No. 48 of 1934.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE CANADIAN NATIONAL RAILWAY COMPANY *Appellant*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY *Respondent.*

Case for the Appellant.

RECORD.

1. This is an Appeal by the Canadian National Railway Company (hereinafter called "the Appellant") brought by Special leave of His Majesty in Council from a Judgment of the Supreme Court of Canada dated the 6th March 1934 whereby (reversing with costs an Order dated 12th July 1933 of the Board of Railway Commissioners for Canada) it was by a majority (Sir Lyman P. Duff, C.J., and Lamont Smith and Hughes, JJ., Crocket, J., dissenting) declared that a negative answer should be given to the question whether upon the agreement made between the Appellant and the Canadian Pacific Railway Company (hereinafter called "the Respondent") on the 29th January 1929 grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export and exported from either of those ports to (say) the United Kingdom is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under paragraph 7 of the Agreement as not being "outbound freight traffic destined to "competitive points on or beyond the lines of the parties" as the expression is used in the said paragraph.

p. 54. p. 39. p. 13. p. 83.

2. The Agreement above referred to is the Agreement under which the Northern Alberta Railways were jointly acquired (through a new subsidiary Company) by the Appellant and the Respondent and is, so far as relevant, set out below in paragraph 4 hereof. The debatable

formula defining the traffic to which the equal division is to extend is to be found in the opening sentence of paragraph 7 and is as follows :
p. 83, l. 46. " Outbound freight traffic (including grain milled or stored in transit) " originating on the lines of the new Company and destined via Edmonton " or Morinville to competitive points on or beyond the lines of the parties " and the short question in its concrete application to existing circumstances is whether this formula includes grain consigned, with a view to ultimate export, to the Pacific ports of Victoria (Vancouver Island) and Prince Rupert which are served only by the Appellant and to which there is no competitive service. It is the contention of the Respondent (which prevailed in the Supreme Court) that all overseas ports to which grain may be ultimately shipped from any of the Pacific Ports of Canada are " competitive points " and that all grain whatsoever that may be intended for ultimate export is *ipso facto* " destined to a competitive point " within the meaning of the formula although its destination so far as concerns the railway is a port to which there is no competitive transport, and although the ultimate destination is unknown. The Respondent also contends that Prince Rupert and Victoria themselves are " competitive points " for the reason that the Prince Rupert and Victoria routes compete for export traffic with the New Westminster and Vancouver routes.

3. The Appellant Company's contention (which was accepted by the Railway Commissioners) was that the expression " competitive points " is used in the agreement with its usual railway signification, i.e., as denoting points to which there are competing routes at equal through rates (e.g., New Westminster and Vancouver) and that neither Prince Rupert nor Victoria is such a point.

4. The Agreement so far as relevant is as follows :—

p. 83. " Agreement made this 29th day of January A.D. 1929 " between the Canadian Pacific Railway Company hereinafter " referred to as the ' Canadian Pacific ' and the Canadian National " Railway Company hereinafter referred to as the ' Canadian " National.'

" 1. The parties agree to join in the purchase of the " Edmonton Dunvegan and British Columbia Railway Company, " the Central Canada Railway Co., the Alberta Great Waterways " Railway Co., the Central Canada Express Co. and the Pembina " Valley Railway upon the terms set out in the correspondence " between the President of the Canadian Pacific and the Premier " of Alberta dated September 17th, 19th and 20th 1928.

" 2. Each of the parties hereto shall assume the payment " of and be liable for one half of the purchase price payable " (with interest) and one half of the obligations to be assumed

" by the Purchasers under the said Agreement and shall be " entitled to one half of the benefits to be derived therefrom, " it being the intention of the parties that the said Agreement " shall be for their equal benefit and advantage.

" 3. A new Company shall be formed to acquire, maintain " and operate the said undertakings, the capital of which shall " be supplied by the parties in equal shares. Each party shall " be entitled to appoint one half the number of Directors and " the Directors may vote by proxy.

" 4. The operations of the new Company shall always be " conducted with due regard to economy consistent with good " railway practice, and having due regard to the future require- " ments of the property and the necessities of the territory to " be served.

" 5. All officers and employees of the new Company shall " be impartial between the Canadian National and the Canadian " Pacific and the parties shall unite in requiring the dismissal or " disciplining of any officer or employee guilty of infringing this " rule.

