

establishing his claim. To recover back what he paid, he would have to set up and prove a contract which, if contrary to the statute, would be void.

The goods carried were "settlers' effects," and are so described in the bill of lading. The contract for their transportation has been fully performed; and, while it is clear that the rate stated was the result of inadvertence, it was within the apparent scope of the agent's authority, and the contract would govern the right of recovery in this case unless it was contrary to the statute and in that way an illegal one.

But it was argued that sec. 341 did not cover the situation here, but applied only to a rate made upon all settlers' effects and open to all persons shipping them. In other words, that "reduced rates" did not include a specific bargain to carry one lot of these goods.

I do not see anything in sec. 341 to refute the contention that a specific reduced rate may be made under it. The design of the Act to compel equality of treatment in the carriage of traffic is explicitly set out in certain sections, but the opening words of sec. 341 exclude these as controlling, *inter alia*, the carriage of settlers' effects at reduced rates. They provide that "nothing in this Act shall be construed to prevent" such carriage at the reduced rates. How, then, can the Court insist on a construction applying the very sections, relief from which is expressly given?

In the case of *City of Toronto and Town of Brampton v. Grand Trunk R.W. Co. and Canadian Pacific R.W. Co.* (1910), 11 Can. Ry. Cas. 370, and in the same case in the Supreme Court of Canada, *ib.* 365, it was held that sec. 77 applied to the issue of commutation tickets under sec. 341. That decision, it was argued, shews that all reduced rates made under sec. 341 must be shewn to be free from undue preference or unjust discrimination; implying thereby that they must be open to more than one person. This would eliminate such a situation as the present.

There are several answers to this, I think. The decision of the Supreme Court was in a case where from its nature tickets must be issued to more than one person. Besides this, if the decision could be read as applying to every case under sec. 341—a conclusion certainly not warranted by the report—it may be fully complied with when the Railway Board's intervention, under the proviso with which sec. 341 concludes, is invoked. Neither 77 nor the proviso operates to prevent the reduced rate being made, but in fact both assume its existence, and only give power to the Board to extend, restrict, limit, or qualify it.