

lative authority that could not be done. It could not have been intended, as was argued, that the Board should be powerless to do more than approve of an agreement or determine only whether the agreement was a fair one to the parties affected by it.

*Regina v. Newcastle-on-Tyne Corporation* (1889), 60 L.T.R. 963, distinguished.

*Rex v. Inspector of Leman Street Police Station* (1920), 36 Times L.R. 677, followed.

The discretion of the Board is absolute, subject only to review by the Lieutenant-Governor in Council under sec. 47 of the Ontario Railway and Municipal Board Act.

Under the provisions of sec. 9 of the Ontario Railway and Municipal Board Act, the Board authorised its Chairman to report to the Board upon the applications for approval of the by-laws. The Chairman held an inquiry, which the parties attended and at which they were heard and evidence taken, and he reported to the Board what had been done and the conclusion to which he had come. The Board, after the reading of the report and some explanations by the Chairman, came to the conclusion that approval should be withheld. It did not appear that any application to be heard before the Board was made by the appellant company, nor any application under sec. 25 of the Act to vary the decision.

Section 9 provides that the report made to the Board "may be adopted as the order of the Board or otherwise dealt with as to the Board seems proper." This language is wide enough to warrant the Board, where evidence has been taken and the parties concerned have been fully heard, in acting upon the report without bringing the parties before it again.

The appellant company's two objections should be overruled, and the appeal dismissed with costs.

MACLAREN, J.A., for reasons stated in writing, agreed that the appeal should be dismissed.

MAGEE, J.A., in a written judgment, said that he was of opinion that, in the circumstances, the discretion exercised by the Board in withholding approval of the sale should not be interfered with by this Court; but he was not without doubt as to the propriety of the Board, without hearing the parties, adopting the conclusion of the Chairman.

FERGUSON, J.A., read a dissenting judgment. He was of opinion that the Board, in considering and acting on evidence not disclosed and refusing to hear and consider the appellant