" 6. Neither party shall directly or indirectly solicit the " routing of outbound competitive traffic over their respective " lines.

" 7. The New Company shall be required to route outbound " freight traffic (including grain milled or stored in transit) " originating on the lines of the new Company and destined via " Edmonton or Morinville to competitive points on or beyond " the lines of the parties in such a way that each of the parties " shall receive on a revenue basis one half the outbound freight " traffic originating and destined as aforesaid, including such " freight traffic routed by the shipper as well as such freight " traffic unrouted by the shipper. Comparisons on a revenue " basis of the traffic so received by each of the parties shall be " made monthly and any inequality or division in any month " shall be rectified in succeeding months. The foregoing provisions " in respect to freight traffic shall apply also to outbound express " traffic and telegraph traffic respectively originating on the lines " of the new Company and destined to competitive points on or " beyond the lines of the parties For the purpose of the division " of traffic in this paragraph provided for Freight traffic express " traffic and telegraph traffic shall be divided and dealt with " separately.

* * * * *

p. 84, l. 41. "10. Disputes arising out of this Agreement in respect of "any matter within the jurisdiction of the Board of Railway "Commissioners for Canada shall be referred to the Board.

* * * * *

p. 85, l. 4. "11. The parties agree to co-operate with fairness and "candour toward each other, and to give effect to this agreement "in the most liberal and reasonable manner to the intent that "each of them shall receive its full and equal share of the benefits "of the joint undertaking subject to the provisions of Clause 4 "hereof."

5. This agreement and the agreement for the acquisition of the Railways were confirmed by Chapter 48 of the Statutes of Canada 1929 Sections 2 and 9. p. 74.

6. Pursuant to the agreement a new Company was formed under the name "Northern Alberta Railways Company" (hereinafter called the "Northern Company") which acquired as contemplated the Edmonton, Dunvegan and British Columbia Railway, the Alberta Great Waterways Railway, the Central Canada Railway and the Pembina Valley Railway (hereinafter called the "Northern Railways"). These lines run in a generally northerly and north-westerly direction from Edmonton Alberta. They were originally privately owned but through financial difficulties ultimately came under the control of the Province of Alberta.

7. Between 1921 and 1926 the Northern Railways were managed by the Respondent. During that time there were arrangements covering the carriage of freight traffic between points on the railway of the Appellant and points on the Alberta Great Waterways Railway but otherwise arrangements for through or joint freight traffic from and to points on the Northern Railways beyond Edmonton were exclusively with the Respondent.

8. From 1926 to the making of the agreement the Northern Railways were managed by the Appellant who enjoyed exclusive through freight traffic arrangements.

9. Since the making of the agreement both the Appellant and the Respondent have had joint freight arrangements with the Northern Railways.

10. Grain intended for ultimate export is at the present time the chief commodity carried over the Northern Railways to Edmonton from which point it is carried by the Appellant or by the Respondent to the seaboard. Each of the parties has at all times been desirous of securing this traffic from Edmonton to the seaboard.

11. The Appellant undertakes to carry such grain to Pacific Ocean ports of Prince Rupert, Vancouver, New Westminster and Victoria, all of which are points on the railways of the Appellant in the Province of British Columbia. The cars destined for Victoria are transported to the Island of Vancouver by barges for a distance of 78 miles. The railway of the Respondent does not run to Prince Rupert ; nor does the Respondent undertake to carry export grain to Victoria ; but the Respondent undertakes to carry such grain to New Westminster and to Vancouver and the bulk of the grain is carried to Vancouver and exported thence. The rates to all Pacific ports on such grain are equal though the distances from Edmonton onwards differ materially ; such rates are lower than on grain shipped to those ports for domestic purposes.

12. The grain carried to any of the ports for export is consigned by the shippers to elevators there into which it is discharged by the Railway and stored with other grain of the same grade without distinguishing the various consignments and an equivalent quantity of grain from the store is held subject to the consignor's order. The same practice is followed when grain is milled or stored in transit. The ocean carriage rates on grain are not uniform but competition tends to equalise them.

13. The question in the action is whether the export grain consigned to Prince Rupert or to Victoria is consigned to a " competitive point " within the meaning of the Agreement.

