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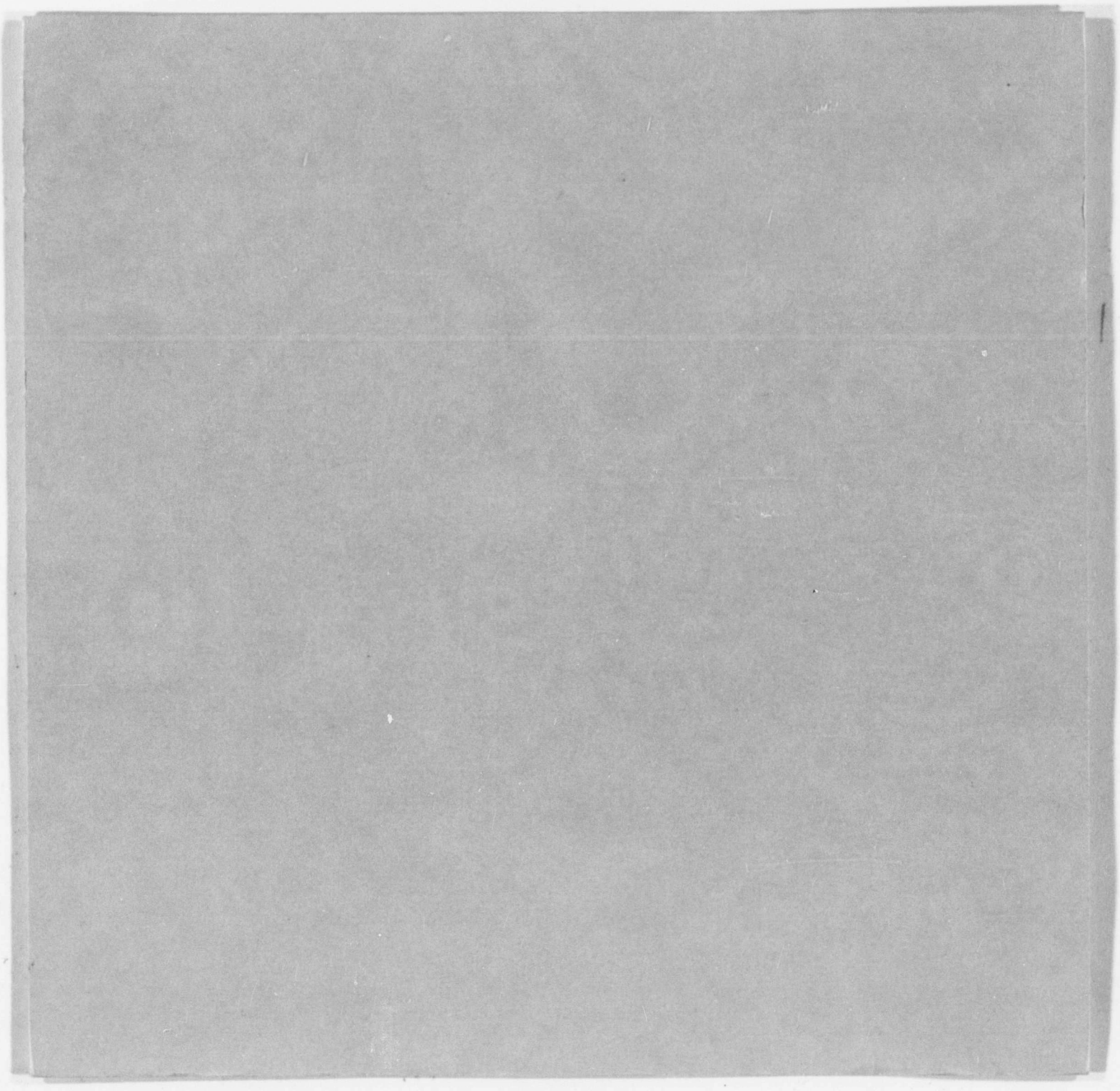

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C 49360

Would you please let me have the views of the Prime Minister on this subject and point out to him that it would perhaps be difficult for him to appear at the unveiling of the tablet to the memory of Sir Wilfrid Laurier, at Saint-Lin, after having decided to stand aside on the above mentioned occasion.

Jean Désy

Honorary Secretary.

Announcement of both memorials on same date. Possibly inadvisable that P.M. should be there. Announcement Suggest Geo. Graham - or Elliott Don't play up Sir J. to detriment of Geo Sir Wilfrid Mention to Rogers for consideration.

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S-4

P.C.250/471

C 49361 fgh.

Certified to be a true copy of a Minute of a Meeting of the Treasury Board, approved by His Excellency the Governor General in Council, on the **23rd March, 1928.**

N-1302
8 of 4 (d)
B-1000-B

PRIVY COUNCIL
CANADA

PRIVY COUNCIL.

The Board recommend that authority be granted for payment from "Unforeseen Expenses" of the sum of $300. for the purpose of defraying expenses incurred in connection with the preparing of the Address presented to His Royal Highness the Prince of Wales, and the Address presented to the Right Honourable Stanley Baldwin on the occasion of their recent visit to Ottawa.

Clerk of the Privy Council.

The Right Honourable
The President of the Privy Council.

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N-1302 C 49362
2nf. I

MINUTES OF THE FIFTEENTH EXECUTIVE COMMITTEE MEETING HELD AT ROOM 534, THE SENATE, ON WEDNESDAY MAY 1ST, 1929, AT 3 P.M.

Those present were:

The Rt. Hon. George P. Graham

The Hon. Sir George H. Perley

The Hon. Charles Marcil

Mrs. J. A. Wilson

Mr. Tom Moore

Dr. A. G. Doughty

Mr. C. G. Cowan

The minutes of the previous meeting were read and approved.

The Chairman, Rt. Hon. George P. Graham, then read his report of the transactioms of the Executive, covering the period from September 8th 1927, to date, which was as follows:

MAY 8 " RECD

14353

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C 49363

FINAL REPORT OF THE NATIONAL
DIAMOND JUBILEE EXECUTIVE COMMITTEE

In concluding the activities of the National Executive, it is but fitting that there should be a resume of the work performed since September 8th, 1927, the date of the meeting at which reports were received from the various provincial committees and from the sub-committees of the National Executive. At that time the committee prepared an interim report which was presented to Parliament by the Prime Minister on February 2nd, 1928. This report was subsequently printed by order of Parliament and a copy is attached hereto.

The intervening months have been occupied with carrying out the programme of this executive insofar as it was not completed at the date of the meeting held in September 1927.

Prominent among the activities were the history contests in the schools and universities and the distribution of medals and certificates in connection therewith.

The contract for the plaques for public and separate schools throughout Canada was completed in good time by the manufacturers and the plaques were furnished as directed to the Ministers of Education of the provinces and distributed by them to the schools.

The work of distributing publications was completed, including the volume "Evolution of Government" written by William Smith of the Dominion Archives.

The final task was the distribution of the official commemorative medal, which was carried out as directed by this executive on the recommendation of the committee on medals.

A large amount of correspondence has been carried on and the work of meeting financial obligations satisfactorily completed.

Your committee can well look back to an achievement which has fully measured up to the best expectations of the originators of the proposal to celebrate the Sixtieth Anniversary of Confederation.

In conclusion it is but fitting that as Chairman of this Committee, I should pay tribute to those who were largely responsible for the organization of the celebration and for carrying it through to such a successful fruition.

The most potent force in ensuring the success of the celebration was the press of Canada that every day contributed enthusiastically and generously.

Outstanding among those not in the public service was Mr. Charles G. Cowan, Chairman of the Association of Canadian Clubs, who, as an Honorary Secretary, gave his whole time for three months prior to July 1st, 1927 and since that date has exercised supervision. To Mr. Cowan's organizing ability, business acumen and wholehearted Canadian patriotism, much of the success attained was due and, while many other citizens throughout Canada rendered invaluable aid, it is but fair to say that Mr. Cowan contributed a double share and is entitled to a large measure of credit for the work accomplished.

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The work of the Hon. Thomas Ahearn, P. C., as Chairman of the radio broadcasting committee in planning the national broadcast on July 1st was admirably done and deserves the highest praise. Mr. J. E. Macpherson as Vice-Chairman also contributed notable service.

The Hon. Herbert Marler, P.C., acted as Honorary Treasurer and Chairman of the finance committee. In addition to these duties which were performed with zeal and ability, Mr. Marler undertook the Chairmanship of the national celebration in Ottawa, and to his guidance much of the success attained was due.

Mr. Walter Thompson, Chairman of the publicity committee, assembled a fine representative body of publicity experts and working journalists . This committees work was splendidly performed. Its contribution to the success of the Jubilee was of inestimable value. Much of the credit must be given to Mr. Thompson for his organizing and executivee ability.

The Hon. Sir George Perley, K.C.M.G. was a tower of strength to the committee. His keen interest and sound judgment were helpful throughout and his work as Chairman of the reception committee at Ottawa on July 1st deserves special praise.

Of those in the public service, honourable mention should be made of Mr. Jean Desy, of the Department Of External Affairs, who, as an Honorary Secretary, gave nearly all his time for three months and brought to the work of the central executive a genuine zeal and enthusiasm which did much to stimulate interest and secure co-operation. Mr. Desy was especially energetic in planning and organizing the fine historical pageant in connection with the celebration in the Capital and was Chairman of the medals committee.

Dr. A. G. Doughty of the Dominion Archives did excellent work in connection with the historical and literary phases of the national programme and gave much valuable time to the supervision of the publication of the souvenir volume entitled "Evolution of Government",

Mr. Ernest H. Scammell of the Department of Soldiers' Civil Re-Establishment, gave three months' service in the central office and his splendid executive ability and wide experience in organizing public demonstrations proved of great assistance.

Mr. William Smith Assistant Keeper of Public Records in connection with the Dominion Archives, as the author of the souvenir book "Evolution of Government contributed an historical work of enduring character to the celebration of Canada's Diamond Jubilee.

Lt.-Col. H.G. Coghill of the Department of National Defence, rendered conspicuous service in arranging details of the public demonstrations July 1st to 3rd, 1927 at Ottawa.

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Mr. H. E. M. Chisholm, Publicity Director for the Department of Trade and Commerce, and Mr. C. J. Cavers, Publicity Director for the Soldiers' Settlement Board, contributed splendid service in connection with the work of the publicity committee.

Mr. F. A. McGregor of the Department of Labour, as Joint Assistant-Secretary, gave valued secretarial assistance.

Commander C. P. Edwards of the Marine Department gave much of his time and energy in connection with the national broadcast and as Secretary of the committee had to assume the major portion of the executive duties. Commander Edwards' work was especially arduous for the two months prior to July 1st, 1927, and he is entitled to a generous measure of the credit for the success of the broadcast.

Mr. T. W. Quayle of the Department of the Secretary of State, did the greater portion of the clerical work, had general supervision of the central office and gave assistance in carrying out the various activities of the National Executive. He also had charge, under the Honorary Treasurer, of the finances and looked after the payment of accounts. Mr. Quayle's work was ably and faithfully performed. The value of his services from first to last cannot be over-estimated.

Credit should be given the Canadian branch of the Royal Mint and the Government Printing Bureau for effective and prompt service in connection with all work in which their co-operation was required.

George P. Graham
Chairman, Executive Committee

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The report was approved after a brief discussion in which the Hon. Sir George Perley deprecated the absence of reference to the work of the Chairman. It was agreed that any reference to the work of the Chairman and Vice-Chairman would appropriately come from the Corporation when it convenes.

The reports of the Auditor General were submitted, and after brief discussion it was moved by Hon. Sir George Perley, seconded by Mr. Tom Moore, and resolved that:

> "Whereas there will be a surplus of revenue over expenditure this committee hereby directs that the balance to the credit of the Committee at the time of the dissolution of the Corporation be refunded to the Receiver General of Canada."

The resolution was carried with the understanding that no money should be returned until after the meeting of the Corporation and all expenses had been met and a final audit made by the Auditor General.

It was moved by Hon. Charles Marcil, seconded by Dr. Doughty that:

> "Whereas the official commemorative medal in its nature is destined to be of historic interest, and whereas a certain number in excess of the quantity required for distribution in 1867 on the occasion of the passing of the British North America Act, were given in custody to the Under Secretary of State of Canada to be allocated as the Governor in Council might determine from time to time, be it resolved that twenty-five bronze medals of the Diamond Jubilee educational series and fifty of the school children's series and fifty bronze official medals be given in custody of the Under Secretary of State of Canada to be held for future distribution as occasion may arise."
>
> "Be it further resolved that the Deputy Master of the Royal Mint is hereby authorized to retain the custody of the dies for the official medal, and that under his direction the dies for the school children's medal and the dies for the educational medal be destroyed."

This was carried.

Some discussion ensued as to final proceedings and the Chairman and Honorary Secretary were authorized to confer with His Excellency the Governor General and the Honorary President, Sir Robert Borden, as to a suitable date.

It was moved by Mrs. J. A. Wilson, seconded by Hon. Sir George Perley, and resolved that:

> " Whereas this Executive Committee has completed the work assigned to it by the Corporation brought into existence by "An Act to Incorporate a National Committee for the celebration of the Diamond Jubilee of Confederation" - being an act passed by Parliament at the first session of the sixteenth parliament(1927) - it is hereby decided to make a final report to the said Corporation."

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"And it is further resolved that the report of this committee shall be the interim report presented to Parliamentt February 2nd, 1928 at the second session of the sixteenth parliament, together with the final report as adopted today, and also a copy of the reports of the Auditor General as presented to Parliament."

This concluded the business and the Chairman in a few happy remarks referred to the unity of action which had characterized the deliberations of the committee. The committee itself was representative of all parts of the country and of all classes and creeds. From its first meeting it had faced the problem of organizing the celebration with singleness of purpose and the unanimity that characterized its decisions represented the general feeling of the country and made possible the great success that was attained. The Chairman hoped that this spirit of unity would continue to grow throughout the country. He desired to express the hearty thanks of the committee to provincial governments and to all who were associated in the work throughout Canada. He was satisfied that the impression that had been made on the school children would be a lasting one and that through the children in the settlements of newcomers throughout the West the parents had been brought to feel that they were really Canadians and had a part in our national life.

Mr. Moore referred to the splendid work of the Chairman and endorsed the suggestion previously made that at the final meeting of the Corporation some record should be made of the distinguished services of both the Chairman and Vice-Chairman.

The meeting then adjourned.

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P-1600-C.

C 49368

Ottawa, June 7, 1930

PROPOSED WORDING FOR CONFEDERATION BUILDINGS TABLET:

"The corner stone of this building was laid July first, 1927, as the first of a group of departmental buildings to be known as Confederation Block, in commemoration of the Diamond Jubilee of Confederation. This building was completed in the year 1930.

"His Excellency the Right Honourable the Viscount Willingdon, G.C.M.G., G.C.S.I., Governor General of Canada; the Right Honourable William Lyon Mackenzie King, C.M.G., LL.D., D. C. L., Prime Minister of Canada; the Honourable John Campbell Elliott, K.C., D.C.L., Minister of Public Works; James Blake Hunter, B.A.; Deputy Minister of Public Works; Thomas William Fuller, Chief Architect."

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MEMORANDUM C 49369

Office of the Prime Minister

Ottawa, June 6, 1930

MR. BALDWIN:

Please secure from Mr. Fuller the wording of the tablet which is to be placed in the building.

WLMK

Herewith H.B.

Mr. Fuller has promised to get it for me this afternoon H.B.

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Cold – Conservative Party
– Con. C-19370 1927

RESOLUTIONS ADOPTED
AT THE
NATIONAL CONSERVATIVE CONVENTION
OCTOBER 11, 1927.

THE TARIFF

The resolution on the tariff submitted to the convention reads:
"This convention desires to record its feeling of pride in the growth, progress and prosperity of Canada, under the historic fiscal policy of the Liberal-Conservative party.
"It affirms its adherence to the principles of that policy in its declared objects of stimulating the development of the natural resources of the Dominion; preserving and enlarging the market for Canadian farm products; building up the industries of Canada, and thus creating employment for our workmen; promoting inter-provincial trade, and generally providing a diversified economic life which will be effectual in retaining Canada's sons and daughters within our own boundaries.
"This convention affirms the principle that from time to time, as changing conditions require, the customs tariff should be revised and its rates adjusted and brought into conformity with such conditions. In such revisions regard should be had not only to the objects of fiscal policy herein enumerated, but to the welfare of the consumer, and it is desirable in the national interest that in such revisions the cost of living and the cost of the implements used in production of whatever nature should be given special and attentive study, with a view to the reduction of such costs to the extent practicable.
"This convention affirms the policy first introduced by the Liberal-Conservative Government in 1912, that with a view of having tariff rates under scientific investigation, a permanent tariff commission should be appointed, representative of the three great classes of Canadian industry - agriculture, labor and manufacturing - entrusted with the duty of studying tariff problems, and making such recommendations to the Government as it deems in the public interest with reasons therefor. Should it find that unfair advantage is being taken of tariff duties it shall make recommendations to be given effect to by the Government for reducing or removing tariff schedules or imposing special duties of excise upon products in respect of which such advantage has been taken, and its reports, findings and reasons therefor shall be laid before Parliament and made known to the public.
"And this convention expresses the view that while strong effort should be directed towards the establishment of a system of preferential tariffs throughout the empire no preference should be given at the expense of the Canadian farmer or workman, and all such preference should be conditional upon the use of Canadian ports".

IMMIGRATION

The resolution on immigration reads:
"Whereas, the present Dominion Government's immigration and colonization policy

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has proved a failure both to its plan of admission, distribution and administration.

"Therefore resolved, that Canada adopt an aggressive system of immigration based upon the selective principle and with that end in view efforts be directed to:

"1 - Repatriation of Canadians.

"2 - Securing a larger percentage of British settlers.

"3 - Taking full advantage of the assistance tendered by the British Government to promote Empire settlement.

"4 - Making arrangements between the two Governments to ensure proper training of the youth of the British Isles as agriculturists to better qualify them as Canadian settlers.

"5 - That in the selection and settlement of immigrants a same classification and districution should be made, taking into consideration the immigrant's previous occupation and adaptability and that in such distribution the needs of all provinces should be given fullest consideration.

"6 - That in selecting new immigrants, relatives of present citizens of Canada should receive favorable consideration.

"7 - That special concessions be granted to Canadians to enable them to settle our vacant lands.

"8 - Oriental exclusion.

"We believe that the new-comer already settled in this country desires to take his place as a useful Canadian citizen, and we assert that our party will do all in its power in extending all possible friendly assistance to enable him to attain that aim".

NATIONAL FUEL POLICY

"Whereas, the interchange of products between the different sections of the Dominion is essential to our poeple attaining the highest degree of self dependence and prosperity:

"And whereas, fuel is outstanding in its importance both to the industrial and family life, but its distribution is checked by natural barriers between our thickly populated centres and our vast deposits of coal in our east and west;

"And whereas, it has always been the policy of the Liberal-Conservative party to encourage home industries and the development of our natural resources;

"Therefore, be it resolved:

"That the Conservative party pledges itself to a national fuel policy and to that end Parliament instruct the railway commission to fix a fair rate as between the carriers on the one part and the industry and the consumer on the other part; and to determine in addition a rate which will enable the coal industry to compete with imported coal; and that the deficit if any, be recognized as a national burden and borne by the Dominion as a whole."

CONSERVATION OF RESOURCES

"That in the best interests of Confederation and the economic development of Western Canada, the Provinces of Manitoba, Saskatchewan and Alberta,

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should be granted their natural resources free from restrictions within the legislative competence of the Parliament of Canada, but in compliance with the letter and spirit of the constitution, and that the claims of these provinces to compensation for loss for lands and resources alienated and the claims of any other provinces in connection with this subject should be investigated with a view to satisfactory and equitable adjustment."

"The report of the organization committee recommends endorsation of the formation of Macdonald-Cartier clubs and other Conservative associations of young men and women; it also makes recommendations with regard to organization work throughout the country.

FOR EX-SERVICE MEN

"(Legislation for ex-service men)-

"That the Conservative party pledges itself in the matter of legislation relative to ex-service men and their dependents.

"A - To an administration of existing legislation, sympathy with the known spirit of such legislation, and in accord with the desire of the Canadian people, and to that end that all essential amendments be made.

"B - For the amending of existing legislation providing for the allowing of appeals from the decisions of the B.P.C. and D.S.C.R. on the matter of assessment to the Federal Appeal Board as a competent independent tribunal with full power to act.

"C - That in the matter of employment in the Civil Service preference be given to ex-service men and women, and that the existing law be rigidly enforced, and that appointments be not made on the grounds of political expediency.

"D - That in the matter of pensions to the needy aged the minimum age be reduced to 60 years.

"E - That the recommendations of the Ralston Commission appointed for the express purpose of investigating problems of pensions, employment and treatment be implemented by legislation.

"F - That recognizing agriculture as the basic industry of the country, we believe every effort should be made to encourage soldier settlers to remain on the land, and having regard to the difficulties with which they have met, amending legislation be passed to alleviate their distress, and further, that existing legisltion be sympathetically enforced.

"G - That this convention records its sense of national loss in the fact that in order to advance themselves such a large number of ex-service men have emigrated from Canada; further, we are fully cognizant of the high type of citizenship they represented in peace, as in war, and the great need of their presence in Canada and their assistance in maintaining the highest place of citizenship in our country."

ST. LAWRENCE WATERWAY

In regard to the St. Lawrence Canal, the following resolution was submitted:

"Whereas the improvement of the Welland Canal system by the Canadian people is nearing completion.

"This convention is of the opinion that the St. Lawrence Canal system as an all-Canadian project should be developed in the national interest

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and when conditions warrant.

"When undertaking the sovereign rights of the respective provinces in the development of power shall be protected.

"Freight rates on grain and grain products -

"Resolved, that we pledge our party to maintain the existing freight rates as a maxima on grain and grain products."

HUDSON BAY RAILWAY

"Recognizing the aspirations of the people of Western Canada to find the most direct means by Canadian ports, by which the products of the west, primarily grain, live stock and farm products, can be carried to the markets of the world, we pledge ourselves to the completion of the Hudson Bay Railway to the Bay at once, and provide such terminal and harbor facilities as are adequate for the operation of the route."

DEVELOP PEACE RIVER

"Resolved that this convention favors the construction as soon as possible of a Pacific Coast outlet from the Peace River District by the most advantageous route."

"This convention reaffirms the policy of the Conservative party to promote, by every effective means, the passage through Canadian ports of the products of Canada and imports for the consumption of its people."

PROTECTION OF FORESTS

A policy of forest protection and reforestration was advocated in a resolution. The resolution further proposed "the extension of scientific research as to the best methods of protecting, conserving and developing our vast resources in co-operation with the provinces to the end that the maximum benefit will accrue to the people of the Dominion as a whole."

MARITIME RIGHTS

"Whereas, the Duncan Commission created by the Dominion Government was given wide powers for the purpose of investigating the grievances of the Maritime Provinces of Canada and which commission as a result of such investigation made certain recommendations, many of which have not been implemented by necessary legislation:

"Be it therefore resolved that this national convention of the Liberal-Conservative party approve and pledge itself when reutnred to power to the enactment of all such legislation as may be necessary to fully implement each and every recommendation made by the said commission."

THE NATIONAL RAILWAYS

"That the Conservative Party pledges itself to maintain the Canadian National Railways as a public owned and operated utility. The resolution further pledges the Conservative party:

"To make the directors of that railway non-partisan and free from political interference."

The full text is as follows:

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"Whereas the Canadian Pacific Railway owes its existence to the courage and vision of Conservative statesmen;

"And whereas the amalgamation of the different units now comprising "The Canadian National Railways" was achieved by the Conservative party;

"And whereas it is in the best interests of our country that both railway systems should remain separate and apart;

"Be it resolved, therefore, that the Conservative party pledges itself to maintain the Canadian National Railways as a publicly owned and operated utility and to make the directorate of that railway non-partisan and free from political interference."

OLD AGE PENSIONS

The resolution setting forth the party's attitude on old age pensions carried without discussion.

It read:-

"Whereas all needy aged persons, wherever resident in Canada, qualified by residence have equal right to old age pensions, and whereas the present Federal pension law is inadequate and unworkable:

"Therefore be it resolved that pension legislation should be subject of Federal legislation only."

AID TO HIGHWAYS

"Resolved, that this convention favors the principle of federal aid for the construction of inter-provincial highways and reaffirms the policy of the Conservative party in this respect."

LABOR

The resolution on labor was:

"Resolved, that this convention accept and adopt as a part of the platform of the Liberal-Conservative party, the terms of the Labor convention and general principles associated with it, which forms a part of the Treaty of Peace of 1919.

"This convention and these principles, adopted as they were, on motion of Canada's then Prime Minister, accepted and subscribed to by representatives of governments, of employers and of labor from many countries of the world, form a fitting foundation upon which stability in industrial relations and progressive social legislation may securely rest.

"The methods and principles as described in the treaty are:

"(1) The guiding principle above enunciated that labor should not be regarded merely as a commodity or article of commerce.

"(2) The right of association for all lawful purposes by the employee as well as by the employers.

"(3) The payment to the employed of a wage adequate to maintain a reasonable state of life as this is understood in their time and country.

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"(4) The adoption of an eight-hour day or a 48-hour week, as the standard to be aimed at where it has not already been obtained.

"(5) The adoption of a weekly rest day of at least 24 hours, which should include Sunday whenever practicable.

"(6) The abolition of child labor and the imposition of such limitations on the labor of young persons as shall permit the continuation of their education and assure their proper physical development.

"(7) The principle that men and women should receive equal remuneration for work of equal value.

"(8) The standard set by law in each country with respect to the condition of labor should have due regard to the equitable economic treatment of all workers lawfully resident therein.

"(9) Each state should make provision for a system of inspection in which women should take part in order to insure the enforcement of the laws and regulations for the protection of the employees.

And be it further resolved:

(a) That national peace and prosperity can be established only if based on social justice.

(b) To promote industrial peace and human welfare is the duty of the state.

"To best accomplish this the following is adopted:

"(1) Encouragement of the production of goods within Canada by Canadian labor.

"(2) Conversion of our raw materials into finished goods at home rather than exporting them for manufacture abroad.

"(3) Encourage specially industries that afford reasonable continuity of employment.

"(4) That all possible aid be given capital and labor by encouraging both to promote co-operation, conciliation and arbitration methods in adjusting controversies between these two important factors in the country's industrial life.

"(5) By co-operation between Government, capital and labor extend scope and use of public employment service, thereby reducing labor turnover and giving unemployed workmen access to wider employment opportunites.

"(6) Encourage the prevention of employment of children under sixteen years of age.

"(7) Make available to Canadian citizens and especially to returned soldiers any offers of assistance for land settlement and as extended to prospective immigrants from other countries.

"(8) Consultation with representatives of both employers and employees on matters affecting them, and representation for both on federal boards or commissions dealing with matters directly affecting their interests.

"(9) So far as is practicable, to support social legislation, designed to conserve human life, health and temperance, to relieve distress during periods of unemployment, sickness and old age.

"(10) To encourage uniformity in labor laws throughout Canada and the wider spread of technical education both in industry and agriculture.

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"That ample provision for the care of our war veterans, nursing sisters, and the widows and orphans of those who made the supreme sacrifice, be restored and maintained."

IMPERIAL RELATIONS

"This convention re-affirms the traditional adherence of the Liberal-Conservative party to the principle of loyalty to the Crown and to the maintenance of that integral connection of Canada with the British Empire, which is based upon full concurrence of the Canadian people.

"This convention further expresses its satisfaction at the position attained by Canada as a nation within the British Empire which was acknowledged at the close of the Great War by our participation in the imperial conference and Canada's signature affixed to the Treaty of Versailles, and also by Canada's admission with full status to the League of Nations.

"The convention emphasizes the fact that the attainment of this position, which has been the resutl of the practical applications made by the leaders of the Conservative party, which was founded in the struggle for Confederation, and has continuously stood for the unity and equality of all Canadians and for the material, moral and spiritual development of Canada.

"This convention rejoices in the powers and freedom of action which Canada as a nation has attained largely through the efforts and sacrifices of our soldiers, and pledges itself anew to the ideal of a united Canada.

"This convention emphasizes the fact that the Conservative convention cherishes the traditions and purposes of the British family of nations, and believes that in the co-operation of the British nations will be found good for Canada and for the world."

MINING

"That this convention believes that for the proper development of the mining industry of Canada there should be co-operation to a greater degree between our Federal and Provincial Governments; that there be established a federal mineralogical department under the direction of a Minister of Mines in which there should be facilities for a central geological department with laboratory and technical staff available to the provinces, and that scientific research should be prosecuted to the utmost in the matter of our mining industry."

FISHERIES

"Whereas, the fishing industry is of primary importance to our Canadian economic system and, whereas, this industry is not being developed up to its possibilities owing to the lack of departmental attention.

"Be it resolved that the Liberal-Conservative party endorses a policy of developing this industry to its fullest capacity and of

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taking measures to safeguard the lives employed therein."

AGRICULTURE

"This convention recognizes agriculture as the basic industry of Canada and it pledges the Liberal-Conservative party to encourage the development of agriculture by promoting by legislation and otherwise a greater interest in agriculture and securing a greater degree of contentment and prosperity for those dependent upon it and, in particular, this party believes that by the scientific investigation of agricultural problems the Government should prosecute every possible effort to advance the interests of this great industry.

"And further this convention is of the opinion that the Government of Canada should co-operate with any and every agency which exists where such co-operation will further the greatest industry of our country."

PARTY POLICY

"The Liberal-Conservative party, whose founders have brought about Confederation, and cemented its provinces into a harmonious political whole, based upon common interests, common ideas, and mutual respect and affection of all its elements, stands everlastingly pledged to a policy which will at all times bring prosperity, contentment and peace to all its citizens, irrespective of boundaries and of origins."

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East Block Prem Chifley 304 (3-C)

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RESOLUTIONS

NATIONAL CONSERVATIVE CONVENTION

Winnipg, October 10th - 12th.
1 9 2 7.

. . . . . .

DUNCAN COMMISSION AND MARITIMES

Whereas the Duncan Commission created by the Dominion Government was given wide powers for the purpose of investigating the grievances of the Maritime Provinces of Canada, and which Commission as a result of such investigation made certain recommendations, many of which have not been implemented by necessary legislation.

Be it therefore resolved that this National Convention of the Liberal-Conservative Party approve and pledge itself when returned to power to the enactment of all such legislation as may be necessary to fully implement each and every recommendation made by the said Commission.

ST. LAWRENCE CANAL

Whereas the improvement of the Welland Canal System by the Canadian people is nearing completion.

This Convention is of the opinion that the St. Lawrence Canal System as an all Canadian project should be developed in the national interest, and as and when conditions warrant.

In such undertaking, the sovereign rights of the respective Provinces in the development of power shall be protected.

FREIGHT RATES ON GRAIN AND GRAIN PRODUCTS

Resolved that we pledge our Party to maintain the existing freight rates, as a maximum on grain and grain products.

INTER-PROVINCIAL HIGHWAYS

Resolved that this Convention favours the principle of Federal aid for the construction of inter-provincial highways, and re-affirms the policy of the Conservative party in this respect.

TARIFF RESOLUTION

This Convention desires to record its feeling of pride in the growth, progress and prosperity of Canada under the historic fiscal policy of the Liberal-Conservative Party.

It affirms its adherence to the principles of that policy in its declared objects of stimulating the development of the natural resources of the Dominion; preserving and enlarging the market for Canadian farm produce; building up the industries of Canada, and thus creating employment for our workmen; promoting inter-provincial trade; and generally providing a diversified economic life which will be effectual in retaining Canada's sons and daughters within our own boundaries.

This Convention affirms the principle that from time to time as changing conditions require, the customs tariff should be revised and its rates readjusted and brought into conformity with such conditions. In such revisions, regard should

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be had not only to the objects of fiscal policy herein enumerated but to the welfare of the consumer, and it is desirable in the national interest that in such revisions the cost of living and the cost of the implements used in production of whatever nature, should be given special and attentive study, with a view to the reduction of such costs to the extent practicable.

This Convention affirms the policy first introduced by the Liberal-Conservative Government in 1912, that with a view of having tariff rates under scientific investigation, a permanent tariff commission should be appointed, representative of the three great classes of Canadian industry, agriculture, labour and manufacturing, entrusted with the duty of studying tariff problems, and making such recommendations to the Government as it deems in the public interest with reasons therefor. Should it find that unfair advantage is being taken of tariff duties, it shall make recommendations, to be given effect to by the Government for reducing or removing tariff schedules or imposing special duties of excise upon products in respect of which such advantage has been taken, and its reports, findings, and reasons therefor shall be laid before Parliament and made known to the public.

And this Convention expresses the view that while strong effort should be directed towards the establishment of a system of preferential tariffs throughout the Empire, no preference should be given at the expense of the Canadian farmer or workman, and all such preference should be conditional upon the use of Canadian ports.

HUDSON BAY ROUTE

Recognizing the aspirations of the people of Western Canada to find the most direct means by Canadian Ports, by which the products of the West, primarily grain, livestock and farm products, can be carried to the markets of the world, we pledge ourselves to the completion of the Hudson Bay Railway to the Bay at once, and to provide such terminal and harbour facilities as are adequate for the operation of the route.

USE OF CANADIAN PORTS

This Convention reaffirms the policy of the Conservative Party to promote, by every effective means, the passage through Canadian ports of the products of Canada, and imports for the consumption of its people.

ORGANIZATION

That the Organization of the Conservative Party be carried out on the following plan:-

(1) That each Polling sub-division in each Federal Riding select a Chairman who shall have the power to choose his committee in the Poll.

(2) That each Federal Riding shall form a Conservative Association which shall meet annually and elect officers in accordance with the plans determined by the Provincial Organization in each respective Province and that the Chairman of each Polling sub-division within the Riding shall be a member of the Executive.

(3) That in each Province there be a Provincial Organization that shall meet annually for the election of officers and the transaction of business, and that the President and Secretary of each Riding Associatio shall be members of the Provincial Organization Executive.

(4) That a Dominion Council be formed consisting of

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the following: Three (3) representatives each from Ontario and Quebec, and one (1) each from Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta, British Columbia and one (1) from the Yukon and each Province shall have the privilege of sending in addition a woman representative to the Council and that the Federal and Provincial Leaders and the Organizer appointed by Federal Caucus be members of the Council. We further recommend the delegates of each Province here assembled to promptly select their Provisional representatives on this Council who shall hold office until their Provincial Organizations can duly select their official representatives at first Annual Meeting. That the members of the Council meet annually.

That all members meet at about 2 P. M. October 12th, at call of Chair to organize preliminaries.

(5) That this Committee recommends to the convention that necessary financial appropriation be made to place organizers in the fields, as may be necessary, to complete the organization outlined in this report.

(6) That whereas it is highly desirable thatthe principles and the precepts of the Conservative Party be inculcated into the rising generation of young menaand women of Canada, THEREFORE be it further resolved that this Committee on Organization strongly recommends that this Convention endorse the formation of a Macdonald-Cartier Clubs and other Conservative Associations of young men and women and that it be recommended that the Provincial Riding and other regularly constituted Conservative Organizations give due recognition on their Executives to duly elected representatives of such Clubs.

NATURAL RESOURCES

Whereas, the Natural Resources of the Dominion, which are being too rapidly depleted, are an asset of paramount importance to the nation, a heritage to be used for the general benefit of the people and with due regard to the interests of succeeding generations.

Therefore the Liberal-Conservative Party declares itself strongly in favour of a policy of forest protection and reforestration and the extension of scientific research as to the best methods of protecting, conserving and developing our vast resources in co-operation with the Provinces, to the end that the maximum benefit will accrue to the people of the Dominion as a whole.

LEGISLATION FOR EX-SERVICE MEN

That the Conservative Party pledges itself in the matter of legislation relative to ex-service men and their dependents.

(a) To an administration of existing legislation in sympathy with the known spirit of such legislation and in accord with the desire of the Canadian people, and to that end that all essential amendments be made.

(b) For the amending of existing legislation providing for the allowing of appeals for Decisions of the B. P. C. and D. S. C. R. on the matter of assessment to the Federal Appeal Board as a competent independent tribunal with full power to act.

(c) That in the matter of employment in the Civil Service

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preference be given to Ex-service men and women and that the existing law be rigidly enforced, and that appointments be not made on the grounds of political expediency.

(d) That in the matter of Pensions to the needy aged, the minimum age be reduced to sixty years.

(e) That the recommendation of the Ralston Commission, appointed for the express purpose of investigation problems of pensions, employment and treatment be implemented by legislation.

(f) That realizing Agriculture as the basic industry of the country, we believe every effort should be made to encourage soldier settlers to remain on the land, and having regard to the difficulties with which they have met, amending legislation be passed to alleviate their distress, and further, that existing legislation be sympathetically enforced.

(g) That thi Convention records its sense of national loss in the fact that in order to advance themselves, such a large number of ex-service men have emigrated from Canada; further we are fully cognizant of the high type of citizenship they represented in Peace, as in War, and the great need of their presence in Canada and their assistance in maintaining the highest plane of citizenship in our country.

PEACE RIVER DISTRICT

Resolved that this Convention favours the construction as soon as possible of a Pacific Coast outlet from the Peace River District by the most advantageous route.

AGRICULTURE

That this Convention recognized agriculture as the basic industry of Canada and it pledges the Liberal-Conservative Party to encourage the development of Agriculture by promoting by legislation and otherwise a greater interest in agriculture and securing a greater degree of contentment and prosperity for those dependent upon it and, in particular, this Party believes that by the scientific investigation of agricultural problems the Government should prosecute every possible effort to advance the interests of this great industry.

And further this Convention is of the opinion that the Government of Canada should co-operate with any and every agency w which exists where such co-operation will further the greatest industry of our country.

PARTY POLICY

The Liberal-Conservative Party whose founders have brought about Confederation and cemented its Provinces into an harmonious political whole, based upon common interest, common ideas, and mutual respect and affection of all its elements, stands everlastingly pledged to a policy which will at all times bring prosperity, contentment and peace to all its citizens irrespective of boundaries and of origins.

IMMIGRATION

WHEREAS, the present Dominion Government's Immigration and Colonization policy has proved a failure both as to its plan of admission, distribution, and administration,

THEREFORE RESOLVED, that Canada adopt an agressive system of immigration based upon the selective principle and with that end in view efforts be directed to:

1. Repatriation of Canadians.

2. Securing a larger percentage of British settlers.

3. Taking full advantage of the assistance tendered by the British Government to promote Empire settlement.

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4. Making arrangements between the two Governments to ensure proper training of the youth of the British Isles as agriculturists to better qualify them as Canadian settlers.

5. That in the selection and settlement of immigrants a sane classification and distribution should be made taking into consideration the immigrant's previous occupation and adaptability and that in such distribution the needs of all provinces should be given fullest consideration

6. That in selecting new immigrants, relatives of present citizens of Canada should receive favourable consideration.

7. That special concessions be granted to Canadians to enable them to settle our vacant lands.

8. Oriental exclusion.

We believe that the newcomer already settled in this country desires to take his place as a useful Canadian citizen, and we assert that our Party will do all in its power in extending all possible friendly assistance to enable him to attain that aim.

INDUSTRIAL RELATIONS AND SOCIAL LEGISLATION.

RESOLVED that this Convention accept and adopt as a part of the platform of the Liberal-Conservative Party, the terms of the Labour Convention and general principles associated with it, which form a part of the Treaty of Peace of 1919.

This Convention and these principles, adopted as they were, on motion of Canada's then Prime Minister, accepted and subscribed to by representatives of Governments, of employers and of labour from many countries of the world, form a fitting foundation upon which stability in industrial relations and progressive social legislation may securely rest.

The methods and principles as described in the Treaty are:

(1) The guiding principle above enunciated that Labour should not be regarded merely as a commodity or article of commerce.

(2) The right of association for all lawful purposes by the employed as well as by the employers.

(3) The payment to the employed of a wage adequate to maintain a reasonable state of life as this is understood in their time and country.

(4) The adoption of an eight-hour day or a forty-eight hour week, as the standard to be aimed at where it has not already been obtained.

(5) The adoption of a weekly rest day of at least 24 hours, which should include Sunday whenever practicable.

(6) The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

(7) The principle that men and women should receive equal remuneration for work of equal value.

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(8) The standard set by law in each country with respect to the condition of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

(9) Each state should make provision for a system of inspection in which women should take part in order to ânsure the enforcement of the laws and regulations for the protection of the employed.

AND BE IT FURTHER RESOLVED:

(1) That national peace and prosperity can be established only if based on social justice.

(2) To promote industrial peace and human welfare is the duty of the State.

To best accomplish this the following is adopted:

(a) Encouragement of the production of goods within Canada by Canadian labour.

(b) Conversion of our raw materials into finished goods at home rather than exporting them for manufacture abroad.

(c) Encourage especially industries that afford reasonable continuity of employment.

(d) That all possible aid be given capital and labour by encouraging both to promote co-operation, conciliation and arbitration methods in adjustin controversies between these two important factors in the country's industrial life.

(e) By co-operation between the Government, capital and labour extend scope and use of public employment service thereby reducing labour turnover and giving unemployed workmen access to wider employment opportunities.

(f) Encourage the prevention of employment of children under sixteen years of age.

(g) Make available to Canadian citizens and especially to returned soldiers any offers of assistance for land settlement that are extended to prospective immigrants from other countries.

(h) Consultation with representatives of both employer and employees on matters affecting them, and representation for both on all Federal Boards or commissions dealing with matters directly affecting their interests.

(i) So far as is practicable, to support social legislation designed to conserve human life, health and temperance, to relieve distress during periods of unemployment, sickness and in old age.

(j) To encourage uniformity in Labour Laws throughout Canada and the wider spread of technical education both in industry and agriculture.

(k) That ample provision for the care of our war veterans, nursing sisters, and the widows and orphans of those who made the supreme sacrifice, be restored and maintained.

MINING

That this Convention believes that for the proper development of the Mining industry of Canada there should be co-operation to a greater degre between our Federal and Provincial Governments, that there be established a Federal

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Mineralogical department under the direction of a Minister of Mines in which there should be facilities for a Central Geological department with laboratory and technical staff available to the Provinces, and that scientific research should be prosecuted to the utmost in the matter of our Mining industry.

FISHERIES

Whereas the fishing industry is of primary importance to our Canadian economic system and whereas this industry is not being developed up to its possibilities owing to the lack of departmental attention.

Be it resolved that the Liberal-Conservative Party endorses a policy of developing this industry to its fullest capacity and of taking measures to safeguard the lives employed therein.

OLD AGE PENSIONS

WHEREAS all needy aged persons, wherever resident in Canada, qualified by residence have equal right to old age pension, and

WHEREAS the present Federal Pension Law is inadequate and unworkable.

THEREFORE be it resolved that Pension Legislation should be the subject of Federal Legislation only.

IMPERIAL RELATIONS.

This Convention reaffirms the traditional adherences of the Liberal-Conservative Party to the principle of loyalty to the Crown and to the maintenance of that integral connection of Canada with the British Empire which is based upon the full concurrence of the Canadian people.

This Convention further expresses its satisfaction at the position attained by Canada as a nation within the British Empire, which was acknowledged at the close of the Great War by our participation in the Peace Conference and Canada's signature affixed to the Treaty of Versailles and also by Canada's admission with full status to the League of Nations. The Convention emphasizes the fact that the attainment of this position has been the result of the practical application mainly by the leaders of the Conservative Party, of the principles laid down by that party which was founded in the struggle for Confederation and has continuously stood for the unity and equality of all Canadians and for the material, moral and spiritual development of Canada.

This Convention rejoices in the powers and freedom of action which Canada as a nation has attained largely through the efforts and sacrifices of our soldiers in the Great War and pledges itself anew to the ideal of a united Canada.

This Convention emphasizes the fact that the Conservative Party cherishes the traditions and purposes of the British family of nations and believes that in the free co-operation of the British nations will be found the greatest good for Canada and for the world.

NATIONAL FUEL

Whereas, the interchange of products between the different sections of the Dominion is essential to our people attaining the highest degree of self dependence and prosperity.

AND WHEREAS, fuel is outstanding in its importance both [illegible] industrial

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to the industrial and family life, but its distribution is checked by natural barriers between our thickly populated centres and our vast deposits of coal in our East and West.

AND WHEREAS it has always been the policy of the Liberal-Conservative Party to encourage home industries and development of our Natural Resources.

Therefore, be it resolved - -

That the Conservative Party pledges itself to a National Fuel Policy and to that end Parliament instruct the Railway Commission to fix a fair rate as between the carriers on the one part and the industry and the consumer on the other part; and to determine in addition a rate which will enable the coal industry to compete with imported coal; and that the deficit, if any, be recognized as a national burden and borne by the Dominion as a whole.

NATIONAL RESOURCES

That in the best interests of Confederation, and the economic development of Western Canada, the provinces of Manitoba, Saskatchewan and Alberta, should be granted their natural resources free from restrictions within the legislative competence of the Parliament of Canada, with provisions for the maintenance and administration of the School Lands and School Land Endowment Funds for educational purposes, according to the laws of the respective provinces, but in compliance with the letter and spirit of the constitution, and that the claims of these provinces to compensation for loss for lands and resources alienated, and the claims of any other provinces in connection with this subject should be investigated with a view to satisfactory and equitable adjustment.

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CHAMBRE DES COMMUNES
CANADA
LE GREFFIER

ARTHUR BEAUCHESNE, K.B., M.S.R.C.

OTTAWA
Le 2 décembre, 1931.

Mon cher député:

Sont-ils assez dégoutants ces bons curés qui mettent leur église à la disposition de la maison Paquet pour faire de la reclême. Où est la foi dans le Petit Jésus? Est-ce que ce bonhomme Noel n'est pas le même que Santa Claus? Il n'y a plus rien de sacré dans la province de Quebec. Les Canadiens français vivent sous le régime des exploiteurs, cléricaux et laïques.

A vous,

Arthur Beauchesne

M. J. F. Pouliot, M. P.,
RIVIERE DU LOUP, P. Q.

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C 49386

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C 49387

Extract from "Canada and the Canadian Bill"
by Sir John Beverley Robinson, 1839:

"With respect to the principle recommended by Lord Durham under the name of 'responsible government' it is not surprising that, notwithstanding the distinct rejection of the innovation by Her Majesty's government, it is still made the ground of so much hurtful agitation in Upper Canada. . . .

"I greatly apprehend that whatever advantages might be reasonably expected from a legislative union of the four North American colonies, if that were found practicable and considering the character of the population of Nova Scotia and New Brunswick, the effect of uniting the two provinces of Canada only, will be to create a representative Assembly such as the government will be unable to withstand, except by measures which it is painful to anticipate - that it may, at the very outset, and will certainly, at no distant period, give existence to a representative body in which the majority will not merely be opposed in the common spirit of party to any colonial Governor who shall not be unfaithful to his trust, but a majority which would be held together by a common desire to separate the colony from the Crown - a party, consequently, whom it will be impossible to conciliate by any concession within the bounds of right. . . .

"The opposition of the Assembly, while it represented Lower Canada alone, appeared to the government in England to be so formidable that the influence of the motives I have just enumerated was fast weakening the royal authority, and depriving the constitution of that power of protection which is necessary for the public good. . . .

"How much greater then will be the danger, when every threat from the Assembly must be treated as proceeding from the representatives of the whole of Canada; and when every perplexing obstacle thrown in the way of the executive government will create in the two provinces the same embarrassment and confusion which under the former system could only extend to one.". . .

"If the French-Canadians should be violent and clamorous, they (modifications) would be conceded in the hope of appeasing them; if they should be for a time plausible and submissive, they would be conceded from another motive; and sooner or later the people of Upper Canada would, I apprehend, be left to take their chances of the union without their securities. . . .

"Surely it was no error in judgment that they (the Legislative Council) have always, constantly and firmly but temperately, endeavored to withstand, by constitutional means, those destructive schemes which the mother country has at last found it necessary to repress by her armies, and yet it will be found that in several public discussions they have either surrendered silently and without vindication to whatever censures were cast upon them, or the censure has received countenance where the Council could not but feel that they had a right to look for support. And now, at the termination of the contest, it is proposed to change their constitution, apparently for the purpose of moulding it more in accordance with that branch of the legislature from which all the difficulties have sprung. . . .

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Gee - Const Issue / 1924

C 49388

Comments upon the Act of Union, 1840:

By Sir Francis Bond Head:

"It must inevitably destroy the Established Church in Upper Canada, subvert British institutions in both provinces, and effect the separation from the Empire of the whole of our North American colonies."

Lord Metcalfe declared on leaving Canada:

"that the union of the Canadas was a fatal measure, and that responsible government was an impracticable theory."

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Sub Confederation Coll - Const Docs 1924.

C 49389

THE BRITISH CONSTITUTION

Lecture by Sir Wilfrid Laurier

in Montreal, October 27, 1909.

(See pages 7, 8 & 10.)

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MEMORANDUM

Prime Minister's Office

Ottawa,.....

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POOR
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gradually done away with, was set aside by the ruler, but in England, the first crude system of representation grew and developed in power and in influence, until it became the parliament; the Parliament of England; the pride of all British subjects in all parts of the world, and alike the envy and the aim of all friends of freedom, law and order, all the world over. It was by this nascent parliament that the ambition of Kings was checked, and this was done through the principle which was asserted almost with the origin of the monarchy in England, that in the realm of England, the King has no power to levy taxation upon his subjects, except by the consent of his subjects. This was a bold principle in the middle ages when the doctrine was prevalent of the ever-growing omnipotence of the King, of the annointed of the Lord, as the phrase was then current. That principle bred in the people of England, a strength of character and a spirit of freedom which was not then to be found in any other race. It was, as I have said, the nascent parliament of England which checked the powers of the King, and I am bound to say that the sovereigns of those days cast a covetous eye upon the prerogatives of the other monarchs of Europe who could tax their subjects at their own sweet will, and to their hearts' content.

That principle was the cause of a long struggle between the Kings and the Parliament, which lasted, with various fortune, until the days of Charles the First, when Parliament asserted it, not only by resolutions, not only by speeches, but when they embodied it in a Statute to which the King ungraciously assented, and from which he vainly sought to escape. The principle was established in the Statute of 1641, and asserted that it was:—

"The ancient right of the subjects of this Kingdom, that "no subsidy, custom, impost, or any charge whatsoever ought "or may be laid or imposed upon any merchandise exported "or imported by subjects, denizens or aliens without common "consent in parliament."

And this is the first cardinal principle of the British Constitution, that the King has no power of taxation except

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by the common consent of Parliament. You may ask me what, in those early days, was the composition of Parliament? It was exactly as it is to-day, composed of hereditary Peers and the Elected Commoners. There was no difference, save that in those early days the Lords and the Commons sat together. There was only one House. How the House was afterwards divided into two Houses—one the House of Lords and the other the House of Commons—is a matter of history, which I need not dilate upon, suffice to say that for the five hundred years which have elapsed since the days of Edward the Third, the legislative power of England has resided in the King, the Lords, and the Commons—the three estates of the Realm. In other words, no law can be passed in England, except by the consent of the three entities composing the Parliament, the King, the Lords and the Commoners. There is perfect equality. They have as much power, the one as the other, excepting in matters of finance, where it has long been recognized; at all events, the Commons have long claimed that they have the initiative power, and that the Lords have no right whatever to change or to amend their measures, but must reject or approve them, just as they are, and they can go no further. This is the second principle of the British Constitution: that the legislative power resides, not in the King, as was the case in ancient France, and in many countries of Europe, but in the three estates of the Realm, the King, the Lords and the Commons. Now with regard to the Executive power in every civilized nation, it is vested in the Chief Magistrate, and, in England, the Chief Magistrate is the King, but under the present system the exercise of the executive power is subject to a condition which is absolutely unique, which was never found in any nation until it was adopted in England, and that is that the King, in the exercise of his Executive power, is subject to the will and the control of Parliament. Even the most despotic King must have Ministers. He cannot do everything himself in connection with any of the great departments of State, but he appoints Ministers who carry on the business and advise the sovereign or president, as the case may be. It would be natural—the King having

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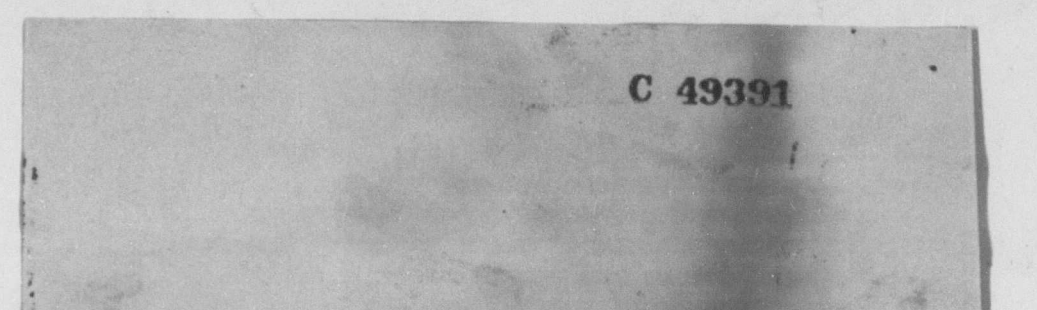

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appointed his Ministers—that his Ministers should be responsible to him. So it was for many centuries and ages in Great Britain, but when the long contest which took place between the British Parliament and the King, over the legislative power, had been closed, Parliament advanced a step further. It was found, by the course of events, that if the Ministers of the King were not in close sympathy with the majority in Parliament, they could easily baffle the will of Parliament, as expressed in the Law, and, therefore, Parliament advanced the doctrine that the King must be served by Ministers who were in sympathy with the elected representatives of the people, and responsible to them. This principle was not adopted in a day. It was strongly resisted by the Crown. In fact, it was only in the early years of our late Sovereign, of that great, good and wise woman, Queen Victoria, that the principle was at last fully admitted, recognized and acted upon. This principle was as distasteful to the Georges as the other principle of taxation by the consent of the people had been distasteful to the Plantagenets, to the Tudors and to the Stuarts, but to-day it is fully recognized. The moment a Ministry has ceased to command the majority in Parliament, they must make way for other men, and even then the Sovereign is not free to select anybody he pleases to take their place; he must choose men who are in sympathy with the Parliamentary majority. This, Ladies and Gentlemen, is the third great cardinal principle of the British Constitution. I have named you three; first, no taxation except by the consent of Parliament, no legislation except by the consent of the three estates of the Realm, no Executive Authority except with the consent of Parliament.

Now, I am bound to say, in truth and in justice to History, that the merit of first checking the ambition of the Sovereign, the merit of first planting the seed of constitutional government does not belong to the class which we to-day call "the people," but it belongs to the Barons, to the Lords, to the aristocracy of Britain. Under the feudal regime in every country in Christendom, the great land proprietors were almost as strong and powerful as the King himself. In France, Hugues Capet,

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who was the first King of the French after the fall of the Carlovingian Dynasty, once said to a subject who had taken the title of Count:—"Who made thee Count?" The insolent rejoinder was: "Who made thee King?" In England, during the reign of Edward the First, the King desired the Earl of Norfolk to take part in an expedition to Gascony, and the latter peremptorily refused. The King in a fit of petulant passion, exclaimed "By God, Sir Earl, you will go or hang." The cool answer was: "By God, Sir King, I shall neither go nor hang." The spirit of resistance was the same in France as in England, but it perished in the first whereas in the latter country it remained a flame which never was extinguished and permeated the whole body. All honour, I say, to the aristocracy of England. History does not record a class which has done better service for the State, and which can boast of more illustrious fame. Happy England, if the nobles of the 20th century, faithful to the traditions of the past, in the new principles which come up under new conditions, will stand, as their forefathers, in the vanguard of freedom and reform. By the side of the Lords arose the Commons. The Commons at first were recruited from the landed gentry and the town burgesses. It remained so for many centuries. In 1832, there was a Bill of Reform followed by several similar measures in quick succession, which extended the franchise until now, in Great Britain, the right to vote is given to every respectable wage earner, and that country has come to the day of Democracy. Happy England, if her Democracy remember that moderation in triumph is the keynote to stability and progress, and that what has made England what she is to-day, is not Revolution, but Evolution and Reform. The British Constitution is the result of a process of Evolution; the application of a few leading principles, supplemented by maxims, rules and precedents—too long to enumerate—which have grown with the ages, determined one at a time, and all tending towards one single object; the Government of the people by the people themselves. How true are the words of Tennyson, in my estimation the most English of all the

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English poets since the days of Shakespeare, when he thus summarized the blessings of England's free institutions:—

You ask me why, tho' ill at ease
  Within this region I subsist,
  Whose spirits falter in the mist,
And languish for the purple seas.

It is the land that freemen till,
  That sober Freedom chose;
  The land, where girt with friend or foes,
A man may speak the thing he will.

A land of settled Government,
  A land of just and old renown,
  Where freedom slowly broadens down
From precedent to precedent.

Where faction seldom gathers head,
  But by degrees to fullness wrought,
  The strength of some diffusive thought,
Hath time and space to work and spread.

No better definition of the British System has ever been written than is contained in these beautiful lines. During the last century, the great American Statesman, Daniel Webster, was a visitor in the old city of Quebec. At that time there was a detachment of the English Army doing garrison duty in that Gibraltar of the American Continent. One evening the ears of Webster were saluted by the tattooing of the English troops, and a thought crossed his mind which, shortly afterwards, in a speech delivered in Congress, he expressed in these words—Speaking of England he said it was:—

"A power, to which, for purposes of foreign conquest "and subjugation, Rome, in the height of her glory, is not to "be compared; a power which has dotted over the surface of "the whole globe with her possessions and military posts,

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"whose morning drum-beat, following the sun and keeping "company with the hours, circles the earth with one continuous "and unbroken strain of the martial airs of England."

This beautiful language graphically expresses the power which has been reached by the small Island whose modest beginning has just been explained. If to-day Webster were to speak upon the same subject, if he could gaze upon what we to-day see with our own eyes, and were to descant upon the same subject, with what images could he describe the power of England. He could speak of her, not as encircling the globe with her garrisons, but as the centre of a group of daughter nations who have found in the adoption and application to themselves of the British Constitution, not only a charter of liberty, but a closer bond of union with the Motherland. Proud as we may be as British Subjects, of these achievements of a country to which we belong, there is another respect in which, it seems to me, the British Subjects can derive still greater pride. The British Constitution in another way encircles the globe. It has been carried over the globe not only by British hands, but by friends and lovers of Liberty. During the last century, all the nations of the Continent of Europe have been convulsed by Revolutions in the struggle of the people for liberty, and they found it at last in the application to themselves of the British Constitution. France, Italy, Spain, Portugal, Germany, Austria, Hungary, Greece, Denmark, Norway, Sweden, all these countries have adopted, in whole or in part, the British Constitution. At all events, those which have not adopted it entire, have adopted those two cardinal principles "No taxation except by the consent of the people, and ministerial responsibility." Nor, is that all. These great principles have crossed the farthest oceans, and by them the dormant civilization of the Orient has been quickened to life. Japan has adopted it, and by doing so it has jumped at one bound into the highest rank in peace and war, and even the Empire of Turkey itself, the decadent power, the sick man, as Lord Palmerston used to call it, is seeking, and may find in the British Constitution, regeneration. And,

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The Election in Nova Scotia in 1859 was very close. By the returns the Liberals had a majority of 3; but the Johnstone Government in which Sir Charles Tupper (then of course Dr. Tupper) was Provincial Secretary did not resign but met the House in January 1860. In a straight want of confidence vote the Government was defeated. Mr. Johnstone advised a dissolution and the Governor, Lord Mulgrave, refused and sent for Hon. William Young to form a Government. To say that Sir Charles was peeved is to put it altogether too mildly. He refused all social intercourse with the Governor and even went so far as to address a letter to the Duke of Newcastle, then Principal Secretary of State for the Colonies, savagely attacking the Governor and complaining in bitterest terms of his action. Here are some of Sir Charles striking phrases and sentences:- "The usurping Government of Mr Young"

"The unconstitutional refusal of Lord Mulgrave to dissolve the Assembly upon the advice of the late Executive council".

" A Decision has been made which cannot fail to induce in these Colonies the impression that what

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has been supposed to be self-government is but a delusion and a snare."

"In conclusion your Grace will allow me to add that should it prove true that the Colonial Office has determined to sustain the Lieutenant Governor in the unconstitutional course pursued by him it will become necessary to lay the subject before the Imperial Parliament and this country will then learn whether the time has arrived when important constitutional changes have become indispensable for the acquisition of British Institutions as enjoyed in the Parent State."

Letter of Dr. Tupper to Duke of Newcastle quoted in full in Vol. 1 Chapter 4 of Saunders Life of Sir Charles Tupper.

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C 49399

The following speeches, as reported in the London "Times" were examined, but no reference was made by Sir Wilfrid Laurier to the British Constitution:

Speech at Imperial Institute, London, June 18, 1897.

Dominion Day Speech at Hotel Cecil, London, June 29.1897.

Speech at National Liberal Club, London, July 4, 1897.

Speech at Chamber of Commerce, London, July 9, 1897.

The following is an excerpt from Sir Wilfrid's speech at the Colonial Institute, London, July 2 1897:

"The basis upon which the British Empire rested was not force or violence, but freedom and justice "

(From London "Times", July 3, 1897)

The following is an excerpt from Sir Wilfrid's speech at the Constitutional Club on July 7, 1902, as reported in the London "Times" of July 8, 1902:

"The British Empire is a galaxy of free nations. The bond of the British Empire is allegiance to the King without distinction of race or colour."

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C 49400

Imp Instn

Times June 14/94

" " 30. 94. p 10

Dom Day Speech

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at Colonial Instn Times July 3 97 p 12

" Nat Lib. Club Times July 5 94 p 13

address on Colonial affairs
Times July 6 97 p 12

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at Ch. of Commerce
Times July 10 97 p 14

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C 49401

Times of

Imperial Institute London — June 19 1897 cut out
Dominion Day Speech Hotel Cecil London — June 30. 1897 nothing
Colonial Institute London — July 3 1897

"The basis upon which the British Empire rested
was not force or violence, but freedom
and justice

National Liberal Club, London Eng. — July 5 1897 nothing
Report of Meeting in Downing St. — July 6 1897

Chamber of Commerce London — July 10 1897 nothing

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C 49402

Ottawa, ... 191 ....

London Times July 8 1902 Page 11
Constitutional Club

The British Empire is a galaxy of free nations.
The bond of the Br. is allegiance to the King without
distinction of race or colour x

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C 49403

Cable - Const. Issued 7/1926

Governors General Cabinet. (D. O'D Skelton)

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C 49404

into prohibited ground; that this power is to be exercised only for the protection of imperial or federal rights which may have been invaded by provincial legislatures, but never to afford relief to any section of the community which may deem itself aggrieved by that legislation. Interference in such cases would be a violation of the federal principle, and in all such cases the aggrieved portion of the community must seek and can find its relief in the application of the principle of responsible government.

For the members from the province of Quebec, he concluded, to urge federal intervention was to put in jeopardy the independence of their province merely to snatch a party triumph.

The Bleus had their motion of censure, passed on a straight party vote, by 186 to 51. Next they demanded Letellier's head. The governor-general, the Marquis of Lorne, had a fellow-feeling for lieutenant-governors, and was extremely reluctant to sanction Letellier's dismissal after Joly had assumed responsibility and been sustained by the people. Macdonald himself had little enthusiasm for the task, but the Bleus would brook no delay. Macdonald offered his half-hearted recommendation of dismissal; the marquis demurred, and believed that he should seek instructions from the British government before establishing an important precedent. The government was in a quandary; should they yield, or should they resign? Macdonald decided to yield, but with ill-grace; his statement to the Commons gave the impression that the governor-general's action had not the assent of the cabinet. The Bleus were furious, hooted their leader in the House, stormed in caucus, threatened a vote of non-confidence, but fell

C 49405

into line. The British authorities advised the governor-general to follow the recommendations of his cabinet on this as on other matters. Letellier's dismissal followed, and De Boucherville was avenged.

In the attempt to hold a lieutenant-governor personally responsible to the federal government rather than allow him shelter behind the responsibility of the provincial ministry, Macdonald had acted with some reluctance. Into the conflicts with Ontario which followed he threw himself with a vigour and tenacity rooted in strong personal feeling. In great measure the conflicts as to constitutional rights were merely the cover for personal rivalry and party jockeying. In Ottawa John A. Macdonald was now supreme; in Toronto, Oliver Mowat. They had been friends in youth, Mowat studying law in Macdonald's Kingston office, but in the intensely personal atmosphere of Union politics they had become bitter enemies. We have a glimpse of their relations, and incidentally of the amenities of parliamentary life in the sixties, in a scene in the House in April, 1861,—Macdonald accusing Mowat of inconsistency, Mowat declaring the attack false and unwarranted, and Macdonald crossing the floor of the House, shaking his fist in Mowat's face, and shouting, "You damned pup, I'll slap your chops for you." When Mowat retired to the bench, hostilities slumbered, but when he stepped down to take control of the provincial administration in 1872, and particularly when in face of Conservative victory on federal issues, he strengthened his grip on Ontario, the rivalry became

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C 49406

Comment re erection of statue of Cromwell in London

"Happy is the dynasty which can permit without offence or without fear the memory of a regicide to be honoured in its capital. Happy the sovereign and happy the dynasty that, secure in their constitutional guarantees and in the world-wide love of their subjects, can allow such a ceremonial as this to take place without a shadow of annoyance or distrust"

(Extract from Lord Roseberry's "Miscellanies - Literary and Historical"

Cromwell tercentenary celebration 1899

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Cole - Const Issues / 1926

C 49407

THE BRITISH CONSTITUTION

Speech of Sir Wilfrid Laurier in answer to Sir Charles Tupper in the House of Commons as reported in Hansard on September 21, 1896.

"If the outgoing administration before the election had taken the precaution, or had advised the Crown, of nominating Mr. so and so to the House of Lords, and if the Crown had agreed to that, I could well understand that the honour of the Crown under such circumstances was pledged..."

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C 49408

THE BRITISH CONSTITUTION.

Sir Wilfrid Laurier's Speeches

~~Excerpt from "Wilfrid Laurier on the Platform, 1871-1896";~~
Speech at picnic at Somerset, Que., on August 2nd, 1887.

-o-oeo-o-

"We form part of the British Empire, we are British subjects; we are British subjects and should be proud of the fact; we form part of the greatest empire on the globe and are governed by a constitution which has been the source of all the liberties of the modern world".

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CANADA

Col - Const Issue 7
C 49409 1926.

THE BRITISH CONSTITUTION.

"Life and Letters of Sir Wilfrid Laurier", by Dr.O.D.Skelton

•

....."The Government was in a quandary; should they yield, or should they resign? Macdonald decided to yield, but will ill-grace; his statement to the Commons gave the impression that the Governor-General's action had not the assent of the cabinet. The Bleus were furious, hooted their leader in the House, stormed in caucus, threatened a vote of non-confidence, but fell into line. The British authorities advised the governor-general to follow the recommendations of his cabinet on this as on other matters. Letellier's dismissal followed, and De Boucherville was avenged". (In 1878)

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THE BRITISH CONSTITUTION.

Extracts of Sir Wilfrid Laurier's Speeches

Speech at picnic at Somerset, Que.,
August 2nd. 1887.

"We form part of the British Empire, we are British subjects; we are British subjects and should be proud of the fact; we form part of the greatest empire on the globe and are governed by a constitution which has been the source of all the liberties of the modern world".

Speech at the Constitutional Club.
July 7. 1902.

"The British Empire is a galaxy of free nations. The bond of the British Empire is allegiance to the King without distinction of race or colour".

Lecture delivered in Montreal on Oct.27.1909.

"The moment a Ministry has ceased to command the majority in Parliament, they must make way for other men, and even then the Sovereign is not free to select anybody he pleased to take their place; he must choose men who are in sympathy with the Parliamentary majority. This, Ladies and Gentlemen, is the third great cardinal principle of the British Constitution. I have named you three; first, no taxation except by the consent of Parliament, no legislation except by the consent of the three estates of the Realm, no Executive Authority except with the consent of Parliament".

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Coll - Const Issue 1924
C 49411

THE BRITISH CONSTITUTION.

Speech by Sir Wilfrid Laurier in answer to Sir Charles Tupper in the House of Commons, as reported in Hansard of September 21, 1896.

-o-o-o-o-o-

.... "My hon. friend spoke with his usual vigour on the British constitution, and if we are to believe him in the speech he delivered this evening, he had nothing in view but respect for the British constitution. If I understood him aright, Government is responsible to Parliament but not responsible to the people, and the voice of the people, can only be heard through the voice of Parliament and the voice of the people, as spoken by the people, is not to be taken into consideration. I do not say that there is not something in that argument, But that is not the modern doctrine, which is, that the Government is not only responsible to Parliament but to the people in whose behalf Parliament speaks. The theory propounded by the hon. gentleman is a hundred years old. The hon. gentleman well knows that the British constitution is not a cut and dried instrument. If there is one characteristic which distinguishes the British constitution more than another it is its elasticity. It has been found applicable as statute has followed statute and precedent followed precedent, and it has adapted itself to new eras of development as they have progressed from age to age, It has been applied

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without effort, wrench or hindrance from the time of the personal absolutism of the earlyvPlantagenet kings down to the Democratic Government of Queen Victoria. Responsible government was the greatest conquest achieved by the British people under the constitution. In early days government was responsible to Parliament. But it could hardly be said that Parliament represented the people - it represented the classes and the privileged classes, but not the people; and the great Reform Bill of 1832, followed as it has been by successive instalments and extensions, brought the Parliament of Great Britain and the Parliament of Canada to be expressions of the direct voice of the people. This is a new doctrine, which is new in operation, - that as soon as the voice of the people has been heard, immediately the Ministers of the Crown shall take advice as to whether they have been supported or not by the people. The first statesman to deal with this question and to take this view was Mr. Disraeli after the great Reform Bill of 1868..."

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C 49413 1924

THE BRITISH CONSTITUTION.

Speech ~~by Sir Wilfrid Laurier, in answer~~ by Sir Charles Tupper in the House of Commons, as reported in Hansard of September 21, 1896.

-o-o-o-o-

....."No greater misfortune could happen to Canada in my opinion than that the time should come when anybody would feel that the Governor General of this great Dominion represented not his sovereign who reigns in the hearts of the whole people but a party in the state. In this we should lose one of the great distinctions that give British institutions, in my opinion, such great superiority over republican institutions".....

....."But I feel that there are some things above and beyond party, and one of these is the maintenance of these great parliamentary institutions that have enabled England to become what she is and which have been adopted and copied down to the present time by Canada's and have enabled all classes and all parties in this country to look to the Executive head of Canada with the same respect and confidence that the people of the whole Empire look to Her Majesty the Queen".

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C 49414

Extracts of speech of Sir CHARLES TUPPER
in House of Commons on September 21,1896.

"I need not tell you, Sir, that in my judgment nothing is so vitally important to Canada as the maintenance of the great privileges which we enjoy under the British constitutional system that has been adopted for this country; and when I speak of the British constitutional system, I speak of a system which, after a long struggle from time immemorial between the Crown and the people, was adopted in Great Britain, a system which has made that country, I think I may venture safely to say, the envy of nations and the admiration of the world. There is no question, Sir, that under that system of parliamentary government England has attained a position in which she must be admitted to be the grandest and mightiest Empire in the world. I need not remind this House that Robert Baldwin, Lafontaine and other great Reformers of old Canada struggled and fought persistently to obtain that same system of parliamentary government for Canada; that in 1841 the great and long-continued efforts of the old Reform party were crowned with abundant success; and that from that time down to the present, I may say, all the provinces of which British North America is composed have enjoyed to the fullest extent the system of parliamentary government that prevails in England".....

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C 49415

Sir Charles Tupper.
Sept 21, 1896

.....However fiercely the contests may wage between the two great parties in the state, noperson ever fails in according ~~the~~ to Her Majesty the most profound respect, reverence and continued support. Under our system of parliamentary government, we enjoy - we ought to enjoy- the same advantage. Under that system we stand in precisely the same position as England. The representative of Her Majesty in Canada, as the executive head of the country, enjoys the confidence, the respect and the support of all parties in the state; and however keenvthe struggles may be between different parties, all alike are ready to give to the representative of Her Majesty that same respect, confidence and support that Her Majesty herself receives throughout this great Empire, and from all classes and parties in Great Britain.

Now, Sir, I must take for granted that the gentlemen who form the present Government of Canada are necessarily responsible for every act that the Governor General of Canada has committed; and that relieves me at once from the disagreeable necessity of uttering a single word in disparagement of His Excellency; because, under the form of government we possess, my hon. friend the First Minister and his colleagues, on assuming office, were necessarily and naturally obliged to assume all responsibility for every act of His Excellency from the time of what I may call the crisis which ensued on the general election.

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on the general election. The position that Canada occupies in this respect was very distintly stated by the Right Hon. Sir John Macdonald in the confederation debates. On February 6th, 1865, Attorney General Macdonald said:

> "In the constitution we propose to continue the system of responsible government which has existed in this province since 1841, and which has long obtained in the mother country. This is a feature of our constitution as we have it now, and as we shall have it in the federation, in which, I think, we avoid one of the great defects in the constitution of the United States. There the President, during his term of office, is in a great measure a despot, a one-man power, with the command of the naval and military forces - with an immense amount of patronage as head of executive, and with the veto power as a branch of the legislature, perfectly uncontrolled by responsible advisers, his cabinet being departmental officers merely, whom he is not obliged by the constitution to consult with, unless he chooses to do so. With us the Sovereign, or in this country the representative of the Sovereign, can act only on the advice of his Ministers, those Ministers being responsible to the people through Parliament."

Todd, in his "Parliamentary Government in the British Colonies" at page 817, lays down the same principle in the following words:

> "Upon a change of Ministry it is essential that the gentlemen who may be invited by the Governor to form a new Administration shall be unreservedly informed by him of the circumstances which led to the resignation or dismissal of their predecessors in office; and that they shall be willing to accept ehtire responsibility to the local Parliament for any acts of the Governor which have been instrumental in occasioning the resignation or effecting the dismissal of the outgoing Ministry. For it is an undoubted principle of Eblish law, that no prerogative of the Crown can be constitutionally exercised unless some Minister of State is ready to assume responsibility for the same. Hence the authority remains inviolate, however the propriety of its exercise may be questioned, or its use condemned. The authority of the

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Crown, in the hands of the Queen's representative, must invariably be respected; and no one subordinate to the Governor should attribute to him personally any adt of misgovernment, his Minister being always answerable for his acts to the local Parliament and ~~in~~ to the constituent body."

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C 49418

THE BRITISH CONSTITUTION.

Sir Wilfrid Laurier's speeches.

Excerpt of Lecture delivered by Sir Wilfrid in Montreal on October 27, 1909.

"Now with regard to the Executive power in every civilized nation, it is vested in the Chief Magistrate, and, in England, the Chief Magistrate is the King, but under the present system the exercise of the executive power is subject to a condition which is absolutely unique, which was never found in any nation until it was adopted in England, and that is that the King, in the exercise of his Executive power, is subject to the will and the control of Parliament. Even the most despotic King must have Ministers. He cannot do everything himself in connection with any of the great departments of State, but he appoints Ministers who carry on the business and advise the sovereign or president, as the case may be. It would be natural - the King having appointed his Ministers - that his Ministers should be responsible to him. So it was for many centuries and ages in Great Britain, but when the long contest which took place between the British Government and the King, over the legislative power, had been closed, Parliament advanced a step further. It was found, by the course of events, that if the

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Ministers of the King were not in close sympathy with the majority in Parliament, they could easily baffle the will of Parliament, as expressed in the Law, and, therefore, Parliament advanced the doctrine that the King must be served by Ministers who were in sympathy with the elected representatives of the people, and responsible to them. This principle was not adopted in a day. It was strongly resisted by the Crown. In fact, it was only in the early years of our late Sovereign, of that great, good and wise woman, Queen Victoria, that the principle was at last fully admitted, recognized and acted upon. This principle was as distasteful to the Georges as the other principle of taxation by the consent of the people had been distasteful to the Plantagenets, to the Tudors and to the ~~Tudors~~ Stuarts, but to-day it is fully recognized. The moment a Ministry has ceased to command the majority in Parliament, they must make way for other men, and even then the Sovereign is not free to select anybody he pleased to take their place; he must choose men who are in sympathy with the Parliamentary majority. This, Ladies and Gentlemen, is the third great cardinal principle of the British Constitution. I have named you three; first, no taxation except by the consent of Parliament, no legislation except by the consent of the three estates of the Realm, no Executive Authority except with the consent of Parliament."

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C 49420

PRIVY COUNCIL
CANADA

1911
writs - Monday 6.09
19th May (1m.
held valid 1/4 Supply & adjourn
Summers to 20 Coronation

Pkt. resumed on July 19th
Parl. was dissolved July 29th
without any supply being voted

writs issued 3 day of Aug 1911
fixing the 14th day of September
as nomination day. writs
returnable 7th day of Oct
Duhon 23rd of Nov 1911

Proclamation summoning Pkt
to meet on Oct 11 - 1911.

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C 49421

Parliament House

Address voted

Cf Dec 1. p 702 Hansard

Supply was voted
48,000,000
balance of bill for current year
Civil Estimates

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PRIVY COUNCIL

CANADA

APPROVED

29 July 1911

TO HIS EXCELLENCY

The Right Honourable Sir AlbertyHenry George, Earl Grey, etc. Governor General of Canada.

REPORT of a Committee of the Privy Council on matters of State.

PRESENT

The Right Honourables

Sir Wilfrid Laurier

Sir R. J. Cartwright

The Honourables

Sir F. W. Borden

Sydney Fisher

W. S. Fielding

Wm. Paterson

W. Templeton

L. P Brodeur

F. Oliver

Sir A. B. Aylesworth

R. Lemieux

W. Pugsley

C. Murphy

W. L. Mackenzie King

May it please Your Excellency

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C 49423

P.C. 1734

Privy Council - Canada

The Committee of the Privy Council have had under consideration the advisability of proroguing Parliament and as the adjournment of the Senate at the present time renders impossible the announcement to both Houses of Your Excellency's intention to that end, they, therefore, advise that a Proclamation do issue proroguing Parliament to the SEVENTH day of September, 1911.

WILFRID LAURIER

Approved

GREY

July 29/11

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CANADA

C 49424

P.C. 1738

Privy Council - Canada

The Committee of the Privy Council have had under consideration the expediency of dissolving the House of Commons and of summoning a new Parliament.

The Committee, therefore, advise that the present Parliament be dissolved and a new Parliament called together and that a Proclamation do issue, bearing date the Twenty-ninth day of July, 1911, dissolving the present Parliament.

The Committee further advise that a Proclamation do issue, bearing date the twenty-ninth day of July, 1911, directing the issue of the writs of election, such writs to be dated the THIRD day of August, 1911, fixing the FOURTEENTH day of September, 1911, as the nomination day for Candidates at the said election in all of the Electoral Districts excepting the Electoral Districts of Chicoutimi and Saguenay and Gaspe, in the Province of Quebec, and of Comox-Atlin, Kootenay and Yale-Cariboo in the Province of British Columbia, and the Electoral District of the Yukon - said writs to be returnable on the seventh day of October, 1911, except the writ for the Electoral District of the Yukon; and that Monday the twenty-fifth day of September 1911, be fixed as the nomination day for Candidates in the Electoral District of the Yukon - the writ to be returnable on the twenty-third day of November 1911, nomination to be held at Dawson.

The Committee also advise that a further Proclamation do issue summoning Parliament to meet on the ELEVENTH day of OCTOBER, 1911, at the City of Ottawa.

All which is respectfully submitted for approval.

WILFRID LAURIER

Approved
GREY
July 29/11

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C 49425

PRIVY COUNCIL.

The Constitutional Act of 1791, section 38 provided for the existence of an "Executive Council."

The Union Act of 1842, section 45, made similar provision.

The first draft of the Federation Act provided as follows:

"6. The Governor-General of the United Colony may, by Instrument under the Great Seal of the United Colony, constitute an Executive Council, and from Time to Time appoint and remove Members thereof."

The third draft of the Bill provided as follows:

"8. The Governor-General may, by instrument under the Great Seal of Canada, constitute an Executive Council, which shall be called the Privy Council of Canada, and he may from time to time appoint and remove Members thereof."

The fourth draft of the Bill provided as follows:

"11. The Governor-General may, by instrument under the Great Seal of Canada, constitute a Privy Council, and he may from time to time appoint and remove Members thereof."

The final draft of the bill was as follows:

"11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Members of that Council shall be from Time to Time chosen and summoned by the Governor-General and sworn in as Privy Counsillors, and may be from Time to Time removed by the Governor-General."

The clause of the final draft was carried into the Bill itself.

STATUS OF GOVERNOR-GENERAL.

In Sir Robert Borden's Canadian Constitutional Studies, page 61, is the following:

"In the discussion of executive competence it is important to examine the status and functions of the Governor General. Before 1848 he was regarded as an Imperial officer responsible primarily to the British Government through the Colonial Office. With the progress of responsible government, there came a necessary change in his relation to the administration of public affairs. In Canada this relation is the same in all essential respects as that of the King in Great Britain."

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In his address at Yale University in 1923, Sir Robert said as follows:

> "The Governor-General had lost the quality of imperial officer, through which at first he exercised a distinct influence upon public affairs, and he had become in effect a nominated President whose duties and powers in relation to Canada were practically the same as those appertaining to the Crown in the British Islands. In his selection, it became the established practice to consult the wishes of the Canadian public."

In a"Memorandum Circulated by Sir Robert Borden on behalf of the Dominion Prime Ministers",at the Peace Conference in Paris, was the following:

> "The Crown is the supreme executive in the United Kingdom and in all the Dominions, but it acts on the advice of different ministries within different constitutional units; and under Resolution IX of the Imperial War Conference, 1917, the organization of the Empire is to be based upon equality of nationhood."

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C 49427

PRACTICE IN GREAT BRITAIN AS TO ACTION OF GOVERNMENT FOLLOWING A GENERAL ELECTION

Disraeli's Precedent: Resignation if Opposition has Clear Majority.

Prior to 1868, it was the practice of all governments in Britain to meet Parliament after a general election, whatever its outcome. In that year the Disraeli government, after a general election which gave the Liberal Opposition a clear majority of 128, decided to resign without meeting Parliament. Six years later, the Gladstone government, after a general election which gave the Conservatives in their turn a clear majority of 46, followed Disraeli's example. Since that time, it has been the established practice for a government to resign, without meeting Parliament, when an Opposition party has a clear majority of the House.

Rise of Third Parties Affects Situation.

It is of interest to note that the House of Commons elected on the occasion on which Disraeli set this precedent was the last in which only two parties were represented. Beginning with 1874, every Parliament has been composed of at least three and sometimes of four or five parties. This factor obviously had a very material bearing on the question whether the party in power or any other party was to be considered as having the support of the House. In fact, since 1868, while in nine Parliaments one party has had a clear majority over all, in five no party has had such a majority.

Where Clear Majority for one Party.

In the cases in which one party had a clear majority over all, no difficulty has arisen.

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(a) If the government received a clear majority, it carried on, in the following cases:

1895: Conservative government in power.

Results:		
Conservatives	340	Half House = 335
Liberal Unionists	71	
Liberals	177	
Irish Nationalists	82	

1900: Unionist government in power.

Results:		
Conservatives	334	Half House = 335
Liberal Unionists	68	
Liberals	186	
Nationalists	82	

1906: Liberal government in power.

Results:		
Liberals	387	Half House = 335
Nationalists	84	
Labour	41	
Conservative	158	

1918: Coalition government in power.

Results:			
Coalition:			
Unionists	334		Half House = 353½
Liberals	133		
Labour	11		
		478	
Non-Coalition:			
Labour	63		
Unionists	48		
Liberals	28		
Sinn Fein	73		
Nationalists	7		
Independent	10		
		229	

1922: Conservative government in power.

Results:		
Conservatives	347	Half House = 307½
Labour	142	
National Liberal	59	
Liberal	59	
Independent	5	
Nationalists	2	
Sinn Fein	1	

(b) If one of the Opposition parties received a clear majority, the government resigned at once, and the Opposition party formed a government, in the following cases:

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1868: Conservative (Disraeli) government in power: resigns.

Results:

Conservatives	265	Half House = 329
Liberals	393	

1874: Liberal government in power: resigns.

Results:

Liberals	247	Half House = 326
Nationalists	56	
Conservatives	349	

1880: Conservative government in power: resigns.

Results:

Conservatives	233	Half House = 326
Liberals	357	
Nationalists	62	

1886: Liberal government in power: resigns.

Results:

Liberals	188	Half House = 333½
Nationalists	84	
Conservatives	314	
Liberal Unionists	81	

1924: Labour government in power: resigns.

Results:

Labour and Socialist	150	Half House = 307½
Conservative and Constitutionalist	420	
Liberals	40	
Nationalists	1	
Independent	4	

Where No Clear Majority for One Party.

(c) Where the government in power did not secure a clear majority, but where no other party did, the government retained office and met parliament, with varying results, as follows:

1885: Conservative (Salisbury) government in power.

Results:

Conservatives	249	Half House = 335
Irish Nationalists	86	
Liberals	335	

Conservative government, in minority, and with second largest group, meets House: defeated on amendment to Address.

1892: Conservative (Salisbury) government in power.

Results:

Conservatives	268		
Liberal Unionists	47		
		315	Half House = 335
Liberals	273		
Irish Nationalists	81		
		354	

Conservative government, in minority, and with second largest group, meets House: defeated on Address.

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Jan., 1910: Liberal (Asquith) government in power.
Results:

Liberals	275	Half House = 335
Labour	40	
Irish Nationalists	82	
Conservatives	273	

Liberal government, in minority, but largest group, meets House: sustained.

Dec., 1910: Liberal (Asquith) government in power.
Results:

Liberals	272	Half House = 335
Labour	42	
Irish Nationalists	84	
Conservatives	272	

The Liberal government, in a minority, and exactly equal to the Conservatives in number, met the House and was sustained.

1923: Conservative (Baldwin) government in power.
Results:

Conservative	258	Half House = 307½
Labour	191	
Liberal	157	
Other	9	

The Conservative government, in a minority, but the largest group, met the House, and was defeated on the Address.

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J.G ROSS TO C. A. DUNNING
Progressive Party C 49431 (1926)
Parliament - Session of
C.A. DUNNING

I heard Gaboard say
let them ~~def~~ develope the Constitutional
argument first first ~~as th~~ - before the
vote was taken. J. Gordon Ross

J. G. ROSS

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C 49432

C. A. Dunning

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ANONYMOUS (1926)

C 49433

You may expect a dissolution
and a gentleman who is
neither Mr. Mck. King or Mrs.
Meighen will be called upon to
form a cabinet. I think it will
be Sir Robert Borden who will become
a Senator, with Meighen as leader here.

HOUSE OF COMMONS
CANADA

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Colonial Conf. June 7 1926

C 49434

Extract from

"RESPONSIBLE GOVERNMENT IN THE DOMINIONS"
by
Arthur Berridale Keith, D.C.L. (Oxon.), D. Litt, (Edin.)
Volume 1, - pp. 144 to 152.

The new spirit was seen rather markedly in the Canadian proceedings on the result of the general election of 1925. The outcome of the polling was to give the Conservatives the largest number of seats of any party, 117, while the Liberals had but 100, leaving the Progressives to dominate the situation. Moreover Mr. Mackenzie King and eight of his Ministers suffered defeat, creating thus a very unusual position. Quaint doctrines were adduced by the Opposition; in sheer oblivion of the utterly non-parliamentary origin of Executive Government, the view was propounded that by ceasing to be a member of Parliament Mr. King had ceased to be able to be a Prime Minister, and that his Ministry was therefore dissolved. Much less excusably Mr. Meighen declared very energetically that it was improper for the Prime Minister to remain in office, and that he owed the country an immediate resignation, which it was evidently hoped the Governor-General would insist upon, as in the case of Sir C. Tupper. Mr. King with much good sense issued a manifesto on 3 November in which he explained his reason for staying in office. He pointed out that there was no doctrine which required resignation in favour of Mr. Meighen, when the latter had not command of a majority of votes in the House of Commons; that the proper place to decide whether the Government commanded the support of the people was the House of Commons, which would therefore be summoned to meet as early as was legally possible; and that pending this event it was not his intention to take any steps by creating vacancies

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to secure election to Parliament for himself or any of his Ministers who had been defeated, while equally he would not suggest to the Governor General the holding of new elections. This attitude was, clearly, perfectly sound. It was obviously necessary that the Government should continue to be carried on, and the introduction of new Ministers would have meant endless confusion and delay with loss of efficiency from inexperience. That, of course, would have been justifiable if there had been any likelihood that the Progressive Party would coalesce with the Conservatives and give the Ministry a chance of life; as this was implausable, to let a new Ministry take office only to be defeated on meeting Parliament, would have been absurd and objectionable. In the result, when the House of Commons met in January 1926, despite the grave handicap of the absence of the Prime Minister and his ablest colleagues from the House, and the effect of reckless offers by the Conservatives to the Progressives for support at the expenxe of fundamental principles such as higher protection, the Ministry was upheld. It is noteworthy that the Prime Minister declined during the period prior to the meeting of the House of Commons to exercise other than routine powers; thereafter he claimed full freedom of action, and secured his own return to the House of Commons for a seat vacated in his favour by a supporter. This strict observance of constitutional action was the more praiseworthy in that it cantrasted strangely with the step taken by Mr. Meighen himself when his Government was defeated at the general election of 1921.

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Then he took care before leaving office to have a seat vacated for himself - the general election having witnessed his own discomfiture - by the device of appointing the member-elect for Grenville to a nominal position in the Department of Soldiers' Civil Re-Establishment at a salary of 50 dollars a month, thus vacating his seat, for which Mr. Meighen was elected in January 1922. Moreover, as time was to show, Mr. Meighen was himself, when for a brief period in nominal power, though censured by the House of Commons, to spend enormous sums of money without legal sanction, and unnecessarily to make a considerable number of appointments and to award contracts, which Mr. Mackenzie King, on the emphatic verdict of the people at the general election of 1926, had no alternative but to disapprove in the interests of the people of the Dominion.

7. Lord Byng and the Colonial Status of Canada.

In June, 1926 an episode occurred in Canada which ran entirely counter to the whole trend of constitutional usage, and showed that in the opinion of Lord Byng as Governor-General, Canada was in constitutional usage as in law no more than a colony, subject to the rules applicable to Newfoundland or an Australian State. Mr. Mackenzie King's government had learned of serious malpractices in the management of the Customs Department, and Mr. Boivin, the new occupant of the Ministry, was eager to probe the matter. A Select Committee was accordingly appointed on the proposal of the Government to investigate the issues, and it prepared a report which took exception to

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some actions of the late Minister, but in no wise attacked the Government which was willing to accept the report and to proceed in its determination to terminate scandals which had been long inherent in the Department and which had existed in equal virulence under the Governments of Sir R. Borden and Mr. Meighen. They were, however, met with an amendment to the proposal to accept the report moved by a member of the Opposition, which attacked directly the Ministry, and the position of the Government became endangered because, in its determination to secure the continuation of the status quo in Alberta as regards educational matters, in the interest of the Roman Catholic minority, it had offended a section of opinion in Alberta. On 25-26 June the House of Commons rejected by 117 to 115 votes a non-partisan sub-amendment by a Labour member, overruled by 118 to 116 votes the decision of the Speaker, hostile to another attempt - this time by an unfriendly Progressive member - to bring forward a similar sub-amendment to be coupled with the Opposition amendment, and declined to adjourn by 115 votes to 114, though after a late sitting adjournment was carried for the Government by the same vote. Mr. King then very properly advised Lord Byng to grant a dissolution of Parliament, on the score that it was clear that the Government, to carry on effectively its duties, ought to be supported by a vote of the electorate. He very justly insisted that the status of Canada was co-equal in these matters with that of the United Kingdom; that the duty of the Governor-General was to act on the same principles as would have applied to the King;

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and that it was not within his province to argue, as in effect Lord Byng did, that Mr. King 'had had a chance to govern and that Mr. Meighen had not been given a chance of trying to govern or saying that he could not do so, and that all reasonable expedients should be tried before resorting to another election'. There is no answer to Mr. King's arguments; the precedent of the King's immediate grant to Mr. Ramsay MacDonald of a dissolution in 1924, without even considering whether the Government could be carried on without a dissolution, ought to have been conclusive, for it put an end at once to whatever value might have attached to the dictum of Lord Oxford and Asquith that the King still preserved an independent judgment in matters of dissolution, a dictum denounced at the time by all sound constitutional opinion and evidencing the spokesman's obvious and regrettable decline in mental power and sense of political realities. Lord Byng, however, refused to yield and Mr. King then on 28 June resigned office, tendering no advice as to a successor. Mr. Meighen was then asked to form a Government and at once undertook to do so. It must have been clear from the first that he could not carry on without a dissolution, and must exact a promise of one. That fact condemns utterly Lord Byng's action, for, by accepting as a Prime Minister one who equally must have a dissolution, he converted himself into an out-and-out partisan of the Conservative Party, and degraded the office of representative of the Crown by perverting it for party purposes. Worse, however, was to follow. The Prime Minister, who by accepting office on 29 June assumed responsibility

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for all that had transpired and was to follow, was unwilling to carry out his obvious duty and to face Parliament. He himself, by accepting office, vacated his seat, and, if he selected colleagues and had them appointed in the ordinary way, they also must have vacated their seats. A wholly discreditable piece of tactics followed. The Prime Minister and a knot of seven Privy Councillors constituted themselves the advisers of the Governor-General though one only held office, and on the advice of these men the Governor-General appointed the seven to act as Ministers, so that they could perform the duties of their offices without incurring the obligation of vacating their seats. Lord Byng's error of judgment had thus led him into the necessity of concurring in the most deplorable piece of jugglery yet recorded as regards a Dominion Constitution. This farcical Ministry faced the Commons on the 30 June, hoping by large promises to dupe a section of the Progressives - the most unintelligent party yet produced by Canada - into supporting them. But a sense of their folly had returnedtto the Progressive ranks, and the proceedings of the new Government offended the most elementary sense of political honour. On 1-2 July (2 a.m.) the House of Commons by 96 to 95 votes passed a resolution in the following terms:

> That the actions in this House of the Hon. Members who have acted as Ministers of the Crown since 29 June 1926... are a violation and an infringement of the privileges of this House for the following reasons:

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1. That the said hon. gentlemen have no right to sit in this House, and should have vacated their seats therein, if they legally hold office as administratoes of the various Departments assigned to them by Order in Council.

2. That if they do not hold such offices legally they have no right to control the business of Government in this House and to ask for supply for the Departments of which they state they are acting Ministers.

The just censure of the House was followed by a further departure from constitutional usage by Mr. Meighen. Not daring to face the House of Commons, the Ministry obtained an immediate dissolution from the Governor-General, which was at 1 p.m. intimated to members by messengers as they prepared to reassemble on 2 July. Had a dissolution been granted to Mr. King, the Governor-General would have been advised to prorogue as usual the Parliament, after assenting to such Bills as were in a state to receive assent, and a dissolution proclamation would then have been issued in due course. But by the informal procedure adopted, contrary to all British and Canadian usage, the Bills already passed by the Houses, including the divorce Bills of private persons, were wasted. Suggestions of illegality both as to the constitution and action of the Government and the mode of dissolution were made by the Liberals in the electoral campaign. But in strict law these cannot be sustained. It is open to a Governor-General to select any Privy Council which he pleases, whatever its position, and to exercise on the advice of this body all his great powers. But constitutionally his action was wholly irregular, and Mr. Meighen's advice on this head is open to the severest criticism. Similarly the intimation of dissolution was adequate in law, but it was a deplorable act of discourtesy to the House of Commons,

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and one of which it is quite inconceivable that the King would be guilty as regards the Imperial House of Commons. The case against Mr. Meighen was admirably put by Mr. King in an exhaustive indictment at Ottawa on 23 July 1926:

> We are the custodians of the honour of the British Crown and of the sanctity of the British Constitution, not for Canada alone, but for Australia, for New Zealand, for Africa, for Newfoundland, for the Irish Free State, for India, yes, and for the British Isles themselves. The violation of its usages, its practices, its law, in one part of the Empire, cannot fail to have far-reaching reactions in every other part. Free representative institutions cannot be threatened in Canada without their being everywhere threatened. If Mr. Meighen's unconstitutional course is permitted to go unchallenged by the people of this country, then may we question on behalf of all self-governing British communities whether the British Constitution may not become a phantom to delude to destruction, instead of being, as we believe it is, the day-star of our dearest liberties.

A dissolution granted, Mr. Meighen proceeded to regularize his Ministers, who had no longer to face the necessity of immediate re-election, and an electoral contest of great severity was begun by the new Administration ejecting from office the incumbents of the posts of Returning Officer in the hope thus of winning seats. An arrangement was made with Quebec under which Mr. Meighen recanted his former loyalty to the Conservative doctrine of standing firmly beside the United Kingdom in critical issues affecting the life of the Empire. Mr. E. L. Patenaude was induced to accept his leadership and to seek to carry Quebec for Conservatism on the strength of Mr. Meighen's pledging himself that not a Canadian soldier would leave Canada in any future war until after a general election fought on that issue, thus paralysing Canadian power to interfere in even the gravest emergency. Further disregard of the British

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connexion was shown by Mr. Meighen's avowed intention to follow the course already laid down by General Hertzog in the case of the Union of South Africa, of placing the British preference on a strictly business footing of reciprocity, thus ignoring the fact that the preference as given in 1897 was Canada's most effective mode of recognizing the boon of the protection of the British fleet and of British diplomacy. A threat of tariff war with the United States was added. It is small wonder that the wiser heads among the Conservatives saw with dismay this repudiation of traditional policy, undertaken without the general assent of the and Conservatives who were loyal to the ideal of the British connexion refused (party, to vote for supporters of a policy which induced Mr. Rowell to mount a Liberal platform for the first time since his participation as President of the Council in Sir R. Borden's administration, and to denounce a foreign policy which would plunge Canada at a time of crisis into a bitter election fought on racial grounds, and paralyse her capacity of assisting the rest of the Empire.

The result of the election was decisive of Canadian disapproval of Lord Byng's intervention and of Mr. Meighen's acceptance or approval of it. Whereas, had Mr. King been allowed to appeal to the people, he would have done so under the handicap of the Customs disclosures, the Conservatives fought under the triple disadvantage of the abuse of the royal prerogative for party ends; the surrender of party independence for mere expediency in the effort to seduce Quebec from her principles; and the menace of injury to British trade. The Customs charges, unwisely pressed for party reasons, and not as they should have

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been in a deep sense of the moral corruption which admittedly pervades a large section of Canadian political life, despite the personal integrity of the Heads of the Government since Sir John Macdonald, recoiled on the heads of the attackers. The solid Conservative Opposition of 117 members was reduced to 91, the Liberals increased to 119, with 11 Liberal Progressives pledged to support the Liberals, 8 Progressives whose support was little less assured, 5 Labour and Independent, the former generally sympathetic, and Mr. Bourassa as an Independent but a valiant supporter on the constitutional issue. The Conservatives held only the four seats already theirs in Quebec; the return of 60 Liberals mocked the vain effort to bribe the Province to renounce its principles. The United Farmers of Alberta returned a solid group of 11; in Saskatchewan and Manitoba the Progressives recognized that the day for a distinct party was over, and Canada gladly saw the return to a normal two-party regime.

The sequel to the decision of Canada was not long delayed. The Imperial Conference of 1926 could not hesitate to enunciate the doctrine that the true position of the Governor-General or Governor of a Dominion (not of the Governor of a State) was similar in all essentials to that of the King in the United Kingdom in respect of the administration of public affairs, thus accepting the view pressed for many years by the writer. The resolution, it will be seen, does not decide the question of appointment, nor was there any reason to do so. It has long ceased, as has been seen, to be possible for the Imperial

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Government to present any Dominion with a Governor-General to whom it is opposed, and the tendency must be for the initiative in appointment to pass more and more into the hands of the local Government, which need not, of course, restrict its choice to local men, but may easily prefer to invite a distinguished outsider to fill the office. As will, however, be seen, the proposal to deprive the Governor-General of any function as representing the Imperial Government is likely to render the office unattractive to any person of intelligence normally resident in the United Kingdom, and to restrict the choice to local residents to whom, especially in old age, the ceremonial and pomp of office may appeal. But, as Mr. Baldwin stated in the House of Commons on 25 November 1926, the Governor-General is still to retain the duty as to reserving Bills, and therefore, for the present, and in any case until legislation, Imperial and Dominion, cancels this obligation, he must remain a representative of the Imperial Government.

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C 49445 (MACKENZIE KING) (1926).

I

THE SUPREMACY OF PARLIAMENT

The Peoples' will expressed by House of Commons Majority.

The situation from 1921 to 1925

The issue in the 1925 general elections.

245 — 116 — 128 = L. 101 / C. 24 / P. 2

His Excellency advised to let Parliament decide.

Mr. Meighen afforded every chance to govern.

The decision of Parliament.

Closure required to enforce the will of Parliament

Parliament's decision endorsed by the country in by-elections.

The supportaccorded the Liberal administration in Parliament.

Cooperation on a known legislative programme.

Honourable cooperation the only method of carrying on.

✓ Constitutional Issues of 1926
✓ Customs Investigation
✓ Gen. Election of 1925 - Results
✓ Parliament - Sessions of Parl.

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C 49446

II

THE WORK OF THE SESSION.

The Robb Budget.

Reductions in Taxation.

No more blue ruin talk by our Conservative opponents.

Reciprocal trade treaty with the British West Indies

Old Age Pension Bill and other measures rejected by the Senate.

Legislation to which the Royal Assent was denied.

Tariff Advisory Board and Maritime Rights Commission

Session disclosed spèendid possibilities of co-operation between groups.

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C 49447

III.

THE SO-CALLED "CENSURE" OF THE ADMINISTRATION.

The request for dissolution in no way connected with possible censure of Liberal administration.

Stevens' amendment cannot be construed as implying "A vote of censure" B

Assurances before change of Government that Stevens' amendment would not be carried.

Reasons why, after change of Government, Stevens' amendment carried.

Progressive support of tory fiscal policies also explained.

Dissolution requested out of a regard to the honour and dignity of Parliament.

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C 49448

IV

THE CUSTOMS INQUIRY AND THE DUNCAN REPORT.

Government's own investigation basis of Customs inquiry.

Report of Special Committee on Customs Inquiry.

No censure of Government or Boivin in Committee's report.

Purpose of Stevens' amendment - Purely political.

Duty of Committee to have expressed censure if censure deserved.

Members of House not in position justly to censure.

A just comparison.

Stevens' amendment political propaganda.

A campaign of vile suggestion and slander.

Efforts to deceive the electorate.

Any person involved should be tried and punished.

Searching inquiry by Board of Royal Commissioners demanded.

British justice due all.

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C 49449

V

GOVERNOR GENERAL AND PRIME MINISTER.

The request for dissolution.

Was the right advice tendered?

Who was most entitled to advise?

Was Mr. Meighen in a position to carry on?

Personal and official relations with the Governor-General.

Grounds upon which dissolution was refused.

The issue is between the opposing views of political parties.

No attack upon the Governor-General.

Mr. Meighen's conduct, not His Excellency's, called in question.

What was said of His Excellency.

The constitutionality of a course of procedure.

The right to dissolution.
Censure or possible censure no bearing on right to dissolution.
British authority with respect to constitutional issue

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C 49450

VI

MR. MEIGHEN AND THE CONSTITUTION.

Constitutional issue the main one.

Prime Minister and Parliament.

Attempt to carry on government without a responsable ministry.

Only a Temporary Government.

"Not a Government" -"Government Yet to be formed"

"Not King's Ministers".

Proceedings contrary to British Parliamentary usage practice and law.

Verdict of Commons treated with contempt.

Infringement of privileges of Members of the Commons

A defeated Ministry kept in power

British parliamentary practice further ignored.

Parliament insulted as well as ignored and defied.

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C 49451

Prorogation intended by Liberal Government.

Copy of Draft Order concerning Prorogation.

British practice concerning prorogation and dissolution.

The Constitution not a mere scrap of paper.

The beginning of a dictatorship under a discredited ministry.

Absolutism or anarchy?

Supreme Importance of Issue to British Commonwealth of Nations.

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C 49452

VII

THE LINK OF EMPIRE.

Upholding the Constitution.

Character of the British constitution.

Underlying source of loyalty to Crown and flag.

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MEMORANDUM C 49453
Prime Minister's Office

Ottawa,.....

Rt. Slemin Ammeli
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C 49454

Professor Arthur Berriedale Keith,

D.C.L., D.Litt.
Edinburgh University.

Publications:

Responsible Government in the Dominions (1912)

Imperial Unity and the Dominions (1916)

Dominion Home Rule in Practice (1921)

Constitution, Administration, and Laws of the Empire (1924)

Etc., etc.,

The following are among appointments he has held:

1901 Appointed to Colonial Office
1903 Services re Alaska Boundary Arbitr.
1903 Secretary to Crown Agents for Colonies
1907 Secretary to Colonial Navigation Conference, Imperial Copyright Conference;
Clerk to Imperial Conference.
1911 Junior Asst.Sec. to Imperial Conference
1912 Private Sec. to Permanent Under-Sec. of State.

etc. etc.

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C 49455

LISTED UNDER
ELECTIONS - GEN. ELECTION OF 1925 -
RESULTS
CONSTITUTIONAL ISSUE OF 1926

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(MACKENZIE KING)

Nov 8, 1925.

Chronology

C 49456

Thursday Oct 29.- Polling Day.

Friday Oct 30.- 5. p.m. interview with Hon Ex-Govt House, declined alternative course, viz declining premiership & declining resignation - Cabinet to be seen before final action taken

Saturday Oct 31. Worked on draft of letter to Gov - having in mind tendering resignation both with Sir Campbell Sifton & Gov.

Sunday Nov. 1. Kingsmere - Vincent Massey & lunch - reflection.
Morning on letter to Gov Ex.

Monday Nov. 2. Cabinet meeting during afternoon draft letter discussed with Cabinet. Arguments against resignation
5. p.m. letter with Hon Ex, and found it being prepared & contains no specific statement. - Differences in relation to Cabinet - situation in form of letter to Gov Ex - to be given Cabinet.

Tuesday Nov 3. Work on draft of letter to Gov Ex.
12 Noon. Interview with Hon Ex to show him typed draft - to indicate in accepting advice that did not agree with Cabinet
Talk with Mr Lemieux - advice against tendering of letter -
talk with Hon Ex - 10. decide not to tender letter. - just to issue Statement to press

Wednesday Nov 4. Drafting Statement for press -
formula from Hon Ex 12 o'clock at noon
Cabinet meeting to discuss Statement to press
Meeting with Hon Ex - 5 o'clock
Meeting with Hon Ex - 10 o'clock - Press 11.30

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C 49457

Thurs: Nov 5: - Statement appears in press outlining Govt's intention to meet House.
Meeting of Cabinet - discussion of opening of House - & by elections
Friday, Nov. 6. - Lengthy statement appears - affecting meeting Parliament - decision rendered application Pell. for Dec 10. - Sam out from in by election - other elected in opposition statement fine & Thurs.
Sat, Nov 7. Statement appears in press re Pell meeting Dec 10 - also re resignation of ministers
Sunday Nov. 8.

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Const Imm 1924

C 49458

From:

THE JOURNAL OF COMPARATIVE LEGISLATION &
INTERNATIONAL LAW. 3rd Series, Vol.VIII, Part 1.
February, 1926.

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"Notes on Imperial Constitutional Law." (page 128).

"The Constitutional Position of the Prime Minister."

The Canadian general election was productive of curious results in that not only did the Government fail to secure a majority over the other parties, but it was returned with a distinct inferiority of numbers to the Conservatives, and the Prime Minister himself, and his most important colleagues suffered defeat. A strong protest was immediately made by Mr. Meighen, who claimed that constitutional usage required that the Prime Minister should resign office and that the Governor-General should commission him to form a Ministry. It is clearly impossible to sympathize with this claim, which violates every principle of the orderly conduct of responsible government. The essential principle of administration is that the government must be carried on, and that it must represent as far as is possible the majority in Parliament. The first objection to a change of Ministry was the dislocation consequent on a handing over of portfolios to men without recent experience of the problems which are being dealt with in the departments; the second was the absolute uncertainty existing when the result of the elections became known as to the future relations of the parties, and the great probability that a Conservative administration would be defeated by the combined votes of the Liberals and Progressives who in the preceding Parliament had normally opposed the Conservatives. Mr. King's position was clearly correct; he held that it was the duty of the Ministry, under these circumstances, to hold office until the House of Commons had decided the question, and that in the

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interval it ought strictly to refrain from any but routine business. He rejected, on this ground, the suggestions made to him that he should advise a second dissolution and ask the people to decide definitely which party was to govern, and the proposal that he should take steps to secure re-election for himself or any of his defeated colleagues to the House of Commons before the House met, while positively he advised the calling together of Parliament at the earliest possible moment after the completion of the elections. The absolute correctness of his attitude is a welcome proof of the development of the doctrine of responsible government in Canada, freeing the Governor-General from the burden of personal intervention in a matter which ought to be decided by the votes of the chosen representatives of the people. In this regard the attitude of successive Governors-General is instructive; Lord Aberdeen felt called upon to bring about Sir Charles Tupper's resignation by declining to approve various proposals made by him after the defeat of his party at the polls of 1896; Lord Grey did not interfere with Sir Wilfrid Laurier's recommendations for appointments, etc., after his defeat in 1911, leaving the incoming Government to reverse them at its discretion, as was clearly the wiser course of action, and Mr. King has carried the development a step further by refraining from exercising the power to recommend any but essential or trivial appointments so long as it remained uncertain whether he had a parliamentary majority.

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C 49460

FROM THE PRIME MINISTER

TO

Has the 'Speech' been
has never delivered

Jean Excelling would be
interested in reading
the last paragraphs

Mackenzie.

/ /

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Cab - Conf Issue 7 1926
C 49461
9

SPEECH FROM THE THRONE

PROROGATION

FIRST SESSION, FIFTEENTH PARLIAMENT

JUNE 00, 1926

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C 49462

Honourable Members of the Senate:

Members of the House of Commons:

In bringing to a close the First Session of the Fifteenth Parliament of Canada, it is gratifying to observe that throughout the country business conditions continue to show marked and steady improvement. The favourable trade balance, exceeding four hundred million dollars with other relevant considerations, has made it possible with complete confidence to resume gold payments as from July 1.

The marked increase in railway earnings and the reduction of the estimated financial requirements of the publicly owned system to the lowest sum attained in any year since the railways were taken over by the government make the railway situation most reassuring.

There has been a notable and increasing growth in the number of immigrants settling in Canada while the number of Canadians returning from the United States also shows a gratifying improvement.

Increasing revenue due to the general prosperity of the Dominion, combined with a policy of economy and retrenchment, has made possible substantial reduction in the national debt as well as large remissions of taxation. The customs tariff has been very materially reduced, more particularly on automobiles. Increased exemptions and reduced rates of income tax, especially as affecting those with smaller incomes, have effectively lightened the burden of the taxpayer. In further accord with the policy of tax reduction the receipt tax has been abolished, and the country will, on July 1, revert to penny postage. There has also been a reduction in the excise taxes imposed for war revenue purposes. The cumulative effect of these reductions in taxation will, it is confidently anticipated, prove a strong stimulus to Canadian business and investment.

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The trade agreement with the British West Indies, Bermuda, British Guiana and British Honduras has been duly approved, and will, it is believed, not only bring commercial advantage to all parties to the agreement, but serve to strengthen the bonds of Empire.

Provision has been made for the immediate rehabilitation of the Hudson's Bay Railway preparatory to the early construction of the final section of this new outlet to the ocean.

In accordance with the announced policy of the government, the Advisory Board on the Tariff has been duly constituted and is now carrying on its work of investigation.

The Royal Commission to inquire into Maritime Provinces problems and conditions has also been appointed and is about to commence its sittings.

Provision has been made for granting such credit facilities to farmers as will enable them to obtain long term mortgage loans on better terms, both as to rate of interest and conditions of repayment.

A Special Committee of the House of Commons, appointed to investigate the administration of the Department of Customs and Excise and the situation resulting from smuggling operations along the international boundary, after prolonged and careful inquiry, duly reported its findings together with important recommendations as to the changes which should be made in existing customs laws as well as in their administration. Legislation has been enacted and regulations adopted giving effect to such recommendations as could be acted upon immediately, and active steps are being taken to reorganize and strengthen the administrative agencies in order to ensure the effective suppression of smuggling and its attendant evils.

An Imperial Conference to discuss questions of general interest to the British Community of Nations will be held in London in October. Arrangements will thereafter be completed for the holding of a conference at Ottawa of representatives of the Federal and Provincial Governments of the Dominion.

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CANADA

C 49464

Members of the House of Commons:

In His Majesty's name I thank you for the provision you have made for the needs of the public service.

Honourable Members of the Senate:

Members of the House of Commons:

My official connection with Canada is rapidly drawing to a close. It is with deepest feeling that on behalf of Lady Byng and myself I express to you the regret we experience at the termination of our sojourn in this country. I assure you I shall watch the future progress and development of this Dominion with an abiding interest and in the confident belief that under God's Providence it will ever increasingly prosper in its moral as in its material life.

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C 49465

61

DISCOUR DU TRÔNE

PROROGATION

PREMIÈRE SESSION, QUINZIÈME PARLEMENT

00 JUIN 1926

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C 49466

Honorables Membres du Sénat:

Honorables Membres de la Chambre des Communes:

En venant proroger la première session du quinzième parlement du Canada, il me fait plaisir de constater que l'état des affaires continue à jouir d'une amélioration stable et constante.

La balance du commerce excédant quatre millions de dollars et certaines autres considérations qui s'ensuivent ont rendu possible le retour des paiements en or à partir du premier juillet.

L'augmentation remarquable de nos recettes de chemin de fer et la réduction des dépenses annuelles à la somme la moins élevée depuis que le gouvernement a pris possession des lignes ferroviaires, démontrent que la situation est des plus rassurantes.

Il y a eu une augmentation notable et toujours croissante du nombre des immigrants s'établissant au Canada; et le retour des Canadiens des Etats-Unis s'accomplit avec une amélioration encourageante.

L'augmentation des revenus causée par la prospérité générale du Dominion et secondée par une politique d'économie a rendu possibles une diminution substantielle de la dette nationale et de grandes réductions dans les impôts. Le tarif douanier a été considérablement abaissé, surtout sur les automobiles. La réduction des taux de la taxe sur le revenu et l'augmentation des classes exemptées, spécialement des personnes jouissant de revenus peu élevés, ont sensiblement diminué le fardeau des contribuables. Conformément à notre politique de réduction des impôts, la taxe sur les reçus a été abolie et le pays retournera en juillet au timbre postal de deux sous. Il y a eu aussi diminution des droits sur les revenus de guerre. Le résultat total de ces réductions sera, nous en avons le ferme espoir, un stimulant puissant pour le placement des capitaux et le commerce du Canada.

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La convention de commerce avec les Indes Occidentales Britanniques, les Iles Bermudes, la Guyane Britannique et le Honduras Britannique a été dûment approuvée et sera, croyons-nous, non seulement d'un grand avantage commercial pour les nations signataires mais aussi elle contribuera à resserrer les liens qui unissent l'Empire.

Les mesures nécessaires ont été prises afin de rétablir sans retard le chemin de fer de la Baie d'Hudson en vue de la construction, dans un avenir rapproché, de la dernière section de ce nouveau débouché vers l'Océan.

Conformément à la politique annoncée par le gouvernement, la Commission Consultative du Tarif Douanier a été dûment constituée et poursuit actuellement son enquête.

La Commission Royale chargée de s'enquérir des problèmes et des conditions des Provinces Maritimes a aussi été nommée et commencera bientôt ses séances.

Les mesures nécessaires ont été prises pour accorder aux cultivateurs, des facilités de crédit leur permettant d'obtenir des emprunts à long terme, ou plutôt à des termes plus faciles, quant aux taux d'intérêt et aux conditions de paiement.

Un Comité spécial de la Chambre des Communes a été nommé pour s'enquérir de l'administration du ministère des Douanes et de l'Accise ainsi que de la situation créée par la contrebande sur la frontière internationale. Après une enquête longue et bien conduite, il a rapporté ses conclusions et fait des recommandations importantes quant aux changements qui s'imposent dans les lois des douanes et leur administration.

La législation requise a été adoptée et un règlement approuvé pour donner effet aux recommandations qui peuvent être immédiatement mises en vigueur. Le ministère prendra les moyens de réorganiser et de renforcer les agences administratives, afin de supprimer immédiatement la contrebande et les maux qui en résultent.

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Une Conférence Impériale pour discuter des questions d'intérêt général à la Société Britannique des Nations aura lieu à Londres en octobre. Des arrangements seront ensuite complétés pour tenir à Ottawa une Conférence des représentants des gouvernements fédéral et provinciaux.

Honorables Membres du Sénat:

Membres de la Chambre des Communes:

Mes rapports officiels avec le Canada se termineront bientôt. C'est avec la plus profonde émotion que j'exprime, au nom de Lady Byng et au mien, le regret que nous éprouvons à la pensée que notre séjour dans ce pays ne sera pas maintenant de longue durée. Je vous assure que je suivrai les futurs progrès et le développement de ce Dominion avec un intérêt des plus sympathiques et avec la ferme conviction que, grâce à la divine Providence, il prospèrera de façon croissante dans toute l'étendue de sa vie morale et ministérielle.

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CANADA

IH/4 P.C. 1042 C 49468

(iii)

The Committee of the Privy Council have had under consideration the expediency of dissolving the House of Commons, and of summoning a new Parliament.

The Committee therefore recommend that the present Parliament be dissolved, as of the 28th day of June, 1926, and that a new Parliament be called together, and that a Proclamation, bearing date the 28th day of June, 1926, do issue, dissolving the present Parliament.

The Committee submit the same for Your Excellency's approval.

W.L. Mackenzie King.

W.L. Mackenzie King Papers
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CANADA

P.C.1041. 2 C 49470 (iii)



The Committee of the Privy Council have had under consideration the expediency of dissolving the House of Commons, and of summoning a new Parliament.

The Committee therefore recommend that the present Parliament be dissolved, as of the 28th day of June 1926, and that a new Parliament be called together, and that a Proclamation, bearing date the 28th day of June, 1926, do issue, dissolving the present Parliament.

The Committee submit the same for Your Excellency's approval.

6- en t. prem. cad. à Food Dept, dans mes papiers et dans
— laissé par dernier ministère pour gouv.
Séjour from W.L.M.K. — remis au Premier et dans ses
24-1-39 papiers pour gouv.
W.L.M.K.

W.L. Mackenzie King Papers
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CANADA

(MACKENZIE KING)

C 49471

W.L. Mackenzie King Papers
Memoranda & Notes

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C 49472

Ground for demolition ... Certificate of Minister ... unfitness for ... Govt. ... by Land Commissioner of Public Works ... unfitness for any other ... Land ... a Public ... which ... Minister responsible ... for ... Department of ... Minister ... which Land ... unfitness for ... Land ... a ... Minister ... has ... Land for which ... Minister ... has ... Land ... Minister ...

Reasons Justifying for House of Commons

... Government ... Minister ... Minister ... Minister

C 49473

Jan 28-1924

~~Sat~~
Jan 30-

1

19

Monday

Parliament & Archives
Bill

Monday 4th Feb
Tuesday ~~5th~~
Budget

W.L. Mackenzie King Papers
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(MACKENZIE KING)
J.C.

C 49474

Notes made on Privy Council
matters 1924 - June 28 - 1929 Jan
(1926)
JC

last day in connection Geneva
Treaty Conference & despatch

to Lord Cecil coming & do something King himself
and remarks

to the use of self governing Dominion
this so called equality of status of the nations
of the British Commonwealth is a blasphemous
travesty must be rejected & action of the kind
on the part of a foreign Govt here from
England to the States of a Crown Colony.

Effect this will be for reaching a Council
the Empire
Government
Govt of Irish
Ireland
Newfoundland
Dominions
to the exclusion of the Crown & the Empire
to the exclusion of the Mother Country & the Dominions
the Irish Question & Ireland Government

by this act your Country will be viewing ~~a~~ [illegible]
~~a constitutional change~~

W.L. Mackenzie King Papers
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C 49475

Hills

abide with me
fight the good fight
a few more years shall roll

~~Happy~~ Sing
This is the home of prayer

The key of love by stiffened is
by rumound sent to Leadith

Here I survey the wondrous
cross

Tell me the old old story
of Jesus and His love

My faith looks up to thee

W.L. Mackenzie King Papers
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CANADA

(MACKENZIE KING)
J.C.

Dissolution ought to carry on part many [illegible]
precedent equally of parties — Dominions June 28th
reason for dissolution — (1926)
J.C.

C 49476

What is only way of changing present situation of
precedent equally of parties
Language in Empire must change if
No amending must change it but an election
An election is the constitutional way of changing it

What is reason for election — that reason
exists after Empire comes on just as much
at present time — it would be flagrant
violation of constitution if Governor
thought it was a reason for a dissolution
Refused dissolution Today & Monday
hence granted — on what grounds
Is a act that may not be to take one side of
politics — to refuse help an election, &
give it to opposition — was such act
to be condemned & politics ignored here,
the Jews in any Colonial Dependency
or other land perfectly safe course free
from accusations & is to follow general
rule act on advice of Ministers and rid-
self of all personal responsibility

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C 49477

bijoy very bad dispute between himself & the P.M. — Aberdeen — no confidence shown in him of the town against half of Council — He only [illegible] sent out under a cloud.

I cannot congratulate myself on [illegible]

agreement [illegible] be dissolved after necessary supplies have been voted

— everything comes back to practical quality of [illegible]

Keith [illegible] 208 + following — Constitutional adjustment [illegible]

administration — Situation [illegible]

W.L. Mackenzie King Papers
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CANADA

(MACKENZIE KING)
J.C.

C 49478

Notes - June 30th (1926)
J.C.

dinner last evening
all agreed
Lord Byng refused to grant dissolution
Lord Byng and under take responsibility for refusal to grant dissolution
in other words. Lord Byng of opinion in exercise
discretion of being able to find a ministry
who can carry on the government of the
country parliament in the ordinary way
by reason more than anyone could say at that
or I should say that he should feel
He has been very fair and patient throughout
the difficulty so far as
announced
I am pleased to see this ~~announcement~~ of Mackenzie King, & much pleased
this confidence is shown in him & his party
announcement appears to have fallen on serious
In absence of acting Premier in the House is not carrying on the
Lord Byng did not feel it should be carried on
the part the Government that Parl. could not be carried on without
a Pty. in the House - That a new election
be meant a dissolution - Should be found between
April & May 5th.
(see Hansard) January
the only question is Commons not being in session
How can the Government be carried on under present condition.

The Opposition has the choice of entering the Parliamentary service
has only calling for ~~support~~ the vote of confidence
to consider of the business the Session convened for
Throne Speech, Address & Estimates subsidy as required
We are not prepared to vote subsidies to enable a dissolution
to take place, when the calling of Parl. has been should not take place

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CANADA

C 49479

the arc of the Covenant

Powers conferred & covenants which must
prevent the Crown at any time to determine
who is to be the right Honourable

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PUBLIC ARCHIVES
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C 49480

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

(MACKENZIE KING) (1926).
J.C. J.C.

C-49481

See Governors Instructions 15th June 1905
Can. Ann. Vol 3 p 1565

"No member"
has since ceased any Office or Trust
shall come to his seat -
that if the Minister in which they are acting
commits an error he must not only be a party
thereto.

The Privy Council -
How did they change from P.C. 1584

The constitution -
How Sec 62 - Commonwealth act
Moore's Commentaries on Constitution p 646
Sec 64
2 Kings — p 165 (Moore - his comment thereon)

See Bowman - on Cabinet
Mr Lloyd George's Statement

W.L. Mackenzie King Papers
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PUBLIC ARCHIVES
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CANADA

(July 1926)
J.C.

C 49482 July 25th.
Memo C Manning -

Dear Mr. King:

I have just come from talking with Mr. Ewart regarding Chapter 10, Sect. 13 which you and Mr. Cannon were discussing at dinner time. Mr. Ewart agrees fully with your interpretation, namely - that the last two provisions have not been fulfilled,

(a) a new administration has not been formed
(b) the "said offices" have not been filled

and that therefore the seats of your ministers, if recalled, would not become vacant.

Mr. Ewart also agrees that the present acting ministers are legally questionable and that if illegal it would follow:

(a) that expenditures, acts, contracts etc. executed by them would be illegal.

(b) that an individual could take recourse in Supreme Court of province by a writ of "quo warranto"

(c) that parliament could take action as at present.

Charles Manning
Toronto Star

W.L. Mackenzie King Papers
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PUBLIC ARCHIVES
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CANADA

(MACKENZIE KING)
J.C.

C 49483

Notes - Ghent Treaty
July 1 - 24

House of Commons
Canada

Borden, Colonial Statutes p. 61

re Privy Councillors
Change from Exec Council 1791 - Sec 38
1842 - Sec 45 -

Sec 10, 11 - 12 - 13 Federal Act.

General advice as Privy Councillors
All Powers come from Exec -
Privy Council is to "aid & advise
not perform executive Acts"

Powers under our own Statutes
Each Province in own

See Keith 1st vol - 239 - 242 (J. Charles Cons)
306
Parliament - 310 Rep of Cabinet

W.L. Mackenzie King Papers
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ARTHUR MEIGHEN C 49484 JULY 1, 1926

Constitutional Issue of 1926

STATEMENT ISSUED BY THE RT. HON. ARTHUR MEIGHEN.

at midnight July 1. (1926)

While it is highly undesirable that a controversy should arise with regard to the conduct of the Governor General in respect to a matter upon which his duty compelled him to give a decision according to his best judgment, yet the attacks promulgated by, or under the direction of the late Prime Minister ought not to pass unnoticed. A reasonable consideration of the fact that His Excellency bu virtue of his office can himself make no defence warrants surely a word on his behalf.

There are several classes of cases in which the Crown must exercise discretion in granting or refusing the advice of a Prime Minister asking for an appeal to the people. The only class to which attention need be directed at the moment is that in which a Prime Minister, having asked for and obtained dissolution, has failed to secure a majority. It is indisputable that in such a case a Prime Minister continuing in office is not entitled, during the ordinary course of Parliament, to demand a second dissolution merely on the ground that he is unable to command a majority in the House of Commons. This principle is of a special force in the early stages of a new Parliament.

More emphatically is it true that in the class of cases stated above, if not indeed in any case whatsoever, a Government is not entitled to dissolution while a motion of censure against that Government is under discussion in the House. A dissolution very manifestly should not be granted when its effect is to avoid a vote of censure. This was precisely the case in the present instance.

Early last autumn and more than a year before the expiration of the parliamentary term, Mr.King advised His Excellency that a new Parliament should be summoned. He publicly declared that under then existing conditions he could not carry on the affairs of the country efficiently, and that his appeal to the people was based upon the necessity of a reasonable working majority. Dissolution was granted by the Governor General, a new election was held, and in the new parliament Mr.King found his party in a minority.

Having advised the Crown that notwithstanding his defeat he could carry on with the aid of the Progressive party, he was permitted to continue a task which, under more favourable conditions he had declared to be hopeless. For several weeks his attempt appeared to succeed, but finally he found himself faced with a vote of censure based on serious charges of mal-administration which, as the result proved, would have called for his immediate resignation

To avoid the impending censure Mr. King again advised dissolution in the midst of a session and before necessary provision had been made for the public service. His advice was properly and constitutionally declined by His Excellency. If it had been granted Mr. King, again appealing to the people and finding himself once more in a minority, cou d with equal reason apply at the next session for a third dissolution and so on indefinitely.

It is manifest that His Excellency could not for a moment entertain a principle involving such extraordinary and unconstitutional results. His plain duty was to decline the advice which Mr.King had tendered on this subject and to accept that gentleman's resignation.

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In November last the Governor General's attitude to Mr. King was extremely considerate, having regard to the results of the last election. His conclusion in refusing a second dissolution is justified not only by plain, common sense, but by a long list of precedents and authorities which cannot be gainsaid.

Many authorities recognize the discretion of the Crown to grant or refuse dissolution. Among them that of Mr. Asquith (now Lord Oxford) may be emphasized. His words are as follows:

> (December, 1922) "The dissolution of parliament is in this Country one of the prerogatives of the Crown. It is a mere feudal survival, but it is a part, and I think, a useful part, of our constitutional system. It does not mean that the Crown should not voluntarily and without the advice of responsible ministers, but it does mean that the Crown is not bound to take the advice of a particular ministry to put its subjects to the tumult and turmoil of a series of general elections so long as it can find other m nisters who are prepared to give it a trial. The notion that a minister who cannot command a majority in the House of Commons is invested with the right to demand a dissolution is as subversive of constituional usage as it would, in my opinion be pernicious to the general and paramount interests of the nation at large.

This opinion of a great Liberal statesman and leader will hardly be questioned. Thus it is clear that Lord Byng possessed a discretion which he was bound to exercise according to his best judgment. His entire impartiality, his high sense of duty, and his perfect sincerity in reaching a conclusion will not for a moment be questioned by the Canadian people.

W.L. Mackenzie King Papers
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Marginal notes by Mr. King on copy of Statement by Mr. Meighen, July 1, 1926.

Para 1	remains to be seen if advice given.
Para 1	making use of the name of the Crow's representative to further the ends of party politics.
Para 2	no record dissolution demanded.
Para 3	nonsense
Para 3	appeal to higher court from which Parliament derives its authority.
Para 3	would not have been passed.
Para 5	not defeated
Para 5	January to June
Para 5	not sure it would have carried.
Para 6	had it carried dissolution would still be a right.
Para 6	not true this done by Meighen.
Para 8	It was Parliament that decided.
Para 10	G.G. could not find other minister.
Para 10	As P.M. I had a majority in the Commons. This applies to Meighen not me.
Para 11	He received two dissolutions in one year.
Para 11	Not until he granted a dissolution to Meighen after his Govt had been "in office" two and a half days and met with censure as well as defeat.

W.L. Mackenzie King Papers
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B (MACKENZIE KING) (1926)

Constitutional Issue of 1925 - 26

C 49487

Listen to the statement given by
his Majesty to his Ministers on which, on Friday
proceeds on which, he urged a
dissolution of Parliament. See
if they are not virtually
identical with the reasons
given formally to His Excellency
on Monday of this week,
except that ~~he~~ there on Monday of last
~~he~~ only
~~he~~ His Excellency which any
administration his Majesty
might ~~have~~ although it forces
would meet with certain
defeat, his Majesty was
able ~~on~~ after Thursday night
to inform His Excellency that
the defeat of his Ministry had
already taken place.
Here is ~~the~~ a quotation from

C 49488

his Majesty's Statement as it
is to be found in an afternoon
paper of July 2, and the morning
papers of July 3. After ~~referring~~
~~to~~ mentioning of the declared defeat
~~of the declared defeat~~ of that
Government, this Statement
~~continues the following paragraph~~
proceeds
"The fact of this defeat

C 49489

MEMORANDUM
Prime Minister's Office

Ottawa,.....

Copy to appear in Book - Statement by Mr. Lyon
Case 1922 -
Copied in Mr. Lyon's own handwriting
6 pages of July 2. Begins - The
Governor-General.

W.L. Mackenzie King Papers
Memoranda & Notes

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C 49490

Statement given Press by Mackenzie King at noon July 2nd published in afternoon papers

On Monday last the Government of the Right Honourable Mackenzie King suddenly resigned in the midst of a debate on a motion of censure for maladministration of the Customs Department. Thereupon His Excellency invited me to form a new administration. This task I accepted and in order that the work of the Session which was then very near its close might not be lost I made temporary arrangements for the ordinary conduct and completion of public business including passing of necessary supply and the early prorogation of the House.

During the week the Government thus formed was sustained in several division on matters of vital importance including a decisive vote of censure against the Mackenzie King administration.

Early this morning on what was really a question of law and admittedly not a question of policy the Government was declared defeated by a majority of one.

The fact of this defeat coupled with a consideration of the chaotic condition into which public affairs have been drifting and the too evident instability of government necessitated in my opinion an early appeal to the electorate. I have accordingly advised the Governor General to-day to dissolve Parliament, which advice His Excellency had been pleased to accept.

It is now my duty to complete the organization of the present Cabinet after which the date of the Election will be immediately announced.

W.L. Mackenzie King Papers
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CANADA

Coll. Const. Dec 7 1926.

C 49491

The Toronto Globe,

July 3, 1926.

Premier Meighen's Statement.

Premier Meighen issued the following statement this afternoon:

"On Monday last the Government of the Right Hon. Mackenzie King suddenly resigned in the midst of the debate on a motion of censure for maladministration of the Customs Department. Thereupon his Excellency invited me to form a new Administration. This task I accepted, and in order that the work of the session, which was then very near its close, might not be lost, I made temporary arrangements for the ordinary conduct and completion of public business, including passing necessary supply, and the early prorogation of the House.

"During the week the Government formed was sustained in several divisions on matters of vital importance, including a decisive vote of censure against the Mackenzie King Administration.

Defeated on Question of Law.

"Early this morning, on what was really a question of law, and admittedly not a question of policy, the Government was declared defeated by a majority of one.

"The fact of this defeat, coupled with a consideration of the chaotic condition into which public affairs have been drifting, and the too evident instability of government, necessitated, in my opinion, an early appeal to the electorate. I have accordingly advised the Governor-General today to dissolve Parliament, which advice his Excellency has been pleased to accept.

"It is now my duty to complete the organization of the present Cabinet, after which the date of the election will immediately be announced."

— did nothing of the kind as facts prove. had he had a campaign in fact he might have made "temporary arrangements" without the cabinet.

— comports with my advice

— i.e. [work that] has been declared [through] the right wrong.

W.L. Mackenzie King Papers
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Cdl - Const · Issue of 1926

The Toronto Globe
July 3, 1926.

C 49492

Action of Governor-General Issue at Stake, Says King

(Canadian Press Despatch.)

Ottawa, July 2.—The following statement was issued this afternoon by Right Hon. W. L. Mackenzie King:

"On Monday of this week I made the following statement in the House of Commons:

" 'The public interest demands a dissolution of this House. As Prime Minister I so advised his Excellency the Governor-General shortly after noon today. His Excellency, having declined to accept my advice to grant a dissolution, to which I believe, under British practice, I was entitled, I immediately tendered my resignation, which his Excellency has been graciously pleased to accept.'

Mr. Meighen's Position.

"On Tuesday last the House of Commons was informed that the then Leader of the Opposition, the Right Hon. Arthur Meighen, had on the previous evening advised his Excellency that he would undertake the task of forming a new Administration, and that he had been sworn in that morning as Prime Minister, Secretary of State for External Affairs, and President of the Privy Council. The statement, which it was announced had been prepared by Mr. Meighen as Prime Minister, concluded as follows:

" 'The Prime Minister accordingly decided to constitute and submit to his Excellency a temporary Ministry composed of seven members, who would be sworn in without portfolio, and who would assume responsibility as Acting Ministers of the several departments.'

"On Wednesday the members of the temporary Ministry in the House of Commons proceeded to have the House vote supply. On being questioned as to their authority so to do, they admitted that not one of their number had been sworn in as a Minister of the Crown.

"On Thursday, after careful consideration by the House of Commons, then assembled, of the unconstitutionality of the whole proceedings, the following resolutions was adopted by the House of Commons:

Censured by Commons.

"That the actions in this House of the honorable members who have acted as Ministers of the Crown since the 29th of June, 1926, namely, the honorable members for West York, Fort William, Vancouver Centre, Argenteuil, Wellington South, and the honorable senior member for Halifax, are a violation and an infringement of the privileges of this House for the following reasons:

" '(1) That the said honorable gentlemen have no right to sit in this House, and should have vacated their seats therein, if they legally held office as administrators of the various departments assigned to them by Order-in-Council. (2) If they do not hold such offices legally they have no right to control the business of government in this House, and to ask for supply for the departments of which they state they are Acting Ministers.'

Dissolution to Non-Existent Minister.

"The adoption of this resolution by the House of Commons defeated the Meighen Administration. This morning a dissolution had been obtained by the defeated Ministry, a Ministry which by resolution of the Commons has been declared never to have had the right to exist. On Monday a dissolution was denied to a Ministry which had not met with a single defeat in Parliament in a period of over four and one half years.

"In these circumstances, the issue which, above all others, is now before the people is whether or not Government in Canada is to be carried on in accordance with the expressed will of the people's representatives in Parliament, under a system of responsible self-government."

— Note Grounds as set forth in Mackenzie's Statement.

— compare with heading "in no uncertain terms" in Conservative Gazette

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C 49493

(MACKENZIE KING, July 4, 1926)

On Friday afternoon, July 2nd., a Proclamation was issued reading as follows:

BYNG OF VIMY
(L.S.) CANADA

GEORGE the FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the S Seas, KING, Defender of the Faith, Emperor of India.

To Our Beloved and Faithful the Senators of the Dominion of Canada, and the Members elected to serve in the House of Commons of Our said Dominion, and to all whom it may concern, Greeting:-

A P r o c l a m a t i o n

WHEREAS We have thought fit, by and with the advice and consent of Our Privy Council for Canada, to DISSOLVE the present Parliament of Canada,

Now know Ye, that We do for that end publish this Our Royal Proclamation, and do hereby DISSOLVE the said Parliament of Canada accordingly; and the Senators and the Members of the House of Commons are discharged from their meeting and attendance forthwith.

In Testimony Whereof, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Well-beloved Julian Hedworth George, Baron Byng of Vimy, General on the Retired List and in the Reserve of Officers of Our Army, Knight Grand Cross of Our Most Honourable Order of the Bath, Knight Grand Cross of Our Most distinguished Order of Saint Michael and Saint George, Member of Our Royal Victorian Order, Governor General and Commander-in- Chief of Our Dominion of Canada.

At our Government House, in our City of Ottawa, in our Dominion, this second day of July, in the year of Our Lord one thousand nine hundred and twenty-six and in the seventeenth year of Our Reign.

By Command

Thomas Mulvey
Under Secretary of State.

A copy of the above Proclamation was sent to the Speakers of the Senate and the House of Commons by the Under-Secretary of State. The letter of Mr. Mulvey reads as follows:

DEPARTMENT OF THE UNDER SECRETARY OF STATE
OF CANADA

Ottawa, July 2., 1926.

Sir;

I have the honour to advise you that, by direction of

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the Right Honourable the Prime Minister, a Proclamation has been issued by His Excellency the Governor General dissolving Parliament. A copy of the Proclamation is enclosed herewith.

I have the honour to be,
Sir,
Your obedient servant,

Thomas Mulvey
Under-Secretary of State.

The Honourable Hewitt Bostock,
Speaker of the Senate,
Ottawa.

As a consequence of the receipt of that letter from the Under-Secretary of State, neither House of Parliament was permitted to sit, and Senators and Members of the House of Commons were informed by messengers and page-boys that their presence was no longer required.

This method of assuming to dissolve Parliament is quite contrary to constitutional usage and law. When both Houses of Parliament are in session, the only way by which Parliament can constitutionally be dissolved is by the presence in the Senate of His Excellency the Governor General or his Deputy. Canadian practice with respect to the dissolution of Parliament is identical with British practice, which is authoritatively stated in Anson, "Law and Custom of the Constitution", at page 72, as follows:

"The dissolution of a parliament may be effected either by an exercise of the royal prerogative, or by efflux of time. When the King exercises his prerogative he may do so in person, should Parliament be sitting, or if not in person by Royal Commission. If Parliament is not sitting, but stands ~~adjourned~~ prorogued, it is dissolved by proclamation in the manner described on an earlier page.

"The usual practice, if Parliament is sitting, is for the King to prorogue it ~~first~~ first and then issue a Proclamation in the form set out on a preceding page".

But Canada's present Prime Minister is apparently not hampered by constitutional law and practice. After the declaration by the Commons of the night previous that their actions were a violation and an infringement of the privileges of the House, Mr. Meighen's acting Ministers could not face Parliament even for the purpose of having it prorogued or dissolved. He therefore advised a course which would not be tolerated in Great Britain, and has assumed the responsibility for an act of the Crown which is in contempt of the rights and dignity of Parliament.

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At page 103 referring to dissolution of Parliament - Bourinot says, "The Governor-general acting upon the advice of his Privy Council, may close the existence of Parliament by dissolution. Parliament is dissolved under the Great Seal after having been prorogued to a certain day." Also at page 104 "It is the rule in Canada, as in Great Britain, that, when Parliament is to be dissolved, to issue a proclamation for dissolution immediately or very soon after that of prorogation." The form of proclamation is brief and simple, merely naming the day to which Parliament is prorogued; that of dissolution states that "we do hereby dissolve the said Parliament, and the Senators and members of the House of Commons are discharged from their attendance and meeting on the — day of — " (the date to which the Parliament was prorogued). Simultaneously with the issue of the proclamation dissolving a Parliament a proclamation officers calling another Parliament, and informing "all to whom these presents have come" that writs have been issued in due form for that purpose returnable on a certain date therein named. This is followed generally on the same day, by a further proclamation summoning the House of Commons to meet a few days after the return of the writs of election."

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3.

Anson further states, on page 71, how prorogation of Parliament is effected:

> "Prorogation is effected at the end of a session either by the King in person or by Royal Commission. In the former case the King's commands are announced, in his presence, to both Houses, by the Speaker of the House of Lords; in the latter a like announcement is made by the Commissioners.
>
> "The prorogation is to be a specified date, but it may be necessary either to postpone or to accelerate the meeting of Parliament."

So in case of either dissolution or prorogation, while Parliament is in session, the exercise of the Crown's action is not, and cannot be effected by a proclamation communicated by a member of the Civil Service.

Anson also writes: (Page 76)

> "Common law governs all that relates to the prerogative of the Crown; its right to summon Parliament and to summon it in the form of proclamation; to open, prorogue, and dissolve it, and to do so either in person or by Commission."

As the right of the Crown "to open, prorogue, and dissolve it, and to do so either in person or by Commission" is governed by common law, it follows that the unconstitutional methods adopted on Friday last would, in the language of Anson: "affect the validity of any parliamentary proceedings or touch any public or private right".

In 1911, Sir Wilfrid Laurier advised and obtained a dissolution of the then parliament. The Senate at the time had been adjourned to a later date, which made impossible the announcement to both Houses of either prorogation or dissolution. Four proclamations were issued on July 29, 1911. The first prorogued parliament, "to the 7th of September next", and made it clear that only the adjournment of the Senate prevented the usual announcement to both Houses; it reads as follows:

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CANADA

GREY
(L.S.)

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperior of India.

To our Beloved and Faithful the Senators of the Dominion of Canada, and the Members elected to service in the House of Commons of Our said Dominion, and to all whom it may concern,-

GREETING:

A PROCLAMATION.

WHEREAS We have thought fit, by and with the advice and consent of Our Privy Council, to Prorogue the present Parliament of Canada, and whereas the adjournment of the Senate at the present time renders impossible the announcement ~~of~~ to both Houses,-

NOW KNOW YE, that We for that end publish this Our Royal Proclamation, and do hereby Prorogue the said Parliament of Canada accordingly to the Seventh day of September next.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Right Well-Beloved Cousin and Councillor the Right Honourable Sir Albert Henry George, Earl Grey, Viscount Howick, Baron Grey of Howick, in the County of Northumberland, in the Peerage of the United Kingdom, and a Baronet; Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, &c., &c., Governor General and Commander in Chief of Our Dominion of Canada.

At Our Government House, in our City of Ottawa, in our said Dominion, this Twenty-ninth day of July, in the year of Our Lord one thousand nine hundred and eleven, and in the second year of Our Reign.

By Command,
James G. Foley,
Clerk of the Crown in Chancery, Canada.

The second proclamation dissolved parliament, the third issued writs of election and the fourth summoned parliament to meet on the 11th day of October.

In the present case Mr. Meighen has assumed to dissolve parliament by a single proclamation enclosed in a letter addressed to the Speakers of both Houses by a deputy minister. Under the proclamation issued, parliament was not even prorogued to any date.

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Though both Houses of Parliament were in session, His Excellency the Governor General was not permitted to meet parliament in person, Senators and Members of the House of Commons were completely ignored, their presence, in fact, being treated with contempt.

The first breach of the constitution of Canada has unfortunately led to, andbeen followed by, other serious infractions and violations of the rights of the Canadian people. In circumstances so serious it becomes the duty of all who cherish liberty to consider how far the validity of parliamentary proceedings and of public and private right, is being affected by the unconstitutional course being pursued, and to make their opinions known in no uncertain manner.

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With respect to Friday's proceedings a serious question arises as to whether Parliament has been legally and constitutionally dissolved, seeing there was no prorogation notwithstanding that both Houses of Parliament were in session and His Excellency the Governor General was present in the capital at the time.

On Friday afternoon, July 2nd, a Proclamation was issued reading as follows:

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At our Government House, in our City of Ottawa, in our Dominion, this second day of July, in the year of Our Lord one thousand nine hundred and twenty-six and in the seventeenth year of Our Reign.

By Command
Thomas Mulvey,
Under Secretary of State.

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DEPARTMENT OF THE UNDER SECRETARY OF STATE
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Ottawa, July 2, 1926

Sir:

I have the honour to advise you that, by direction of the Right Honourable the Prime Minister, a Proclamation has been issued by His Excellency the Governor General dissolving Parliament. A copy of the Proclamation is enclosed herewith.

I have the honour to be,
Sir,
Your obedient servant,

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Under-Secretary of State.

The Honourable Hewitt Bostock,
Speaker of the Senate,
O t t a w a.

As a consequence of the receipt of that letter from the Under-Secretary of State, neither House of Parliament was permitted to sit, and Senators and Members of the House of Commons were informed by messengers and page-boys that their presence was no longer required.

This method of assuming to dissolve Parliament is quite contrary to constitutional usage and law. When both Houses of Parliament are in session, the only way by which Parliament can be constitutionally dissolved is by the presence in the Senate of HisxExcellency the Governor General or his Deputy. Canadian practice with respect to the dissolution of Parliament is identical with British practice, which is authoritatively stated xx in Anson, "Law and Custom of the Constitution", at page 72, as follows:

"The dissolution of a parliament may be effected either by an exercise of the royal prerogative, or by efflux of time. When the King exercises his prerogative he may do so in person, should Parliament be sitting, or if not in person by Royal Commission. If Parliament is not sitting, but stands prorogued, it is dissolved by proclamation in the manner described on an earlier page.

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Bourinot, the recognized authority on parliamentary procedure and practice in Canada, says (4th edition, page 102): "The Governor General will be always guided by British constitutional practice with respect to the prorogation and dissolution of parliament".

At page 103 referring to Dissolution of Parliament, Bourinot says: "The Governor General acting upon the advice of his Privy Council, may close the existence of parliament by dissolution. Parliament is dissolved under the great seal after having been prorogued to a certain day". Also at page 104: "It is the rule in Canada, as in Great Britain, that, when Parliament is to be dissolved, to issue a proclamation for dissolution immediately or very soon after that of prorogation". The form of proclamation is brief and simple, merely naming the day to which parliament is prorogued; that of dissolution states that "we do hereby dissolve the said parliament, and the Senators and Members of the House of Commons are discharged from their attendance and meeting on the - - - day of - - - -" (the date to which the Parliament was prorogued). Simultaneously with the issue of the proclamation dissolving a parliament, a proclamation appears calling another parliament, and informing "all to whom these presents have come" that writs have been issued in due form for that purpose returnable on a certain date therein named. This is followed generally on the same day, by a further proclamation summoning the House of Commons to meet a few days after the return of the writs of election.

But Canada's present Prime Minister is apparently not hampered by either British or Canadian constitutional law and practice. After the declaration by the Commons on the night previous that their actions were a violation and an infringement of the privileges of the House, Mr. Meighen's acting Ministers could not face Parliament even for the purpose of having it prorogued or dissolved. He therefore advised a course which would not be tolerated in Great Britain and is in violation of constitutional law and practice in Canada, and has assumed the responsibility for an act of the Crown which is in contempt

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of the rights and dignity of Parliament.

Anson further states, on page 71, how prorogation of Parliament is effected:

> "Prorogation is effected at the end of a session either by the King in person or by Royal Commission. In the former case the King's commands are announced, in his presence, to both Houses, by the Speaker of the House of Lords; in the latter a like announcement is made by the Commissioners.
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So in case of either dissolution or prorogation, while Parliament is in session, the exercise of the Crown's action is not, and cannot be effected by a proclamation communicated by a member of the Civil Service.

Anson also writes: 'Page 76)

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As the right of the C rown "to open, prorogue, and dissolve it, and to do so either in person or by Commission" is governed by common law, it follows that the unconstitutional methods adopted on Friday last would, in the language of Anson "affect the validity of any parliamentary proceedings or touch any public or private right".

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GREY
(L.S.)

CANADA

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India.

To Our Beloved and Faithful the Senators of the Dominion of Canada, and the Members elected to service in the House of Commons of Our said Dominion, and to all whom it may concern,- Greeting:

A Proclamation.

WHEREAS We have thought fit, by and with the advice and consent of Our Privy Council, to Prorogue the present Parliament of Canada, and whereas the adjournment of the Senate at the present time renders impossible the announcement to both Houses:-

NOW KNOW YE, that We for that end publish this Our Royal Proclamation, and do hereby Prorogue the said Parliament of Canada accordingly to the Seventh day of September next.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. Witness, Our Right Trusty and Right Well-Beloved Cousin and Councillor the Right Honourable Sir Albert Henry George, Earl Grey, Viscount Howick, Baron Grey of Howick, in the County of Northumberland, in the Peerage of the United Kingdom, and a Baronet; Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, &c., &c., Governor General and Commander in Chief of Our Dominion of Canada.

At Our Government House, in our City of Ottawa, in our said Dominion, this Twenty-ningh day of July, in the year of Our Lord one thousand nine hundred and eleven, and in the second year of Our Reign.

By Command,
James G. Foley,
Clerk of the Crown in Chancery, Canada.

The second proclamation dissolved parliament, the third issued writs of election and the fourth summonded parliament to meet on the 11th day of October.

In the present case Mr. Meighen has assumed to dissolve parliament by a single proclamation enclosed in a letter addressed to the Speakers of both Houses by a deputy minister. Under the proclamation issued, parliament was not even prorogued to any date.

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Though both Houses of Parliament were in session, His Excellency the Governor General was not permitted to meet parliament in person, Senators and Members of the House of Commons were completely ignored, their presence, in fact, being treated with contempt.

The first breach of the constitution of Canada has unfortunately led to, and been followed by, other serious infractions and violations of the rights of the Canadian people. In circumstances so serious it becomes the duty of all who cherish ~~impunity~~ liberty to consider how far the validity of parliamentary proceedings and of public and private right, is being affected by the unconstitutional course being pursued, and to make their opinions known in no uncertain manner.

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(MACKENZIE KING) C 49505 (1926)

(Insert white slip
between each day
with index of -

CHRONOLOGY

June 26. Sat. Cabinet
Interview with His Ex.

June 27. Sun. Cabinet
Interview with His Ex.
Cabinet

June 28. Mon. Cabinet — Memo. of S.S.
Interview with His Ex. — Letter to G.G.
Resignation
Announced in Commons - Get statement
Adjournment

June 29. Tues. Press announces Meighen accepted - See Meighen's statement if any.
Drayton's announcement - Get statement
Meighen has assumed office (letter from G.G.)

Fyle Hansard procdgs of Tuesday
also Votes & Proceedings & orders o.Day

Re Amendments (Customs) - secure & fyle

June 30. Wed. Speaker's Ruling - Govt. defeated by 1.
Supply
Motion on going into - fyle - Hansard & Votes & Proc.
re Fiscal policy. & Orders of Day

July 1. Thurs. Lapointe rises to privilege
Motion — secure & fyle
Govt.defeated.
Meighen issues statement re Gov.Gen. - secure & fyle.

July 2. Fri. Dissolution announced
Secure proclamation
method of announcing
Meighen issues statement secure & fyle) See Toronto Star
King " " " " (Statement of Ewart
2nd " " "
July 3. Sat. See statement from Meighen,) Statement of Garland
re formation cabinet (Forke statement
Letter to G.G. (Progs. position

July 4. Sun. Statement given to Press

July 5. Mon. Statement in Press from Leader of Opposition

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CONSTITUTIONAL POSITION

Sat.) Advised His Excellency — Dissolution necessary
Sun.) — No one else can carry on.
Mon.)

His Excellency — Will not accept advice
Says Meighen has not had chance to carry on, or to say he is unable to do so.

Accepts resignation
declines to withhold resignation
Without an adviser
Sends for Meighen
Meighen accepts responsibility for refusing dissolution by His Ex.

(If His Ex. can find an adviser ready to accept responsibility, he might be assumed to justify his attitude, tho. contrary to Br. & Can. practice. Adviser must carry on; if unable to do, must find one who can or send for one whose advice originally tendered.

1st Unconstitutional Step

Refuse advice of Prime Minister for dissolution
Not done in 100 years in Great Britain
" " " Canada since Confederation.

Meighen unconstitutional - in tendering Crown advice, unable to implement. Sworn in as P.M., Ex.Affairs & Pres. P.C.

2nd Unconstitutional Step

Making any appointments on advice of P.M. as the only sworn members of Cabinet
e.g. Black of Halifax as Privy Councillor.

Permitting Govt. Executive to be carried on by only one sworn Minister - not requiring administration of oaths of office; to see that Ministers duly sworn (see instructions to Gov.Genl).
Permitting Exec. to advise; not properly constituted

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3rd Unconstitutional Step

Permitting the Cabinet to advise, & administer the public affairs without complying with constitutional practice re appointment Ministers of Crown:
either (1) as King's Ministers
or (2) Ministers not sworn.

(all acts of Cabinet null & void in view of resolution of H.of C.
Cabinet - Committee H. of C.
House declared their privileges infringed.

4th Unconstitutional Step

Permitting dissolution

1. Without advice of regular sworn ministry.
Committee of P.C.
(Constitution requires dissolution on advice of Cabinet - not P.M.)

2. On advice of Ministry defeated in H.of C. and which H.of C. by resolution has declared had no right to exist, or to advise His Ex.

Commons had made its will known.

5th Unconstitutional Step

Permitting dissolution without Prorogation
While both Houses of Parliament in session.

(See Anson re British practice
See Bourinot re Canadian practice - based on Br.
& recognized in Canada.

Parliament according to Constitution must be a continuing body.
in session - suspended between session by prorogation
Present position - in session (ignored by Ministry)
or dissolved completely (tho' not being prorogued)

Dft

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6th Unconstitutional Step

If new Cabinet recognized -

It is extension or expansion of "temporary Govt"
No Govt. in one sense of word.
Which H. of C. declared not to have right to exist.

Authority of Govt. derived from people, thru representatives in parliament.

Whatever body can advise Crown - certainly cannot be a Committee of H. of C. which H. of C. has said has no right to exist.

All transactions may be held to be invalid - against public & private right.

What other O.-in-C. have been passed (all O.in-C. illegal in existing circumstances)

(See page 5374 - Drayton:- "Imagine my hon.friend moving a vote of want of confidence in a govt. which is not yet formed."

Mr.King: "The strongest reason why such a motion should be made."

How have an acting Minister, where there is no Minister for whom he is acting, who can take responsibility for his acts.

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Re Cabinet announced

No right to exist.

1. Action of Gov.Gen. unconstitutional in not accepting advice of P.M. re dissolution.

2. Action of Gov.Gen. unconstitutional in permitting himself to be advised by one individual only, or by a Cabinet not a member of which had taken oath essential to discharge of executive functions.

3. In permitting Ministers to continue in office when H.of C. declared that in so doing they were infringing the privileges of the House.
After Govt. defeated.

4. In accepting advice of defeated and discredited Ministry in anything.

5. Especially on dissolution - which had been denied same week to a recognized regularly constituted Govt., which advice, by the course of events, was proven to have been sound and right.

6. In permitting dissolution without prorogation, thereby further infringing on the time-honoured rights and privileges of the House of Commons.

British Govt. should be informed:

Parliament must either be dissolved entirely. i.e. both Senate and House of Commons by arbitrary act of Gov. Gen. on advice of person of his own choice, not in parliament, Or

Parliament is still in session, not having been prorogued - dissolution proceedings all an infringement of rights of Commons - leading to complete destruction of all constitutional guarantees.

Petition should be made to the Crown to recall the representative(?) to enable Parliament to be reconstituted.

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C 49510

OUTLINE OF SPEECHES

The elections of 1925

Let parliament decide - Bagot
the House of Commons
the representatives of the people

Parliament decides:
the administration continues in office
open co-operation and support

The country endorses parliament's decision:
Prince Albert,
Regina,
West Middlesex

The work of the Session; Speech from Throne
Other measures

The Budget of 1925:
Fruit of years of Liberal policies - features of economy - production

Measures passed Commons. Legislative Program.

Action of Senate. Now proposed to give Conservatives chance to increase Tory membership of.
In Supplementary Estimates - Provision for Conferences
Measures rejected by Senate.

Co-operation gives way to Tory intrigue

The Customs inquiry - Report of Committee accepted
No report vs. Boivin
Politics in Stevens' amendment
Judicial inquiry - wrongdoers to be prosecuted.

Dissolution recommended
Not granted - Constitutional issue
Votes of Confidence throughout Session

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C 49511

Outline of Speeches (continued)

2.

Meighen administration formed
defeated
dissolution granted (same week)

Meighen's record as a usurper:
War Times Election Act.
Soldiers ballots
Successor to Borden
Defeated self & govt. & brings on by-election
_____?

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June 28.
Re Dissolution - British practice

re conference with Meighen. Why did he not adopt
that course
Meet parliament
Confer with Leader of Opposition

June 29.
Govr.-Gen. "Requested" Meighen to form a new administration
" advised His Ex. he wd. undertake that task

Meighen's statement

H. of C. "the first duty to conclude with all convenient despatch the work of the present session" - Not done.

"If government was to be formed in the usual way and if Ministers were to be assigned portfolios necessitating the vacating of their seats & consequent by-elections."

Can we admit formation of Govt.in other than usual way.
What is left of Constitution once we begin to violate it.
Constitution made up of written documents.(B.N.A.Act)
Statutes, precedents, custom, & British practice.

"The P.M. decided to constitute and submit to His Ex. a 'temporary Ministry' composed of __ members who would be sworn in without portfolios - and who would assume responsibility as acting Ministers of several Depts.

Entirely wrong advice to His Ex.
His Ex. should not have permitted such a subterfuge
King of England would not have permitted
while parliament in session.

"following Members have accepted office as Ministers"
without portfolio - if Ministers accepting office shd.resign

These men have been assigned responsibility as Actg.Ministers

Responsibility = responsible (to the Crown
(to parliament
(to the people

How possible without being sworn, etc.

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"Govt. deem it its first duty to give Parliament an opportunity of dealing with all such matters as should be disposed of prior to close of session" -

This not done - dissolution prevented parliament dealing with any matters

"So soon as prorogation takes effect Mr. Meighen will immediately address himself to the task of constituting a government in the method established by custom"

- No prorogation
Since when did we decide to establish a Govt. in any way save established method; established by custom, law & practice.

"The present plan is merely to meet an unusual if not unprecedented situation" - since when were special plans for special situations.

To see significance of all that follows, imagine situation reversed - a Liberal Gov.-Gen. refuse Meighen's advice.

June 29. Meighen Passes O.-in-C.

appointing himself - Secy.of state External Affairs
President P.C.

No. of order 1042: Same as that fixed for prorogation by King Gt.

1043: Appoints Black Privy Councillor;
Is this possible save by O-in-C. of Council duly established.
No cabinet yet formed.

1044 etc. Appoints "Acting Ministers"
No Ministers yet appointed

June 30.

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July 1. Lapointe - raised a question of the privileges of the House that Ministers had vacated their seats.

Robb amendment- Actions of Members "who had acted as Ministers of the Crown since June 29" - are "a violation and an infringement of the privileges of the House"

"No right to sit in the House...if they legally hold office.
"If they do not hold such offices legally they have no right to control the business of Government in the House or to ask for Supply"

Motion carried 96 to 95. Meighen Govt.defeated.

(formed June 29th(noon);
defeated July 1, midnight: = 2½ days)

July 2. Statement issued by Meighen after midnight July 1.
re conduct of Govr.-Genl.
"the attacks promulgated by or under the direction of the late P.M. ought not to pass unnoticed" This a lie.

"to demand a second dissolution" - each parliament is complete in itself. -
Dissolution of 14th prlt.in natural course
" " 15th prlt. a matter by itself.

"merely on ground unable to command a majority"
Was commanding a majority.

"A Government not entitled to dissolution while a motion of censure against that Govt. is under discussion in the House"

P.M. may ask for dissolution any time. Is merely appealng to higher court - the people rather than prlt.

"effect to avoid a vote of censure" - no vote wd. have carried had Gov't not resigned - vote ~~only~~ to prevent dissolut

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"for <u>several weeks</u> his attempt appeared to succeed"

Throughout entire session, January to June inclusive.

"faced with a vote of censure - wd. have called for resignation"

Not at all probable. vote wd. have passed, have Administration contd.

Had motion carried - wd. have been entitled to ask for dissolution. e.g. Ramsay MacDonald, 1924.

"to avoid the impending censure Mr. King again advised dissolution" -

Not true. - It was to avoid bargaining, bartering, intrigue.etc "to maintain dignity & honour of parliament".

"in the midst of a session" advised dissolution. Elsewhere Meighen says at end (see statement by Drayton)
"before necessary provision had been made for the public service.
Compare Meighen's action re dissolution.

"finding himself once more in a minority"

Was not in a minority; parliament takes no account of parties. It is only majorities.

"Wd. apply for a third dissolution" -

It is for the people to say.

"In Nov. the <u>Govr.Genl's</u> attitude to Mr.King extremely considerate.
It was parliament that decided -
My advice to G.G. was considerate in relieving him of responsibility, and placing it on parliament.

"Conclusion in refusing dissolution - justified by a long list of precedents & authorities" - there are none.

Mr. Asquith's words. Ans. is action of the King

Quote Asquith: "The notion that a Minister who cannot command a <u>majority</u> in the H.of C. is invested with the right to demand a dissolution is as subversive of constitutional usage as it would, in my opinion be pernicious to the general and paramount interests of the nation at large".

This was exactly Meighen's position in asking dissolution.

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July 2 Dissolution - Note Proclamation

Wording "by and with advice of our Privy Council to Dissolve the present parliament"

Letter of Mulvey
Wording "by direction of Prime Minister"

Is there an O.in-C. dissolving parliament - "dissolve the present parliament"

No Order re Prorogation.

Statement to Press by Meighen.

"Govt. of King resigned - in midst of debate, etc. resignation due to advice not being accepted.

"Made temporary arrangement for the ordinary conduct and completion of public business, including passing of necessary supply and the early prorogation of the House".

This not possible constitutionally in circumstances
Did nothing of the kind as facts proved.

Had Meighen had majority in parliament he might have made "temporary arrangements" ?

"Govt. thus formed was sustained in several divisions on matters of vital importance"

- Was defeated on first vote - appeal from ruling of chair
Was defeated on first want of confidence vote from Oppostn.

"On what was really a question of law & admittedly not a question of policy the Govt. was declared defeated"

It was a question of the right of the Govt. to exist
Both law & policy & constitutional right.

Admits defeat - "fact of the defeat, coupled with a consideration of the chaotic condition into which public affairs have been drifting and the too evident instability of government necessitated in my opinion an early appeal to the electorate"

NOTE - Compare with my reasons for dissolution

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Meighen's reason for dissolution:

"fact of that defeat - The Government was declared defeated"

"coupled with a consideration of the chaotic condition into which public affairs have been drifting and the too evident instability of government, necessitated in my opinion an early appeal to the electorate"

Compare with my reasons as given in my own words in Hansard.

Exactly same reasons, yet dissolution given Meighen & refused me

Meighen plus defeat

Me minus defeat plus confidence of parliament.

"It is now my duty <u>to complete the organization of the present cabinet</u>

<u>Cabinet</u> - i.e. a cabinet which Meighen says was "declared defeated"

Note use of word "Cabinet" - not so called before
it was acting Ministers
committee of Privy Council

Note time taken to <u>complete</u>

This all most important
The advice tendered His Ex. in each case

Taken from Meighen's words in issued statement
" " my words in H. of Commons.

Ask query: Is this fair play - is this justice.
Can one political party be thus favoured at expense of another

Gov.-Genl. nothing to do with political parties
Only with majorities of H. of C.

Will of parliament completely ignored.

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July 2.

My statement to Press

Note events of week as set forth there.

Hodd to issue - the rights of the people as expressed by
The House of Commons.

July 5.

Statement to Press as to whether Parliament has been legally dissolved

No Prorogation

Proclamation: "by direction of the Rt. Honble. the P.M.
proclamation has been issued by His Ex. the G.G.
dissolving parliament.

Note - whole procedure ignoring parliament.

Method "quite contrary to constitutional usage and law"
" " " British Practice
Note to keep to fore.

Meighen's statement to Forke - could not face prlt. to prorogue
Act of Crown in contempt of the rights and dignity of parliament.
His Ex. not permitted to meet Prlt. Flag flying over East Block at 12.

In 1911. Parliament was prorogued by Royal Proclamation

"Whereas the adjournment of the Senate at the present time
renders impossible the announcement to both Houses"
..... we publish this Our Royal Proclamation and do hereby
prorogue the said parliament."

May affect validity of whole transactions

All legislative programme thrown to the winds.

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Not a feature of British constitutional practice that has been

respected. No following of Br. practice in proroguing & dissolution
No Ministers of the Crown
No Cabinet in true sense of word
A temporary Govt.
No going back for re-election
No majority support in Commons
No prorogation - by Gov.Gen. in person
No provision for supplies, etc.

Meighen undertook to form govt. on June 29th without conference with Progressives. Se Garland's statement July 5.

Progressives were prepared to "facilitate the completion of the Session's business" - acted fairly with new administration "based on the assumption that the new ministry was legally constituted and capable of functioning"

Progressive votes - intended to enable temporary govt to complete work of Sess
Garland gives this as reason for
"rejecting the purely partisan fiscal motion introduced by the Liberals"

Garland's statement - "authorized by a conference of the Progressive Group"
We assisted in dismissing the Conservative shadow Govt. for following reasons:

1. Not legally capable of functioning either as to introduction of money bills or estimates or in the letting of necessary contracts.
2. Mr. Meighen in attempting to usurp the functions of Govt. in so illegal a manner.
3. Action of Gov. Gen. in refusing to accept the advice of his adviser the late P.M. was unconstitutional and calculated to restore Canada to a purely Colonial status"

Note. Garland suggests 3 possible courses for Meighen after defeat of his Govt & says

"That he

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C 49520

STATEMENT PREPARED BY THE PRIME MINISTER
AND READ BY SIR HENRY DRAYTON IN CONNECTION
WITH CHANGES IN THE MINISTERIAL SITUATION.
(Hansard - June 29. Page 5291.)

Immediately following the resignation of the late government and the adjournment of the House yesterday, His Excellency, the Governor General sent for the Right Honourable Arthur Meighen, leader of the Conservative party and requested him to form a new administration. Mr. Meighen advised His Excellency last evening that he would undertake this task, and was sworn in this morning as Prime Minister, Secretary of State for External Affairs and President of the Privy Council.

Having in mind the fact that the present session has now continued for almost six months, and is very near its close, Mr. Meighen believed it to be the first duty of any government he might form to conclude with all convenient despatch the work of the present session. Such a course in preference to a somewhat prolonged adjournment was demanded also by a just regard for the convenience of hon. members, especially those who come from a great distance.

It was manifestly impossible to effect this result if a government was to be formed in the usual way* and if ministers were to be assigned portfolios necessitating the

* in order to

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vacating of their seats and consequent by-elections. The delay thus involved would, especially at this period of the year, have entailed unnecessary hardship. The Prime Minister accordingly decided to constitute and submit to His Excellency a temporary ministry composed of seven members, who would be sworn in without portfolio, and who would assume responsibility as acting ministers of the several departments.

(conclude Cabinet.

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Cole - Const Journal 7 1926
C 49522

The summoning of Parliament and determining the time and place of its meeting pertain to the Royal Prerogative, in the exercise of which, however, constitutional practice requires that the Sovereign shall act upon the advice of His Ministry. (May, Parliamentary Practice, 19th edition, 55, 58). In the exercise of this prerogative the meeting of Parliament summoned for a fixed date may be postponed by a proclamation of prorogation. Where after a general election doubt may exist as to whether the Ministry commands the confidence of the newly elected assembly, a Governor may, and ordinarily should, insist that the Ministry should meet the new Parliament at the earliest possible period for the purpose of determining the question, ~~of whether they possess the confidence of the newly elected assembly~~ .....But under particular circumstances the Governor may see fit to approve of delay in convening the new Parliament (Todd, Parliamentary Practice in the British Colonies, p.803).

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An interesting instance is given at p.p. 783,784, where elections had resulted in the return of an unusual number of independent members and avowed supporters of the Ministry had not an absolute majority. This induced the Governor to believe that an early session of the new Parliament should take place. The Ministry did not concur in this opinion, Although six newly elected members of the House memorialized the Governor to convene Parliament before the expiry of the (March 31st) financial year, it was not summoned to meet until May 18th. Meanwhile the Premier was obliged to resign on account of ill-health; his colleagues likewise resigned. The retiring Premier advised the Governor to authorize his Attorney General to form a new Ministry. At first the Governor declined and sent for the Leader of the Opposition to consult him on the emergency. He was not confident of his own success in obtainging the formation of a Ministry. The Governor

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then sent for the Attorney General who succeeded in reconstructing the former Ministry with himself as Premier. The new administration secured the confidence of Parliament---//--The Representation Act, 1924, enacts that the House of Commons shall consist of 245 members, etc. By the Election Act, returning officers are required ~~to~~ with due despatch to make their returns to the Chief Electoral Officer who must cause the same to be immediately published in the Canada Gazette. Under the English Parctice, the Clerk of the Crown in Chancery delivers to the Clerk of the House of Commons a return-book of the names of the members returned to serve in Parliament. This book is sufficient evidence of the return of a member. If a member be elected after a general election the Clerk of the Crown in Chancery sends to the Clerk of the House of Commons a certificate of the return. (May, Parliamentary Paractice, 19th ed., 168 ~~pxpx64x65~~; Anson, Law & Custom

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of the Constitution, 1922 ed., p.p. 64,65). This practice seems to contemplate that the return-book shall be complete and shall contain returns in respect of all writs issued for the general election. There is no corresponding duty imposed on the Chief Electoral Officer in Canada; but it would seem that by practice of Parliament he is obliged "to be in attendance at the table of the House of Commons and to deliver to the Clerk of the House a roll containing a list of such members as have been ~~elected~~ returned to serve in the Parliament then about to meet for the transaction of business". This duty formerly incumbent on the Clerk of the Crown in Chancery (Bourinot, Parliamentary Procedure, 4th ed., p.86) would appear now to be imposed by the Elections Act upon the Chief Electoral Officer (Statutes of 1920, c.46, s.18). This practice would also seem to contemplate that the roll to be delivered to the Clerk should contain a complete return of all

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the writs issued for the general election.

Inasmuch as the first act of a newly assembled House of Commons, after it has received authority from the Governor, is the election of a Speaker who is to preside over the House and to be its spokesman during the Parliament, it would seem to be the privilege of every constituency that its representative should be in a position to take part in such election. While, therefor, it probably cannot be said that the exercise of the Prerogative of the Governor in regard to the fixing of the time and place of meeting of Parliament is subject to any requirement that it shall be possible for every constituency to be represented in the House of Commons at the time so fixed, it would seem to be not an unreasonable ground for advising delay in convening Parliament that opportunity should be given for such re-presentation. The passage quoted from Todd on Parliamentary

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Government in the British Colonies would appear to afford sufficient authority for such a course being taken.

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(MACKENZIE KING)

Statement handed to the Press
5.20 P.M. July 6th/26 ug

C 49528

The "temporary government", through one of its "acting ministers", has published a lengthy statement defending itself against the charge that dissolution without prorogation of parliament, as effected upon the advice of the Prime Minister, was ochtrary to British and Canadian constitutional law and practice, and that as a consequence the validity of the whole proceedings are now open to question.

The government rests its case not upon constitutional law or practice as established and set forth by all leading recognised authorities on parliamentary government in Great Britain and in the Dominions, but on what it alleges its predecessors in office intended to follow. The government's position is set forth in the following paragraph in the statement of the Hon. Hugh Guthrie, acting Minister of Justice, issued last night, and which appears in the Press of to-day:

> "As respects the complaint by the Right Hon.Mr.Mackenzie King about the manner of dissolution of parliament, it may be stated that the forms and procedure used followed precisely the same as those prepared and proposed by Mr. King himself just four days previously when he himself sought dissolution of parliament."

First of all, may I point out that if the above statement were true, it would be no answer to, or excuse for, the illegal and unconstitutional course adopted by the present Prime Minister.

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From the moment Mr. Meighen assumed office his reponsibility in tendering advice to His Excellency, The Governor General, became hiw own; my responsibility ceased the moment my resignation was accepted. If in any particular the advice tendered His Excellency by myself was unconstitutional or illegal, it became the duty of Mr. Meighen, the moment he accepted office, so to advise, and thereby save His Excellency, as the representative of the Crown from adopting a course with respect to the dissolution of parliament that could be open to any question.

But the statement that "the forms and procedure used followed precisely the same as those prepared and proposed by Mr. King himself just four days previously when he himself sought dissolution of parliament" is not true; it is untrue. How, may I ask, is Mr. Guthrie to say what "forms and procedure" I "prepared and proposed". These were known only to my colleagues in the Cabinet and myself at the time of my several interviews with His Excellency the Governor General. The legal and constitutional aspects of the procedure to be followed were carefully considered by the Cabinet and in particular by Hon. Ernest Lapointe, the then Minister of Justice, who advised very fully in the matter. When the draft order-in-council relating to dissolution was prepared it was accompanied by draft orders relative to prorogation, to the issue of writs of election, and to the summoning of parliament to

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meet at a later date. In all particulars, save the insertion of dates (for which blanks were left to be filled in in the event of dissolution being granted) the draft orders were complete. Obviously, until it had been decided whether or not a dissolution would be granted by His Excellency it was not possible to present to His Excellency the Orders pertaining to prorogation, the issue of writs of election and the summoning of parliament to meet at a later date.

It was never contemplated that in the event of dissolution being granted it would not be preceded by prorogation. As a matter of fact, the procedure contemplated was, prorogation in the regular manner by His Excellency meeting both Houses in person,, the Speech from the Throne to make mention of the dissolution and the reasons therefor.

Mr. Guthrie's statement continues:

"The effect of the dissolution on pending legislation and supplies ~~xxx~~ was practically the same as would have been the effect had Mr. King secured a dissolution on the previous Monday.

Here again the government is entirely wrong in the assertion made by its Acting Minister of Justice. As proof of this I would draw attention to a statement I made in the House of Commons on Thursday, July 1st, which statement was made in the hearing of my former colleagues and of the members of the ~~x~~"temporary" government present in the House, and was never called in question.

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This statement appears on page 5455 of Hansard, (Unrevised Edition), and is as follows:

> When I was counselling a dissolution, I never contemplated that the business of this session would end there. After discussing dissolution and obtaining a decision favourable to dissolution, my next step would have been to consider the time at which dissolution should be taken. I would have advised His Excellency to arrange immediately for prorogation, and in the Speech from the Throne to announce the dissolution. That is the manner in which it should properly be done. That is the only way in which dissolution at the moment should be thought of by any party concerned".

It may be observed that this public statement of my position and of the constitutional course of procedure was before both the government and the country at the time Mr. Meighen advised and obtained dissolution without having it preceded by prorogation.

Thus much said, the real question with respect to dissolution remains. Was the course pursued by the Prime Minister in not permitting His Excellency to meet both Houses and prorogue parliament prior to dissolution, at a time when both Houses were in session, not wholly contrary to constitutional usage and law?

Bourinot, the recognized authority on parliamentary procedure and practice in Canada, says: (Fourth Edition, page 103):

> "The Governor-General will always be guided by British constitutional practice with respect to prorogation and dissolution of parliament".

(On page 105):

> "Parliament is dissolved under the Great Seal after having been prorogued to a certain day".

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(on page 104)

"It is the rule in Canada, as in Great Britain, that when parliament is to be dissolved, to issue a Proclamation for dissolution immediately or very soon after that of Prorogation."

The British practice with respect to dissolution being necessarily preceded by prorogation, when both Houses of Parliament are in session, is established beyond all question. The following sentences from Anson's "Law and Custom of the Constitution", will suffice to summarise the position with respect to British constitutional practice as recognized and affirmed by all the leading constitutional authorities:

(Page 72)
"The dissolution of parliament may be effected either by the exercise of the Royal Prerogative or by the efflux of time. When the King exercises his prerogative he may do so in person, if parliament is sitting, or if not in person by Royal Commission.
"The usual practice, if parliament is sitting, is for the King to prorogue it first and then issue a Proclamation."

(Page 71)
"Prorogation is effected at the end of a session either by the King in person or by Royal Commission. In the former case the King's commands are announced in his presence in both Houses by the Speaker of the House of Lords. In the latter, a like announcement is made by the Commissioners. The prorogation is to a specified date, but it may be necessary either to postpone or accelerate the meeting of parliament."

So much for the constitutional position with respect to dissolution and prorogation.

A word now as to the legal position. The legal position, according to British practice, is summarized as follows in

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Anson's "Law and Custom of the Constitution:" (Page 76)

> "Common law governs all that relates to the prerogative of the Crown. Its right to summon parliament and to summon it in the form of proclamation; to open, prorogue and dissolve it, and to do so either in person or by Commission."

As the right of the Crown to "open, prorogue and dissolve it" (referring to parliament), and "to do so either in person or by Commission" is governed by common law, it follows that if unconstitutional or illegal methods are adopted with respect to prorogation or dissolution, that, in the language of Anson, such unconstitutional methods may affect the validity of any parliamentary proceedings, or touch any public or private right."

Mr. Guthrie is correct when he intimates that there are two distinct legal and constitutional questions raised by the action of the present Prime Minister; one with regard to the formation of the present government and the other in regard to the dissolution of parliament on Friday last. The major portion of Mr.Guthrie's statement is concerned with the former question, and is comprised in a recital of communications from two members of the Civil Service of Canada, each of which communications is related to considerations respecting privy councillors and acting ministers in certain circumstances, but neither of which communications pretends to deal with the fundamental question of the appointment of ministers of the Crown for the purpose of

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carrying on government and administering public departments in accordance with recognized constitutional practice and law.

The theory that responsible government can be carried on in Canada, or for that matter in any part of the British Empire, except by Ministers of the Crown duly sworn to office, is so repugnant to the whole conception of British parliamentary institutions as to be unworthy even of consideration; and yet that is the theory of government under which Canada is being governed today and has been governed (if the use of that word in such circumstances is permissible) ever since the late administration resigned office on Monday June 28th.

The communications from the Clerk of the Privy Council and the Deputy Minister of Justice, quoted by Mr.Guthrie are wholly beside the mark. They were read in the House of Commons and were before the Members of the House when the House, on Thursday, July 1st, passed the following resolution:-

"That the actions in this House of the hon.members who have acted as ministers of the crown since the 29th of June, 1926, namely the hon.members for West York, Fort William, Vancouver centre, Argenteuil, Wellington South, and the hon. senior member for Halifax, are a violation and an infringement of the privileges of this House for the following reasons:

1. That the said hon. gentlemen have no right to sit in this House, and should have vacated their seats therein, if they legally hold office as administrators of the various departments assigned to them by orders in council.
2. That if they do not hold such offices legally they have no right to control the business of government in this House and to ask for supply for the departments of which they state they are acting ministers."

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By the adoption by the House of Commons of this resolution the government of Mr.Meighen was defeated in parliament. There are two very significant and pertinent features of this defeat. It was the first defeat any government had sustained in parliament in Canada since Confederation, and it was a formal declaration by parliament that the government as constituted was illegal, invalid, and had no right to exist.

The presumption of the Prime Minister thereafter to continue to advise His Excellency, and above all under such circumstances to advise and obtain a dissolution, which three days previously had been refused by His Excellency to a government regularly constituted, which had been in office over four and a half years and in that time was never once defeated, constitutes a more flagrant violation of constitutional right and law than can be found in British history.

The continuance in office today of the government thus defeated, and voted out of existence by the House of Commons, and its presumption to enlarge its numbers and its powers and to continue to act as the government of Canada is an even more unwarranted violation of constitutional right, practice and law, and which, if permitted to continue, cannot fail to undermine the whole fabric of constitutional government in Canada and the fundamental principles of self-government under British institutions in whatever quarter of the globe they may be held in honour to-day.

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MACKENZIE KING

C 49536

1926

✓ Mr King's 2nd administration
✓ Constitutional issue 1926

June 28 — Mr King — British practice
re conference with Lloyd — why did he not adopt that course
instead of
confer with leaders of Opposition

June 29 — Cons. Govt "requested" Lloyd to form a new administration
ad " advised Gov Gen. he was unable to take that line

Lloyd's statement
p. 26. — "Before doing so he concludes with all commend depended the
work of the present session" — Not done.

"If Government" was to be formed in the usual way and
of understood must be assigned forfeiture incurred during
the recalling of Mr Meighen's government election"
Can an advised formation of Govt in other than usual way.
What is effect of Constitution once one left to decide it.
Constitution made up of written documents (B.N.A. Act)
statutes, precedents, customs, & Br. practice:

"He & Mr. decided to constitute and submit to Gov Gen.
a Conservative Ministry" composed of 7 members who
would be sworn in without forfeiture — & who
would assume responsible as acting Ministers
of General depts —
entirely wrong advice to Gov Gen
Gov Gen should not have permitted
such a subterfuge.
Mem of Govt and not-hons
permitted to take part in session
"forthwith" new elected Members or Ministers "without forfeiture" — of Members acting after Sheldon-Williams.
"there was [illegible]
assigned responsible as acting Ministers"
responsible = responsible { to the Crown / to Parl. / to the people.
hons Members assumed to be sworn. &c

"Govt deem it their duty to form parliament an effective
& dealing with all the matters as should be the concern of him
to the close of the session" — His act. done. demands Govt
to deal with any matters.

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C 49537

"So soon as prorogation takes effect the Queen will immediately address herself to the task of constituting a Government in the manner established by Custom"

— No prorogation

Once when did we decide & establish "Custom" in any way save by custom law & precedent.

"The present plan is merely to meet an unusual and unprecedented situation." — Still a plan

Have special plans for special situations.

June 29th — Duplex despatches O. in C.

Attorney General - Secy of State & Colonial Affairs Vrendenburg H.C.

No Order 1042 - same as draft passed for prorogation & Privy Council.

1043 - Attorney Gen. Privy Councillors.

In this province same by O. in C. only Council duly established no consent of Parliament.

1044 Ch: Attorneys "acting Ministers"

No numbers for Attorneys

June 30th

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July 1. Lapointe – raised a question of the privileges of the House that ministers had vacated their seats
Robb. answered

a clause of ~~ministers~~ members "who had acted as ministers of the Crown since June 24" – are "a violation and an infringement of the privileges of the House"
"no right to sit in the House ... if they legally hold office"
"If they do not hold such office legally they have no right to control the business of government in the House as to ask for supply"

Motion carried 96 to 95 – Meighen Govt. defeated.
(formed June 29th (noon) defeated July 1. midnight = 2½ days)

July 2. –

Statement issued Meighen after midnight July 1.
re conduct of Govt. Genl.
"the attacks promulgated by or under the direction of of the late P.M. ought not to pass unnoticed" – This a lie

"to demand a second dissolution" – Each parliament is complete in itself. – dissolution of 14th pvt. in natural course
" of 15th pvt. a matter of itself.
"merely on ground unable to command a majority"
I was commanding a majority.

"A government not entitled to dissolution while a motion of censure against that govt. is under discussion in the House" –
P.M. may ask for dissolution any time. It merely appealing to higher court – the people rather than pvt.
"effect to avoid a vote of censure" – no vote will have carried had govt. not resigned – vote simply to prevent dissolution.

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"for several months his alleged offences to succeed"

Government entire summer. Party & Judges criticism.

"faced with a vote of censure . — . would have called for resignation"

Not at all probable vote would have turned Government out - would have been entitled to ask for dissolution

Ex Ramsay MacDonald 1924.

"to avoid the impending censure has King again advised dissolution" — not true - "it was to avoid bargaining, bartering, intrigues, etc." to maintain elected Government in power."

"in the midst of a session" advised dissolution — Chamberlain says at end (see Statement of Objects)

- "before necessary provision had been made for the public service" - Compare - Meighen action re dissolution.

"finding himself once more in a minority." — was not in minority - Orth takes into account of Liberals - Mr. in our opposition

"did ably for a recent dissolution" - it is for the people to say.

"It was NOT the [illegible] alleged by King existing condition" It was public that decided - my advice to G.G. was considered in relation to whole of the circumstances - Library at a glance.

"Conclusion in refusing dissolution - "previous of a long list of precedents & authorities" — there are none.

"The exquisite words - are in a dictum of the King

'Lord Byng' "The Motion that a Minister who cannot command a majority in the House is invested with the right to demand a dissolution is an subversion of constitutional usage as it would, in my opinion be pernicious to the general and permanent interests of the nation at large" — Mr. Meighen Mackenzie King Papers Memoranda & Notes

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5/.

C 49540

July 2. Conservative - Nfld Proclamation

wording "In case which advice of one King
Council to Dominion the Government"
Letter of Lindsey,
wording "In direction of P.M."
It must on 0-ii C- dominion folls.
"dominion the Government"

order re
No Prorogation

Statement Press of tonight.

"Cost of King enquiry - in midst of debate"
Singular date to advice not being accepted.

"made customary arrangement for the ordinary conduct
& completion of public business, including Supply
necessary public and the early Prorogation of the House"
this not possible constitutionally in circumstances
in effect asking of the Crown an act of personal
that King has not legally & constitutionally made "certain arrangements"
Cost then formed view & declared in General discussion
on inability of Privy Councillors"
- was defeated on first vote - appeal from
ruling of Chair
was defeated
on first count of confidence vote from Opposition

"On what was really a question of law & admittedly not a
question of policy the Govt was declared defeated
It was a question of the right of the Govt to Exist.
both law & policy. - I constitutional right -

Note — Adverts Defeat "fact of the defeat, coupled with a con-
Compare with - sideration of the character conditions under which public affairs have
my reasons for been drifting and the too evident instability of Government measures
dismissal. in any House on party affiliations to the electorate"

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Meighen's reason for dissolution

" fact of the defeat - "the Government was declared defeated"

" coupled with a consideration of the character condition into which public affairs have been drifting and the too evident instability of Government; warranted in my opinion an early appeal to the electorate"

Coupled with my reasons as given in my own words in Hansard.

Exactly same reasons for dissolution given Meighen refused me

he + defeat-
me - defeat + confidence of Parl.

"It is now my duty to complete the organization of the present Cabinet - i.e. a Cabinet which might stop vote declaring defeat

Note use of word 'Cabinet' - not so called before it was acting name with consent of Privy Council

Note time taken to complete

Note all most important
No advice tendered Gov. Gen - in each case
Taken from Meighen words in Council Statement
" " my words in Hansard
Sub query. Is this justifiable. in case he
Gave one potential for 5th case favoured
abstinence of another.
Gov. Gen. entitled to act with full freedom
on full & impartial consideration of facts.
Council opposed ignored.

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C 49542

July 2.
Key Statement to Press

Note conflict of views on sole point here.

Need to insist - the rights of the people
as expressed by
the House of Commons

July 3. Statement to Press as to whether Parl. has been legally dissolved
NO Prorogation.

- Proclamation "by direction of the Ho. the Pte. a proclamation has been issued by the Ex. in G.C. dissolving Parl.

Note - whole procedure ignoring Parliament.

Method "quite contrary to constitutional usage and law"
" " " Ancient Practice
Note to keep to fore.

Unofficial Statement to Parlt - could not face Parl - to prorogue
act of crown in contempt of the rights and dignity of Parliament.
This has not occurred in most Brit. Hist. Key Hist. mss Col. Hist. at 12.

In 1911 - Parl was prorogued by Royal Proclamation

"Whereas the adjournment of the Senate at the present time renders impossible the announcement to both Houses"
... we publish this our Royal Proclamation - and do hereby prorogue the said Parliament -
Key effect - validity of whole transaction

All legislative Program Unconstitutional -

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8/1 C 49543

N.S. a feature of British constitution at present that has been neglected. No forbears of Br. Monarch as King of Scots
No members of the Crown
No cabinet in time sense of word
A temporary Govt.
No party basis for selection
No party support or opposition
No prorogation - Govt. just in power
No provision for suffrage &c.

King has undertaken to form Govt on June 29th - without consulting with Progressives. See Parlands Statement 29th.

Progressives were pressed re "facilitating the completion of the Commons business" - moved adst. part with new addendum/date "based on the assumption that the new ministry was legally constituted and capable of functioning"

Progressives were - intended to enable Govt to complete work of session

Parland gave this as reason for
"existing the purely parliamentary fiscal motion introduced by the Liberals"

Parlands statement - "assumed as a condition of the Progressive group's co-operation in determining the Conservative Standing Govt. for following reasons

1. not legally capable of functioning - cannot as a consequence of dissolution of money bills or criminal or civil letting of necessary contracts

2. the machine in all matters to ensure the functioning of Govt in legal manner

3. action of Govt re reference & acceptance of this advice the test of the most unconstitutional and calculated to restore Canada to purely Colonial status"

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9.

C 49544

Note - Garland suggests 3 formula courses for Langley after defeat of Con. Govt.

"Malcolm

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Elections of Speaker C 49545

The election of 1925

Kayot:
Sub parliamentary decade - the House of Commons
the representative of the people

Parliamentary decade.
the administration continues in office
Open corporation and subsidies.

the country endorses Prime Minister; Regina, Westminster

the work of the session - Speech from throne
other measures

the Budget of 1926 -
trend of years of Canadian politics - features of economy - production.

measures passed Commons
Legislative program.

Estimates of Senate - now before and prior Session
claims of the Crown long unchanged.
Supplementary Estimates - Provision for expenses

measures rejected by Senate

Corporation taxes may be long litigious

the Customs inquiry - report of Committee accepted
to report to Parliament
- publication of Minutes awaited
Judicial inquiry - proceedings & findings awaited

distribution recommended
not granted. - Constitutional issues
Notice of Resolutions this session.

inquiries demanded.
defeated
distribution granted - Commons and Senate
War Measures Act
Resolutions ballots -
Customs Board
Appeal Court
Income War Tax

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C 49546

(1)

In Cabinet announced –

No right to exist

(1.) action of Govt. unconstitutional in not accepting advice of P.M. re dissolution

(2.) action of Govt. unconstitutional in permitting Ministry to proceed by one individual only – or by a Cabinet not a majority of which had taken oath of office to discharge executive function

(3.) in permitting Ministers to continue in office when HofC declared by 30 days majority ~~that they were~~ infringing the privileges of the House. – after fact defeated.

(4.) in acceding advice of defeated and discredited Ministry in anything

(5.) Especially on dissolution – which had been denied some week to a recognized regular & constituted Govt – who advice & line of course of events was proven & knew best & right

(6.) in permitting dissolution without proroguing Parliament & thereby forfeiting confidence on the privileges of the House of Commons

Dr. Govt should be informed

Pr. Minister either to demand enquiry re. Hon Senate – HofC.
Cancelling act of Govt. on advice & person of his own choice, not in Pr. Min. of State in Session – not having been prorogued – dissolution proceedings ~~also~~ an infringement of rights of Commons – leading to complete destruction of all Constitutional Government – Petition should be made to the Crown to recall its representative (?)

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to remain fully to be reconsidered.

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Chronology.

C 49548

(Memorandum of Cabinet Conference on Defence Policy held on Monday 27th June, 1938.)

June 26 Sat. - Cabinet
Interview with Hon. Mr. Ilsley

June 27 Sun. Cabinet.
Interview with Hon. Mr. Ilsley
Cabinet

" 28 Mon. Cabinet
Interview with Hon. Mr. Ilsley
Memorandum
announced in Commons
adjournment.

Memo of 55:
Letter to G.G.

Get Statement

" 29. Tues. - Press comments (Empire aspect) - Can complete Statement of army
Hansard (Hansard from (3.)

Get Statement

Get Hansard proceedings of Thursday
also Votes & Proceedings & Orders of day

" 30. Wed. - Mr. Chevrier's (Canso) -
(Shipbuilding meeting - Cork defeated)
Carthy -
motion on Empire unity
on foreign policy -

Secure Statement

Get -

Hansard, Votes & Proceedings & Orders of day

July 1. Mon - Interviews re Speech -
Motion
Cork defeated.
Empire economic Statement re Corporations -

Secure Statement.

Secure Statement

July 2nd Friday - Administration summary
Empire
Secure Statement.
Method of summary -
Empire economic Statement
Army economic Statement -

Secure Statement

See Memorandum

Statement of Expenditure
2nd " " "
Statement required
For the Statement
Progress Memo

July 3rd Sat. - See statement from Empire - re Economic statement.
Letter to G.G.

July 4th (Sunday) Statement from Press

July 5th (Monday) Statement re Press from leaders of Opposition

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C 49549

Constitutional position

Sask
Sens
Morden } Administration Excellency dissolution necessary
No one else can carry on

Hon Speaker. Will not accept advice
Says Ministers have not lost confidence & he can carry on, or he
Say he is unable to do so

Accepts resignations
declines to submit to resignation
without an address
Cancels for Ministers
Ministers accept responsibility for refusal of advice
Explains Sp.

(If Hon Sp can find an administration ready & accepts responsibility - he might be summoned upon his publication - this contrary to Pol. & Constl practice - administration must carry on - If unable to do, must find one who can or send for one whose advice originally tendered.

1st unconstitutional step - refuse advice of Prime Minister for dissolution
not done in 100 years in Gt Britain.
" " " Canada since Confederation

Ministers - unconstitutional —— In tendering Crown advice, unable to consult
Sworn in as Priv. Co Hon. Sp Gibson & Rendell K.C.

2nd unconstitutional step - - Making any appointments on advice of Priv. or any
Sworn member of Cabinet
Eg. Black of Halifax as Priv Councillor
Executive
Permanent Govt to be carried on & only on Sworn
Ministers " - not requiring administration of public
affairs - to see that Ministers duly Sworn
(See instructions to Hon Sec)
Pending Exec Administration - not to proceed with completed

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C 49550

3rd ... constitutional Step — Persuading Governor to advise ... to dissolve Parliament without complying with constitutional practice re appointment Ministers of Crown either (1) ... King's Ministers or (2) ... Ministers ... Senate

(all acts of Governor void & void in view of resolution of 1926.
Cabinet = Committee 1926.
House declared - their privilege infringed

4th " " Persuading dissolution of Parliament on advice of rejected Senate Ministry

(Constitutional requires dissolution on advice Cabinet of P.C. - not P.C.

(2) On advice of Ministry defeated in 1926 - and when 1926 Resolution was declared had no right to exist - on the advice Hon. Ex - Government had ceased to exist

5th " " Persuading dissolution without Prorogation until both Houses of Parl in Session

(See Anson re British Practice
See Bourinot " Canadian Practice - based on Br & wrongly in Canada

Parl already Constituted must be a continuing body in Session - Suspended between Sessions & Prorogation present position a ... Session (Opened & meeting) or dissolved completely (last not having been opened)

6th " " House Cabinet recognized -

It is decision on expression of "temporary Govt" the Government in ... which 1926 declared ... to have right to exist

authority of Govt. derived from people, ... responsible to Parliament

Whatever body can advise Crown - certainly cannot be ... a Commission of 1926 which 1926 Legislature has no right to appoint -

All transactions may be held to be invalid - & until settled remain ...

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C 49551

which others O. in C. have been honored. (all O. in C. illegal in existing circumstances)

(See page 5-374 - Hansard - "Imagine my hon friend moving a vote of want of confidence in a govt which is not yet formed"

We are to say - "The Sovereign alone who sits & whom should be made. How have an acting Ld Mr, whose duties is not known but for whom he is acting, who can take responsibility for his acts.

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C 49552 Memo attached to memo of King 1926 which has two titles written on it: Mr King's 2nd administration Constitutional Issues 1926

June 28.
Re Dissolution - British practice

re conference with Meighen. Why did he not adopt
that course
Meet parliament
Confer with Leader of Opposition

June 29.
Govr.-Gen. "Requested" Meighen to form a new administration
" advised His Ex. he wd. undertake that task

Meighen's statement

H. of C. "the first duty to conclude with all convenient despatch the work of the present session" - Not done.

"If government was to be formed in the usual way and if Ministers were to be assigned portfolios necessitating the vacating of their seats & consequent by-elections."

Can we admit formation of Govt. in other than usual way.
What is left of Constitution once we begin to violate it.
Constitution made up of written documents. (B.N.A.Act)
Statutes, precedents, custom, & British practice.

"The P.M. decided to constitute and submit to His Ex. a 'temporary Ministry' composed of __ members who would be sworn in without portfolios - and who would assume responsibility as acting Ministers of several Depts.

Entirely wrong advice to His Ex.
His Ex. should not have permitted such a subterfuge
King of England would not have permitted
while parliament in session.

"following Members have accepted office as Ministers"
without portfolio - if Ministers accepting office shd. resign

These men have been assigned responsibility as Actg. Ministers

Responsibility = responsible (to the Crown
(to parliament
(to the people

How possible without being sworn, etc.

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"Govt. deem it its first duty to give Parliament an opportunity of dealing with all such matters as should be disposed of prior to close of session" -

This not done - dissolution prevented parliament dealing with any matters

"So soon as prorogation takes effect Mr. Meighen will immediately address himself to the task of constituting a government in the method established by custom"

- No prorogation
  Since when did we decide to establish a Govt. in any way save established method; established by custom, law & practice.

"The present plan is merely to meet an unusual if not unprecedented situation" - since when were special plans for special situations.

To see significance of all that follows, Imagine situation reversed - a Liberal Gov.-Gen. refuse Meighen's advice.

June 29. Meighen Passes O.-in-C.

appointing himself - Secy.of state External Affairs
President P.C.

No. of order 1042 Same as that fixed for prorogation by King Ot.

1043: Appoints Black Privy Councillor;
Is this possible save by O-in-C. of Council duly established.
No cabinet yet formed.

1044 etc. Appoints "Acting Ministers"
No Ministers yet appointed

June 30.

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July 1. Lapointe - raised a question of the privileges of the House that Ministers had vacated their seats.

Robb amendment- Actions of Members "who had acted as Ministers of the Crown since June 28" - are "a violation and an infringement of the privileges of the House"

"No right to sit in the House...if they legally hold office.
"If they do not hold such offices legally they have no right to control the business of Government in the House or to ask for Supply"

Motion carried 96 to 95. Meighen Govt.defeated.

(formed June 29th(noon);
defeated July 1, midnight: = 2½ days)

July 2. Statement issued by Meighen after midnight July 1.
re conduct of Govr.-Genl.
"the attacks promulgated by or under the direction of the late P.M. ought not to pass unnoticed" This a lie.

"to demand a second dissolution" - each parliament is complete in itself. -
Dissolution of 14th prlt.in natural course
" " 15th prlt. a matter by itself.

"merely on ground unable to command a majority"
Was commanding a majority.

"A Government not entitled to dissolution while a motion of censure against that Govt. is under discussion in the House"
P.M. may ask for dissolution any time. Is merely appealng to higher court - the people rather than prlt.

"effect to avoid a vote of censure" - no vote wd. have carried had Gov't not resigned - vote ___?

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POOR
COPY

"for several weeks his attempt appeared to succeed"

Throughout entire session, January to June inclusive.

"faced with a vote of censure - wd. have called for resignation"

Not at all probable vote wd. have passed, have Administration contd.

Had motion carried - wd. have been entitled to ask for dissolution. e.g. Ramsay MacDonald, 1924.

"to avoid the impending censure Mr. King again advised dissolution" -

Not true. - It was to avoid bargaining, bartering, intrigue.etc "to maintain dignity & honour of parliament".

"in the midst of a session" advised dissolution. Elsewhere Meighen says at end (see statement by Drayton)

"before necessary provision had been made for the public service. Compare Meighen's action re dissolution.

"finding himself once more in a minority"

Was not in a minority; parliament takes no account of parties. It is only majorities.

"Wd. apply for a third dissolution" -

It is for the people to say.

"In Nov. the Govr.Genl's attitude to Mr.King extremely considerate.

It was parliament that decided -

My advice to G.G. was considerate in relieving him of responsibility, and placing it on parliament.

"Conclusion in refusing dissolution - justified by a long list of precedents & authorities" - there are none.

Mr. Asquith's words. Ans. is action of the King

Quote Asquith: "The notion that a Minister who cannot command a majority in the H. of C. is invested with the right to demand a dissolution is as subversive of constitutional usage as it would, in my opinion be pernicious to the general and paramount interests of the nation at large".

This was exactly Meighen's position in asking dissolution.

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July 2 Dissolution - Note Proclamation

Wording "by and with advice of our Privy Council to Dissolve the present parliament"

Letter of Hulvey
Wording "by direction of Prime Minister"

Is there an O.in-C. dissolving parliament - "dissolve the present parliament"

No Order re Prorogation.

Statement to Press by Meighen.

"Govt. of King resigned - in midst of debate, etc. resignation due to advice not being accepted.

"Made temporary arrangement for the ordinary conduct and completion of public business, including passing of necessary supply and the early prorogation of the House".

This not possible constitutionally in circumstances
Did nothing of the kind as facts proved.

Had Meighen had majority in parliament he might have made "temporary arrangements" ?

"Govt. thus formed was sustained in several divisions on matters of vital importance"

- Was defeated on first vote - appeal from ruling of chair
Was defeated on first want of confidence vote from Oppostn.

"On what was really a question of law & admittedly not a question of policy the Govt. was declared defeated"

It was a question of the right of the Govt. to exist
Both law & policy & constitutional right.

NOTE - Compare with my reasons for dissolution

Admits defeat - "fact of the defeat, coupled with a consideration of the chaotic condition into which public affairs have been drifting and the too evident instability of government necessitated in my opinion an early appeal to the electorate"

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Meighen's reason for dissolution:

"fact of that defeat - The Government was declared defeated"

"coupled with a consideration of the chaotic condition into which public affairs have been drifting and the too evident instability of government, necessitated in my opinion an early appeal to the electorate"

Compare with my reasons as given in my own words in Hansard.

Exactly same reasons, yet dissolution given Meighen & refused me

Meighen plus defeat

Me minus defeat plus confidence of parliament.

"It is now my duty to complete the organization of the present cabinet

Cabinet - i.e. a cabinet which Meighen says was "declared defeated"

Note use of word "Cabinet" - not so called before
it was acting Ministers
committee of Privy Council

Note time taken to complete

This all most important
The advice tendered His Ex. in each case

Taken from Meighen's words in issued statement
" " my words in H. of Commons.

Ask query: Is this fair play - is this justice.
Can one political party be thus favoured at expense of another

Gov.-Genl. nothing to do with political parties
Only with majorities of H. of C.

Will of parliament completely ignored.

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7.

July [redacted]

My statement to Press

Note events of week as set forth there.

Hold to issue - the rights of the people as expressed by
The House of Commons.

July 5.

Statement to Press as to whether Parliament has been legally dissolved

No Prorogation

Proclamation: "by direction of the Rt. Honble. the P.M.
proclamation has been issued by His Ex. the G.G.
dissolving parliament.

Note - whole procedure ignoring parliament.

Method "quite contrary to constitutional usage and law"
" " " British Practice
Note to keep to fore.

Meighen's statement to Forke - could not face prlt. to prorogue
Act of Crown in contempt of the rights and dignity of parliament.
His Ex. not permitted to meet Prlt. Flag flying over East Block at 12.

In 1911. Parliament was prorogued by Royal Proclamation

"Whereas the adjournment of the Senate at the present time
renders impossible the announcement to both Houses"
..... we publish this Our Royal Proclamation and do hereby
prorogue the said parliament."

May affect validity of whole transactions

All legislative programme thrown to the winds.

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Not a feature of British constitutional practice that has been

respected. No following of Br. practice in proroguing & dissolution
No Ministers of the Crown
No Cabinet in true sense of word
A temporary Govt.
No going back for re-election
No majority support in Commons
No prorogation - by Gov.Gen. in person
No provision for supplies, etc.

Meighen undertook to form govt. on June 29th without conference with Progressives. Se Garland's statement July 5.

Progressives were prepared to "facilitate the completion of the Session's business" - acted fairly with new administration "based on the assumption that the new ministry was legally constituted and capable of functioning"

Progressive votes - intended to enable temporary govt to complete work of Sess
Garland gives this as reason for
"rejecting the purely partisan fiscal motion introduced by the Liberals"

Garland's statement - "authorized by a conference of the Progressive Group"
We assisted in dismissing the Conservative shadow Govt. for following reasons:

1. Not legally capable of functioning either as to introduction of money bills or estimates or in the letting of necessary contracts.
2. Mr. Meighen in attempting to usurp the functions of Govt. in so illegal a manner.
3. Action of Gov. Gen. in refusing to accept the advice of his adviser the late P.M. was unconstitutional and calculated to restore Canada to a purely Colonial status"

Note. Garland suggests 3 possible courses for Meighen after defeat of his Govt & says

"That he

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C 49560

OUTLINE OF SPEECHES

The elections of 1925

Let parliament decide - Bagot
the House of Commons
the representatives of the people

Parliament decides:
the administration continues in office
open co-operation and support

The country endorses parliament's decision:
Prince Albert,
Regina,
West Middlesex

The work of the Session; Speech from Throne
Other measures

The Budget of 1925:
Fruit of years of Liberal policies - features of
economy - production

Measures passed Commons. Legislative Program.

Action of Senate. Now proposed to give Conservatives chance to
increase Tory membership of.
In Supplementary Estimates - Provision for Conferences
Measures rejected by Senate.

Co-operation gives way to Tory intrigue

The Customs inquiry - Report of Committee accepted
No report vs. Boivin
Statistics in Stevens' amendment
Judicial inquiry - wrongdoers to be prosecuted.

Dissolution recommended
Not granted - Constitutional issue
Votes of Confidence throughout Session

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CUTLINE OF SPEECHES

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Outline of Speeches (continued)

2.

Meighen administration formed
defeated
dissolution granted (same week)

Meighen's record as a usurper:
War Times Election Act.
Soldiers ballots
Successor to Borden
Defeated self & govt. & brings on by-election
_____?

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C 49562

Re Cabinet announced

No right to exist.

1. Action of Gov.Gen. unconstitutional in not accepting advice of P.M. re dissolution.

2. Action of Gov.Gen. unconstitutional in permitting himself to be advised by one individual only, or by a Cabinet not a member of which had taken oath essential to discharge of executive functions.

3. In permitting Ministers to continue in office when H.of C° declared that in so doing they were infringing the privileges of the House.
After Govt. defeated.

4. In accepting advice of defeated and discredited Ministry in anything.

5. Especially on dissolution - which had been denied same week to a recognized regularly constituted Govt., which advice, by the course of events, was proven to have been sound and right.

6. In permitting dissolution without prorogation, thereby further infringing on the time-honoured rights and privileges of the House of Commons.

British Govt. should be informed:

Parliament must either be dissolved entirely. i.e. both Senate and House of Commons by arbitrary act of Gov. Gen. on advice of person of his own choice, not in parliament, Or

Parliament is still in session, not having been prorogued - dissolution proceedings all an infringement of rights of Commons - leading to complete destruction of all constitutional guarantees.

Petition should be made to the Crown to recall the representative(?) to enable Parliament to be reconstituted.

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C 49563

(Insert white slip
between each day
with index of -

CHRONOLOGY

June 26. Sat. Cabinet
Interview with His Ex.

June 27. Sun. Cabinet
Interview with His Ex.
Cabinet

June 28. Mon. Cabinet — Memo. of S.S.
Interview with His Ex. — Letter to G.G.
Resignation
Announced in Commons - Get statement
Adjournment

June 29. Tues. Press announces Meighen accepted - See Meighen's statement if any.
Drayton's announcement - Get statement
Meighen has assumed office (letter from G.G.)

Fyle Hansard proedgs of Tuesday
also Votes & Proceedings & orders o.Day

Re Amendments (Customs) - secure & fyle

June 30. Wed. Speaker's Ruling - Govt. defeated by 1.
Supply
Motion on going into - fyle - Hansard & Votes & Proc.
re Fiscal policy. & Orders of Day

July 1. Thurs. Lapointe rises to privilege
Motion — secure & fyle
Govt.defeated.
Meighen issues statement re Gov.Gen. - secure & fyle.

July 2. Fri. Dissolution announced
Secure proclamation
method of announcing
Meighen issues statement secure & fyle) See Toronto Star
King " " " " (Statement of Ewart
2nd " " "
July 3. Sat. See statement from Meighen,) Statement of Garland
re formation cabinet (Force statement
Letter to G.G. (Progs. position

July 4. Sun. Statement given to Press

July 5. Mon. Statement in Press from Leader of Opposition

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C 49564

CONSTITUTIONAL POSITION

Sat.) Advised His Excellency — Dissolution necessary
Sun.) — No one else can carry on.
Mon.)

His Excellency — Will not accept advice
Says Meighen has not had chance to carry on, or to say he is unable to do so.

Accepts resignation
declines to withhold resignation
Without an adviser
Sends for Meighen
Meighen accepts responsibility for refusing dissolution by His Ex.

(If His Ex. can find an adviser ready to accept responsibility, he might be assumed to justify his attitude, tho. contrary to Br. & Can. practice. Adviser must carry on; if unable to do, must find one who can or send for one whose advice originally tendered.

1st <u>Unconstitutional Step</u>

Refuse advice of Prime Minister for dissolution
Not done in 100 years in Great Britain
" " " Canada since Confederation.

Meighen unconstitutional - in tendering Crown advice, unable to implement. Sworn in as P.M., Ex.Affairs & Pres. P.C.

2nd <u>Unconstitutional Step</u>

Making any appointments on advice of P.M. as the only sworn members of Cabinet
e.g. Black of Halifax as Privy Councillor.

Permitting Govt. Executive to be carried on by only one sworn Minister - not requiring administration of oaths of office; to see that Ministers duly sworn (see instructions to Gov.Genl).
Permitting Exec. to advise; not properly constituted

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3rd Unconstitutional Step

Permitting the Cabinet to advise, & administer the public affairs without complying with constitutional practice re appointment Ministers of Crown:
either (1) as King's Ministers
or (2) Ministers not sworn.

(all acts of Cabinet null & void in view of resolution of H.of C.
Cabinet - Committee H. of C.
House declared their privileges infringed.

4th Unconstitutional Step

Permitting dissolution

1. Without advice of regular sworn ministry.
Committee of P.C.
(Constitution requires dissolution on advice of Cabinet - not P.M.)

2. On advice of Ministry defeated in H.of C. and which H.of C. by resolution has declared had no right to exist, or to advise His Ex.

Commons had made its will known.

5th Unconstitutional Step

Permitting dissolution without Prorogation
While both Houses of Parliament in session.

(See Anson re British practice
See Bourinot re Canadian practice - based on Br.
& recognized in Canada.

Parliament according to Constitution must be a continuing body.
in session - suspended between session by prorogation
Present position - in session (ignored by Ministry)
or dissolved completely (tho' not being prorogued)

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6th Unconstitutional Step

If new Cabinet recognized -

It is extension or expansion of "temporary Govt"
No Govt. in one sense of word.
Which H. of C. declared not to have right to exist.

Authority of Govt. derived from people, thru representatives in parliament.

Whatever body can advise Crown - certainly cannot be a Committee of H. of C. which H. of C. has said has no right to exist.

All transactions may be held to be invalid - against public & private right.

What other O.-in-C. have been passed (all O.in-C. illegal in existing circumstances)

(See page 5374 - Drayton:- "Imagine my hon.friend moving a vote of want of confidence in a govt. which is not yet formed."

Mr.King: "The strongest reason why such a motion should be made."

How have an acting Minister, where there is no Minister for whom he is acting, who can take responsibility for his acts.

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(MACKENZIE KING)
Statement handed to the Press.
noon - July 7/26.

C 49567

In the controversy which has arisen as to the position ofthe Government of Canada at the present time, Liberals claim that whatever else may be said this much is clear. The Right Honourable Arthur Meighen is the only Minister of the Crown who has taken an oath of office. Mr. Meighen constitutes now all that can be designated as the Government of Canada in whatever pertains to Canada's domestic, inter-imperial and international affairs and responsibilities. So far as Ministers sworn to administer the several departments of the Government are concerned, he is the entire Cabinet, the sole executive, the sole administrator of all the departments of State. In a few days he will attempt to carry on the business of the country, not with money appropriated by Parliament for public services, but by Governor-General Warrants, which he will demand from the representative of the Crown.

Under the existing situation the Liberals contend ~~but~~ that one of two alternatives alone are possible: Either there is in Canada at the moment no government which will be recognized as such under British constitutional practice and law since there are no Ministers of the Crown (but only one Minister sworn to office) or the government which exists is a "one-man" government carrying on with such expedients as he himself is devising. Elsewhere in the world such a condition of government they contend would be described as anarchy or absolutism, and that Mr. Meighen would be the first so to describe it, if the position were reversed and he instead of being Prime Minister were the ~~Leader of His Majesty~~ Loyal Opposition

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Coll - Const Dom'l / 1926

C 49568

Extract from "The Legionary"
Official Organ of the Canadian Legion of the British Empire Service League.

July 15th, 1926

"The Canadian Legion of the B. E. S. L. has no part in party politics, but The Legion, as a great national association comprised of men of all parties and creeds, of East and West, and of varied national antecedents, stands ready to advance, by non-partisan means, that clause of its declared principles, which reads: "It shall stand for loyalty to the reigning Sovereign, Canada, and the Empire, for maintenance of the foundation principles of the British Constitution, for the development of a national and united spirit, and for ordered government in Canada".

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C 49569

Mr McCormacy
President of Young Fish
Young men

Norman
Mr Forke

Forke - only could
governs with aid
of Progressive Party

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(Letter copy Ans)

JULY, 192 C 49570

MEMO FOR MR. KING

Mr. Meighen's speech simplifies the discussion of the constitutional question.

He does not pretend that the relation between the Governor-General and his Ministers differs in any respect from the relation between the King and his Ministers. Question upon that point being eliminated, all that remains to discuss is the practice prevailing in England.

Mr. Meighen evidently admits the existence of the general rule that the Governor-General must accept the advice of his Ministers. But he makes exception of a case in which a vote of censure is pending in the Commons. This exception is a mere creation. It cannot be found in any work of constitutional practice. It is created pro hac vice. No argument in support of it is presented by Mr. Meighen - unless, indeed that no Prime Minister would "demean" himself by tendering advice under such circumstances.

The answer to all this, I think, is sufficiently indicated in my letter to The Citizen of Thursday, the 22d inst.

I enclose a letter recently published by Mr. Reid, a Toronto lawyer, in The Globe, and my reply to it. The inapplicability of Mr. Reid's extracts from Leonard Courtenay and Professor Hearn is indicated in my reply.

(J.S. EWART)

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Dotes

C 49571

400 Wilbrod Street
Ottawa

20 July 1926

The Editor, The Globe,

Toronto.

Sir, - I should like to make reply to Mr. Reid's letter. He affirms that I acknowledged, "for all practical purposes," the Governor-General's power to refuse a dissolution, when I said:

> "The only possible ground or consideration which could have justified a refusal of dissolution to his then Prime Minister, Mr. King, would have been the possible chance of avoiding another election."

The quotation is sufficiently accurate for Mr. Reid's purposes, but, when placed in its proper context, it loses the significance which he attaches to it. For my argument was that practically the King had no such power; that the Governor had no greater power than the King; and that, therefore, the Governor had made a mistake. I then added that, supposing all these arguments to be wrong and supposing that the Governor had a discretion, "the only possible ground" etc. - as Mr. Reid has it.

The Governor's refusal to sanction elections is justified by Mr. Reid upon ~~him~~ ground that appears to indicate his possession of an extraordinarily fertile but extremely errant imagination. His idea is that Mr. King asked the Governor to save him by dissolving parliament from a verdict in the Commons of "guilty" ~~by dissolving parliament~~. To which the Governor is supposed to have replied:

> "No. If you are guilty, you must resign. And if you are guilty and won't resign, then I will dismiss the whole ministry."

I do not believe that anyone else in Canada would have thought it possible that Mr. King asked for a dissolution upon the ground suggested by Mr. Reid. Mr. King has told us (and there appears to be no reason for questioning his statement) that he advised a dissolution because neither he nor Mr. Meighen could carry on effectively the government of Canada. And if we do not know exactly what the Governor said in reply, we may be sure that it was not, ~~as Mr. Reid has imagined~~ that imagined by (for the last occasion upon which a King dismissed his ministry was in 1784), and that it was not, as some other persons may have imagined, namely:

> "I agree, Mr. King, that there is no remedy for the present situation other than dissolution, but I think that I ought to give your opponents a change to get a crack at you before the elections."

Mr. Reid will look in vain in British as well as Colonial history for such a nonsensical reply. The Governor would not like to see it on record.

For the rule is very clear that the King must abstain from participation in the quarrels of political parties. And there was nothing so unusually reprehensible in the charge made against the government as to

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make proper the Governor-General's infringement of that rule. All that Mr. Stevens' motion alleged as against the Prime Minister and the government was that they -

> "had knowledge for some considerable time of the rapid degeneration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is highly indefensible. The conduct of the present Minister of the Department, the Hon. George H. Boivin, in the case of Moses Asis, is utterly unjustifiable."

The resolution, therefore, was of the usual character of attacks by Opposition leaders. The Committee, which had, at great length, examined the whole subject, agreed to a unanimous report in which there were no such censures. And the object of the Opposition was to add the above condemnatory clauses to that unanimous report. Very clearly, His Excellency had nthing to do with the bandying of political charges of such a nature.

When Mr. Reid asks whether the Governor-General ought to function merely as "a figurehead" and "a rubber-stamp," the replies are as follows:

(1) The Governor-General ought to act as does the King. As Bagehot puts it -

> "the sovereign has ...three rights - the right to be consulted, the right to encourage, the right to warn. And a king of sense and sagacity would want no others" (The English Constitution, 6th ed., p. 75).

(2) In theory and for all practical purposes, the prerogative powers of interference in legislation and administration are gone - the taxing prerogative since Charles I; the veto prerogative since Queen Anne; the dismissal-of ministers and the refusal-of-dissolution prerogatives since George III. They are all capable of resuscitation, but no British King will ever risk his crown by an attack upon the well-established principles of responsible government and ministerial responsibility. Does Mr. Reid imagine that King George would antagonize the millions of members of a political party by declining to act upon the advice of their leader?

Mr. Reid would not have cited Leonard Courtenay and Professor Hearn had he kept in mind that nobody disputes the theoretical right of the Crown to refuse dissolution. For these authors are dealing with the case of a ministry defeated at the polls, facing an Opposition capable of carrying on the government, and immediately asking for a new election. Although Mr. Courtenay thinks that under such circumstances the King might refuse to sanction dissolution, he rightly might have added that "such a ridiculous case has never happened, and never will happen, in a country so amenable to public opinion as the United Kingdom or Canada." In other words, while the prerogatives remain, they are practically - that is, under all conceivable circumstances - as dead as the respective sovereigns who last employed them[2].

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Challenging my argument that the King has not during the last hundred years refused to assent to a request by his Ministers for a dissolution, Mr. Reid says that "a dissolution has never been advised except under conditions making it reasonable and proper." So far from that being the case, the right of a Prime Minister to request dissolution for mere party advantage purposes is so well established that Sir Sidney Lows says in his book The Governance of England:

> "Under the English system, it is always in the power of a Cabinet to rush the appeal to the electorate." And he adds that the"power of the Prime Minister to call a dissolution when he pleases, increases the authority of the Cabinet. It can be used as a kind of penal measure, if Ministerialists are too undisciplined and the Opposition too obstructive."

Let me now supply three out of the many instances in which dissolution was asked, although the conditions under which the request was made were, (apart from the recognized convention above referred to) both unreasonable and improper.

(1) In 1874, Mr. Gladstone, while still in the enjoyment of a solid Liberal majority, asked for a dissolution upon the ground that his government could not undertake further work without a fresh access of strength. In other words, Mr. Gladstone thought the moment opportune for political party advantage. And so, although, according to Sir Sidney Low, "there seemed absolutely no reason of state for an appeal to the constituencies," the King gave his assent and elections were brought on - in order to strengthen the Liberal party!

(2) In 1900, too, there were no reasons on public grounds for suddenly plunging the country into a general election. The whole energies of the people were being devoted to the prosecution of the Boer war. But the Salisbury-Chamberlain administration saw in the war-enthusiasm of the people a splendid opportunity for re-establishing themselves in power, and, for that reason only, they advised the Queen to grant a dissolution. Her Majesty, of course, refrained from remonstrance and, acting constitutionally, gave her assent. In cricket or other competitive activities, taking a mean advantage of one's opponent is not thought to be either reasonable or proper.

(3) The elections of November 1922 gave Mr. Bonar Law and the Conservative party a very comfortable majority. A few months afterwards, Bonar Law resigned, and his successor, Mr. Baldwin, within twelve months of the previous elections, advised the King to assent to another dissolution for the mere purpose of enabling him to get rid of a tariff pledge given

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by Mr. Bonar Law during the 1922 elections. I think Mr. Reid will agree with me that to precipitate a general election merely to enable a political party to change an item of its policy is(apart from the convention) both unreasonable and improper.

And now let us notice the last of the British dissolutions. The Baldwin elections of 1923 were a surprise to their originator. His majority was greatly reduced, with the result that, when the Labour and Liberal parties combined shortly after the opening of parliament, he was beaten. That was in the early part of 1924. Mr. Ramsay MacDonald of the Labour party was entrusted with the reins of government, but before the year was up, he sustained a heavy defeat(364 to 198 votes) by a combination of Conservatives and Liberals. Mr. MacDonald now asked for an obtained a dissolution. It was the third request within two years. It was asked for and granted to a man who not only had been afraid of defeat, but had been overwhelmingly defeated.

Was his request ~~unrequest~~ unreasonable and improper? If so, it is a test case for Mr. Reid. In my view, it was both reasonable and proper for ~~the simple reason that~~ the Commons being constituted as it was, the only remedy was a dissolution. Mr. Baldwin,with the largest following, had been beaten. Mr. MacDonald, with the next largest, had been beaten. Nobody imagined that Mr. Asquith, with still fewer supporters, could carry on. The only remedy was a dissolution.

Apply that case to our situation. Neither Mr. King, Mr. Meighen, nor Mr. Forke could effectively carry on the government of the country - as everybody knows. The only remedy was dissolution. Mr. King advised dissolution. And the Governor-General ought to have assented.

(J.S. Ewart)

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C 49575

C 49576

EXTRACT FROM A WRITTEN STATEMENT HANDED OUT BY LEON J. LADNER ON HIS ARRIVAL VANCOUVER AUGUST 3., 1926:

"There may be reasons to change our constitution; in fact some changes could very properly be made. But this is no reason for the eledtors of Canada to support Mr. King on his red-herring constitutional issue and thereby administer a vote of censure and consequent recall of our distinguished Governor General who stands high in the admiration and respect of the Canadian people and rests deep in their affections, honoured from East to West, from North to South, as a great statesman, a great soldier, a true patriot and an English gentleman".

Samuel Hughes
" " Bennett

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C 49577

MEMO RE. INTERVIEW AT
Ottawa,
Monday, Sept. 29th, 1926.
12 o'clock noon.

HIS EXCELLENCY:

"Mr Charles Murphy, I owe you a debt "of gratitude, and I want to pay it before I leave "Canada. Your friendship has been more to me than "words can express, and I wanted to say that to you, "and to thank you for it, face to face, and not in "writing. I am speaking to a friend, and, therefore, "I am going to speak freely."

"In all that has taken place I have "nothing to regret. I did my duty as I saw it, and I "will, of course, have to abide by the judgment that is "passed upon me. But, perhaps, I might tell you my "own little story."

His Excellency then narrated what had taken place last Fall immediately succeeding the election, and stated that, at his first interview with King, the latter had agreed that it was the part of wisdom that he should decline to continue in office, but that, later, he returned and said his Cabinet insisted that he would go on and, consequently, he would have to do so.

Then His Excellency continued:-

"Thereupon, I said to Mr. King: 'Well,' "'in that event, you must not, at any time, ask me' "'for a dissolution unless Mr Meighen is first given' "'a chance to show whether or not he is able to govern.' "Mr King said he would be pleased to carry out this "request."

"When the interviews took place in June "last regarding the situation that then existed, and "when Mr King asked for a dissolution, I reminded him "of our conversation of last November but he still "pressed for a dissolution, and I told him that, in the "circumstances, and, in accordance with our understand- "ing, I would have to decline it if he made a formal re- "quest for it, as Mr Meighen had not been given the "chance agreed upon, and I felt that I would be censurable "if I would not ask a man who had 117 supporters whether "he could govern, when I had accepted an assurance to "that effect from a man who had 101 supporters. That is "the situation up to that point."

"As Mr King still pressed for a dis- "solution I was regretfully obliged to decline to grant "it, and I sent for Mr Meighen. I told Mr.Meighen "what my conversations with Mr King had been, both in "November last and at the time that we were then talking "in June, and I asked Mr Meighen if he could assure me

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"that he would be able to form a Government and carry on "an Administration. He said that he would be able to do so, and I accepted his advice and told him to go ahead."

"At a subsequent interview, about the "same time, I asked Mr Meighen if there was any objec- "tion to my having a talk with Mr. Forke- not for the "purpose of seeking his advice, or giving him any, but "merely to talk over the whole situation with him. Mr. "Meighen said that he had no objection, and I then tele- "phoned Mr Forke and asked him to call at my office. He "did so, and after we had chatted for a while, he seemed "to misunderstand the purpose of my visit, and he "flourished a paper and said 'We have written down there "'what we are prepared to vote for in support of Mr. "'Meighen': but I told him I did not desire to discuss "with any one what he would vote for or vote against. "The old man seemed to be somewhat excited, and he kept "flourishing xxxx the paper, and after repeating his first "statement about it, he added that he would leave it with "me. I told him that I did not want it, as my concern was "not with the votes of any party or any individual, and "when he left he took the paper away with him."

"Then, when Mr Meighen came to me after "his Ministry had suffered defeat, I recalled what I had "told him about my conversation with Mr King in November, "and I suggested that, in view of the conditions that pre- "vailed, and for the sake of the country, it might be ad- "visable to have a talk with Mr King, as well as with Mr "Forke, if necessary, and see if some arrangement to carry "on might not be made, so as to avoid the turmoil, the "trouble and the feelings always attendant upon an election. "To this, Mr Meighen agreed, but he returned later and "said his Cabinet was adamant, and I was, therefore, obliged "to give him a dissolution."

Hon. C.M. -

"Did I understand Your Excellency to say "that, after having told Mr King in November last that "you could only agree to his continuance in office if he "would agree not to ask for a dissolution before Mr.Meighen "was given a chance to show whether he could carry on a "Government or not, you reminded him of this statement and "understanding when you discussed a dissolution with him "in June last?"

HIS EXCELLENCY-

"Yes; I did."

HON. C.M. - "And did I further understand that you "told Mr.Meighen in June last of what you had told Mr. "King in this regard both in November and in June."

HIS EXCELLENCY -

"Yes; I did."

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HON. C. M.

"My colleagues and I never
"heard that Mr. King had made any such promise in November
"last as Your Excellency mentions".

HIS EXCELLENCY:-

"Mr. King also asked me to
"cable the British Government for instructions, but I
"declined, saying that if I were going to get into a
"muddle, I would not bring the British Government into it."

"Now, there is my story. I
"will put nothing on paper. I will not write a word about
"it. I may tell it to a personal friend now and again, but
"that is quite a different matter. I have nothing to regret,
"and I have no feelings against any person in Canada. I
"love Canada, and I want to continue to serve it to the best
"of my ability wherever the good Lord may place me. I
"wanted to see you in particular and tell you these things,
"because I have valued your friendship from the very first,
"and now as I am going to shake hands with you and say 'Goodebye'
"I again wish you everything that is wishable."

(Charles Murphy).

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Nov 4.

1925

- Statement prepared for press, after receiving telegrams from [redacted] dated one & two p.m. respectively & then 5 o'clock received (after reading one & two p.m. Journals) at 10.30 o'clock
- used in conference with press representatives at 11.30 o'clock

Sec. Court. Docs 7 1926.

C 49580 10.

The latest official returns having made it apparent that as a result of the General Election held on October 29, no one of the participating political parties would of itself have a clear majority in the House of Commons when parliament assembles, it became my duty as Prime Minister to acquaint His Excellency the Governor General with the situation and to advise His Excellency as to the course which should be pursued. After several interviews with His Excellency at which the position brought about by the recent general election was fully discussed and all alternatives presented, I have taken the responsibility of advising His Excellency to summon parliament for the earliest practicable date in order to ascertain the attitude of the parliamentary representatives towards the very important question raised by the numerical position of the respective political parties. His Excellency has been pleased to accept this advice.

After careful consideration of the constitutional precedents and their bearing upon the situation which has arisen as a result of the general election, the Cabinet decided unanimously this afternoon that it was their constitutional duty to meet parliament at the earliest possible moment, regard

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being had for the legal requirements with respect to the time necessary for the return of the writs and the official gazetting of the members who have been elected.

In the present situation there are three possible courses of procedure, each of which has been carefully considered by the Cabinet:

1. That His Excellency be asked to grant an immediate dissolution of parliament;

2. That His Excellency be asked to call upon the leader of the largest political group to form a government.

3. That His Excellency be asked to summon parliament at the earliest practicable date ~~with a view of definitely ascertaining the attitude of the parliamentary representatives toward the very important question raised by the numerical position of the respective parties.~~

With respect to an immediate dissolution it was felt that it was not in the interests of the country to occasion the turmoil and expense of another general election until at least parliament had been summoned, and the people's representatives in parliament had been afforded an opportunity of giving expression to their views.

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With respect to the leader of the political party having the largest definite following in the House of Commons being called upon to form an administration, the Cabinet holds the view that responsible self-government in Canada rests upon the principle that the majority are entitled to govern, the majority so understood meaning not the political party or group having the largest number of members, but the majority as determined by the duly elected representatives of the people in parliament. Far from indicating that Mr. Meighen is in a position to command a majority in the newly elected House of Commons the results of the elections appear clearly to indicate that he is not in such a position. I am not aware of any precedent in Great Britain or in Canada for recommending before parliament meets, that the leader of a party not commanding a clear majority in the House of Commons should be called upon ~~before parliament meets~~ to form a government. To summon parliament and to allow the House of Commons to disclose its attitude upon division, is the procedure warranted by constitutional precedent and by the present circumstances. To take any other course would be to fail to recognize the supreme right of the people to govern themselves

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in the manner which the Constitution has provided, namely expressing their will through their duly elected representatives in parliament and in accordance with recognized parliamentary practice.

In the interval, until parliament assembles it is the intention of the Government to refrain from making appointments beyond such as are essential for the proper carrying on of the public business.

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C 49584

Nov 4 - Press Statement

The latest official returns having made it apparent that as a result of the General Election held on October 29, no one of the participating political parties would of itself have a clear majority in the House of Commons when Parliament assembles, it became my duty as Prime Minister to acquaint His Excellency the Governor General with the situation and to advise His Excellency as to the course which should be pursued. After several interviews with His Excellency at which the position brought about by the recent general election was fully discussed and all alternatives presented, I have taken the responsibility of advising His Excellency to summon parliament for the earliest practicable date in order to ascertain the attitude of the parliamentary representatives towards the very important question raised by the numerical position of the respective political parties. His Excellency has been pleased to accept this advice.

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3. That His Excellency be asked to summon parliament at the earliest practicable date for the purpose aforementioned.

With respect to an immediate dissolution it was felt that it was not in the interests of the country to occasion the turmoil and expense of another general election until at least parliament had been summoned, and the people's representatives in parliament had been afforded an opportunity of giving expression to their views.

