

Judgment appealed from reversed, the CHIEF JUSTICE and IDINGTON, J., dissenting.

*Ewart, K.C.*, for appellants. *Travers Lewis, K.C.*, and *Ladner*, for respondent.

Board of Railway Commrs:]

[Dec. 6, 1911.

CANADIAN PACIFIC RAILWAY CO. AND CANADIAN NORTHERN RAILWAY CO. v. BOARD OF TRADE OF THE CITY OF REGINA.

*Railways—Construction of statute—The Railway Act, R.S.C. 1906, c. 37, ss. 77, 315, 318(2), 323—1 Edw. VII. c. 53 (D.)—52 Vict. c. 2; 53 Vict. c. 17; 1 Edw. VII. c. 39 (Man.)—Board of Railway Commissioners—Complaints—Evidence—Agreement for special rates—Unjust discrimination—Practice—Form of order on reference.*

In virtue of an agreement with the Government of Manitoba, validated by statutes of that province and of the Parliament of Canada, the Canadian Northern Railway Company established special rates for the carriage of freight, etc., to points in Manitoba, and the Canadian Pacific Railway Company reduced its rates, which had been in force prior to the agreement, in order to meet the competition resulting therefrom. The complaint made to the Board of Railway Commissioners for Canada by the respondents was in effect that as similar proportionate rates were not provided in respect of freight, etc., to points west of the Province of Manitoba there was unjust discrimination operating to the prejudice of shippers, etc., to and from the western points. On questions submitted for the consideration of the Supreme Court of Canada,

*Held*, that the facts mentioned are circumstances and conditions within the meaning of the Railway Act to be considered by the Board of Railway Commissioners in determining the question of unjust discrimination in regard to both railways; that such facts and circumstances are not, in law, conclusive of the question of unjust discrimination, but the effect, if any, to be given to them is a question of fact to be considered and decided by the Board in its discretion. (Cf. *The Montreal Park and Island Ry. Co. v. City of Montreal*, 43 S.C.R. 256.)

Appeal dismissed with costs.

*Chrysler, K.C.*, for appellants, Canadian Pacific Ry. Co. *Ewart, K.C.*, and *George F. MacDonell*, for appellants, Canadian Northern Ry. Co. *Wallace Nesbitt, K.C.*, and *Orde, K.C.*, for respondents.