14. The proceedings were initiated by a complaint to the Board of Railway Commissioners that the Appellant was not being accorded an equal share of the outbound freight traffic to competitive points, as provided for by paragraph 7 of the contract, because the Northern Railways were reckoning as part of its share grain for export consigned to the ports of Prince Rupert and Victoria.

15. The Board of Railway Commissioners (the Chief Commissioner and the Assistant Chief Commissioner), held that Prince Rupert and Victoria were not, under the circumstances, competitive points and that export grain traffic to these ports was not to be taken into account in the equal division of outbound freight traffic under paragraph 7 of the Agreement.

16. The Commissioners held that in a railway sense and as used in the contract the words " competitive points " meant points common to both railways or their connections to which each railway was prepared to carry at equal rates. In the course of his Judgment the Chief Commissioner used the following language :—

" The rates and conditions of carriage of grain shipped for " export from points on the Northern Company to all three of p. 10, l. 4.

" the ports above referred to (Prince Rupert, Victoria and " Vancouver) are identical. The question is, what did the parties " mean by the use of the words ' competitive points on or beyond " ' the lines of the parties ' ? I have always understood " ' competitive points ' in railway parlance to mean points in " respect to which two or more lines compete for traffic. In " other words, a point at which two or more railways have " facilities and are prepared to handle traffic at equal rates. " Reading the words in the ordinary way, I think there can be " no doubt that ' competitive points on or beyond the lines of " ' the parties ' means points on the lines of the parties or their " connecting carriers, and have no reference to any point other " than one on a railway."

" As I understand Mr. Tilley's argument, he contends that " ' beyond ' may refer to a point in a foreign country to which " commodities may be carried. I do not think that the words " can possibly bear any such interpretation."

" Mr. Tilley says :—

" ' You cannot whittle down that " on or beyond " to say " ' that they are on railway lines either those of the railway " ' company or other connecting carriers. The point of that " ' description is to say in the broadest possible way that so " ' long as it is outbound freight traffic originating on the lines " ' of the new Company, if it is destined to competitive points " ' it matters not where that competitive point is, it may be on " ' the railways or any place beyond.' "

" Though he did not say so in express words, his argument " must go the length of asking us to hold that all points to which " commodities may be exported are competitive points. For " example, it is said that grain carried over the Canadian National " to Victoria and shipped thence to the United Kingdom or the " Orient is outbound freight traffic to competitive points beyond " the lines of the companies because both destinations are " competitive points. We are not told in what sense they are " competitive points. We know that so far as concerns the " carriage of this traffic by these railways, namely for that " portion of the haul from points on the Northern Company to " Victoria, the Canadian Pacific does not compete."

" The word ' competitive ' as used in the agreement must " have reference to competition between railways. The parties " were only interested in securing the carriage of grain to a port. " What becomes of it afterwards did not in the least interest " them. If the parties intended what Mr. Tilley now contends

" they did, they should have said so, and this is particularly
" true when one considers the meaning which both parties had,
" long prior to the agreement, given to the words ' competitive
" ' traffic.' "

* * * * *

" When the agreement was entered into the Canadian p. 11, l. 28.
" National alone was carrying grain from points on the Northern
" Company to both Victoria and Prince Rupert. The Canadian
" Pacific had no line to Prince Rupert and while it had facilities
" at Victoria it had declined to put in a through rate for export
" to this point. In fact, one of the first applications I heard
" after becoming a member of the Board was an application to
" compel the Canadian Pacific to put in such a rate. The
" Company refused to do so, chiefly on the ground that it was
" too expensive to carry grain to Victoria for export at the rates
" which would have to be put in. The Canadian Pacific notwith-
" standing it refused to carry grain to Victoria, now insists that
" any grain carried there by the Canadian National shall be
" apportioned under the agreement. In other words, that for
" every car the Canadian National hauls over its lines to Victoria
" a car shall be apportioned to the Canadian Pacific for carriage
" to Vancouver."

17. On appeal by the Respondent to the Supreme Court of Canada, it was held by a majority of the Court, reversing the judgment of the Railway Board, that export grain consigned to the ports of Prince Rupert and Victoria was " outbound freight traffic to competitive points " and should therefore be taken into account in the determination of the equal division provided for by paragraph 7 of the contract.