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To summon parliament and to allow the House of Commons to disclose its attitude upon division, is the procedure warranted by constitutional precedent and by the present circumstances. To take any other course would be to fail to recognize the supreme right of the people to govern themselves in the manner which the Constitution has provided, namely expressing their will through their duly elected representatives in parliament and in accordance with recognized parliamentary practice.

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C 49587

From: The Edinburgh "Scotsman", of March 16, 1927

Points of View. Letters from Readers

Constitutional Issue in Canada

The University, Edinburgh,
March 15, 1927

Sir:

The Constitutional issues in Canada, the Conservative view of which is very clearly set out in the message from your Ottawa correspondent in your issue of to-day, are so important that a comment based on Constitutional practice may be permissible. The alleged "gentlemen's agreement" has been declared by Mr. Mackenzie King a complete fabrication, and it need only be added that since the well-known case of Sir W. Ellison-Macartney in Tasmania in 1914 it has been clearly unconstitutional for a Governor to make any bargain with Ministers as to the terms on which they are to remain in office, and it is quite unfair to attribute to Lord Byng a breach of a clear rule of Constitutional usage.

The vital question of Mr. King's action in advising Lord Byng to consult Mr. Amery appears to me to have been seriously misunderstood. No one could deny that Lord Byng was an Imperial officer subject to the Royal instructions, conveyed through the Secretary of State. The point at issue was - What did these instructions enjoin in the case where a Prime Minister asked for a dissolution, and presented for approval an Order in Council for that purpose? Was it Lord Byng's duty to investigate the political situation for himself, and decide on his own responsibility what was best for Canada? Or could he follow the British practice - recently signally illustrated

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by the immediate acceptance by His Majesty of Mr. Ramsay MacDonald's advice in 1924 - and act on the advice of his Ministers? The custom of the Australian States supported the use of a personal discretion, but no Canadian Governor-General since federation had ever declined advice. Lord Byng was without political experience, and it appears to me that Mr. King acted with much common sense in advising him, before taking a decision which, as he rightly anticipated would have very far-reaching consequences, to ask the Secretary of State what the Royal instructions really meant. I confess that, while I have always held that Lord Byng erred in his decision, it appears to me that much of the responsibility really rests with a system under which a Governor-General is sent out without any clear instructions as to the place which he is to occupy in the structure of government. Happily, the resolution of the Imperial Conference of 1926 should effectively prevent any Governor-General in future being placed in so uncomfortable a position as was Lord Byng. - I am, &c.

A. Berriedale Keith

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E.J. LEMAIRE

AUG. 7, 1930

P.C. 1930

C 49589

Bennett, R.B. ✓ P-453
The Having of the leadership 1936
of the Liberal Party ✓
Government appointment Reid June 15/36

P.C.1930.

CERTIFIED to be a true copy of a minute of a meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 7th August, 1930.

The Committee of the Privy Council, on the recommendation of the Honourable Richard Bedford Bennett, the Prime Minister, submit the following memorandum regarding certain of the functions of the Prime Minister:

1. A meeting of a Committee of the Privy Council is at the call of the Prime Minister and, in his absence, of that of the senior Privy Councillor, if the President of the Council be absent.

2. The quorum of the Council being four, no submission, for approval to the Governor General, can be made with a less number than the quorum.

3. A Minister cannot make recommendations to Council affecting the discipline of the Department of another Minister.

4. The following recommendations are the special prerogative of the Prime Minister:

   Dissolution and convocation of Parliament

   Appointment of -

   Privy Councillors
   Cabinet Ministers
   Lieutenant-Governors (including leave of absence to same)
   Provincial Administrators
   Speaker of the Senate
   Chief Justices of all Courts
   Senators
   Sub-Committees of Council
   Treasury Board
   Committee of Internal Economy, House of Commons
   Deputy Heads of Departments
   Librarians of Parliament
   Crown appointments in both Houses of Parliament
   Governor General's Secretary's Staff

   Recommendations in any Department.

The Committee advise that this Minute be issued under the Privy Seal, and that a certified copy thereof be attached, under the Great Seal of Canada, to the commission of each Minister.

All which is respectfully submitted for Your Excellency's approval.

E.J. Lemaire

Clerk of the Privy Council.

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CONSULAR SERVICE. ✓

C 49590

PRIME MINISTER'S OFFICE

MEMORANDUM

Thursday,
July 23,
1925

MR. KING:

Does Mr. King wish to read the attached papers concerning the status etc., of foreign consuls in the Dominions.

WHM.

W.H. MEASURES.

Perhaps Mr Skelton would read and bring to my attention anything important & needful. — I will read myself later on when question arises

July 28-25

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FILE under WLMK. C-2100 (1926)

MEMORANDUM C 49591

Department of External Affairs

Consular Service
National Status

Ottawa,.....

This is the first consular exequatur signed by a Canadian minister! It will doubtless be of interest to Mr. King as a souvenir.

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C 49592

George R. I.

George

by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c. &c. &c. *To All and Singular Our loving Subjects to whom these Presents shall come Greeting:*

Whereas Our Good Brother the King of the Serbs, Croats and Slovenes has by a Commission bearing date the Fifteenth day of March, 1926, appointed Monsieur Anta Seferovitch to be His Consul at Montreal

_____

_____

_____ and *We having approved of this appointment according to the Commission before mentioned,* **Our Will and Pleasure are,** *and We hereby require that you do receive, countenance, and as there may be occasion, favourably assist him the said* Anta Seferovitch _____ *in the exercise of his Office, giving and allowing unto him all the Privileges, Immunities, and Advantages thereunto belonging.*

Given *at Our Court of Saint James the* Sixteenth _____ *day of* November _____ *One Thousand Nine Hundred and* Twenty-six ____ *in the* Seventeenth _____ *Year of Our Reign.*

By His Majesty's Command.

W.L. Mackenzie King

SECRETARY OF STATE FOR EXTERNAL AFFAIRS.

D

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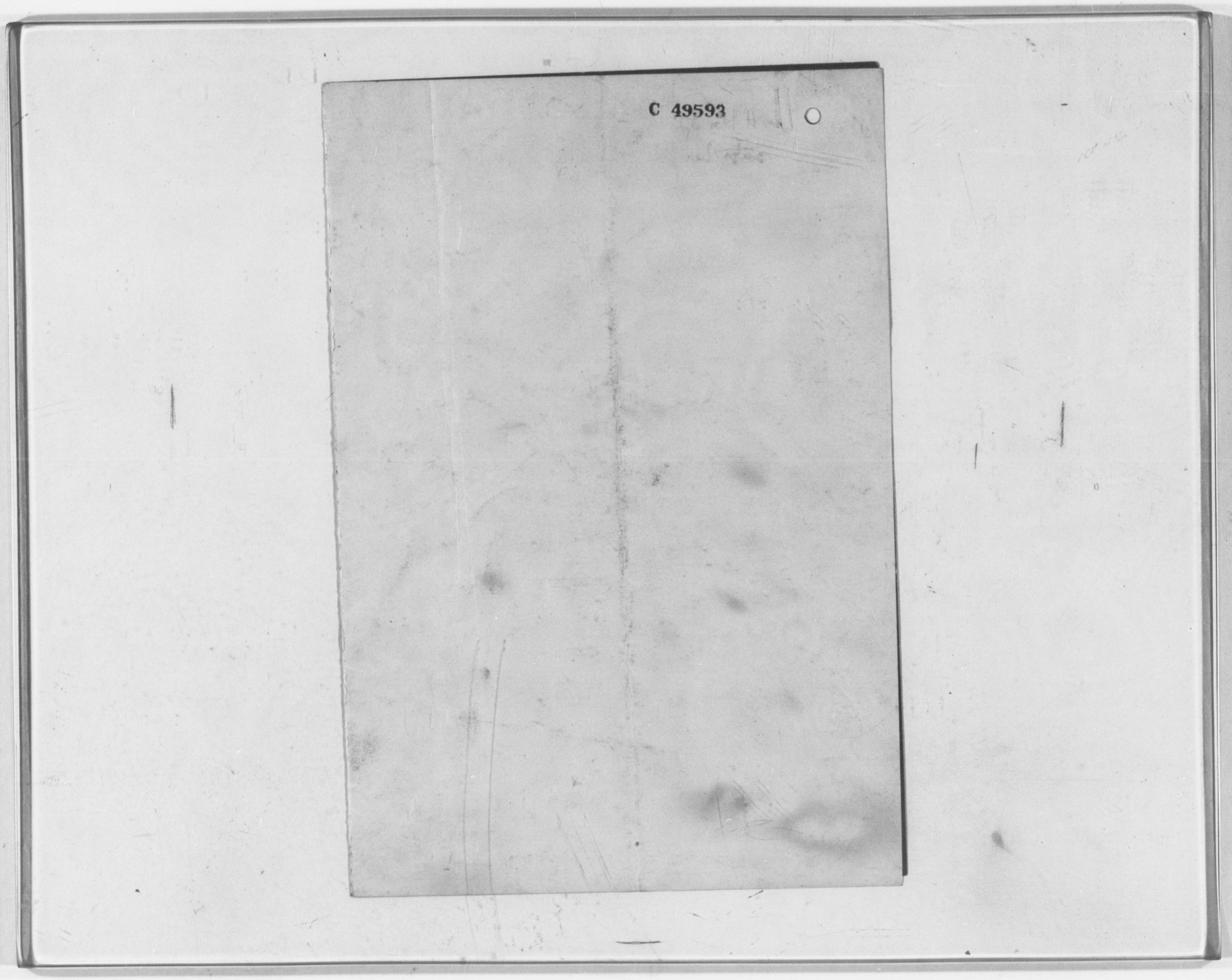

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By His Majesty's Command.

W. Mackenzie King

SECRETARY OF STATE FOR EXTERNAL AFFAIRS.

D

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C-2108 49594

Position of Consuls.

"A Consul", Lord Birkenhead states in his International Law, is not as such an international agent. He is an official of the country for which he acts, entrusted with duties of a multifarious kind in a foreign country, and permitted by that country to discharge them within its borders."

Consuls after appointment by their governments, cannot enter upon their duties until authorized to do so by an exequatur issuing from the country in which they are to act. An exequatur is defined as "a more or less formal authorization to do, within the jurisdiction of the country granting it, the different acts incidental to consular authority".

Before 1926, in the case of consuls appointed to a Dominion, it was the custom for the British Government to advise His Majesty to issue the exequatur, without consultation with the Dominion Government, if the consul was a career man. If he was a local resident, and particularly if a citizen of the Dominion, appointed as an honorary consul, it was customary to consult the Dominion Government before advising His Majesty. In both cases, however, it was the Secretary of State for Foreign Affairs who countersigned His Majesty's exequatur.

Since 1926, applications for the issue of an exequatur, if coming from a country with which we have direct diplomatic relations, i.e., the United States, come direct to the Canadian Government;

applications

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applications from other countries are referred to the Canadian Government through British diplomatic channels. In either case, if the issue of an exequatur is advised, it is countersigned by the Secretary of State for External Affairs of Canada. (It has been agreed by the British Government that similarly any action taken in withdrawing an exequatur would be on the advice of His Majesty's Canadian Government).

Imperial Conference, 1926, reference.

See page 22-23. attached.

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C 49596

HALL'S TREATISE ON INTERNATIONAL LAW,
P. 309.

Consuls are persons appointed by a state to reside in foreign countries, and permitted by the government of the latter to reside, for the purpose partly of watching over the interests of the subjects of the state by which they are appointed, and partly of doing certain acts on its behalf which are important to it or to its subjects, but to which the foreign country is indifferent, it being either unaffected by them, or affected only in a remote and indirect manner. Most of the duties of consuls are of the latter kind. They receive the protests and reports of captains of vessels of their nation with reference to injuries sustained at sea; they legalise acts of judicial or other functionaries by their seal for use within their own country; they authenticate births and deaths; they administer the property of subjects of their state dying in the country where they reside; they send home shipwrecked and unemployed sailors and other destitute persons; they arbitrate on differences which are voluntarily brought before them by their fellow countrymen, especially in matters relating to commerce, and to disputes which have taken place on board ship; they exercise disciplinary jurisdiction, though not of course to the exclusion of the local jurisdiction, over the crews of vessels of the state in the employment of which they are; they see that the laws are properly administered with reference to its subjects, and communicate with their government if injustice is done; they collect information for it upon commercial, economical and political matters. In the performance of these and similar duties the action of a consul is evidently not

international

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international. He is an officer of his state to whom are entrusted special functions which can be carried out in a foreign country without interfering with its jurisdiction. His international action does not extend beyond the unofficial employment of such influence as he may possess, through the fact of his being an official and through his personal character, to assist compatriots who may be in need of his help with the authorities of the country. If he considers it necessary that formal representations shall be made to its government as to treatment experienced by them or other matters concerning them, the step ought in strictness to be taken through the resident diplomatic agent of his state-- he not having himself a recognised right to make such communications.[1] Thus he is not internationally a representative of his state, though he possesses a public official character, which the government of the country in which he resides recognises by sanctioning his stay upon its territory for the purpose of performing his duties; so that he has a sort of scintilla of an international character, sufficiently strong to render any outrage upon him in his official capacity a violation of international law, and to give him the honorary right of placing the arms of his country upon his official house. [2]

[1] By some Consular Conventions the right is given of making representations to the local authorities not only for the protection of subjects of their state, but in the case of an infraction of any treaty, and of addressing themselves to the government itself, if attention is not paid to their representations, whenever the diplomatic representative of their state is absent.

[2] Spain, which in several respects gives exceptional privileges to consuls, in this matter is less liberal than other countries. the arms of the consul's state may only be put up inside his house.

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C 49598

HALL'S TREATISE ON INTERNATIONAL LAW,

P. 311.

The exequatur is not issued as of course, and it may be refused if the person nominated as consul is personally objectionable for any serious reason. Thus in 1869 the exequatur was refused by England to a certain Major Haggerty, an Irishman naturalised in the United States, who was known to have been connected with Fenian plots. Again, the exequatur may be revoked if the consul outsteps the limits of his functions, especially if he meddles in political affairs; and though revocation seldom takes place, it being the practice to give an opportunity of recalling the offending consul to the state by which he has been nominated, a certain number of instances have occurred in which the measure has been resorted to. Thus in 1834 the Prussian consul at Bayonne having helped in getting clandestinely into Spain supplies of arms for the Carlists, and his government having refused to recall him, his exequatur was withdrawn; in 1856 the exequatur of three English consuls in the United States was revoked on the ground of their alleged participation in attempts to recruit men for the British army during the Crimean War; the exequatur was withdrawn from an American citizen acting as consul at St. Louis for a foreign power for endeavouring to make use of his consular office to escape from military service during the Civil War; and in 1866 the Consul for Oldenburg at New York was deprived of his exequatur for refusing to appear and give evidence before the Supreme Court in a cause to which he was one of the parties.[1]
So soon as the exequatur is revoked the person up to that time consul totally loses his official character.

[1] Possibly a state may in strictness have the right to withdraw an exequatur without cause. In 1861 the English and French consuls at Charleston , under identical directions from their

respective

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respective governments, jointly expressed to the Confederate government a hope that the Confederate States would observe the provisions of the Treaty of Paris with respect to the capture of private property at sea. The exequatur of the English consul was revoked by the Federal government on the ground that, in making the communication in question, he had infringed a statute providing that no person not authorised by the President should assist in any political correspondence with the government of a foreign state 'in relation to any disputes with the United States, or to defeat the measures of their government'. The alleged ground was obviously a mere pretence; for (1) the exequatur of the French consul was not withdrawn, (2) the consul was employed in a business with which the United States had no concern, viz. in obtaining protection for British commerce from a de facto authority. The revocation of the exequatur remained therefore without plausible ground assigned or assignable. Nevertheless Lord Russell 'did not dispute the right of the United States to withdraw the exequatur of Mr. Consul Bunch, though H.M.'s government are of opinion that there was no sufficient ground for that act of authority' (Parl. Papers, North Am. 4, 1862); and it is in fact not easy to see how the refusal without reason assigned to allow a person, who is not representative of his state, and who therefore is not identified with its sovereignty, to continue to exercise certain functions in a given territory, can, beyond the strict powers of the sovereign of that territory.

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IH/4 P.C. 440 C 49600

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 1st. March, 1922.

PRIVY COUNCIL
CANADA

The Committee of the Privy Council have had before them a Report, dated 24th February, 1922, from the Secretary of State for External Affairs, stating,- with reference to a letter dated 6th February, 1922, from the Consul General of the United States at Ottawa to the Governor General's Secretary, relative to the appointment of Mr. George E.J. Crosby as American Consul at Charlottetown, Prince Edward Island,- that he is not aware of any objection to the recognition of Mr. Crosby in the capacity indicated.

The Committee submit the same for Your Excellency's information.

Clerk of the Privy Council.

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E-18-10

C 49601

P.C.759.

Certified copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 7th May, 1924.

PRIVY COUNCIL
CANADA

No.161

The Committee of the Privy Council have had before them a report, dated 1st May, 1924, from the Secretary of State for External Affairs, stating,- with reference to a despatch from the Secretary of State for the Colonies, dated 16th April, 1924, relating to the appointment of Senor Jose Rafael Pocaterra as honorary consul for the Dominican Republic at Montreal,- that he is not aware of any objection to the recognition of Senor Pocaterra in the capacity indicated.

The Committee submit the same for Your Excellency's information.

Clerk of the Privy Council.

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C 49602

Friday,
October 7,
1 9 3 2

MR. KING:

This memo has been prepared by a member of the Saskatoon Men's Twentieth Century Liberal Club. Miss Doherty left it with me.

HRLH.

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C 49603

THE CO-OPERATIVE COMMONWEALTH FEDERATION

By Durward Thomas

NOT since the Progressive Party returned its sixty odd members to the Dominion House of Commons at the 1921 election has a more formidable challenge to the Liberal Party been issued than the formation of the Co-operative Commonwealth Federation at a conference of farmer-labor-socialist delegates held at Calgary, August 1st, 1932. At that conference were represented all of the more important radical political groups in Canada. From a political point of view the strongest groups represented were the United Farmers of Alberta, the recently formed Farmer-Labor Party of Saskatchewan, the United Farmers of Canada (Saskatchewan Section), the Independent Labor Parties of Saskatchewan and Manitoba, the Canadian Brotherhood of Railway Employees. Action on a Dominion-wide scale was proposed by a manifesto issued at a meeting on June 30th of the Executives of the United Farmers and Farm Women's organizations of Alberta, along with members of the Alberta Provincial Cabinet and private members in the Alberta Legislative Assembly and the Dominion House of Commons. The Western Conference of Labor acted as hosts of the joint conference.

THE Co-operative Commonwealth Federation was formed for the purpose of gathering within the ranks of a single Dominion-wide political organization all local groups which subscribe to its socialistic program. Its name was adopted to enable the local and provincial bodies to continue their activities, at present, under their local names. Each unit is based on an economic function. The name "Co-operative Commonwealth" is a thinly veiled alternative for "Socialist." There were delegates at the conference who advocated the name "Socialist" but the conference decided to place political expediency ahead of sincerity. The program adopted is as follows:

"(1) The establishment of a planned system, of social economy for the production, distribution and exchange of all goods and services.

(2) Socialization of the banking, credit and

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financial system of the country together with the social ownership, development, operation and control of utilities and natural resources.

(3) Security and tenure of the worker and farmer in his home.

(4) Retention and extension of all existing social legislation and facilities with adequate provision for insurance against crop failure, illness, accident, old age and unemployment.

(5) Equal economic and social opportunity without regard to sex, nationality or religion.

(6) The encouragement of all cooperative enterprises which are steps toward the achievement of the Co-operative Commonwealth.

(7) Socialization of health services.

(8) Federal government should accept responsibility for unemployed and supply suitable work or adequate maintenance."

THE form of organization of the Co-operative Commonwealth Federation consists of a Dominion president, secretary and council and a council for each Province. National organizations, such as the Canadian Brotherhood of Railway Employees, are to be represented on the Provincial Councils on an equal basis with Provincial affiliated bodies. Membership in the federation will include "The organizations affiliated with the Western Conference of Labour Political Parties, Farmers' organizations, and any other groups which are prepared to accept the principles of the federation."

The officers elected were:

President: J. S. Woodsworth M.P. of Winnepeg North Centre. Mr. Woodsworth is one of the most able and well known members of the Dominion House of Commons. He is an indefatigable worker. His personality and idealism dominated the conference. His leadership gives the federation a significance which it might otherwise have lacked.

Secretary: Norman F. Priestly, Vice-president of the United Farmers of Alberta.

Provisional Dominion Council: George H. Williams, past president of the United Farmers of Canada (Saskatchewan Section), and a very active farmer organizer. Mr. Williams has recently made a visit to the Soviet Union and has written a book and delivered

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a series of lectures sympathetic to the communistic system. He is an effective speaker and a young man of untiring energy.
M. J. Coldwell, president of the Independent Labor Party and leader of the Farmer-Labor Party of Saskatchewan. Mr. Coldwell is principal of a public school in Regina and member of the Regina City Council. He came to Canada from England in 1910 and has taken a continuous part in politics. In 1925 he contested the Regina Constituency as a Progressive candidate, but was defeated. His supporters in the Regina civic elections increase with each election. John Queen M.L.A., Winnipeg. Mrs. J. Lotham of the Women's section of the U.F.A. W. F. Irvine U.F.A.M.P. from Wetaskiwin, Alberta. Mrs. Louise Lucas, president of the women's section of the U.F.C. (S.S.) A. R. Mosher, secretary of the Canadian Brotherhood of Railway Employees, Ottawa. Angus McInnis, Labor M.P. Vancouver.

A meeting of the Council held at Calgary after the conference drafted plans for the organization of every constituency in Canada by the federation before the next federal election. Organization in Eastern Canada has been entrusted to Messrs. Woodsworth, McInnis and Mosher, according to a statement made by Mr. C. M. Fines, President of the Co-operative Labor Party of Regina. The Western Provinces are naturally being left to the strong local groups already in existence there.

The strongest of the Western groups is the United Farmers of Alberta, which has controlled the Provincial Government under Premier Brownlee for several years and elected a regular group to the Dominion House of Commons. At the meeting on June 30th above mentioned the following resolution was adopted:

" Whereas, in the development of our present economic system, great weaknesses have emerged, of which the depreciation of commodity prices and the unprecented volume of unemployment are manifestations; and

Whereas, civilization itself is thereby placed in jeopardy; and

Whereas, constructive action is now imperative for the purpose of establishing securely the foundations of the cooperative state which is the accepted objective of the U. F. A.;

We suggest, as steps to the attainment of that objective the following programme:-

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1. Nationalization of our financial and credit system, with a view to the regulation of credit and investment operations; and in particular, as immediate steps, we advocate:

(a) The abandonment of the gold standard in Canada,

(b) A well considered policy of inflation, and the devising of means to make the purchasing power in the hands of consumers at all times adequate to acquire the total goods and services available.

2. Public ownership of public utilities.

3. The acquisition or organization, either by the state or by the extension of cooperative enterprise, of those facilities and utilities incidental to the handling and processing of farm products.

4. Continued effort in and support of cooperation in all its branches.

5. Measures designed to bring about a more equitable distribution of wealth, including taxation measures, especially income and inheritance taxes.

6. Adoption of a national planning policy.

7. A revision of the constitution of Canada and a redefining of the responsibilities of federal and provincial authorities, to the end that our constitution shall be more in harmony with the economic requirements of the age.

8. While adhering to our traditional belief in freer trade between nations, we emphasize the immediate need of a recasting of our tariff policies with a view to the encouragement of our export trade and to the welfare of the primary producer and the general consumer.

9. We reaffirm our belief in a non-party system of government and the elimination of the patronage system and secret campaign funds.

10. A foreign policy designed to secure international cooperation in regulating trade, industry, and finance, and to promote disarmament and world peace.

Recognizing that these reforms can in the main be accomplished only by legislative action in the Parliament of Canada, we place ourselves on record as being willing and ready to cooperate with other organizations throughout Canada with a view to attaining the objects herein set forth."

Possibly the most interesting of recent political developments is the formation of the Farmer-Labor Party in Saskatchewan by the alliance of the United Farmers of Canada and the Independent Labor Party at a conference held in Saskatoon on July 27th. Mr. Coldwell was elected leader after Mr. Williams had withdrawn. The new party will undoubtedly prove a powerful factor

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in the next Saskatchewan Provincial Election. Any underestimating its importance by Liberals should be deprecated. It is well to remember the sorry plight of the farmers of Saskatchewan and the tendency of Western farmers to pursue radical groups. The experience in Alberta, Manitoba, North Dakota and in the 1921 federal election should be a warning that unless the Liberal Party offers an advanced program it may lose many supporters. The success of the Farmer-Labor Party in the Provincial election will likely determine its future course and success in the next federal election. It is generally admitted that Saskatchewan is the key to the political situation in Canada today. Mr. Woodsworth told the Saskatoon conference that there is little hope of Farmer-Labor groups achieving much in the maritimes and industrial east, but the west may start the movement that will swing the whole Dominion. "If the Farmer-Labor Party fails in Saskatchewan it will fail in the Dominion." The aspirations of the Farmer-Labor Party are definitely socialistic. At the conference, Mr. Williams, in advocating the name "Socialist," said; "You have adopted a socialistic program and whether or not you call yourself a socialist party your opponents will do so. Those countries which have come out four square for socialism are closer to the realization of their ideals than those that have side-stepped the issue." The reason given for not adopting the name suggested was a fear that the electorate would fail to distinguish between socialism and communism, thus arousing insurmountable antagonism. But it is only necessary to analyse the platform adopted to see how socialistic the Farmer-Labor Party is. Its economic policy is set out as follows:

> "In the opinion of the United Farmers of Canada and the Independent Labor Party, the present economic crisis is due to inherent unsoundness of the capitalistic system, which is based on private ownership of resources, and capitalistic control of production and distribution that involves the payment of rent, interest and profit. We recognize that social ownership and co-operative production for use is the only sound economic system.
>
> "In order to attain the above objective, we propose, if elected, to enact the following measures:-

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1. The establishment of a planned system of social economy for the production, distribution, and exchange of goods and services.

2. Socialization of the banking, credit and financial system of the country, together with the social ownership, development, operation and control of utilities and natural resources.

3. To give immediate security of tenure to the worker in his home, and the farmer on his land. Substitution of use-hold system of tenure for present insecurity.

4. Social legislation to secure to the worker adequate income and leisure, freedom of association, insurance against illness, old age and unemployment and an effective voice in the management of his industry.

5. Retention and extension of all existing social legislation and facilities.

6. That all governing bodies be elected by popular vote of all resident adults and the abolition of election deposits for candidates for all public office.

7. To remove the burden of debt that hangs so heavily over society at the present time.

8. Adequate provision for the economic security of returned soldiers and their dependents.

9. To immediately open negotiations with all exporting nations with a view to entering into treaties designed to bring about the free exchange of commodities.

10. The development of Churchill as a free port of entry for western Canada and that the government of Canada insure vessels operating in and out of Churchill, at the same rate that governs the same class of boat and cargo entering other ports in Canada.

11. Equal pay for equal work irrespective of sex.

12. The encouragement of all cooperative enterprises which are steps toward the achievement of the co-operative commonwealth.

13. To humanize the law and bring it into harmony with the actual needs of the people.

14. (a) The equalization of educational opportunity and costs by establishing a provincial unit for educational administration.

(b) The placing of education under non-political commissions with a view to preventing outside interference and promoting general efficiency.

(c) The establishment of a body upon which the teaching profession shall be adequately represented to supervise the training,

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certificates and efficiency of the profes-
sion."

Mr. Albert Simmons, an organizer for the provincial (seek.) Liberal Party, closely in touch with popular sentiment in the rural districts, states that there is a definite reaction against the Conservative Governments, both Dominion and Provincial. He states that the reaction, however, is not necessarily in favour of the Liberal Party. The unusual severity of the present economic depression has resulted in a marked distrust in our present political institutions. He states that the leaders of the Liberal Party must, within six months in the Province and within a year in the Dominion field, enunciate a definitely advanced economic policy - one which will deal with the specific economic problems which face the farmer and labour population. This enunciation must not be a platitudinous re-statement of worn-out aspirations. It must be definite. It must be frank. It must be vigorous. It must be concrete. The electorate must be assured in no uncertain terms that the Liberal Party will put its promises upon the statute books if returned to power.

Another organization represented at the Calgary Conference which possibly should be mentioned, is the League for Social Reconstruction, which was launched last January at a meeting of some of the members of the staffs of the Universities of Toronto and McGill. The founders of the L.S.R. conceive of it as a kind of Canadian Fabian Society. It is hoped to gather within its ranks a large number of intellectual skeptics who are not able to join Farmer or Labour political organizations. Of the League for Social Reconstruction, Mr. Woodsworth is also honorary president. The provisional executive committee consists of the following:-

Prof. F. R. Scott of the Faculty of Law, McGill University.
Prof. King Gordon of the Union Theological College.
Prof. E. A. Havelock of Victoria College, Toronto.
Mr. J. F. Parkinson of the Department of Political Economy, University of Toronto.
Prof. F. H. Underhill of the Department of History, University of Toronto.

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The policy of the L.S.R. is set forth in its manifesto as follows:-

"The League for Social Reconstruction is an association of men and women who are working for the establishment in Canada of a social order in which the basic principle regulating production, distribution and service will be the common good rather than private profit.

The present capitalist system has shown itself unjust and inhuman, economically wasteful, and a standing threat to peace and democratic government. Over the whole world it has led to a struggle for raw materials and markets and to a consequent international competition in armaments which were among the main causes of the last great war and which constantly threaten to bring on new wars. In the advanced industrial countries it has led to the concentration of wealth in the hands of a small irresponsible minority of bankers and industrialists whose economic power constantly threatens to nullify our political democracy. The result in Canada ia a society in which the interests of farmers and of wage and salaried workers - the great majority of the population - are habitually sacrificed to those of this small minority. Despite our abundant natural resources the mass of the people have not been freed from poverty and insecurity. Unregulated competitive production condemns them to alternate periods of feverish prosperity, in which the main benefits go to speculators and profiteers, and to catastrophic depression, in which the common man's normal state of insecutiry and hardship is accentuated.

We are convinced that these evils are inherent in any system in which private profit is the main stimulus to economic effort. We therefore look to the establishment in Canada of a new social order which will substitute a planned and socialized economy for the existing chaotic individualism and which, by achieving an approximate economic equality among all men in place of the present glaring inequalities, will eliminate the domination of one class by another.

As essential first steps towards the realization of this new order we advocate:-

(1) Public ownership and operation of the public utilities connected with transportation communications, and electric power, and of such other industries as are already approaching conditions of monopolistic control.

(2) Nationalization of Banks and other financial institutions with a view to the regulation of all credit and investment operations.

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(3) The further development of agricultural co-operative institutions for the production and merchandising of agricultural products.

(4) Social legislation to secure to the worker adequate income and leisure, freedom of association, insurance against illness, accident, old age, and unemployment, and an effective voice in the management of his industry.

(5) Publicly organized health, hospital and medical services.

(6) A taxation policy emphasizing steeply graduated income and inheritance taxes.

(7) The creation of a National Planning Commission.

(8) The vesting in Canada of the power to amend and interpret the Canadian constitution so as to give the federal government power to control the national economic development.

(9) A foreign policy designed to secure international co-operation in regulating trade, industry and finance, and to promote disarmament and world peace.

The League will work for the realization of its ideal by organizing groups to study and report on particular problems, and by issuing to the public in the form of pamphlets articles, lectures etc. the most accurate information obtainable about the nation's affairs in order to create an informed public opinion. It will support any political party in so far as its programme furthers the above principles; and will foster co-operation among all groups and individuals who desire in Canada the kind of social order at which the League aims. "

Branches of the L.S.R. have already been formed at Toronto, Montreal, Belleville, Brantford, London, Brandon, Saskatoon, Yorkton, Regina, Dauphin, Calgary, Vancouver.

The L.S.R. has issued three pamphlets:-

(1) H. C. Cassidy - Outline of a National Program Towards Reducing Unemployment.
(2) Harold A. Innis - Economic Conditions In Canada 1931-32.
(3) Prof. F. H. Underhill - The Party System.

Only a year ago Montague Norman, Governor of the Bank of England, in a private letter to Governor Morget, Bank of France wrote as follows:-

" Unless drastic measures are taken, the Capitalistic System throughout the civilized world will be wrecked within a year. I should like this prediction to be filed for future reference."

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Mr. Dafoe of the Winnipeg Free Press recently stated that he had experienced seven Economic depressions during the last fifty years and noted that each period of prosperity and hard times was more extreme that the preceding one. " We must find some way to break this rhythm," he declared, "Otherwise I doubt if our Capitalistic civilization can stand the strain."

There are in Canada today, seven hundred thousand men unemployed. The article of Mr. Innis, above mentioned, shows that Canada's foreign trade has been cut in two during the last two years. The majority of farmers in Western Canada are overburdened with debt which will reduce them to a state of servitude and peonage to the financial interests, unless drastic action is taken by governments. The statements of policy of the political groups quoted above indicate a widespread movement toward Socialism in Canada. This was made plain by the Workers' Economic Conference held at Ottawa during August the first to the third. At that Conference, five hundred and seventy-six delegates representing over two hundred and fourteen thousand Canadian workers, showed clearly that a new fighting spirit and determination exists in the working class of Canada today. Every speaker demanded a new social order - a proletarian society. The concrete demands which the Conference addressed to the Canadian Government are repreduced below:-

1. Eanctment of the Workers' Non-Contributory Unemployment Insurance Bill - pending enactment - cash relief at the rate of $10.00 per week with $2.00 per week for each dependent.

2. The seven hour day and the five day week with no reduction in pay. Full union wages for all relief work. Abolition of the forced labour system. Abolition of child labour for all children under sixteen years of age.

3. Repeal of all tariffs and taxes which hold up prices on necessities of life and constitute a monopoly attack on the standard of living of the workers.

4. Immediate cessation of the police terror and violent regime throughout Canada. The repeal of Section 98. Immediate release of Tim Buck, Ewen Carr, Popovitch, Boychuk, Bruce, Cacic and all workers imprisioned for their labour activities. Stoppage of the kidnapping and deportation policy, restoration of the rights of free speech, assembly and organization.

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5. Immediate release of the thirty-two Indian Trade Union leaders now lying in Merut prison for three years withoug trial. Release of the fifty-five thousand Indian political prisoners. Self-determination for India and withdrawal of all British troops from the Colonies.

6. No shipment of food or war material to Japan. Withdrawal of Premier Bennett's war embargo against the Soviet Union. All military and naval expenditures for the relief of the unemployed workers and poor farmers in Canada.

7. Exemption of all poor farmers from taxes, debts, and rent payments. Adequate emergency relief for the poor farmers at the expense of the rich. Enactment of the Farmers' Unity League Farm Relief Bill.

The election of a Labour candidate, Humphrey, S. Mitchell over a Conservative candidate in East Hamilton, Ontario, in August 1931 with a majority of over four thousand is a further indication that Labour forces in the East are moving to the left. This movement is constantly encouraged by such publications as The Canadian Forum and The Western Producer.

It is not fantastical to ask the question : "Will Liberalism in Canada be crushed between Conservatism and Socialism as it has been in Great Britain and other European countries?" Or will a New Liberalism arise with courage enough to defend individual liberty while advocating a progressive socialization of our collective economic affairs? An outline for a new Liberal organization, which is worthy of consideration by the Canadian Liberal Party, is set forth in the August 20th. edition of The New Statesman and Nation (London). A new doctrine must be worked out which recognizes the need of a constructive revolution in our economic, monetary, and political controls and yet is determined to defend, as the fundamental principle of Liberalism, the free development of the individual.

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F-1302-36
unofficial
C 49614

Reply Received

OFFICE OF
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
CANADA

Copyright ✓
E.T. Imperial Relations - Treaty ✓
making Powers of the Crown

MEMORANDUM FOR THE PRIME MINISTER: 21st February, 1928
Copyright Conference at Rome.

The Conference is an important one and Canada should be adequately represented. If possible, I think Mr. Rinfret should go. Since O'Halloran retired, there is unfortunately no member of his staff very familiar with the broader questions of copyright, but Mr. Desy is thoroughly familiar with the subject, though it could not be decided upon until later if it would be possible to spare him from the Department at that time.

The proposal to send representatives of publishers and authors is rather a tall order. I do not at present see why if they have anything to say, they should not make their representations to the Government and have them considered before the representative of the Government goes.

In the meantime there is an important question of status to be decided. The International Bureau at Berne apparently holds that we acceded to the International Copyright Convention after the passing of our Copyright Bill of 1923, as a colony of Great Britain. In that case we would not be entitled to separate representation in the Conference. We have recently requested the British

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Government to notify the Government of Switzerland that it was our intention to accede as a distinct contracting party, to bear our share of the expenses of the Bureau(which are one or two thousand dollars a year), and to have a vote in the Conference. If exception is taken to this, we shall have to consider what steps should be taken to have the Convention revised in order to make it clear that we are an independent member.

O.D. SKELTON

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C 49616 Treaties - Ratification Procedure
Imperial Relations - Treaty making ✓
Powers of the Crown ✓

MEMORANDUM FOR THE PRIME MINISTER: 11th April, 1928

An International Copyright Conference is to be held in Rome on May 7th for the purpose of revising the International Copyright Convention signed at Berne in 1908. The Conference is the first in twenty years and is a matter of distinct importance to Canada.

A preliminary question arises as to the right of Canada to be represented directly. The Berne Convention of 1908 was signed by Great Britain and Article 26 gave the contracting parties the right to accede at any time for their colonies or foreign possessions. After the Canadian Copyright Act was passed in 1921 and amended in 1923, the Governor-in-Council was empowered to declare the adhesion of Canada to the Convention of Berne. An Order-in-Council was passed accordingly on July 27,1923, and the British Government was requested to notify the Swiss Government of Canada's adhesion. Apparently we adhered as a colony and with no direct membership in the Union. Incidentally we have therefore been exempt from contribution(which would amount to about $1500 a year), Great Britain paying the full contribution for the Empire.

In February we accordingly brought to the attention of the British Government the fact that this position was not in accordance with present principles as to participation in international treaties and conferences, and we asked to have it made clear to the Government of Switzerland,with which adhesions are registered, that it was the intention of Canada to accede to the Convention of 1908 as a distinct member,and that it would be prepared to share the expenses of the Union as a member of the second class. The British Government in March agreed to give notice accordingly through the British Minister at Berne,and it is anticipated that the question of our position will therefore be satisfactorily adjusted shortly.

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C 49617

Any revised Convention will take the form of a Convention between heads of States, and it will therefore be necessary to issue Full Powers to our representative.

The representatives of Great Britain and all the other Dominions have already been selected. No decision has been made as to Canada.

It would appear to be highly desirable that the Secretary of State, to whose Department copyright is now attached, should attend the Conference if this is at all possible. There is no technical officer in his Department who could accompany him, as Mr.Richard, the Acting Commissioner of Copyright, is fully occupied with the Patents branch of the work. It might be possible for us to spare our Second Secretary, E.D.McGreer, who is familiar with French(the language in which the proceedings will take place) as well as English, and who could get up the question if sufficient notice were given. We do not like to spare him, as his services are needed hereput I do not know of anyone else in the Service who would be of assistance.

I understand that the special Canadian interests concerned in copyright intend to send representatives to Rome, the manufacturers sending E.Blake Robertson of Ottawa, the publishers Hugh Eayrs of McMillan's, and possibly the authors sending Mr. Burpee. They would of course have no official position or membership in the Conference.

A decision as to whether it is possible for Mr.Rinfret to go ought to be reached immediately. It would be necessary to sail April 27th or 28th at latest. Could you find an opportunity of discussing it with Mr.Rinfret shortly?

O.D. SKELTON

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ANONYMOUS TO WLMK. E-1302-36

C 49618

MEMORANDUM FOR THE PRIME MINISTER: 2nd July, 1929.

Copyright

In connection with the Copyright Conference held at Rome last year, in which Canada was represented by Mr.Roy and Mr.Desy, a report has been submitted to the Australian Parliament by Sir William Harrison Moore, the Australian delegate. It is a valuable report and will be useful in considering the question of legislation or revision of our copyright next session. At the present time I am bringing to your attention the concluding paragraph of the report, which reads as follows:

> "In concluding the present Report, I must again express my appreciation of the co-operation among the several delegations of the British Empire, which marked the Conference. I have already indicated the very special relation which existed between the Australian and the New Zealand delegates. To the delegation from Great Britain I am under a deep obligation for the readiness with which their technical knowledge and advice was ever available to me, for the time and thought they gave to the matters in which Australia was peculiarly interested, and for their support both in consultations and in the Conference itself. To the Canadian delegation we were under special obligations which illustrate the value from an Empire standpoint of some of our diversities. In the drafting of a Convention of this nature although French alone is the official language, it is necessary to consider how terms and phrases of the one language will stand in the other, and to find the appropriate expression, which is often very different from the literal translation. The bilingual experience of the Canadians was invaluable here. Hardly less valuable was the fact that in Canada the two systems of the common law and the civil law meet, so that the Canadian lawyer could often bridge the gap between two different modes of thought".

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C 49619 T-1216

CRIMINAL CODE (as amended to date).

Conspiracy in restraint of trade.

496. A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.

Acts in restraint not unlawful.

497. The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section.

Penalty for conspiracy.

498. Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company,-

To limit transportation facilities.

(a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or,

Restrain commerce.

(b) to restrain or injure trade or commerce in relation to any such article or commodity; or,

Lessen manufacturing.

(c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or,

Lessen competition.

(d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees.

Jan. 23, 1923. L.C.M.

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re Criminal Code.

C 49620

MEMORANDUM FOR MR. KING:

Re: Extension of Criminal Law to Matters not ordinarily considered as coming within Criminal Jurisprudence.

In connection with the Amendment of the Criminal Code to provide penalties for offences re minimum wages and unfair trade practices, you may be interested in the extracts on this point given below in the judgments of the Privy Council declaring ultra vires the Board of Commerce Act, and declaring intra vires the Combines Act of 1923.

These judgments take opposing views. The extract from the judgment in re the Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919, which was delivered in 1921, is as follows:

> "It is one thing to construe the words 'the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters,' as enabling the Dominion Parliament to exercise exclusive legislative power where the subject matter is one which by its very nature belongs to the domain of criminal jurisprudence. A general law, to take an example, making incest a crime, belongs to this class. It is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the Provincial Legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law which require a title to so interfere as basis of their application."

The extract from the judgment on the Combines Investigation Act, 1923, and Section 498 of the Criminal Code, which was delivered in January, 1931, is as follows:

> "The substance of the Act is by Section 2 to define, and by Section 32 to make criminal, combines which the legislature in the public interest intends to prohibit. The definition is wide, and may cover activities which have not hereto been considered to be criminal. But only those combines are affected 'which have operated or are likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others'; and if Parliament genuinely determines that commercial activities which can be so described are to be suppressed in the public interest, their Lordships see no reason

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which Parliament should not make them crimes. 'Criminal law' means 'the criminal law in its widest sense' (Attorney General for Ontario v. Hamilton Street Railway (1903), A.C. 524). It certainly is not confined to what was criminal by the law of England or of any province in 1867. The power must extend to legislation to make new crimes. Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: Is the act prohibited with penal consequences? Morality and criminality are far from coextensive; nor is the sphere of criminality necessarily part of a more extensive field covered by morality - unless the moral code necessarily disapproves all acts prohibited by the State, in which case the argument moves in a circle. It appears to their Lordships to be of little value to seek to confine crimes to a category of acts which by their very nature belong to the domain of 'criminal jurisprudence'; for the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular periods are declared by the State to be crimes, and the only common nature they will be found to possess is that they are prohibited by the State and that those who commit them are punished."

ERP

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C 49622

Dear Mr King

Can you dine with me
tonight? Alone x

R. Jennie

Mr Mackenzie King

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C 49623

Joseph K

Prefer dine this evening: lets not
make it too hurried. Let Ernest
know on x will drop round at 7 45

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Council

R-1109
C 49624

MEMO FOR MR. HUDSON.

re Crows Nest Pass agreement.

In the Crows Nest Pass agreement contained in Statutes 60-61, Vict. Cap. 5. in consideration of receipt of certain subsidies, the Canadian Pacific Railway agreed - "That a reduction shall be made in the general rates and tolls of the Company as now charged or as contained in its present freight tariff, whichever rates are now the lowest for carloads or otherwise, upon the classes of merchandise, hereinafter mentioned, westbound from and including Fort William, and all points East of Fort William on the Company's railroad to all points West of Fort William on the Company's line or on any line of railway throughout Canada, owned or leased by or operated on account of the Company, whether the shipment is by all rail line or by lake and rail, such reduction to be to the extent of the following percentages respectively, namely;

Upon all green and fresh fruits	33-1/3%
Coal oil	20%
Cordage and binder twine	10%
Agricultural implements of all kinds, set up or in parts	10%
Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe fittings, nails, spikes and horse shoes	10%
All kinds of wire	10%
Window glass	10%
Paper for building and roofing purposes	10%
Roof felt, box and packing	10%

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Paints of all kinds and oils	10%
Livestock	10%
Wooden ware	10%
Household furniture	10%

and that no rates higher than such reduced rates or tolls shall be hereafter charged by the Company upon any such merchandise carried by the Company between the points aforesaid.

There shall be a reduction in the Company's present rates and tolls on grain and flour from all points on its main line, branches or connections West of Fort William, to Fort William and Port Arthur, and all points East, of 3 cents per 100 lbs."

This agreement was effective on some commodities peior to the 15% increase effective March 15, 1918, but on other commodities the rates were lower than provided because of the Manitoba agreement. For example,- Under the Manitoba agreement, grain rates were 10 cents from Winnipeg and districts as opposed to 12 cents under the Crows Nest Pass agreement. Calgary rate was 24 cents as opposed to 26 cents under the Crows Nest Pass agreement. When the 15% advance order was made the Commissioner held that he could override the Manitoba agreement, it being an agreement of a local government, but that he could not override the Crows Nest Pass agreement, it being a Dominion agreement, and on this account the 15% was not given its full force and effect with respect to the commodities covered by the Crows Nest Pass agreement, or some of them. For example,- the rate on grain was limited to an increase of 2 cents per 100 lbs., and on agricultural implements, the rate from Toronto to Winnipeg under the increase would have been 72½ cents, but could only be 68½ cents under the

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contract.

It is to be noted in connection with this agreement that it only affects the Canadian Pacific Railway and not the Canadian National roads, but the rates would of necessity be made effective by the competing roads so that the same result is arrived at.

It is also to be noted that it only applies to the lines which were in existence in 1908, but the Board in its judgment in the 15% increase case indicated that the application of the contract rates only to certain lines would be a discrimination against the territory served by the other lines, and I believe that if effective in one territory it must be made effective in the others.

It should be made clear that if the amendment to the Railway Act, 1919, namely section 325, ss. 5, although only effective for three years was a waiver of that contract, then legislation should make that clear, but I do not think that it could seriously be argued that the Crown had waived its rights under that contract by the temporary abandonment of its rights thereunder.

The object of insisting upon the re-establishment of this agreement is that we are firmly convinced that rates upon our basic commodities must come down. Our experience with the commission has been such that we cannot hope with any degree of assurance that they will act, and therefore we would expect the government of the country in a matter of policy of this kind to exercise its undoubted rights to fix maximum rates. Under

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normal conditions the rates should be lower than the Crows Nest Pass agreement and should cover other commodities, but I do not think that under the present financial conditions we would be justified in demanding at present the reinstatement of rates under the Manitoba agreement, or lower, but that we are justified in having the Crows Nest Pass agreement rates put into effect.

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R—1109.
de B.
C 49628

2

Summary of

GENERAL ORDER No. 308.

The rate increase of September 13th, 1920, of 40% in the East and 35% in the West was dealt with by the Chief Commissioner, Hon. F. B. Carvell, in his judgment dated September 9th, 1920, in the course of which he said:-

"Before attempting to arrive at the amount of increases, if any, to be granted, I take it the Board must first decide what policy it will adopt with respect to these opposing contentions. While I realize that, to a very large extent, the financial requirements of the Canadian Pacific Railway must govern our decision, yet I would be very sorry to take the attitude that we should not in any manner consider the requirements of the Canadian National system.

"It would be entirely useless, for the purposes of this decision to at all enter into the history of this great system; suffice it to say it is now a reality which the people of Canada own and must work out to the best interests, not only of the railway, but the country as a whole.

"Reference was made, during the course of the hearing, to a statement made by the Minister of Railways in Parliament in the month of March last that it was a question for the House to decide as to whether the deficit of $47,000,000 on the Canadian National system should be met by rates or taxes upon the people. Parliament sat for nearly three months after this statement was made and prorogued on the last day of June without having taken any action, and therefore this Board must approach it from the standpoint of the law as it now stands, which imposes upon this Board the duty of "fixing, determining and enforcing just and reasonable rates", not only for the Canadian Pacific Railway, but for all other railways under its jurisdiction. Therefore, as only one rate ought to be made for all companies, the real question to be decided is, what are just and reasonable rates, considering all the circumstances of all the railways of Canada as they exist to-day. What might be considered a just and reasonable rate for one company might be an unjust and unreasonable rate for another, and therefore, I take it we must arrive at that medium which will on the whole, be just and reasonable in so far as it is possible to do so, and, at the same time be just and reasonable to the community who have to pay the tolls.

"If we give a rate which will barely allow the Canadian Pacific Railway Company to pay its fixed charges and dividends, or a lesser rate, then it is absolutely certain that the Canadian National Railway system, including the Grand Trunk, Grand Trunk Pacific, Intercolonial and Transcontinental, and for the purposes of this judgment I am considering them as a part of this system, will face an operating deficit of at least $50,000,000 per year, assuming that the wage award is adopted and including the Intercolonial and National Transcontinental and Grand Trunk Pacific systems.

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"The National system will therefore be condemned at its birth to a condition, which practically for all time to come, or at least for many years, will force it to Parliament annually for money with which to pay the operating expenses of the road. Such a condition must necessarily prove very discouraging to its managers and officials."

As the rates which will become applicable after July 1st and July 6th next are the rates which will, unless otherwise provided, be the rates which the Railway Board increased in September, 1920, it is of interest to note the following comparison which Mr. Carvell made regarding them as between Eastern and Western Canada:-

"The eastern rates apply to that portion of Canada east of Port Arthur (including Port Arthur, eastbound), and the western rates to the territory west of lake Superior (including Port Arthur, westbound). It was admitted by all parties at the hearing that the operating ratio in Western Canada was somewhat less than in the East; that the tonnage per train was greater in the West than in the East, and that about 55 per cent of the total traffic of the Canadian Pacific Railway system was in Eastern Canada and 45 per cent in Western Canada.

"In order to satisfy myself of the facts, I have investigated the tariffs, both east and west, applicable to the more important traffic movements. I find that on building brick, sand, gravel and crushed stone, also on green vegetables to and from distributing points, the carload rates are lower in the West than in the East; that on rough or partly dressed building stone the western rates are the lower for the shorter hauls and slightly higher for the longer, with parity in some of the mileage blocks; and that on cheese, eggs and fresh meat the carload tariff to and from distributing points is lower for distances to between 150 and 200 miles and higher for the longer movements than in the East.

"On lumber, while the shorter haul rates are lower than, or the same as, those in the East, and higher for the longer distances under the mileage tariff, the specific point to point tariff, which really governs the bulk of this traffic, is considerably higher in the West than for similar distances in Eastern Canada. In dealing with a station to station tariff, however, a mere comparison of similar distances is not always conclusive, since a density of movement on the one side may not be counterbalanced on the other.

"As to livestock, while there is little difference between the West and East rates in the mileage tariffs, the point to point western tariff is in general the higher, taking movements to Winnipeg and Montreal as illustrative.

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"As regards agricultural implements shipped in carload lots from distributing points, up to 100 miles the western rates are lower than the eastern for some distances, and are the same for others, but above 100 miles they rule higher- considerably so for the long hauls. The carload mixing privilege is, however, more liberal in the West than in the East.

"When we come to general merchandise, or what is referred to as class freight, I find that the western rates are considerably greater than the eastern, whether they be those of the standard minimum mileage tariffs or those of the special tariffs from distributing points.

"It is somewhat difficult to form a comparison of the grain rates between the two divisions because practically all the grain rates in the West are based upon Fort William or Port Arthur, and we have no such distances in the East as we have in the West, but, generally speaking, the following table affords an indication, taking Windsor, Ont., as the starting point producing the longest eastern hauls of Ontario-grown grain:-

	Miles.	Cents.
Windsor to Montreal	555	35½
Brandon to Fort William.....	553	17½
Windsor to Lennoxville.....	657	32
Wapella, Sask., to Fort William,..	655	21
Windsor,Ont., to St. John, N. B.,	1,033	36½
Hatton, Sask., to Fort William,..	1,032	28

"Allowing for the undoubted fact that a very large proportion of the traffic both east and west is on the commodity basis, I am still forced to the conclusion that the rates in Western Canada average considerably greater than in the East, possibly around 15 to 18 per cent."

After quoting Sir Henry Drayton, former Chief Commissioner, in support of the above conclusion, Mr. Carvell announced the increases, as follows:-

"Until the 31st day of December, A. D. 1920, I would give a general increase of 40% in eastern freight rates and 35 per cent in western freight rates with 20 per cent both east and west in passenger fares; which, however, should not exceed four cents per mile, 50 per cent in sleeping and parlour car rates and 20 per cent on excess baggage.

"Commencing the first day of January next, and until there is another revision of rates, I would reduce these percentages on freight to 35 per cent in eastern territory and to 30 per cent in western terriotry, with ten per cent reduction in passenger fares up to the first day of July next, when passenger rates should come back to the basis in effect prior to the coming into force of this judgment; but continuing the full increases in parlour and sleeping car rates and excess baggage. It will of course be understood that the percentages of increases in the rates east and west of Port Arthur herein granted will, in the case of through rates between the East and the West (excepting transcon-

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tinental commodity rates), apply to the East and West factors thereof respectively.

"This will, in my opinion, very nearly give the Canadian Pacific Railway an even balance sheet at the end of the present fiscal year, and for the year 1921, according to my estimate, should give them a reasonable surplus; but it may still leave the Canadian National system with an operating deficit."

Embodied in the judgment was the following paragraph limiting the jurisdiction of the increases to July 1st, 1922:-

"As our jurisdiction for granting increases on certain lines of railway in Western Canada depends entirely upon the amendment to section 325 of the Railway Act, 1919, which expires on the 6th day of July, 1922, the rates hereby established cannot continue beyond that date unless Parliament, in its wisdom, sees fit to extend the provisions of that section. Therefore, the rates herein provided for shall not extend beyond the first day of July, 1922".

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Railway Rates C 49632

R-1109
X-1506

RESOLVED that a Select Special Committee be appointed to make enquiry into the question of ~~Railway~~ regulating Crow's Nest Pass rates, it having been disclosed by conferences held between the Government and the ~~representatives~~ chief Executives of the Railways with respect to the reduction of freight rates ~~that, because of the uncertainty of the entire rate situation~~, that the Executives of the various Railways deem it inadvisable immediately to reduce rates on basic commodities in view of the fact that, under the terms of Subsection 5 of section 325 of the Railway Act of 1919, the suspension of the Crow's Nest Pass scale of rates will expire on the 7th July, 1922;

~~And~~ that, in the circumstances, it is advisable to afford opportunity to all interested parties to submit their views regarding the subject matter of the said conferences to such Committee with particular regard to the effect upon Canadian National Railways and other Lines as well as upon agricultural development and Canadian industry generally, of the rates established by the Crows Nest Pass agreement;

And that the said Committee shall have power to send for persons, papers and records, including the Minutes and Evidence taken before Committees of this House in previous Sessions, to examine witnesses under oath, and to report from time to time.

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Resolution No.2, respecting
Freight Rates.

C 49633

LEGISLATURE OF SASKATCHEWAN

R-1109

FIRST SESSION - FIFTH LEGISLATURE

Certified copy of a resolution passed unanimously by the Legislative Assembly of the Province of Saskatchewan, January 16, 1922:

"Whereas the burdens of existing freight rates, especially on the products of agriculture, is so great as to be more than the traffic can bear; and

Whereas in many parts of the Province the result of this condition is that grain is standing in the fields unthreshed because, at the present prices, threshing costs and freight charges would absorb the whole of the price realised:

Therefore, be it resolved, That, in the opinion of this Assembly, the Government of Saskatchewan should continue to press its application for the reduction of freight rates now before the Railway Commission of Canada; and further,

That, in the opinion of this Assembly, the Parliament of Canada should under no circumstances re-enact subsection (5) of section 325 of The Railway Act of Canada, which expires in July, 1922, and which if allowed to lapse, will again bring into force the Crow's Nest Agreement."

CERTIFIED A TRUE COPY

Clerk, Legislative Assembly.

Regina, February 11,1922.

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R-1109

C 49634 5

On Saturday, the 25th February, 1922, the Privy Council had under consideration the Petition of the National Dairy Council of Canada, asserting an appeal under the provisions of Section 52, of Chapter 68 of the Statutes of Canada, 1919, being the Railway Act of A. D. 1919, against the decision of the Board of Railway Commissioners of Canada made the 15th day of February, 1921, whereby the said Board dismissed the application of the Petitioners herein, in which they applied to have the advance or increase of twenty per cent. formerly allowed on express rates on cream removed.

The history of this case is briefly set forth in the Petition of the appellants, and the facts as there stated appear to be accepted by both sides and are as follows; in part:

> "On the 22nd day of July, 1920, the Express Companies doing business in Canada, appealed to the Railway Commission for a flat increase of forty per cent. of all express rates. They submitted to the Board in support of their application evidence to show that the cost of operations had so increased that they were unable to carry on without an increase in their revenue. They also submitted evidence to show that the value of the goods they transported had materially increased and they argued that they were, therefore, entitled to an increase in rates. In the judgment of the Chief Commissioner, Honourable F. B. Carvell, dated February 2nd, 1921, the Express Companies were granted increases of thirty-five per cent. on first class rates and twenty per cent. on "commodity" rates. Cream moves under "commodity tariffs and therefore cream rates were increased twenty per cent."

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An application was made to the Board on the 15th November, 1921, asking for the removal of the twenty per cent. increase allowed as above stated, so far as that increase effected the article of cream, which motion or application was dismissed by the Board and this appeal is to all intents and purposes from the decision or order of the Board dated 2nd February, 1921, as well as from the decision of 15th November, 1921, insofar as either decision has a bearing upon the increased rate on the carriage of cream by the Express Companies herein.

There is no appeal from the thirty-five per cent. and twenty-five per cent. increases allowed on the first class and second class rates, and the only matter on appeal is the twenty per cent. increase on the class of express "commodities", which include cream. If the rate of cream could be dealt with by itself, it would be comparatively simple, but cream is only one of a variety of goods or merchandise classed for rating purposes as "commodities", and consisting at least of fruit, fish, vegitables and cream. The flat increase of twenty per cent. allowed by the Board on February 2nd, 1921, applies equally to whatever comes within the "commodity" group, and for that reason it would appear to your Council that if there is to be a reduction in the rate on cream, that there should be a further hearing by the Board for the purpose of ascertaining whether or not there should be a reduction on the various other classes of merchandise comprised

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in the "commodity" group, and your Council respectfully suggests that in view of the material fall off in the market value of cream a corresponding reduction, if possible should be made in the express freight rates. And after hearing further evidence in regard to the various classes of goods included in "commodities", the Board shall be of opinion that a general reduction of the "commodities" rates cannot consistently be made, then and in such case your Council would with all due deference advise that a specific rate be fixed for the subject matter of this appeal and along the linss hereinbefore suggested. And for the purposes above mentioned the Council beg to advise that the subject matter of this appeal be referred back to the said Board,

All of which is respectfully submitted.

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POOR
COPY

IH/6 P.C. 562 R-1109

Certified copy of a Report of the Committee of the Privy C 49637
Council, approved by His Excellency the Governor
General on the 7th March, 1922.

PRIVY COUNCIL
CANADA

The Committee of the Privy Council have had before them a Report, dated 7th March, 1922, from the Minister of Justice, stating that,- upon consideration of the petition of the Corporation of the city of Toronto praying for an Order of Your Excellency in Council rescinding General Order No. 527 of the Board of Railway Commissioners with regard to express rates, or in the alternative that the said Order be varied by reducing the percentages of increases therein authorized, and the representations of counsel and others representing the interested parties at the hearings which took place before Your Excellency in Council on the 4th April, 1921, and the 24th February, 1922,- he is of opinion that this is not a case in which Your Excellency in Council should interfere with the Order of the Board.

The Minister, therefore, recommends that the said petition of the Corporation of the city of Toronto be dismissed.

The Committee concur in the foregoing recommendation and submit the same for Your Excellency's approval.

W. Pyfe Le Bourdais
Clerk of the Privy Council.

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Confidential

X-1506.
C 49638

Thursday, June 22, 1922.

The Select Special Committee appointed to consider Railway Transportation Costs asks leave to present the following as their

THIRD AND FINAL REPORT:

Your Committee, appointed pursuant to resolutions of Parliament passed on the 8th day of May, begs leave to report that it has had altogether sessions or meetings and has heard and considered the evidence of many witnesses and as well received many written representations from interested sources. Witnesses were heard on behalf of the Canadian Railways, several of the Provincial Governments, Industrial Organizations, and particular industries and interests. The proceedings of the Committee have been from time to time, as printed, circulated among members of the House of Commons and of the Senate and have been as well widely circulated outside of Parliament.

Your Committee was charged with the duty of enquiring into the question of transportation costs with particular regard to the effect of rates established by the Crowsnest Pass agreement on Canadian National and other railways and upon agricultural development and Canadian industries generally.

The Crowsnest Pass agreement was an undertaking entered into in 1897 between the Government of Canada and the Canadian Pacific Railway, whereby in consideration of a subsidy to be earned by the construction of the Crowsnest Pass Railway, which subsidy amounted to $3,404,720, a reduction should be made in the rates upon the classes of merchandise below stated Westbound from, and including Fort William and all points East of Fort William on the Company's Railway, to all points West of Fort William on the Company's

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main line or on any line of railway throughout Canada, owned or leased by, or operated on account of the Company. The commodities, the classes of merchandise to be affected are as follows:-

Upon all green and fresh fruits, 33-1/3 per cent;
Coal oil, 20 per cent;
Cordage and binder twine, 10 per cent;
Agricultural implements of all kinds, set up or in parts, 10 per cent;
Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe-fittings, nails, spikes and horse shoes, 10 per cent;
All kinds of wire, 10 per cent;
Window glass, 10 per cent;
Paper for building and roofing purposes, 10 per cent;
Roofing felt, box and packing, 10 per cent;
Paints of all kinds and oils, 10 per cent;
Livestock, 10 per cent;
Woodenware, 10 per cent;
Household furniture, 10 per cent;

The agreement also provided for a reduction in the rates on grain and flour from all points on the main line, branches or connections of the Canadian Pacific Railway West of Fort William to Fort William and Port Arthur. The decrease was fixed at 3¢ per hundred pounds to be reached in two annual reductions of a cent and a half each.

The Crowsnest rate on grain and grain products in entirety from September 1, 1899, until October 7, 1903, when it was modified by a lower rate resulting from an agreement made between the Province of Manitoba and the Canadian Northern Railway. Lower rates continued until March 15, 1918, when an increase of 15% on rates generally was made by order of the Board of Railway Commissioners. This increase was granted because of representations by the railways that they could not successfully maintain their services unless granted rates that would enable them to meet the increased operating costs due to substantial increases in cost of fuel, coal, materials, supplies, equipment of all kinds and wages. This increase was subject to the Crowsnest Pass agreement, but it brought Western grain rates up to Crowsnest maximum rates from most points in

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Saskatchewan and Alberta, though not in Manitoba.

Shortly afterwards, the first of the so-called McAdoo series of wage Awards was adopted in the United States and in view of the continued increase in the cost of living, Canadian railway employees' organizations claimed wages in Canadian territory should be similarly advanced. An Order-in-Council, P.C. 1768, of July 16, 1918, authorized the wage increase on Government-owned railways and recommended that similar increases be adopted on other lines. The same Order-in-Council authorized a general rate increase to meet the increased operating costs. It thus became necessary to exceed the Crowsnest maximum rates and to accomplish this end a further Order-in-Council, P.C. 1863, of July 27, 1918, authorized the Board of Railway Commissioners to disregard any existing rate-controlling agreements. This prepared the way for the rate increase of August 12, 1918, which was 25% in the East, but less in the West because there the 15% increase which came into effect on March 15, 1918, was included in the 25% increase.

The several Orders-in-Council referred to were passed under the authority and power vested in the Governor-in-Council under the War Measures Act. Upon the end of the War it was deemed desirable to continue in statutory form the authority of the Board of Railway Commissioners to disregard rate-controlling agreements and in due course sub-section 5 of section 325 of the Railway Act was enacted, enabling the Board of Railway Commissioners to disregard rate-controlling agreements for a period of three years from July 6, 1919. Thus, the power of the Board to disregard special agreements and in particular the Crowsnest agreement will terminate on July 6th next unless Parliament shall in the meanwhile otherwise enact.

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Subsequent to the enactment of sub-section 5 of section 325 of the Railway Act the upward trend in railway operating cost in Canada continued, largely owing to what is known as the Chicago Labour Award, and on September 13, 1920, the Board of Railway Commissioners, under General Order No. 308, ordered a further advance of 35% in Western territory and 40% in Eastern territory. With that Order, the peak of the rate increases over Crowsnest rates was reached. The Order provided for decreases at certain periods in accordance with which the peak rate was reduced by 5% on January 1, 1920, and by 10% December 1, 1921.

The duration of the remainder of this increase is limited to July 1, 1922, owing doubtless to the fact that on July 6th the Crowsnest agreement would come into operation if the suspension were not further continued by statute, and which would doubtless necessitate a reconsideration of the whole freight rate structure.

Your Committee has heard the representations of the railways which may be summarized as follows:-

Mr. Beatty, for the Canadian Pacific Railway, estimated that the application of the Crowsnest scale of rates to 1921 traffic, but leaving all other existing rates in effect, would cause a decrease of approximately $24,000,000 in gross earnings, and $14,000,000 in net earnings. Of this decrease, $7,159,537 would be from grain.

Mr. Hanna, for the Canadian National Railway System, estimated that under Crowsnest rates on agreed commodities and with general rates in effect prior to September 13, 1920, on all other traffic, the Canadian National Railway System would lose $23,000,000 of gross revenue, of which $8,606,453 would be from grain and grain products. The

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result would be to increase the deficit of 1921 from $16,000,000 to $26,000,000, or a net loss of 10 million dollars.

On Mr. Hanna's second appearance before the Committee, he re-stated the figures for the Canadian National Railway System in another form. On the basis of Crowsnest rates on grain, certain voluntary reductions on basic commodities (to be later alluded to) and all other traffic estimated at present rates, the loss to the National System by reason of such reductions was estimated at $10,240,000. This he said he would expect to make up by reductions in expenses, including labour, leaving the net result where it was last year when the deficit was $16,000,000.

The effect of the Crowsnest scale on the revenues of the Grand Trunk would appear to be almost negligible in consideration of the matter at issue, as the operations of that road are confined to Eastern territory, and the Crowsnest scale of rates could only affect it on the Westbound movement to North Bay of such of the 13 specific Crowsnest commodities as may now move from East to West. Therefore, the net loss of that Company by reversion to Crowsnest rates was set by Mr. Watson at one hundred thousane dollars.

Mr. Beatty, for the C.P.R., agreed that a downward revision of rates was desirable, and stated that his Company was prepared, with the approval of the Board of Railway Commissioners, to put into immediate effect reductions in rates on basic commodities that he claimed would be of greater national benefit than the re-establishment of Crowsnest rates. Such reductions would largely affect the

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Company's revenues, and could only be made, Mr. Beatty said, in anticipation of substantial reductions in operating costs. In view of continued abnormal labour and material costs, the railways took the ground that they were not in a position to stand the Crowsnest scale of rates and reduced rates on basic commodities as well. Mr. Beatty claimed that the reinstatement of Crowsnest rates in entirety at the present time would make it necessary for the Canadian Pacific to endeavour to supplement its revenue on other traffic by the increase of present rates.

The alternative proposal of the railways relates to the following basic commodities:

Grain and grain products (west of Fort William), forest products, coal (exclusive of anthracite coal and coal from the head of the Lakes); building material, including brick, cement, lime and plaster, potatoes, fertilizers, ores, pig iron, blooms, billets, wire rods and scrap iron.

The railways offered reductions of 20% off present rates on grain and grain products, and to go back to

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the scale of rates of August, 1918, on the basic commodities. It is estimated by the Railways that the reduction incident thereto would be, as regards the Canadian Pacific Railway, $8,338,469, Canadian National Railways, $6,971,400, and Grand Trunk, $1,053,789, a total of $16,363,658.

The reduction in revenue from grain and grain products under this basic commodity proposal would be as follows: Canadian Pacific Railway, $5,354,139 and Canadian National, $4,844,115, a total of $10,198,254. The total reduction in revenue from grain and grain products if Crowsnest rates were made effective was estimated at $15,765,990, of which sum $8,606,453 was Canadian National and $7,159,543 Canadian Pacific. From this it will be seen that the alternative reduction proposed by the railways, as regards grain and grain products, was roughly two-thirds of the Crowsnest rate. This is borne out by the percentages, Crowsnest rates being approximately 31 per cent below present rates on grain and the alternative 20 per cent below. Roughly, the difference is five and a half million dollars. As against this were placed reductions estimated at $6,165,404 voluntarily suggested by the railways on basic commodities other than grain and grain products and apportioned as follows:- C.P.R., $2,984,330; Canadian National, $2,127,28[illegible] and Grand Trunk, $1,053,789.

Since the proceedings of your Committee commenced, a reduction of 10 per cent on international and interstate traffic was announced by the Interstate Commerce Commission. This it is estimated, will affect the Canadian Railways to the extent of $5,745,000, divided as follows: - C.P.R., $2,220,000, Canadian National, $1,250,000, and Grand Trunk, $2,275,000.

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In addition to hearing evidence as to the effect of Crowsnest Pass rates on Canadian railways, certain other aspects of the railway situation were impressed upon your Committee. Representatives of the Province of British Columbia argued for the equalization of the Mountain scale of rates with the Prairie scale, and for the placing of the port of Vancouver in a position of relative equality with the head of the Lakes. It was contended that equal consideration with the rest of Canada in the matter of railway rates was implied in the railway arrangement made with the Province of British Columbia at the time of Confederation.

The case for the prairie Provinces was forcibly and ably presented. Stress was laid on the fact that the earnings from prairie lines were greatly in excess of the earnings in the east. It was stated that the rates in the east, being controlled and limited by water and American rail competition, resulted in deficiencies in revenue which prairie rates were designed to make up and it was urged that the Crowsnest Pass Agreement was the only controlling factor at the disposal of the prairie farmers. Therefore they objected strongly to its further suspension. It was their "sheet anchor" as one witness put it.

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Representatives of the Maritime Provinces urged that their situation was one of special character because of the conditions under which the Intercolonial Railway has been constructed as a result of the Confederation agreement. They contended that there was an implied obligation necessarily attaching to these terms which guaranteed to them special consideration in regard to railway freight rates on account of their distance from the central and Western Provinces. It was claimed that the increases in rates on the Intercolonial Railway since 1916 were in excess of rates allowed by the Board of Railway Commissioners on many of their products, which excessive rates greatly interfered with interprovincial trade and are contrary to the obligation accepted by the Government of Canada at Confederation. The Government was, therefore, asked to take cognizance of the situation and endeavour to arrange such reductions of rates as will, having regard to the actual cost of operation of these railways remove as far as possible the difficulties complained of and that the Board of Railway Commissioners should, for the same reasons, and in so far as their jurisdiction extends, restore the differential rates formerly applicable to traffic to and from the Maritime Provinces.

While your Committee was perhaps impressed by the arguments put forward on behalf of the Maritime Provinces and British Columbia, they are possibly without the scope of the reference to us and, in any event, are too intricate and involved, and would require more time than is at the disposal of your Committee, to form a proper judgment regarding them. Moreover, these matters have been before the Board of Railway Commissioners during the past 12 months; the Board has heard voluminous evidence, much expert testimony and lengthy arguments; it has had at call men trained in railway rate matters, and the Committee feel that it would be inadvisable

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and generally unsatisfactory to even appear to invade the jurisdiction of the Board, or to anticipate its judgment.

Whether the Crowsnest Pass agreement should come into effect on July 6th next, or whether it should be further suspended to enable the Board of Railway Commissioners to regulate freight rates for a fixed period regardless of rate-controlling agreement, upon a consideration of all the abnormal economic conditions still prevailing and upon other considerations, was the important matter referred to your Committee. The question is not without its difficulties. The problem is largely one of approximating the net financial results upon the operations of Canadian railways with the Crowsnest Pass agreement scale of rates again operative, and the resultant effect upon the ability of the railways to sustain further reductions on basic commodities outside of those mentioned in the agreement, and the probable results as to railway revenues if such additional reductions were made. It was from these points of view that your Committee considered the matter.

There are many unknown factors which enter into a consideration of this matter, some of which are as follows:

1. The precise general effect of rate reductions upon railway traffic and its influence in stimulating business and producing railway revenue.

2. The probable future wage reductions in connection with our railways and when they shall become effective.

3. The probable degree of deflation in the costs of materials used by railways.

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4. The action to be taken by the Board of Railway Commissioners upon the applications of the Province of British Columbia, and the Prairie Provinces, or the action of the Board or of the Government on the application of the Maritime Provinces for rate reductions, etc., and upon which matters judgment is shortly to be rendered.

5. The action to be taken by the Board of Railway Commissioners in respect of special applications for rate reductions and the probable action of the Board in the way of general rate reductions upon basic commodities or upon class rates.

Without a determination of some or all of these matters, it is difficult for your Committee to intelligently approximate the effect of the Crowsnest Pass agreement if put into operation, or its effect upon the future action of the Board of Railway Commissioners in respect of future rates upon other commodities. Further, conditions relative to a consideration of this question are changing, or are likely to change, so rapidly that conclusions presently made will soon be found unreliable. Again, the Crowsnest agreement was suspended first by Order-in-Council and later in effect by Act of Parliament, apparently without public disapproval. Such action was based upon inflated railway operating costs and increased value of commodities as well as the general economic conditions resulting from the War. It was chiefly for these reasons, we believe, that the Board of Railway Commissioners was empowered to disregard rate controlling agreements if it saw fit.

The Board of Railway Commissioners have been charged by the Parliament of Canada with the duty of regulating railway rates and of establishing just and reasonable railway rates. It is the only body in Canada equipped for the determination of the intricate matters relative to railway rate

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making. The matter of the Crowsnest agreement becoming effective or being suspended is closely related to other concrete railway rate issues either pending or imminent. The one reacts upon the other and both upon the whole freight rate structure which must within a short period of time undergo many substantial changes. The whole question would seem to be one that can best be treated by one body, the Board of Railway Commissioners. Your Committee has reached the conclusion that in all the circumstances it is the part of wisdom and in the general public interest to place in the hands of the Board of Railway Commissioners the power for a limited time to disregard the Crowsnest agreement if it sees fit, and bring about general freight rate deflation in the degrees and in the manner that changing circumstances and broad national interests would indicate as being just and reasonable and in the public interest.

Your Committee, therefore, recommends that a suspension of the Crowsnest Pass agreement for one year from July 6, 1922, with power to the Governor-in-Council to suspend for a further period of one year, if in its judgment the then existing conditions justify the same, and your Committee recommend that suitable legislation be enacted to make effective this recommendation.

The recommendation of the Committee for the further suspension of the Crowsnest agreement is made in view of the great necessity of a general reduction in freight rates on basic commodities as a whole and in what is considered to be the general public interest, and not in consequence of the proposals for rate reductions made by the railways. It is the judgment of your Committee that the reductions proposed by

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the railways should not be regarded by the Government, or by the Board of Railway Commissioners as being the maximum of reductions, nor should the basic commodities named be regarded as the only ones upon which reductions may be made. Nor is it intended that the period for which a further suspension of the Crowsnest Pass agreement is recommended shall necessarily preclude the adoption of Crowsnest rates on grain and grain products prior to the expiration of the period of suspension. Basic commodities which may be afforded reductions should have the earliest possible consideration by the Board of Railway Commissioners.

The evidence given to your Committee and the various representations made to it, in one form or another, inevitably lead to the conclusion that a general reduction in railway rates is essential to the economic life of the country. To this end should be directed the best efforts of the managers of our railways, and the attention of the Board of Railway Commissioners. It is impossible to predicate the precise effect of rate reduction upon commodities in stimulating business or railway traffic. Doubtless, however, high freight rates are a discouragement to trade, and even the fact that rate reductions are in anticipation tends to retard business and railway traffic. Further, your Committee is of the opinion and wish to declare in the most emphatic manner, that railway operating costs should be decreased, even if requiring the most drastic action; and towards the achievement of that end we recommend the closest co-operation between the management of the different Canadian railways, and the management of the railways and its employees.

Your Committee recommends that the evidence be reported for the information of the House.

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Railway Rates
1922

C 49651 R-1107

Re Freight Tolls - 1922

Files Nos. 30531, 30685, 30686 and 30686.2

BY THE BOARD :-

Shortly after the promulgation of General Order No. 308 of this Board, being the Order providing for the general rate increases known as the Thirty-five and Forty Per Cent Case, effective September 13th, 1920, various bodies, among them the Province of Manitoba, appealed to the Privy Council asking that the said Order be rescinded for various reasons set forth by the appellants. The matter was heard by the Privy Council, and, on the 6th day of October, 1920, by P.C.No.2434, His Excellency in Council dismissed the appeal, but, in doing so, stated as follows:-

> "What constitutes a fair and reasonable rate should now be arrived at without reference to the requirements of the Canadian National System and Your Committee recommends that the Order in this case be referred back to the Board to be corrected in its findings in such manner as to determine what are fair and reasonable rates without taking into account at all for the time the Order shall be in effect, the requirements of the Canadian National System.
>
> "Very strong representations were made at the argument on appeal to the effect that the Order continued and indeed intensified an unjust discrimination in rates, it being claimed that higher freight rates prevail generally in Western Canada, that is west of Fort William, than prevail in Eastern Canada, that is east of Fort William. It was strongly urged that the reasons, whatever they may have been, for this differential no longer exist, and that as a matter of public policy the principle of equalization of rates East and West should now be recognized. On the other hand, it was urged that the competition arising out of lake and river transportation as well as out of lower competitive rates on Eastern

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United States lines compelled a somewhat lower scale in Eastern Canada than in Western Canada. Whether or not these reasons now obtain in any substantial degree is a question which requires minute and expert investigation such as can be best conducted by the Railway Commission itself and not by Your Excellency's Advisers, but the Committee is strongly impressed with the very great desirability of bringing about with the least possible delay equalization of Eastern and Western rates.

"The Committee of the Privy Council therefore further recommend that as conditions have probably changed materially in recent years tending more and more to make qualization practicable, an inquiry by the Board be directed to be held at the earliest practicable date with a view to the establishment of rates meeting to the utmost extent possible the above requirement as to equalization."

The Board thereupon started an investigation, primarily to ascertain whether or not conditions had changed as suggested by the Order in Council and as to whether the difference in rates, if any, thus existing in a general way between Eastern Canada and Western Canada amounted to undue discrimination against Western Canada.

The first sittings was held at Ottawa on the 22nd day of November, 1920, when it was arranged that the Board would hold sittings in Western Canada in the early Spring, and, in pursuance thereof, sittings were held in all the principal cities of Western Canada in the month of April, 1921, again in the months of October and November, 1921, and the final argument took place in Ottawa in the months of February and March last.

Very shortly after arrangements were made for such hearings, application was made by representatives of the Provinces of New Brunswick, Nova Scotia, and Prince Edward Island alleging that they were unfairly treated in that the arbitraries over Montreal, which they had enjoyed for many years prior to 1916, had been either abolished or materially increased, and asked that the old arbitraries be re-established.

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Then the Province of British Columbia applied for the elimination of the Mountain scale of rates as applied to thatProvince, asking that the Prairie scale be extended through to the Pacific Coast.

At a later date, application was made by the Lumber Association of Canada and allied interests for a general reduction in the rates upon lumber commodities.

There have also been applications before the Board by the Board of Trade of the City of Sault Ste Marie and other business interests thereof for the extension of Schedule A rates from Sudbury to Sault Ste Marie, and, finally, an application by the Commercial Travellers' Association of Canada alleging that the 20% increase upon excess baggage provided for by General Order No. 308 should have been eliminated when passenger rates went back to normal on the 1st day of July, 1921, claiming that the excess baggage rate is based upon passenger rates and, therefore, when the passenger rates were reduced, the same principle should be applied to excess baggage.

In addition to this, we have had scores of applications from individuals, corporations, and municipalities asking for a reduction of rates either generally or upon the traffic in which they were respectively interested.

No reference is made herein to the application of the fruit growers of Nova Scotia and the potato growers of the Maritime Provinces for a reduction in the export rate on their commodities, as these rates were increased, not by General Order No. 308, but by General Order No. 303, effective August 26th, 1920, and we understand the railway companies have already filed tariffs, effective July 1st, reducing these rates by 10% in accordance with the like reductions in the United States

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under the recent General Order of the Interstate Commerce Commission.

By the terms of General Order No. 308, all increases therein provided for cease to exist on the 1st day of July, 1922, because pf the fact that the amendment to Section 325 of the Railway Act, 1919, which had the effect of postponing the coming into effect of the Crows Nest Pass legislation for three years, expires on the 6th day of July next. Shortly after Parliament opened in March last, the question of the further extension of the coming into operation of the Crows Nest Pass legislation was referred to a Special Committee of the House, which has reported, and legislation based thereon has been enacted, being Bill No. 206, which, in effect, provides for the suspension of the operation of the Crows Nest Pass legislation for a further period of one year upon all rates and schedules mentioned therein with the exception of grain and flour, the rates upon which latter products on and after the 6th day of July, 1922, shall be those provided for in the original legislation, being Cap. 5 of the Statues of 1897, and also providing that His Excellency the Governor General in Council may extend the provisions of the said Act for an additional term of one year, if, in their judgment, it is considered advisable to do so.

Comparison of Canadian and United States Freight Rates.

It is considered advisable at this stage to give a comparison of the general rate structures of Canada at present as compared with the rate structures of the United

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States as they will be on and after the 1st day of July next, because, on account of the great similarity between railway operations and business conditions in the two countries as well as the very large volume of international traffic, it is well to know as nearly as possible the exact relationships of the rate structures of both countries.

Two or three years ago, and before the general increase in rates in the United States authorized by the Interstate Commerce Commission under Ex Parte 74, effective August 26, 1920, a careful comparison was made between the general level of freight rates in Canada and the United States which showed, having regard to all the controlling conditions, that the general level was slightly in favor of the Canadian shipper.

Freight rates in Canada were not increased during the first four years of the war, but in 1918 and 1920 it was necessary, not only in Canada, but in other countries as well, to materially increase freight rates, so as to enable the privately owned railways, but not in full measure, to meet their advancing operating costs which had increased by leaps and bounds and in a manner entirely without precedent or parallel. The wage increases in 1918 and 1920, coupled with the increased cost of coal and other materials and supplies, resulted in such increases in railway operating costs that a substantial increase in freight rates was inevitable.

Notwithstanding that the employees of the Canadian railways were granted increases in wages equal to those in the United States and that increased costs and war conditions bore even more heavily upon railway conditions in Canada

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than in the United States, the increase in rates as authorized by this Board did not bear as heavily on the Canadian public as the increase authorized in the United States by the Interstate Commerce Commission, as will be clearly evidenced by the following.

These general increases, commonly known as the Forty Per Cent increases, although in fact they averaged appreciably under that figure, became effective in the United States on the 26th day of August, 1920, and in Canada on the 13th day of September, 1920. There has been no general decrease in freight rates authorized in the United States since August 26, 1920, although there will be a general decrease of 10% effective July 1, 1922. On the other hand, the increased rates effective September 13, 1920, in Canada, were subject to a general decrease of 5% January 1, 1921, and a further general decrease of 10% December 1, 1921. The situation is illustrated below, taking in each case for simplicity of illustration, a rate of $1.00 per 100 lbs. --

C A N A D A

	Rate prior to Sep.13/20.	Eff.Sept.13/20 Rate increased to	Eff.Jan.1,1921, Rate decreased to	Eff.Dec.1,1921 Rate decreased to.
East	$1.00	$1.40	$1.35	$1.25
West	1.00	1.35	1.30	1.20

Interterritorial Traffic

Percentage of increase in rates within territories east and west of Port Arthur applied to the east and west factors thereof respectively.

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U N I T E D S T A T E S

	Rate prior to Aug.26/20.	Eff.Aug.26,1920. Rate Increased to	Eff.July 1,1922. Rate Decreased to.
Eastern Group	$1.00	$1.40	$1.26
Western Group	1.00	1.35	1.21½
Southern and Mountain/Pacific Groups	1.00	1.25	1.12½
Interterritorial Traffic	1.00	1.33 1/3	1.20

Further, under this Board's General Order 308, September 9, 1920, the railways were prohibited from increasing rates on -

Crushed stone, sand, and gravel
Minimum class rate scale
Minimum cha rge per shipment
Switching, interswitching, milling-in-transit, diversion, reconsignment, stop-overs, demurrage, weighing, etc.

The increase allowed in rates on cordwood, slabs, edgings and mill refuse for use as fuel was limited to 10 per cent.

The increase in coal rates was limited as follows:

In rates 0 to 80 cents per ton; 10 cents.
In rates 80 to 150 " " " ; 15 "
In rates over 150 " " " ; 20 "

In the United States, under Ex Parte 74, July 29, 1920, there was no similar limitation with respect to rates on crushed stone, sand, gravel, and coal, and they were subject to the same percentage increases as authorized for other traffic; further, the percentage increase applicable in the group where the service is performed was made in the charges for switching, transit arrangements, weighing, diversion, reconsignment, lighterage, floatage, storage (not including

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track storage), and transfer, while no increases for these services were allowed in Canada.

The coal traffic is, of course, a very large and important movement, and the following illustrations show what the limitation in Canada meant as compared with the percentage increase in the United States. The increases allowed were -

	In Canada Effective Sept.13,1920.	In United States Effective Aug. 26,1920.		
		Eastern Group	Western Group	Southern and Mtn-Pacific Group
In rates 0 to 80¢ ton	10¢ per ton	40%	35%	25%
" " over 80 " 150 "	15¢ " "	"	"	"
" " " 150	20¢ " "	"	"	"

To Illustrate:-

	In United States			In Canada
	East	West	South & Mtn-Pacific	
A rate of 80¢ per ton became	112¢	108¢	100¢	90¢
" " " 150¢ " " "	210¢	203¢	188¢	165¢
" " " 300¢ " " "	420¢	405¢	375¢	320¢

Under the reduction in rates in the U.S. to become effective July 1, 1922, the situation will be --

Where rate prior to 1920 increase was -	In United States July 1st.1922.			In Canada Aug.1st, 1922, on Anthracite.	In Canada, Aug.1st,1922. on all other coal.
80¢ per ton now becomes	101¢	97¢	90¢	90¢	80¢
150 " " " "	189¢	182¢	169¢	168¢	150¢
300 " " " "	378¢	365¢	338¢	320¢	300¢

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Subsequent to the general increase in 1920, there have been a large number of substantial reductions in Canada between various points on different commodities. In Canada, among the more important reductions made by the railways, were the grain rates from Fort William and Lake ports to the Atlantic seaboard and eastern Canada; on livestock on which a reduction of approximately 25% was made in July, 1921, from the rates effective September, 1920; on hay in eastern Canada; on lumber from the Pacific Coast to eastern points; on wool and hides from western to eastern points, etc., etc.

In the United States a reduction in carload rates on grain, grain products, and hay in the western and Mountain-Pacific groups became effective in January, 1922; rates on livestock in the same groups in excess of 50 cents per 100 lbs. were reduced 20 per cent, but not below 50 cents in October, 1921; and carload rates upon products of the farm, garden, orchard, and ranch were reduced 10 per cent in January, 1922. These are the only three instances where reductions were made covering the entire country, or the whole of any one or more rate groups, since the increases of 1920 became effective. These rates are not being further reduced in the United States July 1, 1922.

Comparison between Canadian and United States Passenger Fares.

Immediately prior to August 26th, 1920, the standard passenger fare in the United States was 3 cents per mile.

On August 26th, 1920, the Interstate Commerce Commission authorized an increase of 20 per cent in all passenger fares, with a standard of 3.6 cents per mile. An increase or surcharge of 50 per cent was allowed in sleeping and parlor car fares, an increase of 20 per cent in excess baggage rates, and

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20 per cent increase in rates for the carriage of milk in baggage cars, all effective on the same date.

In Canada, prior to September 13th, 1920, the standard passenger fare east of and including McLeod, Calgary, and (Wolf Creek) Thornton, Alberta, was 3.45 cents per mile; west of these points, 4 cents per mile.

By General Order of the Board No. 308, the passenger fares were increased by 20 per cent, subject to a maximum of 4 cents per mile. The Order did not, therefore, increase passenger fares in British Columbia. An increase of 50 per cent was also allowed in parlor and sleeping car fares, and 20 per cent in excess baggage charge, but no increase was allowed in the rates for the carriage of milk in baggage cars.

On January 1st, by the same Order, the standard passenger rate east of McLeod, Calgary, and Thornton was reduced to 3.795 cents per mile, and on July 1st, 1921, the standard passenger fare reverted to 3.45 cents per mile.

On December 1st., 1921, the increase or surcharge in parlor and sleeping car fares was reduced to 25 per cent over those in effect prior to September 13th, 1920.

Comparison of rates in Canada and in the United States at present is as follows:

PASSENGER FARES

United States:		
All territory,	Standard,	3.6¢ per mile
Canada:		
East of McLeod, Calgary & Thornton	Standard,	3.45¢ per mile
West of above territory	Standard,	4 cts. per mile

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SLEEPING AND PARLOR CAR FARES.

United States: Surcharge of 50 per cent.

Canada: Surcharge of 25 per cent.

EXCESS BAGGAGE CHARGE.

United States: 20 per cent increase.

Canada: 20 per cent increase.

MILK IN BAGGAGE CARS.

United States: 20 per cent increase.

Canada: No increase.

Basic Commodity Reductions.

At the hearings by the Special Committee of Parliament above referred to, both the Canadian Pacific Railway and the Canadian National Railways proposed that, outside of the question of the rates on grain from the Prairie Provinces to the Head of the Lakes, any decreases in freight rates in Canada should be confined to what they called "basic commodities", and, in the reference to the subject as found on page 47 of the Reports of the Special Committee, Mr.Beatty, President of the Canadian Pacific Railway Company, stated as follows:-

> "It was apparent, however, that in 1921 certain industries felt the depression much more severely than others, and it was the opinion of the railway executives both in Canada and the United States, an opinion which, I think, is shared by the United States Government as expressed by the testimony of the Secretary of Commerce, Mr. Hoover, before the Interstate Commerce Commission, that inasmuch as the reductions were a matter of relief they should be first extended to those industries which most needed it. It was felt that more effective relief would be accorded in this way and that it would bear less heavily on the companies' revenues because of the exclusion from the reductions of numerous commodities in which the railway rate played a very small part. If the matter were one depending on the judgment of the railways, this method would be followed if the Railway Commission approved."

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Mr. Beatty furnished the following list of basic commodities on which he thought reductions should be made,- Grain and grain products, forest products, coal, building material, brick, cement, lime, plaster, potatoes, fertilizer, ores, wire rods, and scrap iron, to which, later on, were added pig iron, blooms, and billets. The same list was afterwards approved by the Canadian National Railways.

In the Report of the Special Committee to the House above referred to, it was stated as follows:-

> "basic commodities which may be afforded reductions should have the earliest possible consideration by the Board of Railway Commissioners."

While the recommendation of the Committee is to be treated with respect, it is not binding in law upon this Board. it is arguable that in revising rates, the logical method to pursue is to redress antecedent necessary percentage increases by subsequent percentage decreases, thus minimizing the inequalities which the percentage increases had accentuated. As a matter of emergency action, however, revisions may be made on basic commodities in so far as is possible, consistently with other conditions now existing.

At a later sittings of the Committee, both the Canadian Pacific and the Canadian National Railway Companies suggested that, in lieu of the coming into effect of the Crpws Nest Pass Agreement, the following percentage reductions from present rates should be made upon these basic commodities, viz.:-

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Grain and Grain Products West of Fort William	20%
Forest Products	20% East, and 16.66% West.
Coal, exclusive of Anthracite coal and coal from Fort William. Reductions specific. Rates 0 to 80¢ per ton	reductions 10¢ per ton
over 80¢ to $1.50 per ton	" 15¢ " "
over $1.50 per ton	" 20¢ " "
Building material Brick, Cement, Lime, and Plaster; Potatoes; Fertilizers (other than chemicals); Ores; Pig Iron; Blooms; Billets; Wire Rods; Scrap Iron	Western Lines 16.66% Eastern Lines 20%

This proposal was not adopted by either the Committee of the House as proposed, but, as before stated, the rates on grain and flour from the Western Provinces to the Head of the Lakes were reduced to the original Crows Nest Pass basis, and the question now arises as to what percentage of reduction the Board can reasonably grant upon these specific commodities under the changed conditions above referred to.

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At a hearing of the Special Committee on the 20th day of June instant, Mr. Lanigan, Freight Traffic Manager for the Canadian Pacific Railway Com pany, filed a statement showing what would be the reduction in the revenues of that Company if the offer above referred to had been accepted, as follows:-

STATEMENT FILED BY MR. LANIGAN

Canadian Pacific Railway

Basic Commodities

Grain and grain products	$5,354,139
Forest products	1,765,147
Coal, exclusive of anthracite and coal from Fort William	476,619
Potatoes	115,358
Building material - brick, lime, cement, plaster	353,415
Fertilizers (other than chemical)	18,621
Pig iron, billets, blooms, wire rods, and scrap iron	132,466
Ores	122,704
	$8,338,469
International and Interstate Traffic, 10 per cent	2,220,000
Grand Total	$10,558,469

This showed a total, not including reductions on international traffic, of $8,338,469, and, of this amount, $5,354,139 was the estimated reduction on grain. Taking this from the total reduction leaves a balance of $2,984,330 to be distributed among the other commodities. By the legislation herein before referred to granting the Crows Nest Pass rates on grain as therein provided, according to the evidence of Mr. Beatty, as recorded on page 46 of the Reports of the Special Committee, assuming the grain traffic of the

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Canadian Pacific Railway to be the same as in 1921, the adoption of the Crows Nest rates would reduce their revenue by $7,159,537, which taken from the sum of $8,338,469 would leave $1,178,932 still available for reduction in rates on the above list of basic commodities, and the Board, after very careful investigation, has concluded that this would be represented by a reduction of 7½ per cent on the rates now in existence on these basic commodities, less than the increases authorized by General Order No.308, not, however, including therein any reductions heretofore made upon any of the said commodities upon domestic rates in Canada. This would leave increases on these commodities above the basis of September, 1920, at 12½ per cent in Western Canada and 17½ per cent in Eastern Canada.

This reduction of 7½ per cent, however, should not apply to coal other than anthracite, which was not increased on a percentage basis, but by flat rates as hereinbefore particularly described, and, therefore, it is felt that all the increases on coal other than anthracite granted by the Board by General Order No. 308 should cease and the rates go back to those immediately preceding the 13th day of September, 1920. This reduction, however, not to apply to coal from Head of Lakes Ports westbound.

These reductions in the revenues of the Canadian Pacific Railway together with reductions in international rates and those hereinafter provided for will amount to more than eleven million dollars per year, and, considering that the net revenue for that Company for the first five months of

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1922 shows a falling off of $2,393,000 as compared with the same months for 1921, the Board does not feel justified in going further in the direction of rate reductions.

The Canadian Pacific Railway figures are given above as this Company is taken as the standard in rate discussions. An examination, however, of the Canadian National figures, while showing some improvements over 1921, shows a deficit in operating alone for the first four months of 1922 of $6,945,000, the only bright spot in the whole situation being the Grand Trunk, which shows a gain of $2,591,000 for the first five months of 1922 as compared with the like period of 1921.

Maritime Provinces.

With regard to rates between Maritime Province points and stations west of Montreal, the earliest record is from a tariff published by the Grand Trunk in 1874, naming rates from territory west of Montreal to St. John and Halifax, which applied only via Portland and steamer, and were exclusive of marine insurance. From Toronto, the rates in this tariff were --

To		Classes 1	2	3	4
		Cents per 100 lbs			
St. John, N.B.	S	100	84	67	50
	W	106	89	71	51
Halifax, N.S.	S	100	84	67	50
	W	110	93	74	55

S - Summer rate
W - Winter rate

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These rates are simply given as a matter of historical information, and, of course, play no part in the question as at that time the all-rail route via Riviere-du-Loup was not in existence.

Following the opening of the all-rail route, the rates between Maritime Province points and territory west of Montreal were constructed by the addition to the Montreal rate of a scale of arbitraries. The earliest record is a tariff of 1891 - 1894, showing the following rates --

	Classes 1	5	Arbitrary over Montreal 1	5
Toronto to Montreal	50¢	25¢		
" " St.John	80	40	30¢	15¢
" " Halifax	86	43	36	18

The record is not clear between 1894 and 1900 because the organization of this Board was only completed in 1904, and all tariffs then in effect were filed by the railways in that year. However, from 1900 to 1916, the arbitraries over Montreal were --

To	Classes 1	5
St. John	20¢	10¢
Halifax	22¢	11¢

These arbitraries were, of course, advanced along with all other rates, arbitraries, or proportionals under the various subsequent rate changes, and the situation is shown in the following tabulation --

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Arbitraries over Montreal

	St.John		Halifax	
	Classes		Classes	
	1	5	1	5
1891 - 1894	30	15	36	18
1900 - 1916	20	10	22	11
Dec. 1st, 1916	24	12	26	13
March 15th, 1918	27½	14	30	15
Aug. 12th, 1918	34	17½	37½	19
Sept.13th,1920	47½	24½	52½	27
Jan. 1st, 1921	45½	23½	50½	25½
Dec. 1st, 1921	42½	21½	47	23½

The Toronto - St. John rate provides the key to the entire situation so far as relates to the freight rate structure between Maritime Province points and Ontario territory, as the rates to and from the other Ontario groups are related to the Toronto rate, as fixed by the Board in the International Rates Order, and at the other end St. John is the pivotal point, the other groups bearing a fixed relation thereto. This system of rate making between the territories in question was in effect long before the creation of the Board and has since been carefully considered, particularly in the Eastern Rates Case in 1916, more extended reference to which is contained in the judgment in that case; it is an integral part of the whole class rate structure in Eastern Canada and could not be changed without involving disturbance of the entire rate fabric in this territory. As the class rate structure in Eastern Canada is not being distrubed at this time no change should be made in these arbitraries.

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With reference to rates between Eastern Canada and points west of Fort William, a different situation is found to exist. Instead of territorial groupings in Ontario, as in the case of the rates between Ontario and the Maritime Provinces, the rates are blanketed to and from the whole territory Montreal to Windsor and Sarnia, inclusive, Sudbury to Niagara Falls, all intermediate points and all lateral lines. The reason is apparent - the water lines operate from Montreal, calling at intermediate points to Sarnia, at a common rate to the Head of the Lakes, while the westermost points, such as Sarnia and Windsor, can reach St. Paul and thence Western Canadian points with a short mileage via Chicago. From and to points East of Montreal it has been the practice to add an arbitrary to the Montreal rate. Montreal, through its geographical situation at the head of ocean navigation and as the terminal of the western river and lake routes, is a natural breaking point. This group with its blanket rate takes in a large area - Montreal to Windsor, 555 miles - Montreal to Sudbury, 444 miles - Niagara Falls to Sudbury, 337 miles - Windsor to Sudbury, 480 miles. The distance from Montreal, the most easterly point, to Fort William, the head of lake navigation and the rate breaking terminal between Eastern and Western Canada, is 997 miles. From Windsor, the most westerly point, the distance is 1,032 miles. While, of course, the blanket rate covering this territory is justified by the governing conditions outlined, points east of Montreal are put to an undue disadvantage in comparison by the addition to the Montreal

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rate of a scale of arbitraries that does not indicate an equitable continuation of a long haul rate.

Take, for instance, St. John, N.B., to Toronto, Ontario, a distance of 810 miles, split up St. John, N.B., to Montreal, 466 miles, and Montreal to Toronto 334 miles (C.P.R.), rate St. John to Toronto $1.25½ first class, Montreal to Toronto, 83¢, difference East of Montreal 42½¢ per 100 lbs. Rate Montreal to Winnipeg, 1,417 miles, $2.67½, first class, rate St. John to Winnipeg, 1,885 miles, $3.08½, difference east of Montreal, 41¢. In other words, the difference over Montreal for the long haul to Winnipeg is practically the sam for a haul of 1,885 miles as for a haul of 810 miles. This does not indicate the tapering of a through rate that a long haul justifies and is due to the application of a system of rate arbitraries.

The rate from Montreal to Winnipeg is made up on an arbitrary from Montreal to Fort William of $1.39½, first class, plus the regular first class rate from Fort William to Winnipeg of $1.28. The regular first class rate Montreal to Fort William is $1.99½. This shows that effect has been given to the tapering process on a long haul by the addition of a reduced rate arbitrary East of Fort William to the full rate beyond. This process should not stop at Montreal. The first class arbitrary Montreal to Fort William of $1.39½ for 997 miles is represented on the Eastern Schedule A mileage scale by a distance 450 to 475 miles, $1.40, first class, or in other words, by a constructive mileage roughly equivalent to one-half the actual distance. The differences over Montreal should be blanketed by natural divisions, i.e., on group Montreal to Megantic, Que., a second, Megantic to St.John,N.B.

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and the differences should not exceed those that would exist under Sechedule A were the actual mileage east and south of Montreal treated in the same manner as that between Montreal and Fort William, thus the Megantic group would be 12¢ per 100 lbs.,first class, and 6¢, fifth class, over the Montreal arbitrary of $1.39½, while St.John would be 24¢, first class, and 12¢, fifth class, and Halifax 28¢,first class, and 14¢ fifth class, and other Maritime groupings proportionately.

While this Board has no jurisdiction over the Intercolonial and Transcontinental Railways, yet, if this principle were adopted on those roads, then, as Quebec, a distance of 1352 miles from Winnipeg via the Transcontinental Railway, takes the Montreal rate of$2.67½, first class, Moncton would naturally take the same arbitrary (as it is today) over Quebec rates as St.John, N.B., takes over Montreal rates.

The St.John gateway provides via Canadian Pacific Railway the short mileage to Montreal; from Halifax and other points this route and gateway should be maintained to shippers (with the option of Ste Rosalie) so that the advantage of the short constructive mileage of the Canadian Pacific Railway will continue to function as a rate factor.

These arbitraries over Montreal, first class, should be scaled down on the usual relation between classes 1 to 10, and where commodity rates are published will apply as maxima over Montreal at the class of the commodity so treated.

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Application of Sault Ste Marie Board of Trade.

Schedule A was established as a result of the International Rate Case.

Application was made at the recent hearings, on behalf of the S.S.Marie Board of Trade, asking that the north-western boundary of the territory in which Schedule A applied should be extended to include the Soo branch to the City of S.S.Marie. The representative of the Board of Trade stated that he understood that the limits were Parry Sound and North Bay.

In the discussion which took place, it was understood that while North Bay had been provided for in the original Order, the territory had been extended to cover Sudbury. It appears from checking the rates that an error crept in and that Sudbury is not enjoying the full advantage of the Schedule A rates.

The Schedule A rates equalized certain conditions of water competition and American rail competition. S. S. Marie which is making the application is a water competitive point. It appears from checking the rates that both Sudbury and S.S.Marie have to a modified extent been given the advantage of the Sechdule A. rates. What has been done has been to give the advantage of the Schedule A rates to North Bay. This is something available under the tariff. Then for the mileage beyond North Bay to Sudbury and to S.S.Marie there has been given an arbitrary rate for the additional mileage, which is less than the full Schedule A rates would be for the same mileage; that is to say, what

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is done is not to give Schedule A rates on the through mileage but Schedule A rates on the mileage to North Bay and less than Schedule A rates on the mileage beyond.

As already stated, the reduction is arbitrary. The tariffs do not disclose any exact percentage reduction.

On consideration of the evidence submitted by the applicant and in view of the fact that the Sechedule A territory has been extended to cover S. S. Marie in the way above indicated, it would appear to be justifiable to make provision for Schedule A rates applying as requested, but basing this on the through mileage.

A similar adjustment should be made to Sudbury.

Such additional mileage on the Schedule A scale as is necessary to cover the extension should be provided for.

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Mountain Rates - British Columbia.

The Judgment in the Western Rate Case set out that initial construction and railway operation through the Mountains were much more expensive than operation on the Prairies. It was set out that "some differ- "ences in rates at the present time are not only justi- "fiable but necessary. It is not contended, on behalf "of British Columbia, that operation through the Moun- tains is not much more expensive." The Judgment held that these higher costs could not be "smeared" over the system so that British Columbia would have the same rates as those applying to the Prairie Provinces.

In the present application, various additional contentions were advanced. Emphasis was laid upon the implications alleged to arise from the steps culminating in Confederation.

What is involved in this is somewhat analogous to what was involved in Attorney-General for British Columbia vs. Can.Pac.Ry.Cos.346, in which it was held that under the terms of the contract with the Dominion Government for the construction of the Canadian Pacific Railway, dated Odtober 21st, 1880, Schedule to 44 Vict., Ch.1, the only party who could make any complaint as to their non-observance was the Government of Canada.

Reference was also made to the alleged better climatic conditions existing in British Columbia as affects operating; and there was also set out the

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conditions wh_ich it was contended should be considered as a result of the construction of the Canadian Northern Pacific.

It does not appear necessary to develop the question as to what implications, if any, are to be deduced from the finding regarding the Canadian National, as set out in the Privy Council Order following the appeal from the Board's decision in the so-called "Forty Per Cent Case." It would appear that the opinion of the late Chief Commissioner Mabee, which was quoted with approval in the Western Rate Case by the then Chief Commissioner, Sir Henry Drayton, is applicable here. The opinion in question is - "The "question for us to decide is what rates are fair "irrespective of how much any company is worth or "is not worth."

In view of what is said herein as to the controlling effect of water and United States rail competition in the portion of Canada east of the Great Lakes, the rates there existing cannot be taken as the necessary proper measure of what the British Columbia rate should be.

Under the Western Rate Case, a basis of 1½ for 1 was adopted on the Pacific standard tariff. This, with the appropriate mileage grouping in the tariffs applicable, worked out on the average 30% over the Prairie standard. From 80 to 85% of the British Columbia traffic is carried on commodity rates. In so far as

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these commodity rates are based on percentages of the standard rates, the effects of the standard rate adjustments are carried down, although in much less degree. In the movement on commodity rates of the staples of British Columbia the effect of the Mountain scale is in many cases not apparent.

It is admitted by Counsel for the Province of British Columbia that the costs are still higher on the British Columbia division than on the Prairie divisions. He refers, however, to costs east of the Great Lakes as supporting his contentions. As set out herein, it does not appear that deductions from the experience of other sections whose rates are dominated by water and United States railway competition can be controlling here.

Following the reasoning of the Western Rate Case, a revision in the Mountain scale as provided for in the Pacific standard is justifiable. On careful consideration, the reduction hereinafter provided for should be made; the Board does not feel justified in going any further.

The rates of the new "Pacific" standard mileage tariff are to be constructed by applying the "Prairie" standard tariff for distances up to and including 750 miles (the appropriate maximum haul in British Columbia) 1¼ miles for 1 mile, and to the rates so produced the 25-mile differences of the "Prairie" standard scale be added for each 25 miles over 750 miles, so as to produce standard through rates for part Mountain and part Prairie hauls.

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The distributing rates from recognized mainland distributing centres in British Columbia other than Vancouver and New Westminster, as well as the tariff between Vancouver and New Westminster and points east thereof, will be constructed from the new standard tariff in the same manner as at present, as prescribed in General Order No. 125, May 30th, 1914, and Order No. 31648 of October 11th, 1921, respectively.

All commodity mileage rates applying locally between stations in Pacific territory, also on interchange traffic between Pacific and Prairie territory, to be reduced so as to preserve the same relationship to the new standard mileage scale as they now bear to the present scale, such rates, of course, to be the maxima with regard to special commodity rates specifically published.

Rates on grain and grain products from "Prairie" points to stations in British Columbia, for domestic consumption, where now based on "Prairie" mileage scale, but using constructive mileage of 1½ miles for 1 mile for the Mountain haul, to be reduced by figuring on 1¼ miles for 1 mile for the mountain haul.

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Lumber Rates.

As the rates on lumber and forest products, including pulpwood, logs, poles, posts, etc., are to be reduced by 7½ per cent as hereinbefore described, it will be unnecessary to further consider the application of the Canadian Lumbermen's Association.

Excess Baggage.

By General Order No. 308, passenger fares were increased by 20 per cent up to and including the 31st day of December, 1920, and by 10 per cent from that date until the 1st day of July, 1921, when the passenger rates reverted to the standard of 3.45 cents per mile, and, by the same Order, the rates on excess baggage were increased by 20 per cent. As the rates on excess baggage are built upon a percentage of the passenger fares, it is only logical that, when the passenger fares are reduced, excess baggage should bear the same reduction, and, therefore, it is considered that the rates on excess baggage should go back to the basis prior to September 13th, 1920.

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Equalization between the Prairie Provinces and Eastern Canada.

In the reference to the Board by the Governor-in-Council in the appeal in the so-called "Forty Per Cent Case," the Board's attention was directed to the advisability of conducting an investigation to see to what extent existing disparities of rates between different rate sections could be redressed. The reference was not based on the idea that the disparities were wrong per se. Under the Railway Act, not all discriminations or preferences are forbidden. As was developed with a plentitude of example, in the Western Rates Case, what is forbidden under the discrimination sections are preferences which are undue or discriminations which are unjust. The burden, therefore, was on the Board in the investigations made to ascertain whether under existing conditions the discriminations in rates existing were discriminations which fell under the inhibitions of the Railway Act.

Counsel for the Provinces of Manitoba and Saskatchewan very frankly stated, ".....I have never at any time said otherwise "than that I did not think that of necessity the rate for the "same distance for the same commodity should necessarily be the "same East as West or West as East. In my opinion, the equal "treatment of unequal things is just as bad as the unequal treatment of equal things. I have never advanced, either in argument "before this Board of before any other tribunal, or by evidence "adduced, anything which would lend itself to the suggestion that "I have advocated that any particular rate must of necessity be "the same for any particular distance East as West. There are many "other factors besides mere distance." Counsel continued that 'longer hauls were important in the West; shorter hauls in the East.

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Counsel in thus defining the issue emphasized that conditions peculiar to each of the rate areas compared must be given weight in determining whether the low rate existing for a given distance in one section is to be taken as the criterion of discrimination in another. In so presenting the matter, he was but following the position so clearly laid down by the late Chief Commissioner Killam in the early decisions of the Board, namely, that mere mileage comparisons do not afford criteria of discrimination, but that all facts material must be given weight. In other words, under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination; discrimination, in the sense in which it is forbidden by the Railway Act, is a matter of fact to be determined by the Board.

In the course of argument, Counsel for the Provinces of Manitoba and Saskatchewan emphasized the position that under his view of existing conditions there should be a reduction in grain rates, and, thereafter, there should be reductions on basic commodities, e.g., cattle, lumber, coal and the instruments of production such as agricultural implements.

A further submission was made that articles in Classes 5 to 10, not now covered by commodity rates, should be afforded a reduction. This practically means narrowing down to Classes 5 and 7, as Class 9, which is concerned with cattle, is unimportant from a rate standpoint, cattle moving on a commodity rate. Coal, lumber, and grain also move on commodity rates.

As already pointed out, a reduction, under Statute, has been made in the rates on/ grain and flour. Through the Board's instrumentality, a reduction on cattle was made. The articles of lumber and coal are dealt with specifically in the present Judgment.

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Reference has been made to the greater earning power of Western lines, it being contended there is greater earning power both gross and net. At the same time, the larger mileage in the West, specific reference being made to the Canadian Pacific mileage, may be noted.

The fundamental matter, however, in the present application, so far as the position of Manitoba and Saskatchewan is concerned, is in terms of the reference to the Board by the Governor-in-Council, to ascertain whether there is an unjustifiable discrimination existing as between the rates applicable in the Provinces of Manitoba and Saskatchewan and the rates applicable east of the Lakes. Alberta was not represented by Counsel; but what may be found in regard to the justification or otherwise of the difference between rates in Manitoba and Saskatchewan as compared with the section east of the Lakes will have application to the situation in Alberta as well. While it is set out, as above, that Alberta was not represented by Counsel, it may be said that Counsel for the Province of British Coulmbia dealt with certain phases of the situation concerned in his application as if the interests of Alberta and British Columbia were more or less identical. At the same time, it is not set out in the record by any submission from the Province of Alberta that Counsel for British Columbia was representing Alberta.

In dealing with the situation as between Manitoba and Saskatchewan on the one hand and the section east of the Lakes on the other, the very fair and candid statement made by Counsel for the Provinces of Manitoba and Saskatchewan, which was in substance that mileage is not the fundamental criterion of discrimination must be given weight. It is

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necessary to look to the particular facts affecting the rate adjustments in the particular sections.

The Western Rates Judgment, in dealing with the establishment of special class rates from Lake Superior and Pacific Coast termini, stated, inter alia, that as to lake termini between Port Arthur, Fort William and Westfort and points west thereof, there should apply to and from points east of Winnipeg the Prairie territory town tariff basis, subject to the rates to Winnipeg and St. Boniface as maximum; that to and from Winnipeg and St. Boniface the rates should be no greater than those of the Prairie standard tariff for 290 miles; that to and from points beyond Winnipeg within Prairie territory the maximum first-class rates were to be those of the Prairie standard tariff for the through mileage, made up of actual distance beyond Winnipeg added to the above mentioned assumed mileage of 290 miles east of Winnipeg.

The Judgment in the Western Rates Case sets out how this constructive mileage of 290 miles east of Winnipeg on the movement from the Lake Termini was arrived at. The essence of the arrangement is that the mileage from the Lake to Winnipeg being 424 miles, there is a concession of 134 miles on the movement concerned. This was built up on rate conditions which had developed in the West. There is not the same arrangement existing on a movement from the East to Fort William.

Here, again, the particular facts of the section in which the rate adjustment is made must be considered, and it does not follow that the arrangement herein referred to would be a criterion of discrimination in connection with a complaint as to a different rate adjustment east of the Lakes.

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Having in mind the special conditions of the territory west of the Lakes, a special rate adjustment has been made on the very important commodity of Agricultural Implements. In the shipment of these from points in eastern Canada, e.g., Hamilton to Montreal, inclusive, the rate to western points is on the Chicago basis, that is, the rate from Chicago to said points applies. In view of the system whereby the rates east of Montreal are built up on differences over that point the effect of this rate reduction is carried further east in so far as originating points shipping to the Prairie Provinces are concerned. This, again, is based upon special traffic conditions, and would not necessarily afford a criterion of unjust discrimination in respect of a different treatment in the East in regard to similar mileages concerned.

In the presentation of Counsel for the Provinces of Manitoba and Saskatchewan, reference was made to the difference in classification basis. In the East, the 5th class rate is one-half of 1st. In the West, the 4th class rate is one-half of 1st. Reference was made to this as showing, inter alia, a considerable difference as affecting the important 5th class; and since the distributing rates are built up by taking a percentage off, it was contended that this difference was carried down into the distributing rates.

In general, the apparent conclusion Counsel had in mind was that the Board should construct a basis of its own.

As especial reference was made to the 5th class, some comments in this connection are necessary. In eastern Canada, the 5th class is 50% below the 1st; in Western Canada it is 55%. It may be remarked in passing that in eastern Canada the 5th class is 37½% below the 1st class rate, while in western Canada it is 50% below the 1st class rate.

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Putting it in another way, if the 5th class rate is taken and scaling is made up to the 1st, then in eastern Canada the 4th class rate is 25% above the 5th class rate, while in Western Canada it is 10% above the 5th class rate.

It was suggested by Counsel that the Board should construct a standard of its own, taking the foundation of the western American Classification.

If the Western scale were constructed with the relationship between the classes in conformity with the Eastern scale, starting with the 1st class rating in the Western scale and scaling down the other classes under the eastern plan, this would result in a large increase in the rates for all classes below the 1st.

If one-half of the 1st class in the West were taken and put in the position of one-half of the 1st class in the East, this would mean taking the present Western 4th class, which is one-half of 1st, and putting it in the position of the Eastern 5th class, which is one-half of 1st, and then scaling the other classes on the Eastern plan, the result of this would be to produce the same result as the other method just mentioned.

The question of the standardization of the Western rate scales is dealt with in the Judgment of the Western Rates Case, in Section 19, under the heading of "Standardization". Reference may be made to this as bearing on the history of the development. The citation set out in the Judgment, in the report of the Board's Chief Traffic Officer, the late Mr. Hardwell, emphasizes the advances which would take place if the Western rate scale were standardized on the Eastern Canada basis.

Bound up to the difference in classification basis

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is the difference in one of the fundamental rules of the Classification, namely, that concerned with the Mixing privilege. As a result of a compromise arising out of the strong position taken by the Western Jobbers, the more liberal mixing rule of the East is not applicable west of Fort William. West of Fort William, the mixing rule is limited by the Trade list principle, and, in general, favor is shown, judging from Resolutions filed with this Board by representative trade bodies in the Prairie provinces, to limiting the mixing rule to articles normally moving in carload quantities. This, again, emphasizes a difference in traffic conditions as between the East and the West.

At a meeting held in Winnipeg on April 26th, 1921, at which there were present representatives of the Boards of Trade of Brandon, Calgary, Edmonton, Lethbridge, Montreal, Moose Jaw, Regina, Toronto, Vancouver, Winnipeg and the Saskatoon Chamber of Commerce, as well as representatives of the Canadian Manufacturers' Association, there was under discussion the question of a change from the Trade list principle in the Classification; and the following Resolution was passed:

> 1. It was decided that in the best interests of both Eastern and Western Canada Rule 2 and the trade lists of the present Classification should be continued and substituted for proposed Rule 10 of the Canadian Freight Classification No. 17.
>
> 2. It was also decided that a Classification Committee representing Western Boards of Trade or other business organizations and railways be named to consult with the present Eastern Classification Committee in connection with the provisions of the new Calssification.
>
> 3. It was further the opinion of the meeting that there should be no disturbance at the present time in the present class rate relationships now existing in Eastern and Western Canada as a result of the finding

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of the Board of Railway Commissioners in the enquiries conducted in the Eastern and Western Rate Cases and Orders issued in relation thereto, and subsequent Orders.

4. The Chairman of this meeting was instructed to submit a copy of this resolution to the Board of Railway Commissioners tomorrow.

It may be noted that the Saskatoon Chamber of Commerce dissented from Paragraph 3, and the representative of the Vancouver Board of Trade stated he could not vote in favor of the Resolution but would submit it to his Board of Trade.

It thus appears on the records before the Board that in regard to Classification arrangements there are differences of traffic interest between the Prairie Provinces and the territory east of the Great Lakes. It appears that commercial conditions in the West emphasize a preponderating movement of traffic in carlots and, consequently, any standardization which would effect an increase on the distinctly carload classes would bring about a serious dislocation of business. Here, again, the situation is that differing conditions have brought about different practices and rules, and the rule or practice existing in one section and giving a different treatment is not a necessary measure of discrimination in another section.

Counsel for the Provinces of Manitoba and Saskatchewan stated that there was a difference in average hauls East and West, and while stating that in various cases the shorter hauls were at much lower rates in the West than in the East, he contended that the important matter in the West was the long haul. It is

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a legitimate deduction from this to say that the level of the rate in the East being, according to Counsel's submission, concerned with an average short haul, affords no necessary criterion of what the rate should be on longer haul traffic in the West.

It was testified by the Canadian Pacific Railway Company that its rates on Building materials in the Prairies were lower than in Eastern Canada, there having been taken into consideration the necessities in connection with supplying shelter.

The examples given are illustrative of the fact that differing commercial conditions have brought about differing traffic rates and arrangements, and simply attract attention to the position that it is not in the abstract rates but in the concrete conditions that the measure of determining whether the rate structure is discriminatory or otherwise must be found.

In the Western Rate Judgment, after a very careful analysis of the rulings of the Board in the matter of discrimination and searching analysis of traffic conditions, the Board found that water competition, generally speaking, was effective in the East. It found that, in the main, the rate structure of Eastern Canada was justified on the basis of water and rail competition; and the following language was used:

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"For the reasons stated, I am of
"the opinion that while discrimination exists
"between the rates charged East and West of
"Port Arthur, the discrimination is justified
"under the Railway Act and the decisions of
"the Board already referred to. It is neither
"undue or unjust."

See Section 9 of the Judgment in question.

In the hearings before the Board in the present case, considerable attention was devoted to the matter of water competition in its bearing upon rates in Eastern Canada. Counsel for the Provinces of Manitoba and Saskatchewan was disposed to minimuze the importance of this water competition. It is true that on account of tonnage readjustments arising out of the War and the incidents thereof there have been fluctuations in the water-borne tonnage, yet this does not detract from the fact that from the ocean well into the middle of the continent there is a water highway on which vessels are free to go and come, not tied down to any particular route, and not involving the large fixed investments which are essential to railway transportation. It is also true that adjacent to this section of Canada are the rail lines of the United States which are equally subject to the effect of this water-borne traffic; and it does not appear that any vital change in this respect has taken place since the date of the decision in the Western Rate Case.

While as a consequence, naturally to be expected, from difference of conditions, many Prairie rates have a spread over the Eastern rates, the course of the decisions of the Board, including the present decision, has been to narrow this spread wherever possible.

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The matter has been put in a succinct way in the evidence before the Special Committee appointed to consider Railway Transportation costs. Counsel who appeared before the Board for the Provinces of Manitoba and Saskatchewan represented these Provinces, as well as Alberta, before the Committee. At p. 300 of his evidence, in dealing with the different scales, he said:

> "First, there is the eastern scale which, "I will develop later, is held down by maximums "created by water competition, potential and "otherwise, and by American rail competition."

Again, at p. 301, in summarizing the provisions of the Railway Act in regard to discrimination, he used the following language:

> "The railways, when we replied "that we were discriminated against in "respect of eastern rates answered and "the Board has held it to be a good ans- "wer. True, there is a disparity, a "discrimination, and I propose to give "you the four or five decisions in all "the rate cases to that effect, that there "is discrimination, a disparity against "us, but the railways have satisfied the "onus of showing that it is not unjust "or undue, because railway rates in the "east are held down by water competition and "American rail competition, something they "cannot control, and therefore that excuses "that discrimination."

The Board holds that the differences in rates as between the Prairie Provinces and Eastern Canada as referred to do not constitute an unjust discrimination or undue preference.

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Conclusions.

All steam railways in Canada under the jurisdiction of this Board shall file tariffs, effective the first day of August next, providing for the following reductions, viz.:-

(a) On the articles, other than grain and flour, hereinbefore referred to as basic commodities, namely,- forest products, building material, brick, cement, lime, and plaster, potatoes, fertilizers (other than chemicals), ores, pig iron, blooms, billets, wire rods, and scrap iron, a decrease of 7½ per cent from the increase given by General Order No. 308 and any other Orders affecting the said commodities issued since that date, which will hereafter leave the increase granted by said General Order No. 308, in Western Canada, at 12½ per cent and, in Eastern Canada, at 17½ per cent; the term "forest products" as set out in such list to be defined as follows:-

In the territory east of Port Arthur, Ontario, in accordance with the list of commodities shown in C.P.R. tariff C.R.C. No.E-3818 as taking rate basis "A"; in the tariffs from British Columbia to Prairie points on the commodities taking Group A and Group B rates, as shown in C.P.R. tariff C.R.C. No.W-2573; and from stations in Alberta and British Columbia to stations in Eastern Canada, in accordance with the Canadian Freight Association tariff C.R.C. No.30; also on pulpwood west of Port Arthur, Ontario.

In cases where reductions heretofore granted or ordered upon these commodities have not amounted to 7½ per cent as above described, they shall be reduced to that point, and, where they exceed 7½ per cent, they will remain

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FM/

Conclusions.

All steam railways in Canada under the jurisdiction of this Board shall file tariffs, effective the first day of August next, providing for the following reductions, viz.:-

(a) On the articles, other than grain and flour, hereinbefore referred to as basic commodities, namely,- forest products, building material, brick, cement, lime, and plaster, potatoes, fertilizers (other than chemicals), ores, pig iron, blooms, billets, wire rods, and scrap iron, a decrease of 7½ per cent from the increase given by General Order No. 308 and any other Orders affecting the said commodities issued since that date, which will hereafter leave the increase granted by said General Order No. 308, in Western Canada, at 12½ per cent and, in Eastern Canada, at 17½ per cent; the term "forest products" as set out in such list to be defined as follows:-

In the territory east of Port Arthur, Ontario, in accordance with the list of commodities shown in C.P.R. tariff C.R.C. No.E-3816 as taking rate basis "A"; in the tariffs from British Columbia to Prairie points on the commodities taking Group A and Group B rates, as shown in C.P.R. tariff C.R.C. No.W-2573; and from stations in Alberta and British Columbia to stations in Eastern Canada, in accordance with the Canadian Freight Association tariff C.R.C. No.30; also on pulpwood west of Port Arthur, Ontario.

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as they are at present.

These reductions are made upon the same basis in both Eastern and Western Canada with the object of preserving the same spread between these territories as was provided by General Order No. 308.

(b) On coal, other than anthracite and coal from the head of the lakes westward, all increases provided for by General Order No. 308 to be rescinded;

(c) On commodities moving under class and commodity rates between points east of Montreal and points west of Port Arthur and Fort William, the establishment of arbitraries as provided for herein;

(d) On the territory between North Bay and Sault Ste.Marie, Schedule A rates to be applied;

(e) Mountain rates to be reduced to the basis provided for herein; and

(f) The increase in excess baggage rates, as provided for in General Order No.308, to be eliminated.

With the above exceptions, all tariffs now in effect, either under the provisions of General Order No.308, as amended by General Order No.350, or as the result of voluntary action by the carriers, shall remain in force.

Ottawa, June 30th, 1922.

(SGD.) A. D. CARTWRIGHT,
Secretary, B.R.C.

"I Concur"
(SGD) F. B. C.
S. J. McL.
A. C. B.
J. G. R.
C. L.

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P. C. 455 C 49692 R-1109 A-1002

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 17TH MARCH 1922

PRIVY COUNCIL CANADA

The Committee of the Privy Council, on Saturday the 25th day of February, 1922, have had under consideration the Petition of the National Dairy Council of Canada, asserting an appeal under the provisions of Section 52 of Chapter 68 of the Statutes of Canada, 1919, being the Railway Act of A.D. 1919, against the decision of the Board of Railway Commissioners of Canada made the 15th day of February, 1921, whereby the said Board dismissed the application of the Petitioners herein, in which they applied to have the advance or increase of twenty per cent formerly allowed on express rates on cream, removed.

The history of the case is briefly set forth in the Petition of the appellants, and the facts as there stated appear to be accepted by both sides and are as follows, in part:

> "On the 22nd day of July, 1920, the Express Companies doing business in Canada, appealed to the Railway Commission for a flat increase of forty per cent. of all express rates. They submitted to the Board in support of their application evidence to show that the cost of operations had so increased that they were unable to carry on without an increase in their revenue. They also submitted evidence to show that the value of the goods they transported had materially increased and they argued that they were, therefore, entitled to an increase in rates. In the judgment of the Chief Commissioner, Honourable F. B. Carvell, dated February 2nd, 1921, the Express Companies were granted increases of thirty-five per cent. on first class rates, twenty-five per cent. on second class rates and twenty per cent. on "commodity" rates. Cream moves under "commodity" tariffs and therefore cream rates were increased twenty per cent."

And

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An application was made to the Board on the 15th November, 1921, asking for the removal of the twenty per cent. increase allowed as above stated, so far as that increase effected the article of cream, which motion or application was dismissed by the Board and this appeal is to all intents and purposes from the decision or order of the Board dated 2nd February, 1921, as well as from the decision of 15th November, 1921, insofar as either decision has a bearing upon the increased rate on the carriage of cream by the Express Companies herein.

There is no appeal from the thirty-five per cent. and twenty-five per cent. increases allowed on the first class and second class rates, and the only matter on appeal is the twenty per cent. increase on the class of express "commodities" which include cream. If the rate of cream could be dealt with by itself, it would be comparatively simple, but cream is only one of a variety of goods or merchandise classed for rating purposes as "commodities", and consisting at least of fruit, fish, vegetables and cream. The flat increase of twenty per cent. allowed by the Board on February 2nd, 1921, applies equally to whatever comes within the "commodity" group, and for that reason it would appear that if there is to be a reduction in the rate on cream, that there should be a further hearing by the Board for the purpose of ascertaining whether or not there should be a reduction on the various other classes of merchandise comprised in the...

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the "commodity" group, and the Committee of the Privy Council is of opinion that in view of the material fall off in the market value of cream a corresponding reduction, if possible, should be made in the express freight rates, and if after hearing further evidence in regard to the various classes of goods included in "commodities", the Board is of opinion that a general reduction of the "commodities" rates cannot consistently be made, then and in such case a specific rate should be fixed for the subject matter of this appeal and along the lines hereinbefore suggested. The Committee of the Privy Council for the purpose above mentioned, advise that this appeal be referred to the Board, for further consideration.

Clerk of the Privy Council.

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EXTRACT OF LETTER WRITTEN TO HONOURABLE GEORGE E. AMYOT.Fyle T-1007 C 49695 R-1109

COPY

Ottawa, August 23, 1922.

I am deeply interested in what you have written of the bearing of the railway rates situation upon the problem of our Canadian West. I shall take an early opportunity of discussing with my colleagues the considerations which your representations naturally suggest. I share entirely your view that very much could be done, through a further consideration of the railway rate problem, to render the greatest of all services to the western half of our Dominion.

W. L. Mackenzie King

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C 49696 R-1109 C.N.P. - Vol I

NELSON R. BUTCHER & Co
STENOGRAPHERS

THE RAILWAY COMMISSION.

VANCOUVER PROVINCE : The Railway Commission was organized very largely for the express purpose of keeping the question of freight rates out of politics. The supreme test of its usefulness seems to be pending, and the Commission should be given every opportunity to make good. It has made good in the past. It has attempted by a series of judgments extending over years, to iron out unjust discrimination in Canada, and it has made good progress. It has been competent and painstaking, and its judgments have been based on the principles of equity. There is no reason to believe it would prove false to its traditions if the great task of examining and adjusting the freight rates clear across the country were committed to it. The probability is that it would do very well. It could not possibly make a worse muddle than Parliament will inevitably make if it goes playing with freight rates itself.

MAN 7 Rec'd

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C 43697 R-1109 Vol. 1. C.N.P

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P.C.1219.

PRIVY COUNCIL CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 30th day of JUNE, 1923.

PRESENT

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL.

WHEREAS Chapter 41 of the Statutes of Canada, 1922, entitled "An Act to amend the Railway Act, 1919", provides as follows:

> 1. Subsection 5 of section 325 of the Railway Act, 1919, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by order of the Governor in Council published in the Canada Gazette; provided, that notwithstanding anything herein or in said subsection 5 contained, rates on grain and flour shall, on and from the 6th day of July, 1922, be governed by the provisions of the agreement made pursuant to Chapter 5 of the Statutes of Canada 1897".

NOW THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Railways and Canals, and in virtue of the authority vested in him by the said Chapter 41 of the Statutes of Canada, 1922, is hereby pleased to order that the said subsection 5 of Section 325 of the Railway Act, 1919, shall be and the same is hereby continued in force for a further period of one year, that is, until the 6th day of July, 1924, subject to the proviso contained in the said Act with respect to rates on grain and flour.

Clerk of the Privy Council.

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C 49698 R-1109 Vol. 4

Re reference re Crows Nest Pass

Certified copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor General on the

24th October, 1923

PRIVY COUNCIL CANADA

P.C.2165

The Committee of the Privy Council having had under consideration a Petition to the Governor in Council by the Attorney General of the Province of British Columbia, acting on behalf of the Province of British Columbia and by the Attorney General of the Province of Alberta acting on behalf of the Province of Alberta, by way of appeal from a General Order of the Board of Railway Commissioners for Canada dated the 30th June, 1922, made as the result of a general investigation and enquiry as to Railway Rates in Canada recommended by Order in Council of the 6th October, 1920 (P.C.2434), submits as follows:

The Order appealed against is one made by the Board of Railway Commissioners for Canada, dated the 30th day of June, 1922, in consequence of a reference to the said Board pursuant to the provisions of Order in Council of the 6th October, 1920 (P.C.2434) which primarily related, among other things, to the alleged discrimination in Freight Rates against Western Canada as compared with those prevailing in Eastern Canada.

During the hearing, the Province of British Columbia applied to the Board to be heard, asking that the scale of rates then existing upon the Prairies be extended to the Pacific Ocean. It was admitted that the Pacific Scale of so-called Class and Distributing rates was based upon a ratio of one and one-half miles of Prairie Territory to one mile of Pacific territory.

The Committee deems it proper to call attention to the provisions of Section 52 of the Railway Act (1919) under which this application was heard and to observe that while this section confers upon the Governor in Council very wide powers as to varying or rescinding any Order of the Board, and while the discretion so vested in His Excellency in Council in proceedings under this Section is not subject therein to any defined limitation the intent of the legislation is to invest His Excellency in Council with judicial powers by which he may in his discretion aid in securing and enforcing the provisions of the Railway Act having due regard to the method of railway rate regulation by an independent commission which was the outstanding innovation in the Railway Act of 1903 and which has been preserved throughout succeeding revisions of the Act to the present time.

The Act of 1903 provided for the creation of a Board of Railway Commissioners, and constituted it a Court of Record with all the powers of such a Court as to the hearing of witnesses and obtaining of evidence. The members of the Board are peculiarly qualified by long and varied experience to deal with the highly technical subjects which come before them, and for the purposes of investigations have available an efficient

expert

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expert organization and a complete system of statistical and other records accumulated from year to year in the course of their administration of the provisions of the Act.

For these reasons it does not appear to Your Committee that it is desirable, except under very extraordinary circumstances, that the Governor in Council should undertake to re-hear or review the decisions of the Board, as to whether upon the facts appearing in the evidence before it in any particular case the provisions of the Statute with regard to rates have been complied with. This observation is particularly pertinent in the present case which arises out of a General Investigation undertaken pursuant to the direction of His Excellency in Council.

In the present case it appears that the allegations of the Petition and the arguments of Counsel representing the Petitioners relate wholly to questions of fact and the principles in regard to the Regulation of Railway Rates in Canada under the jurisdiction of the Board.

The Order in question was made as the result of a very thorough enquiry by the Board extending over a period of more than a year and a half preceding the date of the Order during which hearings took place in all parts of Canada. At such hearings representatives of Boards of Trade, Municipalities, Provinces and other interested parties were present or represented, and voluminous exhibits and statements were presented and filed. The Judgment upon which the said Order was based revised and altered in important respects the rates of toll throughout the Dominion including the so-called Pacific Scale of Rates, which was by it reduced from the ratio of one and one-half miles on the Prairies to one mile in Pacific Territory, to a ratio of one and one-quarter miles on the Prairies to one mile in Pacific Territory.

The Province of British Columbia filed a Petition to the Governor in Council by way of appeal from this decision of the Board, and later the Province of Alberta was joined as a party to the Petition. On the argument, Counsel for both of these petitioners were heard in support of the Petition which was opposed by Counsel for the Manitoba Government and Winnipeg Board of Trade and for the Railway Companies interested.

One of the main grounds of appeal dealt with on the argument was that regarding the Export Grain Rates from points in Alberta, Saskatchewan and Manitoba to Vancouver and other British Columbia Coast points. This matter has been specifically dealt with by Order in Council of the 2nd October, 1923 (P.C.2007).

The Committee, therefore, recommends that all other subjects of complaint referred to in the said Petition be also remitted to the Board of Railway Commissioners for Canada to be dealt with as it may deem proper upon the evidence already adduced and the arguments presented before the Board and before Your Excellency in Council.

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The Committee observes, however, that in view of the vital importance of facilitating the interchange of commodities between the various sections of Canada, railway rates should be maintained at as low a basis as possible having regard to all proper considerations. Accordingly the Committee is of the opinion that in the future, should transportation and traffic conditions so change as to render practicable a nearer approach to equalization of rates as between Prairie and Pacific Territory, the Board should in the exercise of its discretion take such action as may be necessary to bring about this result.

All of which is respectfully submitted for approval.

Clerk of the Privy Council.

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Exhibit "D" (a) File A 1000-1924

C 49701 Coll - Freight Rates (2) - Crows Nest Pass.

REINSTATEMENT OF THE CROWS NEST PASS AGREEMENT.

The position the Council takes in regard to this matter is that the agreement in its entirety should be reinstated.

We do not admit that the argument of increased cost of operation is a valid one against this reinstatement - While we are prepared to admit that operating costs have increased,we, at the same time, submit to you that the increased value of concessions granted to the Canadian Pacific Railway from time to time by way of subsidies, lands, mineral rights, water rights, exemptions, etc, fully offset this. This is a matter that affects the whole of Canada in that Eastern and Western rates are affected.

We would respectfully draw your attention to the protection guaranteed to the people under this contract, and would further submit that if this protection is not restored at once the sacredness of contract in this country will be severely shaken.

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Crows' Nest Agreement

"WHEREAS the Crows' Nest Pass Agreement was entered into between the Federal Government and the C.P.R. whereby, in return for a grant of $3,400,000 in connection with the construction of the Crows' Nest Pass Railway, the said C.P.Railway agreed to certain maximum rates on specified basic commodities,

"AND WHEREAS the said agreement was suspended at the request of the Canadian Pacific Railway by the Federal Parliament in the session of 1919 for three years,

"AND WHEREAS, at the expiration of the three year period, the agreement was reinstated only insofaras it applied to grain shipments from points in Western Canada to Fort William,

"BE IT RESOLVED that we urgently request the Parliament of Canada to take the necessary steps to restore the terms of the agreement as it applied to all commodities before its suspension."

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P.C. 880

C 49703 R-1109
Vol. I-C, N.P
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PRIVY COUNCIL
CANADA

IN THE MATTER OF
SECTION 325 (5) OF THE RAILWAY ACT
OF 1919 AND OF THE STATUTES OF 1922,
CHAPTER 41.

- MEMORANDUM -

Pursuant to the provisions of Chapter 41 of the Statutes of 1922, the rates on grain and flour mill products were restored in July, 1922, to the basis fixed by the Crow's Nest Act of 1897. The westbound commodities mentioned in the Act remained on the basis of rates fixed under the various judgments of the Board of Railway Commissioners.

On July 6th, 1924, the Order in Council of June 30th, 1923, suspending the application of the Crow's Nest rates, will expire, resulting automatically in their restoration to the basis of 1898, as outlined by the Act.

The same conditions that withheld the application of the Crow's Nest Act rates to these westbound commodities exist today that governed in 1922 and 1923. Wage conditions, which absorbed 51.3% of operating revenue in 1922, absorbed 51.8% in 1923. These costs represented 57.5% of Canadian railway operating expense in 1922, and 60.1% in 1923. Fuel and locomotive expense shows an infinitesimal reduction, but supplies and materials have materially advanced. Compared with 1898, when the Crow's Nest Act became effective, labor costs have advanced from 111% to 350%, while the material used by the carriers shows advances varying from 50% to 250%. The seriousness of this is reflected in the fact that material costs represent an expenditure of about 70¢ for every dollar of payroll expense.

As outlined in the evidence presented to the Special Committee appointed to consider railway transportation costs in June, 1922, Eastern shipping points which, in 1898, were practically the sole sources of supply for western requirements, have been supplanted by western development, reversing the transportation

To
The Right Honourable
W.L. Mackenzie King, P.C., C.M.G.,
Prime Minister of Canada.

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movement, particularly in the case of fruit, apples, coal and linseed oil, petroleum products, bar iron, paints and cattle; all commodities enumerated by the Crow's Nest Act of 1897.

A restoration of westbound rates of 1898 from Eastern Canada and the lake head ports on so-called Crow's Nest Act Commodities, leaving the augmented charges of 1924 to rest on the shipments from other sources that have developed since the passage of the Crow's Nest Act, creates a disparity of treatment by Act of Parliament. On the other hand the application to a substantial portion of westbound traffic of rates effective under the conditions prevailing in 1898 would be a serious injustice to the carriers operating under the highly increased costs of 1924.

Consideration must be given to the fact that commodities outlined in the Act were not subject to as great an advance in rates to Western destinations as those on other commodities moving between other sections of the Dominion.

Since the Act of 1897, the Railway Act has been revised and the Board of Railway Commissioners created. Since the rates outlined by the Crow's Nest Act were operative, the Canadian National Railway controlling approximately two-thirds of the railway mileage of the Dominion and operating in every Province of Canada, has come into existence. While the terms of the Act only bear on the tariffs of the Canadian Pacific Railway they in turn compel the Canadian National Railways to grant reductions on specific commodities in limited territory and in one direction, while maintaining the schedule of rates outlined in the Orders of the Board of Railway Commissioners in other directions and outside of these limits.

The revenue of the Canadian National Railways is still short of the amount required to meet fixed charges, and in order to minimize the burden of public taxation transportation rates should be reduced only in instances where by so doing commercial activity will be retained or augmented. The restoration of Crow's Nest Agreement rates will not accomplish such result.

Under these circumstances we submit that freight tolls, without exception, throughout the Dominion should be dealt with finally by the tribunal created by Parliament for that purpose and that the judgments of that tribunal should no longer be restricted by legislation passed under circumstances that radically differ from those of today.

Appended hereto is a printed memorandum prepared jointly by the Traffic Departments of the two Railway Companies, setting forth in greater detail the commercial and traffic conditions relating to the various commodities in question and the effect of the restoration of the so-called Crow's Nest Act Commodity Rates.

DATED the 15th day of May, 1924.

CANADIAN NATIONAL RAILWAY COMPANY.
"Sgd."H.W. Thornton. - Pres.

CANADIAN PACIFIC RAILWAY COMPANY.
"Sgd." E.W. Beatty. - Pres.

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Freight Rates - Crows Nest Pass ✓

C 49705 9

PRIME MINISTER'S OFFICE

MEMORANDUM

JUNE, 1924.

MR. KING:

Mr. Graham inquires if a meeting with the representatives of the Canadian Pacific and the Canadian National Railways can be arranged for some time next Friday morning. He is anxious to get early word, as all the parties concerned will have to be telegraphed.

He leaves it to you to indicate the hour and also the members of Council who should be present.

F.A. McGREGOR
McG.

10 30 Friday — King Dr / Mackenzie / Stewart / McMurray / Graham / Murdock / Lapointe / Bureau / Coté, McLean / Bell

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C 49706

R-1109

9

Freight Rates - Crows Nest Pass

Monday,
June 23,
1924

E.J.

MR. LEMAIRE:

The Prime Minister has designated Friday morning, June 27, at 10.30 a.m. as the time for the further hearing of the Railway Rates case. Mr. King wishes me to ask you to send out immediately notices to all the representatives of the railways concerned. The meeting is to be held in Room 239, East Block.

The following Ministers are to be asked to be present:

Honourable Dr. J.H.King,
Honourable W.R. Motherwell,
Honourable Chas. Stewart,
Honourable E. J. McMurray,
Honourable Geo. P. Graham,
Honourable James Murdock,
Honourable Ernest Lapointe,
Honourable Jacques Bureau,
Honourable A. B. Copp,
Honourable E. M. Macdonald.

W. A. McGREGOR
Private Secretary.

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C 49707

FREIGHT REVENUE.

From 1 ton finished product at Selkirk Mill.

Incoming.		Source of supply.	Railway earning.	
Material reproductive.				
2300 lbs.	Scrap.	Within 100 mile radius of Wpg.	@ 2.50 ton	$ 2.88
16 "	Manganese.	England.	@ 1.25 "	.20
9 "	Silicon.	Niagara.	@ 1.19 "	.10
Material not reproductive.				
10 lbs.	Magnesite.	Quebec.	.84¢	.08½
280 "	Limestone.	Stonewall and	@ .05½¢	1.54
12 "	Manganese.	Moose horn.		
15 "	Fluor Spar.	Granby, B.C.	.63¢	.08½
90 "	Bank Coke.	Fernie.	.33¢	.30
40 "	Grey Sand.	(Beausejour &)	.6½¢	.02½
20 "	Silica "	(Minneapolis.)	.18	.03½
12 "	Fire Clay.	Moose Jaw.	.25	.03
2 "	Chrome Ore.	Chicago.	.80	.01½
10 "	Moulds.	Winnipeg.	.8½	.01
68 "	Brick.	Moose Jaw.	.25	.17
650 "	Oil.	Regina.	.57	3.70½
8 "	Lumber.	Various		.10
1400 "	Coal.	Fort William & Duluth	4.10	3.50
60 "	General Supplies.	Various.	.65	.36
4988				

$13.14 per ton. 20 tons - $262.80

Freight on minimum car 20 tons Bars Selkirk to Calgary. 392.00

654.80

Average revenue from material shipped from Selkirk per ton $32.74

Average revenue from material shipped from Vancouver per ton $79.60

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C 49708

June 23rd, 1924.

COMPARATIVE FREIGHT CHARGES ON
RAW MATERIALS.

			1898 to 1918.		1918 to 1924.
	Quantity.	Rate.	Per ton finished steel.	Rate.	Per ton finished material.
Coal.	1400	2.70 per ton	1.89	3.50	2.45
Scrap.	2300	3½¢ per 100 lbs.	.81	5.05	1.15
Brick Fire	80	3.40 per M	.14	.25	.20
Oil	480 lbs	38¢ per 100 lbs.	1.82	.60	2.88
Sand local		5½¢ per 100 lbs.	.02	.6½	.02½
" Silica		13¢ per 100 lbs.	.02½	.17	.03½
Limestone	280 lbs	4½ per 100 lbs.	.12½	.5½	.15
			4.83		6.89
General Items say			.65		.90
Coke Moulds Manganese Silicon Fluor Spar Magnesite			5.48		7.79
Increase →			2.31		
			$ 7.79		$ 7.79

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Exhibit 1.

Comparative statement of the present rates, in cents per 100 lbs. on various commodities, Eastern and Western Canada.

The stations and rates in Eastern Canada are from the Memorandum presented by the Canadian Pacific Railway and the Canadian National Railways to the Dominion Government requesting the suspension of the Westbound Commodity rates guaranteed under the Crow's Nest Agreement. The mileages are from the Official Distance Tables of the Companies.

The rates in Western Canada are from Fort William to various stations in Manitoba, Saskatchewan and Alberta, Canadian Pacific Railway Tariff No. W4965, C.R.C. No. W2655. The distances are from the Official Distance Table of the Company.

Green and Fresh Fruits

Fort William to		Miles	Present Rates	Western rates higher by	St.Catharines to	Miles	Present rate
Oak Lake,	Man.	585	99	45%	Quebec	584	68
Virden	"	600	102	57%	Sherbrooke	603	65
					Sarnia Ont. to		
Percival,	Sask.	676	87	57%	Quebec	673	55
Tompkins	"	978	117	72	St.John,N.B.	980	68

Coal Oil

Binder Twine

					Montreal to		
Bagot,	Man.	491	68	30%	St.John,N. B.	488	52½
Pilot Butte,	Sask.	767	98	53	Halifax	767	64

Agricultural Implements

					Hamilton to		
Chater	Man.	547	62	26%	Quebec	546	49
Mortlach,	Sask.	843	92	50	St.John	858	61½
Tilley,	Alta.	1129	117	85	Halifax	1129	63

Iron Commodities

					Hamilton to		
Chater	Man.	547	74	56%	Quebec	546	47½
Parkbeg,	Sask.	852	107	88	St.John	850	57

Wire

					Windsor to		
P.La Prairie,	Man.	475	65	57%	Ottawa	479	41½
Brandon,	Man.	553	75	80	Montreal	555	41½
Sintaluta,	Sask.	723	93	72	Quebec	729	54
Wapella	"	655	87	66	Sherbrooke	658	52½
Wolseley	"	714	93	56	Megantic	727	59½

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Building Paper

Fort William to		Miles	Present Rates	Western rates higher by	Portneuf to	Miles	Present rate
Burnside,	Man.	483	66	90%	Toronto	482	35
Carberry,	"	525	72	90	Hamilton	522	38
Kirkella	"	623	83	110	St.John	626	39½

Paints and Oils

					Montreal to		
Burnside,	Man.	483	66	26%	St.John	488	52½

Furniture

					Kitchener to		
Kemnay,	Man.	561	84	19%	Quebec	559	70½
Secretan,	"	863	120	39	St.John	863	86½
Brooks,	Alta.	1142	149	60	Halifax	1142	89

Note the heavy percentages on the long hauls. The Prairie Provinces are a long haul country.

Compiled by Alex McDonald,
Winnipeg, 12th June, 1924.

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Supplement to the statement dated June 12th, 1924, compiled from the Memorandum of the Railways with the rates from Fort William to stations in Saskatchewan for similar distances. Present rates in cents per 100 lbs. Eastern and Western Canada.

Agricultural Implements

Fort William to		Miles	Present Rates	Western rates higher by	Hamilton to		Miles	Present rates
Pilot Butte,	Sask.	768	84	36%	McAdam	N.B.	766	61½
Chaplin	"	872	93	51	Spruce Lake	"	874	61½
Swift Current	"	929	98	60	Edmunston	"	929	61½

C.P.R. No. E 2880, C.R.C. No. E3221.

Binder Twine

Fort William to		Miles			Welland to			
Ernfold	Sask.	885	111	67%	St. John,	N.B.	888	66½
Seward	"	943	116	74	St. Leonard Junction,	N.B.	941	66½
Gull Lake	"	964	117	75	Edmunston	"	967	66½

C.P.R. No. E2880, C.R.C. No. E 3221.

Wire, Iron, Nails, etc.

Fort William to		Miles			Hamilton to			
Pilot Butte,	Sask.	768	98	72%	McAdam	N. B.	766	57
Ernfold	"	885	111	93	South Devon	"	885	57
Swift Current	"	929	114	100	Edmunston	"	929	57

C.P.Ry. No. W 4965, C. R. C. No. W 2655 C.P.R. No. E3608, C.R.C. No. E.3832

The above stations were not included in the Railway Memorandum.

Compiled by Alex McDonald,
Winnipeg, 13th June, 1924.

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Exhibit 2

Statement of the mileages, and rates according to the Crow's Nest Agreement, from Toronto, to various stations in Manitoba; from Fort William to the same stations in Manitoba, mileages and Crow's Nest rates, also the mileages and rates between various stations in Eastern Canada with the Crow's Nest rates from Fort William for similar distances. With the exception of the third column, the remainder of the stations, Eastern and Western Canada, were obtained from the memorandum presented by the Railways to the Dominion Government under date of May 15th, 1924.

Schedule A - Green and Fresh Fruits

Toronto to	Miles	Rate	Fort William to	Miles	Rate	Fort William to	Miles	Rate	St.Catharines Ont. to	Miles	Rate
Winnipeg	1233	80½	Winnipeg	420	40½	Savanne	72	40½	Toronto	71	29
P la Prairie	1288	96½	P.la Prairie	475	56½	Oakbank	406	40½	Montreal	403	55½
Brandon	1366	104	Brandon	553	63	Oak Lake	585	66	Quebec	584	68
						Virden	600	68	Sherbrooke	603	65

Schedule B - Green Apples

									Belleville Ont. to		
Winnipeg	1233	53	Winnipeg	420	29½	Eng.River	111	29½	Toronto	116	29
P.la Prairie	1283	63	P la Prairie	475	39½	Hawk Lake	269	29½	Ottawa	264	30½
Brandon	1366	67½	Brandon	553	44	Eagle Riv.	228	29½	Montreal	223	36½
						E.Selkirk	405	29½	Quebec	496	45½
						Ingolf	324	29½	Sherbrooke	324	43

Schedule C - Coal Oil

									Sarnia Ont. to		
Winnipeg	1233	63½	Winnipeg	420	35½	Tache	176	37½	Toronto	170	29
P la Prairie	1288	75	P la Prairie	475	47	Austin	504	49½	Montreal	504	47
Brandon	1366	81	Brandon	553	53	Percival	676	65	Quebec	673	55½
						Tompkins	978	85	St.John N.B.	980	68

Schedule D - Binder Twine

									Welland, Ont. to		
Winnipeg	1233	72	Winnipeg	420	40½	Savane	72	39½	Toronto	79	25
P la Prairie	1288	84½	P la Prairie	475	53	Tache	176	40½	Peterboro	171	34½
Brandon	1366	91	Brandon	553	59½	Dryden	211	40½	Windsor	212	34½
						Wabigon	198	40½	Owen Sound	197	36½
						Bagot	491	56	Montreal to		
						Pilot Butte	767	80	St.John	488	52½
									Halifax	767	64

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Schedule E - Agricultural Implements

Toronto to	Miles	Rate	Fort William to	Miles	Rate	Fort William to	Miles	Rate	Hamilton to	Miles	Rate
Winnipeg	1233	68½	Winnipeg	420	40½	Keewatin	297	40½	Ottawa	296	37½
P. la Prairie	1288	74½	P.la Prairie	475	46½	Molson	382	40½	Montreal	384	38
Brandon	1366	80	Brandon	553	52	Chater	547	52	Quebec	546	49
						Mortlach	843	73½	St. John	850	61½
						Tilley	1129	90½	Halifax	1129	63

Schedule F - Iron Commodities

Winnipeg	1233	72	Winnipeg	420	40½	Buda	40	34	Toronto	40	15½
P. la Prairie	1288	84½	P. la Prairie	475	53	Kenora	297	40½	Ottawa	296	35
Brandon	1366	91	Brandon	553	59½	Lydiatt	389	40½	Montreal	384	35
						Chater	547	59½	Quebec	546	47½
						Parkbeg	852	84½	St. John	850	57

Schedule G - Wire

									Windsor, Ont. to		
Winnipeg	1233	72	Winnipeg	420	40½	P.la Prairie	475	53	Ottawa	479	41½
P. la Prairie	1288	84½	P. la Prairie	475	53	Brandon	553	59½	Montreal	555	41½
Brandon	1366	91	Brandon	553	59½	Sintaluta	723	76½	Quebec	729	54
						Wapella	655	68½	Sherbrooke	658	52½
						Wolseley	714	75½	Megantic	727	59½

Schedule H - Paper, Building and Roofing, also Roofing Felt

									Portneuf, Que. to		
Winnipeg	1233	72	Winnipeg	420	40½	Finmark	33	33½	Quebec	35	13
P. la Prairie	1288	84½	P. la Prairie	475	53	Notman	142	40½	Montreal	138	19½
Brandon	1366	91	Brandon	553	59½	Burnside	483	54	Toronto	482	35
						Carberry	525	56½	Hamilton	522	38
						North Transcona	414	40½	London	413	42½
						Kirkella	623	65	St. John	626	39½

Schedule J - Window Glass

									Montreal to		
Winnipeg	1233	72	Winnipeg	420	40½	Tache	176	40½	Quebec	173	34½
P. la Prairie	1288	84½	P. la Prairie	475	53	English River	111	40½	Sherbrooke	113	29
Brandon	1366	91	Brandon	553	59½	Niblock	97	40½	Three Rivers	96	27½
						Bonheur	130	40½	Ottawa	121	29
						Whitemouth	366	40½	North Bay	365	45½

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Schedule K - Paints and Oils

Toronto to	Miles	Rate	Port William to	Miles	Rate	Port William to	Miles	Rate	Montreal to	Miles	Rate
Winnipeg	1233	72	Winnipeg	420	40½	Tache	176	37½	Quebec	173	34½
P. la Prairie	1288	84½	P. la Prairie	475	53	English River	111	37½	Sherbrooke	113	29
Brandon	1366	91	Brandon	553	59½	Bonheur	130	37½	Ottawa	121	29
						Burnside	483	48	St. John	488	52½

Schedule L - Woodenware

									Ottawa to		
Winnipeg	1233	72	Winnipeg	420	40½	Bonheur	130	40½	Montreal	121	29
P. la Prairie	1288	84½	P. la Prairie	475	53	Dryden	211	40½	Three Rivers	215	37½
Brandon	1366	91	Brandon	553	59½	Tache	176	40½	Quebec	173	40
						English River	111	40½	Sherbrooke	113	37½
						P. la Prairie	475	53	St. John	488	55½

Schedule M - Furniture (New)

									Kitchener to		
Winnipeg	1233	86	Winnipeg	420	47½	Finmark	33	36	Hamilton	31	27½
P. la Prairie	1288	100½	P. la Prairie	475	100½	Raith	53	37	Toronto	58	29
Brandon	1366	108	Brandon	553	108	Busteed	308	47½	Ottawa	309	55½
						Hazelridge	400	47½	Montreal	398	59½
						Kenmay	561	69½	Quebec	559	70½
						Secretan	863	93½	St. John	863	86½
						Brooks	1142	149	Halifax	1142	88

Compiled by Alex. McDonald,
Winnipeg, 9th June 1924.

C 49715

Exhibit 3

Summary of statement compiled from Memorandum of the Railways, Carload Rates, Eastern and Western Canada

Eastern Canada		Western Canada	
Miles	**Rate**	**Miles**	**Rate**
	Green and Fresh Fruits		
584	68	585	(x)66
603	65	600	68
	Coal Oil		
673	55½	676	65
980	68	978	85
	Binder Twine		
488	52½	491	56
767	64	767	80
	Agricultural Implements		
546	49	547	52
850	61½	843	73½
1129	65	1129	90½
	Iron Commodities		
546	47½	547	59½
850	57	852	84½
	Wire		
479	41½	475	53
555	41½	553	59½
729	54	723	76½
658	52½	655	68½
727	59½	714	75½
	Paper, Building and Roofing, also Roofing Felt		
482	35	483	54
522	38	525	56½
626	39½	623	65
	Window Glass		
365	45½	366	(x)40½
	Furniture		
559	70½	561	(x)69½
863	86½	863	93½
1142	88	1142	149

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Eastern Canada		Western Canada	
	Paints and Oils		
Miles	**Rate**	**Miles**	**Rate**
488	52½	483	(x)48
	Woodenware		
113	37½	111	40½
121	29	130	40½
173	40	176	40½
215	37½	211	40½
488	55½	475	(x)53

(x) In only five cases are the rates lower in Western Canada than in Eastern Canada. In all the other cases (24), the rates in Eastern Canada will be lower than the rates in Western Canada when the Crow's Nest rates come into effect.

Compiled by Alex McDonald,
Winnipeg, 10th June, 1924.

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Exhibit 4

Comparisons of the Crow's Nest rates from Fort William, with the rates for similar distances from various stations in Eastern Canada, Schedules A to M, Carload rates in cents per 100 lbs.

Schedule A. Green and Fresh Fruits

EAST				WEST		
Miles	From	To	Rate	Miles	Fort William to	Rate
584	St. Catharines	Quebec	68	565	Oak Lake, Man.	66
603	St. Catharines	Sherbrooke	65	600	Virden "	68

Schedule B, Green Apples

The rates to points in Eastern Canada are for distances 116 to 406 miles. The only comparisons obtainable are those from Fort William to stations East of Winnipeg, and the rates are the same as to Winnipeg under the Crow's Nest Tariff.

Schedule C, Coal Oil

	Miles	Rate		Miles	Rate
Sarnia to Quebec	673	55½	Fort William to Percival Sask.	676	65
Sarnia to St. John	980	68	Fort William to Tompkins	978	85

Schedule D, Binder Twine

The rates from Welland to various stations, short hauls, are lower than from Fort William for similar distances, Welland to Windsor 212 miles, 34½ cents, Fort William to Dryden 211 miles, 40½ cents. Ontario Government Experimental Farm at Dryden.

Schedule E, Agricultural Implements

The rates from Hamilton to Eastern points are all lower than from Fort William for similar distances, Hamilton to Halifax 1129 miles, rate 63, Fort William to Tilley, Alta., same distance, rate 90½ cents, 44 per cent higher.

Schedule F, Iron Commodities

The rates from Hamilton to Eastern points are all lower than from Fort William for similar distances:

Hamilton to Quebec	546 miles	47½ cents,
Fort William to Chater	547 "	59½ "
Hamilton to St. John	850 "	57 "
Ft. William to Parkbeg	852 "	84½ " (nearly 50% higher)

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Schedule G, Wire

The rates from Windsor, Ont., to Eastern points are all lower than from Fort William for similar distances. The longest distances are:

Windsor to Megantic	727 miles	59½ cents
Fort William to Wolseley	714 miles	75½ cents (about 25% higher)

Schedule H
Paper, Building and Roofing, also Roofing Felt

The rates from Portneuf to Eastern points are all lower than from Fort William for similar distances. The longest distances are:

Portneuf, Que., to	Hamilton	522 miles	38 cents
Ft.William "	Carberry	525 miles	56½ "(nearly 50% higher)
Portneuf, Que "	St.John N.B.	626 miles	39½ "
Fort William "	Kirkella	623 miles	65 " (62% higher)

Schedule J. Window Glass

With the exception of the rate for 365 miles, which is 5 cents per 100 lbs. lower, the rates from Montreal are lower.

Schedule K. Paints and Oils

Montreal to St.John	488 miles	52½ cents
Fort William to Burnside	483 "	48

This is one of very few cases where the Eastern rate is higher.

Schedule L. Woodenware

The short haul rates are lower in the East.

From Ottawa to St.John	488 miles	55½ cents
" Ft.William to Portage la Prairie	475 "	53 "

This is another of the very few cases where the Eastern rate is higher.

Schedule M. Furniture

With one exception, a difference of one cent per 100 lbs. all the Eastern rates are lower:

Kitchener to Halifax,	1142 miles	88 cents
Fort William to Brooks, Alta.	1142 "	149 (70% higher)

(The application of the remainder of the Crow's Nest rates will remove some of the disparity which at present exists in the rates which the Prairie Provinces have to pay).

Winnipeg, June 11, 1924.

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Exhibit 5

(A 18) OPERATING RATIO OF THE CANADIAN PACIFIC RAILWAY, FIVE-YEAR PERIODS, LINES EAST, LINES WEST, EXCEPT BRITISH COLUMBIA, ALL WESTERN LINES AND ALL LINES

	Lines East per cent	Western Lines except B. C. per cent	All Western lines per cent	All lines per cent
1907-1911	72	56	60	65
1912-1916	73.3	54.5	57	63.3
1916-1920	80.95		67.30	73.52

OPERATING REVENUE, OPERATING EXPENSES, NET EARNINGS, WITH PERCENTAGES, CANADIAN PACIFIC RAILWAY, FOR FIVE-YEAR PERIODS TO DECEMBER 31st.1920.

	Operating Revenue		Operating Expenses		Net Earnings	
			1907 - 1911			
	Millions	Per Cent	Millions	Per cent	Millions	Per Cent
East	$160	40.92	$116	45.49	$43½	32.30
West	231	59.08	139	54.51	91½	67.70
Total	391		$255		$135	
			1912-1916			
East	226½	38.85	166	44.93	60	28.23
West	356½	61.15	203½	55.07	152½	71.77
Total	$583		$369½		$212½	
			1916 - 1920			
East	370	45.57	299½	49.84	70½	32.79
West	442	54.43	297½	50.16	144½	67.21
Total	$812		$597		$215	

		Operating Revenue of	Produced Net of	Per Cent
1907-11	East	$160,000,000	$43,500,000	27
	West	231,000,000	91,500,000	39.6
1912-16	East	226,500,000	60,000,000	26.5
	West	356,500,000	152,500,000	42.8
1916-20	East	370,000,000	70,500,000	19.06
	West	442,000,000	144,500,000	32.7

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Percentages of net on Western Lines exceed percentages of net on Eastern Lines as follows:-

1907-11	46 per cent,
1912-16	61 per cent,
1916-20	71 per cent.

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EXHIBIT 6 C 49721

From Page 224, Exhibits in the Equalization of Freight Rates, 1921 and 1922, Board of Railway Commissioners file, 30686-2.

Exhibit No. 44

Canadian Pacific Railway Lines East and West.

Net Earnings and Operating Ratios.

	LINES EAST		LINES WEST	
	Net Earnings	Operating Ratio	Net Earnings	Operating Ratio
Jan.	$ 620,784.94	91.97%	$ 466,164.37	92.78%
Feb.	898,498.96	87.13	372,504.36	93.26
Mar.	1,766,989.35	77.22	1,094,105.12	83.54
Apr.	1,415,683.77	79.16	1,669,001.77	75.00
May	1,796,690.39	73.35	1,980,023.02	70.51
Jun.	1,450,143.92	78.28	1,953,112.60	72.72
Jly.	530,249.46	92.13	1,792,659.61	78.50
Aug.	787,620.07	89.62	2,405,033.40	72.45
Sep.	1,013,552.56	87.12	3,734,968.01	66.09
Oct.	822,931.95	88.93	6,339,980.52	55.02
Nov.	4,403.91	99.93	5,048,111.03	57.43
Dec.	566,652.41	91.61	3,170,787.84	63.42
	$11,674,201.69		$30,026,451.65	

Lines East	First six months 1921	Last six months 1921	Full year 1921
Operating revenue	$42,703,845.53	$42,850,125.19	$85,553,979.72
" expense	34,755,063.20	39,124,714.83	73,879,778.03
" ratio	81.15%	91.30%	86.35%
Lines West			
Operating revenue	$39,185,505.90	$62,714,519.99	$101,900,025.89
" expense	31,650,594.66	40,222,979.58	71,873,574.21
" ratio	80.77%	64.13%	70.54%

Operating expenses to total operating revenue, all lines 79.78%.

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CANADIAN PACIFIC RAILWAY

NET EARNINGS

	1923	1922
January	$ 533,971	$ 462,011
February	217,904	702,522,
March	1,717,908	2,487,967,
April	1,679,751	1,578,256,
May	1,715,617	2,408,341
June	2,275,039	2,409,755
6 months	8,140,190	10,048,852
July	2,001,507	1,909,446
August	3,194,768	2,903,623
8 months	13,336,465	14,861,921
September	4,522,432	4,573,410
October	8,268,360	7,712,169
November	7,331,434	6,787,115
December	5,058,888	4,477,850
Sept.-Dec.	25,181,114	23,550,534
Total	$38,517,546	$38,412,466
Less net earnings of operated Companies	729,855	519,314
	$37,787,691	$37,893,152
Canadian Pacific returns to Dominion Government	37,787,723	37,933,310

SUMMARY	1923	1922
January to August (8 months)	$13,336,465	$14,861,921
September to December (4 months)	25,181,114	23,550,534

The net earnings, 1923, of the Canadian Pacific, Montreal & Atlantic and Esquimault & Nanaimo were furnished by the Dominion Statistician, his letter May 23rd, 1924.

The monthly statements of operating revenues, expenses and statistics issued by the Dominion Government Bureau of Statistics prior to this year did not give the Canadian Pacific Railway separately but included the Montreal & Atlantic and the Esquimault & Nanaimo, both of which Companies are operated by the Canadian Pacific Railway.

I suggested to the Dominion Bureau of Statistics that the Montreal & Atlantic and the Esquimault & Nanaimo should be eliminated, which suggestion was accepted beginning January 1st.1924.

Compiled by Alex McDonald,
Winnipeg, 7th June 1924.

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C 49723

From the Monthly Statements of the Dominion Bureau of Statistics

CANADIAN PACIFIC RAILWAY

Freight Revenue

	1923	1922
Jan. 1 - June 30	$54,819,216	$52,226,121
July	9,656,106	8,612,119
August	9,800,375	9,552,614
8 months total	$74,275,697	$70,390,854
September	11,869,986	(1) 12,626,147
October	18,113,612	17,838,482
November	17,169,891	16,713,469
December	13,854,547	12,056,440
4 months total	$61,008,036	$59,234,538
12 months total	$135,283,733	$129,625,392

(1) Crop began to move earlier in 1922 than in 1923.

The monthly statements of operating revenues, expenses and statistics issued by the Dominion Government Bureau of Statistics prior to this year did not give the Canadian Pacific Railway separately but included the Montreal & Atlantic and the Esquimault & Nanaimo, both of which Companies are operated by the Canadian Pacific Railway.

As the freight earnings of these two small roads are less than two per cent of the freight earnings of the Canadian Pacific Railway, the detailed figures shown above may be accepted as approximately correct for reasonable comparative purposes.

The inspection of grain from Canadian Pacific Railway stations September 1st to December 31st. 1923, and the total shipments from all stations by Provinces, same period, were as follows:-

1923	C.P.R.	Sept. 1st to Dec. 31st. 1923	
September	21,779 cars	Manitoba	26,583 cars
October	39,362 "	Saskatchewan	143,957 "
November	37,024 "	Alberta	56,838 "
December	28,422 "	B. Columbia	76 "
	126,587 "		227,454 "

Compiled by Alex McDonald,
Winnipeg, June 7th,1924.

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C 49724

Exhibit 7

Grain Rates Prairie Provinces to Fort William and Port Arthur and from contiguous United States territory to Minnesopolis and Duluth.

Since the restoration of the Crow's Nest grain rates by the Parliament of Canada in July 1922, there has been a great deal of railway propaganda dealing with these rates (from the Prairie Provinces to Fort William and Port Arthur) compared with those from North Dakota and Montana to Minnesopolis and Duluth.

There is no question that the rates on grain from Western North Dakota and Montana, immediately South of Saskatchewan and Alberta, are higher than from these Provinces to Fort William and Lake Superior for similar distances and there are reasons.

The production of Western North Dakota and Montana, 1916-1923, eight years, was about 16 per cent of the production of Saskatchewan and Alberta for the same years.

The comparison of the total grain production of North Dakota and Montana and the Prairie Provinces is as follows:

The Production of Wheat, Oats, Barley, Flax and Rye 1916 - 1923

	Manitoba (Bushels)	Saskatchewan (Bushels)	Alberta (Bushels)	Total (Bushels)
1916-1920 5 years	568,013,400	1,297,110,000	750,920,400	2,616,043,900
1921-1922 2 years	292,505,900	857,261,000	244,071,700	1,393,838,600
1923	123,249,000	505,264,200	304,850,000	933,363,200
	983,768,300	2,659,635,300	1,299,842,100	4,943,245,700

Dominion Government Bureau of Statistics.

	North Dakota	Montana	Total
1916-1920 5 years	780,417,000	207,338,000	987,755,000
(Monthly Crop Reporter, United States Department of Agriculture)			
1921-1922 2 years	413,627,000	115,860,000	529,487,000
(Weather Crops and Markets United States Department of Agriculture, December 23rd, 1922, Volume 2, No. 26).			
1923	155,872,000	78,545,000	234,417,000
	1,349,916,000	401,743,000	1,751,659,000

(Weather Crops and Markets United States Department of Agriculture, Volume 4, No. 26).

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C 49725 R-1109 Vol. 4 C.N.P.

O

Fraser Rates - Crows Nest Pass 10 ✓

PRIVY COUNCIL
CANADA

Ottawa, 24th June, 1924.

F.A.
MR. McGREGOR.

As requested, I have despatched the following telegram to the undermentioned persons,-

"Instructed by Prime Minister to advise you that
"hearing Crows' Nest Pass Agreement will take place Council Chamber
"Ottawa ten thirty morning of Friday the twenty-seventh instant
"stop request your Government be represented at same."

(sgd) E.J.Lemaire,
Clerk of the Privy Council.

The Honourable the Premier of Manitoba.
The Honourable the Premier of Saskatchewan.
The Honourable the Premier of Alberta.
The Honourable the Premier of British Columbia.
The President of the Winnipeg Board of Trade.
The Mayor of the City of Winnipeg.
Sir Henry Thornton, President Canadian National Railways,
Mr. E.W.Beatty, President Canadian Pacific Railway.

I have also, as requested, notified the following Ministers that the hearing of the Crows' Nest Pass Agreement will take place on Friday morning, the twenty-seventh instant, at ten-thirty a.m., and informed them that they are expected to be present at same,-

The Honourable Dr. J.H.King.
The Honourable W.R.Motherwell.
The Honourable Chas. Stewart.
The Honourable E.J.McMurray.
The Honourable Geo. P. Graham.
The Honourable James Murdock.
The Honourable Ernest Lapointe.
The Honourable Jacques Bureau.
The Honourable A.B.Copp.
The Honourable E.M.Macdonald.

E.J.Lemaire,
Clerk of the Privy Council.

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R-1109
Vol I
C 49726



Governor-General-in-Council

Ottawa, June 27th, 1924

Hearing re Crow's Nest Pass Agreement

TRANSPORTATION RATES

BERNARD MULLIN
Stenographer

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OTTAWA - June 27th and 28th, 1924

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THE GOVERNOR GENERAL IN COUNCIL

OTTAWA, June 27th, 1924.

Hearing re Crowsnest Pass Agreement Transportation Rates:-

PRESENT:

The Rt. Hon. W.L.M.King

The Honourables G.P.Graham
R. Dandurand
H. S. Beland
Ernest Lapointe
J.A. Robb
A.B.Copp
Charles Stewart
W.R.Motherwell
James Murdock
J.E. Sinclair
J.H.King
E.M.Macdonald
E.J.McMurray

Representing Railway Companies - Eugene Lafleur, Esq., K.C.

Representing the Canadian Pacific Railway - E. P. Flintoft, Esq., and W.B. Lanigan, Esq.,

Representing the Canadian National Railways - W.C.Chisholm, Esq., K.C., and Frank Watson,Esq.

Representing the Provinces of Manitoba, Saskatchewan and Alberta - H. J. Symington, Esq., K.C.

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The Prime Minister - Gentlemen, I just want to mention that I think all present are aware that the time of the members of the Government just at present is more or less limited and if the case can be put as concisely by the parties as possible, it would be much appreciated by all. A number of communications have been received by letter and telegram from the western provinces and British Columbia and these will all be placed on the record in addition to any remarks made by those representing the various interests.

Mr. Lafleur,K.C. - Mr. Premier and Gentlemen, I suppose it is my duty to open on behalf of the Railway Companies. I appear on behalf of the Canadian National Railways and the Canadian Pacific Railway to suggest that the rates where established by the Crowsnest Pass Agreement should not automatically come into force again on the 7th July next.

No doubt you are all familiar with the subject in a general way, but perhaps I may be permitted to refer to the legislation of 1897 under which these rates were created. In 1897 the Government of Canada subsidized the Canadian Pacific Railway for the purpose of building a railway from Lethbridge to Nelson, B.C. through the Crowsnest Pass, and as a consideration for this subsidy of three million dollars it was provided that an agreement between the Government and Railway should be entered into with certain conditions. The first condition was that the local rates and the tolls on the railway and any connecting railways which were operated to the south of the Company's main line in British Columbia as well as the rates and tolls between any point on such lines and any point of the Company throughout Canada should be subject to the control of the Privy Council because

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the Railway Commission had not been created and it anticipated the creation of the Railway Board which now exists and said if the Railway Commission was appointed that these rates would be subject to the jurisdiction of that Commission and thus having dealt with the rates in general an exception was made which is found in subsection (d) of that Section and which is reproduced in the contract passed in pursuance of the Statute and this is the section which creates, if I may say, a privileged district for certain privileged commodities. It was provided in this exception to the general rules that a reduction should be made in the general rates and tolls of the Company as now charged or as contained in its present freight tariff, either carloads or otherwise, on the classes of merchandise mentioned westbound from Fort William and points east thereof to all points west of Fort William on the Company's line or any line owned or leased by the Company, - and then follows the enumeration of the commodities which are to get the benefit of those rates: Coal oil 30%; cordage and binder twine 10%; agricultural implements 10%; iron articles 10%; wire, all kinds 10%; paper, building and roofing 10%; window glass 10%; paints of all kinds 10%; woodenware 10% and household furniture 10%.

That was the total list of the commodities that were to be carried under this arrangement under these rates.

Hon. Mr. Graham - From where to where?

Mr. Lafleur - from points east of Fort William to western destinations; but you will notice Mr. Premier and Gentlemen there are three limitations on this reduction - it is to apply to a specified territory, viz. the territory which was in 1897 covered by the lines of the Canadian Pacific Railway; it was applicable as to territory to the

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then existing mileage because it provides the reduction was to be made on the existing rates on the railway. So it was restricted as to territory. In the next place, it was restricted as to the class of commodities. These were said to be more or less basic commodities, but were far from including all the basic commodities required in the Prairies, and the third limitation, it was to be traffic westbound from points in the east to the west.

Now, I am not dealing with the grain situation now; I am dealing with the situation as it affects commodities other than grain and grain products, because we are not asking for any change in the conditions established in 1897 in regard to grain and grain products. You will recollect that question was gone into in 1922 when an investigation was made before a special committee and the Special Committee reported against any change in the grain rates created in the arrangement of 1897, and simply recommended the suspension of the Crowsnest Pass Agreement in regard to other commodities and it is in regard to these other commodities that we are now making our submission.

Well now this arrangement of course created a disparity of treatment in the territory comprised in the agreement and other parts of the country, and a further disparity in regard to the goods carried because it created a privileged class of commodities which were the only ones to receive the benefit of the arrangement, and in the next case, it created a disparity in regard to the direction because this applied only to commodities westbound and would not apply to eastbound commodities from British Columbia, eastward bound - so those three exceptions to some extent had created disparities.

I will try to take up a few typical examples to show

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the enormous and unjustifiable disparities created by these arrangements; and this disparity was recognized by the Railway Act of 1903 in Section 3, because although the Railway Act later provides that an endeavour should be made to arrive at an equality of treatment between manufacturers and shippers in different location, the Act of 1903 recognized the disparity created by the Crowsnest Pass Agreement, because section 3 provides that a special act overrides the provisions of the general Act, so that the disparity which existed in 1897 was perpetuated by the Railway Act of 1903. The result of that was when the Board of Railway Commissioners was created in 1903, and superseded the Privy Council's jurisdiction and began to operate it was hampered and restricted by this Crowsnest Pass Agreement, and while in 1914 the rates were fixed for the west and in 1916 the rates were fixed for the east, this only affected merchandise not included in this Statute and eastbound traffic and traffic westbound originating in territory not included in the Act, so necessarily it hampered the operations of the Board of Railway Commissioners and restricted them in the application of their endeavours to establish fair rates throughout the whole Dominion. In that way they were always limited and restricted by the exceptions in this special tariff for a special territory and for certain commodities moving in a certain direction.

Then the next Act which dealt with the situation was the Railway Act of 1919. Of course that was after war conditions had profoundly altered the whole situation, and in 1919, section 325 of the Railway Act, subsection 5, xxxxx

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while recognizing that this limitation of the Board's powers to deal with rates existed by reason of the Crowsnest rates, removed this obstacle for a time, that is, it provided that for three years from the passing of the Act the Board could fix just and reasonable rates throughout Canada without being limited by the provisions of any special act and that was due to the fact that all the conditions in contemplation of Parliament when it passed this legislation in 1897 had suffered a tremendous change owing to the war and all the conditions which followed.

Now that, as I told you, was a suspension of these special rates over a period of three years, and that expired in 1922, and in 1922 the special Committee which I mentioned a moment ago, was created in order to report to the Government on the advisability of further suspending or abrogating this abnormal tariff interfering with the operation of the Commission and preventing the rule of equality from applying on rates throughout Canada, and this Committee reported against making any change in regard to grain but in regard to these commodities other than grain reported in favour of a further suspension of the Crowsnest Pass rates; and a Statute was passed in 1922 extending the operation of Section 325(5) of the Railway Act which gave unrestricted power to the Railway Board, and the operation was extended until the 6th July, 1923, with power, however, to the Government by Order in Council to extend for a further period of one year, if the circumstances justified it; and the Government in the following year, 1923, exercised that power, and by Order in Council continued the suspension until the 6th of July of the present year and

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that is the situation we are in today.

Now if no action is taken by the Government to continue the suspension of these rates, then automatically they will become applicable on the 7th July next and they will profoundly affect the present conditions throughout Canada as I think we will be able to show you despite all the constructive work of the Railway Commission in its attempt to establish fair rates throughout the whole of the country.

Now, without going into details, let me say generally, for example, that in the east the Windsor and Chatham group would have lower rates than the rates applying to London under the present rates established by the Railway Commission - all points west of Montreal now taking the same tariff for westbound traffic. The Windsor - Chatham group would have lower rates than the London; London would have lower than Woodstock and Hamilton - all these points less than Toronto, Peterboro and Montreal, all of which points take equal rates with Toronto at present, and this in turn must advdrsely affect the rates from the Maritime Provinces. In the west you will have disparities there independent of the disparities in the east and west - for instance, disparities in favour of Winnipeg and against points west of Winnipeg, because these points were not on the line as the Canadian Pacific Railway existed in 1897 and therefore would not get the benefits of the Crowsnest Pass rates, which is a very important disparity, one created against new sources of supply. When the Crowsnest Pass arrangement was entered into in 1897, British Columbia was not supplying the Prairies with fruit - the fruit came from the Eastern market and now the situation has been completed reversed,

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the traffic now tends to go from West to East instead of from East to West, and now British Columbia is the chief source of supply of apples and fruits to the Prairie Provinces and it is the nearest market, and it will not be benefited by the Crowsnest Pass Agreement so that British Columbia would suffer a great handicap in competition with the Eastern fruit-growing districts.

Then take another example: At the time of the Crowsnest Pass Agreement, - I am going to give another example of the reversal of the traffic - I dealt with apples and fruits, and now coming to coal oil, that was an important commodity required to a large extent on the Prairies at the time of the Crowsnest Pass Agreement; but now new manufacturing centres have been created in the West and the reinstatement of the Crowsnest Pass rates would deprive these new sources of supply established at Vancouver, Calgary and Regina of any advantage resulting from this low tariff - they are today the principal sources of supply for the Prairies. Coal Oil is not a commodity used much now because of electricity and natural gas, but petroleum and coal oil products now come to the Prairies from these Western supply points and all these Western Points are deprived of any advantage that could be derived under the Crowsnest Pass rates.

Then if you go to the far east, Halifax for instance, which was not on the line of the C.P.R., will not benefit. There are refineries in Halifax, of course, and any eastern refineries which were not on the line of the C.P.R. then, and which do not get the benefit of the reduction, will suffer when contrasted with other points and the

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disparity against Halifax will be in favour of Montreal and Toronto.

I pointed out a moment ago that the Crowsnest Pass rates are restricted first as to territorial application; secondly, as to the character of the commodities carried and thirdly as to the direction of the traffic. Now let me point out that since the Crowsnest Pass arrangement was entered into 7,349 miles have been added to the C.P.R., about 50% of the Company's total mileage. Now this 7,000 odd miles would receive no benefit at all from the Crowsnest Pass agreement, that is shippers at those points would have more to pay, while those fortunate enough to be situated on the mileage as it existed in 1897 would get a benefit; those on the line subsequently constructed would get no benefit at all and would be discriminated against. I have a map which I might put before you Mr. Premier, - it shows the difference as between the system in 1897 and the system in 1924. Now of course the limitation of these rates created in 1897 to that limited territory results, I think, from the wording of the Statute, and I do not know whether it is necessary to say anything to convince you that that is so - I do not know any decision to the contrary. Of course it is a question of law and one which I would be justified in dwelling on here, but I am mentioning it because it seems to be conclusively established in the case decided by the Privy Council in the City of Toronto and The Toronto Railway Company. The Toronto Railway Company was bound by its charter to construct lines on all the streets of the City of Toronto when required by the City, and the City extended to an enormous degree in subsequent

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years, and the City endeavoured to compel the Street Railway to extend into all this new territory. The Privy Council held that the contract must be construed in reference to the existing system at the time of the contract and the obligation to construct lines on all the streets of the City wherever and whenever required by the City could not be applied to the extensions of mileage beyond the then City Limits, and I have nodoubt, that is a sound principle of the interpretation of contracts. This Crowsnest Pass Agreement is an exception to the general rule of equality - it creates a special tariff to a special territory and I do not think any Court would be justified in extending it to any other territory that was not in contemplation at the time. But I do not know whether Mr. Symington does contend that the Crowsnest Pass Agreement applies to new territory.

Mr. Symington - I do. I said that before the Board and Mr. Justice Killam held so.

Mr. Lafleur - I have heard that but I cannot find that Mr. Justice Killam held that; but if he did I would say with great deference that his decision would be overruled by the decision of the Privy Council, and after all his decision would be the decision of a single Judge, and I did not read his judgment as going the length of saying that those Crowsnest Pass rates must apply to all new territory.

Mr. Symington - It has been the practise for 25 years.

Mr. Lafleur - I do not know what my friend means by that. If he means that rates not exactly the same as Crowsnest Pass rates but rates closely corresponding were applied to extended territory, I agree, but that was not

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done by the C.P.R. because of the existence of the Crowsnest arrangement nor under the authority of that Statute. It was this, if I may digress for a moment, and I am very glad the interruption took place for it will enable me to explain this, which is a little confusing. In 1897 these special rates were applied to the territories mentioned - from 1897 to 1901 there were no railway extensions of any account and that question did not arise. In 1901, the Canadian Northern began to construct in the west and then the Canadian Northern made an agreement which is known as the Manitoba Agreement by which - not to go into the details of the agfeement - a considerable reduction was agreed upon, about 15% on general commodities - it was not restricted to ~~any~~ any class of commodities, but applied to all classes of commodities. Well, to meet the competition created by the Canadian Northern which had made this Manitoba agreement, the Canadian Pacific Railway had to lower their rates to the level of the Manitoba agreement and their rates were therefore lowered and they actually went lower than the Crowsnest Pass rates, and they continued as long as conditions were normal and as long as that competition existed, but it had no reference at all to Crowsnest Pass rates - it was not made in consequence of the agreement and it had no relation to the agreement - it was forced on the Canadian Pacific Railway by the competition of the Canadian Northern and that situation lasted until war times when Parliament itself had to intervene, recognizing as it did that the conditions had so changed as to make the Crowsnest Pass Agreement something utterly out of harmony with the conditions resulting from the war. Now that is the history of

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the rates from 1897 until Parliament began to deal with the Crowsnest Agreement. That is all I have to say at the moment in regard to limitations of territory to which these rates apply.

Then as to the character of the commodities I have already explained that it is obvious that the Act of 1897 are enacted in favour of the privileged ones therein mentioned and there are a number of basic commodities which are not favoured as these are. About 70% of the commodities favoured by this exceptional feature of the Act of 1897 are hardware products, and most important products, such as potatoes and vegetables are entirely ignored, and there is no justification on principle for favouring one class of commodities against all other basic commodities that are needed just as much. In the next place I pointed out that there was a reversal of the direction of the traffic owing to the creation of new sources of supply in the west, and that all that traffic originating in the west and moving to the east gets no benefit at all and is heavily handicapped by this favoured arrangement in favour of traffic westbound from points east of Fort William.

Now perhaps the best way to make you grasp the results of this situation is to ask you to consider a few examples. I am not pretending to deal exhaustively with this at all - I have selected a few typical examples and I am going to ask your ~~opinion~~ attention for just a few minutes to the salient disparities which result in regard to certain localities and certain merchandise. I think you have them before you in the same order as I have. The first sheet gives some examples of rate disparities between fruit-growing

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districts in eastern centres to northwest points. Now under the present tariff these points all take the same rate west inasmuch as all points west of Montreal take the same rate for westbound traffic. I have selected the fruit-growing centres. You have in the first place London - London to Winnipeg 52¢ - the rate is the carload rate¢ in cents per 100 lbs. London is a point which was on theline of the C. P. R. as it existed in 1897 and it gets the benefit of the Crowsnest Pass rates if these are automatically restored on the 7th of July next. Then look at the disparity against these important fruit-growing centres, Niagara, St. Catharines, Walkerton, Simcoe, Brighton and Picton - all these at present have the same rates, that is 85¢, the same rate with London - that is, the rate from these places to Winnipeg under the present tariff would be 85¢, but on the 7th July London would get a tremendous benefit, a benefit of 33¢ as against all these centres which are all adjacent to London and which ought to get the same rate. And you have the curious example, one which shows that from Windsor, which has to reach the west through Toronto, the rate is less to the west than from Toronto, although the mileage is greater, and in the same way all these points in the vicinity of London, in the same group, all now carrying fruit at the same rate to the west would have the enormous disparity, one which cannot be reconciled with any justice to the shippers.

Hon. Mr. Motherwell - Is this on the new mileage built since 1897, that is all in red on the map?

Mr. Lafleur - It is all mileage that is not on the C.P.R. either on the new mileage of the C.P.R. or on the mileage of the Canadian National, and in either cases they get no

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benefit.

Hon. Mr. Motherwell - Is the double track from Fort William west considered new mileage?

Mr. Lafleur - No, that is territory that was included in the agreement byt all these points, Niagara, St. Catharines, Walkerton, Simcoe, Brighton and Picton are not on the C.P.R. and get no benefit at all and you see the enormous disparity between their rate and the London rate.

An Honourable Minister - You say that after the 7th July the Crowsnest Pass Arrangement goes into effect the shipper at London sends apples to Winnipeg at 52¢ while the shipper at Niagara would have to pay 85¢?

Mr. Lafleur - Yes, that is it.

An Honourable Minister - What are they paying now?

Mr. Lafleur - 85¢ now to everybody. That is the scientific rate, as far as it can be called scientific, established by the Board, a close approximate to what the Board considered just rates throughout the whole of the Country - They made the best endeavour to create equality and they say these points should pay 85¢ to the west. These are included in groups from Montreal westward and this is the rate on traffic from that group to the western points.

Now take London to Regina, you will see another instance - 80¢; and Niagara, St.Catharines, Walkerton, etc. 127¢. That is another enormous discrepancy. Then London to Saskatoon 98¢, and all these other points will have to pay 134½¢ - you can see the enormous spread there; then take London to Calgary - as compared with these other points to Calgary - London to Calgary 100½¢ and from Niagara Peninsula to Calgary 158¢.

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The Prime Minister - You say ~~kkz~~ will be or will have to be?

Mr. Lafleur - Will continue to be. It will not be changed by the automatic restoration of the Crowsnest Pass rates because these points are not in the territory.

An Honourable Minister - Has anybody conceded that?

Mr. Lafleur - I have not heard it disputed yet.

Mr. Symington - Will you explain to the Government how you get away from the discrimination clauses in the Railway Act in such a case.

Mr. Lafleur - How can it be said that the Railway Board can apply the discrimination clause to a rate which has been fixed by Parliament. The Railway Board can only equalize when there is an unjust discrimination and how can it be said that a disparity created by Act of Parliament is unjust? No Court can say that. It has to obey that law. I would be glad to think that the Railway Board was not bound by the Act of 1897 and could equalize rates without regard to it, but they are bound by that and it has been so decided, and they cannot change those rates - they are fixed - In principle it seems absurd to speak of a railway rate as being perpetual and eternal because in the nature of things you only fix a rate for a time when certain conditions exist and when you fix it by Act of Parliament your Railway Board acts always with regard to existing conditions, and here the conditions are so utterly different that Parliament itself had to intervene. First of all the Government under the War Measures Act had to suspend this Act when war conditions came in and reversed all conditions that existed when Parliament passed that enactment; and ever since that Parliament

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has recognized that those conditions have continued and I am going to submit the conditions have not changed too and the burden will be on my friend to show they have changed and that the operating costs have diminished and that the labour and material costs have also diminished since this time when Parliament first dealt with this Crowsnest Pass Agreement during the war.

Now to resume what I was dealing with: The last point is Edmonton. From London to Edmonton would be 120½¢ and from all these Niagara Peninsula points to the same point, Edmonton, 158¢. You see the enormous spread between these points.

The Prime Minister - I do not wish to interrupt, but I can understand where these rates fixed by the Crowsnest Agreement will necessarily be minimum rates - with regard to the discrimination that arose with regard to the existing rates is there any compulsion upon the part of the Company to maintain that discrimination?

Mr. Lafleur - They have to apply to the territory covered by the Act of 1897, to the commodities mentioned and direction of traffic in the Crowsnest Agreement - in all other places they are subject to the Railway Commission and cannot discriminate, but you see the favoured commodities and favoured directions are all benefitting by the Crowsnest Pass Agrangement at the expense of the other parts of Canada and traffic going other directions.

An Honourable Minister - Here in this case it says London to Winnipeg 52¢ per 100 lbs.

Mr. Lafleur - That is it will be on the 7th July.

An Hon. Minister - And the rate from Niagara to Winnipeg will remain at 35¢?

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Mr. Lafleur - Yes.

The Prime Minister - Is there an obligation on the part of the Railway to keep it at 85¢?

Mr. Lafleur - As long as the Railway Commission keeps it at that level the railway will be justified in keeping it.

The Prime Minister - The point I want is this - supposing the Railway wishes to make a rate from Niagara to Winnipeg the same as from London to Winnipeg, would there be anything to prevent them other than the financial loss involved?

Mr. Lafleur - the Railway rates have been fixed in order to enable the Railways to live and presumably if all rates were to go on the basis of the Crowsnest Pass rates no Railway could live.

The Prime Minister - I can see wherein financial sacrifice would have to be made by Railways if they choose to equalize, but they are free if they desire.

Mr. Lafleur - If they want to bring down everything to the Crowsnest Pass rates in spite of the fact that the operating conditions are totally different to what they were, but they cannot be forced to do it and it would be suicidal to do it - it would increase the already huge deficits on the Canadian National and as to the C.P.R. I do not see how they could pay their fixed charges and dividends; they could not carry on. You see the Railway Board try to establish a rate absolutely fair to all parties, shippers and producers and railways, and they fixed this rate at 85¢ from London to Winnipeg and from Niagara to Winnipeg and all other points to Winnipeg. That is supposed to give the Railways a fair return for the service given and the shippers a fair rate, and if you interfere with that and ask the Railways to make

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a reduction on all rates, you defeat the object of the Commission which was to give the Railways enough to live on, while giving the shippers and manufacturers the best terms possible under the changed conditions. I will show the operating conditions today compared to what they were then, and what the wages today are compared to what they were before the war; but if you revert to pre-war days and want to apply a rate generally that existed in pre-war times you want to find some way of bringing down wages and the cost of materials to what they were in pre-war times.

Senator Dandurand - Mr. Symington's remarks indicate that the privilege on a certain area will perforce bring down the rates all through Canada to the Crowsnest Pass rates. Now I hope you will be able to give us data to show the effect on the finances of the two systems if the conclusion which Mr. Symington seems to draw was orthodox.

Mr. Lafleur - I can tell you in a general way it would mean a loss of millions. Why, Mr. Lanigan estimates the loss to the C.P.R. of between 5 and 5¼ millions.

An Hon. Minister - that is annually?

Mr. Lafleur - Yes.

The Prime Minister - That is what I am trying to get at. Would not the practical application be that they would be obliged to equalize the rates?

Mr. Lafleur - Yes, and it would be ruinous to the Railways - it would augment the expenses of the Canadian National and put the Canadian Pacific Railway in a condition where it could not pay fixed charges and pay a dividend at all; and that is not the object Parliament or the Railway Board had in view when an endeavour was made to make fair rates throughout Canada; it was to enable the Railways to

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live; nobody is interested in bankrupting the Railways, and yet everybody is interested in keeping the rates to a reasonable condition and that is what the Railway Commissioners are endeavouring to do.

An. Hon. Minister - Before leaving that point with respect to discrimination in the East, is it a fact that the Crowsnest Pass Agreement only applies to London and Toronto and points of that character, or in a word, does the Crowsnest Pass Agreement definitely set out the points to which it applies in Eastern Canada?

Mr. Lafleur - My answer would be all the points on the line as the system then existed, it does not enumerate them in the Statute.

An Hon. Minister - That is what I wanted to know. It does not enumerate them in the Statute - then why the discrimination in the points of shipment, if not mentioned? Why should a barrel of apples from Niagara be discriminated against in favour of London, and why should not a through rate apply?

Mr. Lafleur - It ought to, but will not when you give a favoured rate to London against Niagara.

An. Hon. Minister - The Act sets out that it will apply only on points at the date of agreement.

Mr. Lafleur - Perhaps I had better read the wording of the Act.

An Hon. Minister - That is not necessary.

An.Hon. Minister - You had better read it to make it clear.

Mr. Lafleur - "That a reduction shall be made in the general rates and tolls of the Company as now charged, or as contained in its present freight tariff, which freight

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rates are now the lowest, for carloads or otherwise, upon the classes of merchandise hereinafter mentioned westbound, from and including Fort William on the Company's railway to all points west of Fort William on the Company's main line, or on any line of railway throughout Canada owned or leased by or operated on account of the Company where the shipment is by all rail, such reduction to be to the extent of the percentages, namely", and then they are enumerated.

An Hon. Minister - You say on the Company's railways. You mean the Company's railway as in 1897?

Mr. Lafleur - It says the existing rates on the Company's railway - you cannot get away from that language having regard to the circumstances.

Hon, Mr. Lapointe - Why not let Mr. Lafleur proceed with his argument and we can question him afterwards.

Mr. Lafleur - In regard to the Niagara Peninsula, it is clear beyond doubt that that territory is not covered by the agreement, because it is not C.P.R. Territory at all and if you ask me whether the Canadian National will not, in order to meet the competition of London, in order to iron out these disparities, establish a general rate of 52¢ from London to Winnipeg, no sane management could do that in view of present circumstances - it would be madness and it is madness to apply the Crowsnest Pass rate to present operating conditions unless compelled to do it - no sane railway man would do it of his own accord because he would bankrupt his Company.

Now, fresh fruits - in carload rates in cents per 100 lbs, you have the rate from Windsor to Winnipeg 81¢ and from the Niagara Peninsula to the same point 106½¢. You will see that is an enormous spread - and from Windsor to

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Regina 125¢ and from the Niagara Peninsula to Regina 195½¢; and from Windsor to Saskatoon 151½¢ and from the Niagara Peninsula to the same point 208½¢.

An Hon. Minister - That results from the fact that you had no railway there?

Mr. Lafleur - Yes. Saskatoon and Edmonton are suffering as compared with Regina and Calgary respectively.

You see Regina and Calgary had direct mileage in those days and Edmonton and Saskatoon did not. But now they have direct mileage, but the restoration of the Crowsnest Pass rates does not benefit Saskatoon or Edmonton to the same extent as it does Calgary and Regina. Now then briefly to run over these - Windsor to Regina 125¢ and to Saskatoon 151½¢ as compared with Niagara Peninsula rates to Regina 195½¢ and to Saskatoon 208½¢; from Windsor to Calgary 156 compared with Niagara Peninsula to Calgary 241½ and from Windsor to Edmonton 186 as compared with 241½ for Niagara Peninsula to Edmonton. Now you see the enormous disparity in the case of the Niagara Peninsula to all those points.

As to the next example these are disparities between Eastern manufacturing points and northwest centres, the shipping points mentioned under present rate basis all taking the same rate. All points west of Montreal and included in the same group, get a uniform rate to the west. Take agricultural implements first. I have taken the centres from which agricultural implements are shipped, Hamilton, Toronto, Brantford, and St. Marys are the principal points. From Hamilton to Winnipeg, you have 67½¢; from Toronto to Winnipeg you have 68½¢; from Brantford and St.Marys to Winnipeg 32½¢. because Brantford and St.Marys are not included in the territory and get no benefit from the restor-

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ation of the Crowsnest Pass rates. Then from Hamilton to Regina 96¢; from Toronto to Regina 97¢; from Brantford and St.Marys to Regina 128¢. From Hamilton to Saskatoon 115½¢; from Toronto to Saskatoon 116½¢; from Brantford and St. Marys to Saskatoon 139½¢. From Hamilton to Calgary 124½¢; from Toronto to Calgary 125½¢ and from Brantford and St. Marys to Calgary 166½¢. From Hamilton to Edmonton 147¢; from Toronto to Edmonton 148¢ and from Brantford and St. Marys to Edmonton 166½¢.

Then bindertwine - the disparities are great there also. The principal points providing it are Hamilton, Montreal, Welland and Brantford. From Hamilton to Winnipeg the rate is 71½¢. and Montreal to Winnipeg 79½¢; Montreal now gets the same rate; and Welland and Brantford to Winnipeg 114¢. Then Hamilton to Regina the spread is given at 109¢; from Montreal to Regina 117¢ and from Welland and Brantford to Regina 155¢. From Hamilton to Saskatoon 133½¢; Montreal to Saskatoon 141½¢; Welland and Brantford to Saskatoon 168¢. Hamilton to Calgary 137¢; Montreal to Calgary 145¢; Welland and Brantford to Calgary 200¢. Hamilton to Edmonton 164¢; Montreal to Edmonton 172¢; Welland and Brantford to Edmonton 200¢.

Then may I ask you to look at the next page - these are examples of disparities between eastern bar iron manufacturing centres and western centres. Hamilton and Montreal take, under present rate basis the same rates. Sydney 18¢ per 100 lbs. over Montreal and Hamilton. Hamilton to Winnipeg 71½¢; Montreal to Winnipeg 79½¢ and Sydney to Winnipeg, instead of being 18¢ per 100 lbs over Montreal and Hamilton is put up to 114¢. Then from Hamilton to Regina 109¢; from Montreal to Regina 117 and Sydney to Regina

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164¢. Hamilton to Saskatoon 177¢. Then to Calgary from Hamilton the rate is 137¢. from Montreal 145¢ and from Sydney 210¢. That involves the application of the Crowsnest Pass rates to Hamilton and Montreal but not to Sydney.

Now then I pass on to the next example which refers to fifth class commodities, such as paints, iron, window glass, cordage, pipe, etc., and there I take some Eastern points of supply which send these commodities to western centres. Under the present rates all points west of Montreal take the same rate, as you know, all points west and including Montreal. St.John, N. B. would take 12¢ per 100 lbs over Montreal and Amherst and Sackville 2¢ over Montreal and Sydney 6 cents. Now you will note the increased spread against the Maritime points in this example. Take the fifth class commodities from Hamilton to Winnipeg 71½¢ from Toronto to Winnipeg 74¢; then from Brantford and Welland which do not get the same benefit as Hamilton and Toronto from the restoration of the rates, the rate is 114¢; St. John, which does get a benefit 102¢. Amherst,N.S. and Sackville,N.B. get no benefit from the Crowsnest Pass rates and the rate is 128¢, and Sydney 132¢.

Now I ask you to run from there over the other column and you will see the spreads are of the same character and the same spread in regard to these fifth class commodities. All of these work against the Maritime Provinces and the Niagara Peninsula.

Then I ask you to look at the next example which deals with furniture. Now these are disparities between Eastern furniture manufacturing points to western points by the application of the Crowsnest Rates. On the present arrangement they all take the same rates. You have London and Woodstock favoured because they get the benefit of the

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Crowsnest rates. From London to Winnipeg would be 85½¢; from Woodstock to Winnipeg 86½¢. Now take a number of points which are not on the C.P.R., Kitchener, Kincardine, Walkerton, Hanover and Stratford, Ontario - they get no benefit from the Crowsnest rates, and to these you can add Victoriaville, P.Q., and Walkerville, P.Q., - they get no benefit from the Crowsnest Pass arrangement, and Kitchener and the other points would have to pay 138½¢ and Victoriaville and Walkerville 146½¢. Now there is a very marked disparity between these points and simply because some of the points happen to have been in the territory when the Agreement was made. Then if you look at the rate to Regina you will see from London to Regina is 124¢ and from Woodstock to Regina 125¢; from Kitchener, Kincardine, Walkerton, Hanover and Stratford 185½¢ and from Victoriaville and Walkerville 193½¢. and so on. To Saskatoon you have from London 151¢ and from Woodstock 152¢; from Kitchener, Kincardine, Walkerton, Hanover and Stratford 198½¢ and from Victoriaville, and Walkerville, P.Q., 206½¢. From London to Calgary is 154½¢. from Woodstock to Calgary 155½¢; from Kitchener, Kincardine, etc., 234½¢ and from Victoriaville and Walkerville P.Q., 242½¢. and so on to Edmonton.

Now may you look at the next example showing disparity of rates against western points of supply that will ensue by the application of the Crowsnest westbound basis from Fort William and points east thereof. This shows discrimination against British Columbia. As I said a moment ago British Columbia was not supplying fruit to the Prairies in 1897. Now it is their only source of fruit supply and the discrimination against it is heavy. The rates are given per carloads, so much per 100 lbs. You have the rate from Hamilton to Winnipeg, which is the Crowsnest rate 83½¢, and

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the mileage 1272. We have endeavoured to select all points with approximately the same mileage. Kelowna, B.C., instead of being 1272 miles to Winnipeg, it is 1209 and yet with a lesser mileage it pays the present rate and will continue to pay the present rate of 150¢ as against 83½¢ from Hamilton to Winnipeg, for less mileage. Then take Windsor as compared with Kelowna, B. C. I have taken the distances to Swift Current in both cases. Windsor to Swift Current 1958 miles and Kelowna to Swift Current 702, and yet the rate from Windsor to Swift Current would be 135½¢ and from Kelowna to Swift Current 150¢. There cannot be any justification for such a disparity except it results virtually and inevitably from the action of Parliament in 1897. Then Green apples - you have similar results. From Fort William to Moosejaw 817 miles, and from Kelowna to Moosejaw 812 miles, approximately the same, yet Fort William to Moosejaw has a rate of 61½¢ and Kelowna to Moosejaw 113¢, with approximately the same mileage. Then Windsor, Ontario to Swift Current 1958 miles - Kelowna to Swift Current 702 miles, less than half, and yet the rate from Windsor to Swift Current is 86¢ and from Kelowna to Swift Current 104¢; and Fort William to Lethbridge, ~~552 miles, a~~ a mileage of 1176 miles would be 76½¢, while from Kelowna to Lethbridge 552 miles, less than half, would continue the present rate of 86¢.

Now, if you come to coal oil, I will take two points of similar mileage, Fort William to Brandon. (I may say you have the Crowsnest pass rate on coal oil because that was the only commodity included in the enumeration in the Statute.) Fort William to Brandon 53¢. Now the gasoline would pay 74¢. There is no earthly reason for favouring one of these products at the expense of the other. The

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Crowsnest rate does not apply on gasoline or lubricants, but only on coal oil. Then take the rate from Fort William to Winnipeg, 420 miles, as against the rate of Regina to Winnipeg, 357 miles: The Crowsnest rate Fort William to Winnipeg is 45½¢ and from Regina to Winnipeg 56¢, and yet Regina is the nearest and most natural source of supply for the Prairies.

Then building paper - Fort William to Calgary 1243 miles gets 108¢, and Dryden, Ontario, to Calgary, 1032 miles pays 116¢. Dryden is a point west of Fort William and, of course, does not get the benefit of the Crowsnest Pass arrangement.

Then, I have given you in the next page an instance of disparity between two western towns, Calgary and Edmonton, getting different treatment. It is very marked because there is no reason for treating them differently. The moment Edmonton is reached by direct mileage today, on scientific principles, they should get the same rate, yet from Toronto to Calgary, on fresh fruits, a mileage of 2055 you get a rate of 158½¢, whereas from Toronto to Edmonton, a mileage of 2080, you get 188½¢. There is a considerable difference in favour of Calgary. Take the next instance, Fort William to Calgary, 1242 miles, as against Fort William to Edmonton, 1267 miles, approximately the same mileage, and in the case of Calgary, it is 118½¢ and in the case of Edmonton 148½¢. Then another difference in favour of Calgary applies on apples by the carload. Toronto to Calgary, a mileage of 2055, it is 103½¢ and from Toronto to Edmonton, 2080 miles, it is 123½¢. a spread of 20¢. Again, Fort William to Calgary 1242 miles, and from Fort William to Edmonton 1267 miles and the spread is a difference between 80¢ and 100¢. and so with binder twine and iron commodities, paints and oils, window glass, cordage,

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wire and woodenware. I will not read the second page of that Exhibit, but it shows a similar large spread as between Calgary and Edmonton.

The Prime Minister: Did these disparities and discriminations exist before the Crowsnest Pass Agreement was suspended by Parliament in 1917?

Mr. Lafleur: As I think I have explained, in 1917 all the rates had gone down in consequence of the construction of the Canadian Northern and this disparity did not begin to be felt until war conditions commenced and the Canadian Northern competition came in, and when the Manitoba Agreement was made the Canadian Pacific Railway rates went down to meet the competition and there was no complaint made in those times because the rates were lower really than the Crowsnest Pass rates for a while.

Hon. Geo. P.Graham: The costs of operation were not as much then - they were lower.

Mr. Lafleur: Oh yes. I will give the cost of operation in a moment.

The Prime Minister: I will put my question in another way - Suppose the Crowsnest Pass Agreement had never been suspended, would we be confronted now with disparities of this kind, and the consequences of them?

Mr. Lafleur: Oh yes, surely. You see even before the war came and had changed everything the Railway Commission from 1911 to 1914 began its investigation on rates and there was a profound modification in all rates and an attempt made to apply fair rates to Eastern and Western situations. This was the situation from 1911 to 1914 and the other investigation in 1916, and of course those were hampered by the existence of the Crowsnest Pass rates - they could not deal with the Crowsnest Pass condition because it was

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statutory and it was only in 1918 when the Government, realizing the complete change of conditions resulting from the war, removed this obstacle and allowed free play to the ma chinery it had created for the equalization of rates and they came to the conclusion that it was impossible, as it were, to put new wine into old bottles, and that the application of the Crowsnest Pass rates to war conditions would have been intolerable and ruinous to the Railways. Now, I ask you to take consideration of the examples on page 2. For lack of time I will not go into them all, but they show a similar disparity between Calgary and Edmonton, Calgary getting a tremendous advantage. The same with Regina and Saskatoon - Saskatoon is the sufferer and Regina gets the benefit because it had the direct mileage in 1897, whereas Saskatoon had not. Then the last Exhibit I ask you to look at gives the rate disparity favouring the longer haul as aginst shorter distances. Now the distances there - I do not know whether it is marked in your copies, but I put this on fyle - from Fort William to Calgary and to Rosetown and Kerrobert. Now you see the mileage from Fort William to Calgary is 1243, and from Fort William to Rosetown 981, and from Fort William to Kerrobert 1039 miles. Now look at the rates. They range on agricultural implements from 97½¢ to 104¢ and 108¢, notwithstanding the discrepancy in mileage. Then the next is binder twine from Eastern Canada to Calgary, Rosetown and Kerrobert. It is 108, 120 and 123 cents pespectively. On apples, 80, 102 and 108 cents; fresh fruit 118½, 152½ and 158½ cents, and paints 108, 120 and 123 cents; iron commodities 108, 120 and 123 cents and so on. So it shows you that on scientific principles such rates cannot possibly be defended, nor on the principles of equality and justice.

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The Prime Minister: I suppose you will have this Exhibit filed?

Mr. Lafleur: Yes, it will be put on file. Now I have not dwelt on these as long as I should like.

The Prime Minister: You can take longer.

Mr. Lafleur: No, I hesitate to take up much more time. Now the Canadian Nationals are not directly affected by the contract - that is, there is no direct arrangement between them and the Government in respect to these rates, and they are only affected indirectly - necessarily the much be affected. In all of its territory that is, competitive between them and the C.P.R., they are obliged to meet the C.P. R. rates or they would not do any business or get any traffic, and therefore, to that extent it forces them to adopt the Crowsnest Pass rates wherever they are paralleling or competing with the C.P.R. between equidistant points,and therefore in that way it will profoundly affect their revenue. For instance, the C.N.R. would have to meet the Crowsnest rates existing between St.John,N.B. and Winnipeg; that is a competing road and they would be affected. If the C.P.R. comes down to the Crowsnest rate on that transit, why, the Canadian National would have to follow it or would get no business at all. As a matter of business it is imperative that they should do it. Now I think that shows that the whole Maritime Province situation will be disturbed by this - in the Maritime Province region, the Atlantic region, the C.N.R. produce a deficit of $5,222,148 - that is on the Maritime Province lines. Now you could not expect the Management of the Canadian National to adopt a tariff which would enormously augment this deficit. They could not accept the Crowsnest rates to Halifax or Sackville or other centres of production in the Maritime

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Provinces, not being obliged to do so by Statute; you could not expect them to do it on business principles; it would be suicidal with the conditions existing, and you could not expect any sane Board of Management to tolerate further reductions such as would be altogether out of harmony with modern conditions. Now in the West I think the operation deficit of the Canadian National Railways for 1923 was $2,020,709 and to return to the Crowsnest Pass rates in regard to that district, would mean increasing that already large deficit. It is obvious that points served by the Canadian National exclusively will suffer a great disadvantage, that is where the C.P.R. offers no competition and no business reason for reducing its rates to the Crowsnest Pass basis, why, the shippers will suffer in consequence and you could not expect them to reduce the rates unless compelled by competition, but where there is no competition and there they do not cover the same territory as the C.P.R. there would be an inequality and disparity which cannot be got over and which would be madness to try to get over by simply adopting those rates. Now that feature would affect Stratford and several other points in Ontario and Victoriaville P.Q., which are not located on the C.P.R. and are served by the Canadian National.

An. Honourable Minister: You are speaking of furniture now?

Mr. Lafleur: Yes, in these examples. These are furniture export points. I understand there are other furniture points in Quebec, but I do not know to what extent they export furniture. We have one in Terrebonne -

An Honourable Minister: Not furniture, - agricultural implements.

Mr. Lafleur: Well, agricultural implements, but furniture is chiefly at the points I have mentioned. Let

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me contrast the situation in 1897 with that existing in 1924, or 1923, because we have not the data yet for 1924, for the operating ratio. The operating costs have jumped to an enormous extent. In 1907 the operation ratio was 57.16%. That is, you had to spend 57¢ in order to earn a dollar. In 1921, it was 82.28%; in 1922 it was 80.55%, and in 1923 80.86%.

An Honourable Minister: On what system?

Mr. Lafleur: On the C.P.R. In 1897, it cost the C.P.R. 57.16¢ to earn one dollar - in 1923 it cost 80.86¢ to earn a dollar. Now then you can see what a complete change there has been in conditions. Various examples have been given, or various figures have been given in a little memorandum signed by the Canadian National and C.P.R. Companies in regard to the cost of labour and wages. Wages, of course, have been increasing all the time and you will find on page 7 of this little memorandum the labour cost there or the increase of the labour cost. It is given in the 1922 investigation in a way that I think will strike you. At page 38 of the proceedings of the Rate Investigation, (and that was a comparison between the situation in 1897 and the situation in 1922 - it has not gotten any better in 1924) here are the wages for employees: The locomotive engineers were paid in 1898 32¢ an hour - they were paid in 1922 76¢, an increase of 131%; firemen an increase of 217%; conductors an increase of 111%; baggagemen 151%; brakemen 125%, in freight train service the locomotive engineers received an increase in 1922 over 1898 rates of 137%; firemen 213%; conductors 155%; brakemen received in 1898 20¢ an hour as against 56¢ in 1922, an increase of 174%. Maintenance of Way - Sectio foremen $1.80 a day in 1898 as against $4.55 in 1922, an increase of 216%; sectionmen $1.21 per day in 1898

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$3.20 in 1922,an increase of 230%. Station employees received an increase over 1898 rates of 273% on lines east and 329% on lines west, that is for the class of agent and operator. Night operators on lines east increase 317%, and on lines west 342%. Assistant agent lines east increase 334%, and on lines west 373%. Truckers and porters an increase over 1898 rates of 226%, and in the mechanical shops you get the greatest increase in wages, machinists in 1898 receive 19¢ per hour and in 1922 77¢, or an increase of 305%. Blacksmiths in 1898 20¢, in 1922 77¢, an increase of 285%; carpenters an increase of 305% and car repairers an increase of 414%. In 1898 car repairers were getting 14¢ an hour and in 1922 they were getting 72¢. Now that gives an idea of the utter impossibility of applying these rates to modern conditions. The present conditions are such that the railways could not live is such a reduction became at all general, and very many things have intervened since that date, since 1897. The Railway Act has been revised, emphasizing still more than ever the contention of Parliament to equalize rates throughout the whole of the country and to make as far as possible just rates for all sections of Canada, and all sources of production. Then the Board of Railway Commissioners was created in 1903 and the intention was to remit the whole of the rate question to that body. It is inconsistent with the creation of that body and its jurisdiction that it should be hampered or fettered by an obsolete agreement which has no raison d'étre today applying as it does to circumstances in existence in 1897. In 1897 it might have been reasonably expected that the rates then created would not interfere with the railway development, because if circumstances had remained normal; if the immigration had poured into the West; if the war had not

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stopped all progress, why, I think these rates would have gone down as a matter of course. It was probably the expectation that the rates would go below the Crowsnest Pass standard if things had been normal, but the war came in and upset all calculations and all predictions, and rendered the cost of operation absolutely impossible under conditions which were applicable to a different state of things so that one can understand that that arrangement was an unfair one at the time except inasfar as it discriminated between different commodities and traffic bound in different directions, but it was not anticipated that the difficulty would become so accentuated as they have by reason of the change in conditions, but as to applying under present conditions it is simply impossible. It may be said a contract is a contract and you are bound by that contract, and you cannot be heard when asking to be relieved from the obligations in the contract. I quite appreciate the sanctity of contract, but you must have regard to its nature. This contract is a rate-fixing contract, and whoever heard of a rate being eternal - it is contradiction in terms, especially after you set out to have a fair system of rates throughout the whole of the country. To establish a favoured region and favoured class and favoured direction, all those things were with the idea of preparing a rate construction, and while it is true we signed that contract at that time, it was never in contemplation and could not have been in contemplation of the parties that the World War would so change conditions as to make the application of these rates absolutely ridiculous under present conditions. Then, moreover, Parliament has declared its policy upon that. In 1919 the Railway Act was enacted and Section 325, subsection 5 relieved the Railway Board of the embarrassment caused by the

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oxistence of those spedial rates, and why? The World War had so completely revolutionized everything that Parliament recognized the inapplicability of those rates to the operating cost and the cost of millions that had been a result of this war. We had to follow the movement that took place. In the United States for instance, the wages went up, with the McAdoo Wage Scale wages went up on the other side, and the two systems are so intertwined it was impossible not to follow it,and the Government on its own arrangement adopted the McAdoo Award and recommended to the Railways to do the same thing.

An Honourable Minister: Was the relief which Parliament gave in 1919 intended as a permanent relief or as a suspension for war time?

Mr Lafleur: Whatever done was only a suspension. They asked for abrogation because it hampered the operations of the Railway Board and would forever be a stumbling block, and I understand that was seriously contemplated and desired by a great many of the parties, and it must be by the Railway Commissioners because they cannot carry on scientific rate constructions as long as that obstacle exists. If bound by those reductions in those territories they have to make some other territory and other commodities pay the difference. That is, if they are successful in fixing a just and equal rate and be fair to the railways and the shippers - admitting they had been successful in that, then unavoidably at this moment a certain portion of the territory and certain classes of the goods are taken out of that general scheme, for they have to make the others pay the difference, and to that extent they are not carrying out their purpose or aim. Their aim is to give fair treatment to all parties in Canada and they will always be prevented from doing that

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as long as this little preserve exists - that seems absolutely impossible to get away from, and as I said Parliament declared its policy in 1919 in passing Section 325, subsection 5 of the Act, which gave a free hand to the Railway Commissioners and removed this obstacle, and the operation of that Act was suspended for three years, and later on in 1922, a further suspension of one year and another year was granted so both the Parliament and the Government have adopted the policy of suspending the operation of that Act, under conditions as they have existed since 1919. Now have they got any better? I submit not. You cannot say the situation is better in 1924 than in 1922. You will find the operation costs of 1923 are 85.86%, and in 1922 they were 80.53%. The operating ratio is greater today, so I submit today there is no reason for changing the policy of Parliament. They have adopted the policy of suspending that law as long as war conditions last. The extent of the costs consequent upon the war in wages and materials have not varied since Parliament last dealt with this problem, and I submit that it was not in the interests of railways only that Parliament adopted that policy, but in the general interest, in the interests of shippers all over the country, and of all classes of merchandise, as distinguished from favoured merchandise that gets the benefit of those rates. If that is the policy of Parliament, then it is for my friends to show that the situation is better today and that we can make both ends meet with greater facility today than in 1922, and I submit it is impossible to show that.

Now the carriers respectfully suggest to you that

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in the interests of the shippers as well as the railways in order to establish a rate structure fair to every section of the Dominion the Crowsnest Pass arrangement inasfar as it relates to commodities other than grain and grain products, should be abrogated. That is our contention. Parliament has not gone that length, but that is the only really satisfactory remedy for the situation of an abnormal system. After all you may say why ask for abrogation rather than suspension. Well, suspension is only a remedy which will last for a while and will have to be perpetually dealt with - we will have to come back from time to time to show Parliament whether or not conditions have altered for the better. Why not leave the whole matter to the Board of Railway Commissioners which is created for that very purpose. The Board of Railway Commissioners is a body that can examine its subject scientifically and decide on such a question as it is. It seems to me that is the way to deal with it and I think at some time Parliament will have to abrogate it for it is unjust to create a special preserve like that when Parliament and the Board must consider the general interests of the country. Leaving aside the railway interest, there is the interest of the whole country, and Parliament must have been acting in the general interest when it suspended its operation, because you see the enormous discrimination and chaos which will be introduced by the resumption of these rates and the favouring of one section of the country against another and one kind of merchandise against another for which no sound and just reason can be urged.

Now, that would be the solution which would be the most reasonable in my humble judgment, but if you do not feel it is opportune to go that length and to recommend its

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abrogation and the remission of the whole subject to the place where it should go, the Railway Board, in the alternative we would ask for further suspension and would suggest that the continuation of the provisions of the Railway Act, Section 325 and that the interval be utilized by getting a report on the situation from the Railway Commission. It seems to me that would be the most illuminating thing we could get. They have felt its difficulty - it is visible in the various rate cases that come before them, and they are always hampered by this insurmountable obstacle and they will be as long as they favoured regions exist. Now would not it be a reasonable thing to do, to suspend for another period the operation of this Act, and prevent the chaos which is going to begin on the 7th of July, recriminations which must come from all parts of the country which are not favoured by these reductions, and will avoid also the jeopardy in which the railways, including the National lines, will be placed. You have to face the certainty of further increasing the already alarming deficit for operation. Now no harm could be done by a further suspension in order that the matter may be remitted to the Railway Board, and the Railway Board can consider not only the economic question and traffic question, but the legal question and if desirable can refer to any point of law as my friend Mr. Symington wants to contend before the Railway Commission that there is no restriction at all as to territory and the Canadian Pacific Railway is bound under that Act to extend the Crowsnest rate to all its subsequentxly constructed territory, he would be at liberty to submit that, and if the Board has a doubt on that, which is fundamental, the Board can refer that to Supreme Court and then we will be in a position to come before the

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Government with a report from the Board, informed by the Supreme Court and by experts, which would be better than mine. In my way I have shown the discrepancies, but these difficulties would be far more present to the minds of the Railway Board than to me. No layman can deal with it as they can, and my respectful submission to you is in order to prevent the chaos which would ensue you should refer that to them for their opinion and report. This suspension has been continued from time to time since 1918 when first of all the suspension took place under the War Measures Act, and what harm can come of its suspension for another period in order to obtain a report from a competent Board. So I respectfully ask you to deal with the matter because in the absence of your dealing with it it will become a very grave question not only with the Railways, but with the public generally. I thank you, Mr. Premier and gentlemen for the patience with which you have heard me, and I trust you will clear the question of the difficulties which it involves.

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A Delegate: Mr Premier and gentlemen, British Columbia Members are here asking to be heard briefly.

The Prime Minister: Yes, and I have a number of communications from Honourable Mr. Oliver and the Board of Trade and others that I propose to put on the record as part of today's proceedings. Might I suggest as we have a number of Members of the House of Commons here, some of whom wish to speak , that we hear them, and Mr. Symington might follow.

Mr. Symington: Certainly.

An Honourable Minister: Would not it be better to hear all those supporting the petition before hearing Mr. Symington in order to avoid repitition?

A Delegate: To some of the Members of Parliament this is quite a surprise - we are not unprepared, however, for we know where we stand on principle, and might I suggest that you could hear us any time and Mr. Symington might proceed.

Mr. Symington,K.C.: I prefer the other way - it is an application by somebody and whatever said in favour of it I would like to hear it in order to reply to it.

A Delegate: At twenty to 11 today I got notice of this hearing, and it would be rather extraordinary to expect me or anybody else to be heard, but in any case counsel is here representing our interest and counsel can be heard, whereas we are simply Members of Parliament, simply representing constituencies.

An Honourable Minister: The trouble is if the application of Mr. Lafleur is to be granted it would require hasty action and it would be desirable to have all these arguments at once.

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An Honourable Minister: I understand the representatives of British Columbia are supporting the application of the Railways that Mr. Lafleur spoke to, and I think it would facilitate the trouble and discussion and final decision if all those supporting the application of the Companies were heard first so that Mr. Symington would have all those arguments before he speaks - I really think it would mean despatch.

The Prime Minister: Then I think there ought to be placed on the record the communications from the West before Mr. Symington replies, and I think we had better follow the logical method and hear all those supporting Mr. Lafleur now.

Hon. H.H.Stevens, M.P.: Mr.Premier and Ministers, we are not organized, and I might say we have no particular understanding amongst us as to what procedure we must follow in presenting our case, and we are handicapped in not having counsel here. I will present the views very briefly which occurred to me which I think should influence the Cabinet in determining the matter. I may say I will not reiterate the arguments presented so very ably by Mr. Lafleur, and would ask / as you have no doubt already done, to take coguizance of the comparisons and examples he has presented, so I will not deal with them other than a brief reference. I would like to present to you first, and I shall have to speak briefly, that this Act of the Crowsnest Pass Agreement is more or less obsolete - more obsolete than less. That is it starts at a time when no Railway Commission was in existence, and secondly, at a time when the country was commencing to be in a state of development and the results of which were foreseen then. Then if you read in the Act, the first or second sections,

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you will find a reference to a Board of Commissioners for the fixing of rates to be set up - it was in contemplation at the time; no doubt Parliament had in view to settle the rates question by the creation of a Board to deal with it, and in the Act it refers to the future fixing of rates to be dealt with by this Board. Now I would ask you to keep that clearly in mind because it undoubtedly was in front and in the mind of Parliament, and furthermore, I will say this for the experience of the last 26 years: I think the Board was created shortly after this, but at any rate, since the passing of that Act the wisdom of the appointment of that Board has been admitted beyond peradventure. I think it is the most outstanding accomplishment of that period on the economic side, and that justifies us in asking the Cabinet, and indeed Parliament, to refer to that Board, as far as it can, the whole problem of rate-fixing.

I shall not go into the question of discrimination or disparities - I leave that to the presentation of Mr. Lafleur. I have said that the Act was obsolete, and I base it upon this, speaking now for my own district, at the time the rates were fixed there was no such a thing as production of fruit in British Columbia - it was not considered possible. I was living then in the Okanagan Valley and I remember the first orchard planted, and it was not considered suitable for fruit because of the arid nature of the soil, but it was discovered by the use of irrigation and the application of water most of the land produced enormously and resulted in tremendous development until the chief supply for the Prairies and some for the East now comes from the extreme West, a complete change and reversal of conditions insofar as it applies there.

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Now the next point - the Panama Canal which then was merely a dream and looked upon in some quarters as madness, has now become an important factor, a determining factor, in the making of traffic from one side of the Continent to the other and changing the movement of goods in Europe eastward. Now that factor is there. It was not in existence. It was looked upon as a mere dream then when the Act was passed. Now surely the terms of this Act should not be rigidly adhered to in the face of complete change brought about by the construction of the Panama Canal. Now I am not going to labour things - I think I have brought that home to the Cabinet. Another point, the rates under this Agreement were not operative up to the period of time when on account of war conditions and abnormal economic conditions they reached suddenly to a high point. Rates were generally below the level and consequently this question never arose. The question of the advisability or the application of the Crowsnest Pass Act should never come into the realm of practical consideration until the abnormal increase of rates brought about by the war, and this is the point I want to impress upon you, the moment economic conditions forced rates above a certain level, then Parliament was compelled to act, and it did act, and its action was recognized throughout the country as not only necessary but equitable and proper action.

Now then what is the condition today? The condition is there would have been brought about not only in the economic rate construction of Canada, but all over the civilized countries in the world such a complete change in costs and conditions that methods and procedure that were quite fair and proper prior to the war are now

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recognized to be wholly inadequate, so we have to view this thing in the light of conditions today. I do not think we can consider when Parliament passed that Act that it passed it having in mind it should be unalterable. I think that is fundamental. To my mind it is not an unalterable Act and let me say why. It is a contract between Parliament and a railway. I agree with Mr. Lafleur that not only as Members of Parliament, but generally, we should observe terms of contract. I would not suggest ~~think~~ a violation of it arbitrarly, but I want you to observe that one party is Parliament representing the whole people, and the other party is a corporate body. The corporate body is agreeable to varying the contract, and I claim it is the right of Parliament as representing the interests of all, to vary it. Let us assume the reverse - supposing conditions were such that the rates went down and the railways said we want to keep them up to a certain point, there would be no hesitancy on the part of Parliament to force the railways down in their rates. Now if it appears to Parliament, representing the whole country, that a substantial section of the country - I am safe in saying far more than a fair majority - a large portion of the people, are adversely affected by a contract entered into on their behalf 26 years ago, surely Parliament is justified in agreeing to a variation of that, when the other contracting party is not only agreeable but shows it would be ruined by the continuance of those rates. I want to impress that upon you, because upon that will rest the justice to be obtained. British Columbia has been laboring under high rates for years. One difficulty in securing a reduction has been a continuation of high costs not only in British Columbia, but all over. If you abandon the suspension on this

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Crowsnest Agreement unquestionably you are going to cause a serious loss in revenue, and as has already occurred in regard to grain rates, an added loss to the railways. We are fighting now for a reduction of our rates which we contend are onerous and unfair, but the railways would be in this position: they say we are sustaining a loss of a further 5 or 6 millions added to the loss of the last two or three years, and we cannot afford to reduce rates elsewhere. In other words, this is what will result if the Crowsnest Pass rates are made applicable, and, if added to that, other rates on competitive basis are forced to come down, it will result in such a tremendous loss of revenue to the railways that rates in other districts will have to maintain abnormally high rates to compensate for the loss of revenue.

Now another point: I am far from an expert, but I would add a word as to this competitive question. If the Crowsnest Pass Agreement is brought into full operation, the Canadian National, which today is not under obligation to observe this contract, would have to bring its rates down, and I want to contend there is no justification - I know it will be treated by Mr. Symington, and in a sense of duty he is justified in making a plea on behalf of his clients - he will plead it is a contract with us, not with any particular portion of the people, but with the whole of the people, and the C.P.R., and I have as much right, representing British Columbia, as my friends representing the Maritime Provinces and Quebec have, to contend if adversely affected by the Agreement, then the Agreement should be modified. Parliament then has a right to change that Agreement. I am asking in the interest of my Province not in the interest or standpoint of getting

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a particular advantage, but in the interest of getting a measure of justice, that this Agreement should be abrogated by Parliament, and I am speaking on behalf of the whole of the people of Canada.

The Prime Minister then read telegrams and communications which he had received, and filed them of record.

The Prime Minister: Perhaps I might say by way of explanation of the brevity of time, what the Government thought was in having the eminent counsel here today we would in all probability get the essential features to guide us in reaching a decision as to what course we should take in respect to the presentation of this matter to Parliament. Of course it is to be assumed in Parliament every Member would be free to express his own views there, but the Government was seeking to get before it in an immediate way the outstanding arguments, andit was not felt desirable to have a large delegation here, in fact it was thought it would only confuse matters to have a delegation from British Columbia and the Prairie Provinces in number. I think you will appreciate that at this time, especially for the Government, it would have confused matter intolerably if we had large numbers of persons to listen to, and we therefore sent communications to the Premiers of the Provinces notifying them we would have this hearing, and intimating who would likely appear. Are there any other gentlemen from British Columbia who would like to speak?

Honourable S.F.Tolmie: Mr. Premier and gentlemen, I do not intend to take up any time at this late stage

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in which to express my appreciation for the opportunity of presenting our views. Mr. Stevens has gone over the whole situation, and I am sure you are impressed with the necessity of giving British Columbia fair play. We have the canning and the fruit industry of the Okanagan Valley, and I may say we are handicapped to some extent for it is a little regrettable we did not have notification in time to have representatives here from some of our Associations in British Columbia - at least some of them.

The Prime Minister: I should remark that the Government last year devoted 5 or 6 days to listening to the arguments of British Columbia, and I do not think there is the remotest part of it which has not been presented to us.

Honourable S.F.Tolmie: Well, what I want to say in conclusion is, that I fully endorse what Mr. Stevens has said in the claim of British Columbia for fair play.

Mr. J.A.Clark,M.P.: Mr. Premier and gentlemen, I would just like to emphasize what Mr. Tolmie has said about representation from British Columbia. I quite appreciate the fact that British Columbia was given an extended hearing this spring, but now we have represented here the Railway Companies and a portion of the Western Provinces, and I think it would be a splendid thing if British Columbia's views could be summarized briefly before this hearing is concluded. It is entirely beyond question to expect us as Members of Parliament to come here and give you a proper summary of British Columbia's position. Mr. Lafleur has touched upon the results which would ensue to the Railways, and I feel that in the restoration of this Crowsnest Pass Agreement it would be ruinous to the agricultural and fruit-growing

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industry which did not exist in 1897, to all industries which did not exist in 1897, on the Coast. We have in Vancouver 200 industries, and I venture to say not one of these existed in 1897. And we have the Panama Canal today, and it seems to me the restoration of the Agreement would disregard absolutely the natural trade channel. Then, on the sanctity of contract - when British Columbia came into Federation it was a fundamental principle that there should be no discrimination as against British Columbia in favour of other Provinces. Now following that we have the Crowsnest Pass Agreement in 1897 which undoubtedly results in discrimination of British Columbia. In the first instance it is true because we did exist economically at that time. Now we have the third factor, the Panama Canal, and the agricultural development which has taken place, then and I say without hesitation, if this Agreement is renewed the discrimination against British Columbia would be such as to be ruinous, and I therefore repeat my warning, properly repeated, before you reach a decision introducing into Parliament legislation dealing with this matter. I quite appreciate the fact we will all be given the opportunity to debate it in the House, but that would be after the Government has arrived at a decision, and I think it is before arriving at that decision the importance of being heard is great.

The Prime Minister: I suppose you know all the arguments presented to us are preserved in record form and we have them for the purposes of record in the Cabinet - we are not depending on what we hear today altogether for our appreciation of the British Columbia case, for last year I think it was 5 days we sat listening continuously to the claims of British Columbia in regard to the question

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of discrimination. If there is anything you can suggest that has not been suggested by the telegrams and communications submitted and what has already been said, I would be glad for you to do so.

Hon. S.F.Tolmie: My difficulty is obvious - in order to present a case like this it requires preparation and I think Mr. Lafleur's argument will show the tremendous preparation necessary. I would not be prepared personally, for it requires legal counsel.

Hon. Jacques Bureau: We had Jerry McGreer before us last year speaking for 6 hours on the subject.

Hon. S.F.Tolmie: Yes, but we would like a fresh summary of the situation.

Mr. A.W.Neill: Mr. Premier and gentlemen - I will be brief for I could not add much to the able presentation of Mr. Lafleur, because I have not the qualifications. I have here a number of telegrams along the line of those already presented to the Government. When this Crowsnest Agreement was made it was intended, in a certain measure, for the benefit of British Columbia. British Columbia had contributed 3,755,000 acres of land, some of the most valuable in the country. Other Provinces contributed their pro-rata share of taxation, and British Columbia did the same but also contributed in land and it was no doubt with a view of being of some benefit to British Columbia that this Agreement which now seems so unjust was made. At that time we had no industries and very little development, and consequently under those rates, coal oil and fruit and iron would be brought in cheaper and this would be beneficial to us. But now conditions have changed with the development of manufacturing and other interests, and ~~xgr~~ this agreement would now be an

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injustice which was not contemplated by that Agreement. Mr. Lafleur designated various industries affected. There are the oil refineries and the Westminster Cordage Factory - that is a soldiers' industry supplemented by Provincial funds, manufacturers of iron and glass, etc., but I just want to make one point, that is the manufacturers indicated have a limited market and that is toward the West - when we go West we strike the Pacific Ocean, and every half cent taken off the freight rates gives us so many hundred miles more market., Now for instance, to increase the tariff on fish it would cut their market almost in half because we have not got a large market in our cities. There is another point. I am not sure how much the Government is responsible by way of recommendation, or whether the Railway Board entirely put a discriminating rate on the wheat shipped from the Prairies to British Columbia for domestic use. I think Mr. Lafleur said something indicating that they were satisfied to leave wheat rates alone. We do not want them left alone - we want a still further reduction on wheat westward which would help to relieve congestion of traffic on the lakes and perhaps reduce its demand for traffic by way of Hudson Bay. What we want particularly is justice in connection with domestic freight rate on wheat to British Columbia. They can haul 20,000 tons of wheat at a fixed rate and cannot haul 2,000 more tons of domestic wheat at same rate, and the result is that the farmers and the mills of British Columbia get their wheat at a very largely increased rate laid down over that intended for the consumer in China or the miller in China or in the Old Country, and I cannot see any reason or justice in saying they can haul wheat for export at a lower rate just by saying it is part of the long haul. We know nothing about that. The haul is from Calgary to Vancouver, and I

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do not see why they charge more just because it is going beyond that. That phase should be taken into consideration in any readjustment. In conclusion I think that we Members from British Columbia have been slack in not presenting this before you. I do not think the people in British Columbia appreciate the seriousness of this question. I am familiar with all the industries, and I do not know of one that will not be hurt,and most of them viciously hurt by this Crowsnest Pass Agreement rates. It would result in nothing less than a catastrophe for British Columbia if it were carried into effect.

("A" Copy follows)

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MR. T. G. McBRIDE, M.P.: I do not know that I can add much to what has been said. All we ask is fair play. We do not ask the railroads to cut their rates to such an extent that they cannot keep them on a paying basis, but we think they should give the same rates to British Columbia as they are giving to other sections of the country. At the present time it costs twice as much to take a car of apples from the Okanagan to Vancouver as it does the same distance in Ontario. We are helping to pay the taxes to keep those railroads going. Why should we be discriminated against in British Columbia?

MR. C. H. DICKIE, M.P.: Our case has been very ably presented; the government is well apprised of conditions that exist in British Columbia, and I am sure the government realizes the seriousness of the situation.

P. J. SMITH, Vice-President and Manager, Manitoba Rolling Mill Company, Limited: On behalf of the rolling mill and steel industry in the city of Winnipeg and district, I may say that our plant is at Selkirk and our head office at Winnipeg. We are going to have discrimination against us of $7 a ton while we get no benefit at all from the freight rate on raw material. I am not very well prepared, and I am sorry that I could not find our member this morning to present our case. I was on my way East on another matter, and when I reached Fort William, I got a telegram that this hearing was to be this morning, also a letter which I will read from our President, and a memorandum which I will read, and some further memoranda supporting it which I will not read, but will leave with you as an Exhibit. The letter from the President reads:

"I am enclosing herewith copies of some memoranda prepared in connection with the Crowsnest Pass figures.

"The probable difference which the putting in of this

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"rate will make is $7 per ton. If you take from this fifty cents per ton reduction in oil rate, which we expect to get, we will have a net discrimination against our plant of $6.50 per ton, as compared to what exists at present."

I find since coming here, that that fifty cents on oil rate will not apply:

"I say discrimination because it is nothing less than discrimination to arbitrarily fix a rate which was presumably fair twenty-seven years ago without at the same time changing the rates on the material which enters production of the finished product.

"It may be argued that the mills in the East are also paying increased rates on their raw material, but in answer to this it could be pointed out that when we take 5,000 pounds of material into the mill we take out only 2,000 lbs, and eastern mills therefore do not pay the freight rate to Winnipeg on the 3,000 lbs. which disappears in the process of manufacture.

"The only thing that appears possible is that the act should be suspended for another year and a general revision of rates ordered. From our standpoint, this is what is required, as the freight on our raw materials has advanced since the beginning of 1918 at least $2.30 per ton of finished product."

This is the memorandum:

"1. That there has been an increase in freight charges on our raw material to the extent of $2.31 per finished ton of product.

"2. That this increase was offset by the increase in freight rate from competitive plants in the East through the suspension of the Crowsnest Pass agreement

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"amounting to $7. per ton.

"3. That the return to the Crowsnest Pass rates means that the compensation for the higher rates paid on raw material is withdrawn and that this industry is penalized to the extent that it still continues to pay the 1924 rate on raw materials.

"4. That this industry did not exist at the time the Crowsnest Pass agreement was made, but was started in 1908 at a time when local rates on raw material and the rate on eastern bars bore a relation to each other similar to that now existing.

"5. Therefore, the re-application of the Crowsnest Pass agreement rates will place the industry in a situation not contemplated at its inception, and which could not have been foreseen.

"6. That this industry is the only one west of the Great Lakes and furnishes the bulk of the requirements of that territory in bars, iron and steel. It has no opportunity of reaching any other market, as have eastern mills, the Crowsnest Pass agreement rates only operating on traffic westbound from Fort William. The eastern mills will still enjoy its own market unaffected by western competition, and in addition will be given the special rate into the western market.

"7. This industry employs 200 men with an average annual payroll of $350,000. It purchases approximately 20,000 tons of raw material in the West and converts it into mild steel ingots by the open hearth furnace process, which in turn are rolled into bars for the general trade."

I may say that within the last three years we have added

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greatly to our plant. We have probably the best equipped powdered coal plant that is using powdered coal on the American continent. Our western coal that we buy we get from Alberta. The freight rates on that will not be affected and that is a raw material. The raw materials that we buy will extend over a radius of two to three to four hundred miles. That is not affected either by any change in the rates. Consequently the whole of the advantage is to the East. I will leave the memoranda with you as an Exhibit.

The hearing thereupon adjourned until Saturday, June 28, 1924, at 10.30 a.m.

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A. 5.

Saturday, June 28, 1924.

The hearing of the argument resumed at 10.30 a.m.

MR. H. J. SYMINGTON, K.C.: Mr. Prime Minister and Gentlemen of the Council, I am appearing on behalf of the governments of the Provinces of Alberta, Saskatchewan and Manitoba, to oppose the application brought by the railway companies. In opening, I desire to make it clear, on behalf of my clients, that we are asking for no favours and no preferential treatment, but we rest our case upon the logic, right and justice of the situation. We are here opposing a substantive application brought by other parties to change the railway policy of the country, a change in policy vitally affecting the country and for which there has been no public demand, a change of policy adopted in ~~1902~~ 1897 by the Laurier regime when they came into power, not in a haphazard or unfinished way, but after great consideration, after the holding of commissions, taking of evidence and considering the whole subject, a policy framed in accordance with an immigration policy which was put into effect by that administration at that time, a policy adopted not for to-day, but for to-morrow, a policy which was reiterated and substantiated throughout the whole regime of that government from time to time, and always maintained, a policy which had in mind the settlement of western Canada, the making of traffic and general prosperity to the railways and to the country. In our submission to you, the policy of that government laid down in 1897, and as I propose to show to you, reiterated from time to time, proved by results to be a wise, sane, sound and farseeing policy, and one conceived with a cosmopolitan spirit of that administration. The situation in our view is no different to-day. This government has come in at a time when, as I understand their

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policy, they are seeking to popple those lands, to create traffic for their railways, to relieve the taxation of Canada by the augmentation in its numbers of settlers and producers, and you are asked, in the face of that policy, an exactly similar policy to that which was being pursued by the Laurier regime in 1897, to wipe out the very thing that was put into effect for certain purposes, one feature of its being put in being that it was expected to achieve that result. We submit to you that before any such drastic change is considered, that you must, or, I say it with deference, should consider very seriously why that change should be made, and whether the onus has been satisfied by the argument which has been addressed to you by the railways, which I will deal with later.

What was that policy? For fifteen years there had been a certain cry about the monopoly rates in western Canada. The question of extreme rates is nothing new to-day. It was on the boards then, and it was pointed out that the eastern rates were controlled within a maximum by the fact that water flower alongside those rails. The Government said: We are spending money upon canals and upon widening and deepening those waterways, which control and effect competition with the railway rates in the East. On the other hand, in the West there is no water competition. It is what was known then and is known to-day as a railway monopoly territory. Therefore they said: As rates are held down by that controlling maxima in the East, and we are spending money upon creating that maxima protection, we will decide, as a policy, that where the government of Canada subsidize railways in the West, we will insert a clause or condition of two things:

1. That rates henceforth must be under the Board of

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Railway Commissioners, and

2. That rates on certain commodities of particular importance to the development of that country shall be on a certain basis of maxima and shall never at any time in the history of Canada be any higher.

The argument put forward by the railways is that it was intended, when the Board of Railway Commissioners was appointed, those maxima would be wiped out and the board would look after the rates. Nothing of the kind. The two went together. In the Crowsnest Pass agreement I want you to notice that the first thing provided for is, as I say, that all rates on the Canadian Pacific between points on this line and any point on the main line throughout Canada on any other railway owned, leased by or operated on account of the company, should be under a Railway Board, if and when created, followed by the actual covenant as to certain specified rates on specified commodities that they never shall at any time be any higher than those rates set forth.

So that you may understand that this was no haphazard thing, it had been introduced in the administration that preceded the Laurier regime. I suppose I may say without offence at that time that regime was considered very favourable to the Canadian Pacific, and the Liberals at that time were not so considered. They were going to agree and had brought in a bill to subsidize the Crowsnest Pass railway and they were defeated. When the Laurier regime brought in the bill, the subsidy was higher than their friends of the previous administration proposed to give them, and which they had been willing to accept. What was the explanation given to the House? It was the imposition of those very conditions. It was

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discussed at great length, and the excuse for the monopoly given, because it was a monopoly given to the Canadian Pacific in that territory, plus the subsidy, was the imposition of those very restrictions which were paid for in that way.

Following the Crowsnest Pass agreement there was still a great agitation. I may say that at that time many western people opposed the agreement. One member of the government voted against it. It was said that the Great Liberal party were selling out to the Canadian Pacific in this monopoly fight on the prairies. The trouble still continued, not based upon these commodities, but based upon the high western rates on all other classes of commodities. As a result the Government appointed Professor MacLean of Toronto University, now Dr. MacLean of the Railway Commission, to investigate and report upon the matter. He made a very thorough investigation. You will find it in the Sessional Papers of 1902, No. 20 A. Professor MacLean found that all the charges were substantiated; that western rates were destructive, that you could haul by wagon in many cases cheaper than you could send by rail. He said:Maxima such as the Crowsnest maxima are not enough; it needs a regulating body as well, that in the scope of those maxima will prevent discrimination between territories, and grant fair, just and reasonable freight rates. Remember that report never contemplated the abolition of the parliamentary control of rates which they had paid for, it was supplementary and complementary to and a carrying out of the previous policy that all rates would be under the board, if and when created. Accordingly, the 1903 Railway Act was passed in accordance with Professor MacLean's report, and they inserted section 3 in that Act, which maintained and perpetuated the statutory rates made under contracts of that

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character, namely the Crowsnest compact and any hereafter passed, maintained those absolutely, that it was within those maxima that the board regulated rates, and it added this, or it did not add it because it was in the old Railway Act, that there must be no discrimination between territories or localities, no undue or unjust discrimination, if I may correct myself; but it provided that if there was a difference, the onus was upon the railways to show that it was not discrimination. I am coming back to that clause in view of the argument addressed to you by Mr. Lafleur yesterday, and the apparent case made before you of disparity against other provinces based upon a premise that absolutely overlooks the discriminatory clauses of the Canadian Railway Act.

You will notice that the Railway Act of 1903 was passed with the Crowsnest rates and agreements and covenants right in front of it, and they were maintained. In that same year, the Laurier administration were asked by the Canadian Northern railway to guarantee their bonds for the extension of their main line from Grand View to Edmonton, the Canadian Northern railway having in the meantime built their railway line through Manitoba under Manitoba guarantees and under a compact and contract similar to the Crowsnest pass agreement entered into with the Manitoba government, and at rates less than the Crowsnest rates. What happened to show that this was a continuing policy and a policy continued in the same year as that Railway Act was passed? If it is attempted to show that the Railway Act was to do away with the maxima rates, they put clauses in the agreement that in consideration of the guarantee, the Canadian Northern railway must enter into an agreement with the government that the rates would be under

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the Board, if and when created, and that on certain commodities, to be adopted and mentioned in the agreement, the rates would never at any time be any higher. It was objected in the House that this matter was of such great importance that they should know what those commodity rates were. The Minister of Railways of the day, the very minister who framed this Railway Act, pleaded that it was the end of the session, but that the responsibility of the government was there to see that those schedules were adopted and that rates would be fixed lower than they were then. He said to Parliament: Why, thos railroad can make a dollar where other roads suffering from 1 1/2 per cent or 2 per cent grades cannot make fifty cents. He said; This is a matter of contract; the Board will have nothing to do with these rates; Parliament will fix them as a matter of contract and consideration, and the maximum rates will not be touched by the Board. In 1908 the same thing happened. The Canadian Northern railway came back to the government and asked for grants for their Prince Albert and Calgary lines, and as regards all the lines of the Canadian Northern railway, exactly the same clauses were put into the agreements.

HON. MR. GRAHAM: Is it not a fact that the main line to which you refer is under the Board of Railway Commissioners... by consent or in some other way?

MR. SYMINGTON, K.C.: SO is the Canadian Pacific, but the point is, having it under the consent, maxima were created.

HON. MR. GRAHAM: They are not adhered to in the Manitoba rates.

MR. SYMINGTON, K.C.: They are not adhered to in the Manitoba rates, because, as you know, the courts have held

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that section 3 applied only to Dominion Government contracts and not to provincial government contracts. What I am arguing now is purely as a matter of principle, of policy of that regime, that legislative maxima were to be created, to substitute a protection against the waterways protection in the East. That was a situation and condition down to 1914, when the Crowsnest P ass maxima up to that time was of service to the West in so far as only some of those commodities were concerned. It was of no service in the matter of grain rates because the Manitoba agreement grain rates were lower than were then in force and effect. In 1914 these maxima were not reached. That is, rates were lowered to a point below those maxima, so that the Crowsnest pass rates were not a protection. It was never suggested that those maxima should be interfered with until 1917, when the railways made an application for a 15 per cent increase. The Board granted that increase, but restricted the increase in so far as it was interfered with by the Crowsnest maxima -- they could not deal with it.

In September of 1918, the regime of that day for the first time departed from the policy of the previous regime. They did not depart from it as a matter of policy, perhaps, but they introduced as a war measure, under the War Measures Act, a temporary moratorium of the covenant of the Canadian Pacific that those rates would never be any higher. It was put upon grounds that you all know,- war measure grounds -- we are in the war -- prices of agricultural products are high -- as a war measure we will depart from that policy and we will grant a moratorium to the railways so far as that covenant is concerned. In 1919, on the plea of after-war

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conditions, they followed out that moratorium policy. That is, they did not do the simple thing. They did not wipe section 3 out of the Railway Act which said these agreements are permanent and must control in maxima rates, but they added a subsection to section 325, subsection 5, and said for three years the railways could disregard all agreements. That is, they granted a further moratorium of three years of that covenant. That moratorium expired in July, 1922, and the matter was referred by this government to a special committee. That special committee sat for weeks and weeks. The whole subject was gone into in a way that we cannot go into it with you to-day nx in a few hours. The case was very thoroughly and adequately presented on both sides and on all sides. After that investigation, this government, as a matter of policy, decided that that moratorium as regards grain rates should end, and the covenant of the railways come into operation; that as regards the other commodities, that moratorium was extended for one year, --This is what parliament said, -- with the right of the Governor in Council to extend it a full year but after that the moratorium ceased. I submit to this government that that was a declaration of policy, a policy which was in effect a reversion to the policy of the regime from 1896 to 1911. It was a declaration of policy of this government the same as the other. Now, upon no more information except the bringing of a few schedules which were before that committee, up to date, the railways present a petition to you and ask you to change that policy, you the Governor in Council sitting here on two half days' argument, to change a policy decided upon after weeks of investigation, and to change it upon no new information, but upon this situation that the Canadian Pacific railway in 1921 had a surplus of some

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$500,000 after the payment of its dividends and fixed charges. At that committee the Canadian Pacific told that committee that if those rates came in, they would have a deficit of $15,000,000. They said: The most important thing is the grain rates; that will cost us $7,500,000, and you are going to ruin us, -- the same as Mr. Lafleur said: This is going to be ruinous. What is the situation to-day when the railways come to you and ask you to change this as a matter of policy? In 1922 after those grain rates came in, because they came in before the crop movement, instead of a surplus of $500,000, after payment of all the fixed charges and dividends, the Canadian Pacific which was going to have the large deficit and be ruined, had a surplus of $1,700,000 or $1,800,000 or three times as much. In 1923, last year, when the effect of that policy of 1922 came in, they had a still larger surplus, $1,800,000, and they come before you now in that position and ask this government, as a matter of policy, to reverse yourselves and your predecessors, and yourselves in your decision of 1922.

We submit that, under those conditions, there will have to be a very great public demand and a very strong case made out to justify that change.

I come now to what is the case made out by Mr. Lafleur. Mr. Lafleur's case is based entirely upon one proposition, namely, that upon a view of the law which he in his ~~official~~ personal capacity presents to this government, disparity will occur, and the effect of this argument -- not that Mr. Lafleur was a party to it at all -- is to say to the Maritime people and the British Columbia people and even to the Ontariomand Quebec people: This is going to create disparity against you.

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You must protect yourselves. This sectionalism must not be allowed. That is based upon Mr. Lafleur's opinion stated to you, based on a Toronto case which has nothing to do with the Railway Act at all, that, in his judgment this discrimination or disparity will exist; that these rates upon these few commodities will only apply to the lines of the Canadian Pacific which were then in existence, and that there will be discrimination even among the peoples of the West, namely Saskatoon as opposed to Regina, Edmonton as opposed to Calgary. I take this position, the position that I took before the committee on exactly the same point. I submit to you that nobody coming before this Council should endeavour to say that his personal view of the law is so-and-so and more than I should say that my personal view of the law is so-and-so. I do not wish to place myself in opposition to Mr. Lafleur's position; Mr. Lafleur is of too great eminence for that; but the position I take is that the law as laid down by the Board of Railway Commissioners, unappealed against, that has been in force twenty years, fifteen years, is the law that is asked to be set adde, and that is the law that the government must consider is the law. That is where my friends from the Maritimes and British Columbia are wrong in my submission, and I will ask you to bear with me until I show you what that law is. Mr. Lafleur said he did not know of any case. There is a case, two cases, three cases. He may be right. I do not know. I may be right. Mr. Justice Killam may be right. Mr. Justice Maybee may be right, because they both said so. Here was the point. The point was that under the discriminatory clauses in the Railway Act, in the Pacific coast case first under this very agreement, the Crowsnest pass, British

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Columbia came before the Board of Railway Commissioners and said: these Crowsnest rates into this territory are a discrimination against us in our interior shipments and in our shipments into the prairies. Among the defences made by the railways was this: We justify that discrimination because those Crowsnest rates are compulrery rates, and therefore you cannot view them as creating discrimination. They are not put upon a basis of proper earnings or receipts; they are compulsory rates. What did the Board say and what is sensible? The Board said: These rates are not in the class of natural maxima such as water ratos or as rates which you have to put in to meet competition and retain. These are not enforced rates. Those are rates which you voluntarily entered into for a consideration, knowing the discriminatory clause in the Railway Act at the time you entered into them. They are not enforced rates; they are rates voluntarily entered into by you knowing the discriminatory clause, and therefore they must be considered and British Columbia and those other territories cannot be discriminated against in that way. That meets exactly the British Columbia argument and I want to give it to those from British Columbia in view of the statements made here yesterday, so that they can consider it. This case is found in 7 Canadian Railway Cases at page 125:

"Competitive rates -- Unjust discrimination.

"British Columbia Pacific Coast Cities v. Canadian Pacific Railway Company.

" "The Boards of Trade of British Columbia Pacific "Coast cities complained that the rates levied on all "classes of goods from Vancouver to interior points in "British Columbia and the North-West Territories as far "East as Calgary on the main line and to MacLeod on the

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"Crowsnest line were discriminatory as against them, as "compared with the rates on west bound traffic from "Winnipeg to the same territory."

I am not going to bother you with why the rates were still higher at the end of this case than the Crowsnest pass rates, because he goes into the expense of operation in the mountains and the cheap operation in the prairies. This is the headnote, and I will give you Mr. Justice Killam's judgment:

"When the act to authorize a subsidy for a railway "through the Crowsnest pass (60-61 Victoria. Chap 5, sec.1 "D.) was passed and the railway company agreed in in return "for such subsidy to charge lower tolls upon certain class- "es of goods from Port William and all points East to all points West, the Railway Act of 1888 (51 Victoria, chap 29, "sec. 232) then prohibited unjust discrimination between "localities, and parliament should not be considered as "having authorized what would, if done otherwise, have "produced unjust discrimination between localities, "accordingly the rates from Pacific points Eastward should "be proportionately reduced upon similar traffic carried "under similar circumstances."

It was Mr. Justice Killam, whose -- I want to say to the Cabinet if they do not know -- careful and well-considered judgments laid the whole foundation for the administration of this act. He was not a careless man; he was one of the greatest judges we have ever had in Canada. He laid down the principles upon which this act has been construed. What does he say about that? I read at page 145:

"There are two minor points which require consid- "eration. One arises under special commodity tariffs for

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"westbound traffic from Winnipeg upon the classes of "articles named in the statute 60-61 Victoria, chap 5, "sec. 1 (D.), intituled 'An Act to authorize a subsidy "for a railway through the Crowsnest Pass.' That Act "authorized the granting to the Canadian Pacific Railway "Company of a subsidy towards the construction of a rail- "way from Lethbridge, through the Crowsnest Pass, to "Nelson, upon certain conditions, one of which was that an "agreement should be made between the government and the "company by which, among other things, a reduction was to "be made in the general rates and tolls of the company "upon the classes of merchandise therein mentioned west- "bound from and including Fort William and all points east "of Fort William on the company's main line, or on any "line of railway throughout Canada owned or leased by or "operated on account of the company.

"As a result of this act and the agreement made under "it, the company made tariffs of reduced rates upon the "classes of merchandise referred to, not only from Fort "William and points east thereof westward, but also from "Winnipeg westward, without similarly reducing rates on the "same classes of merchandise from Pacific points eastward. "These reductions cannot be considered as having been "forced upon the company, but were the result of an agree- "ment which it chose to enter into for the purpose of "obtaining a subsidy in aid of the construction of a line "of railway. The agreement and the statute did not even deal with rates from Winnipeg at all. When the statute was "passed, and when the agreement was made, the law prohib- "ited unjust discrimination between localities; and while "Parliament did not stipulate for similar reductions over

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"western portions of the company's railway, it should not, in my opinion, be considered as having authorized "what would, if done otherwise, have produced unjust "discrimination. I think that we are justified in infer- "ring that, in respect of the classes of merchandise to "which these tariffs relate, the reductions did result "in such discrimination, and that the rates from Van- "couver eastward, upon similar traffic carried under sim- "ilar circumstances, should be proportionately reduced." That is my answer to my learned friend's argument that disparity will be created; that these rates can go into the Crowsnest Pass railway upon these commodities, but all other rates are going to be out of joint; that the Maritimes are going to be under a disadvantage with regard to Montreal. That decision was followed in a case that meets the other branch. It was followed in one of the most important cases called the Regina Rates Case, which arose under the Manitoba agreement rates to which the Canadian Pacific were not a party at all. The Regina Board of Trade came in and said: Manitoba has a preference over us, a discrimination, and we want that extended to us.

HON. MR. GRAHAM: That was under the Manitoba agreement with the Canadian Northern.

MR. SYMINGTON, K.C.: Quite so, and at that time it was in effect. The Canadian Pacific and the Canadian Northern came in and said: These are forced rates on us and therefore you cannot take them into consideration in considering discrimination. That case is reported in 11 Canadian Railway Cases, at page 380. It was advanced very extensively, for instance, that Brantford, which was not on the Canadian Pacific, would have to pay a higher rate on agricultural implements shipped to the West than Hamilton and other

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places. It was said that Kitchenor where all this furniture is produced, has a ~~hg~~ higher rate than some other place. The Board, under Mr. Justice Maybee, at that time dealt with that subject in the Regina Rates Case:

"The Canadian Northern Railway Company, after these "agreements had been made, got authority from Parliament, (chapter 5(of the statutes of 1902) to extend its lines "Beyond the confines of the province of Manitoba and "therefore voluntarily placed itself in a somewhat similar "position to that which the Canadian Pacific Railway "Company occupied when that company negotiated the Crows- "nest Pass agreement, regarding which the late Chief "Commissioner said in his judgment in the British Col- "umbia Pacific Coast Cities vs. Canadian Pacific Railway "Company, 7 Canadian Railway Cases, 125,p. 146; Vancouver "Eastbound vs. Winnipeg Westbound Rate Case or Vancouver "Interior Rates Case --

""These reductions cannot be considered as having "Been forced upon the company,but were the result of an "agreement which it chose to enter into for the purpose "of obtaining a subsidy in aid of the construction of a "line of railway."

"It could not surely have been the intention of "parliament in passing section 315 of the Railway Act to "permit railway companies to create different circum- "stances and conditions by entering into a contract with "some one and so defeat the intentions of the section. "The 'circumstances and conditions' which if not sub- "Stantially similar may justify different treatment to "different points, I think must be traffic circumstances

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"or traffic conditions; not circumstances and conditions "which may be artificially created by contract. The "present Chief Commissioner ...

That is Mr. Justice Maybee.

"... expressed the following opinion in the Crowsnest "Pass Coal Company vs. Canadian Pacific Railway Case, "reported in volume 8 of MacMurchy and Denison's Can- "adian Railway Cases, at page 41."

That same principle was again passed upon and approved of by the commission when Sir Henry Drayton was Chairman of it, and it has been approved and followed by three boards. That Regina rates case went to the Supreme Court of Canada. I do not want you to understand that it went on that point, as my learned friend has just suggestedx to me. I was going to come to it. It did not go on that point, but it was a hard fought case, and it was appealed against. Mr. Beatty and Mr. Phippen were in charge. Can you imagine when they were fighting that case which meant a great deal to the company and went and appealed to the Supreme Court, if they thought that point was of any use, it would not have been added to the appeal? It was not. The appeal was dismissed and the judgment ~~appeal~~/was sustained by the Supreme Court of Canada. I do not say the law is right or wrong. I do not presume to say so. But this Council, in considering this question, is entitled to take the law as it has been settled with the appeal, and acted upon for all these years as being, for the purposes of this argument, the law in the case.

As regards the Maritime situation, it was advanced that the rates from So-and-so are going to be prohibitory upon you as opposed to the rates from Montreal and Toronto. The Maritime rates are built upon a system of arbitraries.

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"Arbitraries" means this, that there is an arbitrary rate over and above the Montreal rate. That is, if the rate from Montreal to Winnipeg is so much, the rate from the Maritimes is that rate plus so much, and the great disparity of the Maritimes, the present situation, is that when the horizontal increases in rates took place, the arbitrary rate was not considered, but the increase was added on to the arbitraries just the same and the differentials changed. If the rates from Montreal to ~~Winn~~ the West upon these specific commodities come into force and effect in the Crowsnest Pass, the rates from the Maritime provinces will follow suit exactly in proportion to these arbitraries as they exist. St. John was the point given which they said would be affected. There is the decision which says: If the carriage of these goods from Halifax is of the same character and condition as from St. John, under section 314 of the Act, these rates must be the same or there is discrimination of the one over the other. You were told that Kitchener with all its furniture manufacture would be under a discrimination as opposed to Hamilton or some other place. I have here the original tariff and we hope to use it very soon. It is true that Kitchener is not in it, but Berlin is. This is the first Crowsnest Pass tariff. The rate on furniture from Berlin to Winnipeg and the West is exactly the same as from the other points in the exhibit filed. There it was said that fruit from some point in Ontario was going to have an advantage over fruit from the Niagara district.

HON. MR. GRAHAM: Windsor was the point.

MR. SYMINGTON, K.C.: I have looked that up. They are in that tariff and they are exactly the same, if I remember rightly. The other one was Brantford, the home of agricultural implements. It was differentiated under the clause

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in the tariff put in in 1898! The rate from Brantford to Winnipeg was 67½ cents, and the rate from Hamilton was 67½ cents. These are altogether different from the figures put in there. They have gone on the hypothesis that because Hamilton was on the Canadian Pacific railway at that time, namely in ~~1898~~ 1897 or 1898, when this comes back they will put in the 67½ rate from Hamilton, but they will not put it in from Brantford. Do you seriously think that, under the discriminatory clause of the Railway Act which says that goods of the same character carried under the same conditions, must be carried at the same rates; that there must be no discrimination, a rate like that would stand and disparity be created? It is not worth discussion. It would not last a minute. It could not last a minute. So you may view this thing as being this, that with respect to the rates upon these specific commodities, namely agricultural implements, binder twine, wire fencing, certain articles of iron and hardware, roofing for building purposes and fruit, if these rates come in, they will come in and they will apply to similar shipments from similar territory no matter whether they were on the Grand Trunk or the Canadian Pacific Railway as built then or not.

HON. MR. GRAHAM: Is your argument that notwithstanding there may be changed conditions such as cost of operation, etc., the Crowsnest Pass agreement which applies only to certain territory must be the basis for rates all over the Dominion of Canada.

MR. SYMINGTON, K.C.: On those commodities to that territory, yes. I am coming to that, and I hope to be able to tell you this is the one ewe lamb and sheet anchor we have, and while the question of amounts, perhaps, is not very important with respect to these commodities, the principle is of the

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utmost importance, as I hope to make clear to you.

I want now to meet the argument, the only argument made, the only reason given you that it is going to create disparity between different sections of the country with respect to these commodities. I submit to you that in the face of ~~all~~ those judgments, in the face of all the years of practice, because that discrimination never existed, in the face of those decisions which may be wrong -- I do not pretend to differ with my learned friend, Mr. Lafleur; I am not here to give a personal opinion on it; I could if I wanted to, but I do not want to -- the argument that it will exist, falls to the ground, and disparity cannot exist under the Railway Act. What my learned friend seems to have overlooked is this, that he has views the Crowsnest Pass agreement alone without reference to the Railway Act, the Crowsnest Pass Act fixing certain rates on certain commodities at a time when a Railway Act said that you can not discriminate against localities when you enter into that agreement. Mr. Blair, the minister who prepared the act, knew something about railway law. When that agreement was prepared, there was in the Railway Act that discriminatory clause, and the minute the Canadian Pacific signed their name to that agreement, that rates on those commodities would never be any higher, they knew that from all territories of similar character under similar conditions, those were the rates on those commodities going into the prairie provinces.

I come now to the question of contract. We claim that the Crowsnest Pass agreement is our sole and only charter as regards transportation rights, bought and paid for, just as the Canadian Pacific claim that all the advantages which they obtain under their contract with the Dominion were bought and

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paid for and should not be taken away. In the 1917 appeal before the Governor in Council, on an application made to the Railway Commission at that time, when the Canadian Pacific had extraordinary earnings and surplus, one which at that time in our judgment should not have been made, I had the temerity to argue that under the original agreement with the Canadian Pacific we were more or less partners in that enterprise; that the development of this country had been good to the Canadian Pacific as it had been good to the country, and that, perhaps, under those very trying conditions, when money was being spent without thought, all of which had to come out of the productive efforts of the people after the war, they should be content, perhaps, with a little smaller surplus and a little smaller earning. Mr. Beatty took very grave exception to that position, because, as you know, the Canadian Pacific had completed their part of the contract; they had built the line; the covenant of the country was a running covenant for all time -- exemption from taxation, lands and so on, just as in this case reversed, we completed our part of it when we gave them that territory and the subsidy, but their contract was one running for all time under exactly the reverse position. As reported on page 34 of that appeal, in this room I think it was, Mr. Beatty said:

"An impression seems to exist that that is not a "contract at all, and if it is a contract, it is a con- "tract that 37 years later can be amended or varied with "perfect propriety by the Crown. It has been said that "we did get assistance under that contract and that that "assistance had a lot to do with our present position. "What we did was to make a contract for a consideration,

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"and having earned the consideration and having fulfilled "this obligation to construct and complete it is not now "open to the Crown to say:'We are partners with you in "this enterprise to the extent of taking from you any- "thing which you obtained under the contract or any benefi fit which may accrue to you from the utilization of what you received by railway works or otherwise under the contract.'"

That was the view of the then counsel, the present President of the Canadian Pacific, in 1917, on their contract with the Government, where their part of the contract had been fulfilled. I ask you not to lightly disregard the decision that that was a true and proper principle, and that where this country has performed its covenant in full, the running covenant of the Canadian Pacific should be wiped out on the petition of the Railway Companyes. The two cases are exactly analagous. Why the difference in decision? Has there been any demand from the public before this petition from the railways was issued and worked up in this sectional way? Not a thing. I never heard of it. Yet they come and not only -- they modified it a little yesterday -- to continue the moratorium granted by the last administration, but they say:Wipe it out; give us an absolute release. I submit it is not right, not consistent and not just.

I now come to what, I think, is somewhat of a difficult position, because in accordance with past experiences we find the position of the other road being considered. I want to deal with that subject for a few moments. The Canadian National Railways, the successor in the West of the Canadian Northern Railway and the Grand Trunk Pacific, is, in my

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submission, in no better position than the Canadian Pacific Railway. The Canadian Northern railway came into that country under agreements, first with the province and then with the Dominion, of exactly the same character as the Crowsnest Pass agreement. They came in under rates which were lower than the Crowsnest Pass agreement, and they came in under conditions which at that time justified lower rates, and those were the rates in contemplation that were never to be any higher. I want to read you the language of that agreement which is in the department here:

"That the rates and tolls to be charged for the "transfer and carriage of freight and passengers upon the "lines of railway so constructed and aided and upon all "the lines owned by the company shall be under the con- "trol of the Governor in Council or of such authority, "commission or tribunal as is designated or constituted "under any act of the parliament of Canada for the regul- "ation of control of the business of railways; provided "that the rates or tolls to be charged by the company "shall not in any case be higher than the rates or tolls "fixed by an agreement supplementary hereto, which in "accordance with the said act shall be taken to form a "part hereof, to be hereafter executed between the "parties to these presents."

There was again the policy, first the Railway Act, provided, however, that the rates can never be any higher upon the commodities specified in a ~~xxx~~ schedule attached. The discussion in parliament upon that question is very interesting. The Minister of Railways stated that "the Board will not be able to make these rates any higher. Parliament must do that"

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The Hon. Mr. Oliver, discussing the bill and its effect with regard to the Railway Commission stated that what must be done by parliament was to prepare fixed rates and that parliament and not the Railway Commission was to fix definite rates where a subsidy of this kind was being granted. It was a matter of contract. As a further recommendation to parliament as to the nature of the rates that would be specified the Minister of Railways stated:"They will be able to earn a dollar where another road with a 1 1/2 per cent or 2 per cent grade to combat would not earn a dollar." If you wanted proof of the policy of maximum rates with respect to the Canadian National Railways, the successor to the Canadian Northern Railway, there/is. I submit that the fact that the government has taken over the Canadian National Railways is no more an argument as to why that policy can or should or may be repudiated than it is an argument that you could repudiate bonds that you took over. Without questioning whether parliament has the power, I am discussing the principle of the agreement, and I submit that the fact that the Canadian people have taken over the Canadian Northern road is no more an argument that that principle and contract should be repudiated than that the bonds which they took over should be repudiated. That is the situation with respect to the Canadian National Railways.

I now come to a point which I think is generally misunderstood, but I want to make it clear now once for all, that with all the increases that have taken place, in spite of the fact that these were commodities specially selected on which we were supposed to have low rates, that is maxima, ~~maximum~~ fixed, if these Crowsnest rates come in next week, they are still higher than rates for the same distance

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upon those very specified commodities in eastern Canada. That may seem strange to you, but that is the fact, and I am filing schedules to prove it to you. We hear about discrimination and disparity and the tremendous effect of these selected essential commodities for the West, and how unfair it is; but under the present situation, in spite of the increases that have taken place in the east, the Crowsnest rates, when restored, will still, generally speaking, be and in the vast majority of cases be higher than the rates on those commodities in the East. Is there disparity? Should this sheet anchor be taken from us when every time we go before the Railway Commission in rate cases, we demonstrate and they admit it to an absolute finality, that western rates are a great deal higher than eastern rates?

HON. MR. MOTHERWELL: Will the railways admit that? Have you schedules to prove it?

MR. SYMINGTON, K.C.: I do not know whether they will admit admit it. I will put the schedules in. In every rate case the Commission have found that our rates are higher; but they say:"The eastern rates are held down by water maxima which are all prevailing. We have to be fair to the railroads They have got to have the money. Therefore it must come from the uncontrolled territory, the territory unprotected by maxima." The only protection on certain commodities is this. On all the rest we are unprotected. The same thing with regard to transcontinental traffic. Our Vancouver friends talk about rates! Why, on these very commodities the rates to Vancouver are less than to Calgary, even with the Crowsnest Pass coming in and a great deal less on iron and other commodities. That is what a maximum means. These maxima

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have never been of any use to us until things become abnormal, and the minute that happens, they propose to wipe it out; whereas the water rates covering all commodities always exist in the East and extend not alone along those boundaries, but for great distances back. Let me explain what that is. The first case dealt with by the Board is the International Rates Case, and they said the rates from Sarnia and Windsor must be so-and-so because beside those railways is water, and if the rates by rail are higher they will go by water. But they say: We cannot make that apply only to Sarnia and Windsor, or everybody will go there; we have to make it extend to London, Waterloo, and that extends the effect of that water competition ~~from~~ to a point a little east of Sudbury. You can look at Sudbury on the map and you cannot see any water rate that would affect it. But their rates are held down by water competition, and our rates from Calgary, Winnipeg, Regina, or any of the other places where, looking at the map, there is just as much water as from Sudbury to Montreal, have to make that up. The territory must get the advantage of that, because you cannot discriminate between Sarnia and London, and the break must take place somewhere, and it breaks at the ~~xxxxx~~ barren area north of lake Superior. These are held down to the maxima, but we are not. I am not telling you anything new. If you will read about it, it is all discussed, reported upon by commissioners, that we were a railway monopoly territory, and on that account they put in these legislative maxima. I wish there had been a great many more commodities. We are not asking any change; we are asking that what was given to us as a matter of policy, upon which guarantee our people came in there and settled, what we want to guarantee other people whom we are trying to get in there, should not be at

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this stage taken away, when in the face of the inquiry two years ago, it was decidod not to do so. I fail to see anything in the argument of the railways that justifies a change of policy. The Canadian Pacific, on their figures, are in a better position. We all know that the Canadian National is in a better position. So why, upon what basis, should this be wiped out now when it was not wiped out in 1922? We are getting further away all the time from the war. All other moratoriums have ceased. Why should the moratorium on this covenant be extended and not done away with? We are supposed to be getting back to normal business. Is their case any stronger to-day than it was then? Apart from Mr. Lafleur's argument about disparity upon a personal view of law, which is always dangerous, is there any argument before you to-day at all? There were other things advanced in the memorandum, but I am speaking now of the argument presented to you. That was the argument. Mr. Lafleur says:Operating ratios and so on have changed since 1898. This is not a matter since 1898. These rates were wiped out and far below 1898 in 1914. Operating conditions to-day are better than in 1921 or 1922 when the matter came before this government before. I have searched and failed to find any difference which justifies any change in policy, or a repudiation of the ~~principal~~ policy of the political party to which this government belongs, and which has continued throughout these years, a policy framed to people that country, and in close harmony with their immigration policy. It is quite true that I could come to you to-day and say: Let us change a lot of these commodities. I could make a better list to-day, but we are not doing that. This is a matter of principle. We want to get the legislative maxima back. If anybody has the right to change those

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commodities in view of changed conditions, it is the people of Canada. They speak of coal oil. We used to have to bring our coal oil up from eastern Ontario. Now we have a refinery right at Regina. Do you think the imposition of the Crowsnest Pass rates is going to bring coal oil from Sarnia when the refinery is right at Regina? It has released them to that extent from any burdens that may be upon them. Is that a reason why this should be changed -- the fact that it is not so onerous upon them as regards certain goods as it was? We might ask for this, but we are tied to a principle.

HON. MR. LAPOINTE: May I call attention to an argument of Mr. Stevens' yesterday? He evidently assumed that this agreement was for the advantage of the British Columbia people, and he says: Now, we do not want it; it is detrimental to us.

MR. SYMINGTON, K.C.: May I recall a little ancient history to you in answer to that, because it is wrong? This agreement was the subject of one of the fiercest political fights or campaigns that ever occurred in the West. Many former Liberals in the city of Winnipeg left their party; one actually ran as an independent, because of it. They had been through this monopoly fight and a disallowance measure was up in parliament every session with regard to this bill. Mr. Oliver, who subsequently came to this policy of legislative maxima, refused to present the bill and voted against it, and it was left to Dr. Rutherford to present that bill. It was a good speech in Hansard that he presented it with. The party was split upon it. The question was -- were they selling out to the Canadian Pacific? Were the maxima too high, not enough commodities covered, and so on? It was a prairie problem pure and simple, entered into, as you will find in the debates, in co-ordination with that immigration policy which Mr. Sifton

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was at that time bringing in. There is some other political history that I might tell you, but I will not here. It was a prairie problem, and it was a far-sighted one, in my judgment, because from those very decisions British Columbia got the benefit. They talk about the futurex of their fruit industry. Mr. McBride and Mr. Neill say the fruit industry is going to be ruined, because we can bring carloads of apples frm from Ontario cheaper. How can he argue that in face of the Pacific Rates Case, that if that can be done, that discrimination must be removed? In British Columbia they have what is called a "Mountain scale". The Mountain scale says this: They would haul on the prairies 150 miles at the same rate as they would haul in British Columbia 180 miles, or they would haul in British Columbia 100 miles at the same rate as they would haul on the prairies 150 miles, because of mountains and operating conditions and so on. Every reduction made on the prairies is reflected in a reduction in British Columbia because of the Mountain scale. British Columbia has objected to the Mountain scale with the result that it is now reduced to 125 to 100 instead of 150 to 100. It was cut in two by the last decision of the Board. Then as regards their grain rates, if you talk about the benefits of the Crowsnest Pass rates to British Columbia, British Columbia rates on grain to the coast were reduced 25 per cent and then 10 per cent, immediately following the decision of this government in 1922, that the Crowsnest Pass rates east would be reduced. If it had not been for that reduction, British Columbia would never have received that reduction as a matter of right from the Board. They might have got it as a matter of policy from the government.

MR. FLINTOFT, K.C.: It was done by consent.

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MR. SYMINGTON, K.C.: Let me tell you what was done by consent? It was done because the Board called in the Railways and pointed out to them that the Crowsnest Pass rates should come down, and that they had better voluntarily consent, and they did. I want my friends from British Columbia to follow this to see if they think they are wise in opposing the Crowsnest Pass rates. This is the judgment of the Board in October, 1923: The Grain Rates Case:

MR. LAFLEUR: That was not the 25 per cent reduction.

MR. SYMINGTON, K.C: This is the ten per cent reduction. The 25 per cent reduction was in June, 1922.

MR. LAFLEUR, K.C.: And it was by consent?

MR. SYMINGTON, K.C.: By consent, yes:

> "Incidentally, on two or three occasions, during the "hearing and the argument, reference was made to export "rates on grain, but the Board did not feel they had been "sufficiently developed to justify any special finding "thereon; but as the judgment referred to in the said "order in council was issued within a couple of days "after the enacting of Chapter 41 of the statutes of the "parliament of Canada for the year 1922....

That is the 25 per cent reduction introduced shortly following the 1922 act that brought in the eastern Crowsnest Pass rates:

> ".... being the statute referring to the Crowsnest rates "on grain, so called, for that year, the Board realized "there would be complaints against the size of the "spread between Eastbound and Westbound movements of "grain, if there were no reduction made in the export "rates on grain to Vancouver, and so informed the "representatives of both the Canadian Pacific and Can- "adian National Railway Companies. As a result of these "conferences, the railway companies voluntarily made a "general reduction in export rates between prairie "points and Pacific coast points of twenty per cent."

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That is what the Board says as to how the voluntary reduction came about, and I should like my friend the Minister from British Columbia to consider that and to consider the Pacific Rates case. Every reduction in the Crowsnest pass rates is of benefit to the British Columbia shipper the same as it is to every other shipper in this country.

I come back to my statement that these Crowsnest rates if they come in, rates supposed to be put in specially for the West, will still be higher than eastern rates upon the same commodities. I file exhibits for that purpose, but I am going to call attention to some of them, commodity by commodity:

Green and fresh fruits.

Fort William to Oak Lake, 585 miles, present western Canada rate, 99 cents; present eastern rates, 68 cents, west higher by 45 per cent.

HON. MR. GRAHAM: What do you mean by the eastern rate?

MR. SYMINGTON, K.C.: From St. Catherines, Ont. to Quebec, 584 miles. The Crowsnest rate is 66. That is one or two cases in the whole thing where the Crowsnest rate is lower by a little than the eastern rate. The Crowsnest rate in this case is 66 cents as opposed to the present eastern rate of 68 cents for an equal distance.

Bindor twine, Fort William to Pilot Butte, 767 miles, present western rate, 98 cents, Crowsnest rate 80 cents; Montreal to Halifax, 767 miles, eastern rate 64 cents. 80 cents as against 64 cents.

Agricultural implements, Fort William to Tilley, 1,129 miles, Crowsnest pass rate, 93½; Hamilton to Halifax, 1129 miles, eastern rate, 63 cents.

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These places are taken to get the distances. We start at Hamilton, a manufacturing point, and Fort William where the rates break in the West.

HON. MR. CRERAR, M.P. Are those the present rates?

MR. SYMINGTON, K.C.: Those are the rates that will be in effect after the Crowsnest Pass agreement goes into effect. I have the others here and perhaps I had better give them to you

Agricultural implements, Fort William to Tilley, present western rate, 117 cents; present eastern rate, 63 cents, Crowsnest rate 90⅛ cents.

Wire, Fort William to Wapella, Sask., 655 miles, present western rate, 87 cents; Windsor to Sherbrooke, 658 miles, present eastern rate, 52½ cents, or the western rate is 66 per cent higher. If the Crowsnest rate comes in, it will be 68⅛ cents, as against the eastern rate of 52½ cents.

Building paper, Fort William to Kirkella, 623 miles, present western rate, 83 cents; Portneuf to St. John, present eastern rate, 39⅛ cents. The Crowsnest rate will be 65 cents.

Furniture: Fort William to Brooks, Alta., 1142 miles, present western rate, 149 cents; Kitchener to Halifax, 1142 miles, present eastern rate, 88 cents. The Crowsnest Pass rate is 149 cents.

In considering those rates, I ask you to remember that it is admitted in all rate cases, and it is a fact that the cost of operating a railway in the prairies is less than the cost of operating a railway in the East. The operating ratios have always been lower, and it is easily understood why. I need not go into that. We have a flat, level country which lends itself to easy railway haulage, cheap construction and large

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and bulk trains. I submit that on those commodities specially selected, even though the rates come in and in spite of all the increases that have taken place, out of thirty examples which I give you in this Exhibit, only in two cases was there a difference of one or two cents in favour of the West. You can imagine what the situation is with respect to other rates not controlled by such maxima.

They argue then that there has been no change in operating costs and other conditions to justify the rates that vame into force in 1898. The consideration is a comparison between 1918 and 1919 when this situation first arose, and now or else 1922 when you dealt with the matter. I submit that there are no operating conditions now not existing then which would justify the abandonment of this policy and the wiping out of this covenant.

Let us consider the problems, the ruin that is going to happen, and what the West has borne in the matter of freight rates. Every rate case that we have we insist on getting divisions East and West, and I want to deal with that shortly, because I could cover many pages with it. But I desire to impress upon you that from 1907 to 1921, a fifteen year period, which is all I can cover from the material which I have, and which are figures taken from reports given to the Board of Railway Commissioners by the Canadian Pacific railway, the net earnings on that line east of Fort William --and it is "net" that counts ---

MR. LADNER, M.P.: Will you file the rates that have been given here on the East and West as they relate to British Columbia?

MR. SYMINGTON, K.C.: I am putting this exhibit in as soon as I am through dealing with it.

MR. LADNER, M.P.: One covering British Columbia

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MR. SYMINGTON, K.C.: I am not sure that I have one, but I will get you one if I have it.

From 1907 to 1921 the net earnings on eastern lines were $185,000,000, and the net earnings on western lines were $418,000,000.

That is east and west of Fort William. That is, during the fifteen-year period, the net earnings on western lines were $233,000,000 more than on eastern lines.

HON. MR. BUREAU: How many miles in the east and how many in the west?

MR. SYMINGTON, K.C.: I cannot give you that, but the rail mileage in the West is about double the railway mileage in the east. Remember this in answer to that question that the net earnings per mile in the West far exceed the net earnings per mile in the east.

MR. LAFLEUR, K.C.: Per ton per mile?

MR. SYMINGTON, K.C.: Per mile.

MR. McBRIDE, M.P.: That includes British Columbia?

MR. SYMINGTON, K.C.: Yes, and when we got the figures by divisions, it showed the prairies were carrying British Columbia; otherwise there would have been a great deal more upon the prairies. I do not say that against British Columbia, because conditions are undoubtedly to some extent changed.

HON. MR. MACDONALD: What are the figures for the Canadian National Railways?

MR. SYMINGTON, K.C.: I have not them, but I will deal with the Canadian National situation as far as I can in a minute. During the year 1921, which was the year when this matter was considered before your committee, that is the year for which the returns were considered by your committee in 1922, the net earnings -- and these net earnings are prepared

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leaving aside certain charges which are called "unappropriated charges", which amount to a million or more a year -- the net earnings in the East were $11,000,000, and the net earnings in the West, $30,000,000, less unallocated charges in both cases.

Let me show you tho large carrying months:in the West:

In the month of October, the net in the East was

$822,931.95

the net in the West, $6,339,980.52

In the month of October, the net in the East was:

$ 4,403.91

the net in the West, $5,048,111.03

And they tell you the grain rates do not pay.

In the month of December, the net in the East was:

$566,652.41

the net in the West, $3,170,787.04.

My friend, Mr. Lanigan, before the committee said: Oh, but these are statistical figures, not actual figures; but they were figures furnished to the Board for the purpose of considering rates, true, on our request, but they were furnished to the Board. The operating ratio which Mr. Lanigan spoke of -- very important -- it costs so much to earn a dollar -- the operating ratio in the East was 86.35; in the West, it was 70.54, the first time in all these years the West ever got to the 70 point. It costs 70 cents to earn a dollar in the West; in the East it costs 86.35 cents. In the four months of that year, 1921, September, October, November and December, the crop months, the net earnings in the East were:

$2,467,563.

and in the West: $18,293,846.

The railways say:But you cannot judge by regions, by divisions, and we have stopped dividing. True, they have stopped

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dividing until there is another rate case and the Board orders them to do so. So I cannot deal with the East and the West in for the year 1922, and for 1923, but I can deal with it by months, bearing in mind what has occurred in every one of those other fifteen years. During 1922, and this was after the Crowsnest rates that were going to bring in, the net earnings of the whole Canadian Pacific, during the crop months, September, October, November and December, were $23,550,534, and during the other eight months, ~~$14,861,852~~ $14,861,921, all over Canada. That is, during those four crop months the Canadian Pacific made in net earnings $9,000,000 more than it made in the whole other eight months. The average net earnings, September to December, 1922, were $5,887,000 per month, and the average net earnings from January to August, 1922, were $1,857,000 per month. In October, the biggest western month the net earnings of the system were $7,712,169, net earnings of the Canadian Pacific for one month.

Did the West bear their share? Did the imposition of those rates upon basic commodities create a deficit? The net earnings on the Canadian Pacific in 1923 for the four crop months amounted to $25,181,114, as against $13,336,465 for the other eight months. That is during the crop months of 1923, with Crowsnest rates, the Canadian Pacific made net earnings of more than $11,000,000 more than it made in the whole other eight months of the year. The monthly average from January to August over the system was $1,667,000; the monthly average earnings September to October were $5,795,000. In October, the biggest western month, the net earnings of the Canadian Pacific Railway were $8,268,360 the largest over in the history of the Canadian Pacific or, so far as I know, any other railway.

Is it or is it not idle to suggest, in the face of

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figures like that -- and I could give you many more proofs of it -- that this agreement is going to create a disparity against the East or any part of the East or British Columbia in favour of the prairie section?

There are exhibits covering the short summaries that I have given you of them, which I am going to ask permission to file, showing the differences in rates, and these figures which I have just given to you, but in extended form with the reference to where they come from.

I said I would deal with the Canadian National Railways. If it were any argument to say that the financial position of the Canadian National Railways is a reason why this binding contract or the effects of it should be abrogated -- and I submit it is not -- none the less the showing on the Canadian National Railways, so far as you can trace them to that prairie section will bear out, I think, my contention as to the value of that prairie traffic to that road. When the Canadian Northern Railway was in operation, and we were able to obtain and did obtain records, the Canadian Northern up to the year 1915, the last year we got the reports, even in that development stage, the Canadian Northern westward, or the Canadian Northern Railway, as it was called, paid fixed charges and had an operating surplus. They were hooked up the following year with the Canadian Northern Ontario and the Canadian Northern Pacific, and for the first time they did not have a surplus. They had an operating surplus but it did not meet fixed charges. Up to that time the Canadian Northern Railway, the predecessor of the Canadian National Railways made money in the prairie section. The Canadian National system has been organized, and it is suggested, I understand, that the western region as it is called -- correct me, Mr. Minister, if I am wrong,

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in my boundaries, which, I think, extends from Armstrong to the Pacific and Fort William to the Pacific, has this year a small deficit.

HON. MR. GRAHAM: 1923. Last year.

MR. SYMINGTON, K.C.: Yes. We must expect that, because you must consider that tagged on to that prairie section there are two main lines to take care of, the Grand Trunk to Cochrane and the branch to Fort William, and the Canadian Northern to Fort William. There is the Grand Trunk Pacific line to Prince Rupert and the Canadian Northern line to Vancouver. The Canadian National Railways will tell you -- and I say this with all deference to the British Columbia situation -- that those two lines in British Columbia do not pay; they lose money in operating those two lines except as part of the whole system, and I would think that the showing that has been made even in the present stage of its consolidation would demonstrate that the prairie section with those two double charges at each end must pay and pay well. Mr. Ruel in the committee the other day stated that the present branch lines of the Canadian National Railways on the prairies all pay. That was when he was promoting his other branch lines. Let me say to you that if branch lines pay, main lines pay a great deal more, because in one of the rates cases where we took the train earnings on a train of grain from shipping points to Fort William, and showed the operating ratio down to about 30, the answer was made: Oh, yes; that is not fair, -and it was not fair probably with the ratio -- you have to take the branch lines that feed the main line, and the connection of those cars on the branch lines, and you have to deduct that from the terrific profit you make on your main line haulage. So I ask you to consider

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the results of this year on the Canadian National Railways, and again, Mr. Minister, I hope you will correct me if I am wrong. The gross on the Canadian National Railways up to the present month this year is down from last year; the western gx or grain gross is up and up very considerably. The net this year is away above the net of last year. Just analyse that a minute. Tho gross all over is down. The net all over is up. In that gross which is down is a vaster and bigger percentage of western haulage, grain, and the net is away up. That is a smaller gross with a bigger proportion of western haul has produced a bigger net. I do not claim it all. There have been improvements in operation, but I point that out as indicative with the other signs we have as to the results of operation in that prairie section. Take the monthly returns to the Government on Canadian lines. I also have Canadian and American lines.

HON. MR. GRAHAM: Do not do that;

MR. LAFLEUR, K.C.: We are not asking for any change in rates on grain and grain products.

MR. SYMINGTON: I quite concede that Mr. Lafleur has not asked you, but if you look at the memorandum of the railway companies, the slight, little touch in the end in which they say: All rates are to be referred to the Board.

MR. LAFLEUR, K.C.: Just in regard to those commodities.

MR. SYMINGTON, K.C: Then there is no argument which has been advanced in my submission which differs in grain or the other commodities; but I am discussing now the question whether this creates any disparity in the West in view of the general situation and I have finished when I quote you these figures in connection with the Canadian National Railways.

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A. 43.

As regards the net operating revenues in 1923, there was a surplus of from $300,000 to $900,000 in each of the months of April, May, June and July:

1923.	Not operating revenue.
August,	$1,131,451
September,	1,125,168
October,	4,728,008
November,	4,094,048
December,	2,760,525

I submit the basic cause of this is the high rates in the West. My time is nearly up. Under these circumstances the governments of those provinces submit to you ---

HON.MR. GRAHAM: What provinces?

MR. SYMINGTON, K.C.: Alberta, Saskatchewan and Manitoba.

HON. MR. GRAHAM: The reason I ask you that question is that this morning I received complaints from Manitoba, for example, that they had not time to be represented, so from experience my answer was that you were representing that province.

MR. SYMINGTON, K.C.: I am representing the governments of those three provinces. Mr. Brackon, who came down with me, had two hours to catch the train, and so had I, but I haven been through this thing so much it did not bother me. I imagine the protests you have received are from the western provinces who could not get their people down here. The Attorney General of Saskatchewan called me up over the 'phone to act for them; I had a wire from Mr. Greenfield making it perfectly clear that I was acting for Alberta and so on. The other parties who are here may have wanted to have representation. Undoubtedly they do.

HON. MR. GRAHAM: All that was required in your case was time to catch the train, because you have had the case ready

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for some weeks. I wanted to make it clear that no section was neglected.

MR. SYMINGTON, K.C.: It did not hurt me although I had to postpone some cases and I had a little trouble. However, I am here.

RIGHT HON. MR. MACKENZIE KING: I have a wire signed by Mr. Bracken from Winnipeg, Manitoba:

"Wire this date re Crowsnest rates, Symington "leaves tomorrow to represent the province."

MR. SYMINGTON, K.C.: I found I had to catch the train that night owing to daylight saving. I make no complaint. Under those circumstances the Governments of Manitoba, Saskatchewan and Alberta submit:

1. That in 1897 following a thorough investigation into the subject the Government and Parliament of Canada as a matter of settled policy decided and provided for and paid for certain maximum rates on certain named commodities used by settlers in a new country, which were never to be any higher, and that in addition other rates (not these maxima) should be under the jurisdiction of a Board of Railway Commissioners when and if appointed.

2. That after those maxima were established, and after another very thorough investigation, and in pursuance of that policy, in 1903 Parliament established that Board of Railway Commissioners to deal with these other rates, specifically preserving these maximum rates and exempting them from any change by such Board.

3. That in 1903 and again in 1908 this policy was confirmed when subventions were given to the Canadian Northern Railway in consideration of the policy of maximum

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rates in the western territory.

4. That in 1918 the Government, not Parliament, as a war measure under the War Measures Act, and therefore purely as a temporary measure under extraordinary conditions, allowed an increase which relieved the Canadian Pacific Railway from its covenants with respect to these maxima. By making this temporary, the permanent policy was re-affirmed.

5. That in 1919 on the grounds of after-war conditions the Parliament granted to the Canadian Pacific Railway for a period of three years a moratorium from the fulfilling of its covenants, thus recognizing again the permanent obligation of that policy. Section 3 of the Railway Act was retained in that revision.

6. That in 1922 after a longthy and most thorough investigation by its Railway Committee, the policy was again recognized. The moratorium was removed with respect to its most important feature, namely the grain rates, and an extension of the moratorium for one year with the power to the Governor in Council to extend the partial moratorium for a further year.

That was the decision of Parliament. That time has now come.

7. That the time fixed for the resumption of the obligation has arrived and nothing has happened to change the decision, but on the contrary the results have justified that decision. The railways are in a better position as shown by their increased net earnings and the Canadian Pacific railway's increased surplus, immigration is being vigorously promoted and settlement has again commenced. We are farther removed from war conditions and moratoriums should now cease.

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8. The basic cause of the agreement was the fact that the East had continuing maxima fixed by a natural cause, namely water competition and by American rail competition whereas in the West there was, as every Commission pointed out, a railway monopoly with no maxima. The result was very high freight rates in western territory, much higher than in the East. This has been admitted in every rate case. The situation is exactly the same to-day, and the need of legislative maxima was never greater.

We are not asking for any more; we are asking only for the continuation of what we have and what we paid for.

9. With the Crowsnest reductions in force and in spite of increases which have taken place in the East, the rates on these commodities so important to the settlement of the West and the consequent benefit to the East, are still generally speaking higher in the West than in the East, and on other commodities the rates are much higher.

10. The attached schedules show that it is long-haul traffic in the West and long-haul traffic from the East to the West that create the earnings of the railways, and nothing should be done to discourage that traffic.

I therefore submit, on behalf of the governments and the people of those provinces and on behalf of many organizations which have held meetings -- I could file them by the dozen, but I am not going to -- that we protest as strongly as possible against this suggested surrender of our rights, and the suggested repudiation of the policy of the government of 1896 to 1911, and of the policy of this government adopted in 1922.

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I submit, in conclusion, that under the circumstances of the day, that policy proved itself to be a wise policy. The settlement of that country was encouraged, prosperity did come to Canada. You are again face to face with the settlement of that country, and with your immigration problem. Is there any difference, is there any basic difference in conditions from what faced the Government of Sir Wilfrid Laurier in 1897 and what faces your government to-day in 1924? We all know; at least, I think we all know that before the burden of taxation can be relieved, before railway deficits can be overcome, before prosperity can be brought to the East as well as to the West, and to Canada as a whole, people must be brought to that country, and I submit that a change of policy with respect to legislative maxima in connection with those commodities is not opportune. They are few, but it is the one protection we have, and it is the one we cling to. I submit to you it is not any time to change your policy in that regard. I would ask you on behalf of those provinces, as well on behalf of the rest of Canada, because I conceive this to be for their benefit as well, that this application be refused, and that the policy of 1922 which said that on July 7 this moratorium ceases, be continued. I ask that nothing be done and that that policy and act automatically come into force. It requires an affirmative administrative act of this government which can be interpreted only as a change of policy to stop the coming into force again of that policy. I submit in all earnestness that it should not be done.

RIGHT HON. MR. MACKENZIE KING: Perhaps I had better read just three telegrams I have here to make quite clear that Mr.

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Symington is representing the three western provinces. As I intimated yesterday, the purpose of the government in having this hearing was not to have a large number of deputations or or the number of persons that could appear before it or the number of telegrams that could be sent in, but rather to have put before us in as short and concise a way as possible the main arguments covering thismmatter. We, therefore, addressed our communications to the Premiers of the different provinces intimating that we would like to have representation from the provinces as well as from the railways at this hearing.

(The telegrams read by the Prime Minister as well as others received will be found in the Exhibits.)

I may say that the Government will take into consideration all the telegrams it has received in regard to this matter into consideration, in reaching its decision in regard to this question.

Yesterday, I asked any gentlemen who were present who wished to supplement the remarks made by Mr. Lafleur on behalf of the railways to speak if they so desired. On behalf of the government, I should like to make the same proposal to any gentlemen who may be in this room this afternoon, particularly members from the West, who might wish to supplement what has been said by Mr. Symington.

MR. J. T. SHAW, M.P.: I was asked by the Calgary Board of Trade and some other organizations which I received telegrams from to appear before your body and indicate that the attitude of those organizations was entirely out of line with that expressed by the Edmonton Board of Trade. They earnestly desire that the Crownnest Pass agreement should be given the fullest effect to. I do not propose to go over the argument

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but I want to make it abundantly clear that the Edmonton Board of Trade does not by any means in the telegram they have forwarded express the judgment of the people of the southern part of the province of Alberta. Indeed, I doubt if they express the opinions of any considerable proportion of the people of that province. The Calgary Board of Trade have passed a resolution as follows, which indicates the position in general outline:

"That the Calgary Board of Trade express to the "Dominion Government strong disapproval of the abrogation "or any further suspension of the Crowsnest Agreement for the following reasons:-

"1. Because the Canadian Pacific Railway Company "was paid the sum of $3,404,720 as a subsidy towards the "construction of the Crowsnest line and in consideration "of this money covenanted with the Dominion Government "to establish reduced rates (now known as the Crowsnest "rates) on certain specified commodities between eastern "Canada and the West. And they further covenanted 'That "no higher rates than such reduced rates or tolls shall "be hereafter charged by the company upon such merchandise "carried by the company between the points aforesaid.

"2. Because Parliament in July 1918 first suspended "the application of the Crowsnest Pass Agreement --

It should be July, 1919.

"until July, 1922, as a temporary measure only, and in "view of war time conditions. The railways in consequence, have had the advantage of greatly increased rates "for a period of six years, with the exception that the "reduced rates on grain and flour were restored by "Parliament in 1922.

This is the point, 3, that I wish to direct the attention of

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members of the cabinet to.

"3. Because Alberta pays higher freight rates on all "the principal commodities shipped from eastern Canada "than any other province in the Dominion. For instance "the rates on nails, carloads, from Toronto to Calgary "is $2.00 per 100 lbs, and from Toronto to Vancouver, "$1.05 per 100 lbs."

This place so discriminated against.

	"From Toronto to Calgary	From Toronto to Vancouver.
"On Iron pipes and fittings,	$2.00 per 100 lbs.	$1.00"

All these items being included in the Crowsnest Pass agreement.

"Paint	$2.00	$1.54"

"4. Eastern Canada and the chief jobbing centres of "British Columbia have permanent rate controlling "factors in the form of water competition and the "competition of United States railways, and it would "be ~~unfa~~ manifestly unfair to deprive Alberta of its "rate controlling factor, namely the Crowsnest ~~P~~ "Agreement."

That represents very shortly the position of the Calgary Board of Trade. They feel that Alberta is at present, even with the Crowsnest Pass agreement not fully in operation greatly discriminated against much more than British Columbia. British Columbia not only has water compelled rates, not only the constructive mileage in various forms, but commodity rates from various points in eastern Canada. To further eliminate or abrogate the Crowsnest Pass agreement or that part not in operation would simply aggravate the disparity existing so far as Alberta is concerned. To restore the

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agreement will wipe out many of those disparities and put Alberta in a much more favourable position with regard to freight rates.

MR. L. J. LADNER, MP.: asked fmx if copies of the arguments of Mr. Symington and Mr. Lafleur could be distributed?

RIGHT HON. MR. MACKENZIE KING: We have not contemplated printing the argument and distributing it. I think if we were to supply copies to anyone, they ought to be available for all, and that would entail expense.

MR. LADNER: Perhaps all would not want them.

RIGHT HON. MR. MACKENZIE KING: It might be arranged to have copies printed and supplied. If they are supplied to one, they ought to be made available to all. The government will consider the printing of them.

MR. ROBERT FORKE, M.P.: I do not wish to add anything to what has been so well argued by Mr. Symington. I have been in receipt of many telegrams. Probably the Prime Minister has copies of quite a number of them.

RIGHT HON. MR. MACKENZIE KING: Yes.

MR. FORKE: I do not think there is any idea on the part of the prairie provinces that any injustice will be worked on the other parts of the Dominion if these rates come again into effect on the prairies. What I rose to speak about was simply this: The West has been passing through very hard and difficult times. There is a ray of hope appearing and people are ready to take hold and to try to bring back prosperity to that large agricultural empire once more. I think the abrogation of the Crowsnest Pass agreement would have a most disastrous effect upon the people at the present time. They would take it, I think, as a blow at their attempt to bring back a time of prosperity again. I can just imagine the feeling that will go over the West if it should go out that

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the Government have abrogated those rates. They would feel a distinct hardship and injustice had been worked upon them.

HON. T. A. CRERAR, M.P.I have also had quite a number of telegrams and letters protesting against any further suspension or abrogation of the agreement, and I simply wish to state that fact to you in evidence of an opinion in the province of Manitoba, and indeed some of the communications I have had have been from further west in this matter. There is very little that can be added to the argument that has been put up by Mr. Symington. I might, if you will permit me for a moment, draw the attention of the government and of the country to this fact, that in eastern Canada it is established, I think, beyond all question of doubt that the rates are governed by water competition; that is an influence in fixing the rates that shall be charged in eastern Canada. It has been proved, I think, quite conclusively by Mr. Symington, indeed, by the figures also that Mr. Shaw has given, that as regards the Pacific coast, the element of water competition through the opening of the Panama canal, and the operation of American railways, have an influence on rates on the Pacific coast. The rates on commodities from Montreal and Quebec to Vancouver points are ~~high~~ lower than the Calgary rates. What is the explanation of that fact? I trust the Government, in its consideration of this matter, will not lose sight of the fact that the only control there is in the prairie provinces for maximum rates and even on a limited number of commodities is the Crowsnest Pass agreement of 1897. The figures that Mr. Symington has given -- and I am sure they have been worked out with care -- show that on a large number of commodities he has cited, even if the Crowsnest Pass rates are restored on those particular commodities the rates

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in western Canada under that condition for equal distances will be higher in almost every case than in eastern Canada. That is a fact I submit to members of the government should not be overlooked in a consideration of this question. The operating costs are lower in the West. I think it is proven conclusively from the figures that the great bulk of the revenue comes from the West. It is true the mileage is greater, but even putting it on an equal basis of mileage, I think mile for mile the West provides more than the East. We are not complaining about that, but we ask that these maxima fixed by the Crowsnest Pass agreement on these particular commodities be allowed to stand and come into force, because we have no other control than that.

MR. BRACKEN, Premier of Manitoba: As has been pointed out to you, Mr. Symington represents the governments of the three prairie provinces. I suppose it is conceivable that the government does not represent the views of all the Legislature or all of the people. It just happens, however, that a member of each of the two opposing groups in our Legislature is here, Mr. Haig a member of the Conservative party, and Mr. Farmer, a representative of the Labour party, and I suggest they ought to present their views on this matter now.

MR. FARMER: I do not think it is necessary for me to take up very much time by argument, because Mr. Symington has stated the case so well for the prairie provinces that very little can be said. My reason for being here to-day is that among the telegrams which were sent out announcing this hearing was one addressed to myself asking that the city of Winnipeg be represented. In Winnipeg for some weeks there have been a number of meetings held. The Board of Trade and other bodies interested in this question formed a committee, and

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partly at the request of that committee and partly at the request of others who are interested, I came along somewhat later than Mr. Symington and the Premier. I came by a different road, but I got here just the same.

I wish to say I do not think I could find five per cent of the people of Winnipeg who would be in favour of granting the brief of the railway companies. I have talked the matter over with the business men of Winnipeg and the ordinary people who are working for a living in other ways, and they feel that one thing needed there at the present time is some relief from the overhead cost of living which is causing so much depression in that part of Canada.

I might be allowed to refer to one or two things said by Counsel for the railroads yesterday. Mr.Lafleur stated that the war and war conditions and after-war conditions had upset all calculations, calculations that might have had some bearing on the application of those Crowsnest Pass rates back in 1897 and their continuance up to a few years ago. Unfortunately, the railroad calculations are not the only calculations that have been upset. The people of the West at the present time are finding themselves burdened with an almost intolerable load of taxation as a result of war and war conditions. Railroad rates are an additional burden upon the people out in the West, and the people of the West are looking for relief. The railroad companies' calculations with regard to taxation at any rate were not upset by the war or war conditions. The contract which they entered into with the people of Canada some years ago, and which many people thought was to last for twenty years only, has been continued indefinitely, and the railways are not bearing their fair share of the extra taxation caused by war conditions. The people are bearing that burden. Consequently, they feel if

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there is any relief coming to them by way of a reduction in freight rates which will reduce the cost of living in western Canada, they are entitled to that consideration. I do not think I need stress that point. If a contract is a contract in one case, as Mr. Symington has said, it should be regarded as a binding contract in the other. Personally, I think I can say this for the people of western Canada, at least for the people of Winnipeg, that we would be almost prepared to consider an application for the abrogation of the Crowsnest Pass agreement if they will agree to reconsider paying their fair share of the taxation which the people have to bear.

Mr. Lafleur urged two or three times that we should enable the railroad companies to live. The figures presented this morning by Mr. Symington would indicate that they are living a good deal better than other people are in this country at the present time. What the people of western Canada now want is a chance to live also, and it seems to me that one of the ways in which they could be helped to get back on their feet, to re-establish better conditions, would be by a reduction of the overhead charges, represented by these freight rates among other things. You can go so far as to spoil the chances of the railroad companies to live also by continuing a policy of high freight rates. Mr. Symington pointed out that when grain rates were restored as regards Crowsnest Pass figures, increased business resulted to the railroad companies. Unless some reduction is made, business is going to fall off as far as the people of western Canada are concerned. We are all interested in this in the West. The objection that was raised yesterday by Mr. Smith of the Manitoba Rolling Mills is simply the exception that proves the rule. If I might be allowed to step out of my

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own province, the objections raised by Edmonton and Saskatoon are also exceptions that prove the rule as regards the West. These people happen to be influenced, I think, by the appeals that have been made on the ground of the disparity that will result if the Crowsnest Pass rates are restored. I think everyone of them has overlooked the discriminatory clauses in the Railway Act. They cannot speak for the people of the West as a whole. I am here now to speak for the city of Winnipeg particularly and I submit that the petition of the railway companies be not granted.

MR. J. T. HAIG: I am aware that it is not often the Legislature of Manitoba is united. We are often in opposition to the First Minister, and Mr. Farmer who happens to be a member for the city of Winnipeg and I have often found ourselves on the same side. To-day we are all on the same side. Manitoba, Saskatchewan and Alberta may not agree on what policies we should have in regard to tariffs. We may not agree on what policies we should have in regard to immigration. But we agree, when we make a contract, we should live up to it. That is all we are asking for. In the old days of the Macdonald Government, they made a contract with the Canadian Pacific whereby certain taxation exemptions were made to the railroad companies. In the days of Fort Garry, before it became the city of Winnipeg, we made an agreement that we would not tax the Canadian Pacific. In the days of the Canadian Northern Railway, the province of Manitoba, under the Roblin Government made an agreement that it would not tax the land of the Canadian Northern in Winnipeg. We would like very much to get out of those agreements, but we have to live up to them. In this case the Canadian Pacific entered into a contract back in 1897, and I can remember it well as a boy at school in our province. Many of the

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people of the western provinces thought that the Canadian Pacific were getting the whole thing. Times have changed and we of the West are united in asking that the Government of Canada give us a fair chance. British Columbia may argue; the Maritimes may argue; some parts of Ontario may argue one thing or another on this question; but it is our charter of liberty as regards railroad rights in western Canada, and I think I can say confidently that, as regards the Conservative party of the prairies, as regards the Liberal party, as regards the Labour party and as regards the Progressive party of the prairies, while we may differ on some things, we do not differ in our desire to have this contract carried out for the benefit of the people of those prairies. We may differ as to what we think is for the benefit of the West; but what is good for Manitoba, Alberta and Saskatchewan, is good for British Columbia, Ontario, Quebec and the Maritime provinces. I thank you very much for giving the people of Manitoba and the other prairie provinces an opportunity of presenting our case before this Council.

MR. L. H. Jelliff, M.P.: I do not care to go into the subject which has been very thoroughly discussed here. I came over especially to present two resolutions I have, one from the Lethbridge Board of TRade, and the other from the Board of Trade of the town of Taber, both protesting against any further suspension of the Crowsnest Pass agreement and insisting that it come into effect.

HON. H.H.STEVENS, M.P.: Just one word of explanation. Mr. Symington intimated that those of us from British Columbia who spoke yesterday were speaking at the instigation of the Canadian Pacific and the Canadian National. We were speaking wholly at the request of the business people of British

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Columbia and in support of the representations made by the Premier of British Columbia, as the telegrams and resolutions will bear out. Our action is representing the people of British Columbia.

MR. L. J. LADNER, M.P.: Owing to my absence yesterday, may I say a word? The same unanimity prevails among the divergent political parties in British Columbia as that indicated in regard to the prairies, but that unanimity is somewhat different in point of view. We believe that reviving the Crowsnest Pass agreement will accentuate the difficulties under which British Columbia labours now. The Government has had the advantage of a full presentation of the facts and data to indicate the merit of the British Columbia position. There is the element of distribution, the change owing to the Panama canal, many other reasons which have changed the situation there, and we believe, if parliament is again to engage in the business of either re-affirming or altering policy or considering policy, it should be done from a broad national point of view on a scientific basis, by which equity would be given to British Columbia, the Maritime Provinces, Ontario and Quebec as well as the prairie provinces, and if the agreement which it is now being attempted to bring again into parliament and politics, is brought in, permission should be given to bring in many other matters and equities which affect British Columbia and other provinces.

HON. MR. STEWART: Is not your chief plea to be placed on the same rates as the prairies?

MR. LADNER: Yes, and the other provinces. I do not accept Mr. Symington's figures that British Columbia will be in a happier position under the Crowsnest rates.

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HON. MR. STEWART: I am simply speaking of your old presentation for rate reduction, that you be placed on the same basis as the prairies.

MR. LADNER, M.P.: We asked for an equitable set of rates for the transportation of products. We will have our difficulties accentuated by the revival of the Crowsnest Pass agreement.

MR. W. F. CARROLL, M.P.: I wish to submit to you in brief form a condition which will exist in the province of Nova Scotia and especially in the city of Sydney, if the Crowsnest Pass agreement is revived. The present rates for iron, steel and steel products from Hamilton and Montreal to Winnipeg and points west to-day are $1.00 per 100 lbs, whereas from Sydney the rate is $1.18.

HON. T. A CRERAR, M.P.: That is further away.

MR. CARROLL, M.P.: I understand that. Weare handicapped by distance and legal enactment. If the Act is restored, Hamilton rate will come down to 71½ cents, Montreal to 79½ cents, while the Sydney rate will remain as it is $1.18. I followed very closely the argument of the gentleman representing the three prairie provinces, Mr. Symington, a very strong argument as regards points on the Canadian Northern Railway and the Canadian Pacific railway; but he failed to point out that we are in a somewhat different position in Nova Scotia, where we have only the old Intercolonial railway. There is this discrimination against the Maritime provinces, and I am speaking alone for the city of Sydney and the industries there, -- that while the prairie provinces will have certain things by legal enactment, we must take the pot luck, according to the argument of my friend and go before the Railway Commission to have things equalized.

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I do not think that is fair. I do not think that should be the national policy of any government in this country. We should be placed in exactly the same position. If legal enactments are going to be given to the West, as regards freight rates, we should be given the same enactments in Nova Scotia, and not be put in the position of going before the Board of Railway Commissioners and going on our knees and begging for certain things which in the future may or may not be problematical. The Board of Railway Commissioners may not grant us the relief which we think we are entitled to, but you are granting this relief to the prairie provinces by legal enactment. You should take this into consideration in giving your decision.

MR. L. H. MARTELL, M.P.: I appear as a representative of the western portion of the province of Nova Scotia, protesting against the putting into force of the Crowsnest Pass agreement as regards certain commodities. In the town of Windsor, which is the shire town of that important county of Hants, we have a furniture factory. Furniture has a specific classification. What is the result. For some years this furniture factory in Windsor was able and would be enabled still to carry on. We have been able to send our stuff from Windsor, Nova Scotia, to the Eaton firm in Winnipeg, which my friend speaks of as Winnipeg and the West. We have been able to send our stuff our there. We are not on the line of the Canadian Pacific, and if this agreement is put into effect so far as the Canadian Pacific is concerned, we will be unable to put the quality of furniture which we manufacture, into the Winnipeg market. When we could manufacture furniture in the town of Windsor in the county of Hants in the province of Nova Scotia, and put it

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into Winnipeg in competition with furniture factories in Berlin and other places in Ontario, to the Eaton people who are supposed to give great bargains, that shows that we are competent and qualified to manufacture this furniture and put it on the market at fair prices. But if this agreement goes into effect, furniture manufactured along the lines of the Canadian Pacific will get the benefit of the preference; the furniture manufacturers of Ontario, having the benefit of geographical situationw will be able to beat us because they have so much less rail haul, and in addition to that ~~he~~ they will have the preferential rate which will practically mean that we shall be unable to compete with them on account of the putting into effect of the Crowsnest agreement.

We have other things. If the railways of this country are going to be forced to take rates which are losing, we are the losers in other respects, because in the final analysis, the people have to make up the deficits. We have an industry in my town, the Nova Scotia Textile, which manufactures underwear. We have been able to ship almost as far as British Columbia. We are competing with the people of Ontario. If the Canadian Pacific or some other railway is compelled to give rates that are not profitable, then on account of our geographical situation, we will be unable to get into those markets. Someone suggests that textiles are not in it. I know that but I am coming to a more important matter.

We are endeavouring to get our fruit canning industry on a permanent and profitable basis. If we are not on the lines of the Canadian Pacific, the result will be that we will be unable to put our canned stuff into the prairie provinces, owing to the fact that we are some considerable distence

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further away from the markets we wish to secure than places along the Canadian Pacific railway, whereas the people in Ontario on account of their geographical situation will have the benefit as regards putting their canned fruit into the west.

MR. SYMINGTON, K.C.: Canned fruit is not in.

MR. MARTELL, M.P.: Take all our regular fruit. If the cars cannot get into the markets, there will be a deficit on our railway and we have to pay in the final analysis and rates will go up. Under the Crowsnest Act of 1898, certain reductions on apples were provided for from points on the Canadian Pacific railway to points west of Fort William. Time These reductions have been suspended since 1918. The rates of 1898 will be restored if the Act goes into force again on July 6. The Annapolis valley -- and Hants is the beginning of the valley -- a large producer of apples which has in the past shipped large quantities of apples, even trainloads some years to western Canada, is not in the territory from which the Crowsnest reductions apply. London, Hamilton, Woodstock and other Ontario points are in this area and will be entitled by act of Parliament to reductions ranging from 33 cents to 58 cents per 100 lbs to various western destinations. The Annapolis valley, labouring to-day under the disadvantage of greater distance, will find that disadvantage artificially increased by the restoration of the provisions of an act passed to suit the conditions prevailing a quarter of a century ago. We ask that all rates be placed under the jurisdiction of the Board of Railway Commissioners, and that no section of the country be given by any Act of Parliament a sectional right to reductions in rates in which other localities have no rights of participation.

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Mr. Symington referred to moratoriums. He probably is a much superior lawyer to me; but my impression of a moratorium was that it was an act that prevented the foreclosure of a mortgage or the collection of a debt, not the suspension of something the people had a direct right to. My friend from Winnipeg referred to the fact that times have changed, but there is an old well known maxim: "Tempora mutantur, et nos mutamur in illis." -- The times have changed, and we have changed with them." What was good enough 25 years ago is not good enough to-day. The Crowsnest Pass agreement was made to meet the conditions then obtaining. Different conditions in this country have been brought about at the present time. He appealed to you, Mr. Prime Minister, and Gentlemen of the Cabinet, on the basis of being a Conservative representing Liberal principles. The Liberal party is not a stagnant party. It does not believe in standing still. It does not believe in retrogression, but it believes in progression, and if conditions which obtain to-day are inequitable as applied to any particular section of this country, I would be sorry to be united to a party that all my progenitors belonged to, and to think that party was not prepared to meet the conditions obtaining in the light of what they believed should be equitable and just. I submit this in all sense of fairness, our friends from the prairies have no right to any rights, to any consideration which is detrimental to any other portion of the Dominion of Canada, and particularly to the people of the province of Nova Scotia, where confederation was cradled, and which gave to you a great number of the fathers of confederation and some of the best brains of the Dominion.

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A. 64.

RIGHT HON. MR. MACKENZIE KING: May I again direct the attention of those present to the nature of this hearing, the circumstances under which it originated and the circumstances of it? The Government received from the railway companies on May 15 a memorandum, in the nature of a petition, to consider the advisability of further extending the period of the suspension of the Crowsnest Pass agreement and asked to be heard. Subsequently they asked to be heard before the Cabinet in reference to this request. The Government felt that if they were to hear the railway companies in this matter, it was only right that they should give opportunity to the opposing viewpoint also to be represented before the Government. The purpose of this hearing is simply to enable the railway companies to present their x viewpoint with respect to the matter which they have requested in this petition and to give the government an opportunity of hearing the opposing point of view from eminent counsel. The hearing has not been in any way for the purpose of our opening up the whole question that was referred by parliament to a special committee of parliament two years ago and which resulted in a report by that committee to the House of Commons and legislation by the House of Commons. Two years ago the broad question was discussed in the House; the Government stated its policy at the time, brought down its legislation; the legislation is on the books and is being carried out. It remains still as an enactment of parliament. Now, we are asked by the railway companies, seeing that that legislation goes into effect to a further degree on the seventh of July, to hear them with respect to a particular request which they are making, as to an extension of the period of suspension. We have said that we are willing to hear you, but we wish also

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to hear the opposing point of view.

SENATOR WATSON: That extension will require legislation?

RIGHT HON. MR. MACKENZIE KING: Yes, and the Government wishes to have before it the views of all parties concerned in considering what action, if any, it shall take in this matter.

MR. LAFLEUR, K.C.: Mr. Prime Minister and Gentlemen of the Cabinet, as the hour is late, I can say only a few words in reply. It is quite true to say that in 1897 the Government appears to have adopted a certain policy with respect to the introduction of specially favoured tariff rates into the western provinces, and it is possibly right to say that that was with the object of facilitating and encouraging immigration; but it is wrong to say that we are asking you now to reverse a policy which was adopted in 1897, and which has been persisted in ever since, because, as I submit, the policy of the government was clearly expressed in 1922, after a full investigation by a special committee, and that policy was that whatever may have been done in 1897 under normal conditions of operation, to-day after the war, it is impossible to apply pre-war standards to actual conditions. Nothing can be clearer than that. The Government in 1922 came to the conclusion that to apply those rates with the present operating costs was an anomaly and an impossibility, and the only question is: Shall you change your policy as expressed in 1922 in an act of parliament, where it is not shown that conditions have changed for the better? Mr. Symington very lightly said: Oh, we are getting back to normal business. But what are the facts? I do not want to take up the time with more figures...

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HON. MR. STEWART: Was not that an agreement for a consideration, rather than a policy?

MR. LAFLEUR, K.C.: It was an agreemend imposed --

HONMR. STEWART: For a consideration?

MR. LAFLEUR, K.C.: There is not any doubt about that, but it is not ~~that~~ an agreement that concerns us merely, it is an agreement that concerns the welfare of the whole country; and if by perpetuating that agreement, notwithstanding all the by-products of the war, you are going to cripple the railways, that is not going to benefit the people of Canada. If conditions are such that it is going to produce inequality of treatment for the different sections of Canada, and in addition to that, to cripple railway operations, it is for parliament to consider whether that state of things should be remedied. It was remedied in 1922 because of those very conditions, because you could no longer apply conditions of 1897 to the conditions the war had created. I am not asking you to depart from the policy you adopted; I am asking you to continue it for at least another year, and refer to the Railway Commission the question as to whether there is any likelihood of our getting back to the pre-war state of 1897. If there is not, you might as well do away with this obstacle altogether and not hamper the operations of the commission you have created precisely to establish rates. But if you have any doubt about that, if you think there is doubt as to the advisability of abrogating it altogether, I say, at least suspend because conditions, instead of improving, have got worse. The operating ratio in 1923 is less favourable than the operating ratio in 1922, Notwithstanding what Mr. Symington says about our getting back to normal. We are not as far as the railways are concerned.

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Therefore, the policy which the government declared in 1922, should, I respectfully submit, be continued.

MR. E. J. GARLAND, M.P.: You say that the operating costs are getting worse. Is it not true that the net earnings are greatly higher and offset that?

MR. LAFLEUR, K.C.: No, they do not offset that.

MR. E.J.GARLAND, M.P.: I rather gathered they would.

MR. LAFLEUR,K.C.: $1,800,000. If yiu reduce that by the application of this tariff of 1897, the result no doubt will be that we cannot carry on and pay our fixed charges. I am speaking now of the Canadian Pacific. If you apply that to the Canadian National Railways, it means simply increasing already alarming deficits.

HON. MR. STEWART; You said yesterday the operating loss would be increased to the extent of four or five million dollars on the Canadian P acific if the rates were restored. Is that simply the Crowsnest rates?

MR. LAFLEUR, K.C.: Yes.

HON. MR. STEWART: Is that the direct evidence on the committee?

MR. SYMINGTON, K.C.: If you have any evidence of that, let us have it. It is so ridiculous that you must be misled.

MR. LAFLEUR, K.C.: I want to throw the fullest light possible ...

HON. MR. BUREAU: We alone are sitting as a court and we alone have a right to put questions. If we want to get through, we must give you an opportunity to go on.

MR. LAFLEUR, K.C.: If the contention of my learned friend were to apply, and if not only we were obliged to apply Crowsnest Pass rates to the told territory as it existed in 1897, but if we were obliged, as he contends, to make a general reduction so as to have no inequalities,

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I do not know how many millions in loss would result, but it would be enormous. That position is not well taken.

May I just say a word as to the argument advanced by Mr. Symington and those who support him that this Crowsnest Pass agreement is the sheet anchor, the great charter of the prairie west, because, among other things, it is intended to offset the handicap under which they suffer because they have no water competition. How can you compare a fixed, unalterable rate like that with a variable one like the one resulting from water carriage? Surely everything that has tended to raise railway rates and railway operation by reason of increased wages, increased cost of materials and supplies, all these things are reflected on water borne commerce, and water borne commerce has had greater charges imposed upon it by these after-war conditions, and consequently it is not a fixed, it is a variable standard. Everything that is tending to make our operations more expensive, has also had its effect upon water competition.

Mr. Symington says that the whole of our case rests upon a fallacy, and that is that the reduction which would result from the bringing into force of the Crowsnest Pass rates would apply simply to a territory that existed in 1897. He suggested that I was trying to impose upon you my individual opinion without having any legal authority to support it. I have not the presumption to ask you to follow my opinion. I thought I quoted you a decision of the highest court in the Empire, the Privy Council, which decided that where an undertaking is given in regard to a territory mentioned in a contract, the territory is confined to that which was in existence at the time the contract was signed. That is of general application. It does not matter because

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in that case it was a steam railway, an electric railway; it applies in every case. It is a rule in common justice, and when I am speaking of a contract as regards a certain territory, I am stipulating with regard to the territory as both parties knew it, and not with regard to extensions of territory which are speculative matters. That, I thought, was conclusive of the whole matter as far as territorial extension was concerned.

My learned friend says that it has been decided for fifteen years by the Railway Board that these rates should apply eastward as well as westward, and that there is no restriction at all in the application of these rates, and he cited to my surprise the judgment of Mr. Justice Killam in the Pacific Coast case. That is very far from establishing the principle that he contends for. In the Pacific Coast case, Mr. Justice Killam had to deal with a complaint that rates from British Columbia eastward to Calgary and Macleod differed from certain rates which were given, not to the general public, not in regard to special commodities, but a special rate that was given to jobbers on all merchandise westward from Winnipeg. Neither of the British Columbia points in question, neither of the points of discrimination in the prairies were in the Crowsnest Pass agreement, and therefore the Crowsnest Pass agreement and the rates secured thereby had no application at all to this case. The only question was: Is it fair to give jobbers from Winnipeg a preference on westward traffic and not give the same preference to people shipping their goods from British Columbia? That had to be decided on its merits, and on its merits Mr. Justice Killam thought there should be no inequality, and he said. You cannot justify it by citing the Crowsnest

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Pass Agreement. He was quite right. The Crowsnest Pass agreement had no application to that. That is the decision of Mr. Justice Killam, and it cannot be twisted into anything else.

The next case that was cited was the Regina rates case. That merely decides that agreements which are voluntarily made and which are not statutory, that is, confirmed by a Dominion statute, cannot be pleaded to justify discrimination. I agree with that. If it were not that those rates of 1897 are ratified by Parliament, I would say that they were discriminatory rates, but I cannot say that what parliament has ordered is unjust discrimination, so that that case has no application whatever. You have only to look at the Railway Act of 1919 to come to the conclusion that section of the Railway Act, just like section 3 of the act of 1903, imposed upon the Railway Commission the obligation of respecting special contracts which are ratified by Parliament. In all other respects, on all other territory, in regard to all other merchandise, in respect of all other directions of traffic, the Railway Commission has the right to decide the case on its merits, not by reference to these special rates. These special rates create a privileged territory and give exceptional conditions to the beneficiaries of those rates, but they do not impose any obligation on the Railway Commission to follow those rates anywhere else. On the contrary they must make equitable rates all over ~~the country~~ the country on their merits. That is what they have done. Therefore, I am not going to enter into ~~any~~ the long consideration my learned friend gave as to the question of comparing rates East and West. It is true there are differences, but those are the very questions you have committed to the Railway Board. Are you going to review their judgments as to that,

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their judgment in 1914, their judgmont in 1916? That is the very purpose for which they were created, and I take it this is not the place nor the time to question the correctness of their decision. If the West is in any respects injured by the decisions of the commission, it has its recourse by way of appeal, and we are not asking you now to review all the various findings of the Railway Commission. We must take it, in settling rates East and West, respectively, they acted on the best of their judgment and made fair and equitable rates all over the country. The Railway Commission, as I say, are bound in regard to all territory and all points not covered by the agreement of 1897, to proceed according to what is just and equitable, having regard to all the circumstances including the cost of operation in the West, the competition of water-borne commerce in the East. All these things have received the most anxious consideration on the part of the Commission, and it is not right to say that the East is not paying as well as the West. If you take the traffic per ton per mile, the West is giving .81 cents, the East is giving 1.16 cents. Why? Because of the greater density of traffic, Because of the greater carriage in the East.

Some reference has also been made to the position as it affects the Canadian Northern Railway line, and it is suggested that such consequences as I have pointed out are not likely to take place. What are the facts there? In the West, as I said before, there was the deficit in last year's figures of over $2,000,000, in the Maritimes a deficit of over $5,000,000. The only point where there is a redeeming feature appears to be in the Grand Trunk, especially its operations in the Chicago system, where you have a surplus of

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$14,000,000. Does that show that there is any hope of enabling those lines to live and to go on if the deficits in the West and in the Maritime provinces are increased to an alarming degree by the application of the tariffs of 1897? The Canadian National Railway lines are not bound by contract at all; you cannot urge that contract against them. It will be simply that they will be compelled by circumstances to adopt competitive tariffs. They may be obliged to adopt them even in non-competitive territory, not by law; but if they do not, they are creating discontent, inequalities in different sections, and if they do that, just imagine the financial condition to which they will be reduced!

On the whole, it seems to me we are not unreasonable in what we ask. We are not asking you now to take the drastic remedy, which I think must come some day if we never get back to pre-war conditions, which does not seem likely at the present rate of things, -- the drastic remedy of putting this obstruction out of the way altogether. That would be the best remedy; but at least suspend the operation of those rates for a sufficient time to enable you to get a report from the only body that can give you a full and fair report on the whole situation which is going to be created. I cannot say what the Railway Commission will do, but I shall be very much surprised if they do not express alarm at the confusion and chaos that is going to result from the resumption of that old tariff.

I had intended reminding you that the latest decision on the application of the Crowsnest Pass rates is to be found in the decision of the present Chief Commissioner, the Hon. Mr. Carvell; it is the decision of the whole Board

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and in this judgment there is this passage. You will find it in Volume 13, Railway Board's Judgments, Orders, etc.: at page 179.

"In the matter of rates on grain from prairie points "to Pacific coast ports for export."

"It is significant as showing the intention of "Parliament when passing the Crowsnest Act of 1897 to "limit its rate fixing legislation to the exact terms "of the contract between itself and the Railway company, "that by the same act section 1, subsection (c), it was "stipulated that the agreement should provide that all "other rates and tolls on the railway and its connections "as therein mentioned, as well as on its line of steamers "in British Columbia, should be first approved by the "Governor in Council, (this Board not being then in "existence) "or by a Railway Commission, if and when such "commission is established by law." Apart from the "very plain meaning of the act itself and of the "provisions of the Railway Act, the intention is clear "that the rates by parliament established for particular "reasons and under special conditions were not to be "taken as the basis or standard of other rates, espec- "ially so with regard to the Westbound Crowsnest Pass "railway to British Columbia, and also that the powers "of the Governor in Council or this Commission (if and "when established) should not in any way be affected or "restricted by the special rates fixing clauses of the "act under the special circumstances named.

"The effect, therefore, of the legislation was that "solely in respect of the specific articles and pro- "ducts to be included in the agreement, and as to which, "by the agreement and for the consideration of subsidies

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"in the act mentioned, the railway company reduced its "rates, within the specified territory, but that as to "other tolls and rates they were to be fixed by the rate "fixing tribunal in the fullest and widest exercise of its "jurisdiction to fix just and reasonable rates upon all "other traffic upon all railways within its jurisdiction.

"The Crowsnest Pass agreement was not binding upon "other railways then or subsequently operating in that "territory -- although its provisions affected them -- "neither is there anything in the act or agreement which "defines those rates, within that territory as just and "reasonable, or restricts this Board in the establishment "of such conditions, or which could limit, or restrict "this Board in the establishment of such rates on other "railways within the same territory which to this Board "might, from time to time, appear to be just and reasonable.

"Then the legislation of 1922 simply provides after "an interruption of the continuance of the agreement by "its suspension as hereinbefore mentioned, that the pro- "vision of the agreement governing such rates, as an "incident of the transaction of 1897, should remain in "force. That is, that the terms of the agreement of "the railway company made in 1897 should continue to "govern those rates.

"If therefore the contentions of the two western "provinces were concurred in, rates on grain and flour "made twenty-six years ago, as a result of a special "agreement, for a valid consideration, in specific terr- "itory, and in a certain direction, should be the basis "of all other rates for the same territory westward as "well as eastward, and in territory not included in the

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"agreement. It would hardly seem that such an argument "would be tenable and, therefore, the Board should "proceed by some other method to arrive at ~~such~~"just "and reasonable rates" for the transportation of these particular commodities to the Pacific coast."

So that you see, in regard to all rates except the territory that was contemplated in 1897, the Board is not trammelled, and the Board is bound not to follow those rates as a standard or principle for rate-fixing, but just and equitable conditions having regard to the interests of the whole country. It is impossible if we follow the rates that are laid down for us under the authority of parliament in that way that we will discriminate and that we ~~are~~ are bound to come down to the level of 1897. That was seriously argued by my learned friend. How can we be discriminating when we are applying rates lawfully laid down for us by the Commission? The Commission is not bound to adopt that old standard. On the other hand, it would be wrong in adopting it. For Parliament in 1919 said: While in that territory you must respect the special contract, in other territory you must fix the rate on its merits and consider all the conditions.

The hearing was thereupon adjourned.

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C 49856

EXHIBIT 1

Victoria, B.C.. June 25th,1924.

Hon. W.L.Mackenzie King,
Ottawa , Ont.

Y esterday I received a tc legram from the Clerk of the Privy Council advisi ng me that the Privy Cpuncil would afford a hearing re Crows' Nest Pass Agreement Tran sportation Rates in the Council Chamber at Ottawa, on Friday thc twenty-seventh instant at ten-thirty A.M. and inviting this Government to be represented. It is impossible for a representative to leave here and reach Ottawa within the time stated. The only alternative which is left to us is to make a presentation by telegraph which I now propose to do. I am advised that in the interior of British Columbia ovcr f orty million dollars has been invested in lands and improvements for the purpose of producing fruits. This fruit production is entirely dependent upon obtaining water for irrigation purposes. The cost of obtaining irrigation water has been very expensive and involves large annual payments both on capital and maintenance accounts. During the last three ycars low prices have prevailed which coupled with high transportation costs has reduced the fruit growers to a condition approximating bankruptcy. The restoration of Crows' N est Pass Rates will place the B.C. fruit grower at a vastly greater disadvantage than is now prevailing, unless concurrently with the establishment of Crows' Nest Pass Rates transportation rates eastward from B.C. are placed on an equality with the westware movement. At the present time the movement of fruit from B.C. eastward carries in some instances double the r ate fcr movin g fruit in Ontario. The responsibility for the existing discriminations a s well as those which will be added must lie

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with the Government and Parliament of Canada. The following are a few examples which will illustrate what I mean. Apples, carload lots from Vernon, B .C. to Winnipeg, 1176 miles, rate 113. From Toronto to Winnipeg, 1232 miles, present rate 85, proposed Crows' Nest Pass rate 55. We are now suffering a 28 discrimination, and it is proposed to make a 58 or 105 per cent of a discrimination on agricultural implements from Vancouver to Winnipeg, 1466 miles, present rate is 155. From Montreal to Winnipeg, 1416 miles, present rate 82½, Crows' Nest rate 74, present discrimination 82½, proposed discrimination 81 or 109 percent. Building and Roofing paper and felts from Vancouver to Winnipeg, 1465 miles, rate 171. From Montreal to Winnipeg, 1416 miles, present rate 114, proposed rate 78½, present discrimination 57, proposed discrimination 90½ or 115 per cent. Paints and oils Vancouver to Winnipeg, 1465 miles, present rate 142, Montreal to Winnipeg 1416 miles, present rate 114, proposed Crows' Nest Rate 74, present discrimination 28, proposed discrimination 68 or 92 per cent. The manufacturer of paints, binder twine, cordage and rope paper mills and other industries, as well as distribution businesses, will suffer tremendous losses. Many other similar examples could be given. We are not opposing the restoration of Crows' Nest Pass Rates but we are asking the Government and Parliament of Canada to place B .C. in an equitable position similar to that enjoyed by the people of other parts of the Dominion . I would refer you to my evidence before Select Committee of Parliament dealing with Crows' Nest Pass Rates, report of evidence May 29th, 1922.

(SGD). John Oliver.

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C 49858

EXHIBIT 2

OTTAWA, June 26, 1924.

Rt. Honourable Mackenzie King,
Prime Minister,
OTTAWA.

Dear Mr. King,-

I have received wires from two well established firms in Victoria employing a large n umber of men and who have enjoyed the trade on the Prairies as far east as Winnipeg, also from the Chamber of Commerce of Victoria urging the elimination of manufactured items from Crows' Nest Pass Agreement, or at least continued suspension until full representa tion can be made from British Columbia industries showing disastrous effect of restoration of the agreement.

These industries have developed large prairie business based on present r ate structure in spite of present mountain discrimination. It is further urged that the Crows' Nest Agreement w ould accentuate this discrimination to the point of el iminating Briti sh Columbia ma nufacturers and would restrict their eastward territory to the Kootenies. It wo uld mean the carrying of commodities from Eastern Canada a distance of two thousand two hundred miles to Lethbridge or Calgary at same rates of freight a s apply to British Columbia products be ng carried seven hundred miles eastward. In justice, these British Columbia manufacturers should be in a position to enjoy an opportunity to trade with the priarie provinces on an equal footi ng with eastern manufacturers.

In any re-arrangement of this matter I would respectfully urge t hat the claims of these people be c arefully considered a nd that if further informe tion

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is required ~~that~~ representatives from the British Columbia Manufacturers be afforded a hearing.

Y ours faithfully,

(SGD) S.F. Tolmie.

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C 49860

EXHIBIT 3

C. N . TELEGRAM

Victoria B .C. 25 26

Hon. Dr. Tolmie

On direct behalf of and after consultation with Sidney Roofing Co. British America Paint Company and other vitally interested local industries and close examination of figures we urge you to elimin ate manufactured items from crows' Nest Pass Agreement or arrange for continued suspension un til full r epresentation cam be made from British Columbia industries showing disastrous effect of restoration of agreement stop These industries have developed large prairie business based on present rate structure in spite of present mountain discrimin a tion stop Crows' Nest Agreement would accentuate this discrimination to the point of elimination British Columbia Manufacturers a nd would restrict their eastward territory to Kootenay stop It would mean the carrying of commodities from eastern Canada distance of t wo thousand two hundred miles to Lethbridge or Calgary at same rates of freight as apply to British Columbia products bei ng carried seven hundred miles eastward stop Would strike at whole f reight rates structure of Dominion of Canada and be con fiscatory of present vested interests here built up on present freight basis s top Dominion Gov ernment could ha rdly expect this province which gave liberally of lands to Crows' N est Ry to s ee their industries destroyed a nd freight rates put in which would mean Parliament imposing a rate per mile eastbound t wo and a half times as great as is ~~imposed~~ proposed to haul westward under Crows' Nest Agreement stop Do not think such position would wish to be taken by our responsible Parliamentary body in fairness to this province stop It would be grossly unfair

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EXHIBIT 3 page 2

discriminatory a nd confiscatory legislation of the worst kind stop Entire fabric of rates altered and in dustrial distributing points changed since agreement first made stop Complete dislocation inevitable if rates applied now stop is Parliament prepared to guarantee t hat eastbound rates f rom B.C. will be given equivalent mileage reduction stop This only fa ir stop Figures show Crows' Nest Agreement would tend to destroy Calgary Lethbridge and Edmonton as western distributing points stop It is unfair to ha ve given insufficient notice of hearing to enable personal representation to be made at Ottawa stop Urge Pa rliament further suspend matter until claims of far west could place their justification in detail which we a re prepared to submit s top Pleasc canva ss B.C. representatives and wire reply.

C.P.W.Schwengers

Prst. Victoria Chamber of Commerce.

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C 49862

EXHIBIT 4

C P R Telegram

Victoria B.C.June 25 26 24

Hon. Dr. S.F. Tolmie
Ottawa

Will you please make representation to the Government on our behalf relative to the establishing of the Crows' N est Pass Agreement stop. Reinstatement of this rate will without question shut us out of the Prairie market even as far west as Calgary and Edmonton. Without that field it would be impossible for us to continue in business. At present the rate from Victoria to Winnipeg is dollar seventy one per hundred, from Montreal to Winnipeg is dollar fourteen. With the Crows Nest Pass Agreement in effect the rate would be seventy cents or a difference of dollar and one. This rate with the present Regin a and Saskatoon rate would give the eastern manufacturers a rate into the last two mentioned points of dolla r twenty five against our dollar thirty eight and a half. To Calgary and Edmonton, we would have a small advantage which eastern manufacturers could easily absorb on account of increased production stop Eliminate the Prairie Provinces a nd British Columbia manufacturers would not ha ve more than a half million population to cater to while the oastern ma nufa cturers would have nine and a half million. A vigorous fight is nesessary on our behalf as well as other manufacturers s top. British Columbia ma nufacturers and farmers are in a deplorable condition today, and further curtailment would eliminate two thirds of the manufacturers a nd farmers particularly t he fruit growers. Our ratio of distribution at present is a bout one thousand miles,

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but the new ¢ rate would reduce t he ratio to a bout five hundred miles, and give t he eastern manufacturers thirty two hundred. Anything you ca n do wo uld be appreciated.

Sidney Roofing and Paper Co.

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C 49864

EXHIBIT 5

C. P. R. Telegram.

Victoria B.C.June 25 26 25

Hon. Dr. Tolmie,
Ottawa.

If the Crows N est Pass Agreement goes into effect, it will be impossible for us to do business in Regin a, stop. Competition is very keen there at present time, and we would have to close our Regina branch stop. As far as our Calgary and Edmonton branches are concerned both have shown a loss for past few years, and with Crows Nest Agreement being put in to effect we can see no possibility of making any money at these points consequently will have to curtail our business on a number of staple lines which means greatly reduced output stop. Small production in turn means increased overhead expense thereby making it difficult to compete even in British Columbia on a great majority of our products stop. Please make strongest possible representation to the Government to prevent restoration of Crows Nest Pass Agreement.

British America Paint Co.Ltd.

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C 49865

EXHIBIT 6

Ottawa, Ont.,
June 26th, 1924.

PERSONAL

Rt. Hon.W.L.Mackenzie King,
O t t a w a,
Ont.

Dear Sir,- Re Crows' Nest Pa ss Agreement.

I am in receipt of various telegrams from organizations representative of interests in British Columbia, all of which request that the propos ed meeting on Friday morning to consider the above agreement be postponed until British Columbia can be properly represented. All of these organizations and I think, I may say, the opinion in British Columbia is unanimously opposed to the restoration of the Crows' Nest Pass agreement. Its restoration will, no doubt increase the discrimination which already exists against that province by reason of the mountain scale.

I shall appreciate it very much if you will be good enough to give this matter your immediate consideration and advise me whether British Columbia will be given the opportunity of representing her views on this subject before the Privy Council.

Yours truly,

(SGD) J.A. Clark.

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C 49866

EXHIBIT 7

Ottawa, June 26, 1924.

Rt. Hon. W.L.Ma ckenzie King,
Prime Minister of Canada,
O t t a w a.

Dear Mr. King,-

This morning I r eceived the enclosed telegram from the Vancouver Board of Trade which you will note intimates that a conference is to be held shortly regarding the restoration of the Crows' N est Pass Agreement. I most respectfully suggest that:

(a) this conference be adjourned for a few days to permit of the attendance of business interests of British Columbia,

(b) in the event that this is not possible, then that Members from British Columbia shall be given the privilege of attending the conference and ropresenting the views of British Columbia.

This matter is of such grave importance and, to my mind, frought with such extremely critical results, that I do not hesitate to urge most earnestly the granting of this request.

Yours very sincerely,

(SGD) H.H.Stevens

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C 49867

EXHIBIT 8

C.P.R. Telegram

Van couver B .C. June 25

H½H

H.H.Stevens M.P.,
Ottawa.

Re Crows Nest Pass Agreement stop Following resolution passed special meeting this Board held this mornin g:- "That representations be made to Ottawa urging further suspension of the Crows Nest Pass Agreement for a further period of two years or until such time as this question can be fully investigated by an independent and impartial tribun al" stop Press reports indicate Government calling conference of Alberta Saskatchewan Manitoba interests Friday morning next stop British Columbia apparantly not represented stop Have wired Mackenzie King informing him of this Boards sentiments a nd have asked that Vancouver members be g iven opportunity to present this Boards views before conference which are those contained in resolution above mentioned stop Will you kindly convey to other members Vancouver this opinion and solicit their support in this connection stop Do everything possible see that British Columbia claims are laid fully before ca binet, and if necessary s eek adjournment to e nable British Columbia representatives to be present in pers n if you think advisable stop If meeting held Friday cannot possibly present you with arguments but feel quite certain you are f ully cognizant of t he s ituation s top Cannot impress upon you too strongly that t he r estoration of t he Crows Nest Pass Agreement will be extremely d isa strous to British Columbia interests

Vancouver Board of Trade

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C 49868

EXHIBIT 9

C. N. Telegram

Vern on B.C. 25 26 June

T.G. McBride, M.P.,

Understand cabinet meeting Friday morning to consider Crows N est Pass Agreement stop Restoration Crows N est Rates would be ruin ous to fresh fruit and a pple growers of British Columbia unless same reductions apply eastbound as we already laboring under rate discrimination as admitted by railways pages 34 35 their memorandum dated May fifteen stop one glaring example discriminatory rates follows present rate from Hamilton to Winnipeg apples 85 cents mileage twelve hun dred and sixty seven minimum 30000 comparedw ith rate Vernon to Winnipeg 113 mileage eleven hundred and seventy seven minimum 35000 stop Crows N est Rate Hamilton to Winnipeg 55 cents stop This reveals Ontario's present apple rate 33 per cent or 15 cents per box l ess and Crows Nest Rate ~~maximum~~ 105 per cent or 30 cents per box less than our present Winnipeg rate besides longer haul and lower minimum westbound s top also understand that in connection with British Columbia appeal that Privy Council recommend-ed that rate equalization be brought about as quick ly as possible surely Parliament cannot disregard this recommendation stop understand that ~~Parliament~~ restoration of Crows Nest rate would result in loss of millions of dollars of r evenue to railways and they would immediately ask for indrea se eastbound r ates to make up loss of revenue stop surely people of B.C. have paid their share of subsidy which formed the consideration in the agreement and therefore are entitled to same concessions as east stop. Act may have been reasonable

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when first placed on statutes with no fruit production in west but conditions as regards apples and fresh fruit have completely reversed see paragraph 2 page 5 Railways Memorandum stop This should constitute justification for reversal rate situation instead of discrimination against us stop We must have your vote and utmost influence towards permanent suspension of Act unless eastbound rates are made subject to same reductions as westbound stop Kindly give copy of this wire to each British Columbia representative and secure their earnest support as we wish to leave no stone unturned in this fight against discrimination

Associated Growers of B.C.

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C 49870

EXHIBIT 10

C. N . Telegram

Vancouver B.C.June 26,

Hon.H.H.Stevens, M.P.

Ottawa, Ont.

Following wire sent today to Mackenzie King We strongly urge suspension or amendment of Crows Nest Agreement stop conditions in this Province entirely changed since eighteen ninety seven stop Practically all commoditios enumerated in Agreement now moving eastward in large volume stop If agreement must be restored suggest amendment to make reductions apply eastbound also in order to offset westbound feature.

Associated Boards of Trade of B.C.

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C 49871

EXHIBIT 11

C.P.R.Telegram

Vancouver B.C. June 26, 1923.

Hon. W.L.MacKenzie King,

Premier of Canada,

Ottawa, Ont.

Supplementing nightletter forwarded to you yesterday Crows Nest Pass Agreement stop This organization strongly supports attitude taken by Hon. John Oliver in his case forwarded to you last evening stop Sincerely hope joint representations will receive favourable consideration your hands.

Vancouver Board of Trade.

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C 49872

EXHIBIT 12

C.N .Telegram

Vernon B.C.June 26th

Hon. J.H. King,

Ottawa, Ont.

Understand Cabinet meeting tomorrow connection Crows Nest Pa ss Agreement Restoration of Act would be intolerable furthe discrimination and earnestly request your influence aga inst any move to increase present discrimination and allow railway commission to be supreme authority.

F.B. Cossitt

Press Liberal Assn Yale Dist.

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C 49873

EXHIBIT 13

C.N .Telegram

Vancouver B.C. 26

Hon. Dr. King,

Parliament Bldgs. Ottawa, Ont.

With respect to Crows Nest Agreement is it intention of your Government to reestablish those grain rates eastward and continue to disregard the western route stop It may be a proper thing for your Government to say that a certain commidity grain must move to tidewater at certain preferred rated namely Crow rates but to say that that grain shall move only in one direction namely eastward is an outrageous discrimination.against western route which would alienate whple of British Columbia and Alberta against you and your colleagues stop Vancouver Sun is of opinion that Parliament should not interfere with freight rates because regardless of Crows Nest or any other agreement we have got to get affairs of this country on basis of things as they are today not as they were thirty years ago stop However if your Govern= ment does interfere it must not do so in a manner which will discriminate against this Province.

R.M . Cromie

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C 49874

EXHIBIT 14

C.N.X Telegram

Vancouver B.C. 26 June 1924.

W.L.Mackenzie King,

Premier Ottawa.

We strongly urge suspension or amendment of Crows Nest Agreement stop Conditions in this Province entirely changed since eighteen ninety seven Stop practically all commodities numerated in agreement now moving eastward in large volume stop if agreement must be restored suggest amendment to make reductions apply eastbound also in order to offset westbound feature.

Associated Boards of Trade of B.C.

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C 49875

EXHIBIT 15

C. N . Telegram

Victoria B.C.June 26, 1924.

Hon. Dr. J.King,
Minister of Public Works
Ottawa, Ont.

Fruit situation in the Okanagan extremely serious stop Restoration of Crows Nest Agreement rates on fruit from Ontario to Western Canada willh ave disastrous effect on Prairie markets unless Okanagan growers give similar rates stop rate Vernon to Winnipeg eleven hundred miles one dolla r thirteen cents Niaga ra Peninsula to Winnipeg twelve hundred miles rate fifty five cents under Crow agreement discrimina tion fifty eight cents per hundred pounds or forty point six cents per box stop Okanagan growers practically shut out of Manitoba and substantial portion Saskatchewan markets on express rates case understand little hope of any relief to the west stop rate Okanagan to Calgary three hundred and fifty miles two dollars forty cents rate Grimsby to Montreal three hundred ninety miles ninety five cents discrimination one dollar fifty cents per hundred pounds stop Okanagan to Winnipeg eleven hundred miles two dollars forty cents rate Grimsby to Halifax eleven hundred miles one dollar fifty cents discrimination ninety cents stop In view of fact that Yale vitally interested in freight a nd express ra tes to prairies points would advise you to consider absolute necessity of extending some relief to the west stop Have been on the coast for few days am satisfied that unqualified restoration of Crows Nest Agreement rates without extending relief to the west will have disastrous result and impression very strong here that west not getting fair deal.

K.C.Macdonald.

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C 49875

EXHIBIT 15

C. N . Telegram

Victoria B.C.June 26, 1924.

Hon. Dr. J.King,
Minister of Public Works
Ottawa, Ont.

Fruit situation in the Okanagan extremely serious stop Restoration of Crows Nest Agreement rates on fruit from Ontario to Western Canada willh ave disastrous effect on Prairie markets unless Okanagan growers give similar rates stop rate Vernon to Winnipeg eleven hundred miles one dolla r thirteen cents Niaga ra Peninsula to Winnipeg twelve hundred miles rate fifty five cents under Crow agreement discrimina tion fifty eight cents per hundred pounds or forty point six cents per box stop Okanagan growers practically shut out of Manitoba and substantial portion Saskatchewan markets on express rates case understand little hope of any relief to the west stop rate Okanagan to Calgary three hundred and fifty miles two dollars forty cents rate Grimsby to Montreal three hundred ninety miles ninety five cents discrimination one dollar fifty cents per hundred pounds stop Okanagan to Winnipeg eleven hundred miles two dollars forty cents rate Grimsby to Halifax eleven hundred miles one dollar fifty cents discrimination ninety cents stop In view of fact that Yale vitally interested in freight and express rates to prairies points would advise you to consider absolute necessity of extending some relief to the west stop Have been on the coast for few days am satisfied that unqualified restoration of Crows Nest Agreement rates without extending relief to the west will have disastrous result and impression very strong here that west not getting fair deal.

K.C.Macdonald.

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C 49876

EXHIBIT 16

Resolution

Passed by The Nelson Board of Trade

June 19th, 1924.

WHEREAS AFTER examining and fully discussing a memorandum prepared by the Canadian National and Canadian Pacific Railways re the matter of rates under the Crows' Nest Pass Act, it is found that the proposal contained therein are not satisfactory.

THEREFORE BE IT RESOLVED that the Nelson Board of Trade strongly objects to any further suspension of the terms of the Crows' Nest Pass agreement as applied to all commodities affected by the said agreement, unless there is a definite undertaking on the part of the Railways interested, that the saving of freight rates resulting therefrom be distributed to the people of western Canada in the form of rate reductions of basic commodities, such as coal, ore, forest products, grain and all farm products, moving both east and west in Western Canada.

(SGD) E.F. Gigot,

Secretary.

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EXHIBIT 17

Freight Revenue

From 1 ton finished product at Selkirk Mill

Incomin g		Source of Supply		Railway earning
Material reproductive				
2300 lbs	Scrap	Within 100 mile radius of Wpg.	@ 2.50 ton	$2.88
16 "	Manganese	England	1.25 "	.20
9 "	Silicon	N iagara	1.19	.10
Material not reproductive				
10 lbs.	Ma gnesite	Quebec	@ .84	.08½
280 "	Limestone	Stonewall and Moose horn	.05½	1.54
13 "	Fluor Spar.	Granby, B.C.	.63	.08½
90 "	Coke	Fernie	.33	.30
40 "	Grey Sand	(Beausejour &)	.63	.02½
20 "	Silica "	(Minnoapolis)	⅓18	.03½
12 "	Fire Clay	Moose Jaw	.25	.03
2 "	Chrome Ore	Chicago	.80	.01½
10 "	Moulds	Winnipeg	.8½	.01
68 "	Brick	Moose Jaw	.25	.17
650 "	Oil	Regina	.57	3.70½
8 "	Lumber	Various		.10
1400 "	Coal	Fort William & Duluth	4.10	3.50
60 "	General Supplies	Various	.65	.36
4988				

$$13.14 per ton 20 tons - $262.80

Freight on minimum car 20 tons Bars Selkirk to Calgary 392.00

654.80

Average revenue from material shipped from Selkirk per ton $32.74

Average revenue from material shipped from Vancouver per ton $19.60

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EXHIBIT 18

June 23rd, 1924.

COMPARATIVE FREIGHT CHARGES ON
RAW MATERIALS

			1898 to 1918	1918 to 1924	
	Quantity	Rate	per ton finished steel	Rate	per ton fin. mat.
Coal	1,400	2.70 per ton	1.89	3.50	2.45
Scrap	2,300	3½¢ per 100 lbs.	.81	.05	1.15
Brick Fire	80	3.40 per M.	.14	.25	.20
Oil	480 lbs.	38¢ per 100 lb	1.82	.60	2.88
Sand Local		5½¢ per 100 lbs.	.02	.6½	.02½
" Silica		13¢ per 100 lbs.	.02½	XXX .17	.03½
Limestone	280 lbs	4½ per 100 lb s.	.12½	.5½	.15
			4.83		6.89
General Items say			.65		.90
Coke Moulds Manganese Silicon Fluor Spar Magnesite			5.48		7.79
Increase			2.31		
			$7.79		$7.79

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EXHIBIT 19

EXAMPLE OF RATE DISPARITIES BETWEEN EASTERN APPLE AND FRUIT PRODUCING CENTRES TO NORTHWEST POINTS RESULTING FROM APPLICATION OF CROWS NEST BASIS. THESE POINTS UNDER PRESENT RATE BASIS ALL TAKE SAME RATES TO THE WEST.

APPLES

(Carload rates in cents per 100 lbs)

From	TO Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
London	52	80	98	1 00½	120½
NIAGARA ONT ST. CATHATINES ONT WALKERTON ONT SCHICOE ONT BRIGHTON ONT PICTON ONT	85	127	134½	158	158

FRESH FRUITS

(Carload rates in cents per 100 lbs.)

From	TO Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
Windsor	81	125	151½	156	186
NIAGARA PENINSULA	106½	195½	208½	241½	241½

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EXHIBIT 20

EXAMPLE OF RAT E DISPARITIES BETWEEN EASTERN MANUFACTURING POINTS AND NORTHWEST CENTRES. SHIPPING POINTS MENTIONED UNDER PRESENT RATE BASIS ALL TAKE THE SAME RATE.

(Carload rates in cents per 100 lbs.)

AGRICULTURAL IMPLEMENTS

From	To Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
Hamilton	67½	96	115½	124½	147
Toronto	68½	97	116½	125½	148
BRANTFORD, ONT. ST. MARYS "	82½	128	139½	166½	166½

BINDER TWINE

From	Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
Hamilton, Ont.	71½	109	133½	137	164
Montreal	79½	117	141½	145	172
WELLAND ONT BRANTFORD "	114	155	168	200	200

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EXHIBIT 21

EXAMPLE OF RATE DISPARITIES BETWEEN EASTERN BAR ITON MANUFACTURING CENTRES TO WESTERN CENTRES UNDER THE CROWS NEST RATES. HAMILTON AND MONTREAL TAKE UNDER PRESENT RATE BASIS SAME RATES: SYDNEY, 18¢ PER 100 LBS. OVER MONTREAL AND HAMILTON.

BAR IRON

(Carload rates in cents per 100 lbs.)

From	Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
Hamilton, Ont.	71½	109	133½	137	164
Montreal, Quo	79½	117	141½	145	172
SYDNEY, C.B.	118	164	177	210	210

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EXHIBIT 22

EXAMPLES OF RATE DISPARITIES BETWEEN EASTERN POINTS OF SUPPLY TO WESTERN CENTRES ON FIFTH CLASS HARDWARE COMMODITIES. UNDER PRESENT RATE BASES ALL POINTS MONTREAL AND WEST TAKE SAME RATES. ST. JOHN, 12¢ PER 100 LBS. OVER MONTREAL; AMHERST, HALIFAX AND SACKVILLE 2¢ PER 100 LBS. OVER ST. JOHN AND SYDNEY 6¢. NOTE INCREASED RATE SPREAD AGAINST MARATIME PROVINCE POINTS.

FIFTH CLASS COMMODITIES

Paints, Iron, Window Glass, Cordage, Pipe, Etc.

(Carload rates in cents per 100 lbs.)

From	TO Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
Hamilton	71½	109	133½	137	164
Toronto	74	111½	136	139½	166½
BRANTFORD ONT.) WELLAND ")	114	155	168	200	200
Montreal	79½	117	141½	145	172
St. John, N.B.	102	154	171	175	205
AMHERST N.S.) SACKVILLE N.B.) HALIFAX N.S.)	128	183	197	181	231
SYDNEY C.B.	132	187	201	185	235

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EXHIBIT 23

EXAMPLE OF RATE DISPARITIES BETWEEN EASTERN FURNITURE MANUFACTURING POINTS TO WESTERN POINTS BY THE APPLICATION OF THE CROW'S NEST RATES. THESE POINTS ON THE PRESENT BASIS TAKE THE SAME RATES.

FURNITURE

(Carload rates in cents per 100 lbs.)

From	TO Winnipeg	Regina	SASKATOON	Calgary	EDMONTON
London	85½	124	151	154½	184½
Woodstock, Ont.	86½	125	152	155½	185½
KITCHENER ONT KINCARDINE " WALKERTON " HANOVER " STRATFORD "	138½	185½	193½	234½	234½
VICTORIAVILLE QUE.	146½	193½	206½	242½	242½

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EXHIBIT 24

EXAMPLE OF DISPARITY OF RATES AGAINST WESTERN POINTS OF SUPPLY THAT WILL ENSUE BY THE APPLICATION OF THE CROW'S NEST WESTBOUND RATE BASIS FROM FORT WILLIAM AND POINTS EAST THEREOF.

FRESH FRUIT (Carloads)

FROM	TO	MILES		RATES IN CENTS PER 100 LBS.
Hamilton	Winnipeg	1272	Crows Nest Rate	83½¢
Kelowna, B.C.	"	1209	Present rate	150
Windsor, Ont.	Swift Current	1958	Crows Nest Rate	135½
Kelowna, B.C.	" "	702	Present Rate	150

GREEN APPLES (Carloads)

Fort William	Moose Jaw	817	Crows Nest Rate	61½¢
Kelowna, B.C.	" "	812	Present Rate	113
Windsor, Ont.	Swift Current	1958	Crows Nest Rate	86¢
Kelowna, B.C.	" "	702	Present Rate	104
Fort William	to Lethbridge	1176	Crows Nest Rate	76½¢
Kelowna, B.C.	" "	552	Present Rate	86

COAL OIL (Carloads)

Fort William	Brandon	552	Crows Nest Rate Coal Oil	53¢
" "	"	552	Regular Rate Gasoline	74

Crows Nest Rates do not apply on Gasoline or Lubricants

Fort William	Winnipeg	420	Crows Nest Rate	45½¢
Regina	"	357	Present Rate	56

BUILDING PAPER (Carloads)

Fort William	Calgary	1243	Crows Nest Rate	108
Dryden, Ont.	"	1032	Present Rate	116

Dryden, Ont. is a paper making point 211 miles west of Fort William, Ont.

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EXHIBIT 25.

CALGARY AND EDMONTON TAKE UNDER PRESENT TARIFFS THE SAME RATES FROM FORT WILLIAM AND POINTS EAST THEREOF. THE DIFFERENCE THAT WILL EXIST UNDER THE CROW'S NEST SCALE IS OUTLINED BELOW:

FRESH FRUITS (Carloads)

FROM	TO	MILES	RATES IN CENTS PER 100 LBS.
Toronto	Calgary	2055.4	158½¢
"	Edmonton	2080.6	188½
	DIFFERENCE FAVOR CALGARY		30¢
Fort William	Calgary	1242.4	118½¢
" "	Edmonton	1267.6	148½
	DIFFERENCE FAVOR CALGARY		30¢

APPLES (Carloads)

Toronto	Calgary	2055.4	103½¢
"	Edmonton	2080.6	123½
	DIFFERENCE FAVOR CALGARY		20¢
Fort William	Calgary	1242.4	80¢
" "	Edmonton	1267.6	100
	DIFFERENCE FAVOR CALGARY		20¢

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COAL OIL (Carloads)

FROM	TO	MILES	RATES IN CENTS PER 100 LBS.
Fort William	Calgary	1242.4	96¢
" "	Edmonton	1267.6	120
	DIFFERENCE FAVOR CALGARY		24¢

GASOLINE (Carloads)

Fort William	Calgary	1242.4	143¢
" "	Edmonton	1267.6	143
	NO DIFFERENCE		

BINDER TWINE (Carloads)

Fort William	Calgary	1242.4	103¢
" "	Edmonton	1267.6	135
	DIFFERENCE FAVOR CALGARY		27¢

AGRICULTURAL IMPLEMENTS (Carloads)

Fort William	Calgary	1242.4	97½¢
" "	Edmonton	1267.6	120
	DIFFERENCE FAVOR CALGARY		22½¢

IRON COMMODITIES, PAINTS AND OILS, WINDOW GLASS, CORDAGE, WIRE AND WOODENWARE (Carloads)

Fort William	Calgary	1242.4	108¢
" "	Edmonton	1267.6	135
	DIFFERENCE FAVOR CALGARY		27¢

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C 43887

EXHIBIT 26½

EXAMPLE OF RATE DISPARITIES FAVORING LONGER HAUL AS AGAINST SHORTER DISTANCES ON NAMED COMMODITIES UNDER CROW'S NEST CONTRACT. ROSETOWN AND KERROBERT ARE ESTABLISHED DISTRIBUTING CENTRES BUT WERE NOT IN EXISTENCE IN 1898.

To	Miles	Agricultural Implements	Binder Twine & Cordage	Apples	Fresh Fruit	Paints	Iron Comm.	Window Glass	Pipe Etc.	Furniture
		From Fort William		From Eastern Canada to						
Calgary	1243	97½	108	80	118½	108	108	103	108	119½
ROSETOWN	981	104	120	102	152½	120	120	120	104	132
KERROBERT	1039	108	123	108	158½	123	123	123	108	138

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C 49888

EXHIBIT 27

Winnifred, Alberta,
June 18th, 1924.

To
Right Hon. MacKenzie King,

Prime Minister,

Ottawa.

and
Robert Gardner, M.P.

We, the undersigned respectfully request that you insist that The Crows Nest Pass Agreement be re-instated on July 6th, 1924.

(SGD) L.C.Gow	Ch. Graverse
M.H.Smith	Perry Holford
H. Reed	C.D.Herrington
F. Rachilian	John Pope
R. R. McLean	Henry Anderson
W. A. Campbell	Christopher Rasmassen
W. Brown	Mrs. H. Davis
M. Hodgson	L.H.Calloway

EXHIBIT 28

Winnifred Alberta June 18,1924

To Prime Minister King
and
Robert Gardner, M.P.

Ottawa, Canada.

It is our demand that the Crows Nest Pass Agreement be reinstated on July 6th, 1924.
(Signed by the following business men and farmers of this town and district)

(SGD) James E. Larsen -	Merchant
John E. LaMarsh -	Farmer
T.L.Parker	"
W.H.Scott	Machine Agent
Frank Pow Lan	Merchant
A.W. Backstrom	Farmer
Edward Dowlin	"
James Kohmer	Machinery Agent
Luigi Castellarin	Livery
George F. Angle	Farmer
N.P. Rosenbeck	Farmer
T. Rapsah	"
P. Rapson	"
B.J. McDonnell	"
L. B. Losey	"
A. O. Hullman	"

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(Sgd)	J.F. Huick	Agent
	P.L.Backstrom	Farmer
	John Krohan	"
	Jerold Hodgson	"
	J. Cook	"
	W. Z. Bippett	"
	W. F. McDon ald	"
	H. Davis	"
	R.M. Huff	"
	Alex. Sanderson	"
	Swan Husa r	"
	Gilbert Mager	"
	Fisher Merc. Co.	Ada E. Fisher Merchant
	H.J.Fisher	Clerk
	Peter Barr	Farmer
	Jens Jordot	"
	M.J.Collins	"
	Tom Trebble	Postmaster
	W. Hanegan	Farmer
	John McLeod	"
	Percy Colthorp	"
	Ewin Gilmore	"
	A. Claussen	"
	R. Baldwin	"
	R. L. Williams	"
	N. Greenstein	
	J. Maffini	
	R. M. Popel	"

EXHIBIT 29

C.P.R. Telegram

New Glasgow N.S.June 28

Honorable E.M.MacDonald

Minister of Defence, Ottawa, Ont.

In event of Crows Nest Pass Agreement being made effective we claim that similar concessions should be granted as regards freight rates to and from Nova Scotia to all parts of Canada stop The arbitraries which weve suspended in war times should again be restored.

New Glasgow Board of Trade
J. Morris, Secretary.

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C 49890

EXHIBIT 30

C.N.Telegram

Montreal June 27-24

Hon. W.L.MacKenzie King,

Restoration Crows Nest Pass Act will increase spread of rate against Maritime Provinces point as compared with other Canadian Steel producing points and further increase the burden under which we are competing stop we must protest the reintroduction of these rates unless under guarantee protection of our interest.

British Empire Steel Corpn.

EXHIBIT 31

C.N.Telegram

Edmonton Alta June 27, 1923.

Right Hon. W.L.Mackenzie King

General meeting Board of Trade today resolved that the Crowsnest Pass Agreement is today partially obsolete in that the source of supply of many of the commodities specified therein have changed since the agreement was made and a new export route for grain has been established and the agreement itself was framed with regard to those sections of the Western provinces which were recognized as distributing centres of the time the agreement was made resolved that the reenactment of this agreement would cause unfair discrimination against other distributing centres which have developed meanwhile and would fail to afford the relief originally intended by the agreement this Board therefore respectfully recommends to the Government that in order to permit of the submission by the Railways of an alternative schedule and due consideration of it after submission the bringing into operation of the Crows Nest Pass Act except as regards grain and grain products be delayed thirty days. Edmonton Board of Trade.

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C 49891

EXHIBIT 31

Tabor, Alberta, 21st June/24

L.H.Jelliff, Esq., M.P.,
House of Parliament,
Ottawa.

Dear Sir,-

I have been instructed to advise you that the following resolution was unanimously passed at a regular meeting of the Taber Board of Trade held on the 16th instant and to request tha t you give the same your support.

RESOLUTION

BE IT RESOLVED:

1. That the Parliament of Canada be strongly urged not to further grant an extension of the suspension of the rates on westbound merchandise as outlined in the Crows Nest Pass Act but that the provisions of the said Act as applicable to rates be fully restored.

2. That a copy of this resolution be forwarded to the Prime Minister of the Dominion of Canada and to L.H.Jellif Esquire, Member of Parliament for the Riding of Lethbridge.

Yours truly,

(SGD) Alex. Stewart
Secretary
Taber Board of Trade

EXHIBIT 31½

C.P.R.Telegram

Brandon, Man. June 25th,

Hon. McKenzie King,

Ottawa, Ont.

Brandon Board of Trade trongly reaffirms its protestagainst action of railways for entire suspension Crowsnest pass agreement Trust you will defer hearing until Western representatives can reach Ottawa.

H.L.Crawford, Secy.

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C 49892

EXHIBIT 32

Lethbridge Alberta
June 2-th, 1924.

L.H.Jellif, M.P.
House of Commons,
Ottawa, Ont.

Dear Mr. Jellif,-

I have been instructed to forward you the enclosed resolution which was passed at a meeting of our Board held on Thursday June 19th, 1924.

Yours very truly,

(SGD) Jas. S. Rose,
Secretary
Lethbridge Board of
Trade.

RESOLUTION ADOPTED BY THE LETHBRIDGE BOARD OF TRADE
THURSDAY JUNE 19th, 1924.

WHEREAS it is understood that the Canadian Pacific Railway Company and the Canadian National Railway have made application to the Government for the suspension of the west-bound merchandise rates outlined by the Crow's Nest Pass Act and that the whole matter of railway rates throughout the Dominion be left to the decision of the Board of Railway Commissioners, and

WHEREAS IT IS NOT considered at this time to be in the interest of Western Canada that any further extension of the provisions of sub-section 5, Section 325 of the Railway Act be granted,

BE IT FURTHER RESOLVED That the Lethbridge Board of Trade strongly oppose any such further extension and that our organization urge the Parliament of the Dominion of Canada to reinstate the Crows Nest Pass Act and that the application of the Canadian Pacific Railway Company and the Canadian

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National Railway Company referred to be not granted,

and

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to

The Right Honorable Mackenzie King
Premier of the Dominion of Canada
The Honorable Speaker of the House
of Commons and the Senate,
Honorable G.P.Graham, Minister of
Railways,
Mr. L.H.Jellif, M. P.

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C 49894

EXHIBIT 33

Senate, Sask.,
June 19th, 1924.

The Right Honorable W.L.Mackenzie King,

Premier of Canada,

Ottawa, Ont.

Dear Sir,

We note that the suspension of the Crows Nest Pass Agreement lapses on July 6th next and that efforts are being made by certain parties to make this suspension permanent.

We must earnestly object to any such step being taken, and from a most intimate knowledge of the burden the present freight rates place upon this and all other communities in Western Canada, ask and insist that the Crows Nest Pass Agreement be reinstated.

I find that on examination, all such items as are carried in our hardware stocks and which must be shipped from the only point from which we can obtain complete stocks, being Winnipeg, our costs are increased by 12%. Groceries obtained from such close in points as Lethbridge cost four per cent more but prices are much higher for such items at Lethbridge than even Moose Jaw, and a great deal higher than if purchased in Winnipeg.

I would point out that the operating costs to the railroad for labor for the purpose of operating the trains only, cannot be in excess of the costs of 1912, for, of my own family three members are engineers and each one states emphatically that with twelve years rights or more, working as engineers, their earnings today are no greater than twelve years ago.

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The services given the public by the Canadian Pacific Railway Company at this point have steadily diminished year by year until at the present time even with earnings of over twenty five thousand dollars for this station, we are without a station agent the entire year, although an order was issued by the Board of Railway Commissioners that an agent should be on duty here from September 1st, until November 30th of each year.

In no other business, other than the charges for the hauling of freight, do the earnings approximate those of the war years. Why should the Canadian Pacific Railway Company be made the one exception?

I earnestly trust that you will do everything within your power to protect the rights of people, on July 6th.

Yours respectfully

(SGD) E. Jno. Evans,

EVANS BROTHERS,

Merchants.

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EXHIBIT 34

C.P.R. Telegram

Crossfield, Alta. June 27

Rt. Hon. W.L.Mackenzie King,

Ottawa.

The following resolution was passed at a meeting of the Crossfield and District Board of Trade last night that we demand that the Crows Nest Agreement as originally entered into by the C.P.R. and the Government be reinstated in its entirety.

S. Willis, Secretary

EXHIBIT 35

Ottawa, June 27, 1924.

T.G.McBride, Esq., M.P.,
House of Commons,
Ottawa, Ontario.

Dear Mr. McBride,-

The Prime Minister has just received your letter of yesterday, and accompanying it, a copy of the communication you have received from the Associated Fruit Growers of British Columbia, respecting the Crows Nest Pass Agreement. Mr. King wishes me to assure you that the representations you have submitted will be taken into the Government's careful consideration.

Yours faithfully,

F.A.McGregor
Private Secretary.

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C 49897

EXHIBIT 36

Ottawa, June 26, 1924.

The Right Hon. W.L.MacKenzie King,
Prime Minister,
House of Commons,
Ottawa.

Dear Mr. King,-

You will please find enclosed copy of night letter which I received from the Associated Fruit Growers of British Columbia. This night letter fully explains the situation.

I might say that I do think something should be done to equalise the rates east bound as well as west bound, as it certainly will strike a hard blow to the fruit growers in British Columbia if they cannot get equal treatment with the east.

Yours truly,

(SGD) Thos. G. McBride.

(Telegram herein referred to is one of the foregoing exhibits).

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C 49898

EXHIBIT 37

Ottawa, June 24th, 1924.

Rt. Hon. W.L.Mackenzie King,

Prime Minister,

Ottawa.

Dear Mr. King,-

I am in receipt of a letter from the Western Retail Lumbermen's Association, Winnipeg, in regard to the restoration of the Crows Nest Pass rates. I wish to add my voice to their request.

Yours very truly,

(SGD) A.B.Hudson

EXHIBIT 38

Ottawa, June 25, 1924.

The Honourable A.B.Hudson, M.P.,
House of Commons,
Ottawa, Ontario.

Dear Mr. Hudson,-

The Prime Minister has asked me to acknowledge the receipt today of your letter of the 24th instant respecting the restoration of the Crows' Nest Pass rates. Mr. King wishes me to assure you that your representations in this connection will be taken into the careful consideration of the Government.

Yours faithfully,

F.A.McGregor,

Private Secretary.

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C 49899

EXHIBIT 39

C.P.R. Telegram

Kelowna B.C. June 26 = 24

Hon. W.L.Mackenzie King,

House of Commons Ottawa, Ont.

Fruit growers of Okanagan greatly alarmed lest decision on Crowsnest Pass Agreement should have discriminatory effect against them stop Urge that Cabinet seriously consider position of this our leading industry in reaching decision on agreement.

Associated Boards of Trade of Central B.C. and Okanagan

EXHIBIT 40

Ottawa, June 27th, 1924.

The Secretary,
Associated Boards of Trade of
Central British Columbia and Okanagan,
Kelowna, British Columbia.

Dear Sir,-

I am desired by the Prime Minister to acknowledge the receipt of your communication respecting the Crows' Nest Pass Agreement, and to assure you that the representations you have made on behalf of the Associated Boards of Trade of British Columbia and the Okanagan Valley will be taken into the Government's careful consideration.

Yours faithfully,

F.A.McGregor,

Private Secretary

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C 43900

EXHIBIT 41

Ottawa, Ont., June 25th, 1924.

Hon. W.L.MacKenzie King,
Prime Minister,
Ottawa, Ont.

Dear Sir,-

I am herewith passing on to you another telegram I received against any extension of the suspension of the Crow's Nest Pass Agreement.

The West feels very keenly on this matter, in fact I may say that we take the grounds that the whole three Provinces have been settled since 1896 under this Agreement as a real Bill of Rights.

I hope you will use your influence to secure the coming into force of this Agreement in full on July 6th, next.

Yours very truly,

(SGD) J. Evans.

EXHIBIT 42

C.N.Telegram

Leney Sask. 13 - 1 4 June

John Evans, M.P.

Prevent interference with Crowsnest Pass Agreement if possible. E.P.Horton

EXHIBIT 43

Ottawa, June 27, 1924.

J. Evans, Esq., M.P.,
House of Commons,
Ottawa, Ontario.

Dear Mr. Evans,

The Prime Minister wishes me to thank you for sending him the telegram from Mr. E.P.Horton, enclosed with your letter. The representations contained in this telegram, respecting the Crow's Nest Pass Agreement, will be taken into the Government's careful consideration.

Yours faithfully,

F.A.McGregor, Private Secretary

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C 49901

EXHIBIT 44

C.P.Telegram

Kelowna, B.C.June 26th, 192~~2~~

Hon. W.L.Mackenzie King,

Ottawa, Ont.

Understand Cabinet meeting Friday to consider Crows nest rates Pass Agreement Fruit Growers alarmed lest decision arrived at should have discriminatory effect against them we urge and depend upon you to see that the British Columbia Fruit Growers receive fair and equal treatment and protection against any discriminatory rates.

Fruit and Vegetable Shippers Assn.
of B.C.

EXHIBIT 45

Ottawa, June 27, 1924.

The Secretary,
Fruit and Vegetable Shippers Association of B.C.,
Kelowna, British Columbia.

Dear Sir,-

I am desired by the Prime Minister to acknowledge the receipt of your communication respecting the Crow's Nest Pass Agreement, and to assure you that the representations you have made on behalf of the Fruit and Vegetable Shippers Association of British Columbia will be taken into the Government's careful consideration.

Yours faithfully,

F. A. McGregor,
Private Secretary.

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C 43902

EXHIBIT 46

C.N.Telegram

Vernon B.C. June 26th

Hon. W.L.MacKenzie King,

Ottawa, Ont.

Restoration Crows Nest Rates will constitute severe discrimination against our fresh fruit and apple growers and sincerely trust you will use your influence against any move to increase present discrimination rates which already apply eastbound stop The matter is of paramount importance to our industry.

F.D.Cossitt Pres. Liberal Assn. Yale Dist.

EXHIBIT 47

Ottawa, June 27, 1924.

F.D.Cossitt, Esq.,
President,
Liberal Association, Yale District,
Vernon, British Columbia.

Dear Sir,-

I am desired by the Prime Minister to acknowledge the receipt of your communication respecting the Crows' Nest Pass Agreement, and to assure you that the representations you have made will be taken into the Government's careful consideration.

Yours faithfully,

F.A.McGregor,

Private Secretary

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C 49903

EXHIBIT 48

C.N.Telegram

Ottawa 25th June, 1924.

The President,
The Board of Trade,
Winnipeg, Man.

Directed by Prime Minister acknowledge receipt your telegram yesterday and express his regret impossible postpone hearing Crows Nest Pass Agreement to Monday as requested. stop hearing by Cabinet will be more in nature of listening to argument and no large delegations have been invited stop at least two of Western Provinces will be represented by H.J. Symington of Winnipeg now en route to Ottawa who is well informed on whole question and would no doubt convey views your Board.

E.J.Lemaire,
Clerk Privy Council

EXHIBIT 49

C.N.Telegram

Winnipeg Man June 24

Rt. Hon. MacKenzie King, Ottawa.

Surprised to receive your telegram announcing that hearing of Crowsnest Pass Agreement comes up before Cabinet on Friday morning next stop time tooshort cannot arrange proper representation at hearing until Monday June thirteenth at earliest stop we reaffirm our stand against further extension of Crowsnest Pass Agreement stop we are confident your Government will not be a party in repudiating a contract so vital to the interests of the three Western Provinces wire reply.

Winnipeg Board of Trade.

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C 43904

EXHIBIT 50

C.N.Telegram

Edmonton Alta June 26th,

Rt. Hon. W.L.Mackenzie King,
Prime Minister, Ottawa, Ont.

On behalf of the Province of Alberta I desire to convey to your Government our strong disapproval of the abrogation or any further suspension of the Crowsnest rate agreement stop this agreement was necessary to the prosperity of the West in eighteen ninety nine as it is rightly necessary to a continuance of that properity today and because this agreement is a perpetual assurance that these rates can never be greater except by Act of Parliament as warranted in nineteen nineteen we are firmly of the view that in no way should this contract be changed stop Alberta pays higher freight rates on all commodities from Eastern Canada by reason of geographical position than any other province in the Dominion the reduction entitled in this agreement covering particularly binder twine agriculture implements and all kinds of iron products such nails wire etc will be from twenty five to thirty percent to Alberta this is of too much importance to our primary industry to be abrogated or given up just because a large percentage of the remaining rates may be paper rates stop paper rates hurt no one but reductions mean everything to our farmers.

E. Greenfield.

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C 49905

EXHIBIT 51

C.N.Telegram

MooseJaw Sask 25.

Rt. Hon. Prime Minister,

Ottawa, Ont.

We strongly support Winnipeg Boa rd of Trade protest against Cabinet hearing Crowsnest Pass Agreement Friday as notice is too short for west to arrange representation urge meeting be deferred until Monday and reaffirm our stand against further suspension of Agreement and appeal for reenactment six proximo.

Moosejaw Board of Trade.

EXHIBIT 32x 52

C.P.R.Telegram

Estevan, Sask. June 25-26

Hon. Mackenzie King,
Ottawa.

Re Section 325 - 5 Railway Act 1919 of the Statutes of 1922 Chapter 41 The Board of Trade of Estevan has authorized me to forward to you personally the mailed resolution we want this matter given your personal attention, and wish to have our views given the attention due our town and district. Mr. Hugh McLeod of Macoun Sask the defeated Liberal Candidate in the last Dominion election has also authorized me to write you on his behalf asking that your Government support this resolution this is a very important matter to this district not only from a general business and an agricultural point of view but from the point of views as presented by the coal operators of this district. The coal fields of this district are just getting under way last year having marketed approximately half a million tons of coal, the coal situation of Canada is a serious one, and the present high rates confine to a greate xtent the market of a soft coal the

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field here produces only a lignite coa l which sells in the market at the lowest of any c oal marketed in Western Canada today the agricultural interests of the district the business men and the coal mine operators are pressing this point, I therefore wish you to give this matter due consideration and see that no further extension of time is given but that the old rates will come into effect at the expiration granted by special legislation.

E.W.Garner

EXHIBIT 53

C.N.Telegram

Winnipeg Man. 26 June, 1924.

Rt. Hon. McKenzie King,

Premier Ottawa.

We a cknowledge telegram twenty fifth advising impossible postpone hearing Crows Nest agreement stop Winnipeg and West would have appreciated opportunity being heard however you have our views and we are confident that the Government will not consent to further extension of subject on 5 section 325 of Railway Act.

Winnipeg Board of Trade.

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EXHIBIT 55

Comparative statement of the present rates, in cents per 100 lbs. on various commodities, Eastern and Western Canada.

The stations and rates in Eastern Canada are from the Memorandum presented by the Canadian Pacific Railway and the Canadian National Railways to the Dominion Government requesting the suspension of the Westbound Commodity rates guaranteed under the Crow's Nest Agreement. The mileages are from the Official Distance Tables of the Companies.

The rates in Western Canada are from Fort William to various stations in Manitoba, Saskatchewan and Alberta, Canadian Pacific Railway Tariff No. W4965, C.R.C. No. W2655. The distances are from the Official Distance Table of the Company.

Green and Fresh Fruits.

Fort William to	Miles	Present Rates	Western rates higher by	St. Catharines to	Miles	Present Rate
Oak Lake, Man.	585	99	45%	Quebec	584	68
Virden "	600	102	57%	Sherbrooke	603	65
		Coal Oil		Sarnia Ont. to		
Percival, Sask.	676	87	57%	Quebec	673	55
Tompkins "	978	117	72	St.John,N.B.	980	68
		Binder Twine		Montreal to		
Bagot, Man.	491	68	30%	St.John,N.B.	488	52½
Pilot Butte,Sask.	767	98	53	Halifax	767	64
		Agricultural Implements		Hamilton to		
Chater, Man.	547	62	26%	Quebec	546	49
Mortlach, Sask.	843	92	50	St.John	858	61½
Tilley, Alta.	1129	117	85	Halifax	1129	63
		Iron Commodities		Hamilton to		
Chater, Man.	547	74	56%	Quebec	546	47½
Parkbeg, Sask.	852	107	88	St.John	850	57
		Wire		Windsor to		
P.LaPrairie, Man.	475	65	57%	Ottawa	479	41½
Brandon, Man.	553	75	80	Montreal	555	41½
Sintaluta, Sask.	723	93	72	Quebec	729	54
Wapella "	655	87	66	Sherbrooke	658	52½
Wolseley "	714	93	56	Megantic	727	59½
		Building Paper		Portneuf to		
Burnside, Man.	483	66	90%	Toronto	482	35
Carberry, "	525	72	90	Hamilton	522	38
Kirkella "	623	83	110	St.John	626	39½
		Paints and Oils		Montreal to		
Burnside, Man.	483	66	26%	St.John	488	52½
		Furniture		Kitchener to		
Kemnay, Man.	561	84	19%	Quebec	559	70½
Secretan "	863	120	39	St.John	863	86½
Brooks, Alta.	1142	149	60	Halifax	1142	88

Bote the heavy percentages on the long hauls. The Prairie Provinces are a long haul country.

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EXHIBIT 56

Supplement to the statement dated June 12th, 1924, compiled from the Memorandum of the Railways with the rates from Fort William to stations in Saskatchewan for similar distances. Present rates in cents per 100 lbs. Eastern and Western Canada.

Agricultural Implements

Fort William to	Miles	Present Rates	Western Rates higher by	Hamilton to	Miles	Present Rates
Pilot Butte, Sask	768	84	36%	McAdam, N.B.	766	61½
Chaplin "	872	93	51	Spruce Lake NB.	874	61½
Swift Current "	929	98	60	Edmunston "	929	61½

C.P.R. No.E2880,C.R.C.No.E3221

Binder Twine

				Welland to		
Ernfold, Sask.	885	111	67%	St.John, N.B.	888	66½
Seward "	943	116	74	St.Leonard Junction, N.B.	941	66½
Gull Lake "	964	117	75	Edmunston "	967	66½

C.P.R. No. E2880, C.R.C. No. E3221

Wire, Iron, Nails, etc.

Pilot Butte, Sask.	768	98	72%	McAdam, N.B.	766	57
Ernfold "	885	111	93	South Devon"	885	57
Swift Current "	929	114	100	Edmunston "	929	57

C.P.Ry. No. W4965, C.R.C. No. W2655 C.P.R.No. E3608,C.R.C.No.E3832

The above stations were not included in the Railway Memorandum.

Compiled by Alex. McDonald,
Winnipeg, 13th June, 1924.

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EXHIBIT 57

Statement of the mileages, and rates according to the Crow's Nest Agreement, from Toronto, to various ~~stations~~ stations in Manitoba; from Fort William to the same stations in Manitoba, mileage and Crow's Nest rates ~~from~~ also the mileages and rates between various stations in Eastern Canada with the Crow's Nest rates from Fort William for similar distances. With the exception of the third column, the remainder of the stations, Eastern and Western Canada, were obtained from the memorandum presented by the Railways to the Dominion Government under date of May 15th, 1924.

Schedule A - Green and Fresh Fruits

Toronto to	Miles	Rate	Fort William to	Miles	Rate	Fort William to	Miles	Rate	St.Catharines to	Miles	Rate
Winnipeg	1233	80½	Winnipeg	420	40½	Savanne	72	40½	Toronto	71	29
P.LaPrairie	1288	96½	P.LaPrairie	475	56½	Oakbank	406	40½	Montreal	403	55½
Brandon	1366	104	Brandon	553	63	Oak Lake	585	66	Quebec	584	68
						Virden	600	68	Sherbrooke	603	65

Schedule B - Green Apples — Belleville to

Winnipeg	1233	53	Winnipeg	420	29½	Eng. River	111	29½	Toronto	116	29
P. LaPrairie	1283	63	P.LaPrairie	475	39½	Hawk Lake	269	29½	Ottawa	264	30½
Brandon	1366	67½	Brandon	553	44	Eagle River	228	29½	Montreal	223	36½
						E. Selkirk	405	29½	Quebec	406	45½
						Ingolf	324	29½	Sherbrooke	324	43

Schedule C - Coal Oil — Sarnia, Ont. to

Winnipeg	1233	63½	Winnipeg	420	35½	Tache	1 76	37½	Toronto	170	29
P.LaPrairie	1288	75	P.LaPrairie	475	47	Austin	504	49½	Montreal	504	47
Brandon	1366	81	Brandon	553	53	Percival	676	65	Quebec	673	55½
						Tompkins	978	85	St.John N.B.	980	68

Schedule D - Binder Twine — Welland Ont. to

Winnipeg	1233	72	Winnipeg	420	40½	Savane	72	39½	Toronto	79	25
P.LaPrairie	1288	84½	P.LaPrairie	475	53	Tache	176	40½	Peterboro	171	34½
Brandon	1366	91	Brandon	553	59½	Dryden	211	40½	Windsor	212	34½

C 43909

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Schedule D - Binder Twine (Ctd)

Toronto to	Miles	Rate	Fort William to	Miles	Rate	Fort William to	Miles	Rate	Welland Ont. to	Miles	Rate
						Wabigon	198	40½	Owen Sound	197	36½
						Bagot	491	56	Montreal to		
						Pilot Butte	767	80	St. John	488	52½
									Halifax	767	64

Schedule E - Agricultural Implements

									Hamilton to		
Winnipeg	1233	68½	Winnipeg	420	40½	Kecwatin	297	40½	Ottawa	296	37½
P.LaPrairie	1288	74½	P.LaPrairie	475	46½	Molson	382	40½	Montreal	384	38
Brandon	1366	80	Brandon	553	52	Chater	547	52	Quebec	546	49
						Mortlach	843	73½	St.John	850	61½
						Tilley	1129	90½	Halifax	1129	63

Schedule F - Iron Commodities

Winnipeg	1233	72	Winnipeg	420	40½	Buda	40	34	Toronto	40	15½
P.LaPrairie	1288	84½	P.LaPrairie	475	53	Kenora	297	40½	Ottawa	296	35
Brandon	1366	91	Brandon	553	59½	Lydiatt	389	40½	Montreal	384	35
						Chator	547	59½	Quebec	546	47½
						Parkbog	852	84½	St.John	850	57

Schedule G - Wire

									Windsor Ont. to		
Winnipeg	1233	72	Winnipeg	420	40½	P.LaPrairie	475	53	Ottawa	479	41½
P.LaPrairie	1288	84½	P.LaPrairie	475	53	Brandon	553	59½	Montreal	555	41½
Brandon	1366	91	Brandon	553	59½	Sintaluta	723	76½	Quebec	729	54
						Wapella	655	68½	Sherbrooke	658	52½
						Wolseley	714	75½	Megantic	727	59½

Schedule H - Paper, Building and Roofing, also Roofing Felt

									Portneuf Que. to		
Winnipeg	1233	72	Winnipeg	420	40½	Finmark	33	33½	Quebec	35	13
P.LaPrairie	1288	84½	P.LaPrairie	475	53	Notman	142	40½	Montreal	138	19½
Brandon	1366	91	Brandon	553	59½	Burnside	483	54	Toronto	482	35
						Carberry	525	56½	Hamilton	522	38
						North Transcona	414	40½	London	413	42½
						Kirkella	623	65	St.John	626	39½

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Toronto to	Miles	Rate	Fort William to	Miles	Rate	Fort William to	Miles	Rate	Montreal to	Miles	Rate
						Schedule J - Window Glass					
Winnipeg	1233	72	Winnipeg	420	40½	Tache	176	40½	Quebec	183	34½
P.LaPrairie	1288	84½	P.LaPrairie	475	53	English River	111	40½	Sherbrooke	113	29
Brandon	1366	91	Brandon	553	59½	Hiblock	97	40½	Three Rivers	96	27½
						Bonheur	130	40½	Ottawa	121	29
						Whitemouth	366	40½	North Bay	365	45½
						Schedule K - Paints and Oils					
Winnipeg	1233	72	Winnipeg	420	40½	Tache	176	37½	Quebec	173	34½
P.LaPrairie	1288	84½	P.LaPrairie	475	53	English River	111	37½	Sherbrooke	113	29
Brandon	1366	91	Brandon	553	59½	Bonheur	130	37½	Ottawa	121	29
						Burnside	483	48	St.J ohn	488	52½
						Schedule L - Woodenware			Ottawa to		
Winnipeg	1233	72	Winnipeg	420	40½	Bonheur	130	40½	Montreal	121	29
P.LaPrairie	1288	84½	P.LaPrairie	475	53	Dryden	211	40½	Three Rivers	215	37½
Brandon	1366	91	Brandon	553	59½	Tache	176	40½	Quebec	173	40
						English River	111	40½	Sherbrooke	113	37½
						P.LaPrairie	475	53	St.John	488	55½
						Schedule M - Furniture (New)			Kitchener to		
Winnipeg	1233	86	Winnipeg	420	47½	Finmark	33	36	Hamilton	31	27½
P.LaPrairie	1288	100½	P.LaPrairie	475	100½	Raith	53	37	Toronto	58	29
Brandon	1366	108	Brandon	553	108	Busteed	308	47½	Ottawa	309	55½
						Hazelridge	400	47½	Montreal	398	59½
						Kemn ay	561	69½	Quebec	559	70½
						Socretan	863	93½	St.John	865	86½
						Brooks	1142	149	Halifax	1142	88

Compiled by Alex. McDonald,
Winnipeg. 9th June, 1924.

C 49912

EXHIBIT 58

Summary of statement compiled from Memorandum of the Railways, Carload Rates, Eastern and Western Canada.....

Eastern Canada		Western Canada	
Green and Fresh Fruits			
Miles	Rate	Miles	Rate
584	68	585	(x) 66
603	65	600	68
Coal Oil			
673	55½	676	65
980	68	978	85
Binder Twine			
488	52½	491	56
767	64	767	80
Agricultural Implements			
546	49	547	52
850	61½	843	73½
1129	63	1129	90½
Iron Commodities			
546	47½	547	59½
850	57	852	84½
Wire			
479	41½	475	53
555	41½	553	59½
729	54	723	76½
658	52½	655	68½
727	59½	714	75½
Paper, Building and Roofing, also Roofing Felt			
482	35	483	54
522	38	525	56½
626	39½	623	65
Window Glass			
365	45½	366	(x) 40½
Furniture			
559	70½	561	(x) 69½
863	86½	863	93½
1142	88	1142	149
Paints and Oils			
488	52½	483	(x) 48
Woodenware			
113	37½	111	40½
121	29	130	40½
173	40	176	40½
215	37½	211	40½
488	55½	475	(x) 53

(x) In only five cases are the rates lower in Western Canada than in Eastern Canada. In all the other cases (24) the rates in Eastern Canada will be lower than the rates in Western Canada when the Crow's Nest rates come into effect.

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EXHIBIT 59

Comparisons of the Crows' Nest rates from Fort William, with the rates for similar distances from various stations in Eastern Canada, Schedules A to M, Carload rates in cents per 100 lb

Schedule A. Green and Fresh Fruits

EAST				WEST		
Miles	From	To	Rate	Miles	Fort William ... To	Rate
584	St. Catharines	Quebec	63	565	Oak Lake, Man.	66
603	"	Sherbrooke	65	600	Virden "	68

Schedule B. Green Apples

The rates to points in Eastern Canada are for distances 116 to 406 miles. The only comparisons obtainable are those from Fort William to stations East of Winnipeg, and the rates are the same as to Winnipeg under the Crow's Nest Tariff.

Schedule C. Coal Oil

	Miles	Rate		Miles	Rate
Sarnia to Quebec	673	55½	Fort William to Percival Sask	676	65
Sarnia to St. John	980	68	Fort William to Tompkins	978	85

Schedule D. Binder Twine

The rates from Welland to various stations, short hauls, are lower than from Fort William for similar distances, Welland to Windsor 212 miles, 34½ cents, Fort William to Dryden 211 miles, 40½ cents. Ontario Government Experimental Farm at Drydon.

Schedule E. Agricultural Implements

The rates from Hamilton to Eastern points are all lower than from Fort William for similar distances, Hamilton to Halifax 1129 miles, rate 63. Fort William to Tilley, Alta., same distance, rate 90½ cents, 44 per cent higher.

Schedule F. Iron Commodities

The rates from Hamilton to Eastern points are all lower than from Fort William for similar distances:

Hamilton to Quebec	546 miles	47½ cents
Fort William to Chater	547 miles	59½ "
Hamilton to St. John	850 miles	57 "
Ft. William to Parkbeg	852 "	84½ " (nearly 50% higher)

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Schedule G. Wire

The rates from Windsor, Ont., to Eastern points are all lower than from Fort William for similar distances. The longest distances are:

Windsor to Megantic	727 miles	59½ cents	
Ft. William to Wolseley	714 "	75½ cents	(about 25% higher)

Schedule H.
Paper, Building and Roofing, also Roofing Felt.

The rates from Portneuf to Eastern points are all lower than from Fort William for similar distances. The longest distances are:

Portneuf, Que., to Hamilton	522 miles	38 cents	
Ft. William to Carberry	525 "	56½	(nearly 50% higher)
Portneuf, Que. to St. John N.B.	626 "	39½ cents	
Fort William to Kirkella	623 "	65	(62% higher)

Schedule J. Window Glass

With the exception of the rate for 365 miles, which is 5 cents per 100 lbs. lower, the rates from Montreal are lower.

Schedule K. Paints and Oils

Montreal to St. John	483 miles	52½ cents	
Fort William to Burnside	483 "	48 "	

This is one of very few cases where the Eastern rate is higher.

Schedule L. Woodenware

The short haul rates are lower in the East.

From Ottawa to St. John	488 miles	55½ cents	
" Ft. William to Portage La Prairie	475 "	53 "	

This is another of the very few cases where the Eastern rate is higher.

Schedule M. Furniture.

With one exception, a difference of one cent per 100 lbs. all the Eastern rates are lower:

Kitchener to Halifax,	1142 miles	88 cents	
Fort William to Brocks Alta.	1142 "	149	(70% higher)

(The application of the remainder of the Crow's Nest rates will remove some of the disparity which at present exists in the rates which the Prairie Provinces have to pay).

Winnipeg, June 11, 1924.

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EXHIBIT 60.

(A 18) OPERATING RATIO OF THE CANADIAN PACIFIC RAILWAY, FIVE-YEAR PERIODS, LINES EAST, LINES WEST, EXCEPT BRITISH COLUMBIA, ALL WESTERN LINES AND ALL LINES.

	Lines East Per cent	Western Lines Except B.C. Per cent	All Western lines per cent	All lines percent
1907-1911	72	56	60	65
1912-1916	73.3	54.5	57	63.3
1916-1920	80.95		67.30	73.52

OPERATING REVENUE, OPERATING EXPENSES, NET EARNINGS, WITH PERCENTAGES, CANADIAN PACIFIC RAILWAY, FOR FIVE-YEAR PERIODS TO DECEMBER 31st, 1920.

	Operating Revenue		Operating Expenses		Net Earnings	
	Millions	Percent	Millions	Percent	Millions	Percent
1907-1911						
East	$160	40.92	$116	45.49	$43½	32.30
West	231	59.08	139	54.51	91½	67.70
Total	$391		$255		$135	
1912-1916						
East	226½	38.85	166	44.93	60	28.23
West	356½	61.15	203½	55.07	152½	71.77
Total	$583		$369½		$212½	
1916-1920						
East	370	45.57	299½	49.84	70½	32.79
West	442	54.43	297½	50.16	144½	67.21
Total	$812		$597		$215	

	Operating Revenue of	Produced Net of	Percent
1907-11 East	$160,000,000	$43,500,000	27
West	231,000,000	91,500,000	39.6
1912-16 East	226,500,000	60,000,000	26.5
West	356,500,000	152,500,000	42.8
1916-20 East	370,000,000	70,500,000	19.05
West	442,000,000	144,500,000	32.7

Percentages of net on Western lines exceed percentages of net on Eastern Lines as follows:-

1907-11	46 per cent
1912-16	61 per cent
1916-20	71 percent

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EXHIBIT 61

From Page 224, Exhibits in the Equalization of Freight Rates, 1921 and 1922, Board of Railway Commissioners file 30686-2.

Exhibit No. 44

Canadian Pacific Railway Lines East and West

Net Earnings and Operating Ratios.

	LINES EAST		LINES WEST	
	Net Earnings	Operating Ratio	Net Earnings	Operating Ratio
Jan.	$ 620,784.94	91.97%	$ 466,164.37	92.78%
Feb.	898,498.96	87.13	372,504.36	93.26
Mar.	1,766,989.35	77.22	1,094,105.12	83.54
Apr.	1,415,683.77	79.16	1,669,001.77	75.00
May	1,796,690.39	73.35	1,980,023.02	70.51
Jun.	1,450,143.92	78.28	1,953,112.60	72.72
Jul.	530,249.46	92.13	1,792,659.61	78.50
Aug.	787,620.07	89.62	2,405,033.40	72.45
Sep.	1,013,552.56	87.12	3,734,968.01	66.09
Oct.	822,931.95	88.93	6,339,930.52	55.02
Nov.	4,403.91	99.93	5,048,111.03	57.43
Dec.	566,652.41	91.61	3,170,737.84	63.42
	$11,674,201.69		$30,026,451.65	

Lines East	First 6 months 1921	Last 6 months 1921	Full year 1921
Operating revenue	$42,703,845.53	$42,850,125.19	$85,553,979.72
" expense	34,755,063.20	39,124,714.83	73,879,778.03
" ratio	81.15%	91.30%	86.35%
Lines West			
Operating revenue	$39,185,505.90	$62,714,519.99	$101,900,025.89
" expense	31,650,594.66	40,222,979.58	71,873,574.21
" ratio	80.77%	64.13%	70.54%

Operating expenses to total operating revenue, all lines 79.78%

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EXHIBIT 62

CANADIAN PACIFIC RAILWAY

NET EARNINGS

	1923	1922
January	$ 533,971	$ 462,011
February	217,904	702,522
March	1,717,908	2,437,967
April	1,679,751	1,578,256
May	1,715,617	2,408,341
June	2,275,039	2,409,755
6 months	8,140,190	10, 048,852
July	2,001,507	1,909,446
August	3,194,768	2,903,623
6 months	13,336,465	14,861,921
September	4,522,432	4,573,410
October	8,268,360	7,712,169
November	7,331,434	6,787,115
December	5,058,888	4,477,850
Sept-Dec.	25,181,114	23,550,534
Total	$38,517,546	$38,412,466
Less net earnings of operated Companies	729,855	519,314
	$37,787,691	$37,893,152
Canadian Pacific returns to Dominion Government	37,787,723	37,933,310

SUMMARY	1923	1922
January to August (8 months)	$13,336,465	$14,861,921
September to December (4 months)	25,181,114	23,550,534

The net earnings, 1923, of the Canadian Pacific, Montreal & Atlantic and Esquimault & Nanaimo were furnished by the Dominion Statistician, his letter May 23rd, 1924.

The monthly statements of operating revenues, expenses and statistics issued by the Dominion Government Bureau of Statistics prior to this year did not give the Canadian Pacific Railway separately but included the Montreal & Atlantic and the Esquimault & Nanaimo, both of which Companies are operated by the Canadian Pacific Railway.

I suggested to the Dominion Bureau of Statistics that the Montreal & Atlantic and the Esquimault & Nanaimo should be eliminated, which suggestion was accepted beginning January 1st, 1924.

Compiled by Alex. McDonald,
Winnipeg, 7th June 1924.

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EXHIBIT 63

From the Monthly Statements of the Dominion Bureau of Statistics

CANADIAN PACIFIC RAILWAY

Freight Revenue

	1923	1922
Jan. 1 - June 30	$54,819,216	$52,226,121
July	9,656,106	8,612,119
August	9,800,375	9,552,614
8 months total	$74,275,697	$70,390,854
September	11,869,986	(1) 12,626,147
October	18,113,612	17,838,482
November	17,169,891	16,713,469
December	13,854,547	12,056,440
4 months total	$61,008,036	$59,234,538
12 months total	$135,283,733	$129,625,392

(1) Crop began to move earlier in 1922 than in 1923.

The monthly statements of operating revenues, expenses and statistics issued by the Dominion Government Bureau of Statistics prior to this year did not give the Canadian Pacific Railway separately but included the Montreal & Atlantic and the Esquimault & Nanaimo, both of which Companies are operated by the Canadian Pacific Railway.

As the freight earnings of these two small roads are less than two per cent of the freight earnings of the Canadian Pacific Railway, the detailed figures shown above may be accepted as approximately correct for reasonable comparative purposes.

The inspection of grain from Canadian Pacific Railway stations September 1st to December 31st, 1923, and the total shipments from all stations by Provinces, same period, were as follows:-

1923 C.P.R.		Sept. 1st to Dec. 31st, 1923.	
September	21,779 cars	Manitoba	26,583 cars
October	39,362 "	Saskatchewan	143,957 "
November	37,024 "	Alberta	56,838 "
December	28,422 "	B. Columbia	76 "
	126,587 "		227,454 "

Compiled by Alex. McDonald,
Winnipeg, June 7th, 1924.

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EXHIBIT 64

Grain Rates Prairie Provinces to Fort William and Port Arthur and from contiguous United States territory to Minneapolis and Duluth.

Since the restoration of the Crow's Nest grain rates by the Parliament of Canada in July 1922, there has been a great deal of railway propaganda dealing with these rates (from the Prairie Provinces to Fort William and Port Arthur) compared with those from North Dakota and Montana to Minneapolis and Duluth.

There is no question that the rates on grain from Western North Dakota and Montana, immediately South of Saskatchewan and Alberta, are higher than from these Provinces to Fort William and Lake Superior for similar distances and there are reasons.

The production of Western North Dakota and Montana 1916-1923, eight years, was about 16 percent of the production of Saskatchewan and Alberta for the same years.

The comparison of the total grain production of North Dakota and Montana and the Prairie Provinces is as follows:

The Production of Wheat, Oats, Barley, Flax and Rye 1916-1923

	Manitoba (Bushels)	Saskatchewan (Bushels)	Alberta (Bushels)	Total (Bushels)
1916-1920 5 years	568,013,400	1,297,110,000	750,920,400	2,616,043,900
1921-1922 2 years	292,505,900	857,261,000	244,071,700	1,393,838,600
1923	123,249,000	505,264,200	304,850,000	933,363200
	983,768,300	2,659,635,300	1,299,842,100	4,943,245,700

Dominion Government Bureau of Statistics

	North Dakota	Montana	Total
1916-1920 5 years	780,417,000	207,338,000	987,755,000

(Monthly crop Reporter, United States Department of Agriculture).

1921-1922 2 years	413,627,000	115,860,000	529,487,000

(Weather Crops and Markets United States Department of Agriculture, December 23rd, 1922, Volume 2, No. 26).

1923	155,872,000	78,545,000	234,417,000
	1,349,916,000	401,743,000	1,751,659,000

(Weather Crops and Markets United States Department of Agriculture, Volume 4, No. 26).

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C 43920 R-1109 Vol. 4.

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CROW'S NEST PASS AGREEMENT HEARING

BEFORE THE PRIVY COUNCIL

SECOND DAY - Saturday, June 28, 1924.
10.30 a.m.

Cabinet members present: The Prime Minister
Hon. G. P. Graham
Hon. H. S. Beland
Hon. Jacques Bureau
Hon. Ernest Lapointe
Hon. W. R. Motherwell
Hon. E. M. Macdonald
Hon. J. H. King
Hon. A. B. Copp
Hon. E. J. McMurray
Hon. John Sinclair

Others present: Hon. H. H. Stevens, M.P.
Hon. T. A. Crerar, M.P.
Hon. S. F. Tolmie, M.P.
Hon. H. J. Manion, M.P.
Robert Forke, M.P.
L. J. Ladner, M.P.
T. G. McBride, M.P.
W. F. Carroll, M.P.
L. H. Martell, M.P.
J. T. Shaw, M.P.
E. J. Garland, M.P.
Robt. Gardiner, M.P.
H. E. Spencer, M.P.
M. N. Campbell, M.P.
T. H. McConica, M.P.
D. F. Kellmar, M.P.
W. C. Good, M.P.
L. H. Jelliff, M.P.

Hon. Senator Robt. Watson

Hon. John Bracken, Premier of Manitoba
S. J. Farmer, M.L.A., Mayor of Winnipeg
J. T. Haig, M.L.A., Leader of Man. Cons. Oppn.
H. J. Symington, K.C.

Eugene Lafleur, K.C.
E. P. Flintoft, K.C.
W. B. Lanigan

Wm B. Sifton

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Mr. H. J. SYMINGTON, K.C. - (For verbatim record of argument, see official report)

THE PRIME MINISTER - read a number of additional telegrams (all of which are embodied in the official record)

In answer to a question by Mr. Ladner, the Prime Minister said the Government would consider the advisability of having the report of the hearing printed and distributed.

Other speakers: ROBERT FORKE M.P.

HON. T. A. CRERAR M.P.

PREMIER JOHN BRACKEN M.L.A.

MAYOR S. J. FARMER M.L.A.

J. T. HAIG M.L.A.

L. H. JELLIFF M.P.

HON. H. H. STEVENS M.P.

L. J. LADNER M.P.

W. F. CARROLL M.P.

L. H. MARTELL M.P.

Mr. Eugene LAFLEUR, K.C. - Briefly summed up in reply to Mr. Symington.

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Freight Rates - Crows Nest Pass P12 - 1109

C 49922 Vol. 1

PRIME MINISTER'S OFFICE

200

MEMORANDUM

Thursday,
July 17, 1924.

MR. KING:

Mr. L. J. Ladner, M.P. tells me you wished to be reminded to inquire about copies of the Report of the hearing on the Crows Nest Pass Agreement.

I understand from Mr. Lemaire that only 12 copies of the typewritten report were ordered; three have been supplied to our office, one to Sir Henry Drayton. If one is given to Mr. Ladner, no doubt the other British Columbia members will be asking for copies.

McG.

F. A. McGREGOR

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C 49923,

CROW'S NEST PASS AGREEMENT

Memorials, Resolutions, etc., received relative to Appeal to Privy Council from Judgment of Railway Board, Oct. 14, 1924.

1. Memorials, Resolutions, etc., received by the Prime Minister during his tour of the West:

   (a) Urging restoration of Crow's Nest rates.

   (b) Opposed to restoration of Crow's Nest rates.

   (c) Suggestions:
   R. J. Cromie, Publisher,
   Vancouver Sun.

2. Memorials, Resolutions, etc., received by the Prime Minister at Ottawa:

   (a) Urging restoration of Crow's Nest rates.

   (b) Opposed to restoration of Crow's Nest rates.

   (c) Suggestions:
   D'Arcy Scott, Ottawa.
   S. B. Woods, K.C., Edmonton.
   Board of Trade, Yorkton.

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

C 43924

[redacted]

CROW'S NEST PASS AGREEMENT

Section 1.

Memorials, Resolutions, etc., received by the Prime Minister during his tour of the West.

(a) Urging restoration of Crow's Nest rates:

Manitoba:

Telegram - Canadian Council of Agriculture, Winnipeg;
" - Manitoba Citizens and Business Bodies, Winnipeg;
" - Winnipeg Board of Trade, Oct. 16.
" - " " " " 30.

Alberta:

Telegram - Calgary Board of Trade;
Memorial - Lethbridge Board of Trade;
" - Medicine Hat Municipal Council.

(b) Opposed to restoration of Crow's Nest rates:

Telegram - Edmonton Board of Trade.

(c) Suggestions:

Letter from R. J. Cromie, Publisher, Vancouver Sun, Vancouver, B.C.

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
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CANADA

C 43925 FORM T.D. 1 M.

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH

R-1109
Vol. 1. C.N.P.

TELEGRAM

All Messages are received by this Company for transmission, subject to the terms and conditions printed on their Blank Form No. 2, which terms and conditions have been agreed to by the sender of the following message. This is an unrepeated message, and is delivered by request of the sender under these conditions.

J. McMILLAN, General Manager of Telegraphs, Montreal.

9.CR.X.89.RUSH 5 Extra.

Winnipeg,M an.Oct.24th-1924 413P

Received at
Thomson Block
Bernard Ave
PHONE 19

Rt.Hon.W.L.Mackenzie King, (30)

Kelowna,B.C.

Canadian Council of Agriculture representing organized farmers of Ontario Quebec Manitoba Saskatchewan and Alberta unanimously passed resolution today the Canadian Council of Agriculture urge upon the Dominion Government that it exercise immediately its power under Section fifty two of the Railway Act and suspend the order of the Board of Railway Commissioners setting aside the Crowsnest Pass Agreement and further that the Government take such steps as are necessary to remove the discrimination in freight rates now existing in the application of the Crowsnest Pass agreement.

JOHN.W.WARD,SECY.CAN.COUNCIL OF AGRICULTURE

25.20K.

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

C 49926

Form 6123, replacing Form 1-TW

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

CANADIAN NATIONAL TELEGRAM

HEAD OFFICE, TORONTO, ONT. CHAS. E. DAVIES, ACTING GEN'L MANAGER

Exclusive Connection with WESTERN UNION TELEGRAPH CO.
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478WG BY 386 NL 8 EXTRA COUNT 7 PARAGRAPHS AND QN MARKS PUNCTUATION NOT CNTD

WINNIPEG MAN OCT 20 1924

RT HON W L MACKENZIE KING

892 VANCOUVER BC (OR FORWARD)

THE FOLLOWING RESOLUTION WAS PASSED AT A MEETING HELD THIS EVENING OF REPRESENTATIVES FROM MANITOBA CITIZENS AND BUSINESS BODIES STOP

WHEREAS IN 1897 PARLIAMENT PASSED THE CROWS NEST PASS ACT, THE STATUTORY AGREEMENT THEREBY PROVIDED FOR WAS ENTERED INTO, THE SUBSIDY WAS PAID OVER, AND THE SCHEDULE OF RATES THEREUNDER WAS PROMULGAT-ED;

AND WHEREAS THE PARLIAMENTARY FORCE OF THESE RATES HAS BEEN AFFIRMED BY THE BOARD OF RAILWAY COMMISSIONERS FROM TIME TO TIME DURING THE LAST 18 YEARS AND HAS BEEN ACKNOWLEDGED BY THE RAILWAYS DURING THAT TIME IN

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Form 6123, replacing Form 1-TW

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

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C 49927

9 W 2/478WG W L MACKENZIE KING VANCR

APPLICATIONS MADE BY THEM TO PARLIAMENT AND OTHERWISE, AND PARLIAMENT HAS ACTED ON THOSE APPLICATIONS AND PASSED A NEW ENACTMENT IN 1922 AND AT THE LAST SESSION REFUSED TO PASS ANOTHER, FURTHER SUSPENDING OR REPEALING THE CROWS NEST PASS SCHEDULES,

AND WHEREAS THESE RATES HAVE BEEN UNIVERSALLY REGARDED AS A FUNDAMENTAL LAW OF THIS COUNTRY, AND WESTERN CANADA HAS A JUST AND EQUITABLE CLAIM TO THE BENEFITS OF THAT CONTRACT,

AND WHEREAS WESTERN CANADA HAS A RIGHT TO BE RELIEVED OF THE UNJUST BURDEN OF RAILWAY RATES UNDER WHICH IT SUFFERS;

AND WHEREAS WE ARE CONVINCED THAT THERE IS NO BASIS OR JUSTIFICA-TION FOR THE DECISION OF THE BOARD REPEALING THE CROWS NEST PASS ACT AND CANCELLING THE AGREEMENT, THEREBY ARROGATING TO ITSELF THE POWER TO REVERSE THE ACTION OF PARLIAMENT AT ITS LAST SESSION;

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W.L. Mackenzie King Papers
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CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

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C 49928

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HEAD OFFICE, TORONTO, ONT. CHAS. F. DAVIES, ACTING GENL. MANAGER

3/478WG WINNIPEG W L MACKENZIE KING VANCR

89

AND WHEREAS IT TOUCHES THE HONOR OF THE GOVERNMENT TO VINDICATE THE PRINCIPLE OF PARLIAMENTARY GOVERNMENT IN CANADA AND TO UPHOLD AND ENFORCE THE AGREEMENT WHICH THE PRESENT GOVERNMENT AND THE PRESENT PARLIAMENT HAS SO RECENTLY PROTECTED AND AFFIRMED;

AND WHEREAS THE INJUSTICE OF THE BOARDS DECISION IS SO INTOLER--ABLE WE RESPECTFULLY REQUEST THE GOVERNOR-IN-COUNCIL TO IMMEDIATELY RESCIND THE JUDGMENT OF THE BOARD OF RAILWAY COMMISSIONERS ORDERING THE RAILWAY COMPANIES TO WITHDRAW THE TARIFF SCHEDULE OF RATES BEARING DATE JULY 7TH 1924 MADE PURSUANT TO THE CROWS NEST PASS AGREEMENT, AND THAT THE RAILWAYS BE ORDERED TO PUT INTO EFFECT IMMEDIATELY REDUCED RATES FROM AND TO OTHER STATIONS THAN THOSE ON THE C P R LINES IN 1897 TO THE EXTENT NECESSARY TO REMOVE ANY DISCRIMINATION ARISING BY REASON OF

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

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C 49929

Form 6123, replacing Form 1-TW

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4/478WG W L MACKENZIE KING VANCR

89

THE ABOVE SCHEDULES. "

R A C MANNING CHAIRMAN

F E HAMILTON SECRETARY

1135P

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W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Messag.	Nite
Night Letter	N L

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C 49930

CANADIAN NATIONAL TELEGRAM

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47EA ED 276 COLLECT NL 5 EXTRA $1.68 ONLY

WINNIPEG MAN 15 VIA VANCOUVER BC OCT 16 1924

THE RIGHT HONOURABLE MCKENZIE KING

EMPRESS HOTEL VICTORIA BC

THE FOLLOWING RESOLUTION WAS PASSED UNANIMOUSLY AT A MEETING HELD TODAY STOP WHEREAS THE STATUTORY FORCE OF THE CROWS NEST PASS AGREEMENT OF 1897 AND THE EXTENSION OF SIMILAR RATES TO OTHER PLACES AND STATIONS ON THE THEN C P R LINES HAS FOR 27 YEARS BEEN AFFIRMED FROM TIME TO TIME BY THE BOARD OF RAILWAY COMMISSIONERS AND THESE HAVE BEEN UNANIMOUSLY REGARDED AS A FUNDAMENTAL LAW OF THIS COUNTRY DURING THAT PERIOD AND THE WEST HAS A JUST AND EQUITABLE CLAIM TO THE BENEFITS OF THE CONTRACT WHICH IT BEHOOVES THE HONOUR OF THE DOMINION GOVERNMENT TO UPHOLD AND ENFORCE

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

C 49931

CANADIAN NATIONAL TELEGRAM

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Form 6123, replacing Form 1-TW

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Telephone 6200

47EA ED 276 COLLECT NL 5 EXTRA (SHEET 2)

PARTICULARLY THE PRESENT GOVERNMENT WHICH IS THE POLITICAL SUCCESSOR OF THE GOVERNMENT WHICH PASSED THE STATUTE AND ENTERED INTO THE AGREEMENT AND WHEREAS THE WEST HAS THE RIGHT TO BE RELIEVED OF THE UNJUST OVERBURDEN OF RAILWAY RATES UNDER WHICH IT LABOURS AND WHEREAS WE STRONGLY HOLD THE VIEW THAT THERE IS NO WARRANT NOR JUSTIFICATION FOR THE DECISION OF THE BOARD OF RAILWAY COMMISSIONERS REPEALING THE CROWS NEST PASS ACT AND CANCELLING THE AGREEMENT AND AS THE INJUSTICE OF IT IS INTOLERABLE WE HUMBLY AND RESPECTFULLY REQUEST THE GOVERNOR IN COUNCIL TO IMMEDIATELY RESCIND THE JUDGEMENT OF THE BOARD OF RAILWAY COMMISSIONERS ORDERING THE RAILWAY COMPANIES TO WITHDRAW THE TARIFF SCHEDULE OF RATES BEARING DATE JULY 7 TH 1924 MADE PURSUANT TO THE CROWS NEST PASS

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

W.L. Mackenzie King Papers
Memoranda & Notes

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CANADA

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

C 49932

CANADIAN NATIONAL TELEGRAM

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47EA ED 276 COLLECT NL 5 EXTRA (SHEET 3)

Telephone 6200

AGREEMENT AND THAT THE RAILWAYS BE ORDERED TO PUT INTO EFFECT IMMEDIATELY REDUCED RATES FROM AND TO OTHER STATIONS TO THE EXTENT NECESSARY TO REMOVE ANY DISCRIMINATION EXISTING BY REASON OF THE ABOVE SCHEDULES

WINNIPEG BOARD OF TRADE

1003A

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

C 49933

Form 6125
Replacing Form 1-TW long

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162WG Z 221 BLUE

WINNIPEG MAN 1158AM OCT 30/24

THE RIGHT HON MACKENZIE KING 296

CALGARY ALTA

AT A LARGE PUBLIC MEETING AND DINNER LAST NIGHT UNDER THE AUSPICES OF THE WINNIPEG BOARD OF TRADE THE FOLLOWING RESOLUTION WAS PASSED UNANIMOUSLY WHEREAS AN APPLICATION WAS MADE TO THE BOARD OF RAILWAY COMMISSIONERS TO REMOVE THE DISCRIMINATION IN RESPECT OF OTHER PLACES CAUSED BY THE RESTRICTED SCHEDULE OF RATES BEARING DATE JULY 7 1924 FILED BY THE CANADIAN PACIFIC RAILWAY UNDER THE CROWS NEST PASS ACT AGREEMENT STOP AND WHEREAS THE BOARD OF RAILWAY COMMISSIONERS INSTEAD OF ACTING ON THE APPLICATION BEFORE THEM HAVE IN FLAGRANT DISREGARD OF STATUTORY AND CONSTITUTIONAL LAW AND WITH ONLY THE SHALLOWEST PRETENCE OF LAW OR REASON REPEALED THE ACT OF PARLIAMENT AND CANCELLED THE AGREEMENT THEREBY CHANGING A MERE QUESTION OF RAILWAY RATES INTO ONE OF PRIME AND GRAVEST CONSTITUTIONAL IMPORTANCE STOP NOW THEREFORE ON BEHALF OF WESTERN CANADA WE DEMAND THE RESTORATION AND PERPETUATION OF THOSE ELEMENTAL AND INALIENABLE RIGHTS OF BRITISH CITIZENSHIP NAMELY GOVERNMENT BY LAW AND THAT RATIONALLY ADMINISTERED AND THE SUPREMACY OF PARLIAMENT IN ALL MATTERS OF LAW AND PUBLIC POLICY AND WE CALL UPON THE DOMINION GOVERNMENT TO AFFIRM AND REESTABLISH THESE RIGHTS BY REVERSING THE ORDER OF THE BOARD AND DIRECTING THE RAILWAYS TO WIPE OUT THE DISCRIMINATION WHICH EXISTS BE REASON OF THE RESTRICTED SCHEDULE OF RATES WHICH WERE FILED IN JULY LAST

WINNIPEG BOARD OF TRADE

203PM

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

W.L. Mackenzie King Papers
Memoranda & Notes

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CANADA

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

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C 49934

Form 6123, replacing Form 1-TW

CANADIAN NATIONAL TELEGRAM

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361MU Y 112 NL

CALGARY ALTA OCT 18 1924

HON W L MACKENZIE KING 564

HOTEL VANCOUVER VANCOUVER BC

HAVE WIRED HON MR GRAHAM AS FOLLOWS THE GOVERNOR IN COUNCIL AFTER CAREFUL CONSIDERATION AND AFTER HEARING ARGUMENTS OF ALL PARTIES INTERESTED IN JUNE LAST REFUSED APPLICATION OF THE RAILWAY COMPANIES FOR FURTHER SUSPENSION OF CROWS NEST PASS AGREEMENT STOP APPARENTLY UPON SAME ARGUMENTS AND REPRESENTATION RAILWAY COMMISSION HAVE RENDERED JUDGMENT IGNORING CROWS NEST AGREEMENT WHICH JUDGEMENT HAS CREATED WIDESPREAD DISSATISFACTION AND IS HIGHLY PREJUDICAL TO WESTERN CANADA STOP UNDER THESE CIRCUMSTANCES THE CALGARY BOARD OF TRADE STRONGLY URGE THAT THE GOVERNOR IN COUNCIL TAKE EARLY ACTION UNDER SECTION FIFTY TWO OF THE RAILWAY ACT TO SUSPEND THE OPERATION OF THE RAILWAY BOARDS ORDER UNTIL THE ISSUES INVOLVED HAVE BEEN FINALLY

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

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C 49935

Form 6123, replacing Form 1-TW

CANADIAN NATIONAL TELEGRAM

HEAD OFFICE, TORONTO, ONT. CHAS. E. DAVIES, ACTING GEN'L MANAGER

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SHEET 2 NO 361MU CALGARY TO HON MACKENZIE KING VANCOUVER

DETERMINED

CALGARY BOARD OF TRADE

832P

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

COPY

C 49936

Submitted
by
THE LETHBRIDGE BOARD OF TRADE

RE: CROW'S NEST PASS AGREEMENT

The Lethbridge Board of Trade considers the Crow's Nest Pass Rate Agreement as a sound compact between the people of Canada and the Canadian Pacific Railway, the people granting a subsidy in return for rate concessions from the Company.

We view with apprehension the decision of the Railway Commission which destroys this Agreement and leaves Western Canada without rate compensation, which we consider requisite and necessary for the proper development of Western Canada.

The Western Provinces are completely isolated from water transportation and consequently they have not the benefits of the competition which water provides to nearly every other section of the Dominion. Furthermore we would call to your attention the fact that the producers of Western Canada are situated at great distances from their ultimate market and they are also severely handicapped in having to bring in their supplies from long distances, and for these further reasons the matter of freight rates comes up in more acute form than in any other of the Provinces of the Dominion. Our Board of Trade is decidedly of the opinion that your Government should use every means possible to expedite action with a view to having the serious situation created by the Railway Commission's decision alleviated and the rates guaranteed to this country by the Crow's Nest Pass Agreement restored.

Respectfully submitted by the

LETHBRIDGE BOARD OF TRADE,

October 29th, 1924.

Per D. J. Shepherd, President
Geo. W. Green
W. A. Buchanan
S. G. Porter

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

CABLE ADDRESS "GASCITY" CODE WESTERN UNION

C 49937

Office of The Mayor

October 28th, 1924.

To the Rt. Hon. William Lyon Mackenzie King, P.C.,M.P.,
Premier of the Dominion of Canada.

Sir:

The Municipal Council of the City of Medicine Hat begs to present to you as head of the Dominion Government, a respectful but emphatic protest against the action of the Board of Railway Commissioners in ordering the suspension of the railroad rates under the Crow's Nest Pass Agreement.

In addition they respectfully wish to protest against any Board created by Parliament, having power to over-ride the Statutes of that Parliament.

Walter Buckwale
Mayor
H. Blackburn
City Clerk.

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
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CANADA

Section 1.

(b) Opposed to restoration of Crow's Nest rates.

Telegram - Edmonton Board of Trade.

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
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CANADA

FORM T.D. 1 M.

ANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAPH

TELEGRAM

C 49939

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J. McMILLAN, General Manager of Telegraphs, Montreal.

40 CRMC 40 250 RUSH COUNT GNS 8 EXTRA

EDMONTON ALTA OCTOBER 27-24 336 PM

HON W L MACKENZIE KING FERNIE BC

WE HAVE WIRED STRONG PROTEST TO ACTING PREMIER OTTAWA AGAINST ANY ACTION OF DOMINION GOVERNMENT WHICH DELAYS ELEMINATION OF THE DISCRIMINATION AGAINST THIS CITY AND DISTRICT CONSEQUENT UPON RESTERATION OF CROWSNEST PASS ACT AND AGREEMENT AND TARIFFS FILED THEREUNDER STOP. WE OBSERVE WITH SURPRISE REPORT OF TELEGRAM SENT YOU BY PREMIER OF ALBERTA IN WHICH IT IS STATED THAT (NO INJUST -ICE CAN POSSIBLE RESULT FROM MAINTAINING PRESENT STATUS PENDING RESULT OF APPEAL) STOP THIS IS UNQUESTIONABLY WRONG AS THE GREATEST INJUSTICE TO THE WHOLE OF THE PORTION OF THE PROVINCE OF ALBERTA NORTH OF REDDEER WILL RESULT FROM MAINTAINING STATUS UNDER TARIFFS THAT CAME INTO FORE JULY SEVENTH AND THIS PORTION OF PROVINCE CONTAINS APPROXIMATELY TWO THIRDS OF THE INHABITANTS OF THE PROVINCE AND INCLUDES THE WHOLE OF THE TERRITORY OF THE MAIN LINE OF THE CANADIAN NATIONAL RAILWAYS STOP ORDER OF BOARD OF RAILWAY COMMISSIONERS AT LEAST WIPES OUT DISCRIMINATION

32

FORM T.D. 1 M.

ANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAM

C 49940

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J. McMILLAN, General Manager of Telegraphs, Montreal.

BETWEEN SOUTH AND NORTH AND WE CANNOT TOO STRONGLY URGE THAT NO ACTION BE TAKEN BY DOMINION GOVERNMENT WHICH REINTRODUCES ANY SUCH DISCRIMNATION STOP MANY OF OUR BUSINESS HOUSES WILL BE PRACTIC -ALLY UP OUT OF BUSINESS IF THIS DICRIMINATION WERE TO BE ALLOWED TO CONTINUE MUCH LONGER STOP WE OF COURSE DO NOT OBJECT TO ANY ACTION OF DOMINION GOVERNMENT WHICH BRINGS CROWSNEST RATES INTO FORCE IN THIS PART OF THE PROVINCE AS WELL AS IN THE SOUTH EITHER PENDING ANY APPEAL TO THE SUPREME COURT OF CANADA OR PERMANENTLY

K A BLATCHFORD - MAYOR JOHN BLUE FOR EDMONTON BOARD OF TRADE

17

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

C 49941

Section 1.

(c) Suggestions:

Letter from R. J. Cromie,
Publisher, Vancouver Sun.

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

C 43942

THE VANCOUVER SUN

MORNING, EVENING AND SUNDAY

OFFICE OF THE PUBLISHER

Vancouver, B.C.,
Oct. 21st., 1924.

Hon. W.L.Mackenzie King,
Hotel Vancouver,
Vancouver, B.C.

Dear Mr.King:-

The marked portion of today's editorial has the germ of an idea in it that might come useful to you in meeting the present demand for a restoration of the Crow's Nest rates; that idea is the granting to a central area like Manitoba, some slight reduction in the per-ton-per-mile rate to either the Atlantic or Pacific seaboard.

As I view the situation, the Mackenzie King Government are in danger of losing in the three western provinces the political ground which they have won during the last three years unless they can in some way meet the demand for the Crow rates.

If Canada is to remain CANADA, the Mackenzie King Government or no other Government can continue the present discriminations against the Pacific outlet. It seems to me that it needs very little manipulation to show that Western interests lie in equalized rates over the short haul to the Pacific, rather than preferred or Crow's Nest rates over the long haul eastward. It seems to me that a complete and satisfactory answer to the West lies in this equalized rates for short haul versus preferred rates for long haul, plus a little special consideration for a central area like Manitoba, and once this principle is placed squarely before the country by the Premier of Canada, it should go a long way towards closing off all this present idle chatter.

Someone must make good the loss suffered by preferred rates on the uneconomic long haul eastward; that someone is the general public. Why should the general public have to do this when the simple alternative is to use the short economic haul westward? Also, the public should not lose sight of the fact that even after granting specially low rates

W.L. Mackenzie King Papers
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to haul that grain eastward, one half of every bushel of that grain is delivered at the head of the Lakes in American boats, hauled by them to American ports, then over American railroads to American Atlantic ports; 177,000,000 bushels was the amount of the 1923 crop handled in this manner by Americans.

While the short western route is capable of handling that grain, not at preferred or Crow's Nest rates, but at regular rates, and at the same time make money out of it, it looks to me like national stupidity for Canadian railroads to be asked to give special rates to drive good Canadian business into American channels.

Sincerely,

R. J. Cromie

Publisher

RJC*S

Encl.

(Dictated but
not read)

W.L. Mackenzie King Papers
Memoranda & Notes

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

CROW'S NEST PASS AGREEMENT C 43944

Section 2.

Memorials, Resolutions, etc., received by the Prime Minister at Ottawa.

(a) Urging restoration of Crow's Nest rates:

Manitoba:

Resolution	- Municipality of Strathcona,	Belmont;
"	- United Farmers of Manitoba,	Benito;
"	- City Council,	Brandon;
"	- United Farmers of Manitoba,	"
"	- " " " "	Crocus;
"	- Rural Municipality of	Gilbert Plains;
"	- Village Council,	Gimli;
"	- Board of Trade,	Hartney;
"	- Municipality of Woodworth,	Kenton;
"	- " " Lakeview,	Langruth;
"	- " " Manitou,	Manitou;
"	- " " Miniota,	Miniota;
"	- " " Minto,	Clanwilliam;
"	- " " Morris,	Morris;
"	- Board of Trade,	Neepawa;
"	- Town Council,	Oak Lake;
"	- Municipality of Ochre River,	Ochre River;
"	- Board of Trade,	The Pas;
"	- Board of Trade,	Portage La Prairie;
"	- Town Council,	Rapid City;
"	- Council of Municipality of	Riverside;
"	- Ladies Aid,	Swalwell;
"	- Rural Municipality of	Sifton;
"	- City Council,	St. Boniface;
"	- Retail Merchants Association,	Swan River;
"	- Board of Trade,	Virden;
"	- Town Council,	"
"	- Rural Municipality of	West Kildonan;
"	- Canadian Council of Agriculture,	Winnipeg;
"	- City Council,	"

Saskatchewan:

Memorial	- Farmers Union of Canada,	Halvorgate;
Resolution	- Board of Trade,	Moose Jaw;
"	- Sask. Grain Growers' Assoc.,	Regina;
"	- Canadian Council of Agriculture.	

Alberta:

Resolution - Canadian Council of Agriculture.

(b) Opposed to restoration of Crow's Nest rates:

Telegram - Edmonton Board of Trade.

(c) Suggestions:

D'Arcy Scott, Ottawa;
S. B. Woods, K.C., Edmonton;
Board of Trade, Yorkton.

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Municipality of Strathcona

=

C. M. Brown, Sec.-Treas.

C 43945

Belmont, Man. November 18th. 1924

Resolution passed at the Annual meeting of the ratepayers of The Rural Municipality of Strathcona in Manitoba;

Whereas the Dominion Government, by an act of Parliament, did enter into, what is known as the "Crow's Nest Pass" agreement, with the Canadian Pacific Railway Co. whereby the said Company agreed on certain fixed freight rates to and from Western Canada,

And Whereas during the World War the Parliament of Canada did set aside the said agreement for certain period allowing the Railway Company to increase the freight rates for that period to cover cover the increased cost of operation,

And Whereas this period expired on July 1st. 1924 and the old rates automatically came into force,

And Whereas the Railway Commission acting on an appeal from the Railway Company did cancell the agreement, thereby setting aside an Act of Parliament, and again place in force the War Time rates which will cost the people of Western Canada Millions in money if allowed to remain in force,

BE IT RESOLVED that we the ratepayers of the Municipality of Strathcona in annual session do strngly urge the Government of Canada to again put into force the Crows' Nest Pass rates.

And that a copy of this resolution be forwarded to The Hon. McKenzie-King, Hon. Arthur Meighan, Robert Forke M.P. and Jas. Steedsman M.P.

V 22 Recd

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C 49946

EDUCATION CO-OPERATION LEGISLATION

UNITED FARMERS OF MANITOBA

A WORKING ASSOCIATION HAVING FOR ITS OBJECT THE
BETTERMENT OF THE RURAL COMMUNITY AND
THE SECURING OF AN ALL-ROUND
SQUARE DEAL

To the Right Honourable
Mr Kenzie King
Ottowa

Benito LOCAL
Nov 8 1924
MANITOBA

The following resolution was passed unanimously at a meeting held to day:—

Whereas the statutory farce of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations other than on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behooves the honor of the Dominion Government to uphold and enforce, particularly the present government which is the political successor of the government which passed the statute and entered into the agreement;

And Whereas, the West has the right to be relieved of the unjust overburden of railway rates under which it labors;

And Whereas, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act, and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgement of the Board of

NOV 14 1924

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C 49947

Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th 1924 made pursuant to the Crows Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules

Respectfully submitted

W. W. Graham
Pres

James. S. Patton
Secretary

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Brandon

C 43948

COUNCIL CHAMBER Oct. 20th, 1924

Resolution No. M.B.

Moved by Ald. Kennedy

Seconded by Ald. Patmore

That this Council hearily concurs in the action taken by the Executive Council of the Province of Manitoba in it's appeal to the Governor-General-in-Council, to suspend the order of the Board of Railway Commissioners of Canada, cancelling the Crow's Nest Freight Rates Agreement.

That a copy of this resolution be transmitted to Premier Bracken, the Prime Minister and the Governor-General of Canada.

Carried.

H. Cater.

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DIVISION LIST **1924** **ORDER OF DAY**

	YEA	NAY
His Worship Mayor Cater		
Ald. Clement		
Ald. Crawford		
Ald. Curran		
Ald. Dinsdale		
Ald. Epton		
Ald. Kennedy		
Ald. McKenzie		
Ald. Oglesby		
Ald. Patmore		
Ald. Young		

1. Reading of Minutes
2. Original Communications
3. Petitions and Hearing of Petitions and Delegations
4. Reports
5. Enquiries
6. Giving of Notice
7. Unfinished Business
8. Motions
9. Consideration of By-Laws

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C 49949

"Whereas the Board of Railway Commissioners has by decision rendered, abrogated the Crows Nest Pass agreement, thus virtually assuming the power to overrule an Act of Parliament, long established, honestly entered into and everywhere recognized, as representing the will and intention of the people of Canada.

And whereas, the Crows Nest Pass agreement constituted the only regulating factor in freight rates in Western Canada,

Therefore be it resolved, that we emphatically demand that the Government at once vindicate the supremacy of an Act of Parliament in Canada and reverse the decision of the Board of Railway Commissioners with respect to the Crows Nest Pass Rates and take such steps as is necessary to remove all freight rate discrimination."

Resolution of 10th. Annual ~~Convention~~
Convention United Farmers of Manitoba
(Brandon District) Nov. 15, 1924

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C 49950

Crocus Man
Nov 13th 1924

To the Right Honourable W. Lyon Mackenzie King
The following resolution was unanimously passed at
a meeting of Crocus Hill Local U.F.M. on Tuesday Nov 11th

Whereas the statutory rate of the Crows Nest Pass Agreement
of 1897 & the extention of similar rates to other places
& stations than those on the then C P R lines has for
27 years been affirmed from time to time by the
Board of Railway Commissioners & these have been
unanimously regarded as a fundamental law of this
country during that time & the West has a just & equitable
claim to the benefits of that contract which it behooves
the honour of the Dominion Government to uphold & enforce,
particularly the present government which is the political
Successor of the government which passed the statute &
entered into the agreement;
And whereas the West has the right to be relieved of the
unjust overburden of railway rates under which it labours;
And Whereas, we strongly hold the view that there is no warrant
nor justification for the decision of the Board of Railway Com-
missioners repealing the Crows Nest Pass Act; & cancelling
the agreement; & as the injustice of it is intolerable,
we humbly & respectfully request the Governor in Council

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immediately rescind the judgment of the Board of Railway commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th 1924 made pursuant to the Crows Nest Pass Agreement; & that the railways be ordered to put into effect immediately reduced rates from & to other stations to the extent necessary to remove any discrimination existing by reason of the above schedules

Respectfully submitted

Henry Woodcock
President

Alfred Averill
Secretary

Crocus Hill Local United Farmers of Manitoba
Crocus P.O. Man.

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C 49952

RURAL MUNICIPALITY OF GILBERT PLAINS

Dallyn-Dimmick That the Council endorses the following resolution of the Winnipeg Board of Trade viz:

Whereas the Statulory force of the Crows Nest Pass Agreement of 1897 and the extension of similiar rates to other places and stations on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behooves the honour of the Dominion Government to uphold and enforce, particulary the present Government which is the political sucessor of the Government which passed the Statue and entered into the Agreement.

And Whereas the West has the right to be relieved of the unjust overburden of railway rates under which it labours;

And Whereas we strongly hold the view that there is no warrent nor justification for the decision of the Board of Railway Commissiomers repealing the Crows Nest Pass Act, and cancelling the Agreement, andthe injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately resind the judgment of the Board of Railway Commissioners ordering the Railway Companies to withdraw the tariff schedule of rates bearing date July 7th 1924 made pursuant to The Crows Nest Pass Agreement, and that the Railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimation existing by reason of the above schedules.

And that a copy of this Resolution be sent to the Right Hon. McKenzie King and to the Federal Member at Dauphin.

Carried.

Copy Resolution
Dr. Dauphin
Agr. Trans

W.L. Mackenzie King Papers
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C 49953

RESOLUTION FORM

Village of Gimli.

Nov 12th 1924

Moved by Councillor H.Benson

Seconded by Councillor Th.Thordarson

That the resolution passed by the Winnipeg Board of Trade, October 15th, 1924 and the resolution passed by the Manitoba Citizen and Business bodies Committee, October 20th, 1924 in regards to the Crowe Nest Pass Agreement be endorsed by the Council for the Village of Gimli. Carried.

The above Resolution was passed unanimously at ageneral Meeting held November 4th, 1924.

B. N. Jonasson.
Sec- Treas.

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C 49954

Harntey, Manitoba,
October 31, 1924.

To the Right Honourable W. L. MacKenzie King,
Prime Minister of Canada,
OTTAWA, Ontario.

The following resolution was passed unanimously at a meeting held this evening by the Hartney Board of Trade:

WHEREAS the statutory force of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations, on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behooves the honour of the Dominion Government to uphold and enforce, particularly the present government which is the political successor of the government which passed the staututе and entered into the agreement;

AND WHEREAS, the West has the right to be relieved of the unjust overburden of railway rates under which it labours;

AND WHEREAS, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act, and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th-1924 made pursuant to the Crows Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules.

HARTNEY BOARD OF TRADE.

C D Batty
Sec Treas

NOV 7 Recd

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C 49955

F. J. GOULD,
REEVE

A. B. RUTHERFORD,
SEC'Y.-TREAS.

The Rural Municipality of Woodworth

OFFICE OF

Secretary-Treasurer

KENTON, MAN.,

18th Nov. 1924,

To the Right Honourable McKenzie King,
and The Honourable Robert Forke,
Ottawa, Ont.

At a meeting of the Rate-Payers of the Rural Municipality of Woodworth held this day the following resolution was passed unanimously;

Whereas the statutory force of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations, on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behooves the honour of the Dominion Government to uphold and enforce, particularly the present government which is the political successor of the government which passed the statute and entered into the agreememt;

And Whereas, the West has the right to be relieved of the unjust overburden of railway rates under which it labours;

And Whereas, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act, and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th - 1924 made pursuant to the Crows Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules.

And that one copy of this resolution be sent to the Prime Minister Right Honourable McKenzie King and one to our member for Lansdowne Honourable Robert Forke.

Rural Municipality of Woodworth,
Per. A.B.Rutherford, Secretary

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GEO. W. LANGDON,
REEVE,
LANGRUTH, MAN.

TELEPHONE NO. 25

MRS. E. P. GIBSON,
SECRETARY-TREASURER,
LANGRUTH, MAN.

C 49956

RURAL MUNICIPALITY OF LAKEVIEW

INCORPORATED APRIL 10, 1920.

LANGRUTH, MAN., Nov. 12th, 1924.

Rt. Hon. McKenzie King,

Ottawa, Ont.

Sir,-

The following is copy of resolution passed by our Council on the 7th inst., which same will explain itself.

"This Council heartily endorses resolutions passed by the Winnipeg Board of Trade October 15th and by the Meeting of M Manitoba Citizens and Business Bodies October 20th, demanding restoration of Crows Nest Pass Agreement re reduced freight rates. That copy of this resolution be sent to the Right Honorable McKenzie King, Mr. Milne, M.P. and the Secretaries of the above bodies."

Yours truly,

A. G. Gibson

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C 49957

H. BURKE, SEC.-TREAS.

Municipality of the Village of Manitou

Manitou, Man., 5th Nov. 1924.

To the Right Honourable McKenzie King,

Ottawa, Ont.

The following resolution was passed at the Council meeting held yesterday evening.

WHEREAS the statutory force of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations, on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behooves the honour of the Dominion Government to uphold and enforce, particularly the present government which is the political successor of the government which passed the statute and entered into the agreement.

AND WHEREAS, the West has the right to be relieved of the unjust overburden of railway rates under which it labours.

AND WHEREAS, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act, and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th 1924 made pursuant to the Crows Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules.

The Village of Manitou.

W C Dales Mayor.

H. Burke. Secretary-Treasurer.

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C 49958

J. [illegible]. MITCHELL,
REEVE.

W. E. WARREN,
SEC.-TREASURER

Rural Municipality of Miniota

SECRETARY-TREASURER'S OFFICE.

Miniota, Man., 19th November 192

The Right Hon. W. L. Mackenzie King,
Ottawa.

Sir,

At the Annual meeting of the Ratepayers of the Miniota Municipality held yesterday I was instructed to forward you a copy of a resolution passed by said meeting.

I am, yours truly,
W. E. Warren.
Secretary-Treasurer.

Resolution.

Be It Resolved that this meeting of the Ratepayers of the Rural Municipality of Miniota vigorously protests against the action of the Board of Railway Commissioners in abrogating the Crows Nest Pass Freight Rates Agreement as their decision creates a Breach of contract between the Parliament of Canada and the Railway Company and that such action constitutes a great injustice to the people of Canada.

and that a copy of this resolution be sent to the Prime Minister, Hon Arthur Meighen, Hon T. A, Crerar Mr Robert Forke M.P. P! the Free Press and Winnipeg Tribune.

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C 49959

Copy of a resolution passed by the ratepayers of the Rural Municipality of Minto at a meeting held in Clanwilliam,Man, Nov.18th 1924.

WHEREAS in 1897 Parliament passed the Crows Nest Pass Act, the statuory agreement thereby provided for was entered into, the subsidy was paid over,and the schedule of rates thereunder was promulgated.

AND WHEREAS the Parliamentary force of these rates has been affirmed by the Board of Railway Commissioners from time to time during the last 18 years and has been acknowledged by the Railways during that time in applications made by them to parliament and otherwise,and Parliament has acted on these applications and passed a new enactment in 1922 and at the last session refused to pass another,further suspending or repealing the Crows Nest Pass Schedules;

AND WHEREAS these rates have been universally regarded as a fundamental law of this country, and Western Canada has a just and equitable claim to the benefits of that contract.

AND WHEREAS Western Canada has a right to be relieved of the unjust burden of railway rates under which it suffers.

AND WHEREAS we are convinced that there is no basis or justification for the decision of the Board repealing the Crows Nest Past Act and cancelling the agreement,thereby arrogating to itself the power to reverse the action of parliament at its last session;

AND WHEREAS it touches the honor of the Government to vindicate the principle of parliamentary Government in Canada and to uphold and enforce the agreement which the present government and the present parliament has so recently protected and affirmed;

AND WHEREAS the injustice of the Boards decision is so intolerable we respectfully request the Governor-in-Council to immediately rescind the judgement of the Board of Railway Commissioners ordering the Tailway companies to withdraw the tariff schedules of rates bearing date July 7th 1924 made pursuant to the Crows Nest Pass Agreement,and that the railways be ordered to put into effect immediately reduced rates from and to other stations than those on the Canadian Pacific Tailway lines in 1897,to the extent necessary to remove any discrimation arising by reason of the above schedules;

Respectfully submitted,

.

Secretary.

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C 49960

Rural Municipality of Morris.

Morris, Man. October 31. 1924

Moved by Councillor Heppner,

Seconded by Councillor Covernton,

That this Council strongly holds the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows nest Pass Act, and cancelling the agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railways Commissioners ordering the railways companies to withdraw the tariff schedule of rates bearing the date July 7th-1924 made pursuant to the Crows Nest Pass agreement, and that the Railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimation existing by reason of the above schedules.,

That a copy of this resolution be sent to the Right Honourable McKenzie, King, Premier, Dominion of Canada.,

C.L. Stoney,
REEVE

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C 49961

T. G. MURPHY, Pres. E. P. BOYLE, Vice-Pres. C. L. THRING, Sec.-Treas.

Neepawa Board of Trade

COUNCIL 1924—
W. E. N. King
H. L. Wethey
S. G. Simpson
A. B. Dunlop
R. H. Wemyss
Clarence Kerr
G. C. Brooker
John Crawford

Neepawa, Manitoba 18th. Oct. 1924 192

To the Right Honourable McKenzie King
House of Commons
Ottawa. Ont.

Sir.-

I beg to forward you the following resolution, which was passed at a meeting of the Council of the Neepawa Board of Trade this morning;-

WHEREAS the statutory force of the Crow's Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations, on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behoves the honour of the Dominion Government to uphold and enforce.

AND WHEREAS the West has the right to be relieved of the unjust overburden of railway rates under which it labours,

AND WHEREAS we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crow's Nest Pass Act and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to rescind immediately the judgement of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th. 1924 made pursuant to the Crow's Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules."

I have the honour to be, Sir,
Your obedient servant

C. L. Thring
Secretary.

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COPY

C 49962

The Town of Oak Lake

November 3rd. 19 24

MOVED BY E.U.Steen

SECONDED BY Story

That we endorse the resolutions re Crows Nest Pass Agreement passed by the Winnipeg Board of Trade and the Manitoba Citizens and Business Bodies and that copies of this resolution be forwarded as requested by Mr. Hamilton.

CARRIED

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JOHN HOWSON, REEVE
OCHRE RIVER

C 43963

H. E. WELLAND, SEC.-TREAS.
OCHRE RIVER

Rural Municipality of Ochre River

Ochre River, 8 November 192 4

MANITOBA

To the Right Honourable McKenzie King,
Ottawa.

Dear Sir,

The following resolution was passed unanimously at a meeting of this Council held on the 1st inst.

WHEREAS the statutory force of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations, on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benifits of that contract which it behooves the honour of the Dominion Government to uphold and enforce, particularly the present government which id the political successor of the government which passed the statute and entered into the agreement;

AND WHEREAS, the West has the right to be relieved of the unjust overburden of railway rates under which it labors;

AND WHEREAS, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act, and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th 1924 made pursuant to the Crows Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules.

Respectfully submitted,

H. E. Welland.
Secretary Treasurer.

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C 49964

Board of Trade

The Pas. - Manitoba

The Pas
Is the GATEWAY to the whole of NEW MANITOBA and its wealth of Forests, Mines and Fisheries

The Pas
Is the only DIRECT route to and OUTFITTING POINT for the Herb Lake, Schist Lake and Flin-Flon Gold and Copper Mines

The Pas
Is a MODERN TOWN, with Electric Lights, Waterworks, Sewers and Telephones

The Pas
Is the Southern Terminus of the Hudson's Bay Railway, and the logical Railway Centre of New Manitoba

The Pas
Must be the DISTRIBUTING POINT of Anglo-Canadian Commerce and an important Wholesale Centre

COME AND SEE
The Pas

The Pas, Manitoba
Canada

October 31st 1924 192

Hon Mackenzie King.
Ottawa.

Hon Sir.

I was directed by the Council of the Board of Trade, to forward you the following Resolution.
That this Board of Trade go on record as being strongly opposed to the action taken by the Board of Railway Commissioners in repealing the Crows Nest Pass Act, and cancelling the agreement , and that we strongly endorse the resolution as passed by the WINNIPEG BOARD OF TRADE objecting to the repeal of this Act, and asking that the Governor in Council rescind the Judgment of the Board of Railway Commissioners and that a copy of this resolution be sent to you, also to the Minister of Railways, Solicitor General. Clerk of the Executive Council. Mr Burt M..P. for Nelson, the Right Hon A Meighedn, and Mr Robert Forke M. P.

respectfully.

W. T. Young

Secretary. Treasurer.

NOV 4 Recd

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SECRETARY'S OFFICE
DRAWER 628

CABLE ADDRESS "PROGRESS"
TELEPHONE 313

C 49965

CITY OF PORTAGE LA PRAIRIE
1880
MANITOBA

BOARD OF TRADE

22nd. October, 1924.

To the Right Honourable McKenzie King,
Ottawa. Ont.

Dear Sir:-

The following resolution was passed unanimously at a meeting of our Board held on the 20th instant:-

WHEREAs the statutory force of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations, on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period and the West has a just and equitable claim to the benefits of that contract which it behooves the honour of the Dominion Government to uphold and enforce, particularly the present government which is the political successor of the government which passed the statute and entered into the agreement:

AND WHEREAS, the West has the right to be relieved of the unjust overburden of railway rates under which it labours;

AND WHEREAS, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act, and cancelling the Agreement, and as the injustice of it is intolerable, we humbly and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date July 7th,1924 made pursuant to the Crows Nest Pass Agreement, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules.

Yours truly,

H. M. Dunham

Secretary- Treasurer.

hmd.d

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C 49966

BOX 146

PHONE 76

TOWN OF RAPID CITY

SECRETARY-TREASURER'S OFFICE

RAPID CITY Oct. 28. 1924 192
MANITOBA

To the Right Honorable McKenzie King
Victoria. B.C.

The following resolution was passed unanimously at a regular meeting of the Town Council, held on Monday the 27th of October.

WHEREAS. the statutory force of the Crows Nest Pass agreement of 1897 and the extension of similar rates to other places and stations on the then Canadian Pacific Railway lines has for 27 years haen affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundamental law of this country during that period. and the West has a just and equitable claim to the benefits of that contract which it behooves the honor of the Dominion Government to uphold and enforce. particularly the present government which is the political successor of the government which passed the statute and entered into the agreement.

AND WHEREAS. the West has the right to be relieved of the unjust overburden of railway rates under which it labors.

AND WHEREAS. we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act. and cancelling the agreement. and as the injustice of it is intolerable. we humbly and respectfully request the Governor - in - Council to immediately rescind the judgement of the Board of Railway Commissioners. ordering the railway companies to withdraw the tarriff schedule of rates bearing date July 7th. 1924 made pursuant to the Crows Nest Pass agreement. and that the railways be ordered to put into effect immediately reduced rates from and to other stations. to the extent necessary to remove any discrimination existing by reason of the above schedules.

Respectfully submitted

E.E.Riesberry
Mayor

C.G.Murray
Secretary Treasurer

NOV 6 Recd

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C 49967

Copy of Resolution passed by the Council of the
Rural Municipality of Riverside an November 7th,1924.

Moved and Secmnded -- That this Municipality place itself on record as strongly endorsing and upholding the resolution passed by representatives of Manitoba Citizen and business bodies on October 20th,1924 in connection with the Crow's Nest Pass Agreement, and that a copy of this resolution be forwarded to Rt.Hon.MacKenzie King,Premier of Canada, and Mr.Robt.Forke, leader of the Progressive Party,Ottawa.

Carried.

I hereby certify that the above is a true and correct copy of resolution passed by Riverside Council on Nov.7th,1924.

A. McLaulay

Secretary-Treasurer.

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C 49968

Swalwell - Alta

October 13, 1927

Since the Railway Commission has seen fit to disallow the Crows Nest Pass Agreement we the Swalwell Ladies Aid demand the Prime Minister that the Governor in Council take action to overrule the action of the Railway Board and restore the agreement.

H. H. Dintman President

E. J. Clapport Sec. Treas.

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COPY C 43969

The Rural Municipality of Sifton

November 4th. 1924

Moved by Howat

Seconded by Duncan

That we endorse the resolutions re Crows Nest Pass Agreement passed by the Winnipeg Board of Trade and by the Representatives from Manitoba Citizens and Business Bodies and that copies of this resolution be sent as requested be Mr. F.E.Hamilton.

CARRIED

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C 43970

BUREAU DU GREFFIER
CITY CLERK'S OFFICE

ERNEST GAGNON

TELEPHONE N 1063
P.O. BOX 19

St. Boniface, Manitoba 30th October, 1924

Right Hon. McKenzie King,
Premier of Canada,
Ottawa, Ont.

Dear Sir,-

The following resolution was passed unanimously at a meeting of the Council of the City of St. Boniface, held on the 27th instant.

" WHEREAS the statutory force of the Crows "Nest Pass Agreement of 1897 and the extension "of similar rates to other places and stations, "on the then Canadian Pacific Railway lines has "for 27 years been affirmed from time to time by "the Board of Railway Commissioners and these have "been unanimously regarded as a fundamental law of "this country during that period and the West has "a just and equitable claim to the benefits of "that contract which it behooves the honour of the "Dominion Government to uphold and enforce, parti-"cularly the present government which is the poli-"tical successor of the government which passed "the statute entered into the agreement;
" AND WHEREAS, the West has the right to be "relieved of the unjust overburden of railway rates "under which it labours;
" AND WHEREAS, we strongly hold the view that "there is no warrant nor justification for the "decision of the Board of Railway Commissioners "repealing the Crows Nest Pass Act, and cancelling "the Agreement, and as the injustice of it is into-"lerable, we humbly and respectfully request the "Governor-in-Council to immediately rescind the "Judgment of the Board of Railway Commissioners "ordering the railway companies to withdraw the "tariff schedule of rates bearing date July 4th - "1924 made pursuant to the Crows Nest Pass Agreement

NOV 3 Rec'd

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"and that the railways be ordered to put
"into effect immediately reduced rates from
"and to other stations, to the extent necessary
"to remove any discrimination existing by
"reason of the above schedules."

Yours very truly,

Ernest Lapointe

EG)C.

City Clerk.

W.L. Mackenzie King Papers
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Swan River Manitoba Oct 31st/24 C 49972

To the Right Honorable McKenzie King .

Ottawa.

The following resolution was passed unanimously at a meeting of The Swan River Retail Merchants Association held on the evening of Oct31/2

WHEREAS the statuatory force of the Crows Nest Pass Agreement of 1897 and the extension of similar rates to other places and stations on the then Canadian Pacific Railway lines has for 27 years been affirmed from time to time by the Board of Railway Commissioners and these have been unanimously regarded as a fundemental law of this country during that period and the west has a just and equitable claim to the be nifits of that contract which it behoves the honour of the Dominion Goverrmment to uphold and enforce , particularly the present government which is the political successor of the government which passed the statue and entered into the agreement;-

AND WHEREAS, the West has the right to be relieved of the unjust over burden of railway rates under which it labours;

AND WHEREAS, we strongly hold the view that there is no warrant nor justification for the decision of the Board of Railway Commissioners repealing the Crows Nest Pass Act,and cancelling the agreement ,and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff schedule of rates bearing date of July 7th 1924 made pursuant to the Crows Nest Pass Agreement .and that the railways be ordered to put into effect immediately reduced rates from and to other stations ,to the extent necessary to remove any discrimination existing by reason of the above schedules.

The Swan River Retail Merchants Associaton.

Secretary Tpes

W.L. Mackenzie King Papers
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Received P.M's office Ottawa.

C 49973

Copy of resolution of the Virden Board of Trade passed at a Special meeting of the Board October 17th 1924

WHEREAS on October 14th inst a majority of the Board of Railway Commissioners presumed to supersede an agreement made between the people of Canada and the Canadian Pacific Railway Company;

AND WHEREAS the said Board has undertaken to re-impose a burden on the people of Western Canada, of which the Federal Parliamentdeemed it expedient to relieve them by allowing the Crow,s Nest Pass Agreement to come into force on July 7th 1924;

AND WHEREAS the people,s obligation under that agreement has been carried out, and the subsidy paid over to the said railway company;

AND WHEREAS the disposition of great corporations to evade contracts and to over-ride statites, when these restrictions appear inconvenient to them, is not calculated to develpp in the mind of the public a due respect for law or the sanctity of contracts.

AND WHEREAS the Board of Railway Commissioners in assuming an authority which Parliament never intended they should exercise, has aroused the just indignation of the people of Western Canada, on whom the burden of excessive railway rates must fall;

AND WHEREAS in the opinion of this Board of Trade no greater set-back to the cause of Immigration could take place than the imposition of the rates which musy follow the action of the Railway Commissioners, and the broadcasting of the fact that Parliament has been defiedm , and the will of the peolpe thwarted.

NOW THEREFORE the Virden Board of Trade desire to lay before you this expression of our disappointment, amazement and indignation at the action of the Railway Commissioners, and respectfully request the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners, and that the railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules.

To the Right Honourable Mac enzie King
Premier of Canada

OCT 22 Rec'd

W.L. Mackenzie King Papers
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C 49974

WM. WHITEFORD
SEC.-TREAS.

TOWN OF VIRDEN

LABOR OMNIA VINCIT

INCORPORATED 1904

OFFICE OF THE
CLERK AND TREASURER

P.O. BOX 310
PHONE No. 1

VIRDEN, MAN. CANADA Nov. 11th, 1924.

Premier King,

Ottawa,

Canada.

Sir;-

It was unanimously decided at a meeting of the Council of the Town of Virden to forward the following protest to the Dominion Government as to the action of the Railway Commission;-

"That the Council of the Town of Virden in council assembled this seventh day of November A.D. "1924,most emphatically express their disappointment "and indignation at the action of the Board of Rail- "way Commission in repealing the Crows Nest Pass Act "and cancelling the agreement; and as the injustice "of their action is intolerable,they most respect- "fully request the "Governor in Council" to immed- "iately rescind the the Judgment of the Board of "Railway Commission, and to order that the Railways "be ordered to put into effect immediately reduced "rates to and from other stations,to the extent nec- "essary to remove any discrimination existing by "reason of the above schedules." CARRIED.

I have the honor to be,

Sir,

Yours respectfully,

TOWN OF VIRDEN.

W W Whiteford
Secretary Treasurer

NOV 14 1924

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C 49975

MUNICIPAL OFFICES
WEST KILDONAN. MAN.

November 6th, 1924.

To the Right Honourable McKenzie King,
Ottawa, Canada.

Sir:-

The following resolution was passed at a regular meeting of Council held on the 3rd instant, and I was instructed to forward you a copy of same.