18. The Chief Justice of Canada, Sir Lyman P. Duff, with whom concurred Smith and Hughes, JJ., held that the purpose of the Agreement, considered as a whole, was to equalise the benefits to be derived by the joint purchase of the Northern Railways and that paragraph 7 should be construed in the light of that underlying intention. The following language indicates his view :—

" There can be no doubt that the traffic the parties had in p. 43, l. 39.
" view consisted almost entirely of grain and products of grain
" for export. The ultimate destination of the articles shipped
" was not the Pacific seaboard but places in Asia, Europe and
" America beyond the Pacific seaboard. The real question is
" whether or not the returns from the whole of this traffic
" originating on the Northern Alberta Railway Company's lines,
" carried by rail to the seaboard for export, were to be subjected

" to Articles 6 and 7 of the agreement, or whether these articles " were to be limited in their application to traffic destined to " points which are competitive in the sense ascribed to the word " by the learned Chief Commissioner."

" The parties had joined in a common enterprise with a " view to sharing equally in its benefits and they declare their " intention in very explicit words in Article 11 to :

" give effect to this agreement in the most liberal and reasonable " manner to the intent that each of them shall receive its full " and equal share of the benefits of the joint undertaking . . .

" We think Article 11 lays down a principle which does " not contemplate that the construction of the cardinal stipulations " of the contract are to be controlled by the meaning attached " by the usage of ' railway men,' in ' railway parlance,' to " particular expressions when those expressions are employed " exclusively with reference to the operation of railways. The " words of the agreement are, of course, to be given their ordinary " scope, but we think this article is intended as a direction that " the objects of the agreement as ascertained from the instrument " as a whole, together with the conditions the parties must " necessarily have had in view, are to be factors of exceptional " weight and importance in its interpretation. From this point " of view, we find ourselves unable to concur with the view of " the learned Chief Commissioner that the phrase ' competitive " ' points ' in Article 7 is to be read as limited to points ' at which " ' two or more railways have facilities and are prepared to " ' handle traffic offered at equal rates.' "

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p. 45, l. 1. " Nor do we think that the language of Article 6 should be " overlooked. ' Competitive traffic ' is, perhaps, not a very " precise phrase ; but it seems clearly enough, to mean here " traffic in respect of which the railways would be competing. " In its natural meaning it would apply to the traffic in export " grain. It is quite true, of course, that Article 6 is not to be " read as dominating the agreement. It must be read with " Article 7 but it does point to the conclusion that what the " parties had in mind is competitive traffic in export grain. It " is not seriously disputed that, but for the agreement, there " would be competition between the railway companies in respect " of all this traffic."

19. The Chief Justice in stating the question for decision had
p. 41, l. 36. referred to it as " by no means free from difficulty although the relevant " considerations lie in a rather limited field."

Lamont, J., who concurred in the majority judgment substantially agreed with the view of the Chief Justice. He was further of opinion that if Prince Rupert and Victoria were held not to be competitive points within the meaning of section 7, the result would be that the Appellant could in respect of the grain carried to Prince Rupert and Victoria obtain an extra share of the traffic from the Northern Railways which in his opinion would be inconsistent with the equality of benefit in the joint undertaking provided for in section 11 of the agreement and he found a further ground for his opinion in the limited scope which he thought would otherwise attach to the word "beyond" in the debated formula. p. 45, l. 13. p. 48, l. 3.

20. Crocket, J., who dissented, held that the specific language of paragraph 7 was used in a background of railway practice; that its meaning in a railway sense was scarcely questioned and that it was not to be controlled by the general provision for equality of benefits mentioned in paragraph 11 of the contract. He adopted generally the views of the Commissioner but added in the following passage further reasons of his own :— p. 49, l. 33.

"For my part I can see no reason why such words as p. 50, l. 25.
"'outbound freight traffic destined to competitive points on or
"'beyond the lines of the parties' should be interpreted in any
"other sense than the ordinary, usual sense which they bear
"in the conduct and operation of railways. The whole agreement
"is on its face essentially a railway agreement, concluded between
"two railway companies as such and one which deals entirely
"with railway administration and operation, railway traffic and
"railway revenue."

* * * * *

"There is not the slightest suggestion in the Board's order p. 51, l. 9.
"that the grain is billed for a through joint rail and ocean transit
"to any particular point overseas or indeed to any country
"overseas. On the contrary the statement of facts shows that
"it is not."