"WHEREAS, it is the opinion of this Council that there is no justification for the decision of the Board of Railway Commissioners in repealing the "Crows Nest Pass Act" and cancelling the Agreement,

THEREFORE, be it resolved that this Council respectfully requests the Governor-in-Council to immediately rescind the judgment of the Board of Railway Commissioners ordering the railway companies to withdraw the tariff of rates dated July 7th, 1924, made pursuant to the Crows Nest Pass Agreement, and that the Railways be ordered to put into effect immediately reduced rates from and to other stations, to the extent necessary to remove any discrimination existing by reason of the above schedules, and further, that a copy of this resolution be sent to the Right Honourable McKenzie King."

Yours truly,
J. W. Ballard

Sec.-Treas.

NOV 15 Recd

W.L. Mackenzie King Papers
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C 49976

RESOLUTION adopted by The Canadian Council of Agriculture, representing the organized Farmers of Alberta, Saskatchewan, Manitoba, Ontario and Quebec, at Winnipeg, on October 24th, 1924.

RE: CROW'S NEST PASS AGREEMENT

"THAT The Canadian Council of Agriculture urge upon the Dominion Government that it exercise immediately its power under Section 52 of the Railway Act and suspend the Order of the Board of Railway Commissioners, setting aside the Crow's Nest Pass Agreement;

"AND FURTHER that the Government take such steps as are necessary to remove the discrimination in freight rates now existing in the application of the Crow's Nest Pass Agreement."

W.L. Mackenzie King Papers
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C 49977

City Clerk's Department

C. J. Brown
City Clerk

City of Winnipeg

November 4th 1924.

Rt. Hon. W. L. Mackenzie King,
Prime Minister for Canada,
Ottawa, Ont.

Sir:

I have the honour to advise you that Council endorsed the following resolution passed at a meeting of the Manitoba Citizen and Business Bodies Committee, held on October 20th 1924 and ordered that a copy of same be forwarded to the Right Honourable W. L. Mackenzie King, Prime Minister for Canada, namely:-

"That we respectfully request the Governor-
"General-in-Council to immediately rescind the
"judgment of the Board of Railway Commissioners
"ordering the Railway Companies to withdraw the
"tariff schedules of rates bearing date July 7th
"1924 made pursuant to the Crows Nest Pass Agree-
"ment, and that the railways be ordered to put
"into effect immediately reduced rates from and
"to other stations than those on the Canadian
"Pacific Railway lines in 1897, to the extent
"necessary to remove any discrimination arising
"by reason of the above schedules."

I have the honour to be,
Sir,
Your obedient servant,

C. J. Brown
City Clerk.

MP.GG.

NOV 7 Recd

W.L. Mackenzie King Papers
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C 49978 67

Halvorgate Lodge.
Farmers. Union of Canada
Halvorgate
Sask.
oct: 24th /24.

Rt. Hon. W. L. Mackenzie-King
Ottawa.

Dear Sir

I am requested by the members of the above lodge to write you that the Farmers of this District do keenly protest against the Ruling of the Board of Railway Commissioners regarding the Crows Nest Pass Agreement, and the subsequent expense which will be added to such Commodities that he has to buy; the crops are a failure here, and the majority of farmers heavily involved, we would ask that you will endeavour to take steps to have the above Agreement put into Operation,

I am also to say it is advocated that nationalization of the C. P. R take place

Awaiting the favor of Your reply

I remain
Yours. Truly
J. W. Smith Secy

NOV 4 Rec'd

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C 49979

P.O. BOX 640

PHONE 4245

The Moose Jaw Board of Trade

POPULATION (FED. CENSUS) 19,285
NET ASSESSMENT (1924) $22,197,205.00

BOARD OF TRADE BUILDING
53 RIVER STREET EAST
Moose Jaw
SASKATCHEWAN

Moose Jaw is an important railway centre; grand divisional point on main line of C.P.R. (2,500 employees); served by C.N.R.; 8 lines radiate from city; junction of Soo Line running direct to St. Paul and Chicago.

Moose Jaw is the centre of a splendid mixed farming district; crops noted for quality and yield; stock raising, dairying and poultry raising profitable; Co-operative Stock Yards under Provincial Government supervision; Interior Storage Elevator capacity 3,500,000 bushels.

Moose Jaw is a wholesale distributing centre, serving 2 smaller cities, 30 towns, 125 villages and 150 hamlets. Lines: Groceries, meats, candies, tobaccos, drugs, dry goods, men's furnishings, boots, shoes, rubbers, furniture, bedding, hardware (shelf and heavy), seeds (farm and garden), lumber, building materials, fuel, automobiles, farm machinery, oil, flour, rolled oats and feed (made locally), butter, ice cream and cheese (made locally), bricks (made locally), lubricating greases (made locally), castings and heavy ironwork (made locally), etc.

Moose Jaw has 8 Banks, 5 Hospitals, 6 Hotels, 50 Wholesale Houses, 12 Public Schools, 2 Collegiate Institutes, 3 Residential Colleges (2 boys', 1 girls'), Public Library (20,000 vols.), Y.M.C.A., Y.W.C.A., 2 Golf Clubs, 200 acres of Parks, Registered Aeroplane Field and Customs Air Harbor.

Moose Jaw operates light and power plant and waterworks. Provincial Government operates modern automatic telephone system; street railway privately owned and operated.

—

FOR FURTHER INFORMATION WRITE
THE SECRETARY
THE BOARD OF TRADE.
MOOSE JAW, SASK.

NOV 6 Recd

November
First
1924

The Right Honourable
The Prime Minister of Canada,
O T T A W A. Ont.

Sir,

The subjoined copy of a resolution passed by the Executive Council of this Board is transmitted for the consideration of the Government of Canada;

WHEREAS the Moose Jaw Board of Trade is in favor of the re-instatement of the provisions of the Crows Nest Pass Agreement, and
WHEREAS the said Board of Trade approves the terms of the telegram of the Calgary Board of Trade to the Rt. Hon. the Premier of Canada urging that the Governor-in-Council suspend the majority Order of the Board of Railway Commissioners until the issues involved thereby have been fully determined, and
WHEREAS the said Board of Trade heartily commends the prompt action of the Government of Saskatchewan in appealing against the said majority Order of the Board of Railway Commissioners and is in thorough agreement with the arguments of the said Government that the provisions of the said Agreement should be re-instated,
NOW THEREFORE the Executive Council of the Moose Jaw Board of Trade in regular Meeting assembled this 22nd day of October 1924 strongly protests against the action of the Board of Railway Commissioners in setting aside the provisions of a statute of the Parliament of Canada.
AND be it further resolved that copies of this resolution be ordered transmitted to the Rt. Hon. the Premier of Canada, and to the Hon. the Premier of Saskatchewan.

I have the honor, etc.,

Secretary.

KEEP YOUR HAND TO THE PLOW AND YOUR TRUST IN THE CREATOR.
STEADFAST FAITH AND THE UPWARD LOOK WILL BRING US
OUT OF TROUBLE AND FAILURE INTO PROSPERITY
AND TRUE SUCCESS IN LIFE.

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C 49980

GEO. F. EDWARDS'
PRESIDENT

R. M. JOHNSON
VICE-PRESIDENT



ORGANIZATION, EDUCATION AND CO-OPERATION, WILL BRING THE FARMER INTO HIS OWN.

THE SASKATCHEWAN GRAIN GROWERS' ASSOCIATION

INCORPORATED

HEAD OFFICE
FARMERS' BUILDING
REGINA
SASKATCHEWAN

November 10th, 1924.
(Dictated Nov. 6th)

Hon. W. L. Mackenzie-King,
Premier of Canada,
Ottawa, Can.

Dear Sir :

I have the honor to transmit to you a resolution passed at the Convention of Grain Growers' Locals of Shellbrook Constituency on October 31st. The resolution is as follows :

> RESOLVED that the Grain Growers' Associations of the constituency of Shellbrook in annual meeting assembled do vigorously protest the recent action of the Board of Railway Commissioners in abrogating the Crows' Nest Pass Agreement and call upon the Federal Government to immediately restore the agreement.

Yours very truly,

Geo F. Edwards

President.

GFE/MGB.

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Section 2.

(b) Opposed to restoration of Crow's Nest rates.

Telegram - Edmonton Board of Trade.

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CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nlt
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

C 49982

Form 6123, replacing Form 1-TW

CANADIAN NATIONAL TELEGRAM

HEAD OFFICE, TORONTO, ONT. — W. G. BARBER, GENERAL MANAGER

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EDMONTON ALTA 12TH NOV-24.

RIGHT HON. W. L. MACKENZIE KING, 565

PRIME MINISTER OF CANADA, OTTAWA, ONT.

UNDERSTAND PRIVY COUNCIL CONSIDER CROWSNEST JUDGMENT THIS WEEK STOP THIS BOARD DESIRES REMIND YOU OF ITS ATTITUDE AS STATED IN WIRE OCTOBER TWENTY THIRD TO HON MR GRAHAM AND TO YOURSELF ON OCTOBER TWENTY SEVENTH WHILE RETURNING EAST STOP RATES IN FORCE FROM JULY SEVENTH TO CANCELLATION BY RAILWAY BOARD WERE INTOLERABLE IN DISCRIMINATIONS AGAINST EDMONTON.

EDMONTON BOARD OF TRADE.

112AM

USE OUR DIRECT ALL-CANADA SERVICE TO VANCOUVER, VICTORIA AND BRITISH COLUMBIA POINTS

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C 49983

Section 2.

(c) Suggestions:

D'Arcy Scott, Ottawa;
S. B. Woods, K.C., Edmonton;
Board of Trade, Yorkton.

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C 43984

Telephone Queen 45

SCOTT & FRASER

BARRISTERS, SOLICITORS & NOTARIES

Railway Commission and Parliamentary Counsel

Supreme Court and Government Department Agents

D'ARCY SCOTT **ALLAN J. FRASER**

CENTRAL CHAMBERS,

OTTAWA, Canada

November 11th, 1924.

The Rt. Hon. W. L. McKenzie King, M. P.,

Prime Minister,

OTTAWA, Ontario.

My dear King:-

Re: Crow's Nest Pass Agreement:

The newspapers say that the Government will shortly decide on a policy with reference to the action of the Railway Commission in deciding that it had jurisdiction to disregard The Crow's Nest Pass Agreement.

Having given considerable attention to the study of transportation problems, I am going to take the liberty of advising you strongly not to interfere with the decision of the Commission. I appreciate that the West is unduly excited over the decision of the Board, but I think the agitation is due largely to the work of politicians who think it is good politics to shout about Crow's Nest Pass rates. The Agreement, as you know, was made years before the establishment of the Railway Commission and, at the time, was possibly the best available method of bringing about a reduction and permanency in some rates on commodities moving westward; but since the establishment of the Railway Commission with full power to regulate rates, The Crow's Nest Pass Agreement became superceded and a much better machine for regulating rates was established. The only commodities moving eastward affected by the Agreement were grain and grain products. These rates are now fixed by the legislation of 1922, and, therefore, are not subject to the present order of the Board. Other commodities moving eastward, such as cattle, hides, wool, dairy products, lumber, coal etc., were not included in the agreement. These products move now in considerable volume and, if we were to have unduly low rates on certain preferred commodities mentioned in the Agreement, these other commodities must pay unduly high rates to make the balance equal in the Railway revenues.

There are only thirteen commodities moving from points east of Fort William to points west of Fort William which are affected by the Agreement. They are by no means all the commodities consumed in the West. Articles that are not covered by the Agreement which move westward

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The Rt. Hon. W. L. McKenzie King, M. P.

are all foods except fruit, clothing, dry goods, boots, leather goods, rubber goods, machinery, gasoline, fuel oil and lumber. Why should these articles have to pay extra high rates in order that the articles mentioned in The Crow's Nest Pass Agreement get unduly low rates? I do not believe the western people really understand the situation. Unless the Railway Commission is to be supreme to regulate all rates, including Crows Nest Pass rates, instead of the Commission being made subject to The Crow's Nest Pass Agreement, you will have chaos in rate regulation and you might as well tear up The Railway Act and abolish the Railway Commission.

If the Government and Parliament will keep its hands off the Commission, it will probably be upheld by the Supreme Court and the Crow's Nest Pass question will soon be forgotten but, if the Government or Parliament interfere, more serious results will follow.

I gave an address on the question of The Crow's Nest Pass Agreement and its affect on railway rates some days ago to the Rotary Club here, and I am holding myself in readiness to deliver the same address in Toronto and Montreal. The subject is a complicated one and is not understood by the general public. If your Government will take a firm stand and make a definite announcement against interference with the Commission, it will not only be doing the right thing in the interests of the country but, I believe, also taking a wise step politically; because if you do not deal with the matter firmly, you are going to get into lots of trouble in the future.

If, at any time, I can be of any assistance to you in supplying you with information on the subject, I will be happy to help out in any way in my power.

I have discussed the situation with Chief Commissioner McKeown, and I believe that if he is

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The Rt. Hon. W. L. McKenzie King, M. P.

given a free hand he will do what he can to bring about a general reduction in all rates to a fair level, which would be far better for the western people than an unduly excessive reduction in a few commodities.

Your Government has earned the approval of the country by the appointment of Sir Henry Thornton and the splendid work he has done with the Canadian National Railways. It will be a great day when the railway will be able to pay its own interest charges. That day is coming if the railway is given a chance; but, if Crow's Nest Pass rates are forced on it, Parliament will have to continue to provide funds to pay interest for many years to come.

With kind regards,

Faithfully yours,

D'Arcy Scott

D'AS/R

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C 49987

WOODS, FIELD, MACALISTER & CRAIG
~~WOODS, SHERRY, COLLISSON & FIELD~~
~~WOODS, SHERRY, MACALISTER & CRAIG~~
BARRISTERS, SOLICITORS, NOTARIES

CABLES: "BIGGWOOD"

S. B. WOODS, K.C.
J. C. SHERRY
~~J. WOODS COLLISSON~~
S. W. FIELD K.C.
J. MACALISTER
W. D. CRAIG

EDMONTON, ALBERTA, CANADA. 5th Novr. 1924

PLEASE REFER TO FILE NUMBER 2-29241

YOUR NUMBER

The Secretary to the Prime Minister,
Parliament Buildings,
Ottawa.

Dear Sir,

Re Crows Nest Pass Rates matter.

I have received from the Counsel for the Provinces of Alberta, Saskatoon and Manitoba a copy of the petition of these Provinces to the Governor in Council dated 31st October. As already expressed in telegrams sent by the Mayor of Edmonton and Secretary of the Edmonton Board of Trade to the acting Prime Minister and to the Prime Minister, the City of Edmonton and the Board of Trade of Edmonton strongly object to any action being taken that will continue the tariffs filed by the Railway Companies to which this petition refers in operation pending any appeal that may be taken from the order of the Board of Railway Commissioners of 4th October 1924.

Should the petition of the three Prairie Provinces result in a decision by the Governor General in Council to refer any matters arising in connection with this case to the Supreme Court of Canada for decision, I would respectfully

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submit and ask that the question hereto annexed be included among any matters so submitted

Yours truly,

Counsel for the Cities of Edmonton and Saskatoon and their respective Boards of Trade.

16. encl.

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16-2-29241 C 49989

Whether Sub-clause (D) of Section 1 of 60 & 61 Vict. Chapter 5 (Dom) and the corresponding clause of the agreement therein provided for according to its proper construction

(a) Where reference is made therein to "The Company's Railway" means and refers to the railway of the Canadian Pacific Railway Company as the same exists from time to time during the currency of the agreement in the said Act provided for or is confined in its operation to the Railway of the Canadian Pacific Railway Company as the same existed either on:

(1) June 29th 1897 or
(2) September 6th 1897.

(b) Where reference is made therein to "the Company's main line or on any line of Railway throughout Canada owned or leased by or operated on account of the Company" means and refers to the main line of the Canadian Pacific Railway Company and to the lines of railway throughout Canada, owned or leased by or operated on account of the Canadian Pacific Railway Company from time to time, or is confined in its operation to the main line of the Canadian Pacific Railway Company as the same existed either on:

(1) June 29th 1897 or
(2) September 6th 1897

and to such lines of railway throughout Canada as were either of:

(1) June 29th 1897 or
(2) September 6th 1897

owned or leased by or operated on account of the Canadian Pacific Railway Company.

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WHEREAS there appears to be considerable feeling in Western Canada that the West is dominated by the Eastern Interests to the detriment of the West.

AND WHEREAS it appears that the real reason for the foregoing conditions is a sectional protection established by freight rates.

AND WHEREAS the result of the sectional protection has been to segregate industrial establishments in the central Provinces of Canada.

AND WHEREAS present rates prohibit the exchange of Western Goods in Western Canada, thereby supressing enterprise and producing a condition of stagnation throughout the entire West.

AND WHEREAS we have for several decades been endeavoring to establish markets for Western products in the Central Provinces of Canada and have signally failed.

AND WHEREAS the greatest problem facing Western Canada is that of available markets for the primary industries.

AND WHEREAS that problem will never be solved until industries are established in Western Canada using Western coal and also Western products.

AND WHEREAS the segregation of industries in the coalless Provinces of Canada limits industry and places a tremendous economic burden on the whole Dominion in providing those Provinces with foreign coal and refined metals.

AND WHEREAS the present dispute over the Crows' Nest Pass Agreement opens up the whole question of Railway Rates affecting Western Canada and it is advisable that the whole matter of Railway Rates be thoroughly discussed by the people of the West.

NOW THEREFORE THE BOARD OF TRADE OF THE TOWN OF YORKTON RESOLVES:

1. That they wholeheartedly condemn the prevailing system of "Sectional Protection" through Railroad Rates.

2. That they are of the opinion that a proper adjustment of the Rates would be beneficial to Canada as a whole and would be the means of removing all obstacles to the establishing of Manufacturing Plants in Western Canada in close proximity to the Coal supply.

3. That the whole Freight Rate question be thoroughly investigated with a view to removing the discrimination under which the West is laboring at the present time.

4. That the Crows' Nest Pass Agreement Rates be restored on Miscellaneous Goods from the East, and that another and similar Agreement be made to include ALL COMMODITIES throughout the West and British Columbia.

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I N D E X

EXHIBITS

1. Statute providing for Crow's Nest Pass Agreement 60 - 61 Victoria, Cap. 5.

2. War Measures Act - 5 Geo. V; Cap. 6, Section 6.

3. Order of Railway Board authorizing 15% Increase, 1917.

4. Order-in-Council asking recommendation of Board as to increase of freight rates - P.C. No. 1768.

5. Report of Board to Privy Council, July 25, 1918.

6. Order-in-Council, July 27, 1918, authorizing 25% in freight rates - P.C. No. 1863.

7. 1919 Amendment to Railway Act - Section 325, Subsection 5.

8. Section 3 of Railway Act.

9. Judgment of the Board, September 19, 1920, authorizing 40% - 35% Increase.

10. Section 52 of the Railway Act.

11. Order-in-Council referring question of 40% - 35% Increase back to Railway Board - October 6, 1920, P.C. No. 2434.

12. Order of Railway Board confirming previous Judgment, December 10, 1920.

13. Order of Railway Board authorizing 10% Decrease, 1921.

14. Report of Parliamentary Committee - 1922, on freight rates and Crow's Nest Pass Agreement.

15. 1922 Railway Act Amendment, embodying recommendations of Parliamentary Committee - 12 - 13 Geo. V; Cap. 41.

16. Judgment of Railway Board, result of general investigation throughout Canada - 1922.

17. Order in Council suspending Crow's Nest Pass Agreement until July 6, 1924 - P.C. No. 1219.

18. Judgment of Railway Board of ~~September 17~~ October 14, 1924, overriding Crow's Nest Pass Agreement.

19. Stated questions on which Appeal to Supreme Court of Canada is being taken.

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60 - 61 VICTORIA

CHAP. 5.

An Act to authorize a Subsidy for a Railway through the Crow's Nest Pass.

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C 49993

60-61 VICTORIA.

CHAP. 5.

An Act to authorize a Subsidy for a Railway through the Crow's Nest Pass.

[*Assented to 29th June*, 1897.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Subsidy to the Canadian Pacific Railway Co. for railway through Crow's Nest Pass.

1. Subject to the conditions hereinafter mentioned, the Governor in Council may grant to the Canadian Pacific Railway Company a subsidy towards the construction of a railway from Lethbridge, in the district of Alberta, through the Crow's Nest Pass to Nelson, in the province of British Columbia (which railway is hereinafter called "the Crow's Nest Line,") to the extent of eleven thousand dollars per mile thereof, and not exceeding in the whole the sum of three million six hundred and thirty thousand dollars, payable by instalments on the completion of each of the several sections of the said railway of the length respectively of not less than ten miles, and the remainder on the completion of the whole of the said railway; provided that an agreement between the Government and the Company is first entered into in such form as the Governor in Council thinks fit, containing covenants to the following effect, that is to say:—

Agreement to be entered into.

Covenants therein.

On the part of the Company:

(*a.*) That the Company will construct or cause to be constructed, the said railway upon such route and according to such descriptions and specifications and within such time or times as are provided for in the said agreement, and, when completed, will operate the said railway for ever;

(*b.*) That the said line of railway shall be constructed through the town of Macleod, and a station shall be established therein, unless the Governor in Council is satisfied by the Company that there is good cause for constructing the railway outside the limits of the said town, in which case the said line of railway shall be located and a station established at a distance not greater than five hundred yards from the limits of the said town;

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(*c.*) That so soon as the said railway is opened for traffic to Kootenay Lake, the local rates and tolls on the railway and on any other railway used in connection therewith and now or hereafter owned or leased by or operated on account of the Company south of the Company's main line in British Columbia, as well as the rates and tolls between any point on any such line or lines of railway and any point on the main line of the Company throughout Canada, or any other railway owned or leased by or operated on account of the Company, including its lines of steamers in British Columbia, shall be first approved by the Governor in Council or by a Railway Commission, if and when such Commission is established by law, and shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid;

(*d.*) That a reduction shall be made in the general rates and tolls of the Company as now charged, or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise, upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William and all points east of Fort William on the Company's railway to all points west of Fort William on the Company's main line, or on any line of railway throughout Canada owned or leased by or operated on account of the Company, whether the shipment is by all rail line or by lake and rail, such reduction to be to the extent of the following percentages respectively, namely:—

Upon all green and fresh fruits, 33⅓ per cent;

Coal oil, 20 per cent;

Cordage and binder twine, 10 per cent;

Agricultural implements of all kinds, set up or in parts, 10 per cent;

Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe-fittings, nails, spikes and horse shoes, 10 per cent;

All kinds of wire, 10 per cent;

Window glass, 10 per cent;

Paper for building and roofing purposes, 10 per cent;

Roofing felt, box and packing, 10 per cent;

Paints of all kinds and oils, 10 per cent;

Live stock, 10 per cent;

Wooden ware, 10 per cent;

Household furniture, 10 per cent;

And that no higher rates than such reduced rates or tolls shall be hereafter charged by the Company upon any such merchandise carried by the Company between the points aforesaid; such reductions to take effect on or before the first of January, one thousand eight hundred and ninety-eight;

(*e.*) That there shall be a reduction in the Company's present rates and tolls on grain and flour from all points on its main line, branches, or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds, to take effect in the

60 following

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following manner:—One and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety-eight, and an additional one and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety-nine; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid;

(*f.*) That the Railway Committee of the Privy Council may grant running powers over the said line of railway and all its branches and connections, or any portions thereof, and all lines of railway now or hereafter owned or leased by or operated on account of the Company in British Columbia south of the Company's main line of railway, and the necessary use of its tracks, stations and station grounds, to any other railway company applying for such grant upon such terms as such Committee may fix and determine, and according to the provisions of *The Railway Act* and of such other general Acts relating to railways as are from time to time passed by Parliament; but nothing herein shall be held to imply that such running powers might not be so granted without the special provision herein contained;

(*g.*) That the said railway, when constructed, together with that portion of the Company's railway from Dunmore to Lethbridge, and all lines of railway, branches, connections and extensions in British Columbia south of the main line of the Company in British Columbia shall be subject to the provisions of *The Railway Act*, and of such other general Acts relating to railways as are from time to time passed by Parliament;

(*h.*) That if the Company or any other company with whom it shall have any arrangement on the subject shall, by constructing the said railway or any part of it, as stipulated for in the said agreement, become entitled to and shall get any land as a subsidy from the Government of British Columbia, then such lands, excepting therefrom those which in the opinion of the Director of the Geological Survey of Canada (expressed in writing) are coal-bearing lands, shall be disposed of by the Company or by such other company to the public according to regulations and at prices not exceeding these prescribed from time to time by the Governor in Council, having regard to the then existing provincial regulations applicable thereto; the expression "lands" including all mineral and timber thereon which shall be disposed of as aforesaid, either with or without the land, as the Governor in Council may direct:

(*i.*) That if the Company or any other company with whom it shall have any arrangement on the subject shall, by constructing the said railway or any part of it as stipulated for in the said agreement, become entitled to and shall get any lands as a subsidy from the Government of British Columbia which in the opinion of the Director of the Geological Survey of Canada (expressed in writing) are coal-bearing lands, then the

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Company will cause to be conveyed to the Crown, in the interest of Canada, a portion thereof to the extent of fifty thousand acres, the same to be of equal value per acre as coal lands with the residue of such lands. The said fifty thousand acres to be selected by the Government in such fair and equitable manner as may be determined by the Governor in Council, and to be thereafter held or disposed of or otherwise dealt with by the Government as it may think fit on such conditions, if any, as may be prescribed by the Governor in Council, for the purpose of securing a sufficient and suitable supply of coal to the public at reasonable prices, not exceeding two dollars per ton of two thousand pounds free on board cars at the mines.

And on the part of the Government, to pay the said subsidy by instalments as aforesaid.

Company to carry out agreement.

2. The Company shall be bound to carry out in all respects the said agreement, and may do whatever is necessary for that purpose.

Issue of bonds.

3. In order to facilitate such financial arrangements as will enable the Company to complete the railway as aforesaid without delay and to acquire and consolidate with it the railway from Dunmore to Lethbridge, hereinafter called "the Alberta Branch," which, under the authority of chapter thirty-eight of the statutes of 1893, it now operates as lessee, and is under covenant to purchase, the Company may issue bonds which will be a first lien and charge and be secured exclusively upon the said Alberta Branch and Crow's Nest Line together in the same way and with the same effect as if both the said pieces of railway to be so consolidated were being built by the Company as one branch of its railway within the meaning of section one of chapter fifty-one of the statutes of 1888, and that section shall apply accordingly, such first lien to be subject to the payment of the purchase money of the Alberta Branch, as provided for in the said covenant to purchase.

OTTAWA: Printed by SAMUEL EDWARD DAWSON, Law Printer to the Queen's most Excellent Majesty.

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(2)

Excerpt

from

THE WAR MEASURES ACT - 1914

(5 Geo. V. - Cap. 2)

SECTION 6. Special powers of Governor in Council.

The Governor in Council shall have power to do and authorize such acts and things, and to make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada: and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:-

(a) censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;

(b) arrest, detention, exclusion and deportation;

(c) control of the harbours, ports and territorial waters of Canada and the movements of vessels;

(d) transportation by land, air, or water and the control of the transport of persons and things;

(e) trading, exportation, importation, production and manufacture.

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(f) appropriation, control, forfeiture and disposition of property and of the use thereof.

2. All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation.

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C 43999

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

Judgments, Orders, Regulations, and Rulings.

JANUARY 8, 1924.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. VII **Ottawa, January 8, 1918** **No. 20**

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"A."

FILE No. 27840.

Application by Canadian railway companies for a recommendation to the Governor in Council under the War Measures Act for a general advance in freight and passenger rates.

JUDGMENT.

THE CHIEF COMMISSIONER:

The first application filed was that of the Canadian Northern Railway Company on behalf of itself and all other railway companies operating in Canada. Applications largely similar in form and all having the same object have since been filed by the Toronto, Hamilton and Buffalo, Grand Trunk, Grand Trunk Pacific, Pere Marquette, New York Central, Michigan Central, Canadian Pacific, Kettle Valley, and Great Northern Railway Companies.

The grounds upon which the applications were made are stated shortly in the Canadian Northern Railway's application, as follows:—

> "Nothing is more essential to the welfare of Canada, whether considered in its own interests or as a part of the Empire, than that the railways operating within its borders should be in a position to respond immediately and effectively to the fullest demands made upon them, either by the general commerce of the country or in connection with the defence of the realm.
>
> "Every industry, whether engaged in war preparation or in the manufacture of commercial commodities, and every individual in Canada is affected, either directly or indirectly, by the efficiency or inefficiency of transportation facilities, and while at the present time, owing to scarcity of skilled labour and other causes due to the war, it may not be possible to maintain the transportation service in a condition of highest efficiency, it is an imperative duty on the part of every one to see that the service is adequately sustained.
>
> "The applicants claim that under the present revenues and rates applicable to their enterprises it is impossible to adequately sustain their service, to make needed betterments, or to meet the enormous decreases in net operating income attributable to the very substantial increased cost of fuel coal, materials, supplies, equipment of all kinds and wages entering into the maintenance and operation of their railways.

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"The applicants submit herewith a summarized statement showing that upon the Canadian Northern system alone the increase cost to it of fuel coal, materials and equipment for the ensuing year as compared with the prices in the year just closed and prepared on the assumed basis of the same quantity of business and the same volume of traffic in the two respective years will amount to over five millions of dollars; that these increases are attributable to the horizontal advance in the prices of fuel coal and other commodities purchased by the applicants in the United States and Canada as required, and are also in part attributable to increased duties, war taxes, and increased transportation costs of connecting carriers, both lake and rail, on imported materials. Since the rates of the railway companies are absolutely fixed under the Railway Act, the applicants are powerless to increase their revenue, to equalize or even to approach equalization of this increased cost in fuel coal and other commodities, and they are faced with a huge deficit in net operating income unless immediate relief is granted.

"Substantial increases in both freight and passenger rates are therefore imperatively necessary, and the emergency requires that the relief granted should be made in the most expeditious manner and with the least possible delay.

"If advances in rates be proposed and filed with the Board in compliance with its present rules governing the publication of tariffs, a long delay must necessarily ensue before such tariff publication can be prepared and made effective, and for these reasons it is deemed expedient that any advances permitted should be made by virtue of the War Measures Act and that the Board upon the passage of any Order in Council as may be recommended by the Board should permit the publication of flat percentage advances to existing tariffs by supplementary tariffs filed with the Board and that such supplementary tariffs should be published and made effective at the earliest possible moment."

The applications as originally filed were unaccompanied by notices to representative public bodies. Under the direction of the Board, notices were given. The following public hearings have taken place:—

At Victoria on June 5.
At Vancouver on June 6.
At Toronto on June 12.
At Nelson on June 16.
At Calgary on June 18.
At Edmonton on June 19.
At Montreal and Saskatoon on June 20.
At Regina on June 21.
At Winnipeg on June 22.
At Fort William on June 25.

At some points the application has been opposed without qualification; at other points a qualified opposition has been raised; while at others no objection is taken.

Some of the larger shippers, in vieux of the admitted increased cost of railway service, have looked upon the increase as inevitable. The Quaker Oats Company writes that it is agreeable to such general advances in freight rates as, in the opinion of the Board, seem to be justified by conditions now existing.

The secretary of the Hamilton Board of Trade was instructed to advise this Board that no objection would be taken, provided such advance was shown to be justified, That Board was at difficulty, however, in understanding why an increase of 10 per cent, 12 per cent, or some other percentage rate was not adopted; and taking the position that, if the Railway Board determines that the railways are entitled to an advance as a temporary measure, the privileges be confined to some specific, definite time. The suggestion made was a year, and at the end of that time the present rates should automatically come into effect.

Mr. Georgeson, who appeared for the Calgary Board of Trade, thus states the position of his Board:—

"Calgary will not submit any evidence on this question. It agrees that the cost of operation has increased, particularly in the items of fuel and wages. We have no means of knowing whether the proposed increase is necessary or not. The Commission can secure the necessary evidence from the railroads, and we will leave the matter in your hands for adjustment. We cannot tell whether 5 per cent or 25 per cent is sufficient. We have no means of offering any evidence. We do agree to the general principle that there are reasons why there should be an increase of rates."

The submission of the Toronto Board of Trade is as follows:—

"On behalf of interested members this Board submits that the transportation service generally has been and is at present inadequate, and it is feared that owing to the financial position of certain companies, lacking materials and equipment at a greatly increased cost, conditions will not improve unless the necessary capital is expended to meet these requirements and it is imperative that immediate action be taken to meet the emergency.

"To this end I am instructed to state that if the Board of Railway Commissioners decides that the exigencies of the situation may best be met, and the required service provided and maintained, by granting an increase in rates not exceeding 15 per cent, this Board will not offer opposition thereto provided:—

"1. That coal and coke and such articles or commodities as are of little value and carry relatively heavy freight charges, such as crushed stone, sand, clay, gravel, etc., shall be exempt therefrom;

"2. That tolls covering such regulations and services are switching, weighing, demurrage, refrigeration, car service, transfer, diversion, reconsigning, heating, storage, elevation, or other special services, shall be exempt therefrom;

"3. That the advance in rates be distinctly considered as an emergency measure and that such rates shall remain in effect for a limited period to be determined by the Board of Railway Commissioners."

The Quebec Board of Trade say:—

"The demand of the railway Companies of Canada to be allowed to increase their freight and passenger tariffs by 15 per cent, has been referred to the chairman of our transportation committee, Mr. Alex. Hardy, for study. In accordance with his report, with which our council concur, and on account of his long experience in such matters, and in view of the fact that the cost of coal and all operating expenses has greatly increased—temporarily we hope—we would recommend that the Railway Commission should allow an increase in freight and passenger rates of 10 per cent for one year from the date of its going into force, upon the following conditions:—

"1. That the increase shall be for one year only, and that at the expiration of that time the present tariffs shall again come into force;

"2. That so as to indicate its temporary nature and to avoid the necessity of making new tariffs, the railways shall be authorized for 12 months to add 10 per cent at the foot of all their freight bills and to collect 10 per cent extra on all tickets sold;

"3. We do not consider that the extra flat rate of 15 cents per ton upon coal, irrespective of distances, is equitable. The 10 per cent should apply upon this item also, instead of 15 cents per ton, but not to exceed 15 cents per ton in any case;

"4. We would recommend that no increase be allowed on wheat or other grain to *Canadian seaports* for export. We consider this imperative, so as to

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put a stop to the lamentable diversion of our western grain trade to New York and other United States seaports, which last year took away two-thirds of our western grain trade."

Mr. Fisher, who appeared for the Edmonton Board of Trade, is reported as follows:—

"The matter was discussed fully by the committee and the council of the Board and at a very largely attended meeting. This was the result of the general meeting, on June 12, and I will submit the resolution to you:—

"Resolved that while some general advance in railway tariffs may prove necessary as a temporary measure in view of the increased cost of operation, this Board had been unable to elicit from the Canadian Freight Association any information as to the relationship between the increase that has taken place in the cost of operation and the increase in revenue which would result from the proposed general increase in tolls. Consequently it is urged that such increase should be permitted only after it has been clearly shown to the satisfaction of the Board of Railway Commissioners that such increase is necessary to enable the railways to continue to afford satisfactory service to the public; and that it be clearly understood that any increase permitted is of a purely temporary character owing to abnormal conditions and not to be continued in effect after conditions have become normal."

"You will see there, sir, that the Board does not take exception to the idea of an advance in rates, if necessary."

"The CHIEF COMMISSIONER: All you want to see is that it is kept down to a fair figure."

Mr. FISHER: Yes, just what is absolutely necessary."

Mr. Tilston, who appeared with Mr. Hutchison for the Montreal Board of Trade, read into the record the following resolution, as representing the views of that Board:—

"I beg to say that the council of this Board having requested its Transportation Bureau Committee and the several branch associations of the Board to consider and report regarding the application of the railways to the Board of Railway Commissioners for a recommendation to the Governor General in Council for the passage of an Order in Council under the War Measures Act, 1914, permitting a general advance of 15 per cent on existing tariffs covering freight and passenger tolls, including a specific advance of 15 cents per ton on coal, a joint meeting of the Transportation Bureau Committee and representatives of the Corn Exchange Association, the Wholesale Drygoods Association, the Metal and Hardware Association, the Lumber Association, the Produce Merchants' Association and the Wholesale Liquor Association was held this afternoon, when the joint views were embodied in a draft resolution, which draft was considered by the council of this Board at a special meeting held this afternoon, when after full consideration of the same, it unanimously adopted it as follows for communication to your Board:—

"Resolved: That the council of the Montreal Board of Trade, recognizing the need of an improved service and the need of the railway companies for financial assistance to enable them to provide the necessary equipment and additional facilities as well as to cover the increased costs of labour, coal and supplies, will not oppose the application of the railway companies for a general advance on existing tariffs covering freight and passenger tolls, except with regard to the following conditions:—

"1. That the amount of the increase shall be such as the Board of Railway Commissioners is convinced from evidence submitted is necessary under present abnormal conditions, but that it shall not exceed 15 per cent."

"I may say, Mr. Chairman, that this was merely included in the resolution, so that it would be in the record."

"2. That such increases do not apply to terminal rates, charges and allowances or absorptions and rates and charges for demurrage, weighing, switching, car service, transfer, diversion, reconsignment, refrigeration, icing, storage, elevation, and other transit or special services."

"3. That owing to the general hardship involved by the current high prices that no advance be made as applying to coal and coke, and that consideration be given as to the wisdom of applying advances to low grade commodities such as crushed stone, sand, clay and gravel, etc., etc."

"We mean that perhaps the Board might, in taking different districts, think that in some cases on low class commodities 15 per cent would be too high, that perhaps under some conditions it might be too high to add 15 per cent on crushed stone, sand and gravel.

"4. That the advance be distinctly regarded as a measure of emergency, and therefore that any advance that may be granted shall apply for a period of one year only, when any extension of that period which might then be asked for by the railway companies could, if conditions warrant it, be considered by the Board of Railway Commissioners."

"We thought that if advance was granted by the Board there should be a fixed limit, not an indefinite limit, and that if conditions were not such that the roads could operate under the old tolls they could make another application to the Board at some future time."

"I am to add that the council is of opinion that in the case of contracts entered into by shippers prior to the notice of application by the railway companies for an advance in their rates, in event of your Board granting any advance, consideration should be given to such contracts."

Mr. Harrington, who appeared for the Retail Coal Dealers, submitted the following resolution of his association:—

"We realize the necessity of granting to the applicants at this time a substantial increase in freight and passenger rates, so that an efficient service may be assured by them.

"We would, however, respectfully present:—

"(*a*) That inasmuch as the applicants have invoked the War Measures Act, so that an Order in Council may relieve them from the regulations prescribed by the Railway Act, that any increase which your honourable Board may in its wisdom deem necessary to the carrying on of its enterprises set forth by the applicants, must be made subject to the duration of such War Measures Act.

"(*b*) That assurances must be given by the applicants that the revenue to be derived from such increase in rates shall be extended by the applicants in the securing and contributing of adequate services, by the immediate acquisition of the necessary materials, supplies and equipment, and in the payment of the necessary wages to competent labour to maintain such equipment in the highest possible state of efficiency.

"(*c*) That both anthracite and bituminous coal be included in the percentage advance of 15 per cent, with a maximum charge of 15 cents per ton, and not subjected to the specific charge of 15 cents per ton, as asked for by the applicants", and I have added to the above, and subject to a further reduction by participation by Canadian Lines in such increase in coal traffic as may be authorized by the United States Interstate Commerce Commission."

Mr. Sclanders, who appeared for the Saskatoon Board of Trade, stated that the shippers of Saskatoon recognized that it would be an economic fallacy of the most dangerous kind to starve our transportation companies in a country where transportation is one of our fundamental economic problems; but, at the same time, he very

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reasonably stated that he wanted to be sure that the increase that is demanded is reasonable.

Mr. Sclanders also pointed out that with his present information he was unable to reconcile the drastic demand of 15 per cent increase in freight and passenger rates in face of the increased net earnings of the Railway Companies.

Mr. Sclanders finished his argument with the following statement:—

"Therefore, Mr. Chairman, we would be exceedingly glad if the Board of Railway Commissioners would investigate this situation, and thereafter inform us what in their judgment the railway companies ought to get. If an increase in freight rates and passenger rates is necessary in your judgment after investigation, and if that increase is necessary for the maintenance of our railways in a reasonable degree of efficiency, why, I think you will find that the West will not be behind. We are willing to bear our own share of the burden, but we do not wish to bear too much. We do not wish to have our fundamental economic handicap unnecessarily accentuated."

Mr. McDonald, who appeared for the Regina Board of Trade, said:—

"Referring to this application and the table indicating the increase, we desire to emphasize that if the increase applied for by the Railway Freight Association is necessary in order to meet the increased charges as referred to by Mr. Hinton, this Board has no objection to the raise. We are of opinion that under existing conditions, however, the increase is not justifiable, inasmuch as there are few organizations that are in a position to profit in consequence of the war to the extent of the transportation companies. We believe that that should be borne in mind. We believe, too, that that is borne out by the weekly and monthly statements of the business by the various railway companies."

"The position the Board desires to take is that the Railway Commission provide itself with figures obtained from absolute audits of receipts and expenditures of the various railway companies, and if in the opinion of the Commission the increase is necessary, then we concur."

The Board further takes the position that whatever increase, if any, the Board may decide upon, it should be based upon conditions prevailing under the freight schedules as of the 25th April, 1917.

"Of course it is to be understood as a war measure."

"The CHIEF COMMISSIONER: Purely temporary?

"Mr. MCDONALD: To terminate at the expiration of the war. That is about all we care to say with respect to it."

Mr. Starkey, who appeared for the Nelson Board of Trade, urged that if the Commission decided that the railway companies were entitled to an advance, it should not be put upon a 15 per cent basis; that the effect of a flat increase would be to put Nelson at a still greater disadvantage in its competition with coast cities. Mr. Walsh representing the Canadian Manufacturers Association, at the hearing at Winnipeg, read into the record the following resolution:—

"The Canadian Manufacturers' Association will not oppose such increase in rates, not exceeding 15 per cent, as the Board of Railway Commissioners may consider proper, with the exception of tariffs covering coal, coke, milling-in-transit and similar services, and after giving proper consideration to such articles as are of little value and carry very heavy freight charges, like crushed stone, sand and gravel, on the following conditions:—

"1. That it be considered strictly as a war measure."

"2. That the Board can satisfy themselves that this increase will enable the railways to provide an adequate service throughout."

"3. That it shall remain in force for a limited period, to be determined by the Board."

Mr. Ingram representing the Canadian Manufacturers' Association of Western Canada, concurred in this resolution and dwelt upon paramount importance of equipment and service.

Mr. Benson, speaking for the Winnipeg Implement Association, said:—

"We feel that we can safely leave this in the hands of the Board. There is no question but what the prices of everything have been advanced, and this is, according to our interpretation, a war measure. We feel that the request of the railway companies should be granted, provided that your Board feels it is necessary for them to have 15 per cent. But we are satisfied to leave the matter of percentage of increase in your hands.

The general effect, of the above is a recognition of a change in conditions brought about by the war, of increased costs, and the necessity of some action. Other public bodies opposed the application "in toto" and objected to any relief being accorded to the railways. The Board of Trade of Duncan, B.C., passed the following resolution:—

"Resolved that this Board of Trade protest against any increase in freight rates west of the Great Lakes, inasmuch as the last year was the record of any year for Canadian railways, and the present high freights form a serious bar to the economic development of the West."

The Revelstoke Board of Trade expressed themselves as opposed to any advance being allowed, either directly or indirectly, claiming that the statements of earnings do not warrant any increases whatever.

The Vancouver Board of Trade was represented at the sittings by Mr. Shallcross, who submitted, among other matters, the following resolution:—

"That the Committee is opposed to the application of the railway companies for an increase of 15 per cent on freight and passenger rates."

"In support of their protest the committee submits the following, and urges your earnest consideration thereof:—

"The committee assumes that the main justification for an application to increase rates at this time would be because of a reduction in the net revenues or an increase in the operating ratio sufficient to gravely threaten the financial standing of the railways.

"From the Government blue books, the committee obtained the following figures:—

	Gross Earnings.	Net Earnings.	Operating Ratio.
1913..	$256,702,703	$ 74,691,012	70·9
1914..	243,083,539	64,108,280	73·6
1915..	199,843,072	52,111,972	73·9
1916..	261,888,657	81,346,394	68·93
	$961,517,971	$272,257,658	287·33
Average per annum..	$240,379,492	$68,064,414	71·83
1916..	261,888,657	81,346,394	68·93
	*$21,509,165	†$13,281,980	‡2·90

* Increase for 1916 over average.
† Increase. ‡ Decrease for 1916 over average.

"From the foregoing it will be seen that for the four years 1913 to 1916, inclusive, the gross and net earnings show a marked increase, whilst the operating ratio shows a decrease of 2·90 per cent in 1916 compared with the four years' average.

"In the foregoing circumstances the committee had hopes that the railway companies would consider a reduction both in the passenger and freight rates.

"To a very substantial extent the freight charged the people of Vancouver by the railways emanates from eastern seaports or adjacent points. An increase

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of 15 per cent from these points would probably not be urged by the railway companies if the people of Vancouver were permitted to make use of the Panama canal. As the Board is no doubt aware, this waterway can only be used by the residents of the Canadian Pacific coast with the consent of the Dominion Government, by which we mean the appointment of a Canadian customs officer at New York. That this appointment be made, has been requested by the Board of Trade on many occasions, and as many times denied, by the Dominion Government.

"If an increase in the freight rates can be justified by the railways then we urge that this increase should not be made to apply in the local rates in British Columbia. The transportation committee would remind the Board that in its judgment in the Western rate case the Board applied a standard scale to the Pacific division, approximately 30 per cent higher than that applied on the Prairie.

"In these circumstances the committee feels that this province is already carrying more than its share of the load."

Mr. Shallcross also objected to any increase whatever in passenger rates, basing his objection on the ground that passenger rates in British Columbia were four cents a mile as compared with three cents a mile east of Calgary.

Specific objections to the increase were also taken at Vancouver on behalf of the lumber trade. Among other matters it was urged that if any advance should be allowed on a percentage basis, present differentials existing between the different producing centres would be upset; but that if an increase had to be given the increase should be a flat rather than a percentage increase, the effect of which would be to exaggerate existing differentials. It was strongly urged for the Coast Mills that their present relative position with other producing centres be not disturbed. Great stress was also laid on the fact that much lumber was ordered in advance and accepted on the basis of the old rate, and that a reasonable time should be allowed the trade within which to complete existing contracts so accepted.

Mr. Adolph took a similar ground on behalf of the Interior Mills of British Columbia, arguing in favour of a flat advance, and that slabs and wood refuse used for fuel ought to be treated in the same manner as coal.

Mr. Campbell, on behalf of the Fruit Growers, protested strongly against advance in the Canadian fruit rate on account of no similar advances in American rates.

At the Toronto sittings special objections were raised by dealers in crushed stone and sewer pipes, and by canners, fruit growers, and livestock interests. Mr. White, who appeared for the livestock interests relying on the results obtained from Canadian Pacific operations as an answer to the application.

The application was also opposed at Toronto by the Board of Trade of Kitchener and the Kitchener Manufacturers' Association. The position taken by the Association, along with the executive of the Board of Trade, was that assistance should come from the Government in the form of a loan, or something of that nature, rather than a tax on the shipper. Mr. Moody, who appeared on behalf of the Association, stated that in his belief some of the railway companies required assistance, but insisted that it should not be given through an advance in rates. The following resolution was put on the record:—

"That in view of the reports of the Commission appointed by the Dominion Government to investigate the railway situation in Canada, and the necessity pointed out in both the minority and the majority reports, for the Government of Canada to take over the Canadian Northern Railway, the Grand Trunk Pacific Railway and the Grand Trunk Railway:—

"Be it resolved that this Association go on record as against any increase in freight or passenger rates as asked for by the railways of Canada, at least until the question of Government ownership of railways is finally decided.

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"Should, however, the Railway Commissioners of Canada decide that an increase in freight and passenger rates is required to provide equipment for the railways of Canada in order that proper railway service may be given to the Canadian public, and if possible a recurrence of conditions as they existed in the winter of 1916-1917 may be avoided.

"That the proposed increase in freight and passenger rates of 15 per cent, or whatever percentage of increase in these rates may be required in the judgment of the Railway Commissioners of Canada, be levied in the form of a Government tax, to be placed at the disposal of the Railway Commissioners of Canada, to provide a reserve of railway equipment, to be leased by the Railway Commissioners to the railways requiring additional equipment."

Mr. Moody also appeared at the sittings in Montreal, when he stated:—

"After making my report to the Kitchener Manufacturers' Association, Mr. Chairman, they asked me to return and explain their opposition to the manner in which this grant is being asked for by the railways.

They do not wish to be misunderstood in the fact that they realize that the railways must have assistance, but it is the manner in which this money is to be derived; that is where they get their objection.

They claim that the railways are a national interest, and that they must be maintained. They also feel that while the railways are of national benefit, the grant or loan or assistance should come from the Dominion of Canada at large, and should be supplied out of the general funds. That would eliminate a whole lot of difficulties and details. The Government would be simply assisting the railways to the extent they are asking, and those that do not require it would not need to be assisted.

"I made my report to the executive as complete as any one could be expected to do, from the applications that were set forth at Toronto.

"What I understand is that there are two of these railways badly in need of assistance, and that it should come immediately.

"If these two railways could be assisted out of the general funds, we as manufacturers would not be saddled with what you might call a doubled up percentage .....

"..... The only thing we are looking for is that these railways will be nationalized probably before the time expires during which these people are asking for this advanced rate."

Mr. Waldron appeared at the Toronto sittings on behalf of the United Farmers of Ontario, when he stated that it was perfectly clear that where railway freight rates are regulated, rates must be permitted to rise according as commodities and labour rise in value. He stated that his clients regarded with great apprehension the presentation of the demand in the manner in which it was presented that day. In short, Mr. Waldron challenged the right of the Board to make any recommendation whatever under the War Measures Act, and that the present application was not such as was contemplated by Parliament when passing that statute. He also claimed that the additional rates would add the sum of $39,000,000 a year to the freight charges collected by the railways, and that probably of that sum more than eighteen and one-half million dollars would accrue to the benefit of the Canadian Pacific Railway, $5,321,000 to the Canadian Northern, and $5,873,256 to the Grand Trunk Railway, with the result that, in his view, one system requiring no assistance would, under the present application, receive $18,500,000 in order that justice might be done the Canadian Northern and the Grand Trunk.

On being asked by the Assistant Chief Commissioner how he would work it out; whether he would allow the increase to the Grand Trunk and advise the people that they should ship by the road which has the higher rate, Mr. Waldron answered:—

"I do not profess to offer a solution of that great difficulty, Mr. Chairman. One solution is offered by Sir Henry Drayton and Mr. Acworth, another by Mr. Smith.

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"What you are asked to do here is to proceed and solve it in another way which I understand these gentlemen refuse to accept. That is one of the obstacles and one of the objections which I make to this application."

At Winnipeg, Mr. Martin, who appeared for the Board of Trade, objected entirely to any increase at all. He dwelt on the bad effect of paralleling, the fact that in many places railways were altogether too close, and that in other sections there were great distances without lines. He argued that, as a result the revenues of the companies were greatly affected, pointing out that with lines constructed only five miles apart or less, as is the case in a good many places, of necessity there is not tthe same traffic offering as would have been the case had the distance between them been fifteen or twenty miles. Mr. Martin also dwelt upon the large earnings of the Canadian Pacific. His first suggestion as to adequately dealing with the question was the adoption of the majority report of the Royal Commission.

Mr. Mylius, who objected, took the position that there was no justification for any increase, and as a remedy believed that it would pay the Government to take over the Canadian Northern and the Grand Trunk Pacific and tear up many hundreds of miles of the Grand Trunk Pacific rails, and put those rails down in cross-sections to give lots of feeder for the two then existing lines, the Canadian Northern and the Canadian Pacific. He also made a special plea for the western shipper.

Mr. Chevrier, who appeared for the Retail Merchants' Association, took the stand that the Government ought to loan the necessary funds to the railways, and objected entirely to any increase in rates.

Mr. McKenzie, who appeared with Mr. Henders for the Grain Growers' Association of Manitoba, was alarmed at the depopulation of the land, which he thought an increase in the rates would add to. He made an interesting study of Canadian Pacific figures and successes, dwelt on the hardship to the farmers that any increase would entail, and thought that the Government should now help the Canadian Northern and the Grand Trunk Railway Companies, rather than grant any increase.

On the question of the position of the Canadian Pacific Railway, Mr. McKenzie argued that the company's general balance sheet of December 31, 1916, showed a total liability of but $602,297,912.75. In his analysis he transfers reserves, premiums on ordinary stock sold, different reserves and appropriations, the net proceeds of lands and townsites, the surplus revenue from operation, and surplus in other assets, from the liability to the asset side of the balance sheet. It is, of course, obvious that this transfer is quite correct in at least some of these items.

With these transfers, Mr. McKenzie increased the assets shown in the balance sheet and amounting to $986,768,543.90, by the sum of $384,488,631.15, making a grand total of $1,371,257,175.05. In like manner, of course, these deductions from liability, were used by Mr. McKenzie in reducing the total liability shown by the company's balance sheet to the amount above stated.

No answer is made with reference to the large increase of cost and the position of the other lines; but Mr. McKenzie's position may shortly be stated as follows: Mere increases in cost, never mind how great, cannot be looked upon as conclusive or necessitating a rate increase. The increase in gross must also be considered. If the increases in gross revenue are sufficient to absorb the increased cost, so as to still afford the company a reasonable return on its capital and for the service rendered, the increases having been taken up by the increased business the public afforded the company, no increases whatever should be made; that an increased rate, to be effective, must be common to all companies; and that the effect of the increase asked would be to give the Canadian Pacific Railway Company some $18,000,000 of added revenue, which it does not require, while the other applicants, that need assistance, would get a little better than $5,000,000 a piece.

Mr. Pitblado appeared for the Government of the province. He opposed the application with regard to the financial position of the Canadian Pacific, and endorsed Mr. McKenzie's argument in this connection.

Mr. Pitblado challenged the jurisdiction of the Board to make a recommendation to the Governor in Council under the War Measures Act. He said:—

"But it is beside your powers for the railway companies to ask you to recommend to the Governor in Council what they should do under the War Measures Act, and I submit that the responsibility and power and control is in the Governor in Council, and that the railway companies have no right to ask you to do anything."

Mr. Pitblado also submitted that the railways in their application were attempting to over-ride agreements. The first agreement referred to was the Crow's Nest Pass agreement, made by the Canadian Pacific with the Dominion government. The agreement is printed in the Dominion Acts 60-61 Victoria, chapter 5. This agreement makes provisions that in consideration of $11,000 a mile paid to the Canadian Pacific Railway Company, not exceeding in the whole $3,637,000, the rates should be reduced on a large number of commodities.

The other agreement referred to by Mr. Pitblado is known as the Canadian Northern Railway's agreement with the Manitoba Government, of 1901, and printed in chapter 39 of the Manitoba Statutes of that year. Under that agreement, in consideration of guaranteeing the railway company's bonds and giving them a lease of the Northern Pacific and Manitoba road, a reduced rate schedule was agreed to by the Canadian Northern.

No analysis was prepared either by the railway companies or by the contestants, as showing how the present application would conflict with these agreements.

It is only fair to say that Mr. Pitblado certainly cannot be criticised in this regard, as he did not have sufficient time at his disposal to prepare such an analysis. This the Board has been obliged to do, and we find that there is no doubt that these agreements are material and have to be considered.

Mr. Phippen, who appeared for the Canadian Northern, in answering Mr. McKenzie, made the statement that if his company had been assisted in the same way that the Canadian Pacific had been assisted, it would require no increase in rates whatever; but insisted that, if the railway situation was taken care of by Government aid, as suggested, that in the place of loans to the amount necessary, the railways ought to get cash gifts from the Government, as beyond all question their operation was costing them just so much more, and that they were unable to make any proper or satisfactory return on their activities.

Under such circumstances, under Mr. Phippen's submissions, the mere advance of moneys to meet the necessities of the companies would simply mean a change of creditors and work no real financial improvement.

The Canadian Pacific Railway Company was not represented at this hearing. They asked, however, for the opportunity to put in a written reply. This reply was filed with the Board on Augusut 17, 1917, a copy being furnished to Mr. Pitblado. The material submissions made on behalf of the company are as follows:—

"1. *Extent of Aid to the Canadian Pacific.*"

"The extent of the aid given to the Canadian Pacific has been stated in a very misleading way both in the Drayton-Acworth report and by the opposants to this application, including counsel for the Canadian Northern Railway Company.

"The Canadian Pacific received as a term of its contract in consideration of work done and obligations to be performed—perpetual obligations of enormous magnitude—$25,000,000 in cash, certain portions of railway constructed by the Government, and 25,000,000 acres of land. The real value of these considerations must be ascertained as of the time of the contract or the completion of the works, not at a period over thirty years later. The aid is what was

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given, not what the company were able, largely through their own efforts, to make it worth to it. The land in question was valued at ten cents an acre in 1881. The minimum sale price was fixed by the Government in 1884 at $1.25 per acre; a large block of land was offered by the company to the Government in 1885 for $2 an acre, and in 1886 the Government accepted in full of its claim against the company land sufficient to cover the amount due at the rate of $1.50 per acre. The so-called subsidy, which was nothing more nor less than the consideration for the undertaking of these huge obligations imposed upon the company by the Crown, was worth at the time of the contract, $2,500,000; in 1884, $31,250,000; in 1886, $37,500,000. It would be almost as logical and correct to say that the value of the raw product to the producer is identical with the value of the finished article to the consumer as to contend that the amount received by the company from land sales in the last thirty odd years plus the present value of the unsold lands as shown by the company's books represents what was given by the Crown to the company in 1881.

"Another obviously inaccurate fallacy in the figures employed by counsel for the province and his associates is that no allowance is made for the enormous and expensive organization which the company was compelled to establish and maintain to sell and colonize its lands. It is inferentially suggested that all the company did was to wait for the purchasers and that no expense to it was involved. No regard is had for the sums expended by the company in exploiting Canada and inducing settlers, all of which would require to be deducted from the proceeds of lands sold and the value of lands remaining unsold.

"2. *The Company's Reserves.*

"What the company has accumulated in reserves is not an element in determining this application. All its earnings were made from the sale of transportation at legal rates established and approved by the board and if, because of the volume of business transacted and its efficiency in conducting its operations, a surplus has been built up, no argument can, it is submitted, be based upon that fact, especially when all that is asked is that additional earnings, less than sufficient to meet the additional expenditures may be secured. If the value of the elements necessary to produce the commodities to be sold has increased, it could fairly be asked that the sale price of the commodity be increased proportionately.

"3. *The Company's earnings have not been excessive.*

"The actual cash invested in the Canadian Pacific railway (exclusive of the cost incurred by the Government in constructing portions built by it) was on June 30, 1916, $789,115,096, the net earnings from railway operations were $48,839,101 and the percentage of earnings on cash invested was 6·19. For the years ending June, 1914, and 1915, the percentages were 5·39 and 4·23 respectively.

"In other words the company has not always earned bare interest on the money put into the railway and has never earned enough to be accused of excessive returns.

"The value of the company's railway enterprise is in excess of $1,000,000,000 and its shareholders have received dividends from railway operations and special income of 10 per cent per annum or $26,000,000. The return to the company shareholders from the use of its facilities by the public is less than 2·6 per cent of the value of the company's undertaking. Can it be suggested that this is an inordinate or even an adequate return?

"4. *Additional Expenses.*

"The company closed the year ending 30th June, 1917, with gross earnings from freight and passenger business of $140,759,986 and net earnings of $48,157,758.

"The increased expenditure for wages, fuel, etc., for 1917-18 over 1915 as using the same requirements as 1915, *though they will be 20 per cent greater,* will be $19,376,922. These figures are larger than those contained in the schedule attached to the application made in April and are the ascertained costs due to the increase in the prices of material and labour as follows:—

"General purchases	$ 4,869,504 or 60·3%
Fuel purchases	6,659,441 or 82·3%
Tie purchases	695,635 or 47%
Stationery purchases	502,340 or 60%
Labour	6,650,000 or 18%
Total increase	$19,376,922 or 35·8%

"The granting of the eight hour day to practically all employees involves an enormous and permanent increase in cost of labour.

"The increase applied for will give increased revenues based on freight and passenger business of the year of 30th June, 1917, of approximately $17,500,000. Costs and wages are still climbing rapidly and the company only asks for sufficient additional revenues to partially offset the increased costs as now ascertained.

"5. *Where will the burden fall.*

"Mr. Pitblado in his address to the Board assumed that any increase of rate would fall in the main upon the shippers in Western Canada. Unless the rates are not now relatively fair (and the Board has decided that they are) the earnings in one part of the country, as compared with another, are not a factor. The facts are not, however, as Mr. Pitblado assumes. The increase which is, of course, calculated on the gross operating revenues will fall most heavily relatively on Eastern Canada.

"The gross operating revenues for the year ending June 30, 1917, were as follows:—

"Operating revenues on lines East	$59,459,718
" " " West	81,300,267
Mileage—	
Lines East	4,827
Lines West	8,125
Gross revenue per mile on line in East	12,313
Gross revenue lines West	9,957

"6. *Necessity for Increase.*

"The position of the Canadian Pacific Railway is unique. It cannot and does not contend that the increase is necessary for it to earn its operating expenses and fixed charges, as do the Canadian Northern and Grand Trunk. Its financing has been such that its fixed charges form a smaller proportion of its obligations than with other companies. It pays 7 per cent per annum dividend to its shareholders from operating revenues. It is as essential to the credit of the company and to the credit of Canada that it earn its dividends and reasonable surpluses as it is that the Canadian Northern and the Grand Trunk should maintain their fixed charges. It cannot be said that it would be a greater calamity for Canada if the Canadian Northern Railway and the Grand Trunk Railway should go into the hands of a Receiver than it would be if the Canadian

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Pacific's financial position should be weakened. Is it not a fact that the strength and ability and willingness to earn, raise *and spend* large sums of money in improved facilities and equipment has had a vital and beneficial effect on the development of Canada and has contributed more than any other agency to the transportation necessities of the whole country. Can this condition be met and continued otherwise than by the financial strength and earnings sufficiently large to ensure a reasonable margin of safety to the investor and ample surplus for working capital. The demands on the company have been extraordinary and will no doubt continue to be. In no other way can they be met and it is submitted with respect that no other condition should be permitted to arise."

"7. *Increase on future earnings.*

"It must not be forgotten that the application has only to do with gross earnings to be secured in the future during the time the increase granted is in effect. It is obvious to all those familiar with the railway situation that the earnings cannot be maintained at their present high level and that the diminishing of the heavy shipments of munitions and general war supplies and of carriage of soldiers will have a pronounced effect on the railway companies' earnings during the succeeding year.

"There is, on the other hand, little likelihood of decreases in the cost of materials sufficient to offset decreased revenue and, in these circumstances, there is practically no ground for the hope that the increase, if allowed, will amount to anything like the figures which have been estimated. As evidence that this is so, it may be of interest to note that the gross earnings of the Canadian Pacific for the first week of August are over $400,000 short of the earnings for the same week in 1916."

I, in the first instance, deal with the objection taken by both Mr. Pitblado and Mr. Waldron that it is not within the jurisdiction of the Board to advise the Governor in Council as to what action the Government ought to take under the War Measures Act.

Speaking generally, the jurisdiction of the Board is that established by the Railway Act. The War Measures Act certainly does not confer any jurisdiction on the Board one way or the other. No request has been made to the Board by the Governor in Council to report upon the subject. Under the War Measures Act,—

"The Governor in Council shall have power to do and authorize such acts and things, and to make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:—

"(*d*) transportation by land, air, or water and the control of the transport of persons and things,"

5 Geo. V. Chap. 2, Sec. 6.

As to the great necessity of properly maintaining transportation during a time of war, there is, of course, no room for argument. My own personal view is that there is also room for improvement in the Companies' present facilities.

The application, however, is an application entirely in ease of the railway companies' finances, and not primarily, if at all, for the purpose of improving facilities and

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service. This was very frankly admitted by Mr. Hanna, one of the chief witnesses called by the Canadian Northern Railway Company.

In my view, the objection is well taken, and the application is one which ought to be considered by the Board as an application for increased rates under the provisions of the Railway Act.

I now deal with Mr. Pitblado's argument as the Crow's Nest Pass Agreement and Statute; and also the Manitoba Agreement.

Under the provisions of 60-61 Victoria, Chapter 5, the Governor in Council was authorized to grant to the Canadian Pacific Railway Company a subsidy towards the construction of the railway from Lethbridge through the Crow's Nest Pass to Nelson, to the extent of $11,000 per mile, until the sum of $3,360,000 in all had been advanced.

The Company has accepted the subsidy; the line has been completed; and the terms of the Statute have been agreed to.

The Act contains the following provisions:—

"(*d*) That a reduction shall be made in the general rates and tolls of the company as now charged, or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise, upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William and all points east of Fort William on the company's railway to all points west of Fort William on the company's main line or on any line of railway throughout Canada owned or leased by or operated on account of the company, whether the shipment is by all rail line or lake and rail, such reduction to be to the extent of the following percentages respectively, namely:—

"Upon all green and fresh fruits, 33⅓ per cent;
"Coal oil, 20 per cent;
"Cordage and binder twine, 10 per cent;
"Agricultural implements of all kinds, set up or in parts, 10 per cent;
"Iron, including bar, band, Canada galvanized sheet, pipe, pipe fittings plates, nails, spikes and horseshoes, 10 per cent;
"All kind of wire, 10 per cent.
"Window glass, 10 per cent;
"Paper for building and roofing purposes, 10 per cent;
"Roofing felt, box and packing, 10 per cent;
"Paints of all kinds and oils, 10 per cent;
"Live stock, 10 per cent;
"Woodenware, 10 per cent;
"Household furniture, 10 per cent.

"And that no higher rates than such reduced rates or tolls shall be hereafter charged by the company upon any such merchandise carried by the company between the points aforesaid; such reductions to take effect on or before the first day of January, one thousand eight hundred and ninety-eight;

"(*e*) That there shall be a reduction in the company's present rates and tolls on grain and flour from all points on its main line, branches, or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds, to take effect in the following manner: One and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety-eight, and an additional one and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety nine; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid."

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The Company has accepted the subsidy; the line has been completed; and the terms of the Statute have been agreed to.

The Act contains the following provisions:—

"(*d*) That a reduction shall be made in the general rates and tolls of the company as now charged, or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise, upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William and all points east of Fort William on the company's railway to all points west of Fort William on the company's main line or on any line of railway throughout Canada owned or leased by or operated on account of the company, whether the shipment is by all rail line or lake and rail, such reduction to be to the extent of the following percentages respectively, namely:—

"Upon all green and fresh fruits, 33⅓ per cent;
"Coal oil, 20 per cent;
"Cordage and binder twine, 10 per cent;
"Agricultural implements of all kinds, set up or in parts, 10 per cent;
"Iron, including bar, band, Canada galvanized sheet, pipe, pipe fittings plates, nails, spikes and horseshoes, 10 per cent;
"All kind of wire, 10 per cent.
"Window glass, 10 per cent;
"Paper for building and roofing purposes, 10 per cent;
"Roofing felt, box and packing, 10 per cent;
"Paints of all kinds and oils, 10 per cent;
"Live stock, 10 per cent;
"Woodenware, 10 per cent;
"Household furniture, 10 per cent.

"And that no higher rates than such reduced rates or tolls shall be hereafter charged by the company upon any such merchandise carried by the company between the points aforesaid; such reductions to take effect on or before the first day of January, one thousand eight hundred and ninety-eight;

"(*e*) That there shall be a reduction in the company's present rates and tolls on grain and flour from all points on its main line, branches, or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds, to take effect in the following manner: One and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety-eight, and an additional one and one-half cent per one hundred pounds on or before the first day of September, one thousand eight hundred and ninety nine; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned on such merchandise from the points aforesaid."

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An examination of the tariff situation on apples to a few typical points applicable at the time this Act took effect as reduced by the Act and the agreement, and the present rates established the following rates:—

To—	Contract. Cents.	Present. Cents.
Winnipeg	55	53
Regina	83	83
Medicine Hat	97	96
Lethbridge	100	100
Edmonton	123½	104
Macleod	114½	104

It will be observed that the present rates to Regina and Lethbridge are merely the rates reserved by the contract, and that in only two instances, the movements to Edmonton and Macleod, could any substantial advance be made, having regard to the terms of the contract.

This situation is not peculiar to the apple traffic. The rates applicable to the barrelled coal oil movement in carlots for Fort William are as follows:—

To—	Contract. Cents.	Present. Cents.	With 15 Per cent Increase. Cents.
Winnipeg	45½	33	39
Brandon	53	49	56
Regina	71	65	75
Swift Current	79	76	87½
Medicine Hat	88	84	96½
Calgary	96	95	109½
Lethbridge	92	90	103½
Saskatoon	93	74	85
Edmonton	120	95	109½

It will be noted than on only the first and two last items of the table is the 15 per cent advance possible. An advance to the other points, allowing the rates to go back to the contract basis, would fall very far short of the 15 per cent, which could only as above stated be allowed under the contract in the cases of Winnipeg, Saskatoon and Edmonton.

A most important movement is that of agricultural implements in carlots from Toronto. An analysis discloses the following situation:—

To—	Contract. Cents.	Present. Cents.	With 15% Increase. Cents.
Winnipeg	68½	63	72½
Brandon	80	73	83
Regina	97	87	100
Swift Current	106½	96	110½
Calgary	125½	116	133½
Saskatoon	116½	95	109½
Edmonton	148	116	133½
Lethbridge	121	110	126½

While the present schedule in each instance is below the contract price, the result again shows that in most cases no such increase as that asked could be made.

There is no doubt that there is authority for the proposition that the passage of an Act giving a new Commission, by it formed, full jurisdiction to fix just and reasonable freight and passenger rates and fares, automatically repealed previous maximum rate laws—the basis supporting such proposition, of course, being that the object of the legislature is plainly declared, namely, the fixing of just and reasonable freight and passenger rates, having proper regard, not only to the question of the reasonableness and fairness of the rate inself, but also to the principle of equality as between different districts and shippers, which would be defeated by the continuance of Special Act giving special rights to any particular district of the country, or creating rates, which by change of circumstances and conditions could not be described as just or reasonable.

I am of the opinion, however, that this principle cannot be applied in the present instance.

Section 3 of the Railway Act specifically provides that, unless expressly provided in the Act to the contrary, wherever the provisions of the Railway Act, and of any Special Act passed by the Parliament of Canada, relate to the same subject matter, the provisions of the Special Act shall, in so far as it is necessary to give effect to such Special Act, be taken to over-ride the provisions of the Railway Act.

A specific reduction worked by the Special Act, therefore, limits the general jurisdiction of the Board, having regard to rates. In my view, no matter how great the shortage may be in railway revenue, the Board cannot advance these Canadian Pacific rates, beyond the reduction secured under the Special Act.

Owing to the manner in which our railways are constructed and the territories occupied by them, no useful object whatever would be served by increasing the rates on other lines, as it would simply mean that they would be carrying no business at the higher rate when the lower was available to the public on the Canadian Pacific rails.

The situation in connection with the Manitoba Agreement is entirely different. There, the Act is of a provincial legislature, which does not bind the Board.

In the first instance, the Canadian Northern is a Dominion corporation. In the second instance, assuming that any of the component railways, which are now combined in the Canadian Northern system, were provincial undertakings, the rule obtaining as to Special Acts passed by the Dominion Parliament, is entirely reversed in the case of all acts of Provincial Legislatures.

Section 6 of the Railway Act provides that where any railway, the construction or operation of which is authorized by a Special Act passed by the legislature of any province, is declared by the Parliament of Canada to be a work for the general advantage of Canada, the Railway Act shall apply to such railway and to the company constructing or operating the same, to the exclusion of such of the provisions of the Special Act as are inconsistent with the Railway Act.

The situation was recognized by the province and the railway company, who made a joint application to Parliament for an authorizing and confirming Statute by the Dominion.

Their petition was acted upon; and, in 1901, Statute 1, Edward VII, chapter 53, was enacted by the Parliament of Canada. Section 3 in part reads:—

> "3. Nothing in this Act nor in the indentures contained in the schedules hereto, or done in pursuance of this Act or of the said indentures shall,—
>
> (a) divest or limit, temporarily or otherwise, the rights or powers (under existing or future legislation of the Parliament of Canada) of the Governor in Council or of the Railway Committee of the Privy Council, or of any commission or other authority, respecting any matter or thing, obligation or duty;"

The result is that, not only was the jurisdiction of Parliament expressly reserved, but the parties accepted the private or special Act which specifically reserved it.

The effect of the argument, apart altogether from statutory limitations of the Board, must be considered.

The late Chief Commissioner Mabee in his judgment in the Crow's Nest Pass Coal Company vs. Canadian Pacific Railway Company, 8 C.R.C. 33, at page 41, says:—

> "The Railway Act requires that under substantially similar conditions the tolls charged shall be equal to all persons, and at the same rate, whether by weight, mileage or otherwise, and any reduction or advance either directly or indirectly is expressly prohibited. No undue or unreasonable preference or advantage can be permitted to any person or company. The object of the legislation is to place every one upon terms of absolute equality, and if agreements were permitted to be entered into for reduction in tolls or for other preferential

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treatment, the door would be opened wide for the defeat of the Act, and the Board would be called upon to struggle with all sorts of conditions, opinions, and complications in the determination of such cases."

"It will not be understood that I am expressing the opinion that such was the object of the present agreement, the conditions existing when the same was entered into were such that the contrary opinion might be arrived at."

The judgment of the Assistant Chief Commissioner in Regina Board of Trade vs. Canadian Pacific and Canadian Northern Railway Companies, 11 C.R.C. 380 at page 391, reads:—

"It could not surely have been the intention of Parliament in passing section 315 of the Railway Act to permit railway companies to create different circumstances and conditions by entering into a contract with some one and so defeat the intentions of the section. The "circumstances and conditions" which if not substantially similar may justify different treatment to different points, I think must be traffic circumstances or traffic conditions; not circumstances and conditions which may be artificially created by contract."

When the Regina Rate Case was decided railway revenues were buoyant and expenses normal. The Canadian Northern Manitoba Agreement was there considered. The application of the Regina Board of Trade was based on discrimination. To meet that issue, the Railway Companies relied on the agreement. The Assistant Chief Commissioner held that discrimination could not be excused under any agreement, and ordered the removal of discrimination by the extension of the Manitoba basis to adjoining Prairie territory.

An agreement, however, of course, ought not to be lightly regarded by the Board. In cases where conditions are similar rate agreements afford excellent evidence of what the railway considers a fair rate. Apart from a change in conditions, an agreement which did not involve discrimination might well be looked upon as conclusive, unless it could be shown that traffic could not continue to be carried under it, and that in the public interest a higher rate which would result in proper public service ought to be ordered. The burden of Canadian Northern obligations which under the agreement were guaranteed by Manitoba and which amounted to a sum exceeding $25,000,000 have been assumed by the country as a whole.

The operating and traffic conditions maintaining in Manitoba are very similar to these obtaining in Saskatchewan and Alberta. Their similarity was recognized in the Regina Rate Case, and the principle was carried to its legitimate conclusion under the Western Rates Case, with the result that the three provinces, from the effective date of the latter case, have had a tariff basis of similar application to each province and without discrimination.

To now give effect to the Canadian Northern Manitoba agreement and confine its operation to Manitoba, would again restore the discrimination which had been found to exist as against Saskatchewan and Alberta.

As a result, in my opinion, the Manitoba agreement does not as a matter of law conclude the issue. On the other hand a very strong case must of necessity be made out before rates are permitted higher than those reserved by the agreement.

Although admitting that the cost of railway operation is greatly in excess of that obtaining when existing tariffs became effective, submissions are made that nevertheless this application should be dismissed; but that the necessary relief should be afforded for the necessities of the railways by direct Government financial assistance, either by way of loans or absolute gifts. It again has been urged that, instead of increasing rates, the necessitous railways should be taken over by the country and the report of the Royal Commission to inquire into railways adopted.

Again, it is also urged that, as the country is now acquiring the Canadian Northern and has advanced a further sum of $7,500,000 to the Grand Trunk Pacific Railway Company in ease of the financial obligation of that company and its promotor and

guarantor, the Grand Trunk Railway Company, no further relief ought now to be afforded any of these companies by a rate advance.

It is, of course, quite true that the country will acquire the Canadian Northern, and also quite true that the advance made to the Grand Trunk Pacific is much in ease of the necessities, not only of that company, but also of the parent company, the Grand Trunk. The rights of the companies under the Railway Act, as well as the duty of the Board, are not affected by these considerations.

The principle relied on by Mr. Pitblado and Mr. Waldon in their objections to the Board taking action under "The War Measures Act" is applicable.

The whole tariff situation and railway subject is surrounded with much difficulty, but some things are at least clear. Among them, it is clearly the duty of the Board to allow fair and just rates to carriers for the service they perform. It is also clear that the Board can neither order nor enforce rates which are unremunerative to the carriers without infringing the principle of the Railway Act by denying carriers a fair and just rate. No enforced unremunerative rate can be said to be just to the carriers.

The question is one directly affecting shippers and consignees on the one hand, and carriers on the other; but, in arriving at a solution of what a fair rate for the transportation of coal by the Grand Trunk from the frontier to Toronto would be, the fact that the country had relieved the Grand Trunk of a present liability by making a cash advance to the Grand Trunk Pacific, could hardly be a consideration or a reason why a rate otherwise fair and just ought not to be adopted.

It is equally clear that any losses the Grand Trunk may have made in the Grand Trunk Pacic can afford no ground for increasing the rate, which, apart from such consideration, was fair and reasonable.

There is no reason why the business of the Canadian Northern should be conducted at a loss, simply because the country owns it. Under the Railway Act, the Board certainly cannot deny the people as a whole a rate which would be fair to individuals when owning the transportation system. It appears that a national railway, just as much as any other railway, ought to be operated so as to cover the cost. The interest cost on the Canadian Northern securities certainly cannot be looked upon as negligible and a matter of no moment to the country.

Whether there be room for issue on this score or not, at any rate under the Railway Act the Board cannot consider rates on the Canadian Northern on a different basis to those on other roads, simply because the country will in future own the stock.

In like manner, it is not for the Board to determine whether any set of railways ought to be consolidated or not, even if, in the opinion of the Board, such a consolidation might justify a lower rate schedule. The Board has no legislative functions; but, on the other hand, it is a statutory body with a statutory jurisdiction. The incorporation of railway companies and the determination of their routes—the question of private or public ownership of railways, are matters entirely for Parliament.

The policy recommended by the Commission of Inquiry can neither be adopted nor rejected by the Board. It is a matter entirely without our jurisdiction and cannot be considered in this application.

Apart altogether from railway necessities, objections are made to any raise on the ground that the general business and financial condition of the country is such that any added rates would create a burden entirely undue, if not a costly burden on the people.

This objection, while not confined to Winnipeg, was taken the most strongly by Mr. McKenzie at that point, who specially referrod to land depopulation and the lack of real prosperity.

Undoubtedly the higher the rate the greater the cost to the country; but, it would appear, that the country as a whole could much better afford to pay increased rates than run the risk of transportation failure or embarrassmet.

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The automobile industry is a pretty fair index of prosperity. *The Public Service Monthly*, published by the Department of Agriculture of Saskatchewan, in its issue of August last says:—

"The records of the Department of the Provincial Secretary go to show that the motor business of the Province of Saskatchewan is developing by leaps and bounds. A large increase in the number of cars licensed was foretold in the *Public Service Monthly* some time ago, but even those who were in the best position to know never anticipated such a phenomenal rate of increase as has been maintained during the first six months of 1917. At the end of June the number of licenses was 26,640, as compared with 13,039 for the same period in 1916, or an increase of more than 100 per cent. The figures for July are not yet complete, but the highest number at the time of writing is 28,510, and the same relative rate of increase over 1916 is being maintained. The number plates are being issued this year in numerical order, so that the highest numbered plate means also the number of licenses issued.

"The following are the numbers of licenses issued during the first six months of the two years:—

	1916.	1917.
January	794	1,985
February	350	654
March	839	3,105
April	4,530	7,794
May	4,914	9,015
June	1,612	4,087

"In the month of May as many as 347 number plates were issued every working day. The majority of these are handled at the office, but a large proportion is daily despatched by mail.

"In all other branches of the motor business similar increases are to be seen. The number of automobile liveries is now 1,020, while there are 462 dealers, and in both cases these figures are greatly in excess of former years. There are also many more motor bicycles in use, the number of licenses at the end of July being 424, of which 276 are new and the rest renewals."

The position is very similar in the other two provinces in which Mr. McKenzie was particularly interested, namely, Manitoba and Alberta. This condition in an agricultural community can only be expected as a result of the high prices obtaining for grain, live stock, and other farm produce.

Some similar objection has been made in the East. There, again, the manufacture of munitions has in part at any rate duplicated the prosperity of the Prairie Provinces.

The figures that have been presented in opposition to the application, correctly taken as they have been from the different companies' annual reports and from Government statistics, are shown by the recent cost developments to be of little value in determining the position of the companies and the burden of to-day.

The added costs are largely the outcome of advances made in the spring and summer of this year. More than that, they do not seem to be final, but rather appear to be growing.

The last annual reports do not, therefore, mirror these increases at all, nor are they of the slightest help in arriving at a proper conclusion on this application. The fact is that abnormal increases in costs have developed since the last annual reports were made.

The point taken by Mr. McKenzie that costs of themselves were not the sole factor, but that increased gross to the companies might well offset the effect of the advances, and that this increased gross must be considered as well as the cost advances.

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As a matter of fact, the increased costs have not been met by the increased gross, as the more recent monthly reports show.

The Canadian Northern figures for the months of July, August, and September of this year and of 1916, are returned as follows:—

	Gross Revenue.	Expenses.	Net Revenue.	Operating Ratio.
July, 1917	$3,844,883	$2,940,026	$ 904,856	76·46
" 1916	3,834,191	2,636,812	1,197,379	68·77
Aug., 1917	3,405,200	2,812,000	593,200	82·57
" 1916	3,684,900	2,612,900	1,072,000	70·90
Sept., 1917	3,341,700	2,915,800	425,900	87·26
" 1916	3,187,900	2,455,300	732,600	76·95

These results cannot be disregarded. They show that while the gross revenue of July had a slight increase, the net revenue decreased $292,523, or 24·43 per cent. August, on the other hand, shows a decrease of $279,700 in gross, but nevertheless has an increase in expenses of $199,100, resulting in a reduction in net earnings of $478,800 or no less than 44·66 per cent. In September, there was again an increase in gross, the increase amounting to $153,800, but again the expenses increased by $460,500, reducing the net return, notwithstanding the greater gross, by the sum of $306,700, or 41·86 per cent.

The above figures are obtained from the company's monthly statements. The figures for these three months are taken up in the company's general statement issued for the quarter ending September 30, 1917. This quarterly statement also includes the results of the like quarter of the preceding year. The quarterly statement gives the company's total revenue for these three months as $10,591,807.57 as against $10,706,995.89, for the same period of the previous year. The result is a comparatively small decrease of $115,188.32 in gross receipts, which amounts in percentage to but a little over 1 per cent of decrease.

The expenses are shown as $8,667,867.95 for the three months of 1917, as against expenses of $7,704,982.67 for the same period of the year before. The resultant increase in expenses is $962,885.28, constituting an increase exceeding 12·49 per cent.

The net income for the 1917 period amounts to $1,923,939.62 as against $3,002,013.22 for the 1916 period. A decrease in the net income of $1,078,073.60, which represents a percentage decrease in net amounting to 35·91 per cent.

The increases in expenses are, as a matter of fact, greater than the totals I give disclose. Necessary work has been deferred, owing to the state of the company's finances. The Canadian Northern Railway certainly cannot be charged with ever expending more than was necessary for the maintenance of its lines. As a matter of fact, the charge in the past has been to the contrary, and the amounts expended by the company under this head can well be expressed as relatively small.

Notwithstanding during the period in review the company only expended for maintenance of right of way and structure $1,976,869.14 in 1917, as against $2,279,658.41 in 1916, an apparent economy of $302,789.27, representing a percentage decrease of 13·28 as being effected in this connection. As a matter of fact, the expenditure is not saved—it is merely deferred, and the only real result of deferred maintenance and repairs is that the ultimate expenditure will be greater than if made promptly and maintenance and repairs had been kept up concurrently with the necessity.

This decrease of expenses is entirely eaten up by other increases. To merely illustrate: The cost of maintenance of equipment (necessary work and repairs on engines, other running stock, and the like) increased from $1,156,419.05, in 1916, to $1,502,779.46, in 1917, an increase of all but 30 per cent.

I also instance the advance in the cost of transportation,—for this period in the year 1917 amounting to $4,491,149.49 as against $3,655,746.23 for the same period of the previous year.

The results of October are of particular interest, as in this month a substantial increase in gross revenue is shown. The October, 1917, earnings amounted to $3,941,-

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612.62, as against $3,716,784.77 for October, 1916. The resultant increase in gross is $224,827.85 or over 6 per cent.

The expenses, however, grew at a very much greater ratio. Those of October, 1916, were $2,496,512.78, while for October, 1917, the expenses amounted to no less than $3,350,486.03, the increase here amounting to $853,973.25 or 34·20 per cent.

As a necessary result, there is an alarming drop in net income from $1,220,271.99 to $591,126.59 a decrease of $629,145.40. In short, the company's net revenue, with an increased gross of 6 per cent decreases 51·55 per cent.

It should, however, be noted that, in connection with this month the economics of the preceding quarter in connection with the maintenance of way and structures were not practiced. On the other hand, no extravagant expenditure was made under this head. The expenditures of 1917 amounted to $694,653.25 as against $510,141.25. In view of the increased costs which are apparent in other accounts the increased figures cannot sustain any charge either of improvidence or railway extravagances.

Attention has already been called to the fact that the company spends but relatively little on its right of way.

While the necessity of any possible economics cannot be denied, some economics cannot be practiced without loss in efficiency and resultant damage, not only to the company itself, but also to that portion of the public that are dependent upon the transportation that it ought to provide. It is sufficient to give but one illustration of insufficient maintenance and repair. The grain movement of the autumn of 1916 to the head of the lakes was light. The October receipts at the lake terminals only amounted to 19,673,341 bushels of wheat as against 53,367,710 bushels for October, 1915. The total grain receipts for the month in 1916 only amounted to 27,189,876 bushels as against 60,786,715 for October of 1915. In October of this year 27,729,126 bushels of wheat were received and 31,851,584 of all grains, an increase of 4,661,708 over the same month of the year before or over 16 per cent. The Canadian Northern however only hauled last October to the lake terminals 7,653 cars while it hauled 8,610 cars in October of the year before. Instead of a proportionate increase in the road's grain business the month results in a car decrease of 957 cars or 11 per cent.

A direct reason for this decrease was the physical condition of the line between Winnipeg and Port Arthur. Train schedules could not be kept, and freight wrecks occurred. Efficiency in transportation, including as it does, sufficient terminal facilities, sufficient cars and locomotives for the business offering, and a properly maintained and repaired line of railway, constitutes the chief public necessity in railway transportation.

This efficiency can only be furnished by companies whose business is sufficiently remunerative as to produce the necessary funds to maintain the railway and to meet the ever-increasing demands of transportation.

Transportation, if left long enough to the unaided efforts of insolvent or financially embarrassed companies, must, of necessity, break down, to the country's great hurt and injury.

The question for the Board to determine is whether, in the light of the above facts, effect ought to be given to the Manitoba Agreement. If effect be given to the Manitoba Agreement, practically no rate increases can be made in western territory, where the great bulk of the Canadian Northern's business is carried on.

Should the usual practice as between parties to commercial contracts be followed and if it be the duty of the Board to consider the agreement as a pure matter of law, and having regard only to the contracting parties and not to public convenience and necessity, it well may be that the mere fact that the rate called for by the agreement constitutes an insufficient remuneration for the service rendered and may result in actual insolvency, constitutes of itself no ground for relief.

If a builder agrees to do certain work for an inadequate consideration, his loss or its amount is no answer to his contractual liability.

Distinctions, however, between the contractor, on the one hand, and railway companies on the other, are readily apparent. The contractor's charges are not subject

to Government or Commission control. The railway company's charges are. The contractor is subject to no duty to the public. The railway company is. Public necessity and service constitute a direct justification for railway construction and railway company incorporation. Moreover, in case the contractor obtains under his agreement an excessive remuneration, that fact of itself is no bar to his enforcing his agreement and collecting the last cent of his consideration. On the other hand, the Board is not bound by any contract under which railways may be entitled to an unreasonably large rate, but reduces that rate to whatever it finds just and reasonable.

Under any other practice, traffic officers of the companies, could from time to time, in many cases make special contracts with shippers at unfairly high rates, or, on the other hand, give favoured shippers unduly low rates.

In either instance, the object of the Act, which is to secure uniformity just as much as reasonableness in rates, would be defeated.

An unduly low rate constitutes an unreasonable rate, just as much as an unduly high one, and the question of whether a rate is unduly low or unduly high can only be established with a knowledge of the cost entilled by the service, which must from time to time vary.

It has been stated that railway company directors are charged with duties and trusts, first, to the public, second, to the company's employees; and third, to the company's shareholders.

I would place the duty to the public, involving as it does proper and sufficient transportation, as being the duty of primary importance.

The mere fact that an agreement, in the light of changed circumstances, proves improvident and provides rates insufficient to enable the company's property to be properly kept up and to meet the current demands of transportation, and also involves loss to the shareholders, is not an answer to the company's primary obligation to properly operate the road.

It may well be that an agreement made by the directors elected by the shareholders cannot be set aside on the application of the shareholders themselves; but, on the other hand, it is clear that no agreement ought to stand in the way of the public as a whole obtaining the full benefit of that measure of transportation, which a properly maintained condition of the company's facilities would permit.

Further, an improvident contract made by one company is not merely of injury to itself and that portion of the public using its line—Parliament has so authorized railway construction that the line of one company or another parallels those of others to such an extent that in many instances an unreasonably low rate reserved by contract made by one company must be adopted by the other line. As a result, the other companies are just as much injured as is the company to the contract, and by an act over which they have not the slighest control.

It is also apparent that an agreement which reserves an unremunerative rate applicable in the one district, involves a discrimination as against other districts where traffic and operating conditions are similar, and directly infringes on the provisions of the Act requiring uniformity in rates.

The Board does not consider any agreement made by a shipper to pay a given rate any justification for the rate if it be unreasonably high. On the same principle, when rates reserved by contract prove, in the face of changed conditions and increased costs, unreasonably low, the rates must be made reasonable, notwithstanding the contract.

In normal times, the contract was entirely free from objection. The discrimination which it caused in one district as against the other, was relieved by the Regina Rate and Western Rate Cases. With to-day's costs and to-day's conditions, the contract reserves an unreasonable rate, under which the Canadian Northern is unable to properly maintain its properties; and, with the changed conditions, agreeable to the above principles and practice of the Board, higher rates ought to be put in, notwithstanding the provisions of the agreement.

The effect of increased costs on railway revenues is not peculiar to the Canadian Northern. With its larger field and greater diversity of operations, the Canadian

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Pacific returns would not as quickly show the effect of different cost advances as those of the Canadian Northern. The returns, however, of the Canadian Pacific for September show an increase of $30,935 in gross on eastern lines, and on western lines of $64,803. The expenses, however, have greatly increased, the increase in eastern lines amounting to $732,049, and on western lines to $839,145. As a result, with a total gross revenue of $11,476,695 as against $11,380,939, September of this year as compared with September of 1916, produces a net revenue of but $3,727,173 as against $5,202,611. In other words, the drop in net earnings on the system for the month amounts to $1,475,438, a reduction of 28·3 per cent.

Taking the Grand Trunk Railway as the characteristic line in the East—there is no doubt that it may be fairly so regarded—the actual results are very nearly the same as those of the Canadian Northern.

The increased traffic which the contestants to the application urged was inevitable to take place has materialized, but the increased gross has entirely failed to make up the losses brought about by increased expenses.

The total transportation revenue of the Grand Trunk for the 10 months' period of 1917, that is to say from January 1 to October 31, amounted to $43,366,844, as against $39,100,498 for the same period of the previous year. The resultant increase is $4,266,-346, practically 11 per cent.

For this same period in 1917, however, the working expenses amounted to $33,-689,532.48, as against $27,479,538.79 for 1916. The increase in expenses is therefore, $6,209,993.69, representing a percentage growth in expenses of 22·59.

The fact that expenses are unfortunately increasing and that transportation in the later months of the year is subject to greater burdens than during the earlier months is emphasized by taking the figures for October out of this 10 months' period and contrasting the results obtained in October with the results obtained for the full 10 months.

Transportation receipts for October of this year amounted to $4,703,643 as against $4,618,000 for 1916. The increase is still present, although to a much smaller percentage, the whole increase amounting to $85,643, a percentage increase of 1·85.

The expenses for October of this year, however, amounted to $3,876,019.95 as against $3,111,193.36 for the same month of the year before. The resultant increase is $764,826.59, an increase in expenditure of 24·58 per cent.

The result on the transportation net is that it only amounts to $708,930.05 for October of 1917, as against $1,390,537.64, for the month of the previous year. Therefore, it decreases $681,607.59, a percentage reduction of no less than 49 per cent.

The effect of the cost of railway operation over the whole country is beyond question. This loss in net of 49 per cent may well be compared to the October figures of the Canadian Northern, where the net decrease amounted to 51·55 per cent.

There can be no question, in view of the actual results, that the railways require greater revenues and must have them if proper efficiency is to be maintained and the demand of the country for transportation at all adequately met.

I have already dealt with the difficulty in dealing with the emergency in the West and resulting from the agreements and statutes referred to. Difficulties also exist in the East and are specially attributable to the operation of the Grand Trunk under different tariffs.

The rate situation in the East has been largely controlled by water competition and the competition of American lines.

Speaking generally, there is no doubt that it is the right of a company to ignore competition should it desire to do so; and there is also no doubt that the advances in water rates have lessened the competition from that source materially.

The Grand Trunk situation, however, is aggravated by the fact that it is to quite a large extent an American system. It derives a large portion of its tonnage from American points through its ownership of the Chicago and Grand Trunk Railway and other subsidiary American systems. Again, speaking generally, these subsidiary American systems (which are not only owned by the Grand Trunk share-

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holders, but are operated by the Grand Trunk officials, the whole being operated as one system) are operated under rates upon a lower basis than that obtaining in Eastern Canada.

Not only does the Grand Trunk carry through Canadian territory goods of American origin billed through to an American point, but it also carries goods of American origin into Canada which come into direct competition with Canadian producers, wholesalers, and jobbers. The discrimination was in the past greater than it now is.

An application was made to the Board in 1907, with a view of removing the rate discrepancy, and the disability of the Canadian producer was relieved by the Order issued in the so-called International Rate Case, which reduced rates in Canadian territory to as near the rates in American territory as it was then felt that it was practicable to go.

While undoubtedly the Grand Trunk proper has benefited by the traffic produced by its American subsidiaries, unfortunately earnings in American territory, based as they were upon lower rate schedules, resulted in unprofitable operation of these subsidiary lines, with the result that the Grand Trunk from time to time has had to make good, deficits occurring on the American portions of the system, amounting to large sums of money.

This, again, has been the subject of complaint by the Canadian shippers, who have urged that the surplus that the company earned out of their rates was used by the company to enable it to carry on transportation in the United States at less than cost.

This feature of the rate situation was considered by the Board in the Eastern Rates judgment; and, as a matter of fact, the increases there granted were not so great as they would have been had the tariff basis in the American territory of the system being higher.

The details of these deficits given the Board by the company were filed in the Eastern Rates Case in 1915, and related to the deficits of 1914. The net deficit then shown by the company, resulting from the operation of its American subsidiaries and deducted from the net of the parent company, amounted to $1,230,448.89.

I understand, however, that, with the heavier traffic brought about by the war and before the present abnormal costs obtained, the earnings of these subsidiary lines greatly improved and the parent company was practically, if not altogether, relieved of the burden of these deficits. The statutory reports so indicate.

In view of the necessities of the company and the deficits of the past on the American subsidiary lines of the company, the Board has hoped that the rate situation would improve in American territory and that the company would take advantage of whatever rate increases were possible under leave of the appropriate commissions.

The condition brought about by advanced costs would appear to be somewhat similar in the United States situation to that in Canada.

This has been recognized by the Interstate Commerce Commission in their report to Congress based, as it is, on the financial necessities of the roads, as well as the traffic demands of the nation.

It may also be noted that the Interstate Commerce Commission has recently granted a substantial increase in connection with the very important iron and steel movement in western territory.

The Interstate Commerce Commission has also authorized general increases in what is known as the Central Freight Association Territory as far back as June 29 last. For some reason or other these were not with ordinary despatch fully put into effect by the railway companies.

This question Mr. Hardwell has had up with the companies' officials.

Perhaps one of the most important schedules, having regard to the position of the Canadian shipper, on the one hand, and his American competitor, or the other, is the Detroit schedule, covering rates from Detroit to Toronto and Montreal, and the intermediate points.

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The Grand Trunk rates in Canada of importance in this relation are the rates from Windsor (which, of course, is a station en route) to Toronto and Montreal, and upon which the rates from all intermediate stations are scaled.

The basis under which traffic has been carried since the publication of the tariff authorized in the Canadian Eastern Rates Case and prior to the publication of those authorized in the United States 15 per cent Case, is shown by the following schedule:—

	Class 1. Cents.	Class 2. Cents.	Class 3. Cents.	Class 4. Cents.	Class 5. Cents.
Detroit to Toronto.	38	33	24	17	14
Windsor to Toronto	38	33	29	24	19
Windsor differences.	0	0	+ 5	+ 7	+ 5

	Class 1. Cents.	Class 2. Cents.	Class 3. Cents.	Class 4. Cents.	Class 5. Cents.
Detroit to Montreal.	61·5	53·3	41·0	28·7	24·6
Windsor to Montreal.	60·0	53·0	45·0	38·0	30·0
Windsor differences.	— 1·5	— 0·3	+ 4·0	+ 9·3	+ 5·4

From these schedules it will be observed that a shipper from the intermediate station, Windsor, in connection with the all-important fifth class, paid 5 cents more than the shipper from Detroit in the foreign movement to Toronto, and for the movement to Montreal paid 5·4 cents more.

The disparity was not as high in the past, the Board having increased class rates in the Eastern Rates Case by an addition of 2 cents first, scaling down to 1 cent, fifth class, other classes scaling proportionately.

The Canadian increases were allowed owing to the financial position of the Grand Trunk, the Board feeling that, although the apparent difference was great, under war conditions and the demand for all commodities the Canadian shipper would not as a matter of fact suffer.

This added disability was cheerfully accepted by eastern shippers.

Following the publication of the tariffs authorized in the United States 15 per cent Case the rate situation was as follows:—

	Class 1. Cents.	Class 2. Cents.	Class 3. Cents.	Class 4. Cents.	Class 5. Cents.
Detroit to Montreal	70	61½	47	33	28
Windsor to Montreal	60	53	45	38	30
Windsor differences.	-10	—8½	—2	+5	+2

The rates from Detroit to Toronto were not then advanced, the rates in Central Freight Association territory being still under consideration by the Interstate Commerce Commission. That Commission, as previously mentioned, announced its decision on the 29th June last, granting increases independently of the 15 per cent previously allowed, but the railway companies, whatever the reason may have been, did not take advantage of this decision to advance the rates from Detroit to Toronto until December 1.

At the time of the hearing in this case, and indeed until the first instant, if effect were given to the application for a 15 per cent increase, the result would have been that the rate from Detroit to Toronto, first class, would have been no less than 5·5 cents lower than the Windsor rate to Toronto, and the difference in favour of the Detroit shipper on articles moving under the fifth class into the Toronto market, as against the Windsor shipper, would have been no less than 8 cents. The same disability would apply proportionately to all intermediate points.

The company has made it possible for the Board to grant the advance without creating this discrimination against the Canadian shipper by filing, effective on the

1st instant, as already stated, its tariff increasing rates as authorized in the Central Freight Association territory.

The following schedule shows the rates as they now will be under the rates from Detroit, as provided for by the company's tariff of December 1, 1917, and with effect given, as this judgment does, to the company's application for a 15 per cent advance:—

	Class 1. Cents.	Class 2. Cents.	Class 3. Cents.	Class 4. Cents.	Class 5. Cents.
Detroit to Toronto.	50	42½	33½	25	17½
Windsor to Toronto	43½	38	33½	27½	22
Windsor differences	—6½	—4½	0	+2½	+4½

	Class 1. Cents.	Class 2. Cents.	Class 3. Cents.	Class 4. Cents.	Class 5. Cents.
Detroit to Montreal	70	61½	47	33	28
Windsor to Montreal. . . .	69	61	52	43½	34½
Windsor differences	—1	—½	+5	+10½	+6½

Absolute parity, of course, is not obtained. It was found impossible to obtain it in the International Rate Case. While the rate situation is not all that can be desired in view of the necessities of the company and the higher American rate basis made effective on the first instant, I would allow the increase of 15 per cent as asked subject to the exceptions herein made.

Increases were sought to be made in the all-rail movement from the East to the West. The increases which the companies desired were increases entirely in Eastern territory. The new all-rail tariff became, therefore, a matter directly affecting the Eastern situation, although the movement was entirely into Western territory.

Much has been said as to the delay in dealing with the railways' application for an increase. The railways' delays in connection with the Detroit Schedule have been mentioned. I might also point out that the Assistant Chief Commissioner, in a memorandum dated the 7th of April, 1917, suspending increased lake-and-rail rates until they were discussed at sittings of the Board in the West, gives the following direction with reference to the all-rail increases:—

> "We were told at the opening sittings on March 20th by the representatives of one of the railway companies, that the railway companies contemplated shortly filing tariffs increasing the all-rail rates from Eastern to Western points. If this is contemplated, it would be well for the railway companies to file these all-rail tariffs without delay, so that if any objections are made to them the parties objecting can be heard at the Western sittings, which it will be necessary for the Board to hold to consider the tariffs now before us."

The Western Boards of Trade protested against the tariffs which were subsequently filed increasing the rates for the all-rail movement and requested that the matter should be heard.

For some reason or other, the railway companies did not file the all-rail tariffs as directed. They subsequently explained that owing to lack of clerical help they had been unable to carry out the direction, although the sittings of the Board in the West, where the increased lake-and-rail tariffs and the application for the general fifteen per cent advance were heard, were held as late as June, two months after the direction was given.

As a result, further sittings of the Board had to be arranged and these all-rail increases, which were not only objected to by the western Boards of Trade, but also by the Canadian Manufacturers' Association, had to be heard, after the companies' neglect had been brought to the notice of the Board last September by protests from the West. The hearings thus rendered necessary were at Calgary, Edmonton, Saskatoon, Regina, Winnipeg, and Fort William; and the increased all-rail tariffs were

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allowed by the Board's Judgment issued on November 9. It may be noted that the last hearing took place at Fort William on the 22nd of October.

On the record these rates should be considered on a different basis. The companies have already obtained a substantial increase, the 1st class all-rail basing rate to Fort William being advanced from 75 cents to 81 cents, other classes scaling in proportion. The resultant increase of 6 cents on first-class makes an average increase of under 6½ per cent in the five classes of general merchandise. 15 per cent on top of that would make an average increase of approximately 21½ per cent.

In view of the manner in which the through tariffs from Eastern to Western Canada are built up on the combination of the rates current from Port Arthur and Fort William west and certain arbitrary rates from the eastern shipping points to Port Arthur and Fort William produced to a great extent by the summer competition of the lake-and-rail route; and in view also of the fact that the rates to different points in western territory have been constructed on the whole result thus obtained, it is obvious that an interference of a different percentage as applied to the whole might work changes in the relative rate bases of different distributing centres in Western territory.

This, of course, ought not to be done. Much trouble has been taken in the past to arrive at a fair basis of rates as between different districts and to maintain a rate situation of justice from different western distributing points. The matter was referred to Mr. Hardwell, the Board's Chief Traffic Officer, to work out the effect of any change in percentages upon the whole district.

This has necessitated Mr. Hardwell making up a very large number of rates and putting in much labour in comparing the rates in different sections of the country. His report on the question is as follows:—

December 14, 1917.

T.D. 12353.

Re 15 per cent Application and Western Rates.

I beg to report that a close examination of the rate situation as it affects freight traffic between Eastern and Western Canada has convinced me that whether the proposal to allow an increase of 10 per cent be sufficient or insufficient for railway needs, it is illogical, and would also upset the system that has always existed of basing the through rates on Fort William.

The Board recently granted increases in the proportionals for Fort William only:—

1st class, from 75 cents to 81 cents.
5th " " 31 " to 33 "

The proposal to accept an increase of 15 per cent in the local tariffs west of lake Superior, would include the tariff from Fort William; therefore, the rates from Fort William to Winnipeg, for example, would advance as follows:—

1st class, from 85 cents to 98 cents.
5th " " 38 " to 43½ "

The suggestion of an increase of 10 per cent from Toronto and Montreal to Winnipeg would result as follows:—

1st class, from 1·66 to 1·82½ cents.
5th " " 0·71 to 0·78 "

Deducting from these proposed through rates the increased rates from Fort William would leave the eastern proportionals as follows:—

1st class, 84½ cents instead of 81 cents = 104·2 per cent.
5th " 34½ " " 33 " = 104·4 "

Therefore, the proportionals recently allowed would be increased by less than 4½ per cent.

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Furthermore, the wholesale centres, in the west might be expected to complain if their distributing rates were advanced 15 per cent while the shippers in eastern Canada were asked to pay but 10 per cent on their through rates.

So far as the basing system is concerned, the existing eastern proportionals might be protected by increasing the rates west from Fort William 10 instead of 15 per cent; but this would not remove the objections to be anticipated from the western jobbers. It might also be expected to arouse the coast cities, who would hardly favour a less increase in the terminal tariff from the lake Superior ports than in the terminal tariff from Vancouver, etc. While the eastern arbitrary system may, perhaps, be considered theoretical, these trade objections may prove real.

In my opinion, the logical solution is to confine the 10 per cent advance to the proportionals east of Fort William. The recent allowance averaged under 6½ per cent in the five classes of general merchandise so that the total now suggested would approximate 16½ per cent. The through rates would then be made by adding the Fort William westbound rates increased by 15 per cent. From Toronto and Montreal to Winnipeg the situation would then be expressed as follows:—

	1st Class.	5th Class.
Present rates from September 1, 1917..	$1.66	71 cents.
If present through rates were increased 15 per cent..	1.91	81½ "
If present through rates were increased 10 per cent..	1.82½	78 "
If present rates were increased 10 per cent to Fort William and 15 per cent beyond..	1.87	79½ "
If through rates prior to September 1, 1917, were increased 15 per cent..	1.84	79½ "

"It will be observed that if the Board had included the recent all-rail case in the 15 per cent application, and consequently now granted the full 15 per cent, the rates would approximate to Winnipeg those I suggest; in fact the important 5th class would be the same."

I would adopt Mr. Hardwell's report. The result is that 15 per cent will be allowed in so far as the territory west of Port Arthur is concerned, but the increase will be held down to 10 per cent on the eastern balance of the through rate.

There are already difficulties as to the spread of rates on coal. Those spreads would be but further aggravated if percentage increases were allowed on coal. I would allow a flat increase of not exceeding 15 cents per ton on all coal and coke carried in the eastern and western territories. This flat advance on the long hauls will, of course, be a great deal less than a percentage increase of 15 per cent; but on the other hand, on the shorter hauls, it will be larger than the 15 per cent incrase would be. The flat rate will, however, bear less harmfully on the consumers generally.

The necessity of this 15-cent increase on a commodity of direct and urgent necessity to the public is much to be regretted. It is, however, inevitable. In order to increase railway revenues to an appreciable extent, commodities constituting a large part of the tonnage carried must bear an appreciable share of increased rates. Coal in eastern territory is chiefly carried by the Grand Trunk and in western territory the coal tonnage of the Canadian Northern is fast increasing. Both these systems require increased revenues very badly.

Common clay and sand, gravel and crushed stone are commodities which cannot, in my view, stand a 15 per cent increase. I would however, permit the companies to increase their rates on these commodities, both in eastern and western territories, by adding to existing rates not more than five cents a ton.

In western territory, as already indicated, any relief the Board can give the railways is limited by the provisions of the Crow's Nest Pass Agreement.

The chief traffic in the West is grain. The Crow's Nest Pass Agreement will not permit a general increase of 15 per cent to be made to the lake Superior ports; but

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under it a flat increase of 2 cents a hundred, which will approximate a 10 per cent advance on what is perhaps the average western grain rate, can be obtained on the commodities included in the existing tariffs on grain, flax seed and their products and I would allow it.

It is quite true that neither the Canadian Northern nor the Grand Trunk Pacific are bound by the provisions of the Crow's Nest Pass Agreement or Act. On the other hand, while it would be open for the Board to permit an increase of 15 per cent in their rates, over a very large part of the territory served by one or other of these systems grain could undoubtedly be hauled to the Canadian Pacific. The result would be that both these companies, in order to protect their traffic, would reduce their rates at all points where their traffic would suffer from Canadian Pacific competition.

The element of unequal rates would be again introduced into the western territory; and I am convinced that this is no better for the railways than it is for the districts.

The Crow's Nest Pass Agreement again, does not call for lower rates for the whole territory as now operated. The reductions apply merely to the then existing tariffs, and, therefore, to operations of the company as carried on at the time that Act was passed.

I am of the opinion that discrimination should be avoided, and that the effect of the Crow's Nest Pass Agreement must be extended to the system of the company as to-day operated.

Under present tariffs no distinction is made between stations in the territory covered by the company's tariffs in effect when the agreement was made and those upon its subsequent construction. The Board, in my view, ought not to permit any such distinction to be now made. The Crow's Nest Pass Agreement was considered by the late Chief Commissioner Killam, J., in British Columbia Coast Cities vs. Canadian Pacific Railway, 7 C.R.C., 125, His judgment reads:—

> "As a result of this Act and the agreement made under it, the company made tariffs of reduced rates upon the classes of merchandise referred to, not only from Fort William and points east thereof westward, but also from Winnipeg westward, without similarly reducing rates on the same classes of merchandise from Pacific points eastward. These reductions cannot be considered as having been forced upon the company, but were the result of an agreement which it chose to enter into for the purpose of obtaining a subsidy in aid of the construction of a line of railway. The agreement and the statute did not even deal with rates from Winnipeg at all. When the Statute was passed, and when the agreement was made, the law prohibited unjust discrimination between localities, and while Parliament did not stipulate for similar reductions over western portions of the company's railway, it should not, in my opinion, be considered as having authorized what would, if done otherwise, have produced unjust discrimination. I think that we are justified in inferring that, in respect of the classes of merchandise to which these tariffs relate, the reductions did result in such discrimination, and that the rates from Vancouver eastward, upon similar traffic carried under similar circumstances, should be proportionately reduced."

In my view full effect should be given to the above principles.

In so far as concerns carload rates on grain, flax-seed and their products in the West, other than the rates to the lake Superior ports and intermediate points held down by the terminal rates; also on the same commodities from Port Arthur and Fort William eastward, and carload grain and grain products in Eastern Canada, I would allow the application for a flat 15 per cent advance, subject to a maximum increase of 2 cents per 100 pounds in the existing rates.

The consideration of chief importance underlying the lumber rates in the West is their relation one to the other. The spread is of greater importance to the lumber industry than the amount of the rate itself. A straight percentage increase would improperly accentuate existing spreads from lumber producing territories and dislocate bnsiness. It would have a specially detrimental effect upon the British Columbia industry.

On the other hand, a general flat increase might bear with undue severity upon short hauls. There are rates as low as 5 cents a hundred. A flat increase of 3 cents, which on a rate of 46 cents would be an increase of only 6½ per cent, would, in the case of a 5-cent rate, amount to an increase of 60 per cent.

The whole western lumber rate situation is full of difficulty and presents a highly technical rate problem. The question as to how increases in lumber rates can be best made without dislocation of traffic by changing the rate relationship now existing between present mills and at the same time result in no undue hardship to the consumer, was referred to Mr. Hardwell for his opinion. Mr. Hardwell's report, in part, is as follows:—

> "As regards lumber; so far as the British Columbia mills are concerned, the desideratum being the preservation of the existing rate relationship between the various mills, as emphasized at the Calgary hearing and in past proceedings, it is clear that this cannot be attained by means of a percentage of increase, even though held down to a maximum per 100 pounds advance for the longer hauls.
>
> "The entire situation has been very carefully examined, therefore, with the view of settling on flat increases in cents per 100 pounds which should avoid any possible complaints of preference or discrimination. Working on a tariff that has no uniform basis, it is impossible to arrive at advances accurately representing 15 per cent. I find, however, that the adoption of the following recommendation would not only afford a broad basis, but would nearly approximate 15 per cent, namely:—
>
> > "To Alberta destinations, also to Canadian Pacific Railway main line stations as far east as Mortlach, Sask., the increase to be 3 cents per 100 pounds.
> >
> > "To all other destinations in Saskatchewan the increase to be 4 cents per 100 pounds.
> >
> > "To destinations in Manitoba, also in New Ontario, east to Port Arthur, the increase to be 5 cents per 100 pounds.
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> > "To a large number of destinations those suggested increases would equal 15 per cent; to others they would be slightly over or under 15 per cent. From the interior mills to Winnipeg the rate would advance from 33 to 38 cents, or precisely 15 per cent; from the coast mills from 40 to 45 cents, or one cent less than 15 per cent.
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> > "From British Columbia to Eastern Canada I would increase the difference over the rates to Port Arthur 10 per cent as recommended for the class rates. From the interior and coast mills, respectively, the rates to Toronto points would go up from 60 and 67 cents to 67 and 74 cents; 110 per cent of the through rates, as first proposed, would give 66 and 73½ cents.
> >
> > "To Montreal points the result would be similar."
>
> "From the other lumber shipping territories I submit the following recommendations:—
>
> > "From the northern Manitoba and Saskatchewan spruce districts, 15 per cent, subject to a maximum of 3 cents per 100 pounds to destinations in Saskatchewan, also in Manitoba east to Winnipeg, and 4 cents to those in Alberta and east of Winnipeg to Port Arthur.
> >
> > "From the Lake of the Woods and Rainy River districts 15 per cent, subject to a maximum of 3 cents per 100 pounds, to destinations in Manitoba, and 4 cents to those in Saskatchewan and Alberta.
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"Between points in Eastern Canada 15 per cent flat. As the highest local eastern rate appears to be 20 cents this would make the maximum advance 3 cents."

I would adopt Mr. Hardwell's report. Under it the rate differences from the different competing mills would be maintained as they now are.

In so far as the bulk of the movement is concerned, Mr. Hardwell's recommendations will result in the 15 per cent increase; in other instances the increase will not amount to 15 per cent; and, in other cases, the percentage increase will be slightly in excess of 15 per cent.

The adoption of Mr. Hardwell's recommendations will put the lumber rate upon a more scientific basis than it has been in the past.

The rate situation which Mr. Hardwell's report preserves is the outcome of an agreement between the associated western mills and the railways. Under this arrangement, the rates from the coast mills east to Winnipeg and Port Arthur, are made the basic rates. The rates from the interior mountain mills and from the mills as far east as Calgary and Blairmore are all based on this standard rate and scale, not strictly having regard to mileage, but scaled according to the agreement between the trade and the railways.

These mills enter into more or less competition with mills in the Northern Spruce Belt (Northern Manitoba and Northern Saskatchewan); also with mills in the lake of the Woods district on the Canadian Pacific, and in the Rainy River district on the Canadian Northern; and to some extent with the mills at Port Arthur.

The situation is highly competitive having regard to the lumber business. Mr. Hardwell's report is in my opinion, the best solution available.

On through movements of these lumber commodities from western shipping points to destinations east of Port Arthur, under Mr. Hardwell's report, the increase permitted is a proper and logical result having regard to the dispositions made of other through movements, and in view of the increases already made in the all-rail and lake-and-rail rates.

While increases have not been made in the American transcontinental rates, I would, nevertheless, permit an increase in the transcontinental class rates, as they do not reflect competition to the extent the commodity rates do. The rates, however, are built up on the all-rail movement, but in view of the American scale and for the reasons already given I think the increase ought to be reduced to 10 per cent.

Transcontinental commodity rates, however, are directly competitive. If unduly increased over the American transcontinental rates, the results well might be that Canadian produce would not move at all in cases where American produce was available, or in some other instances, if it did move, it would move over American lines. I would not at the present advance the transcontinental commodity rates unless these rates are advanced in conformity with advances made by the American lines.

Generally speaking, the rail freight rates in British Columbia are on a considerably higher basis than in the prairie territory. In the Western Rates Case, the Board found that a higher level of charges was justified by the greater cost of conducting transportation. An advance of 15 per cent would, however, materially increase the spread between the mountain and the prairie tariffs, and having regard to all the circumstances, I am of the opinion that in the so-called "Pacific" territory an increase of only 10 per cent should be allowed, but, of course, no rates to be lower than the prairie rates as increased. This percentage difference will not apply to the rates between the ports of call on the British Columbia lakes, as these being now on the prairie basis must take the prairie increase of 15 per cent.

Railway tolls covering services incidental to transportation stand on a different footing to those charged for the line movement. The application for a general advance and authority permitting a general advance in freight rates not exceeding 15 per cent would, however, include them unless specifically excepted. Some of these charges, for example, tariffs for heating and refrigeration, have been recently considered by the Board. Other such services in their nature represent entirely a terminal activity and have particular importance at different local points. Strong objection has been taken by Boards of Trade, particularly those at larger points, to any increase being made on this application and on the general grounds on which it is supported to any increase in these tolls.

In my opinion the objections are well taken, and I would refuse on the present record any increase of tolls and tariffs applicable to switching, whether local or interswitching, weighing, demurrage, refrigeration, heated car service, car diversions, reconsignments, storage, wharfage, sleeping or parlour car accommodation, or other special services.

The application for an increase covers passenger rates as well as freight rates.

I am of opinion that the present maximum rate of 4 cents in British Columbia is so high that it ought not to be advanced. On the other hand, I would grant the advance in rates in other territory where the present maximum rate is three cents as against the four-cent rate in British Columbia.

In so far as passenger rates are concerned, it is entirely in the public interest at the present time that passenger travel should be as light as possible. The usual considerations applying to passenger traffic are to-day reversed. Public interest to-day calls for a reduction wherever possible in passenger service, to the end that the country's resources of coal, railway facilities and supplies, as well as man power, should be conserved as much as possible for all essential freight movement. The same considerations do not, of course, apply to the necessary freight movement.

On the other hand, it must be realized that the Board cannot make rates, having in mind an improved and more economic location and system of railways. The Board's duty as I see it, and as I have already pointed out, is to control and adjust rates, having regard to the systems of railways that Parliament has authorized. The Board must take the railway ownership just as it finds it.

No greater profits will be obtained by the railways under the new rate schedule than in the past. The increased rates allowed will certainly not equal the increase in costs to which the railways are subject. These increased costs are not in any way attributable to the railway managements. They are very largely represented in wage increases which have had the approval of the public at large. Public bodies and public sympathy have been with the men in the increases which they have obtained. No objection whatever has been made by any contestant on the ground that the railways have improvidently increased wages. The other items of cost increases are chiefly the result of to-day's prices of coal, steel material, and railway supplies. The railways suffer in this regard in common with other users of these necessities. The increased cost can certainly not be said to be the railway's fault.

It must be realized that these increased costs can only be met by increase in tariffs. The railways' revenues are derived from transportation.

The increases granted do not work out at the same percentage in both eastern and western territory.

While it may be that the increases granted in western territory may not prove sufficient to meet the increasing demands on the companies' exchequers, they are as great as the Board can authorize on the present application, in view of the Crows Nest Case, with the exception of the increases on coal rates.

In the West, the application in one instance called for a 15 per cent increase in coal rates.

As the coal-rail haul in western territory is long, a 15 per cent rate increase would, on the whole, have netted more than 15 cents a ton—much more on some of the long hauls.

The haul on coal in the East is certainly short, having regard to the volume moved; and the flat increase of 15 cents a ton the railways asked in eastern territory produces more revenue than a percentage increase of 15 per cent would. In adopting the flat increase of 15 cents per ton on coal, I am of opinion that substantial justice is being done.

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While it is true that in so far as western territory is concerned, on the great bulk of traffic, rates would only increase approximately 10 per cent and eastern rates are, speaking generally, raised 15 per cent, it must be borne in mind that, while the rates in the two different sections of the country are much nearer equality since the deductions worked under the Western Rates Case and the increases given under the Eastern Rates Case took effect, again speaking generally, rates in the West are still higher.

As a result subject to the limitations worked by the Crowsnest agreement as extended by this judgment and to the specific directions herein contained the companies are permitted to raise their general rates 15 per cent and make the specific advances herein allowed.

The Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioners McLean and Goodeve concurred.

OTTAWA, ONT., December 26, 1917.

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H/3 P.C. 1768 (4) C 50034

Certified copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the **16th July, 1918.**

PRIVY COUNCIL CANADA

The Committee of the Privy Council have had before them a Memorandum, dated 15th July, 1918, from the Minister of Railways and Canals, stating that representations have been made by the Organization of Railway Employees for an increase in the scale of Railway wages of the employees engaged on the Intercolonial Railway, Transcontinental Railway and Prince Edward Island Railway, and that similar demands have been made on other Railway Companies in Canada. That the attached letter from the Chairman of the Railway Commission has been received by the Acting Premier, and referred by him to the Minister of Railways and Canals, from which letter it appears that the extra amount of wages which the three larger systems, that is to say, Canadian Pacific, Grand Trunk and the Canadian Northern, would be called upon to pay, should the same rate of wages be adopted in Canada as is now in force in the United States, amounts to the sum of $36,865,494.00, while on Government lines the increase would amount to $5,600,000.00, and it further appears that the Railway Companies are of the view that the wages paid railway employees in Canada ought to be the same as that adopted in corresponding territories in the United States, as the class of work is the same in both countries. That there is a large interchange of traffic, and that as a result, many employees work in both countries; and on the further grounds that different Organizations are international in their scope, and that heretofore the wage scale in both countries have been relatively the same.

That in view of the increased cost of living, wages in Canadian territory should be increased as increased in American Territory, by the award commonly known as the "McAdoo" award, as the same may be from time to time amended or extended, in so far as the Government Railways Systems are concerned, and that it is advisable in the public interest that Companies, privately owned, should make similar increases to their employees.

That the net earnings of the railway systems as a result of increased costs of transportation, which has already accrued, have greatly decreased. That the net earnings of the Grand Trunk in 1917 decreased to £26,279, as against £1,202,281 in 1916, and the deficit of the Canadian Northern largely increased, while the Canadian Pacific net earnings in the first six months of the present year decreased some $7,000,000, while the increased scale of wages as contemplated will cost that Company alone $15,000,000 over and above its present costs.

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That in order to enable the railways of Canada to meet the increased wage charges which they will be obliged to pay by reason of the increases herein before referred to, the Minister of Railways and Canals believes that similar action ought to be taken in Canada as taken under similar circumstances in the United States, and freight rates be raised in Canada as such rates have been raised in adjacent United States territory.

The Minister recommends, under the authority of the War Measures Act:

(1) That the scale of wages of railway employees as fixed by the "McAdoo" award in United States territory, including any amendments or extensions thereof, be applied in Canadian territory, in so far as all lines of railway owned, operated or controlled by the Government, are concerned.

(2) That the wage scales of privately owned railways companies in Canada should be similarly advanced.

(3) That increases be made in the freight rates of all Canadian Railway carriers, subject to the jurisdiction of Parliament, as have been made in the rates of American carriers by the Interstate Commerce Commission, and under orders of the Director General of Railway Administration of the United States.

(4) That on the acceptance by the Canadian Pacific, Grand Trunk, Canadian Northern and other railway companies of the said "McAdoo" schedule, the Board of Railway Commissioners be required to forthwith prepare a schedule of rates which will grant similar increases in railway freight rates in Canada to the increases already granted in American territory, effective as of August 1st, 1918.

The Committee concur in the foregoing recommendation, and submit the same for approval.

E. J. Lemaire
Clerk of the Privy Council.

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5. Report of Railway Board - July 25, 1918.

6. Order-in-Council P.C. No. 1863. (Page 290)

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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(5)

Report of the Board of Railway Commissioners for Canada to the Governor in Council under the direction given by Order in Council No. 1768, to prepare a schedule of rates which will grant similar increases in railway freight rates in Canada to the increases already granted in American territory, effective as of August 1, 1918.

File No. 28678.

Under Order in Council No. 1768, the opinion is expressed that, in view of the increased cost of living, the wages in Canadian territory should be increased as increased in American territory by the award commonly known as the McAdoo Award, as the same may from time to time be amended or extended, in so far as the Government Railway Systems are concerned; and that it is advisable, in the public interests, that the companies privately owned should make similar increases to their employees.

The Order definitely advances the scale of wages of railway employees as fixed by the McAdoo Award for lines of railway owned, operated, or controlled by the Government, and recommends that the wage scale of privately owned railway companies in Canada should be similarly advanced.

The Order further provides that should the privately owned railway companies adopt the McAdoo schedule, the Board of Railway Commissioners shall forthwith prepare a schedule of rates which will grant similar increases in railway freight rates in Canada to the increases already granted in American territory, effective as of August, 1, 1918.

The railway companies have notified their employees of their acceptance of the McAdoo scale. The effect of the Order is to reimburse the companies for the additional increased cost to which the railways will be put by the adoption of the scale and in their railway operation. The advance is limited to freight rates, and is also limited to the advances already made in United States territory for the same purpose.

The estimates of the increased costs filed by the Canadian Railway War Board show a total increased cost of $50,616,226, in addition to which there are further claims to be settled by the McAdoo Award which, if settled adversely to the companies, might call for an additional sum of $19,930,000, making a possible outlay of $70,546,260.

The McAdoo Award is popularly supposed to increase rates 25 per cent. In some instances, not amounting, however, to a great volume, the McAdoo Award exceeds this percentage. In a larger number of instances, owing to maximum advance limitations and to a flat rate increase, which, while advancing in a higher percentage the rate for the shorter mileages, holds down all longer movements, the increase of 25 per cent is not obtained.

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The Railway Statistics for 1917 show the total freight earnings of all systems in Canada as amounting to $215,245,256.49. This total amount includes railways which are not under the jurisdiction of Parliament and whose increases are not mirrored in the companies' estimates. The difference, however, would not be very great.

Assuming, however, that the whole amount represented earnings of companies under the jurisdiction of Parliament, and assuming, further, that the increases under the McAdoo scale would net in gross the whole 25 per cent, which they will not, the total amount of the resultant increases under the McAdoo Award would amount to $53,811,314. These figures, however, cannot be accepted. On the one hand the freight earnings in 1917 were very large—the volume may not prove representative—but on the other hand, as rates have already been increased, the resultant gross revenues may well be much larger. As the Board has not had the time necessary to compile statistics based on the newer rates, the American increases, which were arrived at as necessary in American territory after much investigation, are treated as those necessary, subject to the recommendation hereinafter made for rate reduction.

The increases herein covered are those permitted under the Order of the Director General of the United States Railroad Administration when the Canadian rate situation permits the adoption of the whole increase, and in other instances the extent that the increases may be adopted.

Different action has been taken in the United States in connection with their eastern and western territories. Different action has also been taken by the Board. In order to arrive properly at a conclusion the different increases already granted by the Board in Canada in many instances will have to be deducted before the gross increases granted in the United States are given full effect. As the increases made by the Board differ in eastern territory as against the western territory, it is necessary that the matter be dealt with separately.

Rate decisions increasing rates in eastern territory have been made from time to time in both jurisdictions. At a comparatively recent date the rates in eastern United States territory were increased by varying, but large, percentages. No such increase took place in Canada, but a general increase was made in Canada under the Board's Judgment in the "Fifteen Per Cent Case." It is impossible at the moment to report the full effect of the increases in both countries for the past few years. In arriving at the net increase which ought to be given in Canada in order to make similar increases to those made in the States, the Board, therefore, has not considered any increase granted in either jurisdiction prior to the application of the so-called "Fifteen Per Cent Case" in both countries, justification for these applications being the increase of all costs, and, therefore, a proper point at which to commence.

Section 1.—Territory east of Fort William—Class Rates.

The Interstate Commerce Commission on June 29, 1917, granted a 15 per cent increase in the class rates in eastern United States territory. This Board made a similar increase in class rates in eastern territory on December 26, 1917. The order of the Honourable the Director General of the United States Railroad Administration (for the sake of brevity hereinafter called the "McAdoo Order"), gives a direct increase of 25 per cent in the United States eastern class rates. As similar increases have been granted in both territories in order to bring the final increase to a parity, an increase of 25 per cent in Canadian territory ought to be made in the existing schedules.

A result of the McAdoo Order is to create a direct advance in the minimum charge. As a result of this increase all class rates are increased more than 25 per cent, in so far as all movements up to 25 miles are concerned.

Section 1, subsection (*d*) of the McAdoo Order reads: "After such increase no rates shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below for the several classifications."

Official classification scale:—

1.	2.	3.	4.	5.	6.
25	21½	17	12½	9	7

cents per 100 pounds.

In order to carry the McAdoo increases into effect in Canada, while it will be necessary to repeat Mr. McAdoo's provision as to minima, the proper first-class minimum rate in Canadian territory is 24 cents rather than 25 cents, having regard to the Canadian rate scale. This is practically the same increase.

In addition to the percentage increases the McAdoo Order provides that the minimum charge on less than carload shipments shall be that provided in the classification governing, but in no case less than 50 cents. The minimum charge in Canada is in no case less than 35 cents. The increase involved, therefore, is 15 cents.

Section 2 (c).—Commodity rates.

Rates on coal were increased by the Board's Order of December 26, 1917, by 15 cents per ton flat. Similar increases were since granted by the Interstate Commerce Commission. The increases, however, were not put generally into effect as in Canadian eastern territory. The McAdoo Order, however, reads:—

> "Where rates have not been increased since June 1, 1917, the increase to be made now shall be determined by first adding to the present rate fifteen (15) cents per ton, net or gross as rated, or if an increase of less than fifteen (15) cents per ton, net or gross as rated, has been made since that date, then by first adding to the present rate the difference between the amount of that increase and fifteen (15) cents per ton, net or gross as rated; and to the rates so constructed the above increases shall now be added."

As a result the increases granted under the McAdoo Order for the coal traffic are increases calculated either on a previous 15-cent advance, or else on a 15-cent advance made necessary and justified by the Order itself. The conditions are, therefore similar in the two territories. In order to give the railways in Canada similar increases as in the United States it will be necessary to adopt the section of the McAdoo Order giving the coal schedules, reading as follows:—

Commodity.	Increase.
Where rate is 0 to 49 cents per ton....	15 cents per net ton of 2,000 pounds.
" 50 " 99 " "	20 " " "
" $1 " $1.99 "	30 " " "
" $2 " $2.99 "	40 " " "
" $3 or higher per ton....	50 " " "

Coke stands in exactly the same position as coal in so far as increases in both countries are concerned. The increase in the McAdoo Award, however, is higher than in the case of coal, the rates being advanced to the following scale:—

Where rate is 0 to 49 cents per ton....	15 cents per net ton of 2,000 pounds.
" 50 " 99 " "	25 " " "
" $1 " $1.99 "	40 " " "
" $2 " $2.99 "	60 " " "
" $3 or higher per ton....	75 " " "

It is unfortunate that through rates do not apply on movements of coal and coke to Canadian points.

Prior to the McAdoo Order the rate on anthracite in American territory was $2.15 to Buffalo. Under the McAdoo Order that rate became $2.60. The present Buffalo-Toronto rate is 81 cents. Under the McAdoo Order that rate would become $1. The increase on the McAdoo Order, if the traffic moved under a joint tariff, would be held

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down to an increase of 50 cents in all; a difference of 14 cents as against an increase under the present system of 64 cents. This matter is entirely out of the hands of the Canadian railway companies or this Board.

Section 3.—Iron Ores.

While commodity rates were generally advanced by the Interstate Commerce Commission, iron ores were made an exception in Canadian eastern territory. This Board increased the rates on iron ores 15 per cent. The McAdoo Order deals with the movement of this commodity as follows:—

> "Thirty cents per net ton of 2,000 pounds, except that no increase shall be made in the rates on ex-lake ore that has paid one increased rail rate before reaching lake vessel."

The reference to an increased rail rate in connection with the boat movement does not of necessity show any general increase in the iron ore rate. The Board is not advised of any general increase in American territory. The effect of the 30-cent increase is to give a greater increase than that already given by the Board on all traffic carried at a rate of less than $2 per ton, while it holds down the increase for the longer movements. To place the increases on a parity the Board's increase of 15 per cent should be struck out and 30 cents per net ton added to the former Canadian rate.

Section 4.—Stone, artificial and natural, building and monumental, except carved, lettered, polished, or traced.

In United States territory the Interstate Commerce Commission by its Order of March 12, 1918, increased the commodity rates, with certain exceptions in which stone is not included, by 15 per cent. The Board has made a similar increase in its judgment of December, 1917, in eastern territory. The increase in the McAdoo Order amounts to 2 cents per 100 pounds, and the like increase will follow in Canadian territory.

Section 5.—Stone, broken, crushed and ground.

This stone is of low value and for that reason the Canadian Board held down the increase in its "Fifteen Per Cent Case" to a flat addition of 5 cents a ton. An increase was allowed of 15 per cent in American territory. As many of the hauls are comparatively short there probably is not much disparity in the results in the two countries; the Canadian increase would be somewhat the smaller. The advance under the McAdoo Order is 1 cent per 100 pounds. The same increase should be made in the corresponding Canadian territory.

Section 6.—Sand and Gravel.

These rates are in exactly the same position as stone, broken, crushed and ground. The McAdoo Order allows a similar increase of 1 cent per 100 pounds and the same increase should be here allowed.

Section 7.—Brick, except enamelled or glazed.

Similar increases have been granted in both countries by the respective commissions. The McAdoo Order allows an advance of 2 cents per 100 pounds, which should also be permitted in Eastern Canada.

Section 8.—Cement.

An increase of 15 per cent has already been made in Canada. Specific advances were also allowed by the Interstate Commerce Commission on January 15, 1918, in so far as a very large amount of traffic in American territory is concerned

It is impossible to state what the actual results of the increase over the whole field may be, increases having been made in both territories, some of those in the United States being much heavier than the Canadian increase of 15 per cent. The increase under the McAdoo Order, which amounts to 2 cents per 100 pounds can be applied.

Section 9.—Lime and Plaster.

Lime is not excepted from the increase of 15 per cent in commodity rates given by the Interstate Commerce Commission and already has been increased by the Board 15 per cent. The addition of the increase under the McAdoo Order of 1½ cents per 100 pounds in Eastern Canada will restore the parity.

Section 10.—Lumber and other Forest Products not otherwise herein specifically dealt with.

An increase of 15 per cent was granted by the Board of Railway Commissioners in Eastern Canada. An increase was also given in American eastern territory by the Interstate Commerce Commission, but the increase made by the Interstate Commerce Commission was held down to an increase of 1 cent per 100 pounds. In order to put the increase on a parity the increase of 15 per cent already allowed by the Board will have to be taken off, and 1 cent added to the former tariff, which will then be increased by 25 per cent but not exceeding 5 cents per 100 pounds.

Section 11.—Pulpwood.

The Canadian Board allowed an increase of 15 per cent on pulpwood. In the Main and New Hampshire districts, where pulpwood is produced and comes directly into competition with Canadian pulpwood, the American railways put into force an advance of 15 per cent before the McAdoo Order was made, and on international business the increase granted by the McAdoo Order, which amounts to 25 per cent, but not exceeding 5 cents per 100 pounds, is already in effect. Parity is, therefore, obtained by increasing the present rates in Canada as provided by the McAdoo Order.

Section 12.—Cordwood, Slabs and Mill Refuse for Fuel Purposes.

The rates on these articles were advanced 15 per cent in Canada under the Board's Judgment. Under the Order of the Interstate Commerce Commission an increase was granted of 1 cent per 100 pounds in some instances and 15 per cent in others. Under the McAdoo Order the rates take an advance of 25 per cent, but not exceeding an increase of 5 cents per 100 pounds. Taking the rates for a 60-mile haul, the Canadian position is as follows:—

Prior to the 15 per cent increase the rate was 4½ cents, the increase being to 5 cents. Applying the McAdoo Order on the present Canadian rate of 5 cents, the rate would become 6½ cents. A considerable quantity of cordwood is hauled 125 miles. The old rate for this distance was 5½ cents, the "Fifteen Per Cent Case" made it 6 cents, and the McAdoo advance would make it 7½ cents, while if the Interstate Commerce Commission's increase of 1 cent was added to the original rate and the McAdoo increase added, the rate would be 8 cents. The railways' attention has been called to the fact that owing to the shortage of coal it is desirable that as much cordwood be carried as possible. While the railways insist that the expense to which they have been put, having particular regard to the recent increase in wages, are such that the whole increase of the McAdoo Order would be absolutely required, under the circumstances the railways raise no objection if, instead of applying the full increase, a flat increase of 1 cent over the present rate is applied to the whole movement. The result would be that the increase on this commodity would make the new rate for 60 miles 6 cents instead of 6½ cents, and for 125 miles 7 cents instead of 7½ cents.

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Section 13.—Wheat.

The Board advanced the rate in eastern territory 15 per cent, subject to a maximum increase of 2 cents per 100 pounds. The Interstate Commerce Commission had advanced the rate in American territory 15 per cent without limiting the increase by a maximum.

Comparative increases will be secured by the companies carrying the former judgment of the Board into effect without the limit imposed of 2 cents per 100 pounds, and adding the increase provided by the McAdoo Order, which amounts to 25 per cent, but not exceeding an increase of 6 cents per 100 pounds.

Section 14.—Other Grains, Flour and other Mill Products.

These rates should be treated in the same way as the wheat rates. The McAdoo Order in dealing with them reads: "25 per cent but not exceeding an increase of 6 cents per 100 pounds, and increased rates shall not be less than new rates on wheat."

Section 15.—Live stock.

Similar increases have been made in both countries by the respective commissions. The McAdoo Order increases the rates 25 per cent, but not exceeding an increase of 7 cents per 100 pounds where rates are published per 100 pounds, or $15 per standard 36-foot car where rates are published per car.

Section 16.—Packing House Products and Fresh Meats.

An increase of 15 per cent has been made in both countries by the respective commissions. The McAdoo Order makes a further increase of 25 per cent, except that the rates published from all Missouri River points to Mississippi River territory and east thereof shall be the same as the new rates from St. Joseph, Mo. The exception is without significance, having regard to territory contiguous to Canada. The adoption of the McAdoo Order will make a parity of increase.

Section 17.—Bullion, base (copper or lead), pig or slab, and other smelter products.

Fifteen per cent increases have already been granted in both countries. The McAdoo Order increases the rates 25 per cent, and may be adopted.

Section 18.—Sugar, including syrup and molasses, where sugar rates apply thereto.

A 15 per cent increase was granted by the Interstate Commerce Commission. A 15 per cent increase was also granted by the Board. Canadian eastern territory is contiguous to American territory covered by the official classification. Under the McAdoo Order sugar rates are to be advanced 25 per cent, except that where the official classification applies the fifth-class rates, as increased, will apply. Commodity rates for sugar were in effect in American eastern territory prior to the McAdoo Order and are to-day in effect in eastern Canada.

Sugar classifies 5th-class, and only moves on 5th-class, in so far as the all-rail movement from Eastern to Western Canada is concerned. The district covered by sugar commodity tariffs stops at North Bay, on the Grand Trunk, and at Sudbury, on the C.P.R. The effect of the McAdoo Order is to increase the rates on sugar between points in the United States formerly covered by commodity tariffs to a greater extent than 25 per cent. For example: the former commodity rate on sugar from New York to Detroit was 24½ cents. Under the McAdoo Order it now becomes 35, an increase of 42 per cent. From New York to Chicago the commodity rate was 31½; new rate, 45 cents; a percentage increase of 43 per cent. The New York to St. Paul and Duluth rate was 38½ cents; new rate, 65 cents; a percentage increase of 69 per cent.

As the commodity rates in Eastern Canada were not based on any fixed proportion of the 5th-class, the percentage of the resulting increase would change in almost every instance. As similar increases were made in both countries before the McAdoo Order, the parity of treatment in increases will be obtained by providing for an increase of 25 per cent, except that in Canada, where the Canadian Freight Classification applies, the 5th-class rate as increased would be substituted.

The effect of the McAdoo Order on the sugar movement from Montreal to Toronto would be as follows:—

The present rate is 18½ cents per 100 pounds, while the present 5th-class rate is 26½ cents, and as increased under the McAdoo Order would be 33 cents. As a result the rate would be increased 14½ cents per 100 pounds, or 78·3 per cent.

The increase would make the freight costs 0·33 cents per pound as against 0·185 cents per pound, and on a 10-pound purchase by the consumer 3·3 cents as against 1·85 cents.

Section 19.—Ice.

No authority to increase ice rates in American eastern territory prior to the McAdoo Order appears. Under these circumstances, the increase of 15 per cent allowed by the Board should be cancelled, and the McAdoo advance of 25 per cent should be calculated on the former rates.

Section 20.—Commodity Rates Not Included in the Foregoing.

These should be increased 25 per cent as allowed by the McAdoo order.

Section 21.—Territory West of Fort William.—Class Rates.

No increase was made in class rates in western territory by the Interstate Commerce Commission. An increase of 15 per cent was allowed by the Board. As a result the increase granted by the Board should be cancelled and the 25 per cent increase allowed by the McAdoo Order calculated on the old rates.

The position in so far as minimum rates are concerned, is similar to the position already covered, having regard to the eastern rates. The result is that the same minimum of 24 cents first-class, in view of the Canadian tariff construction, should be adopted in lieu of the 25 cent minimum provided by the McAdoo Order.

The minimum charge on less than carload shipments will also be increased so as to provide for a minimum charge of 50 cents, instead of 35 cents, as in eastern territory.

Section 22.—Coal.

The McAdoo Order makes the same increases on coal as in eastern territory, and in view of the provision of the Order that in any case where a flat 15 cents had not already been allowed the increased rate should be calculated upon that basis makes the situation such that to arrive at a comparative increase the full McAdoo increases must be adopted as in eastern territory.

Section 23.—Coke.

The position as to coke is exactly the same as to coal, and the increases here, again, are the same as already shown for eastern territory.

Section 24.—Iron Ores.

This is not an important movement in Western Canada. No increase was made in the American rate prior to the McAdoo Order. That Order allows a flat increase of 30 cents per net ton of 2,000 pounds except that no increase shall be made in rates on

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ex-lake ore that has paid one increased rate before reaching lake vessel. As a result the existing tariffs to cover this movement should be cancelled and the 30 cents per net ton allowed by the McAdoo Order added to the rates existing prior to the 15 per cent case.

Section 24 (a).—Other Ores.

Ores other than iron, under the McAdoo Order, are covered by a general increase of 25 per cent. The American rate situation does not at all compare with the situation in Western Canada. Ore rates to Western Canadian smelters are compiled for the lower values on the rubble and dimension stone commodity mileage basis, on values exceeding $50 to $100 on the 10th-class distributing rates, and on values exceeding $100 on the 10th-class standard rates. In the United States, however, the ore rates have no such relation. It is inadvisable to change the Canadian basis. Increases, however, can be obtained by advancing the Canadian rates in the same manner as the McAdoo award advances the commodity and class-rates upon which the Canadian rates are based. The district particularly interested is the Kootenay district. On low-grade ores of the value of $5 the old rate was $1.35 a ton from Kimberley to Trail. An increase of 10 per cent has since been made, so that the existing rate is $1.50 per ton. Under the basis recommended this rate will become $1.55 per ton. If the straight McAdoo increase had been applied the rate would become $1.70 a ton. For the same movement on ores of $15 a ton the old rate was $1.65, increased to $1.80, and the proposed increased rate will be $1.85. Under the McAdoo award the increased rate would amount to $2.10.

The increases on the rubble and stone commodities are but 1 cent per 100 pounds, and the increases in the ore rates are thus held down. Values from $25 to $50 inclusive are based on the dimension stone commodity tariff. The increase here under the McAdoo Order is 2 cents per 100 pounds, and the result is that on the same movement of ore of the $25 value the old rate of $1.90 a ton, which has been increased to $2.10 a ton, and would move at a rate of $2.30 a ton. Under the McAdoo Order the rate would be $2.40.

For the $50 ore the old rate was $2.80, the rate as increased is $3.10, and the increase which should be allowed would bring the rate up to $3.20. In this case the McAdoo Order would allow an increased rate of $3.50. On $100 ore the old rate was $4 per ton; as increased $4.40 a ton and would become $5. It is to be observed that the basis of the McAdoo increase would make the same $5 rate.

Over the above the ordinary ore rates there are other ore rates covering train load lots. These have been increased in Canadian territory. The increases granted ought to be disallowed and the new rates be based on the former rates, plus an advance by 25 per cent as per the McAdoo Order .

Section 25.—Stone, artificial and natural, building and monumental, except carved, lettered, polished or traced.

The rates on these commodities were advanced by the Board in the "Fifteen Per Cent Case." No advance was made by the Interstate Commerce Commission. The advanced tariff approved by the Board should be cancelled, and the 2 cents per 100 pounds called for by the McAdoo Order added to the tariffs as they existed prior to the "Fifteen Per Cent Case."

Section 26.—Stone, broken, crushed and ground, sand and gravel.

The rates on those commodities were advanced by the Board in the "Fifteen Per Cent Case." No advance was made by the Interstate Commerce Commission. The advanced tariff approved by the Board should be cancelled, and the 1 cent per 100 pounds called for by the McAdoo Order added to the tariffs as they existed prior to the "Fifteen Per Cent Case."

Section 27.—Brick, except enamelled or glazed.

The rates on this commodity were advanced by the Board in the "Fifteen Per Cent Case." No advance was made by the Interstate Commerce Commission. The advanced tariff approved by the Board should be cancelled and the 2 cents per 100 pounds called for by the McAdoo Order added to the tariffs as they existed prior to the "Fifteen Per Cent Case."

Section 28.—Cement.

The position of relative increases is similar to that in eastern territory and the same action may be taken.

Section 29.—Lime.

An increase of 15 per cent has already been made in Canada. No increases were allowed by the Interstate Commerce Commission. The advanced tariff approved by the Board must be cancelled and the increase under the McAdoo Order, which amounts to 1½ cents per 100 pounds, applied in the former rate.

Section 30.—Lumber.

The most important movement in western territory is from British Columbia, which province together with Washington and Oregon are closely in relation one to the other in the production of lumber. The Canadian mills sell in the United States territory in competition with the American producer, and the American producers sell in Canadian territory in competition with British Columbia mills. The original rates were the same. The rate from Vancouver to Winnipeg was 40 cents. The rate from Portland and from Seattle to St. Paul and Winnipeg was also 40 cents, the Winnipeg rate being competitive.

Some years ago the American lines, with the subsequent approval of the Interstate Commerce Commission, advanced their rate from 40 to 45 cents to St. Paul, although for competitive purposes, owing to the fact that the Canadian lines could not increase their rates, the United States 40 cent rate to Winnipeg was maintained.

The matter of lumber rates was considered by the Board in the "Fifteen per cent Case." The situation was found to be such that no flat 15 per cent increase could be allowed. The consideration of chief importance in lumber rates was found to be the relation one to the other, having regard to the different points of production in Canadian territory. Certain advances were allowed, and among them the rate Vancouver to Winnipeg was advanced to 45 cents. The main rate was, therefore, restored to a parity with the American rate as formerly. Under the McAdoo Order the American lines have increased their rate to St. Paul and Minneapolis from 45 to to 50 cents. Other rates in American territory have been advanced to the full 25 per cent allowed by the McAdoo Order, subject to the maximum of 5 cents. The increase given by the Board in the "Fifteen Per cent Case" practically restored parity between the Canadian and American rates. If the increase allowed by the McAdoo Order of 25 per cent, subject to a maximum of 5 cents per 100 pounds is allowed in the existing tariffs, that parity would be maintained. The increases will, of course, extend not only to movements in local territory, but also to eastern Canada and to the Eastern States.

Other sources of local supply are the northern spruce belt and the Lake of the Woods, Rainy River and Thunder Bay districts.

Under the McAdoo Order these rates will take the same advance.

Section 31.—Grain and Grain Products to Fort William and Port Artuhr.

These rates in Canadian western territory are lower than the rates in contignous American territory. The American hauls are to the terminals at St. Paul, Minneapolis and Lake Superior ports. All these terminals take the same rate. The haul

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within Canadian territory is to Port Arthur and Fort William. For example, the rate from Garrison, Mont., to Minneapolis, a haul of 1,172 miles, was 33 cents. The haul from Lethbridge to Fort William, 1,177 miles, had a 23-cent rate.

Under the McAdoo Order the rate from Garrison moved up a further 6 cents, making that rate 39 cents, while under the Board's Order the grain rate from Lethbridge was increased 2 cents, making that rate 25 cents, so that the difference became much accentuated. The parity of increase in haul, although, of course, not in rate, which is not for a moment recommended, can be easily obtained by adding the increase under the McAdoo Order to the old rates for mileages substantially similar to those in the United States. The folliwng table is submitted as showing the results of the application of the McAdoo scale on this basis to points representing different mileages:—

To Fort William, Port Arthur and Westfort, Ont.

From	Miles.	Old Rate.	Present rate as increased by Board.	New rate based on McAdoo increase for similar U. S. Mileages.
Winnipeg, Man	420—CP	10	12	14
Port. la Prairie, Man	475—CP	12	14	16
Brandon, Man	553—CP	13	15	17½
Minnedosa, Man	554—CP	13	15	17½
Souris, Man	570—CP	14	16	18½
Dauphin, Man	613—CN	15	17	19½
Arcola, Sask	672—CP	16	18	21½
Estevan, Sask	710—CP	17	19	22½
Weyburn, Sask	735—CP	18	20	24
Regina, Sask	777—CP	18	20	24
Moosejaw, Sask	819—CP	18	20	24
Swift Current, Sask	929—CP	20	22	26
Maple Creek, Sask	1014—CP	21	23	27
Saskatoon, Sask	900—CP	22	24	28
Biggar, Sask	960—GTP	23	25	29
Kindersley, Sask	1066—CN	24	26	30
Kerrobert, Sask	1041—CP	24	26	30
Hanna, Alta	1202—CN	25	27	31
Medicine Hat, Alta	1077—CP	22	24	28
Prince Albert, Sask	977—CN	23	25	29
Lethbridge, Alta	1178—CP	23	25	29
Calgary, Alta	1243—CP	24	26	30
High River, Alta	1278—CP	25	27	31
Red Deer, Alta	1282—CP	25	27	31
Edmonton, Alta	1243—GTP	25	27	31

Section 32.—Grain and Grain Products between Local Points and the Pacific Coast.

In so far as local rates and rates to Vancouver are concerned, the McAdoo Order would also increase these 25 per cent, with a maximum of 6 cents per 100 pounds. The simplest way of dealing with these movements, which are not in any way related to the American market or American competition, is to disallow the increase already made by the Board and calculate the increases on the old rates.

Section 33.—Livestock.

Attention has not been called to any increase either on the line of the Great Northern or on the Northern Pacific. These companies occupy territory contiguous to that of Canadian carriers in the west. Increases in the American livestock rates in the more southerly territory were granted in 1915. These increases would not, however, appear to control the situation. The increase already granted by the Board should, therefore, be struck out and the increase allowed under the McAdoo Order of 25 per cent, but not exceeding an increase of 7 cents per 100 pounds for rates published per 100 pounds or $15 per standard 36-foot car where rates are published per car, added.

Section 34.—Packing House Products and Fresh Meats.

These rates were advanced by the Board in the "Fifteen Per Cent Case." No increase was allowed by the Interstate Commerce Commission. The advance under the McAdoo Order is 25 per cent. The advance tariffs authorized by the Board should be cancelled and the increase calculated on the tariffs in effect prior to March 15, 1918.

Section 35.—Bullion base (Copper or Lead), Pig or Slab and other Smelter Products.

The McAdoo Order allows an increase of 25 per cent on existing rates except that:—

1. Rates from producing points in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington to New York, N.Y., shall be sixteen dollars and fifty cents ($16.50) per net ton with established differentials to other Atlantic Seaboard points, and

2. Rates from points in Colorado and El Paso, Texas, to Atlantic Seaboard points shall be increased six dollars and fifty cents ($6.50) per net ton.

Separately established rates used as factors in making through rates to the Atlantic Seaboard shall be increased in amounts sufficient to protect the through rates as above increased.

There are three smelters in British Columbia, one at Greenwood, one at Grand Forks, and one at Tadanac (Trail).

The chief movement of the smelter products in Canadian territory is to Toronto, Hamilton and Montreal. The exact percentage of increase, owing to the blanket form of the McAdoo Order, is somewhat difficult to apply to any mileage basis, or to the Canadian rate basis. Under the Order the rates to Buffalo from Northport, which is the American smelter nearest to the Canadian group, is 71½ cents per 100 pounds. An increased rate to the Canadian carriers which would place Toronto and Hamilton on the same basis as Buffalo would be reasonable and fair. This 71½-cent rate produces a rate per ton of $14.30. The present rate to Toronto for the Canadian haul is $13.40. Under the McAdoo Order the Boston rate becomes $16.90 a ton, while the New York rate is $16.30. The Montreal rate ought to be held down to the New York rate. To territory east of Montreal in Canada the usual arbitraries should be added to the Montreal rate.

Rates to points in Western Canada should take the advance of 25 per cent as provided by the McAdoo Order. In view of conditions existing at Canadian smelters and the cost of production of zinc, the present zinc rates for domestic purposes should be reduced to the copper and lead rates already referred to.

Section 36.—Sugar, Syrup and Molasses.

Sugar is refined in western territory in Vancouver, whence the movement extends as far east as Winnipeg. The McAdoo Order is difficult to apply to this traffic. For example, it provides that from points in California to points taking Missouri River rates and those related thereto under the Interstate Commerce Commission's 4th section order, and to points east of the Missouri river, an increase of 22 cents per 100 pounds was made. The order, of course, includes an increase of 25 per cent except in specific cases. As already pointed out in connection with the eastern movement, it makes a large increase by cancelling the commodity rates and making the increased 5th-class rates applicable. The sugar from Vancouver to destinations in the west moves under commodity rates, as eastern sugar moves locally in Eastern Canada. The eastern refiner has long alleged an undue preference which enables the British Columbia shipments to be carried as far as Winnipeg under the commodity tariff, while he, shipping all-rail to the western provinces, has to pay the 5th-class rates, and the complaint has also been made that the British Columbia tariff is out of scale. Judgment has been reserved for a considerable time by the Board in this question, but a readjustment of the sugar rates will have to be made before the question is properly and

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finally determined. The fairest way of increasing the British Columbia sugar rates would appear to be to apply to these rates the same basis and principles as recommended for eastern territory.

Section 37.—Commodity Rates Not Included in the Foregoing.

These rates should be advanced by adding the increase of 25 per cent provided by the McAdoo Order to the rates as they existed prior to the increase of 15 per cent permitted by the Board, and the Board's increase disallowed.

Section 38.—General Class Rates Between Points in Eastern and Western Canada.

The eastern portion of these rates was increased 6 cents in the first-class shortly before the 15 per cent application had been made, a further increase of 10 per cent being then allowed by the Board. The increase in Western Canada was 15 per cent. The like United States rates were increased, in so far as eastern territory was concerned, approximately 10 per cent, this increase being made on the 15th of March last, the former New York-Duluth rate being $1.18·8 1st-class and increased in July, 1917, to $1.30. Under the McAdoo Order the rates have increased 25 per cent; so that the present rate is $1.62½. In order to produce a like parity in Canada the McAdoo increase in eastern territory of 25 per cent will be calculated on the existing rates, but in western territory the 15 per cent already allowed by the Board must be disallowed and a 25 per cent increase made on the old rates.

Section 39.—Commodity Rates Between Points in Eastern and Western Canada.

Specific commodity rates in the separate territories have already been dealt with, and in both territories commodity rates which are not covered by specific provision are shown to require an increase of 25 per cent in order to give the increase called for under the McAdoo Order. In connection with commodity rates between eastern and western Canada the appropriate increases would, therefore, be those which would obtain hereunder in the different territories in like commodity rates therein, in so far as the portion of the rate in such territory is concerned.

Section 40.—Export and Import Rates.

Both export and import rates are cancelled by the McAdoo Order, although the right to make a differential rate has been reserved. The Canadian rate structure and traffic conditions do not permit similar action.

(*a*). *Export Rates.*—This question had already been dealt with by the Board.

(*b*). *Import Rates.*—The increases which would result by the general adoption of the increased scales for local tariffs as provided by the McAdoo Order ought not to be allowed. With the longer rail haul in Canada and the different traffic conditions obtaining, in order to do business the railways in the past have deemed it necessary to maintain an import rate basis which would be as low as that obtaining from the American port enjoying the lowest rate. Just so soon as these rates became equalled by local rates in Canadian territory local rates from that point onward obtained. The only increase that ought to be permitted in import rates, if the very proper policy of the past is continued, is to authorize increases in the import rates subject to the limitation that the rates as increased shall not exceed in any particular class or commodity the lowest import rates to the same points, from Baltimore or any North Atlantic seaport in the United States.

Section 41.—Disposition of Fractions.

In applying rates, fractions should be disposed of as follows:—

(1) Rates in cents or in dollars and cents per 100 pounds or per package:—
Fractions of less than ¼ or 0·25 to be omitted.

Fractions of ¼ or 0·25, or greater, but less than ¾ or 0·75 to be shown as one-half (½).

Fractions of ¾ or 0·75, or greater, to be increased to the next whole figure.

(2) Rates per ton:—
Amounts of less than five cents to be omitted.
Amounts of five cents or greater, but less than ten cents, to be increased to ten cents.

(3) Rates per car:—
Amounts of less than twenty-five cents to be omitted.
Amounts of twenty-five cents or greater, but less than seventy-five cents, to be shown as fifty cents.
Amounts of seventy-five cents or greater, but less than one dollar, to be increased to one dollar.

Section 42.—Observance of differentials.

The McAdoo Order contains the following provision:—

"In establishing the freight rates herein ordered, while established rate groupings and fixed differentials are not required to be used, their use is desirable, if found practicable, even though certain rates may result which are lower or higher than would otherwise obtain."

There is no objection to the adoption of this clause. As a matter of fact it merely applies to the scales as advanced, the practice usually followed in the preparation of schedules.

Section 43.

It should be pointed out that in the preparation of the schedule of increases in this report the provisions of Order in Council No. 1768 have been adhered to, and the directions to establish similar increases to those granted in adjacent United States territory have been complied with to the extent the Canadian rate system and conditions permit. In the result the previously existing parity of rates in Canadian and United States territory has been as near as may be preserved, and whenever under the former rate schedules Canadian railway rates have been on a lower rate basis lower rates in Canada have been maintained. In the general result it will be found that smaller increases will obtain in Canada than in the United States. Where it has been found impracticable to give the full increase allowed in United States territory under the McAdoo Order the matter has been fully discussed with the chief traffic officers of the companies chiefly concerned.

Section 44.

It is difficult accurately to forecast the increased gross earnings that the rate increases will give. It is much more difficult to arrive with any degree of accuracy at the result of the net. Traffic conditions and operating expenses constantly change. The authorities of the United States have gone into all the circumstances requiring and the added expenses necessitating a rate increase with much care. As a result of this study, in the opinion of those authorities, the so-called twenty-five per cent increase was necessary.

Increased costs and war conditions bear even more hardly upon railway conditions in Canada than in the United States. The Canadian railways themselves are large contributors to increased United States freight charges. Railway coal for Quebec, Ontario, and a considerable portion of the western prairies is imported from the coal mines of the United States and subject to long hauls by the American carrier.

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The Grand Trunk Railway Company estimates that the additional amount its coal for the year will cost, owing to the increase of freight rates alone in United States territory, is approximately $800,000; the Canadian Pacific $900,000, and the Canadian Northern $450,000.

A large percentage of other raw materials required by the railways in their operation are also imported from the United States. The Canadian railways not only pay the ordinary duty, but also a special war tax on their coal.

It is also clear that the increases authorized by the McAdoo Order, to the extent adopted by Order in Council No. P.C. 1768, will not give the Canadian railways the increases the United States lines receive under it. No increases are allowed on Canadian lines on passenger sleeping or parlour car tariffs.

It is also true that the increases on a large volume of the traffic will fall a considerable degree short of the 25 per cent increase popularly connected with the McAdoo Order, owing to the maximum limitation the order creates and the flat increases in other cases allowed.

The Order in Council was not passed for the purpose of increasing company profits over those of previous years, but for the purpose of meeting the advanced costs of transportation, of preventing strikes, and the collapse of the country's transportation.

The railway executives, while stating that the increases allowed will enable transportation to continue in efficiency, claim that such increases will not be sufficient to cover the whole increased cost of operation. Whether this will or will not be the case is largely a matter of speculation.

Under all the circumstances it is submitted that the Board be instructed to advise the Cabinet, through the Minister of Railways, month by month, the monthly net results of the operations of the three larger systems, i.e., the Grand Trunk, Canadian Pacific, and Canadian Northern, to the end that any increases that may be found to be unnecessary be promptly curtailed.

H. L. DRAYTON.

OTTAWA, July 25, 1918.

(6)

P.C. 1863.

AT THE GOVERNMENT HOUSE AT OTTAWA.

SATURDAY, the 27th day of July, 1918.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

His Excellency the Governor General in Council, on the recommendation of the Minister of Railways and Canals, made on the recommendation of the Board of Railway Commissioners, and under the authority of the War Measures Act, 1914, is pleased to order and enact and it is hereby ordered and enacted as follows:—

1. Notwithstanding the provisions of any legislation heretofore passed, or of any rate-limiting agreement heretofore made, the charges for the carriage of freight on all railways owned, operated or controlled by the Government of Canada, and all other railways subject to the jurisdiction of the Parliament of Canada, shall be increased to the extent and in the manner hereinafter set out, that is to say:—

TERRITORY EAST OF FORT WILLIAM.

Section 1.—Class Rates.

All class rates in eastern territory shall be increased twenty-five per cent.

Section 2.—Commodity Rates.

(*a*) Commodity rates on the following articles in carloads shall be increased by the amounts set opposite each:—

Commodities.	Increases.
Coal—	
Where rate is O to 49 cents per ton	15 cents per net ton of 2,000 pounds.
Where rate is 50 to 99 cents per ton	20 cents per net ton of 2,000 pounds.
Where rate is $1.00 to $1.99 per ton	30 cents per net ton of 2,000 pounds.
Where rate is $2.00 to $2.99 per ton	40 cents per net ton of 2,000 pounds.
Where rate is $3.00 or higher per ton	50 cents per net ton of 2,000 pounds.
Coke—	
Where rate is O to 49 cents per ton	15 cents per net ton of 2,000 pounds.
Where rate is 50 to 99 cents per ton	25 cents per net ton of 2,000 pounds.
Where rate is $1 to $1.99 per ton	40 cents per net ton of 2,000 pounds.
Where rate is $2 to $2.99 per ton	60 cents per net ton of 2,000 pounds.
Where rate is $3 or higher per ton	75 cents per net ton of 2,000 pounds.
Ores, iron	30 cents per net ton of 2,000 lbs. except that no increase shall be made in rates on ex-lake ore that has paid increased all-rail rate before reaching lake vessel. The increase of 30 cents shall be added to tariffs in force prior to March 15, 1918, and the increases since allowed by the Board of Railway Commissioners struck out.
Stone, artificial and natural, building and monumental, except carved, lettered, polished or traced	2 cents per 100 pounds.
Stone, broken, crushed and ground	1 cent per 100 pounds.
Sand and gravel	1 cent per 100 pounds.
Brick, except enamelled or glazed	2 cents per 100 pounds.
Cement	2 cents per 100 pounds.
Lime and plasters	1½ cents per 100 pounds.
Lumber and other forest propducts not otherwise herein specifically dealt with	A flat rate of 1 cent per 100 pounds to be added to the tariffs in force prior to March 15, 1918, and the rate so obtained to be then increased by 25 per cent but not exceeding 5 cents per 100 pounds; the increase since granted by the Board of Railway Commissioners to be disallowed.
Pulpwood	25 per cent, but not exceeding an increase of 5 cents per 100 pounds.
Cordwood, slabs, and mill refuse, for fuel purposes	1 cent per 100 pounds.
Wheat	By striking out the limitation imposed of 2 cents per 100 pounds in the increase allowed by the Board of Railway Commissioners, effective March 15, 1918, and adding 25 per cent increase, but not exceeding 6 cents per 100 pounds.
Other grains, flour and other milled products	To be increased to the new wheat rates.
Live Stock	25 per cent, but not exceeding an increase of 7 cents per 100 pounds where rates are published per 100 pounds, or $15 per standard 36 foot car where rates are published per car.
Packing-house products and fresh meats	25 per cent.
Bullion, base (copper or lead), pig or slab, and other smelter products	25 per cent.

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Commodities.	Increases.
Sugar, syrup, and molasses	By cancelling existing commodity rates and applying the fifth-class rate as increased hereunder.
Ice	25 per cent calculated on tariff in effect prior to March 15, 1918. Increases since allowed by the Board of Railway Commissioners to be disallowed.

(*b*) Commodity rates not included in the foregoing list shall be increased 25 per cent.

(*c*) In applying the increases prescribed in this section, the increased class rates applicable to like commodity descriptions and minimum weights between the same points are not to be exceeded.

TERRITORY WEST OF FORT WILLIAM.

Class Rates.

(*a*) All class rates shall be increased 25 per cent, calculated on the tariffs in force prior to March 15, 1918; the increases since allowed by the Board of Railway Commissioners to be disallowed.

Commodities.	Increases.
Coal and coke	Rates to be increased as rates on these commodities are increased hereunder in eastern territory.
Ores, iron	Rates to be increased as rates on these commodities are increased hereunder in eastern territory.
Ores, other	On ores not exceeding in value $25 per net ton, 1 cent per 100 pounds; on ores valued over $25 to $50, 2 cents per 100 pounds; on ores valued over $50 to $100, the 10th class rates of the merchandise distributing scale, as increased hereunder, shall apply; on ores over $100 in value the 10th class rates of the merchandise standard scale, as increased hereunder, shall apply.
Stone (artificial and natural), building and monumental, except carved, lettered, polished, or traced	By the addition of 2 cents per 100 pounds to the tariff in force prior to March 15, 1918; the increases subsequently granted by the Board of Railway Commissioners to be disallowed.
Stone, broken, crushed, and ground; also sand and gravel	By the addition of 1 cent per 100 pounds to tariffs in force prior to March 15, 1918; the increases since allowed by the Board of Railway Commissioners to be disallowed.
Brick, except enamelled or glazed	By the addition of 2 cents per 100 pounds to the tariffs in force prior to March 15, 1918; the increases since granted by the Board of Railway Commissioners to be disallowed.
Cement	2 cents per 100 pounds.
Lime	1½ cents per 100 pounds on the tariffs in force prior to March 15, 1918; the increases since allowed by the Board of Railway Commissioners to be disallowed.
Lumber	25 per cent, but not exceeding an increase of 5 cents per 100 pounds.

TERRITORIES WEST OF FORT WILLIAM.—*Continued.*

Commodities.	Increases.
Grain and grain products to Fort William and Port Arthur	By the addition of the increases granted under the McAdoo Order for similar mileages in adjacent American territory, to the rates in effect prior to March 15th, 1918. Where more than one tariff of an American carrier in an adjacent State exists, the rate increase shall be that allowed on the lowest normal rate for the same or similar mileages in such contiguous territory under the McAdoo Order; the increases since granted by the Board of Railway Commissioners to be disallowed. Prrovided that the rates on said products shall not be greater from the City of Edmonton than from the City of Calgary.
Grain and grain products between local points and to the Pacific Coast	By the addition of 25 per cent, but not exceeding an increase of 6 cents per 100 pounds to tariffs in effect prior to March 15, 1918, and by disallowing the increases since made by the Board of Railway Commissioners.
Live Stock	By the addition of 25 per cent, but not exceeding an increase of 7 cents per 100 pounds where rates are published per 100 pounds, or $15 per standard 36-foot car where rates are published per car; increases to be based on tariffs in effect prior to March 15, 1918, and the increases since allowed by the Board of Railway Commissioners to be disallowed.
Packing-house products and fresh meats	By the addition of 25 per cent. to the tariffs in effect prior to March 15, 1918, and increases since allowed by the Board of Railway Commissioners to be disallowed.
Bullion, base (copper or lead), pig or slab, and other smelter products	Rates from British Columbia smelters to Toronto and Hamilton to take the rates from the contiguous American smelting and shipping point, namely, Northport, Wash., to Buffalo, viz., 71½ cents per 100 pounds, Montreal to take the New York rate of 81½ cents per 100 pounds. Rates to Canadian points, other than points in eastern Canadian territory, to be advanced 25 per cent. Rates on zinc for domestic consumption to be the same as on copper and lead.
Sugar, syrup, and molasses	To be made on the basis and principle adopted hereunder for eastern territory.

(*b*) Commodity rates not included in the foregoing list shall be increased 25 per cent, calculated on the tariffs in force prior to March 15, 1918, and the increases since authorized by the Board of Railway Commissioners to be cancelled.

(*c*) In applying the increases prescribed in this section, the increased class rates applicable to like commodity descriptions and minimum weights between the same points are not to be exceeded.

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TERRITORIES BOTH EAST AND WEST.

Minimum Charges.

(*a*) After the increases hereunder made in class rates, no rates shall be applied on any traffic moving under class rates lower than the amounts in cents per 100 pounds for the respective classes as follows:—

Classes	1	2	3	4	5	6	7	8	9	10
Rates	24	21	18	15	12	11	9	10	10	7½

(*b*) The minimum charges on less than carload shipments shall be as provided in the Canadian Freight Classification, but in no case shall the charge on a single shipment be less than fifty cents.

(*c*) Class rates.

	Increases.
Class rates between eastern and western points	That portion of the rate applicable to eastern territory to be increased 25 per cent., and that portion applicable to western territory, 25 per cent., based on the rate in effect prior to March 15, 1918. The advances subsequently allowed by the Board in western territory shall be disallowed.
Commodity rates between eastern and western points	On that portion of the rate applicable to eastern territory, the appropriate increase granted hereunder for the commodity for local movements in eastern territory; and on the western portion, the appropriate increase granted hereunder for the commodity for local movement in western territory. The advances allowed by the Board of Railway Commissioners in western territory, effective March 15, 1918, shall be disallowed.
(d) Import rates	To be increased, subject, as a maximum, to the lowest rates obtaining from Baltimore or any North Atlantic Seaport in the United States to the same destinations, except that the rates from Halifax shall be increased so as to continue on the present relative basis.

(e) Disposition of Fractions.

In applying rates, fractions shall be disposed of as follows:—

(1) Rates in cents or in dollars and cents per 100 pounds or per package:
Fractions of less than ¼ or 0·25 to be omitted.
Fractions of ¼ or 0·25, or greater, but less than ¾ or 0·75, to be shown as one-half (½).
Fractions of ¾ or 0·75, or greater, to be increased to the next whole figure.

(2) Rates per ton:
Amounts of less than five cents to be omitted.
Amounts of five cents, or greater, but less than ten cents, to be increased to ten cents.

TERRITORIES BOTH EAST AND WEST.—*Continued.*

(e) Disposition of Fractions.—Continued.

(3) Rates per car:
Amounts of less than twenty-five cents to be omitted.
Amounts of twenty-five cents, or greater, but less than seventy-five cents, to be shown as fifty cents.
Amounts of seventy-five cents, or greater, but less than one dollar, to be increased to one dollar.

(f) Observance of Differentials.

In establishing the freight rates herein ordered, while established rate groupings and fixed differentials are not required to be used, their use is desirable, if found practicable, even though certain rates may result which are lower or higher than would otherwise obtain.

(*g*) All schedules, viz., tariffs and supplements, published under the provisions of this Order shall bear on the title-page the following, in bold-face type:—

This schedule is published and filed on one day's notice with the Board of Railway Commissioners for Canada, pursuant to Order in Council No. .....

The Board of Railway Commissioners shall obtain from the three larger railway systems, that is to say, the Grand Trunk, Canadian Pacific and Canadian Northern Railway Companies, the results of railway operation per month, and report on the same monthly to His Excellency in Council, through the Minister of Railways and Canals, to the end that should the earnings of the said companies under this order be greater than the sum required to meet increased costs and permit transportation to be properly and efficiently carried on, the appropriate reduction in the rates fixed hereunder shall be made. The said reports and the books, accounts and records upon which the same are based shall be subject to examination and audit by the Government of Canada, under such regulations as may hereafter be prescribed by the Governor in Council.

The provisions herein, the rates herein prescribed shall be effective, if filed with the Board of Railway Commissioners, as and from the first day of August, 1918, and shall remain in force for the duration of the present war and until further ordered, subject to the provisions of the section next preceding. Increase of rates may become effective after the twelfth day of August, 1918, and as and when filed.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

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C 50056

(7)

Excerpt

from

THE RAILWAY ACT - 1919

Disallowance.

325. (1) The Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable, or contrary to any of the provisions of this Act, and may require the company, within a prescribed time, to substitute a tariff satisfactory to the Board in lieu thereof, or may prescribe other tolls in lieu of the tolls so disallowed.

Substitution.

Effective date.

(2) The Board may designate the date at which any tariff shall come into force, and either on application or of its own motion may, pending investigation or for any reason, postpone the effective date of, or either before or after it comes into effect, suspend any tariff or any portion thereof.

Amendment.

(3) Except as otherwise provided, any tariff in force, except standard tariffs hereinafter mentioned, may, subject to disallowance or change by the Board, be amended or supplemented by the company by new tariffs, in accordance with the provisions of this Act.

Consolidation.

(4) When any tariff has been amended or supplemented, or is proposed to be amended or supplemented, the Board may order that a consolidation and reissue of such tariff be made by the company. R.S., c. 37, s. 323. Am.

Powers to fix rates not limited.

(5) Notwithstanding the provisions of section three the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company: Provided that this subsection shall remain in force only during the period of three years from and after the date of the passing of this Act.

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C 50057 (8)

Excerpt

from

THE RAILWAY ACT - 1919

Construing with Special Acts.

General rules as to construing.

3. Except as in this Act otherwise provided,—

(*a*) this Act shall be construed as incorporate with the Special Act; and

(*b*) where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter the provisions of the Special Act shall, in so far as is necessary to give effect to such Special Act, be taken to over-ride the provisions of this Act. R.S., c. 37, s. 3.

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C 50058

RAILWAY BOARD JUDGMENT,

September 9, 1920.

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C 50059
(9)

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. X Ottawa, September 15, 1920 No. 13

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa.

GENERAL ORDER No. 308.

In the matter of the application of the Railway Association of Canada, on behalf of the railway companies members thereof and of all other railway companies within the jurisdiction of the Board, for authority to make a general advance of 30 per cent in the totals at present charged for the carriage of freight by the said companies; and the further application for an additional increase of 10 per cent in all freight rates, and an increase of 20 per cent in passenger fares, 50 per cent in sleeping and parlour car rates, 40 per cent in the rates on milk, and 20 per cent in the rates for excess baggage.

File No. 29996.

THURSDAY, the 9th day of September, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Ottawa, August 10, 11, 12, 18, 19, 20, and 21, 1920, in the presence of counsel for and representatives of the Canadian Pacific, Grand Trunk, Canadian Northern, Toronto, Hamilton and Buffalo, New York Central, Essex Terminal, Wabash, and Great Northern Railway Companies, the Michigan Central Railroad Company, the Canadian Railway Association, the Canadian Freight Association, the Canadian Manufacturers' Association, the Livestock Dealers' Association, the Canadian Wholesale Grocers' Association, the Canadian Lumbermen's Association, the Retail Merchants' Association of Canada, the Clay Workers' Association, the Canadian Export Paper Company, the Dominion Canners, Limited, the Carnation Milk Products, Limited, the Riordon Paper Company, the National Dairy Council, the United Farmers of Ontario, the Canadian Council of Agriculture, certain commercial organizations of the Maritime Provinces, the Retail Coal Dealers of Ontario, the Eastern Canada Livestock Union, the Crushed Stone Industries of Ontario, the Western Canada Livestock Union, the Canadian Construction Company, Limited, the Boards of Trade of Winnipeg, Toronto, Mont-

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real, and St. John, the city of Toronto, the Hamilton Chamber of Commerce, the London Chamber of Commerce, the Border Cities Chamber of Commerce, the provinces of Manitoba, Saskatchewan, and New Brunswick, and the Department of Public Highways for the province of Ontario, the evidence offered and what was alleged; and upon reading the written submissions filed, judgment, dated September 6, 1920, was delivered by the Chief Commissioner, and concurred in by the other members of the Board who heard the application, a certified copy of the said judgment being attached hereto marked "A",—

It is ordered: That the changes in the tariffs of the companies operating steam railways subject to the jurisdiction of the Board, as set forth in the judgment, which is hereby made part of this order, be, and they are hereby, authorized.

F. B. CARVELL,
Chief Commissioner.

"A"

Application of the Railway Association of Canada on behalf of the railway companies members thereof, and of all other railway companies within the jurisdiction of this Board, for authority to make a general advance of thirty per cent (30%) in the tolls at present charged for the carriage of freight by the said companies.

File No. 29996.

JUDGMENT.

THE CHIEF COMMISSIONER, HON. F. B. CARVELL, K.C.:

This is an application made by the Railway Association of Canada on behalf of all the railways under the jurisdiction of this Board, and consisted, first of a general application for a 30 per cent increase in all railway freight rates. Before the hearing, and as a result of the decision of what is known as the Chicago Wage Award, by which substantial increases were given to all railway employees in the United States, dating back to the first of May last, a supplementary application was made asking for a further increase of 10 per cent in all freight rates; 20 per cent in passenger fares; 50 per cent in sleeping and parlour car rates; 40 per cent in milk and 20 per cent in excess baggage.

At the hearing representatives of the different railways filed statements showing, at great length, their respective financial conditions for some years past; all showing an increase of business with a very substantial increase in operating ratio, which in other words, means the number of cents which a railway must expend in operating its road in order to earn one dollar, which was alleged by counsel for the Railway Association, as the surest test of the financial condition of any railroad, and, unfortunately, with the exception of the Canadian Pacific Railway, which was unsatisfactory, practically all of the other roads showed that it was costing as much, or more, to operate them than they were receiving; and the term "operating ratio" does not take into account anything in the way of fixed charges or dividends.

The Canadian Pacific Railway statement shows the following for the past four years:—

Calendar Year	Operating Net Earnings	Operating Ratio
1916	50,476,499	68·87
1917	46,546,018	70·01
1918	34,502,387	78·16
1919	32,933,036	81·39

while for the six months ending June 30 last its operating ratio had jumped to 87·58 per cent; and in the report for July, just filed with the Board, excluding taxes and including increased wages, it had increased to 91·43 per cent.

The operating ratio of the Grand Trunk for the year ending December 31, 1919, was 87·43 per cent, and for the six months ending June 30 last, was 99·97 per cent. For the Canadian Northern system, not including the Intercolonial or National Transcontinental, the operating ratio for the year ending December 31, 1919, was 112·08 per cent, and for the twelve months ending May 31, 1920, 117·61 per cent. According to estimates filed with the Board, the result for 1920, if increased wages were granted, as hereinbefore referred to, and no increase in the traffic rates, the operating ratio would be 134·23 per cent. If the wage increase were granted as from the first of May last, and the full rate increases from the first of September instant, the operating ratio would be 119·59 per cent, and the estimated result of operations for twelve months on the 1920 basis, with both wage and rate increases granted, would still leave an operating ratio of 105.01 per cent.

All the counsel, representing the opposing interests based their case upon the financial statement of the Canadian Pacific Railway and practically all the evidence, outside of the financial statements above referred to, dealt only with that railway, and therefore, in arriving at a judgment I am forced to refer almost exclusively to the condition of the Canadian Pacific Railway in order to arrive at proper conclusions.

Mr. Moule, the assistant comptroller for the Canadian Pacific Railway Company, stated that the reserves of the company could be placed at $317,000,000 but of this amount $160,000,000 would only be available after the lands were sold. He also stated in the evidence that at the present time the "liquid assets" consisted of $53,000,000 in cash and accounts collectable amounting to about $16,000,000, making a total of $69,000,000, of which about $37,000,000 was represented by Imperial and Dominion Government securities. As against this he stated that there were accounts which had to be paid amounting to $27,000,000 and also alleged that within four years fifty-two million dollars of actual cash must be provided for the retirement of notes maturing in March, 1924, although by that date the cash fund should be augmented to a considerable extent by the receipts from land sales which are specially allocated to meet these obligations. Notwithstanding these facts it was contended by Mr. Geary, counsel for the city of Toronto, and Mr. D'Arcy Scott, for the Government of Saskatchewan and the National Dairy Council, that no matter what the loss might be in operation, any deficit required for the payment of dividends should be taken from the reserves so long as the same lasted, instead of increasing the rates as applied for.

Mr. McMaster, counsel for the Canadian Manufacturers' Association, as I understood him, contended that the rates should be so adjusted that the Canadian Pacific Railway would be able to pay its dividends without drawing upon its reserves, but nothing further. Mr. Symington, counsel for the province of Manitoba, was not quite so generous and Mr. Coyne, representing the amalgamated Boards of Trade of the three Prairie Provinces, would draw upon the reserves to some extent if necessary for the payment of dividends.

I am unable to agree with any of these contentions and much less with that of Mr. Geary because, should his doctrine be followed to its logical conclusion, in a very short time the cash reserves would be dissipated, and it would only be a question of time when this company would find itself in the position of the Grand Trunk and Canadian Northern systems.

If the Canadian Pacific Railway Company has, for many years past, kept an outstanding position among transportation companies of the world, it is because through wise business management they have been able to place themselves in such a financial position that the financial world has faith in the institution, and perhaps none of us realize the value which this financial status has been to Canada in the outside world during recent years, the most outstanding case being the loan of $40,000,000 worth of debenture stock to the Imperial Government, which was actually hypothecated in the United States for the purchase of munitions during the great war.

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But, apart altogether from this phase of the question, we have in the actual conditions in Canada that about which there can be no speculation whatever. It is known, from their financial statement, that they have actually put into the road out of reserves, proceeds of land sales, etc., $130,000,000, which has probably been expended more or less in every province in Canada through which the road runs, in bettering conditions and fitting it to that extent to better serve the public as a common carrier; and, according to the evidence, during the present fiscal year, they have already expended more than $8,000,000 "out of reserve" for the construction of branch lines in western Canada. Under the present financial conditions all counsel above referred to, I think would admit that none of these branch lines would be possible during the present year if the Canadian Pacific Railway Company did not have the reserve from which to draw for this purpose, but, even supposing they were able to sell securities to the public it would mean an increase of their fixed charges or dividends which would have to be met out of earnings, and every addition to capital expenditure would be a further demand for increased rates; and therefore, considering the question from every standpoint, I consider it a national necessity that the Canadian Pacific Railway at least be kept in a healthy financial condition, with the hope that, as a result the other great railway system may be benefited in a corresponding degree.

The financial statement of the Canadian Pacific Railway for the year ending December 31, 1919, showed a surplus of $844,219. It was contended, and was not denied, that should they pay the increases to their employees, based upon the Chicago Award, without receiving any increase in rates, the 1920 balance sheet would show a deficit of many millions of dollars. The above mentioned award, if adopted by this company, would require an additional wage expenditure before the 31st day of December next, of $14,822,300 and for the next full year nearly $22,000,000, and, if adopted by the other roads would mean the same proportion of increases.

It was strongly contended by many interests, that the Board, in making its decision, should take into consideration only the financial requirements of the Canadian Pacific Railway Company, and whatever deficit there should be in the operation of the Canadian National System should be borne by the country out of ordinary taxation. In replying to these contentions the representatives of the Canadian National Railway pled most earnestly for the full increases asked for, claiming that were they granted, and they paid the wage increases above referred to, their operating ratio for the next year would be 105 per cent, and they only asked to be placed in such a position that they could run the railroad without going to the country for assistance, admitting for the present at least, that the country should take care of the fixed charges as well as the deficit which was sure to result from the operation of the Intercolonial and National Transcontinental systems.

Before attempting to arrive at the amount of increases, if any, to be granted, I take it the Board must first decide what policy it will adopt with respect to these opposing contentions. While I realize that, to a very large extent, the financial requirements of the Canadian Pacific Railway must govern our decision, yet I would be very sorry to take the attitude that we should not in any manner consider the requirements of the Canadian National system.

It would be entirely useless, for the purposes of this decision to at all enter into the history of this great system; suffice it to say it is now a reality which the people of Canada own and must work out to the best interests, not only of the railway, but the country as a whole.

Reference was made, during the course of the hearing, to a statement made by the Minister of Railways in Parliament in the month of March last that it was a question for the House to decide as to whether the deficit of $47,000,000 on the Canadian National system should be met by rates or taxes upon the people. Parliament sat for nearly three months after this statement was made and prorogued on the last day of June without having taken any action, and therefore this Board must approach it from the standpoint of the law as it now stands, which imposes upon this

Board the duty of "fixing, determining and enforcing just and reasonable rates," not only for the Canadian Pacific Railway, but for all other railways under its jurisdiction. Therefore, as only one rate ought to be made for all companies, the real question to be decided is, what are just and reasonable rates, considering all the circumstances of all the railways of Canada as they exist to-day. What might be considered a just and reasonable rate for one company might be an unjust and unreasonable rate for another, and therefore, I take it we must arrive at that medium which will on the whole, be just and reasonable in so far as it is possible to do so, and, at the same time be just and reasonable to the community who have to pay the tolls.

If we give a rate which will barely allow the Canadian Pacific Railway Company to pay its fixed charges and dividends, or a lesser rate, then it is absolutely certain that the Canadian National Railway system, including the Grand Trunk, Grand Trunk Pacific, Intercolonial and Transcontinental, and for the purposes of this judgment I am considering them as a part of this system, will face an operating deficit of at least $50,000,000 per year, assuming that the wage award is adopted and including the Intercolonial and National Transcontinental and Grand Trunk Pacific systems.

The National system will therefore be condemned at its birth to a condition, which practically for all time to come, or at least for many years, will force it to Parliament annually for money with which to pay the operating expenses of the road. Such a condition must necessarily prove very discouraging to its managers and officials.

In my judgment that is not in the best interests of the country, as a whole, and therefore while not attempting to grant a rate which will immediately place the Canadian National system upon a self-supporting basis, yet it should be one which will at least give its managers the hope that by wise and prudent operation this happy end may be attained, and that it may, within a reasonable time reach a position of independence without which, I fear, nothing but disaster can be the result.

According to the statement furnished by Mr. Beatty, president of the Canadian Pacific Railway Company, assuming that the wage award is adopted, and assuming that the full increases asked for are granted, their deficit would be $62,179 at the end of the present year, and, in order that there may be no misunderstanding, I quote that portion of the statement as follows. The anticipated results for the year 1920 have been estimated on the following basis:

The actual gross earnings for the first six months were			$ 92,057,586
Assuming for the balance of the year a 20 per cent increase in freight traffic and 10 per cent in passenger traffic the gross for the last half of the year are estimated at			112,600,000
Estimated on sleeping-car and commutation-car rates now in effect			650,000
Estimated gross revenue			$205,307,586
Operating expenses, January to June, inclusive	$80,629,400		
Assuming the same operating ratio for the last half of 1920, as for the last half of 1919, without added wage or material costs	$89,291,800		
		$169,921,200	
Add advance in cost of fuel	$4,293,000		
Advance in cost of material and supplies	6,112,000		
Sales tax	400,000		
Overtime train service at one and one-half	765,000		
		11,570,000	
Total estimated operating expenses			$181,491,200
Estimated net for 1920, without advance in rates			23,816,386
30 per cent increase in freight rates for four months, assuming 20 per cent increase in freight traffic			16,563,600
Estimated net			$ 40,379,986
Estimated income tax			3,068,838
Net after income tax			37,311,048
Fixed charges, dividends and pensions fund			32,579,077
Surplus			$ 4,731,771

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Wage award, if applied in Canada—four months—May to August, inclusive	$7,113,750	
September to December, inclusive	7,708,450	
		$14,822,300
Estimate of revenue from supplemental application—		
Freight, 10 per cent	$5,521,200	
Passenger, 20 per cent	3,619,300	
Sleeping and parlor car, 50 per cent	828,565	
Milk, 40 per cent	32,410	
Excess baggage, 20 per cent	26,875	
		10,028,350
		4,793,950
Deficit		$ 62,719

In arriving at this conclusion we must take into consideration the fact that his increases are based upon a period of four months from the first day of September, while now they will be somewhat less than that, and which to that extent would increase the deficit, and also that eight months' increased wages will be paid during this present year.

This naturally leads to what would be the result, assuming that the full increases were granted when applied to the fiscal year of 1921, and it must be admitted that this is to some extent a matter of speculation. Mr. McMaster furnished a very interesting statement for the year ending June 30, 1920, in which he estimated a surplus of $26,000,000.

For the purpose of this decision, however, I think the fairer way would be to take the estimate of the Canadian Pacific Railway for the year 1920, and attempt to figure out what the result would be during the next fiscal year, assuming the same volume of business and the same general conditions as we know to exist during the present fiscal year.

I have, therefore, prepared a statement, based upon the evidence adduced, showing the estimated gross revenue for the year 1920, first without increased rates, and secondly with the full increases asked for, and also the estimated expenditures. Included in the latter is the item of $6,250,000 for increased labour necessary to bring the maintenance of way up to the average of pre-war years. I have also in the statement shown the estimated receipts to some extent divided. Instead of the miscellaneous item, I have shown the amounts receivable in the different items making up the account. These latter items have been furnished, at my request, by Mr. Moule and are not found in the exhibit filed in the same detail as contained herein. The result of this calculation, both of estimated receipts and expenditures, is as follows:—

Estimated Gross Revenue for 1921, based on 1920, without Increased Rates.

Freight, Eastern lines (including 20 per cent increase 2nd half year)	$ 63,000,000
" Western lines (including 20 per cent increase 2nd half year)	74,000,000
Switching, Eastern lines	270,000
" Western lines	330,000
Passenger (deducting Coolie business, but including 10 per cent increase in latter half year)	45,000,000
Sleeping and parlor car (including full year 20 per cent increased rates in effect and 10 per cent increase in business 2nd half year)	5,000,000
Milk	250,000
Excess baggage	400,000
Express	7,000,000
Mail	1,500,000
Demurrage	470,000
Hire of equipment	2,950,000
Storage of freight and baggage	450,000
Grain elevators	1,000,000
Parcel rooms	130,000
Rents and miscellaneous	2,000,000
	$203,750,000

Estimated Revenue for 1921, based on 1920, with Increases Applied for.

Estimated gross, as per above	$203,750,000
Add 40 per cent to freight (see note)	54,800,000
" 40 " " " switching	240,000
" 20 " " " passenger	9,000,000
" 50 " " " sleeping and parlour car	2,500,000
" 40 " " " milk	100,000
" 20 " " " excess baggage	80,000
	$270,470,000
Estimated expenses, as per attached	217,230,000
Net revenue	53,240,000
Fixed charges and pension fund	11,350,000
Net income	$ 41,890,000
Income tax, 10½ per cent	4,398,500
	$ 37,491,500
Dividends	22,427,000
Surplus	$ 15,064,500

Estimated Expenses for 1921 on present basis of costs.

Actual expenses to June 30, 1920	$ 80,629,000
Estimate of expenses, July to December, assuming same operating ratio as last year	89,292,000
Estimate of new wage award	21,000,000
Increase in cost of coal for locomotives, 4,200,000 tons at $2.10	8,800,000
Increase in coal for othear purposes, 600,000 tons (Inland S.S. Lines station buildings, power plants, etc.	1,200,000
Miscellaneous material 30 per cent	8,335,000
Ties, 5,000,000 at 15 cents	750,000
Rails, 100,000 tons at $10	1,000,000
Maintenance of way labour below average for 4 years prior to war, 134 days per mile of mile per annum	6,225,000
	$217,231,000

This shows an estimated surplus for the next fiscal year of $15,064,500, which is probably more than the company should be entitled to, and which is probably a little less than the actual surplus would be for the year's operation, as possibly the increase of the maintenance of way labour might not be realized. As against this, however, for reasons hereinafter stated, the gross revenue would not be as great as I have estimated.

This brings me to the question what rate of increase, if any, should be granted. Practically the whole argument of Messrs. Symington and Coyne, outside of the general statement as to the payment of the dividends herein referred to, was based on the allegation that the rates in Western Canada were greater than those in Eastern Canada. This has been a burning question with the people of the West at every rate hearing since the organization of this Board, and as the matter was so thoroughly discussed in the Western Rates Case, 17 Canadian Railway Cases, 123, and decisions arrived at, I feel it unnecessary to enter into any lengthy analysis of figures to show to what extent, if any, this claim is justified.

The eastern rates apply to that portion of Canada east of Port Arthur (including Port Arthur, eastbound), and the western rates to the territory west of lake Superior (including Port Arthur, westbound). It was admitted by all parties at the hearing that the operating ratio in Western Canada was somewhat less than in the East; that the tonnage per train was greater in the West than in the East, and that about 55 per cent of the total traffic of the Canadian Pacific Railway system was in Eastern Canada and 45 per cent in Western Canada.

In order to satisfy myself of the facts, I have investigated the tariffs, both east and west, applicable to the more important traffic movements. I find that on building brick, sand, gravel and crushed stone, also on green vegetables to and from distributing points, the carload rates are lower in the West than in the East; that on

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rough or partly dressed building stone the western rates are the lower for the shorter hauls and slightly the higher for the longer, with parity in some of the mileage blocks; and that on cheese, eggs and fresh meat the carload tariff to and from distributing points is lower for distances to between 150 and 200 miles and higher for the longer movements than in the East.

On lumber, while the shorter haul rates are lower than, or the same as, those in the East, and higher for the longer distances under the mileage tariff, the specific point to point tariff, which really governs the bulk of this traffic, is considerably higher in the West than for similar distances in Eastern Canada. In dealing with a station to station tariff, however, a mere comparison of similar distances is not always conclusive, since a density of movement on the one side may not be counterbalanced on the other.

As to live stock, while there is a little difference between the West and East rates in the mileage tariffs, the point to point western tariff is in general the higher, taking movements to Winnipeg and Montreal as illustrative.

As regards agricultural implements shipped in carload lots from distributing points, up to 100 miles the western rates are lower than the eastern for some distances, and are the same for others, but above 100 miles they rule higher—considerably so for the long hauls. The carload mixing privilege is, however, more liberal in the West than in the East.

When we come to general merchandise, or what is referred to as class freight, I find that the western rates are considerably greater than the eastern, whether they be those of the standard maximum mileage tariffs or those of the special tariffs from distributing points.

It is somewhat difficult to form a comparison of the grain rates between the two divisions because practically all the grain rates in the West are based upon Fort William or Port Arthur, and we have no such distances in the East as we have in the West, but, generally speaking, the following table affords an indication, taking Windsor, Ont., as the starting point producing the longest eastern hauls of Ontario-grown grain:—

	Miles	Cents
Windsor to Montreal	555	35½
Brandon to Fort William	553	17½
Windsor to Lennoxville	657	32
Wapella, Sask., to Fort William	655	21
Windsor, Ont., to St. John, N.B.	1,033	36½
Hatton, Sask., to Fort William	1,032	28

Allowing for the undoubted fact that a very large proportion of the traffic both east and west is on the commodity basis, I am still forced to the conclusion that the rates in Western Canada average considerably greater than in the East, possibly around 15 or 18 per cent.

In coming to this conclusion I am stating nothing new, as this fact has always been recognized and particularly by Sir Henry Drayton, the then Chief Commissioner, in the *Eastern Rates Case*, so called, In re *Eastern Tolls, 22 Can. Ry. Cases*, at page 41, where the following statement appears:—

> "While, as has been set out at greater length in the Western Rates case, differences of condition do exist between Eastern and Western Canada, and while western freight rates have already materially been reduced, the general schedule there obtaining is still higher, notwithstanding the fact that certain western rates that may be instanced are lower. There is no doubt but what the Act requires and the general public interest of the country, as a whole, demands, that, if practicable, eastern rates should be advanced so that the different schedules may more nearly approach a parity."

This principle should be followed. Giving weight to the conditions set out in re *Western Tolls* as affecting the relative levels of tolls east and west of Fort William

and also bearing in mind changes in conditions which have taken place, I am of the opinion that it is justifiable to allow a reasonably less percentage of increase on freight tolls west of Fort William than east thereof. Consequently, I have concluded that an increase in rates should be granted along the following lines, with the exception of the items hereinafter specially referred to.

Until the 31st day of December, A.D. 1920, I would give a general increase of 40 per cent in eastern freight rates and 35 per cent in western freight rates with 20 per cent both east and west in passenger fares; which, however, should not exceed four cents per mile, 50 per cent in sleeping and parlour car rates and 20 per cent on excess baggage.

Commencing the first day of January next, and until there is another revision of rates, I would reduce these percentages on freight to 35 per cent in eastern territory and to 30 per cent in western territory, with 10 per cent reduction in passenger fares up to the first day of July next, when passenger rates should come back to the basis in effect prior to the coming into force of this judgment; but continuing the full increases in parlour and sleeping car rates and excess baggage. It will of course be understood that the percentages of increases in the rates east and west of Port Arthur herein granted will, in the case of through rates between the East and the West (excepting transcontinental commodity rates), apply to the East and West factors thereof respectively.

This will, in my opinion, very nearly give the Canadian Pacific Railway an even balance sheet at the end of the present fiscal year, and for the year 1921, according to my estimate, should give them a reasonable surplus; but it may still leave the Canadian National system with an operating deficit.

At the hearing I was very much impressed with the argument presented by those opposing any increase on crushed stone, sand and gravel, as, from the evidence adduced, and which was not contradicted by the railway companies, they must be making a fairly substantial profit in the transportation of these commodities; but I am arriving at this conclusion, to a very great extent, by the public necessities of Canada at the present time. Perhaps, next to the railroads nothing is more urgently required than the improvement of our highways, and any increase in the rates on the materials entering into their construction must of necessity defer this much needed improvement; in fact it was stated by Mr. McLean, of the Public Works Department of the province of Ontario, that they were now establishing in many parts of that province crushing plants at local centres, as the rates were already greater than the traffic would bear, and therefore any increased rate would not only deprive the public of a real necessity, but would probably reduce the business and consequently the profits of the railway, therefore I would give no increases in the rates on these three commodities.

Owing to the unprecedented cost of coal to-day and the likelihood of the same condition continuing for some time to come, I am not inclined to grant the above general increases in this commodity. The Order in Council, P.C. 1863, gave the following increases:—

In rates	0	to	49	cents	per ton	Increase	15 cents.
" "	50	"	99	"	" "	"	20 "
" "	100	"	199	"	" "	"	30 "
" "	200	"	299	"	" "	"	40 "
" "	300	up		"	" "	"	50 "

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This scale was that prescribed in the McAdoo Order for the United States. There is no lower rate now from Black Rock to Ontario points than 80 cents., and the higher rates are $1.80 to Kingston, $2.40 to North Bay, Parry Sound and Depot Harbour, and $3.10 to Sudbury. Based on the current rates I would allow the following increases, viz:—

In rates	0 to 80	cents per ton	Increase	10 cents.
Over	80 " 150	" "	"	15 "
"	150	" "	"	20 "

In the West the minimum line haul rate is also 80 cents, but the hauls being much longer than in Eastern Canada, the great bulk of the territory will take the maximum increase of 20 cents. From Lethbridge, for example, the maximum increase will operate to destinations Medicine Hat and east.

The increase in the rates on cordwood, slabs, edgings, and mill refuse, all for use exclusively as fuel, should be limited to 10 per cent.

I would also refuse any increase in milk rates as only a few months ago this Board on a special application, refused any increase on this commodity.

I also think there should be no increase in the minimum class rate scale as established by Order in Council, P.C. 1863, and now in force by a recent order of this Board, as well as the minimum charge per shipment.

As substantial increases were given in commutation fares by special order of this Board only a few months ago, no additional increase should be given them herein.

So far, the freight rates dealt with are those charged for line hauls. Local switching rates were materially increased by the carriers about ten months ago, and these, together with the tolls for interswitching, it is not the purpose of this judgment to increase. The same must be said of the charges for such other incidental services as milling-in-transit diversion, reconsignment, stop-overs, demurrage, weighing and the like. Should the carriers feel that the existing tariffs do not fully compensate them for the services rendered, any formal applications they may make will be investigated and dealt with on their merits.

In some industries the amount of increases in the rates themselves, is a consideration secondary to the preservation of the rate relationships from the points of production. For example: the maintenance of the existing spreads between the rates from the various mills in British Columbia was urged at the hearing by the lumber interests of the province. While the principle of percentage increases must necessarily disrupt these relationships to some extent, it is considered important that in the working out of the tariffs such recognized differentials as have been referred to should be preserved so far as may be practicable, even though certain rates may result which are lower, or higher than they would otherwise be.

Transcontinental commodity rates may be advanced correspondingly to the increases now permitted in the United States, preserving the relationship between the territorial groups of the two countries that have obtained since 1918.

As under a percentage division of joint through rates each participating carrier will receive its appropriate share of the increases herein authorized, it is necessary that those railways that in joint traffic are paid an arbitrary division in a fixed amount, should receive a percentage of increase corresponding to the increase in the through rates.

As our jurisdiction for granting increases on certain lines of railway in Western Canada depends entirely upon the amendment to section 325 of the Railway Act, 1919, which expires on the 6th day of July, 1922, the rates hereby established cannot continue beyond that date unless Parliament, in its wisdom, sees fit to extend the provisions of that section. Therefore, the rates herein provided for shall not extend beyond the first day of July, 1922.

Mr. E. M. Macdonald, K.C., on behalf of the maritime section of the Canadian Manufacturers' Association and Honourable Mr. Finn on behalf of the Government

of Nova Scotia, urged that in any advance which might be made the proportional arbitraries east of Montreal in existence prior to the year 1915, should be maintained. I fear, however, we have not sufficient information at the present time to justify us in attempting to deal with this question, therefore, in arriving at my decision I have not taken this into consideration, but always reserving the right of the maritime people to apply to the Board, and also reserving the right to render a decision on the sugar application, now before us, regardless of what the general decision may be hereunder.

At the hearing Mr. Kelly, speaking for the Railway Association of Canada, stated that they had decided to pay the railway employees the rates granted to the American employees by the Chicago award, granting back pay to the first day of May last, and on cross-examination he frankly admitted that if they were not granted he firmly believed "there would be a general strike throughout Canada." Realizing as I do the sincerity of his statement and the terrible results which would necessarily befall the people of this country as a whole under such a contingency, I have taken his statement into consideration in adjusting the rates herein. It must not be forgotten that a very large part of the increase hereby granted will be necessary to take care of this increased wage, in the case of the Canadian Pacific Railway Company alone, amounting to nearly $22,000,000 per year.

I realize these rates will be a substantial burden upon the people of Canada but it was admitted by all parties at the hearing that the cost of everything entering into the operation and maintenance of railways has increased more than 100 per cent during the past four years, while the railway companies have been granted increases in what are known as the 15 per cent and 25 per cent cases, amounting on an average to not more than 35 per cent.

It is entirely unreasonable that the railway companies should be expected to provide the necessary transportation services for this country unless they receive rates somewhat in proportion to the increased cost of their operation, and while the rates herein established fall far below the increased cost of everything else, yet I feel they will be sufficient to enable the railways to carry on during the term to which they apply, and that the people in the light of the actual facts will cheerfully contribute their quota in order to keep these utilities in a position to efficiently transport the business of the country.

The Canadian Pacific, Grand Trunk and Canadian Northern Companies will be required to furnish to this Board monthly statements of their operating revenues and, should this Board, at any time before July 1, 1922, be of the opinion that a greater or less amount of money is being paid to the railway companies than is actually necessary to enable them to maintain a reasonable degree of operating efficiency, this Board reserves to itself the right, at any time, on notice, to readjust the rates to meet the conditions then existing.

The steam railway companies subject to the jurisdiction of this Board shall therefore be entitled to publish and file tariffs in accordance with the above provisions effective on or after Monday the 13th day of September, instant.

In working out the rates under this judgment, fractions will be disposed of as set out in Order in Council, P.C. 1863.

OTTAWA, September 6, 1920.

The Assistant Chief Commissioner, the Deputy Chief Commissioner and Commissioners Goodeve and Rutherford concurred.

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C 50070

Application of the Edmonton, Dunvegan and British Columbia Railway Company and the Central Canada Railway Company for approval of standard freight and passenger tariffs increasing their rates.

File No. 30186.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application was launched for a 50 per cent increase in freight rates and a corresponding increase in passenger rates. The rates of this railway are, for the reasons set out in "In re *Edmonton, Dunvegan and British Columbia Railway Company, 22 Can. Ry. Cas., 1,*" permitted to be on the Mountain scale.

The application as launched asked, as has been pointed out, for a 50 per cent increase in standard passenger rates. The standard rate of the Mountain scale being 4 cents, this would give a rate of 6 cents per mile. In the course of the hearing, counsel for the railway companies substituted 5 cents as the maximum rate per mile for which the railways were asking.

At the hearing, representation was made by counsel for the railways that a general application based on increased costs of operation was in course of preparation by the railways subject to the Board's jurisdiction. Representation was made at the hearing by Mr. Ford, counsel for the Board of Trade of Grande Prairie, that the matter of rate increase should stand over until the general application for rate increase was dealt with.

Subsequent to the hearing, the Board received a telegram from the secretary of the United Farmers of Alberta strongly urging that the application should not be decided before the general application of railway rate increases. When the application for general rate increases was launched, notification of the hearing was duly given to Mr. Higginbotham, secretary of the United Farmers of Alberta.

During the hearing, representations were made as to the condition of the service afforded on the applicant railways. It was strongly urged that the need for retention of the Mountain scale basis no longer existed. In addition to what was set out at the hearing, representations are on file from various organizations taking this position. It was strongly urged that with the limited population at present located in the country served by the railways concerned, any increase of rates would be highly detrimental.

The burden of increased rates is one which should be imposed only when there is a thoroughly established justification therefor. At the same time, in the present application, as well as in the application launched by the railways for a general increase in rates, much material was submitted re-enforcing what is a matter of common knowledge, namely, that in the period which has elapsed since 1914 railway costs of operation have practically doubled, while rate increases have been very much less. The weighty responsibilities imposed upon the Board by Parliament compel the conclusion that rates inadequately remunerative are not only detrimental to the railway concerned but in a wider and more important phase are detrimental to the public served by the railway, because if the rates do not adequately remunerate for the service the efficiency will tend to deteriorate, and there will be progressive difficulty in obtaining those adequate facilities which are essential if traffic is to move.

While the Board was considering the evidence submitted in the present application, the application of the railways subject to the Board's jurisdiction for a general increase in rates was launched; and the Board was impressed with the idea that the position was well taken that the decision in the present application was one which should be considered in connection with the decision in the general rate application.

The placing of the Edmonton, Dunvegan and British Columbia railway on the Mountain scale was, as indicated in the judgment already referred to, a temporary measure. Conditions have not, however, so changed as to warrant at present the

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C 50071

(10)

Excerpt

from

THE RAILWAY ACT - 1919

Governor in Council may vary or rescind.

52. (1) The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties.

Appeal to Supreme Court as to jurisdiction by leave of judge.

(2) An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, upon leave therefor being obtained from a judge of the said Court upon application made within one month after the making of the order, decision, rule or regulation sought to be appealed from, or within such further time as the judge under special circumstances shall allow, and upon notice to the parties and the Board, and upon hearing such of them as appear and desire to be heard, and the costs of such application shall be in the discretion of the judge.

Appeal to Supreme Court by leave of Board.

(3) An appeal shall also lie from the Board to such Court upon any question which in the opinion of the Board is a question of law, or a question of jurisdiction, or both, upon leave therefor having been first obtained from the Board within one month after the making of the order or decision sought to be appealed from, or within such further time as the Board under special circumstances shall allow, and after notice to the opposite party stating the grounds of appeal; and the granting of such leave shall be in the discretion of the Board.

Entry of application.

(4) No appeal, after leave therefor has been obtained under subsection two or three of this section, shall lie unless it is entered in the said Court within sixty days from the making of the order granting leave to appeal.

Security for costs.

(5) Upon such leave being obtained the party so appealing shall deposit with the Registrar of the Supreme Court of Canada the sum of two hundred and fifty dollars, by way of security for costs, and thereupon the Registrar shall set the appeal down for hearing at the nearest convenient time; and the party appealing shall, within ten days after the appeal has been so set down, give to the parties affected

Notice of appeal.

by

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C 50072

SECTION 52.

by the appeal, or the respective solicitors by whom such parties were represented before the Board, and to the Secretary, notice in writing that the case has been so set down to be heard in appeal as aforesaid; and the said appeal shall be heard by such Court as speedily as practicable.

Powers of the Court.

(6) On the hearing of any appeal, the Court may draw all such inferences as are not inconsistent with the facts expressly found by the Board, and are necessary for determining the question of jurisdiction, or law, as the case may be, and shall certify its opinion to the Board, and the Board shall make an order in accordance with such opinion.

Board may be heard.

(7) The Board shall be entitled to be heard by counsel or otherwise, upon the argument of any such appeal.

Costs.

Practice.

(8) The Court shall have power to fix the costs and fees to be taxed, allowed and paid upon such appeals, and to make rules of practice respecting appeals under this section; and, until such rules are made, the rules and practice applicable to appeals from the Exchequer Court shall be applicable to appeals under this Act.

Members of Board not liable for costs.

(9) Neither the Board nor any member of the Board shall in any case be liable to any costs by reason or in respect of any appeal or application under this section.

(10) Save as provided in this section,—

Proceedings of Board final save as above.

(*a*) every decision or order of the Board shall be final; and,

(*b*) no order, decision or proceeding of the Board shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari*, or any other process or proceeding in any court. R.S., c. 37, s. 56; 1910, c. 50, s. 1. Am.

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P.C.2434 C 50073 (11)

Certified copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor General on the 6th October, 1920.

PRIVY COUNCIL CANADA

The Committee of the Privy Council have had under consideration certain Petitions to the Governor General in Council asking for the exercise of the powers conferred upon him by Section 52 of chapter 68 of the Statutes of Canada, 1919, intituled "The Railway Act, 1919", to vary or rescind an Order of the Board of Railway Commissioners for Canada, dated 6th September, 1920, fixing certain increases in freight rates, passenger fares, sleeping and parlour car rates and excess baggage. Counsel and representatives of the various petitioners have been heard and, as well, Counsel for the Railways affected. Consideration has been given to the various cases cited and exhibits filed.

The Order appealed against is made by the Chief Commissioner and concurred in by the Assistant Chief Commissioner, Mr.S.J.McLean; by the Deputy Chief Commissioner, Hon. W.B.Nantel, K.C., and by Commissioners A.S.Goodeve and J.G.Rutherford, being all the Commissioners who presided at the hearing. The increases authorized by the Order may be briefly stated as follows:

Until 31st day of December, 1920:-
40% on Eastern freight rates
35% on Western freight rates
20% on Eastern and Western passenger fares not exceeding 4¢ per mile
50% on Sleeping and Parlour car rates
20% on Excess Baggage.

The first three to be reduced on the 1st day of January, 1921 to
35% on Eastern freight
30% on Western freight
10% on Passenger fares to 1st July, 1921; after 1st July Passenger fares to be reduced to rate prevailing before the Order.

Provision is also made in the Order that the Canadian Pacific, the Grand Trunk and the Canadian Northern Railway Companies shall furnish monthly returns of operating revenues, and the right is reserved to the Board to make such readjustment of rates as may be justified by such returns, The increases provided for are noted in the Order to wholly expire on 6th July, 1922, unless in the meantime Parliament extends the provisions of Section 325 of the Railway Act enabling such Order to be longer effective. To the above general increases there are, however, the following exceptions fixed:

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On coal, increases limited as follows:

In rates	0 to 80 cents	per ton, increase	10¢
Over	80 to 150	" "	15¢
Over	150	" "	20¢

On milk - no increase.
On crushed stone, sand and gravel - no increase
Oncordwood, slabs, edgings and mill refuse only 10%
On commutation fares and on minimum class rate as established by Order in Council (P.C.1863) and on local switching rates, milling in transit diversion, reconsignment, stopovers, demurrage and weighing - No increase.

Upon examination of the monthly returns, filed as above provided, it will be the duty of the Board, should a reduction in costs of materials or other services warrant, to reduce rates accordingly.

It appears that the application of the various railways was for a general increase without limitations of 40% East and West on freight traffic, of 20% on passenger fares, of 50% in Sleeping and Parlour Car rates, of 40% on Milk and 20% on Excess Baggage.

In connection with this appeal it must be observed that one of the duties, if not indeed the principal task, of the Board of Railway Commissioners, is to determine upon application, what are fair and reasonable rates to be charged from time to time for the various services performed by public utilities under the jurisdiction of the Board. In such determination there must of course be taken into account, as has been done in the present case, all relevant circumstances such as changes in the scale of wages, and the cost of materials, the effect of competitive means of carriage whether by lake route or by lines to the South, and such other facts as may be established and as are found pertinent to the issue by a lawfully constituted judicial tribunal. For the purposes of this work the Commission not only has the advantage of hearing the evidence and following the cross examination, but brings to bear the experience of its own members, extending in many cases over a considerable number of years, and the familiarity with railway problems thus acquired. It has, in addition, at its disposal a permanent staff of expert officials trained in the various branches of the work of the Board and able to advise the Commissioners in the many intricate and more or less technical subjects that are before the Board for adjudication. It follows that a decision of the Board so arrived at as to what may constitute under all the circumstances a fair and reasonable rate, could not, except for extraordinary cause, be usefully reviewed by Your Excellency's Advisers. Indeed, for Your Excellency's Advisers to take upon themselves to weigh the evidence adduced and substitute their own judgment for the judgment of the Board upon the question of fact arising on the issue and to be determined upon such evidence would defeat the purpose for which the Board of Railway Commissioners was created and would in the end be highly prejudicial to the public interest.

The Committee of the Privy Council is, however, of opinion that if it should be disclosed in the Order or established in argument that the Board in coming to a

conclusion.....

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conclusion on the evidence submitted (in this case as to what is a fair and reasonable rate) had applied principles which it should not have applied, principles which the Committee of the Privy Council consider not in consonance with public policy, such appropriate action should be taken as will lead to a finding in which only correct principles will be applied.

In the case under consideration the terms of the Order disclose on pages 286 and 287 of the Judgments, Orders, Regulations and Rulings of the Board, that in determining what would be a fair and reasonable rate, the Board took into account as one element for consideration, the requirements of the Canadian National Railway System. The Canadian National Railway System as constituted now includes within its mileage railways of great extent and involving heavy cost of operation which must be held to have been built not as purely railway enterprises of a business character but in a substantial degree for colonization and other purposes. The reorganization of this system looking to the better utilizing of these lines is moreover now only under way. Railways so constructed cannot under the best of operation on any practicable scale of rates be made for some time at least a financial success. A system largely composed of such roads and in such state of reorganization, would not therefore appear to Your Excellency's Advisers to be properly at the present time a factor for consideration in the solution of a rate-making problem. What constitutes a fair and reasonable rate should now be arrived at without reference to the requirements of the Canadian National System and Your Committee recommends that the Order in this case be referred back to the Board to be corrected in its findings in such manner as to determine what are fair and reasonable rates without taking into account at all for the time the Order shall be in effect, the requirements of the Canadian National System.

Very strong representations were made at the argument on appeal to the effect that the Order continued and indeed intensified an unjust discrimination in rates, it being claimed that higher freight rates prevail generally in Western Canada, that is west of Fort William, than prevail in Eastern Canada, that is east of Fort William. It was strongly urged that the reasons, whatever they may have been, for this differential no longer exist, and that as a matter of public policy the principle of equalization of rates East and West should now be recognized. On the other hand, it was urged that the competition arising out of lake and river transportation and as well out of lower competitive rates on Eastern United States lines compelled a somewhat lower scale in Eastern Canada than in Western Canada. Whether or not these reasons now obtain in any substantial degree is a question which requires minute and expert investigation such as can be best conducted by the Railway Commission itself and not by Your Excellency's Advisers, butthe Committee is strongly impressed with the very great desirability of bringing about with the least possible delay equalization of Eastern and Western rates.

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The Committee of the Privy Council therefore further recommend that as conditions have probably changed materially in recent years tending more and more to make equalization pracicable, an inquiry by the Board be directed to be held at the earliest date with a view to the establishment of rates meeting to the utmost extent possible the above requirement as to equalization.

Strong argument was advanced as well against the application of a 5% greater freight rate for the remainder of 1920 than shall prevail after January 1st, 1921, in order to overtake in part at least the extra burden imposed on the railways due to advances in wages which took effect May 1st, 1920. The ground of the objections was that this imposed an unfair burden upon shippers during the last four months of this year, such shippers being largely in Western Canada. There can be no doubt that the fair distribution over all of Canada of any necessary burdens is a principle that must to the utmost be adhered to and the Committee recommend that if it seems to the Board practicable by way of diminution of the extra percentage and if absolutely necessary its extension over a longer period it meet as far as possible the objection above set out.

It was urged in argument as well very generally by the applicants that the increase in passenger rates should not be diminished or discontinued before a reduction in freight rates is ordered. This is a matter, however, which seems properly a subject for the disposition of the Board and the terms of the Order are such that effect may be given to the contention if in the judgment of the Board the public interest is served thereby.

In addition to such matters of principle as are referred to above in respect of which it is submitted review by the Governor General in Council is justified, it is conceivable that upon the hearing of a Petition there might appear in the Order under review, whether as the result of omission to take fully into account important evidence, or for other reasons, some such manifest error entailing a substantial miscarriage of justice, as would constitute ground for modification or reference back for correction. Such error was contended by Counsel, particularly Counsel for the Manitoba and Saskatchewan Governments and of the Winnipeg Board of Trade to have

occurred/

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occurred in the present case. The contention of these appellants was that the finding of the Commissioners applicable to all railways under their jurisdiction would, according to the estimate of the Commissioners themselves, afford an unwarrantably high return to one railway, the Canadian Pacific. Reference was made in this connection to words in the Order wherein it was conjectured that should the application of the railways be allowed, there would be a surplus to this Company in the year 1921, after payment of its regular dividend and income tax, of $15,064,500. The Order however, did not contain any estimate as to the effect upon these figures of the reductions made by the award from what was requested in the application and also of the exceptions stipulated in the award. In order to arrive at what the correct figures should be after taking these reductions and exceptions into account, an estimate was made on the second day of the hearing jointly by Mr. Moule, the Chief Accountant for the Canadian Pacific Railway Company and by Mr. McDonald, Chief Accountant, as regards this appeal, for the Province of Manitoba. A copy of this estimate signed by the above named Accountants is attached hereto. The basis on which it is made appears thereon and the result indicates that the surplus above referred to would after such exceptions and deductions are allowed for, probably entirely disappear. At any rate there does not appear a probability of any return so unwarrantable as to be evidence of such error on the part of the Railway Commissioners as would justify, for this cause alone, interference on the ground of mistake.

The Committee submit the same for approval.

E.J. Lemaire

Clerk of the Privy Council.

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C 50078

RAILWAY BOARD JUDGMENT

December 10, 1920.

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C 50079

tion of this service will not be extended to the providing of freight facilities or the handling of freight in either l.c.l. or carload lots at the Latimer road location, but simply for the purpose of passenger accommodation on the local milk train.
December 4, 1920.

The Deputy Chief Commissioner concurred.

ORDER No. 30419

In the matter of the application of residents of the Port Kells District, in the province of British Columbia, for an order requiring that a station be placed at the junction of the Latimer road and the Canadian National railways.

File No. 28017.

THURSDAY, the 9th day of December, A.D. 1920.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, October 12, 1920, the applicants, the Canadian National Railways, and certain other interested parties being represented at the hearing, and what was alleged; and upon reading the report of an inspector of the Board,—

It is ordered: That the Canadian National Railways be, and they are hereby, required, on or before the 1st day of May, 1921, to erect a small passenger shelter, with small closed-in end where express or baggage shipments may be housed, at the junction of the Latimer road and the Canadian National railways at Port Kells, in the province of British Columbia; and make a regular stop, each way, of its local milk train, for the purpose of taking on and letting off passengers only, provided that the installation of such service be not extended to the providing of freight facilities or the handling of freight in either carload or less than carload lots at the location aforesaid.

F. B. CARVELL,
Chief Commissioner.

Application of the Governments of Manitoba and Saskatchewan, et al for an order suspending the railway rate increases, as granted by the Board's Order No. 308, of date September 9, 1920; or in the alternative, that the said Order No. 308 be varied by reducing the increase thereby granted on railway lines west of Fort William, to fifteen per cent.

File 29996.24

Heard at Ottawa, November 22, 1920.

12

JUDGMENT

COMMISSIONER RUTHERFORD,—

This is an application for a suspension of the increase in railway rates as granted by the Board's Order No. 308, of date September 9, 1920; or that the said Order No. 308 be varied by reducing the increases in railway rates on lines west of Fort William to 15 per cent; the application is based on a judgment of the Governor in Council, of date October 6, 1920, which referred the said Order No. 308 back to the Board for further consideration.

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. . . The appellants were represented by Mr. H. J. Symington, K.C., for the province of Manitoba, Mr. D'Arcy Scott for the province of Saskatchewan. Mr. J. B. Coyne, K.C., and Mr. P. G. Denison for the Winnipeg Board of Trade, Mr. G. R Geary, K.C., for the city of Toronto, certain other interests also having counsel present at the hearing.

The position taken by the appellants can be best set forth by quoting from the presentation made by Mr. Symington, counsel for the province of Manitoba at the hearing on November 22,—

> "This is an application for a suspension of the increase in freight rates granted by the Board under Order No. 308 or in the alternative that the order be varied reducing the increase from Fort William west by fifteen per cent.
>
> "Shortly the facts connected with the application are as follows: On the 9th September, 1920, the Board issued Order No. 308, effective September 13, (four days later); an appeal was taken to the Governor in Council at the earliest possible moment and on the 6th of October, they issued a judgment; under that judgment, to which I wish to refer the Board, certain findings and principles were laid down, to which I shall ask the Board to direct some attention."

In presenting his case to the Board, Mr. Symington adduced, under twelve heads, his interpretation of the findings reached in the judgment of the Governor in Council, but as his rendering of a number of these points differed very considerably from the actual text of the judgment, I do not think that any good object would be served by reproducing his version here.

As a matter of fact he devoted his attention, during the course of the hearing, to practically four points, namely:—

> (1) A general criticism of the methods followed by the Board in fixing fair and reasonable rates.
>
> (2) That the Board in reaching its decision as to increase in rates, took into consideration the requirements of the Canadian National Railways.
>
> (3) The necessity of the equalization of eastern and western rates.
>
> (4) The alleged injustice of the additional five per cent (5%) imposed upon freight rates for the period between September 13, 1920, and December 31, 1920.

It is, I think, unnecessary to deal further with the question of the legality or otherwise of the course followed by the Governor in Council in referring Order No. 308 back to the Board.

It is evident that the Governor in Council, failing to find in the Order anything which would justify its variation or rescission, and feeling nevertheless that, in view of the representations made by the Appellants, certain of its features might be open to criticism, decided to refer it back to the Board, with the suggestion, in no sense of the word an Order, that these features should be again considered and if deemed necessary or advisable, further dealt with.

The record of the hearing on the appeal sustains this view, inasmuch as at the close of the discussion between the Chief Commissioner and Mr. Symington, with which the hearing opened, the latter admitted the soundness of the position taken by the former, his final statement in this connection being as follows:—

> "What I say is this, that on this application I am coming before this Board saying that they ought to do a thing, not that they must. I am not arguing it from a legal standpoint, I am taking the position that the Board ought to do it."

Mr. Symington, in my opinion, read into the judgment of the Governor in Council, a number of objections to the judgment of the Board, not in any way justified by the language of the first-mentioned document.

C 50081

This criticism applied to his attack on the methods followed by the Board in arriving at a decision as to what constitutes fair and reasonable rates. His contention that the application of a general rate increase on a percentage basis was faulty and unfair, inasmuch as, except in regard to a few articles, specially treated, no effort was made to ascertain how the new rates would affect individual classes of goods shipped, was in no sense justified by the findings of the Governor in Council.

To serve his purpose in this instance, he merely took from the preamble of the judgment of the Governor in Council the statement that one of the duties of the Board is "to fix fair and reasonable rates," and proceeded to hang upon this phrase an argument against a certain line of action taken by the Board, to which no reference whatever was made in the said judgment.

Apart from the fact that, for the reasons above stated, this argument had no place in the case now before the Board, it is answered by the statement that the rates in force prior to the application of the railway companies had all been for many years carefully considered and adjusted to the requirements of each particular line of traffic; that the application of the railway companies was for a general percentage increase to enable them to meet the augmented cost of operation and material; that every interest was at liberty to appear and present its case at the hearing; that a number of interests did so appear and that, of these, several received special consideration.

Moreover, the judgment in no way prejudices the established right of any interest, which may deem the rates affecting it unfair or unreasonable, to apply to the Board for an adjustment.

Further, eliminating the special pleading which has been so prominent a feature of the attacks on the Board's judgment in the Railway Rates Case, and applying common sense principles, it is, I think, quite clear that one of the most important factors to be considered in reaching a decision as to what are fair and reasonable rates, is that of the ability of the railway to carry on.

The fact that under the law, the railways as public utilities are required to have their rates approved by the Board, does not justify the view that they should therefore be compelled to do business at a loss.

Further, if the rates fixed are not fair and reasonable to the railways as well as to the public, the public will suffer inasmuch as no railway compelled to operate on a non-paying basis can furnish either efficient service or adequate facilities for the handling of traffic.

In his second count, namely that the Board in its judgment took into consideration the requirements of the Canadian National Railways, Mr. Symington is on better footing, inasmuch as the judgment of the Governor in Council states that this should not have been done.

Here, however, there seems to be a general misunderstanding as to the real position of the Board in that connection, and particularly as to the basis of the calculations on which the findings of the Board in the Railway Rates Case were actually arrived at.

While admitting that the language used by the Chief Commissioner in his judgment might be interpreted as conveying the impression that the Board took into consideration the unfortunate financial position of the Canadian National Railways, it is scarcely necessary to point out that all the calculations as set forth in that judgment, are based on the figures submitted by the Canadian Pacific Railway Company and that, as a matter of fact, that company was the only criterion by which the Board could reach a conclusion as to the increase of rates which would be required to enable a properly equipped and efficiently managed railway to maintain operation on a reasonably remunerative basis.

On the course to be followed in this connection there was no difference of opinion among the members of the Board, and it is regrettable that the Governor in Council, as well as some members of the general public and of the press, attached to the language

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of this portion of the judgment of the Chief Commissioner a greater measure of importance than they did to the definite statements of facts and figures submitted a little further on, and on which the actual findings were based.

With reference to the third point dealt with by Mr. Symington, namely the equalization of eastern and western rates, it should not be forgotten that its interjection to the Rates Case was purely incidental, and that the Board would not have been justified in attempting to deal with so important a question at such short notice, even in face of the statements made by Mr. Symington at the hearing in August which indicated that the operating rates and train tonnage were much more favourable to the railways in Western Canada than in the East.

It is also well to bear in mind that the factors which first led to the establishment of these differing rates, namely water competition and that offered by the railway lines of the Eastern United States, have been for some years in an abnormal and unsettled condition and that their future influence on rates in Eastern Canada is an entirely unknown and unguessable quantity.

Much has been made of the fact that the Chief Commissioner in his judgment, stated that the rates in Western Canada averaged from fifteen per cent (15%) to eighteen per cent (18%) higher than those in the East, and that he, nevertheless, made a difference of only five per cent (5%). It should not be forgotten, however, that the disparity in favour of the East, for reasons well known and fully understood, has long been recognized as an established, and until very recently, accepted condition.

Under these circumstances therefore, the Board took the ground that pending future full inquiry and investigation, and until the whole question has been considered from the standpoint of things as they are and as they are likely to be in the future, it would not be justified in going further than it did in the matter of reducing western rates.

As stated at the hearing on the appeal, the Board is prepared, in compliance with the request of the Governor in Council, to take up this question at once, and arrangements are now in progress for the early inauguration of a full and exhaustive inquiry into all the circumstances bearing upon it, with a view to reaching, at the earliest possible date, a definite understanding as to a fair and proper basis of equalization.

The fourth point raised by Mr. Symington was that the additional 5 per cent imposed upon freight rates for the period between September 13, 1920, and December 31, 1920, inflicted an unfair burden upon shippers, such shippers being largely in Western Canada.

It is a matter of common knowledge that the action of the Board in granting the special temporary additional rate, was taken with the view of enabling the railways to provide the sum of approximately twenty-three million dollars ($23,000,000) required to meet the unexpected demands of their employees in the matter of wage increases, which as a result of the United States Wage Award, had been made retroactive to May 1, 1920.

Without discussing the justice or otherwise of the attitude assumed by the railway employees in the matter of this wage award, the Board was faced with the alternative of a general strike if their demands were not met.

In view of the then very alarming situation as regarded coal supply for the approaching winter and the outstanding importance of ensuring the movement of the western grain crop, the Board after carefully considering all the circumstances and especially the fact that the expenditure was of an abnormal and temporary character, decided that it would be in the public interest to grant a slightly higher rate for the remainder of the current calendar year.

It was strongly urged in the argument in the appeal to the Governor in Council that this portion of the Board's order imposed an unfair burden on western shippers, inasmuch as the period in question was coincident with the heaviest part of the grain movement from western points.

The attitude of the western shipper in regard to this phase of the question is readily understandable, especially in view of the serious fall which has since taken place in the prices of grain and other farm produce. On the other hand the Board felt that the busiest season of the year and the season at which the traffic on western lines most closely approximated in volume that of the East, was that during which this abnormal burden would be most easily borne and most evenly distributed.

The claim advanced by Mr. Symington on behalf of the appellants that the Board had disregarded the decision of the Governor in Council is not borne out by the language of his judgment on this point, which is as follows:—

> "There can be no doubt that the fair distribution over all of Canada of any necessary burdens is a principle that must to the utmost be adhered to, and the committee recommend that if it seems to the Board practicable by way of diminution of the extra percentage and if absolutely necessary its extension over a longer period, it meet as far as possible the objection above set out."

There is nothing mandatory in these words, the matter being left unreservedly in the hands of the Board, which, after careful consideration, has been unable to see its way to change the terms of the order, especially in view of the confusion which such a change would involve and the close proximity of the date when this extra burden on the shipper will be removed.

In the judgment of the Governor in Council, the only reference to passenger rates is as follows:—

> "It was urged in argument, as well as very generally by the applicants, that the increase in passenger rates should not be diminished or discontinued before a reduction in freight rates is ordered. This is a matter, however, which seems properly a subject for the disposition of the Board, and the terms of the order are such that effect may be given to the contention, if, in the judgment of the Board, the public interest is served thereby."

At the hearing on the appeal before the Board, Mr. Symington presented as his version of the findings of the Governor in Council on this point, the following:—

> "That in their judgment all such railway freight rates should be decreased earlier than passenger rates."

But otherwise referred only incidentally to this phase of the question.

As a matter of fact any discussion of passenger rates which took place at the hearing on the appeal, was merely incidental to the presentation of financial statistics and estimates by the Canadian Pacific and Grand Trunk Railway Companies, when it was developed that since the order of the Board came into effect, there has been a considerable falling-off in receipts from this source.

While this decrease may be due in part to the general decline in business activity, it may also be in part attributable to the higher rates, and to that extent the provision of the Board's order for a reduction on January 1, 1921, is justified.