* * * * *

"It may be added that it is stated in the reply of the p. 51, l. 23.
"Northern Alberta Railways Co. that it is required to show
"clearly on the waybills that the grain is for export and
"the name of the elevator in care of which the grain is shipped.

"How grain thus shipped from stations on the Northern
"Alberta Railways to any of these ports, and discharged into

" the particular elevator in care of which it is shipped, and there " stored to await an order of the owner when he desires to export " it to the overseas market in which he has decided to sell it, " for delivery into an ocean steamer for a separate ocean transit, " with which the railway company as such has no concern, can " be considered as not being ' destined ' to the particular port " on the Pacific seaboard to which it is shipped, but ' destined ' " to an unnamed point in an unnamed country, I confess I am " completely at a loss to comprehend. The very suggestion of " ' a competitive point ' beyond the seas in such an agreement " demonstrates to me that the words ' or beyond the lines of " ' the parties ' were never intended to cover an ocean transit " with reference to which the railway undertakes no responsibility " and with which it has as such nothing whatever to do."

* * * * *

p. 53, l. 20. " The object of the agreement as a whole must, of course, " be ascertained, and I have no doubt, having regard to the " provisions of articles 2 and 11, that the underlying intention " was that, as far as practicable, the parties should share fully " and equally in the benefits accruing from their joint acquisition " and operation of the Northern Alberta Railways system, and " that the joint undertaking should be conducted with fairness " and candour between them. Once, however, it is seen that a " definite and specific exception is made in clear and unambiguous " language as regards a particular branch of traffic in an article " obviously inserted for the purpose of dealing exclusively with " that particular branch of traffic, the special article must be " held to be the governing article in relation to the particular " branch of traffic which it has thus singled out from all other " branches. No other conclusion, it seems to me, is possible, " without entirely ignoring the special article, which surely must " be considered in order to determine the object and intent of " the agreement as a whole. That intent, I think, is clearly shown, " viz.: that both parties are to share equally in the benefits " accruing from the joint undertaking in the manner above stated " subject to the condition expressly provided in article 7 with " regard to outbound freight traffic, that only the revenues " accruing from such outbound traffic as is destined to competitive " points on or beyond their own lines, is to be included in the " equalising revenue comparison. Articles 2 and 11 may both " be read in perfect consistency with such an intent. They " cannot over-ride or negative the plain, unequivocal words of " Article 7."

21. The effect of the majority judgment in the Supreme Court of Canada is that outbound freight traffic from the Northern Railways for export from any port in Canada served by either railway alone is " outbound " freight traffic to competitive points " and on a revenue basis is to be taken into the account of equal division between the Appellant and the Respondent. This would include in addition to Prince Rupert, such a port as Fort Churchill, on Hudson's Bay which is served exclusively by the Appellant.

22. Your Petitioner submits that traffic " beyond the lines of " the parties " contemplates carriage which is specifically undertaken to the points mentioned, namely, " competitive points." That may be by means of other transportation agencies operating either in Canada or elsewhere. Section 338 of the Railway Act (Revised Statutes of Canada 1927, Chapter 170) expressly contemplates international traffic by railways in the following language :—

> " When traffic is to pass over any continuous route from a " point in Canada through a foreign country into Canada, or " from any point in Canada to a foreign country, and such route " is operated by two or more companies, whether Canadian or " foreign, the several companies shall file with the Board a joint " tariff for such continuous route."

23. Your Petitioner contends that as to traffic for the public passing between points on the Northern Railways and points on the railways of the Appellant and Respondent there is no intention, under the contract, to equalise the benefits received by each party except in respect of that portion of outbound freight traffic which is destined to competitive points : as to all other traffic, which would include inbound freight and passenger traffic from competitive and non-competitive points on the railways of the Appellant and Respondent to points on the Northern Railways, as well as outbound freight on the Northern Railways to non-competitive points and outbound passenger traffic to both competitive and non-competitive points on the railways of the Appellant and Respondent, there is no restriction or limitation but each railway has complete liberty of action, subject only to the provisions of paragraph 6 of the Agreement against solicitation for outbound competitive traffic. Your Petitioner further contends that there was no intention to affect traffic to points to which only one of the two railways undertakes to carry and that each railway was to be left to the exclusive enjoyment of whatever its local position or advantage at any point might bring to it.