In his judgment in the Railway Rates Case, the Chief Commissioner, after referring to certain figures furnished him by the Canadian Pacific Railway Company, and which he had used for the purpose of ascertaining the extent to which the proposed increases would affect the financial position of that company, incidentally made the statement that, with the entire increase asked for in the application, namely forty per cent (40%) on all freight rates, and twenty per cent (20%) on passenger rates, the Canadian Pacific Railway Company would have an estimated surplus for the year 1921 of $15,064,500.

Although the judgment subsequently set forth that under the rates actually allowed, subject as these were to many exceptions and time limitations, this estimated surplus, based as it was on an essentially different calculation, had absolutely no bearing on the situation, much adverse criticism, founded on this incidental statement has been directed at the Board.

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When the appeal in the Railway Rates Case was before the Governor in Council, the Canadian Pacific Railway Company was required to furnish an estimate of revenue and expenditure for the year 1921, based on the increases as actually authorized by the order of the Board.

This statement, a copy of which signed by Mr. W. J. Moule, Assistant Comptroller of the Canadian Pacific Railway Company, and by Mr. Alex. Macdonald, Traffic Expert for the appellants, was attached to the judgment of the Governor in Council, indicated that for the next fiscal year (1921), the Canadian Pacific Railway Company would, under the increased rates, as allowed by the Board's order, have a deficit of $800,277.

At the present hearing, the same company submitted a revised estimate for the year 1921, based on the actual operations for the first nine months of 1920, and the last three months of 1919, which indicates that with the increased rates, the Canadian Pacific Railway Company will, in all probability, have a deficit of $415,000.

In order to further dispel the apparently widespread impression that the increased rates, as allowed by the Board's order, will provide a large annual surplus for the railways, and as in my opinion the public is entitled to the fullest possible information on this phase of the subject, additional statements, submitted at the hearing on the appeal by the Canadian Pacific Railway Company, are herewith given in full, as follows:—

A. Statement of revenue and expenditure for 1921 (estimated) with revenue based on the increased rates, as allowed by the Board's order, and showing probable net deficit for 1921 under the increased rates of $415,000.

B. Statement of revenue and expenditure for 1920 (estimated) with revenue based on the increased rates from September 13, 1920, as allowed by the Board's order and showing probable net deficit for 1920, under the increased rates of $1,938,795.

C. Statement of revenue and expenditure for 1920 (estimated) without the increased rates from September 13, 1920, as allowed by the Board's order, and showing a probable net deficit, had increases not been allowed, of $18,400,118.

A. Statement of Revenue and Expenditure for 1921 (estimated) based on same volume of traffic 1920 (9 months) and 1919 (3 months), with increased rates added to revenue.

REVENUE WITHOUT INCREASED RATES.

Freight—Eastern lines		$61,200,000
Western lines		71,100,000
Passenger		44,000,000
Sleeping and parlor cars		4,600,000
Excess baggage		400,000
Mail		1,500,000
Express		7,000,000
All other earnings		7,850,000
		$197,650,000

ESTIMATE OF INCREASE IN REVENUE DUE TO INCREASED RATES.

35 per cent on Eastern lines freight, except coal and wood, 34 per cent		$20,808,000
30 per cent Western lines freight, except coal and wood, 28 per cent		19,628,000
10 per cent passenger—6 months in 1921		1,920,000
32½ per cent express revenue (except passenger fares)		2,100,000
50 per cent sleeping and parlor cars		2,300,000
20 per cent excess baggage		80,000
		$46,836,000
Gross revenue for 1921 based on traffic of 1920		$244,486,000

A. Statement of Revenue and Expenditure for 1921, etc.—*Concluded.*

EXPENDITURE.

Actual expenses to September, 30, 1920, taken as basis first ten months of 1921	$128,280,000	
Estimate of expenses October to December, inclusive, assuming same operating ratio as 1919	43,154,000	
Wage increase, January to June, and October to December (allowing for smaller traffic October to December)	15,000,000	
Increase in cost of fuel for locomotives	7,250,000	
Increase in cost of fuel, other purposes	1,000,000	
Miscellaneous material, allowing for three months already in, actually at higher costs	7,000,000	
Ties, 5,000,000 at 15 cents	750,000	
Rails, 100,000 tons at $10	1,000,000	
Expense necessary to restore maintenance of way forces to prewar basis, 134 days per mile of line	6,225,000	
		$209,659,000
Net revenue		$34,827,000
Less—		
Fixed charges and pension fund		11,350,000
		$23,477,000
Income tax, 10½ per cent		2,465,000
		$21,012,000
Dividends		21,427,000
Estimated net deficit 1921, with revenue based on increased rates		$ 415,000

B. Statement of Revenue and Expenditure for 1920 (estimated) revenue based on Increased Rates from September 13, to December 31, 1920, as allowed by Board's Order No. 308.

REVENUE.

Actual gross earnings for first ten months of 1920 were	$172,227,403	
Approximate earnings first two weeks, November, 1920	11,400,000	
Estimated gross earnings for balance of November and for December, 1920, assuming same freight traffic and decrease of 15 per cent in passenger traffic	25,503,000	

ESTIMATE OF INCREASE IN REVENUE DUE TO INCREASED RATES.

Estimate of increased rates freight and passenger, November 15 to December 31	$7,857,000	
Estimate on sleeping car and commutation rates now in effect	117,000	
Gross revenue, 1920		$217,104,403

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When the appeal in the Railway Rates Case was before the Governor in Council, the Canadian Pacific Railway Company was required to furnish an estimate of revenue and expenditure for the year 1921, based on the increases as actually authorized by the order of the Board.

This statement, a copy of which signed by Mr. W. J. Moule, Assistant Comptroller of the Canadian Pacific Railway Company, and by Mr. Alex. Macdonald, Traffic Expert for the appellants, was attached to the judgment of the Governor in Council, indicated that for the next fiscal year (1921), the Canadian Pacific Railway Company would, under the increased rates, as allowed by the Board's order, have a deficit of $800,277.

At the present hearing, the same company submitted a revised estimate for the year 1921, based on the actual operations for the first nine months of 1920, and the last three months of 1919, which indicates that with the increased rates, the Canadian Pacific Railway Company will, in all probability, have a deficit of $415,000.

In order to further dispel the apparently widespread impression that the increased rates, as allowed by the Board's order, will provide a large annual surplus for the railways, and as in my opinion the public is entitled to the fullest possible information on this phase of the subject, additional statements, submitted at the hearing on the appeal by the Canadian Pacific Railway Company, are herewith given in full, as follows:—

A. Statement of revenue and expenditure for 1921 (estimated) with revenue based on the increased rates, as allowed by the Board's order, and showing probable net deficit for 1921 under the increased rates of $415,000.

B. Statement of revenue and expenditure for 1920 (estimated) with revenue based on the increased rates from September 13, 1920, as allowed by the Board's order and showing probable net deficit for 1920, under the increased rates of $1,938,795.

C. Statement of revenue and expenditure for 1920 (estimated) without the increased rates from September 13, 1920, as allowed by the Board's order, and showing a probable net deficit, had increases not been allowed, of $18,400,118.

A. Statement of Revenue and Expenditure for 1921 (estimated) based on same volume of traffic 1920 (9 months) and 1919 (3 months), with increased rates added to revenue.

REVENUE WITHOUT INCREASED RATES.

Freight—Eastern lines		$61,200,000
Western lines		71,100,000
Passenger		44,000,000
Sleeping and parlor cars		4,600,000
Excess baggage		400,000
Mail		1,500,000
Express		7,000,000
All other earnings		7,850,000
		$197,650,000

ESTIMATE OF INCREASE IN REVENUE DUE TO INCREASED RATES.

35 per cent on Eastern lines freight, except coal and wood, 34 per cent		$20,808,000
30 per cent Western lines freight, except coal and wood, 28 per cent		19,628,000
10 per cent passenger—6 months in 1921		1,920,000
32½ per cent express revenue (except passenger fares)		2,100,000
50 per cent sleeping and parlor cars		2,300,000
20 per cent excess baggage		80,000
		$46,836,000
Gross revenue for 1921 based on traffic of 1920		$244,486,000

A. Statement of Revenue and Expenditure for 1921, etc.—*Concluded.*

EXPENDITURE.

Actual expenses to September, 30, 1920, taken as basis first ten months of 1921	$128,280,000	
Estimate of expenses October to December, inclusive, assuming same operating ratio as 1919	43,154,000	
Wage increase, January to June, and October to December (allowing for smaller traffic October to December)	15,000,000	
Increase in cost of fuel for locomotives	7,250,000	
Increase in cost of fuel, other purposes	1,000,000	
Miscellaneous material, allowing for three months already in, actually at higher costs	7,000,000	
Ties, 5,000,000 at 15 cents	750,000	
Rails, 100,000 tons at $10	1,000,000	
Expense necessary to restore maintenance of way forces to prewar basis, 134 days per mile of line	6,225,000	
		$209,659,000
Net revenue		$34,827,000
Less—		
Fixed charges and pension fund		11,350,000
		$23,477,000
Income tax, 10½ per cent		2,465,000
		$21,012,000
Dividends		21,427,000
Estimated net deficit 1921, with revenue based on increased rates		$ 415,000

B. Statement of Revenue and Expenditure for 1920 (estimated) revenue based on Increased Rates from September 13, to December 31, 1920, as allowed by Board's Order No. 308.

REVENUE.

Actual gross earnings for first ten months of 1920 were	$172,227,403	
Approximate earnings first two weeks, November, 1920	11,400,000	
Estimated gross earnings for balance of November and for December, 1920, assuming same freight traffic and decrease of 15 per cent in passenger traffic	25,503,000	

ESTIMATE OF INCREASE IN REVENUE DUE TO INCREASED RATES.

Estimate of increased rates freight and passenger, November 15 to December 31	$7,857,000	
Estimate on sleeping car and commutation rates now in effect	117,000	
Gross revenue, 1920		$217,104,403

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B. STATEMENT of Revenue and Expenditure for 1920, etc.—*Concluded.*

EXPENDITURE.

Actual operating expenses, January to September, 1920	$128,280,263	
Estimated operating expenses for October, November and December, based on ratio for last three months 1919, without added wages or material costs	41,640,600	
Add advance in cost fuel	2,170,000	
Add advance in cost material and supplies	3,056,000	
Sales tax	200,000	
Wage award, May, June, October, November and December (July, August and September already included in operating expenses)	8,700,000	
Total expenditure (approximated)		$184,046,863
Estimated net revenue for 1920		$ 33,057,540
LESS—		
Fixed charges and pension fund		$11,282,700
Estimated net income		$21,774,840
LESS—		
Income tax, 10½ per cent		$2,286,358
Net after deduction income tax		$19,488,482
Dividends		$21,427,277
Estimated deficit for 1920, with revenue based on increased rates September 13 to December 31		$1,938,795

C. STATEMENT of Revenue and Expenditure for 1920 (estimated) without the Increase in Revenue due to Increased Rates, in force from September 13, to December 31.

REVENUE.

Estimate of gross revenue, as shown in statement "B" (including increase)		$217,104,403
LESS—		
Estimate of revenue from increased rates, September 13 to December 31—		
September	$1,955,000	
October	5,840,000	
November (first two weeks)	2,740,000	
Balance of year (see statement "B"	7,857,000	
		18,392,000
Gross revenue without increased rates		$198,712,403

EXPENDITURE.

Estimate of operating expenses as shown in statement "B"	$184,046,863
Net revenue	$14,665,000
LESS—	
Fixed charges and pension fund	11,282,700
Net income	$3,382,300
LESS—	
Income tax, 10½ per cent	355,141
	$3,027,159
Dividend requirements	21,427,277
Estimated deficit for 1920, if increased rates had not been granted	$18,400,118

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These estimates, while worked out with the greatest provisional exactitude, are, especially in view of the business depression which is apparently at hand, liable to be seriously affected by circumstances, now entirely unforeseen and against which it is impossible to guard.

On their face value, however, they furnish a fair indication that the Canadian Pacific Railway Company is not likely to do much more than pay its way during the coming year, if indeed it succeeds in avoiding a deficit.

It will, I think, be admitted that an honestly organized and efficiently managed railway should be in a position to earn annually over and above its operating expenses and costs of maintenance, such a sum as will enable it to pay its interest and other proper charges, and generally to maintain its credit and standing in the financial world.

In this connection it is well to remember that as provided by the Board's Order No. 308, the Canadian Pacific, Grand Trunk and Canadian Northern Railways are furnishing to the Board monthly statements of their operating revenues and that the Board reserves to itself the right to, at any time on notice, readjust the rates to meet conditions as they arise.

The hearing on this appeal furnished an excellent opportunity for a general review of the whole situation created by the Board's Order, authorizing the increases in freight and passenger rates. While it would perhaps be too much to expect the public to accept with equanimity the heavy unavoidable burden imposed by the Order, it is a matter of some satisfaction to the Board that the further ventilation and discussion afforded by the hearing on the appeal have shown that notwithstanding the criticism to which they have been subjected, its findings cannot, on the most searching analysis be fairly characterized as other than just and reasonable.

I am of opinion that the application should be refused.

OTTAWA, December 10, 1920.

The Chief Commissioner, the Assistant Chief Commisioner and the Deputy Chief Commissioner concurred.

Re Edmonton, Dunvegan & British Columbia and Central Canada Railways

File No. 30186.

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

By the Board's Judgment of September 8, 1920, provision was made that the same provisions as to the rate increases should be made in the case of the E. D. & B. C. and Central Canada Railways as in the case of the railways specifically dealt with under General Order No. 308. It is to be noted, as pointed out in the Judgment, that the rates of the E. D. & B. C. Ry., although said railway is located in prairie territory and would, therefore, normally come under the prairie scale, were at the time of the hearing on the mountain scale. This had been allowed because of the conditions in which the company found itself. The Board's Judgment of September 8, 1920, allowed the mountain scale, instituted as a temporary measure, to be continued, it being stated that conditions have not so changed as to warrant at present the applying of the prairie scale instead of the mountain scale. As under the mountain scale the maximum passenger rate is 4 cents per mile, and as under the provisions of Order 308 the increase in passenger rates was limited to a maximum of 4 cents per mile, it results that the increases which were allowed the E. D. & B. C. Ry., and this applies to the Central Canada as well, were limited to the increases in freight.

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It should be emphasized, as already pointed out, that the increases in the rates allowed the E. D. & B. C. Ry. are based on the mountain scale; that is to say, the railway is given the advantage of the rate increases which applies to the West generally, and further, this is based upon the rate scale of mountain territory which is higher than that of the prairie. There are then in fact included in the existing rate basis of the E. D. & B. C. an exceptional temporary increase due to the application of the mountain scale as well as the increase under the provisions of Order 308. Under General Order No. 308 the increases in freight rates provided for both East and West are subject on January 1, 1921, to a reduction of 5 per cent, thus the general rate applicable to the western territory would be reduced from the 35 per cent increase to a 30 per cent increase.

It is contended by the E. D. & B. C. that the special conditions of the railway warrant the continuance of the 35 per cent increase, in other words, in addition to the exceptional treatment allowed by the continuance of the mountain scale there should be an exceptional treatment in respect of the 5 per cent decrease.

Figures have been submitted by the railway for September and October. These are the latest figures which are before the Board.

The total expenditures on the E. D. & B. C., under the five headings,—Maintenance of Way and Structures, Maintenance of Equipment, Traffic, Transportation and General, during the month of September, 1920, amounted to $192,851.31, which represented a net increase of $112,866.16 over the expenditures for the month of September, 1919. Since the increase in the item of Maintenance of Way and Structures alone amounted to $115,588.13, it will appear that this gross increase is the characteristic figure, and that taking into consideration the reduction in certain other items of expenses, in reality all of the net increase was due to the expenditure in Maintenance of Way and Structures.

For the month of October, 1920, the total expenditures, under the same headings, amounted to $240,293.22 as against $85,087.31, showing a net increase of $155,105.91. The increase on Maintenance of Way and Structures amounted to $141,169.59. It will again appear that Maintenance of Way and Structures is the characteristic item.

Comparing the Maintenance of Way and Structures in the period covered by the reports with the figures available antecedent thereto, it is to be noted that the figures for Maintenance of Way and Structures in September, 1919, amounted to $20,329.78, and in October, 1919, to $18,862.44, or an average of $19,576 per month. On the other hand, the expenditures on Maintenance of Way and Structures for September and October, 1920, averaged $147,974 per month. These comparisons are not entirely characteristic, because if the figures for the period of January to August, 1920, a period antecedent to the rate increase, are taken, it will be found that the average monthly figures for Maintenance of Way and Structures were $48,315. If the total of the sums falling within the five items already set out is taken, it will be found that the average expenditure per month in the period from January to August, 1920, was $129,286 as against an average of $221,572 per month in the period of September to October, inclusive, 1920.

Notwithstanding the consideration above given to figures which may be considered more characteristic, it is none the less apparent that there has been a large increase in expenditures, and that this is primarily due to expenditure on Maintenance of Way and Structures.

On the Central Canada September, 1920, expenditures exceeded these for the same month of 1919 by $11,181. Of this, $9,611 was attributable to Maintenance of Way and Structures. For October, 1920, a somewhat different situation presents itself. The excess over October, 1919, was $10,697. Of this $3,528 was due to Maintenance of Way and Structures, while $5,504 was due to general expense. For the months September to October inclusive, 1919, the average monthly expenditure was $17,711; while the average monthly expenditure for the period January to August, 1920, was $10,248. The comparative monthly figures for the same periods in respect of Maintenance of Way and Structures are $8,141 and $4,346 respectively.

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RAILWAY BOARD ORDER

September 13, 1921.

[redacted]

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C 50090
(13)

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XI Ottawa, October 1, 1921 No. 13

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In the matter of proposed reductions in freight rates, and sleeping, Pullman, and parlor car fares.

File No. 31214.

JUDGMENT

Hon. F. B. CARVELL, K.C., *Chief Commissioner:*

Under section 325 of the Railway Act, 1919, subsection (1),—

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

About a month ago, the Board, of its own motion, instituted an investigation to decide whether or not a change should be made in the freight, Pullman and sleeping car rates as now existing in Canada, and requested the railway companies of Canada under its jurisdiction to meet the Board at Ottawa on Tuesday, the 30th day of August last for the purpose of discussing the whole situation. The proceedings were informal, in the nature of a conference, because we felt that, if a reduction in rates was justified, then no greater delay should be allowed than was absolutely necessary and also that we would probably have a better opportunity of discussing the whole situation than we would at a public hearing.

At the conference, the Canadian Pacific, Grand Trunk, Canadian National, New York Central, Michigan Central, and Temiscouata Railways were specially represented by their officials and, in most cases, solicitors, and all other railways under our jurisdiction were represented by the Railway Association of Canada. Continuous conferences have taken place almost daily down to the present time. Statements were furnished by some of the railways, principally by the Canadian Pacific. I think I am safe in saying that they all deprecated any serious reduction in rates, but contended that, if a reduction were to be made, it should be on special commodities which, in their judgment, would be of particular benefit in expediting commercial transactions in Canada rather than a percentage decrease covering traffic of all kinds.

They all agreed, however, that there should be a reduction in sleeping, Pullman, and parlour car rates, practically admitting that the present rates were so high as to prevent a certain amount of traffic. There were some suggestions that the reduction in the rates governing this particular class of traffic should be graduated according

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to distance, giving a greater percentage reduction on long distance traffic than on the shorter, and with this view on general principles I am inclined to be in accord, but no details have been furnished us up to the present time.

By the Rate Judgment of August, 1920, a flat increase of 40 per cent in Eastern Canada and 35 per cent in Western Canada was given on all freight traffic, with a few exceptions more particularly referred to hereafter, up to the end of December, 1920, and thereafter of 35 per cent in Eastern Canada and 30 per cent in the West and a 50 per cent increase in sleepeing car, Pullman, and parlour car fares. It was strongly contended by the representatives of the Grand Trunk and Canadian National roads that their finances were such that a rate reduction of any kind excepting that in sleeping car rates, etc., would be a gross injustice to them because, with the Canadian National in particular, their operating expenses far exceed their revenues and a reduction in rates would only aggravate the difficulties under which they were labouring.

In the case of the Canadian Pacific Railway Company, they contended that any reduction in rates would probably endanger their chances of earning dividends for the current year. The decision of this Board in the August Case of 1920 was referred to, in which it was contended that on account of the strong financial position which the Canadian Pacific Railway has occupied in the business life of Canada for many years past, any rate arrangement should be such as to leave them in a position to earn their dividend of 7 per cent. I agreed with that proposition then and reiterate it here, and, therefore, in arriving at a conclusion at the present time, I am doing so entirely on an examination of the traffic and financial requirements of the Canadian Pacific Railway Company.

The company filed with us a very comprehensive analysis of all kinds of traffic for the first seven months of the present year, January to July inclusive, and an estimate of receipts and expenditures for the remaining five months. During the discussions they were able to produce the gross receipts for the month of August, but the amounts credited to each particular kind of traffic had not been segregated, and therefore we have not the benefit of this information so far as that month is concerned, neither have we any statement of their expenditures.

In the statement filed, they estimated a small deficit. In doing so, they pointed out many important reductions which have been made during the past eight months, and particularly within the last two or three months, which are very considerable and will, to that extent, affect their net at the end of the financial year. Perhaps the two most important reductions are grain from For William and lake ports, both to the seaboard and for domestic consumption in Eastern Canada, and live stock. In the case of grain for export, the reduction amounts to 3 cents per 100 pounds from Fort William and 5 cents per 100 pounds from bay ports. They propose to increase the 3 cent reduction from Fort William by 7½ cents, or a total of 10½ cents per 100 pounds, and to reduce the rate on grain for domestic consumption from Fort William by 4½ cents per 100 pounds, and the rate on grain between stations in Eastern Canada by 2½ cents per 100 pounds. This, they estimate, will amount to a reduction in revenue of $1,169,000. In the case of live stock, the reduction amounts to about 25 per cent of the existing rates. This last reduction was made with the entire concurrence of the Board in the month of July last owing to the serious condition in which that important industry found itself by reason of existing economic conditions, and will, according to the company's estimate, amount to $220,000 from the date of reduction.

They propose a reduction in the rate on hay of 25 per cent, which will amount to $143,000, this due to the shortage in the hay crop in the provinces of Ontario and Quebec, and, to some extent, in the Maritime provinces. They have made reductions in the rate on lumber from the Pacific coast to eastern points amounting to $95,982. They have made reductions in the rates on smelter products to United States points, effective September 22 instant, and to Canadian points, effective

August 18 last, which they estimate will produce a reduction in revenue of $46,985. They propose a reduction in the rate on dressed meats and packing house products from western packing house plants to eastern destinations, but do not state either the percentage of reduction or the estimated loss of revenue therefrom. They have made reductions in wool and hides from western to eastern points which they estimate will amount to about $9,000. In addition to these specific cases, a number of substantial reductions have been made between various points and on various commodities, but, as we have not been furnished with details of quantities, I am unable to give any estimate of what the result will be in their revenues. By another computation, they estimate that, with the reductions already in effect and those contemplated, the total reduction in freight rates for the remainder of the year will be $2,800,000. These are all very important and are all taken into consideration in arriving at their estimate of their net for the whole year, which, as I said before, they estimate will produce a slight deficit after providing for fixed charges, pensions, income tax, and dividends.

The rates granted the railway companies of Canada a year ago were very severe, and I am not at all surprised that they were a great shock to the people generally, who were compelled to patronize the railways and who, of course, would have to pay the extra rates, and yet, after a year's experience and a very close study of the traffic returns from month to month, I am satisfied they were entirely justified and nothing less would have complied with the requirements of the law which says that we should give to the transportation companies "just and reasonable rates." In fact, the final results to the Canadian Pacific Railway Company for the last year, even under these very high rates, only gave them a surplus of $450,000 after paying their dividends.

At that time, the Chicago Wage Award had gone into effect in the United States, and the executives of the different railways in Canada felt that they were compelled to give the same increases here as had been granted in that country, which, in the case of the Canadian Pacific Railway Company, were estimated at an increase of about $21,000,000 annually, something over $7,000,000 being required to meet these wages back to the 1st of May, 1920, because the increased wages went into effect on that date in the United States.

As I felt that in order to avert a catastrophe to the railway companies of Canada a year ago we were compelled to give the increases above referred to, when the same Board in the United States some months ago ordered a reduction in the wages of the employees of the United States railways which amounted to about 12½ per cent, I naturally felt that the Canadian railways should at least make a like reduction, and we are informed they have already put these reductions into effect, dating, in the case of the Canadian Pacific Railway Company, from the 16th day of July last, and all the roads are now paying their men on this reduced basis.

Also, as it is admitted by the railways that their materials are costing them at least 25 per cent less than a year ago, I had a very strong impression that the public was entitled to a substantial reduction in freight rates. It could not be exactly the same amount, because our passenger rates, which were increased 20 per cent up to the end of December, 1920, then 10 per cent until the 1st of July, are now back to where they were prior to the Rate Judgment, and there were no increases on a number of commodities hereinafter referred to. My object, therefore, in inviting the railway companies to a conference was to ascertain what would be a reasonable reduction in freight, sleeping, and parlour car rates in order to correspond with the reduction in operating expenses.

I was also very strongly fortified in this opinion by an examination of the Canadian Pacific Railway Company's traffic returns for the first seven months of this year, in which they show net earnings practically $2,000,000 greater than for the corresponding seven months of 1920. An examination also shows that, during the months of January and February, only a very slight improvement took place in their

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operations, but beginning with the month of March, the Canadian Pacific Railway Company have applied their well-known efficient business methods to the operation of their road. Their net, month by month, has shown a satisfactory increase. In March, it amounted to $2,450,000, in April to $2,646,000, in May to $3,293,000, in June to $3,104,000, and in July to $2,054,000, the reduction during the month of July being accounted for by a large increase in maintenance and equipment charges in getting ready for the fall business. The August net is not available, but we know that the gross is $16,647,000, or an increase over the July gross of about $900,000, and I think it fair to assume that their net will show a very satisfactory increase, the result of these economies as above stated being to show a net of nearly $2,000,000 over the same period for 1920. I am satisfied, not only from the statements of the company's officials but also from a careful analysis of their monthly statements, that this great saving has been accomplished without in any way reducing the high standard of their right of way, equipment, and system in general. It is certainly, considering the great decrease in general business, a wonderful tribute to the business sagacity and ability of this organization.

The problem before us is what will be the results of the last four months of the company's fiscal year. Of course, it can only be an estimate, but the railway company should be in a position to estimate results more accurately than I could do, and I naturally in arriving at a conclusion felt that I must scrutinize very closely these estimates and see whether or not in my opinion they are justifiable. On the whole, I think they are fairly accurate, but I am compelled to disagree with them on a few very important items.

In the first place, they state that, during the last four months of 1920, their revenue from the transportation of grain and grain products from the point of origin to the head of the lakes was $20,762,000, and they estimate that, during the like period of this year, it will fall to $13,387,000, a drop of $7,374,000, or a decrease of 34 per cent. They point out in justification of this estimate that, on account of crop conditions in Western Canada, the northern portions of the country which are served more largely by the C.N.R. lines than by the Canadian Pacific will produce the greater portion of the grain and naturally the C.N.R. will transport a greater portion than last year. They also contend that the average haul will be about 20 per cent less than last year in mileage, and, of course, the rate will be 5 per cent less than in 1920, but, with the Canadian Pacific Railway Company's well-known business ability, with their efficient operating staffs, excellent roadbeds, and adequate equipment, I cannot agree that there will be a reduction of anything like 34 per cent in their revenue, especially when they admit that the grain crop will be 4 per cent greater than it was last year. How much less is their estimate than the actual result will be, of course, I am unable to state, because, after all, it is only an estimate, but I will be very much surprised, if their revenue from this commodity is not $2,000,000 greater than their estimate.

Taking the system as a whole, they arrive at their estimate of gross expenses for the last five months of 1921 by applying the percentage of total expenses to total revenue as found in 1920 to a like period in 1921, and, in the statement which they furnish us, they took the total receipts for the last five months of 1920 and the total expenses for the same period and found that the expenditures amounted to 84 per cent of the receipts, and after estimating the total receipts for the last five months of 1921, they estimated their total expenses on the same basis to be $70,830,000. From this they deducted certain amounts for the decrease in the cost of labour and materials, amounting to $7,302,000, and added $2,800,000, provision for rails and fastenings and the necessary labour in laying same, making the net estimated expenses for the period $66,328,000, and, by adding this to the actual expenditures for the first seven months of 1921, arrived at their estimated expenditures for the full year, which, when placed against the estimated revenues, showed, as before stated, a small deficit.

Their attention was called to the fact that, in the months of October, November and December of 1920, they had included about $3,400,000 for the retroactive wages of May and June, the result being that a new computation was made based upon an operating ratio of 81·99, or practically 82 per cent, which reduced their estimated deficit by about $1,500,000, thus leaving their deficit around $1,100,000.

If they arrived at the estimated expenditures for the last five months of 1921 upon the same operating ratio as that for 1920, it is perfectly clear that they included in that estimate the same percentage of requirements for rails, fastenings, and the laying of the same as was provided for 1920, and I find from an examination of their traffic returns, that, during these five months, they actually expended for these items $5,945,000. I naturally inquired why it was necessary to include an estimated expenditure for these same items during the last five months of this year in addition to what they had already provided for by $2,800,000. This was called to their attention, and the answer was that it was required to bring up the expenditure for this year to what would be required to keep their track in proper condition as these items had been very seriously reduced in the first seven months of this year. I find, however, from an examination of their statements that, during the first seven months of 1920, they expended for these items $5,435,000 and, for the same period of 1921, $4,984,000, or a reduction of less than $450,000. Considering the general reduction in business, in my opinion, the amount expended during the first seven months of this year is quite equal to, if not in excess of, the amount expended for like purposes in the first seven months of 1920, and, therefore, I conclude they are not justified in adding the item of $2,800,000 to their estimated expenditures for the last five months of this year. Applying this item alone to their estimated deficit of $1,100,000, I find they would have a surplus of $1,673,000.

Then again, I find they estimate for the present year that they will require the sum of $2,381,498 for income tax, but $2,300,000 was included in their expenditures for the months of November and December, 1920, for income tax, and, as they have estimated for 1921 the same ratio of expenditures to revenues as actually obtained in 1920, they have already included in their estimated expenses for this year 82 per cent of $2,300,000, or $1,886,000, and I am unable to see that they are justified in doing this a second time as they have done. Therefore, instead of adding $2,381,498, they would have been entitled to add only $495,498, which would bring their surplus to over $3,500,000.

I cannot, however, agree that the expenditures for the last five months of this year will be in the same ratio to earnings as they were in 1920. I find from their returns that, during the months of January and February of 1921, their operating ratio was just about the same as it was in 1920, but, from that time down to the end of July last, being the last month for which we have accurate returns, a very, very substantial improvement has taken place in their operating ratios, as will be seen by the following table:—

OPERATING RATIOS

	1920	1921	Decrease %
January	94·63	94·13	0·50
February	93·56	91·93	1·53
March	86·52	81·95	4·57
April	84·29	79·18	5·11
May	79·35	74·18	5·17
June	84·37	77·90	6·47
July	91·43	87·12	4·31

This shows an average reduction for the five months, March to July inclusive, of over 5 per cent, due entirely to more economical management, for which the company is entitled to the very greatest credit imaginable. I cannot bring myself to believe that for the remainder of the year they will discontinue this excellent business management and bring their operating ratio back on a parity with what it was for the last five months of 1920. In other words, there must be a continuation of this reduction in their operating ratio which, at the end of the year, should show an

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improvement at least as great as that for the first seven months, which amounted to $2,000,000, because, while the period is shorter, the traffic is very much greater. If this estimate is anywhere nearly correct, it would give the company a surplus of well over $4,000,000.

I am not satisfied with their estimate of the reduction in revenue under the item of all other kinds of traffic, which includes everything excepting grain and grain products, hay, lumber, anthracite coal, bituminous coal, ores, live stock, and dressed meats. They estimate a reduction of about 21 per cent, because that was the average reduction on this traffic for the first seven months of this year, but I find that, for the month of July, this reduction only amounted to 13 per cent, and, therefore, while I cannot say to what extent this estimated revenue is smaller than it should be, yet I see no reason why the full 21 per cent should be deducted and think these items will yield more revenue than they anticipate, but, as the question is largely problematical, I make no venture as to the actual amount.

There is one other small item in which their estimates are clearly wrong, although I can quite understand how it happened, that is, the rates for the carrying of mail. A new agreement was made with the Government, effective the 1st day of March, 1921, by which their receipts from this source are practically doubled, and, in arriving at the estimate for the last five months, they took the average for the first seven and applied it to the last five. I find, however, that, if we take the averages March to July, inclusive, and apply it to the last five months of this year, their revenues will be $200,000 more than their estimate.

I, therefore, think that, instead of showing a deficit of $1,100,000, they will have a substantial surplus after meeting all dividend requirements and, of course, fixed charges, pensions, and income tax. If I am correct in this estimate, then there should be a reduction in rates, because the public is entitled to every cent of reduction in rates which is possible under existing circumstances. A year ago, this Board gave the railway companies a percentage increase in rates on all traffic excepting a few items hereinafter referred to such as sand, gravel, crushed stone, etc., and, as they were given, at least by me, under the firm conviction of absolute necessity with the hope that sometime in the near future rates might be brought back to the same basis as existed in the month of August, 1920, I can never be privy to allowing these rates to remain on their present basis subject to a few special reductions which the railway companies would like to make for any reason which to them may seem proper. It is not for my conception of the duties of the Board of Railway Commissioners under the Railway Act. As they have already made very considerable reductions, which I have particularly referred to, I think they could stand a ten per cent reduction on the remainder of their freight traffic and still pay their dividends.

I, therefore, think an order should issue instructing all steam railway companies in Canada under the jurisdiction of this Board to file tariffs, effective the 21st day of September instant, reducing the fares on their sleeping, Pullman, and parlour cars by 25 per cent—not 25 per cent from existing rates, but, going back to 1920, when they were given an increase of 50 per cent, it should now be figured upon an increase as of that date of 25 per cent. This, I am sure, will produce more money at the end of the year to the railway companies than they could possibly earn under present rates, because, as before stated, I am satisfied these rates are so high that they are preventing much traffic which otherwise they would obtain. That all freight rates other than those upon which decreases have already been made, and also those hereinafter especially provided for, should be decreased by ten per cent from the increases given in 1920, which would leave the increase in Western Canada at 20 per cent and in Eastern Canada at 25 per cent. In cases where the reductions already granted have not amounted to 10 per cent, they should be reduced to that point, and, of course, where they exceed 10 per cent, they will remain as at present. There will be no reductions on crushed stone, sand, and gravel, cord wood, slabs, edgings, and saw mill

refuse when used exclusively for fuel, and milk, as no increases were given on these commodities by the 1920 order. There should be no reduction on coal because the increases on this commodity in no case exceeded 20 cents per ton and were graduated down to 15 cents and 10 cents per ton according to distance. There should be no decrease in the minimum class rate scale as established by Order in Council P.C. 1863 and now in force by an order of this Board or in the minimum charge per shipment, as these were not increased a year ago. There will be no decrease in commutation or passenger fares, because passenger fares are now back to where they were in 1920 and the commutation fares have been dealt with by a special order of this Board. The decrease hereby ordered shall only be for line hauls and shall not affect local switching rates, tolls for interswitching, or such incidental services as milling-in-transit, diversions, reconsignments, stop overs, demurrage, weighing, and the like, as they were not dealt with by the 1920 order. In arriving at these decreases, existing spreads between the rates from the various mills in British Columbia shall be maintained, the same as provided for in the order of 1920, and, of course, the export rates will not be affected by this order, as they were the subject of a special order of the Board. In working out the rates under this judgment, fractions will be disposed of as set out in Order in Council, P.C. 1863.

OTTAWA, ONT., September 13, 1921.

The Deputy Chief Commissioner concurred.

Re Section 325 of The Railway Act, 1919, Subsection (1)

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

In the present case, as in the Board's judgment in the Rate Application of 1920, the position of the Canadian Pacific Railway Company is taken as the test. The Chief Commissioner, in his decision in the 1920 application, expressed the opinion that the rates the judgment sanctioned would "very nearly give the Canadian Pacific Railway an even balance sheet at the end of the present year, and for the year 1921, according to my estimate, should give them a reasonable surplus . . . ." The Chief Commissioner's position in the present case is expressly the same.

Under the reduction in wages which the Canadian Pacific provided for, effective July 16, 1921, it is estimated this represents from July 16 to December 31 a reduction of $4,787,000, while for the period August to December it is $4,300,000. The amount so involved is in either case in excess of the surplus estimated in the Chief Commissioner's judgment in the present matter.

While provision was made by the Canadian Pacific for a reduction in wages, with a corresponding reduction in the pay cheques, this has not up to date so gone into the funds of the company as to be available for reduction of operating costs. Whether it will remain with the company or whether it will finally be paid to the employees will be involved in proceedings before a special tribunal.

Parliament has provided by legislation for rate regulative powers to be exercised by a regulative tribunal operating under the Railway Act. It has also provided by distinct and separate legislation for investigatory powers in respect of labour disputes, and for the appointment of special tribunals in connection therewith.

On August 4, 1921, the engineers, firemen, conductors, trainmen and telegraphers made application to the Department of Labour for the appointment, under the Industrial Disputes Investigation Act of 1907, of a Board of Conciliation and Investigation. The Minister of Labour acceded to this application. The Board of Conciliation and Investigation is now in process of constitution.

The question of wage reduction is the pivotal one in the present consideration of reduction in operating costs, with its consequent bearing on rates.

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What is herein involved is a rate reduction based essentially on a wage reduction.

Pending the decision of the special tribunal, appointed to investigate as to the wage question involved, I do not feel that I am justified in expressing an opinion on the propriety of a rate reduction based essentially on a wage reduction whose justifiability is at present under investigation.

September 13, 1921.

Commissioners Boyce and Rutherford concurred.

ORDER NO. 31475

In the matter of the complaint of John Granville Thynne, of Otter Valley, Merritt, British Columbia, hereinafter called the "complainant," against the flooding of his lands by the Vancouver, Victoria and Eastern Railway Company in narrowing a certain creek channel in the vicinity of the complainant's property; and the Order of the Board No. 31341, dated July 26, 1921, made therein.

File No. 572.49

FRIDAY, the 2nd day of September, A.D. 1921.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

J. G. RUTHERFORD, C.M.G., *Commissioner.*

Whereas by indenture made the 26th day of July, 1921, between the complainant, Hermance Hope Worsnop and Mary Elizabeth Kimble, mortgagees, and the said railway company, the complainant agrees, in consideration of the payment by the railway company to him of the amount of a judgment rendered herein by the Court of Appeal of the province of British Columbia and of the abandonment of an appeal by the railway company to the Supreme Court of Canada from the said judgment—forever to release, quit claim, and discharge the railway company, its successors and assigns from all claims which he has heretofore made, or he, his heirs, executors, administrators, or assigns can at any time hereafter make by reason of any damage of any nature or kind whatsoever arising or to arise by reason of the interference by the railway company with the outlet of Thynne lake or the channel of Otter Creek to lots 67 and 68, by reason of water coming upon or remaining on the said lands or any part thereof, or otherwise howsoever,—

The Board Orders: That the said Order No. 31341, dated July 26, 1921, be, and it is hereby, rescinded.

F. B. CARVELL,
Chief Commissioner.

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OFFICIAL REPORT OF EVIDENCE

Taken by the

SPECIAL COMMITTEE APPOINTED TO CONSIDER

RAILWAY TRANSPORTATION COSTS.

June 24, 1922.

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OFFICIAL REPORT OF EVIDENCE

TAKEN BY THE

SPECIAL COMMITTEE APPOINTED TO CONSIDER RAILWAY TRANSPORTATION COSTS

No. 17—REPORT TO THE HOUSE, TAKEN FROM VOTES AND PROCEEDINGS OF JUNE 24, 1922

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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By leave of the House, Mr. Mackenzie King (*York*) moved,—That the House do now revert to Presenting Reports by Standing and Select Committees, under Routine Proceedings; which was agreed to.

Presenting Reports by Standing and Select Committees being accordingly called;

Mr. Maclean (*Halifax*), from the Special Committee appointed to consider Railway Transportation Costs, presented the Third Report of the said Committee, which is as follows:—

Your Committee, appointed pursuant to resolutions of Parliament passed on the 8th day of May, begs leave to report that it has had altogether twenty-nine sessions or meetings and has heard and considered the evidence of many witnesses and as well received many written representations from interested sources. Witnesses were heard on behalf of the Canadian railways, several of the Provincial Governments, industrial organizations, and particular industries and interests. The proceedings of the Committee have been from time to time, as printed, circulated among members of the House of Commons, and of the Senate, and have been as well widely circulated outside of Parliament.

Your Committee was charged with the duty of inquiring into the question of transportation costs with particular regard to the effect of rates established by the Crowsnest Pass agreement on Canadian National and other railways and upon agricultural development and Canadian industries generally.

The Crowsnest Pass agreement was an undertaking entered into in 1897 between the Government of Canada and the Canadian Pacific Railway, whereby in consideration of a subsidy to be earned by the construction of the Crowsnest Pass railway, which subsidy amounted to $3,404,720, a reduction should be made in the rates upon the classes of merchandise below stated westbound from, and including Fort William and all points east of Fort William on the Company's railway, to all points west of Fort William on the company's main line or on any line of railway throughout Canada, owned or leased by, or operated on account of the Company. The commodities, the classes of merchandise to be affected, are as follows:—

Upon all green and fresh fruits, 33⅓ per cent;
Coal oil, 20 per cent;
Cordage and binder twine, 10 per cent;
Agricultural implements of all kinds, set up in parts, 10 per cent;
Iron, including bar, band, Canada plates, galvanized, sheets, pipe, pipe-fittings, nails, spikes and horse shoes, 10 per cent;
All kinds of wire, 10 per cent;
Window glass, 10 per cent;
Paper for building and roofing purposes, 10 per cent;
Roofing felt, box and packing, 10 per cent;
Paints of all kinds and oils, 10 per cent;
Livestock, 10 per cent;
Woodenware, 10 per cent;
Household furniture, 10 per cent.

The agreement also provided for a reduction in the rates on grain and flour from all points on the main line, branches or connections of the Canadian Pacific Railway west of Fort William to Fort William and Port Arthur. The decrease was fixed at 3 cents per hundred pounds to be reached in two annual reductions of a cent and a half each.

The Crowsnest rate on grain and grain products remained in entirety from September 1, 1899, until October 7, 1903, when it was modified by a lower rate resulting from an agreement made between the Province of Manitoba and the Canadian Northern Railway. Lower rates continued until March 15, 1918, when an increase of 15 per cent on rates generally was made by order of the Board of Railway Commissioners. This

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increase was granted because of representations by the railways that they could not successfully maintain their services unless granted rates that would enable them to meet the increased operating costs due to substantial increases in cost of fuel, coal, materials, supplies, equipment of all kinds and wages. This increase was subject to the Crowsnest Pass agreement, but it brought western grain rates up to Crowsnest maximum rates from most points in Saskatchewan and Alberta, though not in Manitoba.

Shortly afterwards, the first of the so-called McAdoo series of wages awards was adopted in the United States and in view of the continued increase in the cost of living, Canadian railway employees organizations claimed wages in Canadian territory should be similarly advanced. An Order in Council, P.C. 1768, of July 16, 1918, authorized the wage increase on Government-owned railways and recommended that similar increases be adopted on other lines. The same Order in Council authorized a general rate increase to meet the increased operating costs. It thus became necessary to exceed the Crowsnest maximum rates, and to accomplish this a further Order in Council, P.C. 1863, of July 27, 1918, authorized the Board of Railway Commissioners to disregard any existing rate-controlling agreements. This prepared the way for the rate increase of August 12, 1918, which was 25 per cent in the East, but less in the West, because there the 15 per cent increase which came into effect on March 15th, 1918, was included in the 25 per cent increase.

The several Orders in Council referred to were passed under the authority and power vested in the Governor in Council under the War Measures Act. Upon the end of the war it was deemed desirable to continue in statutory form the authority of the Board of Railway Commissioners to disregard rate-controlling agreements and in due course subsection 5, of Section 325, of the Railway Act was enacted, enabling the Board of Railway Commissioners to disregard rate-controlling agreements for a period of three years from July 6, 1919. Thus, the power of the Board to disregard special agreements, and in particular the Crowsnest agreements, will terminate on July 6th next unless Parliament shall, in the meantime, otherwise enact.

Subsequent to the enactment of subsection 5 of Section 325 of the Railway Act, the upward trend in railway operating costs in Canada continued, largely owing to what is known as the Chicago Labour award, and on September 13, 1920, the Board of Railway Commissioners, under General Order No. 308, ordered a further advance of 35 per cent in Western territory and 40 per cent in Eastern territory. With that order, the peak of the rate increases over Crowsnest rates was reached. The order provided for a decrease of 5 per cent on January 1st, 1921; a further decrease amounting to 10 per cent was made effective under General Order No. 350.

The duration of the remainder of the increase directed by General Order No. 308 is limited to July 1, 1922, owing doubtless to the fact that on July 6, the Crowsnest agreement would come into operation if the suspension were not further continued by statute, and which would doubtless necessitate a reconsideration of the whole freight rate structure.

Your Committee has heard the representations of the railways:

Mr. Beatty and Mr. Lanigan on behalf of the Canadian Pacific Railway, and Mr. Hanna and Mr. Hayes on behalf of the Canadian National Railway, and Mr. Watson on behalf of the Grand Trunk Railway.

In addition to hearing evidence as to the effect of Crowsnest Pass rates on Canadian railways, certain other aspects of the railways situation were impressed upon your Committee. Representatives of the Province of British Columbia argued for the equalization of the Mountain scale of rates with the Prairie scale, and for the placing of the Port of Vancouver in a position of relative equality with the head

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of the lakes. It was contended that equal consideration with the rest of Canada in the matter of railway rates was implied in the railway arrangement made with the Province of British Columbia at the time of Confederation.

The case for the Prairie Provinces was also presented. Stress was laid on the fact that the earnings from Prairie lines were greatly in excess of the earnings in the East. It was stated that the rates in the East, being controlled and limited by water and American rail competition resulted in deficiencies in revenue which prairie rates were designed to make up and it was urged that the Crowsnest Pass agreement was the only controlling factor at the disposal of the people of the Prairie Provinces. Therefore, they objected strongly to its further suspension. It was their "Sheet anchor" as one witness put it.

Representatives of the Maritime Provinces urged that their situation was one of special character, because of the conditions under which the Intercolonial Railway has been constructed as a result of the Confederation agreement. They contended that there was an implied obligation necessarily attaching to these terms which guaranteed to them special consideration in regard to railway freight rates, on account of their distance from the central and Western provinces. It was claimed that the increases in rates of the Intercolonial Railway since 1916 were in excess of rates allowed by the Board of Railway Commissioners on many of their products, which excessive rates greatly interfered with interprovincial trade, and are contrary to the obligation accepted by the Government of Canada at Confederation. The Government was, therefore, asked to take cognizance of the situation and endeavour to arrange such reductions of rates as will, having regard to the actual cost of operation of these railways, remove as far as possible the difficulties complained of, and that the Board of Railway Commissioners should, for the same reasons, and in so far as their jurisdiction extends, restore the differential rate formerly applicable to traffic to and from the Maritime Provinces, and we recommend that the Minister of Railways and Board of Management take steps to meet the situation in these provinces by a substantial reduction in rates.

While your Committee was impressed by the arguments put forward on behalf of the Maritime Provinces and British Columbia, they are possible without the scope of the reference to us, and, in any event, are too intricate and involved, and would require more time than is at the disposal of your Committee, to form a proper judgment regarding them. Moreover, these matters have been before the Board of Railway Commissioners during the past 12 months; the board has heard voluminous evidence, much expert testimony and lengthy arguments; it has had at call men trained in railway rate matters, and the Committee feel that it would be inadvisable and generally unsatisfactory to even appear to invade the jurisdiction of the board, or to anticipate its judgment. The claim of the Maritime Provinces with regard to local rates is a matter for the consideration of the Minister of Railways and the management of the Intercolonial Railway.

Whether the Crowsnest Pass agreement should come into effect on July 6th next, or whether it should be further suspended to enable the Board of Railway Commissioners to regulate freight rates for a fixed period, regardless of rate-controlling agreements, upon a consideration of all the abnormal economic conditions still prevailing and upon other considerations, was the important matter referred to your Committee. The question is not without its difficulties. The problem is largely one of approximating the net financial results upon the operations of Canadian railways with the Crowsnest Pass agreement scale of rates again operative, and the resultant effect upon the ability of the railways to sustain further reduction on basic commodities outside of those mentioned in the agreement, and the probable results as to railway revenues if such additional reductions were made. It was from these points of view that your Committee considered the matter.

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There are many unknown factors which enter into a consideration of this matter, some of which are as follows:

1. The precise general effect of rate reductions upon railway traffic and its influence in stimulating business and producing railway revenue.

2. The probable future wage reduction in connection with our railways and when they shall become effective.

3. The probable degree of deflation in the costs of materials used by railways.

4. The action to be taken by the Board of Railway Commissioners, upon the applications of the Province of British Columbia, and the Prairie Provinces, or the action of the board, or of the Government on the application of the Maritime Provinces for rate reductions, etc., and upon which matter judgment is shortly to be rendered, the action to be taken by the Board of Railway Commissioners in respect of special applications for rate reductions and the probable action of the board in the way of general rate reductions upon basic commodities or upon class rates.

Without a determination of some or of all of these matters, it is difficult for your Committee intelligently to approximate the effect of the Crowsnest Pass agreement if put into operation, or its effect upon the future action of the Board of Railway Commissioners, in respect of future rates upon other commodities. Further, conditions relative to a consideration of this question are changing, or are likely to change, so rapidly that conclusions presently made will soon be found unreliable.

Again, the Crowsnest agreement was suspended first by Order in Council and later in effect by act of Parliament. Such action was based upon inflated railway operating costs, and increased value of commodities, as well as the general economic conditions resulting from the war. It was chiefly for these reasons, we believe, that the Board of Railway Commissioners was empowered to disregard rate controlling agreements, if it saw fit.

Fixing rates by legislation is no doubt generally a bad principle, because it hampers the free action of the Board of Railway Commissioners and may create a discrimination in favour of the commodities covered by statutory rates. The Crowsnest Pass agreement was enacted before the institution of the board. This board, created in 1903, have been charged by the Parliament of Canada with the duty of regulating railway rates and of establishing just and reasonable railway rates. It is the only body in Canada equipped for the determination of the intricate matters relative to railway rate making. The matter of the Crowsnest agreement becoming effective or being suspended is related to other concrete railway rate issues either pending or imminent. The one reacts upon the other, and both upon the whole freight rate structure which must, within a short period of time, undergo many substantial changes. The question would seem to be largely one that can best be treated by one body, the Board of Railway Commissioners.

But it has been represented to your Committee that three important provinces of Canada are mainly devoted to the basic industry of grain growing.

The prosperity of that basic industry is a factor vitally affecting the economic welfare of the nation at large.

The grain grown in the prairie provinces is mostly for export purposes and the price of that commodity is settled by competition on the grain markets of the world.

During the war, due to reduced production and increased consumption and the large stocks that had to be accumulated by the governments of warring countries, grain prices were greatly inflated. Since the termination of the war, a rapid deflation of grain prices took place, due to increased production, and reduced consumption, and also due to the fact that so many nations with a depreciated currency have

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largely lost their purchasing power. These factors have forced down grain prices towards pre-war levels much more rapidly than what has been the case in respect of other commodities that grain growers are obliged to buy.

On the other hand, some of the reasons advanced in 1918 as justifying the suspension of the Crowsnest Pass agreement have disappeared, and your Committee has reached the conclusion that an immediate reduction of freight rates on grain and flour is in the national interest.

Conclusion

Your Committee, therefore, recommends a suspension of the Crowsnest Pass agreement, except in respect of grain and flour, for one year from July 6, 1922, with power to the Governor in Council to suspend for a further period of one year, if in its judgment the then existing conditions justify the same, and your Committee recommends that suitable legislation be enacted to make effective this recommendation.

The recommendation of the Committee for the further suspension of the Crowsnest agreement in accordance with the foregoing paragraph is made in view of the great necessity of a general reduction in freight rates on basic commodities as a whole and in what is considered to be the general public interest. It is intended that the period for which a further suspension of the Crowsnest Pass agreement is recommended shall not necessarily preclude the adoption of Crowsnest rates prior to the expiration of the period of suspension. Basic commodities which may be afforded reductions should have the earliest possible consideration by the Board of Railway Commissioners.

The evidence given to your Committee and the various representations made to it, in one form or another, inevitably lead to the conclusion that a general reduction in railway rates is essential to the economic life of the country. To this end should be directed the best efforts of the managers of our railways, and the attention of the Board of Railway Commissioners. It is impossible to predicate the precise effect of rate reduction upon commodities in stimulating business or railway traffic. Doubtless, however, high freight rates are a discouragement to trade, and even the fact that rate reductions are in anticipation tends to retard business and railway traffic. Further, your Committee is of the opinion and wish to declare in the most emphatic manner, that railway operating costs should be decreased, and towards the achievement of that end we recommend the closest co-operation between the management of the different Canadian railways, and between the management of the railways and their employees.

Your Committee recommends that the evidence and Minutes of Proceedings be reported for the information of the House.

(For Minutes of Proceedings and the Evidence accompanying this Report, see Appendix to Journals, No. 5.)

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AN ACT TO AMEND THE RAILWAY ACT, 1919.

12-13 GEORGE V.

CHAP. 41.

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12-13 GEORGE V.

CHAP. 41.

An Act to amend The Railway Act, 1919.

[*Assented to 28th June, 1922.*]

HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Powers of Board continued.

1. Subsection five of section three hundred and twenty-five of *The Railway Act, 1919*, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by order of the Governor in Council published in the *Canada Gazette;* Provided, that notwithstanding anything herein or in said subsection five contained, rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the statutes of Canada, 1897.

Crow's Nest agreement to apply to grain and flour.

OTTAWA: Printed by F. A. ACLAND, Law Printer to the King's Most Excellent Majesty.

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ACTION OF RAILWAY BOARD - 1922

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C 50108

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XII Ottawa, July 5, 1922 No. 8.

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa. Remittances to be made payable to the order of the Chief Accountant. P.O. Money or Postal Orders preferred. Cheques or drafts must be made payable at par at Ottawa. Postage Stamps will not be accepted.

Re Freight Tolls—1922

Files Nos. 30531, 30685, 30686 and 30686.2

BY THE BOARD:

Shortly after the promulgation of General Order No. 308 of this Board, being the order providing for the general rate increases known as the Thirty-five and Forty Per Cent Case, effective September 13, 1920, various bodies, among them the province of Manitoba, appealed to the Privy Council asking that the said order be rescinded for various reasons set forth by the appellants. The matter was heard by the Privy Council, and, on the 6th day of October, 1920, by P.C. No. 2434, His Excellency in Council dismissed the appeal, but, in doing so, stated as follows:—

"What constitutes a fair and reasonable rate should now be arrived at without reference to the requirements of the Canadian National System and your committee recommends that the order in this case be referred back to the Board to be corrected in its findings in such manner as to determine what are fair and reasonable rates without taking into account at all for the time the order shall be in effect, the requirements of the Canadian National System.

"Very strong representations were made at the argument on appeal to the effect that the order continued and indeed intensified an unjust discrimination in rates, it being claimed that higher freight rates prevail generally in Western Canada, that is west of Fort William, than prevail in Eastern Canada, that is east of Fort William. It was strongly urged that the reasons, whatever they may have been, for this differential no longer exist, and that as a matter of public policy the principle of equalization of rates East and West should now be recognized. On the other hand, it was urged that the competition arising out of lake and river transportation as well as out of lower competitive rates on Eastern United States lines compelled a somewhat lower scale in Eastern Canada than in Western Canada. Whether or not these reasons now obtain in any substantial degree is a question which requires minute and expert investigation such as can be best conducted by the Railway Commission itself and not by Your Excellency's advisers, but the committee is strongly impressed with the very great desirability of bringing about with the least possible delay equalization of Eastern and Western rates.

"The Committee of the Privy Council therefore further recommend that as conditions have probably changed materially in recent years tending more and more to make equalization practicable, an inquiry by the Board be directed to be held at the earliest date with a view to the establishment of rates meeting to the utmost extent possible the above requirement as to equalization."

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The Board thereupon started an investigation, primarily to ascertain whether or not conditions had changed as suggested by the Order in Council and as to whether the difference in rates, if any, thus existing in a general way between Eastern Canada and Western Canada amounted to undue discrimination against Western Canada.

The first sittings were held at Ottawa on the 22nd day of November, 1920, when it was arranged that the Board would hold sittings in Western Canada in the early spring, and, in pursuance thereof, sittings were held in all the principal cities of Western Canada in the month of April, 1921, again in the months of October and November, 1921, and the final argument took place in Ottawa in the months of February and March last.

Very shortly after arrangements were made for such hearings, application was made by representatives of the provinces of New Brunswick, Nova Scotia, and Prince Edward Island alleging that they were unfairly treated in that the arbitraries over Montreal, which they had enjoyed for many years prior to 1916, had been either abolished or materially increased, and asked that the old arbitraries be re-established.

Then the province of British Columbia applied for the elimination of the Mountain scale of rates as applied to that province, asking that the Prairie scale be extended through to the Pacific coast.

At a later date, application was made by the Lumber Association of Canada and allied interests for a general reduction in the rates upon lumber commodities.

There have also been applications before the Board by the Board of Trade of the city of Sault Ste. Marie and other business interests thereof for the extension of Schedule A rates from Sudbury to Sault Ste. Marie, and, finally, an application by the Commercial Travellers' Association of Canada alleging that the 20 per cent increase upon excess baggage provided for by General Order No. 308 should have been eliminated when passenger rates went back to normal on the 1st day of July, 1921, claiming that the excess baggage rate is based upon passenger rates and, therefore, when the passenger rates were reduced, the same principle should be applied to excess baggage.

In addition to this, we have had scores of applications from individuals, corporations, and municipalities asking for a reduction of rates either generally or upon the traffic in which they are respectively interested.

No reference is made herein to the application of the fruit growers of Nova Scotia and the potato growers of the Maritime Provinces for a reduction in the export rate on their commodities, as these rates were increased, not by General Order No. 308, but by General Order No. 303, effective August 26, 1920, and we understand the railway companies have already filed tariffs, effective July 1, reducing these rates by 10 per cent in accordance with the like reductions in the United States under the recent General Order of the Interstate Commerce Commission.

By the terms of General Order No. 308, all increases therein provided for cease to exist on the 1st day of July, 1922, because of the fact that the amendment to section 325 of the Railway Act, 1919, which had the effect of postponing the coming into effect of the Crowsnest Pass legislation for three years, expires on the 6th day of July next. Shortly after Parliament opened in March last, the question of the further extension of the coming into operation of the Crowsnest Pass legislation was referred to a Special Committee of the House, which has reported, and legislation based thereon has been enacted, being Bill No. 206, which, in effect, provides for the suspension of the operation of the Crowsnest Pass legislation for a further period of one year upon all rates and schedules mentioned therein with the exception of grain and flour, the rates upon which latter products on and after the 6th day of July, 1922, shall be those provided for in the original legislation, being chapter 5 of the Statutes of 1897, and also providing that His Excellency the Governor General in Council may extend the provisions of the said Act for an additional term of one year, if, in their judgment, it is considered advisable to do so.

C 50110

Comparison of Canadian and United States Freight Rates

It is considered advisable at this stage to give a comparison of the general rate structures of Canada at present as compared with the rate structures of the United States as they will be on and after the 1st day of July next, because, on account of the great similarity between railway operations and business conditions in the two countries as well as the very large volume of international traffic, it is well to know as nearly as possible the exact relationships of the rate structures of both countries.

Two or three years ago, and before the general increase in rates in the United States authorized by the Interstate Commerce Commission under ex parte 74, effective August 26, 1920, a careful comparison was made between the general level of freight rates in Canada and the United States which showed, having regard to all the controlling conditions, that the general level was slightly in favour of the Canadian shipper.

Freight rates in Canada were not generally or materially increased during the first four years of the war, but in 1918 and 1920 it was necessary, not only in Canada, but in other countries as well, to materially increase freight rates, so as to enable the privately owned railways, but not in full measure, to meet their advancing operating costs which had increased by leaps and bounds and in a manner entirely without precedent or parallel. The wage increases in 1918 and 1920, coupled with the increased cost of coal and other materials and supplies, resulted in such increases in railway operating costs that a substantial increase in freight rates was inevitable.

Notwithstanding that the employees of the Canadian railways were granted increases in wages equal to those in the United States and that increased costs and war conditions bore even more heavily upon railway conditions in Canada than in the United States, the increase in rates as authorized by this Board did not bear as heavily on the Canadian public as the increase authorized in the United States by the Interstate Commerce Commission, as will be clearly evidenced by the following.

These general increases, commonly known as the Forty Per Cent increases, although in fact they averaged appreciably under that figure, became effective in the United States on the 26th day of August, 1920, and in Canada on the 13th day of September, 1920. There has been no general decrease in freight rates authorized in the United States since August 26, 1920, although there will be a general decrease of 10 per cent effective July 1, 1922. On the other hand, the increased rates effective September 13, 1920, in Canada, were subject to a general decrease of 5 per cent January 1, 1921, and the further general decrease of 10 per cent December 1, 1921. The situation is illustrated below, taking in each case for simplicity of illustration, a rate of $1 per 100 pounds:—

CANADA

—	Rate prior to Sept. 13, 1920	Effective Sept. 13, 1920, Rate increased to	Effective Jan. 1, 1921, Rate decreased to	Effective Dec. 1, 1921, Rate decreased to
	$ cts.	$ cts.	$ cts.	$ cts.
East	1 00	1 40	1 35	1 25
West	1 00	1 35	1 30	1 20

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INTERTERRITORIAL TRAFFIC

Percentage of increase in rates within territories east and west of Port Arthur applied to the east and west factors thereof respectively.

UNITED STATES.

	Rate prior to Aug. 26, 1920	Effective Aug. 26, 1920 Rate Increased to	Effective July 1, 1922 Rate Decreased to
	$ cts.	$ cts.	$ cts.
Eastern group	1 00	1 40	1 26
Western Group	1 00	1 35	1 21½
Southern and Mountain Pacific Groups	1 00	1 25	1 12½
Interterritorial Traffic	1 00	1 33⅓	1 20

Further, under this Board's General Order 308, September 9, 1920, the railways were prohibited from increasing rates on—

Crushed stone, sand, and gravel
Minimum class rate scale
Minimum charge per shipment
Switching, interswitching, milling-in-transit, diversion, reconsignment, stop-overs, demurrage, weighing, etc.

The increase allowed in rates on cordwood, slabs, edgings and mill refuse for use as fuel was limited to 10 per cent.

The increase in coal rates was limited as follows:—

In rates 0 to 80 cents per ton—10 cents
In rates 80 to 150 " " " —15 "
In rates over 150 " " " —20 "

In the United States, under ex parte 74, July 29, 1920, there was no similar limitation with respect to rates on crushed stone, sand, gravel, and coal, and they were subject to the same percentage increases as authorized for other traffic; further, the percentage increase applicable in the group where the service is performed was made in the charges for switching, transit arrangements, weighing, diversion, reconsignment, lighterage, floatage, storage (not including track storage), and transfer, while no increases for those services were allowed in Canada.

The coal traffic is, of course, a very large and important movement, and the following illustrations show what the limitation in Canada meant as compared with the percentage increase in the United States. The increases allowed were:—

	In Canada Effective Sept. 13, 1920.	In United States Effective Aug. 26, 1920.		
		Eastern Group	Western Group	Southern and Mtn-Pacific Group
		%	%	%
In rates 0 to 80c. ton	10c. per ton	40	35	25
" " over 80 to 150c. ton	15c. " "	40	35	25
" " over 150c.	20c. " "	40	35	25

C 50112

To Illustrate:—

	In United States			In Canada
	East	West	South and Mtn-Pacific	
A rate of 80c. per ton became	112	108	100	90
" " 150c. " "	210	203	188	165
" " 300c. " "	420	405	375	320

Under the reduction in rates in the United States to become effective July 1, 1922, the situation will be—

Where rate prior to 1920 increase was—	In United States July 1, 1922			In Canada Aug. 1, 1922, on Anthracite.	In Canada Aug. 1, 1922, on all other coal.
	c.	c.	c.	c.	c.
80c. per ton now becomes	101	97	90	90	80
150 " " " "	189	182	169	165	150
300 " " " "	378	365	338	320	300

Subsequent to the general increase in 1920, there have been a large number of substantial reductions in Canada between various points on different commodities. In Canada, among the more important reductions made by the railways, were the grain rates from Fort William and Lake ports to the Atlantic seaboard and Eastern Canada; on live stock, on which a reduction of approximately 25 per cent was made in July, 1921, from the rates effective September, 1920; on hay in Eastern Canada; on lumber from the Pacific coast to eastern points; on wool and hides from western to eastern points, etc., etc.

In the United States a reduction in carload rates on grain, grain products, and hay in the Western and Mountain-Pacific groups became effective in January, 1922; rates on live stock in the same groups in excess of 50 cents per 100 pounds were reduced 20 per cent, but not below 50 cents, in October, 1921; and carload rates upon products of the farm, garden, orchard, and ranch were reduced 10 per cent in January, 1922. These are the only three instances where reductions were made covering the entire country, or the whole of any one or more rate groups, since the increases of 1920 became effective. These rates are not being further reduced in the United States July 1, 1922.

COMPARISON BETWEEN CANADIAN AND UNITED STATES PASSENGER FARES

Immediately prior to August 26, 1920, the standard passenger fare in the United States was 3 cents per mile.

On August 26, 1920, the Interstate Commerce Commission authorized an increase of 20 per cent in all passenger fares, with a standard of 3·6 cents per mile. An increase or surcharge of 50 per cent was allowed in sleeping and parlour car fares, an increase of 20 per cent in excess baggage rates, and 20 per cent increase in rates for the carriage of milk in baggage cars, all effective on the same date.

In Canada, prior to September 13, 1920, the standard passenger fare east of and including McLeod, Calgary, and (Wolf Creek), Thornton, Alberta, was 3·45 cents per mile; west of these points, 4 cents per mile.

By General Order of the Board No. 308, the passenger fares were increased by 20 per cent, subject to a maximum of 4 cents per mile. The order did not, therefore, increase passenger fares in British Columbia. An increase of 50 per cent was also allowed in parlour and sleeping car fares, and 20 per cent in excess baggage charge, but no increase was allowed in the rates for the carriage of milk in baggage cars.

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On January 1, by the same order, the standard passenger rate east of McLeod, Calgary, and Thornton was reduced to 3·795 cents per mile, and on July 1, 1921, the standard passenger fare reverted to 3·45 cents per mile.

On December 1, 1921, the increase or surcharge in parlour and sleeping car fares was reduced to 25 per cent over those in effect prior to September 13, 1920.

Comparison of rates in Canada and in the United States at present is as follows:—

PASSENGER FARES

United States—		
All territory	Standard	3.6c. per mile
Canada—		
East of McLeod, Calgary and Thornton	Standard	3.45c. per mile
West of above territory	Standard	4c. per mile

SLEEPING AND PARLOR CAR FARES

United States	Surcharge of 50 per cent
Canada	Surcharge of 25 per cent

EXCESS BAGGAGE CHARGE

United States	20 per cent increase
Canada	20 per cent increase

MILK IN BAGGAGE CARS

United States	20 per cent increase
Canada	No increase

BASIC COMMODITY REDUCTIONS

At the hearing by the Special Committee of Parliament above referred to, both the Canadian Pacific Railway and the Canadian National Railways proposed that, outside of the question of the rates on grain from the Prairie Provinces to the head of the lakes, any decreases in freight rates in Canada should be confined to what they called "basic commodities," and, in the reference to the subject as found on page 47 of the Reports of the Special Committee, Mr. Beatty, President of the Canadian Pacific Railway Company, stated as follows:—

> "It was apparent, however, that in 1921 certain industries felt the depression much more severely than others, and it was the opinion of the railway executives both in Canada and the United States, an opinion which, I think, is shared by the United States Government as expressed by the testimony of the Secretary of Commerce, Mr. Hoover, before the Interstate Commerce Commission, that inasmuch as the reductions were a matter of relief they should be first extended to those industries which most needed it. It was felt that more effective relief would be accorded in this way and that it would bear less heavily on the companies' revenues because of the exclusion from the reductions of numerous commodities in which the railway rate played a bery small part. If the matter were one depending on the judgment of the railways, this method would be followed if the Railway Commission approved."

Mr. Beatty furnished the following list of basic commodities on which he thought reductions should be made: Grain and grain products, forest products, coal, building material, brick, cement, lime, plaster, potatoes, fertilizer, ores, wire rods, and scrap iron, to which, later on, were added pig-iron, blooms, and billets. The same list was afterwards approved by the Canadian National Railways.

In the Report of the Special Committee to the House above referred to, it was stated as follows:—

> "basic commodities which may be afforded reductions should have the earliest possible consideration by the Board of Railway Commissioners."

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While the recommendation of the committee is to be treated with respect, it is not binding in law upon this Board. It is arguable that in revising rates, the logical method to pursue is to redress antecedent necessary percentage increases by subsequent percentage decreases, thus minimizing the inequalities which the percentage increases had accentuated. As a matter of emergency action, however, revisions may be made on basic commodities in so far as is possible, consistently with other conditions now existing.

At a later sittings of the committee, both the Canadian Pacific and the Canadian National Railway Companies suggested that, in lieu of the coming into effect of the Crowsnest Pass Agreement, the following percentage reductions from present rates should be made upon these basic commodities, viz:—

Grain and grain products west of Fort William	20%
Forest products	20% East, and 16.66% West
Coal, exclusive of anthracite coal and coal from Fort William. Reductions specific. Rates 0 to 80c. per ton—reductions 10c. per ton. Over 80c. to $1.50 per ton—reductions 15c. per ton. Over $1.50 per ton—reductions 20c. per ton.	
Building material—Brick, cement, lime, and plaster	Western Lines 16.66% Eastern Lines 20%
Potatoes	
Feertilizers (other than chemicals)	
Ores	
Pig-iron	
Blooms	
Billets	
Wire rods	
Scrap iron	

This proposal was not adopted by either the committee or the House as proposed, but, as before stated, the rates on grain and flour from the western provinces to the head of the lakes were reduced to the original Crowsnest Pass basis, and the question now arises as to what percentage of reduction, the Board can reasonably grant upon these specific commodities under the changed conditions above referred to.

At a hearing of the Special Committee on the 20th day of June instant, Mr. Lanigan, Freight Traffic Manager for the Canadian Pacific Railway Company, filed a statement showing what would be the reduction in the revenues of that company if the offer referred to had been accepted, as follows:—

STATEMENT FILED BY MR. LANIGAN

CANADIAN PACIFIC RAILWAY

BASIC COMMODITIES

Grain and grain products	$ 5,354,139
Forest products	1,765,147
Coal, exclusive of anthracite and coal from Fort William	476,619
Potatoes	115,358
Building material—brick, lime, cement, plaster	353,415
Fertilizers (other than chemical)	18,621
Pig-iron, billets, blooms, wire rods, and scrap iron	132,466
Ores	122,704
	$ 8,338,469
International and interstate traffic, 10 per cent	2,220,000
Grand total	$10,558,469

This showed a total, not including reductions on international traffic, of $8,338,469, and, of this amount, $5,354,139 was the estimated reduction on grain. Taking this from the total reduction leaves a balance of $2,984,330 to be distributed among the other commodities. By the legislation herein before referred to granting the Crowsnest Pass rates on grain as therein provided, according to the evidence

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of Mr. Beatty, as recorded on page 46 of the Reports of the Special Committee, assuming the grain traffic of the Canadian Pacific Railway to be the same as in 1921, the adoption of the Crowsnest rates would reduce their revenue by $7,159,537, which taken from the sum of $8,338,469 would leave $1,178,932 still available for reduction in rates on the above list of basic commodities, and the Board, after very careful investigation, has concluded that this would be represented by a reduction of 7½ per cent on the rates now in existence on these basic commodities less than the increases authorized by General Order No. 308, not, however, including therein any reductions heretofore made upon any of the said commodities upon domestic rates in Canada. This would leave increases on these commodities above the basis of September, 1920, at 12½ per cent in Western Canada and 17½ per cent in Eastern Canada.

This reduction of 7½ per cent, however, should not apply to coal other than anthracite, which was not increased on a percentage basis, but by flat rates as hereinbefore particularly described, and, therefore, it is felt that all the increases on coal other than anthracite granted by the Board by General Order No. 308 should cease and the rates go back to those immediately preceding the 13th day of September, 1920. This reduction, however, not to apply to coal from head of lakes ports westbound.

These reductions in the revenues of the Canadian Pacific Railway together with reductions in international rates and those hereinafter provided for will amount to more than eleven million dollars per year, and, considering that the net revenue for that company for the first five months of 1922 shows a falling-off of $2,393,000 as compared with the same months for 1921, the Board does not feel justified in going further in the direction of rate reductions.

The Canadian Pacific Railway figures are given above as this company is taken as the standard in rate discussions. An examination, however, of the Canadian National figures, while showing some improvements over 1921, shows a deficit in operating alone for the first four months of 1922 of $6,945,000, the only bright spot in the whole situation being the Grand Trunk, which shows a gain of $2,591,000 for the first five months of 1922 as compared with the like period of 1921.

Maritime Provinces

With regard to rates between Maritime Province points and stations west of Montreal, the earliest record is from a tariff published by the Grand Trunk in 1874, naming rates from territory west of Montreal to St. John and Halifax, which applied only via Portland and steamer, and were exclusive of marine insurance. From Toronto, the rates in this tariff were:—

To		Classes 1	2	3	4
		Cents per 100 lbs.			
St. John, N.B.	S.	100	84	67	50
	W.	106	89	71	51
Halifax, N.S.	S.	100	84	67	50
	W.	110	93	74	55

S—Summer rate.
W—Winter rate.

These rates are simply given as a matter of historical information, and, of course, play no part in the question as at that time the all-rail route via Riviere du-Loup was not in existence.

Following the opening of the all-rail route, the rates between Maritime Province points and territory west of Montreal were constructed by the addition to the Montreal rate of a scale of arbitraries. The earliest record is a tariff of 1891-94, showing the following rates:—

		Classes 1	5	Arbitrary over Montreal 1	5
Toronto to Montreal		50c.	25c.	....	....
"	St. John	80c.	40c.	30c.	15c.
"	Halifax	86c.	43c.	36c.	18c.

The record is not clear between 1894 and 1900 because the organization of this Board was only completed in 1904, and all tariffs then in effect were filed by the railways in that year. However, from 1900 to 1916, the arbitraries over Montreal were:—

To	Classes 1	5
St. John	20c.	10c.
Halifax	22c.	11c.

These arbitraries were, of course, advanced along with all other rates, arbitraries, or proportionals under the various subsequent rate changes, and the situation is shown in the following tabulation:—

	Arbitraries over Montreal St. John Classes 1	5	Halifax Classes 1	5
1891-1894	30	15	36	18
1900-1916	20	10	22	11
Dec. 1, 1916	24	12	26	13
March 15, 1918	27½	14	30	15
Aug. 12, 1918	34	17½	37½	19
Sept. 13, 1920	47½	24½	52½	27
Jan. 1, 1921	45½	23½	50½	25½
Dec. 1, 1921	42½	21½	47	23½

The Toronto-St. John rate provides the key to the entire situation so far as relates to the freight rate structure between Maritime Province points and Ontario territory, as the rates to and from the other Ontario groups are related to the Toronto rate, as fixed by the Board in the International Rates Order, and at the other end St. John is the pivotal point, the other groups bearing a fixed relation thereto. This system of rate making between the territories in question was in effect long before the creation of the Board and has since been carefully considered, particularly in the Eastern Rates Case in 1916, more extended reference to which is contained in the judgment in that case; it is an integral part of the whole class rate structure in Eastern Canada and could not be changed without involving disturbance of the entire rate fabric in this territory. As the class rate structure in Eastern Canada is not being disturbed at this time no change should be made in these arbitraries.

With reference to rates between Eastern Canada and points west of Fort William, a different situation is found to exist. Instead of territorial groupings in Ontario, as in the case of the rates between Ontario and the Maritime Provinces, the rates are blanketed to and from the whole territory Montreal to Windsor and Sarnia, inclusive, Sudbury to Niagara Falls, all intermediate points and all lateral lines. The reason is apparent—the water lines operate from Montreal, calling at intermediate points to Sarnia, at a common rate to the head of the lakes, while the westernmost points such as Sarnia and Windsor, can reach St. Paul and thence western Canadian points with a short mileage via Chicago. From and to points east of Montreal it has been the practice to add an arbitrary to the Montreal rate. Montreal, through its geographical situation at the head of ocean navigation and as the terminal of the western river and lake routes, is a natural breaking point. This group with its blanket rate takes in a large area—Montreal to Windsor, 555 miles—Montreal to Sudbury, 444 miles—Niagara Falls to Sudbury, 337 miles—Windsor to Sudbury, 480 miles. The distance from Montreal, the most easterly point, to Fort William, the head of lake navigation and the rate breaking terminal between Eastern and Western Canada, is 997 miles. From Windsor, the most easterly point, the distance is 1,032 miles. While, of course, the blanket rate covering this territory is justified by the governing conditions outlined, points east of Montreal are put to an undue disadvantake in comparison by the addition to the Montreal rate of a scale of arbitraries that does not indicate an equitable continuation of a long haul rate.

Take, for instance, St. John, N.B., to Toronto, Ontario, a distance of 810 miles, split up St. John, N.B., to Montreal, 466 miles, and Montreal to Toronto 334 miles (C.P.R.), rate St. John to Toronto $1.25½ first class, Montreal to Toronto, 83 cents, difference east of Montreal 42½ cents per 100 pounds. Rate Montreal to Winnipeg,

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1,417 miles, $2.67½, first class, rate St. John to Winnipeg, 1,885 miles, $3.08½, difference east of Montreal 41 cents. In other words, the difference over Montreal for the long haul to Winnipeg is practically the same for a haul of 1,885 miles as for a haul of 810 miles. This does not indicate the tapering of a through rate that a long haul justifies and is due to the application of a system of rate arbitraries.

The rate from Montreal to Winnipeg is made up on an arbitrary from Montreal to Fort William of $1.39½, first class, plus the regular first-class rate from Fort William to Winnipeg of $1.28. The regular first-class rate Montreal to Fort William is $1.99½. This shows that effect has been given to the tapering process on a long haul by the addition of a reduced rate arbitrary east of Fort William to the full rate beyond. This process should not stop at Montreal. The first-class arbitrary Montreal to Fort William of $1.39½ for 997 miles is represented on the Eastern Schedule A mileage scale by a distance 450 to 475 miles, $1.40, first class, or in other words, by a constructive mileage roughly equivalent to one-half the actual distance. The differences over Montreal should be blanketed by natural divisions, i.e., one group Montreal to Megantic, Que., a second, Megantic to St. John, N.B., and the differences should not exceed those that would exist under Schedule A were the actual mileage east and south of Montreal treated in the same manner as that between Montreal and Fort William, thus the Megantic group would be 12 cents per 100 pounds, first class, and 6 cents fifth class, over the Montreal arbitrary of $1.39½, while St. John would be 24 cents first class, and 12 cents fifth class, and Halifax 28 cents first class, and 14 cents fifth class, and other maritime groupings proportionately.

While this Board has no jurisdiction over the Intercolonial and Transcontinental railways, yet, if this principle were adopted on those roads, then, as Quebec, a distance of 1,352 miles from Winnipeg via the Transcontinental railway, takes the Montreal rate of $2.67½, first class, Moncton would naturally take the same arbitrary (as it is to-day) over Quebec rates as St. John, N.B., takes over Montreal rates.

The St. John gateway provides via Canadian Pacific railway the short mileage to Montreal; from Halifax and other points this route and gateway should be maintained to shippers (with the option of Ste. Rosalie) so that the advantage of the short constructive mileage of the Canadian Pacific railway will continue to function as a rate factor.

These arbitraries over Montreal, first class, should be scaled down on the usual relation between classes 1 to 10, and where commodity rates are published will apply as maximum over Montreal at the class of the commodity so treated.

Application of Sault Ste. Marie Board of Trade

Schedule A was established as a result of the *International Rate Case.*

Application was made at the recent hearings, on behalf of the Sault Ste. Marie Board of Trade, asking that the northwestern boundary of the territory in which Schedule A applied should be extended to include the Soo branch to the city of Sault Ste. Marie. The representative of the Board of Trade stated that he understood that the limits were Parry Sound and North Bay.

In the discussion which took place, it was understood that while North Bay had been provided for in the original order, the territory had been extended to cover Sudbury. It appears from checking the rates that an error crept in and that Sudbury is not enjoying the full advantage of the Schedule A rates.

The Schedule A rates equalized certain conditions of water competition and American rail competition. Sault Ste. Marie, which is making the application, is a water competitive point. It appears from checking the rates that both Sudbury and Sault Ste. Marie have to a modified extent been given the advantage of the Schedule A rates. What has been done has been to give the advantage of the

Schedule A rates to North Bay. This is something available under the tariff. Then for the mileage beyond North Bay to Sudbury and to Sault Ste. Marie there has been given an arbitrary rate for the additional mileage, which is less than the full Schedule A rates would be for the same mileage; that is to say, what is done is not to give Schedule A rates on the through mileage but Schedule A rates on the mileage to North Bay and less than Schedule A rates on the mileage beyond.

As already stated, the reduction is arbitrary. The tariffs do not disclose any exact percentage reduction.

On consideration of the evidence submitted by the applicant and in view of the fact that the Schedule A territory has been extended to cover Sault Ste. Marie in the way above indicated, it would appear to be justificable to make provision for Schedule A rates applying as requested, but basing this on the through mileage.

A similar adjustment should be made to Sudbury.

Such additional mileage on the Schedule A scale as is necessary to cover the extension should be provided for.

Mountain Rates—British Columbia

The Judgment in the *Western Rate Case* set out that initial construction and railway operations through the mountains were much more expensive than operation on the prairies. It was set out that "some differences in rates at the present time are not only justifiable but necessary. It is not contended, on behalf of British Columbia, that operation through the mountains is not much more expensive." The judgment held that these higher costs could not be "smeared" over the system so that British Columbia would have the same rates as those applying to the Prairie Provinces.

In the present application, various additional contentions were advanced. Emphasis was laid upon the implications alleged to arise from the steps culminating in Confederation.

What is involved in this is somewhat analogous to what was involved in *Attorney-General for British Columbia vs. Can. Pac. Ry. Co., 8 Can. Ry. Cas. 346,* in which it was held that under the terms of the contract with the Dominion Government for the construction of the Canadian Pacific Railway, dated October 21, 1880, Schedule to 44 Victoria, Chapter 1, the only party who could make any complaint as to their non-observance was the Government of Canada.

Reference was also made to the alleged better climatic conditions existing in British Columbia as affects operating; and there was also set out the conditions which it was contended should be considered as a result of the construction of the Canadian Northern Pacific.

It does not appear necessary to develop the question as to what implications, if any, are to be deduced from the finding regarding the Canadian National, as set out in the privy Council Order following the appeal from the Board's decision in the so-called "Forty Per Cent Case." It would appear that the opinion of the late Chief Commissioner Mabee, which was quoted with approval in the Western Rate Case by the then Chief Commissioner, Sir Henry Drayton, is applicable here. The opinion in question is. "The question for us to decide is what rates are fair irrespective of how much any company is worth or is not worth."

In view of what is said as to the controlling effect of water and United States rail competition in the portion of Canada east of the Great Lakes, the rates there existing cannot be taken as the necessary proper measure of what the British Columbia rate should be.

Under the *Western Rate Case,* a basis of 1½ for 1 was adopted on the Pacific standard tariff. This, with the appropriate mileage grouping in the tariffs applicable, worked out on the average 30 per cent over the Prairie standard. From 80 to 85 per cent of the British Columbia traffic is carried on commodity rates. In so far as

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these commodity rates are based on percentages of the standard rates, the effects of the standard rate adjustments are carried down, although in much less degree. In the movement on commodity rates of the staples of British Columbia the effect of the Mountain scale is in many cases not apparent.

It is admitted by counsel for the province of British Columbia that the costs are still higher on the British Columbia division that on the Prairie divisions. He refers, however, to costs east of the Great Lakes as supporting his contentions. As set out herein, it does not appear that deductions from the experience of other sections whose rates are dominated by water and United States railway competition can be controlling here.

Following the reasoning of the *Western Rate Case*, a revision in the Mountain scale as provided for in the Pacific standard is justifiable. On careful consideration, the reduction hereinafter provided for should be made; the Board does not feel justified in going any further.

The rates of the new "Pacific" standard mileage tariff are to be constructed by applying to the "Prairie" standard tariff for distances up to and including 750 miles (the approximate maximum haul in British Columbia) 1½ miles for 1 mile, and to the rates so produced the 25-mile differences of the "Prairie" standard scale to be added for each 25 miles over 750 miles, so as to produce standard through rates for part Mountain and part Prairie hauls.

The distributing rates from recognized mainland distributing centres in British Columbia other than Vancouver and New Westminster, as well as the tariff between Vancouver and New Westminster and points east thereof, will be constructed from the new standard tariff in the same manner as at present, as prescribed in General Order No. 125, May 30, 1914, and Order No. 31648 of October 11, 1921, respectively.

All commodity mileage rates applying locally between stations in Pacific territory, also on interchange traffic between Pacific and Prairie territory, to be reduced so as to preserve the same relationship to the new standard mileage scale as they now bear to the present scale, such rates, of course, to be the maxima with regard to special commodity rates specifically published.

Rates on grain and grain products from "Prairie" points to stations in British Columbia, for domestic consumption, where now based on "Prairie" mileage scale, but using constructive mileage of 1½ miles for 1 mile for the mountian haul, to be reduced by figuring on 1¼ miles for 1 mile for the mountain haul.

Lumber Rates

As the rates on lumber and forest products, including pulpwood, logs, poles, posts, etc., are to be reduced by 7½ per cent as hereinbefore described, it will be unnecessary to further consider the application of the Canadian Lumbermen's Association.

Excess Baggage

By General Order No. 308, passenger fares were increased by 20 per cent up to and including the 31st day of December, 1920, and by 10 per cent from that date until the 1st day of July, 1921, when the passenger rates reverted to the standard of 3.45 cents per mile, and, by the same order, the rates on excess baggage were increased by 20 per cent. As the rates on excess baggage are built upon a percentage of the passenger fares, it is only logical that, when the passenger fares are reduced, excess baggage should bear the same reduction, and, therefore, it is considered that the rates on excess baggage should go back to the basis prior to September 13, 1920.

Equalization Between the Prairie Provinces and Eastern Canada

In the reference to the Board by the Governor in Council in the appeal in the so-called "Forty Per Cent Case," the Board's attention was directed to the advisability of conducting an investigation to see to what extent existing disparities of rates

between different rate sections could be redressed. The reference was not based on the idea that the disparities were wrong *per se*. Under the Railway Act, not all discriminations or preferences are forbidden. As was developed with a plenitude of example, in the *Western Rate Case*, what is forbidden under the discrimination sections are preferences which are undue or discriminations which are unjust. The burden, therefore, was on the Board in the investigations made to ascertain whether under existing conditions the discriminations in rates existing were discriminations which fell under the inhibitions of the Railway Act.

Counsel for the Provinces of Manitoba and Saskatchewan very frankly and fairly stated, ". . . . I have never at any time said otherwise than that I did not think that of necessity the rate for the same distance for the same commodity should necessarily be the same East as West or West as East. In my opinion, the equal treatment of unequal things is just as bad as the unequal treatment of equal things, I have never advanced, either in argument before this Board or before any other tribunal, or by evidence adduced, anything which would lend itself to the suggestion that I have advocated that any particular rate must of necessity be the same for any particular distance East as West. There are many other factors besides mere distance." Counsel continued that longer hauls were important in the West; shorter hauls in the East.

Counsel in thus defining the issue emphasized that conditions peculiar to each of the rate areas compared must be given weight in determining whether the low rate existing for a given distance in one section is to be taken as the criterion of discrimination in another. In so presenting the matter, he was but following the position so clearly laid down by the late Chief Commissioner Killam in the early decisions of the Board, namely, that mere mileage comparisons do not afford criteria of discrimination, but that all facts material must be given weight. In other words, under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination; discrimination, in the sense in which it is forbidden by the Railway Act, is a matter of fact to be determined by the Board.

In the course of argument, counsel for the provinces of Manitoba and Saskatchewan emphasized the position that under his view of existing conditions there should be a reduction in grain rates, and, thereafter, there should be reductions on basic commodities, e.g., cattle, lumber, coal and the instruments of production such as agricultural implements.

A further submission was made that articles in Classes 5 to 10, not now covered by commodity rates, should be afforded a reduction. This practically means narrowing down to Classes 5 and 7, as Class 9, which is concerned with cattle, is unimportant from a rate standpoint, cattle moving on a commodity rate. Coal, lumber, and grain also move on commodity rates.

As already pointed out, a reduction, under statute, has been made in the rates on grain and flour. Through the Board's instrumentality, a reduction on cattle was made. The articles of lumber and coal are dealt with specifically in the present judgment.

Reference has been made to the greater earning power of Western lines, it being contended there is greater earning power both gross and net. At the same time, the larger mileage in the West, specific reference being made to the Canadian Pacific, mileage, may be noted.

The fundamental matter, however, in the present application, so far as the position of Manitoba and Saskatchewan is concerned, is in terms of the reference to the Board by the Governor in Council, to ascertain whether there is an unjustifiable discrimination existing as between the rates applicable in the provinces of Manitoba, and Saskatchewan and the rates applicable east of the Lakes. Alberta was not represented by counsel; but what may be found in regard to the justification or otherwise of the difference between rates in Manitoba and Saskatchewan as compared with the section east of the Lakes will have application to the situation in Alberta as well. While it is set out, as above, that Alberta was not represented by counsel, it may be said

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that counsel for the province of British Columbia dealt with certain phases of the situation concerned in his application as if the interests of Alberta and British Columbia were more or less identical. At the same time, it is not set out in the record by any submission from the province of Alberta that counsel for British Columbia was representing Alberta.

In dealing with the situation as between Manitoba and Saskatchewan on the one hand and the section east of the Lakes on the other, the very fair and candid statement made by counsel for the provinces of Manitoba and Saskatchewan, which was in substance that mileage is not the fundamental criterion of discrimination, must be given weight. It is necessary to look to the particular facts affecting the rate adjustments in the particular sections.

The *Western Rates* judgment, in dealing with the establishment of special class rates from Lake Superior and Pacific Coast termini, stated, *inter alia*, that as to lake termini between Port Arthur, Fort William and Westfort and points west thereof, there should apply to and from points east of Winnipeg the Prairie territory town tariff basis, subject to the rates to Winnipeg and St. Boniface as maximum; that to and from Winnipeg and St. Boniface the rates should be no greater than those of the Prairie standard tariff for 290 miles; that to and from points beyond Winnipeg within Prairie territory the maximum first-class rates were to be those of the Prairie standard tariff for the through mileage, made up of actual distance beyond Winnipeg added to the above-mentioned assumed mileage of 290 miles east of Winnipeg.

The Judgment in the *Western Rates Case* sets out how this constructive mileage of 290 miles east of Winnipeg on the movement from the lake termini was arrived at. The essence of the arrangement is that the mileage from the Lake to Winnipeg being 424 miles, there is a concession of 134 miles on the movement concerned. This was built up on rate conditions which had developed in the West. There is not the same arrangement existing on a movement from the East to Fort William.

Here, again, the particular facts of the section in which the rate adjustment is made must be considered, and it does not follow that the arrangement herein referred to would be a criterion of discrimination in connection with a complaint as to a different rate adjustment east of the Lakes.

Having in mind the special conditions of the territory west of the Lakes, a special rate adjustment has been made on the very important commodity of agricultural implements. In the shipment of these from points in Eastern Canada, e.g., Hamilton to Montreal, inclusive, the rate to western points is on the Chicago basis, that is, the rate from Chicago to said points applies. In view of the system whereby the rates east of Montreal are built up on differences over that point the effect of this rate reduction is carried further east in so far as originating points shipping to the Prairie Provinces are concerned. This again, is based upon special traffic conditions, and would not necessarily afford a criterion of unjust discrimination in respect of a different treatment in the East in regard to similar mileages concerned.

In the presentation of counsel for the provinces of Manitoba and Saskatchewan, reference was made to the difference in classification basis. In the East, the 5th-class rate is one-half of 1st. In the West, the 4th-class rate is one-half of 1st. Reference was made to this as showing, *inter alia*, a considerable difference as affecting the important 5th class; and since the distributing rates are built up by taking a percentage off, it was contended that this difference was carried down into the distributing rates.

In general, the apparent conclusion counsel had in mind was that the Board should construct a basis of its own.

As especial reference was made to the 5th class, some comments in this connection are necessary. In Eastern Canada, the 5th class is 50 per cent below the 1st; in Western Canada it is 55 per cent. It may be remarked in passing that in Eastern Canada the 4th class is 37½ per cent below the 1st-class rate, while in Western Canada it is 50 per cent below the 1st-class rate. Putting it in another way, if the 5th-class rate is

taken and scaling is made up to the 1st, then in Eastern Canada the 4th-class rate is 25 per cent above the 5th-class rate, while in Western Canada it is 10 per cent above the 5th-class rate

It was suggested by counsel that the Board should construct a standard of its own, taking the foundation of the Western American Classification.

If the Western scale were constructed with the relationship between the classes in conformity with the Eastern scale, starting with the 1st-class rating in the Western scale and scaling down the other classes under the Eastern plan, this would result in a large increase in the rates for all classes below the 1st.

If one-half of the 1st class in the West were taken and put in the position of one-half of the 1st class in the East, this would mean taking the present Western 4th class, which is one-half of 1st, and putting it in the position of the Eastern 5th class, which is one-half of 1st, and then scaling the other classes on the Eastern plan, the result of this would be to produce the same result as the other method just mentioned.

The question of the standardization of the Western rate scales is dealt with in the judgment of the *Western Rates Case*, in section 19, under the heading of "Standardization." Reference may be made to this as bearing on the history of the development. The citation set out in the judgment, in the report of the Board's Chief Traffic Officer, the late Mr. Hardwell, emphasizes the advances which would take place if the Western rate scale were standardized on the Eastern Canada basis.

Bound up to the difference in classification basis is the difference in one of the fundamental rules of the Classification, namely, that concerned with the mixing privilege. As a result of a compromise arising out of the strong position taken by the Western jobbers, the more liberal mixing rule of the East is not applicable west of Fort William. West of Fort William, the mixing rule is limited by the trade list principle, and, in general, favour is shown, judging from resolutions filed with this Board by representative trade bodies in the Prairie Provinces, to limiting the mixing rule, to articles normally moving in carload quantities. This, again, emphasizes a difference in traffic conditions as between the East and the West.

At a meeting held in Winnipeg on April 26, 1921, at which there were present representatives of the Boards of Trade of Brandon, Calgary, Edmonton, Lethbridge, Montreal, Moose Jaw, Regina, Toronto, Vancouver, Winnipeg and the Saskatoon Chamber of Commerce, as well as representatives of the Canadian Manufacturers' Association, there was under discussion the question of a change from the trade list principle in the Classification; and the following resolution was passed:—

> 1. It was decided that in the best interests of both Eastern and Western Canada rule 2 and the trade lists of the present Classification should be continued and substituted for proposed rule 10 of the Canadian Freight Classification No. 17.
>
> 2. It was also decided that a Classification Committee representing Western Boards of Trade or other business organizations and railways be named to consult with the present Eastern Classification Committee in connection with the provisions of the new Classification.
>
> 3. It was further the opinion of the meeting that there should be no disturbance at the present time in the present class rate relationships now existing in Eastern and Western Canada as a result of the finding of the Board of Railway Commissioners in the inquiries conducted in the Eastern and Western Rate Cases and orders issued in relation thereto, and subsequent orders.
>
> 4. The chairman of this meeting was instructed to submit a copy of this resolution to the Board of Railway Commissioners to-morrow.

It may be noted that the Saskatoon Chamber of Commerce dissented from paragraph 3, and the representative of the Vancouver Board of Trade stated he could not vote in favour of the resolution but would submit it to his Board of Trade.

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It thus appears on the records before the Board that in regard to classification arrangements there are differences of traffic interest between the Prairie Provinces and the territory east of the Great Lakes. It appears that commercial conditions in the West emphasize a preponderating movement of traffic in carlots and, consequently, any standardization which would effect an increase on the distinctly carload classes would bring about a serious dislocation of business. Here, again, the situation is that differing conditions have brought about different practices and rules, and the rule or practice existing in one section and giving a different treatment is not a necessary measure of discrimination in another section.

Counsel for the provinces of Manitoba and Saskatchewan stated that there was a difference in average hauls east and west, and while stating that in various cases the shorter hauls were at much lower rates in the West than in the East, he contended that the important matter in the West was the long haul. It is a legitimate deduction from this to say that the level of the rate in the East being, according to counsel's submission, concerned with an average short haul, affords no necessary criterion of what the rate should be on longer haul traffic in the West.

It was testified by the Canadian Pacific Railway Company that its rates on building materials in the prairies were lower than in Eastern Canada, there having been taken into consideration the necessities in connection with supplying shelter.

The examples given are illustrative of the fact that differing commercial conditions have brought about differing traffic rates and arrangements, and simply attract attention to the position that it is not in the abstract rates but in the concrete conditions that the measure of determining whether the rate structure is discriminatory or otherwise must be found.

In the *Western Rate* Judgment, after a very careful analysis of the rulings of the Board in the matter of discrimination and searching analysis of traffic conditions, the Board found that water competition, generally speaking, was effective in the East. It found that, in the main, the rate structure of Eastern Canada was justified on the basis of water and rail competition; and the following language was used:—

> "For the reasons stated, I am of the opinion that while discrimination exists between the rates charged east and west of Port Arthur, the discrimination is justified under the Railway Act and the decisions of the Board already referred to. It is neither undue nor unjust."

See section 9 of the Judgment in question.

In the hearings before the Board in the present case, considerable attention was devoted to the matter of water competition in its bearing upon rates in Eastern Canada. Counsel for the provinces of Manitoba and Saskatchewan was disposed to minimize the importance of this water competition. It is true that on account of tonnage readjustments arising out of the war and the incidents thereof there have been fluctuations in the water-borne tonnage, yet this does not detract from the fact that from the ocean well into the middle of the continent there is a water highway on which vessels are free to go and come, not tied down to any particular route, and not involving the large fixed investments which are essential to railway transportation. It is also true that adjacent to this section of Canada are the rail lines of the United States which are equally subject to the effect of this water-borne traffic; and it does not appear that any vital change in this respect has taken place since the date of the decision in the Western Rate Case.

While as a consequence, naturally to be expected, from difference of conditions, many prairie rates have a spread over the eastern rates, the course of the decisions of the Board, including the present decision, has been to narrow this spread wherever possible.

The matter has been put in a succinct way in the evidence before the Special Committee appointed to consider railway transportation costs. Counsel who appeared

before the Board for the provinces of Manitoba and Saskatchewan represented these provinces, as well as Alberta, before the committee. At page 300 of his evidence, in dealing with the different scales, he said:—

> "First, there is the Eastern scale which, as I will develop later, is held down by maximums created by water competition, potential and otherwise, and by American rail competition."

Again, at page 301, in summarizing the provisions of the Railway Act in regard to discrimination, he used the following language:—

> "The railways, when we replied that we were discriminated against in respect of Eastern rates, answered, and the Board has held it to be a good answer. True, there is a disparity, a discrimination, and I propose to give you the four or five decisions in all the rate cases to that effect, that there is discrimination, a disparity against us, but the railways have satisfied the onus of showing that it is not unjust or undue, because railway rates in the east are held down by water competition and American rail competition, something they cannot control, and therefore that excuses that discrimination."

The Board holds that the differences in rates as between the Prairie Provinces and Eastern Canada as referred to do not constitute an unjust discrimination or undue preference.

Conclusions

All steam railways in Canada under the jurisdiction of this Board shall file tariffs, effective the first day of August next, providing for the following reductions, viz:—

(*a*) On the articles, other than grain and flour, hereinbefore referred to as basic commodities, namely,—forest products, building material, brick, cement, lime, and plaster, potatoes, fertilizers (other than chemicals), ores, pig-iron, blooms, billets, wire rods, and scrap iron, a decrease of 7½ per cent from the increase given by General Order No. 308 and any other orders affecting the said commodities issued since that date, which will hereafter leave the increase granted by said General Order No. 308, in Western Canada, at 12½ per cent and, in Eastern Canada, at 17½ per cent; the term "forest products" as set out in such list to be defined as follows:—

In the territory east of Port Arthur, Ontario, in accordance with the list of commodities shown in C.P.R. tariff C.R.C No. E-3818 as taking rate basis "A"; in the tariffs from British Columbia to prairie points on the commodities taking Group A and Group B rates, as shown in C.P.R. tariff C.R.C. No. W-2573; and from stations in Alberta and British Columbia to stations in Eastern Canada, in accordance with the Canadian Freight Association tariff C.R.C. No. 30; also on pulpwood west of Port Arthur, Ontario.

In cases where reductions heretofore granted or ordered upon these commodities have not amounted to 7½ per cent as above described, they shall be reduced to that point, and, where they exceed 7½ per cent, they will remain as they are at present.

These reductions are made upon the same basis in both Eastern and Western Canada with the object of preserving the same spread between these territories as was provided by General Order No. 308.

(*b*) On coal, other than anthracite and coal from the head of the lakes westward, all increases provided for by General Order No. 308 to be rescinded;

(*c*) On commodities moving under class and commodity rates between points east of Montreal and points west of Port Arthur and Fort William, the establishment of arbitraries as provided for herein;

(*d*) On the territory between North Bay and Sault Ste. Marie, Schedule A rates to be applied;

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(*e*) Mountain rates to be reduced to the basis provided for herein; and

(*f*) The increase in excess baggage rates, as provided for in General Order No. 308, to be eliminated.

With the above exceptions, all tariffs now in effect, either under the provisions of General Order No. 308, as amended by General Order No. 350, or as the result of voluntary action by the carriers, shall remain in force.

OTTAWA, June 30, 1922.

(Sgd.) A. D. CARTWRIGHT,
Secretary, B.R.C.

Chief Commissioner Carvell, Assistant Chief Commissioner McLean, and Commissioners Boyce, Rutherford and Lawrence concurred.

GENERAL ORDER No. 366

In the matter of freight tolls—1922

File Nos. 30531, 30685, 30686, and 30686.2

FRIDAY, the 30th day of June, A.D. 1922.

Hon. F. B. CARVELL, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
J. G. RUTHERFORD, C.M.G., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Vancouver, April 7 and October 17, 18, 19, and 20; Victoria, April 11; Kamloops, October 26; Nelson, April 15 and October 29; Calgary, April 18 and October 31; Edmonton, April 20 and November 2; Saskatoon, April 21 and November 3; Regina, April 22 and November 4; Brandon, April 23; and Winnipeg, April 25 and November 8, respectively, 1921; and in Halifax, January 17; St. John, January 19; and Ottawa, February 15, 16, 17, 20, 21, and 22, and March 13 to 30, respectively, 1922—in the presence of counsel for and representatives of the provinces of Nova Scotia, New Brunswick, Manitoba, Saskatchewan, and British Columbia, the Maritime Board of Trade, the Boards of Trade of Halifax, Montreal, Toronto, Sault Ste. Marie, Winnipeg, Calgary, Nelson, Lethbridge, Edmonton, the Canadian Manufacturers' Association, the Railway Association of Canada, Canadian Lumbermen's Association, Limited, Canadian Retail Coal Dealers' Association, Dominion Millers' Association, United Farmers of Manitoba, United Farmers of Alberta, United Grain Growers, Saskatchewan Grain Growers' Association, Wholesalers' Association of Calgary, Western Canada Live Stock Union, Canadian Aberdeen-Angus Association, Amherst Foundry, J. W. Cunningham Company, Stetson Cutler & Company, Saskatchewan Co-operative Elevator Company, W. Malcolm McKay, Limited, Northern Foundry and Machine Company, the Canadian Pacific and Grand Trunk Railway Companies, and the Canadian National Railways, and what was alleged at the hearings—judgment, dated June 30, 1922, was delivered by the Board, a certified copy of the said judgment being attached hereto marked "A",—

The Board orders: That all railway companies operating steam railways, subject to the jurisdiction of the Board, be, and they are hereby, required forthwith to file tariffs giving effect to the rates prescribed and authorized by the said judgment, which is hereby made part of this order; the effective date of the said rates to be August 1, 1922.

F. B. CARVELL,
Chief Commissioner.

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AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 30th day of JUNE, 1923.

PRESENT

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL.

WHEREAS Chapter 41 of the Statutes of Canada, 1922, entitled "An Act to amend the Railway Act, 1919", provides as follows:

> 1. Subsection 5 of section 325 of the Railway Act, 1919, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by order of the Governor in Council published in the Canada Gazette; provided, that notwithstanding anything herein or in said subsection 5 contained, rates on grain and flour shall, on and from the 6th day of July, 1922, be governed by the provisions of the agreement made pursuant to Chapter 5 of the Statutes of Canada 1897".

NOW THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Railways and Canals, and in virtue of the authority vested in him by the said Chapter 41 of the Statutes of Canada, 1922, is hereby pleased to order that the said subsection 5 of Section 325 of the Railway Act, 1919, shall be and the same is hereby continued in force for a further period of one year, that is, until the 6th day of July, 1924, subject to the proviso contained in the said Act with respect to rates on grain and flour.

E. J. Lemaire

Clerk of the Privy Council.

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RAILWAY BOARD JUDGMENT

October 14, 1924

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of freight tariffs, Canadian Pacific Railway, C.R.C. No. E-4137; Canadian National Railway, C.R.C. E-765; Canadian Pacific Railway, C.R.C. No. W-2757; Canadian National Railway, C.R.C. No. W-391; and of various complaints against the said tariffs.

Heard at Ottawa, the 17th, 18th, 22nd, 23rd, 24th, 25th, and 26th of September, 1924.

JUDGMENT

COMMISSIONER BOYCE:

The Board's jurisdiction under the provisions of the Railway Act to adjust and remedy numerous and far-reaching complaints resulting from the filing by the Canadian Pacific and the Canadian National Railway Companies of the tariffs above described, effective July 7, 1924, is appealed to and invoked.

An outline of the rate history involved leading up to the issue of the tariffs now causing such wide dissatisfaction, and around which centre such serious traffic grievances, will be helpful before dealing with these tariffs and the rate situation in which they were made, and the effects produced thereby.

There is directly in issue, in the exercise by the Board of any of its remedial functions in the adjustment of these complaints, the question of the construction to be placed upon those clauses of the agreement entered into the 6th of September, A.D. 1897, between Her Majesty the Queen, acting in respect of the Dominion of Canada, and represented therein by the Minister of Railways and Canals, on the one part, and the Canadian Pacific Railway Company, on the other part, and which is generally known and may be referred to as the Crowsnest Pass Agreement, which relates to freight rates, and which agreement was provided for, and the conditions in the agreement as executed were specified in advance of the actual agreement, in an Act of the Parliament of Canada, passed in 1897, being 60-61 Vict., Chap. 5, intituled "An Act to authorize a Subsidy for a railway through the Crowsnest Pass." That enactment, in its terms, provided for a subsidy to the railway company towards the construction of a railway from Lethbridge, in the province of Alberta, through the Crowsnest Pass to Nelson, in the province of British Columbia, to the extent of $11,000 per mile, and not exceeding in the whole $3,630,000, payable, according to the terms specified in the Act; and contains the following general provision: "Provided that

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an agreement between the Government and the company is first entered into in such form as the Governor in Council thinks fit, containing covenants to the following effect, that is to say." The covenants to be included in the contract are there particularly set forth, ten in number, in subsection (1) of the Act, and, in so far as the covenants so provided, to be entered into by the subsidy contract to be so approved, related to the question of rates, they are contained in subclauses (*d*) and (*e*), section 1, of that Act.

Pursuant to the conditions of the Act, the Subsidy Agreement of September 6, 1897, was entered into between Her Majesty and the railway company, and contained the covenants mentioned in clauses (*d*) and (*e*) of the enactment above set out, as well as all other covenants which the Act provided such agreement should contain.

Tariffs were filed by the railway company shortly following the execution of the agreement, which were in conformity, as to the commodities named, with the conditions (*d*) and (*e*) of the agreement; and these tariffs at that time did not conflict with any prevailing freight rates upon similar commodities, and did not prejudicially affect any other railways than the contracting railway, the Canadian Pacific Railway Company.

The conditions as to railway development, transportation costs, and traffic generally for many years were such that these rates so agreed to on the specific commodities mentioned, afforded a fair return to the railway companies using them for the service performed in the carriage of the traffic covered by them. In fact, on all commodities covered by the schedule, except apples and coal oil, reductions took place in these rates, and were maintained and in existence when the Board was created in 1903, and for long afterwards; and increases in these rates did not call for the consideration of this Board until 1917, when applications were filed by the Canadian Northern Railway Company, then operating in both western and eastern territory, and by the Canadian Pacific, the Grand Trunk, Grand Trunk Pacific, Toronto, Hamilton and Buffalo, Pere Marquette, New York Central, Michigan Central, Kettle Valley, and Great Northern Railway Companies, for a recommendation by the Board to the Governor in Council, under the War Measures Act, for a general advance in freight and passenger rates. The application of the Canadian Northern Railway Company, which was supported by accompanying statements, set forth that, under the then present revenues and rates applicable to the enterprises of the railway, it was impossible adequately to sustain the railway service, to meet needed betterments, or to meet the numerous increases in net operating costs attributable to the very substantial increased cost of fuel, coal, materials, supplies, equipment of all kinds, and wages entering into the maintenance and operation of their railways, and that substantial increases in both freight and passenger rates were, therefore, imperatively required. The applications were heard at various points throughout Canada, with the result that by a judgment of the Board, dated December 26, 1917, reported Vol. 22, Canadian Railway Cases, p. 51, the railway companies concerned were permitted to increase their general rates 15 per cent and make the specific advances therein allowed.

The effect of the Crowsnest Pass agreement of September 6, 1897, and of the Act, above cited, which provided for its terms, was considered in the judgment in the Fifteen Per Cent Increase Case. The same agreement had been incidentally referred to in a previous judgment, delivered by the late Chief Commissioner Killam, in the British Columbia Pacific Coast Cities v. Canadian Pacific Railway Company (Vancouver Interior Tolls Case), 7 Can. Ry. Cas. 125, to which cases I shall refer hereafter.

The application for this general rate increase was based upon war conditions, and resultant increased costs as mentioned in the application of the railway companies above quoted, and followed a similar increase by the Interstate Commerce Commission of June 29, 1917, in the class rates in Eastern United States territory.

Following the 15 per cent increase in rates, came an increase of 25 per cent in the United States eastern class rates, commonly known as the McAdoo Award. By Order in Council of the Canadian Government, P.C. No. 1,768, after the publication of the McAdoo Award, and following a report of the then Chief Commissioner of this Board to the Canadian Government, dated July 25, 1918, and reported in the judgments of this Board, Vol. 8, p. 277, a further general increase of 25 per cent was made effective by the Canadian Government under The War Measures Act, by Order in Council P.C. 1863, dated July 27, 1918, to Canadian railways.

When the Railway Act was consolidated and amended in 1919, there was introduced an addition, as a subsection to section 325, viz., subsection (5), which is an important factor for consideration, and which was much referred to in the argument. That amendment reads as follows:—

> "(5) Notwithstanding the provisions of section three the powers given to the Board under this Act to fix, determine, and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by an agreement made or entered into by the company: Provided that this subsection shall remain in force only during the period of three years from and after the date of the passing of this Act."

This amendment, it was contended, was passed with reference to the Crowsnest Pass Agreement, which, in judgments of the Board in (*a*) the Coast Cities Case, 7 Can. Ry. Cas. 125, (*b*) the Regina Rate Case, Regina v. C.P.R. and C.N.R. Cos., 11 Can. Ry. Cas. 380; 45 S.C.R. 321; (*c*) the Fifteen Per Cent Increase Case, 22 Can. Ry. Cas. 49, and (*d*) Forty Per Cent Increase Case, 26 Can. Ry. Cas. 130, had been referred to. It was, irrespective of such contention, a measure which removed by legislation any doubts as to the Board's powers, when dealing with the question of general increases in costs of railway transportation, when such powers or its rate jurisdiction generally were in conflict with " any Act of the Parliament of Canada, whether general in application or special, and relating only to any specific railway or railways, etc.," or as regards excusing " charges of unjust discrimination " where " such discrimination or preference is justified or required by any agreement made or entered into by the company." The subsection was, by its terms, to continue in force only during the period of three years after the date of the passing of the Act (July 7, 1919).

It is to be observed that the additional subsection did not in any way alter or impair any jurisdiction the Board otherwise had to disregard agreements resulting in unjust discrimination in rates. The Board had decided that it had such a jurisdiction, and had exercised it in a definite and pronounced manner, e.g.,—

Crowsnest Pass Coal Co. v. C.P.R.,
8 Can. Ry. Cas., p. 33, at p. 41.

Regina Rates Case,
11 Can. Ry. Cas. 380, at pp. 391 and 394,

and has since so decided. See Lyons Fuel Supply Co. v. Algoma Central Ry. Co., Board's Judgments, Vol. VIII.

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In so far as the subsection referred to Acts of Parliament, whether general or special, it is, I think, clear that there could be in contemplation and intent only those Acts, general or special, which were restrictive of the wide powers of the Board conferred upon it by Parliament by the Railway Acts since 1903. The subsection made no reference to any particular Act, nor to any particular railway, nor to any particular agreement, and of itself cannot, I think, be so interpreted. Any special significance that may be sought to ascribe to it must be judged by the plain and general wording of the subsection.

In 1920, effective May 1, a substantial increase was made to all railway employees in the United States, known as the Chicago Wage Award. This award having been adopted and made applicable to Canadian railways, thereby greatly increasing operating costs, applications were made on behalf of most of the Canadian railways for a further general increase, and upon such application, by judgment of the Board of the 6th September, 1920, reported in 26 Can. Ry. Cas. 131, the Board granted a general increase of 40 per cent in eastern freight tolls and 35 per cent in western freight tolls, 20 per cent in passenger tolls, both east and west (not to exceed 4 cents per mile), 50 per cent in sleeping and parlour car tolls, and 20 per cent in excess baggage tolls, to be effective until December 31, 1920; commencing January 1, 1921, the eastern freight toll increase to be reduced to 35 per cent and the western increase to 30 per cent. By that decision, all railways under the Board's jurisdiction were required to furnish the Board with a monthly statement of their operating revenue, with a view to readjustment if desirable of the rates so ordered.

This latter provision as to control by the Board upon the basis of costs as found by its previous judgment, is important to bear in mind with respect to what action was subsequently taken to continue in force these rates found by the Board to be fair, reasonable, and adequate.

In its disposition of the 40 per cent Increase Case, and by virtue of the amendment to section 325 by the addition of subsection 5 thereto, in the Railway Act of 1919, above referred to, all doubts created by any references in previous decisions as to the powers of the Board being in any way limited, restricted, or circumscribed by the Crowsnest Pass Agreement, or by any other agreement or statute, were removed, so that the increase, based upon an exhaustive examination by the Board as to what were fair and reasonable rates applicable to all railway companies, were so applied. General Order of the Board No. 308, dated September 9, 1920, provided that the changes in the tariffs of the companies operating steam railways, subject to the jurisdiction of the Board, as set forth in the judgment of the Chief Commissioner, which was made part of that Order, were thereby authorized by the Board.

An application was then made by the Governments of Manitoba and Saskatchewan, and others in similar interest, for the suspension of the increase in railway rates as granted by the Board's General Order, above referred to, or, alternatively, that the order be varied by reducing the increase in railway rates on lines west of Fort William to 15 per cent. That application was based upon a decision of the Privy Council, dated October 6, 1920, upon an appeal from the decision of the Board, represented by General Order No. 308, and which order on appeal referred the question as to suspension back to the Board for further consideration. Upon this reference, judgment was delivered by the Board November 22, 1920, reported in Judgments of the Board, Vol. 10, p. 429, which dealt with and justified by reference to the financial necessities of the railways, the increase in rates which had been challenged, and by reference to that judgment it will be seen that the Board's decision to increase the rates was entirely based upon its duties under the Railway Act to fix, determine, and enforce just and reasonable rates. The application was refused.

By Order in Council P.C. No. 2434, dated October 6, 1920, dismissing the appeal from General Order No. 308, above referred to, His Excellency in Council

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recommended that, as conditions had probably changed materially in recent years, tending more and more to make equalization of rates practicable, the Board should conduct an inquiry at the earliest date, with a view to the establishment of rates meeting to the utmost extent possible the requirements as to equalization.

The Board held an exhaustive investigation into the subject, and held sittings throughout Canada; and upon that application, and based upon an immense amount of evidence as to rate situation gathered on such inquiry, and after full investigation and consideration of costs entering into the service, delivered its judgment dated the 30th of June, 1922, making certain changes in the rates on certain basic commodities, on coal, and on commodities moving under class and commodity rates between points east of Montreal and west of Port Arthur and Fort William, and on mountain rates as in said judgment specified; and by General Order No. 366, dated June 30, 1922, the Board required the railway companies under its jurisdiction to file tariffs giving effect to the rates so prescribed and authorized, the effective date of the said rates to be August 1, 1922.

So far, then, as the Board's general powers under the Railway Act permitted it to fix fair and reasonable rates, the Board exercised those powers, and, within its jurisdiction, by its General Order No. 308 and by General Order No. 366, approved of and authorized tariffs giving effect to fair and reasonable freight rates, after careful and exhaustive consideration and examination of all elements and factors involved in the making of such rates. These decisions of the Board, therefore, subject to any restriction which, it is contended, is imposed upon it in the Crowsnest Pass Agreement, or in any other agreement or private legislation, represented, and do represent, the Board's judgment as to what would constitute fair and reasonable rates within the meaning and scope of these orders and judgments.

Following the report of the Special Committee appointed by Parliament in 1922, to inquire into railway transportation costs, Chapter 41, 12-13 George v, was passed, which provides as follows:—

> "1. Subsection five of section three hundred and twenty-five of the Railway Act, 1919, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by Order of the Governor in Council published in the *Canada Gazette*: Provided that, notwithstanding anything herein or in said subsection five contained, rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897."

The effect of this legislation was, as I view it, to continue for another year, or such further period as the Governor in Council might see fit, subsection 5 of section 325, with a proviso that, notwithstanding anything in the subsection contained, rates on grain and flour, on and from the 6th of July, 1922, shall be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897. The meaning of this amendment is somewhat obscure. As has been pointed out, the amendment to section 325, effected by the addition of subsection 5, did not specifically, or by any inference which could be deduced from the wording of that section, legislate with regard to any particular statute, general or special, or to any particular agreement, but was entirely general in its character; it was entirely general with regard to all such general and special Acts and all such agreements as had a limiting or restricting effect upon the general jurisdiction of the Board under the Railway Act to fix fair and reasonable rates, and which statutes or agreements the Board might otherwise consider. It was legislation in the abstract, and, in my view, went no further than to declare in effect that whatever general or private acts or agreements interefered

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In so far as the subsection referred to Acts of Parliament, whether general or special, it is, I think, clear that there could be in contemplation and intent only those Acts, general or special, which were restrictive of the wide powers of the Board conferred upon it by Parliament by the Railway Acts since 1903. The subsection made no reference to any particular Act, nor to any particular railway, nor to any particular agreement, and of itself cannot, I think, be so interpreted. Any special significance that may be sought to ascribe to it must be judged by the plain and general wording of the subsection.

In 1920, effective May 1, a substantial increase was made to all railway employees in the United States, known as the Chicago Wage Award. This award having been adopted and made applicable to Canadian railways, thereby greatly increasing operating costs, applications were made on behalf of most of the Canadian railways for a further general increase, and upon such application, by judgment of the Board of the 6th September, 1920, reported in 26 Can. Ry. Cas. 131, the Board granted a general increase of 40 per cent in eastern freight tolls and 35 per cent in western freight tolls, 20 per cent in passenger tolls, both east and west (not to exceed 4 cents per mile), 50 per cent in sleeping and parlour car tolls, and 20 per cent in excess baggage tolls, to be effective until December 31, 1920; commencing January 1, 1921, the eastern freight toll increase to be reduced to 35 per cent and the western increase to 30 per cent. By that decision, all railways under the Board's jurisdiction were required to furnish the Board with a monthly statement of their operating revenue, with a view to readjustment if desirable of the rates so ordered.

This latter provision as to control by the Board upon the basis of costs as found by its previous judgment, is important to bear in mind with respect to what action was subsequently taken to continue in force these rates found by the Board to be fair, reasonable, and adequate.

In its disposition of the 40 per cent Increase Case, and by virtue of the amendment to section 325 by the addition of subsection 5 thereto, in the Railway Act of 1919, above referred to, all doubts created by any references in previous decisions as to the powers of the Board being in any way limited, restricted, or circumscribed by the Crowsnest Pass Agreement, or by any other agreement or statute, were removed, so that the increase, based upon an exhaustive examination by the Board as to what were fair and reasonable rates applicable to all railway companies, were so applied. General Order of the Board No. 308, dated September 9, 1920, provided that the changes in the tariffs of the companies operating steam railways, subject to the jurisdiction of the Board, as set forth in the judgment of the Chief Commissioner, which was made part of that Order, were thereby authorized by the Board.

An application was then made by the Governments of Manitoba and Saskatchewan, and others in similar interest, for the suspension of the increase in railway rates as granted by the Board's General Order, above referred to, or, alternatively, that the order be varied by reducing the increase in railway rates on lines west of Fort William to 15 per cent. That application was based upon a decision of the Privy Council, dated October 6, 1920, upon an appeal from the decision of the Board, represented by General Order No. 308, and which order on appeal referred the question as to suspension back to the Board for further consideration. Upon this reference, judgment was delivered by the Board November 22, 1920, reported in Judgments of the Board, Vol. 10, p. 429, which dealt with and justified by reference to the financial necessities of the railways, the increase in rates which had been challenged, and by reference to that judgment it will be seen that the Board's decision to increase the rates was entirely based upon its duties under the Railway Act to fix, determine, and enforce just and reasonable rates. The application was refused.

By Order in Council P.C. No. 2434, dated October 6, 1920, dismissing the appeal from General Order No. 308, above referred to, His Excellency in Council

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recommended that, as conditions had probably changed materially in recent years, tending more and more to make equalization of rates practicable, the Board should conduct an inquiry at the earliest date, with a view to the establishment of rates meeting to the utmost extent possible the requirements as to equalization.

The Board held an exhaustive investigation into the subject, and held sittings throughout Canada; and upon that application, and based upon an immense amount of evidence as to rate situation gathered on such inquiry, and after full investigation and consideration of costs entering into the service, delivered its judgment dated the 30th of June, 1922, making certain changes in the rates on certain basic commodities, on coal, and on commodities moving under class and commodity rates between points east of Montreal and west of Port Arthur and Fort William, and on mountain rates as in said judgment specified; and by General Order No. 366, dated June 30, 1922, the Board required the railway companies under its jurisdiction to file tariffs giving effect to the rates so prescribed and authorized, the effective date of the said rates to be August 1, 1922.

So far, then, as the Board's general powers under the Railway Act permitted it to fix fair and reasonable rates, the Board exercised those powers, and, within its jurisdiction, by its General Order No. 308 and by General Order No. 366, approved of and authorized tariffs giving effect to fair and reasonable freight rates, after careful and exhaustive consideration and examination of all elements and factors involved in the making of such rates. These decisions of the Board, therefore, subject to any restriction which, it is contended, is imposed upon it in the Crowsnest Pass Agreement, or in any other agreement or private legislation, represented, and do represent, the Board's judgment as to what would constitute fair and reasonable rates within the meaning and scope of these orders and judgments.

Following the report of the Special Committee appointed by Parliament in 1922, to inquire into railway transportation costs, Chapter 41, 12-13 George v, was passed, which provides as follows:—

> "1. Subsection five of section three hundred and twenty-five of the Railway Act, 1919, shall, notwithstanding the proviso thereof, remain in effect until the sixth day of July, 1923, and may be continued in force for a further period of one year by Order of the Governor in Council published in the *Canada Gazette*: Provided that, notwithstanding anything herein or in said subsection five contained, rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897."

The effect of this legislation was, as I view it, to continue for another year, or such further period as the Governor in Council might see fit, subsection 5 of section 325, with a proviso that, notwithstanding anything in the subsection contained, rates on grain and flour, on and from the 6th of July, 1922, shall be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897. The meaning of this amendment is somewhat obscure. As has been pointed out, the amendment to section 325, effected by the addition of subsection 5, did not specifically, or by any inference which could be deduced from the wording of that section, legislate with regard to any particular statute, general or special, or to any particular agreement, but was entirely general in its character; it was entirely general with regard to all such general and special Acts and all such agreements as had a limiting or restricting effect upon the general jurisdiction of the Board under the Railway Act to fix fair and reasonable rates, and which statutes or agreements the Board might otherwise consider. It was legislation in the abstract, and, in my view, went no further than to declare in effect that whatever general or private acts or agreements interefered

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with the full exercise by the Board of its jurisdiction under the Railway Act, might be disregarded, and should not be binding upon the Board during the period for which the section was in force.

By the legislation of 1922, chapter 41, this general provision is continued for another year, but, by the proviso, special reference is made to the provisions of the agreement executed pursuant to the Crowsnest Pass Act to the extent of providing that rates on grain and flour shall, on and from the 6th of July, 1922, be governed by the terms of that agreement.

If there be direct legislation in the proviso governing the specific commodities of grain and flour not repugnant to the general jurisdiction upon the Board conferred to fix fair and reasonable rates upon all commodities, I would observe that the effect of the proviso appears to be that rates on the two commodities mentioned in the proviso are to be governed by the agreement, which is a statutory injunction to the Board, with respect to two commodities, to observe a particular agreement not mentioned in subsection 5 of section 325, the operation of which is extended for another year. Whether this legislation, in the few lines contained in the proviso, has the effect of so limiting and restricting the Board in the full exercise of its functions is a question which I shall discuss later on when dealing with the effect of the original Crowsnest Pass Subsidy Act and the agreement following it.

By proclamation in 1923, the provisions of the subsection (5) to section 325 of the Railway Act were extended for another year, and, notwithstanding the application to the Government by the Canadian Pacific for its continuance, no further extension of the subsection was made, and whatever was, or had been, its effect or meaning, it ceased to exist after the 6th July, 1924. At that date the rates found by the Board to be just and reasonable rates, were in force under the Orders of the Board hereinbefore referred to, and it followed as a result that the fixing by the Board of such rates on the higher basis, and in continuing them while the railways' accounts were under monthly review by the Board, was an assertion or declaration by the Board by virtue of its powers, as a rate controlling and rate fixing tribunal, that the rates so fixed were found by it under existing conditions as to costs, to be the only just and reasonable freight rates applicable, and that, as a result, any other rates, lower than those rates, were not just and reasonable, and would not give a fair and adequate return to the railways charging them, for the service involved.

This brings the record down to the causes of the present complaints.

Effective July 7, 1924, the following new tariffs of rates were voluntarily published by the railway companies named, and are now in force, viz.:—

Canadian Pacific Railway's C. R. C. No. E-4137.
Canadian National Railway's C. R. C. No. E-765.

Applying on specific commodities from various points in Eastern Canada to stations in Canada west of Westfort, Ont., as enumerated.

Canadian Pacific Railway's C. R. C. No. W-2757.
Canadian National Railway's C. R. C. No. W-391.

applying on specifically named commodities from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to various stations in Canada west thereof.

These tariffs have given rise to innumerable complaints from shippers in all parts of the country from the Atlantic to the Pacific. The tariffs produce a great many freight rate anomalies, but the principal features which have given grounds for complaint may briefly be summarized as follows:—

With reference to rates between Eastern Canada and points west of Fort William, for many years prior to July 7, 1924, the whole territory from Montreal to Windsor and Sarnia, inclusive, Niagara Falls to Sudbury, all intermediate points, and all branch lines, was blanketted, that is to say, the same rate applied

from all stations within this entire area to Winnipeg and all other Western Canadian points. Thus, the manufacturer or shipper at one point in this territory was on an exact equality, from the standpoint of freight rates, with his competitor at any other point in said area.

The tariff issued by the Canadian Pacific Railway Company, effective July 7, 1924 (in compliance with their interpretation of the Crowsnest Agreement), provided for rates, on the commodities mentioned in the said agreement, only from and to stations on that company's line as existing in 1897, and under the grouping of Eastern Canadian territory as existing January 1, 1898. For example, that company's mileage on eastern lines in 1897 was approximately 3,700 miles, and in 1923, 5,200 miles; its western lines in 1897 approximated 3,600 miles, and in 1923, 9,400 miles. The Crowsnest rates are very much below—in some cases approximately 50 per cent below—the present general rate level created by changed conditions since 1897; consequently, the application of these Crowsnest rates from those stations in existence in 1897, and the continuance of the higher rates since established from all points on lines subsequently constructed (both taking the same rate previous to July 7), entirely disrupts and dislocates the freight rate structure created by the Board, and leaves of the structure only *disjecta membra*. For example, on binder twine, carloads, the rate from Hamilton and Brantford, to Winnipeg, prior to July 7, was $1.14 per 100 pounds from both points. Effective July 7, the rate from Hamilton was reduced to 71½ cents, the rate from Brantford remaining at $1.14. Hamilton is given Crowsnest rates, Brantford is not. Again, as between stations both of which take Crowsnest rates, disparities have been created as compared with the situation prevailing prior to July 7, for the reason that the Eastern Canadian territory, already described as being blanketed and taking the one rate, was, under the Crowsnest Agreement, split up into six groups, the lowest rate being from the Windsor group and the highest from Montreal. Taking paint as an illustration, instead of the Montreal and Windsor manufacturers being on an exact rate equality to Western Canada, as for many years past, the Windsor manufacturer's rate is now 10 cents per 100 pounds lower than that of the Montreal manufacturer. From Windsor the distance the traffic to Western Canada is hauled is 35 miles greater than from Montreal, yet the Windsor rate, under the Crowsnest Agreement, is 10 cents less than that from Montreal. These are simply two cases illustrating the conditions which apply with respect to all the commodities mentioned in the Crowsnest Agreement.

The situation complained of, therefore, is not only as between stations to which Crowsnest rates have been restored, and those to which they were not given, but also as to the disparities between the rates from stations where the Crowsnest rates have been restored.

The situation in Western Canada is equally chaotic. The rates on the commodities in question have heretofore always been so regulated and controlled by the Board so as to establish a relative basis throughout the whole Prairie territory. Since July 7, however, the Crowsnest rates have applied from Fort William and points east thereof to points on the line of the Canadian Pacific Railway as in existence in 1897, while to all other territory the higher rate level established since 1897 still governs. This means that approximately 35 per cent of the western lines of the Canadian Pacific Railway has Crowsnest rates, and the balance, 65 per cent of the mileage, has the higher rates. For example, to practically the whole territory north of the Canadian Pacific Railway Company's main line, very much higher rates apply than to the main line and those branches south thereof, in existence in 1897, although the higher rates also apply to southern branches since constructed in contiguous territory. One of the obvious results is that certain jobbing and distributing centres in Western Canada have been adversely affected, and are now unable to distribute the com-

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modities named in the Crowsnest Agreement on a relative basis of freight rates within territory which is naturally tributary to them, having in mind their geographical location.

Another disturbance is the change in the " between " application of the rates. Prior to July 7, the rates on Crowsnest commodities between Eastern and Western Canada were, generally speaking, the same in both directions. The tariffs naming class rates apply " between." For instance, roofing paper is manufactured at Winnipeg, and the carload rate, on July 6, Winnipeg to Toronto (also Toronto to Winnipeg), was $1.14 per 100 pounds. It is still $1.14, Winnipeg to Toronto, but effective July 7, was reduced to 74 cents from Toronto to Winnipeg.

The Crowsnest rates herein referred to are westbound rates only, and do not apply east bound, or from British Columbia, or from the Maritime Provinces.

British Columbia claims the tariff of July 7 is depriving it of its markets in Western Canada, because the low Crowsnest rates have been restored from Eastern Canada to the prairies, while there is no change in the rates from British Columbia to the prairies. In other words, while there was a certain relationship between rates from British Columbia eastbound, and from Eastern Canada westbound, to prairie points, fixed from time to time under various orders of this Board, this relationship and the rate structure existing previous to July 7 has all been disrupted. The fruit industry of British Columbia was particularly stressed, and as a typical illustration of the result of the radical reduction in rates from the East, and no change in rates from the West, the present rate on fresh fruit, carloads, from Kelowna to Winnipeg, 1,209 miles, is $1.50 per 100 pounds, while the Crowsnest rate from Hamilton to Winnipeg, 1,272 miles, is 83½ cents per 100 pounds.

Between the Maritime Provinces and Western Canada, the published through rates are built up on arbitraries or additions to the normal Montreal rate, and by reason of the much greater distance, the Maritime shipper is, under ordinary conditions, naturally at some disadvantage in the matter of freight rates, as compared with Ontario. The non-application of Crowsnest rates to Maritime province points and their restoration in Ontario has made the rate disparities previously existing so much greater that it is claimed it is now almost impossible for the Maritime province manufacturer to compete in the Western Canadian market.

The Canadian National Railway Company has only published the Canadian Pacific's Crowsnest rates from strictly competitive points in Eastern Canada to strictly competitive destination points in Western Canada, to meet the competition, and has published same as competitive rates, and these rates do not apply as maxima from or to intermediate non-competitive points on the Canadian National Railway.

There are other minor anomalies, and the disruption of the freight rate structure resulting from the tariffs in question has created a condition of chaos and rate disparities without any parallel in the history of freight rate making in Canada.

The publication of these tariffs was due to the view, evidently then held by the Canadian Pacific Railway Company, that the terms of the subsidy contract of the 6th September, 1897 (the Crowsnest Agreement), in so far as it related to rates, was binding upon it, and that, therefore, by reason of the cessation, by effluxion of time, of the suspending clause (section 325, subsection 5), applicable to all agreements, the company remained bound by the rate terms of its agreement. In taking this view, it is argued that it did so by reason of the references to the effect of such agreement in the Board's judgments in the following cases:—

Coast Cities Case, 7 Can. Ry. Cas. 125, at p. 145.

Regina v. C.P.R. and C.N.R., 11 Can. Ry. Cas. 380, at p. 391.

In *re* Increase in Passenger and Freight Tolls (15 per cent Increase Case), 22 Can. Ry. Cas. 49, at pp. 77 and 78.

Railway Association v. Canadian Manufacturers' Association (40 per cent Increase Case), 26 Can. Ry. Cas. 130, at pp. 145-6.

The tariffs so made, effective July 7, 1924, by the railway companies named, were not in accordance with the Board's judgments and orders previously referred to, as to what rates should be, nor were they fair and reasonable under existing conditions. Their publication by the Canadian Pacific Railway Company (in so far as they were by that company put into effect under that company's agreement of 1897) compelled all other railways in competitive territory to conform to them, to meet the unjust and unfair competition forced upon them, and which they were obliged to meet by reducing their rates below the standard fixed by the Board as just and reasonable, and thereby compelled reductions of freight rates of a wide and far-reaching character below that standard, not only by the Canadian Pacific Railway Company (which at that time seemed to recognize its contractual obligations to adhere to the contract tariff) but by the other railway companies, who were in no way bound by the contract, and in consequence of its effect, as reflected by the Canadian Pacific Railway Company's tariffs, conforming to the old agreement of 1897, were and are subjected to heavy losses, which they complain they are unable to bear, and which, but for the indirect effect upon them of the Canadian Pacific Railway Company's contract tariffs, they would be under no obligation to bear. The result is that the Board's functions under the Railway Act in fixing from time to time, after exhaustive inquiry, fair, reasonable, and adequate freight rates for all railways under its jurisdiction, are rendered futile and ineffective by the existence of an agreement, made in 1897, with one railway company, which, in its present effect, purports to fix and impose upon all railways affected, for all time, and notwithstanding changed and changing conditions, railway rates at a standard below and not in accordance with those standards of equality which this Board has found from time to time to be fair and reasonable.

Determination of the effect of the Crowsnest Pass Agreement upon the powers of this Board conferred upon it at its creation by the Railway Act of 1903 is, therefore, vital to the consideration by the Board of the extent to which it may exercise its remedial functions in the present chaotic situation, affecting rates from one end of Canada to the other, and the argument at the hearing was centred upon that question, and therefore must be dealt with.

If, as is argued by the many complainants, the provisions of the agreement are now binding upon the Board, in whole or in part, it is clear that, wide as are the powers conferred upon it by the Railway Acts of 1903, 1906, and 1919 to remedy such grievances and equalize and stabilize all rates, the Board would be restricted to the rates in the agreement specified, which, as I have shown, have the effect, in the construction placed upon it by the railways in filing the tariffs of the 7th July, of disrupting and dislocating rates equalized and settled by the Board, and disturbng industrial conditions throughout the whole of Canada.

I think that the Board's duty in the circumstances is to deal with this concrete question, which goes to the root of its general powers as a rate-controlling body.

Although the agreement of 1897 has been referred to in the previous judgments of the Board I have cited, it will, I think, be found that in none of them is the question now involved the direct and main issue. True it is that in some

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of these decisions, when disposing of questions in the consideration of which the rates under the agreement were either relatively or incidentally involved, the Board dealt with those questions and applied its judgment in their adjustment in a manner which treated the rates under the agreement as being rates in force and not controlled by the Board, and in one case, the Fifteen Per Cent Case, as I shall presently show, expressed its view as to the application in law of the agreement as restrictive of the general jurisdiction of the Board, but now, when the agreement rates appear as a block to the full and unfetter exercise by the Board of its powers, it becomes necessary to review, in relation to present chaotic conditions all centering on the construction to be placed upon the agreement, the whole question as to the effect of the agreement in law as limiting and circumscribing its wide powers. I will deal with the cases cited in which the rates contracted for by the agreement were referred to.

In the Coast Cities Case, 7 Can. Ry. Cas. 125, decided May 25, 1907, which was a complaint that the rates on all classes of goods from Vancouver to interior points in British Columbia and the Northwest Territories, as far east as Calgary on the main line and to McLeod on the Crowsnest line, were discriminatory as compared with the rates on westbound traffic from Winnipeg in the same territory. The reference to the Crowsnest Agreement made by the Chief Commissioner in that judgment, is preceded by the words, "There are two minor points for consideration" (p. 145). He then refers, as the first of these points, to the Crowsnest Pass Agreement, and the Act requiring that agreement, and after describing it, proceeds (p. 146) to discuss, not the agreement or the Act by which it was required to be executed, nor the effect of either, but the effect of the tariffs of the Canadian Pacific Railway Company, filed in accordance with its covenants in that agreement, and which contained the reduced rates on the commodities included in the agreement; and proceeds (p. 146):—

> "These reductions cannot be considered as having been forced upon the company, but were the result of an agreement which it chose to enter into for the purpose of obtaining a subsidy in aid of the construction of a line of railway. The agreement and the statute did not even deal with the rates from Winnipeg at all."

The learned Chief Commissioner then points out that,—

> "When the statute (Crowsnest Subsidy Act) was passed, and when the agreement was made, the law prohibited unjust discrimination between localities, and, while Parliament did not *stipulate* for similar reductions over western portions of the company's railway, it should not, in my opinion, be considered as having authorized what would, if done otherwise, have produced unjust discrimination."

He concludes that the reductions so voluntarily made by the company in its tariffs then before him *did* result in such discrimination, and that the rates from Vancouver eastward, upon similar traffic carried under similar circumstances, should proportionately be reduced. The second point is not revelant.

The tariffs of only one railway, the Canadian Pacific Railway, a party to the Crowsnest Pass Agreement, were involved. No other railway was affected, and the judgment deals only with the tariffs as they stood. There was no issue as to the agreement under which the railway company had issued its tariffs, nor as to the statute prescribing the terms of that agreement; but the decision dealt with the tariffs as they stood in relation to other tariffs brought in question, and held as above.

I can see nothing in this decision upon a minor and only relative point which commits the Board to any view, one way or another, as to the restrictive form of the agreement. In the circumstances, and under conditions then existing, such an opinion was not necessary to the decision.

In the Regina Rates Case, 11 Can. Ry. Cas., p. 380, decided by this Board June 22, 1910, the judgment in the Coast Cities Case was referred to (p. 391) and quoted, and then, after referring to the nature of the Crowsnest Pass Agreement, says (p. 390):—

> "This agreement has no bearing upon the point at issue in this case, except to show that rates west of Manitoba have been reduced as a result of Government intervention."

Reference is made by the then Assistant Chief Commissioner, in delivering the judgment of the Board, to the judgment of the Board in Crowsnest Pass Coal Co. v. C.P.R., 8 Can. Ry. Cas. 33, as follows (p. 391):—

> "It could not surely have been the intention of Parliament in passing section 315 of the Railway Act to permit railway companies to create different circumstances and conditions by entering into a contract with some one and so defeat the intention of the section. The 'circumstances and conditions' which, if not substantially similar, may justify different treatment to different points, I think must be traffic circumstances or traffic conditions; not circumstances and conditions which may be artificially created by contract. The present Chief Commissioner expressed the following opinion in the Crowsnest Pass Coal Company v. Canadian Pacific Railway Case, reported in Vol. 8 of MacMurchy & Denison's Canadian Railway Cases, at page 41;"

and to the further dictum in that case (p. 392):—

> "The Railway Act requires that under substantially similar conditions the tolls charged shall be equal to all persons, and at the same rate, whether by weight, mileage or otherwise, and any reduction or advance either directly or indirectly is expressly prohibited. No undue or unreasonable preference or advantage can be permitted to any person or company. The object of the legislation is to place everyone upon terms of absolute equality, and if agreements were permitted to be entered into for reduction in tolls or for other preferential treatment, the door would be opened wide for the defeat of the Act, and the Board would be called upon to struggle with all sorts of conditions, opinions, and complications in the determination of such cases."

It would not appear, therefore, that in the Regina Case the Board decided upon the extent to which, if at all, the Crowsnest Pass Agreement was binding upon it in all cases, or that it limited and restricted its jurisdiction over rates generally to the extent now contended. The judgment of the Supreme Court in appeal, 45 S.C.R., p. 321, seems to go to the length only of saying that such an agreement as that directly in question to the issue, viz., the Canadian Northern Railway Company's Manitoba Agreement, was a circumstance which the Board should regard in deciding the main question.

In the Fifteen Per Cent Rate Case—22 Can. Ry. Cas., p. 49, decided December 26, 1917, the agreement was again referred to in the judgment of the then Chief Commissioner (Sir Henry Drayton). This was a general application for an increase in passenger and freight tolls throughout Canada, on the ground of the increase in operating expenses, owing largely to war conditions. The result was that all railways subject to the jurisdiction of the Board were permitted to increase their general rates 15 per cent with some specific advances named. The contention of Mr. Pitblado, K.C., who appeared for the Manitoba Government, was that the increase asked for would violate two agreements, viz., the Crowsnest Pass Agreement made with the Canadian Pacific, in consideration of subsidy, and the agreement of the Canadian Northern Railway Company with the Manitoba Government (Manitoba Statutes, 1901, ch. 39), made in consideration of a bond guarantee.

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The remarks of the then Chief Commissioner as to this (the Crowsnest contract) appear at pp. 57, 58, 77 (foot), 78, 83, and 84, and as to the Manitoba-C.N.R. Agreement, at pp. 60 and 61. As to the former agreement, the learned Cheif Commissioner held, in effect, that in any increase of rates, the *Canadian Pacific* was held down to the rate clauses of the agreement with the Dominion Government, holding that the Crowsnest Pass Subsidy Act, which, as a condition of the subsidy, required the agreement to be made, was a Special Act, "relating to the same subject matter," the provisions of which must be taken to override the provisions of the Railway Act.

The Canadian Northern, Grand Trunk, and Grand Trunk Pacific Railways (now merged into the Canadian National System), and all other railways affected by the Crowsnest Rates in competitive territory, were, although no parties to the agreement made by the Canadian Pacific Railway Company, compelled to reduce their rates to the scale of the agreement, and to publish rates which were lower than the rates the Board would have permitted them to charge as fair and reasonable rates, had they not been held down by the agreement. But as to the Manitoba-C.N.R. Agreement, he observed (p. 61) that the effect of the agreement, apart altogether from statutory limitations of the Board, must be considered, in view of section 3 of 1 Edward VII, chapter 53 (Canadian Act), passed to give greater effect to the provincial Act, by virtue of section 6 of the Railway Act of Canada. the judgments of the Board in Crowsnest Pass Coal Co. v. C.P.R., 8 Can. Ry. Cas. 33, at p. 41; and in the Regina Rates Case, 11 Can. Ry. Cas. 380, at p. 391, were referred to (p. 61). At p. 62 he says:—

> "To now give effect to the Canadian Northern-Manitoba Agreement and confine its operation to Manitoba, would again restore the discrimination which had been found (Regina Rates Case) to exist as against Saskatchewan and Alberta".

And as a result, his opinion was that the Manitoba Agreement did not conclude the issue.

At p. 63 of the judgment, the Chief Commissioner holds as follows:—

> "The whole tariff situation and railway subject is surrounded with much difficulty, but some things are at least clear. Among them, it is clearly the duty of the Board to allow fair and just rates to carriers for the service they perform. It is also clear that the Board can neither order nor enforce rates which are unremunerative to the carriers without infringing the principle of the Railway Act by denying carriers a fair and just rate. No enforced unremunerative rate can be said to be just to the carriers."

And at p. 67, in discussing the effect of rate making by contract generally, he observes that as to special contracts with shippers at unfairly high rates, or giving favoured shippers unduly low rates,—

> "in either instance, the object of the Act (Railway Act), which is to secure uniformity just as much as reasonableness of rates, would be defeated."

And at p. 67,—

> "An unduly low rate constitutes an unreasonable rate, just as much as an unduly high one, and the question of whether a rate is unduly low or unduly high can only be established with a knowledge of the cost entailed by the service, which must from time to time vary;"

and at p. 68, after further considering the effect of improvident or unfair contracts, he says:—

> "It is also apparent that an agreement which reserves an unremunerative rate applicable in the one district, involves a discrimination as against other districts where traffic and operating conditions are similar, and directly infringes on the provisions of the Act requiring uniformity in rates."

While the language of the Chief Commissioner in the Fifteen Per Cent Case is unequivocal and definite in the expression of his view as to the binding effect upon this Board of the Crowsnest Pass Agreement, it is to be borne in mind that the effect of such agreement was not the *ratio decidendi* of the judgment, but dealt only with one incidental matter relative to the main question. The Crowsnest Agreement was not the main issue, and there was no argument directed against the view stated in the judgment as to its effect in law, under all conditions. The conditions with which the Board is now confronted are, as pointed out, conditions applicable, more or less to, or seriously affecting all, railways under the jurisdiction of the Board, also manufacturers and dealers, and the public generally, throughout Canada, and the storm centre of the widespread disturbance is the Crowsnest Pass Agreement. These conditions, which have taken new form and become aggravated since the Fifteen Per Cent Case was decided, call for the general application by this Board of those principles as to maintaining uniformity and equality of rates on a basis which will also allow to all carriers fair and just remuneration for the services they perform, which the then Chief Commissioner relied on, and which are specially pertinent and applicable as broad and just principles (entrusted by Parliament to this Board under the Railway Act to administer and apply), to the general upheaval and disorganization of rate structure which this Board is now asked to adjust, and which could not have been contemplated, I suggest, by the then Chief Commissioner in expressing the opinion he did as to the binding effect of the agreement. I suggest, with great respect, that in arriving at the decision he did, the then Chief Commissioner was not referring to, nor did he have before him, decisions of higher courts binding upon this Board, to which I shall presently refer, and which, especially in the circumstances now presented, where the general jurisdiction conferred upon the Board by the Railway Act is threatened with paralysis, would, I suggest, with equal respect, have called for graver consideration of a question of such wide and far-reaching importance, affecting, as it undoubtedly does, not the interests of the contracting railway alone, but those of the railways of the Canadian public generally, none of whose interests should be prejudicially affected by a rate contract by one railway company, without much more anxious consideration than for an adjustment of the issue then before it, it was necessary to bestow.

In Railway Association of Canada v. Canadian Manufacturers' Association (Forty Per cent Increase Case), 26 Can. Ry. Cas., p. 130, the late Chief Commissioner (Hon. F. B. Carvell) referred only, at the close of his judgment (p. 145, at top of p. 146), to the amendment to section 325 of the Railway Act of 1919, which was expiring July 6, 1922, and without in any way expressing any opinion as to its application to any particular conditions, limited the application of certain increases to July 1, 1922. Doubtless he had in mind the Crowsnest Pass Agreement as being the subject of such amended section. If he had, he did not so express himself, neither, as I had pointed out, does that amendment so specify. Here again the reference was *per curiam*, and only incidentally concerned with the main question then before the Board.

Except as to a variation in the Regina Case by the Supreme Court of Canada (45 S.C.R. 321) in a manner not directly involving the matters now before the Board, that court has not been called upon to express an opinion on the main issue now involved in this case; and if the decision of this Board should in future, come under review, the whole issue may be presented in the light of all the changed conditions and complexities now presented to us.

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I am, therefore, of opinion that, while it is desirable and expedient, as far as may be practicable, and according to the requirements of each case, for the Board to follow its previous decisions where relevant, the present issue calls for the fullest special consideration, and the Board would be not only amply justified in reviewing its previous decisions, but it would be its duty so to do, in order that the whole question of the application of this agreement, now directly in issue before it, should be considered with reference to greatly changed conditions, interests of the public, and of other railways, and the preservation of industries, and in the light of decisions of great weight and not referred to in the previous decision.

The doctrine *stare decisis* is not, I think binding upon us. That doctrine is not always to be relied upon, the Courts often find it necessary to overrule cases which have been decided contrary to principle. It should not be pressed too far. Bouvier's Law Dictionary, p. 1028.

The decisions of the Board must necessarily change with changed and changing conditions. Section 51 of the Railway Act, 1919, expressly reserves that power to us, and from the nature of the wide jurisdiction conferred upon the Board, and the necessity of meeting new conditions and problems as they arise, involves changes of remedy to meet particular conditions, and in order that there may be the widest discretion and latitude exercised and applied according to the conditions in each case presented to the Board.

I think, therefore, that the Board is called upon to deal with the issue as it is presented to us now, and consider the terms and effect of the Crowsnest Pass Subsidy Agreement as the main issue and in relation to conditions as presented to us on these applications for relief from a disorder of rates which is intolerable. The Board, during a protracted sitting, has heard evidence and exhaustive arguments by counsel representing interests of various kinds, affected by these rates, from Atlantic to Pacific, centred upon this question as the main and controlling factor in the present rate upheaval.

The state of the law respecting rate regulation and control existing at the time the Crowsnest Pass Subsidy Act was passed in 1897 by the Parliament of Canada, and at the subsequent date, September 6, 1897, when the Subsidy Agreement now in question was made, may usefully be referred to.

The Canadian Pacific Railway Act, 44 Victoria, chapter 1, is the Special Act incorporating that company. It is in three parts, 1st, a contract between Her Majesty and the company for the construction of the railway; 2nd, the Act, declaring (section 1) that the contract, copy attached, was approved and ratified, and the Government authorized to perform and carry out the conditions of it according to their purport; and 3rd, the Charter of Incorporation, a schedule to the Act, and by the Act (section 2) declared to have, with Order in Council relating to it, force and effect as if it were an Act of the Parliament of Canada, and held to be an Act of incorporation within the meaning of the contract.

By clause 17 of the charter, the provisions of the Consolidated Railway Act, 1879, in so far as applicable and not inconsistent, were declared applicable and incorporated with the charter "save and except as hereinafter provided."

Clause 17 of the Railway Act, 1897, provided, subsection 1, that tolls should from time to time be *fixed and regulated* by the by-laws of the company, or by the directors, if thereunto authorized by the by-laws; subsection 6, that all or any of the tolls might be by any by-law reduced and again raised "as often as deemed necessary for the interests of the undertaking," subject, subsection 9, to approval of the Governor in Council after publication of the by-law; and that, subsection 10, every by-law fixing and regulating tolls shall be subject to revision by the Governor in Council from time to time; subsection 11, that parliament might, from time to time reduce the tolls, "*but not without the consent of the company,* so as to produce less than fifteen per cent per annum profit on the capital actually expended in its construction, nor unless upon examination made by the Minister of Public Works of the amount received and expended by the company, the net income from all sources for the year then last passed is found to have exceeded fifteen per cent upon the capital so expended."

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By the Canadian Pacific Railway Company's Charter, section 20, the limit of reduction of tolls by Parliament, fixed by section 17 of the Railway Act of 1879 at 15 per cent on the capital expended, was fixed at 10 per cent, which it was stipulated should be on the net income, and the subsection closes as follows:—

> "And the exercise by the Governor in Council of the power of reducing the tolls of the Company as provided by the tenth subsection of said section seventeen is hereby limited to the same extent with relation to the profit of the company, and to its net revenue, as that to which *the power of Parliament to reduce tolls is limited* by said subsection eleven as hereby amended."

It will be seen that the amendment to the Special Act of the Canadian Pacific Railway Company restricted the power of the Governor in Council, reserved under subsection 10 of section 17 of the Railway Act, 1879, to revise tolls fixed or regulated by by-laws of the company, in the same way as by subsection 11 of the same section the powers of Parliament to reduce tolls was restricted to the ten per cent basis, as in the amending clause is specified.

The power of revision and of reducing tolls by the Governor in Council (within the 10 per cent limitation) reserved by the Railway Act, section 17, subsection 10, being removed, as well as that of Parliament, the railway company was, as to fixing, regulating, and revising its rates, left free from any interference by Parliament or the Governor in Council as to reductions beyond the 10 per cent limitation, without the consent of the company. Parliament, therefore, deprived itself of the power to legislate any reduction of the tolls of the company below the prescribed minimum.

When the Railway Act of 1888 was passed, these provisions and powers in the Special Act appear to be distinctly preserved to the company and excepted from the operation of the general Act by section 6 (see secton 2 (*t*)), and by section 223, which specially excepts the provisions of the Special Act. The qualifying words in section 223 of the 1888 Act, "subject to the provisions and restrictions in this and the Special Act contained," were left out of the corresponding and consolidated section—251—of the new Act of 1903, with effect presently referred to.

It would seem, therefore, that when the Government, in 1897, was negotiating with the railway company the terms of the subsidy contract for the Crowsnest line, and desired to impose upon the company, as one of the conditions of the subsidy agreement, the fixing and reduction of freight rates, it was confronted by the difficulty that, as the law then stood, except "*with the consent of the company,*" Parliament could not without special legislation, compel any reduction of those rates, except subject to the limitations as to the 10 per cent return specified in section 20 of the company's charter, which was part of the Special Act, that is, Parliament had stripped itself of the power to legislate, and the Governor in Council of the power to order, a reduction of rates without the consent of the company, where such reduction would be, or might be, within the limitations it had placed upon its own powers and those of the Governor in Council in that respect. If it had decided to legislate reduction of rates, it could have done so within and subject to that limitation, but the difficulty it then had to meet, in the absence of special legislation overcoming it, was that any such reductions, so effected by legislation, could only be in force so long as they were within the 10 per cent limitation, and the accounts of the company would have

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tc be readily available at all times for the purposes of the periodical, frequent, and searching scrutiny by the Government to determine whether the net return of 10 per cent had or had not been exceeded; and as the revenues of the company and its financial condition were constantly fluctuating, the rates which it was desired permanently to fix, at least as maximum rates, might be ultra vires of Parliament one year and intra vires the next, in force for a time, then inapplicable, dependent upon the showing in the accounts of the company and the result of its profits on its capital expenditure. There could be no stability in such rates, and what the Government evidently had in mind was to fix and stabilize the rates and determine the maxima which those rates should not exceed as one of the several conditions of the Subsidy Agreement.

Evidently, it would appear, the Government of that day decided not to ask Parliament to legislate the control of rates, but to obtain the agreement of the company under the provisions of subsection 11 of section 17 of the Railway Act, 1879, and section 20 of the charter, which required the consent of the company to reductions within the limitation of 10 per cent, and, therefore, sought power from Parliament, in the form of the Act, 60-61 Victory, capital 5, "An Act to authorize a subsidy for a railway through the Crowsnest Pass," by the terms of which Act nothing was legislated for except the power from Parliament to the Governor in Council to grant aid to the railway company by way of subsidy, as stated, and with the following proviso:—

> "Provided that an agreement between the Government and the Company is first entered into in such form as the Governor in Council thinks fit, containing covenants to the following effect", etc.

The whole transaction was incomplete, and was left to be settled and completed by an agreement, the terms of which were generally ("to the following effect") prescribed, between the Government and the company, and I think it is clear that the effect of the legislation was, in so far as it provided for an agreement by the company, to reduce its rates, that Parliament provided for rate reduction being effected by an agreement, or "consent of the company", which, for the reasons I have stated as to the state of the law at the time, it could not effectively enforce by legislation.

The agreement was executed and the tariffs were published under it, the subsidy was paid, and the line was built and put and maintained in operation, all in terms of the contract. When it is urged that the statute just referred to was and is a Special Act "relating to the same subject matter" as the Railway Act, so as to bind the general jurisdiction of this Board, I am a little in doubt as to how such an argument, strongly pressed upon us, can be supported in view of the conditions I have stated.

The statute imposed no duty upon the company with respect to rate reduction or rate fixing, except, as a term of obtaining a subsidy, to *contract* for such reductions. The statute did not bring the rates into existence. The statute became law on June 29, 1897. No rate reduction, no change in rates, was thereby effected, the rates remained as they were, notwithstanding the statute, until not only the agreement dated September 6 following had been executed, but until the covenants in the agreement, in so far as they related to rates, had been performed by the filing of tariffs, effective January 1 following.

If the Subsidy Agreement had never been executed, could it have been argued that because the statute provided for its execution as a term of the subsidy, and that it should contain, *inter alia*, provision and covenants to reduce railway rates, that the statute and not the agreement provided the rates, or that the statute, then, was a Special Act governing rates? And because the rates were contracted for in solemn form, does it have statutory effect, as a Special Act, because in a statute which, in its terms, legislated for something entirely *outside* the Railway Act, then or since in force (viz., the grant by the Government of

a subsidy to a railway company to aid in the construction of another line of railway), and provided that certain conditions should first be the subject of covenant by an agreement subsequently to be executed? The test as to whether the rates were reduced to the scale in contemplation by Special Act "relating to the same subject matter" as the Railway Act, or as to anything in the Railway Act, surely lies in the answer to the question as to whether these rates were the creature of the statute or the result of contractual obligation. There was no declaration in the statute that the terms of the agreement, if and when made, should have the force of a Special Act under the Railway Act. It did not legislate the rates into existence, I think, by reason of its limited powers to do so, and of the uncertainties attendant, at a future time, in their enforcement. The rates, therefore, appear to have their origin in convenant, not in a statute, providing, conditionally, that such a covenant should be made.

When the Railway Act of 1903 was passed, there was inaugurated for the first time a sweeping change with respect to control of Dominion railways in the creation of this Board, endowed as it was with the widest powers possible. In the language of a judgment of the Supreme Court of Canada:—

> "Extraordinary powers, far exceeding any existing in the Railway Acts of any other country, are given to the Railway Board." . . . . "Unless it can be shown that the Board has no jurisdiction or acted contrary to the Railway Act, this court cannot interfere; for the Board can do almost anything in relation to railways, except when prohibited by Parliament."

Grand Trunk and Canadian Pacific Railway Companies v. City of Toronto, 42 S.C.R., p. 613, Girouard, J; 11 Can. Ry. Cas. 38, at pp. 49-50, and on appeal to the Privy Council (1911) A.C. 461, at p. 471, Lord Atkinson says of this jurisdiction:—

> "The Railway Board is constituted by the Railway Act of 1903 (3 Edward 7, chapter 58). By section 26 very extensive powers are given to them as to the orders they may make affecting the rights and obligations of railway companies. For the purpose of exercising their jurisdiction they are a court of record, and have all the powers of a superior court."

By that Act, and within its terms, and subject only to excepted jurisdiction expressed in it, the administration of the Act was committed by Parliament to this Board with the plenary powers set forth in section 23, which may be exercised, it will be noted, as well as regards the general Act, as to Special Acts, etc., etc.

The powers conferred upon the Board as a statutory created body for enforcing and administerting the functions bestowed upon it are unlimited in character, unless, as stated by the Supreme Court, *ibid*, "it can be shown that the Board has no jurisdiction."

The intention to except from the wide jurisdiction thus conferred, any subject otherwise included in it, must show itself in plain terms from that Act itself.

The application of the Act by section 3 is general and comprehensive. It is to be "incorporated and construed as one Act, with the 'Special Act,' subject as herein provided." Section 4 provides that any section of the Act may by any Special Act passed by the Parliament of Canada, be excepted from incorporation therewith, or may be extended, limited, or qualified, and concludes: "It shall be sufficient, for the purposes of this section, to refer to any section of this Act by its number only."

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The Act of 1888, in force at the time the Crowsnest Subsidy Act was passed, did not contain this provision, but section 3 of that Act (1888) provides:—

"3. This Act, subject to any *express provisions* of the Special Act and to the exception hereinafter mentioned, applies to all persons, companies, and railways within the legislative authority of the Parliament of Canada, except Government railways."

This qualification does not appear, significantly, in the corresponding section (3) of the 1903 Act; and the exception as to the Special Act is contained in section 6 of that Act. Section 5 of the Act of 1903 is a combination of sections 5 and 6 of the Act of 1888, with some changes, which may shortly be referred to.

Then if, as was urged upon us at the hearing by counsel for certain of the numerous complainants, the Subsidy Act of 1897 was a "Special Act," and as such limited or qualified the corresponding provision of the general Act, it must be a Special Act contemplated by section 5 of the Act of 1903, which reads as follows:—

"5. If in any Special Act heretofore passed by the Parliament of Canada it is enacted that any provision of the General Railway Act in force at the time of the passing of such Special Act, is excepted from incorporation therewith, or if the application of any such provision is, by such Special Act, extended, limited, or qualified, the corresponding provision of this Act shall be taken to be excepted, extended, limited, or qualified in like manner; and, unless otherwise expressly provided in this Act, where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the Special Act shall be taken to over-ride the provisions of this Act in so far as is necessary to give effect to such Special Act."

In the light of my comment upon the express nature of the Subsidy Act, I do not find in that Act the exceptions provided by section 5, above cited.

"Special Act," by section 2 (*t*) of the 1888 Act, means any Act (*a*) under which the company has authority to construct or operate a railway; and (*b*) which (Special Act) is enacted with special reference to such railway, and includes all such Acts.

The Subsidy Act of 1897 gave the Canadian Pacific Railway Company no authority "to construct or operate a railway." That company already had that authority from Parliament in its Special Acts, and the Subsidy Act provided only financial means to aid, on the terms of an agreement to be executed, construction and operation of such railway. Neither is the latter part of the interpretation section applicable to the Canadian Pacific Railway Company, which had then constructed and was operating certain lines, and desired to treat with the Government for aid to build another one. There was no "*special reference*" to a railway, and in its scope and object, the provisions of the Subsidy Act of 1897, of itself, did not come into conflict with any of the provisions of the Railway Act. Under similar circumstances the same words were held by the Board to mean "construction or operation" of the railway as in the context. G.T.R. and C.P.R. v. City of Toronto, 11 Can. Ry. Cas. at p. 42; 42 S.C.R., p. 613, at p. 686; (1911) A.C. 461.

The Act of 1897 did not validate a contract—it made provision for one to be subsequently executed. If it had validated a contract, it would still, for that reason, not necessarily be a Special Act. See G.T.R. and C.P.R. v. City of Toronto, *ibid*, Davies, J., at pp. 626-627.

The interpretation of the term "Special Act" in the Railway Act of 1888 was carried into the Act of 1903, word for word, with the following addi-

tion; "and where such authority is derived from any letters patent granted under any Act, such letters patent shall be deemed to form part of such Act."

I have referred, in this respect, to both the 1888 and 1903 Railway Acts, the one in force when the 1897 Subsidy Act was passed, and the other creating this Board, in order to show that while the legislation of 1897 was not a "Special Act" within the interpretation of that term in the 1888 Act, there was, in the 1903 Act, no change made in the interpretation of the terms such as would tend to broaden that interpretation and embrace the Act of 1897, and indicate an intention to provide for any such exception or limitation of the full powers of the Board conferred by the Act of 1903 as would favour the construction now pressed upon us.

But the words added in the interpretation of the term "Special Act," in the 1903 Act, section 2 (*w*), may have some significance when, as I have shown, the powers of Parliament as to full control of rates of the Canadian Pacific Railway Company were subject to limitation. That company was incorporated by charter—see section 2 of Canadian Pacific Railway Act of 1881—and the non-extension of the interpretation of the term "Special Act" in the 1903 Act, except to include companies incorporated by charter, might be significant of an intention, in framing the Act of 1903, to leave no doubt as to that company being subject to the full jurisdiction of the Board under section 23 of that Act, *where that full jurisdiction as to rates did not exist in the Government.*

There is some difference of language used in embodying, in section 5 of the Act of 1903, what was contained in sections 5 and 6 of the Act of 1888, the former of which sections is not relevant.

Section 6 of the Act of 1888 reads as follows:—

"6. If in any Special Act it is provided that any provisions of any general Railway Act in force at the time of the passing of the special Act is excepted from incorporation therewith, or if the application of any such provision is extended, limited, or qualified, the corresponding provision of this Act shall be excepted, extended, limited, or qualified in like manner."

This section refers to and includes "any Special Act," while in section 5 of the Act of 1903 the language used is, "any Special Act heretofore passed by Parliament". In the 1888 Act, the word is "provided," while in the 1903 Act it is "enacted," and contains the added prefaced sentence, "and unless otherwise expressly provided in this Act," etc. The first part of section 5, 1903 Act, is not applicable. It could not be contended that the Act of 1897, even though it were a "Special Act," *enacted* that any provisions of the general Railway Act *in force at the time of the passing of such Special Act*, is incorporated therewith. The remainder of that section is to be considered.

If the Act of 1897 *was* a Special Act, did its operation over-ride the provisions of the General Act? It is clear, as a result of the qualifying words prefacing the additional words in section 5 of the 1903 Act, that not every Special Act was to over-ride the provisions of the general Act. "Unless otherwise expressly provided by this Act," are qualifying words, indicating, I think, that the provisions of the general Act in carrying out the broad policy of railway control by this Board should be followed where such provision was "express" as to "*this Act.*"

Now as to tolls and tariffs under the provisions of the Act of 1903, the following sections of that Act may be referred to as indicating that the words "this Act," where they appear therein, are intended to tie down the enactment or provision to the general Act, not leaving it open to a variety of interpretations by Special Acts.

Railway Act, 1903, section 251—toll section. No toll to be charged until a by-law is passed, etc., "*nor shall the company charge, levy, or collect any*

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money for any services as a common carrier except under the provisions of this Act," which would indicate that full and complete control of rates was to be regulated by *this Act,* with a direct prohibition against the company collecting any money for any services as a common carrier, except under the provisions of "*this Act.*" I think this provides complete control by the Railway Commission, then constituted, over tolls—that is "*charges for any services as a common carrier.*" It is a definite legislative injunction, and admits of no exception or qualification.

Section 252, relating to discrimination in tolls, opens with the words, "such tolls," i.e., the tolls charged under a by-law authorizing the preparation and issue of tariffs of such tolls "*approved by the Board under the provisions of this Act.*" It ties the whole of the section with its most important provisions as to equality and prohibition of unjust discrimination, expressly, down to "*this Act,*"—the Act of 1903, without equivocation or exception, and by the word "except" permits of no qualification by a Special Act or otherwise. The authority and power of the newly constituted Board is made supreme and paramount, as is the intent of the Act generally, subject to exceptions, where specifically made, and to review and appeal.

Section 253, by provision in subsection 2, is also tied down to section 252 by the words, "*The Board* may determine whether there *has been unjust discrimination,*" etc., "*within the meaning of this Act,* or whether, in any case, the company has complied with the provisions of *this and the last preceding section,* and may, by regulation, declare," etc., "what shall constitute unjust or unreasonable preferences," etc., within the meaning of *this Act,* or what shall constitute compliance or non-compliance "*with the provisions of this and the last preceding section.*"

Section 254 is enacted to confer further power on the Board in dealing with tolls or charges referred to in sections 251 and 252. There again, subsection 3, the words, "The provisions of *this Act,*" by express provision for the important subjects dealt with, exclude the application of any Special Act under section 5.

I do not think it necessary to multiply examples, but I will refer to one more section.

Section 257.—"The Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable, *or contrary to any of the provisions of this Act.*" By sections 251, 252, 253, and 254, the preparation and review of such tariffs for such tolls are made expressly subject to the Board's jurisdiction—by *this* section the Board may disallow such tariffs or parts thereof which are prepared," contrary to "*any* of the provisions of *this* Act."

In the face of this new legislation, passed to stabilize a disordered condition of railway rates, and which provided, after careful enquiry and report upon traffic and rate conditions by eminently qualified experts, for the establishment and constitution of an independent tribunal for the administration of the new Railway Act framed and designed, *inter alia,* to control railway rates on a basis of equality and fairness, and aimed at the evils of unjust discrimination, undue preference, and kindred evils which constituted the mischief legislated to correct; and in providing in that tribunal and through its experts, at great expense to the people of this country, broad remedial jurisdiction and appropriate means of readily adjusting all grievances as they arise; and of dealing with all conditions of traffic according to changed and changing conditions from time to time, with a view to equalizing, stabilizing, rate conditions upon the principles of fairness, reasonableness, and adequate return applicable to rates of all railways, with favours to none—can there be found, in this legislation, any trace of an intent to reserve from the jurisdiction, so broadly conferred upon the Board, special rates with one railway company made six years before, and to fix those rates for all time, upon this country, compelling other railways, not

parties to the contract creating them, and whose lines, now affected, were not then built, to suffer losses and bring about a rate convulsion and a condition or rate chaos such as the Board now has presented to it, and which centres round the contention that such reservation of contract rates was made by Parliament in passing the 1903 Act? Such an intention would not only be wholly inconsistent with the true intent, spirit, and meaning of that general legislation, which, I think, in its terms and scope, permits of no such qualifications or limitation, but would be repugnant to the very clear intention of Parliament in providing for an altogether new method of broad control of all such difficulties which constantly arise from time to time, as rates vary with changing conditions. I cannot accept any such conclusion. It is, I think, rejected by the legislation itself. The language of Lord Atkinson, in delivering the judgment of the Judicial Committee of the Privy Council in C.P.R. v. Toronto Corporation and G.T.R. Co. (1911) A.C. 461, at p. 479 (a case not before the Board in the Fifteen Per Cent Case, but the facts of which are similar to those now before us), I think, supports such a conclusion. He says:—

> "But though the Act empowers the companies to construct their works and operate their railways in the way proposed, it does not enact that the works it authorized shall, if made, never be altered, no matter how surrounding circumstances may change. To give to it such a construction would result in paralyzing both the committee and the Board and in defeating entirely the object of this remedial statute the Railway Act of 1906."

See also Winnipeg v. Winnipeg Electric Ry. Co., 31 Man. L.R., p. 131, at pp. 152 *et seq.* Judgment of Dennistoun, J. A., at pp. 165 *et seq.*

C.P.R. v. City of Toronto and Grand Trunk Ry. Co. (1911), A.C., at p. 479: "Now section 3 enacts that where the provisions of the Act of 1906 and of any special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the Special Act so far as is necessary to give effect to it are to be taken to over-ride the provisions of the Act of 1906. If the subject-matter of the Special Act and that of section 238 of the Act of 1906, as amended, were the same, then there would undoubtedly be a conflict between the two enactments; but they are not the same; the specified works, the power to construct and use them, form the subject-matter of this Special Act. The subject-matter of section 238 is the control of the Board over the railway companies, and the power conferred upon it to require the companies to construct such works as it may deem necessary for the protection and convenience of the public. These are wholly different matters. The two statutes can stand together. Effect can be given to each. There is no conflict between their provisions, such as is contemplated by section 3. Section 3 consequently does not restrict in any way the power of the Board."

In his reasons for judgment in City of Lethbridge v. Western Canada Power Co. (1924), D.L.R., Vol. 3, p. 648, Anglin, J., at p. 1060, says:—

> "The avowed intention of the legislature was that the Board should exercise general supervision over all public utilities;"

and at p. 1061:—

> "Out of respect to the legislature and to carry into effect the spirit, if not the letter, of its policy, as expressed in the Public Utilities Act, the courts, although they may not have been denuded of jurisdiction to entertain such an action as that now before us, should, I think, decline to exercise that jurisdiction, if they possess it, and should relegate the parties to the Board which the legislature has constituted to deal with such cases and has clothed with powers adequate to enable it to do full and complete justice in the premises."

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On the further argument before the Alberta Supreme Court (1924) 3 D.L.R., at p. 651, Hyndman, J. A., in his judgment, says:—

"It would appear to me, and also as I understood him, counsel for the company admitted that, regardless of agreement, so long as the utility exists, the Board's right and power to regulate all its operations and services to the public are supreme."

Clarke, J. A., at p. 654:—

"My conclusion is that the Board had jurisdiction to consider the matters of supply and rates, etc., and to give such effect to them as they thought proper. If it should appear that the giving of a full supply to the city would have the effect of depriving the other municipalities of the supply they are entitled to under their agreements, then surely the Board would have some discretion in refusing the unconditional order asked for by the city, and I think that if the result of the order made by the Board is to compel the company, in order to fulfil its agreements with the different municipalities, to incur abnormal expenditures of capital not contemplated when the agreements were entered into, under the wide powers given by the Act—*the Board had power to fix a rate appropriate to the changed conditions.*"

Then the effect of the Crowsnest Subsidy Act, if it be a Special Act, and if its provisions are in any way a block to, or a limitation of, the otherwise free and unfettered jurisdiction of the Board, upon railways not a party to nor interested in the treaty that it represented, must be considered. The agreement represented by it, and which, it is contended, makes the Act, in strange combination with an agreement not then *in esse*, but merely the creature of a condition, a Special Act, may be good *inter partes*, but what construction is to be placed upon it when considered from the point of view of its effect upon those third parties whose interests are undoubtedly prejudicially affected by its terms? Take, as one outstanding instance presented, the position of the Canadian National System, whose rates and revenues suffer in respect of the commodity list in the agreement, more or less over its entire and vast network of railways from Halifax to Vancouver. It is not only entitled to fair and reasonable rates, but has been awarded them, but cannot charge them by reason of the existence of an agreement to which it and its predecessors were strangers. The judgment in the Fifteen Per Cent Case (22 Can. Ry. Cas. 63) declares (*a*) that the Canadian Northern Railway, one of its acquired railways, are entitled to, but cannot obtain, fair, reasonable, and adequate rates for the traffic carried of the classes in the Crowsnest agreements, and because of it. It is further held in that case that no rate is fair and reasonable which is unremunerative (Fifteen Per Cent Increase Case, p. 60). In the Forty Per Cent Increase Case (26 Can. Ry. Cas.), this Board held that Canadian National rates were not fair and reasonable, being inadequate; and applied the increase to them. But that remedy is a myth and a phantasy if, when awarded those fair and reasonable rates by this Board, the railway entitled to them cannot obtain them or charge them as regards traffic in competitive territory where it is held down to the low competitive rate in territory, and on commodities, to which the Crowsnest Agreement applies. The Canadian National Railways, and every other railway not a party to the Crowsnest Agreement (were it binding on this Board), are entitled to demand from this Board that fair and reasonable scale of rates. They were awarded them, and are entitled to charge them, all to no purpose, because of the effect of this agreement forcing them to meet the competitive agreement rates of the Canadian Pacific. To persist in a contention that such rates should be applied to, e.g., the Canadian National Railways, is to claim a preference. If the

Board is bound by the Canadian Pacific Railway contract of 1897, and, while being so bound, the Canadian National Railways could obtain for their railway services upon the listed commodities, the rates adequate, fair, and reasonable for such service, to which this Board has found them entitled, the remedy would not be difficult, but that is one of the many anomalies presented to us in these complaints.

Then, no remedy being possible by that method, the Board's jurisdiction and powers of adjustment—if the contentions of complainants were sound—being paralyzed, what construction must be placed upon a contract, or a statute, if it be such, which, for the sake of argument merely, we may admit is good *inter partes* as regards the third parties?

In *ex parte* Corbett, 14 Ch. Div. 122, at p. 29, Jessel, M.R., says:—

"I think also that there is a general rule of construction of statutes, which is applicable to this matter, namely, that unless you are obliged to do so, you must not suppose that the legislature intended to do a palpable injustice."

In East and West India Dock Co. v. Hill, 22 Ch. Div., at p. 23, Lord Selborne, in delivering the judgment which was concurred in by Jessel, M.R., and Cotton, L.J., said:—

"I have said that there is in this case undoubted difficulty, but on principle it is certainly desirable in construing the statutes, if it be possible, to avoid extending it to collateral effects and consequences beyond the scope of the general object and policy of the statute itself, and injurious to third parties with whose interests the statute need not, and does not, profess to directly deal. It seems quite manifest that the effect of the statute, if it were construed according to the appellant's argument, would be to do a great deal more harm to third parties than it could do to *anyone else*."

And on appeal to the House of Lords, reported in 9 A.C. 453, Earl Cairns says, at p. 454:—

"It is said that the 23rd section of the Act produces this result, and I admit freely that the section seems to me capable of that construction. No doubt if we read it literally it does seem to provide that when any property of the bankrupt acquired by the Trustee under this Act consists of land of any tenure burdened with onerous covenants, the Trustee may by writing under his hand disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same is a lease, be deemed to have been surrendered."

And again he continues:—

"It is possible that they may mean that, to all intents and purposes, as between all persons, persons actually concerned in the bankruptcy, and those not so concerned, it shall be a surrendered lease, and shall be altogether out of the case. But on the other hand is that the only interpretation? . . . ."

And further on:—

"Where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep within the purpose for which the Statute was passed it is the bounden duty of the court to adopt the second and not to adopt the first of those constructions."

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This case was cited with approval in Railton v. Wood, 15 A.C. 263, where, after quoting the above dictum of Earl Cairns, Lord Field says:—

"Of the two possible constructions, therefore, their Lordships prefer that which does not extend the operation of the Statute to collateral effects and consequences beyond its general objects and policy."

Kingston v. Cataraqui Electric Ry. Co., 25 A.R., at p. 468.

Plumstead Board of Works v. Spackman, 12 Q.B.D., p. 878—Brett, L.J., at p. 887.

Queen v. Clarence, 2 Q.B.D. 65.

What remedy would be applicable? This Board is not a court of equity, nor a judicial body; it can only act and adjudicate within its jurisdiction. It is not concerned with adjusting the rights of parties arising *ex contractu*, but it is concerned with the due and unfettered execution of its functions under the Railway Act; and if the obligations of a contract, even though solemnized as alleged interfere, I think it should, and must, assert a remedy, as it did in Crowsnest Coal Co. v. Canadian Pacific Ry. Co., 8 Can. Ry. Cas., p. 33, and in Lyons Fuel & Supply Co., Judgment of the Board, 1919, p. 1.

If such an adjustment is not made, the losses to the Canadian National Railway System through these inadequate rates must be made up elsewhere, or fall as a further tax upon the public to make up the deficit that may be involved, so that as that system is owned by the people of Canada, the anomaly would be accentuated by the Government being called upon to exact from the public the difference between the compelled competitive rate forced upon its railway system, as a result of a contract made with another railway company, and the fair and adequate rate awarded by this Board.

It would surely be a fair adjustment, in the circumstances, for this Board to make such a disposition as would ensure not only to this railway, but to all others entitled to them, fair and reasonable rates, and leave remedies for settlement *ex contractu*.

Western Counties Ry. Co. v. Windsor & Annapolis Ry. Co., 7 A.C., p. 178, at pp. 190 and 191.

I do not think that the agreement, with its preceding statute, has the force of a statute. If the statute directly confirmed it and declared it binding, it would, I think, remain a contract, for the reasons I have stated and supported by the authorities I have cited.

The cases of Ottawa Electric Co. v. Township of Nepean, 60 S.C.R. 216; and Robertson v. G.T.R., 6 Can. Ry. Cas. 494, 7 Can. Ry. Cas. 267, are, I think, clearly distinguishable.

For the relief of third parties from the hardship of a contract to which it is not a party, and to arrive at an adjustment of the present conditions and restore order out of chaos, I think that this Board can but do its duty as administrator of the Railway Act, and if, in so doing, rights are not nicely adjusted, there is a remedy elsewhere. This Board is concerned with the contract, and the rates under it only, as it and they disturb and block the efforts of the Board to adjust and maintain the poise and equal relation of rates under the Railway Act. In the circumstances with which we are confronted, I think the Board's duty is to assert its full jurisdiction and powers to do so, and in its discretion, and while scrutinizing the contract rates as to their relative fairness and adequacy, to maintain its decision as to what rates tend to equality, fairness, and reasonableness, and disallow rates it finds are not so.

Montreal Park and Island Ry. Co. v. City of Montreal, 43 S.C.R., p. 256.

Canadian Pacific Ry. Co. *et al* v. Regina Board of Trade, 45 S.C.R., p. 321.

The disparities and inequalities resulting from the application and maintenance of Crowsnest rates are set forth, by example, in (*a*) Exhibit five,

showing "example of freight rate disparities which would result from the restoration of the Crowsnest Pass Act," and (*b*) Exhibit five A, "Memorandum submitted by the Canadian National and Canadian Pacific Railway Companies," which may be referred to.

If the Board's powers to remedy situations so disclosed were to be blocked and impeded by rates originating by contract before the Act of 1903, the whole scheme of the Railway Act of 1903 would fail, and the rate structure, the work of the Board for twenty years, would fall to pieces.

Some difficulty is presented by the Act of 1922, chapter 5. If the Act of 1897 is not a Special Act limiting the Board's rate controlling functions, the effect of this amendment upon the two commodities named, viz., grain and flour, is obscure. It is contended that this legislation must be indicative of an intention of Parliament to fasten upon the Board the duty of fixing rates on these two commodities in accordance with the Crowsnest Agreement, and from the words used that would appear to be so, but if the Crowsnest Agreement did not take the form of a Special Act limiting the Board's plenary powers, there is nothing in the Act of 1922 to make it do so.

The Act of 1922 refers not to the Crowsnest Pass Act, but the agreement made pursuant to that Act, so that Parliament, therefore, did not, as late as 1922, regard the 1897 legislation as a Special Act. This is important to observe in determining just what the Act purports to do. By the Act of 1903 this Board was constituted by Parliament as a court of record and well nigh exclusive jurisdiction conferred upon it, as that jurisdiction is affirmed and emphasized in the Act of 1919, section 325, subsection 5, in plain terms. The Board exercised that jurisdiction and established rates under it, and changed these rates from time to time as conditions necessitated.

The general Act admits of no exception to its general terms as regards the full authority of the Board, *inter alia*, "to fix, determine, and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require." By the Act of 1922 these general powers purport to be qualified and limited in a manner which would effect discriminations and preferences in favour of two out of a list of several commodities, the subject of a special agreement which had not the force of a statute and which was not otherwise binding upon the Board.

The Act of 1922, therefore, comes into confiict with the general Act of 1903. The Act of 1922 specially confers a preference by an agreement—made twenty-seven years ago—with one railway company, under conditions of traffic which have materially changed, and to the prejudice and loss of other railways not parties to, or bound by, the 1897 agreement, and thereby causing those inequalities, preferences, unfair and unreasonable and unjust discriminatory rates which the whole tenor, spirit, meaning, and policy of the general Act of 1903, and subsequent general Railway Acts, is aimed at removing, and charges this Board with the duty of removing.

If this Act of 1922 is to govern, the Board cannot exercise its functions, and the mischief aimed at by the general Acts cannot be removed with the disturbance of the whole rates structure, built by the Board under the general law as a result.

In the face of this apparent inconsistency and repugnancy, the Board's course is, I think, clearly to follow and exercise its general jurisdiction under the general Act, and disregard the special legislation inconsistent therewith.

Special interests will not be served at the expense of the sacrifice of the general principles entrusted by the general Act to the Board to conserve and administer in the interests of the public generally, and of railways generally. That course would be at least consistent with the Board's efforts to discharge the duties incumbent upon it to administer the general Act according to its plain

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spirit and meaning. If the Board is wrong in this view, it can be corrected; but, in the exercise of its remedial functions, and in the face of such a crisis which is now presented to it, this course would appear to be the more consistent and more conducive to the adjustment, on a basis of equalization, of the present upheaval of rates.

The adherence of the Board to its general jurisdiction in the face of this inconsistency and repugnancy would seem to be in accord with the proper and usual construction based upon such inconsistencies, especially in remedial statutes.

In Colquhoun v. Brooks, 14 A.C. 493, Lord Herschell says, at p. 506:—

"It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act."

See Board v. Board, 41, D.L.R. 286, at p. 293:—

"The law will never make an interpretation to advance a private and to destroy the public (right), but always to advance the public and to prevent every private, which is odious in law in such cases." 6 Coke, p. 139, Part XI, 73 b.

See, also, Atcheson v. Everett (1776), Cowp. 382, at p. 391, Lord Mansfield, C. J.:—

"The General Act being a remedial statute, in advancement of the remedy, should be done in a way consistent with any construction of it."

Johnes v. Johnes (1814), 3 Dow. App. Cas. 1, at p. 15, Lord Eldon, L.C.

Dean and Chapter of York v. Middleburg (1828), 2 Y. and J., at p. 215, Alexander, C. B.

Nicholson v. Fields (1862), 31, L.J., Ex. 233, at p. 235, Pollock, C. B.

Giovanni Dapueto v. James Wyllie & Co. (1874), L. R., 5 P.C. 482, at p. 492; 43 L.J., Ad. 20, at pp. 23, 24, Sir Montague E. Smith, delivering the judgment of the Judicial Committee.

The Queen v. Skeen (1859), 28 L.J.M.C. 91, at p. 94, Lord Campbell, C. J.:—

"If the apparent logical construction of its language leads to results which it is imposible to believe that those who framed or those who passed the statute contemplated, and from which one's own judgment recoils, there is, in my opinion, good reason for believing that the construction which leads to such results cannot be the true construction of the statute."

The Queen v. Clarence (1888), 22 Q.B.D. 23, at p. 65; 58 L.J.M.C. 10, at p. 32, Lord Coleridge, C. J.:—

"You are not so to construe the Act of Parliament (Merchant Shipping Act, 1873, 36 and 37 Victoria, chapter 85) as to reduce it to rank absurdity. You are not to attribute to general language used by the legislature in this case, any more than any other case, a meaning that would not only carry out its object, but produce consequences which to the ordinary intelligence are absurd. You must give it such a meaning as will carry out its objects."

The Duke of Buccleuch (1889), 15 P.D. 86, at p. 96, Lindley, L. J.

Beal on Statute Interpretation, pp. 152, 153, and 197-198.

Hill v. East and West India Dock Co., L.R., 9 A.C., at p. 456.

Plumstead Board of Works v. Spackman (1884), 13 Q.B.D. 878, at p. 887.

I would find as facts upon the evidence:—

1. That the Canadian Pacific Railway rates, as contracted for by the agreement of 1897, while then fair and reasonable under then traffic conditions, are not adequate to present conditions of traffic, and do not furnish an adequate return for the service concerned, and are not fair and reasonable, representing as they do but 35 per cent to 60 per cent of rates found adequate under present traffic conditions. (See Exhibits 73, 74, 75, and 76.)

2. That the continuance of any of the contract rates compels unjust and unfair reductions by other railways, not parties to the contract, in competitive territory, and causes unjustifiable loss to those companies, which they ought not to be called upon to bear.

3. That the rates in force July 6, 1924 (except the rates made effective by the Act of 1922), were just and reasonable rates as to all companies, were equitable, uniform, and undiscriminatory in their effect, and had been permitted by the Board after full and exhaustive examination.

4. That rates represented by tariffs in question, effective July 7, 1924, are unequal, unjust, unfair, not uniform, and subversive of stable rate structure, and cause widespread and far-reaching dislocation and disruption of such rate structure, and are not based upon any sound principle applicable to present traffic conditions.

5. That the Canadian National Railways are entitled to the just and reasonable rates found and permitted under the judgments and orders of this Board referred to, but are unable to obtain them by reason of being held down in competitive territory on the commodities mentioned by the terms in the agreement of 1897 relating to such rates, and suffer loss in consequence.

And I am of opinion—

(*a*) That the Crowsnest Pass Subsidy Act was not, and is not, a "Special Act" within the meaning and intent of the Railway Acts of 1888 or 1903, or afterwards, and the jurisdiction and powers of the Board upon it conferred by its constitution (the Act of 1903) and continued in subsequent Acts, are not limited, restricted, qualified, or affected by anything contained in that Subsidy Act or in the agreement of September 6, 1897.

(*b*) That if such Act were a "Special Act," it does not relate to the same subject-matter as the general Act of 1903, and is excluded from operation upon the general Act, with like results.

(*c*) That the provisions of the agreement executed in pursuance of the Act, in so far as the same relate to, or purport to fix, regulate, and control railway rates, ought, under no circumstances or conditions, to be permitted to clash or interfere with, limit, or restrict the right of other railway companies, not parties to it, operating in competitive territory, to the fair and reasonable tolls and rates from time to time determined and permitted upon the commodities and in the territory to which the agreement rates apply, and of which tariff rates so approved such companies have been denied, and, but for which agreement rates, they would have received, and now ought to receive; and

(*d*) That this Board has jurisdiction, under the Railway Act, over the tolls and tariffs of all railway companies within its jurisdiction, and, in the exercise of that jurisdiction and of its remedial functions, and for the purpose of adjusting the present disparities and dislocation of rates, may, and should, make such adjustments with respect thereto as will restore equalization and stabilization of railway rates throughout Canada, and in doing so, and while paying due regard to the effect of all such agreements as that now in question, as traffic circumstances, is in no way conclusively bound by them.

(*e*) That all decisions, judgments, or orders of the Board in any way inconsistent with this opinion be varied and amended so as to conform to it.

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I think that the basic remedy to be immediately applied to the present conditions, caused by the filing of the tariffs in question, is to cancel them and restore the rates under tariffs in force on July 6, 1924, permitted by the Board. If any inequalities, discriminations that are unjust, or preferences that are undue remain after restoration of such tariffs, application may be made to the Board for their adjustment.

The four tariffs in question, and cited herein, should be disallowed and withdrawn from operation within fifteen days, and the tariffs in force on the sixth day of July last should, within that time, be restored and made effective.

Order should go accordingly.

OTTAWA, October 14, 1924.

THE CHIEF COMMISSIONER:

This matter was set down for hearing following receipt of complaints from the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Prince Edward Island, as well as from cities in different parts of Canada as far separated as Vancouver, B.C., and St. John, N.B. Such complaints were augmented in volume by specific instances of discrimination laid before the Board by Chambers of Commerce and Boards of Trade of over a score of cities, by numerous business associations including the Kelowna Growers' Exchange, the United Farmers of British Columbia and of Manitoba, the Canadian Manufacturers' Association, the National Dairy Council and many other organizations as well as by individual companies from the east and west, all of which united to complain that the Crowsnest Pass Agreement and the rates established thereunder have resulted in discrimination against individual firms, against localities and against manufactured and natural products, culminating in an unsettled business condition throughout Canada which some of those appearing before the Board have pronounced to be chaotic, and others have described as absolutely destructive of trade. Some of the localities represented were described as being intensely indignant because of such discrimination, and determined at all hazards that such conditions should be put an end to. Some complainants have founded their grievances upon the recent re-establishment of the rates called for by the agreement, others are protesting against any attempt to remove the preferences so created.

There are complaints from cities and towns which have come into existence since the Crowsnest Pass Agreement was made, and to which, by a narrow construction of the document, the rates provided for in the agreement are held not to apply. Other complaints have arisen by reason of certain railway lines constructed since such agreement, and by the same narrow construction freight carried along these lines is excluded from the benefit of the reduction provided for, and consequently the localities served by such later extensions are not favoured by the rates set out in the agreement, thus causing discrimination against them. Further complaints are concerned with a disparity in freight rates on fruit moving east as compared with that moving west, others with a disproportion in grain rates charged in western Canada in comparison with the eastern rate, with arbitrary classification of freight, with increaseed carload weights, and with many other circumstances specifically enumerated in the various resolutions, petitions and representations placed before the Board. There are also complaints concerning which it may be said the Crowsnest Pass matter has little to do, but with very few exceptions the whole trouble centres around that agreement.

The diversity of views held and expressed before the Board by interested parties has demonstrated beyond doubt that under present conditions there is no common ground which all can occupy in harmony. The existence and continuance of the agreement, and of the preferences thereunder given make it impossible to reconcile such sharply conflicting interests, or to present any solution of the problem which is not fraught with what is regarded as an unjust discrimination and unfairness to one body of complainants or to the other.

The immediate and pressing necessity of a speedy determination of the unsettled problems connected with this inquiry, has moved the Board to hasten its decision, as far as regards the principle which it thinks should apply to the solution of the difficulties involved. It is apparent that if the reductions called for by the Crowsnest Pass Agreement must be forever maintained, full effect must be given to them, and consideration must be had of other problems, which in that event necessarily arises, but which otherwise do not exist. As for instance, the above noted complaints as to the status under the agreement, of towns and cities which have come into existence since the making of such agreement, and the liability on the part of the lines of railway since constructed to carry the commodities named at the reduced rates. These are two important features of the problem which will have to be faced, in case the proper construction of the agreement be that the Crowsnest Pass reduction must persist. If however it should be determined otherwise, the dual problem above indicated sinks out of sight and in this respect, as well as in many others, a decision as to the jurisdiction of this Board over the rates called for by the agreement referred to, lies at the very threshold of the problems which have been presented for, solution.

There are other and manifold subjects remaining for consideration after the settlement of the main question and as before indicated, these are not altogether disposed of by a decision concerning the Crowsnest Pass Agreement. In that regard mention may be made of the matter of grain rates westward, as between grain destined for export and that intended for domestic consumption. And in the east, the question of sugar rates from the refineries in New Brunswick and Nova Scotia remains for adjustment undetermined by the present decision of the Board upon the legal question embodied in the construction of the agreement. These two outstanding subjects of inquiry, and others of equal importance to different localities are not lost sight of by this decision and they will be disposed of by the Board in the light of its determination regarding the Crowsnest Pass Agreement, so far as the same are affected thereby. If parties or localities interested in such other matters consider that in the light of the present finding of the Board regarding the agreement, a proper decision of any such other question requires a rehearing therein, it is open to them to make application to that end. Otherwise, the Board will proceed with all possible despatch to take up these consecutive problems, and deal with them in the light of the evidence and argument already presented in each individual case. It is obvious that because of the very numerous complaints now before the Board, some little time must be consumed in giving full and complete consideration to the circumstances connected with each case, and it is because of the period of time which must necessarily elapse before all these separate matters can be finally determined, that in the opinion of the Board, it is not only desirable but it is imperative in the public interest that its view upon the main question should at once be made public, as a first step toward the adjustment of business relations upon conditions made stable by the decision of this Board. It is hardly necessary to allude to the fact that whatever rates are effective upon the railway line immediately concerned in the agreement, must be met at competitive points by other railways serving the same territory, whereby the scope and incidence of the agreement are materially extended, making it all the more necessary that in the interests of all, a speedy determination of the main issue be arrived at.

I have had the pleasure of reading over the judgment prepared and written by Mr. Commissioner Boyce dealing with the legal aspect of this case, and I unreservedly adopt the conclusion at which he has arrived concerning the

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jurisdiction of the Board over the freight rates under the Crowsnest Pass Agreement. I can arrive at no other conclusion as to the Board's jurisdiction than that which has been expressed by him. It is doubtless true that those interested in the maintenance of the rates established under the Crowsnest Pass Agreement have been able to point to previous dicta—and perhaps to one decision of the Board—expressing a conclusion different from that which is announced to-day. With regard to all the cases referred to, except that known as the Increase in Rate case, 22 C.R.C. 49, such remarks were clearly obiter and being such, cannot by any principle of construction, be held to bind the Board.

Referring the case last mentioned which was decided over six years ago and which is said to be still under appeal to the Supreme Court of Canada, responsible counsel have urged that the question involved here was not then argued before the Board, that it was not necessary for a decision of that case, that a pronouncement upon the subject by the Board was unexpected, and following such announcement appeal was immediately taken, which appeal, while still alive, has not been proceeded with because the rates provided in the agreement were suspended by statute. Notwithstanding this explanation, if this were an ordinary case, one in which the rights of private parties only were concerned it would, I think, be obviously the correct practice to await with deference the determination of the question at the hands of the Appeal Court before announcing decision herein, especially when such pronouncement is at variance with the views previously expressed, even under the circumstances above alluded to. But in my opinion, the importance of this matter both to the business interests of the country and to the common carriers, is of such an overwhelming nature, and the necessity for stablizing freight and business conditions is so imperative, that I think the duty owed by this Board to the public should over-ride the finer questions of legal etiquette which might be involved, if indeed any such questions can be said to exist.

The further view has been urged upon us that from time to time enactments have been made by the Dominion Parliament in which the Crowsnest Pass Agreement has been referred to and recognized—notably subsection 5 of section 325 of the Railway Act of 1919, and chapter 41 of the Acts of 1922, in which latter statute it is provided that "rates on grain and flour shall, on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897." That is to say, by the Crownsnest Pass Agreement. No doubt that is all true. The fact that the agreement was entered into is readily conceded: It was never denied. But the real issue before us is—Has this Board power to say to the Canadian Pacific Railway Company—Although in the year 1897 you bound yourself to the maintenance of certain freight rates, nevertheless, this Board as the rate making authority now releases you from such obligation.

I cannot view the agreement in the light of forever disabling the parties thereto from reconsidering their situation and from making the necessary adjustment that business conditions now so insistently demand. The contract is between Her Majesty the Queen on the one hand, and the Canadian Pacific Railway Company on the other. All that need be said of it for the purpose of this argument is that it consists of an agreement on the part of the Crown to pay a certain specified sum of money as a subsidy to the railway company in assisting it to build the Crowsnest Pass Railway, and in consideration of the receipt of that money, the Canadian Pacific Railway Company promised to build and operate the line and to allow certain reductions in freight rates to be charged upon specific commodities.

I am at a loss to discover upon what ground it can be said that such an agreement carries with it the necessary consequence that the parties who entered into it could never readjust their relations under the contract. The argument

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in support of that contention involves the supposition that under the statute and the agreement, the public immediately affected by such reduction obtained a vested interest in the continuance of these reduced rates. No such provision is contained in the agreement itself, and I can see nothing to indicate that any such intention was present in the mind of either party to the contract when it was entered into. The Crown was acting in the public interest in this, as well as in all contracts, and I can find nothing in the agreement, or in anything which surrounds it, to lead to the conclusion that the parties thereto were not, and are not, free to amend, rescind, or alter the contract in any way they mutually agree upon.

It therefore follows that the reduction provided for in the Crowsnest Pass Agreement must disappear as a factor in Canadian freight tariffs. Under the conditions now prevailing it is impossible to make a fair and reasonable adjustment of rates and tolls as between one locality and another, and as between the shipper and the railroads on the basis of the continuance of such reductions and the provisions of the Crowsnest Pass Agreement. This decision will remove as between city and city all discrimination based upon the Crowsnest Pass Agreement, and will eliminate whatever discrimination has arisen from an extension of lines of railway to which the benefit of such rates has not been applied by those responsible for the existing tariffs.

Under legislation enacted subsequent to the passage of the Crowsnest Pass Railway Act and the making of the agreement under it, this Board has been vested with full power to fix, determine, and enforce rates then exercisable by the party of the first part to such agreement—subject to appeal, and I think this Board has the necessary jurisdiction and should proceed to consider the subject-matter of all these complaints with a view to removing existing discrimination and giving necessary relief, unhampered by the agreement entered into under the provisions of the Crowsnest Pass Railway Act, and the order made hereunder is, in my opinion, the first step in that direction.

OTTAWA, October 7, 1924.

Deputy Chief Commissioner Nantel and Commissioner Lawrence concurred.

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The various decisions in which the Board has dealt with the rate relations of the Crowsnest Pass Agreement are, in the reasons of the majority, subjected to critical analysis. I have attempted to give due weight to the consideration of the various criticisms and contentions advanced.

Notwithstanding careful consideration, I am constrained to the conclusion that these decisions were neither erroneously nor carelessly rendered so far as the consideration of the limiting effects of the Crowsnest Pass Agreement are concerned; and I am further constrained, although with great deference to the opinion of the Chief Commissioner, to conclude that the provisions of law involved do not warrant the conclusions arrived at by the majority.

It is urged that the decisions of the Board in which the Crowsnest Pass Agreement have been held to have imposed maximum rates which cannot be exceeded or disregarded are based not only on an erroneous conception of the force of the agreement in regard to rates, but also on an erroneous conception of the Board's jurisdiction in regard thereto.

It is contended that the decision of the late Chief Commissioner Killam in *The Coast Cities Case*, which broke the trail regarding the effect of the Crowsnest Pass Agreement, contained remarks regarding the effect of this agreement which were not material to the matter in dispute, and that these remarks, therefore, are to be regarded as *obiter dicta*.

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The criticism of the decision in *In re Increase in Passenger and Freight Tolls, 22 Can. Ry. Cas., 49*, the details of which need not be gone into here, is that the finding as to the limiting effect of the Crowsnest Pass Agreement is not in reality involved in the ratio *decidendi*, it being contended that the matter was not in argument before the Board, and the Board, therefore, did not have the benefit of the information and light obtainable from the argument of counsel representing divergent interests.

In the first place, it seems to me there can be no question but that the matter was presented before the Board at the time of hearing by counsel for the province of Manitoba as a material factor. See in this connection in *In re Increased Passenger and Freight Tolls, 22 Can. Ry. Cas., 49*, at *pp. 55-60*. The then counsel for the Manitoba Government, who appeared in the present hearing as counsel for the Canadian Manufacturers' Association, specifically drew attention in the course of the present hearing to what he had said on the former occasion, as set out in the former record.

But even if weight is to be given to the contention urged by way of criticism, this does not appear to me as being final. I think regard must be given to the discretion possessed by the Board under the Railway Act, a discretion which, in my opinion, differentiates in some degree at least the Board from other courts in connection with the matter of decisions.

I appreciate the advantage of regular procedure along the beaten pathway of the law. In my opinion, whatever may be the view at times popularly expressed, it was not the intention of Parliament in providing for the Board of Railway Commissioners for Canada to create a jurisdiction similar to that of an Eastern Cadi, rendering justice, as he saw it at the moment, independent of record and of law. While the Act gives the Board discretion, it of necessity has to be a discretion based on reason and not on whim; and so, if in its procedure in connection with the hearing and consideration of evidence, it differs in some degree from other courts, there must be good reason for such difference.

The Board, within the limits of the Railway Act, is given a wide discretion in regard to the ways by means of which it may approach the findings set out in its decisions; and it appears to me that, on this account, the methods of construction and criticism which are open to consider in connection with the decisions of other courts are not necessarily applicable in the same degree in the case of decisions rendered by the Board. The Board may institute a proceeding of its own motion. It may render a decision without a hearing. It has been said in *In re Telegraph Tolls, 20 Can. Ry. Cas., 1, at pp. 10 and 11*:—

> "The scope of the jurisdiction conferred upon the Board differs in various respects from that exercised in ordinary judicial procedure. In a proceeding before a court, there is normally a satisfactory assurance that when the hearing is concluded all the material evidence has been presented and judgment thereafter issues on such evidence. The Board while made a court of record by the Railway Act is given peculiar functions which by placing an especial reliance upon the discretion of the Board demands especial care that the discretion should be carefully used. The Board has dual, and to some extent anomalous functions of investigating matters of its own motion and of deciding matters, whether originated of its own motion or on complaint. Subject to exceptions, which might be pointed out as in the case of a continuing offence, it may be said that in general, a court is concerned with adjudication on a past and closed state of facts. In the case of a regulative tribunal exercising supervision over rates, the question confronting it is—reasoning from the past—what continuing rate or scale of rates should be prescribed for the future? The scope of the Board's activity is not punitive or prohibitory in respect of past transactions, but corrective and amendatory in respect

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> of future transactions. The Board deals with a future rate in the light of what has been established as to the past rate. But in so dealing it makes researches of its own, and supplementary to what has been presented in evidence and all this constitutes the record on which it makes a decision. Where the question of what is a reasonable rate for the future is before it, it has to consider not only what may be established on the basis of past transactions, but also to endeavour to form an opinion as to what will be a reasonable rate for the future under conditions which cannot be exactly measured in terms of what is set out in evidence and which must of necessity be estimated. The imposing of the burden of so wide a discretion as is thus placed upon the Board by the Railway Act of necessity creates an equally wide obligation to see that the discretion is wisely used."

When, then, the Board subjected to analysis and considered the matter of alleged limitation of rates exercised by the Crowsnest Pass Agreement, which was placed before the Board—even if only in an outline way—by counsel for the province of Mantoba, the Board was not acting beyond the scope of its powers. I am, therefore, unable to accept the conclusion that the Board in so finding was using words which were superfluous as not being material to the *ratio decidendi*.

Even if it is held that the decisions which have been rendered by the Board dealing with the Crowsnest Pass Agreement and its effects can be distinguished and held to be inoperative as limiting the Board's powers, reference must still be made to specific legislation enacted by Parliament. The legislation in question is contained in *subsection 5 of section 325 of the Railway Act and in 12-13 George V, chapter 41*.

As already pointed out, it was held in *In re Increased Passenger and Freight Tolls*, that the Crowsnest Pass rates in regard to the commodities concerned operated as maxima, which the Board could not exceed.

Following the position therein laid down, the Board held there was a difference as to the powers it could exercise in a case where an agreement or franchise was not validated by or incorporated in Dominion legislation as compared with the case where it was so incorporated or validated. In the application of the *Montreal and Southern Counties Ry. Co., 23 Can. Ry. Cas., 106*, the municipalities of the town of St. Lambert, Greenfield Park, and Longueuil pled that there were existing franchise arrangements as to rates under which the railway operated and which the Board could not exceed. The Board held that agreements between the municipalities and the railway did not oust the jurisdiction of the Dominion Parliament and the Railway Board in their administration of the Railway Act, and stated,—

> "It may be noted that the agreements in question have not been validated by legislation and have not been submitted to or approved by the Board."

An appeal was made by the town of St. Lambert to the Governor in Council asking for the recission of order of the Board No. 27456, which implemented the judgment already referred to. The prayer of the petitioner was not granted.

In the application of the *Hamilton Radial Electric Ry. Co.*, decision in which was rendered July 12, 1918, *23 Can. Ry. Cas., 114*, the Board found that under the Dominion legislation the municipal agreements and by-laws under which the railway operated were to remain in full force between the municipality and the railway as continued and incorporated by the Act. Following the decision in *In re Increase in Passenger and Freight Tolls, 22 Can. Ry. Cas., 49, at pp. 57-60*, it was held by the Chief Commissioner that the limitations created by the municipal franchise by-laws, incorporated in effect as they were into the railway's legislation, acted as a limitation to the exercise of the Board's power.

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Subsequent to the decisions following the above principle as laid down in *In re Increase in Passenger and Freight Tolls*, came the amendment as set out in subsection 5 of section 325 of the Railway Act, 1919.

Counsel for the Canadian Railway Association took the position that subsection 5 was enacted at a time when the decision in *In re Increase in Passenger and Freight Tolls* was in litigation, and that the legislation was intended to clarify a situation which was uncertain from the standpoint of jurisdiction.

I have considered this suggestion, but do not find it conclusive. As the matter presents itself to me, it was recognized that after the termination of the period during which the War Measures Act would be operative, there might and probably would be a period during which high operating costs would continue, and which could not adequately be dealt with if statutory or assumed statutory maxima were still operative. It is a matter of knowledge that it was at first proposed that the legislation in question should run on for five years. This term, however, was not adopted. As I read the legislation, it was intended and hoped that the time limited would tide over a transition period.

The words of the subsection are very general and do not mention the Crowsnest Pass Agreement, nor, in fact, do they mention any other agreement. The judgments above referred to show that the limiting effects of rate agreements embodied in franchises validated by or incorporated in Dominion legislation were recognized; but the limited number of such cases cannot be taken as a real measure of the reason for the enacting of the legislation, notwithstanding the fact that the legislation during its life would enable those operating the railways in question to make application for relief, which the terms of their franchises would not otherwise permit.

I consider that the real reason for the enactment of the legislation was the Crowsnest Pass Agreement.

Turning now to the analysis of subsection 5 of section 325, if the Board had, *ab initio*, power to deal with reasonable rates unlimited " or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special, and relating only to any specific railway or railways," and if the Board had, *ab initio*, power to deal with matters of discrimination or preference, regardless of allegations that such discrimination or preference was justified or required by " any agreement made or entered into by the company," what was the necessity of the legislation?

It may be said that if it is held that the Crowsnest Pass Agreement is not a Special Act, so far as rate limitation is concerned, then the provisions of the first portion of the subsection I have quoted are not material as bearing on the intention of Parliament in regard to the Crowsnest Agreement. I cannot, however, escape the opinion that the citation I have made showing the intention that during the time limited by the Act the Board should not be limited by the provisions of the general or Special Act was intended to refer to the Crowsnest Pass Agreement. I can hardly conceive a situation wherein the difficulties arising out of franchise agreements affecting some smaller electric railways would be made the reason for this amendment to the Railway Act. Whether Parliament was right or wrong in regard to considering that the Crowsnest Pass Agreement had the status of a Special Act, it is not for me to say; but I cannot escape the conclusion that it did regard it as having the status of a Special Act.

But, continuing further, if it is admitted that there was no Special Act involved, so far as the Crowsnest Pass Agreement is concerned, and, therefore, the portion of the legislation I have referred to was not material as in any way indicating or defining the power of the Board in respect to the situation, the situation is different when it comes to the discrimination provisions of the subsection. There, as has been pointed out, no " discrimination or preference can be justified or required by any agreement made or entered into." The Crowsnest Pass arrangement was an agreement. If the Board had power under the

discrimination sections to disregard the limiting powers of such an agreement, what was the necessity for such legislation? It seems to me that the enactment of this legislation is, in substance, a statement by Parliament that in regard to the subject-matter dealt with in the subsection the Board had not—in the absence of this specific enactment—regulative powers. If this construction is justifiable, then it is unnecessary to elaborate the position which exists at the end of the three-year period when the legislation is no longer operative.

In 1922, subsection 5 of section 325 was amended by chapter 41, 12-13 George V. I appreciate it is not open, under rules of legal construction, to refer to Hansard as explaining or construing this legislation. But there is, however, high authority to the effect that the Report of a Special Committee, on whose report legislation was introduced, may be looked to in construing the statute. In a decision of the House of Lords in *Eastman Photographic Company, Ltd., appellants, and the Comptroller-General of Patents, Designs and Trademarks, A.D. 1898, 571, the Earl of Halsbury, L. C., held at pp. 573 to 575:—*

> " Before dealing with the decision itself, I think it desirable, from what occurred in the course of the argument, to say something as to what sources of construction we are entitled to appeal to in order to construe a statute. Among the things which has passed into canons of construction recorded in *Haydon's Case* (2), we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason for the remedy.
>
> " My Lords, I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission."

The final report of the Special Committee of 1922, appointed to consider railway transportation costs, recites that it was " charged with the duty of inquiring into the question of transportation costs with particular regard to the effect of the rates established by the Crowsnest Pass Agreement on Canadian National and other railways, and upon agricultural development and Canadian industries generally." Later the report says:—

> " Whether the Crowsnest Pass Agreement should come into effect on July 6 next, or whether it should be further suspended to enable the Board of Railway Commissioners to regulate freight rates for a fixed period, regardless of rate-controlling agreements, upon a consideration of all the abnormal economic conditions still prevailing and upon other considerations, was the important matter referred to your committee."

Then followed the recommendations which are incorporated in the amending legislation of 1922.

In analysing the provisions of chapter 41, the reasons for judgment of the majority take the position that while the wording of the legislation is somewhat obscure, it cannot have been intended to oust the general jurisdiction of the Board in regard to rates.

The Act provides, in general, that subsection 5 of section 325 of the Railway Act of 1919 is to remain in force until July 6, 1923, subject to its being continued in force for a further period of one year by Order in Council, but subject to the proviso that "notwithstanding anything herein or in said subsection 5 contained, rates on grain and flour shall on and from the sixth day of July, 1922, be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897."

The legislation which was permitted to be continued until 1923, subject to the continuance of a further period of one year by Order in Council, is concerned

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with the so-called Crowsnest commodities moving westwards. A different treatment in point of time, at least, is given to flour and grain; and it would appear on analysis that the difference is more fundamental than one of time alone.

The Act of 1922 was passed subsequent to the enactment of the general Act which it amends, and with the full knowledge of what is contained therein in regard to the Board's powers.

The legislation of 1922, in substance, states that grain and flour, falling within the scope of the agreement, shall, as to rates be governed by the provisions of the agreement. I submit that the Act of 1922, might, instead of referring to the provisions of the agreement, have set out in the legislation itself the rate provisions as to grain and flour set out in the agreement. If this had been done, the situation would have been that the Act passed subsequent to the General Railway Act and amending the latter was passed with the full knowledge of the Board's general powers in regard to rates, and notwithstanding this it specified maximum rates. Had this been done, I cannot see how there could be any question whether or not Parliament had intended to limit the Board's powers in regard to rates on the commodities in question, and within the conditions laid down under the agreement.

Instead of such a specific designation, the legislation refers to the agreement saying that "rates on grain and flour" shall be "governed" by the provisions of the agreement; that is to say, an Act is placed on the statute book and in order to ascertain what its binding effect is, reference must be made to an earlier agreement. Putting it in another way, this provision of the legislation of 1922 must be read with the indicated portion of the agreement.

The word "governed" would not appear to be a word of precision. I cannot find in the law dictionaries anything helpful by way of definition. Turning to the ordinary dictionaries, the Oxford Dictionary gives some eleven definitions. In general, the significance common to all of these definitions is that of *direction* or *control*. The one most material is that which reads as follows:—

> "To constitute a law or rule for; to be applicable to as a determining principle or limiting condition; to serve as a precedent, rule or type for; especially in *law*, to serve in determining or deciding (a case)."

The Century Dictionary defines the word "govern," when used transitively, as "to exercise a directing or restraining power over; control or guide....." When used intransitively, "to exercise or have control over; practice direction or guidance....."

Funk & Wagnall's Dictionary defines the word as "to serve as a rule or deciding precedent for".

The significance common to all these definitions is that of *control* or *limitation;* and I am of the opinion that the construction of the legislation of 1922 must be approached from this standpoint. The rates, then, to be charged on grain and flour as dealt with under the agreement on and after July 6, 1922, are to be *controlled* or *limited* by the rate provisions of the agreement.

The legislation of 1922, as I read it, provides for controlling or maximum rates on grain and flour within the limits and conditions of the agreement, and for these rates one is referred to the agreement. Whether, then, the agreement does or does not limit the Board's jurisdiction in this regard does not appear to be material so far as grain and flour rates are concerned. The legislation of 1922 in effect specifies the rates by earmarking the rates referred to in the agreement. The fact that instead of setting out the rates in the legislation there is a reference to the rates in the agreement does not, in my opinion, make any difference. The rates which the legislation specifies are rates carried in the agreement, and being tied up to the legislation are just as effective as if

set out in the legislation itself; and these rates, therefore, depend for their binding force on the legislation of 1922 and not on the provisions of the agreement.

An analysis of chapter 41 shows, then, a difference in treatment between grain and flour on the one hand, and the remaining Crowsnest Pass commodities on the other. The legislation provides specifically what rates shall apply on grain and flour, within the conditions laid down by the agreement. In the case of the Crowsnest Pass commodities, rates were allowed to go into operation by efflux of time, without in any way indicating by specific legislative sanction what rates should prevail for the future.

Even if, then, it is held that the general powers of the Board in regard to rate regulations transcend the limitations which the Crowsnest Pass Agreement has, under decisions given, been assumed to exercise, it is at the same time apparent that the grain and flour rates in respect of what is set out in the Crowsnest Pass Agreement stand in a situation apart.

October 14, 1924.

COMMISSIONER OLIVER:

On July 7 of this year tariffs were filed by the Canadian Pacific and the Canadian National Railways which lowered the west bound rates, on certain commodities as specified in the Crowsnest Act, from some points in Eastern Canada to some points in Western Canada, while the rates from and to other points remained at their former level.

Shippers complained that by the tariffs of July 7 rates had been reduced in some cases and left at the former level in others, without any reason in traffic conditions for the discrimination, which they claimed was therefore "unjust", within the meaning of the sections of the Railway Act defining discrimination and empowering and authorizing the Board to prevent it.

Distributors complained that by the same tariffs of July 7 reductions to certain distributing centers had been made, while there was no reduction to certain other and competing points. This was claimed to be "discrimination" within the meaning of the Railway Act, such as called for action by the Board for its removal.

It was agreed by shippers and distributors that great injury had been and was still being done to the business interests of the country at large by the discriminations created by the tariffs of July 7. This was not contradicted or argued against by the railways.

The railways complained that the provisions of the Crowsnest Act of 1897 had compelled them to file the reduced tariffs of July 7; but they claimed that the Act did not compel them to file such reduced tariffs from or to points on Canadian Pacific Railway lines or connections not in existence in 1897.

The railways also argued that the Board had power to set aside the rates as fixed by the Crowsnest Act, even on lines and between points to which it was admitted the Act did apply, and asked that the Board permit them to revert to the rates generally in force before July 7, 1924, without regard to the Crowsnest Act.

As it appears to me from the facts and arguments presented, four principal questions have come before the Board for its consideration:—

(1) Does the Crowsnest Act apply to all lines and connections of the Canadian Pacific Railway, now in existence in Canada?

(2) Should the rates, as fixed by that Act, be extended by the Board to all railways in Canada?

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(3) Do the powers entrusted by Parliament to the Board warrant the presumption that these powers enable it to over-ride the provisions of the Crowsnest Act, by increasing the westbound rates on certain specified commodities and eastbound rates on grain and flour, to a level above those fixed by the Crowsnest Act?

(4) Do existing circumstances make it desirable in the public interest that the rates on the specific commodities mentioned should be increased above the maximum fixed in the Crowsnest Act?

Regarding the first question:—

Although the discrimination in westbound traffic rates, which was the consequence of the tariffs of July 7, was declared by the shippers and admitted by the railways to have created "chaotic", "impossible" and "ruinous" conditions for a large proportion of the manufacturers and traders of Canada, I have been unable to find in the presentation of their case by Counsel for the railways, any endeavour to establish by argument the assumption upon which the admittedly discriminatory character of the tariffs of July 7 was based. Where the consequences of a new and unusual interpretation of an old and well understood Act of Parliament are so serious as in this case, it would seem to me that the burden of proof in support of this new interpretation is upon the railways. As they failed to support their view by argument, although their attention was specifically called to the point, I am compelled to assume that their assertions lacked a satisfactory basis of proof, and are entitled to be considered accordingly.

I have been unable to find anything in the wording of the Act that would warrant the restricted interpretation placed upon it by Counsel for the railways. On the other hand, I find what appear to me to be good and sufficient reasons for holding that the interpretation hitherto given the terms of the Act is correct, as well as being in accordance with the well understood intent of Parliament when it was passed.

Subsection (*c*) of section (1) of the Crowsnest Act reads as follows:—

> "That so soon as the said railway is opened for traffic to Kootenay Lake, the local rates and tolls on the railway and on any other railway used in connection therewith, and now or hereafter owned or leased by or operated on account of the company, south of the company's main line in British Columbia;
>
> "As well as the rates and tolls between any point on any such line or lines of railway, and any point on the main line of the company throughout Canada, or any other railway owned or leased by or operated on account of the company, including its lines of steamers in British Columbia, shall be first approved by the Governor in Council, or by a Railway Commission, if and when such Commission is established by law, and shall at all times thereafter, and from time to time, be subject to revision and control in the manner aforesaid."

This subsection relates to the provisions of the Canadian Pacific Railway Company's charter, which permitted the company to earn 10 per cent on its capital actually expended in construction, before its rates could be reduced by Parliament. By the terms of subsection (*c*), all rates between points on all lines of the Canadian Pacific Railway and points on the section of the railway whose proposed construction was the subject of the agreement, may be reduced by order of the Governor in Council (or of the Railway Commission), without any limitation, either expressed or implied.

In his explanation to Parliament of the purposes and provisions of the Crowsnest Act, the Honourable Mr. Blair then Minister of Railways, said:—

> "We have succeeded in securing from the Canadian Pacific Railway Company a rescinding of that agreement (the 10 per cent clause), to such an extent that all traffic which may originate in any part of Canada for the western country, and all traffic which may originate in that country for any part of Canada, or any portion of the main line of the Canadian Pacific Railway, shall be subject to such rates as either the Railway Committee of the Privy Council, or the Governor in Council, or a Railway Commission, should one be constituted, shall impose."

It will be noted that when the Honourable Mr. Blair used the words, "All traffic which may originate," as above quoted, he specifically included future, as well as present traffic, and did not except any part of the system on which the traffic specified "may" originate. Clearly, he desired Parliament to understand that that provision of the Act, so far as it went, applied to the whole Canadian Pacific Railway system, both as it then was and as it might be in the future.

Subsection (*c*) deals with two divisions of the same subject in a single sentence. The subject is the unrestricted control by Government of the rates on certain specified traffic movements on the Canadian Pacific system. The first part relates to rates on the Crowsnest line itself, with its British Columbia connections; the second part relates to rates on the system as a whole, to and from points on the Crowsnest line.

In regard to the movements specified there is no limit as to the period during which the rates shall be under Government control, nor are there any words that can be construed to limit the operation of Government rate control as to those movements over the whole system, so long as the restrictive power over rates is effective; which it is at all times.

The words "now or hereafter" in the first part of the sentence, are used to express the intent that the Columbia and Western extension of the Crowsnest line to Midway, then to be built under a British Columbia charter and receiving assistance from the Government of that province under conditions fixed by it, would be brought under the same absolute Government control as to rates as the rest of the system not subject to conditions imposed by British Columbia.

The expressions used in the second part of the sentence comprised in subsection (*c*) are intended to, and in fact do, apply to the whole railway system operated by the Canadian Pacific Company. The traffic movements affected are expressly limited; the period of the Government control of rates is expressly unlimited; the reference is in express terms to the system as a whole; therefore, if it were intended that the operation of the clause was to be limited at some future time to only a part of the system, that intent, to be effective, must have been expressly stated, as it has not been.

Subsection (*d*) reads as follows:—

> "(*d*) That a reduction shall be made in the general rates and tolls of the company, as now charged or as contained in its present freight tariff, whichever rates are now the lowest, for carloads or otherwise upon the classes of merchandise hereinafter mentioned, westbound, from and including Fort William, and all points east of Fort William, on the company's railway to all points west of Fort William on the company's main line, or on any line of railway throughout Canada, owned or leased by or operated on account of the company, whether the shipment is by all rail line, or by lake and rail, such reduction to be to the extent of the following percentages respectively, namely,—
>
> | | Per cent. |
> |---|---|
> | "Upon all green and fresh fruits | 33⅓ |
> | Coal oil | 20 |
> | Cordage and binder twine | 10 |
> | Agricultural implements of all kinds, set up or in parts | 10 |

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	Per cent.
Iron, including bar, band, Canada plates, galvanized, sheet, pipe, pipe fittings, nails, spikes and horseshoes	10
All kinds of wire	10
Window glass	10
Paper for building and roofing purposes	10
Roofing felt, box and packing	10
Paints of all kinds and oils	10
Live stock	10
Wooden ware	10
Household furniture	10

"And that no higher rates than such reduced rates or tolls shall be hereafter charged by the company upon any such merchandise carried by the company between the points aforesaid; such reductions to take effect on or before the first of January, one thousand eight hundred and ninety-eight."

The specific reductions in rates made by subsection (*d*) are stated in terms which, as in subsection (*c*), can only be construed to apply to the whole railway system operated by the Canadian Pacific Railway Company. The words, "No higher rates than such reduced rates or tolls shall be hereafter charged" places beyond question that the period during which the maximum rates specified shall be effective is without limitation.

As in the case of subsection (*c*), the application of the maximum rates of subsection (*d*) is expressly limited; the period for which the rates are fixed is expressly unlimited; and in express terms, the reference is to the railway system as a whole; therefore, I again conclude that if it were intended that the operation of the clause was to be limited at some future time to only a part of the system, that intent, to be effective, must have been expressly stated, as it has not been.

Subsection (*e*) reads as follows:—

"(*e*) That there shall be a reduction in the company's present rates and tolls on grain and flour, from all points on its main line branches or connections west of Fort William to Fort William and Port Arthur and all points east, of three cents per hundred pounds, to take effect in the following manner:—

"One and one-half cent per one hundred pounds on or before the first day of September, 1898, and an additional one and one-half cent per one hundred pounds on or before the first day of September, 1899; and that no higher rates than such reduced rates or tolls shall be charged after the dates mentioned, on such merchandise from the points aforesaid."

Subsection (*e*) is a part of the same section as subsections (*c*) and (*d*), and, lacking express statement to the contrary, can only be construed as applying to the Canadian Pacific system as a whole, during the whole period of its application, as do subsections (*c*) and (*d*).

I therefore conclude that the position taken by the Canadian Pacific Railway Company, that the Crowsnest rates apply only to lines which, at the date of the passing of the Act formed part of that system, is not supported by the terms of the Act, which terms are identical with the agreement made under it.

The question as to whether the Crowsnest rates apply only on those parts of the Canadian Pacific Railway system which were in existence in 1897, is of greatest importance in its relation to the rates on grain from the prairies. By an amendment to the Railway Act of 1919, the provisions of the Crowsnest

Act fixing certain maximum rates were suspended by Parliament, and for a period which ended on July 6, 1922, the Board was given full authority to increase rates above the Crowsnest maximum. By another amendment to the Railway Act made by Parliament in 1922, the Crowsnest rates on grain and flour were made applicable from July 7 of that year, and without limitation as to time, subject to "The provisions of the agreement made pursuant to chapter five of the statutes of Canada, 1897," otherwise the Crowsnest Act. This Act was assented to on June 28 and on July 7. The rates on grain and flour from all prairie railway points to Fort William were (ostensibly, but not always in actual fact), adjusted downward in tariffs then issued by the railways to the level fixed by the Crowsnest Act. At that time the contention for a limited application of the Act had not been put forward by the railway companies, and probably had not even been considered. If the contention by the railways that the Crowsnest Act has only a sectional application so far as westbound commodities are concerned, is seriously put forward and is supported by the decision of a majority of this Board, the application of the Act of 1922 regarding grain rates must be accepted as being subject to the same limitation. The railways will then have the same liberty to create such discrimination between prairie points of grain shipment as they have already created in regard to commodity shipments westward by their tariffs of July 7, and the discriminations that now exist, notwithstanding the Act of 1922, will in effect be approved.

There can be no question as to the intent of Parliament in passing the Act of 1922, namely that all grain shipping points west of Fort William should have equality of treatment in the matter of rates. Had any other contention been made at that time, there is no doubt that it would have been met in the terms of the Act. If the contention as to the limitation of the application of the Act is accepted by the Board, the railways will be in a position to impose additional rate burdens on the grain traffic from west to east, with even more serious consequences to the country at large than have resulted from the tariffs of July 7, on commodity traffic from east to west.

As to the second question:—

The extension of the Crowsnest rates to railways other than those lines included in the Canadian Pacific Railway system, is not provided for in the Crowsnest Act. It is a matter of the general railway policy of the country. The power to compel conformity with the Crowsnest rates by other railways is entrusted to this Board under the terms of the Railway Act, and more particularly by its provisions regarding discrimination, as to rates, services, facilities, etc. The Crowsnest Act was passed in 1897, and the provisions in the Railway Act for the appointment of this Board in 1903; so that the powers of the Board were conferred with the full knowledge and understanding by the Government of the day and by Parliament, of the provisions of the Crowsnest Act. Parliament, by the Crowsnest Act, had fixed certain maximum rates, applicable only to the Canadian Pacific system. In 1897, when the Crowsnest Act was passed, the Canadian Pacific Railway operated 95 per cent of the railway mileage in Canada west of Fort William. By 1903, when the Railway Act amendment appointing this Board was passed, the Canadian Northern system had come into being, and the Government of the day was entering upon the construction of the Grand Trunk Pacific. The very wide and drastic powers to prevent discrimination, granted this Board on its establishment in 1903, were for the express purpose of ensuring to the Canadian people that the railways then under construction or in prospect would be compelled, in consideration of the aid they were seeking, to give like service at the same rates as the railway then in existence was giving.

The Railway Act of 1903, in its provisions regarding discrimination, merely established by statute the principle that had been accepted and consistently acted upon from the date upon which the Crowsnest rates came into

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effect, namely, that the rates on the Canadian Pacific Railway, as fixed by the Crowsnest Act, were the standard which must fix the rates charged by other railways for like services. This is evidenced by the fact that tariffs from Grand Trunk points in Ontario to points west of Fort William were filed at the same time as the first Crowsnest tariff was filed by the Canadian Pacific Railway, and specified the same rates. All railway tariffs filed since that time, up to July 7, have been in acceptance of the same principle of the conformity of the tariffs of all railways subject to the jurisdiction of the Board.

The Crowsnest Act was intended to permit traffic between Eastern and Western Canada generally to be carried on under more favourable conditions as to rates than it had previously been, so far as the Canadian Pacific Railway was concerned; and the provisions against discrimination in the Railway Act were intended and framed to have the same result, so far as railways not parties to that agreement were concerned. Both Acts were necessary to secure the purpose desired. They are complementary, not contradictory. The relationship between the Crowsnest Act and the Railway Act of 1903 is plainly set out in subsection (*b*) of section (3) of the latter Act:—

> " (*b*) Where the provisions of this Act and of any special Act passed by the Parliament of Canada relate to the same subject-matter the provisions of the special Act shall, in so far as is necessary to give effect to such special Act, be taken to over-ride the provisions of this Act."

The Crowsnest Act is a special Act. In its subject-matter it deals with railway rates, as also does the Railway Act. The subsection above quoted effectually declares that in such case, the provisions of the Crowsnest Act, establishing maximum rates on the Canadian Pacific Railway, shall over-ride the provisions of the Railway Act, which give this Board otherwise unlimited authority to adjust rates. The Crowsnest rates having been established by Parliament as a maximum, in my opinion this Board is required by the provisions of the Railway Act against discrimination, to bring the rates of other railways (and the rates of the Canadian Pacific Railway not reduced by the tariffs of July 7), to that level.

Regarding the third question:—

As it seemed to me, the argument of counsel for the railways was almost exclusively devoted to the support of their contention that this Board had been given supreme authority in the matter of fixing railway rates; that the powers conferred upon the Board by the Railway Act had superseded the restrictive provisions of the Crowsnest Act, in regard to maximum rates; and that the " chaotic " and " intolerable " conditions admittedly created by the sectional application of the rate tariffs of July 7, should be cured by the Board reinstating the rates as they stood before that date. Counsel for the railways were asked why they had not brought their request that the Board allow rates above the maximum of the Crowsnest Act to the consideration of the Board before filing their discriminatory tariffs of July 7. If they had done so, and the Board had been able to agree with their views as now expressed, the existing " chaotic " and " intolerable " business conditions would have been avoided. To this question they had no convincing reply to offer.

I am unable to find in the Railway Act or elsewhere support for the contention that Parliament has at any time shown even a disposition to abdicate its authority in regard to the regulation of railway rates. Parliament has always had the power to regulate those rates, except when it divested itself of that power by specific agreement. One of the chief purposes of the Crowsnest Act was to secure a return to the Governor in Council responsible to Parliament, of some measure of the power to regulate rates on the Canadian Pacific Railway, which had been granted away in what was known as the ten per cent clause of

the original Canadian Pacific Railway Act. The other important purpose of the Act was to amicably secure reduced rates on what were considered as basic commodities in the trade between East and West.

The Railway Commission was created in the early years of the period of our greatest railway expansion. New conditions were arising; the time had come for the correction of many abuses. It was not possible for the Governor in Council to give these matters the attention which the new and growing conditions demanded. The Railway Commission was created and empowered to do that work; to relieve the Railway Committee of the Privy Council from the burden of detail and to more efficiently give effect to the intent of Parliament as expressed in railway legislation from time to time. The powers of the Railway Committee of the Privy Council were placed in the Board's hands to be exercised with care and discretion. But the Governor in Council did not divest himself, and therefore did not divest Parliament of authority in the matter. On the contrary the right to revise any or every decision of the Board specifically rests with the Governor in Council alone, and with no other power or authority.

Section (52), subsection (1) of the Railway Act, provides:—

> " The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes*, or otherwise and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto, shall be binding upon the Board and upon all parties."

The Crowsnest Act has been in force for twenty-seven years. From the date of its passage in 1897 until 1918, that Act was never disturbed, nor was the comprehensive and binding nature of its provisions ever questioned. When during the stress of war conditions, an increase of railway rates above the maximum fixed in the Crowsnest Act was assumed to have become necessary, the Governor in Council on July 18, 1918, acting under the extraordinary provisions of the War Measures Act, instructed this Board to prepare a schedule of increased railway rates, to correspond with the increases then recently granted the railways of the United States. The Board duly reported as instructed, and on July 27, 1918, the new rates were given effect by Order in Council. The responsibility for ignoring the maximum rates fixed by the Crowsnest Act in that rate increase was assumed by the Governor in Council in the following words:—

> " Notwithstanding the provisions of any Act of the Parliament of Canada or of any Provincial Legislature heretofore passed, or of any rate limiting agreement heretofore made, the charges for the carriage of freight on all railways owned, operated or controlled by the Government of Canada, and all other railways subject to the jurisdiction of the Parliament of Canada, shall be increased to the extent and in the manner hereinafter set out."

The wording of the paragraph of the Order in Council giving effect to rates which increased the rates fixed by the Crowsnest Act, leaves no room to doubt that the Government of the day was fully impressed with the belief that in its hands lay the sole power to make that increase, and that its power to do so was derived from Parliament, solely through the terms of the War Measures Act.

The powers conferred on the Governor in Council by the War Measures Act ceased on January 1, 1920, so far as railway rates were concerned, and therefore, the exemption from the Crowsnest rates which had been granted by Order in Council ceased on that date.

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As conditions regarding railway rates were still considered to be unfavourable to the railways, and it was therefore necessary that rates higher than those of the Crowsnest Act should be allowed (in anticipation of the expiry of the War Measures Act), an amendment was made to the Railway Act, suspending for three years the effect of the Crowsnest Act as to railway rates. This amendment is subsection (5) of section 325 of the Railway Act, assented to on July 7, 1919.

The subsection reads as follows:—

> "Notwithstanding the provisions of section 3, the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates, as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company; provided that this subsection shall remain in force only during the period of three years from and after the date of the passing of this Act."

This amendment established fully the intent of the Government and of Parliament to retain in full effect the provisions of the Crownest Act as to rates, although suspending their operation, because of special conditions for a specific period, which period expired on July 7, 1922.

I desire to call attention to the following provision of the subsection above quoted:—

> "The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company."

A condition of undue and injurious discrimination results from the filing of the tariffs of July 7. The provisions of the Crowsnest Act are the excuse offered for the filing of these tariffs. The Act of 1919 says in express terms that the Board shall not excuse the charge of unjust discrimination against the railways in such a case. It is true that the provision quoted is not now in force, but it expresses clearly the principle that discrimination such as that brought about by the tariffs of July 7 should not be allowed by the Board.

During the period from January 1, 1920, to June 28, 1922, this Board, in the exercise of the authority conferred upon it by the amendment of 1919, made several revisions of rates, without regard to the Crowsnest Act. On September 20, 1920, an increase over the rates that had been granted in 1918 by Order in Council was granted by order of the Board, amounting to 40 per cent in Eastern and 35 per cent in Western territory; 20 per cent on all passenger fares; 30 per cent on sleeping and parlor car fares and 20 per cent on excess baggage.

As time went on conditions as to railway traffic changed, and from time to time reductions were made by order of the Board. As the end of the three year period of exemption from the rate provisions of the Crowsnest Act approached, representations were made by the railways directly to Parliament and to the Government, urging that the statutory exemption from the rate provisions of that Act be continued by an amending statute. As a result, subsection (5) of section 325 of the Railway Act of 1919 was amended by chapter 41 of the Statutes of 1922, to re-establish in full effect the Crowsnest rates on grain and flour, while leaving the rates on other commodities mentioned in that Act subject to the jurisdiction of the Board for a further period of one year, and subject

to further extension by order of the Governor in Council for another year. The extension of one year by Order of the Governor in Council was granted. This extension expired on July 6 last and the Crowsnest Agreement then came into full force, with all the effect that had ever been given it by Parliament.

Urgent representations were made to the Governor in Council by the railways during the recent session of Parliament, which prorogued shortly before the effect of the 1922 amendment to the Railway Act had expired, asking for a further suspension of the provisions of that Act. After these representations had been very fully considered by the Government, the proposal was not submitted to Parliament, nor was any other action taken by the Government. Under such circumstances, there can, in my opinion, be no ground for believing other than that Parlaiment fully understood the situation in regard to the Crowsnest Act and was fully decided that the Act should come into complete force and effect without further delay.

As I understood the representations made in this case in behalf of the railways, they amounted to the assertion that the Board of Railway Commissioners created by Parliament is vested with power to set aside specific provisions of an agreement to which one of the railways was a party and whose conditions became the important feature of an Act of Parliament. I have been unable to find warrant for such a view either in the Acts of Parliament or in the procedure hitherto followed by the Government in dealing with the situations that have arisen out of the administration of the Crowsnest Act.

I am equally unable to find support for the conclusions advanced by the railways in the procedure followed by themselves. I find that on the two occasions in 1919 and 1922 on which the Crowsnest Act was over-ridden by Act of Parliament, the railways were active in securing that result by the presentation of facts and arguments to the Government and to Members of Parliament. They were equally active, though less successful, during the recent sessions of Parliament. Their appeal to this Board to attempt an exercise of authority on their behalf in defiance of the will of Parliament as that stands and is expressed in the Crowsnest Act, would be entitled to greater consideration, if their present assertions were not contradicted by their former actions. They went to Parliament in 1919, in 1922 and again in 1924; evidently it was only when they had failed to favourably impress the Government and Parliament in 1924 that they made the discovery that this Board had power to ignore the expressed will of Parliament, as embodied in the Crowsnest Act.

As to the fourth question: —

The railways made their chief argument in support of their contention that the Board had power to increase railway rates over the Crowsnest maximum, but they did not offer any evidence or argument to show that the rates should be so increased, although it will no doubt be admitted that increase of Crowsnest rates was their final objective.

It is easy to understand that an agreement made under the conditions of twenty-seven years ago may very well be out of line with present requirements in important particulars. In so far as the Crowsnest Act is so out of line, its usefulness is decreased. Certainly its details would be different if it were being drawn up to-day, with the same objectives, but adapted to present conditions. The people of Canada, through their Parliament, are one of the parties to this agreement; the Canadian Pacific Railway Company is the other. So far as the country is concerned, its part of the agreement has been fulfilled. The Government, subject to the sanction of Parliament, is therefore, in a position to revise the agreement at any time that it can come to terms with the other pary to it. As I undersand the case, that is a matter for the consideration of the Government; it is not a matter in which the Railway Act gives this Board any authority or right to interfere.

Of course at any time the Government might, as in 1918, call upon the Board to report as to a revision of the Crowsnest Agreement, or might cause

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the Railway Act to be amended as in 1919, to give power to the Board to altogether ignore the Crowsnest rates, or to ignore them in part as in 1922, for the purpose of giving increases. The fact that none of these things have been done, leads to the conclusion that the Government has not been convinced that railway rates should be maintained at the levels prevailing up to July 7.

In the discussions that have taken place in this connection, it has been generally assumed that increase of rates means increase of revenue to the railways. That is only true if the increase is not "more than the traffic will bear." It is the same with railways as with any other business. Profits can only be made while business can be done. Traffic must be created before railways can carry it. Unless rates are such as will permit the creation of traffic, they cannot be profitable to the railways. The recent reductions of prairie grain rates, both east and west, have been reflected in an increased producing acreage, even in the face of depressed world prices. Had railway rates gone up instead of down in 1922, and since, there can be no question that also would have been reflected in decreased production. High fixed charges cannot be met out of light traffic, no matter how high the rates may be placed. The higher the rates, the less the traffic is the rule.

It is true that once wheat is produced it must be marketed; and that if rates on grain were increased at the present time, the crop now being marketed would have to pay the increased rates. But if the increase were made, all the probabilities are that next year would see either a lessened increase or an actual decrease in production, which would be reflected in reduced railway earnings.

The manufacturers of eastern cities who are cut off from their western market by the discriminatory rates of the tariffs of July 7, cannot furnish traffic for the railways as they could if they had been able to supply their western customers.

Railways must be paid for the service they give. The principle of the Crowsnest Act is,—Low rates on basic commodities and higher rates on other articles. That is universally recognized as a sound principle in the adjustment of railway rates. I have been unable to gather from the facts or arguments presented on behalf of the railways that it would be desirable in the interests of either the country or the railways to depart from that principle by increasing the rates on basic commodities, such as are affected by the Crowsnest Act.

My conclusions therefore are:—

(1) The Crowsnest Act applies to all lines and connections of the Canadian Pacific Railway in Canada, and therefore, the rates as defined by that Act should be applied forthwith throughout the Canadian Pacific system;

(2) In pursuance of the powers vested in this Board to prevent discrimination in railway rates and services, the rates defined by the Crowsnest Act should be applied to the Canadian National system and to all other railway lines in Canada;

(3) This Board was created and empowered for the more efficient enforcement of the Acts of Parliament regarding railways, and therefore, cannot set aside any part of the provisions of any such Act, but on the contrary, is bound to loyally enforce those provisions;

(4) While it would be quite in order for the Government to negotiate a new arrangement with the Canadian Pacific Railway Company in the place of the Crowsnest Act, I am of the opinion that such an agreement, having due regard to the promotion of trade between Eastern and Western Canada, should maintain the principle of low fixed rates on basic products established by that Act.

In view of the conclusions, as above set forth, I feel compelled to dissent from the majority judgment of the Board.

OTTAWA, ONT., October 6, 1924.

GENERAL ORDER NO. 408

In the matter of various complaints against certain tariffs of the Canadian Pacific and the Canadian National Railway Companies, arising out of the restoration of Crowsnest Pass Rates, so-called.

File No. 32812.1

TUESDAY, the 14th Day of October, A.D. 1924.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. W. B. NANTEL, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, September 17, 18, 22, 23, 24, 25, and 26, 1924, in the presence of counsel for and representatives of the Railway Association of Canada, the Canadian Pacific, Canadian National, and Toronto, Hamilton and Buffalo Railway Companies, the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, and Prince Edward Island, the Cities of Edmonton, Saskatoon, and Brantford, the Town of Victoriaville and Smiths Falls, the Boards of Trade of Edmonton, Saskatoon, Toronto, Montreal, and Smiths Falls, the Chamber of Commerce and the manufacturers of Brantford, the Ontario Associated Boards of Trade and Chambers of Commerce, the Canadian Manufacturers' Association, the Kitchener and Waterloo Manufacturers' Association, the British Columbia Railway Rates Adjustment Association, British American Paint Company of Victoria, Acadia Sugar Refinery Company, Limited, Atlantic Refinery Company, Manitoba Rolling Mills Company, the National Dairy Council, the Canadian Council of Agriculture, the Fruit Growers of Canada, Eastern Furniture Company, Limited, Chair Manufacturing Company, Plymouth Cordage Company, Page-Hersey Tube Company, the Canadian Roofing Manufacturers' Association, and Frost and Wood, the evidence offered, and what was alleged,—

The Board Orders: That the following tariffs, namely:—

Canadian Pacific Railway, C.R.C. No. E-4137.
Canadian National Railway, C.R.C. No. E-765.
Canadian Pacific Railway, C.R.C. No. W-2757
Canadian National Railway, C.R.C. No. W-391.

be, and they are hereby, disallowed and required to be withdrawn from operation within fifteen days from the date of this Order.

H. A. McKEOWN,
Chief Commissioner.

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APPEAL TAKEN TO SUPREME COURT OF CANADA.

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1. Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize railway rates upon the railway of the Canadian Pacific Railway Company inexcess of the maximum rates referred to in the Crow's Nest Pass Act, being Chap. 5, 60-61 Victoria, Statutes of Canada, and in the agreement therein referred to, upon the commodities therein mentioned.

2. If the Court shall be of opinion that the Crow's Nest Pass Act or Agreement is binding upon the Board of Railway Commissioners for Canada, then, according to the construction of the Crow's Nest Pass Act, Section 1, Clause (d) and the agreement made thereunder -

(a) Are the rates therein provided applicable to traffic westbound from Fort William and from all points east of Fort William, now on the Canadian Pacific Railway Company's railway; or, are such rates confined to westbound traffic originating at Fort William and at such points east of Fort William as were at the date of the passing of the act and (or), the making of the agreement, on the company's line of railway ?

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(b) Are such rates applicable to traffic originating at points east of Fort William which were, at the date of the passing of the act, and (or), of the making of the agreement, on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company ?

(c) Are the rates therein provided applicable to traffic destined to points west of Fort William, which are now on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company ? or

(d) Are such rates confined to traffic destined to points west of Fort William which were, at the date of the passing of the act, or the making of the agreement, on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by ar operated on account of the Canadian Pacific Railway Company ?

3. Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize rates upon

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the Canadian Pacific Railway on grain and flour, from all points on the main line, branches or connections of the company west of Fort William, to Fort William and Port Arthur, and all points east, beyond the maximum rates specified in the Crow's Nest Pass Act and Agreement, and referred to in Chapter 41, Statutes of Canada (1922).

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C 50179

CROW'S NEST PASS AGREEMENT

I N D E X

1. Chronological Record.

2. History of Crow's Nest Pass Agreement.

3. Summary of Judgment being appealed from.

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C 50180

CHRONOLOGICAL HISTORY

of the

CROW'S NEST PASS AGREEMENT

Sept. 6, 1897 - Crow's Nest Pass Agreement.

Aug. 22, 1914 - War Measures Act - (5 Geo. V; Cap. 2).

Dec. 26, 1917 - 15% Increase in Freight Rates ordered by the Railway Board.

July 16, 1918 - 25% Increase in Freight Rates (Order-in-Council P.C. No. 1863).

July 7, 1919 - Railway Act amended, giving Railway Board complete jurisdiction re Freight Rates for 3 years (Section 325, Sub-section 5).

Sept. 9, 1920 - 40% (East) - 35% (West) Increases in Freight Rates, ordered by Railway Board.

Jan. 1, 1921 - 5% Decrease in Freight Rates, ordered by Railway Board.

Sept. 13, 1921 - 10% Decrease in Freight Rates, ordered by Railway Board.

May 5, 1922 - Special Committee appointed by House in Commons to examine Freight Rates situation, particularly Crow's Nest Pass Agreement.

June 24, 1922 - Report of Parliamentary Committee.

Statute embodying Report of Special Committee assented to (12-13 Geo. V; Cap. 41).

June 30, 1923 - Order-in-Council suspending restoration of Crow's Nest Pass rates until July 6, 1924.

June 27, 28, 1924 - Hearing by Privy Council relative to restoration of Crow's Nest rates.

July 7, 1924 - Crow's Nest Rates came into operation.

Sept. 17, 1924 - Hearing by Railway Board regarding situation created by restoration of Crow's Nest rates.

Oct. 14, 1924 - Railway Board override Crow's Nest Pass Agreement.

Oct. 28, 1924 - Privy Council refuses petition to suspend Order of Board pending appeal.

Nov. 27, 1924 - Railway Board grants leave to appeal to Supreme Court of Canada.

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HISTORY OF THE CROW'S NEST PASS FREIGHT RATES SITUATION.

The Crow's Nest Pass Agreement.

The Crow's Nest Pass Agreement was entered into September 6th, 1897, between the Government of Canada and the Canadian Pacific Railway, by virtue of an Act of the Dominion Parliament (60-61 Victoria, Cap. 5) (Exhibit 1), which authorized such an agreement and set out the terms and conditions to be embodied in it. By this agreement, in consideration of a subsidy of $11,000. per mile, not to exceed in the whole $3,630,000., the Canadian Pacific Railway agreed:

(a) To construct a railway from Lethbridge, Alberta, through the Crow's Nest Pass to Nelson, B. C.

(b) To reduce freight rates on the following manufactured commodities and merchandise westbound from points East of Fort William on the Company's Railway, viz:

Green and Fresh Fruits;
Coal Oil;
Cordage and Binder Twine;
Agricultural Implements;
Various kinds of Iron;
Wire;
Paper for building and roofing purposes;
Window Glass;
Paints;
Wooden Ware;
Household Furnishings;
Live Stock.

(c) To reduce freight rates on Eastbound grain and flour from all points West of Fort William.

(d) That no higher rates than the reduced rates referred to in (b) and (c) be charged thereafter by the Company on any such merchandise carried by the Company between the points aforesaid.

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While the Crow's Nest Pass Agreement was binding only on the Canadian Pacific Railway, the rates permitted in that agreement affected all competing lines as they came into being, and in course of time the Canadian Northern and the Grand Trunk systems were forced by competition to meet the Crow's Nest rates, although neither road had participated in the subsidy nor received any benefit from the agreement which had created the Crow's Nest rates.

For many years, however, after the Crow's Nest Pass Agreement was entered into, its terms worked no hardship on the Railways, owing to low operating costs, moderate prices for materials and supplies, and ever-increasing volume of traffic. In fact, owing to these factors, reductions occurred below the Crow's Nest rates on all commodities covered by the Crow's Nest Pass Agreement, except on apples and coal oil, so that as a practical factor it was largely lost sight of.

The "15% Increase" of 1917.

With the outbreak of war there was a sharp upward trend in transportation costs and as a result in 1917 the Canadian Railways, following a similar increase made in the United States by the Interstate Commerce Commission, made application to the Railway Board for a general increase of 15% in freight rates. This increase the Railways sought to obtain by virtue of Section 6 of the War Measures Act (5-Geo. V; Cap. 2) (Exhibit 2), which provided that the Governor-in-Council should have general power to make any regulations regarding transportation deemed necessary in the best interests of Canada. The Railways, therefore, asked the Railway Board to make a recommendation to the Governor-in-Council under this Act for an Order-in-Council increasing the freight rates to 15%.

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The Board, however, not having been asked by the Governor-in-Council for such recommendation, did not make any, but proceeded to give effect to the request for a 15% increase on its own initiative, being careful to restrict the increase so as not to interfere with the maxima laid down by the Crow's Nest Pass Agreement. (Exhibit 3)

The "25% Increase" of 1918.

In 1918 a general increase was made in railway wages in the United States, by what is commonly known as the "McAdoo award", with an accompanying rise in freight rates. By Order-in-Council P.C. No. 1768 (Exhibit 4), the Dominion Government, recognizing the necessity of a similar wage rate being made applicable in this country, asked the Railway Board to submit a schedule of railway rates which would be necessary to sustain such a rise in wages. The Railway Board submitted a report as requested, (Exhibit 5) July 25, 1918, and as a result and under the authority of the War Measures Act, the Canadian Government by Order-in-Council P.C. No. 1863, (Exhibit 6) dated July 27, 1918, authorized a general increase of 25% in Canadian Railway freight rates.

This Order-in-Council marked a new step in the development of freight rate fixing, in that for the first time in the fixing of freight rates the Crow's Nest Pass Agreement was disregarded, due to war conditions and the general authority of the War Measures Act.

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Railway Act Amendment of 1919. (Section 325, Subsection 5).

In 1919 an amendment to the Railway Act was passed (Section 325, Subsection 5), which had a marked bearing on the question of freight rates. (Exhibit 7). Up until this time it seems to have been unquestioned that the effect of Section 3 of the Railway Act (Exhibit 8), which provides that where provisions of the Railway Act and any Special Act clash, the provisions of the Special Act shall be taken as overriding the provisions of the Railway Act, was to take such agreements as the Crow's Nest Pass Agreement out of the operation of the Railway Act and hence beyond the jurisdiction of the Railway Board.

In view of this situation and in view of the necessities arising from war time conditions, it was deemed advisable by the Canadian Government to enlarge the powers of the Railway Board so as to give it an unrestricted jurisdiction in the matter of freight rates. In order to do this the above mentioned amendment (Section 325, Subsection 5) was passed, providing that notwithstanding the provision of Section 3 of the Railway Act, above referred to, the Railway Board nevertheless should have an unfettered jurisdiction without regard to the provisions of any Special Act. By this same section it was provided that the amendment should only be enforced for three years, that is until July 7, 1922. This agreement did not specifically refer to the Crow's Nest Pass Agreement, but was a general provision affecting all agreements and statutes fettering the Railway Board's jurisdiction.

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The "40%-35% Increase" of 1920.

In May, 1920, a substantial increase was made in railway wages in the United States, by what is known as the "Chicago Wage Award". This award having been adopted and made applicable to Canadian Railways, thereby greatly increasing operating costs, applications were made by the Canadian Railways for a general increase in freight rates.

As a result, by a Judgment of the Board, dated September 9, 1920, (Exhibit 9) a general increase, among others, of 40% in Eastern freight tolls and 35% in Western freight tolls was made. This increase was to be effective until the 31st December, 1920, and a 5% decrease was to be made January 1st, 1921.

The "5% decrease" Of 1921

Following this Judgment an application, by way of an appeal to the Privy Council, was made by the Governments of Manitoba and Saskatchewan, and other interested parties, under Section 52 of the Railway Act, (Exhibit 10) for the suspension of the increase or alternatively for the reduction of the increase in Western rates to one of 15%.

After hearing the application, Privy Council by Order-in-Council P.C. No. 2434, dated October 6, 1920, (Exhibit 11) referred the question back to the Board for further consideration and asked for a decision without reference to the needs of the Canadian National Railways, a factor which apparently had entered largely in the decision appealed from.

Following this reference, Judgment was delivered by the Board December 10, 1920, in which it was held that the increase ordered by the Board in its previous Judgment was justified by reference to the financial necessities of the railways and, therefore, the Board confirmed its former Judgment. (Exhibit 12)

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The "10% Decrease" of 1921

During the summer and fall of 1921 the Railway Board initiated a series of informal conferences, with representatives of all the Canadian Railways, with a view to considering the whole freight rate situation. As a result of these conferences, the Railways agreed to a general decrease of 10% in freight rates. This reduction was sanctioned by Order of the Board dated September 13, 1921. (Exhibit 13)

Parliamentary Action 1922.

The situation remained thus, in spite of considerable agitation, until the beginning of the parliamentary session of 1922. During this session, in view of the fact that unless further steps were taken the rates provided by the Crow's Nest Pass Agreement would come into effect automatically July 7, 1922, by effluxion of time, the question was brought very strongly to the fore. In view of the important and far-reaching effects which would be bound to follow either the suspension or application of the Crow's Nest Pass Agreement, a Parliamentary Committee was appointed by the House of Commons, May 5, 1922, to investigate and report on the existing freight rates situation, particularly as effected by the Crow's Nest Pass Agreement. This Committee reported June 24, 1922, (Exhibit 14) recommending suspension of the Crow's Nest Pass Agreement except in respect of grain and flour, for one year from July 6, 1922, with power to the Governor-in-Council to suspend for a further period of one year if, in its judgment, the then existing conditions should justify such further suspension. This report was adopted and embodied in a statute, amending the Railway Act accordingly. (12-13 Geo. V; Cap. 41) (Exhibit 15) Thus, by parliamentary action, a status quo, as far as the Crow's Nest Pass Agreement is concerned, was maintained until the 6th day of July, 1923.

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Action of Railway Board - 1922.

The Railway Board made an extensive study of the freight rate situation in Canada, and held numerous sittings throughout the country. As a result of this investigation, further reductions in freight rates were made in certain areas and on certain commodities, chiefly a reduction in the mountain scale of from 1½ miles for one mile to 1¼ miles for one mile. (Exhibit 16)

In all the decisions of the Railway Board up to this point the restriction in jurisdiction imposed by the Crow's Nest Pass Agreement seems to have been unquestioned, saving of course where provided otherwise by parliamentary action.

Order-in-Council of 1923

On June 30, 1923, in pursuance of the authority vested by the above mentioned Act, the Governor-in-Council, by Order-in-Council P.C. No. 1219 (Exhibit 17), further suspended the re-enforcement of the rates of the Crow's Nest Pass Agreement until July 6, 1924.

Developments during 1924

As the time approached when the Crow's Nest rates would automatically go into effect, strong representations were made by the Railways to the Government for a further suspension of the Crow's Nest Pass Agreement or for complete abolition. A hearing was accorded by the Governor-in-Council to all interested parties with regard to the Crow's Nest Pass Agreement on June 27th and 28th, 1924, and as a result of this hearing the Government decided to take no action, and so permitted the rates laid down by the Crow's Nest Pass Agreement to become automatically effective on July 7, 1924.

The Canadian Pacific Railway, however, in filing its tariffs, in view of the new situation, took the ground that the Crow's Nest rates were only applicable to those of its lines actually in operation at the

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time the Agreement was entered into, and retained the previous higher rates on all other sections of its system.

The Canadian National Railways, in accordance with this view, filed a new tariff only with regard to those sections of its system where Canadian Pacific reductions made it essential in order to compete, and retained the former rates elsewhere.

As a result of the situation thus created, the whole matter again came before the Railway Board on the 17th of September, 1924, and after hearing all interested parties, the majority of the Board, consisting of the Chief Commissioner, Deputy Chief Commissioner Nantel, Commissioners Boyce and Lawrence, held that the Board had jurisdiction to override the Crow's Nest Pass Agreement, disallowed the new tariffs filed by the Railways, based on the Crow's Nest Pass Agreement, and reinstated former tariffs. The minority of the Board, consisting of Assistant Chief Commissioner McLean and Commissioner Oliver, dissented, holding that the Crow's Nest Pass Agreement was beyond the jurisdiction of the Board and hence any action taken by the Board with a view to altering freight rates must be limited by its terms. (Exhibit 18)

Immediately following this Judgment, which was handed down October 14, 1924, the Governments of Manitoba, Alberta, and Saskatchewan, petitioned the Governor-in-Council to suspend the order of the Board until an appeal could be heard and decided by the Privy Council, but the Governor-in-Council, after hearing and considering the petition, decided on October 28th not to intervene.

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From the above mentioned Judgment of October 14, 1924, the Governments of Manitoba, Alberta and Saskatchewan have now:

(a) Taken an appeal by leave of the Board, obtained November 27th, to the Supreme Court of Canada on certain stated questions (Exhibit 19).

(b) Taken an appeal, by virtue of Section 52 of the Railway Act (Exhibit 10), to the Governor-in-Council.

.....

Primarily the question in appeal would appear to be one of constitutional law, viz: the extent of the jurisdiction of the Railway Board in view of the Crow's Nest Pass Agreement and subsequent parliamentary legislation.

Bound up almost inseparably with this legal question, however, there seem to be the further questions of the whole economic basis of the freight rate structure and of the effect which any change in freight rates either by restoration of the Crow's Nest Pass Agreement or by its further suspension or abolition would have on other parts of Canada.

While the Middle West presses for restoration, British Columbia and the Maritimes appear equally anxious for further suspension.

British Columbia, in spite of reductions which have been made from time to time on freight rates there, alleges that restoration will practically deprive her of Western markets by destroying the relationship in rates at present existing between British Columbia rates and Eastern rates to the Prairie Provinces.

The Maritime Provinces, their rates being built up on arbitraries added to the rates from Montreal West, allege that a cut in Montreal rates, such as the restoration of the Crow's Nest Pass Agreement would mean, without a corresponding reduction in the arbitraries, would deprive them also of their Western markets, as they would be unable to compete with Ontario and Quebec shippers.

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C 50190

SUMMARY

of

JUDGMENT OF RAILWAY BOARD

Which is being Appealed to Privy Council

Introductory. Following the restoration of Crow's Nest Pass rates, July 7, 1924, the Canadian Pacific Railway filed new conforming freight tariffs affecting only those parts of its system in operation in 1897, and the Canadian National Railways filed new freight tariffs only where rendered competitively necessary by the action of the Canadian Pacific. This led to complaints from the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and from various municipal corporations and business associations, owing to alleged discriminations created by the application of the new tariffs. As a result the whole matter came up for hearing before the Railway Board at Ottawa.

Dates of Hearing:

September 17, 18, 22, 23, 24, 25 and 26, 1924.

Date of Judgment:

October 14, 1924.

JUDGMENT. It was held by a majority of the Board, consisting of the Chief Commissioner, Deputy Chief Commissioner Nantel, and Commissioners Boyce and Lawrence, that the new tariffs filed should be disallowed and withdrawn from operation within fifteen (15) days, and that the tariffs in force on the 6th day of July, 1924, should within that time be restored and made effective. An Order to this effect went accordingly. (General Order #408).

Assistant Chief Commissioner McLean and Commissioner Oliver dissented.

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SUMMARY OF JUDGMENTS.

Commissioner Boyce.

Commissioner Boyce, who wrote the majority Judgment, found as facts from the evidence:

(1) That the Canadian Pacific Railway rates as agreed upon in the Crow's Nest Pass Agreement were not adequate, fair, nor reasonable, in view of existing traffic conditions;

(2) That the application of the Crow's Nest rates compelled unjust and unfair reductions on the part of other Railways in competitive territory;

(3) That freight rates in force July 6, 1924, (except flour and grain rates made effective 1922) were just, reasonable, equitable, uniform, and indescriminatory in effect;

(4) That freight tariffs effective July 7, 1924, in view of the restoration of the Crow's Nest rates, were unequal and unjust, and would have the effect of disrupting and dislocating the whole freight rate structure.

(5) That the Canadian National Railways were entitled to just and reasonable rates and that such could not be obtained with the Crow's Nest Pass rates in operation.

After making the above findings as to facts, he held:

(a) That the Crow's Nest Pass Subsidy Act is not a "Special Act" and within the meaning and intent of the Railway Acts of 1888 or 1903 and so does not restrict or qualify the powers

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given the Board by those Acts;

(b) That even if the Act in question is a "Special Act", it does not relate to the same subject matter as the general Railway Act of 1903 and so does not operate on that Act;

(c) That the effect of the application of the Crow's Nest rates on other Railways than the Canadian Pacific (third parties) would be inequitable and should not be permitted;

(d) That the Railway Board has general jurisdiction under the Railway Act over all freight rates and while paying due regard to agreements, etc., is in no way conclusively bound by such agreements, etc.;

(e) That all previous decisions of the Board inconsistent with this Judgment should be varied and amended to conform to it.

The Chief Commissioner.

The Chief Commissioner concurred in the above Judgment, emphasizing the inability of the Board to usefully function unless the Crow's Nest Pass Agreement was removed as a factor in the fixing of freight rates, and further expressing his opinion that because the Crow's Nest Pass Agreement had once been entered into by the Canadian Pacific Railway and the Government of Canada was no reason why it should therefore never be reconsidered or adjusted.

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Deputy Chief Commissioner Nantel and Commissioner Lawrence concurred in the majority Judgment.

Assistant Chief Commissioner McLean.

Assistant Chief Commissioner McLean, in dissenting from the majority Judgment of the Board, held:

(1) That previous Judgments of the Board had consistently held that the jurisdiction of the Board was limited by the terms of the Crow's Nest Pass Agreement;

(2) That Section 325, Subsection 5, of the Railway Act, was passed by the Dominion Parliament expressly because of the Crow's Nest Pass Agreement and conclusively indicates that rightly or wrongly Parliament regarded the Crow's Nest Pass Agreement as a Special Act and so limited the general jurisdiction of the Board.

Commissioner Oliver.

Commissioner Oliver, in his dissenting Judgment, held:

(1) That the rates provided in the Crow's Nest Pass Agreement are applicable to all parts of the present Canadian Pacific Railway system;

(2) That in pursuance of the powers vested in the Board to prevent discrimination, such rates should be applied to the Canadian National Railways and all other Railway Lines in Canada;

(3) That the Board was created and empowered for the more efficient enforcement of the Acts regarding railways and, therefore, has no power to set aside or override any of such Acts, one

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of which is the Crow's Nest Pass Subsidy Act;

(4) That any future negotiations between the Government and the Canadian Pacific Railway, with the view to altering the Crow's Nest Pass Agreement, should be based on the principle of low fixed rates on basic products established by that Act.

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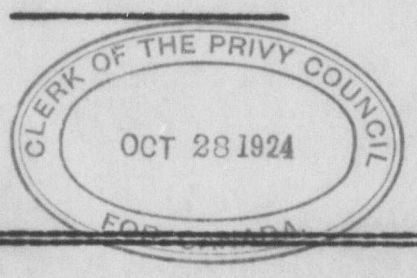
PC. 1886 C-50195 R-1109 Vol. 4

DATED October 21st. A. D. 1924.

TO HIS EXCELLENCY THE GOVERNOR-IN-COUNCIL, OTTAWA.



PETITION OF THE GOVERNMENTS OF THE PROVINCES OF ALBERTA, SASKATCHEWAN AND MANITOBA.

RE CROW'S NEST PASS AGREEMENT.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS UNDER SEC. 52 OF "THE RAILWAY ACT."

H. J. SYMINGTON,
303 Lombard Building,
WINNIPEG MANITOBA.

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C 50196

TO HIS EXCELLENCY THE GOVERNOR-IN-COUNCIL, OTTAWA:-

THE PETITION OF THE GOVERNMENTS OF THE PROVINCES OF ALBERTA, SASKATCHEWAN AND MANITOBA,

HUMBLY SHEWETH:

1. THAT following the lapse of sub-section (5) of section 325 of "The Railway Act of Canada" on July 6th, 1924, the Canadian Pacific Railway Company filed certain tariffs effective July 7th, 1924, covering rates on certain basic commodities mentioned in the "Crow's Nest Pass Act" being Chap. 5, 60 & 61 Vict. Statutes of Canada, 1897, but effective only between certain points on the said Railway.

2. THAT as a result, objections were filed with the Board by various parties claiming that in order to prevent discrimination, the said rates should be made to apply as between all points and the Board appointed a time for the hearing of various complaints arising out of the filing of said tariffs.

3. THAT the Board on October 14th, 1924, gave a judgment (the Assistant Chief Commissioner MacLean and Commissioner Oliver dissenting) and issued an order No. 408 ordering said tariffs disallowed and requiring their withdrawal within fifteen days from the date of such order.

4. THAT your petitioners hereby appeal by way of petition under sec. 52 of "The Railway Act of Canada",

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1919, and ask that the said order be meantime suspended and be rescinded or varied upon the following amongst other grounds:-

(a) The said order and judgment hold that the Board of Railway Commissioners is not bound by the maximum rates provided by the Statute, Chap. 5, 60 & 61 Vict., Statutes of Canada, known as "The Crow's Nest Pass Act", and by the agreement therein provided for.

(b) That Parliament by the said Act provided that certain fixed maximum rates were to prevail on certain commodities and that the Board has no power to overrule the said Statute and increase the said rates above such maximum.

(c) That in the year 1919 Parliament on account of after-War conditions passed s. s. (5) of sec. 325, of the Act authorizing the Board of Railway Commissioners to disregard the Crow's Nest Pass agreement rates for a period of three years.

(d) That in the year 1922, prior to the lapse of s. s. (5) of sec. 325 of the Railway Act, Parliament appointed a sub-committee to enquire into railway conditions for the purpose of deciding whether the power given to the Board to disregard the rates fixed by the Crow's Nest Pass agreement should be continued for a further period or not, and that after hearing evidence of all parties the said committee reported to Parliament that the Crow's Nest rates on grain should become immed-

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istely effective and that the rates on the other commodities mentioned therein should become effective one year from date, namely, July 7th, 1923, or on July 7th, 1924, if the Governor-in-Council by Order-in-Council extended the time for one year, and Parliament adopted said report and by an enactment, Chap. 41 of the Statutes of Canada, 12 & 13 Geo. V., legislated accordingly.

(e) That His Excellency the Governor-in-Council did in 1923 by Order-in-Council extend the said time during which the Board could disregard westbound commodity rates until July 6th, 1924.

(f) That the Railway Companies in June 1924, applied for a hearing before His Excellency the Governor-in-Council, "to suggest that the rates where established by the Crow's Nest Pass agreement should not automatically come into force again on the 7th of July next", and His Excellency, the Governor-in-Council heard the parties on June 27th, 1924, and after hearing decided that the said rates should come into force on July 7th, 1924.

(g) That on July 7th, 1924, the Canadian Pacific Railway Company filed tariffs purporting to comply with the provisions of the Crow's Nest Pass Act, but other tariffs were not filed to comply with the discrimination sections of the Railway Act.

(h) The order appealed from overrides and repeals

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Acts of Parliament.

(i) The Board by the order appealed from has set itself up as superior to Parliament.

(j) The Board by the order appealed from reverses the decisions of Parliament and of His Excellency the Governor-in-Council.

(k) If the order appealed from is allowed to remain, Parliament no longer can fix maximum rates and is inferior to its own creation - the Board of Railway Commissioners.

(l) The decision appealed from is subversive of Parliament and of the Government and is contrary to Constitutional Government.

(m) The order appealed from is contrary to public policy.

(n) The order appealed from amounts to a repudiation of the agreement between Her Majesty the Queen in the Right of the Dominion of Canada and the Canadian Pacific Railway, which repudiation can only be permitted by Parliament, and the order of the Board amounts to a fraud on Parliament.

(o) It is in the hands of His Excellency the Governor-in-Council to protect Parliament from being defrauded and with submission it is the duty of the executive to allow Parliament the party to the agreement and Parliament only, to say whether the Canadian Pacific Railway Company shall be permitted to withdraw

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from or repudiate its agreement with Parliament.

(p) Upon such other grounds as the material and argument may disclose.

YOUR PETITIONERS THEREFORE BY WAY OF APPEAL PRAY:-

THAT the Order of the Board of Railway Commissioners of Canada may be rescinded and that until the hearing and disposition of this appeal, the order should in the meantime be suspended, and that in addition to the tariffs now filed, that the Canadian Pacific Railway Company should be ordered to file with the Board of Railway Commissioners, tariffs removing discriminations in respect of Crow's Nest Pass commodities, or that the Board of Railway Commissioners for Canada be instructed to order the Canadian Pacific Railway Company to file further tariffs removing such discrimination, or for such other order as to His Excellency-in-Council may seem just.

AND YOUR PETITIONERS WILL EVER PRAY:

DATED at Winnipeg this 21st day of October, A. D. 1924.

H. J. SYMINGTON, of Counsel for the Governments of the Provinces of Alberta, Saskatchewan and Manitoba.

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Freight Rates – Crows Nest Pass

C 50201

Submitted by
THE LETHBRIDGE BOARD OF TRADE

Re CROW'S NEST PASS AGREEMENT

The Lethbridge Board of Trade consider the Crow's Nest Pass Rate Agreement as a sound compact between the people of Canada and the Canadian Pacific Railway, the people granting a subsidy in return for rate concessions from the Company.

We view with apprehension the decision of the Railway Commission which destroys this Agreement and leaves Western Canada without rate compensation, which we consider equisite and necessary for the proper development of Western Canada.

The Western Provinces are completely isolated from water transportation and consequently they have not the benefits of the competition which water provides to nearly every other section of the Dominion. Furthermore we would call to your attention the fact that the producers of Western Canada are situated at great distance from their ultimate market and they are also severly handicapped in having to bring in their supplies from long distances, and for these further reasons the matter of freight rates comes up in more acute form than in any other of the Provinces of the Dominion. Our Board of Trade is decidedly of the opinion that your Government should use every means possible to expedite action with a view to having the serious situation created by the Railway Commission's decision alleviated and the rates guaranteed to this country by the Crow's Nest Pass Agreement restored.

Respectfully submitted by the

LETHBRIDGE BOARD OF TRADE

October 29th 1924.

Per. D. J. Shepherd, President
Geo. W. Green
W. A. Buchanan
S. G. Porter

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MEMORANDUM C 50202

Prime Minister's Office,

Ottawa,.....

Removed for Council

memo. Lethbridge Oct 29 1924
Board of Trade re
Crow's Nest Pass.

R.O.C.

27/11/24

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PC. 1886 R-1109
C 50203 duplicate

DATED October 31st. A. D. 1924.

TO HIS EXCELLENCY THE GOVERNOR-IN-COUNCIL, OTTAWA.



PETITION OF THE GOVERNMENTS OF THE PROVINCES OF ALBERTA, SASKATCHEWAN AND MANITOBA.

RE CROW'S NEST PASS AGREEMENT.

ON APPEAL FROM THE BOARD OF RAILWAY COMMISSIONERS UNDER SEC. 52 OF "THE RAILWAY ACT".

H. J. SYMINGTON,
303 LOMBARD BUILDING,
WINNIPEG MANITOBA

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C 50204

TO HIS EXCELLENCY THE GOVERNOR-IN-COUNCIL, OTTAWA:

THE PETITION OF THE GOVERNMENTS OF THE PROVINCES OF ALBERTA, SASKATCHEWAN AND MANITOBA,

HUMBLY SHEWETH:

1. THAT following the lapse of sub-section (5) of sec. 325 of "The Railway Act of Canada" on July 6th, 1924, the Canadian Pacific Railway Company filed certain tariffs effective July 7th, 1924, covering rates on certain basic commodities mentioned in the "Crow's Nest Pass Act" being Chap. 5, 60 & 61 Vict. Statutes of Canada, 1897, but effective only between certain points on the said Railway.

2. THAT as a result, objections were filed with the Board by various parties claiming that in order to prevent discrimination, the said rates should be made to apply as between all points and the Board appointed a time for the hearing of various complaints arising out of the filing of said tariffs.

3. THAT the Board on October 14th, 1924, gave a judgment (the Assistant Chief Commissioner MacLean and Commissioner Oliver dissenting) and issued an order, No. 408 ordering said tariffs disallowed and requiring their withdrawal within fifteen days from the date of such order.

4. THAT your petitioners hereby appeal by way of petition under sec. 52 of "The Railway Act of Canada,"

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1919, and ask that the said order be meantime suspended and be rescinded or varied upon the following amongst other grounds:-

(a) The said order and judgment hold that the Board of Railway Commissioners is not bound by the maximum rates provided by the Statute, Chap. 5, 60 & 61 Vict. Statutes of Canada, known as "The Crow's Nest Pass Act", and by the agreement therein provided for.

(b) That Parliament by the said Act provided that certain fixed maximum rates were to prevail on certain commodities and that the Board has no power to overrule the said Statute and increase the said rates above such maximum.

(c) That in the year 1919 Parliament on account of after-War conditions passed s. s. (5) of sec. 325 of the Act authorizing the Board of Railway Commissioners to disregard the Crow's Nest Pass agreement rates for a period of three years.

(d) That in the year 1922, prior to the lapse of s. s. (5) of sec. 325 of the Railway Act, Parliament appointed a sub-committee to enquire into railway conditions for the purpose of deciding whether the power given to the Board to disregard the rates fixed by the Crow's Nest Pass agreement should be continued for a further period or not, and that after hearing evidence of all parties the said committee reported to Parliament that the Crow's Nest rates on grain should become immed-

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istely effective and that the rates on the other commodities mentioned therein should become effective one year from date, namely, July 7th, 1923, or on July 7th, 1924, if the Governor-in-Council by Order-in-Council extended the time for one year, and Parliament adopted said report and by an enactment, Chap. 41 of the Statutes of Canada, 12 & 13 Geo. V., legislated accordingly.

(e) That His Excellency the Governor-in-Council did in 1923 by Order-in-Council extend the said time during which the Board could disregard westbound commodity rates until July 6th, 1924.

(f) That the Railway Companies in June 1924, applied for a hearing before His Excellency the Governor-in-Council, "to suggest that the rates where established by the Crow's Nest Pass agreement should not automatically come into force again on the 7th of July next", and His Excellency, the Governor-in-Council heard the parties on June 27th, 1924, and after hearing decided that the said rates should come into force on July 7th, 1924.

(g) That on July 7th, 1924, the Canadian Pacific Railway Company filed tariffs purporting to comply with the provisions of the Crow's Nest Pass Act, but other tariffs were not filed to comply with the discrimination sections of the Railway Act.

(h) The order appealed from overrides and re-

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peals Acts of Parliament.

(i) The Board by the order appealed from has set itself up as superior to Parliament.

(j) The Board by the order appealed from reverses the decisions of Parliament and of His Excellency the Governor-in-Council.

(k) If the order appealed from is allowed to remain, Parliament no longer can fix maximum rates and is inferior to its own creation - the Board of Railway Commissioners.

(l) The decision appealed from is subversive of Parliament and of the Government and is contrary to Constitutional Government.

(m) The order appealed from is contrary to public policy.

(n) The order appealed from amounts to a repudiation of the agreement between Her Majesty the Queen in the Right of the Dominion of Canada and the Canadian Pacific Railway, which repudiation can only be permitted by Parliament, and the order of the Board amounts to a fraud on Parliament.

(o) It is in the hands of His Excellency the Governor-in-Council to protect Parliament from being defrauded and with submission it is the duty of the executive to allow Parliament the party to the agreement, and Parliament only, to say whether the Canadian Pacific Railway Company shall be permitted to withdraw from or

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repudiate its agreement with Parliament.

(p) Upon such other grounds as the material and argument may disclose.

YOUR PETITIONERS THEREFORE BY WAY OF APPEAL PRAY:-

THAT the Order of the Board of Railway Commissioners of Canada may be rescinded and that until the hearing and disposition of this appeal, the order should in the meantime be suspended, and that in addition to the tariffs now filed, that the Canadian Pacific Railway Company should be ordered to file with the Board of Railway Commissioners, tariffs removing discriminations in respect of Crow's Nest Pass commodities, or that the Board of Railway Commissioners for Canada be instructed to order the Canadian Pacific Railway Company to file further tariffs removing such discrimination or for such other order as to His Excellency-in-Council may seem just.

AND YOUR PETITIONERS WILL EVER PRAY:

DATED at Winnipeg, this 21st. day of October, A. D. 1924.

H. J. SYMINGTON, of Counsel for the Governments of the Provinces of Alberta, Saskatchewan and Manitoba.

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C 50209 R-1109 Vol. 4

Freight Rates — Crows Nest Pass

PRIVY COUNCIL
CANADA

Ottawa, 14th November, 1924.

Memorandum for Mr. McGregor.

In connection with the hearing of argument in the case of the appeal of the Western Provinces from the order of the Board of Railway Commissioners in the matter of the Crow's Nest Pass Agreement, to be held on Thursday, the 4th of December, at 2.30 p.m., the undersigned begs to advise, for the information of the Right Honourable the Prime Minister, that notification has been sent to the undersigned with the request that a representative in each case be present at this hearing,-

The Honourable the Premier of Manitoba,
The Honourable the Premier of Saskatchewan,
The Honourable the Premier of Alberta,
The Honourable the Premier of British Columbia,
The President the Winnipeg Board of Trade,
His Honour the Mayor of Winnipeg,
Sir Henry Thornton, President Canadian National Railways
Mr. E.W.Beatty, President Canadian Pacific Railway,
H.J.Symington, K.C., Winnipeg, Man.

E.J.Lemaire,
Clerk of the Privy Council.

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Memo. prepared for Mr. King at Crow's Nest Pass Appeal

(R. O. CAMPNEY) J.C.

FREIGHT RATES - CROW'S NEST PASS

C 50210 12 - 1109

Vol. 4

(1924) J.C.

I N D E X

EXHIBITS

1. Statute providing for Crow's Nest Pass Agreement 60 - 61 Victoria, Cap. 5.
2. War Measures Act - 5 Geo. V; Cap. 6, Section 6.
3. Order of Railway Board authorizing 15% Increase, 1917.
4. Order-in-Council asking recommendation of Board as to increase of freight rates - P.C. No. 1768.
5. Report of Board to Privy Council, July 25, 1918.
6. Order-in-Council, July 27, 1918, authorizing 25% in freight rates - P.C. No. 1863.
7. 1919 Amendment to Railway Act - Section 325, Subsection 5.
8. Section 3 of Railway Act.
9. Judgment of the Board, September 19, 1920, authorizing 40% - 35% Increase.
10. Section 52 of the Railway Act.
11. Order-in-Council referring question of 40% - 35% Increase back to Railway Board - October 6, 1920, P.C. No. 2434.
12. Order of Railway Board confirming previous Judgment, December 10, 1920.
13. Order of Railway Board authorizing 10% Decrease, 1921.
14. Report of Parliamentary Committee - 1922, on freight rates and Crow's Nest Pass Agreement.
15. 1922 Railway Act Amendment, embodying recommendations of Parliamentary Committee - 12 - 13 Geo. V; Cap. 41.
16. Judgment of Railway Board, result of general investigation throughout Canada - 1922.
17. Order in Council suspending Crow's Nest Pass Agreement until July 6, 1924 - P.C. No. 1219.
18. Judgment of Railway Board of September 17, 1924, overriding Crow's Nest Pass Agreement.
19. Stated questions on which Appeal to Supreme Court of Canada is being taken.

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C 50211

CHRONOLOGICAL HISTORY

of the

CROW'S NEST PASS AGREEMENT

Sept. 6, 1897 - Crow's Nest Pass Agreement.

Aug. 22, 1914 - War Measures Act - (5 Geo. V; Cap. 2).

Dec. 26, 1917 - 15% Increase in Freight Rates ordered by the Railway Board.

July 16, 1918 - 25% Increase in Freight Rates (Order-in-Council P.C. No. 1863).

July 7, 1919 - Railway Act amended, giving Railway Board complete jurisdiction re Freight Rates for 3 years (Section 325, Sub-section 5).

Sept. 9, 1920 - 40% (East) - 35% (West) Increases in Freight Rates, ordered by Railway Board.

Jan. 1, 1921 - 5% Decrease in Freight Rates, ordered by Railway Board.

Sept. 13, 1921 - 10% Decrease in Freight Rates, ordered by Railway Board.

May 5, 1922 - Special Committee appointed by House in Commons to examine Freight Rates situation, particularly Crow's Nest Pass Agreement.

June 24, 1922 - Report of Parliamentary Committee.

Statute embodying Report of Special Committee assented to (12-13 Geo. V; Cap. 41).

June 30, 1923 - Order-in-Council suspending restoration of Crow's Nest Pass rates until July 6, 1924.

June 27, 28, 1924 - Hearing by Privy Council relative to restoration of Crow's Nest rates.

July 7, 1924 - Crow's Nest Rates came into operation.

Sept. 17, 1924 - Hearing by Railway Board regarding situation created by restoration of Crow's Nest rates.

Oct. 14, 1924 - Railway Board override Crow's Nest Pass Agreement.

Oct. 28, 1924 - Privy Council refuses petition to suspend Order of Board pending appeal.

Nov. 27, 1924 - Railway Board grants leave to appeal to Supreme Court of Canada.

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C 50212

HISTORY OF THE CROW'S NEST PASS FREIGHT RATES SITUATION.

The Crow's Nest Pass Agreement.

The Crow's Nest Pass Agreement was entered into September 6th, 1897, between the Government of Canada and the Canadian Pacific Railway, by virtue of an Act of the Dominion Parliament (60-61 Victoria, Cap. 5) (Exhibit 1), which authorized such an agreement and set out the terms and conditions to be embodied in it. By this agreement, in consideration of a subsidy of $11,000. per mile, not to exceed in the whole $3,630,000., the Canadian Pacific Railway agreed:

(a) To construct a railway from Lethbridge, Alberta, through the Crow's Nest Pass to Nelson, B. C.

(b) To reduce freight rates on the following manufactured commodities and merchandise westbound from points East of Fort William on the Company's Railway, viz:

Green and Fresh Fruits;
Coal Oil;
Cordage and Binder Twine;
Agricultural Implements;
Various Kinds of Iron;
Wire;
Paper for building and roofing purposes;
Window Glass;
Paints;
Wooden Ware;
Household Furnishings;
Live Stock.

(c) To reduce freight rates on Eastbound grain and flour from all points West of Fort William.

(d) That no higher rates than the reduced rates referred to in (b) and (c) be charged thereafter by the Company on any such merchandise carried by the Company between the points aforesaid.

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While the Crow's Nest Pass Agreement was binding only on the Canadian Pacific Railway, the rates permitted in that agreement affected all competing lines as they came into being, and in course of time the Canadian Northern and the Grand Trunk systems were forced by competition to meet the Crow's Nest rates, although neither road had participated in the subsidy nor received any benefit from the agreement which had created the Crow's Nest rates.

For many years, however, after the Crow's Nest Pass Agreement was entered into, its terms worked no hardship on the Railways, owing to low operating costs, moderate prices for materials and supplies, and ever-increasing volume of traffic. In fact, owing to these factors, reductions occurred below the Crow's Nest rates on all commodities covered by the Crow's Nest Pass Agreement, except on apples and coal oil, so that as a practical factor it was largely lost sight of.

The "15% Increase" of 1917.

With the outbreak of war there was a sharp upward trend in transportation costs and as a result in 1917 the Canadian Railways, following a similar increase made in the United States by the Interstate Commerce Commission, made application to the Railway Board for a general increase of 15% in freight rates. This increase the Railways sought to obtain by virtue of Section 6 of the War Measures Act (5-Geo. V: Cap. 2) (Exhibit 2), which provided that the Governor-in-Council should have general power to make any regulations regarding transportation deemed necessary in the best interests of Canada. The Railways, therefore, asked the Railway Board to make a recommendation to the Governor-in-Council under this Act for an Order-in-Council increasing the freight rates to 15%.

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The Board, however, not having been asked by the Governor-in-Council for such recommendation, did not make any, but proceeded to give effect to the request for a 15% increase on its own initiative, being careful to restrict the increase so as not to interfere with the maxima laid down by the Crow's Nest Pass Agreement. (Exhibit 3)

The "25% Increase" of 1918.

In 1918 a general increase was made in railway wages in the United States, by what is commonly known as the "McAdoo award", with an accompanying rise in freight rates. By Order-in-Council P.C. No. 1768 (Exhibit 4), the Dominion Government, recognizing the necessity of a similar wage rate being made applicable in this country, asked the Railway Board to submit a schedule of railway rates which would be necessary to sustain such a rise in wages. The Railway Board submitted a report as requested, (Exhibit 5) July 25, 1918, and as a result and under the authority of the War Measures Act, the Canadian Government by Order-in-Council P.C. No. 1863, (Exhibit 6) dated July 27, 1918, authorized a general increase of 25% in Canadian Railway freight rates.

This Order-in-Council marked a new step in the development of freight rate fixing, in that for the first time in the fixing of freight rates the Crow's Nest Pass Agreement was disregarded, due to war conditions and the general authority of the War Measures Act.

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Railway Act Amendment of 1919. (Section 325, Subsection 5).

In 1919 an amendment to the Railway Act was passed (Section 325, Subsection 5), which had a marked bearing on the question of freight rates. (Exhibit 7). Up until this time it seems to have been unquestioned that the effect of Section 3 of the Railway Act (Exhibit 8), which provides that where provisions of the Railway Act and any Special Act clash, the provisions of the Special Act shall be taken as overriding the provisions of the Railway Act, was to take such agreements as the Crow's Nest Pass Agreement out of the operation of the Railway Act and hence beyond the jurisdiction of the Railway Board.

In view of this situation and in view of the necessities arising from war time conditions, it was deemed advisable by the Canadian Government to enlarge the powers of the Railway Board so as to give it an unrestricted jurisdiction in the matter of freight rates. In order to do this the above mentioned amendment (Section 325, Subsection 5) was passed, providing that notwithstanding the provision of Section 3 of the Railway Act, above referred to, the Railway Board nevertheless should have an unfettered jurisdiction without regard to the provisions of any Special Act. By this same section it was provided that the amendment should only be enforced for three years, that is until July 7, 1922. This agreement did not specifically refer to the Crow's Nest Pass Agreement, but was a general provision affecting all agreements and statutes fettering the Railway Board's jurisdiction.

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The "40%-35% Increase" of 1920.

In May, 1920, a substantial increase was made in railway wages in the United States, by what is known as the "Chicago Wage Award". This award having been adopted and made applicable to Canadian Railways, thereby greatly increasing operating costs, applications were made by the Canadian Railways for a general increase in freight rates.

As a result, by a Judgment of the Board, dated September 9, 1920, (Exhibit 9) a general increase, among others, of 40% in Eastern freight tolls and 35% in Western freight tolls was made. This increase was to be effective until the 31st December, 1920, and a 5% decrease was to be made January 1st, 1921.

The "5% decrease" Of 1921

Following this Judgment an application, by way of an appeal to the Privy Council, was made by the Governments of Manitoba and Saskatchewan, and other interested parties, under Section 52 of the Railway Act, (Exhibit 10) for the suspension of the increase or alternatively for the reduction of the increase in Western rates to one of 15%.

After hearing the application, Privy Council by Order-in-Council P.C. No. 2434, dated October 6, 1920, (Exhibit 11) referred the question back to the Board for further consideration and asked for a decision without reference to the needs of the Canadian National Railways, a factor which apparently had entered largely in the decision appealed from.

Following this reference, Judgment was delivered by the Board December 10, 1920, in which it was held that the increase ordered by the Board in its previous Judgment was justified by reference to the financial necessities of the railways and, therefore, the Board confirmed its former Judgment. (Exhibit 12)

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The "10% Decrease" of 1921

During the summer and fall of 1921 the Railway Board initiated a series of informal conferences, with representatives of all the Canadian Railways, with a view to considering the whole freight rate situation. As a result of these conferences, the Railways agreed to a general decrease of 10% in freight rates. This reduction was sanctioned by Order of the Board dated September 13, 1921. (Exhibit 13)

Parliamentary Action 1922.

The situation remained thus, in spite of considerable agitation, until the beginning of the parliamentary session of 1922. During this session, in view of the fact that unless further steps were taken the rates provided by the Crow's Nest Pass Agreement would come into effect automatically July 7, 1922, by efflumion of time, the question was brought very strongly to the fore. In view of the important and far-reaching effects which would be bound to follow either the suspension or application of the Crow's Nest Pass Agreement, a Parliamentary Committee was appointed by the House of Commons, May 5, 1922, to investigate and report on the existing freight rates situation, particularly as effected by the Crow's Nest Pass Agreement. This Committee reported June 24, 1922, (Exhibit 14) recommending suspension of the Crow's Nest Pass Agreement except in respect of grain and flour, for one year from July 6, 1922, with power to the Governor-in-Council to suspend for a further period of one year if, in its judgment, the then existing conditions should justify such further suspension. This report was adopted and embodied in a statute amending the Railway Act accordingly. (12-13 Geo. V: Cap. 41) (Exhibit 15) Thus, by parliamentary action, a status quo, as far as the Crow's Nest Pass Agreement is concerned, was maintained until the 6th day of July, 1923.

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Action of Railway Board - 1922.

The Railway Board made an extensive study of the freight rate situation in Canada, and held numerous sittings throughout the country. As a result of this investigation, further reductions in freight rates were made in certain areas and on certain commodities, chiefly a reduction in the mountain scale of from 1½ miles for one mile to 1¼ miles for one mile. (Exhibit 16)

In all the decisions of the Railway Board up to this point the restriction in jurisdiction imposed by the Crow's Nest Pass Agreement seems to have been unquestioned, saving of course where provided otherwise by parliamentary action.

Order-in-Council of 1923

On June 30, 1923, in pursuance of the authority vested by the above mentioned Act, the Governor-in-Council, by Order-in-Council P.C. No. 1219 (Exhibit 17), further suspended the re-enforcement of the rates of the Crow's Nest Pass Agreement until July 6, 1924.

Developments during 1924

As the time approached when the Crow's Nest rates would automatically go into effect, strong representations were made by the Railways to the Government for a further suspension of the Crow's Nest Pass Agreement or for complete abolition. A hearing was accorded by the Governor-in-Council to all interested parties with regard to the Crow's Nest Pass Agreement on June 27th and 28th, 1924, and as a result of this hearing the Government decided to take no action, and so permitted the rates laid down by the Crow's Nest Pass Agreement to become automatically effective on July 7, 1924.

The Canadian Pacific Railway, however, in filing its tariffs, in view of the new situation, took the ground that the Crow's Nest rates were only applicable to those of its lines actually in operation at the

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time the Agreement was entered into, and retained the previous higher rates on all other sections of its system.

The Canadian National Railways, in accordance with this view, filed a new tariff only with regard to those sections of its system where Canadian Pacific reductions made it essential in order to compete, and retained the former rates elsewhere.

As a result of the situation thus created, the whole matter again came before the Railway Board on the 17th of September, 1924, and after hearing all interested parties, the majority of the Board, consisting of the Chief Commissioner, Deputy Chief Commissioner Mantel, Commissioners Boyce and Lawrence, held that the Board had jurisdiction to override the Crow's Nest Pass Agreement, disallowed the new tariffs filed by the Railways, based on the Crow's Nest Pass Agreement, and reinstated former tariffs. The minority of the Board, consisting of Assistant Chief Commissioner McLean and Commissioner Oliver, dissented, holding that the Crow's Nest Pass Agreement was beyond the jurisdiction of the Board and hence any action taken by the Board with a view to altering freight rates must be limited by its terms. (Exhibit 18)

Immediately following this Judgment, which was handed down October 14, 1924, the Governments of Manitoba, Alberta, and Saskatchewan, petitioned the Governor-in-Council to suspend the order of the Board until an appeal could be heard and decided by the Privy Council, but the Governor-in-Council, after hearing and considering the petition, decided on October 28th not to intervene.

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From the above mentioned Judgment of October 14, 1924, the Governments of Manitoba, Alberta and Saskatchewan have now

(a) Taken an appeal by leave of the Board, obtained November 27th, to the Supreme Court of Canada on certain stated questions (Exhibit 19).

(b) Taken an appeal, by virtue of Section 52 of the Railway Act (Exhibit 10), to the Governor-in-Council.

.....

Primarily the question in appeal would appear to be one of constitutional law, viz: the extent of the jurisdiction of the Railway Board in view of the Crow's Nest Pass Agreement and subsequent parliamentary legislation.

Bound up almost inseparably with this legal question, however, there seem to be the further questions of the whole economic basis of the freight rate structure and of the effect which any change in freight rates either by restoration of the Crow's Nest Pass Agreement or by its further suspension or abolition would have on other parts of Canada.

While the Middle West presses for restoration, British Columbia and the Maritimes appear equally anxious for further suspension.

British Columbia, in spite of reductions which have been made from time to time on freight rates there, alleges that restoration will practically deprive her of Western markets by destroying the relationship in rates at present existing between British Columbia rates and Eastern rates to the Prairie Provinces.

The Maritime Provinces, their rates being built up on arbitraries added to the rates from Montreal West, allege that a cut in Montreal rates, such as the restoration of the Crow's Nest Pass Agreement would mean, without a corresponding reduction in the arbitraries, would deprive them also of their Western markets, as they would be unable to compete with Ontario and Quebec shippers.

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C 50221

SUMMARY

of

JUDGMENT OF RAILWAY BOARD

Which is being Appealed to Privy Council

Introductory. Following the restoration of Crow's Nest Pass rates, July 7, 1924, the Canadian Pacific Railway filed new conforming freight tariffs affecting only those parts of its system in operation in 1897, and the Canadian National Railways filed new freight tariffs only where rendered competitively necessary by the action of the Canadian Pacific. This led to complaints from the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and from various municipal corporations and business associations, owing to alleged discriminations created by the application of the new tariffs. As a result the whole matter came up for hearing before the Railway Board at Ottawa.

Dates of Hearing:

September 17, 18, 22, 23, 24, 25 and 26, 1924.

Date of Judgment:

October 14, 1924.

JUDGMENT. It was held by a majority of the Board, consisting of the Chief Commissioner, Deputy Chief Commissioner Nantel, and Commissioners Boyce and Lawrence, that the new tariffs filed should be disallowed and withdrawn from operation within fifteen (15) days, and that the tariffs in force on the 6th day of July, 1924, should within that time be restored and made effective. An Order to this effect went accordingly. (General Order #408).

Assistant Chief Commissioner McLean and Commissioner Oliver dissented.

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SUMMARY OF JUDGMENTS. Commissioner Boyce.

Commissioner Boyce, who wrote the majority Judgment, found as facts from the evidence:

(1) That the Canadian Pacific Railway rates as agreed upon in the Crow's Nest Pass Agreement were not adequate, fair, nor reasonable, in view of existing traffic conditions;

(2) That the application of the Crow's Nest rates compelled unjust and unfair reductions on the part of other Railways in competitive territory;

(3) That freight rates in force July 6, 1924, (except flour and grain rates made effective 1922) were just, reasonable, equitable, uniform, and indescriminatory in effect;

(4) That freight tariffs effective July 7, 1924, in view of the restoration of the Crow's Nest rates, were unequal and unjust, and would have the effect of disrupting and dislocating the whole freight rate structure;

(5) That the Canadian National Railways were entitled to just and reasonable rates and that such could not be obtained with the Crow's Nest Pass rates in operation.

After making the above findings as to facts, he held:

(a) That the Crow's Nest Pass Subsidy Act is not a "Special Act" and within the meaning and intent of the Railway Acts of 1888 or 1903 and so does not restrict or qualify the powers

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given the Board by those Acts;

(b) That even if the Act in question is a "Special Act", it does not relate to the same subject matter as the general Railway Act of 1903 and so does not operate on that Act;

(c) That the effect of the application of the Crow's Nest rates on other Railways than the Canadian Pacific (third parties) would be inequitable and should not be permitted;

(d) That the Railway Board has general jurisdiction under the Railway Act over all freight rates and while paying due regard to agreements, etc., is in no way conclusively bound by such agreements, etc.;

(e) That all previous decisions of the Board inconsistent with this Judgment should be varied and amended to conform to it.

The Chief Commissioner.

The Chief Commissioner concurred in the above Judgment, emphasizing the inability of the Board to usefully function unless the Crow's Nest Pass Agreement was removed as a factor in the fixing of freight rates, and further expressing his opinion that because the Crow's Nest Pass Agreement had once been entered into by the Canadian Pacific Railway and the Government of Canada was no reason why it should therefore never be reconsidered or adjusted.

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Deputy Chief Commissioner Mantel and Commissioner Lawrence concurred in the majority Judgment.

Assistant Chief Commissioner McLean.

Assistant Chief Commissioner McLean, in dissenting from the majority Judgment of the Board, held:

(1) That previous Judgments of the Board had consistently held that the jurisdiction of the Board was limited by the terms of the Crow's Nest Pass Agreement;

(2) That Section 325, Subsection 5, of the Railway Act, was passed by the Dominion Parliament expressly because of the Crow's Nest Pass Agreement and conclusively indicates that rightly or wrongly Parliament regarded the Crow's Nest Pass Agreement as a Special Act and so limited the general jurisdiction of the Board.

Commissioner Oliver.

Commissioner Oliver, in his dissenting Judgment, held:

(1) That the rates provided in the Crow's Nest Pass Agreement are applicable to all parts of the present Canadian Pacific Railway system;

(2) That in pursuance of the powers vested in the Board to prevent discrimination, such rates should be applied to the Canadian National Railways and all other Railway Lines in Canada;

(3) That the Board was created and empowered for the more efficient enforcement of the Acts regarding railways and, therefore, has no power to set aside or override any of such Acts, one

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of which is the Crow's Nest Pass Subsidy Act;

(4) That any future negotiations between the Government and the Canadian Pacific Railway, with the view to altering the Crow's Nest Pass Agreement, should be based on the principle of low fixed rates on basic products established by that Act.

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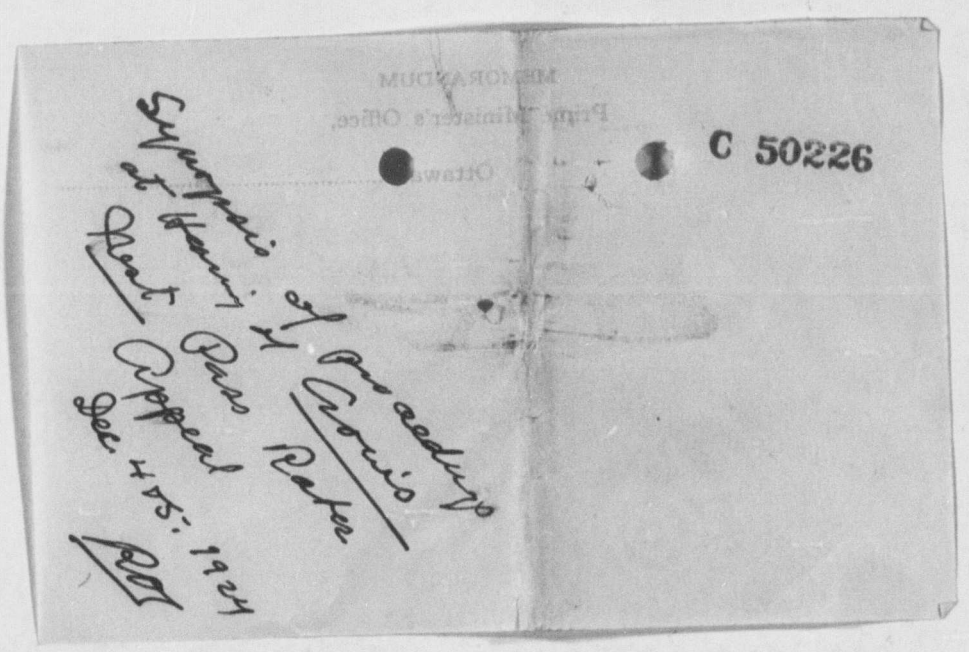

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R-1109
C-50227

H E A R I N G

re

CROW'S NEST PASS AGREEMENT RATES

The Hearing took place in the Railway Committee Room, House of Commons, on December 4th and 5th, 1924.

The following Members of the Cabinet were present:

Rt. Hon. W. L. Mackenzie King
Hon. George P. Graham
Hon. Charles Murphy
Hon. Raoul Dandurand
Hon. Jacques Bureau
Hon. Ernest Lapointe
Hon. James A. Robb
Hon. A. B. Copp
Hon. Charles Stewart
Hon. W. R. Motherwell
Hon. James Murdock
Hon. Dr. J. H. King
Hon. E. M. Macdonald
Hon. E. J. McMurray
Hon. P. J. A. Cardin
Hon. H. B. McGiverin

The following gentlemen appeared for various interested parties:

Mr. H. J. Symington, K.C.,	representing the Governments of Alberta, Manitoba and Saskatchewan.
Mr. S. B. Woods, K. C.,	representing the Cities of Edmonton and Saskatoon.
Mr. G. G. McGeer, K.C.,	representing the Province of British Columbia.
Hon. H. Greenfield,	representing the Government of Alberta.
Mr. J. T. Shaw, M.P.,	representing the United Farmers of Alberta.
Mr. George Edwards,	representing the Agricultural Council of Saskatchewan.
Mr. White,	representing the City of Calgary.
Mr. D. G. McKenzie, K.C.,	representing United Farmers of Manitoba.
Hon. R. E. Finn, K.C.,	representing New Brunswick, Nova Scotia and Prince Edward Island.
Mr. T. Marshall,	representing Toronto Board of Trade and the Ontario Associated Boards of Trade.
Mr. D'Arcy Scott, K.C.,	representing Manitoba Rolling Mills.
Mr. J. K. Smith,	representing the Montreal Board of Trade.
Mr. Travers Sweetmen, K.C.,	representing Winnipeg Board of Trade.
Hon. John Bracken,	representing the Government of Manitoba.
Mr. Mitchell,	representing the Union of Municipalities of Manitoba.

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The following gentlemen appeared for various interested parties:

Mayor S. J. Farmer,	representing the City of Winnipeg.
Major H. J. Woodside,	representing the Council of Portage la Prairie.
Mr. Eugene Lafleur, K.C.,	representing the Railway Association of Canada.
Mr. W. N. Tilley, K.C.	representing the Canadian Pacific Railway.
Mr. A. Fraser, K.C.,	representing the Canadian National Railways.

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Mr. H. J. Symington, K.C. (Governments of Manitoba, Alberta and Saskatchewan).

Mr. Symington outlined the history of the case and stated that he was not appealing to the Privy Council on legal grounds, but rather on the constitutional ground that the clearly expressed will and intention of Parliament must prevail. Briefly summarized, he based his contention that it was always intended that the Crow's Nest Pass Agreement should bind the Railway Board on the following grounds:

(a) The Crow's Nest Pass Agreement being a contract between the Crown and the Canadian Pacific Railway, could only be altered or modified by agreement of the Government and the Canadian Pacific Railway and not by the Railway Board or any third party.

(b) Parliament gave a rate-fixing jurisdiction to the Railway Board but never deprived itself of the right to fix rate maxima. This was evidenced by Section 2 and 3 of the Railway Act of 1903 and by Mr. Blair's speech in the House when the Act was under consideration.

(c) The Railway Board has repeatedly held itself to be bound by the Crow's Nest Pass Agreement.

(d) In 1918 when freight rates were raised it was deemed necessary to do so by Order in Council under the War Measures Act, owing to the fact that if the Railway Board raised the rates they would be bound by the Crow's Nest maxima.

(e) In 1919 when the Railway Act was consolidated it was deemed necessary to specifically suspend the Crow's Nest Pass Agreement in order that it might not be necessary to regard it in fixing rates.

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(f) The report of a Committee appointed by Parliament in 1922 and the debates in the House following that report, clearly show that Parliament recognized the limitation imposed upon the jurisdiction of the Board. In support of this contention Mr. Symington quoted from the speeches of Mr. King and several members of the Cabinet and from the speeches of Mr. Meighen and Sir Henry Drayton.

(g) Any doubt that may have existed as to whether the Crow's Nest Pass Agreement should have the force of a Special Act or not was removed by the express enactment of 1922, which would in any event, being a Special Act, override the general provisions of the Railway Act, which was anterior to it in point of time.

(h) An amendment to the Act of 1922, seeking to give power to the Board to overrule Crow's Nest Pass rates, was decisively defeated in the House of Commons.

(i) In June 1924 the Railways, by seeking further suspension of the Crow's Nest rates by means of an Order in Council rather than by an Order of the Railway Board, tacitly recognized the binding effect of the Crow's Nest Pass Agreement on the Railway Board.

Mr. Symington also emphasized the importance of the fact that by overriding the expressed will of Parliament, the Railway Board had violated a cardinal axiom of responsible government and had flouted both parliamentary dignity and the very basis of responsible government. He said that if the present decision of the Railway Board were allowed to stand, it would mean that the Government was admitting that an irresponsible body might override with impunity the expressed will and intention of the people as represented by Parliament.

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As to discrimination, Mr. Symington contended that the law at the time the Crow's Nest Pass Agreement was entered into and ever since has been against unjust discrimination and, consequently, if the rates provided by the Agreement are re-instated, the rates to all points not on the line in 1897, and on lines built since, must be made to harmonize with those rates.

Mr. Symington therefore asked of the Privy Council

(1) That on grounds of public policy the order of the Railway, overriding the expressed intention of Parliament, be re-scinded.

(2) That the discrimination created by the tariffs fyled by the Railways July 7, 1924, be removed.

Mr. S. B. Woods, K.C. (Edmonton and Saskatoon).

Mr. Woods urged that no action be taken by the Privy Council to restore Crow's Nest rates unless action were taken at the same time to remove the discrimination created by the narrow interpretation given the Agreement by the Railways, as evidenced by their tariffs fyled July 7, 1924.

Mr. G. G. McGeer, K.C. (British Columbia).

Mr. McGeer pointed out that British Columbia was in a different position from the Prairie Provinces and wished to emphasize that should the Crow's Nest rates be held binding only on those parts of the Canadian Pacific Railway's system in existence in 1897, a very serious hardship would be worked on British Columbia, even though such a situation were only to continue for a short time. He instanced in this connection the situation in which the fruit growers of the Okanagan Valley would be placed. He said that British Columbia was facing a real danger and in view of that he felt justified in appealing to the Privy Council for protection against that danger. He emphasized the duty owed Western pioneers, who had built up the country, on what they thought was the law, namely, Crow's Nest rates with no discrimination, and any tampering, he alleged, would serve only to

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accentuate Western discontent. He said the question was bigger than one of law merely, being really one touching the foundation of Canadian development. In view of the seriousness of the situation, he therefore urged the Privy Council to make a ruling on the question of discrimination which had been raised. He said the Government was in the position of having made in 1897 a bargain with the Canadian Pacific Railway on behalf of the Western Provinces, and that bargain should be carried out by the re-instatement of Crow's Nest rates, coupled with an order that there should be no discrimination, but equality of treatment for all.

Hearing adjourned to 10.30 A.M. - December 5th, 1924.

The Honourable H. Greenfield, Premier of Alberta.

The Honourable Mr. Greenfield said that the question at issue came down briefly to one of the intent of Parliament and he was content to leave that question in the hands of the Governor in Council.

Mr. T. J. Shaw, M.P. (U. F. A.)

Mr. Shaw pointed out the great importance of the Crow's Nest rates to the prosperity of Western farmers and of the necessity of doing full justice to every part of Canada if the Confederation ideal were to be maintained. Referring to the Judgment being appealed from, he said that it was to be noted that the Judgment was not a unanimous Judgment, that two of the ablest Judges had dissented, and one had in 1918 and in 1922 signed judgments both ways without giving reasons in either case.

Mr. George Edwards (Agricultural Council of Saskatchewan).

In support of the argument of Mr. Symington, Mr. Edwards pointed out that the Crow's Nest Pass Agreement was a statutory safeguard in connection with freight rates, taking the place of water competition in Eastern Canada. He emphasized the serious dissatisfaction in the West at the Judgment of the Railway Board, where it was regarded as a blow to the sanctity of contract and at the prosperity of agriculture.

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Mr. White (Calgary).

Mr. White asserted that the whole question was merely one of the intention of Parliament.

Mr. D. G. McKenzie, K.C. (U. F. M.)

Mr. McKenzie said that it was not high freight rates but volume of traffic which would solve the great problems of Canada and the Railways alike, and that in order to restore confidence and prosperity to the farmers of the Prairies, Crow's Nest rates should be restored.

Mr. R. E. Finn, K.C. (Maritime Provinces)

After pointing out the discrimination which the tariffs, fyled July 7, 1924, had worked against the Maritime Provinces, Mr. Finn asked for revision of the whole freight rate structure. He urged that before this is done the Supreme Court should be allowed to decide the legal points at issue. Then, he asserted, the Government, in the light of that decision and the intent of Parliament, having regard to the just and equitable interests of all parts of the Dominion, could make a proper final decision of the whole matter.

Mr. T. Marshall (Associated Boards of Trade of Ontario).

Mr. Marshall said that on behalf of the sixty-three Boards of Trade forming the Association which he represented, he wished to urge very strongly that whatever decision the Privy Council should come to in regard to this matter, in any event the intolerable discrimination following July 7, 1924, should not be allowed to again exist even for twenty-four hours.

Mr. D'Arcy Scott, K.C. (Manitoba Rolling Mills).

Mr. Scott said that his clients did not support Mr. Symington's position. He argued that what constituted the intent of Parliament was a legal matter and also pointed out that the merits of the Agreement itself had been largely ignored. He said that the Agreement had in fact been made primarily for the purpose of assisting the construction of a Railway and that

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the reference to rates was a secondary feature. He emphasized the limited number of commodities affected and the inequitable results both as to other commodities and to other places which the restoration of Crow's Nest rates would bring. Times had changed completely since the Agreement had been entered into and he asked the Government to let the Supreme Court give a ruling on the question and then let the Railway Board deal with the matter. If the Privy Council should consider the Railway Board bound by the Crow's Nest Pass Agreement, he asked that the Crow's Nest Act be repealed so that the Railway Board might have a free hand.

Mr. J. K. Smith (Montreal Board of Trade).

Mr. Smith protested against any return to the chaos following July 7, 1924.

Mr. Travers Sweetman, K.C. (Winnipeg Board of Trade).

Mr. Sweetman simply endorsed Mr. Symington's argument.

Honourable John Bracken, Premier of Manitoba.

Premier Bracken, on behalf of the Province of Manitoba, said that he felt that the case as presented by Mr. Symington was supported by 95% of the people of his province. He said that the feeling in Manitoba had been consistently behind re-instatement of Crow's Nest rates for a good while past and that the people of Manitoba felt that Parliament had clearly expressed itself as to this matter and now looked to the executive of Parliament to put the intention so expressed into effect.

Mr. Mitchell (Union of Municipalities of Manitoba).

Mr. Mitchell endorsed the opinion expressed by Premier Bracken and supported the case as presented by Mr. Symington.

Adjourned till 3 P.M.

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Mayor S. J. Farmer (Winnipeg).

Mayor Farmer asserted that the whole question was whether or not the Government was prepared to accept their whole responsibility and take action. He said that it was a big question of policy and of the prosperity of the country, and should not be turned over to an irresponsible body for decision.

Major H. J. Woodside (Portage la Prairie).

Major Woodside said the Crow's Nest rates should be restored in justice to the farmers of the Prairies and that if this were done it would inevitably lead to increased prosperity.

Mr. Eugene Lafleur, K.C. (Railway Association of Canada).

Mr. Lafleur took issue with Mr. Symington as to the propriety of attempting to determine the intention of Parliament from Hansard and sources outside the Statutes. He maintained that it was the function of the Courts to construe Acts of Parliament and this the Board had tried to do. The whole matter would come before the Supreme Court in due course and that was, to his mind, the proper procedure, rather than attempting to have the executive decide a judicial matter.

He contended that the Crow's Nest Pass Agreement was an agreement, not a statute, and he agreed with the Railway Board that like any other contract it could be ignored by the Board.

He pointed out further that other Railways were bound by the Agreement in competitive territory and so in effect were discriminated against, and in consequence the Board, in its efforts to remove discrimination, was justified in overriding the Agreement.

Referring to previous decisions of the Board, wherein it had held itself bound by the Crow's Nest rates, Mr. Lafleur said that in two cases such decisions were obiter dicta and the other was decided without the point having been argued. He

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accounted for the seemingly general recognition of the binding effect of the Crow's Nest Pass Agreement during the war by asserting that the real reason was the desire to have things done quickly and without raising controversial points. As long as these Acts were in force the matter was left in abeyance, but once they expired he had the right to raise the whole question de novo. This is what he had done and the decision of the Board on this re-consideration of the question was the decision being appealed from.

He said that when the Privy Council refused in June last to further suspend the Crow's Nest Pass Agreement, it did not declare any intention beyond leaving the parties to any legal recourse, which they might otherwise have.

As to restoring Crow's Nest rates and lowering all rates to that basis, Mr. Lafleur said it was impossible to have the advantage both ways. He also maintained that if the Crow's Nest Pass Agreement was a Special Act, overriding the general Act, it also overruled the clauses of that general Act relative to discrimination, legalized the discrimination created and hence there could be no grounds of action.

In conclusion, while not questioning the powers of the Government to do so, he doubted the desirability of the Government interfering, in view of the stand taken by the Council in previous decisions and in view of the fact that the question was one of law, and asked that the matter be left in statu quo.

Mr. W. N. Tilley, K.C. (Canadian Pacific Railway).

Mr. Tilley said he had little to add to the case as presented by Mr. Lafleur. He did wish to point out, however, the necessity of interpreting a document in accordance with accepted rules of construction. He said that when the Crow's Nest Pass Agreement was entered into the Government of the day was a rate-controlling body. Now the Railway Board was the rate-controlling body and, therefore, that jurisdiction which the Government had at that time exercised had been transferred

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to the Railway Commission and hence that body could alter or abolish former agreements.

Mr. Tilley distinguished between the statutory rate, which was not under the Railway Act, and all other rates which were. On this basis he held that the Crow's Nest rates, being created by an agreement, came under the Railway Board. He said that while much had been agreed to during the war, to prevent delay, still the Canadian Pacific Railway never had waived its rights relative to the Crow's Nest Pass Agreement, as was shown by the fact that the appeal on this point, launched in 1917, had never been abandoned, and would in due course come up for hearing before the Supreme Court.

Mr. Allistair Fraser, K.C. (Canadian National Railways).

Mr. Fraser pointed out that the Canadian National Railways had received no benefit from the Agreement, had accepted no responsibilities under it, and yet was bound by its terms in competitive territory. The Canadian National Railways was placed in a position where the loss, due to the terms of the Crow's Nest Pass Agreement, must be made up either by discriminatory rates or by taxes. He said that by the Act of 1919 the Board of Railway Commissioners was instructed to give just, reasonable and fair rates to the Canadian National Railways and that was all he asked for. He said that Parliament had not been flouted, that the Board had merely endeavoured to give fair rates in accord with what it understood to be the existing law.

Mr. Fraser asked the Privy Council not to intervene but to let the Supreme Court pronounce on this matter as in any other case.

Mr. Symington.

Mr. Symington, in reply, contended that the Crow's Nest rates were more clearly statutory than those in the cases cited by Mr. Tilley, and distinguished between the Manitoba agreement

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and the Crow's Nest Pass Agreement. As to the chaos referred to, which would arise if the Crow's Nest rates came in, Mr. Symington emphasized that his appeal sought to have that discrimination removed at the same time.

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PRIME MINISTER'S OFFICE

MEMORANDUM

Freight Rates - Crows Nest Pass

Monday,
December 1,
1924

MR. KING:

Two or three members of the Press Gallery have expressed the hope that the hearings on the Crow's Nest appeal might be arranged for in the Railway Committee Room or some other room larger than the one back of the Privy Council. They say the smallness of the room is a disadvantage to everybody.

F.A. McGREGOR
McG.

Clerk of Privy Council

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PRIME MINISTER'S OFFICE

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"EDMONTON JOURNAL" - Edmonton, Alta., Dec. 12th, 1924.

EDMONTON AND CROWSNEST.

The attitude adopted in Edmonton with regard to the Crowsnest Pass rates is not fairly stated in an article which appeared in the Manitoba Free Press on Monday. The business men of this city are said to have "urged that the agreement stand and that the provision of the railway law forbidding discrimination be enforced, thus giving them the benefit of the Crowsnest rates as far as, by the enforcement of the prohibition of discrimination, they are entitled to them." They have recognized, according to the Free Press, that "they have a common interest with the west generally in obtaining the restoration of the Crowsnest pass schedule," which it is added, "indicates the breadth and strength of the political movement for the restoration of the agreement which will arise if the government allows the matter to drift and the courts hold that the railway commission had a technical legal right to butcher the Crowsnest pass agreement."

As it is very desirable that there should be no misunderstanding as to the city's position, it is well to go over the successive steps that have been taken. Prior to the expiration of the period of suspension in July, the Edmonton board of trade passed a resolution unanimously, in which it was pointed out that the agreement was partially obsolete and could not give the relief that was originally intended. It was urged, therefore, that there should be a delay of thirty days in putting it into complete effect in order to permit of alternative schedules being submitted by the railways. But the government paid no attention to this suggestion and the chaotic conditions which followed were the result.

The city, in common with other centres was subjected to intolerable discriminations and the municipality and the board of trade joined in appointing counsel to appear at the hearing of the case before the railway commission on September 17 in order to secure the removal of these. In explaining the stand which he was taking on behalf of his clients, he pointed out that Edmonton was interested primarily in the removal of the discriminations and only secondarily in the retention of the agreement itself. They were not content with the representation afforded by the province because the premier had shown that he was concerning himself first of all with the maintenance of the pact and that, regardless of discrimination, or whatever else might happen, he believed that the agreement should be preserved.

The judgment of the commission was given in October ordering the withdrawal of the Crowsnest rates, which had been put into effect in July. They removed the discriminations and this was described by the counsel for Edmonton as all important. When the provincial government urged the suspension by the federal cabinet of the order of the railway commission and the reinstatement of the Crowsnest Pass rates pending tests of the legality of the judgment, the city and the board of trade wired to Ottawa protesting against any action being taken "which in any way perpetuates temporarily or otherwise, the discriminations

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against this city or district contained in these tariffs." They added, however, that of course they did not "object to any action of the government which would reduce all rates, including these to this city and district down to Crowsnest level pending such appeal."

A week later Chief Commissioner McKeown visited Edmonton and addressed a group of representative farmers, shippers and business men. He explained, to the satisfaction of the gathering, why it was necessary for the commission to render the decision that it had in order to clear the way for the establishment of the principle of fair play between communities and industries. While it had held that it was not bound by the text of the agreement, it was bound, he declared, to take into consideration that parliament had entered into that agreement and that it had been designed to afford certain relief to those engaged in agriculture in the three prairie provinces. This fact, he promised, would be considered in the fixation of rates once it was determined that the judgment should stand.

Strong confidence that the commission, if the solution were left with it, would do justice to all concerned, was expressed by those present and this represents the prevailing sentiment of this city. It does not approve of the attacks which have been made upon that body in the delivery of which the Free Press has taken the lead. Mayor Blatchford, at the October conference, congratulated Mr. McKeown on the stand which he had taken with respect to the agreement and declared that the city was looking forward to a general levelling up of freight rates throughout Canada and an adjustment particularly of the disparity in rates on grain between Edmonton and Fort William and Edmonton and Vancouver. There cannot be any question that this object, the realization of which means so much to us, must be interfered with by the insistence on the letter of the agreement entered into twenty-seven years ago when conditions in western Canada were so different from what they are now.

From the initial stages of the controversy those who have spoken in the name of Edmonton have taken the proper position and there should be no misunderstanding of this such as that to which the Free Press article of Monday is liable to give rise.

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Certified copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor General on the 25th December, 1924.

P.C.2220

PRIVY COUNCIL CANADA

The Committee of the Privy Council have had under consideration a Petition to the Governor in Council of the Governments of the Provinces of Alberta, Saskatchewan and Manitoba, by way of appeal from a General Order of the Board of Railway Commissioners for Canada (hereinafter referred to as the Board) No.408, dated the 14th day of October, 1924, under which certain tariffs of the Canadian Pacific Railway and the Canadian National Railways were disallowed and required to be withdrawn from operation.

Upon the hearing it appeared that the Canadian Pacific tariffs in question had been filed pursuant to the provisions of the agreement entered into the 6th day of September, 1897, between Her late Majesty Queen Victoria, in right of the Dominion of Canada, and the said Railway Company, under the terms of an Act of the Parliament of Canada, 60-61 Victoria, Chapter 5, entitled "An Act to authorize a subsidy for a railway through the Crow's Nest Pass", and hereinafter called the Crow's Nest Pass Agreement, and that the Canadian National Railways' tariffs in question provided for the same reductions which they were compelled to put in at certain points in competition with the Canadian Pacific Railway; the tariffs in both cases being effective from the 7th day of July, 1924, upon the expiration of subsection 5 of section 325 of the Railway Act.

It further appeared that the Board, being of the opinion that in the exercise of its jurisdiction to fix just and reasonable rates and remove unjust discrimination, it was not bound by the limitations contained in the agreement above referred to, disallowed the tariffs in question and restored the scale of rates on the commodities covered by the said tariffs which had been in effect prior to the said 7th day of July, 1924.

The Petitioners seek to have the above-mentioned Order of the Board rescinded and further to have the discrimination which would be created by the reinstatement of the tariffs disallowed by the Board removed by lowering other rates to the level of the rates in effect on Crow's Nest commodities, so-called, prior to the effective date of the Board's said Order No.408.

The Petition to Your Excellency in Council is dated the 21st day of October, 1924, and it appears that subsequently by notice dated the 12th day of November, 1924, the Petitioners made application to the Board for leave to appeal from its said Order to the Supreme Court of Canada, upon which application the Board, after hearing all interested parties did by its Order No. 35864, dated the 27th day of November, 1924, grant leave to appeal to the Supreme Court of Canada upon the following questions of law and jurisdiction, namely:

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1 - Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize railway rates upon the railway of the Canadian Pacific Railway Company in excess of the maximum rates referred to in the Crow's Nest Pass Act, being Chapter 5, 60-61 Victoria, Statutes of Canada, and in the agreement therein referred to, upon the commodities therein mentioned.

2 - If the Court shall be of opinion that the Crow's Nest Pass Act or Agreement is binding upon the Board of Railway Commissioners for Canada, then according to the construction of the Crow's Nest Pass Act, Section 1, Clause (d), and the agreement made thereunder -------

(a) Are the rates therein provided applicable to traffic Westbound from Fort William and from all points east of Fort William, now on the Canadian Pacific Railway Company's railway; or, are such rates confined to westbound traffic originating at Fort William and at such points east of Fort William as were, at the date of the passing of the Act and (or) the making of the agreement, on the Company's line of railway?

(b) Are such rates applicable to traffic originating at points east of Fort William which were, at the date of the passing of the Act, and (or) of the making of the agreement, on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

(c) Are the rates therein provided applicable to traffic destined to points west of Fort William, which are now on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company? or

(d) Are such rates confined to traffic destined to points west of Fort William which were, at the date of the passing of the Act, or the making of the agreement, on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

3 - Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize rates upon the Canadian Pacific Railway on grain and flour, from all points on the main line, branches, or connections of the Company west of Fort William, to Fort William and Port Arthur, and all points east, beyond the maximum rates specified in the Crow's Nest Pass Act and Agreement, and referred to in Chapter 41, Statutes of Canada (1922).

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It thus appears that the Petitioners herein under the provisions of Section 52 of the Railway Act, have resorted to the Supreme Court of Canada to have determined the questions of law and jurisdiction above set out. Under these circumstances your Committee is of the opinion that whatever the power of Council may be in the premises, it is absolutely necessary that Council should be advised as to the exact situation in reference to these questions of law and jurisdiction before taking any action looking towards the readjustment of rates sought by the Petitioners.

Your Committee is of the opinion, however, that Your Excellency in Council has power to grant a stay of proceedings or postpone the operation of the Order of the Board complained of, pending the outcome of the appeal to the Supreme Court of Canada above referred to, and to direct that the said Order of the Board be varied by providing that the tariffs therein referred to shall again become operative and remain in effect until further order of the Board following the decision of the Supreme Court upon the said appeal.

The Committee, therefore, recommend that General Order of the Board No 408 be varied so as to provide that the tariffs therein referred to shall again become operative within 15 days after the date hereof, and remain in effect until further Order of the Board following the decision of the Supreme Court of Canada on the appeal to it from the Board hereinbefore referred to; but that such variation shall not be deemed to give any person or corporation the right to demand any refund of freight charges paid or owing in respect of any shipment made during the period during which the higher rates have been or are in force.

The Committee is also of the opinion that it is manifestly in the best interests of all sections of the Dominion, as well as of the parties immediately involved in the appeal to the Supreme Court of Canada, that all parties should join in expediting the hearing of the said appeal.

The Committee submit the same for approval.

Clerk of the Privy Council.

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C 50245 R-1109 Vol. 4 C.N.P.

PRIME MINISTER'S OFFICE

MEMORANDUM for file: Freight Rates - Crows Nest Pass ✓

Friday,
December 26,
1924

Re: Crowsnest Rates
Appeal to the Supreme Court

By the Prime Minister's directions I asked Mr. F. H. Chrysler by telephone this afternoon whether he could be ready to apply to the Supreme Court before noon on Tuesday next December the 30th to have a special sitting of the Court to deal with the above appeal. After looking over the situation and telephoning Registrar Cameron of the Supreme Court, Mr. Chrysler 'phoned back to say that nothing would be gained by arranging a special sitting of the Court, as the preparation of the appeal involving the printing of 150 to 200 pages of factums, documents, etc., could not be completed much if at all before the date set for the regular sitting of the Supreme Court, namely February the 5th or 6th.

Mr. Chrysler said further that the Court would consent to have this appeal set down at the top of the list, and that this would be done.

LCM.

L.C. MOYER

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C 50246 12-1109 Vol. 1-CNP

LEGISLATURE OF SASKATCHEWAN.

FIFTH SESSION - FIFTH LEGISLATURE.

Certified copy of a Resolution passed unanimously by the Legislative Assembly of the Province of Saskatchewan, January 15, 1925:

"That this Legislature is of opinion that the equalization of freight rates throughout Canada is impossible without statutory provisions for maximum rates in those parts of Canada in which freight rates are not controlled by competitive water transportation rates; and further:

"That the Government of Saskatchewan should continue its efforts to insure such statutory provisions and also the equalization of rates affecting different points within the province."

CERTIFIED A TRUE COPY.

(Sgd) G. A. Mantle

Clerk, Legislative Assembly.

REGINA, January 20, 1925.

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C 50247 R-1109 C.N.P. Vol I

Certified copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor General on the 5th June, 1925.

P.C.886

PRIVY COUNCIL CANADA

The Committee of the Privy Council have had under consideration the final disposition of the Petition to the Governor in Council of the Governments of the Provinces of Alberta, Saskatchewan and Manitoba by way of appeal from a General Order No.408 of the Board of Railway Commissioners for Canada (hereinafter referred to as the "Board"), dated the 14th day of October, 1924, under which certain tariffs of the Canadian Pacific Railway Company and Canadian National Railways were disallowed and required to be withdrawn from operation.

In and by the said petition the petitioners seek to have the above-mentioned General Order of the Board rescinded and further to have the discrimination which would be created by the reinstatement of the tariffs disallowed by the Board removed by lowering other rates to the level of the rates in effect on Crow's Nest commodities, so-called, prior to the effective date of the said Order.

Upon the hearing it appeared that the Petitioners had appealed to the Supreme Court of Canada to have determined certain questions of law and jurisdiction of the Board arising in connection with the Board's General Order above-mentioned. The Committee, being of the opinion that, whatever the power of Council might be in the premises, it was essential that it should be advised as to the exact situation in reference to these questions of law and jurisdiction before finally disposing of this matter, and that the operation of the said General Order of the Board should be postponed pending the outcome of the said appeal to the Supreme Court, recommended in part that the said General Order of the Board be varied so as to provide that the tariffs therein referred to should again become operative and remain in effect until further order of the Board following the decision of the Supreme Court of Canada on the said appeal to it. Effect was given to this recommendation by the issue of Order in Council (P.C.2220) dated the 25th December, 1924.

It appears that the Supreme Court of Canada, after argument in which were heard not only Counsel for the present petitioners and the Railway Companies interested but also counsel for the Province of British Columbia, the Maritime Provinces, the Cities of Edmonton, Alberta, and Saskatoon, Saskatchewan, and Brantford, Ontario, and after reserving judgment, directed that the questions submitted to it be answered as follows:

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QUESTION 1 - Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize railway rates upon the railway of the Canadian Pacific Railway Company in excess of the maximum rates referred to in the Crow's Nest Pass Act, being Chapter 5, 60-61 Victoria, Statutes of Canada, and in the Agreement therein referred to, upon the commodities therein mentioned.

ANSWER - NO

QUESTION 2 - If the Court shall be of the opinion that the Crow's Nest Pass Act or Agreement is binding upon the Board of Railway Commissioners for Canada, then, according to the construction of the Crow's Nest Pass Act, Section 1, Clause (d), and the agreement made thereunder,

(a) 1. Are the rates therein provided applicable to traffic westbound from Fort William and from all points east of Fort William now on the Canadian Pacific Railway Company's railway?

ANSWER - NO

(a) 2. Are such rates confined to westbound traffic originating at Fort William and at such points east of Fort William as were, at the date of the passing of the Act and (or) the making of the Agreement, on the Company's line of railway?

ANSWER - YES

(b) Are such rates applicable to traffic originating at points east of Fort William which were, at the date of the passing of the Act and (or) the making of the Agreement, on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway?

ANSWER - In order that the traffic provided for by clause (d) should fall under that clause it must originate at Fort William or some point east thereof which at the date of the agreement was "on the Company's railway".

(c) Are the rates therein provided applicable to traffic destined to points west of Fort William which are now on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

ANSWER - In order that the rates prescribed in clause (d) should apply the destination of traffic otherwise within that clause must be a point which was, at the date of the agreement, "on the Company's main line or on (some) line of railway throughout Canada owned or leased by or operated on account of the Company".

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(d) Are such rates confined to traffic destined to points west of Fort William which were, at the date of the passing of the Act or the making of the Agreement, on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

ANSWER - YES

QUESTION 3 - Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize rates upon the Canadian Pacific Railway on grain and flour from all points on the main line, branches or connections of the Company west of Fort William, to Fort William and Port Arthur, and all points east beyond the maximum rates specified in the Crow's Nest Pass Act and Agreement, and referred to, in Chapter 41, Statutes of Canada (1922).

ANSWER - NO

Upon the hearing before Your Excellency in Council it appeared that the re-establishment of the rates provided for in the Crow's Nest Pass Agreement upon the limited list of commodities and between the points specified therein had brought about considerable variations in the rates applicable thereto prior to the 7th July, 1924, and it was urged on behalf of a large section of the Dominion, and in particular by Counsel for the cities of Edmonton, Alberta, and Saskatoon, Saskatchewan, and the Maritime Provinces, as well as representatives of responsible trade organizations in the Provinces of Ontario and Quebec that the establishment of these rates would disrupt the rate structure built up under the control of the Board since its creation, with consequent serious injury to trade relationships throughout the Dominion.

It was also urged that sources of supply had changed since the Agreement was made and that certain commodities which were formerly shipped in large quantities from Eastern Canada to the Prairie Provinces are now largely supplied either by local industries or from British Columbia, which latter Province, it was alleged, would be cut off from a large part of its natural market by the permanent restoration of the Crow's Nest Rates.

It was further urged that the continuance of the Crow's Nest Rates (so-called) would compel the Canadian National Railways to make similar reductions from all competitive points, and thus involve a serious loss in revenue to them which would have to be made up from other Government sources and further postpone the time when it would be possible to make any general rate readjustment or to solve satisfactorily the problem of the National Railways.

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ANSWER - YES

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The Committee observe that the Agreement in question was made at a time when the Canadian Pacific Railway Company was the only company having a through line of railway extending through the Prairie Provinces and British Columbia, and before the creation of the Board for the control of railway rates under the provisions of the Railway Act of 1903 and subsequent Acts; and further, that the underlying purpose of the rate control inaugurated by the Railway Act of 1903 was to do away as far as possible with all unjust discriminations and undue preferences, and to secure a fair and reasonable rate structure, which, under substantially similar circumstances and conditions would be equal in its application to all persons and localities.

The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade.

The Committee are further of the opinion that to give effect to this policy, and considering the submissions made by Counsel and important trade organizations representing different Provinces and localities in the Dominion as to the disadvantages that would be suffered by such Provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the body constituted by Parliament with full powers under statute to fix and control railway rates.

The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing Provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crow's Nest Pass Agreement, should not be exceeded.

The Committee are further of the opinion that, before such investigation is undertaken it is essential to ensure that the provisions of the Railway Act in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, be unfettered by any limitations other than the provisions as to grain and flour hereinbefore mentioned.

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The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and Railway Companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various Provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:

(a) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(b) The encouragement of the movement of traffic through Canadian ports;

(c) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.

The Committee further advise that legislation be introduced at the present Session of Parliament, making it clear that the provisions of the Railway Act of 1919 in respect of tariffs and tolls shall, save in the particular above mentioned, be operative notwithstanding any special Acts or Agreements and removing all doubts as to the validity of tariffs heretofore filed.

The Committee submit the same for Your Excellency's approval.

E. J. Lemaire

Clerk of the Privy Council.

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C 50252 R-1109 Vol. 1 C.N.P.

COPY

Resolution No.2.

FREIGHT RATES

THE Manitoba Liberal Association commends the efforts of the present Government to arrive at a just and permanent basis for freight rates throughout Canada without discrimination in favor of or against any part of the country and with fixed maximum rates for basic products, but at the same time declares that the West cannot accept the findings of a Railway Commission composed of one representative from the West and five from the East, when fifty per cent. of the mileage lies in the West and a great portion of the freight problems arise there, and urges the Government to reorganize the Commission so as to give equitable representation to all parts of the country.

(Resolution enclosed with letter from Mr.M.G.Walker, Winnipeg, Manitoba, dated August 1, 1925)

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Railway rates

C 50253 Coll - Freight rates - Commerce for Western Canada

THE STORY OF THE SIX CENTS

(The Crowsnest Pass Agreement)

By J. Fred Johnston.

In the year 1897, the Canadian Pacific Railway Company were desirous of building a branch line from Lethbridge through the Crowsnest Pass into British Columbia. They approached the Government of the day (which was the Government of Sir Wilfrid Laurier), and asked that the Government should subsidize the building of this line to the amount of $3,400,000. After considering the matter, the Government agreed to give the railway company this subsidy providing the railway company for their part would agree to maximum rates on certain commodities; these rates to apply on all lines west of Fort William to the Rocky Mountains. The C.P.R. accepted the Government's proposal, and the rates became effective.

In the year 1902, the Manitoba Government made an agreement with the MacKenzie and Mann interests along the same lines as that entered into by the Federal Government and the C.P.R., but the rates agreed to were a little lower than those under the Crowsnest Pass, consequently, from that time until all rates were suspended during the war period, the C.P.R. had to meet the rates as applied under the Manitoba agreement. This created some little confusion in the minds of western people, the farmers particularly, for when the Crowsnest rates were re-established in 1922, many thought that the proper rate was not being charged on account of being a little higher than was the rate on wheat after the year 1902 until the period of the war.

In 1919, the Government of the day made an effort to abrogate this agreement in its entirety. The measure passed the House of Commons, but it was held up in the Senate by the late Senator Robert Watson of Portage la Prairie, Manitoba. Senator Watson had been a member of the House of Commons when this agreement was made in 1897, and knew of its immense value to western grain producers. His opposition was so strong that the Government forces in the Senate finally agreed to a suspension of these rates for a three-year period rather than abrogating the agreement. This three-year period expired on July 6th, 1922. This was the first session for the new Government under the leadership of The Rt. Hon. W. L. Mackenzie King.

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The Attitude of the King Government
with regard to the Crowsnest Pass Agreement.

The three-year period for which these rates were suspended would expire on July 6th, 1922, a few months after the King Government took office. If nothing had been done the rates would have automatically come back into effect on the 6th July. The railway companies, however, held that they would not be able under existing operating costs to carry on at the Crow rates, and asked that the agreement be abrogated. Mr. King decided to appoint a special committee of Parliament composed of representatives from all groups in the House to enquire into the matter and report back to Parliament. This committee was appointed and held many sittings over a period of seven or eight weeks. It was claimed at that time by old Parliamentarians that never in their experience had such a lobby been put on to try to defeat any measure as the Canadian Pacific Railway put on in an endeavour to kill the Crow agreement.

The Journals of the House will show that the Conservative Members in this committee, to a man, opposed the re-establishment of these rates either in whole or in part. The committee finally reported to Parliament recommending that the rates on wheat and wheat products east-bound be re-established. The Government and Parliament accepted this recommendation but not until after our Conservative friends had offered the most strenuous opposition; even going so far as to move in the House that the agreement be abrogated.

These rates today have been made applicable to every foot of railway in the three Prairie Provinces.

What it has meant to the Prairie
Wheat Producers to have these
rates re-established.

In the estimate of the railway companies given under oath before the special committee, they claimed it would be an annual loss in revenue to them of an amount exceeding $15,000,000.00 per year, based on the wheat production of 1921. Taking Craik as the central point of the wheat producing area in the Province of Saskatchewan, the saving is six cents per bushel. This would be about the average for the province. If every half-section farmer would total his shipments of wheat for the last eight crops, he would find that the saving to him has meant many hundreds of dollars, and to our larger farmer thousands of dollars. For this saving we have the King Government to thank, as the Government had to force this matter through Parliament in the face of the strongest possible kind of Conservative opposition.

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Cost to the King Government

In putting this measure through Parliament for the benefit of western wheat producers, the King Government lost many seats in the Eastern Provinces. For instance, after the election of 1921, the supporters of the King Government held twenty-four seats in the three Maritime Provinces. During the campaign of 1925, our Conservative friends made the restoration of these rates the outstanding issue in their appeal for support, claiming as they did that the King Government had sold out to the farmers of Western Canada. This is particularly true of the Province of New Brunswick where Mr. Baxter who had been a Member of the House of Commons in 1922 later resigned his seat to become Leader of the Conservatives in that Province, and having defeated the Liberals became Prime Minister in 1925. The result was that the Liberals were reduced from twenty-four seats in 1921 to eight seats in 1925.

This is one of the greatest things that any Government has ever done for Western Canada. As pointed out it cost the Liberal Party many seats in Eastern Canada for doing what we asked them to do. Is it not the part of wisdom that we should support a Government who stood by us?

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SOUTH AND CENTRAL AMERICA. [September 8.]

CONFIDENTIAL. SECTION 1.

[A 5653/4839/14] No. 1.

Mr. Haggard to the Marquess Curzon of Kedleston.—(*Received September* 8.)

(No. 107. Confidential.)

My Lord, *Havana, August* 8, 1922.

THE political situation that has developed since my despatch No. 86 of the 19th June is one of some interest. The good intentions with which the new Cabinet set out have borne no fruit, beyond the suppression of a few gambling houses, whilst wholesale dismissals and resignations are bringing the public departments into still further chaos, and none of the financial reforms which the new Cabinet was required to pass, as an alternative to direct United States intervention, have come to anything.

The President has retired into obscurity and an attitude of passive resistance. His prestige and reputation for activity, never great, have been lessened by the recent *coup d'État* of General Crowder. He is at loggerheads with his Cabinet, whilst on the other hand any proposal on which the executive can manage to agree together is vetoed or killed by long discussions in Congress.

I have endeavoured to give an idea of the financial situation which is at the root of the Government's difficulties in my preceding despatch No. 106.

A few weeks ago the community was startled by the sudden publication at the instance of General Crowder of part of a memorandum (No. 13) handed by him to the Secretary of State. He pointed to the need of re-establishing public credit, and warned Cuba that unless the proper steps were taken his Government would be compelled to intervene in accordance with their treaty obligations.

It has now been published in full, and I have the honour to enclose it herewith. It refers to Cuba's default on her external and internal loans, and to her present "floating debt;" adds that these are all cases for which American intervention in Cuba is provided by existing treaty requirements, and states that unless the Legislature and executive can agree on adequate steps, such intervention must take place. It then goes on to suggest the necessary measures, which are: a foreign loan properly guaranteed by permanent revenues and a new civil service law permitting the dismissal of employees and place-holders to admit of economies in the national expenditure. A banking law and one for the reorganisation of municipal Governments (a measure General Crowder has much at heart) may, nevertheless, also be required by his Government before any loan will be permitted. He concludes by calling attention, in the old strain, to the failure to prosecute numerous fraudulent officials, and also to the necessity of revising, in agreement with the contractors, the prices of outstanding Government contracts.

The publication of this document has been accompanied by a very sensible statement to the country by Dr. Céspedes, the Secretary of State, to whom it was addressed. The United States Government, he says, require a permanent stabilisation of the national finances guaranteed by proper laws and not a temporary palliative; their advice should be welcomed since it injures no feeling of national sovereignty, but if nothing is done then they will be obliged to intervene in Cuba, and the national interests will be wounded. Delay is dangerous, since foreign intervention is imminent. The required reforms are reasonable, but radical measures are required, and the patriotism of the people must face the need. He reminds them that the approval of the United States Government to any Cuban financial measure is a source of strength, since it gives Cuban credit a world-wide status.

This plain speaking may clear the way towards an improvement. Nobody denies the reality of the situation to which memorandum No. 13 has called attention, but Dr. Céspedes, who seems to be the principal Cuban negotiator, and to have the necessary position and knowledge to bring in the reforms, is greatly hampered by the characters of some of his colleagues and subordinates, more by Congress, and a good deal no doubt by the President. Whether he can stave off direct action by the United States remains to be seen. He tells me his whole time is taken up by important questions, such as the loan, and he has not much left over for those affecting his own department. Amid the welter of contrary proposals and the storm of discussion he

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seems at least to know his own mind, which is apparently that of the United States Government.

Meanwhile, most of the public dissatisfaction is being directed against the President. At the public funeral recently of the latter's brother, I believe that he was to have been called upon by one of the orators to resign his post. A document was ready for his signature, but rain prevented the speech being delivered. If Dr. Céspedes replaces him, which seems a possibility, public disturbance is not anticipated, though Cuba's troubles will not be much nearer a solution. The "Discusion," in a recent outspoken article headed "Collective Cowardice," asks why somebody does not act instead of talking, and appeals for "energetic" measures to set matters right, presumably meaning to suggest a change in the Presidency as the only means of preventing the Americans taking over the Government of the country.

I have, &c.

GODFREY HAGGARD.

Enclosure in No. 1.

Extract from the "Havana Post" of August 6, 1922.

Crowder Memorandum, No. 13.

I. YOUR interesting disclosures at yesterday morning's interview respecting your conference with Parliamentary Committees on the subject of ways and means of settling the Floating Debt of the Republic seem to make it advisable that I indicate now, as far as I can, conditions precedent to the approval by the United States Government of a new foreign loan. Permit me to confirm to your Excellency my statement at yesterday morning's conference that I am not in receipt of final instructions from my Government as to what these conditions precedent may be, and that therefore what I here say is subject to revision by my Government.

II. In determining what these conditions precedent shall be, we must, I think, take into consideration the fact that both Governments are fairly warned—

(*a.*) By the default during the last fiscal year in meeting the service of the Exterior Bonded Debt, the arrears of which were finally paid, not out of the ordinary revenues as required by the Permanent Treaty and by the Constitution of Cuba, but out of the proceeds of a new loan;

(*b.*) By the present default in meeting the service of the Interior Loan of 1917, the arrears being now, I am informed, approximately 3,000,000 dollars; and

(*c.*) By the Floating Debt (unpaid current obligations) reported by both Secretary Gelabert and Secretary Despaigne as embarrassingly large, and by the latter as closely approximating in amount the total annual receipts of the National Treasury from all sources.

That the financial crisis through which the Government of Cuba is passing is fraught with unusual and unprecedented dangers to the republic and that unusual and unprecedented measures must be adopted if the public credit is to be re-established to the degree necessary adequately to secure the additional loan.

III. But the primary consideration which ought to control in determining these conditions precedent to the approval of a new loan is that these conditions shall be of such character as to make it reasonably certain that the Government of the United States will never have to take the steps, under the authority of the Permanent Treaty and Constitution of Cuba, to secure prompt payment of interest and sinking fund charges on either the proposed new loan or the existing loans. It is obvious that adequate assurance that the Government of the United States will be saved from the disagreeable duty under the said treaty and constitution must proceed from measures to be adopted by both legislative and executive branches of the Cuban Government. Certain of these measures are enumerated in the succeeding paragraphs IV and V of this memorandum but without prejudice to their revision or to the inclusion of others after an exchange of views with my Government.

Legislative Action Necessary.

IV. Included among the measures necessary to be enacted by the Congress of Cuba are :—

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(*a.*) A proper loan statute authorising the executive to contract a loan and strictly limiting the uses to which this loan may be applied ;

(*b.*) The permanent revenues necessary for the payment of the interest and redemption of the new loan ; and

(*c.*) A proper Bill suspending certain provisions of the Civil Service Law relating to tenure of employees and of related provisions of the Electoral Code to permit the carrying out of the executive reforms discussed in the next succeeding paragraph.

I am fairly forewarned by the correspondence with my Government that it may be disposed to insist that final payments on any loan authorised shall be deferred until the Congress of Cuba has enacted legislation necessary for the regulation of the business of banks and other institutions of credit, and also a Constitutional Amendment Bill permitting municipal governments to be reorganised in the interest of greater efficiency and economy ; but upon these, for the moment, I do not insist.

The action specified under sub-heads (*a*) and (*b*) is, of course, under article 59, paragraph 3, the constitutional prerogative of Congress, and will follow in due course should a new loan be decided upon as a proper method of settling the Floating Debt. Of very great importance is the action specified under sub-head (*c*) *supra*, which is absolutely necessary if the executive reforms next to be enumerated are to be accomplished.

Executive Action Necessary.

V. I think it quite probable that my Government will insist with great firmness that the economies provided for in the new budget shall be actually realised, and with even greater firmness will insist upon the effective enforcement of the reforms outlined to your Excellency in my memorandum No. 8 submitted on the 5th May, 1922. As I have said in the preceding paragraph, the prompt enactment by the Congress of a Bill suspending the provisions of the Civil Service Law respecting tenure of office and of related provisions of the Electoral Code is an absolute prerequisite to carrying out many of those reforms specified in said memorandum, particularly those dependent upon removals from office and the appointment of men qualified to assist in this great work. (See concluding portion of said memorandum No. 8, pp. 15–17.)

Charges have been persistent that extensive frauds are being practised in the Customs and Internal Revenue services and in the disbursement of revenues under a false documentation, due to which a very formidable percentage of legal receipts is lost to the Treasury. If these charges, which go unchallenged as to accuracy, are false, they should be shown to be false, and, if true, the extent to which the Treasury is defrauded should be made known. I think my Government will insist upon a rigid inspection of these services to determine the truth or falsity of these charges, to be followed up by expedients against officials where a *primâ facie* case of graft or other corruption is shown to exist as a condition precedent to its approval of the new loan.

Charges persist that subordinate members of the judiciary, including secretaries of courts, are guilty of malfeasance in office. Recently the Vice-President of the Republic in a public statement has voiced the same charge, and thus far no one has come to the defence of the judiciary against such an indictment. To meet these unrefuted charges, a rigid investigation is necessary, to be followed by the institution of proper proceedings in the courts where a *primâ facie* case has been made out by such investigation. While considering necessary reforms in the judiciary, it is pertinent to note also apparent lack of diligence of that branch in bringing promptly to trial persons accused of criminal acts in the administration of banks now undergoing liquidation and of public officials charged with graft and corruption in office. My Government knows no reason which would justify the long delay in bringing the long-pending proceedings in court against officials of the city of Havana indicted for fraud and other malfeasance in office to a prompt conclusion. Nor does it understand the failure of efforts to secure extradition of the first class mentioned above, to wit, those accused of criminal acts in the administration of banks now undergoing liquidation. It would be quite unnecessary to make a reform of the judiciary in the respects here indicated as a condition precedent to the approval of the new loan if your Excellency is successful in the plan we discussed yesterday of eliciting the active and zealous co-operation of the Secretary of Justice and the Fiscal of the Supreme Court in bringing offending members of the judiciary before the proper courts.

I need not invite the attention of your Excellency to a fact disclosed by our joint examination of the law relating to competitive bids in the award of contracts has been

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more honoured in the breach than in the observance, with the result that the National Treasury is subjected to a burden from which it should be promptly relieved. It seems to me to be imperative that your Excellency issue an order to each Cabinet Secretary to prepare a list of all contracts, oral or written, for the current fiscal year, giving unit prices and to direct the annulment of all contracts which have been made in violation of the law. And to other contracts where prices are grossly excessive, it would seem proper to order either their rescindment or their reformation with the consent of the contractor. I have little doubt but that from such a procedure a large annual saving to the National Treasury would result. Prompt and effective action in enforcing this or a better procedure would obviate the necessity of considering whether it should be included by my Government as a condition precedent to the approval of the new loan.

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✓Cuba C 50260
✓Canadian Legation

Note of Interview between the Under-Secretary of State for External Affairs and Dr. A.F. Sainz de la Pena.
Thursday, December 15th, 1927.

Lunch and interview with Dr. A.F. Sainz de la Pena regarding his assumption that he was Commercial Attache attached to the Cuban Legation in London but with headquarters in Montreal. It was explained to him again that such an arrangement was not satisfactory on the double ground of constitutional unsuitability, since each of His Majesty's Governments had to be considered by itself hereafter in connection with diplomatic appointments, and of certain difficulties of court jurisdiction, this latter point having been emphasized by the British Government in declining to accept a somewhat similar proposition regarding a United States Commercial Attache to be attached to the London Legation but stationed in India.

I found from Dr. Sainz that he was himself responsible for the action which the Cuban Government had taken in this matter, both the provision for the Commercial Attache and the tentative provision for the establishment of a Cuban Legation. He appeared to have very bitter personal grievances against Dr. Bonet, (Cuban Consul General in Ottawa) on the score of an interview in which Dr. Bonet had professed lack of any knowledge of Sainz's status as Attache. I added that I would send him another letter dealing with some of the aspects of the matter covered in our interview, and he said he would send a copy of it to the Cuban State Department, as he had done in the case of my previous communication.

(O.D. SKELTON)
J.C.

V

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C 50261 E-2075
Cuban Legation

DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA
F.

Memorandum for the Prime Minister

Visit of Dr. Sainz de la Pena

Dr. Sainz probably wishes to interview you either on the question of his diplomatic status or on the question of Customs privileges.

Dr. Sainz, who was appointed Consul of Cuba in Montreal in 1925 and is some relation of the President of Cuba, visited Havana last summer. In the course of his visit he arranged the passing of two laws, the first creating a Cuban Legation in Canada (not to go into force, Dr. Sainz informs me, until Canada establishes a Legation in Cuba), and the other creating the post of Commercial Attaché to the Cuban Legation in London with residence in Canada and abolishing the present Consulate in Montreal.

Copies of these decrees were sent by the British Minister in Havana to the Foreign Office and by the Foreign Office to us.

As regards the appointment of an Envoy at Ottawa, it was first replied early in October that in the opinion of the Canadian Government it was a matter entirely for the decision of the Cuban Government, but if a representative were sent he would be received. On November 4th this position was revised and London was informed that while the Government of Canada appreciated the friendly attitude of the Government of Cuba, it did not contemplate the appointment of any considerable number of Canadian Ministers in the near future and would prefer that such arrangements when made should be on a reciprocal basis. No communication on this subject has been received either in London or in Ottawa from the Cuban Government itself.

On October 22nd Dr. Sainz de la Pena wrote the Prime Minister informing him of his appointment as Commercial Attache to the Cuban Legation in London with residence in Canada, and that he had on that day taken up his post. He asked for provisional authorization pending the receipt of the Exequatur. On November 7th the Under-Secretary of State for External Affairs wrote Dr. Sainz informing him that the matter had been taken up with the Foreign Office and that we had learned that no notification of the appointment in Canada had been received from the Government of Canada; that the Canadian Government appreciated the honour implied in the proposed appointment of a diplomatic representative, but that it did not now contemplate such an exchange, and that if it were arranged the appointment of a Commercial Attache to the Cuban Legation in London with residence in Canada would not be considered consistent with the present status of the Dominion and would not entitle such an Attache to

diplomatic

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diplomatic recognition in Canada. Dr. Sainz requested an interview, which was given him on December 15th, following which a second letter was sent to Dr. Sainz on December 16th giving further reasons for declining to recognize him as Commercial Attache and referring to similar action taken by the British Government with reference to a suggestion from the United States that an official in India should be considered attached to their Embassy in London. Dr. Sainz stated that he would forward the substance of both communications to the Cuban authorities.

Next, as to Customs privileges: The present Canadian law is that all career Consuls-General and Consuls are allowed to import articles for official use without paying duty, and also ordinary household effects when first entering the country. Consuls-General are given the further privilege of importing articles for their personal use without payment of duty. Dr. Sainz endeavoured to bring into Canada some wines for his personal use. The Collector of Customs in Montreal informed him that these were not exempt from duty. This finding is, I think, correct and should be maintained.

We have received a cable from the British Minister in Havana stating that the Cuban Government have been advised by their Commercial Attache in Canada that his effects were held up by the Customs authorities and pointing to the fact that the Canadian Trade Commissioner in Cuba has been allowed as an act of courtesy free entry on his office equipment and personal effects. Dr. Sainz has evidently given misleading information to his Government. A draft reply to the British Minister has been prepared, but not yet sent.

Attached are copies of the more important communications noted above, and also the draft reply to Mr. Morris.

O. D. SKELTON

Ottawa, 21st February, 1928.

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C 50263 E-9010-A

PRIME MINISTER'S OFFICE

MEMORANDUM

16

Monday,
December 24
1 9 2 3

MR KING:

Mr. Mulvey has returned from London, and has some important matters to bring to your attention. His Minister is away and will not be back until after New Year's. The agreement entered into through Mr. Larkin should be presented to Council at it's next meeting, but Mr. Mulvey thinks you should know about it at least a day in advance. He has asked to see you to-day, but I have put him off until Wednesday.

Mr. Mulvey mentioned that it would be necessary for the Government to send to London about $750,000 a week from today.

McG

Mr Mulvey was present at Council session 1926

Dec 27

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DEPARTMENT OF THE SECRETARY OF STATE

Ottawa, June 9, 1923.

MEMORANDUM FOR THE PRIME MINISTER.

In compliance with your request for a memorandum setting forth the purposes of our mission to Washington on which we leave today, should a question be asked in the House, I have the honor to state as follows:

Under Article 297 of the Treaty of Versailles Canada has the right to retain and liquidate all property, rights and interest in Canada belonging, at the date of the coming into force of the Treaty, to German nationals.

During the war, under the Consolidated Orders respecting Trading with the Enemy, German property, which was reported to the Canadian Custodian, was vested by Order of the Court and has since been held under the provisions of the Treaty.

There was similar legislation and action in the United States after that country became a belligerant and a considerable volume of securities of Canadian Companies, which were found at New York and other American financial centres standing in the names of Germans, were taken over by the Alien Property Custodian of the United States.

It was arranged during the progress of the war between the Alien Property Custodian of the United States and the Canadian Custodian that the Alien Property Custodian should continue to hold the above mentioned property of Canadian Companies and collect dividends thereon until it was decided at a later date how the property shpuld be ultimately disposed of.

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DEPARTMENT OF THE SECRETARY OF STATE

Under decisions of the Courts of the United States it has been held that the situs of securities of Companies is that of the authority incorporating the Company, so that securities of Canadian companies, wherever they may be found, have their situs in Canada and are therefore property in Canada under the provisions of Article 297 of the Treaty. The certificates themselves are merely evidence of property.

The disposition of the Canadian securities which are now held by the Alien Property Custodian of the United States is a subject of negotiation with the President of the United States, who is authorized, under United States legislation, to release and hand over the securities to the Canadian Custodian. The Canadian Custodian has, of course, legal rights which may be enforced in the Canadian Courts, but it is considered that the matter, as it is one between nations, could be disposed of more satisfactorily by negotiation than by resorting to the Courts.

A B Coffin

SECRETARY OF STATE.

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14

DEPARTMENT OF THE SECRETARY OF STATE
OF CANADA

Ottawa, December 26, 1923.

LMB.

MEMORANDUM

FOR THE RIGHT HONOURABLE THE PRIME MINISTER.

In the absence of the Honourable the Secretary of State I have the honour to submit for your consideration a report upon the results of my recent visit to London, which was made in an endeavour to settle matters in dispute between the Canadian Custodian and the English Public Trustee and also other disputes arising out of the operation of the Clearing Office.

I reached London on the 3rd of November, but it was not until the 3rd of December that I was able to obtain the first effective appointment with the British Board of Trade. This was due to many causes. From that time until I sailed on the 14th of December, the case was urged with all possible speed.

You will find attached hereto an Agreement which was adopted by the exchange of correspondence between the Honourable Mr. Larkin and Sir Sydney Chapman on behalf of the British Board of Trade. This Agreement is very largely conditional on the postponement of certain litigation arranged to be carried on between the Canadian Custodian and the Alien Property Custodian of the United States. Whether this litigation can be deferred is a matter for further consideration. It appears, however, from a cable received from Mr. Martin Conboy, of New York, counsel for the Canadian Custodian, that it is likely that a postponement can

be

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be arranged.

As set out in the Agreement, securities to the extent of £83,197 were handed over to me. Further securities are to be delivered as soon as it is discovered that they are free from lien or other claim. These securities aggregate £915,583. The actual value is considerably less as £643,325 are Grand Trunk . If the litigation in question can be delayed, further securities amounting to £163,675 will be transferred. The latter securities are such that if the English Public Trustee succeeds in the litigation referred to, there will be good ground for not delivering them to the Canadian Custodian. The questions involved in this litigation are largely the same as those raised in litigation now being carried on in the United States by the English Public Trustee. In the Canadian litigation the court decisions relied on are those of the United States, and as these decisions will be under review, there appear to be good reasons for postponing the Canadian litigation. Moreover, if the English Public Trustee succeeds in the litigation in the United States and the Canadian courts follow this decision, he is to indemnify the Canadian Custodian for losses which he might sustain on that account to the extent of $1,000,000.

The most substantial benefit, however, in the Agreement is that which provides that the Canadian Custodian may inspect the records of the Public Trustee. The lists of securities already

furnished

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furnished are not satisfactory. The first list was supplied in December, 1919, and was deemed quite unsatisfactory. Repeated requests did not produce any explanation or further lists. Two lists were furnished on the 30th of November and the 1st of December, 1923, which are still considered unsatisfactory. These two lists purport to be a complete statement, but they do not contain the names of securities referred to in the list of 1919 to the extent of over £100,000 sterling. Moreover, it is impossible to harmonize the statements on account of the number of duplications in the lists. This indicates that the English Public Trustee keeps his accounts and files his papers without any regard for Canadian interests, there being nothing in his files to indicate whether any of the securities held are those of Canadian corporations. An inspection of the accounts and records may disclose many more securities than those contained in the lists submitted. Such an investigation would also enable a precise computation to be made of the interest which should be allowed.

The Agreement also provides that the debit balance of the Clearing Office should be forthwith paid, together with interest. There has been no question of liability for payment of the debit. The matter of interest, however, stood in the way because the English Public Trustee would make no concession respecting interest on moneys payable to Canada which are in his hands. Now that this concession has been made, there appears to be no reason why interest on the debit balance should not be paid. This interest has, in fact, been earned by the moneys which

the

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the Canadian Custodian has on deposit. Moreover, a recent Agreement by the Officials of the Clearing Office with Germany provides that Germany will be responsible for interest on any credit in the Clearing Office until the amount is paid. As Canada's credit is at present upwards of £250,000, substantial earnings will be made through interest on this item.

As this balance must be paid by cable next week, it is essential that approval of the Agreement in question should be given immediately. I submit herewith a recommendation to Council for this purpose.

Thomas Mulvey
UNDER-SECRETARY OF STATE.

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TERMS OF AGREEMENT ARRIVED AT BETWEEN THE BRITISH AND CANADIAN GOVERNMENTS IN SETTLEMENT OF VARIOUS MATTERS AT ISSUE BETWEEN THEM.

December 13th,1923.

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A G R E E M E N T referred to in letter from the Board of Trade of December 12th,1923.

S.J.C.

P.C.L.

TERMS OF AGREEMENT ARRIVED AT BETWEEN THE BRITISH AND CANADIAN GOVERNMENTS IN SETTLEMENT OF VARIOUS MATTERS AT ISSUE BETWEEN THEM.

---

(1) The Canadian Government to do its utmost to postpone the institution of the litigation contemplated between it and the United States Alien Property Custodian in the Canadian Courts until a decision shall have been given by the United States Supreme Court in the proceedings in the United States Courts to which the English Public Trustee will be a party. The Public Trustee will use his utmost endeavours to obtain a decision as early as possible.

(2) In the event of the postponment being arranged as aforesaid the British Government to indemnify the Canadian Government to the extent of the present market value of all registered stocks or shares represented by blank endorsed certificates and claimed by the Canadian Government from the United States Government, if the United States Supreme Court in the said proceedings to which the English Public Trustee will be a party should hold that the situs of such stocks or shares is determined by the physical situation of the certificates and the Canadian Government should be defeated in the Supreme Court of Canada on this issue or should abandon its proceeding with the concurrence of the British Government. The amount of such indemnity shall in no case exceed $1,000,000,which shall include the costs of the Canadian litigation if such litigation is undertaken with the concurrence of the British Government.

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(3) The English Custodian to deliver to the Canadian Custodian all registered Securities in Companies incorporated in Canada,together with the dividends or interest accrued due thereon, which are now in his possession, if free from lien or third party claims.

(4) All interest or dividends received by the English Custodian and now in his hands and derived from registered securities already delivered by him to the Canadian Custodian under the terms of this arrangement, to be accounted for to the latter.

(5) All monies arising out of the sale of Canadian registered securities by the English Custodian, or the proceeds of drawn bonds of such securities received by him and the interest or dividends accrued due thereon, if and so far as still in his hands and if free from lien or third party claims, to be accounted for to the Canadian Custodian.

(6) This arrangement does not apply to registered securities the property of ex-enemies who resided in this country prior to the war, and who have been permitted to remain here.

(7) The Canadian Custodian to pay by cable to the British Controller on or before January 7th 1924, the balance due to the Central Office on the monthly account by the Canadian Clearing Office,together with interest at five per cent (less £59,000 which will be credited by the Public Trustee to the account of the Canadian Custodian with the British Controller in respect of the dividends and interest to be handed over under Clauses 3 and 4) as shown in the statement rendered by the Central Office to the Controller of the Canadian Clearing Office, such interest to continue to run until the date of payment. The British Custodian to pay to the Canadian Custodian interest at the average rate earned by all monies handed over to the latter under this agreement. Such average rate to be agreed after joint investigation by Representatives of

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the two Custodians respectively.

(8) The Canadian Custodian to waive all claim to ex-enemy owned bearer bonds or debentures or share warrants to bearer (or their proceeds of sale) and to all dividends and interest thereon respectively, the documents of title to which are or were in the possession or under the control of the English Custodian.

(9) The Canadian Custodian to indemnify the English Custodian against all claims in respect of any property or funds handed over to the former under the agreement.

(10) The Representative of the Canadian Custodian to have full access to the relevant records of the English Custodian for the purpose of adjusting figures and accounts and otherwise interpreting or giving effect to this agreement.

(11) The basis of this agreement is that the Canadian Government shall accord complete reciprocity to the British Government as regards all securities in British Companies or Corporations, the documents of title to which are in the possession or under the control of the Canadian Custodian.

(12) The term "English Custodian" shall include the Administrator of Austrian, Bulgarian and Hungarian Property, and also so far as the Board of Trade can arrange it, the Scottish Custodian.

(13) It is understood that the agreement is conditional on the one hand as to the handing over by the English Custodian of all pure registered securities (i.e.registered securities not endorsed in blank) and the fruits thereof and the interest accrued on such fruits, and on the other hand as to the payment by the Canadian Custodian of the balance due from him, with interest, to the British Controller, except that, on this unconditional basis, for the £59,000 referred to

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in Clause 7 there shall be substituted in respect of dividends and interest the provisional sum of £25,000 for the purpose of the said payment, the exact sum to be determined subsequently; but that in all other respects the agreement is conditional notwithstanding anything to the contrary in its language, upon the Canadian Goverbment securing the contemplated postponment of the litigation referred to in Calause 1.

COPY R
COMPARED J. Mac
DATE Dec 26-23

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IH/5

P.C. 2545 C. 50275 E-9000-A

The following is a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by his Excellency the Governor General on the 28TH DECEMBER 1923

15

The Committee of the Privy Council have had before them a Report, dated 26th December, 1923, from the Right Honourable W.L. Mackenzie King, for the Secretary of State, submitting that disputes have arisen between the Canadian Custodian of Alien Enemy Property and the English Public Trustee respecting the delivery by the latter to the former of securities of Canadian corporations sequestrated in the United Kingdom; that questions have also arisen regarding the payment of a debit balance claimed by the Clearing Office established under the Treaty of Versailles, the interest thereon, and the rate of exchange at which such payment should be made;

The Minister states that negotiations and conferences have recently taken place between the Honourable Peter C. Larkin, High Commissioner for Canada, representing the Canadian Custodian, and Sir Sydney Chapman, Secretary of the British Board of Trade, for the purpose of settling all disputes and questions which have arisen in the premises, and that these negotiations have resulted in the Agreement attached hereto.

The/

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The Minister, therefore, recommends that the said Agreement be ratified and confirmed.

The Committee concur in the foregoing and submit the same for Your Excellency's approval.

E. J. Lemaire
Clerk of the Privy Council.

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C 50277 E-1309 Vol. 5

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Memorandum for Mr. King

Attached is a copy of the Agreement concluded by Mr. Larkin, with Mr. Mulvey's assistance, and the Bulgarian Minister in London, providing for the return to Bulgaria of Bulgarian property sequestrated in Canada. It will require to be confirmed by Order-in-Council, as was done in the case of the similar agreement with Austria lastyear.

OS.

Ottawa, 5th November, 1928.

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IMPERIAL CONFERENCE, 1923.

COMMITTEE ON THE POSITION OF THE DOMINIONS AND INDIA IN RELATION TO THE SIGNATURE OF TREATIES AND THE QUESTION OF TERRITORIAL WATERS.

CONCLUSIONS of Meeting October 25th, 1923.

(1) POSITION OF THE DOMINIONS AND INDIA IN RELATION TO THE SIGNATURE OF TREATIES

The Committee decide to recommend for adoption by the Imperial Conference the Draft Resolution relative to the Negotiation, Signature and Ratification of International Agreements (Seee E (T.C.) 2) subject to the amendment of the last sentence of Part II (c) to read as follows:-

"In the case of treaties negotiated at International Conferences, where there is a British Empire Delegation, on which, in accordance with the new established practice, the Dominions and India are separately represented, such representation should also be utilised to obtain this object."

The Complete Resolution in its amended form appears in Appendix A.

The Secretary of State for Foreign Affairs undertook to circulate to the Committee a short historical memorandum on the position of the Dominions in relation to the signature of treaties (See Appendix B.).

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(2) PROHIBITION AND LIQUOR SMUGGLING IN THE UNITED STATES.

The Committee recognised the importance of no action being taken which might tend to impair the principle that the three-mile limit should be the general limit of territorial jurisdiction. At the same time the sense of the Committee was that it was desirable, first on moral grounds, secondly with a view to maintaining good relations with the United States of America, and thirdly in the interests of British commerce, that action should be taken,,if practicable, to assist the United States Government in suppressing the smuggling of liquor by British vessels.

It was noted that the interdepartmental Committee, which had examined the question in Great Britain, had been unable to recommend any satisfactory method of assistance apart from an agreement with the United States Government on the general lines of Mr. Hughes's proposal. It was felt, however, that the form of Treaty suggested by Mr. Hughes was not wholly suitable and that it would be better to frame a counter proposal on similar lines designed to obtain from the United States Government a formal affirmation of the general principles of the three-mile limit and to ensure their support of that principle at any International Conference on Territorial Waters.

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The Secretary of State for Foreign Affairs accordingly proposed that the British Government should take the initiative in suggesting to the United States Government an exchange of notes by which the principle of the three-mile limit of territorial waters would be affirmed on both sides; at the same time it would be arranged on the one hand that no objection would be raised, as a special concession for a limited period, to the search of British vessels engaged in liquor smuggling outside the territorial waters of the United States, and on the other hand that British vessels should be permitted to carry liquor under seal in the territorial waters of the United States.

It was agreed that a draft note to the United States Government should be prepared on these lines and circulated to the Members of the Committee for consideration.

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IMPERIAL CONFERENCE

Extract from Summary of Proceedings

IX. NEGOTIATION, SIGNATURE AND RATIFICATION OF TREATIES.

The principles governing the relations of the various parts of the Empire in connection with the negotiation, signature and ratification of Treaties seemed to the Conference to be of the greatest importance. Accordingly it was arranged that the subject should be fully examined by a Committee, of which the Secretary of State for Foreign Affairs was Chairman. The Secretary of State for the Colonies, the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa and Newfoundland, the Minister of External Affairs of the Irish Free State, and the Secretary of State for India as Head of the Indian Delegation, served on this Committee. With the assistance of the Legal Adviser to the Foreign Office, Sir C. J. B. Hurst, K.C.B., K.C., the following Resolution was drawn up and agreed to :—

"The Conference recommends for the acceptance of the governments of the Empire represented that the following procedure should be observed in the negotiation, signature and ratification of international agreements.

"The word 'treaty' is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between Heads of States, signed by plenipotentiaries provided with Full Powers issued by the Heads of the States, and authorising the holders to conclude a treaty."

I.

"1. *Negotiation.*

"(*a*) It is desirable that no treaty should be negotiated by any of the governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

"(*b*) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other governments of the Empire likely to be interested are informed, so that, if any such government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.

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"(c) In all cases where more than one of the governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those governments before and during the negotiations. In the case of treaties negotiated at International Conferences, where there is a British Empire Delegation, on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilised to attain this object.

"(d) Steps should be taken to ensure that those governments of the Empire whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested.

"2. *Signature.*

"(a) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the government of that part. The Full Power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear.

"(b) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the governments concerned.

"(c) As regards treaties negotiated at International Conferences, the existing practice of signature by plenipotentiaries on behalf of all the governments of the Empire represented at the Conference should be continued, and the Full Powers should be in the form employed at Paris and Washington.

"3. *Ratification.*

"The existing practice in connection with the ratification of treaties should be maintained.

II.

"Apart from treaties made between Heads of States, it is not unusual for agreements to be made between governments. Such agreements, which are usually of a technical or administrative character, are made in the names of the signatory governments, and signed by representatives of those governments, who do not act under Full Powers issued by the Heads of the States: they are not ratified by the Heads of the States, though in some cases some form of acceptance or confirmation by the governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations the governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps should be taken to ensure that the government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views."

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The Resolution was submitted to the full Conference and unanimously approved. It was thought, however, that it would be of assistance to add a short explanatory statement in connection with part I (3), setting out the existing procedure in relation to the ratification of Treaties. This procedure is as follows:—

(*a*) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the government of that part:

(*b*) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the governments of those parts of the Empire concerned. It is for each government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that government.

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C 50284

MEMORANDUM

Prime Minister's Office,

Ottawa, Mch 3/41

Most Secret

Mr King:

Attached draft cable is submitted for your approval.

L. B.

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C 50285 33

Convention
LIQUOR ~~TREATY~~ BETWEEN GREAT BRITAIN AND THE UNITED STATES.

(to aid in the prevention of the smuggling of alcoholic beverages into the United States).

AD HOC AGREEMENT FOR UPHOLDING OF PRINCIPLE OF THREE MILE TERRITORIAL LIMIT, BUT EXTENSION THEREOF IN PRACTICE FOR PURPOSE OF SEIZURE OF VESSELS SUSPECTED OF BEING ENGAGED IN SMUGGLING WITHIN ONE HOUR'S SAILING DISTANCE OF MAINLAND.

Parties to the Treaty (Convention). His Majesty and the President of the United States.

Plenipotentiaries.

Sir Auckland Geddes
Secretary of State Charles Evans Hughes.

Convention
~~Treaty~~ signed at Washington on January 23rd. 1924 by said plenipotentiaries.

Convention
~~Treaty~~ ratified by United States Senate, by vote of 61 to 7, March 13th., 1924.

Convention
~~Treaty~~ will be ratified by British Parliament as soon as Canadian Parliament has signified concurrence in such ratification.

(NOTE) - Convention ~~Treaty~~ has not yet been discussed in British Parliament.

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Negotiations for Treaty:

Commenced June 11th last by submission of U.S. draft.

British Foreign Office submitted alternative draft.

Complete treaty, as finally settled by Foreign Office and State Department, communicated to Canada and other Dominions with request for concurrence.

Jan. 12,1924 - Canadian Government cabled to Colonial Office approval of proposed treaty and signature thereof by His Majesty's representative at Washington, on condition that if a Joint Board to report on any claim for compensation by vessels of Canadian registry be required to be constituted under Article IV, selection of person whose name is to be submitted to His Majesty for appointment to such Board will be made by Canadian Government. Further stipulated in Canadian cable that Canadian parliamentary approval desirable before Canadian Government intimates concurrence in ratification.

Jan. 21,1924 - Colonial Secretary cabled acceptance of condition and stipulation contained in Canadian cable of January 12th.

Feb. 29,1924 - Colonial Secretary cabled desire of his Government to have treaty ratified promptly, and to this end urged Canadian Government to expedite concurrence in ratification.

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DRAFT DESPATCH

FROM THE GOVERNOR GENERAL

TO THE SECRETARY OF STATE FOR THE COLONIES.

Ottawa,
March 21, 1924.

Confidential- Following from my Prime Minister begins:

Your Cable March 17th Liquor Treaty with United States. In moving approval by House of Commons this afternoon, I referred without quoting in extenso to my telegram January 12th, your telegram January 21st and your telegram January 26th. Resolution now goes to Senate for approval.

In view of all circumstances, I see no immediate necessity for publication here of any further correspondence on this subject. Ends.

I do not contemplate necessity for reference to

Confidential - Your Cable March 17. Liquor Treaty with United States, am pleased to inform you House of Commons unanimously approved this afternoon Liquor Treaty with United States. I referred

Senate has adjourned till April 1, I will see that resolution is immediately considered as soon as Senate reassembles

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C-1200
C 50288

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Delegation of twenty-five representatives of
Canadian Association of Garment Manufacturers, etc.,
which waited on the Government of Wednesday,
August the 6th, 1924 at 3.00 P.M.

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Ministers present:

The Right Honourable the Prime Minister,

The Honourable George P. Graham,

The Honourable Jacques Bureau,

The Honourable Ernest Lapointe,

The Honourable Dr. J. H. King,

The Honourable E. M. Macdonald.

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Mr. R. P? SPARKS; explained that the delegation represented the Canadian Association of Garment Manufacturers, the Wholesale Dry Goods Association of Canada, thexRetail Merchants Association of Canada, Canadian Cottom Mills, Silk Mills, Silk Jobbers and Retailers - in fact the whole textile industry of Canada.

The purpose of the delegation was to urge the Government to take more vigorous methods of preventing smuggling of textile fabrics and to have the law changed so as to provide, in serious cases, for imprisonment without option of fine. Smuggling was rapidly on the increase and was driving legitimate business into bankruptcy. It was impossible to estimate the loss of revenue to the country, but the Minister of Customs himself had said that it probably amounted to $50,000,000 (including whiskey and cigarets). "Bootleggers are now shipping wet goods one way and dry goods on the return trip. It is possible to catch the smugglers but it is not possible to punish them adequately. Particularly in Montreal has the administration of justice fallen down in this regard".

The Department of Justice should revise the law so as to make it obligatory on a judge to put behind the bars men convicted of smuggling operations. This would cure 50% to 75% of the smuggling. As matters stood at present the

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Department of Justice Customs had not the equipment to meet an abnormal situation.

Mr. Sparks said that his Association had records of single shipments of textiles valued at $75,000 brought into Montreal and paid for in cash. It seemed to him that the Royal Canadian Mounted Police was the most competent body to deal with the situation. The problem after all was a police problem, and the Department of Customs was completely falling down.

He referred specifically to the activities of Messrs. Marcus Bros and Althause and the Rosen case. The law should be altered so as to put serious offenders into gaol for a period of from six months to two years. Mr. Sparks referred particularly to the alleged smuggling of textiles at Rock Island, Quebec, and vicinity, where he claimed that millions of yards of cotton had been brought illegally into Canada.

Mr. BUREAU objected that it was not fair to charge him with failure to investigate matters which had not been referred directly to him.

Mr. SPARKS said this was an entirely new view to him. He thought the merchants were doing all that they reasonably could do in reporting matters of the kind to officials of the Customs Department. If the Department did not then act, the responsibi-

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lity surely rested ultimately on the Minister. Mr. Sparks threw out a suggestion that a separate Government bonded warehouse should be established at Rock Island,

A further charge made by Mr. Sparks was that the goods smuggled into Canada at Rock Island included a lot of prison-made garments.

The Government should lose no time in reorganizing the whole preventive service and should entrust the work to the R.C.M.P. or some new body.

Telegrams protesting against the present conditions were read from Winnipeg Overall and Work Cloth Manufacturers (9 factories, 700 employees) and Edmonton (5 factories, 600 employees).

"As Manufacturers", said Mr. Sparks, "we are entitled to the same diligence on the part of the Government to prevent smuggling as to collect the revenue which we pay to you." There was also wanted a stricter enforcement of the law on under-valuing of silk.

Mr. BUREAU stated that he had all along been seeking cooperation from those engaged in the textile industry and promised to take action if furnished with details. The preventive service at Montreal had been reorganized. The Minister would himself go to Rock Island to investigate the situation there and, if remedies could be suggested, he would see that they were implemented.

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C 50292

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Mr. SPARKS: I think your reorganization at Montreal is not effective.

Mr. BUREAU: We won't have Mounted Police in the Customs Department.

MR. SPARKS: There is no obligation on us to become informers. Some responsibility to find out the facts rests with the Department.

The PRIME MINISTER: There is an obligation on all citizens to uphold the law.

MR. BUREAU: I am willing to copperate in any way; if you have any information give it to me and I will get results.

Mr. SPARKS: Will the Minister of Justice give us any hope in the change of the law?

Mr. LAPOINTE: I will investigate the situation. I will take it upwith Mr. Taschereau. I will do my part, which, after all, is practically very little. The administration of justice in matters of this nature is in the hands of the Provinces. However, I will investigate with the officers of my Department to see whether anything can be done to improve the situation.

The PRIME MINISTER: congratulated Mr. Sparks on the presentation of his case. Smuggling was most adhorrant to the Government who had a direct financial interest in preventing it and in helping our own industries. The charge that American-

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prison made goods were being dumped into Canada was most serious.

Mr. Bureau had perhaps the hardest job in the Cabinet. He could be relied on to take action if the necessary concrete information were ~~xxxx~~ entrusted to him. "We will do wahat we can, because we are just as much interested as you are".

Other speakers were Mr. Trowern, of the Retail Merchants Association, Mr. Bruck (silk mills) and Mr. ~~Xxxxx~~ Reynolds.

Before the delegation dispersed it was arranged with the Minister of Customs to discuss the possibility of having recognition given by the Department ~~xf~~ to an official of the textile industry to cooperate in apprehending and punishing smugglers.

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C 50294

PRIME MINISTER'S OFFICE

MEMORANDUM

Friday
July 18 (1924)

MR. KING:

I have told Mr. R. P. Sparks that it will be impossible for members of the Government to receive his delegation until Cabinet meets a fortnight after prorogation. He is quite satisfied with this and will hope to hear from this office two or three days before the appointment.

McG.

C 50295

PRIME MINISTER'S OFFICE

MEMORANDUM

Wednesday,
July 16,
1924

MR. KING:

Mr. R. P. Sparks has been inquiring from time to time as to when you and other members of the Cabinet can arrange to see a small delegation representing the Canadian Association of Garment Manufacturers on the subject of the attached letter.

Mr. Sparks emphasizes the extent of the smuggling of goods into Canada and estimates the loss of revenue at more than ten million dollars a year. When he brought up the question nearly a month ago he hoped that the matter would not have to wait over until after the

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C 50296

PRIME MINISTER'S OFFICE

MEMORANDUM

Session when the Ministers concerned were away from Ottawa.

McG.

C 50297

MEMORANDUM

Prime Minister's Office,

Ottawa, December 9., 1924.

Mr. King

Delegation re Smuggling of Silk

Mr. Tolchard, President of the Toronto Board of Trade, phoned at 5.30 this afternoon to say that on account of illness and other unavoidable causes, the above Delegation cannot come to Ottawa tomorrow. Mr. Tolchard asks for an appointment for later in the week or early next week.

LCM.

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C 50298

PRIME MINISTER'S OFFICE

MEMORANDUM

December 9
1 9 2 4

MR. KING:

Re: Smuggling.

I attach hereto a synopsis of an article on the smuggling situation which recently appeared in "The Toronto Saturday Night", which may be of some interest, in view of the delegation being received tomorrow in regard to this matter.

R.O.C.

Postponed indefinitely.
9-XII-24 Low.

C 50299

PRIME MINISTER'S OFFICE

MEMORANDUM

Tuesday,
Dec. 2,1924

MR. KING:

Mr. Bureau does not know at the present time whether he will be in the city or not on Wednesday next to see the delegation re smuggling. I hope to have word from him by Saturday of this week and will then communicate with Mr. Burton.

McG.

Mr. Bureau says he will be in Ottawa next Wednesday, and will be able to meet the delegation that day.

Dec. 6 WHM

Wire SP.

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C 50300

Synopsis of an article entitled
"Smuggling a National Menace"
appearing over the name of Wellington Jeffers
in the Toronto Saturday Night - Nov. 22, 1924

In this article Mr. Jeffers alleges that smuggling has become an organized and profitable industry, particularly along the Quebec and New Brunswick - United States border, and has developed to such an extent as to be a national menace.

He asserts that the Honourable Jacques Bureau is reported as having said that foreign goods to the value of Fifty Million Dollars ($50,000,000) at least are now smuggled into Canada each year. On this basis he points out the great loss of revenue to the Dominion, the handicap from which Canadian Manufacturers suffer, and the consequent hardship reflected in working-men's wages.

He attributes the rapid increase in smuggling of late years largely to the development of high power motor cars and good road systems.

The chief criticisms may be summarized as follows:

1. Customs staff entirely inadequate in point of numbers to cope with the situation.

2. Seizure of goods and fines inadequate penalties and leave smuggling operations unimpaired.

3. The delays of the law and the possibilities of technical evasions.

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He suggests by way of immediate action:

1. Jail sentences without option of fine for persons convicted of smuggling.

2. The increase in customs staff and organization of a strong preventive force to deal effectively with smuggling gangs.

3. Publicity of proceedings taken against smugglers.

4. The organization of a Secret Service to cope with the smuggling gangs working by what he terms "the underground route."

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C 50302

House of Commons
Canada

Insurance

Imbroglio of Prevention Service.

No more to record anything comparable for difficulty.

U.S. Government of Persons & Conditions of Non-Prevention Force.

Longer [illegible] in U.S.

Minister meaning defendant or Subordinate Officers

Discretionary Powers - Pressure.

Re Bonus

Report making to Meaning of

C 50303

House of Commons
Canada

No patience with Party politics

Bureau - (Lengths of time Confidential)

Re Bonus as a Principle

No Minister of Conditions so vigilant

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C 50304

PRIME MINISTER'S OFFICE

MEMORANDUM

Had Thurlow's
the condition of things
were the agreement
would have broken
down.

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C 50305

House of Commons
Canada

C 50306

House of Commons
Canada

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3/ C 50307

House of Commons
Canada

here also made decision
respecting to the part
implemented by immediate
enlargement

number of persons & number of patrols
known & allows & difficulties to bring

Re Regina smuggling from Canada
to U.S. (see Treaty - Extradition
Extradition Act)
respect bond will

United States Govt. had to get Congress
other Govt - extend the marine League

Bootleggers
re vessels carrying cases of liquor
(see Opium Act 1908 - Customs)

4/ C 50308

House of Commons
Canada

"unholy partnership Govt of Canada and
gang of bootleggers must end"

Minister wanted powers
re export of alcohol.
immatured denatured alcohol.

11

Recommendations
continue
re further investigation
extension of Order in Council enlarge-
ment with view of bringing
in cases upon a prosecution

extension to territory - and for
ports.
3 groups of cases
Montreal
Vancouver
Rock de Lens
Interdepartmental made all limit

Minister authorized his interview
arrangements

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C 50309

House of Commons
Canada

C 50310

House of Commons
Canada

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C 50311

PRIME MINISTER'S OFFICE

MEMORANDUM

Your committee is of the opinion that in so far as the matters referred to ~~by the Commission~~ the Committee by the order of reference ~~to it~~ have not been completely reviewed, they ~~investigation should be continued by judicial inquiry~~ should be made the subject of judicial inquiry as to the ~~circumstances~~ circumstances forthwith, the ~~evidence~~ evidence or some inquiry, whether ~~by judicial inquiry or otherwise~~ such the evidence to be reported to ~~Parliament~~ parliament at the ~~opening of the~~ ensuing next session

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C 50312

PRIME MINISTER'S OFFICE

MEMORANDUM

Mot a request do come from the women to their women in senate for the Hon Jorgen Bureau to address before such judicial body ~~the examination~~ meets respecting this administration of the affairs of the Department of Customs and Excise. mets

Re 200 - discretion of army

Est/wst marchons

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C 50313

BRIEF FOUNDED ON THE FACTS IN THE EVIDENCE TAKEN BEFORE THE SPECIAL COMMITTEE INVESTIGATING THE ADMINISTRATION OF THE DEPARTMENT OF CUSTOMS AND EXCISE.

The evidence clearly shows, and it is known to all Members of the Houses of Parliament that practically the same system has been in vogue for all time in the conduct of the Department of Customs and Excise. Changes have been made from time to time in method of practice, but they did not eradicate the principles on which the procedure governing the officials of the Department was based.

The same type of Preventive Service grown slightly larger as time passed has always been employed. This system has been accepted as adequate until the last few years.

Conditions in Canada which would tend to breaches of the Customs Act, however, have come into existence within the last comparatively few years, and as a result witnesses who have made a careful study of this situation declare the old system not only inadequate, but obsolete.

It is well known to Members of Parliament that although it is true that even prior to last session the Act did contain a provision for the punishment of smugglers when apprehended and convicted by a prison sentence as well as a fine, that at the same time the sentence to gaol was practically never asked for. Members well know they were importuned by their constituents to appear before the Minister of Customs on behalf of violators of the Customs Law. Within a short period of time the Republic to the South of us amended its Constitution providing for prohibition, and passed the Volstead Enforcement Act.

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The automobile another recent development has been of wonderful assistance to the smuggling. The evidence shows that liquor to an astounding quantity is by one method and another being delivered to the United States, and the smuggler always makes sure of a return cargo. These cargoes are made up of silks and many other lines, details of which, are fully set out in evidence.

Business conditions in Canada began to suffer. Many business concerns commenced a survey of the situation, and through trade methods soon discovered unfair competition was to a great extent at the bottom of their troubles. Goods were being brought into Canada free of duty. A number of witnesses representing various lines of business activity in Canada came before the Committee, and swore that some of them were even being driven out of business through this unfair competition.

MR. R. P. SPARKS, FORMER PRESIDENT CANADIAN ASSOCIATION OF GARMENT MANUFACTURERS TOOK A SERIOUS INTEREST IN THE QUESTION OF SMUGGLING ON ACCOUNT OF THE SERIOUS LOSS THIS ASSOCIATION FELT THEY SUFFERED THROUGH THE ACTS OF SMUGGLERS. THE EVIDENCE OF THE PRESIDENT IS SET OUT HERE ALMOST IN FULL AS THIS CONTAINS A RECORD OF WHAT WAS PLACED BEFORE THE GOVERNMENT BY HIMSELF, AND HIS ASSOCIATION. THIS EVIDENCE COVERS THE ACTIVITIES OF WHAT IS KNOWN AS THE COMMERCIAL PROTECTIVE ASSOCIATION, A COMPANY FORMED BY MR. SPARKS AND HIS ASSOCIATES TO CO-OPERATE WITH THE GOVERNMENT IN OBTAINING DATA ON THE SMUGGLING SITUATION TO-DAY.

R. P. SPARKS CALLED AND SWORN, PAGE 108:

In 1923 and part 1924, he was President of The Canadian Association of Garment Manufacturers. Prior to August, 1924, he had frequently interviewed the Minister

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of Customs and members of his staff on the question of smuggling. On Aug. 6th 1924 a deputation appeared before the Prime Minister and certain members of his Cabinet.

On June 23rd 1924 a letter was sent to the Prime Minister on the question of wholesale smuggling into Canada claiming the loss to revenue in the opinion of this Association would be found to exceed $10,000,000 and that conditions in the ports, particularly Montreal was such that smugglers were practically immune from punishment, and asking for an appointment.

Letter of Mr. Sparks reporting result of interview was read into minutes - the Association recommended an amendment to the Customs Act that where the value of goods smuggled exceeds $500.00 a penalty in addition to any other of not less than six months or more than two years be imposed.

Certain other recommendations were made, see page 113.

Two petitions from groups of manufacturers as presented to the Cabinet meeting are read into evidence - see page 114.

The Association offered to aid the Government by supplying information received by them through trade channels - Cabinet Council thought the idea good - as a result a Company was incorporated by Dominion Letters Patent with power to establish and operate a Central Bureau for the clearing of information in reference to smuggling and the establishment of branches of the same in other places throughout the Dominion of Canada through the medium of agencies or otherwise.

The name of the Company was The Commercial Protective Association and the Charter issued on the 19th day of January 1925.

Exhibit 23 is a list of 21 organizations co-operating with the Company by contributing money and

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other aid.

On notifying the trade the Company had offices and were prepared to receive information a flood of same reached us. Before passing this on the officers of the Company decided they should make some preliminary investigations and ——— to employ the best criminal investigator available. As a result after enquiries, Mr. Walter Duncan was engaged. He was at that time employed by the Department of Finance and had been for 30 years inspector of detectives in the City of Toronto. Others were engaged under him. He started work about the 1st October 1924, and had at times as high as ten assistants all paid by the Company. After certain correspondence and interviews Mr. Sparks, as President of the Company wrote the following letter - fyled as Exhibit 24.

DOMINION SMUGGLING PREVENTATIVE
ASSOCIATION,
Ottawa, DECEMBER 12, 1924.

Hon. Jacques Bureau,
Minister of Customs and Excise,
Ottawa.

"Dear Sir,- As previously advised, a meeting was held yesterday of the members of a small committee interested in smuggling. We had been hopeful of being able to meet you, but, in your absence, we had an interview with Mr. Farrow."

"The chief object of our interview was to again urge that the investigators whom we have employed to assist your Department in the apprehension and conviction of smugglers should be granted the powers of preventive officers. We wish to again point out that the sole object of our organization is to assist your Department, and that our efforts cannot be effective unless these officers have the powers above referred to. We trust that we may be able to obtain your co-operation in this regard."

I deal with another matter in the same letter, if you wish me to read it.

Q. You might finish reading that letter, because it will indicate what went on.

"Another matter to which reference was made was the situation at Rock Island, Quebec. It is generally known in the trade that vigorous action was taken by your Department, and that your officers found evidence of smuggling on a large scale. It is further well known that the smugglers who were detected came to Ottawa, interviewed members of the Government, with the result that no prosecution was made. The information to this effect has come direct from Rock Island. These people have always claimed to have influence at Ottawa, and, in the minds of those who are affected by this illegal traffic, the events of the past few weeks demonstrate the truth of their boasts.

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It was strongly urged at the meeting yesterday that we should press for a prosecution in these cases.

It was pointed out by those who are familiar with the situation that you were dealing with the smuggling problem in an energetic manner and that we should accept your decision not to prosecute, as you may have had reasons for believing that the ends of justice would be met without prosecution. It was further pointed out that you were co-operating heartily with this Association in our efforts to protect our interests, and I might say that nothing would support this position more fully than the prompt and immediate appointment of these investigators as preventive officers.

Our experience, based on the few weeks during which we have been organized, has more than ever convinced us that we can be of great assistance to your Department, but the effectiveness of our organization is entirely dependent upon the granting of the powers to our officers, to be used in emergencies.

Trusting that this matter will have your immediate and favourable consideration, I remain.

Yours truly,
R.P. SPARKS,
President."

This request was granted and also certain of their men were sworn in as Royal Canadian Mounted Police Officers.

The Company found out however it was not the practice of the Department to prosecute in smuggling cases - the Company were convinced this was necessary.

Exhibit No. 25.

"Ottawa, February 4, 1925.

Rt. Hon. W.L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:- Some months ago a large representative deputation waited upon you and members of your Cabinet pointing out that smuggling and under-valuation for duty purposes were causing an immense loss of revenue and seriously interfering with the business of legitimate traders and manufacturers.

Subsequent to that time this Association was organized for the purpose of assisting the Department of Customs and Excise in the prevention of smuggling and under-valuation and to make certain investigations of their own into this problem. In this regard we are pleased to say that both the Minister and Deputy Minister of Customs have welcomed our co-operation and have facilitated in every possible way the investigations we have made into the smuggling problem. These investigations have even more strongly impressed the business men who have given close attention to this work with the magnitude of this traffic and the necessity of prompt and drastic action.

Under the present law smuggling is not an indictable offence, although the Minister has the right to take cases of smuggling into the civil courts. It has, however, been the practice ever since Confederation to settle departmentally practically all seizures for smuggling or under-valuation. We believe that this

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practice has had the general affect of what might not be improperly described as contempt for the law in this regard.

We respectfully submit that, in order to maintain respect for the law and to correct the abuse of its infraction, all cases of fraud whether by way of smuggling or under-valuation under the Customs Act should be dealt with by the Civil courts, and, in the case of what might be described as commercial smuggling, that is smuggling of goods for resale of a substantial value, say $100 or over, the offence should be made punishable by imprisonment without the option of a fine. The various penalties as set out in the Act at present are entirely inadequate. The preventive service as at present constituted is quite unable to cope with the situation, handicapped as they are by existing laws and regulations which interfere with effective preventive work.

To illustrate the difficulties of the present situation we have prepared maps taking a particular section of the Quebec border, showing approximately sixty roads crossing the border, within one hundred and twenty-eight miles. In this section there are at present nine Customs Houses. According to the Act these Customs Houses remain open from sunrise to sunset and, so far as we are aware, after the sun has set the border is to all intents and purposes wide open. It would be obviously impossible to demand a twenty-four hour service at even all of these sixty roads, let alone the whole four thousand miles of border. We believe the only solution of the problem will be found in drastic punishment for smugglers when caught. In this regard we might refer you to the provisions in reference to the entering into Canada of immigrants under Section 33, sub-section 7 of the Immigration Act. The general conditions as in this section might be applied to smugglers entering Canada on roads other than those on which Customs Houses are located.

The law relating to under-valuation involves complicated and long drawn out investigations which practically nullify their effect. We believe these particular features could be simplified and made more effective.

The appraisal system is unsatisfactory, chiefly owing to the fact that in Canada there are 522 ports of entry, and it is obvious that it would be impossible to keep proper appraisers at all these ports. We might point out, in so far as ports of entry are concerned in Canada in comparison with the United States, that there is one port of entry in Canada for every 17,241 people, whereas in the United States there are only 314 ports of entry, or one to every 372,611 people. We are prepared to make practical suggestions in this regard.

It is respectfully submitted that the conditions herein set forth are sufficiently well known to the Government and to its departmental officers and the requested forms of relief so necessary and reasonable as to justify the Government to take immediate action by instituting the required departmental changes and submitting to Parliament bills providing for necessary legislative enactment, or, if the Government is not satisfied as to the necessity of action and the action which should be taken, it is respectfully submitted that a Parliamentary committee should be appointed immediately to inquire into the necessity of departmental and legislative changes.

I might mention incidentally that this Association has been endorsed and is being supported by the following organizations:-

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The Canadian Manufacturers Association.
Canadian Jewellers' Association.
Canadian Wholesale Dry Goods Association.
Canadian Association of Garment Manufacturers.
Retail Merchants' Association of Ontario.
Montreal Board of Trade.
Toronto Board of Trade.
and the boards of trade in a number of the other of the larger cities in Canada.

Yours truly.

(Sgd.) R. P. SPARKS.

Chairman Executive Committee."

Mr. Sparks states in evidence he never had any complaint to make of Customs Officials at the Head Office as he always found them sympathetic, but the Company wanted the Act changed and also suggested a Parliamentary Committee to investigate. This had been urged very strongly on the Prime Minister six months earlier.

Exhibit No. 26.

Ottawa, February 21, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:- The acquittal by the Quebec courts of J. E. A. Bisaillon, the Chief Preventive Officer at Montreal, who was charged with conspiracy, creates a new situation in reference to the prevention of smuggling. I think you should be in possession of certain information which we have in reference to this matter, as he is the key to the whole smuggling situation.

We have other information of the most important character which I would like to convey to you, and also make some definite suggestions for the prevention of this traffic. If you wish to discuss this matter, I will be glad to make an appointment at any time which suits your convenience. I would suggest that it might be desirable to have the Hon. Mr. Robb also present, and I have some information which I think would be of a good deal of interest to the Hon. Mr. Graham.

Might I again repeat what I think I have said to you before that, from the standpoint of loss of revenue, I think the smuggling business is second only to the loss occasioned from the operation of the Canadian National Railway.

If you desire, I will be glad to make some definite suggestions in regard to administration, which I believe will be immediately effective.

Awaiting a reply, I remain,

Yours respectfully,

(Sgd.) R. P. SPARKS.

Chairman, Executive Committee."

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Exhibit No. 27.

"Ottawa. February 26. 1925.

Rt. Hon. W. L. Mackenzie King.
Prime Minister of Canada.
Ottawa.

Dear Sir.- I took the liberty of writing you on Saturday last suggesting an appointment at which I could lay before you certain information in reference to J. E. A. Bisaillon and other matters in connection with smuggling in which I thought you would be interested. However, if the statement of the Minister of Customs in the House of Commons on Tuesday last is to be accepted as an indication of the Government's policy, I think, perhaps, there is no use taking up your time in this regard.

A Canadian Press dispatch reads as follows: 'In speaking of smuggling Mr. Bureau said: I don't believe any human power can stop it.' although his department had done a great deal to decrease smuggling at the border.

Might I take the opportunity of stating that, after four months investigation by a staff of trained criminal investigators, we are convinced that at least half of the smuggling now going on could be prevented within a month by an energetic policy on behalf of the Department, and further that, with necessary amendments to the Act, ninety per cent of the smuggling could ultimately be prevented. Might I further express the opinion that smuggling is increasing at an alarming rate, rather than decreasing, as the Minister states.

I would also like to call your attention to the fact that yesterday I took up with the Minister of Customs the question of the continuation of Mr. Bisaillon as chief preventive office at Montreal. I pointed out that the business community had lost confidence in Mr. Bisaillon. I had with me at that time a number of reports on this man, one of which I read to the Minister, which contained the following paragraph amongst other statements made by a reputable officer who had formerly been engaged in preventive work -"

"I had with me at that time a number of reports on this man, one of which I read to the Minister, which contained the following paragraph amongst other statements made by a reputable officer who had formerly been engaged in preventive work.- 'Later on, in this first interview Bisaillon went and got a bottle of Scotch and a pitcher of icewater from one of the C. S. Line's boats. When this bottle was empty he offered me to have some more at his flat on Berri street where we went, being driven by him in his new Hudson Six Limousine. There we had champagne, two large cases partly open were in the front room."

"It was not long before he showed us 'his hand' and told us to go slow with the seizure that there were higher up officials interested in same, that we might burn our fingers if working too hard, that we should read between the lines, and that we could make much money if we were wise giving us as example his own ways, owning a nice Auto, a Summer Resort place in the Laurentians and that his salary was not more than ours."

"The Minister inquired as to whether this incident had occurred previous to the promotion of Mr. Bisaillon to the position of Chief Preventive Officer. When I informed that it had occurred during his employment as a regular Customs officer, he stated that this had no bearing on the case whatever, and that he would only consider matters which had occurred since Bisaillon was appointed to the preventive service. I was quite unable to follow the logic of this statement, as a promotion would

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not appear to increase a man's honesty; in fact, the greater opportunity which he enjoyed would be liable to have the opposite effect, if he were not an honest officer.

I had several statements to lay before him of a most important character, but it was apparent that he did not want to hear them.

Might I say that we had hoped for some statement in the Speech from the Throne to the effect that the government proposed to deal with this important problem. When no such statement appeared, we had again hoped that, on the introduction of the estimates of the Customs Department, some statement of policy would be enunciated. If the statement of the Minister as quoted above is to be regarded, as I believe it will be regarded by those interested, as a statement of the government's attitude, we would be glad to know it at an early date.

I am well aware that the government have many matters on their hands to deal with, but I do not feel that a request for an early statement in regard to smuggling is without complete justification.

I might point out that last August a large representative deputation put the whole matter of smuggling before yourself and members of your Cabinet. It has been kept constantly before the government since that time, and the statement made by the Minister of Customs in the House on Tuesday is the first public statement of any character as to the government's attitude.

I am obliged to make a full report on the matters above referred to to the members of this Association who are keenly interested in this problem. If, therefore, we have made an error in assuming that no further action will be taken, we would appreciate greatly some intimation to this effect.

If you desire to make an appointment to discuss thismatter either with myself personally or with the members of the Executive Committee of this Association, we are at your service at any time.

Yours respectfully,

(Sgd.) R. P. SPARKS,

Chairman, Executive Committee."

Witness gave evidence of his interview with the Minister of Customs (Mr. Bureau) at which he informed the Minister the Montreal Trade were very insistent that Mr. Bisaillon be removed as Chief Preventive Officer at the principal port of Canada.

The Minister gave no encouragement in fact his attitude was Mr. Bisaillon was very satisfactory to him.

During February and March witness was in touch with the Prime Minister having probably a half dozen interviews and keeping the Prime Minister posted with important facts. Also witness gave the Prime Minister a private memorandum re Bisaillon.

This is followed by a letter to the Prime Minis-

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ter. fyled as Exhibit No. 28.

"OTTAWA, March 20th. 1925.

Right Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, Ontario.

Dear Sir,-

re J. E. A. Bisaillon

In reference to my conversation with you on Monday last my understanding was:

That, if this Association or any individual was prepared to make definite charges against the above Customs Officer, you would appoint a Royal Commission to investigate such charges.

My further understanding was that lacking such definite charges no action would be taken.

Before making any decision in this regard, I would respectfully call your attention to the fact that there are six or seven other officers of the Customs Department whom we have reasons for believing are trafficking with smugglers and in reference to whose illegal operations we are able to furnish some evidence. Are we to understand that, in each of these cases and in such other instances as may come to our attention it will be necessary for us to apply for Royal Commission in each separate case, and to appear with proof of illegal acts committed by those under suspicion?

Might we point out that much of the information which we have obtained in reference to these men has been obtained in confidence, and if those who have furnished the information are compelled to appear publicly, their usefulness in assisting the Department in the prevention of this traffic is done. No action would more successfully destroy the effectiveness of this organization than the necessity of appearing before a Royal Commission in this case.

In reference to the case of Bisaillon, there are certain facts, some of which are set out below which form a part of the public records and which, if they are not already known to the Minister of Customs and Excise, confirmation of them can easily be obtained. In our opinion these facts of themselves furnish sufficient evidence to warrant the immediate dismissal of Bisaillon.

(1) The case of Rex Vs. Lortier. This was a case in which the Department of Health took action in reference to the smuggling of a large quantity of narcotics and in which Bisaillon appeared as a witness."

" We believe the Court records will show that the presiding Judge expressed his opinion from the Bench to the effect that Bisaillon had deliberately committed perjury and had concealed facts within his knowledge, thereby weakening the case of the Crown. We submit that the facts in this case would alone justify his dismissal from the public service.

(2) In the case of the arrest of certain parties in connection with the seizure of the "Tremblay Barge" the preliminary hearing in connection with which was recently held in the Courts of Quebec before Judge Choquette, evidence was given under oath to the effect that Bisaillon had made deposits in certain banks in Montreal of about $69,000.00. When confronted with this fact Bisaillon stated, underoath, that the monies so deposited were the property of the Receiver General of Canada, which he had deposited in his own name. When asked by the Crown Counsel for evidence of the fact that he had remitted these amounts to the Receiver General, he was unable to furnish this. We have reason to believe that a thorough inquiry into the matter of these deposits would be of interest. We submit that

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in depositing these amounts to his own personal credit, he was acting in direct contravention of the law, and that this action in doing so is in itself sufficient case for his immediate dismissal.

(3) In connection with the above case, it was further substantiated, under oath, that when the "Tremblay Barge" had been seized by Provincial Officers, there were on board two persons who had been placed under arrest. Evidence was given under oath to the effect that when these prisoners were handed over to Bisaillon he stated that he would deal with them from a Federal standpoint. These two men were allowed to escape. We submit that, in allowing these men to escape, he betrayed his trust as a public officer, and his action in this regard would in itself justify his immediate dismissal.

(4) It is already known to officers of the Department of Customs and Excise that Bisaillon is a registered owner of certain property adjoining the border between Canada and the United States, and that he is also the owner of property in the United States adjoining his Canadian property. There are certain buildings on these properties which are known by the police to be frequented by smugglers. We submit that the mere fact that this man is the owner of these properties arouses a suspicion which in itself would justify his dismissal.

(5) We have reasons to believe that many reports have been made by the Royal Canadian Mounted Police as to improper conduct on behalf of Bisaillon in dealings with smugglers and other offenders against the law. These reports are no doubt at your disposal, and we would submit that before asking private individuals to appear as public prosecutors, you should have these reports before you.

The above facts, all of which can be verified from public documents, would appear to us to justify the Government taking action of their own motion.

When this Association was organized to assist the Department, it was understood that information which we were able to furnish would be treated as confidential. It was not at any time suggested that it would be necessary for us to appear before courts of Royal Commissions in bringing either smugglers or corrupt Customs Officers before courts constituted to deal with such offences. We are unable to find any precedent for the Government asking private individuals to institute proceedings against suspected officers of the Crown.

We would respectfully submit that the facts as above set out, together with information conveyed to you in a confidential memorandum, are sufficient of themselves to call for this man's dismissal, and, over and above all this, is the fact that this man has lost the confidence of the business community of Montreal and, as a consequence, his usefulness is at an end.

If, after reading the above, the Government are still of the opinion that it is our duty as citizens, to lay charges against public officers suspected of improper conduct, and if you will so advise me, I will put the matter before the Executive Committee of this Association for their decision."

Yours respectfully,
R. P. SPARKS,
Chairman, Ex. Committee.

Witness states page 134 relations with the Government at this time were cordial even if he was not making much progress. He states positively that

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the efforts of his Company were welcomed by the Government.

Linetsky case - Witness referred to this case in which there were twenty-three appearances before the Court, and it was still before the Courts. His letter, Exhibit No. 33 to the Deputy Minister is as follows:

"Mr. R. R. Farrow,
Deputy Minister of Customs and Excise,
Ottawa.

Dear Sir,- I was in Montreal yesterday when the trial of Israel and Abraham Lenetsky took place. The court proceedings were simply a farce, the chief reason being that there was no counsel present to represent the Department. There was a lawyer named Angers present representing the Attorney General of Quebec. He stated that he knew nothing about the Customs Act and would not proceed with the case, although the Judge was anxious to dispose of it. It was adjourned until August 27th.

It would appear that there has been a complete failure on behalf of somebody, presumably your Preventive Service, to deal with this case in a business like way. It would appear to be the duty of someone on behalf of the Crown to see that competent counsel was present to conduct this case. These men, as you know, are professional crooks of the worst type. Three of our investigators, Mr. Duncan, Mr. Knox, and Mr. Sloan, worked for nearly three months on this case. You can understand, therefore, our disappointment at seeing no apparent interest being taken in it by the officers of your Department, who, it would appear, should have been prepared to press the prosecution vigourously. I might mention that Mr. Duncan came all the way from Toronto specially to appear as a witness. He came knowing when the trial would take place, but was not subpoenaed by anyone. No notice was received from your Department instructing him to be on hand, leaving the impression that the prosecution of these people was a matter of no importance. The Collector at Montreal took absolutely no interest in the matter.

I am creditably informed that the defence in this case are working on a plan which they hope will result in Lenetsky's release. They are not asleep if the Crown is.

In reference to prosecution of J. Wesley at Windsor, Ont. the conditions seem somewhat similar. Four or five adjournments have been granted, the excuse of the defence being that their counsel was in Ottawa endeavouring to arrange a compromise with the Department. I am informed that the lawyer acting for the Crown has never received any intimation from Ottawa as to whether the Department were arranging a compromise and whether they were agreeable to these adjournments. I understand further that Mr. Alexander has both written and wired for instructions in this regard, but has never received any reply. We are under the impression that Wesley is obtaining these adjournments for the purpose of endeavouring to get affidavits from what he describes as "carpet baggers," whom he says sold his goods in Detroit. These affidavits will, no doubt, be used to show that these goods did not enter Canada. We are under the impression that, if the Department had press-

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ed this case at the time that Wesley pleaded guilty, he might have been severely dealt with; the continued delay is certainly in his favour.

I am writing you at this length because I think that it is well that you should know that the lack of energy and intelligent direction by your Preventive Service is creating a very bad impression among the business people who are watching these cases. As you are well aware, so far as I personally am concerned, I have at all times tried to keep the Department, in so far as administration is concerned, in the best possible light. After all that has happened it would have been reasonable to expect to find vigorous action in these and other cases now pending, but certainly that is not the condition which exists, and I felt that the whole situation should be clearly set before you.

We are very hopeful that the Gaunt case will not be handled in the same slipshod manner, knowing that you personally are informed as to the general facts.

Yours truly,

R. P. SPARKS,

Chairman."

To this the Department sent the following reply.

Exhibit No. 34.

"Ottawa, July 24th. 1925.

Dear Sir,- In the absence of the Deputy Minister of Customs and Excise I beg to acknowledge receipt of your letter of the 17th. instant relating to two matters, namely, the prosecution of Israel and Abraham Lenetsky at Montreal, and the prosecution of J. Wesley at Windsor.

It is, of course, to be regretted that this Court proceeding in Montreal has not been handled more vigourously. As you are aware, Mr. Calder was appointed as Counsel for the Crown in this case, and this was with your approval after some discussion at this Department, it being thought that he was the best possible Agent to employ. The first adjournment of this case was due to the fact that the Crown was not ready to proceed owing, I believe, to the absence of Mr. Duncan. The second adjournment, the one to which you refer in your letter, was partially due to the application on behalf of the defendants, but this application would possibly not have prevailed had Mr. Calder been there to press the case himself. Instead of that Mr. Angers, his partner, appeared, not, as I understand it, representing the Attorney General of Quebec, but representing Mr. Calder. In view of Mr. Angers' attitude, I think it was fortunate that the case was not proceeded with at that time. The adjournment is now to the 27th. of August, and we will endeavour to see that no further adjournments take place if they can possibly be prevented by the Crown. The Deputy Minister and Mr. Wilson are both absent from the City at the present time, but will be back about the end of next week, and possibly you would like to see the Deputy Minister then and discuss the matter further with him.

With reference to the prosecution of J. Wesley at Windsor, the adjournments which took place in that case were not due at all to any action of this Department. Mr. Fleming, the Solicitor for the defence, had written this Department, and had local agents

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interview the Department, asking that leniency be extended to Mr. Wesley under the circumstances, but instructions were sent to Mr. Racine, acting for the Crown, to argue the case fully before the Magistrate and press for the extreme penalties provided by the Act. He did so with the result that the Magistrate imposed the full fine of $200, but refused to give a jail sentence in addition. This was due no doubt, to the fact that the offence of smuggling was committed some time ago, and it could be shown that no irregularities had occurred since that time. Mr. Racine in reporting the matter to the Department states that Mr. Alexander was quite satisfied with the result of the prosecution."

To R. P. Sparks, etc.

Exhibit No. 35.

"Ottawa, May 6, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, O N T.

Dear Sir,- On April 8th I sent you a memorandum of suggested changes in the Customs Act, based on the experience of this organization in studying this problem.

If the Government propose to bring down legislation embodying changes such as suggested, we would be glad to organize support for this legislation. We are in close touch with commercial organizations throughout Canada, and could obtain resolutions and letters urging the Government to enact such legislation from boards of trade and wholesale and retail associations in various branches of trade and industry. If you desire such support I would be glad to have advice by return, in order that we may take the matter up with the various organizations interested.

A number of things have happened within the past few weeks which have demonstrated beyond a doubt the need of some such legislation. If you, or the Committee of the Cabinet dealing with this matter, wish to hear a report as to the general facts which have come to our knowledge in reference to Customs administration we would be glad to present these at any time which would suit your convenience.

Yours truly,

(Sgd.) R. P. SPARKS,

Chairman, Executive Committee."

$350,000 SPECIAL VOTE:

Witness stated that subsequent to the passing of the vote he had a number of conferences with the Hon. Mr. Cardin who was the acting Minister and urged that great care be exercised in the selection of officers for preventive purposes. That sufficiently trained investigators be employed - no politics enter into the choice and that in his opinion some difficulty would be found in obtaining even 10 thoroughly competent men in the whole of Canada. He stated to the Acting Minister

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if the Department would select 10 men of the proper qualifications back them to the limit in Ontario and Quebec that the revenues would be increased $10,000,000 per year. Hon. Mr. Cardin was very non-committal on the subject.

Following letter read into minutes.

Exhibit 36.

"Ottawa. September 1. 1925.

Hon. P. J. A. Cardin.
Acting Minister of Customs and Excise.
Ottawa.

Dear Mr. Cardin:- We have called a meeting of the business interests who have been supporting this organization in its efforts to prevent smuggling for Tuesday. September 8th. I am enclosing herewith a copy of the notice sent to those interested."

"You will observe that reference is made to the re-organization of the Preventive Service. If any steps have been taken in this regard I would appreciate it greatly if you will advise me. in order that I may so report to the members of this Association. who are very much interested in this matter. I trust that there will be no objection to informing the business interests as to what it is proposed to do with the amount which Parliament voted.

I might say that we have a great deal of information to the effect that the amendments to the Act as passed at the last session of Parliament have had splendid effect. but there is a general opinion that more effective steps should be taken to see that the law is vigorously enforced.

Yours truly.

(Sgd.) R. P. SPARKS.

Chairman. Executive Committee"

Exhibit No. 37. Copy of notice calling meeting of the Commercial Protective Association was read and was as follows:

Exhibit No. 37. "Ottawa. August 25. 1925.

Dear Sir.- The Commercial Protective Association was organized just about one year ago. It was definitely understood that the organization was to be of a temporary nature. and operations were planned for one year only. The Association has two definite objects in view:

(1) To obtain a change in the Customs Act making more severe penalties for wholesale smuggling;

(2) To obtain an improved Preventive Service to see that the law was put into operation.

The first of these objects has been attained. In reference to the second. a vote of $350,000 specially designated for the prevention of smuggling. was passed by Parliament. but so far no active steps have been taken to reorganize the Preventive Service. although it is believed that such a reorganization is contem-

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plated by the Government.

For the purpose of determining whether the organization shall be continued, and if so, in what form and for what particular purpose, a meeting has been called by the Executive Committee, to be held at Ottawa on the afternoon of Tuesday, September the 8th. at 2:30 at the Chateau Laurier.

It is desirable that there should be a large attendance of those interested in this matter, in order that the views of as many as possible regarding the future policy may be obtained. Your attendance is urgently requested.

Yours truly,

(Sgd.) R. P. SPARKS,

Chairman, Executive Committee."

Witness in reply to questions stated it was the idea of his Company to have Mr. Duncan or Sir Percy Sherwood choose the ten investigators. Witness states the six or seven appointed were quite useless as men of the actual police type were required and not officials - men to catch criminals not to make reports.

Witness then read the following letter:

Exhibit No. 38. "Ottawa, May 30, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir,- In reference to the matter of J. A. E. Bisaillon, about whose activities certain information has been given you, I beg to enclose herewith extracts from evidence given by this man, under oath, in the case of Rex Vs. J. F. Simons, et al.

Although the matter has been before the Government for some months, they appear not to have received an official copy of this evidence, but we have now delivered to the Deputy Minister of Customs a copy of Bisaillon's evidence, together with a copy of the evidence of a number of other witnesses. For your personal information I am enclosing herewith copies of some extracts which show what appears to us to be a remarkable condition. This evidence has to do with certain deposits amounting to $69,000 made by Bisaillon. In his evidence he swears that this was in part moneys which he had collected when he opened a Custom House at Farnham and deposited to his private account and at his convenience remitted to Ottawa. It seems incredible that public business should be carried on in this way, and it appears altogether likely that Bisaillon was perjuring himself.

His explanation of certain deposits of $14,000 as shown on the last page, is certainly amusing. He states that he sold a car for $1,500 and purchased one for $2,000. This he shows as a total of $4,000 and that a car was put at his disposal by the Government worth $2,000. He makes all these statements to justify a deposit, whereas he has simply added together sales and purchases of automobiles, which could in no way account for bank deposits. In this transaction, as in the others referred to, he was evidently committing perjury.

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Under ordinary circumstances one would expect that a public servant who gave evidence of this character would not remain a single hour in the Government employ; however, he has remained for months as Chief of the preventive service for the Province of Quebec.

Now that the evidence is before the Minister no doubt action will be taken, but I thought well to forward you these few extracts, and will be glad to submit the whole file of evidence given, should you desire to see it.

Yours truly,

(Sgd.) R. P. SPARKS,

Chairman, Executive Committee."

Witness states he sent copies of same also to the Minister of Finance, Deputy Minister of Finance, and Deputy Minister of Customs.

Witness at page 160 states he was being pressed by Members of the Board of Trade in Montreal to get action on the Bisaillon case - as a result he went to the Deputy of Customs and suggested the Deputy get copies of the original evidence from Quebec. He enquired some weeks later and was informed he had not got them, but had written. He went in a month later in all three or four times and as the Department still had not same witness went to Montreal and obtained copies at a cost of $60. He sent certified copies to the Deputy Minister and at same time wrote to Mr. Robb and the Prime Minister both of whom had asked him to keep them advised of the whole situation.

A full certified copy of the evidence in French was sent to the Deputy of Customs and extracts translated in English as follows were sent to the Minister of Finance and the Prime Minister.

Exhibit No. 39.

"EXTRACT from evidence given by Joseph Alfred Edgar Bisaillon, of Montreal, under oath on the 13th. day of February, 1925, in the case of Rex vs. J. F. Simons, et al.

Q. You tell us that you opened the Farnham Office and that you deposited the moneys of your Customs Office at the Bank? - A. Yes - 1922 and 1923.

Q. Did you send the money to the Receiver General every day of every week? - A. Generally every week, sometimes every two weeks. That depended on how the affairs were settled.

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Q. I find that you had considerable balances at the ends of the---- month. - A. Naturally I could quite likely have a -------cheque on the 28th. and deposit on the 29th.

Q. In 1923. - A. In 1923 and 1924.

Q. Now do you assert that for years the Farnham Office has been conducted in this manner? A.- No. it was opened in 1920 and in April. 1923 - from the month of April. I do not exactly remember the dates.

Q. Now Mr. Bisaillon with regard to your cheques. you have told us that your Bank Account was above all composed of amounts deposited for the Customs and transmitted to the Receiver General? - A. I have told you that the larger number were for the Customs Department but I have my salary and I do commission business you know which comes to a considerable amount. and there are also bits of business I do myself.

Q. Will you examine all the cheques and show the Judge the cheques you passed to the Receiver General for those years? - A. I do not see any here. These are all personal cheques. $124. $200. These are all personal cheques - $60. $110.

Q. The explanation that you give re your account at the Provincial Bank is that you deposited amounts belonging to the Government for the most part. and that you reimbursed these amounts by cheques afterwards - A. No. not by cheques. by a remittance. a draft which cannot appear there.

Q. So now you say it was by remittances? A. Yes. I had cheques to different people - the cheques which I gave - I see that they are for things - are personal cheques.

Q. So there are no cheques to the Receiver General? A. No. I have received some payable to the Receiver which have been deposited.

Q. How did you buy your remittances? What procedure did you follow? - A. Taking the money in my bank book.

Q. So it was not in ready money. how did you pay at the bank? - A. I made deposits. and then when I had need of an amount. for example I owed the Government three hundred. two hundred or four hundred dollars - I bought a remittance - or sometimes I found myself at the other end of the town and had to buy another remittance. I made a cheque payable to me and bought a remittance for the amount.

Q. Don't you think that if there had been remittances of this kind payable to the Receiver General there would be the figures among the cheques given at the end of the month? - A. No because the receipts in question were generally kept at the office as receipts for our drawings.

Q. I am speaking of the Bank. A. No. sir.

Q. When you received at the end of the month the cheques you had drawn or the remittances. were there no figures which showed the amount drawn from your account? A. Yes. in part.

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Q. Will you show me the figures or something which will show the payments made to the Receiver General? A. They have perhaps omitted to send them. It is perhaps an omission on the part of the Bank.

Q. Naturally I do not want to take you by surprise but you have given an explanation and among all the documents here I do not see any for the Receiver - A. No that is not absolutely necessary. The cheques could have been drawn to my order and they have been bought - these are all personal cheques, my butcher, grocer, taxes on my property.

Q. This then will be for 1922 and 1923? I understand that in 1924 you deposited 14,000 dollars? - A. Yes. I can explain that to you. In April, 1924, I sold a machine to Colonel Archambault, a car for $2,000; I deposited $2,000; later I bought one in May which I paid $1,500 - for I had to draw money from the bank where it was deposited. There is a total of $4,000. I resold it. The Government put at my disposal a machine - that made $6,000. For the remainder there is my salary and bank discounts - I borrowed $2,000 from one of my friends who you know very well is a director of the Bank of Hochelaga and which I have not yet repaid him. I am still in debt to the Provincial Bank for seven or eight hundred dollars. I have three or four thousand dollars of discounts to-day. I am broken and my credit is smashed. The witness made no further statement."

Following letter read:

Exhibit No. 40.

"DOMINION SMUGGLING PREVENTATIVE ASSOCIATION

Ottawa, November 18, 1924.

Hon. Jacques Bureau,
Minister of Customs and Excise,
Ottawa.

Dear Sir,- In connection with the investigation which you are making at Rock Island, Quebec, we have some reason to believe that prison-made garments are being smuggled into Canada, the labels changed and these goods then distributed under the Canadian manufacturer's brand.

I have obtained a complete list of the prison contractors in the United States together with the brands under which their goods are sold, a copy of which I enclose. The Reliance Manufacturing Company is very much the largest and represents what is known as the prison trust.

If, in any of your inquiries, you come across any goods with these brands, this will indicate that they are of prison manufacture.

The principal products of prison labour are work shirts, women's house dresses, children's play suits, overalls and work pants. Might we make the further suggestion that examination might be made of any large importation of these lines coming from the United States, with the object of finding out if they are of prison manufacture. The labels will indicate their origin, but, even apart from their labels, which might be changed, shipments from any of the firms mentioned in the attached list will probably be prison made.

The particular reason why we are calling this matter to your attention is that a very comprehensive campaign is being carried on in the United States to prevent the sale of prison-made goods and it is gett-

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ing very difficult to sell these goods there, and we have reason to believe that contractors who are tied up on long term contracts are turning to Canada as a market for their products.

Perhaps some investigation might be made of the Reliance Manufacturing Company, who are the largest shippers, with the idea of finding out if they are doing any Canadian business.

Yours truly,

R. P. SPARKS,

President."

Following reply received.

Exhibit No. 41. "Ottawa, November 19th. 1924.

R. P. Sparks, Esq., Pres.,
Dominion Smuggling Preventative Ass'n.
P. O. Box 645. Ottawa, O N T.

My dear Sparks,- I beg to acknowledge receipt of your letter of the 18th of November with reference to the organization of an association having reference to the smuggling of goods into Canada.

I expect to leave to-day or to-morrow and to be away at the beginning of next week. As soon as I am back, Mr. Ide will get in touch with you and tell you when we can meet your Montreal and Toronto people.

I will be glad to meet them and I will co-operate with you.

Yours truly."

Witness then gave evidence on what he claimed was prison made goods coming into Canada contrary to law, which he claimed was one of the most serious phases of the smuggling situation.

REVIEW OF RELATIONSHIP AND CO-OPERATION BETWEEN THE CUSTOMS DEPARTMENT AND MR. SPARKS COMPANY OBTAINED BY MR. ELLIOTT THROUGH CROSS-EXAMINATION OF MR. SPARKS.

THESE PAGES OF THE EVIDENCE MUST BE READ IN FULL.

IMPORTANT

See pages 182 to 197 and 221 to 226.

This part of the evidence consisting of 22 pages is a brief in itself. It covers the aims and requirements of Mr. Spark's Company and shows through the correspondence of the Company and by Mr. Sparks own answers that the Department and the Government gave every support thereto resulting in new and drastic legislation being introduced into the House and passed - and disclose feelings of Company at date election was announced &c.

MR. SPARKS RE EXAMINED:

Page 227 &c. Mr. Sparks states in evidence that

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although the officials at Ottawa in the Customs are excellent this cannot be said of the Border points. He places considerable blame on the system which allows the final decision on seizures to the Minister. In many cases the Minister has over-ruled his officials and this ministerial interference he claims has handicapped the officials at Ottawa.

Reply of Mr. Sparks:-

Pages 229 and following Mr. Sparks states in evidence the new legislation gave satisfaction and produced results for about one month. Smuggling stopped and revenue increased but the Government although supplied with the machinery by legislation and the money by the special vote did not spend the money. They did appoint certain officials numbering 67 but witness claims if the proper officials which he named had been called in and the selection of trained men left to them the committee at which he was giving evidence need not have met.

Mr. Cardin:-

He states Mr. Cardin was acting Minister and he had a considerable number of interviews with him. Witness claims see page 231 that by December of 1925 he had lost hope of any benefit from the new legislation - He gives evidence that business was being hurt 33⅓ by smuggling.

Page 232 - Witness gives method and their estimate of amount of silk smuggled into Canada - amount estimated at between five and seven million dollars.

Page 233 - Witness quotes nine manufacturers from Winnipeg who stated they were threatened with extinction from having to compete with stolen goods on which no duty had been paid.

Same page witness states the smugglers first corrupt the customs officials and then carry goods in trucks.

Witness obtained the Departments consent and had it demonstrated that goods could easily be brought in - this resulted in the dismissal of a number of officials.

ROCK ISLAND:

Page 234 - Witness states he had a number of inter-

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views with the Deputy Minister and Mr. Wilson as to conditions at Rock Island - the officials were well aware of what was going on - witness offered to put in the men, supply the plan, pay the men and clean up Rock Island - Mr. Wilson to whom the offer was made stated some one else was in charge there and the offer was not accepted - witness gave the name of Mr. Bisaillon as being in charge. Witness tells of getting four of his men appointed as Customs Officers. Mr. Bureau being at first opposed but witness took the question up with the Prime Minister, Mr. Robb and Mr. Lapointe. Their instructions were the usual viz. that in Customs seizures no proceedings in Court are to be taken unless under instructions of Mr. Wilson - Witness says his men ignored these and locked up smugglers when caught otherwise they would have been helpless.

ROCK ISLAND:

A great number of seizures were made in 1924 at this point but no prosecutions. Mr. Bureau giving as the reason that those smuggling had promised not to do so any more. The names of those on whom seizures were made are given on page 2?35. Witness says he pressed the Minister to prosecute but was refused. as this had never been the practice at any time.

MR. CARDIN:-

Q. Did you discuss that situation with any other Minister, with the Acting Minister Mr. Cardin - A. - I do not recollect doing so.

Witness admits there were forfeitures there was no breach of the law by the Minister who acted perfectly legal in every way.

Seizures followed in December 1924 January, February, and March 1925.

Q. What action was taken on these seizures? A. I did not know until the records were produced here.

MR. CARDIN'S ACTION RE BISAILLON

Witness states Mr.Clerk an inspector of Montreal came to Ottawa and saw witness in presence of Mr. Farrow, Clerk stated Mr. Cardin had instructed him to investigate Bisaillon.

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Witness gave evidence he wrote and interviewed the Prime Minister of Quebec. laid before him evidence in ten specimen cases of almost endless delays in prosecutions. The Prime Minister recommended the changing of the Act. Similar representations were made to the Attorney General of Ontario as witness claimed Justice could not be obtained from Border Magistrates.

COMMERCIAL PROTECTIVE ASSOCIATION:

Office of Company in Montreal closed in August 1925.

MR. SPARKS CROSS EXAMINED BY MR. BOIVIN:

IMPORTANT - see pages 244 to 280 and 285 to 292.

Note - Mr. Sparks gives evidence it was the system in use that he had cause to complain of the same being obsolete.

Mr. Sparks exonerates all officials in the head office at Ottawa.

As to Mr. Bureau as Minister and Mr. Cardin as acting Minister. he states they were acting legally but did not take such action as witness thought necessary. and they had the final decision. He states he had no knowledge of any illegal Act by any Minister - see page 286.

BISAILLON CASE:

Witness gives following facts - Witness gave evidence to Department in King v simons in August 1925. Witness gave as his belief men trained in criminal work are necessary in the outside Preventive Service. When asked if the employment of the Mounted Police as an advantage over the present system. he stated it would be a help but not a solution. This is not their chief work and they are not specially trained for same. A secret service is required.

Page 303 - Witness states and admits he finds no fault with any government or party. It is the system with which he finds fault. His words are "This is absolutely correct."

Witness admits see page 305 that as a result of the legislation his Company had reports from Windsor. Niagara. Sault St. Marie and various points in the Maritime Provinces that smuggling had temporarily stopped.

EXHIBIT NO. 53.

Important exhibit see page 306. It is a comparative statement of the collections on customs on imports from June to January in the years 1924 and 1925 and shows a gain of about eighteen and one half millions of dollars.

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THIS WHOLE QUESTION IS SHOWN IN ALL THE EVIDENCE. ESPECIALLY THAT OF THE PARTIES MOST INTERESTED IN PREVENTING SMUGGLING TO RESOLVE ITSELF INTO TWO HEADINGS OR DIVISIONS ONLY:

1. Proper legislation providing for prison sentence without any option on the part of any person whatsoever.

2. The creation of a new body for the purposes only of preventing smuggling, apprehending smugglers, obtaining convictions of the same and thus place offenders against the Customs Law in prison.

Both these requirements are proven in evidence as absolutely necessary. They are, of course, very drastic changes in the system that has existed since Confederation.

No. 1, namely, necessary legislation was provided by the present Government at last Session of Parliament becoming law on the 27th. day of June, 1925. That many people were unprepared for any such legislation, it is only necessary to refer to addresses made before this Parliament on that occasion.

The leader of the Government Mr. MacKenzie King and the leader of the opposition, Mr. Meighen, were agreed in their appreciation of the legislation as submitted. The following is an extract from the speech of Mr. Mackenzie King as given on page 3778:

> "A year or so ago, at the request of many of the largest wholesale and retail merchants of the Dominion, the Government agreed, if they would form a voluntary association, to co-operate with its membership in their efforts to evolve a more effective means of counteracting this evil. The Commercial Protective Association is an outgrowth of this understanding. This legislation has been drafted after conference between the officials of the Department of Customs and the officers of this protective association."

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The following is an extract from the speech of Mr. Meighen on page 3779:-

> "We have enforced the laws of this country not only for the sake of revenue, but for other purposes which I was glad to see the Prime Minister recognize in his speech, namely, to see to it that our own industries are not undermined by the violators of Canadian laws bringing goods in here, ignoring the duty that intervenes. There is still another reason. While we have a tariff at all the man who obeys the law must certainly be protected against the man who violates it, and there is no such thing as doing business in Canada if any substantial section of the people are to be permitted to escape the law at the boundary while the law abiding section have to pay their share both of revenue and of protective rariff. I will stand behind very severe regulation and very severe penalties for the smuggler, and I do so for the reasons chiefly I have advanced."

The discussion~~s~~ by ~~the~~ other members ~~as mentioned~~ is recorded in the Hansard from page 3775 to page 3777 as follows:-

> MR. HANSON: What is the reason for doing away with the power of remission? I presume, it is intended to make it a little more stringent, but I can suggest cases in which it might be out of proportion. Suppose it were a trifling article which might have a certain value of affection; to take away from the minister the power of remission might result in hardship. I presume the object is to prevent the minister being harassed to death by friends of the smugglers. After all, the minister can use a wise discretion in matters of this kind. I think it is perhaps going too far to provide that there shall be no power of remission. I think it is misplaced and I object to it on that ground.
>
> MR. CARDIN: I quite agree it is very severe, but it has been prepared with a view to meet representations made by people interested in legitimate trade. Complaints coming from the trade are very numerous, and they are very insistent in this matter. These amendments have been practically suggested by persons who have been in the trade, and we thought that doing away with the powers of remission would act as a sort of deterrent. If any person wishing to smuggle goods into Canada is under the impression that he can appeal to the minister or the Governor in Council he will be disposed tootake a greater risk than he would if he knew there was no chance of remission by the minister or the Governor in Council. This is in order to make our legislation more severe. I quite admit that this provision is a very severe one but this illegitimate trade has become very prevalent and we must make an effort to try and reduce the smuggling which is being carried on.
>
> MR. HANSON: Let me suggest a concrete case which occurred in my own practice some few years ago, where such a provision would work a very great hardship. A very reputable firm of Canadian industrialists purchased a number of machines made in the United States, and bought them duty paid delivered in Canada. The machines were brought into Canada under their own power. They were gasoline log haulers, very valuable machines, costing something over $~0,000. They were purchased from a person in the United States who contracted to deliver them to the vendee, freight and duty paid, at a point along the Canadian border in Canada. They were entered at the Canadian customs house. The duty was paid on these machines on the entered values, and a large cheque passed upon the production of the customs receipt. It developed in the course of the next few days that the American vendor had under-valued the machines. He had got his cheque and passed out of the country and the machines were seized. They were released on the deposit of a large sum of money. I think the Commissioner of Customs

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demanded $30,000. After a good deal of negotiation we got that sum reduced to about $10,000, which was about double duty, if I recollect rightly. Under this clause the innocent purchaser might be held as the person who introduced these goods into Canada, although he did not do it clandestinely. Under this legislation, if I read it aright, it might be held that there was no power of remission. This is a case of which I have actual knowledge, in which the innocent purchaser might suffer a very great hardship. If there were no power of remission he would lose the whole value of the machines, including the duty paid. The rules of the department, the Customs Act, and the regulations under which they work are very rigorous at present, but this seems to me to be going the limit, and in the case I suggest it would create a great hardship.

MR. CARDIN: I think in the case indicated by my hon. friend his client would not come under subsection (a) because he was not the man who had smuggled the goods. The goods having been brought into Canada by an American firm he would come under section 3 of the bill, which provides the penalty of keeping or selling goods unlawfully imported. Such a man would be responsible for having in his possession goods which had been introduced illegally into the country. In the next section it is provided that if any person "knowingly" harbours, keeps, conceals, purchases, sells or exchanges any goods unlawfully imported into the country, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods if found shall be seized and forfeited without power of remission. The burden is however on the crown to prove that he was knowingly in possession of goods that had been illegally introduced into Canada.

MR. BAXTER: I am inclined to agree with the minister in his interpretation of the section. At the same time I want to urge him to strike out the words which deprive the minister of the power of remission. I do not think it is likely to happen that we shall have a minister of the crown who would use the power of remission unfairly. I know of course that it lays him open to a good deal of importunity; but a man has to pass through a good many hands before he reaches the ministerial department. The case is thoroughly sifted and the minister is not likely to grant the remission unless he is satisfied that it would be inhuman to impose the penalty. Di During the very short experience I had in the department which the minister is now administering I came across one or two cases in which, without the slightest representation from the parties themselves, but merely on reading the evidence that accompanied the papers for formal signature to confirm the forfeitures, I felt that it was morally unjust to impose the whole penalty. In one case I felt it was unjust to impose the penalty at all while in the other I did not think it should be imposed to the full. I do not think it is wise for the minister to deprive himself of that power. The cases are rare in which he would wish to exercise it, but he should feel all the worse to think that he was deprived of that power. I think the act would be strong enough and that no guilty person could escape if the minister retained that power.

MR. CARDIN: The idea of the section is not to save the minister any trouble but to provide a new deterrent. When people know that there is no chance at all of any remission of the penalty and that they will not get back the goods they will be less inclined to smuggle.

MR. FORKE: Suppose the minister introduced hanging; would not that be a deterrent? These things can be overdone. I am inclined to agree with hon. gentlemen to my right; the penalty is being made too severe. There will always be some smuggling and while we should take every step to put a stop to it we should not make the penalties too extreme. What class of goods are being smuggled into Canada to any large extent?

MR. CARDIN: Silks.

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MR FORKE: It struck me that it was goods of that description that were being chiefly brought into the country. I can see why the minister wants protection.

MR CALDWELL: The minister might find himself in a position in which he would rather want to have the power of remission.

MR. CARDIN: Possibly on sympathetic gounds.

MR. CALDWELL: I do not think that the minister should deprive himself of that power. I would make a suggestion. Does not the minister think it would be better to remove the temptation by lowering the duties?

An hon. MEMBER: On silks?

MR. CALDWELL: I am not referring to silks particularly, although all luxuries should pay a luxury tax. But if the duties all round were lowered that would bring the cost of living down. Would that not be better than to punish the poor, frail mortal who yielded to the temptation to smuggle goods in?

MR. HANSON: The hon. member has not disclosed the true reason for his opposition to these severe penalties. Those of us who happen to represent constituencies along the border know how little respect is paid the revenue laws of the country on both sides of the line; and that might have something to do with our feelings in this matter. I think the law against smuggling ought to be strict, but we ought to stop somewhere, and the minister should consider more carefully the question of this power of remission. I will not say anything about the penalties, which should be severe. Did I understand the minister to say that this was inserted not so much as a deterrent but to assist him?

MR CARDIN: No, it is only intended as a deterrent.

MR. MANION: What was the penalty before?

MR. CARDIN: A fine of from $50 to $200 with the option of imprisonment for a term ranging from one month to one year.

MR. MANION: Now the term of imprisonment is raised from one year as a minimum to a maximum of seven years. That is rather severe penalty.

MR. BAXTER: I am not going to criticise anything that will help to enforce the revenue laws properly, but the minister will realise that the very severity of the punishment will cause juries to ignore their duty and to acquit in cases where conviction would otherwise be absolutely assured. That is always a bad spectacle in the community and it creates disregard for law. It is the strongest reason against penalties that are too severe. A fine of from $50 to $200 is inadequate for the offence with which the minister has to contend; but to jump from that to an indictable offence carrying a penalty of imprisonment for a maximum term of seven year with a minimum of one year for the first offence will, I fear, cause a good many juries to act as they do in cases of infanticide and find people not guilty who undoubtedly are guilty. It would be well for the minister to reconsider this section.

MR. HANSON: Does not the minister think there is a difference between the enormity of smuggling goods and their sale? Yet in the few minutes I have had to read this section it would appear that the penalty is the same in both cases.

MR. CARDIN: Yes; but the man who is found in possession of goods which have been smuggled is protected by the word "knowingly." The penalty is severe, it is true, but the innocent person is protected.

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Mr. Lewis: Mr. Chairman, it seems to me that these penalties are altogether too severe. A man can rob one of our banks of hundreds of thousands of dollars and probably escape punishment; but under this legislation if a person brings across the border two or three hundred dollars worth of goods, and another man sell them, the latter may be punished by a term of several years' imprisonment. I do not know what we are coming to in this country. The best thing we can do is to have free trade, and then there will be no necessity for such legislation.

These speakers absolutely reflected public opinion in Canada at that time. Those seeking the legislation had all the data prepared from the trade which was not before these Members or the general public.

No. 2, namely, the creation of a body to enforce this legislation:

One finds from the evidence that even those who had made a close study of the smuggling situation and who were most seriously injured thereby, or represented organizations so injured are anything but at one on how this body should be created.

CANADIAN MANUFACTURERS ASSOCIATION: at p. 1101 states:

EDWARD BLAKE ROBERTSON, OTTAWA, REPRESENTATIVE:

In 1922 Association found at all its offices, complaints re smuggling were increasing greatly. In 1923 the seriousness of the situation was presented to the annual meeting, see page 1103 at which the estimate was given that $50,000,000 of goods were annu-

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ally smuggled into Canada.

Association also recommended more officers the and not by the Civil Service Commission appointed by Minister, so that there presence would not be known to the smugglers.

Annual meeting 1924. June, it was resolved that owing to seriousness of situation the Dominion Government be strongly urged to re-organize and increase the Preventive Service - take more serious steps to arrest and imprison convicted smugglers and to destroy smuggled goods when received.

Canadian Manufacturers have co-operated with Commercial Protective Association from its start.

Page 105 - Under-valuation of goods - legislation was passed in 1922 providing a method for valuation for duty purposes of goods from countries whose currency was depreiated. It was, however, not enforced against France, Belgium or Italy. Representations were made without success to the Government until Mr. Boivin became Minister of Customs and on the first interview with him, he recognized the fairness of the request and it is now applicable to these counties.

Canadian Manufacturers Association will not offer any recommendations until later, and then after consultation with other business interests.

Witness blamed Volstead Act for increase in smuggling as smugglers wanted a return cargo in their operations.

GEORGE WILSON, PRESIDENT BOARD OF TRADE, TORONTO:

Next called, page 1106.

Board of Trades urges that this Committee recommend to Parliament.

(a) That the Department of Customs and Excise be so manned and equipped as to deal most effectively and speedily with all offenders.

(b) That the law will be strictly enforced in all respects without fear or favour.

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The following declarations and recommendations are respectfully submitted:

1. That manufacturers, wholesalers and retailers, members of the Merchants Association of Montreal, have suffered very serious losses as the result of unfair competition occasioned by the smuggling of merchandise into Canada; that this unfair competition has been felt most keenly by legitimate manufacturers and dealers in silks, canton crepes, cottons, silk dresses, jewelry, tobacco, cigarettes and automobiles.

2. That the Parliamentary Committee should be impressed with the fact that smuggling in the lines referred to was carried on on a very extensive scale and the complaint of the merchants is not aroused as the result of any petty or spasmodic smuggling but because of unhampered and unchecked wholesale smuggling.

3. That legitimate dealers have suffered very unfair competition resulting from the importation of goods at a valuation fixed much lower than the real value and at figures ridiculously low.

4. That legitimate manufacturers and packers of Canadian tobacco are daily suffering heavy losses in business because of the fact that there is very little effective check on unscrupulous dealers and manufacturers who undertake to distribute Canadian tobacco in packages without affixing thereto the required excise stamps.

5. That there is opportunity for a closer supervision and more complete investigation into representations made in sworn declarations by United States exporters to the effect that no drawback is being collected on merchandise which originated in overseas countries, finds its way into the United States and is then exported to Canada. This applies most particularly to seasonable goods, such as trimmings for hats and dresses and made up hats and dresses. The moment that styles change in New York the value of these goods drops to a very low point on the New York market and there exists an organized system of merchandising whereby the drawback is collected from the United States Government but sworn declaration is made to the Canadian authorities that no such drawback has been collected.

This procedure absolutely ruins the trade opportunity for legitimate Canadian dealers who happen to be affected by the particular style change in New York although the season for style change in Montreal is much later and these Canadian dealers are denied an opportunity to reap the benefit of their legitimate style season.

6. That the facilities of the Customs House in Montreal should be increased especially in the matter of providing an adequate number of examiners and duly qualified appraisers.

7. That there is an imperative need for an independent efficiently organized preventive service which will undertake to cope with the tendency for smuggling which has been fostered by the taking of contraband liquor into the United States.

8. That the Board of Directors of the Merchants Association of Montreal urges all those officials connected with the Customs Inquiry to realize that the members of the Association, irrespective of party, are most desirous that the Inquiry should be effectively continued in a businesslike way and that the members of the Association further realize that if all those officially connected with the

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Inquiry co-operate in the proper spirit that great benefit can be realized which will redound to the prosperity of Canadian business and to increased revenue for the Government Treasury.

Respectfully submitted,

JOHN FITZGERALD,
Manager."

By the Chairman:

Q. Will you produce that report or memorandum, Mr. Fitzgerald?—A. Certainly.

Q. Is that all you have to say?—A. Yes, sir.

By Hon. Mr. Bennett:

Q. Has your Association considered, in the light of one of the last paragraphs of your memorandum, as an independent preventive service, the value of the Mounted Police in that regard?—A. I am not in a position to make an official statement, but I know that individually they are very much impressed with the efficiency of the Mounted Police.

Witness retired.

E. A. ROBERTSON called and sworn.

By Mr. Henderson, K.C.:

Q. Where do you live?—A. Montreal.

Q. Occupation?—A. Sales Manager, Montreal Cottons Limited.

Q. You have also been active in connection with the Commercial Protective Association?—A. Yes, sir.

Q. In what capacity?—A. Chairman, Montreal Branch.

Q. Now then, will you tell us, Mr. Robertson, what has been the result of your investigations in that connection?—A. In the conduct of my activities in the Commercial Protective Association, as well as in my official capacity with the firm with whom I am engaged, there has been a flood of evidence which has come to my notice from the Atlantic to the Pacific, with regard to the extent to which smuggling is being carried on.

This has been brought to our attention, and it has not been confined to any one particular section of the country, but the complaints have come from the Atlantic to the Pacific.

At one time, some time ago, this question was not reflected quite so seriously as it has been of recent years, particularly on account of the increased taxation on legitimate businesses which was not so heavy a few years ago as it is to-day.

The effect of the higher taxation, together with the difficulties which are being experienced in connection with smuggling, has added much to the losses of the various businesses.

Goods through illegitimate channels, smuggled goods, has added additional burdens to legitimate dealers throughout the country.

It is a strange fact, and I think an exceptional fact, that the expression is very generally heard from business people, not so much where smuggling exists, and whether it exists or not, but what means can be employed to stop it.

Merchants in the far West engaged in business complain very bitterly of the smuggled goods making their business absolutely impossible. This is being felt to such an extent that people are being so seriously injured that they are finding it practically impossible to attempt to conduct business, and keep their business from being stopped completely.

Sometimes we hear reference to the fact that smuggling is engaged in elsewhere outside of Canada. That may be the case, but it does not concern

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(c) That no compromise with offenders will be tolerated, and that the full penalty prescribed by law will be imposed for all offenders.

The nature of the Report of your Committee, the recommendations contained therein, and the action taken thereon by Parliament and by the Government, will in our opinion, have a very important bearing upon the future of various lines of business, as well as upon the future activities of those law-breakers engaged in this illicit traffic. We, therefore, desire to emphasize the great importance which will be placed by the business interests throught Canada upon the Findings of your Committee.

Signed on behalf of the Board of Trade of the City of Toronto.

Geo. Wilson,
President."

MERCHANTS ASSOCIATION, MONTREAL.

JOHN JOSEPH FITZGERALD, next called, page 1108:

Association in Montreal 600 strong.

Their representations are as follows:

(See page 1109 of the evidence)

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By Mr. Henderson, K.C.:

Q. In a sporting party, it would be quite a number?—A. In 1914, there were about ten million came into Canada, and in 1925, there was only one million. The low tariff produced the revenue, and the high tariff kills the goose that lays the golden egg.

By Hon. Mr. Bennett:

Q. They put up the excise a couple of years ago?—A. Yes, that is what my struggle was.

Witness discharged.

Mr. HENDERSON, K.C.: I have some representatives from the Montreal Board of Trade, and I will call Colonel Stalke.

ROBERT STALKE called and sworn.

By Mr. Henderson, K.C.:

Q. What is your place of residence?—A. Montreal.

Q. And you are President of the Montreal Board of Trade?—A. Yes.

Q. I understand that you have a statement to make with reference to smuggling?—A. Yes, this contains six important recommendations from the Montreal Board of Trade, who represent the merchants of Montreal.

"The Council of the Montreal Board of Trade, representing over eighteen hundred business men of the City and district of Montreal, desires to make the following representations to the Special Committee investigating the administration of the Department of Customs and Excise.

(1) It is the opinion of the council from its own knowledge of general business conditions, that there has been wholesale smuggling into Canada. The members of council are not here to give evidence as to any particular instance as, after a perusal of the evidence already given before the Committee, it appears to them that the Committee already has abundant evidence on which to act.

(2) The fact that there was wholesale smuggling going on was apparently accepted by the Prime Minister on 1st June, 1925, as he is reported in Hansard (page 3778) to have said: 'The government in this legislation is seriously endeavouring to overcome a very grave evil that has developed on a vast scale within the last few years . . . . . , but some of those who believe themselves to be well informed estimate that anywhere from $50,000,000 to $100,000,000 a year is being lost through smuggling operations.'

With reference to the legislation, the enactment of which the Prime Minister was urging in the speech above referred to, and which was subsequently passed, it is only necessary to say that in our opinion the results up to the present time have been negligible.

(3) The conditions above referred to have seriously injured legitimate business and some of our members will appear before this Committee to state what they believe has been the effect of the smuggling on their own business.

(4) The Council believes that the main cause of this smuggling has been gross incompetence and connivance on the part of certain Customs officials.

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(5) The Council further believes that the prevention of the chief inspector from exercising his authority in Montreal, and the creation of special control in the Montreal District, has had very serious effects. There should be one inspector with universal control, who will see that the system is adequately and uniformly administered through the whole of Canada.

(6) The Council is of the opinion that the most effective method of insuring a strict and adequate enforcement of the Act would be to place the whole Customs Preventive Service in the hands of the Royal Canadian Mounted Police, a force which is in a position to enforce the Act without fear or favour.

On behalf of the Council of the Montreal Board of Trade.

(Signed) ROBERT STALKE,
President."

Q. Have you anything to add?—A. I have nothing to add.

Witness discharged.

JAMES M. MACDONELL called and sworn.

By Mr. Henderson, K.C.:

Q. Your residence?—A. Montreal.

Q. And occupation?—A. Trust Company manager.

Q. You are here as a member of the Council of the Montreal Board of Trade?—A. Yes.

Q. You have some remarks to make on the question of smuggling?—A. Yes.

Q. Will you proceed in your own way?—A. I have been asked to make a few remarks following remarks of the President. And I should say to begin with, as the President has already stated, that the members of the Council of the Board of Trade of Montreal represent nearly two thousand business men in Montreal. There is not a single kind of business carried on in Montreal that we do not represent. We are non-political; we represent both Liberals and Conservatives, and even Progressives, if there are any in Montreal since Colonel Calder left.

We are here to-day as members of our association, after reading the evidence which discloses such an alarming state of affairs in connection with the smuggling which is being carried on. This, of course, is no new thing; it has been a matter of common knowledge for a considerable time. I may say that it was brought to the attention of the then Minister of Customs in October, 1924, as to this state of affairs, and it is nothing less than the truth. It is a state of affairs which is being commented upon wherever business men congregate.

By Hon. Mr. Bennett:

Q. In writing, were your representations to the Department of Customs in writing?—A. Yes, the secretary of the Board has a copy of them. It is because of the conditions which are existing, and the alarming evidence which has been given, that we are here to-day. Colonel Stalke has stated that we are not here to give evidence on particular points. We consider more than enough evidence has been given here to you gentlemen, more than sufficient to convince you of three things. In the first place, the business men all over the country, are being subjected to a wicked form of competition that stabs them in the back. These people will not come out in the open, but work underground, and there is no honesty of action in the minds of any one of them.

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COMMERCIAL PROTECTIVE ASSOCIATION - asked for strong measures to protect trade. page 1110. through E. A. ROBERTSON. Sales Manager. Montreal. Cottoms Limited.

IMPERIAL TOBACCO COMPANY. H. S. Bourke gave evidence of seriousness of smuggling to the tobacco industry. especially along the border. Witness asked to recommend states officials should have the right. where they have cause to suspect. to examine by quietly feeling the clothes of anyone coming into Canada. The search should be much more thorough than is now made.

2. Penalty more severe.

Witness has nothing against Customs Officials always found Officers of Department splendid.

3. But there must be more Customs Officers and more supervision.

UNITED CIGAR STORES - FREEMAN PITNEY. OF TORONTO. PRESIDENT. next witness. page 1122:

Points out Cigarettes in all their 300 stores forms 33 1/3% of their business. Yet in Windsor a border City it is 16%. In other Border towns and cities 18½%. If Customs Officers tighten up in their search of parties coming in at Windsor their sales of cigarettes double and treble. In Montreal sales drops 10% in summer owing to auto roads being open. A tobacco store in Detroit located right at the ferry station last year did a net retail trade of $650.000. Witness stated Customs service undermanned.

Next witness points out in Customs and Excise. page 1126.

MONTREAL BOARDS OF TRADE. by its President. Robert Stalke. recommends employment of R.C.M.P.

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JAMES M. MACDONNELL, Member of Council, Montreal Board of Trade, also recommends, R.C.M.P.

SIMILAR REPORTS RECEIVED FROM MANY OTHERS, see Minutes of Meetings Nos. 29 and 30.

GIFFARD LAFOLLE, a senior Canadian partner, Mark Fisher Sons & Company, as a member of the Montreal Board of Trade, and as a leading merchant, recommends - employment of Royal Canadian Mounted Police, who would be directly responsible to the Minister of Justice, to patrol International Boundaries. Working therewith a secret service which would have to be created entirely free from any political influence and a branch of this service established in the North of England, another in New York. A copy of every invoice to go to the secret service, a list of all shippers also to be furnished to this service the creation or appointment of one or two Judges, and a separate Court in which all cases should be tried in Open Court.

Other recommendations as stated above are contained in copies of evidence numbers 29 and 30.

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Mr. Edward Blake Robertson, in speaking for the Canadian Manufacturers Association, the strongest organization of its kind in Canada, recommended the appointment of more officers by the Minister of the Department, and not by the Civil Service Commission, as it was absolutely essential that the identity of those special officers on this work should not be known to those engaged in smuggling.

We find from the President of the Board of Trade of Toronto that they recommend an independent efficiently organized preventive service.

The representative of the Imperial Tobacco Company states he has nothing against Customs Officials, always finding the officers of the Department splendid to conduct business with, but is of the opinion more Customs Officers and more supervision is necessary.

The representative of the United Cigar Stores is strongly of the opinion that the Customs Service is under-manned.

The Montreal Board of Trade by its President, recommends the Royal Northwest Police.

Mr. Sparks, as President of the Commercial Protective Association in his evidence clearly stated that the employment of the Royal Northwest Mounted Police would be a benefit, but not a solution of the question. This was not he stated the chief work of the police, and they were not especially trained in this line. He stressed the necessity of a special secret service.

Other witnesses advocate creation of a new Court and remedies along these lines.

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After the passing of the legislation the end of June, 1925, Mr. Duncan, the Chief Investigator for the Commercial Protective Association who had been loaned to them by the Finance Department, returned to his duties in the Finance Department. Two of the three officials engaged with him on the work were absorbed by the Customs Department and continued in their duties of prevention of smuggling. The fourth officer was not recommended by the Commercial Protective Association.

At this time the Department was without a Minister, and the Honourable Mr. Cardin was acting as Minister of Customs, in addition to being Minister of Marine & Fisheries. The evidence shows that 65 officers have been appointed under the special vote of Parliament, 1925, of which 21 are engaged in obtaining and furnishing information of frauds on the revenue.

It is easy for one who does not assume the responsibility to recommend a plan of procedure but the Government would be responsible to the public for the actions of its officials in any new system put into force. The Inside service as well as the outside service would be required to be surveyed. Evidence shows at rush hours at the Port of Montreal 30 Customs entries passing an official in one hour at rush times. That means opening cases or parcels, appraising and passing the Customs papers. One entry every two minutes. One finds in the evidence statements from those who have cause in their business to be well acquainted with this work and with the volumn of the same that business men were complaining and wanting their entries passed more speedily. The witnesses admitted that the staff were doing everything possi-

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ble under the conditions that existed, but claimed the said staff was under-manned, the Customs quarters inadequate and no officials, however, competent could give satisfaction. These officials had more than they could do to pass entries and collect revenue without being required in any way to protect smuggling.

Customs Houses in many spots in Canada have remained where placed many years ago. They are shown not to be placed where they could guard modern traffic, especially since the introduction of automobiles. In some places five and six roads branch out, and the Customs House does not even cover one.

Many of the officials, especially at small Customs Offices have been entirely underpaid. One cannot read the evidence without feeling that with smuggling as prevalent and salaries small the temptation must be great.

Mr. Sparks in his evidence stated to the present Minister, Honourable Mr. Boivin, without reflection on his ability or good intentions, it would not be possible for him to clean up the present situation without great publicity in order that the people of Canada might be wakened to the seriousness of the situation.

It is shown in evidence that almost immediately after taking charge of the Department, Honourable Mr. Boivin, discussed with the Finance Minister, the question of the investigating at Montreal, of one Bisaillon. The Finance Minister recommended an investigation, and at the request of Honourable Mr. Boivin suggested Mr. Duncan, Chief Investigator for the Department of Finance, as the right man to make the same. The Finance Minister stated that Mr. Duncan was at that time engaged on work for the Finance De-

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partment, but would be available within a reasonable time, and his services would be placed at the disposal of the Customs Minister. It is further shown that the request of Honourable Mr. Boivin, Mr. Duncan undertook this investigation, and his report has been fyled with the Minister, and by the Minister produced to the Committee. In instructing Mr. Duncan, the Minister stated he was to press his investigations, and spare no officer, high or low, in the same. Mr. Duncan fyled an interim report on about December 14th, and two days later Cabinet Council dismissed Bisaillon.

An election was announced early in September and it is well known that the Ministers were unable to give very much time to their offices in Ottawa after that date until some time in November.

The exact steps taken by the Acting Minister of Customs, Honourable Mr. Cardin, and those taken by Honourable Mr. Boivin, after his appointment can best be stated by the Ministers themselves. Many interviews with officials, investigators and others and also amongst Members of the Cabinet, must have taken place, and of course, are not on the record.

The whole evidence absolutely shows the smuggling situation required the two remedies referred to above. The legislation was approved not only by Parliament, but admitted necessary by everyone in touch with the work. This legislation was granted only at the end of June, 1925, with an election announced at the beginning of September, not very much time was allotted to the Government or to an acting Minister to perfect a system that could not in any way hope to stem smuggling under present conditions. In all cases dealt with by the Department those witnesses most interested in preventing smuggling absolutely admit that the Minister or Acting

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Minister has acted entirely within his legal rights. Their objection was to the system as they demanded more drastic punishment than has been known since Confederation. Had any Minister prior to the passing of the legislation acceded to their request for this drastic punishment. the Minister would have spent his whole time with delegations. Members of Parliament and others of influence. for those being prosecuted.

The case for the Government should be made as strong as possible subsequent to the passing of the legislation in June last. Previous to making this statement. it should be clearly shown the condition of public opinion regarding drastic punishment not only at the time the Gardin Act was passed. but for many years thereto.

The following points that must have been considered by the acting Minister. and the present Minister might be noted for consideration.

1. Improvements in the Inside service covering collection of duties and all administration under the Customs and Excise Act. including scale of salaries. qualifications for office. re-division of duties devolving technical knowledge in too many lines. more thorough inspection. power to transfer officials when the Minister or Department had cause to feel the said official was becoming too friendly in his district.

2. Best methods of carrying on preventive work.
   (a.) At ports.
   (b) International land boundaries.
   (c) Bridges. ferries and railroads.

3. Reduction of ports.

4. Location of Customs Houses.

5. Employment of boats in Niagara District.

6. Day and night inspection at warfs.

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7. Such measures as are necessary to obtain the proper valuation of goods and proper checking or inspection of all shipments. These and many other questions must have engaged the attention of the Minister and his officials, notwithstanding the fact that the performance of their duties outside of any preventive work as Customs Officials must have demanded almost their entire time.

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CALL FOR CUSTOMS INVESTIGATION

WHEREAS wines and liquors have been exported from Customs warehouses in Halifax on schooners and small steamers which have been clearing from this Port for foreign Ports, with cargoes consigned to such Ports, and returning within two or three weeks to Halifax or other Nova Scotia Ports either empty or minus a substantial portion of their cargo;

AND WHEREAS upon investigation it has been ascertained that certain of said vessels have not visited the Ports for which they have cleared between the time of clearing from Halifax and the return of said vessels;

AND WHEREAS under the provisions of the Customs Act in the case of exportation of wines and spiritous liqubrs from a Customs Warehouse by sea a bond must be furnished to the Minister of Customs in double the duties of importation on such goods, that the same shall, when the entry outwards is for exportation by sea be actually exported to the place provided bor in said entry;

AND WHEREAS the Customs Act further provides that within the period appointed in the entry for exportation of such goods a Certificate of Landing of some principal Officer of Customs or of Colonial Revenue at the place to which the goods were exported, or of a British Consul resident at a foreign Port, must be produced to the Collector of Customs at the Port for Entry outwards;

AND WHEREAS from the facts as they appear it seems to be probable that such Certificates of Landing as are produced to the Customs authorities as aforesaid may be either forged or improperly delivered by the vessels in question;

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THEREFORE BE IT RESOLVED that the Halifax Social Service Council do respectfully request the Honourable the Minister of Customs, and the Collector of Customs in the Port of Halifax, to conduct an investigation for the purpose of ascertaining if the said Certificates are genuine or are properly given, and if the goods mentioned therein have in reality been landed at the Port of destination of the same;

AND BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the Minister of Customs at Ottawa, the Collector of Customs at the Port of Halifax, and to the Press.

Halifax 19th, January, 1925

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PRIME MINISTER'S OFFICE C 50357

MEMORANDUM

Leave Out

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C 50358

Copy

MINISTER OF CUSTOMS AND EXCISE
Canada

Trois-Rivieres, 10th February, 1925

Right Honourable W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, Ont.