24. The sums in question in the proceedings for the two years 1932 and 1933 are respectively $40,748.15 and $17,939.40.

The Appellant humbly submits that the order of the Supreme Court is erroneous and ought to be set aside and the order of the Railway Commissioners ought to be restored for the following among other

REASONS.

(1) BECAUSE the competitive point contemplated is one to which goods are consigned and undertaken to be carried by the Appellant or Respondent alone or with connecting carriers and admittedly the grain to which this appeal relates is not so consigned or undertaken to overseas points.

(2) BECAUSE neither the Northern Railways nor the Respondent is concerned with the carriage of grain to any point reached through Prince Rupert or Victoria.

(3) BECAUSE the expression "competitive point" has a well understood meaning in relation to competing railways and applies only to cases in which like through rates are quoted for alternative railway routes from substantially the same starting point to substantially the same destination.

(4) BECAUSE it is clear from the terms of paragraph 7 of the Agreement that that clause applies only to goods consigned to a destination to which, apart from any express direction by the consignor, the Northern Railways might route the same either over the Appellant's or over the Respondent's railway and goods consigned to Victoria or Prince Rupert could only be routed over the Appellant's railway.

(5) BECAUSE in relation to the Appellant and Respondent a competitive point is a point to which both Companies are prepared to undertake the carriage of goods at competitive rates over either their own lines alone or their own lines and connecting carriers and the Respondent is not prepared so to undertake the carriage of goods either to Prince Rupert or to Victoria.

(6) BECAUSE the reason for pooling the traffic to competitive points is that otherwise the Northern Railways might favour one or the other of the Companies at the expense of the other in relation to such traffic and this reason cannot apply to goods consigned to Prince Rupert or to Victoria which are served by the Appellant alone.

(7) BECAUSE the Judgment appealed from requires the Appellant to bring into account for the benefit of the Respondent the gross income from traffic which is relatively expensive to handle and which the Respondent could never handle, with no corresponding advantage to the Appellant.

(8) BECAUSE paragraph 7 of the Agreement contemplates that the entire revenue on the traffic to the competitive point is to be brought into the account for the purpose of the comparison but that is impossible in respect of export grain if the overseas destination is deemed to be the competitive point.

(9) BECAUSE the majority Judgment of the Supreme Court overrides the construction of clear particular words used in a special background, by the application of general considerations to which full effect can be given without doing so.

(10) BECAUSE the Judgment appealed from has the effect of including all goods exported by water carriage from Canada within the category of goods "destined to competitive points" and the terms of paragraph 7 of the agreement are not apt to convey this meaning.

(11) BECAUSE in order to fall within paragraph 7 of the Agreement a "point" (e.g., a market or manufacturing centre, or a port) must be in itself the subject of competitive traffic between the two Companies and is not brought within the clause merely because it competes for traffic with some other like point.

(12) BECAUSE the expression "competitive traffic" is materially different from the expression "outbound freight traffic destined to competitive points" and the two expressions have a different scope.

(13) BECAUSE there is no justification for enlarging the scope of the expression "beyond the lines of the parties" to include points beyond the carriage of the Appellant or Respondent with connecting carriers; nor for enlarging the restricted scope of the expression "competitive points" by reference thereto.

(14) BECAUSE the agreement contemplates that all of the outbound freight traffic to competitive points is

capable of being routed over one railway or the other and this is impossible in respect of traffic consigned to Prince Rupert and Victoria.

(15) BECAUSE if the words of paragraph 7 of the Agreement were given in relation to inland traffic a meaning corresponding with that attributed to them by the Judgment appealed from in relation to overseas traffic the clear intention of the agreement would be defeated.

(16) BECAUSE the effect of the Judgment appealed from is to call for an enquiry as to the circumstances and conditions of carriage by agencies with which neither the Appellant nor the Respondent has any connection, which paragraph 7 of the Agreement does not contemplate.

(17) BECAUSE the decision of the Railway Commissioners for Canada was correct and ought to be restored.

I. C. RAND.

J. H. STAMP.

No. 48 of 1934.

In the Privy Council.

ON APPEAL

From the Supreme Court of Canada.

BETWEEN

THE CANADIAN NATIONAL RAILWAY COMPANY - *Appellant*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY - *Respondent.*

Case for the Appellant.

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