My dear Prime Minister:

Re your reference to me of a letter signed by R. W. Ross, President and H. R. Grant, General Secretary, the Social Service Council of Nova Scotia, addressed to you on the 22nd of January, and enclosing copy of a resolution passed at a meeting of the Presbytery of Lunenburg and Yarmouth, on the 10th of December, 1924.

This is sent to me at Trois-Rivieres and I must apologize for not taking it up sooner, the reason being that I was absent from Ottawa on account of illness, as I had occasion to report.

A. The entry and clearance of vessels at Canadian ports is a matter of law. There is no machinery provided to compel a vessel to proceed directly to the port for which she clears.

B. A vessel may clear from a Canadian port to Nassau or any other port, and she may return to the port of clearance within a few days not having proceeded to her destination, but satisfactorily accounting to the collector for the disposition, if any, made of the cargo with which she cleared. Under such circumstances, the collector could not refuse another clearance to the vessel unless, of course, it was charged that the vessel was being used for the smuggling of liquor or other merchandise into Canada.

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C. I take strong exception to the nasty insinuation made in the resolution, to wit:

"This practice of giving official sanction to voyages "known or suspected to be merely colorable or made with evidently "sinister purposes of clearing ships which have not fulfilled "formerly declared voyages when subsequent events demonstrate "that they were never intended to be fulfilled, we can only "describe as culpably lax and capable of the most dangerous abuse "and a real reproach against our Canadian merchant shipping."

It is quite evident that the gentlemen who passed the resolution were not aware of the fact that the law must be administered by the Department as passed by Parliament, and if any amendments to the law are required to meet conditions that may have arisen since the law came into force, then Parliament alone has the power to pass such amendments.

Allow me to say, Mr. Prime-Minister, that I have time and again asked these organizations and gentlemen to give me specific cases to allow me to proceed against the officers who were relaxed in their duty and the only answer I ever got was that they were to complain to you, that I was not acting, and that the letters you received were generally equivocal, treating the whole question of prohibition theorically and abstaining upon any specific case upon which I could act.

If you desire me to get in touch with Mr. Grant, I am willing.

Yours truly,

(Sgd.) Jacques Bureau

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C 50360

Copy

PROVINCE OF NOVA SCOTIA

OFFICE OF THE PREMIER

Halifax, 17th February, 1925

Dear Sir:

I have received from the General Secretary of the Social Service Council of Nova Scotia a copy of a communication which has been forwarded to you, in respect of a Resolution passed by the said Council on the 19th of January last.

I desire to impress upon you the importance of the difficulties which confront the Social Service Council in its efforts. The statements contained in the Resolution are unfortunately only too true.

The Government of Nova Scotia would be very glad to be advised from time to time what measures are being taken along the lines suggested, and I need not add that any steps which may be taken to remedy the matters complained of will have our cordial support.

Yours sincerely,

(Sgd.) E. H. Armstrong

Premier.

Rt. Honourable W. L. Mackenzie King,
Prime Minister,
Ottawa, Canada.

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C 50361

Copy

Ottawa, 4th April, 1925

My dear Mr. Armstrong:

In your letter of February 17th, referring to a communication from the Social Service Council of Nova Scotia with reference to the clearance of vessels carrying liquor shipments from Nova Scotia ports, you express the desire to be advised from time to time of what measures have been taken along the lines suggested.

The question was at once taken up with the Department of Customs and Excise. Correspondence with United States consuls and other officials followed. On February 23rd, instructions were issued to the Collector of Customs at Halifax to notify all exporters of liquor from Customs warehouses at his port that any landing certificates presented for cancellation of bonds given in respect of such exports would not be acted upon until an investigation had taken place as to the genuineness of such landing certificates. The Collector was instructed to forward to the Department representative certificates from various foreign ports which had already been received and acted upon, and to forward also as received by him afterwards any landing certificates presented, so that an investigation might be made.

On March 31st, the Department of Customs received from the Collector at Halifax the first consignment of certificates which had not already been acted upon. Investigation is being held into their genuineness. As this will require communication with foreign countries through the British Foreign Office, several weeks will be required to complete the enquiry. I shall have pleasure in informing you further when notified of the results.

I appreciate your writing to me on this matter, and shall have pleasure at any time in discussing this or any other public matter particularly affecting the Province of Nova Scotia.

With all good wishes, I am,

Yours sincerely,

(Sgd.) W. L. Mackenzie King.

The Hon. E. H. Armstrong,
The Premier of Nova Scotia,
Halifax, Nova Scotia.

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C 50362

Copy

OFFICE OF

THE UNDER-SECRETARY OF STATE

FOR EXTERNAL AFFAIRS

CANADA

Ottawa, 8th April, 1925

Dear Mr. Moyer:

I am enclosing herewith, for your files, a copy of a letter from Mr. C. P. Blair on the subject of irregularities in liquor shipments from Halifax.

31 March, 1925

Yours sincerely,

(Sgd.) O. D. Skelton

L. C. Moyer, Esquire,
Private Secretary to the Prime Minister,
Ottawa.

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C 50363

Copy

COPY

DEPARTMENT OF CUSTOMS AND EXCISE

Deputy Minister of Customs
and Excise
(R.R.Farrow)
File No. 123355

Ottawa, 31st March, 1925

Dear Doctor Skelton:

I beg to acknowledge receipt of your letter of the 31th instant, alluding to communications received by the Prime Minister from The Social Service Council of Nova Scotia, charging irregularities in connection with landing certificates issued in respect of liquor cargoes cleared from Halifax.

The Secretary of the Halifax Social Service Council sent to the Honourable the Minister of Customs & Excise a copy of a Resolution relating to this same subject, his letter being dated 20th January last.

Subsequently, some correspondence took place between the United States Consul at Halifax and the Collector of Customs & Excise at Halifax, and afterwards between the Consul at Halifax and the Consul General of the United States here and this Department, relating to this matter, the result being that on the 23rd February last instructions were sent to the Collector at Halifax to notify all exporters of liquor from Customs warehouses at his port, that any landing certificates presented for cancellation of bonds given in respect of such exports would not be acted upon until an investigation had taken place as to the genuineness of such landing certificates, and the Collector was asked to forward to this Department a representative lot of landing certificates from various foreign ports which had already been received by him and acted upon, and to forward also as received by him afterwards any landing certificates presented so that an investigation might be made.

There has just been received today from the Collector at Halifax the first lot of such landing certificates, being in connection with shipments of liquor by the vessels "McLean Clan", "Katherine M. Moulton" and "Abundance", from his port to Guanago, Honduras. These will be investigated before the bonds are cancelled and I presume that the only method of investigation will be by the British Foreign Office through your Department, and this will no doubt take several weeks for completion.

Yours sincerely,

(Sgd.) CHARLES P. BLAIR
General Executive Assistant.

Dr. O. D. Skelton,
Counsellor, Dept. of External Affairs,
Ottawa.

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COPY

C 50364

Office of the Under-Secretary of State for External Affairs,

Canada,

Ottawa, 2nd September, 1925

My dear Mr. Moyer,

26 August.1925 I enclose copy of a letter from Mr. Blair, on the subject of liquor shipments from Halifax, in answer to the question raised by Dr. H. R. Grant in his letter of August 18th.

Yours sincerely,

(Sgd) O. D. Skelton,

L. C. Moyer, Esquire,
Private Secretary to the Prime Minister,
Ottawa.

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C 50365

COPY

Copy E.T. File No.124814.

DEPARTMENT OF CUSTOMS AND EXCISE

Ottawa, 26th August, 1925
Canada.

Dear Dr. Skelton:

I beg to acknowledge receipt of your letter of the 21st instant, relating to inquiry made of the Prime Minister by the Secretary of the Halifax Social Service Council, as to irregularities in connection with landing certificates issued covering liquor cargoes cleared from Halifax, and referring to subsequent correspondence with regard thereto.

I note that the Prime Minister is now in receipt of a further inquiry from the same source and would like to be advised what answer to return.

Following letter to you dated 31st March, 1925, there was sent to you on the 16th April, 1925, a number of foreign Customs landing certificates in respect of liquors shipped from Halifax, N.S., to Guanaja, Honduras, by vessels named therein, viz:, "Abundance," "Catherine M. Moulton," "McLean Clan," "Morso," and "Jean Wakely," in order that an investigation might be directed through the proper channel to ascertain whether the certificates were genuine in the sense of being actually issued by the party purporting to issue the same, and also if the certificates were true in fact that the goods were actually landed at the place indicated.

In subsequent reference from your department the progress of this investigation has been reported and we have now your reference dated 11th August, being confidential despatch from the Secretary of State for Dominion Affairs, dated Downing Street 27th July, transmitting a copy of a despatch from His Majesty's Consul at Puerto Cortes, in which it is stated that the certificates in question are genuine in the sense that they are made out on the legal stamped paper of Honduras and bear the Government Seal of the Coast Guard Service stationed at Guanaja, and also that the signature is authentic, but the Consul states that he is nevertheless of the opinion that these goods were intended to be smuggled into the United States and in all likelihood were never landed at Guanaja. He intimates that a further report will be forwarded after he has obtained some definite information with regard to Adam Dias the officer who signs the certificates.

In these circumstances we are still holding uncancelled bonds covering shipments by these vessels where such bonds had not been cancelled before the matter was reported.

The Department is still adhering to the attitude set out in the letter of the 31st March to you and is not cancelling any bonds given respecting shipments of liquor ex-warehouse at Halifax until an opportunity has been given to investigate the genuineness of the landing certificates presented.

Yours truly,
(SGD.) CHARLES P. BLAIR
General Executive Assistant.

Dr. O. D. Skelton,
Under-Secretary of State for
External Affairs,
O T T A W A.

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C 50366

COPY

Ottawa, 22nd December, 1925

My dear Mr. Blair,

14th Dec. 1925

I enclose copy of a letter which has been sent to the Prime Minister by Dr. H. R. Grant, General Secretary of the Social Service Council of Nova Scotia, with further reference to the representations made by the Council on the subject of the export of liquor cargoes from Halifax and provision for additional coastal revenue service.

I understand that your Department has had the matter under consideration and I should be obliged if you could suggest an answer or a course of action.

It may be that it would be considered advisable to send copy of all the correspondence on the subject to the Minister of Customs and Excise.

Yours sincerely,

O.D.Skelton.

C. P. Blair, Esquire,
General Executive Assistant,
Customs and Excise Department,
Connaught Building,
O t t a w a.

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C 50367

COPY

DEPARTMENT OF CUSTOMS AND EXCISE

Ottawa, 4th January, 1926

Dr. O. D. Skelton,
Secretary of State for External Affairs,
OTTAWA.

Dear Sir:

I have before me your letter of the 22nd ultimo addressed to Mr. Blair and enclosing copy of letter from Dr. H. R.Grant, General Secretary of the Social Service Council of Nova Scotia, to the Prime Minister, dated 14th December, relating to provision for prevention of smuggling on Nova Scotia Coast and export of liquor cargoes from Halifax.

First. Provision for prevention of smuggling.

There was an appropriation made at last session of Parliament to cover additional expense in this regard. Active carrying out of these proposals was delayed owing to protracted illness of the Honourable Mr. Bureau, then Minister of Customs and Excise, who was practically absent from his office from January 1925, until September, when for this reason he was compelled to relinquish his portfolio altogether. Elections followed and the present Minister will give the matter his attention as soon as possible. In the meantime we have been doing our utmost with the equipment available. A survey of the situation is being made by the preventive service to ascertain what additional equipment in the way of boats and officers can be profitably employed, and it is hoped that with the opening of coastal navigation the Department will be in a position to much more effectively curb the illegal liquor traffic.

Second. Liquor shipment from Halifax.

The earlier correspondence in this connection referred to shipments of liquor in bond and production of landing

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COPY

landing certificates. We still pursue the policy of investigating the genuineness of landing certificates before cancelling bonds. This is known to shippers and the traffic through bonds in Nova Scotia appears to have fallen off greatly. In transit shipments still continue and over these we have limited control. The best we can do is to see that vessels while in port with liquor cargoes are carefully guarded and that the liquors are not landed in Canada.

Yours sincerely,

R. R. Farrow

Deputy Minister.

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C 50369

COPY

ET.

Ottawa, 8th January, 1926

Dear Sir:

File No.
125926

I wish to acknowledge your letter of January 4th, conveying the information asked for on behalf of the Prime Minister regarding provision for prevention of smuggling on the coast of Nova Scotia and the export of liquor cargoes from Halifax. The information has been brought to the Prime Minister's attention.

Yours sincerely,

O.D.Skelton.
Under-Secretary of State for
External Affairs.

R. R. Farrow, Esquire,
The Deputy Minister of Customs
and Excise,
Ottawa.

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Customs Investigation ✓

C 50370

PRIME MINISTER'S OFFICE
CANADA

E. J. Lemaire, Esq.,
Clerk of the Privy Council.

MEMORANDUM:

The Prime Minister asked me to send you the attached communication, dated April 8, from Mr. R. R. Sparks, Commercial Protective Association, concerning proposed amendments to the Customs Act.

Mr. King would be glad if you would send an acknowledgment to Mr. Sparks and say that the amendments proposed in his letter are receiving the consideration of the Cabinet.

Mr. King would like these papers submitted to him for consideration in Council. I attach also, by Mr. King's direction, a letter from Mr. Sparks, dated March 20, with respect to Mr. J. E. A. Bisaillon. Mr. King would be glad if you would send an acknowledgment of this communication to Mr. Sparks and then place the papers before him, for consideration in Council.

W. D. McInnes
Private Secretary.

OTTAWA,
April 16, 1925

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C 50371

re SUPPRESSION OF SMUGGLING

The public has thus far had placed before it only certain unsubstantiated charges, more or less general in character, preferred by Mr. Stevens. Once the Committee gets under way with its investigation it will become clear from the official records that, far from having been indifferent in any particular to smuggling, the Government has shown its determination to deal with the situation in an effective manner, and has at each turn adopted the course best calculated to bring about the necessary reforms.

1. Negotation of treaties between United States and Canada to aid in suppression of smuggling

The growth of smuggling has been due, in the main, to prohibition enactments in the United States and Canada, which have led to smuggling liquor across the international frontier, which in turn has developed smuggling in other commodities by persons engaged in the smuggling business. The first step necessary effectively to cope with this situation was the adoption by the Governments of the United States and Canada of a treaty which would permit of a wider measure of co-operation between the customs officials of the two countries and lead to the more ready apprehension and certain conviction of offenders. After due

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conference and negotiation between the governments of the two countries, treaties for the suppression of smuggling, extradition of offenders, etc., etc. were successfully negotiated and ratified by the Governments of both countries.

(See: Convention between His Britannic Majesty in respect of the Dominion of Canada and the United States for the extradition of offenders against the laws for the suppression of the traffic in narcotics.
Ratifications exchanged: July 17, 1925.
Treaty for the suppression of smuggling operations along the International Boundary between the Dominion of Canada and the United States, and assisting in the arrest and prosecution of persons violating the narcotic laws laws of either Government, and for kindred purposes.
Ratifications exchanged: July 17, 1925.)

2. Formation of Commercial Protective Association to work in co-operation with Government.

The next important step taken towards effectively combatting smuggling was , during the latter half of 1924, the creation of the Commercial Protective Association with the knowledge, approval and co-operation of the Government. It can be shown that not only did the Government welcome the formation of this association, which was known to be allied with the Canadian Manufacturers Association, but that the Minister of Customs and the Deputy Minister co-operated with it and facilitated its efforts to disclose smuggling operations and the most effective methods of suppressing the same. It will even be shown that the Government went

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so far as to meet part of the expenses of the Protective Association with respect to detective service, and arranged for the co-operation of the Government's secret service, with the trained criminal investigators, with the Association.

3. Enactment of legislation to suppress smuggling.

The records will disclose that in the opinion of the Commercial Protective Association, ninety per cent. of the evil could be remedied by stringent legislation, and that only be the enactment of drastic legislation could an adequate solution of the problem be found; that the Government not only welcomed suggestions from the Association but that the Prime Minister himself invited the Association to draft such amendments to the customs law as in the opinion of its officers and members would meet the situation, and undertook to see that a Bill based on the Association's own recommendations would be introduced into parliament. Such a Bill was introduced and the measure had the strong support of the Prime Minister and other members of the Government, and, with certain amendments made during the course of its passage through the two Houses of parliament, was enacted into law at the last session. That the Government's action in enacting this legislation was highly approved by the commercial and industrial community, is abundantly

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proved by the strong praise it brought forth from the Toronto Board of Trade and other organizations identified with the Commercial Protective Association.

4. Increase in Preventive service

The records will disclose that steps were also taken by the Government to obtain from Parliament an appropriation for the purpose of increasing the preventive service, another step recommended by the Commercial Protective Association.

5. A Royal Commission promised by Government to investigate any specific charge directed against customs officials

The records will show that the Prime Minister gave an undertaking, on behalf of the Government, that a Royal Commission would be appointed to investigate any charges which might be laid by the Commercial Protective Association or any person against any official of the Public Service, and in particular against J. E. Bisaillon, Chief Preventive Officer, Montreal, of whose irregularities Mr. Stevens has alleged in his charges the Government had knowledge. The offer of a Royal Commission was made prior to the time at which the legislation above referred to was introduced in parliament, and was never withdrawn. The fact that neither the Association, with its trained criminal investigators, nor any person, could be found prepared to lay a charge against Bisaillon would appear to be the

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sole reason why his conduct was not investigated under Royal Commission, which would have given to the Association every opportunity of not only investigating the general allegations made in ~~his~~ representations against this official, but every opportunity for the fullest kind of enquiry into ~~xxxxxxxxx~~ the alleged smuggling.

6. Stevens charges based on material obtained by Government itself, which led to suspension of Bisaillon

While neither the Commercial Protective Association nor any other person was prepared to make a direct charge against Bisaillon, the records will disclose that the actions of this particular officer were being carefully watched, and that it was by this method, under direction of the Minister of Customs, that sufficient evidence was finally accumulated on which to base a direct charge against Bisaillon and sufficient to lead to his dismissal from the Service. It would appear that it was the material obtained for the Government through its own officers which led to Bisaillon's dismissal, together with grounds for the general allegations and representations of the Commercial Protective Association, which the Government was doing its utmost to meet in

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the most effective way, and that is now being made the basis of the Stevens charges in the investigation before the Parliamentary Committee. It was through the close association of the Government's Secret Service with that of the Commercial Protective Association, and through the association of the latter organization with Mr. Stevens that he came into possession of the material which led him to make his charges of irregularities in the Customs Service.

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(+) Ha. 2nd Branch C 50379
15 February

CORRESPONDENCE, ETC.,

RE PREVENTION OF SMUGGLING

PRIME MINISTER'S OFFICE

1925

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C 50380

CORRESPONDENCE, ETC.,

RE: PREVENTION OF SMUGGLING

PRIME MINISTER'S OFFICE

1925

I N D E X

1. R. P. Sparks' correspondence.

2. Representations re Smuggling - General.

3. Suggestions as to Changes in Customs Act.

4. Correspondence re Government's announcement of Intention to amend Customs Act.

5. Correspondence approving steps taken by Government.

6. Representations re Appointment of Special Preventive Officers.

Note:

This correspondence does not include correspondence relating to the negotiation and ratification of the following Treaties:

1. Convention for the Extradition of offenders against the laws for the suppression of the traffic in narcotics. Ratifications exchanged July 17, 1925.

2. Treaty for the Suppression of Smuggling operations along the International Boundary between the Dominion of Canada and the United States. Ratifications exchanged July 17, 1925.

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R. P. Sparks' Correspondence.

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COMMERCIAL PROTECTIVE ASSOCIATION

OTTAWA, CANADA.

Ottawa, February 4, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

Some months ago a large representative deputation waited upon you and members of your Cabinet pointing out that smuggling and under-valuation for duty purposes were causing an immense loss of revenue and seriously interfering with the business of legitimate traders and manufacturers.

Subsequent to that time this Association was organized for the purpose of assisting the Department of Customs and Excise in the prevention of smuggling and under-valuation and to make certain investigations of their own into this problem. In this regard we are pleased to say that both the Minister and Deputy Minister of Customs have welcomed our co-operation and have facilitated in every possible way the investigations we have made into the smuggling problem. These investigations have even more strongly impressed the business men who have given close attention to this work with the magnitude of this traffic and the necessity of prompt and drastic action.

Under the present law smuggling is not an indictable offence, although the Minister has the right to take cases of smuggling into the civil courts. It has, however, been the practice ever since Confederation to settle departmentally practically all seizures for smuggling or under-valuation. We believe that this practice has had the general effect of what might be improperly described as contempt for the law in this regard.

We respectfully submit that, in order to maintain respect for the law and to correct the abuses of its infraction, all cases of fraud whether by way of smuggling or under-valuation under the Customs Act should be dealt with by the civil courts, and, in the case of what might be described as commercial smuggling, that is smuggling of goods for resale of a substantial value, say $100.00 or over, the offence should be made punishable by imprisonment without the option of a fine. The various penalties as set out in the Act at present are entirely inadequate. The preventive service as at present constituted is quite unable to cope with the situation, handicapped as they are by existing laws and regulations which interfere with effective preventive work.

To illustrate the difficulties of the present situation we have prepared maps taking a particular section of the Quebec border, showing approximately sixty roads crossing the border within one hundred and twenty-eight miles. In this section there are at present nine Customs Houses. According to the Act these Customs Houses remain open from sunrise to sunset and, so far as we are aware, after the sun has set the border is to all intents and purposes wide open. It would be obviously impossible to demand a twenty-four service at even all of these sixty roads, let alone

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the whole four thousand miles of border. We believe the only solution of the problem will be found in drastic punishment for smugglers when caught. In this regard we might refer you to the provisions in reference to the entering into Canada of immigrants under Section 33, sub-section 7 of the Immigration Act. The general conditions as in this section might be applied to smugglers entering Canada on roads other than those on which Customs Houses are located.

The law relating to under-valuation involves complicated and long drawn out investigations which practically nullify their effect. We believe these particular features could be simplified and made more effective.

The appraisal system is unsatisfactory, chiefly owing to the fact that in Canada there are 522 ports of entry, and it is obvious that it would be impossible to keep proper appraisers at all these ports. We might point out, in so far as ports of entry are concerned in Canada in comparison with the United States, that there is one port of entry in Canada for every 17,241 people, whereas in the United States there are only 314 ports of entry, or one to every 572,611 people. We are prepared to make practical suggestions in this regard.

It is respectfully submitted that the conditions herein set forth are sufficiently well known to the Government and to its departmental officers and the requested forms of relief so necessary and reasonable as to justify the Government to take immediate action by instituting the required departmental changes and submitting to Parliament bills providing for necessary legislative enactment, or, if the Government is not satisfied as to the necessity of action and the action which should be taken, it is respectfully submitted that a Parliamentary committee should be appointed immediately to inquire into the necessity of departmental and legislative changes.

I might mention incidently that this Association has been endorsed and is being supported by the following organizations:

The Canadian Manufacturers Association
Canadian Jewellers' Association
Canadian Wholesale Dry Goods Association
Canadian Association of Garment Manufacturers
Retail Merchants Association of Canada
Montreal Board of Trade
Toronto Board of Trade

and the boards of trade in a number of the other of the larger cities in Canada.

Yours truly,

(Sgd) R. P. Sparks

Chairman, Executive Committee.

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COMMERCIAL PROTECTIVE ASSOCIATION

OTTAWA, CANADA.

Ottawa, February 21, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

The acquittal by the Quebec courts of J.E.A. Bissillon, the Chief Preventive Officer at Montreal, who was charged with conspiracy, creates a new situation in reference to the prevention of smuggling. I think you should be in possession of certain information which we have in reference to this matter, as he is the key to the whole smuggling situation.

We have other information of the most important character which I would like to convey to you, and also make some definite suggestions for the prevention of this traffic. If you wish to discuss this matter, I will be glad to make an appointment at any time which suits your convenience. I would suggest that it might be desirable to have the Hon. Mr. Robb also present, and I have some information which I think would be of a good deal of interest to the Hon. Mr. Graham.

Might I again repeat what I think I have said to you before that, from the standpoint of loss of revenue, I think the smuggling business is second only to the loss occasioned from the operation of the Canadian National Railway.

If you desire, I will be glad to make some definite suggestions in regard to administration, which I believe will be immediately effective.

Awaiting a reply, I remain,

Yours respectfully,

(Sgd) R. P. Sparks

Chairman, Executive Committee.

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COMMERCIAL PROTECTIVE ASSOCIATION

OTTAWA, CANADA.

Ottawa, February 26, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

I took the liberty of writing you on Saturday last suggesting an appointment at which I could lay before you certain information in reference to J. E. A. Bisaillon and other matters in connection with smuggling in which I thought you would be interested. However, if the statement of the Minister of Customs in the House of Commons on Tuesday last is to be accepted as an indication of the Government's policy, I think, perhaps, there is no use taking up your time in this regard.

A Canadian Press despatch reads as follows,- "In speaking of smuggling Mr. Bureau said: 'I don't believe any human power can stop it', although his Department had done a great deal to decrease smuggling at the border".

Might I take the opportunity of stating that, after four months investigation by a staff of trained criminal investigators, we are convinced that at least half of the smuggling now going on could be prevented within a month by an energetic policy on behalf of the Department, and further that, with necessary amendments to the Act, ninety per cent of the smuggling could ultimately be prevented. Might I further express the opinion that smuggling is increasing at an alarming rate, rather than decreasing, as the Minister states.

I would also like to call your attention to the fact that yesterday I took up with the Minister of Customs the question of the continuation of Mr. Bisaillon as Chief Preventive Officer at Montreal. I pointed out that the business community had lost confidence in Mr. Bisaillon. I had with me at that time a number of reports on this man, one of which I read to the Minister, which contained the following paragraph amongst other statements made by a reputable officer who had formerly been engaged in preventive work,-

"Later on, in this first interview Bisaillon went and got a bottle of Scotch and a pitcher of ice water from one of the C. S. Line's boats. When this bottle was empty he offered us to have some more at his flat on Berri Street where he went, being driven by him in his new Hudson Six Limousine. There we had champagne, two large cases partly open were in the front room. It was not long before he showed us "his hand" and told us to go slow with the seizure that there were higher up officials interested in same, that we might burn our fingers if working too hard, that we should read between the lines, and that we could make much money if we were wise giving us as example his own ways, owning a nice Auto, a Summer Resort place in the Laurentians and that his salary was not more than ours."

The Minister inquired as to whether this incident had occurred previous to the promotion of Mr. Bisaillon to the position of Chief Preventive Office. When I informed him that it had occurred during his employment as a regular Customs officer he stated that this had no bearing on the case whatever, and that he would only consider matters which had occurred since Bisaillon was

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appointed to the preventive service. I was quite unable to follow the logic of this statement, as a promotion would not appear to increase a man's honesty; in fact, the greater opportunity which he enjoyed would be liable to have the opposite effect, if he were not an honest officer.

I had several statements to lay before him of a most important character, but it was apparent that he did not want to hear them.

Might I say that we had hoped for some statement in the speech from the throne to the effect that the Government proposed to deal with this important problem. When no such statement appeared, we had again hoped that, on the introduction of the estimates of the Customs Department, some statement of policy would be enunciated. If the statement of the Minister as quoted above is to be regarded, as I believe it will be regarded by those interested, as a statement of the Government's attitude we would be glad to know it at any early date.

I am well aware that the Government have many matters on their hands to deal with, but I do not feel that a request for an early statement in regard to smuggling is without complete justification.

I might point out that last August a large representative deputation put the whole matter of smuggling before yourself and members of your Cabinet. It has been kept constantly before the Government since that time, and the statement made by the Minister of Customs in the House on Tuesday is the first public statement of any character as to the Government's attitude.

I am obliged to make a full report on the matters above referred to, to the members of this Association who are keenly interested in this problem. If, therefore, we have made an error in assuming that no further action will be taken we would appreciate greatly some intimation to this effect.

If you desire to make an appointment to discuss this matter either with myself personally or with the members of the Executive Committee of this Association, we are at your service at any time.

Yours respectfully,

(Sgd) R. P. Sparks

Chairman, Executive Committee.

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COMMERCIAL PROTECTIVE ASSOCIATION

Box 645

OTTAWA, CANADA.

Ottawa, March 13, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

In further reference to your suggestion that we should put before the Committee of the Cabinet concrete suggestions as to the amendments to the Customs Act dealing with the matter of smuggling, I beg to say that we are now prepared to do this at any time that suits your convenience.

If agreeable to you, I would be glad to have Mr. H. D. McCormick accompany me as a technical adviser. Mr. McCormick, I might say, is now employed by the Canadian Manufacturers Association. He was for many years in the Customs Department, the greater part of that time in the Preventive Service, and I believe has as complete a knowledge of the Customs Act as almost anyone in Canada. I would be glad to have one or two of the members of the Executive Committee of this Association who have been giving very close study to this matter also present.

Of course, if you prefer that I should present certain facts alone, I will be glad to do so, but, if you are agreeable to others being present, I would be glad to have one day's notice, so that I could notify Mr. McCormick, who would have to come from Toronto.

I am taking the liberty of enclosing a copy of a resolution passed at the Annual Meeting of the Canadian Association of Garment Manufacturers, which you will note expresses appreciation of the efforts already made by the Government to prevent this traffic and urges further action.

Yours truly,

(Sgd) R. P. Sparks

President.

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(COPY)

RESOLUTION Passed At The Annual Meeting Of The Canadian Association of Garment Manufacturers, Held At The Chateau Laurier, Ottawa, On March 11th and 12th, 1925

WHEREAS the smuggling of commodities, amongst the chief of which are silks, cottons, woollens, and ready-to-wear clothing of various kinds, has assumed alarming proportions, and

WHEREAS the under-valuation for duty purposes of goods imported into Canada has become a common practice,

IT IS THEREFORE RESOLVED that the Canadian Association of Garment Manufacturers, in Convention assembled, strongly urge the Government to take such steps in the amendment of the Customs Act and in the strengthening of the administration as will discourage and prevent these illegal practices, which are having such a serious effect on the business of legitimate manufacturers and traders.

This Association further desires to put on record its opinion that the only satisfactory method by which this illegal traffic can be lessened and prevented is such changes in the Customs Act as will increase the penalties against those convicted of smuggling or under-valuation, and that, in the case of wholesale smuggling of merchandise for resale, the penalty should be a sentence to jail without the option of a fine.

This Association desires to go on record as expressing appreciation of such action as has already been taken by the Federal Government to lessen this evil, and endorses the suggestion made to the Government by the Commercial Protective Association for further action in reference to amendments to the Customs Act and strengthening of the preventive service.

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COMMERCIAL PROTECTIVE ASSOCIATION

Ottawa Toronto Montreal

Box 645
Ottawa, Canada

Ottawa, March 20, 1925

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, Ont.

Dear Sir:

Re: J. E. A. Bissaillon

In reference to my conversation with you on Monday last my understanding was:

That, if this Association or any individual was prepared to make definite charges against the above Customs Officer, you would appoint a Royal Commission to investigate such charges.

My further understanding was that lacking such definite charges no action would be taken.

Before making any decision in this regard, I would respectfully call your attention to the fact that there are six or seven other officers of the Customs Department whom we have reasons for believing are trafficking with smugglers and in reference to whose illegal operations we are able to furnish some evidence. Are we to understand that, in each of these cases and in such other instances as may come to our attention, it will be necessary for us to apply for Royal Commissions in each separate case, and to appear with proof of illegal acts committed by those under suspicion?

Might we point out that much of the information which we have obtained in reference to these men has been obtained

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in confidence, and if those who have furnished the information are compelled to appear publicly, their usefulness in assisting the Department in the prevention of this traffic is done. No action would more successfully destroy the effectiveness of this organization than the necessity of appearing before a Royal Commission in this case.

In reference to the case of Bisaillon, there are certain facts, some of which are set out below, which form a part of the public records and, which, if they are not already known to the Minister of Customs and Excise, confirmation of them can easily be obtained. In our opinion these facts of themselves furnish sufficient evidence to warrant the immediate dismissal of Bisaillon.

(1) The case of Rex vs. Lortier. This was a case in which the Department of Health took action in reference to the smuggling of a large quantity of narcotics and in which Bisaillon appeared as a witness. We believe the Court records will show that the presiding Judge expressed his opinion from the Bench to the effect that Bisaillon had deliberately committed perjury and had concealed facts within his knowledge, thereby weakening the case of the Crown. We submit that the facts in this case would alone justify his dismissal from the public service.

(2) In the case of the arrest of certain parties in connection with the seizure of the "Tremblay Barge", the preliminary hearing in connection with which was recently held in the Courts of Quebec before Judge Choquette, evidence was given under oath to the effect that Bisaillon had made deposits in certain banks in Montreal of about $69,000.00. When confronted with this fact Bisaillon stated, under oath, that the monies so deposited were the property of the Receiver General of Canada, which he had deposited in his own name. When asked by the Crown Counsel for

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evidence of the fact that he had remitted these amounts to the Receiver General, he was unable to furnish this. We have reason to believe that a thorough inquiry into the matter of these deposits would be of interest. We submit that in depositing these amounts to his own personal credit he was acting in direct contravention of the law, and that his action in doing so is in itself sufficient cause for his immediate dismissal.

(3) In connection with the above case, it was further substantiated, under oath, that when the "Tremblay Barge" had been seized by Provincial officers, there were on board two persons who had been placed under arrest. Evidence was given under oath to the effect that when these prisoners were handed over to Bisaillon he stated that he would deal with them from a Federal standpoint. These two men were allowed to escape. We submit that, in allowing these two men to escape, he betrayed his trust as a public officer, and his action in this regard would in itself justify his immediate dismissal.

(4) It is already known to officers of the Department of Customs and Excise that Bisaillon is a registered owner of certain property adjoining the border between Canada and the United States, and that he is also the owner of property in the United States adjoining his Canadian property. There are certain buildings on these properties which are known by the police to be frequented by smugglers. We submit that the mere fact that this man is the owner of these properties arouses a suspicion which in itself would justify his dismissal.

(5) We have reasons to believe that many reports have been made by the Royal Canadian Mounted Police as to improper

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conduct by Bisaillon in dealings with smugglers and other offenders against the law. These reports are no doubt at your disposal, and we would submit that, before asking private individuals to appear as public prosecutors, you should have these reports before you.

The above facts, all of which can be verified from public documents, would appear to us to justify the Government taking action of their own motion.

When this Association was organized to assist the Department, it was understood that information which we were able to furnish would be treated as confidential. It was not at any time suggested that it would be necessary for us to appear before courts or Royal Commissions in bringing either smuggling or corrupt Customs officers before courts constituted to deal with such offences. We are unable to find any precedent for the Government asking private individuals to institute proceedings against suspected officers of the Crown.

We would respectfully submit that the facts as above set out, together with information conveyed to you in a confidential memorandum, are sufficient of themselves to call for this man's dismissal, and, over and above all this, is the fact that this man has lost the confidence of the business community of Montreal and, as a consequence, his usefulness is at an end.

If, after reading the above, the Government are still of the opinion that it is our duty as citizens to lay charges against public officers suspected of improper conduct, and if you will so advise me, I will put the matter before the Executive Committee of this Association for their decision.

Yours respectfully,

(Sgd.) R. P. Sparks

Chairman, Executive Committee.

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COMMERCIAL PROTECTIVE ASSOCIATION

OTTAWA, CANADA

Ottawa, April 8, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

I beg to enclose herewith a memorandum covering proposed amendments to the Customs Act, as recently discussed with you.

These suggested amendments have been submitted to the officers of the Department, and, while they do not feel it their duty to express an opinion as to their desirability, they do state that they present no administrative difficulties. The object of nearly all of these amendments is to increase the penalties against those proven guilty of infractions of the Customs Act.

Attached to each suggested amendment is a note giving briefly the reasons for each change. If given opportunity, I would be very glad to present a more extended explanation to the committee of the Cabinet dealing with this matter.

The principal amendment is that to Section 206, which we propose should make smuggling of goods to a value of over $100.00 an indictable offence punishable by a jail sentence without the option of a fine. Most of the other amendments are simply bringing other clauses of the Act into conformity with this proposal. Several other amendments deal with offences for which the Act provides that persons committing such offences "shall incur a penalty". No provision, however, is made for the collection of this penalty except a suit in a civil court. We propose that certain of these offences shall be made indictable and penalties provided for in the Act.

While these suggested amendments may appear drastic, I would like to point out that legislators have never before been called upon to deal with such a situation. The condition exhibited by the United States, a nation with about sixteen thousand miles of border or coast line, along practically all of which smugglers (commonly called bootleggers) by the hundreds of thousands are endeavouring to evade the laws of the country, creates a situation entirely unprecedented in the history of the world. Smuggling on this continent has become a huge industry. Along the international border between Canada and the United States thousands of men are making their living by illicit trade. The step between smuggling from Canada into the United States and from the United States into Canada is a short one, and a large part of the smuggling of commodities into Canada is directly due to the fact that smuggling has become a profession in which there are many adepts.

After months of investigation by trained investigators we have no hesitation in saying that this traffic constitutes a national problem of the very first importance. Our investigations have proved to our complete satisfaction that the only successful way in which this traffic can be discouraged is by the imposition of the most severe penalties. Along a border of nearly four

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thousand miles the physical act of bringing goods from the United States into Canada will never be difficult. Today it is neither difficult nor dangerous, owing to the insufficiency of the penalties. We believe that no legislation will add much to the difficulties, but the legislation which we propose certainly will make it dangerous for those who are caught.

We believe there are certain matters of administration in the matter of enforcement which could be greatly improved. However, until the Act is amended along the lines suggested, the departmental officials, no matter how efficient, will be unable to cope with the situation.

I might say that I have discussed the probability of some legislation being brought down later in the session to deal with this problem with the Hon. Mr. Meighen and Mr. Robert Forke. They both took what we believe to be the proper view that this is not a political matter, and expressed the opinion that they would be prepared to support legislation the purpose of which was to prevent this traffic.

If, after consideration, your Government decides to accept the suggestions here put forward, or in any other way proposes to strengthen the Customs Act, I can assure you on behalf of the whole business community that we will leave no stone unturned to assist the Government in getting such legislation through Parliament.

Yours respectfully,

(Sgd) R. P. Sparks

Chairman, Executive Committee.

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Proposed New Section 154A.

In view of the present day methods of smugglers and the necessity for prompt action at all hours of the day or night it is recommended that Customs officers and peace officers be provided with power to arrest smugglers and other persons committing infractions of the Customs Law without the necessity of first obtaining a warrant.

Under the present Law officers may detain and seize any goods which they suspect to have been smuggled but it appears they have no authority to arrest the offender without first securing a warrant. If an officer, on detecting some person or persons in the act of smuggling goods into Canada or encountering persons whom he knew had smuggled goods into Canada, was obliged to first go and secure a warrant before he could arrest such persons there are many occasions when he would not be able to make the arrest. Therefore, in order that officers charged with the prevention of smuggling may be given better facilities to cope with the evil, we recommend that they be given power to arrest offenders without warrant.

A further reason which makes an arrest desirable is that when a smuggler is arrested his person may be searched and very frequently important evidence is obtained in this way. If a seizure only is made the offender has time to remove any documents or other evidence which he may have on his person.

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PRESENT.

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PROPOSED.

New Section to be numbered 154A, and providing for arrest without warrant of offenders against Customs laws.

154A. Any Customs Officer or any peace officer may arrest, without warrant, anyone found committing or who has committed any offence mentioned in the Customs law.

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PRESENT

175. The Commissioner may thereupon notify the owner of the claimant of the thing seized or detained, or his agent, or the person alleged to have incurred the penalty or forfeiture, or his agent, of the reasons for the seizure, detention, penalty or forfeiture, and call upon him to furnish, within thirty days from the date of notice, such evidence in the matter as he desires to furnish.

2. Such evidence may be by affidavit or affirmation, made before any Justice of the Peace, Collector of Customs, Commissioner for taking affidavits in any Court, or Notary Public.

PROPOSED

175. The Commissioner may thereupon notify the owner or claimant of the things seized or detained, or his agent, or the person alleged to have incurred the penalty or forfeiture, or his agent, of the reason for the seizure, detention, penalty or forfeiture, where the value of the goods seized or detained is under $100.00 or where the value of the goods in respect of which there has been an alleged infraction of the Customs law is under $100.00, and call upon him to furnish within thirty days from the date of the notice, such evidence in the matter as he desires to furnish.

1a. On the Commissioner may direct that an information be laid against the person alleged to have committed an offence against the Customs laws.

2. Where any person or persons is called upon to furnish evidence, such evidence may be by affidavit or affirmation, made before any Justice of the Peace, Collector of Customs, Commissioner for taking affidavits in any Court, or Notary Public.

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Proposed Amendment to Section 175 and Proposed New Section 182A.

With some few exceptions the practice has been to dispose of all seizures departmentally under the provisions of sections 174 to 180. Under this practice the only persons with knowledge of the facts are the Departmental officials and the party alleged to have committed an infraction of the law.

While not recommending any change in the present method in so far as regards pettey infractions, other than to give the Department the right to take court proceedings, inmsuch cases where it is deemed advisable to do so, we do recommend that all major cases of fraud against the Customs revenue - where the value of the goods is $100 or over, should be dealt with by the courts.

We believe that the substitution of court proceedings forthe present method of dealing with such cases departmentally, will prove of great advantage both in the suppression of smuggling and in serving as a warning to others.

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C 50398

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PRESENT

PROPOSED

Proposed new Section to be numbered 182A.

182A. When the value of the goods seized is $100 or over, or when the value of the goods in respect of which there has been an alleged infraction of the Customs law, is $100 or over, if the Commissioner is satisfied that there was an intent to defraud the revenue, he shall direct that an information be laid against the person or persons alleged to have committed an offence against the Customs laws.

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C 50399

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Proposed Amendment to Section 187

In addition to the penalty now prescribed under this section we recommend an amendment to provide for an additional penalty and punishment on summary conviction where the value of the goods is under $100; and where the value of the goods is $100 or over we recommend that the offence be made an indictable one - carrying with it both a fine and a term of imprisonment if the offender is convicted.

Under the section as it now stands the penalty, unless paid voluntarily, can only be recovered by an action in the courts.

The provisions for proceeding summarily and by indictment will provide the Department with an effective weapon for dealing with infractions under this section - effective both in dealing with offenders and as a deterrent to others.

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PRESENT

187. If any goods,-

(a) are imported into Canada at any other place than at some port or place of entry at which a Custom-house is then lawfully established; or,

(b) being brought by land or inland navigation into a port or place of entry where a Custom house is so established, and are carried past such Custom-house, or removed from the place appointed for the examination of such goods by the collector or other proper officer at such port or place before the same have been examined by the proper officer, and all duties thereon paid and a permit given accordingly;

such goods shall be seized and forfeited, and every person concerned in such unlawful importation or removal shall incur a penalty equal to the value of such goods.

PROPOSED

187. Paragraphs (a) and (b) remain unchanged.

such goods shall be seized and forfeited and every person concerned in such unlawful importation or removal shall incur a penalty equal to the value of such goods and shall, -

(a) If the value of the articles is under $100.00 be further liable on summary conviction before two Justices of the Peace to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding one year and not less than one month, orto both fine and imprisonment, and shall, -

(b) If the value of the goods is $100 or over, be guilty of an indictable offence and liable on conviction to a fine of not less than $500 and to imprisonment with hard labour, for a term not exceeding five years and not less than six months.

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C 50401

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Proposed Amendment to Sections 192, 193 and 195

We recommend that these sections be amended so as to provide for additional penalties on summary conviction where the value of the goods is under $100.00, increasing the maximum from $200 to $500 and the minimum from $50.00 to $200, and by providing that where the value is $100.00 or over the offence be made an indictable one, carrying with it a term of imprisonment if the offender is convicted in addition to a fine of $500.00.

As stated in dealing with the proposed amendment to Section 187, the proposed amendment will provide the Department with a more effective weapon in dealing with unlawful importations.

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PRESENT

192. If any goods are imported into Canada in any vehicle other than a railway carriage, or upon the person, betwen sunset and sunrise or any day or at any time on a Sunday or a statutary holiday, except under a written permit from a Collector of Customs, and under the supervision of an officer, such goods and the vehicle in which the same are imported, together with the fittings, furnishings, and appurtenances, and the animals and harness or tackle pertaining thereto shall be forfeited, and may be seized and dealt with accordingly.

2. If the articles so forfeited or any of them are not found, the owner at the time of importation, and the importer, and every other person who has been in any way connected with an unlawful importation of such articles, shall forfeit a sum equal to the value of the articles, and shall be further liable on summary conviction before two Justices of the Peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, orto both.

PROPOSED

192. Subsection 1 remains unchanged.

2. If the articles so forfeited or any of them are not found, the owner at the time of importation, and the importer, and every other person who has been in any way connected with the unlawful importation of such articles shall forfeit ahsum equal to the value of the articles; and shall,

(a) If the value of the goods is under $100 be further liable on summary conviction before two Justices of the Peace to a penalty not exceeding five hundred dollars and not less than two hundred dollars or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment, and shall

(b) If the value of the goods is $100.00 or over, be guilty of an indictable offence and liable on conviction to a fine of $500.00 and to imprisonment with hard labour, for a term not exceeding five years and not less than six months.

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PRESENT

195. (a)Any vehicle containing goods, other than a railway carriage, arriving by land at any place in Canada, whether any duty is payable on such goods or not, and,

(b)Any such vehicle on arriving, if the vehicle or its fittings, furnishings, or appurtenances, or the animals drawing the same, or their harness or tackle, is or are liable to duty; and,

(b)Any goods brought into Canada in the charge or custody of any person arriving in Canada on foot or otherwise;

shall be forfeited and may be seized and dealt with accordingly, if before unloading or in any manner disposing of any such vehicle or goods, the person in charge thereof does not,-

(a) come to the Custom-house nearest to the point at which he crossed the frontier line, or to the station of the officer nearest to such point, if such station is nearer thereto than any Custom-house, and there make a report in writing to the collector or proper officer of Customs, stating the contents of each and every package and parcel of such goods and the quantities and values of the same; and,

(b) then truly answer all such questions respecting such goods and packages, and the vehicle, fittings, furnishings and appurtenances appertaining thereto, as the said collector or proper officer of the Customs requires of him, and,

(c) then and there make due entry of the same in accordance with the law in that behalf.

2. If the articles so forfeited or any of them are not found, the owner at the time of importation and the importer, and every other person who has been in any way connected with the unlawful importation of such articles shall forfeit a sum equal to the value of the articles and shall be further liable on summary conviction before two Justices of the Peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to, imprisonment for a term not exceeding one year and not less than one month, or to both.

PROPOSED

Subsection (1) remains unchanged.

2. If the articles so forfeited or any of them are not found, the owner at the time of importation and the importer, and every other person who has been in any way connected with the unlawful importation of such articles shall forfeit a sum equal to the value of the articles and shall,-

(a) If the value of the goods is under $100.00 be further liable on summary conviction before two Justices of the Peace to a penalty not exceeding five hundred dollars and not less than two hundred dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment; and shall,-

(b) If the value of the goods is $100.00 or over, be guilty of an indictable offence and liable on conviction to a fine of $500.00 and to imprisonment with hard labour for a term not exceeding five years and not less than six months.

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PRESENT

195. If any goods are unlawfully imported on any railway, they shall be seized and forfeited, and the car in which such goods were so imported shall be seized and detached from the train and forfeited.

2. Every conductor, baggage-master, or officer or servant employed on any railway, and every officer or servant employed by any express company who is privy to or aids or abets in such unlawful importation, shall, upon summary conviction, be liable to a penalty not exceeding two hundred dollars, and not less than fifty dollars, orrto imprisonment for a term not exceeding twelve months and not less than three months, or both.

PROPOSED

195. Subsection 1 remains unchanged.

2. Every conductor, baggage-master, or officer or servant employed on any railway, and every officer or servant employed by any express company, who is privy to or aids or abets in such unlawful importation, shall forfeit a sum equal to the value of the articles; and shall,-

(a) If the value of the goods is under $100.00 be further liable on summary conviction before two Justices of the Peace to a penalty not exceeding five hundred dollars and not less than two hundred dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment, and shall,-

(b) If the value of the goods is $100.00 or over, be guilty of an indictable offence and ~~[illegible]~~ liable on conviction to a fine of $500.00 and to imprisonment with hard labour, for a term not exceeding five years and not less than six months.

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C 50405

(COPY)

PROPOSED AMENDMENT TO SECTION 197

We recommend that the offence of "procuring," covered by this section, be made ~~a~~ an indictable offence punishable ~~by~~ imprisonment in addition to the penalty of $100.00 which the section as it now stands provides for. Moreover, under the section as it stands, the Department would have to enter suit to recover the penalty.

Many of the larger operators or smugglers take no part in the actual smuggling but engage others to bring goods into Canada unlawfully.

These people do not think anything of a penalty of $100.00 which must be sued for. But if the offence were made indictable, one or two convictions would have a most salutory effect.

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PRESENT

197. Every person who, by any means, procures, hires or induces any person or persons to be concerned in the landing, unshipping, carrying or conveying of any goods, the importation of which is prohibited, or for the landing of which permission has not been granted by the Collector or other proper officer of Customs, shall, for every person so procured, hired or induced, incur a penalty of one hundred dollars.

PROPOSED

197. Every person, who, by any means, procures, hires or induces any person or persons to be concerned in the landing, unshipping, carrying or conveying of any goods the importation of which is prohibited, or for the landing of which permission has not been granted by the collector or other proper officer of Customs, shall be guilty of an indictable offence and liable on conviction to a fine of one hundred dollars for every person so procured, hired or induced and to imprisonment with hard labour, for a term not exceeding five years, and not less than six months.

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C 50407

(COPY)

PROPOSED AMENDMENT TO SECTION 206.

We recommend that the present grouping of offences in s.s 1 Pars (a), (b) & (c) be changed, and that the offence specified in par (b) owing to its serious nature be dealt with in a separate subsection, and be made indictable in all cases.

As amended any person who commits an offence under present par. (a) or (c) - par (a) and (b) under the amendment proposed - would be liable on summary conviction to a fine or imprisonment, or both, where the value of the goods is under $100.00, and we propose that the maximum fine be increased from $200 to $500 and that the minimum fine be increased from $50.00 to $200, and where the value of the goods is $100.00 or over, the offence would be made indictable, carrying on conviction, both a fine and imprisonment.

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(COPY)

PRESENT

206. If any person,

(a) smuggles or clandestinely introduces into Canada any goods subject to duty; or

(b) makes out or passes or attempts to pass through the Custom-house, any false, forged or fraudulent invoice, of any goods; or

(c) in any way attempts to defraud the revenue by evading the payment of the duty or any part of the duty on any goods;

such goods, if found, may be seised and forfeited, or, if not found, but the value thereof has been ascertained, the person so offending shall forfeit the value thereof as so ascertained.

2. Every such person shall, in addition to any other penalty to which he is subject for any such offence,-

(a) forfeit a sum equal to the value of such goods, which sum may be recovered in any court of competent jurisdiction; and,

(b) further be liable on summary conviction before two justices of the Peace to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment.

PROPOSED

206. Any person who,-

(a) smuggles or clandestinely introduces into Canada any goods subject to duty; or,

(b) in any way attempts to defraud the revenue by evading the payment of the duty or any part of the duty on any goods;

shall, if the value of the goods is under $100.00 be liable on summary conviction before two Justices of the Peace, to a penalty not exceeding five hundred dollars and not less than two hundred dollars, or to imprisonment for a term not exceeding one year and not less than one month; or to both fine and imprisonment; and if the value of the

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goods is $100.00 or over, shall be guilty of an indictable offence and liable on conviction to a fine of $500.00 and to imprisonment, with hard labour, for a term not exceeding five years and not less than six months.

2. Any person who makes out or passes or attempts to pass through the Custom-house, any false, forged or fraudulent invoice, of any goods, shall be guilty of an indictable offence and liable on conviction to a fine of five hundred dollars and to imprisonment, with hard labour, for a term not exceeding five years and not less than six months.

3. Such goods, if found, shall be seized and forfeited, or, if not found, but the value thereof has been ascertained, the person so offending shall forfeit, the value thereof as so ascertained, and every such person shall, in addition to any other penalty to which he is subject for any such offence, forfeit a sum equal to the value of such goods, which sum may be recovered in any court of competent jurisdiction.

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PROPOSED AMENDMENT TO SECTION 207

The only change proposed in this section is to fix the minimum term of imprisonment to be imposed and to delete the words "in the discretion of the court."

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PRESENT

207. Any person who, without lawful excuse, the proof of which shall be on the person accused, sends or brings into Canada, or who, being in Canada, has in his possession any bill-heading, or other paper appearing to be a heading or blank, capable of being filled up or used as an invoice, and bearing any certificate purporting to show, or which may be used to show, that the invoice which may be made from such bill-heading or blank is correct or authentic, is guilty of an indictable offence, and liable to a penalty of five hundred dollars, and to imprisonment for a term not exceeding twelve months, in the discretion of the court.

PROPOSED

207. Any person who, without lawful excuse, the proof of which shall be on the person accused, sends or brings into Canada, or who, being in Canada, has in his possession any bill-heading or other paper appearing to be a heading or blank capable of being filled up and used as an invoice, and bearing any certificate purporting to show, or which may be used to show, that the invoice which may be made from such bill-heading or blank is correct or authentic, is guilty of an indictable offence, and liable to a penalty of five hundred dollars and to imprisonment for a term not exceeding twelve months, and not less than one month.

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C 50412

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PROPOSED AMENDMENT TO SECTION 212

This section deals with smuggling by means of what are known as "line stores" - buildings which stand partly in the United States and partly in Canada. In addition to the monetary penalty now provided for we suggest that a term of imprisonment should be added.

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PRESENT.

212. If, within the limits of Canada, any person deposits, places or carries, or causes to be deposited, placed or carried in, through or into any building upon the boundary line between Canada and any foreign country, or the premises connected therewith, any dutiable goods without payment of duty, or contrary to the provisions of this Act or of any Customs laws or regulations, such person shall incur a penalty not exceeding one thousand dollars, and not less than two hundred dollars.

PROPOSED.

212. If, within the limits of Canada, any person deposits, places or carries, or causes to be deposited, placed or carried in, through or into any building upon the boundary line between Canada and any foreign country, or the premises connected therewith, any dutiable goods without payment of duty, or contrary to the provisions of this Act or of any Customs laws or regulations, such person shall be guilty of an indictable offence and liable on conviction to a penalty of not more than one thousand dollars and not less than two hundred dollars, and to imprisonment for a term not exceeding twelve months and not less than one month.

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Proposed Amendment to Section 216.

The present section provides for a penalty of $100.00 in respect of any person on board a vessel on which goods have been unlawfully brought into Canada and who has been a party to such unlawful importation. The penalty can only be recovered by entering a suit in the courts.

Under the proposed amendment such a person would be liable on summary conviction to a penalty of from $50.00 to $200.00 or to imprisonment for a term of from one month to one year, or to both fine and imprisonment.

Under the proposed amendment the Department would have a more expeditious and less expensive method of punishing persons engaged in smuggling goods into Canada by vessel.

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PRESENT.

216. Every person who is proved to have been on board any vessel or boat liable to forfeiture for having been found within one league of the coasts or shores of Canada, having on board or attached thereto, or conveying or having conveyed anything subjecting such vessel or boat to forfeiture, or who is proved to have been on board any vessel or boat from which any part of the cargo has been thrown overboard or destroyed, or in which any goods have been unlawfully brought into Canada, shall, if he has been knowingly concerned in any of such acts, incur a penalty of one hundred dollars.

PROPOSED.

216. Every person which is proved to have been on board any vessel or boat liable to forfeiture for having been found within one league of the coasts or shores of Canada, having on board or attached thereto, or conveying or having conveyed anything subjecting such vessel or boat to forfeiture, or who is proved to have been on board any vessel or boat from which any part of the cargo has been thrown overboard or destroyed, or in which any goods have been unlawfully brought into Canada shall, if he has been knowingly concerned in any of such acts, be liable on summary conviction before two Justices of the Peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month or to both fine and imprisonment.

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C 50416

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Proposed Amendment to Section 217.

Under the present section anyone obstructing an officer is liable to a penalty of $100.00 which amount could only be recovered by entering suit against the offender.

This is a serious offence and we recommend that it should be made an indictable offence carrying with it both the penalty of $100.00 and a term of imprisonment of from one month to twelve months.

- - - - - - - -

PRESENT

217. Everyone who obstructs or offers resistance to any search of the person, authorized to be made by this Act, or assists in so doing, shall incur a penalty of one hundred dollars.

PROPOSED

217 Every person who obstructs or offers resistance to any search of the person authorized tobe made by this Act, or assists in so doing, shall be guilty of an indictable offence and liable on conviction to a penalty of one hundred dollars and to imprisonment for aterm not exceeding twelve months and not less than one month.

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C 50417

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Proposed Amendment to Section 219.

This section is an important section providing, as it does, that it shall be an offence to knowingly deal in any way with goods which have been unlawfully imported, and in our opinion should be strengthened by increasing the amount of the penalty on summary conviction and by providing that where the value of the goods is $100 or over, the offence shall be an indictable offence and punishable by both fine and imprisonment.

If merchants who handle smuggled goods but who do not themselves participate in the actual smuggling, know that imprisonment awaits them in case they are found out, they will not be so likely to engage in the business of handling goods unlawfully imported into Canada. Anything which tends to discourage firms from dealing in smuggled goods will likewise tend to discourage smuggling.

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PRESENT.

219. If any person knowingly harbors, keeps, conceals purchases, sells or exchanges any goods unlawfully imported into Canada, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods, if found, shall be forfeited, and may be seized, and, if such goods are not found, the person so offending shall forfeit the value thereof.

2. Every such person shall, in addition to any other penalty forfeit a sum equal to the value of such goods which may be recovered in any court of competent jurisdiction, and shall further be liable, on summary conviction before two Justices of the Peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment.

PROPOSED.

No. 219 No change in Subsection 1.

2. Every such personal shall, in addition to any other penalty forfeit a sum equal to the value of such goods, which may be recovered in any court of competent jurisdiction, and

(a) Where the value of such goods is under $100.00 every such person shall further be liable, on summary conviction before two Justices of the Peace, to a penalty not exceeding five hundred dollars and not less than two hundred dollars or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment, and

(b) Where the value of such goods is $100.00 or over, every such person shall be guilty of an indictable offence, and liable on conviction to a fine of $500.00 and imprisonment, with hard labour, for a term not exceeding five years and not less than six months.

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C 50419

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Proposed new Section 220A.

The Criminal Code provides, in section 117, that any person found carrying offensive weapons while in possession of goods liable to seizure is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

It seems to us important that this section should be incorporated in the Customs Act. Officers engaged in the enforcement of the Customs Law are not usually familiar with the provisions of the Criminal Code and while any offender can be proceeded against under section 117 of the Code, it is, in our opinion, desirable that this section should also form part of the Customs Act. We suggest that there should be a minimum term of imprisonment of six months in order to prevent any possibility of a person convicted under this section being given a term of a few days.

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C 50420

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PRESENT.

PROPOSED.

New Section 220A --- taken from section 117 of the Criminal Code.

220A. Everyone who, while carrying offensive weapons, is found with any goods liable to seizure or forfeiture under this Act or any law relating to the Customs, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and not less than six months.

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C 50421

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Proposed Amendment to Section 255.

Under the present section any person refuses to answer questions put to him by an officer is liable to a penalty of $400.00. This section is of very gerat advantage in enabling officers to secure information from persons detected in the act of smuggling or persons who are known to be implicated and to have knowledge of the facts, but its effectiveness is somewhat minimized by the fact that the penalty can only be collected by an action taken in the courts.

In order to place more effective weapons in the hands of officers who are endeavouring to stamp out smuggling, it is recommended that any person who refuses to answer shall be liable on summary conviction to a fine of $400 and to imprisonment of from ten days to thirty days. Customs officers would find it much easier to secure information when the person being questioned knew that his refusal to answer or that evasive answers may lead to a term of imprisonment and a heavy fine.

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PRESENT.

255. Any person required by this Act, or by any other law, to answer questions put to him by any officer of the Customs, who refuses to answer or does not truly answer such questions, shall, in addition to any other penalty or punishment to which he is liable, incur a penalty of four hundred dollars.

PROPOSED.

255. Any person required by this Act or by any other law to answer questions put to him by any officer of the Customs, who refuses to answer, or does not truly answer such questions, shall, in addition to any other penalty or puhishment to which he is liable, be liable on summary conviction before two Justices of the Peace, to a penalty of four hundred dollars, and to imprisonment for a term of not more than thirty days and not less than ten days.

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Proposed Amendment to Section 272.

Under the Food and Drugs Act, where there is judgment in favor of the Crown, the Crown has the right to ask that an amount be included in the costs for counsel fee. This would appear to be a very proper provision and it is recommended that there should be a similar provision in the Customs Act. It would materially reduce the cost of administering the Act.

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PARNELL.

272. In every prosecution, information, suit or proceeding brought under this Act for any penalty, or to declare or enforce any forfeiture or upon any bond given under it, or in any matter relating to the Customs or to trade or navigation, His Majesty, or those who sue for such penalty or forfeiture, or upon such bond, shall, if they recover the same, be entitled to recover full costs of suit.

2. All such penalties, and costs, if not paid, may be levied on the goods and chattels, lands and tenements of the defendant, in the same manner as sums recovered by judgment of the court in which the prosecution is brought may be levied by execution; or payment thereof may be enforced by capias ad satisfaciendum against the person of the defendant under the same conditions and in like manner.

PROPOSED.

Sub-section 1 remains unchanged.

2. The costs of suit shall include a reasonable counsel fee, in the discretion of the magistrate.

3. The present subsection 2 will become subsection 3.

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Proposed new Section 284A.-

Experience shows that in many cases the ends of justice have been defeated through appeals being taken from convictions under this and other Acts. The Government found it necessary in dealing with opium and other narcotics to take away the right of appeal, and it is recommended that the right of appeal should be taken away in cases where a person is charged with having smuggled goods into Canada.

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C 50426

PREAMBLE.

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PROPOSED.

2944. New Section.

2944. Notwithstanding anything contained in the Criminal Code or in this Act, no appeal shall lie from any conviction, judgment, order or proceedings under this Act in respect of the offence of smuggling.

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PRESENT.

Section 1063 of the Criminal Code provides that on a second conviction for an indictable offence, the punishment shall be ten years imprisonment.

PROPOSED.

New Section 285A - based on section 1063 of the Criminal Code.

285A. Everyone who is convicted of an indictable offence for any infraction of the Customs Act, committed after a previous conviction for an indictable offence, is liable to imprisonment for ten years.

W.L. Mackenzie King Papers
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C 50428

Copy

Ottawa, 16th April, 1925

R. P. Sparks, Esq.,
Chairman, Executive Committee,
Commercial Protective Association,
P.O. Box 645,
O t t a w a.

Dear Sir:

I am, by direction of the Right Honourable the Prime Minister, to acknowledge the receipt of your letter of the 20th ultimo, with reference to Mr. J. E. A. Bissaillon, and to say that the same will receive all due consideration.

Yours sincerely,

(Sgd.) E. J. Lemaire

Clerk of the Privy Council.

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CANADA

C 50429

COPY

Ottawa, 16th April, 1926.

R. P. Sparks, Esq.,
Chairman, Executive Committee,
Commercial Protective Association,
P.O. Box 645,
Ottawa.

Dear Sir:

I am directed by the Right Honourable the Prime Minister, to acknowledge the receipt of your letter of the 8th instant, enclosing a memorandum covering proposed amendments to the Customs Act, and to say that the matter therein referred to is now receiving the attention of the Cabinet.

Yours sincerely,

E. J. Lemaire,
Clerk of the Privy Council.

W.L. Mackenzie King Papers
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C 50430

SECRET

Ottawa, 17th April 1925

R. R. Farrow, Esq.,
Deputy Minister of Customs,
Ottawa.

Dear Mr. Farrow:

I am directed by the Right Honourable the Prime Minister to forward you the enclosed communication which he has received from Mr. E. P. Sparks, Chairman of the Executive Committee of the Commercial Protective Association, and to which is attached a memorandum covering certain proposed amendments to the Customs Act.

It is the desire of the Prime Minister that you should go carefully into this matter of the earliest possible and forward it with any comment which you may deem necessary to the Honourable the Minister of Justice by whose Department, as agreed by Council the necessary legislation will be drafted.

Yours sincerely,

E.J. Lemaire,
Clerk of the Privy Council.

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C 50431

COPY

COMMERCIAL PROTECTIVE ASSOCIATION

OTTAWA, CANADA.

Ottawa, May 6, 1925.

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, Ont.

Dear Sir:

On April 8th I sent you a memorandum of suggested changes in the Customs Act, based on the experience of this organization in studying this problem.

If the Government propose to bring down legislation embodying changes such as suggested, we would be glad to organize support for this legislation. We are in close touch with commercial organizations throughout Canada, and could obtain resolutions and letters urging the Government to enact such legislation from boards of trade and wholesale and retail associations in various branches of trade and industry. If you desire such support I would be glad to have advice by return, in order that we may take the matter up with the various organizations interested.

A number of things have happened within the past few weeks which have demonstrated beyond a doubt the need of some such legislation. If you, or the committee of the Cabinet dealing with this matter, wish to hear a report as to the general facts which have come to our knowledge in reference to Customs administration we would be glad to present these at any time which would suit your convenience.

Yours truly,

(Sgd) R. P. Sparks

Chairman, Executive Committee.

W.L. Mackenzie King Papers
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C 50432

COPY

DEPARTMENT OF CUSTOMS AND EXCISE

OTTAWA, May 20th, 1925.

Memorandum for
The Right Honourable W. L. Mackenzie King, C.M.G.,
M.A., LL.B., LL.D.,
Prime Minister of Canada.

I have the honour to return you, herewith, letter written you on the 8th ultimo by Mr. Sparks, Chairman, Executive Committee, Commercial Protective Association, Ottawa, together with his memorandum of proposed amendments to the Customs Act, as recently discussed with you.

These papers were sent me on the 17th ultimo by Mr. Lemaire, Clerk of the Privy Council, since which date the proposed amendments have been discussed with Mr. Sparks.

The latter expressed his willingness to withdraw the amendments he proposes, if the Government will approve of the attached copy of Bill to amend Sections 206 and 219 of the Customs Act.

The same reasons as were advanced by Mr. Sparks in his letter to you of the 8th ultimo will apply to the changes as proposed in the draft Bill.

Respectfully submitted.

(Sgd) R. R. Farrow

Deputy Minister of Customs and Excise.

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C 50433

COPY

B I L L

An Act to Amend The Customs Act.

His Majesty by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:-

1. Section 206 of The Customs Act reading as follows:-

"206. If any person,-

(a) smuggles or clandestinely introduces into Canada any goods subject to duty; or,

(b) makes out or passes or attempts to pass through the Custom-house, any false, forged or fraudulent invoice, of any goods; or,

(c) in any way attempts to defraud the revenue by evading the payment of the duty or any part of the duty on any goods;

such goods, if found, may be seized and forfeited, or, if not found, but the value thereof has been ascertained, the person so offending shall forfeit the value thereof as so ascertained.

2. Every such person shall, in addition to any other penalty to which he is subject for any such offence,-

(a) forfeit a sum equal to the value of such goods, which sum may be recovered in any court of competent jurisdiction; and,

(b) further be liable on summary conviction before two justices of the peace to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment."

is hereby repealed and the following substituted therefore,-

"206. If any person,-

(a) smuggles or clandestinely introduces into Canada any goods subject to duty; or,

(b) makes out or passes or attempts to pass through the Custom-house, any false, forged or fraudulent invoice, of any goods; or,

(c) in any way attempts to defraud the revenue by evading the payment of the duty or any part of the duty on any goods;

such goods, if found, shall be seized and forfeited without power of remission, or, if not found, but the value thereof has been ascertained, the person so offending shall forfeit without power of remission the value thereof as ascertained.

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2. Every such person shall, in addition to any other penalty to which he is subject for any such offence,—

(a) forfeit a sum equal to the value of such goods, which sum may be recovered in any court of competent jurisdiction; and,

(b) further be liable on summary conviction before two justices of the peace to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment,

3. Everyone who smuggles or clandestinely introduces into Canada any goods subject to duty, if such goods are of the value of $200.00 or over, is guilty of an indictable offence and liable, in addition to any other penalty to which he is subject for any such offence, to imprisonment for seven years and not less than one year, and for a second and each subsequent offence, to imprisonment for ten years and not less than three years."

2. Section 219 of the said Act reading as follows:-

"219. If any person knowingly harbours, keeps conceals, purchases, sells or exchanges any goods unlawfully imported into Canada, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods, if found, shall be forfeited and may be seized, and, if such goods are not found, the person so offending shall forfeit the value thereof.

2. Every such person shall, in addition to any other penalty forfeit a sum equal to the value of such goods, which may be recovered in any court of competent jurisdiction, and shall further be liable, on summary conviction before two justices of the peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment."

is repealed and the following substituted thereof, —

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"219. If any person knowingly harbours, keeps, conceals, purchases, sells or exchanges any goods unlawfully imported into Canada, whether such goods are dutiable or not, or whereon the duties lawfully payable have not been paid, such goods, if found, shall be seized and forfeited without power of remission, and, if such goods are not found, the person so offending shall forfeit the value thereof without power of remission.

2. Every such person shall, in addition to any other penalty forfeit a sum equal to the value of such goods, which may be recovered in any court of competent jurisdiction; and shall further be liable, on summary conviction before two justices of the peace, to a penalty not exceeding two hundred dollars and not less than fifty dollars, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment.

3. Every such person, where the goods so harboured, kept, concealed, purchased, sold or exchanged, are of the value of two hundred dollars or over, is guilty of an indictable offence and liable to imprisonment for seven years and not less than one year, and for a second and each subsequent offence, to imprisonment for ten years and not less than three years."

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C 50436

Copy

COMMERCIAL PROTECTIVE ASSOCIATION
Incorporated
Ottawa Toronto Montreal

Box 645
Ottawa, Canada

Ottawa, May 30, 1925

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

In reference to the matter of J. A. E. Bisaillon, about whose activities certain information has been given you, I beg to enclose herewith extracts from evidence given by this man, under oath, in the case of Rex vs. J. F. Simons et al.

Although the matter has been before the Government for some months, they appear not to have received an official copy of this evidence, but we have now delivered to the Deputy Minister of Customs a copy of Bisaillon's evidence, together with a copy of the evidence of a number of other witnesses.

For your personal information I am enclosing herewith copies of some extracts which show what appears to us to be a remarkable condition. This evidence has to do with certain deposits amounting to $69,000.00 made by Bisaillon. In his evidence he swears that this was in part monies which he had collected when he opened a Customs House at Farnham and deposited to his private account and at his convenience remitted to Ottawa. It seems incredible that public business should be carried on in this way, and it appears altogether likely that Bisaillon was perjuring himself.

His explanation of certain deposits of $14,000.00, as shown on the last page, is certainly amusing. He states that he

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sold a car for $1,500.00 and purchased one for $2,000.00. This he shows as a total of $4,000.00, and that a car was put at his disposal by the Government worth $2,000.00. He makes all these statements to justify a deposit, whereas he has simply added together sales and purchases of automobiles, which could in no way account for bank deposits. In this transaction, as in the others referred to, he was evidently committing perjury.

Under ordinary circumstances one would expect that a public servant who gave evidence of this character would not remain a single hour in the Government employ; however, he has remained for months as Chief of the Preventive Service for the Province of Quebec.

Now that the evidence is before the Minister no doubt action will be taken, but I thought well to forward you these few extracts, and will be glad to submit the whole file of evidence given, should you desire to see it.

Yours truly,

(Sgd.) R. F. Sparks

Chairman, Executive Committee.

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Yours truly,

(Sgd.) R. F. Sparks

Chairman, Executive Committee.

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C 50438

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Extract from evidence given by Joseph Alfred Edgar Bisaillon, of Montreal, under oath on the 15th day of February, 1925, in the case of Rex vs. J.F.Simons et al.

Q. You tell us that you opened the Farnham Office and that you deposited the monies of your Customs Office at the Bank?

A. Yes - 1922 and 1923.

Q. Did you send the money to the Receiver General every day or every week?

A. Generally every week, sometimes every two weeks. That depended on how the affairs were settled.

Q. I find that you had considerable balances at the ends of the month.

A. Naturally I could quite likely have a cheque on the 28th and deposit it on the 29th.

Q. In 1923.

A. In 1923 and 1924.

Q. How do you assert that for years the Farnham Office has been conducted in this manner?

A. No. It was opened in 1920 and in April 1923 - from the month of April. I do not exactly remember the dates.

Q. Now M. Bisaillon with regard to your cheques, you have told us that your Bank Account was above all composed of amounts deposited for the Customs and transmitted to the Receiver General?

A. I have told you that the larger number were for the Customs Dept. but I have my salary and I do commission business you know which comes to a considerable amount, and there are also bits of business I do myself.

Q. Will you examine all the cheques and show the Judge the cheques you passed to the Receiver General for these years?

A. I do not see any here. These are all personal cheques. $124. $200; These are all personal cheques - $60. - $100.

Q. The explanation that you give re your account at the Provincial Bank is that you deposited amounts belonging to the Govt. for the most part, and that you reimbursed these amount by cheques afterwards?

A. No, not by cheques, by a remittance, a draft which cannot appear there.

Q. So now you say it was by remittances?

A. Yes, I had cheques to different people - the cheques which I gave - I see that they are for things - are personal cheques.

Q. So there are no cheques to the Receiver General?

A. No I have received some payable to the Receiver which have been deposited.

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Q. How did you buy your remittances? What procedure did you follow?

A. Taking the money in my bank book.

Q. So it was not in ready money, how did you pay at the bank?

A. I made deposits, and then when I had need of an amount, for example I owed the Government three hundred, two hundred or four hundred dollars - I bought a remittance - or sometimes I found myself at the other end of the town and had to buy another remittance, I made a cheque payable to me and bough a remittance for the amount.

Q. Don't you think that if there had been remittances of this kind payable to the Receiver General there would be the figures among the cheques given at the end of the month?

A. No because the receipts in question were generally kept at the office as receipts for our drawings.

Q. I am speaking of the Bank.

A. No Sir.

Q. When you received at the end of the month the cheques you had drawn or the remittances were there no figures which showed the amount drawn from your account?

A. Yes, in part.

Q. Will you show me the figures or something which will show the payments made to the Receiver General?

A. They have perhaps omitted to send them. It is perhaps an omission on the part of the Bank.

Q. Naturally I do not want to take you by surprise but you have given an explanation and among all the documents here I do not see any for the Receiver.

A. No that is not absolutely necessary. The cheques could have been drawn to my order and then have been bought - these are all personal cheques, my butcher, grocer, taxes on my property.

Q. This then will be for 1922 and 1923? I understand that in 1924 you deposited 14,000 dollars?

A. Yes I can explain that to you. In April 1924 I sold a machine to Colonel Archambault, a car for 2,000 dollars; I deposited $2,000. Later I bought one in May which I paid $1500 - for I had to draw money from the bank where it was deposited. There is a total of $4,000. I resold it. The Government put at my disposal a machine - that made $6,000. For the remainder there is my salary and bank discounts - I borrowed $2,000 from one of my friends who you know very well who is a director of the Bank of Hochelaga and which I have not yet repaid him. I am still in debt to the Provincials Bank for seven or eight hundred dollars. I have three or four thousand dollars of discounts today. I am broken and my credit is smashed. The witness made no further statement.

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C 50440

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CANADIAN ASSOCIATION OF GARMENT MANUFACTURERS

Head Office:

Room 209, Hope Bldg., 63 Sparks St.
Ottawa, Ont.

Ottawa, July 22, 1925

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Sir:

I would appreciate very much an opportunity to discuss with you certain matters in reference to the efforts which have been made to prevent smuggling.

There is another matter in reference to which I would appreciate an opportunity for a full discussion with you. I am preparing a circular on the tariff with particular reference to the clothing industry, the general attitude of which will be wholly favourable to a protective tariff, and I am trying to deal with this as a matter of pure economies, without any political consideration. In two respects, possibly three, I think the substance of this article will cover practically new ground in the tariff discussion. I am writing this particularly for distribution to the twelve hundred clothing manufacturers in Canada, and if you felt disposed to discuss the substance of it, I would be glad to outline the general attitude taken.

Yours respectfully,

(Sgd.) R. P. Sparks

President.

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C 50441

Representations re Smuggling

General.

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C 50442

COPY

Ottawa, March 20, 1925

J. O. Herity, Esq.,
Manager, The Chamber of Commerce,
Belleville, Ontario.

Dear Sir:

The Prime Minister has asked me to let you know that he has today received your letter of the 19th instant and will bear in mind the representations of your Chamber of Commerce with respect to the prevention of smuggling of foreign goods into Canada.

By Mr. King's direction, your letter has been referred, for consideration, to the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) F. A. MacGregor

Private Secretary.

March 20, 1925

Hon. Jacques Bureau:

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for his consideration.

Private Secretary.

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C 50443

COPY

Ottawa, March 20, 1925

E. A. Saunders, Esq.,
Secretary, Board of Trade,
Halifax, Nova Scotia.

Dear Sir:

I am directed by the Prime Minister to acknowledge receipt of your letter of the 17th instant relating to the smuggling of goods from the United States to the detriment of the lawful trader of the Province of Nova Scotia.

Mr. King wishes me to assure you that your representations in this matter will receive the Government's careful consideration and to let you know that he has transmitted your communication to his colleague the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) F. A. McGregor

Private Secretary.

March 20, 1925

Hon. Jacques Bureau:

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for his consideration.

Private Secretary.

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C 50444

COPY

Ottawa, April 7, 1925

F. P. Healey, Esq.,
Managing Secretary,
The Hamilton Chamber of Commerce,
Hamilton, Ontario.

Dear Sir:

The Prime Minister has asked me to let you know that he has received your letter of the 3rd instant, and will bear in mind the representations of your Chamber of Commerce with respect to the prevention of smuggling of foreign goods into Canada.

By Mr. King's direction your letter has been referred for consideration to the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) L. C. Moyer

Private Secretary.

April 7, 1925

Hon. Jacques Bureau, M.P:

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for his consideration.

Private Secretary.

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C 50445

Suggestions as to Changes in Customs Act.

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C 50446

COPY

Ottawa, February 17, 1925

J. E. Walsh, Esq.,
General Manager,
Canadian Manufacturers' Association,
Toronto, Ontario.

Dear Sir:

I am directed by the Prime Minister to acknowledge the receipt of your letter of the 14th instant, enclosing a memorandum containing suggestions for changes in the Customs Act, calculated to discourage smuggling, undervaluation of imported goods and dumping.

Mr. King wishes me to say in reply that your representations in this matter will receive the Government's careful consideration. By his direction I have transmitted a copy of your memorandum to the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) F. A. McGregor

Private Secretary.

February 17, 1925

Hon. Jacques Bureau, M.P:

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for consideration.

Private Secretary.

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C 50447

(COPY)

OFFICE OF THE PRIME MINISTER

Province of Quebec

Quebec, March 7th, 1925.

The Right Honourable W.L.Mackenzie King,
Prime Minister of Canada,
Ottawa.

Dear Mr. Premier:

I enclose you herewith copy of a letter received from Mr. R. P. Sparks, Chairman of the Commercial Protective Association of Ottawa, which is self-explanatory.

I regret to see that smuggling is carried on on a large scale in our province and, unfortunately, the penalties do not seem to be severe enough so as to act as a deterrent.

You can depend on our fullest co-operation, as I believe that smuggling is injuring to a great extent the honest trade in this province.

My suggestion is that imprisonment should be made compulsory; we have found that jail has been the best means of enforcing our Liquor Law in Quebec.

Yours sincerely,

(SGD.) L. A. TASCHEREAU

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C 50448

Copy

Ottawa, March 5th, 1925

Hon. L. A. Taschereau,
Prime Minister and Attorney General of Quebec,
Quebec, P.Q.

Dear Sir:

I am taking the liberty of writing you on behalf of the Executive Committee of this Association in reference to the prosecution of smugglers in the courts of the Province of Quebec and with special reference to the case of Abraham and Israel Lenetsky arrested on March 2nd.

You will recall that some months ago the undersigned, together with Mr. J. H. Fortier of Quebec and Mr. Paul Joubert of Montreal, discussed this matter with you. At that time we submitted a memorandum covering ten smuggling cases, in some of which an extraordinary number of adjournments had been granted (as many as fifty-two in a single case) and in others in which guilt had been proven the only publishment was the imposition of a paltry fine. At that time you expressed the desire to co-operate with the business interests in their efforts to prevent this traffic, which is doing such serious injury to the business of legitimate traders and manufacturers.

You expressed the view that the most satisfactory solution of the difficulty would be an amendment to the Customs Act making a jail sentence compulsory in cases in which wholesale smuggling had been proven. This recommendation has been put before the Federal Government, and the whole matter of amendments to the Customs Act in being dealt with by a committee of the Cabinet, of which the Prime Minister is a member. Mr. King is taking an active interest in this matter, and I am taking the

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COPY

liberty of suggesting that, if you felt disposed to write him expressing the opinions which you expressed to the delegation in reference to this matter, he would appreciate it. I can assure you that it would be greatly appreciated by the whole business community.

In reference to the particular case above referred to, we are informed that Mr. R. L. Calder is acting for the prosecution, and we have the utmost confidence in him in every way, but, as the whole matter of prosecutions is under the supervision of your Department, we are taking the liberty of calling the matter to your attention, in the hope that in this case, as in any others which may follow, your Department might use all means in your power to see that the interests of legitimate business are safeguarded. I might mention that Messrs. Lenetsky are members of one of the worst bands of international smugglers operation. For nearly three months the private detectives employed by this Association have been working continuously in an effort to apprehend them. We have reason to believe that during the past three months they have succeeded in bringing in from the United States two large consignments of silk without the payment of duty. The goods seized on Monday were a part of another shipment of a value of about $12,000.00, which they were endeavouring to smuggle into Canada. The drastic punishment of these men will have a very important effect on the whole traffic.

For your information I am attaching herewith a list of the names of the members of the Executive Committee of this Association, on whose behalf I am writing you, together with the names of a large Advisory Council, composed of representatives of a number of firms who are supporting this organization, whose

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sole object is the prevention of smuggling.

Trusting that we may continue to receive co-operation from your Government in this regard, I remain,

Yours truly,

(Signed) R. P. SPARKS

Chairman, Executive Committee.

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C 50451

(COPY)

COMMERCIAL PROTECTIVE ASSOCIATION

Members of the Executive Committee.

J. Powley	Silks Limited	Toronto
A. T. Reid	The A. T. Reid Co., Ltd.,	"
C. L. Burton	The Robt. Simpson Co., Ltd.	"
W. B. Woods	Gordon, Mackay & Co., Ltd.	"
Walter J. Barr	The Goldsmith's Co. of Canada, Ltd.	"
A. J. Doherty	Doherty Manufacturing Co., Ltd.	"
Sol. Bruck	Bruck Silk Mills, Ltd.,	Montreal
E. A. Robertson	The Montreal Cottons, Ltd.	"
C. A. Reynolds	Belding-Corticelli, Ltd.	"
Hector Racine	Alphonse Racine, Ltd.	"
G. Lafoley	Mark Fisher, Sons & Co.	"
R. P. Sparks	Sparks-Harrison, Ltd.	Hull, Que.

Members of the Advisory Committee

W. C. Hodgson	Hodgson, Sumner & Co., Ltd.	Montreal
W. M. Birks	Henry Birks & Sons, Ltd.	"
J. F. Porteous	Greenshields, Limited	"
H. S. Bourke	The Imperial Tobacco Co. of Canada Ltd.	"
Henry McMullen	The Henry McMullen Co., Ltd.	"
Geo. T. Cleghorn	The W.R.Brock Co., Ltd.	"
M. Vineberg	Vineberg, Goodman & Co.	"
J. Seligman	S. & C. Dress Co.	"
A. C. Dawson	Canadian Cottons, Ltd.	"
J. G. Dodd	Dominion Textile Co., Ltd.	"
M. Jacobs	Union Overall Manufacturing Co.	"
John Fitzgerald	Merchants Association of Montreal	"
B. B. Cronyn	The W. R. Brock Co., Ltd.	Toronto
R. A. Stapells	Stapells, Fletcher, Ltd.	"
W. F. Coforth	Ladies' Wear, Ltd.	"

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Members of the Advisory Committee

J. B. Ratcliff	John Northway & Son	Toronto
E. H. Near	Larned, Carter & Co., Ltd.	"
Sir James Woods	Gordon, MacKay & Co., Ltd.	"
H. G. Thomson	The T. Eaton Co., Ltd.	"
J. M. Walsh	Gen. Manager, Canadian Mfgrs.Assoc.	"
R. E. Oaks	Textile Credit Bureau	"
C. H. Kitchen	The Kitchen Overall & Shirts Co., Ltd.	Brantford
E. M. Trowern	The Retail Merchants Association	Ottawa
C. A. Graham	The Great Western Garment Co.,Ltd.	Edmonton,Alta.
W. R. Bottom	Revillon Wholesale, Ltd.	" "
R. L. Smith	G. W. Robinson, Co., Ltd.	Hamilton, Ont.
G. Scott Murray	Murray Sons, Ltd.	" "
Arthur T. Little	Robinson Little & Co., Ltd.	London, Ont.
Major G. J. Ingram	Smallman, Ingram, Ltd.	" "
J. B. Thomson	Jas. Thomson & Sons, Ltd.	Vancouver, B.C.
T. S. Dixon	Gault Bros., Limited	" "
F. W. Roach	Brock & Paterson, Ltd.	St. John, N.B.
Harold Rising	Waterbury & Rising, Ltd.	" "
E. R. Musselman	Ford Motor Company	Ford, Ont.
D. B. Johnson	D. B. Johnson, Ltd.	Ottawa
John L. Garland	John M. Garland, Son & Co., Ltd.	"
C. F. Rannard	Rannard Shoe Limited	Winnipeg, Man.
J. B. Coyne, K.C.	R. J. Whitla & Co.	" "

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COPY

C 50453

Ottawa, May 2, 1925

J. Stanley Cook, Esq.,
Secretary, The Montreal Board of Trade,
Montreal, P. Q.

Dear Sir:

I am directed by the Prime Minister to acknowledge the receipt of your letter of the 1st instant, endorsing certain amendments to the Customs Act, which have been proposed by the Commercial Protective Association and suggesting severer penalties for those importers found guilty of undervaluing goods for customs purposes and the secret settlement of frauds on the customs.

I am desired to inform you in reply that your representations have been noted for consideration in connection with the communication already received from the Commercial Protective Association. By Mr. King's direction I have referred a copy of your letter to the Honourable P. J. A. Cardin, Acting Minister of Customs and Excise.

Yours faithfully,

(Sgd) L. C. Moyer

Private Secretary.

May 2, 1925

Hon. P. J. A. Cardin, M.P:

Referred, by direction of the Prime Minister, to the Acting Minister of Customs and Excise, for his consideration.

Private Secretary.

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C 50454

Correspondence re Government's Announcement of Intention to amend Customs Act.

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C 50455

COPY

THE BOARD OF TRADE OF THE CITY OF TORONTO

Royal Bank Building,
TORONTO, CANADA.

March 25, 1925

Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Parliament Buildings,
Ottawa, Ont.

Dear Sir:

Enclosed I am sending you copy of a letter which has been addressed to the Hon. Jacques Bureau, Minister of Customs and Excise, under instructions from the Council of this Board with regard to the prevention of smuggling.

In view of the rapid increase in this illegitimate traffic and the very detrimental effect which it is having upon the trade and commerce of the country, the Council of this Board is pleased to learn that the Government contemplates making special efforts to curtail smuggling, and respectfully urges that more stringent and adequate measures be put into effect without delay.

Assuring you of the co-operation of this Board in every way possible in your efforts in this connection, I am,

Yours very truly,

(Sgd) F. D. Tolchard

Secretary.

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C 50456

(COPY)

THE BOARD OF TRADE OF THE CITY OF TORONTO

March 25, 1925

Hon. Jacques Bureau,
Minister of Customs and Excise,
Parliament Buildings,
Ottawa, Ont.

Dear Sir:

The Council of this Board has instructed me to express to you their appreciation of the announcement made in the House, on your behalf, by the Hon. Minister of Railways and Canals on the 3rd instant, to the effect that you purpose introducing more stringent legislation for the prevention of smuggling, and asking the House for power to appoint a number of men especially fitted to carry on preventive work.

This Board has been interested in the curtailment of this traffic for some considerable time, due to the heavy inroads which it has made upon legitimate trade, which must also have had a serious effect upon the Federal revenue. For the past few months we have been particularly close to the problem through investigations which have been made in this city. These investigations have revealed a very widespread organization carrying on smuggling, which is having a serious effect upon bona fide commercial interests in this city. These operations can only be successfully dealt with by a thoroughly efficient preventive service with all of the resources of the Government behind it. I am, therefore, instructed to commend the Government for the action which it contemplates to meet this situation and to urge that, in view of its seriousness, the legislation proposed and the appointment of an efficient and adequate preventive staff be proceeded with at the earliest possible date. This Board will be pleased to co-operate in every way possible with your department in this matter.

Yours very truly,

(SGD.) F. D. TOLCHARD,

Secretary.

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C 50457

COPY

Ottawa, March 26, 1925

F. D. Tolchard, Esq.,
Secretary, Board of Trade,
Royal Bank Building,
Toronto, Ontario.

Dear Sir:

The Prime Minister has asked me to thank you for your letter of the 25th instant, and its enclosure, expressing approval of the Government's efforts to prevent smuggling. Mr. King wishes me also to assure you of his appreciation of the readiness of the Board of Trade of the City of Toronto to co-operate with the Government in this matter.

Yours faithfully,

(Sgd) F. A. McGregor

Private Secretary.

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C 50458

Correspondence Approving Steps taken
by Government.

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C 50459

Copy

THE BOARD OF TRADE OF THE CITY OF TORONTO

Toronto, July 15, 1925

Rt. Hon. W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, Ont.

Sir:

On behalf of the Executive and Council of the Toronto Board of Trade, I desire to express appreciation of the action of the Government in introducing legislation at the recent Session increasing the penalties for the smuggling of goods into Canada and including in the Estimates a substantial sum to enable the Preventive Service to be so strengthened and improved as to be able to cope with this illegitimate traffic. We are also gratified that the House of Commons and Senate have accepted the Government's recommendations and that the new law is now in force.

You will remember that a deputation from this Board waited upon you and your colleagues in the Cabinet last Fall and discussed the seriousness of the smuggling situation with you. You then expressed the desire of the Government to do everything in its power to combat the inroads which the smugglers were making into the legitimate trade and revenues of the country and you welcomed the co-operation to this end of an organization of business interests which it was then proposed to form. Acting on this assurance, the members of this Board comprising the delegation organized the Toronto Branch of the Commercial Protective Association. We were very pleased to note from your remarks in the House with respect to the proposed new legislation that you appreciated the vast proportions of this traffic and the need for drastic action. We have been in close touch with the

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Association's work and it has been a great pleasure for this Board to learn that the Government has co-operated to the fullest extent with the result that adequate machinery to deal with the smuggling menace will, we understand, shortly be in operation. We are informed the fact that the new penalties are already in force has had a very deterrent effect upon the traffic and we sincerely hope that in connection with the re-organization of the Preventive Service which is now under way, the dominant note will be the strict enforcement of the law in the interests of the lawful commerce of the Dominion and an increased national revenue which in turn will be reflected in an improvement in economic conditions generally.

We congratulate and thank you for your efforts in the solution of this problem and assure you of the continued co-operation and support of this Board in curtailing the smuggling traffic with the aid of the new powers now available, I am,

Yours very truly,

(Sgd.) S. B. Gundy

President.

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C 50461

Copy

Ottawa, July 14, 1925

G. B. Gundy, Esq.,
President, Board of Trade of the City of Toronto,
Toronto, Ontario.

Dear Sir:

I have received this morning your welcome letter of July the 13th.

It is indeed gratifying to know that the efforts of the Government to cope with the smuggling evil are appreciated to the extent to which your letter would indicate.

I can assure you that we intend to leave no stone unturned to put a stop to smuggling, and shall continue, in our endeavours, to welcome the co-operation of the public interests which has proved so helpful in disclosing the scope of this traffic, and the course of action best calculated to cope with it successfully.

Yours sincerely,

(Sgd.) W. L. Mackenzie King.

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C 50462

Copy

Ottawa, July 14, 1925

The Honourable P. J. A. Cardin, M.P.,
Acting Minister of Customs and Excise,
O t t a w a.

My dear Cardin:

You will, I think, be pleased to have a copy of a communication which I enclose from the President of the Board of Trade of the City of Toronto, referring to the legislation introduced at the recent session with regard to increasing the penalties for the smuggling of goods into Canada, and for many other ways of strengthening and improving the Preventive Service.

I enclose also a copy of my reply.

Yours very sincerely,

(Sgd.) W. L. Mackenzie King

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C 50463

Copy

160 Yonge Street

Toronto, July 14, 1925

Dear Mr. Premier:

Re: Smuggling

Absence from the city has delayed my writing you a word of appreciation and congratulation upon the recent legislation and the fine support given by you and your Government in the efforts to curb this iniquitous traffic.

Fine encouragement is lent to the efforts of the private citizen in matters of public interest by those in authority when not only sympathetic hearing is accorded but when such is followed by useful legislation and as we now anticipate, strong administrative action.

Yours faithfully,

(Sgd.) C. L. Burton

Right Honourable William Lyon Mackenzie King,
Prime Minister,
Ottawa, Ontario.

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C 50464

Copy

Ottawa, July 16, 1925

C. L. Burton, Esq.,
160 Yonge Street,
Toronto, Ontario.

Dear Mr. Burton:

I thank you very cordially for your welcome letter of July 14th. It is deeply gratifying to have its appreciative words.

I can assure you that we shall continue to follow this smuggling business with all the resources at our command and shall continue to welcome the co-operation of friends whose counsel and assistance have been of such value in this matter.

Yours sincerely,

(Sgd.) W. L. Mackenzie King.

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C 50465

Copy

MINISTER OF CUSTOMS AND EXCISE

Canada

Ottawa, 21 July, 1925

The Rt. Hon. W. L. Mackenzie King,
Prime Minister,
O t t a w a.

Dear Mr. King:

Many thanks for your letter of the 14th instant, enclosing copy of a communication from the President of the Toronto Board of Trade referring to the recent legislation for the prevention of smuggling.

It is encouraging to know that the measures taken have already had a strongly deterrent effect and that our efforts are appreciated. The additional vote will enable us to strengthen the Preventive Service as it should be strengthened, and in a short time there should be a very marked change for the better.

Yours sincerely,

(Sgd.) P. J. Arthur Cardin

Acting Minister of Customs and Excise.

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C

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Representations re Appointment of
Special Preventive Officers.

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C 50467

(COPY)

CANADIAN MANUFACTURERS' ASSOCIATION

Toronto, January 20, 1925

Right Hon. W. L. Mackenzie King, C.M.G., M.A., LL.B., LL.D.
Prime Minister of Canada,
Ottawa, Ontario.

Enumeration of Smuggling

Dear Sir:

The Executive Council of the Canadian Manufacturers' Association, at a regular meeting held in Hamilton on January 15, 1925, unanimously approved a recommendation of the Association's Tariff Committee that the Government should be asked that officers of the Preventative Service, Department of Customs and Excise, should be selected and appointed by the Minister on his responsibility and independent of the Civil Service Commission.

It is our understanding that at present appointments to the Preventative Service have to go through the Civil Service Commission, resulting in delay in making the appointment and publicity being given thereto. The latter furnishes to smugglers information regarding the personnel of the staff employed to circumvent their operations. It is, therefore, submitted that, owing frequently to the short duration of employment and the necessity for the utmost secrecy in connection with such engagements, appointments to the Preventative Service should be made on the responsibility of the Honourable the Minister of Customs and Excise entirely separate and removed from the jurisdiction of the Civil Service Commission as is already the method followed in connection with Income Tax appointments.

Information received from our members in all parts of Canada indicates that the great volume of smuggled goods entering

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Canada is seriously injuring Canadian trade and the country's revenue. The appointment of additional capable preventative officers who could be taken on, or released from the service without publicity, on the Minister's own responsibility, would undoubtedly help materially to decrease smuggling, to apprehend smugglers and to increase the federal revenue.

I beg, therefore, to transmit to you the recommendation of our Tariff Committee, approved by the Executive Council of the Association, and express the hope that it will meet with your endorsation.

Yours faithfully,

(SGD.) J. E. WALSH

General Manager.

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C 50469

COPY

Ottawa, January 21, 1925

J. E. Walsh, Esq.,
General Manager,
Canadian Manufacturers' Association,
Toronto, Ontario.

Dear Sir:

The Prime Minister has asked me to let you know that he has today received your letter of the 20th instant, in which you suggest, on behalf of the Executive Council of the Canadian Manufacturers' Association, certain changes in the method of appointing officials whose duties have to do with the suppression of smuggling.

I am desired to say in reply that your representations will receive the Government's careful consideration and that copies of your letter have been forwarded by the Prime Minister's direction to the Honourable Jacques Bureau, Minister of Customs and Excise, and the Honourable J. A. Robb, Acting Minister of Finance.

Yours faithfully,

(Sgd) F. A. McGregor

Private Secretary.

Copy of correspondence referred to:

Hon. Jacques Bureau and
Hon. J. A. Robb.

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C 50470

(COPY)

ST. JOHN BOARD OF TRADE

St. John, March 6, 1925

Rt. Honourable William Lyon Mackenzie King,
Prime Minister,
Ottawa.

Dear Sir:

It has been impressed upon the St. John Board of Trade that the smuggling which is being carried on in this province, particularly at the international bridge at Edmundston, St. Leonards, St. Stephen and Milltown, is having a serious effect upon business interests and manufacturers, and is likewise defrauding the Dominion Government.

This Board would therefore respectfully request that instructions be immediately given for the appointing of additional investigators of a capable type in order to put a stop to this smuggling situation.

Yours sincerely,

(SGD.) R. E. ARMSTRONG

Secretary.

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C 50471

COPY

Ottawa, March 9, 1925

R. E. Armstrong, Esq.,
Secretary, Saint John Board of Trade,
St. John, N. B.

Dear Sir:

I am directed by the Prime Minister to acknowledge the receipt of your letter of the 6th instant, requesting the Government to take steps to deal more effectively with the smuggling situation at the international bridges at Edmundston, St. Leonards, St. Stephen and Milltown.

Mr. King wishes me to assure you in reply that your representations will receive the Government's careful consideration. By his direction I have forwarded a copy of your letter to the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) F. A. McGregor

Private Secretary.

March 9, 1925

Hon. Jacques Bureau, M.P.

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for his consideration.

Private Secretary.

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C 50472

COPY

Ottawa, March 20, 1925

J. A. Y. Bouchard, Esq.,
Secretary, Board of Trade,
Quebec, P. Q.

Dear Sir:

I am directed by the Prime Minister to acknowledge receipt of your letter of the 18th instant recommending that the appointment of investigators in connection with smuggling operations should be left to the Minister of Customs and Excise rather than the Civil Service Commission.

Mr. King wishes me to say in reply that your representations will receive the Government's careful consideration and to let you know that he has transmitted a copy of your letter to the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) F. A. MacGregor

Private Secretary.

March 20, 1925

Hon. Jacques Bureau:

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for his consideration.

Private Secretary.

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(COPY) C 50473

NANAIMO BOARD OF TRADE

Nanaimo, B.C., April 17, 1925

Rt. Hon. W.L.Mackenzie King,
Prime Minister of Canada,
Ottawa, Ont.

Hon. Jacques Bureau,
Minister of Customs and Excise,
Ottawa, Ont.

Hon. J. A. Robb,
Acting Minister of Finance,
Ottawa, Ont.

SMUGGLING OF GOODS INTO CANADA

Honourable Sirs:

At the last regular monthly meeting of this Board, held on the 14th instant, a resolution was passed, as the result of which I am to respectfully address you relative to the smuggling of goods into Canada from other countries, particularly from the United States, which has resulted in throwing thousands of Canadians out of work, caused disturbance and loss in many kinds of manufacturing, wholesale and retail business and has defrauded the Dominion Government out of millions of dollars of revenue.

The smugglers have built up a large and efficient organization and have grown rich by defying the laws of this country. Newspapers and organizations of business men throughout Canada have been urging more vigorous measures to diminish smuggling and to punish smugglers.

This Board, therefore, in common with other Dominion Board efforts being made, respectfully urges the Government to strengthen the Preventive Service of the Department of Customs and Excise by the appointment of more investigators and, in order to facilitate matters, would request the Government to give the Minister of Customs and Excise power to make such appointments on his own responsibility instead of through the Civil Service Commission, it being obvious that, if these appointments were made by the Civil Service

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Commission, the names of such appointees would be published and, consequently, the smugglers would know them before they assumed their duties. If they are appointed by the Minister their names will not be known.

It is felt that, in view of the serious menace which the smuggling referred to has created in its effect upon business, it is most desirable and necessary that the Minister of Customs and Excise be at once given power to appoint additional capable investigators.

All of which is respectfully submitted by -

Yours faithfully,

(SGD.) M. C. INGLIS

Secretary.

cc General Secretary,
Canadian Manufacturers' Association,
Toronto, Ont.

cc J. M. Good, Esq.,
President, Board of Trade,
City.

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C 50475

COPY

Ottawa, April 24, 1925

H. C. Ironside, Esq.,
Secretary, Nanaimo Board of Trade,
Nanaimo, British Columbia.

Dear Sir:

I am directed by the Prime Minister to acknowledge the receipt of your letter of the 17th instant, recommending, on behalf of the Nanaimo Board of Trade, that the Preventive Service of the Department of Customs and Excise be augmented and appointed independently of the Civil Service Commission, in order to cope more successfully with smuggling operations.

Mr. King wishes me to thank the Nanaimo Board of Trade for giving him the benefit of their views in this matter, and to say that the representations of your letter will receive the Government's careful consideration. He notes that you have forwarded a copy of your letter to his colleague, the Honourable Jacques Bureau, Minister of Customs and Excise.

Yours faithfully,

(Sgd) L. C. Moyer

Private Secretary.

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C 50476

Copy

Ottawa, May 13, 1925

A. Gordon Scott, Esq.,
Managing Secretary,
Chamber of Commerce,
Galt, Ontario.

Dear Sir:

I am directed by the Prime Minister to acknowledge the receipt of your letter of the 12th instant, enclosing a resolution passed by the Galt Chamber of Commerce, recommending that the Preventive Service of the Department of Customs and Excise be augmented and appointed independently of the Civil Service Commission, in order to cope more successfully with smuggling operations.

Mr. King wishes me to thank the Galt Chamber of Commerce for giving him the benefit of their views in this matter, and to say that the representations of your letter will receive the Government's careful consideration. By Mr. King's direction I have referred a copy of your letter to the Honourable P. J. A. Cardin, Acting Minister of Customs and Excise.

Yours faithfully,

(Sgd.) L. C. Moyer

Private Secretary.

May 13, 1925

Hon. P. J. A. Cardin, M.P:

Referred, by direction of the Prime Minister, to the Acting Minister of Customs and Excise, for consideration.

Private Secretary.

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C 50477

Aziz Case.

Brief.

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Evidence as to date of appointment and date of taking over duties by Hon. George Henry Boivin as Minister of Customs and Excise.

At the meeting of the Special Committee investigating the administration of the Department of Customs and Excise held Monday February 15th. 1926, Hon. George Henry Boivin was called and sworn --- see page 83 of the minutes of evidence. Mr. Boivin under oath stated as follows:- "Speaking from memory I was appointed on the 4th. day of September, 1925, sworn on the 5th. of September 1925, and took over the administration of the Department from the then Acting Minister, Hon. Mr. Cardin on the 31st. day of October, 1925."

Hon. Mr. Boivin at the same meeting of the Committee in his evidence subsequently stated as follows:- "If the Committee will allow me just one word of explanation in connection with my former evidence I stated that I had been sworn on the 5th. September and that I took over the administration of this Department on or about the 31st. day of October. I do not want the committee to misunderstand me. During the period between the 5th. of September and the 31st. October I happened to be in Ottawa I think on three occasions to attend council meetings and on these three occasions I went to the office of the Department to sign some routine reports which reports Mr. Cardin had, he remaining as Acting Minister.

Evidence given before the Special Committee on case against Moses Aziz.

At the meeting of the Special Committee held Wednesday April 21st. 1926. --- See page 1316 of the evidence.

Mr. William Foster Wilson Chief of Preventive Service Department of Customs and Excise ---- Mr. Calder, K. C., handed

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Mr. Wilson Customs and Excise Preventive Service fyle 13662 subject "Seizure of assorted Whiskey and alcohol from Moses Aziz, Caraquet, New Brunswick". Mr. Wilson under oath stated there was a seizure made from Moses Aziz on May 14th. 1925, of 95 bottles of liquors, mixed brands, labelled differently, brandies and rye and Scotch whiskey, also two one gallon tins, unlabelled, containing alcohol, white whiskey. As a result of this seizure Moses Aziz was fined $50.00 and costs and the liquor was confiscated.

Mr. Wilson gives evidence of a second seizure on the 14th. July, 1925 of nine five-gallon kegs, three kegs containing Booth's gin, two gin, two Scotch whiskey, one case marked "A.M.3", four boxes containing Black and White Scotch whiskey, and on one case marked "A.H. 298 Whiskey".

The charge laid on the first seizure was made because the party was unable to prove the date that it had been bought. The labels did not state the manufacturer's name, and they had the appearance of being of illicit manufacture or contraband, and the labels were falsely attached. From the Customs point of view, he was arrested for having smuggled liquor and he could not prove that the liquor had been bought.

The charge laid on the second seizure that of July 14th 1925, was:- "Contrary to section 219 of the Customs Act, having stored in his possession goods which had been smuggled into Canada and upon which no duty had been paid, but in this case instead of proceeding by indictment a summary conviction was taken. The conviction reads as follows:- "

"Canada
Province of New Brunswick
County of Gloucester.

Be it remembered on the 18th August in the year of our Lord, one thousand nine hundred and twenty-five, at the town of Bathurst, in the said county, Moses Aziz is convicted before the undersigned, R. A. Sutton, a Justice of the Peace for the said county, and Police Magistrate in and for the town of Bathurst, for that he, the said Moses Aziz, on the fourteenth July, 1925, at the said parish of Caraquet in the County of Gloucester did knowingly keep and unlawfully import into the county, to wit, liquors whereon duties lawfully payable have not been paid, contrary to the provisions of the Customs Act and amendments.

And I adjudge said Moses Aziz for his said offence to forfeit and pay the sum of $150.00 to be paid and applied according to law and to a term of three months in the common jail in the town of Bathurst in the county of Gloucester."

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There follows a disposition of costs and further imprisonment of three months unless the fine and costs are paid.

Mr. Wilson then gave evidence that as far as he knew Aziz had not up to that date been imprisoned although he had asked for permission to apply for a warrant of commitment. The warrant had been issued but service of the same had been withheld on instructions received by him from either the Deputy Minister or the Minister but which one he could not remember.

On the 29th. of September 1925 Mr. Wilson telegraphed Mr. G. P. Stewart, Special Customs Officer, at Chatham, New Brunswick, as follows:-

> "Am directed to request you to stay execution of warrant of comment against Moses Aziz, pending further investigation. Arrange with Magistrate accordingly."

On the 29th. of September 1925 Mr. Wilson received a letter from the General Executive Assistant of the Department in connection with this matter which reads as follows:-

> "The Minister desires that execution of warrant of commitment be stayed in this action pending further investigation.
> I beg to confirm instructions given to you this afternoon to wire this to the agent for the Crown in this case."

On the 16th. December, 1925 Mr. Wilson wrote to the Deputy Minister in regard to this matter and said:-

> "May I respectfully ask whether it is the desire of the Department that we now proceed with this matter?"

Mr. Wilson stated since writing the above letter he drew the attention of the Private Secretary of the Minister on more than one occasion to the fact that he had not received an answer to his inquiry.

Mr. Calder K. C. read into the records the following letters. The first letter is noted as "personal and confidential" is dated the 1st. of August 1925 and is as follows:-

> "Hon. Jacques Bureau,
> Minister of Inland Revenue,
> Ottawa.
>
> My dear Minister,- One, A. M. Aziz of Caraquet, is charged before the Courts in Gloucester County, at Bathurst, of having had in his possession on July 14th ult, illicitly imported liquor, knowing that to have been so imported. Officer Perley Stewart of the Preventive Service made the seizure on July 14th, and in laying his charge he fixed a valuation of about $600 on the goods so seized. If the goods were fairly valued they might not exceed $200, and

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hence would fall under the provision of the law which makes such an offence punishable by fine and not imprisonment.

If, however, the goods are fairly highly valued they would exceed the amount of $200 and therefore fall under the provision of the amended Act, and make it an offence of from one to seven years imprisonment. I am informed that the officers who made the seizure admit that a high valuation has been placed on these goods. Would it not be possible to procure another valuation on this seizure and ascertain the exact amount of goods seized.

These goods were in the possession of Mr. Aziz before the Act was amended, and Aziz claims that after the amendment was enacted he was placed in such a position that he could not very well conform himself to the law, as he did not know what to do with these liquors.

Kindly note that he is not charged with having imported these liquors but simply for having had same in his possession, and he can establish that they were in his possession before the Act was amended.

In view of these facts perhaps your Department would consider that a revaluation by the officers prosecuting that case would be proper and that justice would be properly served if such decision was taken.

Mr. Aziz is a very well known man in the County and has a wide circle of friends, and he has been a strong worker for the common cause, and I honestly believe that he has acted honestly throughout this affair, and that ~~N~~ he will be sufficiently punished if the matter is brought within that section of the Act which makes this offence punishable by fine.

This case is to be heard on August sixth.

Trusting that this case will receive your immediate attention, and thanking you, I beg to remain,

Yours very truly,
(Sgd.) P. J. Veniot."

Mr. Calder, K. C., read copy of a telegram dated at Ottawa, August 7th. as follows:-

"Hon. P. J. Veniot,
Bathurst,
New Brunswick,

Re value being made. Attention has been given as stated in your message.

(Sgd.) Jacques Bureau."

Mr. Wilson gave evidence that so far as he was aware no revaluation was made and on August 7th. he wired G. P. Stewart as follows:-

"Proceed in Aziz' prosecution under recent amendment of Customs Act as already instructed.
(Sgd.) W. F. Wilson."

On the same date he wrote Mr. Stewart confirming this telegram and said:-

"The best plan is for us to endeavour to make the very most we can of the recent amendment to the Customs Act. We cannot divert from acting thereunder as soon as we begin to meet with difficulties, such as may be met with in this particular case. Please impress upon Mr. Ramsay that the Department desires to obtain the maximum penalty under the recent amendment."

Mr. Calder then read a letter from the Deputy Minister

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of the Remissions Branch, dated the 29th of August, 1925, under file 125042, as follows:-

> "Dear Sir,- Representations have been made to the honourable, the Minister of Justice, by the Premier of New Brunswick on the case of Moses A. M. Aziz, convicted at Bathurst on August 18th, of illegal possession of illicitly imported liquor. A fine of $150 was imposed, together with a jail sentence of three months, and the fine has been paid.
>
> The Premier of New Brunswick suggests that the imprisonment be suspended, as the offended is a married man, in business for himself, and the term of imprisonment will occasion him much hardship. Moreover, it is stated that Aziz was not aware that the mere possession of smuggled liquor was in itself an offence, and further that the possession dated long before the Act was amended.
>
> As this man is not imprisoned, the Minister of Justice cannot order his release; it therefore, is a matter for your Department to decide whether or not the Magistrate should be asked to issue a warrant of commitment.
>
> Yours truly,
> (Sgd.) M. F. Gallagher,
> Chief of Remissions Branch."

The following extract from a letter of Mr. G. P. Stewart dated at Chatham, New Brunswick on September 5th. 1925, to Mr. Wilson was then read into the evidence:-

> "I have it pretty straight that he has been endeavouring to buy one hundred cases of smuggled liquor. I know he was in Chatham the other day, he called to see me. I was not in. He asked Mrs. Stewart if she knew if I had received any word from the Department of Justice regarding the remission of the three months in jail. She said, she understood there was no word.
>
> Now, if the Remissions Branch has not acted already, it is too bad if our Department cannot point out to them that the man is endeavouring to get into the business again, I got this from a third party, and must keep it confidential, but know that he asked if he could get fifty cases in his own name and fifty for someone else. The party who asked said they were laying low themselves, but if the schooner returned this fall, that Aziz might get it by going out beyond three miles to get it.
>
> I think in the interests of law and order, that the Magistrate, Mr. Sutton, should be instructed to have the warrant of commitment executed the minute the thirty days is up, and that the Clemency Branch should refuse to take up the case until the man is committed. If he has to do some jail, a month or so at least, it will be a great warning."

Mr. Wilson gave evidence that he communicated this report of Mr. Stewarts to the Deputy Minister by enclosing a copy of the same with a covering letter from myself.

Mr. Calder, K. C., read a letter dated at Shipman, New Brunswick on the 21st. September as follows:-

> "Personal and Confidential
>
> Hon. Jacques Bureau,
> Minister of Customs and Excise,
> Ottawa.
>
> Honourable and Dear Sir,- Will you please consult Hon. Mr. Lapointe about the proceedings instituted against Mr. A. M. Aziz, Caraquet, for violation of the Revenue Act. I

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attach the greatest importance to this affair, since in the actual circumstances I need the help of all my friends.

The Hon. Mr.Lapointe will give you all the necessary information. Mr. Aziz is of the highest help for us during this campaign, and we cannot do without his services.

With assurance of my highest consideration."

Mr. Calder read a letter of September 29th. 1925 marked "confidential" as follows:-

"J. G. Robichaud, Esq.,
Shippigan, N. B.

Dear Mr. Robichaud,- I acknowledge receipt of your letter of the 21st instant, on the subject of proceedings instituted against Moses Aziz of Caraquet, for violation of the law.

Considering yourstrong recommendation, instructions have been given not to execute the warrant of imprisonment until a new inquiry has been made.

Sincerely yours,"

It is noted "J. T."

Mr. Calder read a memorandum from Mr. Farrow dated September 29th. 1925, on the letterhead of the Minister of Customs and Excise:-

"Re case of Moses Aziz, Caraquet.

The Minister desires that execution of warrant of commitment be stayed pending further investigation in this case.

William Ide,
Private Secretary."

And there is a note which says:-

"Ask Wilson to wire instructions today 29/9/25."

C. P. B.

Evidence was given that C. P. B. would be Mr. Blair.

As a result Mr. Wilson wired Mr. Stewart, Customs Officer Chatham, N. B., as follows:-

"Am directed to request you to stay execution of warrant of commitment against Moses Aziz, pending further investigation. Stop. Arrange with magistrate accordingly.
W. F. Wilson."

Mr. Calder, K. C., read a telegram from Mr. Robichaud, dated October 1st, 1925, addressed to the Hon. George Boivin, personally or forwarded to Ottawa, Ont., as follows:-

"Please refer my recent communications re Aziz. Most important that matter be settled according to my wishes. Preventive Service has demanded commitment to be effective at once. Rush action and wire me.
J. G. Robichaud."

Mr. Calder, K. C., read the following reply to J. G.

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Robichaud, M. P., Shippigan, dated October 21st. 1925, as follows:-

"Hon. Mr. Boivin out of town. Instructions already sent to stay execution of warrant.

William Ide,
Private Secretary."

Mr. Calder, K. C., read a letter appearing to be from Hon. Mr. Boivin, as follows:-

"Ottawa, November 18th, 1925.

Mr. J. G. Robichaud, M.P.,
Shippigan, N. B.

Dear Sir,- I have before me a memorandum concerning the case of Mr. Moses Aziz, who was condemned by the court to a fine of $150 and to three months' imprisonment for having had liquor in his possession.

The fine of $150 was paid, but the execution of the warrant of commitment was temporarily suspended.

I have examined the case with care, and I can find no reason for which the imposed sentence should not be executed, but I will keep the matter in suspense until I get a reply from you, in the event of your having other representations to make to me.

The officers of the Department contend that the efforts made to prevent smuggling of liquors will be much lessened if this man is let go without further punishment.

Yours very devotedly."

That is signed "J. T." evidently, the stenographer. It is apparently a letter from the Minister.

Mr. Calder then read a letter dated November 25th. 1925, from Shippigan, N. B. as follows:-

"Hon. George Boivin,
Minister of Customs and Excise,
Ottawa.

Honourable and Dear Sir,- Referring to your favour of the 18th of November, on the subject of penalties imposed on Mr. Moses Aziz for having had liquors in his possession, will you please do your best to suspend all proceedings until I see you when I return to Ottawa.

With an expression of my best sentiments,
Yours truly,
J. G. Robichaud,
Member of Gloucester."

Mr. Calder read a letter from Mr. Wilson dated 16th. September, 1925, addressed to Mr. Farrow, as follows:-

"Prosecution of Mr. A. M. Aziz, Caraquet, N.B., Seizure 36848/6099

Sir: Advertant to your letter of the 29th. September last, respecting stay of the execution of the warrant of commitment in this matter.

May I respectfully ask whether it is the desire of the Department that we now proceed with this matter.

I have the honour to be, sir,
Your obedient servant."

In this letter there is a note which reads: "Agreed to see Mr. Robichaud, M.P., before giving orders to execute warrant, 17/12/25 George H. B., M. C. & E."

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Q. Do you recollect that he dictated that one?—A. It was dictated in English.

Q. And you put it in French?—A. I put it into French.

Q. The initials "J. T." indicated that you were the young lady who wrote it?—A. Yes, sir.

Q. You do not know who signed it?—A. I do not know.

Q. That is not your business?—A. No, sir.

By the Chairman:

Q. Are you in a position to say that you made an exact translation in French of what was dictated to you in English?—A. I think so.

The CHAIRMAN: It is very good French.

Hon. Mr. BENNETT: The Chairman is better able to judge than I am, and I will take his word for it. The translation is already in the record, I understand.

Witness retired.

WILLIAM IDE recalled.

By Hon. Mr. Bennett:

Q. Mr. Ide, would you be good enough to look at file No. 125042 again? You are already sworn?—A. Yes.

Q. You have heard read two letters in French?—A. Yes, sir.

Q. By Miss Tremblay?—A. Yes, sir.

Q. One dated on the 29th of September, and the other on November 18th. Perhaps you will be good enough to look at them?—A. The first is September 29th, yes, sir.

Q. Miss Tremblay states that you dictated that letter in English, and that she translated it into French, is that correct?—A. Yes.

Q. Who signed the letter?—A. The Minister, the Hon. Mr. Boivin, so far as I know.

Q. He is the man to sign?—A. Yes.

Q. Does the Minister sign the letters?—A. It would be the Minister or the Acting Minister. In the memorandum which was written on the same day, I used the term "Minister". I would have used the term "Acting Minister" if it had been the Acting Minister.

Q. So that, so far as you recollect, and from looking at the file, the Minister at that moment was the Hon. Mr. Boivin?—A. Yes.

By the Chairman:

Q. Do you always put "Acting Minister" when you write a letter?—A. Not in the Minister's office. In the memorandum which was written the same day, I used the word "Minister"; otherwise I would have used the words "Acting Minister".

By Hon. Mr. Bennett:

Q. Would you look at the second letter, the letter of the 18th of November?—A. Yes, sir.

Q. Who was then the Minister of Customs and Excise?—A. The Hon. Mr. Boivin.

The CHAIRMAN: I knew it, because the letter was dictated in a very prudent way, in the sense of a departmental letter.

Hon. Mr. BENNETT: I am surprised at the Chairman expressing his judgment before the evidence is completed.

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The CHAIRMAN: We like to summarize, Mr. Stevens and I, and make everybody understand.

By Hon. Mr. Bennett:

Q. You think the Hon. Mr. Boivin was the Minister then, on the 18th of November?—A. Yes, I think so.

Q. Miss Tremblay's memory is that you dictated both this letter and the other in English, and that she translated them into French in the course of her duties. After the letter was typewritten, and handed to you, you would as secretary, pass it on to the Minister for signature; is that the idea?—A. Yes, sir.

Q. May I suggest that the course followed in offices now would be very desirable to follow in the Customs Department, namely to have a rubber stamp put over the copies, so as to indicate whether it is the Minister or the Acting Minister who signs?—A. Yes.

Q. I notice the discretion of the Minister is exercised very freely in your office, with a rubber stamp; I notice a large number of files in which the names "Jacques Bureau" and "W. Ide" are in a rubber stamp?—A. Yes.

Q. Approving of these recommendations or otherwise, on the seized properties?—A. Yes.

Q. And I take it that as private secretary, these are your initials?—A. Yes.

Q. That was observed during the time the Minister was ill?—A. Yes.

Q. Or the Acting Minister; and you were instructed to put his signature on with a rubber stamp, and your initials under it, to indicate that you had done that?—A. Yes.

By the Chairman:

Q. You have been in the service how long, Mr. Ide?—A. Since 1919.

Q. As private secretary?—A. Yes. I was in the Agriculture Department four years before that.

By Hon. Mr. Bennett:

Q. You would hardly describe the placing of a rubber stamp upon a letter a very good method of writing a signature, would you?—A. It is like placing the signature of a financial officer of a bank; he puts his name on, on the signature of the accountant.

Q. You adopted the recommendation of the assistant, who in turn turned it over to the Deputy Minister?—A. Yes.

Q. I notice in more than one case the signature of the Deputy Minister, with a rubber stamp as well?—A. It was, but it was discontinued.

Q. In no inconsiderable number of cases, the forms K-9 were signed with a rubber stamp, and you put your initials on?—A. Yes.

Q. And following that, in many cases, there are the signatures of the Minister, with a rubber stamp?—A. Yes.

Q. Practically all of those are predicated by the report of the general executive assistant, which bore his real initials?—A. Yes.

Hon. Mr. BOIVIN: As I happen to be before the committee, if Mr. Bennett will allow me, I might perhaps clear up the question of who signed these letters. At least I would be very glad to do so. If I may be allowed, Mr. Chairman, I saw in the evidence that was given when this Moses Aziz case was first before the committee that a reference was made to a statement of mine at the beginning of the inquiry, that I had been appointed on the 4th September, sworn in on the fifth and had taken over the complete administration of the department on the 31st October. If the committee will look two pages further down in the same evidence they will find that I took good care to say, before leaving the

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box, that I did not want to mislead the committee, that I had been in Ottawa on two or three occasions to attend Council meetings, and when here, had gone to the office and attended to some routine matters. The 29th September, or 28th and 29th September was evidently one of those occasions. I remember very well having seen a telegram, or a letter of the 21st September which was on my desk when I arrived. I might say I was at the office only in the evening. My private secretary, Mr. Ide, was there with me assisting me to clean up correspondence, and when I saw the letter of September 21st, without taking the time to go through the file I was informed by Mr. Ide in a previous message sent by the—I cannot remember.

By Hon. Mr. Bennett:

Q. Saying the Minister was out of town.—A. I am referring to a previous message sent by the Minister or Acting Minister, before I was sworn in, promising that a revaluation of the liquor would be made. I asked Mr. Ide if a revaluation had been made, without going into details, and he told me it had not and I authorized the private secretary to dictate a letter on September 29th and I signed the letter on the following morning before leaving Ottawa.

When I returned in the month of November, to actively take over the duties of the office, the files were placed before me and on the 18th of November, I wrote the letter which bears that date or rather had Mr. Ide, after discussing the matter with him, dictate it and I signed it. In reply to that letter I received one from Mr. Robichaud, dated 25th November, asking me to suspend proceedings until he could see me personally upon his return to Ottawa. I did not reply to that letter but the file was left upon my desk.

At that time we expected Parliament to meet on the 10th of December, but the date of the calling of Parliament was necessarily postponed, and very shortly after the opening of Parliament Mr. Robichaud came to my office one night at eight o'clock, or about that time, for the purpose of discussing another very important matter in which he was interested. The matter is not before the committee and I would prefer not to give any details concerning the discussion.

Q. Is this a Customs matter also?—A. Yes, it is.

Q. I know about it.—A. For about two hours we discussed this other matter, with the result that I was obliged to refuse Mr. Robichaud's request. The name of Moses Aziz was mentioned but not desiring to refuse the request of Mr. Robichaud twice the same evening, and owing to the lateness of the hour, I told Mr. Robichaud we would take the Moses Aziz case up on another occasion. Since that time the file has remained on my desk until it was called for by the committee.

Q. So, you are not involved in the matter? I appreciate your desire not to mention what it was, but the matter is mentioned in some of the correspondence. What Mr. Robichaud was talking about with you is a matter affecting his own brother, that is the transaction you refer to?—A. Yes.

Q. Mr. Boivin, I want to merely observe that at that time you wrote the letter of 18th November, the conviction had been made?—A. Yes.

Q. And the sentence had been imposed against Moses Aziz?—A. Yes.

Q. In looking through the papers, Mr. Boivin, I do not quite understand how you interposed yourself between the sentence and the execution of it?—A. I did not. If the warrant had been executed and if it had been in the hands of any prosecuting officer for the arrest, I would not have interposed.

Q. The fact is, this man was convicted and sentenced to imprisonment?—A. But sometime previous to my entering into the department, a considerable time.

Q. But the warrant had not been executed when you happened to be up here on 28th or 29th September?—A. No.

Q. That is a fact?—A. Yes.

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Q. Mr. Robichaud, who was a candidate in Gloucester, in the then pending election, was pressing at the time for action to assist him in having Moses Aziz not interfered with? That is a fair way to put it.—A. I will have to look at the letter before agreeing entirely with you.

Q. I can read you the letter if you desire.—A. I have it here, September 21st:—

> "Will you please consult with Hon. Mr. Lapointe about the proceedings instituted against Mr. A. M. Aziz, Caraquet, for violation of the Revenue Act. I attach the greatest importance to this affair, since in the actual circumstances I need the help of all my friends.
>
> The Hon. Mr. Lapointe will give you all the necessary information. Mr. Aziz is of the highest help for us during this campaign, and we cannot do without his services.
>
> With assurance of my highest consideration."

Q That is his letter of the 21st September?—A. Yes.

Q. That is one of the letters which was before you on the 28th and 29th?—A. That is the letter I replied to on the 29th.

Q. At that time, did you see Mr. Lapointe about it?—A. No.

Q. Did he speak to you about it?—A. No.

Q. The file sufficiently indicated at that time, that Moses Aziz was under sentence of imprisonment in addition to his fine which had been paid? I observe that myself.—A. The file indicated, at the time, that the sentence had been imposed.

By Hon. Mr. Stevens:

Q. He was sentenced on the 8th August. I have a copy of the judgment before me.—A. I do not remember.

By Hon. Mr. Bennett:

Q. The fact is, Moses Aziz has not yet been imprisoned?—A. No, he has not.

Q. And so far as the records show he has not been imprisoned because of the intervention of the Minister of Customs and Excise?—A. Well, I would not like to admit that the intervention of the Minister was the sole cause of his not being imprisoned.

Q. It is the causa or causan, speaking as a lawyer of his not being imprisoned.—A. Possibly. I am sure the Committee will appreciate that seeing this letter as I did on the 28th or 29th of September, having just entered into my duties and not knowing the rules and regulations, I was asked to consult the Honourable Mr. Lapointe who was not in Ottawa at the time, and whom I could not consult.

Q. But you had the information that the Acting Minister or the Minister had previously promised a revaluation of the liquor?—A. Yes.

Q. That is a fair statement.—A. It was pointed out to me at the time, that a promise had been made, and I took it upon myself, and did not make any request to the Department of Justice for a remission; but I merely took it upon myself to retard the execution, and if it was not in my power to do so, I conceived it to be my duty.

Q. If you will look at the telegram of the 18th November, you will see, having carefully perused the file, that you come to the conclusion the sentence was just and proper sentence, and should be executed, but nevertheless you say further, to use your own words, you will see that the execution is retarded?—A. In the letter of the 18th November.

Q. I do not say you used the word "retard," but why was the execution of the warrant of arrest temporarily retarded?—A. It was temporarily retarded. I did not promise to retard it at all.

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Q. See what you did in the closing paragraph.

Hon. Mr. STEVENS: The fact is, it is still retarded.

The WITNESS: The fact is, it has not yet been executed.

By Hon. Mr. Bennett:

Q. If you do not mind, just look at the letter, the closing paragraph, in which you say, "nothing will be done until you see me."—A. In the closing paragraph?

Q. The one before the last: "I have examined this case with care and I can find no reason why the sentence imposed should not be executed, but I will hold the matter in suspense until I receive from you an answer in case you have some other representations to make."—A. I thought it was only fair to hear the Member before I disposed of it, or changed the promise given by my predecessor to stay the execution of the warrant.

By Hon. Mr. Stevens:

Q. You gave an order?—A. No, I gave an order to continue postponing.

Q. I think perhaps, your memory might be a little at fault. Here is a copy of the sentence which was imposed on August 8th, and then on September 16th the Chief Customs and Excise Preventive Officer gave instructions in regard to the matter. This is to Mr. Stewart, the Customs Officer:—

> "Referring to the fourth paragraph of your report of the 5th instant, wherein you suggest that Magistrate Sutton be instructed to have the warrant of commitment executed as soon as thirty days are up, in connection with sentence imposed upon Moses Aziz on the 18th ultimo, you are instructed to see the Magistrate and have the commitment executed without any further delay. Report to me when this has been done."

On September 29th, you wrote a letter and I see on file a telegram from Mr. Wilson:—

> "Am directed to request you to stay execution of warrant of commitment against Moses Aziz pending further investigation. stop. Arrange with Magistrate accordingly. stop."

There is a letter by Mr. Blair to Mr. Wilson:—

> "Minister desires that execution of warrant of commitment be stayed pending further investigation. I beg to confirm instructions given to you this afternoon by wire—"

That is dated 29th, the same day on which the letter was written, which was signed by you?—A. Quite true.

Q. That is your instructions?—A. Yes, quite true.

Q. That is what stayed execution means?—A. I was under the impression that it had been previously stayed and a request had been made at that time for execution, and I directed to hold it in abeyance. However, whether it was the first time that the execution of the warrant was stayed or whether it was the second time, I want to say that I take the responsibility for it because I happened to be in the office at the time, and I want to clear the Acting Minister of any responsibility in connection with the matter. I have explained, as well as I can, why I gave the orders staying proceedings.

Q. That may be, although it seems that there is a difference between staying proceedings against a man, that is holding up prosecution, and interfering with commitment after sentence has been pronounced.—A. I am quite willing to admit that. I admit I did not understand this case very thoroughly, as I did not think it was within the power of a Minister to stay proceedings on a warrant of commitment.

Q. You must have understood that after you read the last letter.—A. When I read the last letter I certainly did.

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Q. The question is still open, and I think you from the files satisfied yourself that the man should go to jail, but you held it up until Mr. Robichaud came to see you, and still the man is walking the streets and defying the laws of the country.—A. I want to be fair to Mr. Robichaud and I want the Committee to be fair with me. I wanted to keep the promise with Mr. Robichaud, but I am willing to admit there may have been negligence on my part in not bringing Mr. Robichaud to my office. I want the Committee to realize that since Parliament opened the Minister of Customs has been exceedingly busy.

Q. Why not issue the writ of commitment now?—A. I will be very glad to after I have heard Mr. Robichaud. If he has nothing further to say, there is no reason why it should not be issued.

Q. What right have you to interpose yourself between a warrent issued by the Court and its execution?—A. I do not pretend to have that right, but whether right or not I promised Mr. Robichaud I would hear him before I withdrew the order.

Q. Surely, you realize this, that you are a Minister, and have your duties to perform as Minister of Customs and Excise?—A. I do not think for a moment I have a right to withhold it. I stated very clearly in my letter that I think the man should go to jail. I said that on the 28th of September or the 29th.

Q. Mr. Boivin, you are exceeding your power?—A. I do not believe the Minister has the right to withhold execution of a warrant but the bald fact remains that I promised Mr. Robichaud that before I took action I would hear him. Surely there is no harm in hearing him.

Q. Mr. Boivin, your position is a very unhappy one.—A. It is very unhappy.

Q. You are placing yourself in between a sentence of the Court of this land and the execution of the sentence and you are doing it for one reason, and that is that an individual member of the House has asked that you do so. That is a very serious position for any Minister to take, and I say now, this is something which you have no right to do as Minister.—A. I do not pretend that I have, and I have made the statement three times.

Q. Surely, your public duty must come before the convenience of Mr. Robichaud, when this matter has been standing for the last four months. Surely a man with three convictions should not be allowed to walk the streets in defiance of Canadian laws because of the fact that a whim of a Member has to be met.—A. I appreciate that, but I am quite sure that my letters in this matter show that there was never any intention on the part of the Minister Customs to allow Mr. Aziz to walk the streets with impunity forever. That was never in my mind, never in the mind of the Minister.

Q. He has been doing it since the 18th of August and you are preventing the application of a just sentence because of your interference. You admit now you have no right as Minister to interfere. I say to you, in the face of these facts, should not the writ of commitment be issued at once?—A. I think it should. I do not think it should ever have been withheld.

Q. I must admit I cannot understand the persistent delay. It is pretty serious.—A. I still state that I do not think that the telegram sent in my name or at my request, to the Officer of the Court was worth the paper it was written on.

The CHAIRMAN: That is my opinion.

By Hon. Mr. Stevens:

Q. That may be. You now say, or you said a moment ago, you will not lift this stay until you have talked with Mr. Robichaud?—A. I stated, I would see Mr. Robichaud and I promised to see him. I never said, I would not. If the Committee so desires that it should be done I will give the order this afternoon.

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By Hon. Mr. Bennett:

Q. I am sure, I have a very high respect for your ability. Surely, you must realize how serious it is. You said a moment ago, you proposed to still implement your promise which was given to Mr. Robichaud before this warrant is executed?—A. Yes.

Q. Speaking to you as one professional man to another you realize as Minister of the Crown, of Customs and Excise, that you have not the right to arrogate to yourself, the power of His Excellency, the Governor General to change or deal with the findings of a court. You say, you propose to further exercise these powers, and you think you have that right, but I cannot understand it, or cannot understand your mental process.—A. But Mr. Bennett, I do not say that, I do not say that.

Q. I am sorry, Mr. Boivin, I followed you with great care.—A. I realize, Mr. Bennett, you are a very, very able attorney. I realize that. I state as one professional man to another, or as a Minister of the Crown, that I never thought at any time I had the right to withhold the execution of the sentence. I have made that clear very, very many times. When the original order was given to withhold the sentence, it was given without thought and without consideration on my part, and when I was only in the office as Minister for about eight hours.

By Mr. Kennedy:

Q. You see, Mr. Boivin, that the execution was stayed because of the telegram?—A. I think it was stayed because of the telegram which was then sent.

Q. Is not the best thing to do to clean it up right away?—A. Absolutely; I agree with that. I think the man should go to jail, or he should lodge an appeal if he does not want to go to jail.

Hon. Mr. BENNETT: It is too late now to lodge an appeal. He paid the fine immediately it was imposed, and thereby precluded himself from an appeal.

Hon. Mr. BOIVIN: I think, in fairness, it is well to have on the record the fact that the file was not pigeon-holed, and that the matter was not definitely disposed of.

Hon. Mr. STEVENS: I fail, Mr. Boivin, to follow your reasoning that there is any excuse whatever for interfering in the execution of that sentence. There is no justification in that.

Hon. Mr. BOIVIN: I agree entirely, Mr. Stevens, that the only person who could interfere with the execution of that judgment is His Excellency the Govenor General, upon the recommendation of the Minister of Justice. The name of the Minister of Justice was mentioned in that letter, and I was asked to see him. I do not know what for. He was supposed to have information concerning this case which I did not have. I never saw Mr. Lapointe and never discussed this matter with him.

Hon. Mr. STEVENS: I think you will find that the reason you were asked to see the Minister of Justice was because the Honourable Mr. Veniot had written to him.

Hon. Mr. BENNETT: There is a memo. there, Mr. Boivin, from the clerk of the Remission Branch, pointing out, of course, that the power of the executive cannot be invoked unless there is something upon which to invoke it.

Hon. Mr. BOIVIN: Quite true.

Hon. Mr. BENNETT: And apparently—at least, so I judge—Mr. Lapointe had mentioned it to the Remission Branch in the furtherance of what Mr. Robichaud had mentioned to the Minister of Justice. I suppose that is what you would think yourself, would you not?

Hon. Mr. BOIVIN: Undoubtedly.

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Hon. Mr. STEVENS: From references made in this file by the officers having to do with this, they were for the carrying out of the sentence. There was no question in their mind.

Hon. Mr. BOIVIN: There was no question in the minds of Mr. Wilson and Mr. Blair, I think, who both dealt with this matter, that the sentence should be carried out. If any of you gentlemen have sat in the Minister's chair in the Department of Customs you will realize that it is not the officers who can follow the letter of the law, who have the hardest task.

Hon. Mr. BENNETT: That is quite true, Mr. Boivin, in matters where there is a proper discretion for the Minister, but in this case you admit yourself there is no right of discretion on the Minister's part whatsoever.

Hon. Mr. BOIVIN: There may have been a mistake on my part, in connection with the delay granted in the Aziz case. I am quite willing to admit that.

The CHAIRMAN: Mr. Minister, you never had an idea of delaying or preventing Aziz from going to jail?

Hon. Mr. BOIVIN: Not the slightest. The only reason for delay was that I hesitated exceedingly about giving two absolutly definite refusals to two separate requests by the same Member of Parliament on the same night.

Hon. Mr. BENNETT: A supporter, in any event. We are all human.

Hon. Mr. BOIVIN: I think you will find cases on the files, Mr. Bennett, where men who were not supporters of the government, but very high in the ranks of the Conservative party, have received favours from my predecessor, the Honourable Jacques Bureau.

Hon. Mr. STEVENS: Your answer to Mr. Robichaud was not that you would turn this down on the ground that you had no discretion or no right?

Hon. Mr. BOIVIN: Quite true.

The CHAIRMAN: It was only a statutory offence.

Hon. Mr. STEVENS: There was a third conviction.

The CHAIRMAN: No, a second conviction.

Hon. Mr. STEVENS: One against the Provincial law, and two against the Federal.

The CHAIRMAN: You did not know the man had been sentenced before?

Hon. Mr. BOIVIN: No, I did not know at the time but I have ascertained since that it was the third conviction.

The CHAIRMAN: I think we can summarize the whole thing, if we have the idea that the Minister is human. Mr. Robichaud had written to him asking him to reconsider the case, and being a new Minister in the Department, not acquainted with the contents of this file, and the change in the facts, he took the word of Mr. Robichaud and wanted to hear from him before putting the man in jail.

Hon. Mr. BOIVIN: That is all.

The CHAIRMAN: There is still an officer in that province who can execute that commitment?

Hon. Mr. BOIVIN: There is one more word that I would like to say, if I may, to clear the employees of the Department of any responsibility in connection with the confidential letters which may be found upon the file. When the file was called for by this committee, the two files—that is to say, the Minister's private file and the departmental file—were lying together upon my desk. I knew that the telegram sent to Mr. Robichaud by my private secretary, and to the officer by Mr. Wilson, and the telegram received from Mr. Robichaud by our office, were already filed before this committee. Those telegrams referred to correspondence, and the correspondence referred to telegrams, and I considered

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it my duty, in view of the fact that part of the confidential proceedings were already filed, to place the whole matter before the committee, and I myself take the responsibility of having placed those letters upon the file in order that the committee might make sure we had nothing to hide.

Hon. Mr. BENNETT: I regret to say, Mr. Boivin, that in the province of New Brunswick, in the county of Gloucester, and the surrounding part of the north shore, the matter was very well known, and it would make no difference whether you produced the file or not.

Hon. Mr. BOIVIN: Quite so.

Hon. Mr. BENNETT: But unfortunately, it has brought a very considerable amount of—shall I say—criticism, upon the administration of justice, for reasons which I think you, as a skilled lawyer, will at once admit. That is what has given me a feeling of apprehension about the whole matter.

Hon. Mr. BOIVIN: Quite true.

The CHAIRMAN: You will have to be careful in the future.

Mr. ST. PERE: He will have to get away from the common law that every Minister has to follow, that is, that he has to give a hearing to every Member of Parliament who comes along.

The CHAIRMAN: That will be forbidden in the future.

Hon. Mr. BOIVIN: I think, Mr. Chairman, that my name was also mentioned by Mr. Taylor in his evidence the other day concerning a fine of $200 which was accepted in the case of Harnish. In the Harnish case, I think it was pointed out, and quite correctly, by the Acting Deputy Minister, that the man had not been prosecuted before the Courts, but that he had paid a penalty of $200. So that there may be no doubt in the minds of the committee as to who might be responsible there, I will say that I accepted the penalty of $200 on the advice of the officers of my Department, because it had been pointed out to me that the action had been taken under Article 185 of the Excise Law.

Hon. Mr. BENNETT: And was not a judicial proceeding?

Hon. Mr. BOIVIN: Well, it could have been a judicial proceeding.

Hon. Mr. BENNETT: Yes, but it was not.

Hon. Mr. BOIVIN: But under Article 136 the Minister is given the right to accept the fine without sending the accused before the Courts, and the request was made by A. W. Jones, Barrister, of Halifax, on December 10th, 1925.

Hon. Mr. BENNETT: And you exercised your ministerial discretion in making the fine what it was.

Hon. Mr. BOIVIN: It is the minimum fine for a first offence.

Hon. Mr. BENNETT: There is no question but what you had the discretion, Mr. Minister, and you exercised that inasmuch as no judicial proceedings had been taken, which is, in my judgment, an entirely different thing—

Hon. Mr. BOIVIN: From the Aziz case—the "As Was" case.

The witness retired.

CHARLES A. LANGEVIN called and sworn.

By Mr. Calder, K.C.:

Q. Mr. Langevin, in September, 1923, what was your occupation?—A. City Passenger Agent of the Canadian Pacific Railway at Quebec.

Q. Did you at that time know a Miss Denise Larde?—A. No sir.

Q. You had never met her up to that time?—A. No.

Q. Did you know Mr. Rene Dupont?—A. Yes sir.

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Q. What was Mr. Dupont's position in Quebec?—A. President of La Corporations des Obligations Municipales Limitée. He was also the Consul for Belgium.

Q. Is Mr. Dupont in Quebec now?—A. No; I do not think so. I understand he is not in Quebec at the present time. In fact, I believe he is in Europe.

Q. He is in Europe?—A. I heard he was in Europe.

Q. When did he leave?—A. Over a month ago.

Q. Is he presumed to be there permanently?—A. I cannot say.

Q. Will you look at a letter, of which unfortunately I have only a copy, which is the first paper on Customs Excise Preventive Service file 956-113550, titled "Customs Seizure of Clothing from Miss Denise Larde," and state whether you received that letter?—A. That is a translation of the letter.

Q. Do you know who made the translation? The letter sent you was in French, was it?—A. Yes sir.

Q. Will you read over the translation and state whether it is a satisfactory translation of the purport of the letter as you recollect it?—A. Yes.

Q. Now, you will find by the letter—

Hon. Mr. BENNETT: Was that read into the minutes?

Mr. CALDER, K.C.: Yes. This is a letter of the 6th of September, addressed to Mr. Langevin by Mr. Rene Dupont, on the letterhead of La Compagnie des Obligations Municipales Limitée, already read into the record.

The WITNESS: That is right.

By Mr. Calder, K.C.:

Q. You will notice in the second paragraph, he says:

"As I asked you yesterday, I would be glad if you would also hand Miss Larde the enclosed letter addressed to Mr. Bolger."

Apparently there was a conversation between you before that?—A. Yes sir; Mr. Dupont telephoned me the day before.

Q. Will you tell us what the purport of his message was?—A. It is usual for railroad or steamship companies to deliver mail to passengers when it is addressed in their care, and Mr. Dupont knew that I went down to meet steamers occasionally, and he said "You are going down to meet this steamer; would you mind taking these letters?"

Q. So he gave you a letter for Miss Larde?—A. Yes; at least, he sent me the letter the following day.

Q. It was a letter which he himself had written?—A. I cannot say that he wrote it himself, but it was a letter addressed to Miss Larde.

Q. Did it bear a postmark and a stamp, or was it a letter per bearer?—A. Just an ordinary letter, without postmark or stamp.

Q. Then it would be a letter originating in Mr. Dupont's office?—A. I suspect so.

Q. He also handed you a letter to be given to Miss Larde for Customs Officer Bolger?—A. Yes, there were two letters sent.

Q. That also was without a postmark?—A. Yes.

Q. And originated in Mr. Dupont's office?—A. I suspect so.

Q. Now, Mr. Langevin, upon your oath, was the purpose of these two letters discussed between you and Mr. Dupont?—A. None whatever, with me.

Q. In the telephone conversation, do you swear that he did not say that this was to facilitate the entry of Miss Larde's goods?—A. No, it had no reference at all to baggage; simply an ordinary request to render assistance such as is usually made by certain people who have friends coming over.

Q. Is it your statement under oath, that Mr. Dupont did not tell you to hand these letters to Miss Larde for the purpose of getting her baggage through without examination—on oath?—A. There is no question about that.

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Mr. Wilson in his evidence stated that Moses Aziz was a persistent violator of the law.

Honourable Mr. Boivin voluntarily appeared before the Committee and gave evidence (see Minutes of Evidence, Volume 37, page 1406). The evidence of the Honourable Minister, and his replies on cross-examination are attached hereto in full as every statement must be read and weighed.

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The above is a complete record of this case and the evidence of the Minister as to his reasons for deferring the issue of a warrant of commitment against Aziz.

The defence of the Honourable Minister is briefly, as follows:

Although he was sworn in as Minister on the 5th. day of September, 1925. he only took over the administration of his Department on the 31st. day of October, 1925. During this period the Honourable Mr. Cardin was acting Minister, but the presence of Honourable Mr. Boivin was required in Ottawa on two or three occasions for Cabinet Council meetings. In the evenings of these visits to Ottawa, the Honourable Mr. Boivin states that he did attend at his office in the Department of Customs and Excise for the purposes only of signing routine reports which had been prepared in his Department. On the evening of the 28th. or 29th. of September, the letter of Mr. Robichaud.M.P. dated September 21, 1925, was laid before the Minister, by the Secretary, Mr. Ide. The Minister had no time to go through this file and on being informed by the Secretary that the former Minister, Hon. Mr. Bureau had promised a re-valuation of the seizure in this case, and had wired that a re-valuation was being made, and on learning from Mr. Ide the said re-valuation had not been made, the Minister without in any way looking into the other facts on file in this case wrote his letter of the 29th. of September, and had his Secretary wire that execution of warrant of commitment be stayed pending investigation.

The file itself and the facts therein were never properly before the Minister until shortly after he took over his duties of office on the 31st. day of October, 1925. The Honourable Minister after a review of all the facts wrote Mr. Robichaud, M.P. on the 18th. day of November, 1925, and the following is an extract from his letter.

"I have examined the case with care, and I

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can find no reason for which the imposed sentence should not be executed, but I will keep the matter in suspense until I get a reply from you in the event of you having other reports to make to me." The officers of the Department contend that the efforts made to prevent smuggling of liquors will be much lessened if this man is let go without further punishment.

On receipt of a letter from Mr. Wilson, dated 16th. December, 1925, for instructions, the Honourable Mr. Boivin attaches a note to the file that he had agreed to see Mr. Robichaud before giving orders to execute the warrant. This note is dated the 17th day of December, 1925.

We find from an examination of the evidence of the Honourable Mr. Boivin contained in volume 5, a copy of which is attached hereto, that the Honourable Minister, immediately after taking over the administration of the Department of Customs from the then acting Minister, the Honourable Mr. Cardin, had an interview with the Honourable Mr. Robb, the then Minister of Finance, and advised him of certain rummours which had reached the Honourable Mr. Boivin during the general election campaign. An investigation was decided on between the two Ministers as necessary, and the Honourable Mr. Boivin enquired of the Minister of Finance, as to who would be a fit and proper person to make this investigation. The Minister of Finance gave the name of the investigation agent for that Department, Inspector Walter Duncan, who had always given complete satisfaction. Inspector Duncan had investigations in hand for the Department of Finance but as soon as the same was completed, he would be sent to the Honourable Mr. Boivin.

Inspector Duncan came to the office of the Honourable Mr. Boivin on or about the 15th. day of November, undertook to make an investigation for the Department of Customs as soon as he had terminated his work.

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and would then proceed to Montreal. This investigation, the evidence shows took place,the first witness being examined December 1st.. an interim report was made following a verbal report to the Honourable Mr. Boivin, a meeting of Cabinet Council was called thereon, and Bisaillon was dismissed.

The record clearly shows that the Honourable Mr. Boivin at the end of the month of October, 1925, took over the administration of a Department against which there were strong rumours of dissatisfaction, and immediately started in to clear up and clean up the whole unpleasant situation. On page 85, we find the instructions of the Minister to Inspector Duncan were to make the investigation as thorough as he could and to spare no man no matter what might be his rank in the service of the Department, and this is corroborated in the report of Inspector Duncan himself.

It is only fair to the Honourable Mr. Boivin that the House judge him on his record, and it is impossible for the House to say that this Minister was not only willing to undertake this difficult task of cleaning up a very bad situation, but took quick and prompt steps to see that this was done.

One must realize that at this time the Minister was fairly well occupied with consultations with the officials of his Department at Ottawa, and with plans for an investigation ofsall conditions both in the Inside and the Outside Services of the Department.

The Minister maintains in evidence that in delaying the warrant of commitment in the Aziz case, he did so without knowledge of the facts, and on the belief that it already had been stood by a former Minister. The Minister's whole record, however, must be considered, and it cannot be shown that the Minister was prepared to spare any person, much less, one Aziz, in cleaning up the Customs Department, and the question of smuggling.

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letter Nov. 20. - 24. C.M.A. formed to assist Customs in finding out amount smuggled. Law weak. See memo herein
Aug 6, 1924 - Deputation meets Committee of Cabinet.
Saturday night - memo Nov. 22 - Memo sent to Ministers
Dec 16, 1924 -

C 50499

Negotiations U.S. treaties

COMMERCIAL PROTECTIVE ASSOCIATION

Ref Opium Feb 5.

Letter, February 4

Mentions as result of deputation which waited on Government Association was formed. "Pleased to say that both the Minister and Deputy Minister of Customs have welcomed our co-operation and have facilitated in every possible way the investigations we have made into the smuggling problem."

Complains of smuggling not being an indictable offence - but departmentally by Minister.

Suggest deal with cases by Civil Courts.

Commercial Smuggling punishable by imprisonement.

Increase penalties.

Preventive Service inadequate.

"We believe the only solution of the problem will be found in drastic punishment for smugglers when caught"and other changes in law recommended.

Suggests "Instituting the required departmental changes and submitting to Parliament Bills providing for necessary legislative enactment - ~~if~~, if the Government is not satisfied as to the necessity of action and the action which should be taken - a Parliamentary Committee should be appointed.

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February 21 — Acquittal by Courts of J. E. A. Bisaillon, Chief Preventive Officer.

You should be in possession of certain information we have.

Wishes to make definite suggestions.

If wish to discuss matter glad to make appointment.

February 26 — Open fight with Minister of Customs at once over statement in House of Commons.

Mentions four months' investigation by a staff of trained criminal investigators.

Says "With necessary amendments to the Act ninety per cent of smuggling could ultimately be prevented."

Mentions - Yesterday had taken up case of Bisaillon with Minister of Customs and quotes reports from anonymous source. Mentions statements he wished to lay before Minister - an impertinent letter.

"If the statement of the Minister as quoted above is to be regarded as I believe it will be regarded by those interested, as a statement of the Government's attitude, we should be glad to know it at an early date."

.....

"If, therefore, we have made an error in assuming that no further action will be taken, we would appreciate greatly some intimation to this effect."

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February 26 — Concludes: "If you desire to make an appointment to discuss this matter either with myself personally or with the members of the Executive Committee of this Association, we are at your service."

Answered by personal interview (see letter March 13)

March 13 — Letter says: "In further reference to your suggestion that we should put before the Committee of the Cabinet concrete suggestions as to the amendments to the Customs Act dealing with the matter of smuggling.....we are prepared to do this."

"If agreeable.....have Mr. N.D.McCormick accompany me as a technical adviser.....now employed by the Canadian Manufacturers' Association - was for many years in the Customs Department, greater part of time in Preventive Service and I believe...has as complete a knowledge of the Customs Act as almost anyone in Canada."

Encloses resolution - (March 12) Annual Meeting of the Canadian Association of Garment Makers "which you note expresses appreciation of the efforts already made by the Government to prevent this traffic."

Resolution refers to "the only satisfactory method" .. changes in Customs Act.

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C 50502

-A-

Monday March 16 - last spoke at Office offered to appoint Royal Commission to investigate smuggling frauds if he named definite charges in meeting on what communism could do and (over)

March 20 — Refers to interviews Monday last and says:

Re J.E.A.Bisaillon

"My understanding was that if this Association or any individual was prepared to make definite charges against the above Customs Officer, you would appoint a Royal Commission to investigate such charges."

"My further understanding was that lacking such definite charges no action would be taken."

Letter goes on with more generalities.

Note: This letter was acknowledged by Clerk of Privy Council on 16th April, disclosing that matter was one of which Council was taking note, and that Council agreed to Royal Commission.

April 8 — begins - "I beg to enclose herewith a memorandum covering proposed amendments to the Customs Act, as recently discussed with you."

object -

to increase penalties.

smuggling goods over $100. - an indictable offence punishable by jail sentence.

"16,000 miles of border or coast line along practically all of which smugglers by the hundreds of thousands are endeavouring to evade the laws of the country, creates a

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He was hesitant about stepping where I feel it of his saying he would be satisfied if man to station were dismissed, & said I would like to give him a chance to resign or would proceed next session - & perhaps second Bolshevik bill amending Criminal Law to make whosoever smuggling punishable by imprisonment.

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situation entirely unprecedented in the history of the world." "After months of investigation by trained investigators -------- the only successful way in which this traffic can be discouraged is by the imposition of the most severe penalties."

Note: This letter was acknowledged by Clerk of Privy Council on April 16 and statement made "that matter therein referred to is now receiving the attention of the Cabinet."

Also:

On April 17 (next day) letter sent to Farrow by Prime Minister himself for comment and letter to be sent to Minister of Justice by whose Department, as agreed by Council, the necessary legislation will be drafted.

May 3 — Graham Spoke to me re P.C. - refers to Bureau's illness — intention to get Special Franchise Officers also intention in drafting legislation

May 6 Letter refers to proposed legislation offering to get support for same,

Also:

May 20 Letter from Farrow to Prime Minister himself returning Sparks' letter of April 8 - mentioning amendments had been discussed with Mr. Sparks, and mentioning Sparks given his consent to an alternative draft Bill.

May 30 Mr. J. E. A. Bisaillon - encloses extracts of evidence, etc. and says Bisaillon evidently committing

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perjury. Still generalities.

July 22 Asks for opportunity to discuss re smuggling and protection.

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C 50506

PRIME MINISTER'S OFFICE

MEMORANDUM

Feb 28. Sub committee Council office
Graham, Donald Kerr
Lapoint Hemmet Sibl
March 16, Interim meet Graham
March 20 = Final meeting
on 3rd March (Cont'd)
Buriau ill
March 25th commencement in House
by Graham that
Ministry intended introduce legis

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C 50507

Reference re Smyth

Jany 30

Feb 28

March 3 - Promised Copies
to Hoyle

Graham

Bureau abroad
from Hoyle

March 13. - Bureau away
ill

March 16 - Offered Hoyle
Royal Commission

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C 50508

Moved by Mr. Boivin
Seconded by Mr. Cardin

That a Special Committee of this House, consisting of nine members, be appointed forthwith to investigate the administration of the Department of Customs and Excise and alleged serious losses to the Public treasury because of inefficiency or corruption on the part of officers of the Department and others, and that such investigation extend back over such period of time as the Committee may decide and have regard to all matters affecting the prevention of smuggling, the prosecution of offenders, the seizure, storage and disposal of smuggled goods, or goods seized for purposes of excise or other taxes, the appraisal of goods for revenue purposes, the collection of customs and excise duties, the knowledge of ministers or officials of offences or irregularities affecting the public service in said department, the efficiency of the administration thereof, and the necessity of safeguarding the public revenue and the public treasury, and that such Committee have power to send for persons, papers and records, to adjourn from place to place, to print the evidence taken before the Committee, and to report from time to time.

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Moved by Mr. Stevens, seconded by Mr. Doucet:

That the Report be not now adopted, but that it be referred back to the special committee with instructions to add thereto the following clauses as sub-clauses to paragraph six:

"The evidence further discloses (1) that ministerial action has been influenced by the improper pressure of political associates and friends of the minister, or acting minister, administering the department, resulting in the suspension and in some instances the abandonment of prosecutions against those charged with violation of the statutes, and in the loss of revenues to the country. (2) Moreover, successful appeals have been made to the minister and acting minister administering the department to improperly interfere with the course of justice between the conviction of the offenders and the execution of the judgment thereon. (3) The Prime Minister and the government had knowledge for some considerable time of the rapid degeneration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is wholly indefensible. (4) The conduct of the present minister of the department, the Honourable George W. Boivin, in the case of Moses Aziz is utterly unjustifiable.

(5) Your Committee deplores the practice, as revealed by the evidence, of certain men influential in public life to direct appeals, to the minister to relax and depart from the proper administration of his department for reasons of political expediency.

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Your committee is of the opinion thatthis practice is detrimental to the best interests of the country and prejudicial to the administration of the Department.

"And that the committee for such purpose be revived."

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Customs Investigation - Collateral

C 50511

MOVED by Mr. SECONDED by Mr.

THAT the amendment as amended be further amended by striking therefrom the following words:-

"The evidence further discloses that Ministerial action has been influenced by the improper pressure of political associates and friends of the Minister, or Acting Minister administering the Department, resulting in the suspension and in some instances the abandonment of prosecutions against those charged with violation of the Statutes, and in the loss of revenue to the country. Moreover successful appeals have been made to the Minister and Acting Minister administering the department to improperly interfere with the course of justice between the conviction of the offenders and the execution of judgment thereon. The Prime Minister and the Government had knowledge for some considerable time of the rapid degeneration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is wholly indefensible. The conduct of the present Minister of the department, the Honourable George H. Boivin, in the caseof Moses Aziz is utterly unjustifiable".

(precise language cannot be changed)

By addind after the words "for reasons of political expediency" at the end of the second paragraph thereof, the following words "or personal advantage".

And by adding to the proposed addition to paragraph four of the report of the committee, after the words "and to prosecute

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all offenders" the following words: "and to examine former Ministers of the Department of Customs and Excise with respect to any sut matters which in the opinion of the Commission may reflect on their administration;

The said Commission to be composed of three Judges, one to be nominated by the Prime Minister of Canada; one by the Right Honourable the Leader of the Opposition; and one by the Honourable the Leader of the Progressive Party, said Commission to have all the powers conferred upon such Commissioners under the Public Enquiries Act;

The said Commission to have power to make findings and recommendations, and to report the same to Parliament at the opening of the next session together with the evidence taken before said Commission".

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C 50513

Cowz

January 28, 1925

Hon. Jacques Bureau, M.P.:

Referred, by direction of the Prime Minister, to the Minister of Customs and Excise, for consideration.

(Sgd.) F. A. McGregor

Private Secretary.

Ottawa, January 28, 1925

Reverend H. R. Grant, D.D.,
General Secretary,
The Social Service Council of Nova Scotia,
New Glasgow, Nova Scotia.

Dear Sir:

I am directed by the Prime Minister to acknowledge the receipt of your letter of the 22nd instant, enclosing a resolution adopted by the Halifax Social Service Council, urging the strict enforcement of the Temperance Act by the Federal authorities, in order to prevent smuggling operations off the coast of Nova Scotia.

Mr. King will take advantage of the first favourable opportunity to discuss your representations with his colleague, the Honourable Jacques Bureau, Minister of Customs and Excise. He thinks it is only fair to point out, however, that there has been of late a great deal of misrepresentation in the Press, with respect to the responsibilities and obligations of the Dominion and Provincial Governments respectively, in the enactment and enforcement of laws that have to do with the manufacture and sale of intoxicants.

Yours faithfully,

(Sgd.) F. A. McGregor

Private Secretary.

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CANADA

C 50514

Copy

Copy

CALL FOR CUSTOMS INVESTIGATION

WHEREAS wines and liquors have been exported from Customs warehouses in Halifax on schooners and small steamers which have been clearing from this Port for foreign Ports, with cargoes consigned to such Ports, and returning within two or three weeks to Halifax or other Nova Scotia Ports either empty or minus a substantial portion of their cargo;

AND WHEREAS upon investigation it has been ascertained that certain of said vessels have not visited the Ports for which they have cleared between the time of clearing from Halifax and the return of said vessels;

AND WHEREAS under the provisions of the Customs Act in the case of exportation of wines and spiritous liquors from a Customs Warehouse by sea a bond must be furnished to the Minister of Customs in double the duties of importation on such goods, that the same shall, when the entry outwards is for exportation by sea be actually exported to the place provided bor in said entry;

AND WHEREAS the Customs Act further provides that within the period appointed in the entry for exportation of such goods a Certificate of Landing of some principal Officer of Customs or of Colonial Revenue at the place to which the goods were exported, or of a British Consul resident at a foreign Port, must be produced to the Collector of Customs at the Port for Entry outwards;

AND WHEREAS from the facts as they appear it seems to be probable that such Certificates of Landing as are produced to the Customs authorities as aforesaid may be either forged or improperly delivered by the vessels in question;

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THEREFORE BE IT RESOLVED that the Halifax Social Service Council do respectfully request the Honourable the Minister of Customs, and the Collector of Customs in the Port of Halifax, to conduct an investigation for the purpose of ascertaining if the said Certificates are genuine or are properly given, and if the goods mentioned therein have in reality been landed at the Port of destination of the same;

AND BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the Minister of Customs at Ottawa, the Collector of Customs at the Port of Halifax, and to the Press.

Halifax 19th, January, 1925

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CANADA

C 50516

[redacted]

Copy

MINISTER OF CUSTOMS AND EXCISE
Canada

Trois-Rivieres, 10th February, 1925

Right Honourable W. L. Mackenzie King,
Prime Minister of Canada,
Ottawa, Ont.

My dear Prime Minister:

Re your reference to me of a letter signed by R. W. Ross, President and H. R. Grant, General Secretary, the Social Service Council of Nova Scotia, addressed to you on the 22nd of January, and enclosing copy of a resolution passed at a meeting of the Presbytery of Lunenburg and Yarmouth, on the 10th of December, 1924.

This is sent to me at Trois-Rivieres and I must apologise for not taking it up sooner, the reason being that I was absent from Ottawa on account of illness, as I had occasion to report.

A. The entry and clearance of vessels at Canadian ports is a matter of law. There is no machinery provided to compel a vessel to proceed directly to the port for which she clears.

B. A vessel may clear from a Canadian port to Nassau or any other port, and she may return to the port of clearance within a few days not having proceeded to her destination, but satisfactorily accounting to the collector for the disposition, if any, made of the cargo with which she cleared. Under such circumstances, the collector could not refuse another clearance to the vessel unless, of course, it was charged that the vessel was being used for the smuggling of liquor or other merchandise into Canada.

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C50517

C. I take strong exception to the nasty insinuation made in the resolution, to wit:

"This practice of giving official sanction to voyages "known or suspected to be merely colorable or made with evidently "sinister purposes of clearing ships which have not fulfilled "formerly declared voyages when subsequent events demonstrate "that they were never intended to be fulfilled, we can only "describe as culpably lax and capable of the most dangerous abuse "and a real reproach against our Canadian merchant shipping."

It is quite evident that the gentlemen who passed the resolution were not aware of the fact that the law must be administered by the Department as passed by Parliament, and if any amendments to the law are required to meet conditions that may have arisen since the law came into force, then Parliament alone has the power to pass such amendments.

Allow me to say, Mr. Prime-Minister, that I have time and again asked these organizations and gentlemen to give me specific cases to allow me to proceed against the officers who were relaxed in their duty and the only answer I ever got was that they were to complain to you, that I was not acting, and that the letters you received were generally equivocal, treating the whole question of prohibition theorically and abstaining upon any specific case upon which I could act.

If you desire me to get in touch with Mr. Grant, I am willing.

Yours truly,

(Sgd.) Jacques Bureau

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C 50518

Copy

PROVINCE OF NOVA SCOTIA

OFFICE OF THE PREMIER

Halifax, 17th February, 1925

Dear Sir:

I have received from the General Secretary of the Social Service Council of Nova Scotia a copy of a communication which has been forwarded to you, in respect of a Resolution passed by the said Council on the 19th of January last.

I desire to impress upon you the importance of the difficulties which confront the Social Service Council in its efforts. The statements contained in the Resolution are unfortunately only too true.

The Government of Nova Scotia would be very glad to be advised from time to time what measures are being taken along the lines suggested, and I need not add that any steps which may be taken to remedy the matters complained of will have our cordial support.

Yours sincerely,

(Sgd.) E. H. Armstrong

Premier.

Rt. Honourable W. L. Mackenzie King,
Prime Minister,
Ottawa, Canada.

W.L. Mackenzie King Papers
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C 50519

Copy

Ottawa, 4th April, 1925

My dear Mr. Armstrong:

In your letter of February 17th, referring to a communication from the Social Service Council of Nova Scotia with reference to the clearance of vessels carrying liquor shipments from Nova Scotia ports, you express the desire to be advised from time to time of what measures have been taken along the lines suggested.

The question was at once taken up with the Department of Customs and Excise. Correspondence with United States consuls and other officials followed. On February 25rd, instructions were issued to the Collector of Customs at Halifax to notify all exporters of liquor from Customs warehouses at his port that any landing certificates presented for cancellation of bonds given in respect of such exports would not be acted upon until an investigation had taken place as to the genuineness of such landing certificates. The Collector was instructed to forward to the Department representative certificates from various foreign ports which had already been received and acted upon, and to forward also as received by him afterwards any landing certificates presented, so that an investigation might be made.

On March 31st, the Department of Customs received from the Collector at Halifax the first consignment of certificates which had not already been acted upon. Investigation is being held into their genuineness. As this will require communication with foreign countries through the British Foreign Office, several weeks will be required to complete the enquiry. I shall have pleasure in informing you further when notified of the results.

I appreciate your writing to me on this matter, and shall have pleasure at any time in discussing this or any other public matter particularly affecting the Province of Nova Scotia.

With all good wishes, I am,

Yours sincerely,
(Sgd.) W. L. Mackenzie King.

The Hon. E. H. Armstrong,
The Premier of Nova Scotia,
Halifax, Nova Scotia.

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C 50520

Copy

Ottawa, 4th April, 1925

Dear Sir:

On January 28th acknowledgment was made of your letter of January 22nd, enclosing a resolution of the Social Service Council with reference to charges of irregularities in connection with liquor landing certificates.

The matter was at once taken up with the Minister of Customs and Excise. Correspondence followed with United States consuls and other foreign representatives at various points. On february 23rd the Department of Customs and Excise issued instructions to the Collector at Halifax to notify all exporters of liquor from Customs warehouses at his port that any landing certificates presented for cancellation of bonds given in respect of such exports, would not be acted upon until an investigation had taken place as to their genuineness. The Collector was instructed to forward to the Department of Customs representative certificates from various foreign ports which had already been received and acted upon, and to forward also as received landing certificates afterwards presented.

The Department of Customs has recently received from the Collector at Halifax a set of landing certificates in connection with shipments of liquor to southern ports. These are being investigated. As the investigation in these cases involves communication with foreign countries through the medium of the British Foreign Office, it will probably be some weeks before the enquiry is concluded. I shall have pleasure in advising you of the results when conclusion is reached.

Yours sincerely,

(Sgd.) W. L. Mackenzie King.

The Rev. H. R. Grant, D.D.,
General Secretary, The Social Service of Nova Scotia,
New Glasgow,
Nova Scotia.

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C 50521

COPY

OFFICE OF

THE UNDER-SECRETARY OF STATE

FOR EXTERNAL AFFAIRS

CANADA

Ottawa, 8th April, 1925

Dear Mr. Moyer:

I am enclosing herewith, for your files, a

31 March, 1925 copy of a letter from Mr. C. P. Blair on the subject of irregularities in liquor shipments from Halifax.

Yours sincerely,

(Sgd.) O. D. Skelton

L. C. Moyer, Esquire,
Private Secretary to the Prime Minister,
Ottawa.

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C 50522

Copy.

COPY.

DEPARTMENT OF CUSTOMS AND EXCISE

Deputy Minister of Customs
and Excise
(R.R.Farrow)
File No. 123355

Ottawa, 31st March, 1925

Dear Doctor Skelton:

I beg to acknowledge receipt of your letter of the 31th instant, alluding to communications received by the Prime Minister from The Social Service Council of Nova Scotia, charging irregularities in connection with landing certificates issued in respect of liquor cargoes cleared from Halifax.

The Secretary of the Halifax Social Service Council sent to the Honourable the Minister of Customs & Excise a copy of a Resolution relating to this same subject, his letter being dated 20th January last.

Subsequently, some correspondence took place between the United States Consul at Halifax and the Collector of Customs & Excise at Halifax, and afterwards between the Consul at Halifax and the Consul General of the United States here and this Department, relating to this matter, the result being that on the 23rd February last instructions were sent to the Collector at Halifax to notify all exporters of liquor from Customs warehouses at this port, that any landing certificates presented for cancellation of bonds given in respect of such exports would not be acted upon until an investigation had taken place as to the genuineness of such landing certificates, and the Collector was asked to forward to this Department a representative lot of landing certificates from various foreign ports which had already been received by him and acted upon, and to forward also as received by him afterwards any landing certificates presented so that an investigation might be made.

There has just been received today from the Collector at Halifax the first lot of such landing certificates, being in connection with shipments of liquor by the vessels "McLean Clan", "Katherine M. Moulton" and "Abundance", from his port to Guanago, Honduras. These will be investigated before the bonds are cancelled and I presume that the only method of investigation will be by the British Foreign Office through your Department, and this will no doubt take several weeks for completion.

Yours sincerely,

(Sgd.) CHARLES P. BLAIR
General Executive Assistant.

Dr. O. D. Skelton,
Counsellor, Dept. of External Affairs,
Ottawa.

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C 50523

Copy

THE SOCIAL SERVICE COUNCIL OF NOVA SCOTIA

New Glasgow, N.S.,
April 24, 1925

Hon. W. L. Mackenzie King,
Prime Minister,
Ottawa, Can.

Dear Sir:

Your favor of April 4th with reference to resolution of Social Service Council forwarded on January 22nd. In behalf of the Social Service Council permit me to express our gratification that action is being taken to prevent violation of the Customs and Excise Laws.

Yours sincerely,

(Sgd.) H. R. Grant

General Secretary.

Per C.J.F.

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C 50524

(COPY)

THE SOCIAL SERVICE COUNCIL OF NOVA SCOTIA

New Glasgow, N.S., May 22, 1925

Hon. W.L.Mackenzie King,
Prime Minister,
Ottawa, Can.

Dear Sir:

I herewith submit copies of letters to Hon. H. H. Armstrong and to the Minister of Customs.

Yours sincerely,

(SGD.) H. R. GRANT

General Secretary.

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POOR
COPY

C 50525

(COPY)

New Glasgow, N.S., May 22,1925

The Hon. E.N.Armstrong,
Premier and Provincial Secretary,
Halifax,N.S.

Dear Mr. Armstrong:

A seizure of liquor has been recently made by Sergeant Blakeney of the R.C.M.P., consisting of 199 cases of liquor. The cases were marked F.C.Co., Halifax, F.C.I.Co., Halifax, and Franco-Canadian Import Company, Halifax. This liquor was found at Shad Bay in the County of Halifax.

The Franco-Canadian Import Company received licenses from the Department of Customs, with the consent of the Provincial Government as given by Inspector-in-Chief, J. A. Knight, on June , 1923, January 23, March 18 and April 22, 1924, to receive and warehouse liquor in bond for export. As this seizure is evidence that liquor imported by the Franco-Canadian Import Company has been stored at Shad Bay in violation of the law we request that your government co-operate with the Dominion Government in having a thorough investigation made with respect to the manner in which the Franco-Canadian Company observes the Customs regulations.

In behalf of the Nova Scotia Social Service Council.

General Secretary.

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POOR
COPY

C 50526

(COPY)

New Glasgow, N.S., May 22, 1925

The Hon. Jacques Bureau,
Minister of Customs,
Ottawa, Ont.

Dear Sir:

A seizure of liquor has been recently made by Sergeant Blakeney of the R. C. M.P., consisting of 199 cases of liquor. The cases were marked F.C.Co., Halifax, F.C.I.Co., Halifax, and Franco-Canadian Import Company, Halifax. This liquor was found at Shad Bay in the County of Halifax.

The Franco-Canadian Import Company received licenses from the Department of Customs, with the consent of the Provincial Government as given by Inspector-in-Chief, J.A.Knight, on June, 1923, January 22, March 18 and April 22, 1924, to receive and warehouse liquor in bond for export. As this seizure is evidence that liquor imported by the Franco-Canadian Import Company has been stored at Shad Bay in violation of the law we request that a thorough investigation be made by the Department of Customs with respect to the manner in which the Franco-Canadian Company observes the Custom regulations.

In behalf of the Nova Scotia Social Service Council.

General Secretary.

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POOR
COPY

C 50527

(COPY)

Ottawa, May 26, 1925

Reverend H. R. Grant, D.D.,
New Glasgow,
Nova Scotia.

Dear Sir:

The Prime Minister has asked me to acknowledge the receipt of your letter of May 22, enclosing copies of letters forwarded by the Social Service Council of Nova Scotia to the Honourable Jacques Bureau and the Honourable H. H. Armstrong, with reference to the illegal storing of liquor at Shad Bay by the Franco-Canadian Import Company.

Mr. King wishes me to thank you for furnishing him with copies of these letters and to assure you that he will take an early opportunity of discussing the matter with his colleagues.

Yours faithfully,

(Sgd.) L. C. MOYER

Private Secretary.

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POOR
COPY

C 50528

(COPY)

June 30, 1925

[redacted]

Referred, by direction
of the Prime Minister, to the
Acting Minister of Customs and
Excise, for his consideration.

Private Secretary.

Ottawa, June 30, 1925

H. H. Grant, Esq.,
General Secretary,
Nova Scotia Social Service Council,
New Glasgow, Nova Scotia.

Dear Sir:

The Prime Minister has asked me to let you know that he has duly received your telegram relating to the reported intention of a Nova Scotia Company to apply for a brewery license in Halifax.

By Mr. King's direction your representations have been referred for consideration and reply to the Honourable P.J.A.Cardin, who, Mr. King understands, has already had some correspondence with you regarding the subject to which your telegram relates.

Yours faithfully,

(SGD.) L. C. MOYER

Private Secretary.

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C 50529

(COPY)

July 13, 1925

Hon.P.J.A.Cardin, M.P.

Referred, by direction of the Prime Minister, to the Acting Minister of Customs and Excise, for his consideration.

Private Secretary.

Ottawa, July 13, 1925

Reverend H. H. Grant, D.D.,
General Secretary,
The Social Service Council of Nova Scotia,
New Glasgow, Nova Scotia.

Dear Sir:

In the Prime Minister's absence from Ottawa I have to-day received and transmitted for consideration to the Honourable P.J.A.Cardin, Acting Minister of Customs and Excise, your letter of the 8th instant, relating to a certain application for a brewery license in Halifax.

Yours faithfully,

(SGD.) L. C. MOYER

Private Secretary.

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C 50530

(COPY)

THE SOCIAL SERVICE COUNCIL OF NOVA SCOTIA

New Glasgow, N.S., August 18, 1925

The Hon. W.L.Mackenzie King,
Prime Minister,
Ottawa, Can.

Dear Sir:

In your letter dated April 4th, with reference to an investigation by the Department of Customs concerning the export of liquor from Customs Warehouse in Halifax, we were advised that it would be some weeks before the enquiry would be completed. May I ask if the work has yet been overtaken, and if so, with what result.

In behalf of the Social Service Council.

Yours sincerely,

(SGD.) H. R. GRANT

General Secretary.

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COPY

C 50531

Office of the Under-Secretary of State for External Affairs,

Canada.

Ottawa, 2nd September, 1925

My dear Mr. Moyer,

26 August.1925

I enclose copy of a letter from Mr. Blair, on the subject of liquor shipments from Halifax, in answer to the question raised by Dr. H. R. Grant in his letter of August 18th.

Yours sincerely,

(Sgd) O. D. Skelton,

L. C. Moyer, Esquire,
Private Secretary to the Prime Minister,
Ottawa.

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C 50532

COPY

Copy E.T. File No.124814.

DEPARTMENT OF CUSTOMS AND EXCISE

Ottawa, 26th August, 1925
Canada.

Dear Dr. Skelton:

I beg to acknowledge receipt of your letter of the 21st instant, relating to inquiry made of the Prime Minister by the Secretary of the Halifax Social Service Council, as to irregularities in connection with landing certificates issued covering liquor cargoes cleared from Halifax, and referring to subsequent correspondence with regard thereto.

I note that the Prime Minister is now in receipt of a further inquiry from the same source and would like to be advised what answer to return.

Following letter to you dated 31st March, 1925, there was sent to you on the 16th April, 1925, a number of foreign Customs landing certificates in respect of liquors shipped from Halifax, N.S., to Guanaja, Honduras, by vessels named therein, viz:, "Abundance," "Catherine M. Moulton," "McLean Glen," "Horse," and "John Wakely," in order that an investigation might be directed through the proper channel to ascertain whether the certificates were genuine in the sense of being actually issued by the party purporting to issue the same, and also if the certificates were true in fact that the goods were actually loaded at the place indicated.

In subsequent reference from your department the progress of this investigation has been reported and we have now your reference dated 11th August, being confidential despatch from the Secretary of State for Dominion Affairs, dated Downing Street 27th July, transmitting a copy of a despatch from His Majesty's Consul at Puerto Cortes, in which it is stated that the certificates in question are genuine in the sense that they are made out on the legal stamped paper of Honduras and bear the Government Seal of the Coast Guard Service stationed at Guanaja, and also that the signature is authentic, but the Consul states that he is nevertheless of the opinion that these goods were intended to be smuggled into the United States and in all likelihood were never landed at Guanaja. He intimates that a further report will be forwarded after he has obtained some definite information with regard to Adan Dias the officer who signs the certificates.

In these circumstances we are still holding uncancelled bonds covering shipments by these vessels where such bonds had not been cancelled before the matter was reported.

The Department is still adhering to the attitude set out in the letter of the 31st March to you and is not cancelling any bonds given respecting shipments of liquor ex-warehouse at Halifax until an opportunity has been given to investigate the genuineness of the landing certificates presented.

Yours truly,
(SGD.) CHARLES P. BLAIR
General Executive Assistant.

Dr. O. D. Skelton,
Under-Secretary of State for
External Affairs,
O T T A W A.

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C 50533

COPY

Ottawa, 2nd September, 1925

Dear Sir,

I am in receipt of your letter of August 18th asking as to the results of enquiries set on foot by the Department of Customs concerning the export of certain liquor cargoes from Halifax.

In April, a number of foreign Customs landing certificates issued in respect of liquors shipped from Halifax, Nova Scotia, to Guanaja, Honduras, by certain vessels - "Abundance", "Catherine E. Moulton", "McLean Clan", "Morso", and "Jean Wakely" - were forwarded through the Department of External Affairs to the British Foreign Office with a request that enquiry should be made through British diplomatic or consular agents to ascertain whether the certificates had actually been issued by the parties purporting to do so, and whether the goods covered had actually been landed at the places indicated.

On August 11th, a reply was received from the Secretary of State for Dominion Affairs, transmitting copy of a despatch from His Majesty's Consul at Puerto Cortes. It is reported that the certificates in question are genuine in the sense that they are made out on legal stamped paper and bear the Government Seal, and that the signature is authentic, but the Consul adds that he is doubtful whether, as a matter of fact, the goods were landed at Guanaja. He is continuing his investigation, and will make a further report when he has obtained some definite information in regard to the officer who signs the certificates.

Under these circumstances, the Department of Customs and Excise is still holding uncancelled all bonds covering shipments of liquor ex-warehouse at Halifax until an opportunity

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has been given to investigate the genuineness of the landing certificate presented.

I shall have pleasure in informing you further when a final report is received.

Yours sincerely,

(Sgd) W. L. Mackenzie King.

The Rev. H. H. Grant, D.D.,
General Secretary,
The Social Service Council of Nova Scotia,
New Glasgow,
Nova Scotia.

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C 50535

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Ottawa, 22nd December, 1925

My dear Mr. Blair,

14th Dec. 1925

I enclose copy of a letter which has been sent to the Prime Minister by Dr. H. R. Grant, General Secretary of the Social Service Council of Nova Scotia, with further reference to the representations made by the Council on the subject of the export of liquor cargoes from Halifax and provision for additional coastal revenue service.

I understand that your Department has had the matter under consideration and I should be obliged if you could suggest an answer or a course of action.

It may be that it would be considered advisable to send copy of all the correspondence on the subject to the Minister of Customs and Excise.

Yours sincerely,

O.D.Skelton.

C. P. Blair, Esquire,
General Executive Assistant,
Customs and Excise Department,
Connaught Building,
Ottawa.

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C 50536

COPY

THE SOCIAL SERVICE COUNCIL OF NOVA SCOTIA

New Glasgow, N.S., Dec. 14, 1925

Hon. W. L. Mackenzie King,
Ottawa, Ont.

Dear Sir:

On January 22nd of this year our Social Service Council communicated with your Government respecting two matters:—

First — The lack of adequate provision by your Government and the Department of Customs to combat smuggling operations along the coast of the province.

Second — The export of liquor cargoes from Halifax.

Acknowledgment of our letter was made by you on the 29th of January and we were informed that our representations would be discussed with the Minister of Customs.

We were later informed by letter dated 2nd September that an investigation had been undertaken and was being continued concerning the export of liquor cargoes from Halifax, and that we might expect a further report. May we ascertain how the question stands at the present time?

In our letter of January 22nd, as above stated, we expressed the view that there was not adequate provision made to combat smuggling operations. No reference was made in your letter of 2nd September to this matter. We had expressed the opinion based on the judgment of Customs officials, who are thoroughly conversant with the situation, that "to deal effectively with smugglers who take cargoes of liquor from Rum-row or elsewhere to our Coast Customs officers should be provided with ten or twelve fifty-foot motor boats with a speed of from eighteen to twenty knots."

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We further requested your Government to consider the necessity of making some ample provision at the then ensuing session of Parliament as would be of avail in suppressing smuggling.

We regret that your Government did not make provision for any increased expenditure to furnish the boats required in order to cope with this illegal traffic.

We again respectfully and urgently press for action respecting these matters at the session of Parliament opening in January 1926.

Yours sincerely,

H.R.Grant

General Secretary,
SOCIAL SERVICE COUNCIL OF NOVA SCOTIA

HRG/F

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DEPARTMENT OF CUSTOMS AND EXCISE

Ottawa, 4th January, 1926

Dr. O. D. Skelton,
Secretary of State for External Affairs,
OTTAWA.

Dear Sir:

I have before me your letter of the 22nd ultimo addressed to Mr. Blair and enclosing copy of letter from Dr. H. R.Grant, General Secretary of the Social Service Council of Nova Scotia, to the Prime Minister, dated 14th December, relating to provision for prevention of smuggling on Nova Scotia Coast and export of liquor cargoes from Halifax.

First. Provision for prevention of smuggling.

There was an appropriation made at last session of Parliament to cover additional expense in this regard. Active carrying out of these proposals was delayed owing to protracted illness of the Honourable Mr. Bureau, then Minister of Customs and Excise, who was practically absent from his office from January 1925, until September, when for this reason he was compelled to relinquish his portfolio altogether. Elections followed and the present Minister will give the matter his attention as soon as possible. In the meantime we have been doing our utmost with the equipment available. A survey of the situation is being made by the preventive service to ascertain what additional equipment in the way of boats and officers can be profitably employed, and it is hoped that with the opening of coastal navigation the Department will be in a position to much more effectively curb the illegal liquor traffic.

Second. Liquor shipment from Halifax.

The earlier correspondence in this connection referred to shipments of liquor in bond and production of landing

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landing certificates. We still pursue the policy of investigating the genuineness of landing certificates before cancelling bonds. This is known to shippers and the traffic through bonds in Nova Scotia appears to have fallen off greatly. In transit shipments still continue and over these we have limited control. The best we can do is to see that vessels while in port with liquor cargoes are carefully guarded and that the liquors are not landed in Canada.

Yours sincerely,

R. R. Farrow

Deputy Minister.

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landing certificates. We still pursue the policy of investigating the genuineness of landing certificates before cancelling bonds. This is known to shippers and the traffic through bonds in Nova Scotia appears to have fallen off greatly. In transit shipments still continue and over these we have limited control. The best we can do is to see that vessels while in port with liquor cargoes are carefully guarded and that the liquors are not landed in Canada.

Yours sincerely,

R. B. Bennett

Deputy Minister.

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C 50540

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M.

Ottawa, 8th January, 1926

Dear Sir:

File No.
125026

I wish to acknowledge your letter of January 4th, conveying the information asked for on behalf of the Prime Minister regarding provision for prevention of smuggling on the coast of Nova Scotia and the export of liquor cargoes from Halifax. The information has been brought to the Prime Minister's attention.

Yours sincerely,

O.D.Skelton.
Under-Secretary of State for
External Affairs.

R. R. Farrow, Esquire,
The Deputy Minister of Customs
and Excise,
Ottawa.

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C 50541

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Ottawa, 3rd March, 1926

My dear Mr. Grant,

I have had enquiries made as to the points you raise regarding traffic in liquor in the Maritime Provinces.

You ask as to the situation concerning export of liquor cargoes from Halifax. I am advised that the policy of which you were previously informed, of investigating the genuineness of landing certificates before cancelling bonds, is still being pursued by the Department of Customs and Excise. It has come to be realized by shippers that any attempt to evade the law by producing fraudulent landing certificates will be revealed by this investigation, and the traffic in liquor in bond in Nova Scotia appears to have fallen off greatly. In Transit shipments, over which the Department of Customs and Excise has more limited control,

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still continue, but the Department sees that such vessels while in port with liquor cargoes in transit, are carefully guarded, and that the liquors are not landed in Canada. You state further that it is your view that adequate provision has not been made to combat smuggling operations, particularly by the provision of a number of high speed motor boats. You regret further that the Government did not make provision for any increased expenditure for the purpose. As a matter of fact, an appropriation was made at the last session of Parliament to cover additional expenditures for the prevention of smuggling. Some delay in carrying out the complete programme under contemplation was occasioned by the protracted illness of the former Minister of Customs, but the matter is now receiving the active attention of the present Minister. In the meantime I am advised that the Department is doing its utmost with the equipment available. A survey of the situation has been made by the Preventive Service to ascertain what additional equipment in the way of boats and

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officers can be profitably employed, and it is anticipated that with the opening of coastal navigation, the Department will be in a position to curb much more effectively the illegal traffic in liquor.

I have been interested to note that you have recently undertaken an administrative post in connection withthe regulation of the liquor traffic. I should be glad at any time to learn any further conclusions to which you have come as to the situation in this respect.

Yours sincerely,

W.L.Mackenzie King.

The Rev. R. B. Grant, D.D.
General Secretary,
The Social Service Council
of Nova Scotia,
New Glasgow, Nova Scotia.

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The House is of the opinion that immediate steps should be taken to carry out the recommendations of the report subject only to the following modifications:

(1) That with respect ~~to~~ the section 9 which recommends that certain officials should be retired and others dismissed all officials should be treated alike;

(2) That with respect to the section 8 which recommends that the Minister's discretion may be exercised with respect of goods under $200, discretionary power be exercised in the same manner as provided with respect to goods of larger amount, thereby removing all discretionary power from the Minister.

That having regard for the facts disclosed in the evidence it is in the public interest that the investigation commenced by the Special Committee should not be concluded at this time but should be continued in the form of a judicial inquiry to be conducted between the present and the next session of Parliament which will extend the scope of the investigation so as to cover all matters referred to the Committee insofar as they have not been fully reviewed; that in particular the investigation should extend to the important ports of Toronto, Winnipeg, Vancouver, Halifax and St-John; and to such distilleries as the Committee has

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not had time to investigate; that former Ministers of the Department of Customs should be required to appear before such judicial body and testify with respect to any matters concerning their administration upon which the evidence taken before the Special Committee of this House, or the judicial body to be appointed, may appear to reflect. That the said judicial body be required to present its report, together with its findings and recommendations to Parliament for such action as in the circumstances may appear necessary and advisable.

That steps should be taken to bring about the abolition of wholesale liquor warehouses for purposes of export with drastic penalties upon the distilleries for infraction of the law with respect to the export of their products wherever they may be found responsible.

And further this House views with regret that the testimony before the Committee discloses evidence of an attempt on the part of certain of its members on behalf of constituents, clients or others to influence, by personal or political considerations, the Minister of Customs in the exercise of his discretionary powers and desires to record its opinion that action of the kind however occasioned cannot prove other than detrimental to the proper administration of the laws of the country and should be discountenanced in

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every possible way and that in this particular the obligation upon citizens of the country generally is equal in every respect to that imposed by their representatives in Parliament.

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C 50547

That this House concurs in the recommendations of the Special Committee and desires that they be gi en immediate effect; with the exception of the section which recommends that certain officials be retired and others dismissed. This House desires that ~~it~~ all officials mentioned be treated alike.

Further that this House is of the opinion that the investigation while producing useful recommendations for the improvement of the public service failed to deal adequately with the problem because of ~~the~~ various efforts ~~of both political parties~~ to make political capital through the medium of the proceedings of the committee. This House is therefore of the opnion that the whole of the evidence taken and the report of the com mittee should be referred at once to a Judicial Commission outside of party politics in order that the investigation begun by the committee may be completed and parliament fully informed by an indpendent tribunal of all legislative and administrative measures necessary to adequately and efficiently carry out the Customs and Excise laws of the country.

various

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C 50548

MOVED by Mr. SECONDED by Mr.

THAT the amendment as amended be further amended by striking therefrom the following words:-

"The ~~xxxx~~ evidence further discloses that Ministerial action has been influenced by the improper pressure of political associates and friends of the Minister, or Acting Minister administering the department, resulting in the suspension and in some instances the abandonment of prosecutions against those charged with violation of the Statutes, and in the loss of revenue to the country. Moreover successful appeals have been made to the Minister and Acting Minister administering the department to improperly interfere with the course of justice between the conviction of the offenders and the execution of judgment thereon. The Prime Minister and the Government had knowledge for some considerable time of the rapid degeneration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is wholly indefensible. The conduct of the present Minister of the department, the Honourable George H. Boivin, in the case of Moses Aziz is utterly unjustifiable".

And by adding after the words "for reasons of political expediency" at the end of the second paragraph thereof, the following words: "or personal advantage".

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C 50549

That all the words after the word "instructions" in the third line of the amendment be struck out and the following substituted therefor;

1.- To add to Clause 4 the following; Since the enquiry indicates that the smuggling evils are so extensive and their ramifications so far-reaching that only a portion of the illegal practices have been brought to light, your committee recommends the appointment of a judicial commission with full powers to continue and complete investigating the administration of the department of Customs and Excise and to prosecute all offenders.

2.- That the following be added to Clause 6; Your committee deplores the common practice as revealed by the evidence; of members of parliament and others appealing to the minister to relax the regulations of the department for personal advantage or political expediency.

3.- That in Clause 8 all the words after the word "department" in the third line be struck out.

2,4,- That in Clause 13 the name of R.R.Farrow deputy minister of Customs and Excise be added to the list of those who are recommended that their services be dispensed with.

AND THAT the Committee for such purposes be revived.

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That all the words after the word "adopted" in the first line of said amendment be struck out and the following substituted therefor:

"In its entirety, but that a Royal Commission be forthwith appointed to continue the investigation of all matters referred to said Committee [redacted] and to examine former Ministers of the Department of Customs and Excise with respect to any matters which in the opinion of the Commission may reflect on their administration:

That the said Commission be composed of three Judges, one to be nominated by the Prime Minister of Canada; one by the Right Honourable the Leader of the Opposition; and one by the Honourable the Leader of the Progressive Party; said Commission to have all the powers conferred upon such Commissioners under the Public Inquiries Act:

That said Commission have power to make findings and recommendations, and be obliged to report the same to Parliament at the opening of the next session together with the evidence taken before said commission, and that meanwhile so much of the report as is consistent with the foregoing resolution be adopted".

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MOVED by Mr. SECONDED by Mr.

THAT the amendment as amended be further amended by striking therefrom the following words:-

"The ~~xxxx~~ evidence further discloses that Ministerial action has been influenced by the improper pressure of political associates and friends of the Minister, or Acting Minister administering the department, resulting in the suspension and in some instances the abandonment of prosecutions against those charged with violation of the Statutes, and in the loss of revenue to the country. Moreover successful appeals have been made to the Minister and Acting Minister administering the department to improperly interfere with the course of justice between the conviction of the offenders and the execution of judgment thereon. The Prime Minister and the Government had knowledge for some considerable time of the rapid degenraration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is wholly indefensible. The conduct of the present Minister of the department, the Honourable George H. Boivin, in the case of Moses Aziz is utterly unjustifiable".

And by adding after the words "for reasons of political expediency" at the end of the second paragraph thereof, the following words: "or personal advantage".

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That all the words after the word "instructions" in the third line of the amendment be struck out and the following substituted therefor;

1.- To add to Clause 4 the following; Since the enquiry indicates that the smuggling evils are so extensive and their ramifications so far-reaching that only a portion of the illegal practices have been brought to light, your committee recommends the appointment of a judicial commission with full powers to continue and complete investigating the administration of the department of Customs and Excise and to prosecute all offenders.

2.- That the following be added to Clause 6; Your committee deplores the common practice as revealed by the evidence; of members of parliament and others appealing to the minister to relax the regulations of the department for personal advantage or political expediency.

3.- That in Clause 8 all the words after the word "department" in the third line be struck out.

4.- That in Clause 13 the name of R.R.Farrow deputy minister of Customs and Excise be added to the list of those who are recommended that their services be dispensed with.

AND THAT the Committee for such purposes be revived.

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Faucher Amendment

Last memo. Winnipeg North Vancouver Centre

C 50553

That the words "and that the committee for such purposes be revived", as they appear at the end of the amendment, be struck out and the following substituted therefor.

Your committee deplores the common practice, as revealed by the evidence, of members of Parliament and others appealing to the minister to relax the regulations of the department for personal advantage or political expediency.

And also to add thereto the following to paragraph four:-

Since the enquiry indicates that the smuggling evils are so extensive and their ramifications so far-reaching that only a portion of the illegal practices have been ~~xxxxxxx~~ brought to light, your committee recommends the appointment of a judicial commission with full powers to continue and complete investigating the administration of the Department of Customs and Excise and to prosecute all offenders.

And also to strike out all the words after the word "department" in the third line of paragraph eight.

And also in clause thirteen to add the name of R. R. Farrow, Deputy Minister of Customs and Excise, to the list of those who are recommended that their services be dispensed with.

And that the committee for such purposes be revived.

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Moved in amendment to the amendment by Mr. FANSHER
Seconded by Mr. Coote

That the words "and that the Committee for such purposes be revived" as they appear at the end of the amendment be struck out and the following substituted therefor:-

"'Your Committee deplores the common practice, as "'revealed by the evidence, of members of parliament and "'others appealing to the minister to relax the regulations "'of the department for personal advantage or political "'expediency.'"

"And also to add thereto the following to paragraph four:

"'Since the enquiry indicates that the smuggling evils are "'so extensive and their ramifications so far-reaching that "'only a portion of the illegal practices have been brought to l "'light, your committee recommends the appointment of a "'judicial commission with full powers to continue and "'complete investigating the administration of the department "'of Customs and Excise and to prosecute all offenders.'

"And also to strike out all the words after the word 'department' in the third line of paragraph eight.

"And also in clause thirteen to add the name of "R. R. Farrow, Deputy Minister of Customs and Excise, to "the list of those who are recommended that their services "be dispensed with.

"And that the Committee for such purposes be revived."

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C 50555 ✓

/oved by: T. J. Garland. Seconded by: R. Gardiner

That the amendment as amended be further amended by adding thereto the following words after the words and to "prosecute all offenders"
" And that such Judicial Commission should consist of a Judge to be named by the two Judges of the Exchequer Court of Canada."
Said Judge acting as a Commission to have all the powers conferred upon such Commission under the Public Enquiries Act,
The said Commission to have power to make findings and recommendations and to report the same to Parliament at the opening of the next session together with the evidence taken before the said Commission.

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J. G. TURGEON TO W.L.M.K.

C 50556

PRIME MINISTER'S OFFICE

(June 1926)

MEMORANDUM

Dear Chieftain — Customs Investigation / Progressive Party / Parliament - Session of

Just a suggestion - It strikes me this might be the psychological moment for you to send for Mr. Kennedy — I understand Kennedy, Coote, Miss McPhail will stand together.

Among other things perhaps Kennedy could be shown that a Royal Commission would not only dig up ghosts of the past

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PRIME MINISTER'S OFFICE

MEMORANDUM 2 C 50557

but by touching points such as Vancouver unearth evils of the actual moment thereby doing actual good.

I understand Kennedy's Chief trouble is his desire to be Conciliant.

The good to be accomplished by further investigation would satisfy this desire.

Sincerely
J.G. Turgeon

J. G. TURGEON

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Customs Investigation ✓
Parliament - Sessions of
Progressive Party ✓

W.L. C 50558

House of Commons
Canada

(JUNE 1926)

Boys thinks there will be no refusal of the Conservatives to adjourn to night; but wants to finish to-morrow for certain & in this I think he is right.

Spencer

H.E. SPENCER

C 20226

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C 50559

Mr. E. Lapointe M.P.

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C 50560

FINAL REPORT

OF

SPECIAL COMMITTEE APPOINTED TO INVESTIGATE ADMINISTRATION OF DEPARTMENT OF CUSTOMS AND EXCISE

Tabled in House of Commons, Friday

June 18, 1926

Mr. Mercier (St. Henri), from the Special Committee appointed to investigate the administration of the Department of Customs and Excise, presented the Third and Final Report of the said Committee, which is as follows:—

The Special Committee appointed to investigate the administration of the Department of Customs and Excise, beg leave to present the following as their Third and Final Report:—

1. On the 5th February, 1926, the House of Commons adopted the following resolution:—

"That a Special Committee of this House, consisting of nine members, be appointed forthwith to investigate the administration of the Department of Customs and Excise and alleged serious losses to the public treasury because of inefficiency or corruption on the part of officers of the Department and others, and that such investigation extend back over such period of time as the Committee may decide and have regard to all matters affecting the prevention of smuggling, the prosecution of offenders, the seizure, storage and disposal of smuggled goods, or goods seized for purposes of excise or other taxes, the appraisal of goods for revenue purposes, the collection of customs and excise duties, the knowledge of ministers or officials of offences or irregularities affecting the public service in said department, the efficiency of the administration thereof, and the necessity of safeguarding the public revenue and the public treasury, and that such Committee have power to send for persons, papers and records, to adjourn from place to place, to print the evidence taken before the Committee, and to report from time to time."

2. By a subsequent resolution the Committee was constituted as follows: Messrs. C. W. Bell, K.C. (Hamilton West); Hon. R. B. Bennett, K.C.; D. Donaghy, K.C.; A. J. Doucet; J. C. Elliott, K.C.; D. M. Kennedy; P. Mercier, K.C. (St. Henri); E. C. St. Père; Hon. H. H. Stevens; Mr. Paul Mercier, K.C., was elected Chairman Mr. Elliott having been appointed a Minister of the Crown and by resolution of the House of Commons, Mr. William T. Goodison was appointed to the vacancy so created, on March 15th, 1926.

3. Your Committee sat from 9th February to 11th June, held 115 sittings, and heard 224 witnesses. Mr. R. L. Calder, K.C., was appointed Counsel to the Committee, and Mr. R. D. Tighe, Assistant Counsel, both appointments being ratified by the House. Certain interested parties were represented by Counsel on a number of the hearings, by leave of the Committee.

4. Notwithstanding the time devoted by the Committee to the taking of evidence the matters referred to it by the order of reference could not be completely reviewed. Much evidence was taken in connection with the Port of Montreal; the situation at Beebe and Rock Island, Quebec; and the operation of distilleries. The Committee have also with some detail examined into liquor smuggling in the Maritime Provinces. The Committee have examined in a general way the conduct of business at certain customs ports of Ontario. The Committee have not dealt, except incidentally, with the Middle West and the Pacific Coast. To a degree, therefore, this report is incomplete and suggestive rather than final. Full audit and extra-departmental investigation would be profitable in improving the service and recovering a large amount of revenue.

5. Since 1897 the Customs Department has been under the control of a responsible Minister. In 1918 the Department of Excise, which had been a

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separate department of the Public Service since the year 1868, was amalgamated with the Customs Department and in 1920 and 1924, respectively, the amalgamated departments were charged with the collection of Sales and Income Taxes. The administration of these amalgamated departments is a serious task. The Customs frontier between the United States and Canada is a very long one and the position and number of bridges and highways crossing the boundary together with the extended line of sea coast, rendered the suppression of smuggling difficult. The adoption by the United States of the Eighteenth Amendment has increased the difficulty, because it has made the incentive to illegally convey intoxicating liquor to the United States very great, and with the mass production of many products in that country there is a correspondingly great incentive to illegally import such products into Canada. In the year 1925 smuggling assumed such large proportions that a number of business men made representations to the Government, in consequence of which an Act, Chapter 39 of the Statutes of 1925, was passed making smuggling an indictable offence, where the goods were of the value of more than $200 and the penalties incurred by such smuggling increased.

6. The evidence submitted to the Committee leads to the general conclusion that for a long time the Department of Customs and Excise had been slowly degenerating in efficiency and that the process was greatly accelerated in the last few years. Apparently the Hon. Jacques Bureau, then Minister of Customs, failed to appreciate and properly discharge the responsibilities of his office and as a result there was a lack of efficient, continuous and vigorous control of subordinates by the Headquarters Staff at Ottawa.

7. The procedure provided by the Customs Act in the matter of Customs Seizures is as follows:—Upon making a seizure the Collector or Seizing Officer forthwith reports the circumstances of the case to the Commissioner of Customs (Section 174). Thereupon the Commissioner notifies the owner or claimant of the thing seized, stating the reasons for the seizure, and calls upon such owner or claimant to furnish within thirty days any evidence he may desire to submit (Section 175). After the expiration of thirty days or sooner, if evidence is forthcoming on the part of the owner or claimant, "the Commissioner may consider and weigh the circumstances of the case and report his opinion and recommendation thereon to the Minister" (Section 176). The Minister thereupon either gives his decision and states the terms upon which the thing seized or detained may be released or the penalty or forfeiture remitted or refers the decision to the Court (Section 177). The Committee finds that this procedure was not followed. Although, as a rule, the facts are correctly recited in the summary submitted to the Minister, the opinion is not infrequently at variance with such facts, and the recommendation is so drawn as to elicit a decision to which such facts are repugnant. This discrepancy is accounted for by the fact that the report upon the evidence was in many instances preceded by a conference, and the recommendation was dictated by an intelligent anticipation of the Minister's wishes in the premises.

8. The Committee is of opinion that the administrative duties of the Department of Customs and Excise should be left to the Executive Officers of the department. Where the value of the goods or the amount in question is $200 or more the procedure should be automatic and not subject to Ministerial interference or control. Where the goods in question are under $200 the case would fall under the heading of "Petty Offences" and the Minister's discretion might there find a proper field for its exercise.

9. The Committee finds that theft of motor vehicles has frequently been associated with smuggling on the Quebec Customs frontier. The procedure followed by the department in dealing with cars stolen and smuggled has resulted in an advantage to the thief and receiver as against the owner of the car.

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In the opinion of the Committee the procedure might be modified so as to provide that when the owner has established his title to the satisfaction of the department the car should be forthwith released to him, under bonds to re-export it, and upon payment of charges for storage, etc., such release to be made at a time and place of which notice should be given to the person in whose possession it was at time of seizure in order that he may take such legal proceedings as are competent to him to assert any claim thereto or lien thereupon.

10. The Committee finds that it is the common practice of the department to grant clearances to vessels wholly or partly laden with liquor for the United States, or allegedly bound for a foreign port, but admittedly sailing to "rum row," and that false landing certificates have been produced to obtain cancellation of bonds given for foreign export of cargoes so cleared.

The Committee further finds that a strong presumption is raised that some proportion of the liquor so shipped and cleared finds its way back into Canada for consumption. The Committee, therefore, recommends that excise and sales tax be levied on all Canadian made intoxicating liquors released from bond, no matter where they are carried and consumed, and that duty and sales tax be levied on all alcoholic liquors entering Canada, whether in bond or otherwise, irrespective of their ultimate destination.

Doubts have been cast upon the sufficiency of existing legislation to prohibit or authorize regulations prohibiting the illegal export of intoxicating liquors to the United States. To the extent to which such legislation may be insufficient the Committee recommends that it be amended. The Committee further recommends that, as soon as possible, regulations be made to prohibit clearances being granted to vessels carrying liquor as cargo, sailing from a Canadian port to a United States port, such regulations to make an exception in favour of liquor being imported into the United States in accordance with the laws of that country.

11. Subsection 4 of Section 171 of the "Excise Act" provides that "no spirits subject to excise which have not been warehoused for at least two years shall be entered for consumption." By reason of special circumstances arising out of the war, Parliament on the 1st day of July, 1920, Chapter 52, 10-11 George Fifth, Section 4, amended the section by adding thereto a proviso empowering the Governor General to suspend the operations of the said subsection during such period or periods as he may deem necessary. From sessional paper No. 84, 1926, it appears that by Order in Council the following distilleries have been permitted to enter for consumption the spirits manufactured during the period of nine months or less from the date of distillation: Gooderham & Worts, P.C. 641, April 17th, 1924; Distillery Corporation Limited, P.C. 1646, Sept. 14th, 1925; Manitoba Refinery Company (Ltd.), P.C. 1903, October 20th, 1925; Consolidated Distilleries of Manitoba, P.C. 29, January 7th, 1926.

In the opinion of the Committee such unmatured spirits are unfit for human consumption and their release is injurious to the public health. The Committee therefore recommends that Section 4 of Chapter 52, 10-11 George Fifth, be repealed at the present session of Parliament and that the Orders in Council issued thereunder be, thereupon forthwith, cancelled. The Committee further recommends that the technical regulations now governing the denaturing of alcohol be revised by competent experts so as to render all classes of denatured alcohol non-potable, and that where the regulations under Section 171 of the Excise Act provide for the warehousing of potable liquors they shall provide for the maturing of such liquor in wood for a period of at least two years.

12. The Committee recommends that the following firms and companies should be proceeded against in the proper forum to recover the sums, if any, now owing by them to the Crown: John Gaunt Company, Dominion Distillery

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Products and Associated enterprises, B. B. Glove Co., Jas. A. Gilmore Co., Globe Suspender Co., Perfecto Garment Co., Peerless Overall Co., R. & G. Manufacturing Co., Reliable Garment Co., Stanstead Mfg. Co., W. M. Pike & Sons, Standard Mfg. Co., Telford Bros. Garment Co., Telford & Chapman, Jenkins Overall Co. Ltd., Snag Proof Limited, Rock Island Overall Co., Alco Dress Co., O. B. Earle Co., Royal Cloak Co., Miracle Dress Co., Hollinger & Packer, Klover Dress Co., Poyaner Group of Companies, Woollens Limited.

With reference to the distilleries, the Committee has not had time to investigate them all. The Committee recommends that a thorough audit and examination be made of the records and accounts of all the distilleries in respect of all matters relating to a loss of Customs, Excise and Sales Tax Revenue.

13. The Committee finds that the following officers have been delinquent in their duties and recommends that their services be dispensed with:—

1. R. P. Clerk, Inspector of the Port of Montreal;
2. A. E. Giroux, Superintendent of Customs and Excise, Montreal;
3. W. Duval, Preventive Officer at Montreal;
4. John Landy, Customs Officer, Montreal;
5. Collector E. Brownlee, of Beebe, Quebec;
6. Marvin A. Sawyer, Customs Officer at Rock Island;

and that in the interest of the public service arrangements should be made for the retirement of the following persons:—

1. R. R. Farrow, Deputy Minister;
2. W. S. Weldon, Collector of Customs at Montreal;
3. Henry McLaughlin, Suveyor of Customs at the Port of Montreal.

14. The Committee recommends that the conduct of the officers at the Port of Windsor, Ontario, and other important ports, should be further investigated and that the services of such of them as are found guilty of evasion of duty should be dispensed with.

15. The Committee recommends that the evidence of J. A. E. Bisaillon given before this Committee with reference to his bank account for the amount of $69,000 be transmitted to the Attorney-General for Quebec, for the purpose of comparison with the evidence given by him on the same point at preliminary inquiry at Quebec, P.Q., in the case of Rex vs. Symons et al, and for such action by the said Attorney-General as the evidence may warrant; and further that the evidence in connection with the Morris Delage Motor Car case be transmitted to the said Attorney-General for such further action as the said evidence may warrant.

16. The Committee recommends that for reasons of sound economy and increased efficiency there should be a reduction made in the number of ports of entry into Canada.

In support of this recommendation the Committee would call attention to the following facts:—

The United States has 270 Customs ports of entry. The United Kingdom of Great Britain and Ireland has 80 ports of entry. On the other hand, Canada has a total of 681 places at which Customs revenue is collected.

17. For the prevention of smuggling and of other frauds a strong preventive force under a capable administrator is necessary, and the Committee, therefore, recommends:—

1. That the Preventive Service be reorganized under a Chief, possessed with the highest qualifications for such office, clothed with wide powers of initiative, direction and control.
2. That such Chief Preventive Officer be authorized to select his staff in consultation with the Civil Service Commission.

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3. That the Chief Preventive Officer be authorized to organize within the Preventive Service a secret service force, with special training in criminal investigation work, which force shall be under the general executive direction of the Chief of the Preventive Service.

4. That Preventive Officers and persons authorized to act as Customs and Excise Officers be given power to arrest without a warrant persons found committing any act declared by the Customs and Excise Acts to be an indictable offence.

5. That in connection with Preventive Service work the R.C.M.P. services be used for Patrol Work on the border, and while so engaged they be given full powers as Customs Officers. Pending the reorganization of the Preventive Service the R.C.M.P. should be immediately detailed for Patrol Service on all important points on the border.

18. The evidence adduced before the Committee disclosed two outstanding facts, namely,—

First, the methods of appraisal are exceedingly careless and fail to safeguard the interests of the importer or the revenues of the Country from being defrauded by undervaluation, and

Secondly, persons appointed as appraisers are in many instances untrained in the branch to which they are appointed.

The Committee recommends that the appraisal branch be reorganized and that all appraisers be chosen because of their competency to estimate the values of the class of goods they are appointed to appraise.

19. The Committee recommends that in future the provisions of Sections 213 and 213a of the Customs Act, which provide for the removal of buildings within a hundred yards of the boundary which are made use of in smuggling operations, be strictly enforced.

The situation created by the location of Derby Line, Vermont, and Rock Island, Quebec, as brought to the attention of the Committee is of a grave nature, and they recommend that a bond be established in each factory in which bond goods imported from the United States shall be placed until released for manufacturing purposes, and that an officer be appointed to look after such bond at the owner's expense.

20. The Committee recommends that Schedule "C" Prohibited Goods, of the Customs Act, be amended to include merchandise which is marked in contravention of the Gold and Silver Marking Act. That Act provides for prohibition of the importation of articles improperly marked, but Customs Officers ordinarily are not acquainted with the provisions of the Act, and for this reason the Committee recommends the inclusion of the prohibition in Schedule "C" of the Customs Act.

21. Where articles containing precious metals are seized and forfeited the Committee recommends that they be not sold in the open market, as at present, but should be melted down and disposed of as bullion.

22. The Committee recommends that the regulations governing the distribution of the proceeds of fines and forfeitures be revised and that more liberal treatment be accorded informers and seizing officers. The moieties granted seizing officers in respect of seizures made by them should not, however, be distributed to such officers as each seizure is made. Such moieties should be paid into a special fund and periodically distributed to all the members of the Customs and Preventive Services.

23. The Committee recommends that in cases of commercial smuggling or undervaluation, where the offenders are known, they should at once be arrested and brought to trial with the utmost promptness. The Committee further recommends that the Department of Justice be requested to select at once

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capable and experienced Counsel in important centres, and retain them to act for the Department of Customs and Excise in all future cases.

24. The real solution of the difficulties at such points as Windsor, Niagara Falls, where traffic is heavy, and where a thorough examination of vessels and vehicles cannot be carried out, will be found in the discovery in advance by investigators of the secret service of the persons who make a practice of smuggling at these points, and their arrest when passing the Customs barrier. The Committee recommends that at bridges, ferries and main highways, where traffic enters Canada, in addition to the regular Customs supervision, vessels and vehicles should be searched at frequent, irregular and uncertain times. The uncertainty as to what vehicles will be examined, and as to when such examinations will be made, should operate as a strong deterrent of smuggling.

Your Committee recommends that such of the account books and other books and papers belonging to the firms mentioned in clause twelve of this Report, as may be necessary for use in any action that may be taken against the said firms, be retained by the House in order that they may be available if required.

Your Committee submit herewith for the information of the House, their Minutes of Proceedings and the Evidence taken by them.

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C 50565

MR. STEVENS AMENDMENT

Mr. Stevens, seconded by Mr. Doucet, moved in amendment thereto: That the Report be not now adopted, but that it be referred back to the Special Committee with instructions to add thereto the following clauses as sub-clauses to paragraph six:—

"The evidence further discloses that Ministerial action has been influenced by the improper pressure of political associates and friends of the Minister, or Acting Minister administering the department, resulting in the suspension and in some instances the abandonment of prosecutions against those charged with violation of the Statutes, and in the loss of revenue to the country. Moreover successful appeals have been made to the Minister and Acting Minister administering the department to improperly interfere with the course of justice between the conviction of the offenders and the execution of judgment thereon. The Prime Minister and the Government had knowledge for some considerable time of the rapid degeneration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is wholly indefensible. The conduct of the present Minister of the department, the Honourable George H. Boivin, in the case of Moses Aziz is utterly unjustifiable.

"Your Committee deplores the practice, as revealed by the evidence, of certain men influential in public life to direct appeals, to the Minister to relax and depart from the proper administration of his department for reasons of political expediency.

"Your Committee is of the opinion that this practice is detrimental to the best interests of the country and prejudicial to the administration of the department.

"And that the Committee for such purpose be revived."

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C 50566

MR. WOODSWORTH'S AMENDMENT TO THE AMENDMENT

Mr. Woodsworth, seconded by Mr. Heaps, moved in amendment to the said amendment: That all the words after the word "instructions" in the third line of the amendment be struck out and the following substituted therefor:—

"1. To add to Clause 4 the following: Since the enquiry indicates that the smuggling evils are so extensive and their ramifications so far-reaching that only a portion of the illegal practices have been brought to light, your committee recommends the appointment of a judicial commission with full powers to continue and complete investigating the administration of the Department of Customs and Excise and to prosecute all offenders.

"2. That the following be added to Clause 6: Your committee deplores the common practice as revealed by the evidence, of members of parliament and others appealing to the minister to relax the regulations of the department for personal advantage or political expediency.

"3. That in Clause 8 all the words after the word "department" in the third line be struck out.

"4. That in Clause 13 the name of R. R. Farrow, deputy minister of Customs and Excise, be added to the list of those who are recommended that their services be dispensed with.

"And that the Committee for such purposes be revived."

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Customs Investigation

PRIME MINISTER'S OFFICE C 50567

MEMORANDUM

Tuesday,
June 22. (1926)

MR. KING:

Mr. John S. Ewart, who insisted upon my communicating to you immediately the message which I telephoned in his presence a few minutes ago, has asked me to say further that in his opinion Mr. Boivin should speak immediately following Mr. Stevens.

LCM.

L.C MOYER

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Mr Stevens . .

C 50568

The purpose in bringing them forward was to try if possible to drive home to the ministry and to the members of the House on what a wholesale scale this business was being carried on. It was a thoroughly organized traffic, and the officers of the department, as well as the department itself, by its actions and by its rulings, connived at or participated in it.

In the fourth place, it was demonstrated that wholesale commercial smuggling was being practised on an extensive scale and that customs and excise duties and sales taxes were being systematically evaded. The audits, admittedly very incomplete, disclosed losses subject to possible recovery of a sum approximating $1,750,000. This is in respect of cases regarding which there is now to hand, and available to the House, such evidence as would warrant immediate action being taken for the recovery of the amount stated. I would point out here that the ground covered by these audits was undoubtedly but a fragment of the area which ought to be covered and which in my opinion must be covered if justice is to be done. The ex-Minister of Customs, the Minister of Marine while acting minister (Mr. Cardin), and the present minister (Mr. Boivin) have all displayed a callous indifference to the rights of the public treasury, but a touching solicitude for the liberty and well-being of defrauding offenders.

I come now to the fifth point: I refer to a practice which has reached tremendous proportions, namely, the smuggling of liquor into the United States. It was found that liquor smuggling from Canada into the United States was a serious incentive to return smuggling of other goods into Canada, and that this Dominion had become a mere conduit through which a constant stream of liquor flows into the United
3 p.m. States. Much of this liquor pays no revenue into the treasury of either country and is admittedly unfit for human consumption. At this point I wish to refer briefly to the treaty between Canada and the United States. On February 2 last when discussing this phase of the question I gave expression to a sentiment similar to that which I shall now voice. With the laws of the United States I have nothing to do; they are not my business, nor is it my duty to criticize or to approve of them. But, Sir, when the Dominion of Canada enters into a solemn obligation with the United States, then I submit, altogether irrespective of any opinion I may hold of the laws of that country, that it is the duty of the administration of this country to see to it that the terms of that treaty as well as the spirit of it are honoured. I will not read the treaty in toto; I will quote merely the opening paragraph or a portion of it. It declares that this Dominion and the United States—

—being desirous of suppressing smuggling operations along the boundary between the Dominion of Canada and the United States of America, and of assisting in the arrest and prosecution of persons violating the narcotic laws of either government, and of providing as to the omission of penalties and forfeitures in respect to the carriage of alcoholic liquors through Alaska into the Yukon Territory—

—have agreed to certain things. In other words, the three subjects of agreement in this treaty are first, the suppression of smuggling; secondly, the prevention of, and the prosecution of those engaged in, the narcotic traffic; and, thirdly, the carriage of liquor into the Yukon Territory. The treaty is dated June 6, 1924. There is in it a clause which I know some will contend is ineffective and renders the treaty not binding on either country in so far as the smuggling of liquor is concerned. I had better read this clause inasmuch as it will probably be advanced as an excuse for the failure of the government to observe the spirit of the agreement. Article II provides:

The high contracting parties agree that clearance from Canada or from the United States shall be denied to any vessel carrying cargo consisting of articles the importation of which into the territory of Canada or of the United States, as the case may be, is prohibited—

As properly pointed out by my hon. friend from North Vancouver (Mr. Donaghy) in the committee, had the article stopped there it would have been effective. But it goes on:

—when it is evident from the tonnage, size and general character of the vessel, or the length of the voyage and the perils or conditions of navigation attendant upon it, that the vessel will be unable to carry its cargo to the destination proposed in the application for clearance.

It is argued that in view of that qualification Canada is justified in giving clearance to vessels known to be carrying contrabrand cargoes into the United States. My submission, however, is that Canada as a country, and this parliament as well, both understood and do understand now that this treaty was intended for the suppression of the smuggling of prohibited goods from one country into the other. That is the gist of the treaty, shorn of verbiage; and I believe that this administration, and the officials under the administration, ought to be condemned without any measure of consideration for deliberately conniving at the violation of the general terms of that treaty.

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C 50569

I should like now to illustrate the manner in which this traffic is carried on. Vessels laden with liquor would clear for some foreign port, such as Nassau or St. Pierre-Miquelon, but before such clearance the exporter, under the Canadian regulations, would have to deposit a bond equal in value to double the duty assessable on the cargo. That bond is not to be released unless the goods so exported shall have been duly landed and entered for consumption or for warehouse at the point named in the bond. This has been one of the most prolific sources of evasion of the law. I cannot speak too strongly on this point. In my opinion the administration—and in this I include the officers of the department as well as the heads—are either too simple to hold office or else they are deliberately conniving at this traffic, which is contrabrand so far as our friendly neighbour to the south is concerned. And it is beneath the honour and dignity of this country to be engaged in, or to connive with others who are engaged in, such a pursuit. One would expect that when the government exacted such a bond it would demand that it be respected. In practice, however, it is consistently evaded. False landing certificates are tendered and accepted and the bonds are released. Not only is it a fact that liquor, instead of reaching its ultimate point of destination, is diverted to the United States, but there is a strong presumption that a substantial portion or at least some portion of this liquor, upon which no customs or excise duty has been paid, finds its way back into Canada. This, I think, is the conviction of every member of the committee so far as this traffic is concerned, both on the Atlantic and on the Pacific. These vessels secure from the department a clearance for Nassau or Mexico; they leave the Canadian port and when they get outside they either produce an absolutely false landing certificate or, in the case of St. Pierre-Miquelon, it may be genuine. Then the liquor is bootlegged back into Nova Scotia, Prince Edward Island or New Brunswick on the Atlantic and into British Columbia on the Pacific. All of it does not come back, because the great market is Rum Row or Liquor Lane, as they call it on the Pacific, but a portion finds its way back into Canada and pays no revenue to the country. To effectively investigate the possible losses from such cases will require a searching examination of the books and records of the firms concerned as well as some clever police work to check up the documents tendered, as to whether or not they are genuine. In other words this inquiry, while it uncovered certain facts, has not by any means succeeded in discovering the magnitude of the losses to the revenue of this country through this traffic as well as other branches of a different character.

There was another method disclosed by the evidence as followed by the notorious Cooper, Hushion and George gang of bootleggers, by shipment on the Bernard M. and Frank H. as well as other vessels; these, however, were the two vessels most frequently mentioned. In this case cargoes of liquor would be billed from a foreign port via the St. Lawrence and Great Lakes to Port Arthur, and thence by rail and ship to Japan. That sounds like a decent traffic, simply passing through Canada; that was the pretence, but what are the facts? The facts are that such cargoes would be passed through the Lachine canal and there given a clearance for Port Arthur, but the vessels did not reach Port Arthur. These goods were landed somewhere on lake Ontario or lake Erie east of Windsor, and not a dollar of revenue came into the public treasury from the admission of these goods. I find, Mr. Speaker, that the evidence discloses at least four vessels carrying from six thousand to ten thousand cases in this way; there were many more but we had before us definitely these four. Had these vessels been compelled to pay duty on their cargoes it would have meant from $450,000 to $720,000 in revenue to the public treasury.

What guarantee did the minister or the department have that the exchequer was properly guarded? They only had the word of a bootlegger, a man called Harbert, and absolutely nothing more. I ask this House to consider this question for a moment, and we will put it in a little different way. Let us suppose some business man, some merchant, sought to bring in a cargo of hardware, or furniture, of groceries or drygoods, or any other class of goods legitimately handled, in bond for transhipment through Canada to Japan. These goods are brought down the Lachine canal and given a clearance for Port Arthur, but they do not arrive there; they are landed at some unknown point on the lakes, possibly in the province of Ontario, with no payment of duty. Would the department permit that merchant to carry on in that way? The answer is obvious. Then I ask the House why it is that those engaged in the liquor traffic should have a privilege which would not be granted or countenanced for one moment in the handling of other classes of goods. Why is it, Mr. Speaker, that the duty of the minister in the protection of the revenue of this country was satisfied with the word of the bootlegger who brought

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C 50570

TREATY ARRANGEMENTS WITH THE UNITED STATES
REGARDING SMUGGLING

1. 1924:

In common with the other parts of the British Empire, and in accordance with an agreement reached at the Imperial Conference of 1923, Canada has agreed by a treaty (ratified in February, 1924) to permit an extension of the United States right of search at sea as regards alleged rum smugglers, the agreement being that search might be made within a distance from the shore that might be covered in one hour by the vessel under suspicion, or by other craft conveying liquor from it to shore.

2. 1925:

A convention between Canada and the United States for the suppression of smuggling, after approval by Parliament, went into effect in July, 1925. It provides:

> (a) The appropriate officers of each government are authorized to furnish upon request to authorized officers of the other government, information regarding clearances of vessels or transportation of cargoes, shipments, or loads of articles across the boundary, when such imports are subject to duty, and to furnish information respecting clearances of vessels to any ports when there is ground to suspect intention to smuggle the cargo into the other country;
>
> (b) Clearance is denied to vessels carrying cargo prohibited entry into the other country when it is evident from the size of the vessel, length of the voyage, etc., that the vessel would be unable to carry the cargo to the destination proposed in the application for clearance (making the Canadian regulation previously in force a treaty obligation).

No intimation has been received from the United States that the above arrangements are not being observed or are not working satisfactorily, though there has been some discussion of the possibility of supplementary ~~legislation~~ conventions.

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Mr. Stevens' statement (Hansard, p. 5007) that the smuggling treaty with the United States was understood or intended to prohibit clearance of <u>any</u> vessels carrying liquor or other prohibited cargo from Canada to the United States or from the United States to Canada is without foundation. It provided exactly what is noted above - exchange of information as to clearances or shipments of such cargo, and denial of clearance to small vessels which obviously could not reach the destination proposed., e.g., motor boats from Lake Ontario ports to Cuba.

The government has recently had under consideration proposals from the United States government for supplementing the existing convention by a new one providing for refusal of clearance to <u>any</u> vessel carrying liquor to a United States port. It has also noted arrangements just concluded between the British Government and the United States, including some features of the Canadian procedure, but not including any provision for refusal of clearances. ~~(See memo. attached, "A")~~

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Customs Investigation

PRIME MINISTER'S OFFICE C 50572

MEMORANDUM

Friday,
June 25 (1926)

MR. KING:

The Honourable G. N. Gordon has asked me to give you at once the following message:

"I have something important to tell you about the forthcoming vote. I am waiting in Mr. Robb's Office. Could you slip out for a moment and see me there?"

LCM.

L.C. MOYER

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IH/6

P.C. 1161

C 50573

PRIVY COUNCIL
CANADA

to be a true
Certified copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the **20th July, 1926.**

The Committee of the Privy Council have had before them a Report, dated 20th July, 1926, from the Minister of Justice, submitting that on the 5th February, 1926, the House of Commons unanimously resolved -

> **"That a special committee of this House, consisting of nine members, be appointed forthwith to investigate the administration of the Department of Customs and Excise and alleged serious losses to the public treasury because of inefficiency or corruption on the part of officers of the Department and others, and that such investigation extend back over such period of time as the committee may decide, and have regard to all matters affecting the prevention of smuggling, the prosecution of offenders, the seizure, storage and disposal of smuggled goods or goods seized for purposes of excise or other taxes, the appraisal of goods for revenue purposes, the collection of customs and excise duties, the knowledge of ministers or officials of offences or irregularities affecting the public service in said Department, the efficiency of the administration thereof, and the necessity of safeguarding the public revenue and the public treasury, and that such committee have power to send for persons, papers and records, to adjourn from place to place, to print the evidence taken before the committee and to report from time to time."**

The Minister states that the special Committee mentioned was appointed and in part performed its duties and reported to the House, which on the 29th June, 1926, resolved inter alia that the following paragraphs should be added to the Committee's report:

> **"Since the enquiry indicates that the smuggling evils are so extensive and their ramifications so far reaching that only a portion of the illegal practices have been brought to light, your committee recommends the appointment of a judicial commission with full powers to continue and complete investigating the administration of the Department of Customs and Excise and to prosecute all offenders.**

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"and that such judicial commission should consist of a Judge to be named by the two Judges of the Exchequer Court of Canada, said Judge acting as a Commission, to have all the powers conferred upon such Commission under the Public Inquiries Act. The said Commission to have power to make findings and recommendations and to report the same to Parliament at the opening of the next session together with the evidence taken before the said commission;"

The Minister observes that owing to the dissolution of Parliament the said Committee had no opportunity to further consider its report as so amended.

The Minister thinks it expedient and in the public interest that the said investigation be continued and proceeded with without delay in accordance with the intention of Parliament, and he therefore recommends that the Honourable Sir Francois Xavier Lemieux, Chief Justice of the Superior Court for the Province of Quebec who has been named by the Judges of the Exchequer Court to act as a Commissioner to conduct the investigation, be appointed a Commissioner pursuant to the provisions of Part I of the Inquiries Act, Chapter 104, Revised Statutes 1906, to continue and complete the said investigation of the administration of the Department of Customs and Excise of Canada; that he shall have as full and the like powers in that connection as were originally committed to such Committee of the House of Commons as aforesaid, and that he shall have power to make findings and recommendations from time to time during the inquiry and to report the same with the evidence taken before him or at his direction to Your Excellency in Council for submission to Parliament at the opening of the next session thereof.

The Committee concur in the foregoing and submit the same for Your Excellency's approval.

E. J. Lemaire

Clerk of the Privy Council.

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P. C. 1234 C 50575

to be a true
Certified copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 7th August, 1926.

The Committee of the Privy Council have had before them a report, dated 4th August, 1926, from the Acting Minister of Customs and Excise, stating that in his judgment the expenditure of the sum of $10,000, to cover expenses for the month of August of the Royal Commission appointed to investigate the administration of the Department of Customs, which has not been provided for by Parliament, is urgently and immediately required for the public good.

The Committee, on the recommendation of the Acting Minister of Customs and Excise, advise that a Special Warrant of Your Excellency do issue for the sum of $10,000 to cover expenses of the said Commission for the month of August, 1926, the Acting Minister of Finance having reported that there is no Parliamentary provision from which the above expenditure can be made.

Clerk of the Privy Council.

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IH/3

P.C. 1389 C 50576

to be a true
Certified copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 8th September, 1926.

PRIVY COUNCIL CANADA

The Committee of the Privy Council have had before them a Report, dated 25th August, 1926, from the Acting Minister of Customs and Excise, submitting that during last Session Parliament ordered that a judicial investigation be conducted into the administration of the Department of Customs and Excise; but appropriated no amount to meet the cost thereof.

In the circumstances, and in order to meet the will of Parliament, the Minister recommends that authority be granted for payment from the Vote for Special Preventive Service, Department of Customs and Excise, such amounts as are required from time to time to meet the expenses of the Royal Commission appointed for the purpose above mentioned, until an appropriation for that purpose is specifically provided by Parliament.

The Committee concur in the foregoing recommendation and submit the same for approval.

E. J. Lemaire
Clerk of the Privy Council.

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IH/3 P.C. 41/1437 C 50577

Certified to be a true copy of a Minute of a Meeting of the Treasury Board, approved by His Excellency the Governor General in Council, on the **23rd September, 1926.**

PRIVY COUNCIL CANADA

CUSTOMS AND EXCISE:

The Board had under consideration a memorandum from the Honourable the Acting Minister of Customs and Excise, reporting as follows:

"Whereas William Lionel Hicklin, a Customs-Excise Clerk, in the Preventive Service, Montreal, has been detailed for service with the Royal Commission to continue the investigation of the Customs Department, and

Whereas the said William Lionel Hicklin, in his ordinary occupation, is entitled to payment for overtime service, and to a moiety in the proceeds of seizures, and

Whereas in performing the services to which he has been assigned since July 5th, 1926, the said William Lionel Hicklin has been subjected to extra expense away from his home and has had to and will continue to work many hours beyond the usual term of service.

The undersigned has the honour to recommend that a sum of ten dollars ($10.00) per diem be paid, as a living allowance, to the said William Lionel Hicklin from July 5th, 1926, for such period as he may be employed in the Service of the said Commission outside the City of Montreal."

The Board concur in the above report and recommendation, and submit the same for favourable consideration.

E. J. Lemaire
Clerk of the Privy Council.

The Auditor General.

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IH/3 P.C. 49/1437 C 50578

Certified to be a true copy of a Minute of a Meeting of the Treasury Board, approved by His Excellency the Governor General in Council, on the 23rd September, 1926.

PRIVY COUNCIL CANADA

CUSTOMS AND EXCISE:

The Board had under consideration the following memorandum from the Honourable, the Acting Minister of Customs and Excise:

"Whereas Gerald Joseph Kitts, a Customs Excise Clerk, Grade 2, in the Preventive Service, Ottawa, has been detailed for service with the Royal Commission to continue the investigation of the Customs Department, and

Whereas, in performing the services to which he has been assigned since July 5th, 1926, the said Gerald Joseph Kitts has been subjected to extra expense away from his home and has had to and will continue to work many hours beyond the usual term of service.

The undersigned has the honour to recommend that a sum of Ten Dollars ($10.00) per diem be paid, as a living allowance, to the said Gerald Joseph Kitts from July 5th, 1926, for such period as he may be employed in the Service of the said Commission outside the City of Ottawa."

The Board concur in the above report and recommendation, and submit the same for favourable consideration.

E. J. Lemieux
Clerk of the Privy Council.

The Auditor General.

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C 50579 C-1203

Handed to Press at 5:30 p.m.
November 11 1926.

It is expected that the Customs Enquiry Commission will open its sittings in Ottawa, Wednesday, November the 17th.

Honourable Sir Francois Lemieux, Chief Justice of the Superior Court of the Province of Quebec, has tendered his resignation as Chairman of the Commission, on account of the great pressure of his judicial duties and also the fatigue involved for a man of his advanced years in the long journeys and arduous work of the Commission.

In spite of the Government's efforts to retain him, Sir Francois adhered to his first decision. The Government has requested Chief Justice Brown of Saskatchewan, Senior Member of the Commission, to become Ch airman. Sir Francois Lemieux was asked to name a successor as member of the Customs Enquiry Commission and he has suggested the name of Judge Ernest Roy of Quebec City, who has been appointed to-day.

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P.C.67.

C-1203
Vol I C 50580

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 14th JANUARY 1927

The Committee of the Privy Council, on the recommendation of the Right Honourable W. L. Mackenzie King, the Prime Minister, advise,- with reference to the Commission bearing date the 28th September, 1926, issued to the Honourable Sir Francois Lemieux (now replaced by the Honourable Ernest Roy, puisne Judge of the Superior Court of the Province of Quebec), the Honourable James Thomas Brown, Chief Justice of the Court of King's Bench, Saskatchewan, and the Honourable William Henry Wright, a Justice of the Supreme Court of Ontario,- that a supplementary commission do issue to the said the Honourable James Thomas Brown, the Honourable William Henry Wright and the Honourable Ernest Roy, authorizing them, in addition to the powers already conferred, to inquire into and report upon all other matters coming under the administration of the Minister of Customs and Excise which affect the public revenue of Canada or relate to the operations of any person or corporation owning, operating or employed in connection with any business carried on under the provisions of the Excise Act or the Customs Act, or any regulations made thereunder, or are incidental or closely related to any of the matters or things hereinbefore or in the said Commission mentioned or referred to, and that they be authorized by the Commission to be

The Right Honourable
the Prime Minister.

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issued in that behalf to exercise all or any of the powers mentioned in section 11 of the Inquiries Act.

E. J. Lemaire

Clerk of the Privy Council.

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C 50582

Collateral - Customs Investigation

E. NIELD
OFFICIAL REPORTER

C-1203

Vol 3

ROYAL COMMISSION
ON
CUSTOMS AND EXCISE

EVIDENCE

Minutes of Conference at
W A S H I N G T O N, D.C.
August 29th & 30th, 1927.

HON. N. W. ROWELL, K.C.

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Item No.1: Consular agents, Consular Service:

Charles B. Hosmer, (Consul detailed to Department of State) 9
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Minutes of Conference between the Members of the Royal Commission on Customs and Excise of the Dominion of Canada and Officers of the United States Government, held in the Federal Reserve Board Room, Treasury Building, Washington, August 29 and 30, 1927, commencing at 10 A.M.

PRESENT:

Members of the Commission:

Hon. James Thomas Brown,	Chairman.
Hon, William Henry Wright,	Commissioner.
Hon. Ernest Roy,	Commissioner.
Hon. N.W. Rowell, K.C.,	Counsel.
Paul Leduc,	Registrar
Ernest Nield,	Secretary.

Officers of United States Government:

TREASURY DEPARTMENT:
Mr. Seymour Lowman, Assistant Secretary of the Treasury.
Admiral F.C.Billard, Commandant, U.S. Coast Guard.
Lieut. Commander Charles S. Root, Chief of Intelligence Office, U.S. Coast Guard.
Dr. J. M. Doran, Commissioner of Prohibition.
Mr. Alf Oftedal, Assistant Commissioner of Prohibition.
Mr. W.B.Robinson, Chief, Special Agents, Bureau of Prohibition.
Mr. E. W. Camp, Commissioner of Customs.
Mr. Frank Dow, Assistant Commissioner of Customs.
Mr. Nathaniel G. Van Doren, Deputy Commissioner of Customs, in Charge of Investigations.
Mr. F.J.H.Kracke, U.S.Appraiser of Merchandise, New York, N.Y.
Mr. A.K.Thomas, Chief Assistant Appraiser of Merchandise, New York, N.Y.
Mr. Harry J. Anslinger, Consular Officer detailed to the Treasury Department as Chief, Division of Foreign Control, Bureau of Prohibition.
Mr. Alfred B. Haupt, Assistant Chief.

DEPARTMENT OF JUSTICE:
Mr. E.A.Smith, Special Assistant to the Attorney General.
Mr. Howard T. Jones, Chief Attorney.

STATE DEPARTMENT:
Mr. William R. Vallance, Assistant to the Solicitor.
Mr. Charles B. Hosmer, Consul detailed to Department of State.
Mr. Charles H. Derry, Consul detailed to Department of State.
Mr. L. V. Boyle, American Consul at Tahiti.

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MR. ROWELL: Mr. Chairman: On the 19th July of the present year the Canadian Legation addressed the following note to the State Department, to the Honourable Mr. Kellogg, Secretary of State of the United States:

"19th. July 1927.

"Sir,

" A Royal Commission which was appointed in September 1926 to continue enquiries into the administration of the Canadian Customs Service, has now nearly completed the hearing of evidence. The members of the Commission are the Honourable James Thomas Brown, Chief Justice of the Court of King's Bench of Saskatchewan, (Chairman), the Honourable William Henry Wright, a Justice of the Supreme Court of Ontario, and the Honourable Ernest Roy, Justice of the Superior Court of Quebec. The Honourable Newton Wesley Rowell, K.C. is Counsel to the Commission.

"Before the Commissioners consider their report, they are most anxious to have an opportunity of securing information concerning certain phases of the administration of the Customs and Consular Services of the United States. It has seemed to them that this could best be accomplished if arrangements could be made for the Commission to hold a meeting in Washington, at which the desired information could be secured from members of the staffs of the appropriate Departments of the Government of the United States. I have the honour, therefore, to inform you that I have been instructed by His Majesty's Government in Canada to enquire whether

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the proposal to hold a meeting of the Commission in Washington, would be acceptable to the Government of the United States.

"I also have the honour to request that, if this proposal should prove to be acceptable, the competent authorities should be moved to arrange for the attendance before the Commission, of officers qualified to furnish information on the following matters:

"1. Consular agents and consular certificates on invoices, with special reference to the methods by which the fraudulent use of double invoices is avoided. The Commissioners would appreciate greatly any information which officials of the Government of the United States might be prepared to give them on the work of Consular Agents, and their value as a safeguard against fraudulent invoicing for customs valuation.

"2. Ports of entry. A reduction in the number of Canadian ports of entry, at which Customs revenue is collected, has been recommended in evidence before the Commission. It is understood that there are many more ports of entry in Canada than in the United States. The Commissioners would be glad to be able to benefit by the experience of the United States Customs Service in the handling of business with a limited number of ports of entry.

"3. Methods of appraisal. The Commissioners are anxious to learn authoritatively, the chief regulations in force in the United States concerning the appraisal of goods for Customs purposes, and the qualifications which are required for the

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appointment of appraisers.

"4. Refusal of export except to authorized purchasers. Evidence was submitted to the Commissioners at a recent sitting, that the smuggling of alcohol from the United States into Canada across the frontier between Maine and New Brunswick, had been largely stopped by the refusal of the United States authorities to accept export entries for alcohol unless the exports were to persons authorized to sell alcohol for non-potable purposes. The Commissioners would like to secure some definite information about this regulation.

"5. The operation of the Treaty of 1924 for the suppression of smuggling. The Order in Council by which the Commission was appointed, included an instruction 'to enquire into and report on the operation of the Treaty made between the Dominion of Canada and the United States of America, dated June 6th. 1924, for the suppression of smuggling along the international boundary between the Dominion of Canada and the United States of America, and as to whether the said Treaty is being carried out according to the declared intent thereof, and as to whether any amendment of the said Treaty is necessary or desirable to ensure the suppression of smuggling.' The Commissioners have heard a great deal of evidence in Canada on the operation of this Treaty from the Canadian point of view, they would now much appreciate any information which the authorities of the United States might desire to place before them regarding the operation of the Treaty, the nature of any difficulties which may have arisen in its

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operation, and the means by which these difficulties might be removed and the effectiveness of the Treaty increased.

"Should the competent authorities of the Government of the United States be so courteous as to be prepared to authorize the Commission to meet in Washington, the Commissioners are anxious to hold their sittings on August 29th. and 30th. next. They desire to complete their sittings during these two days, but I understand they would be able to sit as well on August 31st. if a more extended meeting should prove to be necessary. If, however, this date is not convenient to the Government of the United States, I shall be glad to attempt to arrange a satisfactory alternative.

"I have the honour to be,
with the highest consideration,
Sir,
Your most obedient,
humble servant,
(signed) "H. H. WRONG
Charge d'Affaires."

On the 19th August the following answer was received from the State Department signed by Mr. W. N. Castle, addressed to Mr. Beaudry, Charge d'Affaires of the Canadian Legation:

"DEPARTMENT OF STATE
WASHINGTON
August 19, 1927.

"Sir:

"I am pleased to acknowledge the receipt of Mr. Wrong's note of July 19, 1927, expressing the desire of the Royal Commission appointed to inquire into the administration of the Canadian Customs Service to have an opportunity for securing information concern-

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ing certain phases of the administration of the Customs and Consular Services of the United States. To that end inquiry was made whether the proposal to hold a meeting of the Commission in Washington would be acceptable to the Government of the United States, and if so, whether the attendance before the Commission of officers qualified to furnish information on certain specifically stated questions could be arranged for.

"I do not understand that the Commission would expect to hold formal public hearings at which testimony of officials of this Government would be taken, but rather would expect to confer with officials of this Government on the subjects stated in your note. On this understanding I am pleased to inform you that no objection is perceived to the holding of the proposed meetings and that the Department will be glad to cooperate with the Commission and to arrange for officers who are informed on consular affairs to confer with the Commission on such matters. The dates suggested, August 29-31, 1927, are entirely acceptable to this Government.

"On receipt of Mr. Wrong's note of July 19, 1927, a letter was addressed to the Acting Secretary of the Treasury asking for an expression of his views with regard to the premises. A reply has now been received from which the following pertinent passage is quoted for your information:

> 'The Treasury Department will be very glad to furnish to the Royal Commission of the Canadian Customs Service any information which it desires and which is available concerning the operation of the Customs Service with respect to the several points mentioned in the Chargé d'Affaires' note, and will welcome an opportunity to be of any service that it may to the Royal Commission of the Canadian Customs .'

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"Accept, Sir, the renewed assurance of my high consideration,

"For the Secretary of State:

"W. R. CASTLE."

Mr. Chairman, it is upon that communication and this reply from the Department of State of the United States, which was received by the Canadian Government, and very greatly appreciated, that the Commission has come to Washington to hold its sittings, or rather for the conference mentioned in the reply on behalf of the Secretary of State. I have had the opportunity, Mr. Chairman, of conversation with Mr. Castle and also with Mr. Lowman, who is in charge of the matter for the Government of the United States, and it has been arranged that a stenographic report of the entire proceedings of a conference should be made, but before any part of it is made public it should be submitted to the Department of State of the United States, and no part made public except with the approval of the Department of State of the United States; and it is on that basis the conference will proceed.

I may say on Saturday Mr. Lowman was good enough to arrange for me to meet informally several of the officials of the Department of State and of the Treasury, and they explained the preparations that have been made for this conference, and I am sure I may now express personally as Counsel at least, as no doubt you will do as Chairman of the Commission, our very great appreciation of the work that has been put upon this matter, and the very careful preparation which has been made for the conference, and the arrangement that all the officials having to do with the matters upon which we have asked for information should be present at the conference and place their information at

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the disposal of the Commission.

I arranged with Mr. Lowman on Saturday, subject to the approval of the Commission, that we should take up the matters one by one as mentioned in the Canadian note to them, and have the appropriate officials deal with each separate matter.

THE CHAIRMAN: On behalf of the Commissioners I wish to express our appreciation of the courtesy that has been shown by the Government of the United States in the willingness that has been displayed in furnishing the information which we seek. The work which we have in hand has occupied our attention now for some eight or nine months, and it is a matter which largely involves the operation of customs as it exists between these two countries, and the results of our work, we trust, may be helpful to the Governments of both countries. We believe you can furnish us with information which will be helpful to us, and the very fact that you have expressed a readiness and willingness to assist us in every way is very much appreciated.

MR. ROWELL: The first matter is the question of the consular service, and consular invoices, and Mr. Lowman has been good enough to advise me that on that matter two members of the Consular Office of the Department of State will be pleased to give the Commission information.

MR. LOWMAN: Mr. C. B. Hosmer and also C. H. Derry -- they are from the Consular Office of the Department of State.

MR. ROWELL: I think, Mr. Hosmer, you have been considering this request of ours as contained in this Canadian note, and if you would just give the Commission the information --

MR. HOSMER: In collaboration with Mr. Derry and also with Mr. E. W. Camp, of the Customs Service, we have

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prepared a memorandum which we have felt would cover comprehensively that portion of the consular activities in which you are interested. I may say that we have here a sufficient number of copies of this memorandum to assist the Commission in following it, and I may make the suggestion, as a convenient means of taking up the subject, that it may be well for me to read this memorandum into your records, and then you may interrupt me or intersperse any enquiries you wish to make by way of amplifying the statements which we have put in our memorandum. If that meets with your approval I will proceed in that way.

THE CHAIRMAN: That is very satisfactory.

MR. HOSMER: The question propounded in your letter of the 19th July, number one, is:

> "Consular agents and consular certificates on invoices, with special reference to the methods by which the fraudulent use of double invoices is avoided. The Commissioners would appreciate greatly any information which officials of the Government of the United States might be prepared to give them on the work of Consular Agents, and their value as a safeguard against fraudulent invoicing for customs valuation."

"The American Government has for more than a century utilized the services of its consular establishment in the administration of its revenue laws. At first the consul's service consisted of administering an oath to the foreign shipper in certain cases, but the execution of invoices under oath was abolished some years ago and is now required only in very exceptional cases. The American consular invoice is, however, much more than an oath or affirmation by the seller or shipper as to the price, value or cost of the goods. It is a document designed to

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serve not only as a check against such representations as the importer may make respecting the value or price of the merchandise but also to expedite the examination of the goods, and, in short, to place before the customs officers any needful information and verification which either cannot be obtained in this country or which may more readily be obtained abroad at the time of shipment.

The purposes of the invoice may be set forth in some detail as follows:

1. That of affording a means whereby the customs officers may know with whom they are dealing both in this country and abroad. The importance of establishing the following as facts in certain cases will be obvious:

That the signer of the invoice is competent to declare as to the kind, quantity and value of the goods -

That he is a credible person -

That he is a manufacturer, jobber, retailer -

That he is a commissionnaire -

That he is the actual seller or shipper or the actual seller's or shipper's agent -

That he does not have connections either business or private which might involve him in a fraud upon the revenue either wilfully or unwittingly.

The last two points are of a great deal of importance at present in connection with the suppression of liquor smuggling. American consular officers are placing considerable emphasis on these points, and it is understood that they are receiving most helpful cooperation not only from certain Canadian officials but also from Canadian firms which are naturally quite anxious that they be not represented as shippers in invoices covering any but their own shipments.

2. That of providing a detailed description of the goods, designating the exact contents of each package, This facilitates both examination and classification. The consul does not examine the merchandise invoiced but he does assure himself that an allegation is made, case by case, as to the exact contents thereof. This is depended upon to expedite considerably the examination of the goods, since when the customs officers choose at random even the small proportion of 10 per centum of the cases for examination and find the contents thereof to tally with the invoice, it is reasonable to assume that the contents of the other cases are as alleged, and further examination is eliminated. If the description of

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the merchandise is at all vague, it is the consul's duty to question the shipper as to the precise character of the goods and to require him to re-execute or amend the document, so that the provisional classification placed upon the goods by the collector (which is done before the goods are examined) will be as accurate as possible. While any defects or omissions in the invoice in this particular might in many cases be readily made up in his entry declaration by the importer, who presumably knows what he ordered, there are admittedly instances in which the shipper is best qualified to supply it. The exercise of care by the consul in this respect naturally affords a measure of protection to both consignee and customs officers against careless practices by foreign shippers in packing, measuring and providing other data necessary to effect prompt clearance.

3. That of supplying certain information, having a bearing on dutiable value, which would not necessarily appear on any kind of commercial invoice. Packing charges, taxes, rebates, drawbacks, and bounties - all have their bearing on the amount of duty to be collected either indirectly through appraisement or directly in additional duties. Where the shipper does not set forth the necessary information in this regard, it is the consul's duty to do so by appropriate notations on the invoice.

Advisory notations are made by the consul in cases where there has been a fluctuation in the value of the merchandise between the date of its sale and that of its exportation, which latter date determines its value for dutiable purposes. In like manner, or by letter or telegraph, the consul is expected to put the customs officers on guard against any suspected misrepresentation of the facts in the invoice. It should be mentioned in this regard that it is one of a consul's duties to keep himself posted as to the prices current of the merchandise invoiced through his office. This he does in part by a comparison of the invoices of all those shippers who export the same or similar merchandise, in part through forming contacts with business men from whom he may obtain reliable information, and to a considerable extent by obtaining copies of current price lists which the shipper is distributing to the trade. While in practice it is impossible for the consul to check the prices and values in all invoices of ad valorem goods, he can check a sufficient number of them to make fraudulent statements as to price and value inadvisable from the shipper's viewpoint, and there is no question but that the shipper's knowledge that the consul is likely to detect him in a falsification works as a fairly effective deterrent to fraud.

4. The requirement that shippers procure consular invoices also provides a safe and convenient method of assuring compliance with various other regulations governing the entry of merchandise subject to quarantine regulations.

Consular invoices are executed in triplicate on a form supplied by the consulate, the consul retaining one copy and dispatching the triplicate to the collector at

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the port of entry, without the intervention of the shipper, who receives the duplicate for transmission to the consignee together with the other shipping papers. The commercial invoice is not necessarily presented to the consul with the consular invoice, as all essential data are transcribed from the former into the latter, but the consul may call for the commercial invoice, or a copy thereof, if necessary.

The inquiry of the Commissioners concerning "double invoices" may refer to either the double commercial invoice or "replace invoices". A replace invoice is a consular invoice which the shipper would have consulated and substituted for an invoice (sometimes fraudulent) previously certified."

Of course that situation does not arise with you at present, because you have no consular invoices.

"Such invoices, it is believed, are not giving much trouble at the present. They are very likely to be detected either by the collector through comparison of the triplicates on file in his office or by the consul noting that the shipment has already been invoiced, or questioning the delay in presenting the document when he finds that shipment was made some weeks before. If the reference is to double commercial invoices it may be stated that the consular invoice should be helpful in reducing the number of such documents. A shipper might send the importer two bills, one covering his price for the merchandise and one covering dutiable and non-dutiable charges (or the amount to be remitted might be split otherwise or even falsified entirely in a duplicate bill) with the intention that the importer present only one of the bills with his entry, but this plan could be frustrated by a

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carefully examined consular invoice since that document would have to show prices in line with those current. ~~When the consul suspects the use of a double commercial invoice he might detect the fraud by demanding to see the shipper's order from the importer, unless the fraud has been planned with extreme care.~~) omit

"While the requiring of consular invoices cannot entirely eliminate so-called "double invoices", the facts that a statement of prices must be presented by the shipper for official certification and his knowledge that the consular officer is in a position to investigate its accuracy and call for explanations of any statements he doubts, is a strong deterrent to such procedure, and may be safely stated to confine it to rare and isolated cases.

Consular Invoices Covering Shipments from Canada.

"It may be helpful to the Commission to know of several special considerations which have been found to enter into the use of consular invoices covering shipments from Canada to the United States and which modify to some extent the utility of consular invoices, as explained above. The most important of these cases are as follows:

"1. In detecting illicit shipments made irregularly in the names of reputable firms, of which there have been many, consular officers have frequently been enabled to detect the fraud through their intimate knowledge of genuine signatures, the usual form of invoices presented by regular shippers," -- that is that each firm that invoices regularly has a more or less individual way of filling out their invoice forms, and it is very easily detected if some one else draws it out -- "the presentation of invoices by persons not connected with the ostensible shipper and similar onservations. All these bear upon the unusual importance of identifying the actual shipper of merchandise arriving from Canada and the assistance an efficient consular officer on the ground is in a position to give.

"2. Illicit shipments from Canada are frequently made in the names of unknown shippers, or persons not

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known to be engaged in the kind of business indicated by the shipment; in such cases consular officers have been able to assist in detecting many illegal importations by promptly notifying the appropriate customs officer in the United States that they were not familiar with the consignors of certain shipments and suggesting investigation. Such notices do not necessarily mean they suspect fraud, but a sufficient number of seizures have resulted from the practice to justify it.

"While considerable has been accomplished in the manner indicated, the effectiveness of these safeguards has been somewhat subordinated to expediency in the case of importations from Canada and the maximum benefit of them has not yet been realized. Owing to the great importance of trade between Canada and the United States, both countries have sought every practicable means of facilitating the entry of merchandise with the least possible delay. To this end, our Customs Regulations permit the pro forma entry of merchandise under a bond to produce a regular consular invoice within a stated period and under certain circumstances shippers by rail or vehicle may present consolidated invoices covering all shipments to one consignee during any weekly period. While the regulation permitting pro forma entries is much less frequently availed of in emergencies in cases of shipments from other countries, the privilege is so important to importers from Canada that a very large proportion of all merchandise arriving in the United States from Canada is entered under a pro forma customs declaration, usually through a customs broker at a border port, who gives bond and procures a consular invoice after the entry has been made; similarly, in cases where consolidated weekly invoices of shipments by rail or vehicle are permissible, they are used chiefly to cover shipments arriving from Canada as they must, of course, arrive from territory contiguous to the United States.

"It is perfectly obvious that consular officers can

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give relatively little assistance in detecting illegal shipments when the merchandise has entered this country before an invoice is presented to them for certification. A number of American consular officers in Canada have felt this situation places them in a somewhat false position and efforts are being made to devise rules to govern the certification of consular invoices in a manner which will assure their greater usefulness and still cause shippers as little hardship as possible. It is believed that a way can be found to reconcile the interests of shippers with the retention of consular surveillance over shipments from Canada before their entry into United States, a supervision which was contemplated by the laws and regulations governing the issuance of consular invoices. Such a plan would be an important feature in suppressing illicit traffic.

"To partially offset the difficulties described above, some resourceful American consular officers in Canada have found it quite effective to use the invoice archives of their offices as a means of checking up consignees of suspicious shipments to this country. Many names of consignees have been found to be fictitious or persons or firms not engaged in legitimate business transactions and as a result the shippers have been carefully watched thereafter and fraudulent shipments discovered."

I will add just one more word in reply to a question propounded by Mr. Rowell on Saturday, as to whether the system of entry by pro forma invoices before the certification of the consular invoice interfered with the safeguards of the system with respect to double invoices: -- I would answer that in the negative. The consul is in just as good a position to detect fraud as regards the question of double

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invoices wholly without regard to the question of whether the invoice is presented before or after shipment, because he can demand the same sort of evidence concerning the correctness of the statements in the invoice even though the merchandise may already have been entered on pro forma entry.

THE CHAIRMAN: Under what circumstances would it be impossible to have a certified invoice before shipment or at the time of shipment?

MR. HOSMER: A very large proportion of imports from Canada are what might be called bulk commodity imports, that is carload lots of, we will say, lumber, paper base stock, asbestos, and many other similar commodities. These carload lots are despatched as promptly as the loading of the car is completed, and they arrive at the border within a very few hours thereafter, and I am assured by customs officers, and it is without doubt correct, that unless it were possible for these very large numbers of freight cars arriving there to be promptly cleared it would result in a serious congestion of traffic at the border. It would be quite impossible under such circumstances, I presume, for the shippers to wait perhaps in some instances forty-eight hours or longer to get a consular invoice by mail to the nearest consulate and back, because many of these shipments originate at relatively isolated points. There have been a number of suggestions made to overcome this seemingly necessary opening in our system, and I am personally of the opinion, and I am giving this wholly as a personal opinion now, that some system can be devised of establishing an immediate contact between the shipper and the consul even if the invoice itself is not certified at that time, so that

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by the deposit, for example, of a copy of a bill of lading with a consul within twenty-four hours thereafter -- that may not be a good plan at all, I am just using that as an illustration -- that the shipper will be obliged to establish a contact with the consulate even though he makes a pro forma invoice, because the most effective surveillance that the consul has is by seeing who is connected with that transaction, and that could be accomplished in a less formal way possibly than by the presentation of a consular invoice duly drafted for certification.

THE CHAIRMAN: If there is a Consular Agent in the locality from which the goods are shipped do you insist on certified invoice? I mean before the goods are admitted, or is it only in cases where the shipper might have some difficulty in reaching the consular office?

MR. HOSMER: The test is supposed to be the latter, but the situation is somewhat anomalous along the border in that regard, because you are somewhat at the mercy of the shipper in what he tells you about the emergency created. It is very simple for him to say that these cars were all loaded late in the afternoon, and it was utterly impossible for me to get consular invoices, you see, because he did not have the weights, and he did not have this and the other, and the statistics that were necessary, until the loading had been completed, and that after that time it was quite impossible for him to get the invoices made out and to the consulate that night, and by the time that the next day has come this stuff is already on the border ready to go across, and the pro forma system has to be applied. Just how far shippers

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abuse that privilege is something that I personally have never been able to fairly determine.

THE CHAIRMAN: You have not got any statistics to show the percentage of pro forma entries?

MR. HOSMER: I have not any statistics for the whole of Canada, but I may say personally from my experience as consul at Sherbrooke, that more than seventy-five per cent, close to eighty per cent of all entries, were pro forma entries.

MR. JUSTICE ROY: For pulp wood and lumber especially?

MR. HOSMER: Pulp wood, lumber, asbestos and cream, which is perishable -- there is another element that enters in there,

MR. ROWELL: Would you mind telling the Commission the safeguards your law requires to have a consular invoice ultimately produced and certified?

MR. HOSMER: We have a statute which requires the production of this invoice finally under a bond which the customs broker at the border is obliged to give, provided he can obtain this pro forma entry, and that bond is cancelled only by the production within six months of a duly consulated invoice; or, I may add, Mr. Derry has suggested, the payment of liquidated damages in the sum of five dollars.

MR. DERRY: The law says a penal sum to be prescribed by the Secretary of the Treasury, so that if there is occasion to increase that penal sum it may be done.

MR. ROWELL: Have you any further protection so far as the broker is concerned, if he fails to produce the consular invoice which he has undertaken to produce on his pro forma entry?

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MR. HOSMER: I believe that all these customs brokers are bonded to the Government in a considerable sum, but just what the technical conditions of that bond are, and whether they would cover this case or not, is a question I believe the Customs Department would be better qualified to answer than I.

MR. LOWMAN: We could regulate that by refusing to permit that broker to do business any more; that is the most effective way.

THE CHAIRMAN: He acts under permit or license.

MR. LOWMAN: Practically that.

MR. ROWELL: It can be cancelled or revoked at any time.

MR. LOWMAN: Yes, and if they want to do business they try to conform to the regulations.

MR. ROWELL: Is there a license for a stated period?

MR. LOWMAN: Brokers are licensed --

MR. CAMP: (Commissioner of Customs): They are licensed; in theory the license can be revoked, but in practice it requires quite a showing of misdemeanour, and so forth.

MR. HOSMER: If a man persisted in not producing invoices you could ring him up I presume and at least threaten to cancel his license.

MR. CAMP: Yes. As a matter of fact there are a few very reliable brokers that handle practically all the business along the Canadian border. The revenues of this Government are protected largely on account of the individuals, and their reliability. If there were a large number, and a number of unknown brokers with poor financial standing, there would be a weakness in our present system, and the question has been a live one at all

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times, and the adequacy of the sum of five dollars has been repeatedly raised, but the system works well, largely because we are fortunate in having practically all the business handled through a very limited number of brokers along the border.

THE CHAIRMAN: Have you the form of certificate that the Consular Agent uses?

MR. HOSMER: Yes; all the forms are furnished by the consulate; there are two forms --

THE CHAIRMAN: What does the Consular Agent certify to?

MR. HOSMER: It is rather an elaborate certificate; I have not a copy here, but I will bring them this afternoon, and copies of the different kinds of consular invoices, and present them to you, so that you can see the exact text. There is a difference in the certificates signed in different types of invoices, varying slightly as to whether the shipment is a consignment or a sale, one covering cases where the importer is not a purchaser, and where naturally the prices are not usually so accurate a guide as in the case where the importer is a purchaser; but I will provide the Commission with blank forms of both invoices.

THE CHAIRMAN: Then your broker's

MR. HOSMER: The broker's entry would have to be furnished you by Mr. Camp. Those are not issued through the consular service at all.

THE CHAIRMAN: Perhaps Mr. Camp will provide us with that.

MR. CAMP: I have a brief statement that was prepared in the form of a lecture by the so-called Customs Information Exchange at New York for the information of our customs

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officers. It is written in a very understandable way, and it gives a rather sketchy picture of customs procedure; and attached to this are the various forms of bonds, and I have taken the liberty of having a number of copies mimeographed, and can supply now a sufficient number of copies for each of the members of the Commission. It shows all the forms of entry, and the way in which they are used.

THE CHAIRMAN: That is splendid, if you will do that. I presume from what you have said, and from what is revealed by your written statement, Mr. Hosmer, that notwithstanding your precautions you find even in Canada that there are some parties ready to beat the United States customs officials?

MR. HOSMER: Oh yes, I think that is true.

THE CHAIRMAN: Can you give us an idea of what percentage gets past.

MR. HOSMER: No, I could not; that would be an utter impossibility to even venture a conjecture.

THE CHAIRMAN: Would you say it occasionally happens that notwithstanding your consular certificates frauds are perpetrated?

MR. HOSMER: I would want to qualify my answer to that by saying, certain types of fraud are still possible in spite of consular certificates. The consular certificate as used in connection with certification of invoices in Canada have not proved an effective measure against all kinds of fraud.

MR. JUSTICE WRIGHT: It has diminished it to a large extent.

MR. HOSMER: It has diminished it to a degree, but as long as it is necessary, and it really seems to be necessary

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for the conduct of business, that so large a proportion of imports must come in under pro forma entry, the full effectiveness of consular certificates as a means of detecting fraud is somewhat eclipsed by that fact --

THE CHAIRMAN: But where it has been certified before entry has been made you have found it quite effective?

MR. HOSMER: Yes. I personally was able to detect a fairly sizable number of fraudulent shipments, but the disagreeable part of it was that after I caught one shipper he never brought his invoice to be certified before shipment again.

MR. ROWELL: When you say certain frauds, would you indicate which one that the invoices do not adequately guard against?

MR. HOSMER: The chief item of fraud I have in mind is a falsified shipment of goods in the name of reputable firms who have nothing to do with it, and the most effective consular intervention that I have found has been by our ability to detect by the form of the invoice itself, or forgeries of signatures, or the fact that the invoices brought to the consul to be consulated by some person whom we know is not connected with that firm at all.

THE CHAIRMAN: That would have reference largely to liquors?

MR. HOSMER: Yes.

THE CHAIRMAN: Altogether?

MR. HOSMER: Yes, so far as I know.

THE CHAIRMAN: Because of course that is the practice.

MR. HOSMER: As far as a safeguard of values is concerned I do not think the system of pro forma entries interferes seriously with the consul's ability to check up

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on prices and values.

MR. ROWELL: The difference would be, if certified before it might afford a means of detection before the entry is actually passed.

MR. HOSMER: Yes.

MR. ROWELL: If certified afterwards, the information would be available for the purpose of tracing up a fraud already committed -- one would operate as prevention, and the other as a means of prosecution.

MR. HOSMER: Yes.

THE CHAIRMAN: How many consular agents would you have in Canada?

MR. HOSMER: About fifty.

THE CHAIRMAN: At practically all important export places?

MR. HOSMER: Yes; and some that are of importance only by virtue of being near the border. We have of course three types of officers there. We have several consulates-general in charge of a consul general who has supervising jurisdiction over other officers; and then we have a large number of consulates, and then certain of these consulates will have consular agencies under them who are not always career officers; they are sometimes local residents and business men who are appointed as consular agents wholly for the convenience of shippers, and whose chief duty is the certification of consular invoices.

THE CHAIRMAN: That is, they are Canadian citizens.

MR. HOSMER: They might in some cases be Canadian citizens. It is the only consular officer we have who is not required to be an American citizen. And naturally we like to have our consular agents American citizens also,

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if there is a duly qualified American citizen available in that locality; but there are cases where residents and citizens of the country have been appointed consular agent when no suitable American citizen was available; but any consular officer above the grade of consular agent must be an American citizen.

MR. ROWELL: Are all the consuls under the supervision of some consul-general?

MR. HOSMER: In Canada the consulates-general with supervisory jurisdiction are located at strategic points; for example, Halifax, Montreal, Ottawa, Winnipeg and Vancouver. However, the question of supervision of a consulate-general is purely an administrative question, which I do not think interests you except incidentally. The consulate-general does not attempt to govern the activities of its subordinate officers with regard to particular transactions.

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MR. ANSLINGER: May I suggest you tell the Commission about the non-delimitation of the Consular district and its effect in Canada.

MR. HOSMER: In many countries the United States has found it advisable to definitely set out by metes and bounds the Consular jurisdiction of a certain office, but in Canada, due to the necessity of so large a number of Consular officers there, it has been found preferable not to attempt to assign any definite Consular district to any Consular office in Canada, so that at least in theory a man can present Consular invoices to the nearest or most convenient Consular officer because he is not limited to consulating invoices within any particular area, and that has frequently raised confusing questions, and has enabled shippers to shift their allegance from one Consul to another in a way which has assisted them to some extent in perpetrating fraudulent shipments. I think most of the Consuls in Canada are quite cognizant of that situation now and have taken practical means to provide against that.

MR. ANSLINGER: In other words the man who is detected by Mr. Hosmer at Sherbrook might send his invoice out to Vancouver to be consulated.

THE CHAIRMAN: He would hardly get it passed in Vancouver if he were doing business in the province of Quebec, would he?

MR. ANSLINGER: That is merely a statement, but he will probably send miles away.

MR. HOSMER: He might sent it to Quebec or Montreal; he might not shift to such an extreme degree as Mr. Anslinger has suggested, but nevertheless he would be within a reasonable proximity of a number of different offices, and he could shift from one to the other.

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MR. CAMP: The Consular officer as a matter of fact is a bit anxious to make a good record in the collection of Consular fees, and sometimes in his anxiety to show some collection to justify the existence of his office, he will not raise very serious objections to the bringing of invoices there, perhaps a large number that might as far as locality is concerned better have gone some place else.) omit

THE CHAIRMAN: That raises another question: You require a fee to be paid for every certificate.

MR. HOSMER: Yes. I may say that is true; but the remuneration of the Consul has nothing to do with those fees whatsoever. It does not make any difference to the Consul whether he collects $10.00 in a year or $10,000.00 in a year so far as his own remuneration is concerned; all fees are collected for the benefit of the Government; it may be that there have been cases such as Mr. Camp suggests where some officer had an unreasonable amount of pride in making his office seem important, but I may say that personally I have never been conscious of any such pride myself, and I have never known any Consular officer who sought to increase the amount of work he had to do for that purpose.

MR. JUSTICE WRIGHT: Could you state generally whether the fees collected by the Consular agent in connection with the exports are a very substantial sum?

MR. HOSMER: They are indeed.

MR. JUSTICE WRIGHT: And go a long way towards maintaining the Consular service?

MR. HOSMER: In an indirect way, of course, they do. All these fees go into the general treasury and of course there is no difect connection between the fees collected by

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the service and the amount of income which the service yields, but as a matter of fact, fees from the service represent a very substantial sum, and if they were put directly to the credit of the service would go a long ways towards its support.

MR. JUSTICE WRIGHT: The maintenance of the Consular service is not a serious burden on the finances of the country.

MR. HOSMER: I don't think it is; that is together with other fees. That is only one kind of fees we collect.

MR. ROWELL: Q. Would you mind explaining the other fees that the Consular agents collect, the other single item of fees from which the greatest income is obtained --

MR. HOSMER: Passport control and immigration work. That represents a substantial income to the Government. In reference to that we collect fees for the issuance of clearance papers to foreign vessels, for notarial services of various kinds that may be required for documents to be used in the United States, executed either by Americans or foreigners in your particular district, and every State in the United States recognizes the notarial authority of Consular officers in foreign countries. In some cases a considerable amount of notarial work is done; the taking of depositions in foreign countries is quite a source of income in some places, that is depositions of witnesses for use in litigation pending in this country; provided, of course, that the nation where the Consul is posted, is willing that such deposition should be taken by him. I spoke of clearance papers.

MR. DERRY: I think that covers this fairly generally. We have quite a few services which are covered but which do not

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pay any fees.

MR. HOSMER: The issuance of American passports too is in some offices a considerable item of income.

MR. ROWELL: I have heard it suggested that speaking generally the income from your Consular offices in Canada would more than pay the expense of administration in Canada.

MR. HOSMER: I don't think there is any doubt but what that is true, because the fees collected by Consular officers in Canada are all relatively high. I know that from my own experience there, and from other colleagues with whom I have talked. We have of course in different parts of the world many offices that are maintained for purposes important, but nevertheless not from the standpoint of income. In other words, we have many offices in parts of the world that the collection of fees nowhere near covers the expense of maintaining them; and then we have other offices where we collect more than will maintain that particular office; and I would say that the fees collected at nearly all Canadian offices are relatively high.

MR. VALLANCE: You mean the total amount received from the fees is high?

MR. HOSMER: Yes, and the invoice fees are a very important proportion of the fees in Canada.

THE CHAIRMAN: The invoice fee is set for each invoice, or does it depend upon the amount involved?

MR. HOSMER: A set fee for each invoice -- $2.50, regardless of the value of the merchandise; in other words it is a service charge and not a tax.

MR. ANSLINGER: I might state that on a consolidated invoice it is only $2.50.

MR. HOSMER: Yes.

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MR. ANSLINGER: In other countries consolidation is not permitted and is not done as a general rule.

THE CHAIRMAN: It is for the certificate, and as a consolidated invoice it would mean one certificate.

MR. HOSMER: Yes; and there are a number of countries, particularly some of the Latin American republics who make quite a large item of income from their Consular invoice business, base the fee upon a percentage of the value of the merchandise in it, and in such cases it almost amounts to a supplemental import tariff in effect, but I think it has always been the idea of our Government to make it a service charge, and have the fee represent simply the value of the service.

THE CHAIRMAN: Do you require a Consular certificate in every case, no exception?

MR. HOSMER: No exceptions, except for shipments of less than $100 in value.

THE CHAIRMAN: In those cases no certificate is necessary?

MR. HOSMER: No, and the Customs officials can clear merchandise on direct declaration.

MR. CAMP: And another exception is passengers' baggage and household . furniture.

MR. HOSMER: Yes, personal baggage and household furniture.

MR. DERRY: Such things as a casket containing a corpse would not require a Consular invoice, and special classes of merchandise.

THE CHAIRMAN: Have you a printed list of that?

MR. HOSMER: I can furnish you with that.

THE CHAIRMAN: Perhaps you would furnish us with that.

MR. HOSMER: We have that in the form of a general

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instruction which enumerates the classes of merchandise which are exempted.

THE CHAIRMAN: If you will do that it will help us.

MR. HOSMER: I will bring that this afternoon.

THE CHAIRMAN: With reference to your Consular agents in another way in the matter of facilitating trade between the two countries, do you find that they are helpful as a bureau of information?

MR. HOSMER: I believe they are. Possibly the trade work of Consular officers in Canada is not of the same direct benefit as in other countries, because of the proximity and the intimate knowledge that the American exporters and importers can obtain for themselves by their own officers and agents, who can very easily visit the different localities, and representatives of American firms can go there, but in a broader sense I believe that the commercial and economic reports showing the tendencies of business in broad lines, rather than the promotion of sales or any direct benefit, the fundamental reports on economic and commercial conditions are of considerable value to our Government, are of benefit and will probably continue --

THE CHAIRMAN: Is the Consular agent at the service of your citizens in a direct way?

MR. HOSMER: For many purposes, matters of protection of interest in proper ways. Of course there are many things that a Consul cannot do, but he can intervene in a discreet manner for the protection of the interests of his nationals with the local authorities, simply for the purpose of seeing the man receive just treatment; and then of course you have relief and welfare work to attend to, and whereas of course he cannot make it an eleemosynary

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institution, at the same time a Consul can practically always find a way of attending to that, either through communicating with the American Red Cross or communicating with relatives of any person who becomes unfortunate and in indigent circumstances. We have considerable welfare and relief work to attend to.

MR. ROWELL: Coming back to the frauds on the Customs, are you in a position to tell us whether in your experience (or perhaps some other officer might) you have found many frauds on your Customs through this double invoicing, fraudulent invoicing? I may say we have found a good deal of that practice throughout Canada, one of the most serious phases of Customs fraud.

MR. HOSMER: I found quite a good many in some countries, but I never found any in Canada.

MR. ROWELL: I am rather asking the question with a view of seeing how far in actual practice your Consular service does prevent it.

MR. HOSMER: I may say at one post which I was -- I prefer not to discuss the post by name -- a good deal of export business was handled by export brokers, all of whom I found after a little while were open to a good deal of suspicion, but fortunately all of them disliked each other heartily and they exported from this country several products on which our Government collected and ad valorem duty, and I found that each of these large exporters were delighted to furnish me with a report concerning the nefarious undertakings of their competitors, and this in rather a clandestine manner; and as a result of it I found it possible to regulate the matter of prices very well, because they were all working against each

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•ther and for my benefit. Of course the chief value of that sort of supervision is in the case of goods ;hich pay an ad valorem duty, and from a given locality. There are not generally a great many of articles which are subject to ad valorem duty, so that the Consul does not have as a rule a serious volume of work placed on him to keep time with the conditions of the market with regard to those particular commodities bearing ad valorem duty.

MR. CAMP: Mr. Chairman, I believe it would be helpful to the Commission if Mr. Kracke, Chief Appraiser at the port of New York, and Mr. Thomas, chief Assistant Appraiser at the port of New York, were asked some questions, because there are some countries from which the exports are all ad valorem, subject to ad valorem duty, and some experiences indicate that a whole line of goods may be incorrectly invoiced over a period of years without detection, and it really does require a good deal of work, perhaps of investigative work, investigative work outside of Consular certificates, to protect the revenues adequately.

MR. LOWMAN: Mr. Kracke is Appraiser at the port of New York; we have had him come over here.

MR. ROWELL: That is exceedingly kind. It is one of our principal difficulties.

THE CHAIRMAN: There is one question I would like to ask: Where you find an exporter in another country who is carrying on fraudulent practices do you attempt to deal with him at all?

MR. HOSMER: No, there is very little you can do except to hold him to the mark.

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THE CHAIRMAN: I had thought the privilege of black-listing him, or something of that kind --

MR. HOSMER: No, I do not know that you have any power to do that; the only thing you can do is, if you once find a man guilty of fraudulent practices, you naturally would observe a special scrutiny of any transaction that came through to your office from him, but I apprehend that yourattempt to prevent him from making further exportation by refusing to consulate his invoice would be a step that would likely be resented in a country, and be misunderstood. I do not think there has ever been any effort made to prosecute a man of that kind.

THE CHAIRMAN: I do not mean to prosecute, you could not do that, but you could certainly prevent him from exporting his goods to your country.

MR. JUSTICE WRIGHT: Refuse entry to his goods, or increase the tariff on them?

MR. HOSMER: I don't know that we have any authority under our law by which that could be done. The only authority I know of which we would have would be to give a special scrutiny to every transaction.

MR. JUSTICE ROY: It can be done only after a modification of the Treaty. There are treaties usually between the country.

MR. HOSMER: Yes, commercial treaties.

MR. JUSTICE ROY: And so if you want to apply a rule like that it should be made after a modification of the treaty, or understanding with the country.

MR. HOSMER: I presume it could be put into a commercial treaty, but I know of no such agreement.

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THE CHAIRMAN: There is no country going to seriously object to having citizens who are practicing fraud of that kind on another country held up.

MR. HOSMER: I would not expect they would.

MR. ROWELL: Now, Mr. Kracke, chief appraiser of the port of New York, could tell us on this point.

MR. F.J.H. KRACKE, Chief Appraiser of the port of New York: The suggestion has been made by the Commissioner of Customs, Mr. Camp, that just at this time I might give you an illustration as to the value or estimated value of consular invoices as a guide for the collection of revenue, referring to a specific case that has been before us of very great importance, I shall ask, Mr. Thomas, my chief assistant, to give you that in brief, but we can not go into it in detail, because the case is not yet completed, but it makes a very striking illustration of what is desired to be brought out, and so I shall ask Mr. Thomas.

MR. A.K. THOMAS, assistant chief Appraiser, port of New York: I would say it is the duty of the Appraiser to appraise imported merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or establishing the value thereof by all reasonable ways and means in his power, any statement of cost or cost of production in any invoice, affidavit, declaration or other documents to the contrary not withstanding, to ascertain the number of parcels or quantities of merchandise ordered or designated for examination, to ascertain whether the merchandise has been truly and correctly invoiced, and, describe the merchandise in order that Collector may determine the dutiable classifaction, and to report his decision to the

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Collector. The duties of the Collector are based on the value reported by the Appraiser, and the rate of duty is determined from the description of the merchandise furnished by that officer.

An investigation commenced in November, 1926, and not yet quite completed, revaaled these conditions, and the name of the merchandise is left out. The report to the Department was to the effect that no line of merchandise appraised by this office, that is the appraiser's office, New York, was under closer observation or was the subject of more frequent inquiry as to valus than this merchandise. It is imported in very large volume, amounting in value to many millions of dollars annually and paying a comparatively high rate of duty. While there was certain uniformity of prices at which the merchandise was invoiced and entered there was nevertheless serious doubt of whether these prices actually represented correct dutiable value. As I say, this investigation was started in November, 1926, and a questionnaire was submitted to each importer in that line. I am picking from the report thos e things which I think are pertinent. The difficulty of obtaining reliable informati on in regard to the value of this merchandise is remarkable, and a brief summary of the attendant obstacles to be surmounted is necessary for a complete understanding of the situation prevalent at the time the investigation was begun. The investigation showed there was a marked uniformity of prices in the Consular invoices which uniformity was due to an understanding or an agreement in the foreign market to control the invoicing values, and it was made with intent to defraud the United States Government of a portion

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of its lawful revenue. The practice of falsification, in invoicing merchandise was undoubtedly adopted to misrepresent and conceal the true facts from the appraiser, in as much as the uniform values were generally used both in the consigned and purchase form invoice, and these values were confirmed by reports from the consulate. Prior to these investigation and during two or three previous investigations we had reports apparently reliable, official and dependable, upon which the appraisement was based. We subsequently found that the manufacturers of this merchandise who shipped to their agents in the United States, prepared these so-called price lists and gave them to the consular offices, but they did not represent value; it was merely the value at which they invoiced the merchandise.

THE CHAIRMAN: And not at which they sold it?

MR. THOMAS: There was no market in the home country; the merchandise was not sold for export to the United States, it was simply consigned to the agents in the United States, a controlled market. They consigned the merchandise under different conditions. The importer here would have an open account with the manufacturer, he would furnish the capital, and there would be a settlement at some other later date. In other cases we found the merchandise was invoiced to the representative in the United States; it was credited on the books of the importer at both consular and proper invoice prices, but we later found there was another item appearing in the account, and when we had that before us we found that this invoice represented in fact a debit bill for the balance due. In this industry the local importerskept a watch over all the activities in the local market, and were well aware

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that any information they would voluntarily furnish the Appraiser would re-act against their own financial interests. That community of interest resulted in a concerted effort to keep the Appraiser ignorant of the true facts, and made necessary the obtaining of documentary evidence in order to open up the fund of information which the investigation eventually developed, and will be noticed later in this report.

The next paragraph deals with the difficulty of appraising this particular line of merchandise. From documents produced in the foreign investigation, it was discovered, or rather it was confirmed by foreign investigation, the ledger account had these two items: A consular invoice and the expense statement. However, when this officer visited the importer's office they had been discontinued, and two accounts substituted therefor: One, which agreed in all details with the consular invoice, and the other account for the so-called expenses. This change was made no doubt in an effort to deceive the investigator, as the original ledger page incorporating both items in one account was subsequently obtained by this office. A further examination was made of these importers for foreign accounts and it was found in all instances both the consular invoice and the so-called expenses were included in one account. The only account which was changed or altered was the account under investigation. The total valuesas incorporated in the two accounts were frequently 60% in excess of the consular invoice figures. As the investigation proceeded it was developed that certain methods and schemes were used to conceal the true facts, all of which were designed to

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accomplish one purpose, the result described, that is, undervaluation of the merchandise approximately 60%, for Customs purposes. Those investigations had been coming along for a number of years, they covered practically the same grades, kinds, and qualities of merchandise, and the invoice prices were uniform. All information that we had been able to obtain up until last November indicated that those prices were the correct value for appraising purposes until an investigator was assigned by our office to visit one of these concerns, and he happened to find this re-written page in the ledger. He brought down these pages of the account and the re-written page, and it was very apparent that this page had just been written. We found that, as I say, debit notes followed for alleged expenses which were really a part of the value of the merchandise, so that merchandise that had been appraised, we will say, in the neighborhood of 65¢ was properly appraisable at $1.10 -- that is taking just one item ~~of~~ out of many, as an illustration --

THE CHAIRMAN: Your Consular agent would have found it impossible to locate it?

MR. THOMAS: I do not see how he could. They were all invoicing the same merchandise at the same prices, and if it would be helpful to your Commission may I relate --

MR. KRACKE: And at the different cities in that section of the country, and more than one country.

MR. THOMAS: We had not completed the investigation of all.

MR. KRACKE: In more than one country, and all with uniform figures.

THE CHAIRMAN: Controlled?

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MR. THOMAS: A controlled market in those countries.

MR. KRACKE: And so great a difference as between 50 to 60% has now been established and accepted and paying duty now, and getting ready to pay back duties to the Government.

MR. HOSMER: May I suggest, that I think one thing Mr. Thomas said ~~there~~ indicates the impossibility of the Consul apprehending ~~that~~ such a wide-spread and carefully-planned fraud in the fact that he said ~~that~~ there was no market for this commodity in the country where it originated, and of course the Consular agent has to rely largely upon that fact for his investigation; so that it would be possible, just as he said, over a period of years, for the Consul to be unable to detect this fraud owing to the fact that he has no local market with which to make any comparison of prices. That happened in a few cases. I was at one post where there was a certain type of perishable merchandise, exported fruits and vegetables, ~~exported~~, fruits of a kind which found no market in the country where they were produced, that is, the people of the country down there did not use that kind of fruit, although they raised them for export, and I remember that the Consulate was troubled year after year to get the price of that particular kind of fruit, and nearly every year a special investigator was sent down there to assist us in investigating the price of those ~~things~~, articles based upon this same consideration which Mr. Thomas ~~threw~~ brought out, the lack of any local market for this particular merchandise.

MR. KRACKE: The best way to answer that is, we take the Consular invoice simply as a starting point. I have had our examiners under direct orders not to make advances

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unless they knew definitely why they were making them, and to withhold making advances and withhold the entries, pending further information, if that was necessary, and because of that order during the last fiscal year we have had under way 700 foreign investigations.

MR. ROWELL: It is quite a common method with you for the purpose of evading your Customs law to use a fraudulent invoice, is it?

MR. KRUCKE: Yes, it is.

MR. ROWELL: It is not unusual with us.

MR. CAMP: Some Customs officers who are not overly optimistic estimate in some of the smaller countries that 70 to 80% of the invoices are to some extent fraudulent.

MR. THOMAS: Or they fail to comply with the requirements.

MR. CAMP: That is not my statement, but the Customs officers; many of them are not at all satisfied that in some countries fraudulent invoicing is not quite prevalent.

THE CHAIRMAN: So that your appraisal system has to be kept right up to the mark as a final check?

MR. KRUCKE: Yes.

THE CHAIRMAN: In spite of your Consular certificate?

MR. KRUCKE: Simply a starting point.

MR. CAMP: That fraud is detected principally by investigation.

THE CHAIRMAN: Under the appraisal branch?

MR. CAMP: Yes, special agency service.

MR. JUSTICE WRIGHT: But generally is the Consular service of great help to the appraisers?

MR. CAMP: It is of great help in one way; if a commercial invoice were accepted probably the information

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in the way that it is desired would not be presented to the Appraiser; at the same time if particular information is desired regarding a certain commodity, that additional information is required to be stated on the invoice, and the Consular officers throughout the world can see that the information is properly stated on the invoice before the invoice is certified, or otherwise all the shippers the world over would have to be educated before that information would be forwarded, and the commercial invoices would come to the Customs officers in a degree of incompleteness as to the information furnished.

THE CHAIRMAN: And if your appraisal branch wanted further information at the point of export your Consular agent is there for the purpose of furnishing it?

MR. CAMP: It is done largely through the Customs officers in foreign countries, our own investigating officers, Customs representatives, located in the foreign countries, but I apprehend that as shippers must go to the Consulate to have their invoices certified it does keep the Consular officers in the foreign field in touch with the commercial activities in their own district, and is very helpful; that may be an indirect help that we do not appreciate as time goes on. I may say that some people in the Customs service feel that a commercial invoice would serve the purpose; my own view is a commercial invoice would not serve the purpose. I personally am a believer in the certified invoice, I believe the certifying of invoices is of immense value to the Customs service in its work.

MR. ANSLINGER: I might interject that the Consular invoice is certified under oath.

MR. DERRY: No, only in very exceptional cases; it is

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merely a declaration.

MR. HOSMER: He does not make oath, he makes a declaration. I may say, in entire agreement with what Mr. Camp has said and also Mr. Kracke, I do not think there is any Consular officer so sanguine concerning the effectiveness of the investigating functions of Consuls concerning prices and things ~~like that~~ of that kind as to feel that he is any more than a link in the chain of investigation, and that the resourcefulness of the particular officer to a certain extent determines how effective a link he is in the chain. That ~~would be~~ is true in any line of work. There is this to be said particularly with regard to these very unusual situations which have been brought out here, ~~that~~ the Consul ~~very likely would~~ might not detect a great combination ~~of fraud~~ to defraud. He might be deceived. I would say, however, that there are a great many revisions of Consular invoices that go on in foreign countries, ~~concerning which they would~~ of which Customs officers never know, because naturally the Consul does not write in every time he makes a man redraft an invoice and state it has been done. However, I would freely concede that the Consular activities in that connection are one link in the chain of investigating work. The experts in the appraisal department are especially trained for that work, whereas it is only one branch of the Consul's work.

MR. CAMP: I believe the Appraiser wanted it understood that he has a duty, an independent duty of determining the value regardless of the statement on the invoice. As a matter of fact, in the absence of other means of making an appraisement, and this happens perhaps more outside of New York than in New York, the statements on the invoices are accepted, and so as a matter of practice,

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the statement on the invoices enters largely into the question of appraisement, particularly at the smaller ports where the facilities for determining prices are not as convenient and available as at the port of New York.

MR. THOMAS: May I say that a shipment might be correctly invoiced in every respect as to the description of merchandise, contents of packages, packing charges, and price paid, and yet the value may not be accepted on appraisal. We have very heavy advances upon absolutely correct invoices, but we do not want the Commission to get the idea that once the merchandise is properly invoiced all difficulties are overcome. Mr. Hosmer understands that; that is why the statement was made.

THE CHAIRMAN: It is simply a statement --

MR. THOMAS: It is a link.

THE CHAIRMAN: Having everything regular and in form would be a help.

MR. THOMAS: If one exporter properly invoices his merchandise and another does not that is a great help to the appraising officer because he matches the two.

THE CHAIRMAN: Later on we will take up the appraisals branch if we may.

MR. ROWELL: The Consular certificate would avoid something that we have found many cases of omitted from the invoice, the packing charges, having a separate invoice for that, and passing only the one invoice, and holding back the other.

MR. THOMAS: That is quite a common practice we have found.

THE CHAIRMAN: I presume the question of describing your packages as contained in the invoice can come under

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the appraisals branch?

MR. ROWELL: Yes, that is what I had planned to do. When you say quite common, do not your Consular agents detect that?

MR. THOMAS: They do and we do. Out of 45 0,000 invoices in a year there is room for both to work.

MR. ROWELL: We might pass to three:

"Methods of appraisal. The Commissioners are anxious "to learn authoritatively the chief regulations in "force in the United States concerning the appraisal "of goods for Customs purposes and the qualifications "which are required for the appointment of appraisers."

I think Mr. Camp and Mr. Kracke were both going to speak to us on this.

MR. CAMP: I would prefer to defer to the appraising officers, Mr. Kracke at the port of New York, and Mr. Thomas, who has been in the service for some forty years, and has held almost every important position at the port of New York.

MR. ROWELL: May I ask you this to start with: Do you require that the invoice shall show on its face the actual marking of the package in which the goods described in the invoice are contained?

MR. THOMAS: In the country of origin?

MR. ROWELL: No, so that you are able from your invoice to pick out the exact cases that correspond with the goods?

MR. THOMAS: Yes.

MR. ROWELL: Do you always insist that the invoice should show on its face the marking on the package that contains the particular goods described in the invoice?

MR. THOMAS: The marks should be shown on the

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invoice so that the contents of the case can be identified. Section 481 --

MR. HOSMER: There is a special column.

MR. THOMAS: If you will refer to section 481 of the Administrative Act, I think you will find that.

MR. JUSTICE WRIGHT: Without opening any package you can locate from the invoice the package you wish to have examined?

MR. THOMAS: That is done by the Collector. The invoice goes to the Collector and he designates certain packages for examination.

MR. JUSTICE WRIGHT: But he knows from the invoice.

MR. THOMAS: What it should contain.

MR. HOSMER: I will bring those forms this afternoon after lunch, so that it will be easier to discuss the question from that.

THE CHAIRMAN: Each package is designated by a number --

MR. THOMAS: Usually by a number. I think 481 covers what you want, on page 112.

MR. ROWELL: 481 says:--

"That all invoices of merchandise to be imported into "the United States shall set forth:

"(1) the port of entry to which the merchandise is "destined;

"(2) the time when, the place where, and the person "by whom, and the person to whom the merchandise is "sold or agreed to be sold, or is to be imported other- "wise than in pursuance of a purchase, the place from "which shipped, the time when and the person to whom "and the person by whom it is shipped;

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"(3) A detailed description of the merchandise,
"including the name by which each item is known,
"the grade or quality, and the marks, numbers or
"symbols under which sold by the seller or manuf-
"acturer to the trade in the country of exportation,
"together with the marks and numbers of the packages
"in which the merchandise is packed."

THE CHAIRMAN: It clearly requires it there?

MR. THOMAS: I think you will find 481 will give you clear information on that.

MR. ROWELL: If you get a shipment of goods where the packages are not marked, what do you do in that case?

MR. THOMAS: We call on the importer to furnish his specifications or any documents he may have which will enable us to identify the merchandise. That will work in the majority of regular importations, but in the case of importations by individuals, tourists, and people not engaged in the importing trade, we have to exercise just a little more consideration in those cases, because they are not used to requirements of the law, and in those cases we may make up an invoice or list ourselves, and then obtain from them whatever information we can as to the prices paid.

MR. KRACKE: You asked a question, Mr. Chairman, regarding the appraisement. I have prepared a memorandum here that I think is a succinct and direct story, and just what it involves might best be presented to you, read to you, and thereupon questions might be asked, because it is all boiled down there, and you put it in your records correctly.

THE CHAIRMAN: This might be a very good time to have that.

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MR. THOMAS: "It is the duty of the appraiser to
"appraise imported merchandise in the unit of
"quantity in which the merchandise is usually bought
"and sold by ascertaining or estimating the value
"thereof by all reasonable ways and means in his
"power, any statement of cost or cost of production
"in any invoice, affidavit, declaration or other
"document to the contrary notwithstanding.
"To ascertain the number of yards, parcels or quantities
"of the merchandise ordered or designated for
"examination.
"To ascertain whether the merchandise has been truly
"and correctly invoiced. To describe the merchandise
"in order that the collector may determine the dutiable
"classification thereof and to report his decisions to
"the collector. The duties collected are based on the
"value reported by the appraiser and the rate of duty
"is determined from the description of the merchandise
"furnished by that officer.
"The tariff act of 1922 contains 495 paragraphs imposing
"duties by specific or general enumerations of duties
"or classes of merchandise. Many of these paragraphs
"enumerate more than one class of merchandise and in
"many cases impose different rates of duty. There are
"also 210 paragraphs enumerating either generally or
"specifically such merchandise as is entitled to entry
"to this country free of duty.
"For a great many years the policy of the United States
"has been to assess ad valorem duties upon the basis
"of the actual market value of the merchandise in the
"country of its production or its sale.

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"Under the present tariff act the value of imported
"merchandise is defined to be foreign value or the
"export value whichever is higher. If neither the
"foreign nor the export value can be ascertained,
"then the United States value. If neither the foreign
"value, the export value, nor the United States value
"can be ascertained, then the cost of production.
"There is also a special provision for any competitive
"article manufactured or produced in the United States
"of a class or kind upon which the president has made
"public a finding as provided for in the tariff act,
"for the appraiser to ascertain the American selling
"price of such article.
"The appraisement of merchandise is an ascertainment
"of its value. The value for tariff purposes is
"defined as follows: It is the price
"(a) at which such merchandise is freely offered for sale;
"(b) to all purchasers;
"(c) in principal markets;
"(d) in usual wholesale quantities;
"(e) when sold in the ordinary course of trade;
"(f) at the time of exportation.
"In the ascertainment of these values it is necessary
"for the appraiser to have a thorough knowledge of
"1st - the character of the merchandise;
"2nd - the existence of a market;
"3rd - the place of the market;
"4th-the ordinary course of trade ,
"(a) as to wholesale quantity;
"(b) quotations and offers,
"5th - prices at which commodities are
"actually sold

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"(a) identical commodities,

"(b) similar merchandise comparable in value,

"6th - the time of exportation

"A market is defined in general terms to be a place "where merchandise is freely and openly bought and "sold. In the consideration of this point the appraiser "must keep in mind cases due to the following "circumstances:

"1st - Markets where merchandise is sold to all apply- "ing purchasers whether resident in the country of the "market or elsewhere.

"2nd - Markets where merchandise is manufactured or "produced which by reason of internal economics the "inhabitants of the country of production do not purchase.

"3rd - Markets which are limited, circumscribed or "closed to certain classes of purchasers by the deliber- "ate act of the producer or dealer.

"4th - Markets where by reason of extraneous commercial "influences prices vary to purchasers of different "nationalities.

"5th - Markets existing under the dominion of one "government while the merchandise is produced in the "dominion of another government.

"6th - Markets existing in different localities in the "same country where the prices vary within the same "territory.

"The statute requires foreign value to be ascertained in "the principal markets of the country whence exported. "With respect to some merchandise the principal markets "are at localities more or less distant from the place "of manufacture and the prices at which the product may

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"be obtained by purchase at the place of manufacture
"vary from those prevailing at the principal market.
"The appraiser must also ascertain the ordinary
"course of trade which embraces and is applied to not
"only the prices at which goods are actually sold but
"to places in which they are offered for sale and the
"quantities in which sales are usually made.
"The application of this clause in ascertaining foreign
"values requires in many instances inquiry into
"industrial as well as commercial products. It is also
"connected with questions involving the existence and
"locality of the market.
"The appraiser also often has to decide the question of
"whether certain items, such as commissions, turn over
"taxes, manipulation taxes, etc., form or do not form,
"part of the market value.
"The cost of production includes, and must be
"ascertained by the appraiser:
"(a) Cost of materials;
"(b) Cost of fabrication;
"(c) General expenses;
"(d) The expenses of preparing and putting merchandise
"in condition for shipment, and the amount to be
"determined;
"(e) An addition for profit.
"Appraising officials, in ascertaining market value,
"cite before them any importer for examination upon
"any matter material to ascertaining the market value
"of imported merchandise, and have the power to require
"the production of letters, accounts, contracts,
"private invoices and the like.

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"The importance of the authority granted the appraiser
"to cite importers before him for examination can be
"appreciated in considering the order issued by the
"Assistant Secretary of the Treasury on May 7th, 1923,
"regarding rules of practice and procedure before the
"Board of United States General Appraisers, which reads
"as follows:

"RULE XXXV: 'Testimony taken by collectors and
"appraisers under the provisions of Section 508 of the
"tariff act of 1922, when reduced to writing, properly
"certified, shall, together with all letters, accounts,
"contracts, invoices or other documents related to
"imported merchandise, be filed with the Board to be
"preserved for consideration as evidence in any proceed-
"ings which may thereafter be pending before it relating
"to such merchandise. The Chief Clerk of the Board
"shall keep testimony and papers in separate files,
properly indexed, for convenient reference.'

"The principles essential to consider in determining
"value are defined by statute. The field of their
application is the entire range of natural and
"artificial production, embracing every specific
"article of commerce, ranging from the commonest to the
"rarest of natural commodities and from the crudest to
"the most perfect products of human labor, skill and
"intellect. The problem of applying such principles to
"such a field of application is infinite in its
"complexities.

"It can be realized that it is impossible for the
" appraiser to personally attend to these numerous
"duties and therefore the administration of the
"Appraiser's Department is divided into divisions;

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"each division is in charge of an assistant appraiser
"who is assisted by a number of examiners, clerks and
"other employees. This unit performs all the duties
"above described and is the foundation upon which the
"entire superstructure for the collection of customs
"duties is erected.

"In the last analysis it is the determination of the
"appraiser which fixes the status of shipments of
"imported merchandise with reference to their values
"and their classifications for duty purposes
"unless changed upon review, and in the great majority
"of instances of appraisement his determination remains
"undisturbed and is followed in computing the rate and
"amount of duty exacted, so that the great bulk of
"revenue from customs depends for its integrity upon
"the precision with which the conclusions of the
"appraisers are reached.

"The work of the appraiser at the Port of New York does
"not cease with the placing of values on merchandise
"imported through that port but extends to every port
"in the United States. The Treasury Department, in
"order to secure uniformity of appraisement and classif-
"ication of imported merchandise, established a bureau
"known as the 'Customs Information Exchange'. This
"bureau is located at the appraiser's office in New
"York. To this bureau all ports throughout the United
"States forward requests for information as to rates
"and values of imported merchandise; the bureau in turn
"refers the inquiries to the Appraiser at New York who
"gives the sending port the desired information.

"It must not be assumed that the Appraiser's action is

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"final and conclusive in all matters; his actions are
"subject to review by the Customs Court.
"At hearings before this Court both the Government and
"the importer have an opportunity to introduce evidence
"and to hear and cross examine the witness of the other
"party and to inspect all samples and all papers
"admitted or offered as evidence. The evidence produced
"for the Government is usually procured by the Appraiser,
"and in many instances the only witness testifying in
"behalf of the Government is the Appraiser or his
"assistants."

That briefly is the statement, but not knowing just what you wanted we prepared that.

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THE CHAIRMAN: Your Customs Court, what is that?

MR. THOMAS: The Customs Court consists of nine Judges appointed by the President. The Court is held in our building, and they hear cases all over the United States at the different ports at different times. We make a report of appraisement, as we term it, and it is higher than the entered value the importer has ten days in which to call for a re-appraisement. That goes before a single Judge. Whatever the decision may be there can be an appeal from that to three Judges. That usually terminates the question of value unless there is a question of law involved, and it might go to the United States Customs Court of Appeals. On questions of rate a protest can be lodged within sixty days after liquidation, and the case then goes before the Customs Court, and is heard by a Board of three Judges, and from that appeal can be taken to the Customs Court of Appeals.

THE CHAIRMAN: Are the Judges trained to this work?

MR. THOMAS: Yes, entirely Customs work.

THE CHAIRMAN: And your Court of three Judges?

MR. THOMAS: That is a division.

THE CHAIRMAN: They move around?

MR. THOMAS: Yes; they move around; they travel to all the ports; they make up their dockets for a certain period, and this work is assigned or taken up by the different Judges.

THE CHAIRMAN: What is the result--expedition or delay in doing it that way?

MR. THOMAS: Well, there is quite a little delay, in some of the most important cases; in some of the minor cases or less important cases you get quite a prompt decision; but that decision of course is not lasting, because market

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conditions may change particularly as to value, and that decision would only cover the particular importation involved in this hearing.

MR. JUSTICE WRIGHT: Is the Court in the nature of a Board of Appraisers?

MR. THOMAS: They appraise and pass upon rates; they were formerly known as the United States Board of General Appraisers, but their name was changed about a year and a half ago to the United States Customs Court, but from 1892 down to about a year ago they were known as the Board of Appraisers.

THE CHAIRMAN: How are they located, the nine Judges?

MR. THOMAS: Right in our building in New York.

THE CHAIRMAN: And supposing a case arises out on the Pacific Coast, do they go out there?

MR. KRACKE: Make up a docket, and go there.

THE CHAIRMAN: How long would an interested party have to wait before his case was disposed of out at the coast?

MR. KRACKE: Six months, three months, according to how they make up their docket.

MR. JUSTICE WRIGHT: Do they hold regular sittings? In the different sections of the country, or just as business warrants?

MR. THOMAS: Just as the business would require.

MR. CAMP: The docket is made up practically a year ahead, and by looking at the docket you can find out when one member of the Court will have his hearings at say Detroit Michigan, or Seattle, Washington; and I imagine in a place like San Francisco the docket would show that hearings were held about every three months.

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MR. THOMAS: I think about four times at year at an important port like San Francisco; but an importer at that port can ask for a hearing at New York; he can get it transferred to New York and insist upon a hearing.

MR. JUSTICE WRIGHT: It is at the importer's option where it is to be heard?

MR. THOMAS: Yes, I think it really is.

MR. ROWELL: He must pay the duty in the meantime?

MR. THOMAS: The amount involved is deposited. The Collector requires a deposit of the amount involved pending a decision in the case.

THE CHAIRMAN: So that in disposing of his goods, if he wanted to make an immediate disposition of them he would have to take into consideration the price at which they were appraised.

MR. THOMAS: Yes, to play safe.

MR. KRACKE: Probably one word that is not brought out in what we had prepared, those investigations which we made, seven hundred or more, and of which nearly four hundred and fifty are still under way, those investigations at our request are made through the department here directing the Special Agency Service that we have, and they make that investigation; that probably ought to be added for your illumination.

MR. THOMAS: Would you care to have just a brief statement as to the ordinary course of appraisement?

THE CHAIRMAN: Yes.

MR. THOMAS: The entry is made at the Customs House and the invoice is forwarded to the Appraiser direct.

MR. ~~VALLANCE~~ CAMP: That is done by the Collector of Customs, yes, that is the first notice that the appraiser has of the

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importation usually.

MR. ROWELL: Is that done by the Collector himself, or is it some designated member of the staff?

MR. THOMAS: Some member of the staff under the authority of the Collector. The invoice comes before the Appraiser with the request or direction of the Collector to appraise the merchandise and report the advisory classification. In law the Collector is the classifying officer; the Appraiser is the one official who sees the merchandise, and having seen it makes his advisory report to the Collector as to the proper classification, that is rate of duty. As to the appraisement of the merchandise, it may be examined on the dock, at the importer's store, or in the Appraiser's warehouse. We will assume the invoice calls for examination at the Appraiser's warehouse, and there are ten cases on the invoice; one is ordered for examination. The appraising officer will take the invoice, refer to his records of value. These records of value are built up of information received by investigation abroad, investigation here in the form of copies of orders, bills, documents, price lists, and other documentary information. If the prices in this invoice before him check up with his latest information as to values, and he has nothing to the contrary, that invoice would be passed. If he is in doubt, if he feels that his information is not of sufficiently recent date, if it is a line that he has not had for some time, and he has not obtained recent information, he would probably send for the importer and tell him he was not satisfied with the values appearing in this invoice. Then thinking the importer might satisfy him that the merchandise was correctly and honestly invoiced,

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having assured himself that there was no fraudulent intent, he would consent to the delivery of the merchandise, but hold the invoice, and make a request to the Customs Information Exchange for an investigation. It may be he will have a number of those invoices for different importers; it may be at the beginning of a season when stuff is just coming in, and he has not received his reports from abroad. He holds those invoices until he has gathered everything he can secure in regard to information, and after that has all been obtained he then comes to his conclusion as to the proper appraised value at the time of exportation.

In connection with the appraisement of ad valorem merchandise, the appraising officer must always keep in mind the question of dumping, whether the merchandise has been sold for export to the United States at a price lower than that at which it is sold in the home market at the time of purchase, and not at the time of exportation. You have there a different condition. At the present time we have a great number of invoices covering a great many lines of merchandise that are being held in our office pending investigation, and the amount of duty involved is very, very large, but the firms involved are responsible importing firms, they are good for any amount that the government might find necessary to assess; but before passing the invoice the examiners and assistant appraisers are instructed to secure all possible information as to value.

MR. KRACKE: Will you tell the Commission of importers' additions?

MR. THOMAS: Importers' additions; an importer may come to our office prior to entry and ask us if we have any

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information as to value at the time of exportation. We give information, but we also receive information; and if it is the practice of this importer to come to us and furnish us with what he has, we will respond by giving him some information that we might obtain from other sources. In one of our divisions we have built up what we would like to have all over our entire building of ten floors, and that is an arrangement with all the importers to receive from them far in advance of the receipt of the merchandise all copies of orders, all copies of contracts, or any information they might have as to the purchase and shipment of their merchandise. They come in and they secure this information and if they feel that it is correct at the time of entry they advance to make market values such additions--

MR. KRACKE: They voluntarily do that.

MR. THOMAS: Yes; and there is no refund under those conditions; they pay on that because they have corrected their invoice to bring it up to market value at the time of exportation. If I am not incorrect I think those additions last year were twelve million dollars at the port of New York alone; and the examiners in addition to that amount made additions of their own on top of those additions of I think three quarters of a million.

THE CHAIRMAN: There may be some further questions in connection with appraisal that we would like to take up this afternoon. The hour has arrived when we wish to take luncheon. On behalf of the Commissioners we would like to invite all the party to that luncheon. It will be at the Metropolitan Club.

---The Conference adjourned at 1 p.m. to 3 p.m.

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The Conference resumed at 3:00 p.m.

THE CHAIRMAN: Mr. Thomas might proceed on the appraisal work.

MR. ROWELL: I was just talking with Mr. Thomas and he suggested if we would ask any questions he would be glad to answer them.

MR. JUSTICE WRIGHT: As to the appointment of your appraisers and the training, if any.

MR. THOMAS: It is mostly examiners. We have Mr. Kracke as Appraiser, myself as Chief Assistant Appraiser, and we have eight assistant appraisers, and then about ninety examiners.

THE CHAIRMAN: At your port?

MR. THOMAS: Yes; and the balance of one thousand employees would be made up of clerks, samplers, chemists, analysts, packers, labourers, watchmen and guards.

MR. JUSTICE WRIGHT: All members of the appraisal staff?

MR. THOMAS: Yes. They come in now as messenger boys, and from that they advance to clerk, routine clerk, from routine clerk to recording clerk, and from recording clerk to classifying clerk, and then if there is a vacancy they may be appointed examiner if they have passed the Civil Service Commission examinations which are held from time to time for the position of examiner of merchandise. The examination is usually made up by our office, and the questions are forwarded to the Civil Service Commission who hold the examination. The last examination was based upon the candidate's knowledge of the Administrative Act, and he was also called upon to give the appraised value, the classification, the rate of duty, and the component material of

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which a sample was composed. If I am not mistaken we had some twenty samples in the examination; and out of one hundred and forty competitors twenty passed. The competitors are limited to members of the Appraiser's office; nobody from the outside or any other branch of the service can have the examination.

THE CHAIRMAN: That means they have had to have several years' experience in that branch before they can enter for these examinations at all.

MR. THOMAS: Yes; the men who went into that examination had from five to fifteen years' experience in the service.

MR. JUSTICE WRIGHT: And nobody is appointed direct as an appraiser from the outside?

MR. THOMAS: No sir.

MR. JUSTICE WRIGHT: Then you have something of the nature of a bureau of information, I think it is, located in New York?

MR. THOMAS: Yes, it is known as the Customs Information Exchange. Under a Treasury Decision containing directions as to procedure, when an examiner receives information as to a new value or any information that would assist the appraising officer in properly appraising or classifying merchandise he sends that information to the Customs Information Exchange, and by that Exchange it is sent to all the parts of the country. If another port but New York receives information as to a new value or any information that would be of interest to the appraising officers, that port sends it in to the Information Exchange for information of New York. If there is a disagreement between New York and

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another port as to the rate of duty the matter is referred to the Department.

MR. JUSTICE WRIGHT: That is to get uniformity of decision?

MR. THOMAS: Yes, to bring about uniformity of practice The Department also send examiners to different ports on lines of merchandise where a specialist is required, as in the case of antiques. A few weeks ago the examiner in New York was sent from that port to San Francisco to secure evidence and testify in the hearing held by one of the judges of the United States Court.

MR. JUSTICE WRIGHT: How is that information forwarded--in the nature of a bulletin at stated intervals, or just as soon as it is received?

MR. THOMAS: Just as soon as it is received. Then through this Exchange we ask for foreign investigations. If an examiner finds his information is not up to date, or if he has received a line of merchandise that is new he will make a request through this Exchange for information as to production. When that is received that is sent to the requesting port and a copy is forwarded to all the ports in the United States. If we want to cable the cable is also sent through this Exchange.

THE CHAIRMAN: That bureau of information covers all phases of customs work?

MR. THOMAS: More particularly appraisement and classification. The bureau is connected with the Special Agency Service of which Mr. Vandoren is the Deputy Commissioner, and that branch also makes investigations.

MR. CAMP: The Department uses the bureau to send out circular information and instructions of any kind, if

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we have information we think should be circulated but do not care to publish it in the weekly Treasury Decisions we send it to the Customs Information Exchange at New York with instructions to circulate, and that means they will mimeograph it, or do what is necessary to send copies out.

MR. THOMAS: This is an illustration of what Mr. Camp means. We photograph the article in all possible positions, and with this the New York office will prepare a memorandum telling of just how it was found, and whatever information they may have in regard to it, and that is sent to all the ports.

MR. ROWELL: Then for administrative purposes your New York office is really the headquarters so far as appraisal is concerned for the United States.

MR. THOMAS: Not exactly that. We have no authority over any other port, but they come to us for information.

THE CHAIRMAN: Your bureau of information being centred there.

MR. THOMAS: Yes. We cannot tell any other person officially what to do; it is up to him at each port, but very often they follow the information from New York.

MR. JUSTICE WRIGHT: The Treasury is the final judge.

MR. THOMAS: But when it comes to the matter of appraisement the Appraiser is the officer that has to take the responsibility under the law. The Department may issue Treasury Decisions, and they may say what information they have, and suggest causes of action, and in many cases of course the instructions of the Department would be followed, but the New York Appraiser does not appraise entries made at San Francisco or any other port, it is for that officer

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to determine whether he will follow that information or not.

MR. CAMP: I think Mr. Thomas hesitates in saying that the Department has no authority to review the appraisement. The appeal is to the United States Customs Court, and the Department appears in no part of the machinery, as far as determining value is concerned. The Appraiser has the responsibility of determining value, and if the Appraiser is not satisfied he may appeal for reappraisement, or the Collector may appeal for reappraisement, if the Collector feels the appraisement is too low; but the Department has no authority and no control, and does not attempt to influence an Appraiser in determining the value of the importation.

MR. JUSTICE WRIGHT: That is to a single judge in the first instance?

MR. THOMAS: Yes; the law says the action of the Appriaser shall be final and conclusive unless an appeal is taken to the Customs Court, and Mr. Camp has very kindly explained what I had a little hesitancy in saying, because we are under the direction of the Department, but when it comes to the matter of appraisement it is true, as he says, that the action of the Appraiser is final and conclusive unless an appeal is taken by the importer or the Collector.

MR. KRACKE: It may be said there is the closest cooperation between the New York office and the Department, and there are daily conferences over the telephone on any matters that are in question at all.

MR. CAMP: Further, I think it would be very unfortunate if the Department could review the work of the Appraiser in determining value, because the Department has

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not the information. The Department would be flooded with requests and cases that it was not in a position to handle, and I think it was very wise to provide that the decision of the Appraiser shall be final, and that the appeal should be to a court, or a court set up for the purpose of hearing appraisement appeals.

MR. JUSTICE WRIGHT: Are classifications treated in exactly the same manner as appraisals?

MR. THOMAS: No sir; classification involves an interpretation generally of a point of law, and the Department does undertake to instruct in the first instance where there is doubt or where there is a difference of opinion between two appraising officers as to the proper classification of the article, and then if the importer is dissatisfied he may protest and have the classification reviewed by the court, and on an appeal by the Court of Customs Appeal. As a matter of law the Appraiser is not the classifying officer. The Collector is the classifying officer; but as a matter of practice the Appraiser puts down an advisory classification of the article, which generally is followed by the Collector. The Collector indicates the classification, but he generally follows the advisory classification of the Appraiser.

MR. ROWELL: Mr. Thomas, in connection with the decision of these claims have you ever had, or Mr. Camp had, in connection with a review of the decision of the Appraiser, a body or court composed of men specially qualified to value, or have you always had a judicial tribunal?

MR. CAMP: In the old days, and that was long before my time, I think they had what was called merchant appraisers.

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MR. THOMAS: First we had merchant appraisers; I think there were three if not five they were men engaged in business, or having had some mercantile experience, would come in and hear cases; but in 1892 or '93 the Board of United States General Appraisers was organized. The first members of that Board, as I recall it, were men who had been in the Customs service, they had been appraisers, special agents, men of long customs experience. At that time it was not required that they should be lawyers, but as it is now it is a court, and I believe in order to be appointed to that court a man must be an attorney, and have had experience in legal practice.

THE CHAIRMAN: How long is it since you made that change?

MR. THOMAS: It was organized as a court about one and a half or two years ago; but before that we had a number of general appraisers who were not attorneys. That court up to a certain time permitted anyone to appear there as a Customs agent or expert, but about four years ago they finally concluded you could not practise before that court unless you passed an examination, if you were not an attorney, and they then opened the way for men in the service to take this examination, and if they passed to be admitted to practise before that court; but since that date only registered attorneys can appear.

MR. CAMP: You refer to people in the service, you mean after they leave the service they shall be eligible to practise before the court.

MR. THOMAS: Yes. A number of men in the service were admitted to practise, and if they leave the service they can practise.

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THE CHAIRMAN: What led you to make that change from a Board of Appraisers to the selection of Judges and a Special Court?

MR. THOMAS: That we have nothing to do with; that is by an Act of Congress. It had been held in a number of decisions of the Customs Court of Appeal that the functions of the General Appraisers were really judicial. Many years ago in these reappraisement cases the General Appraiser acted as an inquiry, he had inquisitorial powers, he himself would investigate as to values, but after a while it developed that he merely sat and heard all the evidence that was produced, and did not seek evidence itself.

MR. CAMP: For many years the Board of General Appraisers was in effect the Court of Record, and the Court of Customs Appeal did not make a record, but reviewed the record that was made by the Board of General Appraisers, and those who favoured changing the name to a Court contended that in reality it was a Court, and it was a Court of Record, and it was the only Court of Record in customs cases, and the Court of Customs Appeal was not originally a judicial tribunal, but, as we have indicated, an Appellate Court that could only consider the record that was made by the lower Court.

MR. JUSTICE WRIGHT: Appellate jurisdiction only?

MR. CAMP: Yes; and that would indicate there was some lower judicial tribunal; it certainly had quasi functions of a Court.

MR. ROWELL: Was there any dissatisfaction from the standpoint of the administration of the Department of Customs with having members of this Board who were not lawyers?

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MR. THOMAS: No.

MR. ROWELL: Was there any practical difficulty, and was it considered expedient to change?

MR. THOMAS: I would not say it was because of any dissatisfaction on the part of the administrative officials, no.

MR. KRACKE: Because the same men now are there who were there previously under the other jurisdiction.

MR. THOMAS: They are there as Judges, whereas they were there before as General Appraisers.

MR. JUSTICE WRIGHT: Have you had a Court of Customs Appeal in existence some time before this Customs Court?

MR. THOMAS: Yes sir; it had been in existence for some years, 1909.

MR. JUSTICE WRIGHT: And the appeal went from the Appraisal Board to the Court of Customs Appeal?

MR. CHIP: Yes.

MR. ROWELL: I thought you said you could only appoint to the Board now a man who was a lawyer.

MR. THOMAS: I understand now appointments to the Customs Court can only be a lawyer. That is outside of our Department, you see. It is a Presidential appointment, and I am only speaking from hearsay.

MR. LOTHIAN: The position Congress took was that this was a judicial function and all the other Courts are filled by lawyers, and therefore this was made over for that reason.

MR. JUSTICE WRIGHT: In practice they only do appoint attorneys.

MR. THOMAS: Yes.

MR. JUSTICE WRIGHT: Is there an Act of Congress that

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makes that imperative?

MR. CAMP: I believe there is no Act of Congress, but if there is any legislative instruction it is to appoint qualified persons, and the fact that it is a Court, and the requirement is to appoint a qualified person, that would lead the Executive to appoint only those who have legal training.

MR. JUSTICE WRIGHT: You could not have on that Court any of the men who were on the former Board who were not attorneys.

MR. THOMAS: I think we could.

MR. JUSTICE WRIGHT: You do not have in fact; if you only appoint attorneys to the Board how can you have men who were formerly general appraisers?

MR. THOMAS: It did not disturb the existing officers.

MR. CAMP: The qualifications of the Board to become members of the Court were not raised.

MR. THOMAS: And those men who were not lawyers have either resigned or gone out of office, so that you have only lawyers at the present time.

MR. CAMP: I think for a long period they have been considering legal training as a prerequisite to the appointment to the Board of General Appraisers, and there has been gradual evolution, and I do not think any appointment has been made for a number of years within that Board except those with legal training.

THE CHAIRMAN: Their work is important, the matter of interpretation of the rules and regulations of the Tariff Act, and I suppose also the ability to say whether or not the evidence offered before the earlier tribunal, the trial tribunal, was proper evidence.

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MR. THOMAS: That would be decision of three Judges on rates.

MR. JUSTICE WRIGHT: There is a Court of three and a Court of five?

MR. CAMP: No, a single Judge, and then the Court of three.

MR. THOMAS: On appeals.

MR. CAMP: The Court of three is the final Court.

MR. THOMAS: On value; but on rates --

MR. LOVMAN: They are the judges of value and also of law.

MR. THOMAS: You have on appeal the reappraisement which goes before a single Judge, and an appeal may be taken from that single Judge to a Board of three; that ends re-appraisement unless there is a legal question involved, and you can take that to the Court of Customs Appeal.

THE CHAIRMAN: On those appeals you cannot introduce any new evidence.

MR. THOMAS: No.

THE CHAIRMAN: It is not a rehearing.

MR. THOMAS: No; you go up on your record.

THE CHAIRMAN: It is simply a question of whether the appraisal in the first place was proper.

MR. THOMAS: You see you are proceeding now to second appraisal , first you have the appraisal we make --

THE CHAIRMAN: You go up from that to your Judge.

MR. THOMAS: Yes, to a single Judge, and the record is made there.

THE CHAIRMAN: He hears new evidence?

MR. THOMAS: Yes; that is the first time the case gets into Court. It comes from him to this Board of three

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Judges and they review the record; but on rates it is a different proceeding. On rates it goes to a Board of three Judges and an appeal from that goes to the Court of Customs Appeal at Washington.

MR. ROWELL: What do you do, Mr. Thomas, where you have a large number of cases of the same class of goods? Do you invariably require one case in ten, or what is your practice?

MR. THOMAS: One case in ten possibly is only involved where there is an appraisement in the Appraiser's warehouse. We have outside examinations on the docks and importer's store where the examiner may examine one hundred per cent. That is not a case of ordering, because the whole importation would be there for him. The volume of business has so increased that we do eliminate as many items as possible to make outside examination, so that we now have twenty-one hundred items that are examined outside of the Appraiser's office. When it comes to the examination in the Appraiser's stores unless there is an order to the contrary we would have one in ten, but where the merchandise is bulky and where the invoice would cover a straight line of a large number of cases where it would be very evident that they all had the same contents, the Collector would order in less than one in ten, because it merely crowds up the place, and the examiner upon examination, if he is dissatisfied with what he finds, might easily order in more, or the entire shipment if it is necessary. At the time of entry the importer gives a bond to return the merchandise to Customs custody if demanded by the Appraiser.

THE CHAIRMAN: When you deliver the goods you take

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a bond from the importer that he will redeliver if called upon?

MR. THOMAS: That is what they call the Collector's redelivery bond.

THE CHAIRMAN: Is that ever executed?

MR. THOMAS: On every entry.

MR. CHAIRMAN: What is the penal sum in that bond?

MR. THOMAS: It is the amount involved, I think it is double the amount of duty collectible. It protects the Government as far as the revenue is concerned.

MR. JUSTICE WRIGHT: Double of the amount --

MR. THOMAS: Of the possible duty.

MR. JUSTICE WRIGHT: As shown on the invoice?

MR. THOMAS: Yes.

THE CHAIRMAN: Would that be a standing bond with reference to a certain merchant?

MR. THOMAS: It applies to every entry.

THE CHAIRMAN: It must be renewed on every entry?

MR. THOMAS: Yes.

MR. ROWELL: One other matter, Mr. Thomas, I think you told us this morning you had got cases of goods without having any number mark whereby you could identify the goods with the invoice; would you tell the Commission what you do under those circumstances:

MR. THOMAS: In that case the examiner would telephone or communicate with the importer and require him to bring to the Appraiser's office any information he may have in his possession as to the contents of the cases. If it should turn out that he had no specifications, had merely bought the lump sum of merchandise without any information as to the exact contents of the cases, if it was possible

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for us, that is for the office, to straighten the matter out we would, but if we could not we would require him to send an employee or a number of employees to make out written papers or give a statement as to what the cases contained. In the case of importations of a great many different articles, take for instance, an invoice covering art objects where you might have classification embracing china, furniture, bronzes, fabrics, and all that, we would require them to put a number on each article, and number the item on the invoice; in other words we would compel them to make out for us a proper invoice in the office. We find if you do that a number of times the importer will very soon compel the exporter to make out a proper invoice.

MR. JUSTICE WRIGHT: Have you any regulation requiring the packages to be so numbered as to identify them on the invoice?

MR. THOMAS: Yes; that is Section 481.

MR. ROWELL: "Together with the mark and numbers of the package in which the merchandise is packed" --

MR. JUSTICE WRIGHT: But if there are no marks or numbers can you refuse the entry?

MR. THOMAS: No; the entry is usually accepted because the Collector cannot anticipate the difficulties we are going to have; he might make an effort, but in the great volume of business that is going through his office they do not always get those particular entries, and they usually come to us and our hold is to tie up the importer, so to speak, cause him a little inconvenience, so that he will go back at his exporter or shipper and see that the proper invoice comes along next time.

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MR. CAHP: Right in this connection, the question of ordering examination of the packages is considered, and is a very important step in the prevention of fraud. Hearings taken in the Customs House at New York that the ordering shall not be done by one man, or that one man will not know whose invoices he will handle; and on the other hand the importer will not know what man will order his examination packages. A number of invoices are taken, they are given consecutive numbers, and they are carried to an entry clerk; the entry clerk among other things indicates in an arbitrary way without any rhyme or reason certain examination packages, and there are a number of entry clerks. The first five invoices may be taken to one entry clerk and the next five to the next one, and so on around the room. At one time I think they had a system of one person ordering examination packages, but the danger of collusion was foreseen, and they stopped that practice, and now have each entry clerk indicate on his entry the entries that he handles, the examination packages, and in addition if the Appraiser has any question in his own mind he may order additional examination packages, and I believe the Collector sometimes reserves the right to indicate additional packages for examination.

MR. THOMAS: And then, too, if the Appraiser has found that a certain line of merchandise there is some question as to correct invoicing or as to the exact character of the invoice, the Appraiser will write the importer for one hundred per cent production.

MR. JUSTICE WRIGHT: Take the case where you have three classes of goods on one invoice, and say only ten cases, does he exercise any judgment in selecting which of

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the ten cases would be sent up?

MR. CAMP: Generally he would take the case containing the representative merchandise of all kinds, and if the importation is too mixed he might order in the whole importation.

MR. THOMAS: At the time of entry if the entry clerk feels that the invoice does not afford proper information for the Appraiser to make the examination and appraisement that is required, he may order in the entire shipment; but in the case you speak of, say an invoice covering several packages, they have certain prescribed rules they are supposed to follow in ordering merchandise. I understand he would select representative cases; if he had two unimportant cases and one case containing a large amount of merchandise with a heavy value he would possibly send that last mentioned one in; if he had out of three cases a case containing somewhat varied merchandise, in number and classification, he would send that case in. The importer or broker has no set way of knowing what is going to be ordered for examination.

MR. JUSTICE WRIGHT: It is left to the discretion of the entry clerk?

MR. THOMAS: Yes. His instructions are based upon the experience of many years as to what the Appraisers would want. Sometimes it may embarrass the Appraiser if certain goods are not ordered in, because you may have to make a textile analysis, a chemical analysis, you may have to secure specific information with reference to this process and classification; we try to keep the Collector informed of all those things we must have samples of, but many cases are classified on invoice description when the examined cases are

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found all to be correct. The building is not large enough and the number of employees is not sufficient to do one hundred per cent of all the importations.

MR. ROWELL: Mr. Thomas, would you tell us just how you handle it, just how the actual appraisal is done; take a case of goods and tell us how you would appraise it in your appraisal warehouse?

MR. THOMAS: The case is received in the Appraiser's office and the invoice has also been received from the Collector; the invoice and case are assigned to the examiner who passes the particular line of merchandise; the invoice is taken by his clerk for purposes of reference to any information he may have recorded as to value and classification. If the clerk finds that the information referred to is up to date, a line has been investigated, and he has any record of preceding importations for other importers, he will check up the invoice values with all that recorded information. If the values invoiced are found to correspond with the prices paid by other importers, and are in agreement with the information that the examiner has as to value the invoice is laid aside until the case is received in the office. Upon receipt of the case the invoice is placed upon it, and the packer, who is also a verifier, will verify the contents of that case. If they are found to be correct the invoice is then passed to the examiner, it goes over what we call a floor on which there may be some twenty-five to one hundred cases for examination.

MR. ROWELL: You said the packer would verify the contents; does he actually check the contents of the case?

MR. THOMAS: Yes; he will check the contents in various ways. You may have a case containing twelve packages

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of a given kind of merchandise containing one dozen articles in the package; he will probably see that one of these packages does contain a dozen, and if the others appear to be the same size, same style of package, he might assume, possibly would assume, that that case contains twelve packages each containing twelve dozen.

MR. ROWELL: Would he count them to make sure that there were just the twelve packages?

MR. THOMAS: Yes; and he would also check one of the packages to see that it contained a dozen or gross or half dozen, whatever the invoice may claim.

MR. ROWELL: Take another class; supposing it were a class of tweeds or of silks, how would he verify the contents in that case?

MR. THOMAS: If they were in there in bolts or rolls he would measure a given quantity and estimate if the entire bolt would contain the total amount invoiced, in other words he would by different ways determine whether the case contained what the invoice stated.

MR. ROWELL: Would it be considered dereliction of duty on his part or on the part of the Appraiser if he went ahead and appraised goods without satisfying himself that the contents were in accordance with the quantities mentioned in the invoice?

MR. THOMAS: It would. Of course the Appraiser is supposed to report --

MR. CAMP: During certain periods of congestion that is not --

MR. THOMAS: I was coming to that; we have periods of the year in which it is impossible to carry out such a

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careful and detailed verification, so that we have to improvise, so to speak, if our men think that a certain line of merchandise, after testing a number of cases, is all right, we might assume that the balance is all right; but in the periods when we can verify it the men are urged and compelled to verify just as much as possible; in other words we have to change our course in accordance with conditions that confront us. We find from now until the holidays is the busy season; it is almost impossible to meet the demands and not have a congestion, and during those periods we cut corners somewhat, and during this period from now until the middle of October the examiners have to be sent out so much on the docks to examine passengers' baggage, and then too, we have so many outside examinations where we have to send our checkers, but we are supposed to verify the contents of the package, but the administration appears to take into consideration the conditions under which we operate, and therefore it would not be exactly a dereliction of duty if you take the circumstances into consideration.

MR. CAMP: The first requirement is to keep merchandise moving, the Appraiser realizing that if the merchandise is piled in on the top of unexamined cases that he will be slowed up in his work, and he will get into a hopeless situation; therefore when the Appraiser's stores begin to fill up they speed up the work and work out means of meeting the situation and taking short cuts that in the judgment of the officers will not jeopardize the revenue; but what they may do to meet one situation might be a little different during the next situation.

MR. THOMAS: Then you may have merchandise you could

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not repack, bulky merchandise, merchandise that you might injure, and you might have merchandise that not one of the employees would touch because of its explosive character, and that we have to pass very often upon the certificate or affidavit of the importer.

THE CHAIRMAN: Take your carload lots where the appraisal takes place outside of the appraisal room where the shipment is for an interior port --

MR. THOMAS: That goes on, that is what we call an I.T. and the examination is made at the final port of entry.

THE CHAIRMAN: I thought your ports were all at the border, you had no interior ports at all.

MR. THOMAS: We have I.T. entries which come through immediate transportation at the final port of entry.

MR. CAMP: All of the United States lies in some collection district. Take the State of Ohio, there are seven or eight ports of entry; Columbus, Toledo, Cleveland, Cincinnati, and they are interior ports. Chicago is a very important port of entry; practically all of the merchandise received at Chicago reaches Chicago in bond. Collections at Chicago are about $16,000,000. a year. Most of the importations are for the stores at Chicago, the mail order offices and the retail stores, but that merchandise comes through in bond to Chicago and goes into the Appraiser's stores and is examined the same.

THE CHAIRMAN: Even though it comes through the port of New York?

MR. THOMAS: Yes; the car would be sealed and sent on to Chicago.

THE CHAIRMAN: I don't know where we got that information, that your ports were all at the border.

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MR. THOMAS: You may have got this impression, that once merchandise is destined for a certain port it must be entered there.

MR. CAMP: At the port of first arrival it must be entered either for consumption or bonded warehouse or transportation to an interior port, or for transportation and exportation.

MR. THOMAS: It must be finally entered at the port for which it is invoiced; that is to prevent shifting of importations; supposing an importer had difficulty at the port of New York, and he wanted to ship it to Boston or some other port, he could not do that; but if he started out to originally ship to Boston or some other port he could; in other words he cannot divert a shipment.

THE CHAIRMAN: Can you tell us offhand how many ports you have?

MR. ROWELL: That comes under another head.

THE CHAIRMAN: Very well.

MR. ROWELL: How about the carload lots where you do examine them at the port of New York; what is the nature of the examination you make?

MR. THOMAS: The carload lots in many cases are weighable merchandise; if the stuff is invoiced by the pound or the ton the Surveyor's Department would weigh that merchandise, and they would turn in to the Collector a certificate of weight. The Appraiser would receive the sample taken by the sampler, and that sample is brought in to the Appraiser's office and the appraising officer determines the value and classification.

THE CHAIRMAN: Supposing it is a carload of machinery?

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MR. THOMAS: In the case of machinery it is usually examined at the place of installation. There is a special provision on machinery, and in that case the examiner would merely go up to wherever the car is, have the car opened up, identify the merchandise as being machinery, look for the manufacturer's name or some other mark indicating it was the merchandise invoiced, and then permit it to go to wherever it is to be installed, and later on after it is installed he goes and makes his appraisal. You take on other bulky merchandise, and we might send to the dock or to the railroad terminal, examine it, release it and tell the importer we intend to call at his place and finish the examination there. In other words, if the appraising officer cannot satisfy himself at the first examination of the identity and character of the merchandise he ties the importer up to it until he does complete his examination, and becomes satisfied of the character of the merchandise.

MR. ROWELL: You would not pass a carload lot unless either at the inception or end of installation the goods in that car corresponded with the invoice?

MR. THOMAS: No.

MR. ROWELL: You do not take the shipper's word on the matter, or the importer's?

MR. THOMAS: Hardly; we have nothing to do with the weighing; the Courts have held the Appraiser is limited to the unit quantity, and we could not report on five thousand of a certain thing being worth twenty-five thousand unless it was sold that way; if it was the practice in the market to sell in quantities of five or ten thousand pounds for a lump sum that would be regarded as the proper basis for appraisal, but if the merchandise is so much per pound or ton

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or cubic foot the Appraiser appraisers' it in that unit; but when it comes to bulk merchandise the Collector through the Surveyor's Department ascertains the quantity.

MR. CAMP: Mr. Thomas, however, speaks on the practice of New York City; Mr. Thomas of course does not speak for the practice prevailing at the border; carload lots coming to New York City generally reach New York on I.T. entries, they cross the border at some other port, and an I.T. entry is made for New York City. I may say the facilities at New York are better in many instances than at the border, and at some of the border ports the Customs officials are compelled to do the best they can under sometimes very trying circumstances. Merchandise comes through sometimes in the winter in a snow-storm, and they have great difficulty in making examinations, and they accept the railroad's weights, I apprehend in many cases, and statements on the invoices and statements of importers, and they check up when facilities are provided. We often find when we provide, for instance, scales for weighing of cattle that the importers of cattle will avail themselves of the privilege of importing in some port where we have no scales, and the reason is more or less obvious.

MR. ROWELL: I suppose the thoroughness with which the appraisal work is carried on at the port of New York is more conspicuous than at smaller ports throughout the country.

MR. CAMP: I think perhaps at a port like Baltimore or Seattle where the merchandise comes in as cargo as of a vessel, physical possession is taken of the merchandise by Customs, the work is as thorough as at New York, and in many instances more thorough, because at many of these ports

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at no time during the year are they compelled to employ short cuts that are sometimes employed at the port Of New York; but the places where commerce makes it impossible to take physical possession at the points along the border, and when the shipments come in in carload lots and the trains cannot be held up, and sometimes facilities for weighing or completely checking are not available --

THE CHAIRMAN: Why not in such cases let the goods go on to their destination to the final port?

MR. THOMAS: They may not be going to a final port; they may be going to a section where there is no --

CHAIRMAN: Assuming they are going, would not you let them go through?

MR. CAMP: The importer may elect to make an Entry for Consumption at the border or send them in transit to the port of destination, and the Customs would only check up at destination in exceptional cases where they suspected an incorrect weight, or incorrect information were given.

THE CHAIRMAN: Or where they could not very satisfactorily deal with it at the border.

MR. THOMAS: You have to adapt yourself to the circumstances. New York sometimes will have to release something that is going to another port, but we will write to Customs Information Exchange or Department and ask the official at that place to give us the information; in other words you are quite satisfied on most of the things, but you want some additional information, so you withhold your report of appraisal and ask the other port to secure this information; so that the whole appraisal system is taken as one. Mr. Camp can tell you the number of ports.

MR. CAMP: We have about three hundred ports of entry

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in addition to some Customs stations.

MR.ROWELL: We will swing to number two:

"Ports of entry. A reduction in the number of C dian ports of entry, at which Customs revenue is collected, has been recommended in evidence before the Commission. It is understood that there are many more ports of entry in Canada than in the United States. The Commissioners would be glad to be able to benefit by the experience of the United States Customs Service in the handling of business with a limited number of ports of entry."

You have prepared a memorandum on that?

MR. CAMP: Yes sir; a memorandum has been prepared on that question --

THE CHAIRMAN: Just a moment, Mr. Hosmer has some papers.

MR. HOSMER: Yes. There is the list which will show every place where we have a onsular ffice; here is our schedule of consular fees; there is the instruction which shows the types of merchandise which are exempt from consular invoices; and here are the four forms which are actually used in connection with invoices. Now, I have an additional supply of each of these forms which I will hand to you for future reference. There is one thing I would like to ask Mr. Thomas to explain that he kindly drew to my attention at noon that might be of some passing interest to you in just closing up this question of consular invoice. In the last few years effort has been made to take advantage of the Customs organization in New York for the instruction of consular officers who are coming to the United States on

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leave of absence, or who are passing through the United States en route from one post. to another, and the State Department has instructed all such officers to report, whenever conditionsmake it possible,to the Customs House in New York for instruction. That permits the appraisement office to give the consular officers the benefit of their experience, and sharpen their wits somewhat in the matter of detecting frauds and things of that kind. I was very much gratified to hear from him that good results are coming from the coordination of the efforts of the two Services, and I would be glad to have Mr. Thomas say a word, if he would, about the method they use of instructing consular officers, of whom a considerable number are passing through New York.

MR. THOMAS: I am very glad to do that, because for the past two years it has been the practice of the State Department to have these consular officers come to our office in New York. They usually come to the Appraiser's own office, and we find just what merchandise would be certified or consulated at their particular port; for instance, if the consular officer at Liverpool should come in, we take our list and see what lines of merchandise would be consulated at Liverpool; we have him brought in contact with all the men who receive merchandise from Liverpool: cutlery, hardware, china, furniture, or art objects, and these men will say to him: "We have this difficulty with the invoice; this firm, John Smith & Son fail to tell us the period of the furniture they are invoicing; this firm fail . to put on packing charges." If you have a consul come in from Hamburg or Berlin where they have turnover taxes we find some of the importers receive invoices on which the exporter has not given all information as to taxes; and

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in that way we acquaint the consul on things that are missing from invoices; and I might say I think there has been a wonderful result from that personal contact of the consular officers with appraising officers right in the Appraiser's office in New York, and I understand it is planned here in the fall to have the Appraiser come down to speak to the young candidates for consular positions in order to put before them the desires and needs of the Appraiser's office. We have accomplished a great deal that way.

MR. ROWELL: Is that the training school you referred to in your memorandum?

MR. THOMAS: Yes.

MR. HOSMER: We have in the State Department what is known as the Foreign Service School, which all persons who have passed the examination for entrance into the Foreign Service must attend and successfully pass their courses for a period of a year. That was only started in 1924, and each year it has been more effective, and, as Mr. Thomas has said, part of the course given in that school during the coming year will embrace addresses by the Appraisers, so that the new men going to the field will have a thorough preparation in their course of duties.

MR. ROWELL: That is a different school from that referred to as your Training School for Customs Agents.

MR. THOMAS: Yes.

MR. ROWELL: Tell us what that is.

MR. THOMAS: This is the Customs Information Exchange that I spoke of this morning, and this is in regard to special agents to make investigations either abroad or here as to values of merchandise, and so forth; that is quite different

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from invoicing and consular service.

MR. ROWELL: Mr. Camp, you have a memorandum on the ports of entry?

MR. CAMP: I have four copies of the memorandum with a list of the ports of entry, and I have additional copies of the memorandum without the list of ports. If the Chairman please, I will read this memorandum.

THE CHAIRMAN: Yes.

MR. CAMP: " 'Ports of Entry. A reduction in the number of Canadian ports of entry at which Customs revenue is collected, has been recommended in evidence before the Commission. It is understood that there are many more ports of entry in Canada than in the United States. The Commissioners would be glad to be able to benefit by the experience of the United States Customs Service in the handling of business with a limited number of ports of entry.'

"Answer:

"The United States has 298 Customs ports; also 120 Customs stations where officers are stationed. At four of the 298 ports no Customs officers are stationed, so that only 294 ports are in operation for customs purposes. The maximum number of ports that under the law may be established is 324. There are 127 Customs ports and 84 stations along or near the International border, including the Great Lakes, between the United States and Canada, a list of which accompanies this memorandum.

"The difference between ports and stations is principally that the former are limited in number, are created by order of the President, and do business in their own name, while the stations are unlimited in number that may

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"be established, they are established by the Secretary of the Treasury, and do business in the name of the nearest port of the Headquarters port of the Customs district in which they are located.

"In the interest of economy, the number of Customs ports and stations is kept at the lowest number consistent with the needs of commerce and the protection of the revenue. In consequence of local pride often considerable pressure is brought to bear at times for the establishment of Customs ports. Before recommending to the President the establishment of a port the Department requires the applicants to submit evidence, as far as practicable, of the importing business that is done for that place through already established ports, and what the prospects are for the transfer of that business or for new business if the place is created a port. Sometimes a Special Agent is sent to the place to look into the situation. Sometimes, to test the probable business, the place is designated as a Customs station temporarily and a Customs officer is sent there on part time or whole time. Great care is taken to ascertain the probable additional expense that would be incurred by the establishment of the place as a port.

"There is also another important consideration that influences the Department in minimizing the establishment of new ports, such new ports being of necessity in practically all cases small or one-man ports. It is believed that it is more advantageous to the Government and to the importers likewise to have fewer but better equipped ports than to have a large number of small or one-man ports. At the larger, better equipped ports there is more expert information and experience available, closer supervision,

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"more uniformity in the appraisement and classification of imports - better facilities in every way. For instance, an article destined for, say, Peoria, Illinois, arriving at the port of New York and entered and cleared from the Customs there would receive the attention of a specialist in that class of goods which it could not possibly have if forwarded in bond to Peoria for entry and clearance there, where the single Customs officer might never have even heard of such an article.

"In order further to limit expenses and in the interest of good administration, the business done at the various ports and stations is carefully watched and the force reduced or withdrawn with decreasing business, or the service reduced to a part time or a seasonal basis or sometimes if the places are in sufficiently close proximity they are consolidated for Customs purposes or a Customs officer will spend alternate days or half-days at the respective places.

"Another factor operating to some extent to keep the number of ports at a minimum is that under certain conditions imports may be sent under bond and Customs seals to places which are not ports or stations, consigned to the nearest Collector of Customs, who will send a Customs officer to that place at the expense of the importers to examine and appraise the merchandise.

"Another similar factor is that Customs inspectors or Deputy Collectors stationed at convenient points may accept what are known as informal entries for imported merchandise valued at not exceeding $100, and for personal and household effects not intended for sale; and mail importations

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may be delivered and duties paid at any post office.

"A patrol along the border to prevent merchandise being introduced into the United States without entry at a Customs port is of much assistance. Since the creation of the border patrol some of the small ports that formerly collected little or no revenue have reported collections in quite substantial sums.

"During the past several years with the advent of good roads and increased use of automobiles the traffic across the border, other than by rail, has increased by leaps and bounds and the Customs facilities in many instances are at present inadequate; On many principal arteries, the type and location of the custom houses are subject to criticism and the necessity for the erection of suitable buildings properly located is urgent. This question has received some consideration by the Bureau of Customs and an effort is being made to secure an appropriation to erect serviceable buildings of a uniform type on the principal international highways. In this connection, it would seem desirable for the officers of the Canadian Customs Service and the officers of the United States Customs Service to join in a discussion of their mutual needs. It would be logical and a convenience to the public to have quarters for the United States Customs Service near the border and at the points where Customs facilities are available on the Canadian side of the line. The ideal situation would be for the respective Governments to maintain Customs stations on the principal international arteries immediately adjacent to the international boundary. Under existing conditions, at many points a person may cross the border and travel for a considerable distance

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"before he realizes that the boundary has been reached. With the Customs stations of both Governments located at the line it is perceived that the Customs work would be facilitated and at the same time the furnishing of adequate quarters and equipment properly located would add to the respect of the public for the Customs Services and aid in the enforcement of the Customs laws.

"The Customs officers of this Government will be glad to cooperate at all times with the Canadian Customs Service on this and other questions of mutual interest."

This last portion of the memorandum has special reference not to the commercial shipment but to tourists and merchandise that is brought in in hand baggage and on automobiles.

THE CHAIRMAN: Would you find it necessary in order to carry that into effect to create many more ports at the border?

MR. CAMP: I believe that the Department feels that it now has Customs facilities on the principal arteries, but it does not always occur that the Customs House is close to the line, and in some instances a new road has been built, which would suggest the moving of a Customs House from a road that has practically been abandoned. I do not think that it would require the establishment of very many, if any, additional Customs ports.

THE CHAIRMAN: I think the suggestion in our country is that a great many of the ports and sub-ports might be abandoned without seriously inconveniencing the traffic. I would like to know something about your work in that respect. You must have many large interior cities and towns that have no ports.

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MR. CAMP: That is true. There are quite a few cities of considerable importance that are not ports of entry. Generally there is some railroad centre or some city not very remote that is a port of entry, although Salt Lake City, for instance, is the only port of entry in the State of Utah, but there are very few importations that would come in to any other place if created a port of entry, and of course importers may clear their importations at the border, at the port of first arrival. The Treasury Department feels that the creation of a large number of ports of entry does not aid in the protection of the revenue, but on the other hand is more or less of a menace to the revenue. Obviously it is impossible to equip a large number of small ports as well as it would be to equip a smaller number of larger ports.

THE CHAIRMAN: That is quite apparent, but do you find that your importer in many of these interior centres makes any assertion of inconvenience at all in that respect?

MR. CAMP: Generally the assertions are made by the local Chamber of Commerce, and very often after a Court is created it is only by some pressure in the local organization that they can compel the local importers to import direct to the interior port. Many of them prefer to clear at the border; and it is sometimes largely a question of civic pride rather than as an expeditious way of doing business that influences the importers to avail themselves of the privilege of making an I.T. entry at the port of first arrival, and paying the duties at the local port.

THE CHAIRMAN: Would you have cases of where there were no ports near the importer's place of business and the goods would be so packed that it would be difficult to appraise

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them at the nearest port, that they could not be very well appraised until the shipment was broken up on the premises of the importer?

MR. CAMP: That would be the exception rather than the rule; but it does occur; and permission is given -- and this is considered as a convenience to the importer -- for appraisement on his premises, and an Inspector is sent to that place at the expense of the importer, but a special arrangement must be made for an importation of that kind and special authority given.

THE CHAIRMAN: That seems hard on the importer that he should be put to that expense just to do business.

MR. CAMP: That is true; but for instance, the city of Washington has a Customs House, it is known as the Georgetown Customs House; it is within the District of Columbia, but it sometimes happens that somebody will have merchandise that they will want unpacked in their own home, and we will send somebody to the house, and if it was outside of the district the importer would be obliged to pay the cost. but generally there is no complaint about paying the expenses, because it is usually quite a convenience to the importer.

MR. MACKIE: Because it is a convenience to him --

THE CHAIRMAN: Where it is a convenience to the Appraisal Branch, then what, where the goods are so packed that it is almost impossible to repack them? We had some illustrations of that out at Vancouver.

MR. JUSTICE ROY: They have to pass through some port of entry, and they will be examined there.

THE CHAIRMAN: But they cannot be examined there just because they cannot be opened until they are finally opened.

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MR. CAMP: I do not recall anything of that kind, but certainly the importer would not be compelled to bear the costs of examination if for our own convenience; we should elect to send somebody to follow that merchandise to destination; but that would be very unusual, and the chances are we would open it at the port of entry, accept the estimated duties, accept the Consumption Entry, and send some special agent or other person to check up on the importation.

MR. THOMAS: Very often they prefer that. We find in most of the cases they are perfectly willing to pay these expenses, particularly articles of fragile merchandise which they feel might be damaged by unpacking and repacking; they are very glad to pay the expense of sending the appraising official to that place.

MR. CAMP: If they insist on making an entry at the port of first arrival the Customs without exception I believe will accept the entry and attempt to make the appraisement. It may cause some inconvenience, and maybe some damage to the merchandise, but the appraisement will be made at the port of first arrival, I might say, almost regardless of the difficulties and inconvenience.

THE CHAIRMAN: So that generally speaking you would say there is no dissatisfaction in your interior places of business for lack of ports or sub-ports.

MR. CAMP: That is right. Changing the whole system to take care of the exceptional importation would not be justified in our estimation. Mr. Thomas reminds me of a certain instance where we sometimes pay the expense of an examining officer, an importation, for instance, diamonds, may come in at some port not equipped to pass diamonds, and the Collector

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will wire to the Department for help, and they will instruct, and will send an examiner to Columbus, Ohio, or another place, and that of course is at the expense of the Government, because it is our own short-coming, and it is cheaper to send a trained man occasionally than to keep a trained man at a place where his service will be used only a fraction of the time.

MR. ROWELL: According to the House of Commons report in Canada we have 681 places at which customs revenue is collected at ports and sub-stations.

THE CHAIRMAN: We have tried to satisfy every interior longing apparently.

MR. CAMP: It might be interesting and instructive to this Commission to gather some information regarding the reorganization of the Customs Service. It occurred in 1913. There was quite a bit of political pressure against abolishing of a number of headquarters ports, consolidating a number of districts, abolishing ports, and so forth, but nobody at this time would undo what was done in 1913. It was a very decided step in the right direction. In many cases there would be twenty or thirty separate Customs districts where Collectors would be stationed which would be consolidated into one district.

MR. ROWELL: Could you tell us approximately the reduction that was made at that time?

MR. CAMP: I believe that about seventy per cent of the headquarters ports were abolished. Many of them were created into sub-ports, but the ports where Collectors were stationed I believe about seventy per cent were abolished; but it did not occur to me that this would be of particular

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interest, and I would prefer to secure for the Commission a copy of the report accompanying the Bill that put the reorganization into effect. I believe that report quite fully explains what was done.

THE CHAIRMAN: That might be very helpful to us.

MR. THOMAS: March the 3rd, 1913.

MR. ROWELL: I notice in this list of Customs stations which you have given us accompanying this memorandum you have a number in Canada; does that mean you include in the number given us the places where you have a United States Customs Agent to pass the baggage and matters of that kind?

MR. CAMP: That is included in the number of eighty-four stations along or near the International line; of course the United States does not collect import duties except on stations located within the United States, and it is always in the name of some other port or sub-port.

MR. ROWELL: The only point I had in view was it would reduce the number you have given us.

MR. CAMP: Yes, it would reduce the number of eighty-four; it would not reduce the one hundred and twenty-seven. Very often the station is a post at which Customs officers are located practically within the city limits of a city that is a port of entry.

MR. ROWELL: Then could you tell us how many Customs offices you have at the present time at which Customs duties are collected?

MR. CAMP: I have not that information; it would be the 127 Customs ports along the border.

MR. ROWELL: I do not mean as between United States and Canada but the entire number.

MR. CAMP: There are 298 Customs ports, and four that

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practically have been abolished, so that there are 294 ports in operation for Customs purposes.

MR. ROWELL: In addition to that are there other stations where you collect Customs duties?

MR. CAMP: These stations carry on the work in the name of some port of entry; for instance, Newark, New Jersey, is now a station in the New York district. I believe Mr. Thomas can explain how they do their work. They have their Appraiser's stores at Newark, and some three million dollars are collected in duty at Newark.

THE CHAIRMAN: They practically do all the work of the port except they do it in the name --

MR. THOMAS: Of that district, district ten which is the New York port, and they report into New York and their appraisements are sent to our office for checking up.

MR. CAMP: But as far as the importer is concerned he does business with Newark, New Jersey, and there are 294 ports at which Customs officers are stationed, and 120 Customs stations. Some of these stations are quite important, and others are of very little importance; but for practical purposes probably one hundred of the one hundred and twenty stations collect import duty to some extent in the name of the headquarters port.

THE CHAIRMAN: How many of those would be one-man offices, have you any idea?

MR. CAMP: Of the Customs stations, I should think that probably half of them might be one-man offices, and of the ports probably there are one hundred one-man ports within the United States. I would undertake to get that information for you definitely if you desire it.

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MR. ROWELL: It was just to get a comparison with our 681. I think the information contained in the report we have, our own report, is not quite accurate; it gives 270 in the United States as compared with 681 in Canada. 681 is the entire number of stations at which Customs revenue may be taken in, ports, sub-ports, and out stations; I thought I would like to get the figure from you that would be comparable with our figure.

THE CHAIRMAN: It would be 294 plus 100.

MR. CAMP: Yes, approximately 100.

MR. ROWELL: In round figures 400.

MR. CAMP: Yes.

MR. ROWELL: You think that would be fair?

MR. CAMP: I think that would be a fair number.

MR. ROWELL: Compared with 681?

MR. CAMP: Yes, and the tendency is to abolish some of the ports of entry that now exist. Some of the ports particularly along the Great Lakes were established largely for navigation purposes, and that change in the law with reference to the clearing of vessels and so forth has done away with much of that work, and I know that Congress when the law was passed anticipated that a number of Customs ports along the Great Lakes would be abolished; but it is largely civic pride and political pressure that makes it very difficult to start the work of abolishing these ports.

MR. ROWELL: Have you any Customs offices for purposes at which you do not collect revenue to prevent smuggling?

MR. CAMP: I do not recall of any places of that kind. Of course we have our stations along the road, we have stations at the bridges and ferries, and while they do

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not receive formal entries nevertheless informal entries are received and duties are paid on articles of small value.

MR. ROWELL: Those are generally associated with the Court in the town or --

MR. CAMP: They are made in the name of the port.

MR. ROWELL: Immediately adjacent?

MR. CAMP: Yes. Of course the Customs station at the end of the International Bridge at Niagara Falls is at Niagara Falls.

MR. ROWELL: Have you any method of checking the appraisals at these one-man ports?

MR. CAMP: The control necessarily is somewhat deficient. Of course entries are all reviewed by the Controllers of Customs. The United States is divided into seven Controllers' districts; there is a final liquidation at the headquarters port, and there are forty-seven headquarters ports. They are all pretty well controlled and supervised; and then in turn the liquidation is made by the Controllers of Customs.

MR. ROWELL: Does that cover more than a clerical checking of the accuracy of the entries? Does it call for a review of the invoice by someone with a knowledge of that class of business who would be able to form an opinion as to whether that represented the correct value of the goods?

MR. CAMP: Of course the review at the headquarters port would go into the question of values. On liquidation the liquidator, if he would observe certain things that seemed erroneous, would call them to the attention of his superiors.

MR. ROWELL: What do you mean by liquidator, the one who determines the amount to be paid?

MR. CAMP: Who makes the final determination of the

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amount of duty as distinguished from . person who estimates the duty at the time the entry is filed.

MR. KRACKE: The final audit.

MR. ROWELL: He is really an auditor in one sense.

MR. CAMP: Yes.

MR. JUSTICE ROY: Has he the power of collecting the duty?

MR. CAMP: No; he indicates approval of the duty collected, or indicates whether or not additional duties are to be collected or a refund is to be paid.

MR. JUSTICE ROY: He has the right to approve and the right to report what he does not appro e.

MR. CAMP: Yes.

MR. THOMAS: He takes the Appraiser's return of value, that is final and conclusive unless appealed from; he takes the Appraiser's advisory classification; for illustration, you may have an invoice of merchandise for which there is no eo nomine provision, it may be composed in chief value of a certain material; when it comes before the liquidator he has to take the Appraiser's report of value and as to the rate of duty he may know of a decision which held that merchandise to be dutiable at a different rate, and in that case he would send it back to the Appraiser for redetermination, and that is worked out and finally he will take the appraised value and estimate the amount of duty collected; but at a small port the return of the initial examining officer is turned into the headquarters port, the headquarters port would go over that matter, and if he was in doubt he would refer to New York through the Customs Information Exchange. When the entire transaction is completed it goes to the Controllers of Customs who are the final auditors of the transaction.

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MR. CAMP: All the Controllers are skilled not only in auditing but in customs decisions and customs procedure, and in customs laws. There is one other check, the Collector of headquarters port is supposed to visit his district periodically; generally he visits the ports within his district once a year, and in addition to that once in one or two years the Special Agents go into the Customs district and examine the accounts and methods in the entire district. They start with headquarters port and then go to the sub-ports, and if there is any particular line of business at a sub-port they may give particular attention to the transactions in the way the importations are handled; so there are several checks. The final liquidation at the headquarters port, the settlement of the account by the Controller, and also the examinations, periodical examinations, of the collection district, by somebody in the Collector's force, the Collector and his assistant or some of his force, and the examination of the ports by the Special Agents who operate from the headquarters in Washington, and make their reports of conditions to Washington --

MR. ROWELL: One point I am not quite clear Mr. Camp: Take the one-man port or sub-port, the appraisal there, is that subject to review by the Collector of head port? In other words, suppose an invoice comes in with the amount of duty fixed, and the Collector of the head port is of the opinion that owing to lack of understanding or appreciation of value, or for any other reason, the local Appraiser has erred in his appraisal, has he any power of correction, or must that be taken in appeal through the various Courts?

MR. CAMP: The man at the one-man port does not make the final liquidation; it goes to the headquarters port for

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final liquidation, and the account is not finally closed until after final liquidation and the stamp of final liquidation and the date is placed on that entry; and if, on final liquidation an additional amount of money is found due, the importer is called on to pay the additional sum.

MR. ROWELL: And it is only from the decision of the headquarters port, the proper official there, that an appeal then might be taken.

MR. CAMP: Yes; the appeal in classification, it is within sixty days after final liquidation.

MR. ROWELL: Another matter you mentioned, Mr. Camp, in your memorandum, that the establishment of patrol on the border had resulted in a substantial increase of the revenue at border points.

MR. CAMP: Yes sir.

MR. ROWELL: Would you mind telling the Commission just what changes you have made in connection with the border patrol or protection?

MR. CAMP: Prior to 1924 there were no American Customs officers on the Canadian border except at fixed stations; on the Mexican border we had officers known as Mounted Inspectors. These Mounted Inspectors started as horse riders, of course now, keeping up with the times, most of them operate automobiles, but to cope with the liquor situation the patrol was created along the Canadian border; these patrol officers endeavour to intercept people who cross the line at points and fail to report at a regular port of entry. At some points we have a report, I think from the Collector in Maine, the statement that I have in mind is, at one small port that in the past reported practically no

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collection, reported collections of three thousand dollars in a period of two months. One hundred dollars a month in the old days would have been a large collection. There were certain types of merchandise reported on at the Customs House that had never been brought to the Customs House before; hay and grain and dairy products. The patrol on the road caused these people, who felt free to come and go, to report their importations and to pay duty this way and if the Customs stations are not to be maintained on every road and every possible crossing, the border Patrol, which will be an inducement to have people go to the regularly established ports of entry, is of very material assistance, and I am inclined to believe that from the standpoint of protection of the revenue if a reasonable number of these ports are maintained and a sufficient policing is done to compel importers to report at these established stations the best results can be obtained.

MR. ROWELL: I noticed in the memorandum you handed us this morning with documents attached you apparently require a Guaranty Company to give a bond. I notice the form given indicates a Guaranty Company on each Entry of onsumption.

MR. CAMP: I believe in most of the instances the broker files the bond.

MR. ROWELL: Do you recall whether your regulations require a Guaranty bond, or is it simply the bond of the broker or the bond of the importer or both?

MR. CAMP: I know that the guaranty bond of a bonding company is not required.

MR. ROWELL: I notice you require a declaration under oath of the purchaser or his agent.

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MR. CAMP: Yes.

MR. ROWELL: That is required on every entry?

MR. CAMP: Yes.

MR. ROWELL: Then that is strictly observed, is it?

MR. CAMP: Yes.

MR. CAMP: Yes.

MR. ROWELL: You require him to take an oath?

MR. CAMP: To sign the declaration that the invoice contains the correct description, and so forth.

MR. ROWELL: I see it is a declaration under oath.

MR. CAMP: Yes.

MR. ROWELL: He is actually sworn to it, is that the practice?

MR. THOMAS: It is taken before a Collector or Deputy Collector; he has the power to take that oath.

MR. ROWELL: Is it actually taken?

MR. THOMAS: Yes.

MR. JUSTICE ROY: On the Bible?

MR. CAMP: No.

MR. ROWELL: You said you did not require that?

MR. CAMP: No, not on the Bible; but it has all the force and effect of an oath before a Notary Public.

MR. JUSTICE ROY: It is a solemn declaration.

MR. CAMP: Yes.

MR. THOMAS: I think you will find that right on the entry form.

MR. ROWELL: I notice the declaration is:

"I, the undersigned, herewith declare that the consignee making this entry is the actual owner of the merchandise described therein, who will pay all additional and increased duties pursuant to Section 435, Paragraph D, of the Tariff Act of 1922; that this entry exhibits a full

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"and complete account of all the merchandise imported in the vessel described therein by said owner," etc. --

THE CHAIRMAN: This is the broker's declaration.

MR. ROWELL: No, it may be signed by the principal or broker. It only declares to the best of his knowledge and belief.

This is interesting:

"If these declarations are made by an agent, bond must be given to produce the declaration of the ultimate consignee in accordance with Sections 484, 485, and 486 of the Tariff Act of 1922."

MR. THOMAS: If the agent takes the oath he may take it upon the statement to the Collector that it is impossible for him at the time of entry to get in touch with the actual importer, but he later will get the owner's or purchaser's oath.

MR. ROWELL: Do you ultimately always have the purchaser's oath to complete the entry?

MR. THOMAS: I believe the Collector does, yes sir.

THE CHAIRMAN: Even where there is a broker employed?

MR. THOMAS: Yes.

MR. ROWELL: Would you mind checking that up to make sure, because we have had it up quite acutely. It has been suggested to us that that is not possible, that it is too great an inconvenience to merchants, and so on, to make them take an oath.

MR. JUSTICE WRIGHT: I think that is more at the time of the entry, in order to facilitate the entry; but there is no reason why it should not be ultimately obtained.

MR. ROWELL: This seems to meet that situation.

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MR. THOMAS: On page 4 in Mr. Camp's memorandum, the second paragraph:

"In case the merchandise is entered by an agent of the importer, he must forward with the entry an Owner's declaration (Cat. No. 3347a) signed and sworn to by the owner, or else give a bond to produce same. He must also forward with the entry what is known as a ten day delivery bond (Cat. No. 7551, now printed on entry), which is really an agreement to deliver to the Appraiser such packages as are not designated for examination in case the Appraiser is not satisfied with the result of his examination of the packages designated. This bond also covers the production of missing documents, pure food requirements, proper marking of country of origin and other requirements, except production of a missing bill of lading, which requires a special form of bond. Some importers, and nearly all Customs House brokers, have on file in the Collector's office a term bond (Cat. No. 7553) which covers several contingencies, such as redelivery of unexamined packages, production of missing papers, pure food and plant regulations, etc. The general rule in such cases is that where the entry covers a number of cases, one case in ten must be examined by the Appraiser and such cases intended for examination are usually designated on the invoice by the entry clerk receiving the entry, and also on the permit (Cat. 7501a) which latter form goes to the inspector on the pier."

MR. CAMP: As I understand the Chairmans question it is whether or not in practice it was strictly followed, and frankly I do not know how many times a nominal fine is collected on the bond in lieu of the owner's declaration; if the owner's declaration were not furnished a nominal fine

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would be paid and the bond may be cancelled.

THE CHAIRMAN: It would look here as if the bond might be furnished by certain importers.

MR. THOMAS: The third line says, "or else give a bond to produce same." That five dollars is in relation to the production of a consular invoice.

MR. CAMP: But I never heard of the collection of the full amount of a bond for failure to furnish the owner's declaration; I do not know how many cases the owner's declaration was not ultimately furnished.

THE CHAIRMAN: That term bond might seem to indicate it might cover a period of time, and therefore it was not necessary to furnish a bond for each entry.

MR. THOMAS: That term bond covers these different conditions. It says here, page 4, "Some importers, and nearly all Custom House brokers, have on file in the Collector's office a term bond (Cat. No. 7553) which covers several contingencies, such as redelivery of unexamined packages, production of missing papers, pure food and plant regulations"-- That does not mean it covers the owner's bond which he has to make, a bond to produce --

THE CHAIRMAN: Could you furnish us with that bond?

MR. THOMAS: Yes.

THE CHAIRMAN: Can you include in one entry several invoices?

MR. THOMAS: Yes.

THE CHAIRMAN: In that event is it one out of ten?

MR. THOMAS: No, each invoice must stand by itself. You may have a variety of merchandise going to each importer, but each invoice must stand by itself. That was in order to

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reduce the handling of so many individual papers. As it is now we get 440,000 a year, and many of those are combined; if they were all separate we would probably get 600,000 invoices. If a man comes there with a number of invoices covering some merchandise going to the same importer they are stamped together.

THE CHAIRMAN: It saves work.

MR. CAMP: I will bring tomorrow morning a copy of Customs forms3347A, and I will also check on the question of whether or not the owner's declaration is actually furnished in practically every case, or whether a penalty on the bond is frequently collected for failure to furnish the owner's declaration.

THE CHAIRMAN: That covers these matters. The other matters may be taken up tomorrow.

The Conference adjourned at 5:00 p.m. until tomorrow, August 30th, 1927, at 10:00 a.m.

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The Conference was resumed at 10:00 a.m. August 30th, 1927.

MR. ROWELL: Mr. Camp kindly consented to furnish the Committee with a copy of the report on reorganization.

MR. CAMP: Well, I did not think you would care to go into the report, I have not the report here, but I can get that for you before the Commission leaves. I thought it was something you might like to have filed with you.

MR. ROWELL: It was not to go into it here, but just to have it filed with us.

MR. CAMP: Yesterday some questions were asked about the owner's declaration. The Commission seems to desire to know whether or not the owner's declaration was in every instance furnished. The Customs requirements are that the consignee must make the entry, whether or not he is the owner the Customs is not particularly interested, but he assumes all the liabilities of the owner if he makes the entry. Under the Act of 1922 there is a provision, I think it is section 485, that permits him to declare that he is not the actual owner, and that he will furnish the name of the owner and the owner's declaration within ninety days; failing to do that the liability for additional duties and so forth falls upon him. It was simply a provision to relieve the nominal consignee of liability for additional duties, and so forth. However, if an agent attempts to make the entry he must furnish the declaration of the consignee or owner, and if he has not such declaration at the time he makes the entry he must give a bond to furnish that declaration. That declaration is furnished in practically every case. We have very little difficulty with it. If the declaration were not furnished and there

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was no liability accrued on the importation, and Customs could be satisfied as to the reason why the owner's declaration could not be furnished, probably the bond would be cancelled on the payment of a nominal penalty of five dollars, the same as the penalty for failure to furnish certified invoice when the entry is made on a pro forma invoice.

MR. ROWELL: Then there was just one other matter: your Preventive Service, does that operate directly from headquarters here, or is it under each Collector in each division? What is the relation of the Preventive Service?

MR. CAMP: The Border Patrol are under the direction of the Collectors in the various districts unless otherwise directed by the Department. The Preventive Service of the United States is known as the Special Agency Service. The head of the Special Agency Service is a Deputy Commissioner, and he has his office in the Bureau of Customs, Mr. Vandoren is the Deputy Commissioner in charge of the Special Agency Service, and he is here this morning and will be glad to furnish any information with reference to that Service you may desire.

MR. ROWELL: If Mr. Vandoren could just give us a little information as to that Service.

Would you kindly tell the Commission, Mr. Vandoren, just the general outlines of the organization of your Preventive Service, the measures you take to prevent or detect and prosecute smuggling?

MR. N. G. VANDOREN: (Deputy Commissioner of Customs in charge of Investigations in Washington, D.C.): The Service is known as the Special Agency Service, Customs. It is recruited by transferring men from the Administrative

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Branch of the various Customs Houses who have shown particular aptitude for investigative work. Under the statutes we examine the books, records and accounts of Collectors periodically to determine whether or not the financial records are properly kept, and the duties collected are properly accounted for. We also make examinations of the method of conducting the Customs business, operating as a sort of continuous efficiency board to see that there is harmonious practice throughout the country, and that the rules and regulations are adherred to. We also observe the conduct of the personnel, and where we see laxity or inefficiency we report it to the Commissioner of Customs for such action as the circumstances warrant. That is broadly the work that we do with regard to the Administrative Branch of the Customs in this country.

We also have various offices established at the principal ports of entry in the United States, from which our field agents work. We have also offices established abroad at the great centres of exportation in most important countries with which we have commercial relations. The duties of our officers abroad are, to make investigations at the request of appraising officers for the determination of market values, and for the obtaining of evidence in case of fraudulent invoicing by a foreigh shipper. In this country we investigate the books, records and accounts of importers, either at the request of appraising officers or originally of our own motion, when knowledge comes to us of fraudulent transactions. We obtain evidence of these frauds and report the evidence to the Collectors of Customs and the United States attorneys through the Collectors. The United States

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is divided into eight districts, each in charge of a supervising agent, and within each district are from three to five officers each under an agent in charge. We have an office in Canada, recently established at Montreal, under a supervising agent. We have approximately 160 investigating officers of all classes; they are continually at work at the request of appraising officers, or of Collectors, or of United States attorneys investigating customs frauds and irregular transactions.

MR. ROWELL: Have you any system of moiety or compensation to informers?

MR. VANDOREN: There is provision in the Tariff Act for the payment to informers of compensation not to exceed twenty-five per cent of the amount recovered, and not to exceed $50,000. in any one case.

MR. ROWELL: Do you find as a matter of experience you get much help from informers, or are your principal discoveries made as a result of investigation?

MR. VANDOREN: I should say the bulk of our work relating to smuggling, systematic commercial smuggling, is based on information.

THE CHAIRMAN: Received from outside the service?

MR. VANDOREN: Yes.

MR. ROWELL: Do you mind telling us the forms in which you find organized commercial smuggling, to see whether the same methods are applied in Canada as here.

MR. VANDOREN: The principal smuggling that we have to deal with outside of liquor, which is a very large subject with us, and has been since the passing of our Prohibition Act, is smuggling of jewellery and articles of small value on the person, and nearly all the cases of this kind that

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were developed are based on information or on suspicion. Our people develop a sort of sixth sense, they are able to nose out a smuggler. Many smugglers are very nervous, particularly if they are not professionals, and the Collector's officers on the dock will often think of a smuggler and call the attention of our men present, and there will be a joint search and joint enquiry. The smuggling of merchandise in large quantities is not very prevalent. Our principal duties with relation to merchandise are where there is undervaluation and fraudulent statements.

MR. LOTHIAN: I think they would be interested in having you tell them about informers going to our consular officers abroad and telling them that a certain individual was going to bring diamonds into the United States and to watch out for them.

MR. VANDOREN: We get a great deal of information from clerks and minor employees in the large jewellery houses, particularly in Paris, and the bigger dressmaking concerns who sell extensively to American visitors. They go over to the consul's office or to one of our offices and give specific information as to the extent of the purchases made by American customers, with the names of the customers, and when that information comes to us we take steps to ascertain what vessel these customsers sail on, and when the declarations of the passengers on that vessel are presented for examination our men scrutinize them, and if we find the merchandise which these particular passengers are reported as having purchased properly listed nothing more is done, they never know anything more about it, but if we find a lack of declaration we commence to interrogate them, and in

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many instances we find that they have concealed the merchandise, particularly if it is precious stones, or merchandise of small compass on their person or somewhere in their luggage in an effort to bring it in without paying the duty. We get a great volume of information of that kind. The American Dealers' Protective Association, which is a wholly private enterprise, advertises in the English editions of the "New York Herald" and the "London Times," and in Paris, offering a reward for information on smuggled jewellery, and whenever they get information of that kind they pass it on to our people, and if we find and make a seizure of smuggled jewellery the reward is paid to the Association as the informer, and I understand they pass the entire amount on to the informer; they do not retain any of it themselves.

MR. LOCKMAN: Frequently that is a large sum; it amounts to several thousands of dollars in a single transaction.

MR. ROWELL: When are the payments made to the informant?

MR. VANDOREN: After the money has been covered into the Treasury, the proceeds of the seizure. The money may be derived either from payment of the fines and penalties and duties by the smuggler, or by sale of the seized merchandise. In any event, no reward can be paid until the money has been covered into the Treasury.

MR. JUSTICE ROY: If the goods are destroyed --

MR. ROWELL: You have cases where the goods are destroyed; in the case of smuggled liquor, you would destroy that.

MR. VANDOREN: Yes, that is destroyed.

MR. ROWELL: How would you deal with an informant in

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that case?

MR. VANDOREN: I have no means of paying informants regarding smuggled liquor unless a fine is assessed, in which case the proceeds of the fine may be used for payment of informers.

MR. LOWMAN: Sometimes we forfeit the vehicle, and in that way get funds.

MR. VANDOREN: If the vehicle is seized it may be forfeited and sold and the proceeds of that used to pay the informers.

THE CHAIRMAN: But there is no reward given to the informant unless the money is realized out of the information that has been given.

MR. VANDOREN: Not so far as the Customs is concerned, no sir.

THE CHAIRMAN: Either by fine or by proceeds of the seizure?

MR. VANDOREN: Only after the Government has realized a cash taking, and then it is divided according to law.

MR. ROWELL: If I understand, you , what we call Preventive service, your Special Investigating Service, is a service to trace out frauds?

MR. VANDOREN: Formerly it did; the law says to avoid and prevent frauds on the Customs revenue.

MR. ROWELL: In addition to that as a protection against smuggling you have a Border Patrol?

MR. VANDOREN: Border Patrol is under the Collector of Customs; that is the Administrative Branch.

MR. ROWELL: Does that border patrol extend around the United States or simply between the United States and Canada?

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MR. VANDOREN: Around the United States, I understand.

MR. LOCMAN: Mexico and Canadian border, and we depend on the coast guard for the other part.

THE CHAIRMAN: The qualifications for these special investigators would require special training in auditing, accountancy and that kind of thing.

MR. VANDOREN: Yes; we want men who are accountants, and abroad they must be able to speak the language of the country in which they are employed and be able to read it so that without the intervention of an interpreter they can transcribe from the books of record and account, and take a statement from the foreign shipper and put him under oath.

THE CHAIRMAN: And who have a detective instinct as well?

MR. VANDOREN: They have to have the detective instinct too, to be successful, and we recruit our men from men already in the service, and who demonstrate these particular qualifications.

MR. ROWELL: Who chooses them?

MR. VANDOREN: As a rule the recommendation is made by the Chief of the Special Agency Service to the Commissioner of Customs, but all appointments are subject to the approval of the Commissioner of Customs, and they are all Civil Service employees except a few minor clerks in our foreign service. Recommendation is made to the Commissioner of Customs, and is concurred in by him, and is then submitted to the Assistant Secretary of the Treasury, who makes the appointment.

MR. ROWELL: Take the case of the border patrol, are those Civil service appointments, or are they appointed directly under the Collector?

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MR. VANDOREN: As I understand it the Border Patrol has been up to this time appointed by the Collector without regard to the Civil Service limitation.

MR. CAMP: For a considerable time there has been an eligible list for border patrol officers, and for the most part for the last two years at least appointments on the border patrol, when paid out of the Customs appropriation, have been from this list certified by the Civil Service Commission. Some money was allocated from the prohibition appropriation, and the appointments were made chargeable to that appropriation without the approval of the Civil Service Commission.

MR. LOWMAN: I think that we might say that after the 1st October all of these employees will be under the Civil Service Commission.

MR. CAMP: This has been going through a process of evolution, which will make everything a Civil Service appointment, as the Assistant Secretary says.

THE CHAIRMAN: The qualifications for the men on the border patrol will be quite different from your investigating officers.

MR. CAMP: Previous Customs experience is not a requisite.

THE CHAIRMAN: More police work.

MR. CAMP: Yes; physical requirements and also the usual mental requirements.

MR. ROWELL: One other question, then the prosecution of offences, when you find fraud upon the Customs does the prosecution pass to your Department of Justice, or what is the procedure you adopt in those cases?

MR. VANDOREN: We report all frauds or violations of the Customs laws to the Collector of Customs in the district

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in which they occur, and he sends as a rule a copy of our report with a comment of his own to the United States attorney in charge of prosecutions in that district, and the handling of the matter from then on is under the jurisdiction of the Department of Justice, but as a matter of practice our men who actually made the seizure or made the investigation cooperate with the district attorney's officers in the preparation of the case, often marshal witnesses, and often sit in court at the elbow of the United States Attorney during the trial, to give him any information that he may not have readily when he is called on to go to the court.

MR. ROWELL: You have a regular attorney, it is the United States district attorney, is it, in all districts who conducts the prosecutions?

MR. VANDOREN: All prosecutions devolve on the United States attorney in the district where the offence occurred.

MR. ROWELL: That is the attorney appointed to represent the United States in all federal proceedings before the United States court.

MR. VANDOREN: Yes; in places like New York City where we have a large volume of business it is the practice or custom of the United States attorney to designate one or two of his assistants to specialize on customs cases, and in that case we will deal with the same officer continuously, sometimes during many years.

MR. ROWELL: Who has charge to initiate the prosecution, the Collector or the United States district attorney, or does it require instructions from the Department of Justice.

MR. VANDOREN: Court prosecution has to be inaugurated by the United States attorney based on the report received from

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the Collector, but the Collector of Customs has very wide powers with regard to adjusting cases of smuggling on the person, and things of that kind. Undervaluations he does not often adjust, but if his Inspectors pick up a passenger on a vessel or on a train or in anautomobile who is smuggling on the person the Collector often will hold a hearing and come to some understanding with the passenger and with the sanction of the district attorney they will make an adjustment right there in the Customs House. That class of case does not involve prosecution.

MR. ROWELL: But where it is a case of commercial smuggling or fraud or undervaluation the Collector would send the report he receives from your branch to the United States district attorney, and a prosecution would then be instituted by him without the necessity of any instructions from the Commissioner of Customs at Washington.

MR. VANDOREN: Of course the Commissioner of Customs is always informed of any report we make to the Collector or any report the Collector makes to the district attorney, and Mr. Camp can tell better than I can just what the functions are.

MR. CAMP: There are three pertinent sections in the Tariff Act.

MR. ROWELL: Would you mind reading them to us?

MR. CAMP: This is Section 616: "It shall not be lawful for any officer of the United States to compromise or abate any claim of the United States arising under the Customs laws for any fine, penalty, or forfeiture, and any such officer who compromises or abates any such claim or attempts to make such compromise or abatement, or in any manner relieves or attempts to relieve any person, vessel, vehicle, merchandise,

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"of this Act, or who has incurred, or is alleged to have incurred any fine or penalty thereunder, files with the Secretary of the Treasury if under the Customs laws and with the Secretary of Commerce if under the Navigation laws, before the sale of such vessel, vehicle, merchandise or baggage a petition for the remission or the mitigation of such fine, penalty or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty or forfeiture was incurred without wilful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty or forfeiture, may remit or mitigate the same upon such terms, and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any special agent, collector, States Commissioner, to take testimony upon such petition: Provided that nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition."

MR. ROWELL: Section 619 is the clause which deals with the payment to informers.

MR. CAMP: Mr. Vandoren spoke of the award of compensation; reference might also be made to sections 603 and section 604, 605, 606, 607 and 608. Section 602 starts with the procedure in calling for the report; and 604 relates to prosecution; 605 to custody; 606 to appraisement, and 607 is a new provision and rather interesting:-

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"If such value of such vessel, vehicle, merchandise or baggage returned by the appraiser does not exceed $1000. the collector shall cause a notice of the seizure of such articles and the intention to forfeit and sell the same to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct."

This is known as the summary forfeiture, and if no claim is made under 608 the forfeiture is accomplished without recourse to the District Attorney. This saves a great deal of litigation and a great deal of time, and it depends entirely on the value of the article. If the article is appraised at less than $1000. then the forfeiture may be summary by court procedure. That is a very helpful and effective provision.

MR. ROWELL: Do you find delays in disposing of the cases in the courts, or have you pretty speedy determination?

MR. VANDOREN: Some of the courts are very congested. It sometimes happens that an offender has three or four offences against him before he is tried; sometimes we seize a boat and it is released on bond and deposit of money, and it is reseized, and sometimes seized three or four times before any forfeiture proceedings are started.

MR. ROWELL: You have some of the same difficulties we have in some of the Customs cases.

THE CHAIRMAN: With reference to your awards, do you offer any inducement to a man who is in the service, if he is the seizing officer, or if he is the informing officer?

MR. VANDOREN: No; an officer of the Customs service is not entitled, and may not receive award, compensation. All fees and awards of any nature have been abolished. I do not know of any that remain at the present time. There was a

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very elaborate system of fees prior to the reorganization in 1912, but they have all been abolished, and the only compensation now is salary. The Collector at Boston recently figured out that if he was now paid on the old fee basis he would be working for the nominal salary of $3,000,000 a year.

THE CHAIRMAN: You found that it did not prove satisfactory, you tried that system?

MR. VANDOREN: It is considered as against, I believe, public policy to have the seizing officer have a financial interest in the seizure, because I believe the law-makers thought it might tend to temper justice to a certain extent that the seizing officer might be unduly harsh in the prosecuti of offenders. Of course, it would be helpful in one way, but public policy in the estimation of Congress demanded that the seizing officer should not have an interest in the award to be collected.

MR. LOWMAN: Up to about 1850 we operated under the old British moiety law, but in 1870 we did away with that, and since then we have had this other system.

MR. ROWELL: Then we might come to No.4:-

"Refusal of export except to authorized purchasers. Evidence was submitted to the Commissioners at a recent sitting, that the smuggling of alcohol from the United States into Canada across the frontier between Maine and New Brunswick, had been largely stopped by the refusal of the United States authorities to accept export entries for alcohol unless the exports were to persons authorized to sell alcohol for non-potable purposes. The Commissioners would like to secure some definite information about this regulation."

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MR. LOWMAN: Dr. James M. Doran, Commissioner of Prohibition, will give you the facts in reference to that.

MR. ROWELL: You were in the Internal Revenue Service for a long time?

DR. DORAN: Mr.Chairman and Justices of the Commission: I have been connected with the Bureau of Internal Revenue for about twenty years. On March 3, 1927, there was created by law the Bureau of Prohibition. This Bureau is charged with the administration of the National Prohibition Act, the Revised Statutes of the United States relating to liquors, and the Harrison Anti-Narcotic Act. The actual collection of the taxes is still accomplished through the Bureau of Internal Revenue, and covered into the Treasury by the Commissioner of Internal Revenue. The Bureau of Prohibition has jurisdiction over the production and storage of all alcohol, whiskey and other spirits and wines, and maintains a system of Government supervision of the bonded warehouses in order to see that the normal taxes are turned over to the Commissioner of Internal Revenue. As a foreword to a short memorandum that I have prepared in answer to your question 4, I want to state that subsequent to the enactment of the National Prohibition Act no distilled spirits or other intoxicating liquor may be manufactured, stored, transported, sold or used or exported except pursuant to a permit. Permits to do any of these acts are issued by our officers known as prohibition administrators. For administration purposes we have divided the continental United States into twenty-three districts, each one in charge of an administrator. Applications to do any of these acts relating to liquor are made to this officer, and with the exception of certain minor details are passed upon and handled by the district administrator. The

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one exception is the granting of a permit to export liquor. Precedent to the granting of a permit to export liquor there must be filed an application which might be termed as analogous to an entry, and the Bureau of Prohibition, with the approval of the Secretary of the Treasury, has drawn up detailed regulations as to what data and information must be submitted in this application which is considered prior to the issuance of a permit to export. I can now read this short memorandum, and if you note anything at any point we can go into that more in detail.

"The Eighteenth Amendment to the Constitution and the National Prohibition Act, in effect, provide for the exportation of intoxicating liquors for non-beverage purposes, only. The regulations governing the exportation of liquors for non-beverage purposes provide in effect for the following showing:

"1. The applicant must be the owner of the liquor which he desires to export.

"2. The applicant must prove the specific non-beverage purpose for whichthe liquor is to be used, and the burden of such proof is on the applicant.

"3. The need or demand for the liquor, or the product in which it is to be used in the foreign country must be shown.

"4. The disposition of previous shipments, if any, must be shown.

"5. The general character of business of the foreign consignee and his legal right to import.

"6. The orders for the liquor, price quotation, terms, acceptance, contracts, and all correspondence and commercial records related thereto, must be

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displayed by the applicant to export.

"7. The permit or authorization of any foreign government when it is required by the laws and regulations of a particular country must be secured from the consignee and filed by the exporter.

This last provision is particularly applicable to Canada.

"The regulations also require that when a permit to ship liquor to Canada is applied for, the American Prohibition Administrator will at once notify, in writing, the liquor law enforcement officer of the Canadian Province to which such liquor is to be exported, giving the names and addresses of the exporter and the foreign consignee, the kind and quantity of liquor, the proposedroute of shipment, the port of exit from the United States, the port of entry into Canada, the name of the Canadian carrier, and the name and address of any person in Canada furnishing any affidavit or other evidence supplied by the exporter to support his application for export permit, together with the substance of the averments or evidence of such person. If the application is accompanied by a copy of a Canadian permit or a certificate of the provincial liquor enforcement officer authorizing the specific importation into Canada, the Administrator will also advise the Canadian official of that fact. In the letter of notification to the Canadian enforcement officer the Administrator will also request that the Canadian officer shall at the earliest possible date advise the Commissioner of Prohibition, at Washington, D.C., whether the Canadian importer is legally qualified to handle for non-beverage use such liquor as is proposed to be exported with any other facts tending to show whether the liquor is actually intended for non-beverage use. The recommendation

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of the Canadian official as to the issuance or non-issuance of a permit authorizing the exportation shall also be requested.

"The regulations further provide that when any liquor goes forward under permit for exportation to Canada the American Prohibition Administrator will advise the liquor enforcement officer of the Canadian Province to which the liquor is to be exported, and such officer of any Province through which the liquor is to be transported, of the fact and date of such shipment and the probable date of arrival at the border, and its route of shipment and destination.

"All export shipments are made under internal revenue bonds. Foreign landing certificates are required to release the bonds

"EXPORTATION OF DENATURED ALCOHOL."

I might say at this point that denatured alcohol we broadly divide into two classes, which I understand are similar to classes set up by your Commissioner of Excise, namely, completely denatured alcohol, and specially denatured alcohol. Completely denatured alcohol after it is compounded under the supervision of the government officer at the denaturing plant is distributed without permit. Specially denatured alcohol after being compounded under the supervision of the government officer at the denaturing plant is distributed only to persons to whom permits have been issued to sell or use the particular formula. The regulation on the exportation of denatured alcohol applies only to specially denatured alcohol.

"A permit is required to export specially denatured alcohol. The application, under oath, must show the name, address, and business of the purchaser abroad, the use to which the specially denatured alcohol will be put, the

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proposed route of shipment, the port of export, and the port of entry into the foreign country.

"Sufficient evidence to establish the exportation of specially denatured alcohol for non-beverage purposes must be preserved in the applicant's files, and such records shall be open to inspection by Government officers. When exportation is to any country requiring a permit or other government authorization to sell or use specially denatured alcohol for non-beverage purposes, the applican shall obtain and preserve in his files a duly verified copy of the purchaser's permit or other authorization. The Administrator may before passing on the application require the submission of such records to him.

"The shipment must be consigned to the Collector of Customs at the port of export, who will notify the American Prohibition Administrator when shipment goes forward.

"When exportation to Canada is made the American Collector of Customs will also immediately notify the Canadian Customs officials at the port of entry of the shipment.

"Within 30 days after the date of shipment of such specially denatured alcohol to Canada, the exporter must secure and forward to the Administrator a certificate executed by the Canadian collector of Customs, or other appropriate customs official, at the port of entry, showing that the shipment was duly landed. Failure by the denaturer or dealer to produce within the specified time satisfactory evidence of landing, or of the Administrator to receive the certificate of clearance from the Collector of Customs, of any such shipment of specially denatured alcohol, shall be sufficient ground for refusal by the administrator to issue to such denaturer or dealer any

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further permits to export specially denatured alcohol pending the filing of such evidence of clearance and landing of shipments previously made.

"EXPORTS TO CANADA.

"Since the adoption of the last export regulations relating to liquors four years ago, and those relating to specially denatured alcohol two years ago, there have been no permits issued to ship whiskey or specially denatured alcohol to Canada. A few shipments of alcohol ar made to the North Star Explosives Co., Prescott, Ontario, for use in manufacturing fulminate of mercury, and small shipments of rum are made to the British American Tobacco Company in Canada for use in treating tobacco. Each separate shipment is made only after a permit is received from the Canadian Provincial Government officials and the papers have been examined in the office of the Commissioner of Prohibition, at Washington."

DR. DORAN: The regulations of the Bureau of Prohibition outlining this matter in specific form and detail are now being revised and are in the Government printing office.

MR. LOUMAN: There is no very great change with regard to exportation.

DR. DORAN: No material change, but there have been some organization changes and the designation of the present officials are somewhat different, and I would prefer that the Department forward to the Commission the revised regulations within the next ten days rather than ask you to take our old compilations which might be somewhat confusing.

MR. LOUMAN: We feel that if we could get our Canadian friends to establish similar regulations to these that there would not be any necessity of any revision of our Treaty

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or anything of that kind. It is all subject to regulation. If there were in Canada similar regulations to these we would be in pretty good shape in controlling importations of liquor in coming from Canada.

THE CHAIRMAN: That seems to afford complete protection?

MR. LOWMAN: It would be quite satisfactory to us if the Canadian Government could see fit to establish similar regulations, and it could be done without any treaty.

THE CHAIRMAN: That is, you do not export simply because there may be a demand from the other country.

DR.DORAN: Not at all except on this very complete showing, and with the certificate of the officials of the other country ---

MR. LOWMAN: And the result of it is that the amount exported is practically nil.

THE CHAIRMAN: How many corporations or companies have you in the business of manufacturing alcohol?

DR. DORAN: We have about one hundred establishments under the general class of bonded establishments, manufacturing or storing alcohol or distilled spirits. About sixty-five are known as industrial alcohol plants, and they manufacture ethyl alcohol for medicinal and denatured purposes, and about thirty-five are bonded warehouses storing our stocks of whiskey and other potable distilled spirits that was on hand when the National Prohibition Act became effective. Exportations are made by these bonded establishments in practically all cases. Therefore I should say we have one hundred possible points from which exportations might proceed.

MR. ROWELL: Your regulations relating to specially denatured alcohol were established about two years ago?

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DR. DORAN: About two years ago, and subsequent to a rather trying condition on the Maine-New Brunswick border to which the Commission refers.

MR. ROWELL: That put an end to that export there. In connection with the export of alcohol itself, your regulations were adopted about four years ago?

DR. DORAN: That is correct.

MR. ROWELL: Is it under those regulations that you require an affidavit from the importer in the foreign country that the liquor is required for medicinal, scientific or other purposes, the sale of which is permitted?

DR. DORAN: That is correct.

MR. ROWELL: I know in the British Columbia investigation we came across a number of cases where affidavits had been required before the export was permitted. Did you require an affidavit prior to that date, do you know?

DR. DORAN: The affidavit was required of the exporter ever since National Prohibition has been in effect, but it was several months after the effective date of the Act before the affidavit of the consignee was required, and it was looked upon as quite a formality at that time, and these regulations were built up by a process of evolution as it came to our attention, the manner in which the export privilege was being abused, and the liquors re-consigned to the United States.

MR. ROWELL: We found in the course of our investigation in British Columbia very large quantities of American liquors were being imported into Canada under permission from your Government nominally for medicinal and scientific purposes, but being imported by people who were not engaged in that class of business but who were in the regular liquor business.

DR. DORAN: That was a pro forma matter until we had

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several investigators in British Columbia, and with the help of the Canadian officials of that province and other provinces, ascertained the facts about these consignees and the regulations that I have now referred to were drawn up as a result of that investigation.

THE CHAIRMAN: I think at that time the affidavitswere required but they did not hesitate to make them.

DR. DORAN: That seems to have been the fact. There were plenty of fine looking affidavits, but they did not seem to relate much to the facts in the case.

MR. ROWELL: I see you say, "all export shipments are made under internal revenue bonds. Foreign landing certificates are required to release the bonds." What is the nature of the landing certificate you require?

DR. DORAN: There is a regular form to be executed and notarized showing the goods have been deposited in the foreign country. I can furnish you with those bonds and forms.

MR. ROWELL: It would be interesting if we had a copy of the bond and landing certificate.

MR. LOWMAN: You had better give them a full list of all your forms so that they can take them with them.

DR. DORAN: Very well. I might say that it is legally possible to pay the tax and then make an application to export the tax-paid liquors, in which case there would be no necessity of furnishing the bonds and securing the landing certificate, but all the other details and requirements of regulation would have to be provided for; and it would of course attract notice at once if anybody proposed to tax-pay liquor and then export it, when they have the right to export without payment of tax. So, as a practical matter, the applications for export are always made for liquors coming from bond and without payment

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of tax.

THE CHAIRMAN: The liquor or denatured alcohol would be under your Government control practically until it went across the border?

DR. DORAN: Yes; these export shipments go to the port of exit consigned to the Collector of Customs and they are under our control until they leave the country.

MR. JUSTICE ROY: The legal possession is in the hands of the Government.

DR. DORAN: Under bond.

MR. ROWELL: Much of ours is taken out of bond and duty paid before it is claimed to be exported. In your case it is all in bond until it reaches the frontier.

DR. DORAN: That is correct.

MR. JUSTICE WRIGHT: Whether the duty is paid or not.

MR. ROWELL: Then the revenue stamps, or the stamps required to be put upon the bottles in order to show that the bottling has been done under the supervision of the Government, comes under your charge?

DR. DORAN: Yes.

MR. ROWELL: We have found in the course of our investigation quite a number of stamps or, what do you call them?

DR. DORAN: We call them strip stamps.

MR. ROWELL: Strip stamps over the corks of bottles indicating that they had been bottled in bond under the supervision of the United States Revenue officers, and we had reason to believe from some of the evidence that those statements were not quite accurate; what do you say? Have you discovered that that has been going on?

DR. DORAN: That has been a fraud that we have encountered very frequently in the last seven years. The strip

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stamp does not evidence the payment of the Internal Revenue Tax on the spirit, but it does evidence the genuineness of the spirits in the bottle. They are an engraved stamp and are sold to the qualified bottlers at a nominal price of ten cents for the number of stamps required for a case of whiskey, that is twelve bottles of quarts, or twenty-four bottles of pints. The counterfeiting of those stamps is an offence against the Statute relating to counterfeiting of engraved notes, that is, currency and securities of the Government, and is investigated by the Secret Service Agency of the Treasury Department who operate with the officers of the Bureau of Prohibition in detecting and running down cases arising from this character of violation. The rather extensive use of fraudulent strip stamps has been a great factor in our domestic bootlegging activities, inasmuch as it is the natural desire of the bootlegger to make it appear to his customer that he is buying good liquor.

MR. ROWELL: These stamps you have produced for us and cancelled are genuine strip stamps?

DR. DORAN: They are the genuine engraved issue. We find the imitations are very good as to colour and printing, but when examined with a microscope will be defective in the fine engraved lines in the centre of the stamp, and while there have been very often imitations as to colour and printing and general appearance, nevertheless they are readily detected if examined closely as to the fineness of the engraving.

MR. ROWELL: By the microscope?

DR. DORAN: Yes, a person accustomed to observing can, of course, tell on an ordinary inspection.

MR. ROWELL: I think that is all, unless the Commissioners desire to ask some questions.

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THE CHAIRMAN: No; I think that pretty well covers it.

MR. ROWELL: Then we come to No.5, the operation of the treaty:

"5. The operation of the Treaty of 1924 for the suppression of smuggling. The Order in Council by which the Commission was appointed, included an instruction 'to enquire into and report on the operation of the Treaty made between the Dominion of Canada and the United States of America, dated June 6th, 1924, for the suppression of smuggling along the international boundary between the Dominion of Canada and the United States of America, and as to whether the said Treaty is being carried out according to the declared intent thereof, and as to whether any amendment of the said Treaty is necessary or desirable to ensure the suppression of smuggling.' The Commissioners have heard a great deal of evidence in Canada on the operation of this Treaty from the Canadian point of view, they would now much appreciate any information which the authorities of the United States might desire to place before them regarding the operation of the Treaty, the nature of any difficulties which may have arisen in its operation, and the means by which these difficulties might be removed and the effectiveness of the Treaty increased."

MR. LOWMAN: Mr. Vallance of the office of the Secretary of State is going to elucidate that subject.

MR. ROWELL: Mr.Vallance, you have prepared a statement, I believe, in connection with the matter?

MR. WILLIAM R. VALLANCE: Yes, sir.

MR. ROWELL: You will notice there are three points in the enquiry: The operation of the Treaty, as to whether the Treaty is being carried out according to the declared

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intent thereof, and as to whether any amendment of the Treaty is necessary or desirable to ensure the suppression of smuggling-

MR. VALLANCE: Yes, sir. I think it might be well to probably give a little resume of the situation that existed when this Treaty was negotiated. I was in Ottawa in 1923 with Judge Moss, who was then Assistant Secretary of the Treasury, in charge of the Prohibition Enforcement, Customs and Coast Guard. At that time there was in force the Treaty with Great Britain which applied to Canada in regard to the seizure of ships on the high seas outside the three-mile limit. That, however, did not deal with the border situation, and we were invited to come to Ottawa for the purpose of dealing with that more particularly. So that this Treaty does not deal with the smuggling from the Atlantic or the Pacific particularly as far as the seizure of ships is concerned, because it is covered in that other Treaty.

"ARTICLE ONE of the Treaty provides as follows:-

> 'The High Contracting Parties agree that the appropriate officers of the Governments of the United States of America and of Canada respectively shall be required to furnish upon request to duly authorized officers of the other Government, information concerning clearances of vessels or the transportation of cargoes, shipments or loads of articles across the international boundary when the importation of the cargo carried or of articles transported by land is subject to the payment of duties; also to furnish information respecting clearances of vessels to any ports when there is ground to suspect that the owners or persons in possession of the cargo intend to smuggle it into the territory of the United States or of Canada.'

"The provision in Article 1 for the furnishing of information respecting clearances of vessels to any ports when there is ground to suspect that the owners or persons in possession of the cargo intend to smuggle it into the territory of the United States or of Canada, has not proved

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to be of the value to this Government in combating liquor by vessels which was anticipated when the Treaty was negotiated.

"The vessels operating out of Nova Scotia and British Columbia, which are engaged in smuggling liquor into the United States along the Atlantic and Pacific Coast, clear for places outside the United States. These vessels, however, instead of taking their liquor cargoes to their declared destinations, proceed to points off the coasts of the United States where they smuggle their cargoes into the United States. As there appears to be no Canadian statute or regulation to compel vessels which have obtained clearances from Canadian ports to depart within any given period, liquor smuggling vessels may delay their departure for a considerable time after they have obtained clearances. The information which is received from the Canadian authorities regarding clearances of this kind accordingly merely puts the American authorities on notice that the vessels concerned, at sometime subsequent to their clearances will engage in smuggling operations somewhere off the coasts of the United States.

"It may be stated that the recent amendment of Section 101 of the Canadian Customs Act, which provides that shipments of liquor from abroad via Canadian ports on through bills of lading to destinations outside the United States, may not leave Canadian ports without the production of a bond from a guarantee company in double duties that they produce certificates of landing at a foreign port, is proving very effective in preventing the smuggling of such intransit liquor into the United States."

I think that was passed as a result of some of the

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customs investigations that were conducted by your Commission.

THE CHAIRMAN: I think that covered ex-warehouse shipments, too.

MR. JUSTICE WRIGHT: No, intransit.

MR. VALLANCE: Just intransit shipments.

"A number of vessels have been clearing from Vancouver and Victoria for Dundas Island, Pearl Harbor and Tugwell Island, Sea Island, Maple Bay and Bowen Island, B.C. These islands have few, if any, inhabitants, and cannot possibly use the liquor which is alleged to be destined for them. As a matter of fact practically all of the liquor which is cleared for these Islands is trans-shipped to other vessels to be smuggled into the United States. The information that has been received by the American authorities regarding clearances of the Comus, Elijo and the #1277, which, are among the vessels engaged in this traffic, has proved to be entirely ineffective in combating their smuggling activities. Other vessels, such as the speed boats Bonita, Manita and Miss Victoria II, which operate from Canadian ports in British Columbia, load duty paid liquor and land it in the United States, apparently without reporting their trips to the Canadian authorities

"The information that has been received regarding the clearances of vessels from points in Canada along the Great Lakes has proved to be of little value to this Government in preventing the smuggling operations of these vessels. The distance between Canadian and American ports, especially along the St.Clair River, is so short that it has not been found possible, even by telephone, to obtain information regarding the clearances of these vessels from Canadian ports in time to prevent the smuggling of their cargoes into the United States.

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"The instructions issued by the Commissioner of Customs at Ottawa under the provisions of Article One of the Treaty of 1924, direct the Collectors of National Revenue to submit to the American authorities as far as possible the following information: the name of the liquor carrying vessel; the nationality of the vessel; the name and residence of the master; the registry or license number of the vessel; the kind of vessel; and a description of the vessel sufficiently clear to enable its identification.

"They further direct the Collectors of National Revenue to identify American motor vessels by requesting production for inspection of the letters of identification issued by United States Collectors of Customs to all such motor vessels."

MR. ROWELL: That is the recent regulation, is it not, June of the present year?

MR. VALLANCE: Yes, that was issued I think on June 11 of this year.

MR. ROWELL: That followed the investigation in the West and at Windsor.

MR. VALLANCE:-

"Notwithstanding the comprehensive nature of these instructions, the information that has been received by the American authorities at Detroit, Cleveland, and other places along the Great Lakes, regarding the identity of the vessels engaged in liquor smuggling, and the identity of their masters, has proved to be erroneous, in practically every instance. The information has accordingly been of slight value to this Government. It may be stated, in this connection, that only in isolated cases have the notices of clearances received from Canadian ports along the Great Lakes given the identification number which is

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issued to American motor boats, notwithstanding the fact that the Canadian authorities have been specifically directed to identify American motor vessels by requesting production for inspection of the letters of identification issued by United States Collectors of Customs to all such motor vessels.

"The unsatisfactory nature of the information that has been received by the American authorities in the Detroit and Cleveland areas is described at some length in a memorandum prepared, under date of June 30, 1927, by Mr.H.T. Nugent, a representative of the Office of Foreign Control, a copy of which is attached to this memorandum."

I might say that Mr.Nugent is at the other end of the table, and will be glad to amplify his memorandum.

"As the telephone notices of clearances of vessels from Canadian ports along the Great Lakes in the vicinity of the St.Clair River, had proved to be entirely inaccurate, the Commissioner of Customs at Ottawa, in June of this year, at the suggestion of this Government, instructed the Collectors of National Revenue at the following places to forward to the Collector of Customs at Cleveland certified weekly reports of all clearances of vessels with liquor cargoes for the United States; Amherstburg, Kingsville, West Dock (Pelee Island), Leamington, Erieau, Port Stanley, Port Burwell, Port Colborne, Port Dover, Port Maitland, Dunnville and Port Rowan. The Canadian officials at the following ports were instructed to forward such lists to the Collector of Customs at Detroit, Sarnia, Wallaceburg, Windsor, Point Edward, Belle River, Sandwich, Walkerville, Port Lambton, Sombra, and Walpole Island. Up to August 16th, however, no certified weekly reports

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appear to have been received from at least twelve of the Canadian ports above enumerated, although it is obvious that there must have been numerous clearances of liquor vessels from those places.

"Along the St.Clair River, between Sarnia and Lake St.Cla ir, there are reported to be a number of beer scows which serve as storehouses for liquor intended to be smuggled into the United States. It would appear that these scows are not under direct customs supervision, and no information seems ever to have been received by the American authorities as to the clearances of the vessels which make contact with them.

"The following extract is taken from a report regarding these scows which was submitted by the American Consul for the district concerned:

> 'The scow's legal status has been based on the theory that it was part of the transportation system from brewery to the foreign consignee, and that liquor stored or kept in them was on its legitimate way from brewery to consignee. The scows have a Dominion permit for each consignment and ha ve fought their war so far on the ground that they were part and parcel of the common carrier transporting the liquor to the consignee in a foreign country. The decisions in the lower court were based almost entirely on the fact that the liquor was kept or stored in the scow for an unusually long time, and usually consignments broken. Therefore the scow has not been outlawed in this decision. If a shipment should be made from here to John Doe in Detroit to the water's edge at Port Lambton, where Mr.Doe is supposed to come and get it, and he does so within a few days, a reasonable time, all will be in order.'"

MR. ROWELL: Can you tell us the date of that consular report?

MR. VALLANCE: I think it was some time during January.

MR. ANSLINGER: Just the latter part of 1926.

MR. ROWELL: I was wondering if it was before we had our investigation.

MR. VALLANCE: I think it was prior to your investigation; I could not say that those scows were still there.

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THE CHAIRMAN: This is the first we heard of the scows

MR. JUSTICE WRIGHT: They were up at Port Lampton and Sarnia.

MR. ROWELL: There was evidence in connection with that.

MR. VALLANCE: They were there I think along in March. Mr.Nugent says they are still there.

MR. ROWELL: There was some evidence given.

MR. JUSTICE ROY: Somebody was selling beer from the scows.

MR. VALLANCE: Of course, we do not get notice of clearance from the scow.

"The unsatisfactory condition which exists with respect to smuggling vessels along the Canadian border in the vicinity of the St.Clair River exists, to a lesser degree, along the Great Lakes in the vicinity of Kingston and Toronto.

"Smuggling by railroads has been successfully conducted at Canadian railway border points where several railways converge, in view of the fact that opportunity is offered, temporarily at least, for concealing the moves of a particular car containing liquor. It has been found also that liquor is frequently concealed in cars with legitimate commodities, and that liquor which is shipped by rail from Vancouver, ostensibly for Walkerville, Ontario, in numerous instances, is smuggled into the United States along the Canadian border of eastern Washington, Idaho and Montana. Renewed efforts have recently been made, through administrative measures, to curb the smuggling of liquor into the United States by railroad cars. It is believed, however, that if possible the Treaty should be made sufficiently comprehensive to prevent smuggling

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of this kind."

I might say that Mr.Hosmer can explain somewhat more fully and also Mr.Anslinger, the measures that have been taken with respect to our consular officers in Canada to check up on shipments in railroad cars.

"This office is advised that when liquor is placed in bond in Canada and is then withdrawn from time to time and the duty paid thereon, the liquor may be transferred to the free warehouses of the proprietor and the sales made therefrom. The sales for export therefore are not necessarily contemporaneous with the payment of duty, or in like quantity. The difficulty, under these circumstances, of preventing the smuggling of duty paid liquor of this kind into the United States from Canada is obvious.

"ARTICLE TWO of the Treaty provides as follows:-

> 'The High Contracting Parties agree that clearances from the United States or from Canada shall be denied to any vessel carrying cargo consisting of articles the importation of which into the territory of the United States or of Canada, as the case may be, is prohibited, when it is evident from the tonnage, size and general character of the vessel, or the length of the voyage and the perils or conditions of navigation attendant upon it, that the vessel will be unable to carry its cargo to the destination proposed in the application for clearance.'

"This article was designed to prevent the fictitious clearances of vessels for remote ports to which their size would not permit them to proceed. It has been found that the vessels engaged in smuggling from Canada along the Atlantic and Pacific Coasts of the United States have been large enough to enable them to carry their liquor cargoes to the destinations declared by them. On the other hand, the small vessels engaged in smuggling along the Great Lakes have not found it necessary to give remote ports as their destinations but have boldly cleared for Detroit,

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Cleveland, and other points in the United States. Article Two has accordingly proved to be of little practical value."

I want a little later to contrast this Article Two with provisions in the Treaty with Cuba and the Treaty which was in force with Mexico for one year.

"ARTICLE THREE of the Treaty, which provides for the return by American and Canadian customs authorities of property seized by them which it has been found was stolen and brought into the United States or Canada, deals with matters primarily within the jurisdiction of the Bureau of Customs."

That Article has been working very satisfactorily with respect to the return of stolen automobiles that were smuggled into Canada.

"ARTICLE FOUR and ARTICLE SIX of the Treaty provide, r respectively, as follows:

> 'The High Contracting Parties reciprocally agree to exchange information concerning the names and activities of all persons known or suspected to be engaged in violation of the narcotic laws of the United States or of Canada respectively.'
>
> 'The following offenses are added to the list of offenses numbered 1 to 3 in Article 1 of the Treaty concluded between the United States and Great Britain on May 18, 1908, with reference to reciprocal rights for the United States and Canada in the matters of conveyance of prisoners and wrecking and salvage, that is to say:
> '4. Offenses against the narcotic laws of the respective Governments.'

"The Office of Foreign Control is informed that these have been operating in a manner which has been extremely satisfactory to the Narcotic Division of the Treasury Department. It is believed that even more satisfactory results will be obtained from the provision in Article Six for the extradition of offenders against the Narcotic laws of the respective Governments when the procedure in extra-

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dition cases under the Article, becomes more clearly defined.

"ARTICLE FIVE of the Treaty provides as follows:

> 'It is agreed that the customs and other administrative officials of the respective Governments of the United States and of Canada shall upon request be directed to attend as witnesses and to produce such available records and files or certified copies thereof as may be considered essential to the trial of civil or criminal cases, and as may be produced compatibly with the public interest.
>
> 'The cost of transcripts of records, depositions, certificates, and letters rogatory in civil or criminal cases, and the cost of first-class transportation both ways, maintenance and other proper expenses involved in the attendance of such witnesses shall be paid by the nation requesting their attendance at the time of their discharge by the court from further attendance at such trial. Letters rogatory and commissions shall be executed with all possible despatch and copies of official records or documents shall be certified promptly by the appropriate officials in accordance with the provisions of the laws of the respective countries.'

"The provision in Article Five for the attendance of witnesses seems to be operating in a satisfactory manner.

"Some of the Canadian authorities have indicated that Article Five applies merely to the certified copies of records and files which are required for the actual trial of civil and criminal cases, and that it does not authorize the production of such documents except when the attendance of witnesses at trials is desired. They have indicated, moreover, that in their opinion Article One of the Treaty, supra, does not require the furnishing of certified copies of documents. As it is frequently highly desirable that the appropriate authorities of the two Governments be furnished, without delay, with certified copies of documents, such as clearances, outward manifests, and crew lists, it is believed that the Treaty should provide in unmistakable terms for the prompt furnishing of documents of this kind.

"ARTICLE SEVEN of the Treaty, which deals with the transportation of liquor through the territorial waters of the

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United States to Skagway, Alaska, via the White Pass and the Yukon Railway, to Canadian territory, and ARTICLE EIGHT , which deals with the ratification of the Treaty, are not pertinent to the present memorandum.

"STATISTICS

"The following statistics, showing the amount of liquor which is being smuggled into the United States from Canada, furnish further evidence of the ineffectiveness of the Treaty in its present form to prevent such smuggling

"The following table, compiled from official sources, shows the values of liquor shipments from Canada, and the value and percentage of these shipments to the United States from 1924 to date. It should be noted that all liquor which enters the United States from Canada, enters unlawfully, in violation of the laws of the United States."

I might say that might be qualified with respect to some small shipments for possibly medicinal purposes or manufacturing purposes, but I do not know of any such shipments.

"VALUE OF ALCOHOLIC BEVERAGES EXPORTED FROM CANADA

FISCAL YEAR	TOTAL	TO U.S.A.	PERCENTAGE TO U.S.A.
1924	$14,854,175	$ 8,714,709	62%
1925	16,225,533	11,610,169	72%
1926	21,207,777	17,207,777	82%
*1927	9,069,093	8,236,126	91%

*Five months ended August 31,1926."

MR. ROWELL: That is those that were declared for export to the United States?

MR. VALLANCE: Yes. I think these figures correspond to evidence given before your Commission at Windsor.

THE CHAIRMAN: We had not only a keen suspicion but some very strong evidence that some of it got back into Canada, - you did not get it all.

MR. VALLANCE: I take that as correct.

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"It has been rather difficult to estimate the total amounts of liquor that are being smuggled into the United States from the various sections of Canada. The following figures regarding the amount of liquor that has been smuggled into the United States from various parts of Canada during various periods, may be of interest:

"Information received by the Office of Foreign Control indicates that in 1926 four vessels from Vancouver and Victoria, B.C. made 146 trips to Sea Island, Maple Bay and Bowen Island, B.C. with 12,600 cases of liquor. These shipments, as stated on page three of this memorandum, undoubtedly were smuggled into the United States. The figures for 1927 in this traffic have not as yet been tabulated.

"The testimony given before the Royal Commission at Windsor (which is referred to on page eleven) indicated that 65% of all the whiskey and that 80% of all the beer exported to the United States from Canada in 1926 and smuggled into the United States, was exported through Windsor. There is no indication that exports through Windsor for 1927 will be less than the exports for 1926.

"Reports that have been received show that between thirty and forty vessels with liquor cargoes clear daily from Sandwich for the United States and that at least twenty clear daily from Walkerville.

"Information in the possession of the Office of Foreign Control shows that the following quantities of liquor have been cleared for the United States from Port Dalhousie, Belleville, and Port Colborne, Canada, for the periods indicated:

"Whiskey	4,226 cases
Gin	110 "
Beer	182 bags
	140 cartons

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Brandy	225	75 cases
Wine		225 cases

"Belleville, April 24,1926 - October 8, 1926.

"Spirits	4,977 cases
Beer	1,397 bags

"Port Colborne, May 1, 1927 - May 26, 1927.

"Ale	7,090 bags
Wine	86 cases
Whiskey	2,070 cases
Gin	60 cases

"CONCLUSION

"The information in this memorandum regarding the operation of the Treaty of 1924 with Canada to Suppress smuggling, although by no means exhaustive, and the statistics which have been given concerning the quantity of liquor which is being smuggled into the United States from Canada, show conclusively that the Treaty in its present form is ineffective to prevent the smuggling of liquor into the United States from Canada, even though the letter and spirit of the Treaty and of the regulations issued thereunder are faithfully observed by the American and Canadian authorities concerned.

"RECOMMENDATIONS

"If the conditions that now exist with respect to the smuggling of liquor from Canada are to be substantially improved, it would seem to be essential that an article be incorporated in the treaty similar to Article Two of the smuggling treaty between the United States and Cuba of March 11, 1926. This Article, which has proved extremely effective in preventing the smuggling of liquor into the United States from Cuba, provides, in part, that clearances of shipments of merchandise by water, air, or land from any of the ports of either country to a port of the other country, shall be denied when such shipment comprises

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articles the importation of which is prohibited or restricted in the country to which such shipment is destined, unless in this last case, there has been a compliance with the requisites demanded by the laws of both countries.

"It is believed also, as has previously been indicated, that the treaty should clearly provide for the prompt furnishing of certified copies of documents, such as clearances, outward manifests and crew lists, upon the request of designated officers of the Government of Canada and the Government of the United States.

"It is believed further that provision should be made for the extradition to the United States and Canada of persons charged with conspiracy and of offenders against the customs laws of Canada and of the United States, regardless of their nationality.

"It may not be inopportune, in conclusion, to refer to the Norwegian Law of June 26, 1926, which prohibits the use of Norwegian vessels in smuggling operations against a foreign country, and to the Panaman law number fifty-four of 1926, which provides that any merchant vessel which has acquired Panaman nationality shall lose that nationality if it is devoted habitually to smuggling, illicit commerce, or piracy, - as indications of the extent to which Norway and Panama have gone, through statutory enactment, to prevent smuggling operations against other countries."

And then if I may read this memorandum which is prepared by Mr. Hugent under date of June 30,1927, with regard to the identification of liquor carrying vessels:-

"Detroit, Michigan,
"June 30, 1927.

"MEMORANDUM TO:

"DIVISION OF FOREIGN CONTROL.

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"IN RE: IDENTIFICATION OF LIQUOR CARRYING VESSELS.

"Reference the communication dated June 30, 1927, from the American Consul in Charge, Jack D. Nickerson, Esq., at Ottawa, Canada, in which he refers to the above subject matter and encloses copy of a letter from the Commissioner of Customs, Department of National Revenue, Customs Division, the concluding paragraph of which asks that information, be furnished regarding the reported clearance of a liquor carrying vessel with the name of Colonel Hanlon given as Master."

Colonel Hanlon was in charge of the border patrol at Detroit, and these statements show that his name was given as the Master in charge of the vessel loaded with liquor.

"For your information, please be advised that on May 14th, 1927, the Sub-Collector of National Revenue, Mr. Lodge, at Walkerville, Ontario, Canada, furnished the following information by telephone:

> '"MABLE" - Gas Launch, 5 tons - not registered, from Detroit, Mich., cleared at 5.00 P.M. with 28 cases of whiskey. A.J.Hanlon, Master.'
> Colonel A.J.Hanlon at that time was Supervisor in charge of the United States Border Patrol at Detroit Mich.

"The practice of clearing vessels at the Canadian ports along the Detroit River with fictitious names and misleading and erroneous information regarding the destination thereof, as well as that of the master, is common knowledge. It may be of interest, in this respect, to mention that on January 21, 1927, the Sub-Collector of National Revenue at the Sandwich dock, near Windsor, Ontario, Canada, reported the following clearances:

> '"ALICE" - Gray gas launch, 6 tons - not registered, from Detroit, Mich., cleared at 5.30 P.M. for Detroit, Mich., with 300 cases of beer and 5 cases of whiskey.' G. Pratt, Detroit, master.'
> At the time of this clearance one C.Pratt was a United States Border Patrolman, stationed at Detroit, Michigan, and serving under Colonel Hanlon.

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"and on March 22nd, 1927, the following clearance was reported from the same dock, and by the same Sub-Collector:

> '"BETTY" - Gray Outboard - not registered, from Detroit, Mich., cleared at 4.45 p.m. with 35 cases of beer for Detroit, Mich. R.Winder, Detroit, Master.'
> At the time of this clearance one R.Winder was a United States Border Patrolman, stationed at Detroit, and serving under Colonel A.J.Hanlon.

"and on March 27, the following clearance was reported by the Sub-Collector of National Revenue, Kingsville,Ontario:

> '"ELENOR R." - Speedboat - not registered, from Toledo, Ohio, cleared with 70 cases of beer for Toledo, Ohio, - Paul Hamilton, Detroit, Master.'
> At the time of this clearance one Paul Hamilton was a United States Border Patrolman, stationed at Detroit, and serving under Colonel A.J.Hanlon.

"and on April 6, 1927, the following clearance was reported by the Sub-Collector of National Revenue at Sandwich dock, near Windsor, Ontario:

> '"PAT" - Gray gas launch - not registered, from Detroit, Mich., cleared at 5.15 p.m. with 125 cases of beer for Detroit, Mich., H. Walters, Detroit, Master.'
> At the time of this clearance one H. Walter was Assistant Supervisor of the United States Border Patrol, stationed at Detroit, and serving under Colonel A.J.Hanlon.

"One could continue for hours in detailing the numerous instances wherein the information as to name of boat, port of destination and name of master is absolutely false. Shortly after the time the Sub-Collectors on the Canadian side of the Border commenced telephoning and telegraphing information regarding clearances of liquor carrying vessels for ports in the United States, in accordance with the provisions of our Treaty with Canada, Colonel Hanlon ... detailed two Border Patrolmen to investigate reported information regarding the names and addresses of the masters of the vessels. The men devoted their entire time to the mission, but at the end of six weeks, and after several hundred addresses had been carefully investigated, it was

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found that not one single address was authentic and the investigations were discontinued."

I might say the affidavits of these men have been furnished to the Canadian Government and effort has followed to obtain correct information on that point.

"With regard to the information concerning the port of destination as furnished by the Canadian Sub-Collectors, may I point out that an examination of the records in the office of the Collector of Customs, Detroit, Mich., fails to show that a single one of the boats reported as having cleared for Detroit ever entered or reported with her cargo; this likewise may be said of all vessels clearing Canadian ports with liquor for other ports in the United States."

There of course is a violation of our laws in that they do not enter at our ports. Further they do not obtain a clearance or any other document from our ports to present when they go into the Canadian port on their return.

"In connection with the subject of identifying vessels clearing Canadian ports with liquor for the United States, may I call attention to the instructions issued by the Canadian Commissioner of Customs, under date of June 11, 1927, to Collectors and Sub-Collectors of National Revenue, included in which is the following:

> 'In furnishing such weekly reports you are requested to give description of the vessels, stating whether open cabin or decked, showing approximate length and width and any other information in addition to the names of the numbers which might serve to aid identification.'

and conclude with this paragraph:

> 'You should in all cases identify United States vessels by requesting production for inspection of letters of identification issued by the United States Collectors of Customs to all United States motor vessels.'

"However, our suggestion that clearance of United

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States vessels be denied unless the master presents such letter of identification was not agreed to and the Commissioner of Customs, under date of June 17, 1927, advised that no authority exists under the Canadian Customs Act, as it now stands, which would justify such action."

MR. ROWELL: That is, in refusing clearance unless it is produced?

MR. VALLANCE: Yes.

"Our efforts are being devoted to the task of properly identifying vessels clearing Canadian ports with liquor for ports in the United States, and to that end every effort is being made to require United States motor vessels to carry the identification number furnished by the Collector of Customs. The present campaign has resulted in the numbering of a majority of the boats, particularly the rum-running craft, but when those boats apply for clearance at Canadian ports, the Sub-Collectors do not appear to pay much attention to the numbers, although plainly discernible.

"I am reliably informed that the modus operandi at the Canadian whiskey docks is to ask the master the name of his craft, regardless of whether or not the boat carries a number on her bow. If the master is busy, a name is arbitrarily assigned to her. If he has time to think of some name he has not used on previous occasions, he does so and selects some common one such as 'MARY,' 'RUTH,' 'DOT,' or any one of a dozen oft-repeated names shown on clearances reported from Canadian ports. Just recently I talked with a rum-running operator who informed me that his boat cleared three times from one port in one day with a different name on each occasion, although the Sub-Collector was well acquainted with him and knew his boat - and too, she carried a number on her bow.

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"Within the past week, I was informed of the clearance of a boat from one of the Canadian ports opposite Detroit at which time the Sub-Collector inquired of him - 'What is the name of your boat?' One was furnished, although she had her numbers conspicuously displayed on her bow as required by the United States Motor Boat Law. The practice may be further emphasized by the fact that liquor carrying craft seized on the United States side of the International boundary, and having just cleared from a Canadian port, have had their numbers properly and conspicuously painted on their bows, but reports of clearances of vessels from Canadian ports on that day mention no numbers whatsoever.

"In conclusion, may I state that regardless of the fact that many of the United States motor vessels clearing Canadian ports with liquor cargoes have their numbers properly affixed to their bows, they are not reported by the Sub-Collectors at the time of furnishing clearance information to the Collector of Customs at Detroit, Mich. And regardless of the fact that practically all of the well-known rum-runners are personally acquainted with the Sub-Collectors on the Canadian side to the extent that they know their correct names, the practice of supplying fictitious names and addresses of the masters remains in vogue - sometimes more farcical than using Colonel Hanlon's."

Now, I have here some reports in regard to false clearances that have been obtained from Nassau and from Havana and from St.Pierre through the French Embassy. They relate to clearances from Halifax and other ports on the eastern coast. We have other similar data on the Pacific coast, which I may have available to put in the record this afternoon. This

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information is of particular interest in connection with the requirements that landing certificates shall be filed under the Canadian law. There are some seven or eight hundred clearances listed here, and in practically no case has the vessel proceeded to the destination, and in some cases it has been found that landing certificates, however, have been filed, and bonds to export the cargo have been cancelled on these false landing certificates. (Mr. Vallance hands memorandum to Mr. Rowell)

MR. ROWELL: These are the Nassau ones?

MR. VALLANCE: Yes.

MR. ROWELL: Can you furnish this copy to the Commission?

MR. VALLANCE: That is for the Commission's information.

THE CHAIRMAN: It gives the name of the exporting company, does it?

MR. ROWELL: No, it gives the name of the schooner, the point from which it cleared, and the date it cleared, and then did not arrive or arrived. It does not give the name of the company - the date of the clearance.

MR. VALLANCE: This was made up from information furnished to us under the Treaty. The Collector of Customs furnished us the name of the vessel, the destination, the date of clearance, and then we advised our counsel at Nassau to ascertain whether the vessel arrived or not.

THE CHAIRMAN: Are not you advised of the consignee?

MR. VALLANCE: I do not think we are.

THE CHAIRMAN: Or consignor, under the Treaty?

MR. VALLANCE: No, sir.

THE CHAIRMAN: You are not required to be under the Treaty?

MR. VALLANCE: No, just information as to the clearance.

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MR. ROWELL: It shows a very large number of vessels. This record starts December 28, 1925, and runs on to December 17, 1926.

---The list was filed with the Registrar of the Commission.

MR. VALLANCE: We sent the list to our consul at Nassau and he took it to the Customs House, and the Customs official has certified that the vessels did not arrive at Nassau.

MR. ROWELL: And this next list of Havana, Cuba, under letter of January 15, 1927, it gives a list of vessels clearing from Nova Scotia ports, and the cargo, and the date of departure, and then it is accompanied by a letter from the Assistant Secretary of Department of State to the Secretary of the Treasury, which encloses a copy of a dispatch dated January 8, 1927, from the American Consul General at Havana, stating that he has been informed by the captain of the port that none of the vessels included in the list with the exception of the British schooner Paloma arrived at Habana. The Paloma is listed as having cleared Lunenburg for Habana on June 18, 1926, with 2986 cases of liquor, and is reported to have entered Habana on July 7, 1926, from the high seas.

THE CHAIRMAN: The policy requiring landing certificates has been tightened up, I think.

MR. ROWELL: Yes, I think so.

MR. ROWELL: The third list is from St.Pierre, and with it is a copy of a letter from the Embassy of the French Republic to the Secretary of State enclosing a list of clearances with an intimation on the margin as to whether the vessel did or did not arrive at St.Pierre. That is a copy of an official communication you received there.

MR. VALLANCE: From the French Embassy here. That is a translation.

---Lists filed with Registrar of Commission.

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MR. ROWELL: In the course of your investigation, did you acquire any information as to how the landing certificates were procured?

MR. VALLANCE: Frequently they were forged landing certificates, they were printed, and they had in the case of some landing certificates, for example, from Ensenada in Mexico, they were printed, and kept in a bank vault in SanFrancisco,

MR. ROWELL: If we could keep to the Atlantic first, did you get any information so far as the landing certificates on the Atlantic were concerned?

MR. VALLANCE: I recall some report from our Consul General in Havana that in certain cases the landing certificates were fraudulent, but we have not any conclusive proof on that such as we have on the Pacific coast, except that the certificate of the Customs officer or the port officer was to the effect that the vessel had never been into the port, and on checking up with Halifax, Canadian officers at Halifax, we were advised that bonds had been released in both cases.

MR. ANSLINGER: In Havana we have found that it is possible to obtain nearly every kind of a fraudulent shipping document.

MR. JUSTICE ROY: It is possible?

MR. ANSLINGER: Yes.

THE CHAIRMAN: If you are willing to pay for it?

MR. ANSLINGER: Yes.

COMMANDER ROOT: Fifty cents a case.

MR. JUSTICE WRIGHT: Fraudulent but not forged.

MR. ANSLINGER: They are forged also by the masters of the vessel.

MR. ROWELL: What about health certificates?

MR. ANSLINGER: They are also forged. There is whole-

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sale forging of Cuban health certificates in Havana.

MR. ROWELL: And they must have an outward clearance.

MR. ANSLINGER: They are also obtained in the same way.

MR. JUSTICE ROY: Not from officials?

MR. ANSLINGER: No.

MR. JUSTICE ROY: Forged by some other people and sold?

MR. ANSLINGER: Yes.

MR. ROWELL: That is the situation on the Atlantic with reference to landing certificates; you were going on to speak of the situation on the Pacific.

MR. VALLANCE: In one case on the Pacific landing certificates were filed. We were furnished by the Canadian authorities at Vancouver with a photostat copy of the landing certificate and sent it to our consul at Ensenada, and he took it to the port officer and obtained a certificate from him that the vessel had never been in Ensenada, and furthermore, the form on which the landing certificate was made out was an obvious forgery, and that although it had his name signed to it was clear that it was a forgery of his signature.

MR. ROWELL: You were going to refer to having discovered some landing certificates in a vault?

MR. VALLANCE: In one case I understand that a safety deposit box in a bank in San Francisco was opened and landing certificates were found there. I believe that was in evidence in the Stadacona case which Mr. Oftedale hands to me.

THE CHAIRMAN: Did not that come before us at Vancouver to some extent?

MR. VALLANCE: This is a memorandum.

MR. ROWELL: Perhaps this might just go into the record. This is an extract from report of special agent W.D. Peck, dated February 1, 1926,-who is Mr.Peck?

MR. VALLANCE: I suggest perhaps Mr. Oftedale might

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speak with reference to that.

MR. LOWMAN: Mr.Oftedale is Assistant Prohibition Commissioner, but formerly was on the Pacific Coast.

MR. ROWELL: Would you mind just giving us such information as you can on that, and perhaps read into the record this particular statement.

MR. ALF. OFTEDALE: (Assistant Prohibition Commissioner) This is an excerpt from a report submitted by Special Agent W.D.Peck who operated under my immediate supervision on the Pacific Coast, and covers the results of his investigation in Topolobampo and Ensenada, Mexico, for the purpose of determining whether or not true landing certificates had been obtained by those who operated the known rum-runner Stadacona later known as the Kuyakuzunt, and the Gunhild II, otherwise the Coal Harbor.

"The Mexican officials gave emphatic testimony not only as to the papers taken from the safe deposit box, but as to photostatic copies of records filed with the Canadian Customs at Vancouver and Victoria, B.C. being forgeries, and that further, that the ships in question had never touched at that port.

"Mr.Briggs accompanied us to Topolobampo, and there we met the Mexican Collector of Customs, Jose Maria Rubio and were able with Mr.Briggs interpreting, to explain to the Collector the purposes of our visit and our desire to determine the facts with relation to the alleged clearances.

" Mr.Rubio informed us that his predecessor, whose name appeared as El Administrado, R. Rivera, had been removed from that office early in the year 1923 and previous to the time wherein he executed clearance papers on the 'Gunhild II' on April 17, 1923, and the 'Coal Harbor' on October 21. 1923, the other two photostatic copies of clearance of the

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'Gunhild II' on November 29,1922 and January 11, 1923 were apparently executed while he was in office.

"However, in all cases the signature of his associate El Contador, F.Martinez, was promptly held to be a forgery. Augustin Villabrago h. who is an assistant of Collector Rubio, has been at this port many years and gave testimony to the effect that no such ships as the 'Gunhild II', 'Coal Harbor' or the 'Pescawha' had ever to his knowledge touched at this port. The official Customs record for the time in question was produced and was examined by Agent Hamer and myself, and it was noted that no boats whatsoever cleared from January 9th to January 19th, 1923, or from April 1st to April 28th, 1923, during which periods Rivera has signed clearance papers on the 'Gunhild II' and the 'Coal Harbor.' The Collector produced the seal which was in use during the dates in question and upon comparison with the seals appearing on the photostats, it was clearly developed that the seal appearing over Rivera's signature on the clearances was a forgery.

"The Collector examined the photostatic copies of the alleged clearances of the 'Coal Harbor' from Corinto, Nicaragua, LaLibertad, San Salvador, and Buena Ventura, Columbia and expressed the opinion that the vessel had never touched these ports, but that likely some of the officials' signatures would be found to be genuine, although in each case no doubt a portion of the document would be found to be forged.

"Mr.Martinez promptly pronounced the documents as forgeries and expressed willingness to testify that he had never signed his name to any such papers and that to his personal knowledge these boats, namely the 'Gunhild II',

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' Coal Harbor' and 'Pescawha' had not cleared from the port of Topolobampo during his tenure of office."

Now, aside from that we have, I think, through the State Department obtained certified records from the leading officials of these ports establishing the fact beyond question that the parties to whom these records were generally sent, and that was to the John Douglas & Company of LaLibertad, San Salvador, and one at Buena Ventura, Columbia, they had never cleared such vessels at those ports; the ships had never landed at those ports. Now, I have here an extract from a report of Special Agents Rumburg and Wasner, dated January 25, 1927, which relates to the various clearances granted well known rum-runners on the Pacific Coast, such as "Gunhild II", later known as "Coal Harbor", the "Malahat" the "Prince Albert", the "Kiltuish", "Chief Skugaid", "Jessie", the "Principio", the "Kuyakuzmt", the "Ouiatchewan"; and in that connection there is a memorandum reading as follows:-

> "The other vessels connected with this rum fleet cleared the port of Vancouver, B.C., as designated below, and in practically every instance the liquor was consigned by the Consolidated Exporters Corporation, Ltd., to John Douglas & Company, La Libertad, San Salvador, and other points, which firm according to a communication now in your file from the Hon. J.W.McCafferty, American Consul in Charge at La Libertad, does not exist."

On the last page of this memorandum is a paragraph reading as follows:-

> "It is noted that on each of the dates above mentioned, the Ouiatchewan cleared for Goose Island, a point near Vancouver, B.C. It is generally known that the Ouiatchewan, Kiltuish and Jessie are used for the purpose of transporting supplies and fuel to the larger rum runners off the

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California coast, and we have evidence that in many instances these small ships took aboard residue cargoes of the larger rum runners."

I also have a communication which has just been prepared for me by the man who has been my first assistant on the coast, and now has succeeded me as Coordinating Officer out there, and this letter is dated August 30, 1927, Washington,D.C.:

"In re false clearances of liquor carrying ships from Victoria and Victoria, British Columbia" ---

MR. ROWELL: Had you evidence that all these clearances were false?

MR. OFTEDALE: Yes, sir; we established that fact.

MR. ROWELL: I am now referring to the list investigated by Rumburg and Wasner.

MR. OFTEDALE: I mean by clearances, landing certificates.

MR. ROWELL: Yes.

MR. OFTEDALE: Yes, we have established the fact that every one of them was false and fraudulent. We obtained the originals in the case of the "Stadacona" by raiding the safety deposit box rented and controlled by Joseph White, American citizen, controlling the activities of the "Stadacona," and we carried those particular landing certificates to the officials in Topolobampo, and also to the Canadian officials, and there we established at both ends of the line that they were entirely fraudulent. I might say in connection with our efforts to apprehend these smugglers out there on the Pacific Coast, we managed to obtain possession of about four or five hundred of their radio messages and telegrams in code, most of which have been deciphered by the aid of the coast guard, the naval intelligence, and our own men, and we have been able to break, I think, at least four different codes, that they have employed

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during the time between 1922 and say the 1st July of this year, and those decoded telegrams tell very interesting stories, and show the constant communication and relationship existing between the source of supply, generally the Consolidated Exporters Corporation, Limited, in Vancouver, and their later base of supplies at Tahiti in the Society Islands, and their agents ashore who were selling orders on the rum-running ships at sea; and of course we have caused the arrest of these agents. We arrested Captain Ford twice, once in connection with a seizure on the Quadra, next he became an agent for the company and sold orders on the ship and maintained quarters in San Francisco, where he was in the act of selling an order for 5000 on the rum-runner "Malahat"; and we have arrested a number of other agents like Nard and Belanger in the act of violating the law of the United States.

MR. JUSTICE ROY: Are they in jail now?

MR. OFTEDALE: Most of those, and the man who actually was convicted in the "Quadra" case, the "Coal Harbor" and a number of other cases that I do not have in mind, have become fugitives, and have gone back into Canada, and we had late information, for instance, that Captain Ford is now managing an hotel in Vancouver, B.C.

MR. JUSTICE ROY: Is Belanger back?

MR. OFTEDALE: B.H.Belanger is now living in Los Angeles, California, and has left the rum-running business. A nephew of his later became an agent and we apprehended him in San Francisco right in the act of selling an order on the rum-runner Principio.

Getting back to this memorandum prepared by Mr.Burford, my assistant, which contains very recent information as to the new practice:-

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"The certified copies of clearances, reports outside, and agreements or articles and crew lists, are on file in the office of the United States Attorney at San Francisco, for the ships which were engaged in the conspiracy known as the Coal Harbor case.

"The only photostat or copies are those with reference to the Stadacona, now known as the Kuyakuznt, which papers were seized from the safety deposit box of Jacobe White. These are in the possession of Assistant Attorney General, Hon. Mabel Walker Willebrandt.

"Attention is called to the fact that a practice now appears to exist whereby smaller boats, namely, the Noble, Ettamac, Odeon, Oukanish, and Ouitchuan, are cleared from Vancouver and coastwise points, sometimes carrying a cargo of tax-paid liquor, and on other occasions without cargo. These boats continue on to points off the Oregon and California coasts where they are used as contact boats between the larger ships lying farther out and the smaller craft from shore. For example, the Noble cleared from Vancouver without cargo on July 2, 1927. She returned sometime during the evening of July 3rd, and loaded a cargo of approximately 2,000 cases of liquor at one of the outlying ship yards in Coal Harbor, Vancouver, and proceeded to sea without the formality of again clearing; in fact, she did not reenter from the first clearance. On July 10th, radio messages from this boat to Vancouver were intercepted, showing that it was then off the California coast. A few days later the Coast Guard located the Noble off San Francisco, and has been picketing her at intervals since.

"The Federalship, now known as the La Colondrina, Guatemalan register, cleared from Papeete, Society Islands,

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on August 6th, with approximately 20,000 cases of liquor, and is now believed to be off the California coast, though when I left San Francisco the Coast Guard had not yet located the boat. The Hurry-on, Prince Albert Appolo, formerly the Principio, and the Chris Muller, have all left Vancouver within the last six months for European ports, and the information received by our agents in Vancouver is to the effect that these boats will return with cargoes of liquor for discharge off the coast of California, and will proceed on to Vancouver empty. The Exmouth II has been reported off the San Francisco coast, it having passed through the Panama Canal on July 8th. This boat cleared from Antwerp, Belgium for Shanghai, China, carrying cargo of some 6,000 cases of liquor. From the radio messages intercepted it appears that the Ouakanish is being used as a contact boat between the Exmouth II and the shore craft. These boats are being operated by J.W.Hobbs, whose company is known as the Central American Shipping Company. However, that name may have been changed recently, as the messages are being sent to Hopco, Vancouver, instead of Casco as formerly."

MR. VALLANCE: We have Consul Boyle who is at the Tahiti Islands, and I think he could give you in a few moments inside information about the result of your hearing in Vancouver in respect of some 30,000 cases that went to Tahiti and was brought back.

THE CHAIRMAN: Very well.

MR. ROWELL: Mr.Boyle, would you kindly give the Commission the information you have as to the operations from Vancouver to California via Tahiti?

MR. L.V.BOYLE (American Consul at Tahiti): The motor

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vessel Falsterbo arrived at Papeete from Vancouver on or about March 15, 1927, and discharged approximately 31,000 cases of whiskey, taking about two days to discharge the cargo, which was placed in a bonded warehouse that had been rented by the agents of the Consolidated Exporters, one Murphy and McLennan.

MR. JUSTICE ROY: Under the French flag?

MR. BOYLE: Yes. About ten days later the five-master motor vessel Malahat arrived.

MR. VALLANCE: What registry?

MR. BOYLE: British registry, arrived at Papeete and loaded 10,600 cases of the cargo that the Malahat had discharged, departing from Papeete ostensibly for Vancouver on or about April 1, 1927. The day before the Malahat arrived the south-bound mail steamer arrived at Papeete from San Francisco, and there was aboard the steamer one Frank Parsons, an insurance man from Vancouver, who came to Papeete for the purpose of obtaining landing certificates for the cargo that had been brought by the Falsterbo; and he left two or three days later on the north-bound steamer for San Francisco, presumably with the landing certificates. About the 24th July, 1927, the Lagolindrina, under Guatemalan registry, ex-Federalship, arrived at Papeete, and loaded somewhere between 18,000 and 20,000 cases of the liquor that had been brought by the Falsterbo, and cleared from Papeete, I believe, on August 6, for Vancouver. At the present time the Consolidated Exporters have only one man at Papeete, Mr.Murphy, Captain McLennan having left there for Canada via New Zealand and China, about the 30th April.

MR. ROWELL: Do you know anything of the movements of these vessels after they left Papeete loaded with liquor for Vancouver?

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MR. BOYLE: No.

MR. VALLANCE: I think the Coast Guard can tell something about it.

MR. BOYLE: I have heard indirectly that the Malahat reached Vancouver about the 7th July, having left Papeete, I think, the 1st April, with the cargo unloaded; I was told that in San Francisco by the Prohibition Service.

MR. ROWELL: It is at least taking ocean voyages backwards and forwards, anyway?

COMMANDER ROOT: They have an intermediate depot off the coast on the Island of Guadeloupe.

THE CHAIRMAN: Are they operating now from San Francisco itself?

MR. BOYLE: The Falsterbo came directly from Vancouver to Papeete.

THE CHAIRMAN: Will you give me the dates of that again?

MR. BOYLE: It arrived at Papeete, as I recall it, on March 15, I believe it was about 17 or 18 days en route, then came from Vancouver to Papeete.

THE CHAIRMAN: Is that the last record you have of the shipments from Vancouver?

MR. BOYLE: That has been the only shipment up until the time I left Papeete on the 26th July.

THE CHAIRMAN: Because I have understood it is pretty well stopped.

MR. ROWELL: In that case they would get genuine landing certificates from Papeete?

MR. BOYLE: Yes, they got landing certificates from the Collector of Customs certified by the British Consul at Papeete.

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COMMANDER ROOT: Parsons was sent out by the owners to be sure they got landing certificates.

MR. BOYLE: He was arrested on his way to San Francisco and investigated.

MR. VALLANCE: I thought that information would be of interest to you, as that shipment to Tahiti was a result of the order that was put into effect after your hearings there with respect to intransitu shipments requiring that they should be moved thirty days after their arrival.

THE CHAIRMAN: Yes, and the bond furnished.

MR. BOYLE: That is the reason given by the agents of the Consolidated at Papeete, because of this regulation.

THE CHAIRMAN: I understand from some regulation that I saw, the Customs officials are instructed to rigidly enforce the production of landing certificates in the exwarehouse shipments, that is, shipments that are made under bond, whether in transitu or ex-warehouse, and that, of course, has stopped the exwarehouse shipments as well from Vancouver.

MR. VALLANCE: Yes, that order had a very salutary effect in Vancouver. I think that is all Mr.Boyle had to say.

MR. ROWELL: There is something further you wanted to submit in connection with the Atlantic.

MR. VALLANCE: Yes. Admiral Billard would like to make some statement. Before passing to that I would like to put into the record a dispatch which we have from our Minister at Guatemala, stating that the Lagolindrina, which was formerly the Federalship, is not entitled to Guatemalan registry, and is therefore operating under a fake registration.

MR. ROWELL: Is the Federalship the one that was seized and subsequently released?

MR. VALLANCE: Yes, and went back to Vancouver, and

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the Panamas registered it and cancelled it two weeks later, and it purchased a Guatemalan registry from a Guatemalan Consular officer, but the Guatemalan Government decline to recognize that, so that it is really a ship without a flag.

MR. ROWELL: It does not go back to its former registration? I was wondering what the legal status is.

MR. VALLANCE: The vessel was first of Belgium registry and arrived in Vancouver, and the Federal Shipping Company, Limited, was organized there. It had as its officers a Canadian lawyer and two longshoremen. The Division of Foreign Control has some evidence that the actual owners were residents of the United States, and probably San Francisco. It cleared with several cargoes after that. First it obtained a Canadian registery which was cancelled two days later on instructions from Ottawa. I have never been able to find out exactly why it had such a short register in Canada. Then it obtained a temporary register from the Panama's Honorary Consul at Vancouver who I understand is a Canadian merchant there, and operated under the Panaman flag for several months, and then was seized and released, and two weeks after it was returned to Vancouver after the register was cancelled, and it is now operating under the name of Lagolindrina, under Guatemalan flag.

ADMIRAL BILLARD: The United States Coast Guard is charged with the responsibility of preventing smuggling in the United States from the sea and across the Great Lakes, large bodies of water. It follows then that I am very much interested and concerned in, and with, anything that may be suggested or may be consummated looking to the reduction of smuggling. I was much impressed with what Mr. Vallance has just told you about Article Two of the Treaty with Canada. I see in the note of the Charge d'Affaires to the Secretary of

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State that the Commissioners are interested in possible amendments to the Treaty that will assure the suppression of smuggling. I wonder if I might be permitted to give a thought that has been in my mind about the extraordinary situation with respect to the existing Article Two of the Canadian Treaty. Under the Article if an individual approaches the Canadian Customs officer who is in a sense conscientious, and represents to him that he desires a clearance for a small motor boat forty or fifty feet in length, loaded with liquor, and bound for Havana, Cuba, if he makes that application at Windsor, I mean, the Canadian Customs official will say to him, "I do not consider that the tonnage and general character of your vessel is of such a nature as will permit making the voyage you request, and I note that your cargo is to consist of merchandise, the importation of which into the United States is prohibited. Therefore, under the operation of Article Two of the Treaty I cannot grant you a clearance." Whereupon the individual changes his approach and says "I desire a clearance for this liquor cargo to Detroit in the United States." I can imagine the conscientious Customs official of Canada saying somewhat as follows: "My friend, when you asked me for a clearance and I suspected that your intention was to introduce liquor into the United States, I was constrained to refuse to grant you the clearance. But now, however, that I know that your intention is to introduce liquor into the United States I am authorized to grant you the clearance, and here it is."

THE CHAIRMAN: But I must notify under those circumstances the American authorities so that they can intercept it.

ADMIRAL BILLARD: True enough.

THE CHAIRMAN: In the other case he does not.

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ADMIRAL BILLARD: But in the other case where he simply suspected its introduction into the United States he is authorized to decline to give the clearance, but where he knows, because the man has told him so, of the purpose, he is not authorized to decline.

The smuggling prevention of the Coast Guard may be considered in two phases: One is, operations along the Great Lakes, where, in my judgment an almost complete stoppage of the traffic could be effected if the Treaty were amended, as Mr. Vallance suggested. The other phrase relates to the operation of Canadian vessels on the Atlantic and Pacific coasts where they clear from Canadian ports ostensibly for West Indian ports, but endeavour to land their cargoes in the United States. That situation you have just covered fairly fully. I have no right to suggest it, Mr.Chairman, because I cannot speak for the State Department on such matters, but it does seem to me that that situation is very adequately taken care of in Article Two of the Treaty with Cuba to which reference has been made. Under that Treaty when one of the High Contracting Parties ... gives notice to the other that it suspects that a specified vessel in a port of the other High Contracting Party, although ostensibly destined to a port in a third country, is likely to attempt to introduce unlawfully into its territory merchandise or persons whose entry is prohibited or restricted, the other High Contracting Party shall require from the Master or person in charge of the vessel in accordance with the laws in force in the respective countries, such additional arrangements as may be agreed upon and incorporated in the regulations, etc., a bond to produce a duly authenticated landing certificate. Now, the value of that provision, as I see it, lies in the following, "If any such vessel . fails to produce the certificate in proof

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of lawful discharge of said merchandise the bond shall be forfeited and thereafter for a period of five years the vessel shall be denied the right to enter or clear from any port of either of the High Contracting Parties with merchandise or persons of the same nature."

THE CHAIRMAN: I understood we were furnished with a copy of that Cuban Treaty?

MR. VALLANCE: Yes.

THE CHAIRMAN: I think, Admiral, that if you do not mind, we will postpone the further hearing of your statement until after luncheon.

ADMIRAL BILLARD : Very well.

---The Conference adjourned at 1.00 o'clock p.m. until 2.30 o'clock p.m.

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Conference resumed at 3.00 p.m., August 30th, 1927.

MR. ROWELL: Admiral Billard, if you would kindly continue your observations; you were directing attention to certain matters when we adjourned for luncheon.

ADMIRAL BILLARD: Mr. Chairman, I presumed to suggest this forenoon that if it were deemed proper by both countries to insert in the treaty with Canada that is now under consideration language substantially like that now appearing in the first paragraph of article two of the treaty of this country with Cuba, it would very essentially curtail in my judgment smuggling between Canada and the United States, and vice versa on the Great Lakes and over the Canadian border. I do not think it is hardly necessary to suggest to the Commission the very great difficulties of preventive measures by water on the Great Lakes. The nearness of the respective countries is obvious, and also it is obvious the physical administrative difficulties of stopping illicit movements across comparatively narrow bodies of water. I think that must be apparent to us all. But, as it seems to me, if the two nations who have in the existing treaty very clearly signified their desire and purpose to prevent smuggling, would see fit to add this additional provision of which I have spoken, I think the problem with respect to the Great Lakes, the Detroit River, the St. Clair River, the border, would be practically solved. Such a provision would not meet the situation that now confronts us on the Atlantic and Pacific Oceans, because there the liquor is not cleared for the United States, but, as has been pointed out, is cleared for West India ports or Tahiti, for other points in a third country. The information that comes to me is to the general effect that

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Canadian vessels do not now generally clear with cargoes of liquor from Canadian ports for West Indian ports for the purpose of smuggling into the United States, due, as I understand it, to the recent Order-in-Council that has been mentioned here this morning with regard to merchandise in transitu, but that on the contrary these vessels now operate very largely out of St. Pierre, Miquelon, and St. John's, Newfoundland; but assuming for the moment that such a provision were incorporated in the treaty forbidding direct clearances of forbidden merchandise between the two countries, I am inclined to assume that there would then arise the practice of clearing domestic liquor from Canada ostensibly for West Indian ports, and we would have the same difficulty revived. That situation in my judgment might be very effectively met if the two nations should see fit to incorporate in the present treaty the language, or language similar thereto, now contained in the treaty with Cuba, which language I mentioned this forenoon. I conceive that with those two provisions--

MR. ROWELL: What is the second one, Admiral?

ADMIRAL BILLARD: Shall I read it at length? It is not very long.

MR. ROWELL: Just state the effect.

ADMIRAL BILLARD: Possibly if you do not mind I might read it, because it is only half a column.

It seems to me admirably adapted to meeting the particular problems that confront us, and I am told has worked out in practice most successfully with Cuba. It reads as follows:

"When one of the High Contracting Parties gives notice
"to the other that it suspects that a specified vessel
"in a port of the other High Contracting Party,

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"although ostensibly destined to a port in a third "country, is likely to attempt to introduce unlawfully "into its territory merchandise or persons whose entry "is prohibited or restricted,"

the very situation that has come up again and again with respect to Canadian vessels the last few years --

"the other High Contracting Party shall require from "the master or person in charge of the vessel -- in "accordance with the laws in force in the respective "countries and such additional arrangements as may be "agreed upon and incorporated in regulations by the "appropriate authorities of the High Contracting "Parties -- a bond to produce a duly authenticated "landing certificate showing such merchandise or "persons actually to have been discharged at the port "for which the vessel cleared. If any such vessel fails "to produce the certificate in proof of lawful dis- "charge of such merchandise or persons or produces "a false certificate or evidence the bond shall be "forfeited and thereafter for a period of five years the "vessel shall be denied the right to enter or clear "from any port of either of the High Contracting Parties "with merchandise or persons of the same nature."

In other words, that the vessel that is engaged in this illegitimate trade shall be punished by not being permitted again to engage in it for a period of five years. I am told that that has worked out most successfully, and my thought is that it will work out equally successfully if such, or similar provisions, should be incorporated in the existing treaty.

THE CHAIRMAN: In what way do you get the information

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that would bring to the attention of the other Government the fact that a boat was going to leave with that object in view?

ADMIRAL BILLARD: The advantage there, sir, lies in the fact that the existing treaty already provides for the exchange of information upon which this notice would be predicated. You heard this morning about the information exchanged between the two countries. That is information flows into us steadily.

THE CHAIRMAN: Yes; and that is only information given when there is a suspicion at the ports that the goods are going to be shipped to your country.

MR. VALLANCE: Might I explain there: We have a black list of vessels that are engaged in this traffic. There are some 360 vessels on that list at one time. It has been reduced somewhat. So we furnish that listof vessels to the other Government as vessels which should be scrutinized carefully when they apply for clearance.

THE CHAIRMAN: That is what I want to get at. You see, according to this contract here, it would seem to indicate that it is only when the vessel is about to ship the goods that you can notify the other Government. You say you get the character of the vessel and notify the other Government so that it will always be on guard whenever that vessel takes on board liquor, for example.

MR. JUSTICE WRIGHT: Applying that to the conditions along the St. Clair and the Detroit rivers, it would mean that any boat that clears for Detroit or for the American side would require to give a bond that they would produce proper landing certificates.

ADMIRAL BILLARD: That is not my thought.

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MR. JUSTICE WRIGHT: Would not that be the result?

MR. VALLANCE: Yes; a vessel clearing from Canada with a cargo of liquor would be required to give a bond that it would produce a landing certificate showing the goods had been landed.

MR. JUSTICE WRIGHT: If it were only suspected of taking a cargo there, much more if it actually declared its intention of going there, a bond should be required.

ADMIRAL BILLARD: My thought was that the first provision that clearances should not be granted for the United States would take care of those vessels.

MR. JUSTICE WRIGHT: No clearances at all?

ADMIRAL BILLARD: No, where cleared directly for the United States. What I am referring to now are vessels clearing for the third country; and we would anticipate no difficulty respecting suspected vessels, because those vessels are followed by us, we know they are engaged in the liquor traffic.

MR. JUSTICE WRIGHT: That provision would apply only to the Atlantic and Pacific.

ADMIRAL BILLARD: In effect, as I see it.

COMMANDER ROOT: For instance, Mr. Vallance spoke of a black list; that list is circulated abroad, and we have several avenues of information by which we follow these vessels. In a short time we know their history, every port for which they clear and to which they are bound, whether or not they get there, and in the space of five or six months we know all about the vessel, so that when we make a representation we can state positively she is so and so, and why we suspect her.

THE CHAIRMAN: My thought is simply this,

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that your agreement there is not wide enough to cover the situation which you have in view, that it contemplates a notice being given only when the vessel is in port, and when the suspicion arises by virtue of the load that the vessel has on it in port, or is taking aboard, and has not in contemplation the character of the vessel at all.

ADMIRAL BIARD: That provision in the Cuban treaty could undoubtedly be strengthened along the line you suggest. I did not venture to suggest that, because it having been incorporated in the Cuban treaty and worked with great success I started with that; it could readily be stiffened up even further.

THE CHAIRMAN: That is, it might provide for the character of a vessel.

COMMANDER ROOT: As a matter of fact the Cuban Government has taken judicial notice of the reputation of these vessels. They have not been compelled to do that, but they have done it of their own motion.

MR. VALLANCE: The practice in that sector has been to clear the vessel for a point in Mexico or Honduras, and then go over along the Florida coast or over to New Orleans or Galveston vicinity, and discharge their cargo, and then they go back and enter at Havana in distress, or else proceed to Tampico or Vera Cruz, and then enter there and pick up another cargo and peddle it out on the return voyage to Havana; and that has been the practice there.

MR. ROBIN: May I ask one question here: What evidence can you give us that you are doing the best you can under existing conditions to protect yourselves? Let me put a proposition to you, you are suggesting we should do something

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to aid in meeting the situation, we might be asked, "Well, why should we, if you are not doing all you can? Are you doing ever thing you can under existing conditions to protect yourself?

ADMIRAL BILLARD: May I say in a vancing these suggestions I did not intend to couch them as suggestions as to what the Canadian Government should do, but as to what the two Governments should do working both ways. Now, replying to your question I think I might say this, that the United States Government on the high seas and on the Great Lakes is doing everything to stop smuggling that it is humanly possible or reasonable to do. In saying that I can only speak for the Coast Guard. The United States has greatly increased the Coast Guard, has supplied a very considerable number of patrol boats, has turned over 25 ex-navy destroyers, has increased the personnel, and the last three years the Coast Guard has striven earnestly, actively, at all seasons, in all weathers, in the middle of winter on the New England Coast to combat smuggling. It has lost a very appreciable number of men by drowning at sea, it has had patrol boats dashed ashore in February gales on the New England coast, it is doing everything that any reasonable person could expect or anticipate to meet this issue.

MR. ROWELL: What force have you on the Atlantic? I do not want you to disclose any information you do not feel you should in connection with it.

ADMIRAL BILLARD: There is no reason why any of this should be kept secret on the Atlantic coast -- and I may say before giving that information that I presume the Commission understands that this work is only one of the duties

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with which the Coast Guard is charged -- on the Atlantic Coast we have operating now 25 speedy destroyers, we have about 8 first-class cruising cutters, we have about 10 what we call second-class cruising cutters; we have probably roughly 125, 75 foot patrol boats; we have 46 off-shore patrol boats cruising long distances off shore. We have harbour tugs and launches, probably 75 fast picket boats, and a cordon of Coast Guard stations from Maine to California. Our vessels scout actively and continuously at sea, picking up these vessels that are under consideration. I cannot conceive, to speak frankly, of any more earnest effort being made to meet this situation than has been made and is being made.

MR. ROWELL: What has become of Rum Row, of which we see a good deal in the papers from time to time?

ADMIRAL BILLARD: Rum Row does not exist any more. The liquor vessels are widely scattered; whereas two and a half years ago they lay at anchor between New Jersey and Cape Cod, now we have to find them. Every day I get a report of our scouting operations and of liquor shipped that our forces have picked up. Some days there will be none; occasionally one, other times possibly two. It does not mean at all that those are the only liquor ships that are out there, because the Ocean is an extremely wide area, hundreds of thousands of square miles, but it shows the complete abolition of Rum Row and the scattering of the vessels that continue to attempt to smuggle.

MR. ROWELL: What would you say to this, suppose some such a treaty were entered into, would not the one effect of that be to drive the traffic more extensively to Newfoundland and St. Pierre, and you would face the same

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situation from those other points.

ADMIRAL DILLARD: Possibly, and we are facing it now with respect to St. Pierre, Miquelon, and are proceeding to meet that issue. We have had vessels cruising on the high seas in the vicinity of St. Pierre concentrated in an effort there. Speaking generally, gentlemen, I may say that the Coast Guard has got a grip on liquor smuggling at sea; and if the two nations are disposed to incorporate such a provision as I have suggested I think the chapter will be practically ended and the thing over.

MR. IOWMAN: At this point, in as much as the Admiral has brought that question up, we find it necessary to practically surround the high seas around St. Pierre to shut out the rum work there. We have negotiations now with the French Government trying to straighten up that situation, the only difficulty being it is more or less difficult for them to control their own nationals at St. Pierre, but we are very hopeful that we can do that, and if we cannot do it, we have to protect ourselves with our own vessels; and of course that would be the same situation as Detroit, if we cannot get any protection; we hated to put more boats on Lake Erie, but we might have to do it.

MR. ROWELL: As I understand the Admiral spoke of the Great Lakes and the Ocean; do your observations cover the Detroit front? Do you have charge of the boats on the Detroit front?

ADMIRAL DILLARD: No sir, the Coast Guard is charged with the responsibility f preventing smuggling across the large lakes. Operations in the Detroit River and vicinity, for reasons that in my judgment are excellent, are under the

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direction of Governor Lowman, carried out by other forces under him.

MR. LOWMAN: You have a few boats; how many boats on Lake Erie?

ADMIRAL BILLARD: We have boats on the lakes.

MR. LOWMAN: How many have you altogether?

ADMIRAL BILLARD: On Lake Erie we have three, seventy-five foot patrol boats, six or eight pickets, and a string of some six or eight Coast Guard stations.

MR. LOWMAN: Entirely inadequate to patrol that whole territory there. Of course if the thing continues we might have to go further with it, and that we would like to avoid if we can.

MR. ROWELL: Have you had any question as to putting additional boats on the Great Lakes or on the River?

MR. LOWMAN: We probably would have to do that if we are going to stop this traffic, if no arrangement is made about it.

MR. JUSTICE WRIGHT: According to the figures that is a sourse of a good deal of the smuggling, that particular section.

MR. LOWMAN: At Detroit, yes. Of course the narrow river there, and the Admiral does not have anything to do with that; we have a few Customs cutters or small boats in the river, but the Admiral does not cover that, but of course he could; his duties might be extended to that section.

MR. ROWELL: Has the question come up of whether, putting on such vessels, would be in conflict with the Rush-Bagot Treaty?

MR. VALLANCE: I understand Canada does not want too many armed vessels on the Great Lakes, and there has been

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a question of putting the Rush-Bagot agreement into the form of a treaty; but that has not been finally settled yet.

MR. JUSTICE WRIGHT: Are not revenue cutters excepted from that treaty?

MR. VALLANCE: Yes; under our interpretation of it revenue cutters are excepted, but there has been objection that if we keep a large force of cutters on the lakes it is a violation of the treaty--more from newspaper sources in Canada.

MR. JUSTICE WRIGHT: Serious contention?

MR. VALLANCE: It is pretty hard to draw the line between what is a war vessel and what is not; in time of war the coast guard is under the government, and to say they are not naval vessels according to some views is quibbling.

ADMIRAL BILLARD: There is an illustration of that; we sent a 125 foot patrol boat to Lake Superior to look after fishermen in trouble, that being the outstanding duty of the service, to protect life and property at sea; that vessel is there to help Canadian fishermen and anybody else that gets in trouble there. She carries forward a little three inch gun. When we sent that vessel to Canada we took the gun down, stowed it below, and wrote the State Department and probably wrote the British Embassy, and the Lord knows where, to get this little patrol boat up through, following the usual procedure. It just illustrates--

MR. LOWMAN: It went through the Canadian canals.

MR. ROWELL: Who is in charge of the patrol?

MR. LOWMAN: In charge of the Customs patrol at the present time? Mr. Ferguson the Collector of Customs at Detroit is in charge of our border patrol.

MR. ROWELL: I think there are a good many people in Canada who would say--this is not voicing any government

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sentiment or the sentiment of the Counsel of the Commission or anybody but certain popular sentiment--that you are not protecting your own frontier at that point, and why should you expect Canada to protect it for you?

MR. LOWMAN: That might be a just criticism, but we are strengthening things up very, very greatly; we have more than doubled our patrol there within two weeks, and we are taking other measures at Detroit to control the situation. We are catching a boat a day, and about ten automobiles in Detroit right now as the result of these new activities.

MR. CAMP: Might it not be well to state that the Customs was given the charge of this work about two months ago. For the preceding two years the responsibility was not a Customs responsibility. During the past two months there have been a very large number of seizures, and the activity against smuggling has taken on what we believe is a very different aspect, and we are hoping within a very short time of removing the cause for criticism at that point.

THE CHAIRMAN: These automobile seizures, Mr. Lowman, would be due to the fact that they were carting liquors that had been taken across by the boat?

MR. LOWMAN: Yes; of course these cars meet the boat at the dock in Detroit, and as they are loaded up we grab them.

MR. JUSTICE WRIGHT: Not automobiles crossing the river with liquor stored?

MR. LOWMAN: No.

MR. VALLANCE: There might be some crossing the ferry.

MR. LOWMAN: I don't think many.

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MR. JUSTICE WRIGHT: The officers at Detroit appear to watch them very closely.

MR. LOWMAN: There might be a little across the ferry, but most of it is these boats dodging back and forth. We will have to take measures; we have not put the Admiral up there because we have not felt it was important enough for that. Now we are going to try and close up that gap; and then we expect it is going to open up at Buffalo, and then when we get it plugged at Buffalo we think the northern boundary of New York will become the place. These big operators have moved from Vancouver to Windsor just lately, the Consolidated Company, since you were out there; they have moved to Windsor and are operating. This smuggling probably at Detroit is very largely in the hands of American citizens.

MR. ROWELL: I think you said, Mr. Vallance, that your officer in charge of the Detroit front was here?

MR. VALLANCE: Yes, Mr. Nugent is here.

MR. ANSLINGER: He is not in charge of the Customs end.

MR. LOWMAN: Mr. Nugent is a secret service agent of the Treasury Department, Special Agent. It might be well for him to tell his story. Mr. Nugent might tell us something about his experience. He is one of the men trying to keep us informed as to what is going on. omit

MR. H. T. NUGENT: (Special Agent, Treasury Department, Washington, D.C.)

Mr. Chairman and Jusitces of the Commission: Mr. Vallance I believe has pointed out the salient features of the unsatisfactory working conditions of Article 2 of this Treaty, and it has been suggested that I amplify for the purpose of the record some of his memorandum regarding the method employed in transmitting this information from

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