

69, 1935

No. 37 of 1934.

In the Privy Council.

CANADIAN  
LIBRARY  
WITHDRAWN

APPELLANT'S CASE.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of the MUNICIPAL AND PUBLIC  
UTILITY BOARD ACT

— AND —

10 IN THE MATTER of an ORDER of the said BOARD dated the  
31st July 1931, whereby Winnipeg Electric Company was  
directed to contribute to certain costs of Main Street and  
Norwood Bridges and approaches thereto.

BETWEEN—

THE CITY OF WINNIPEG and THE CITY  
of St. BONIFACE - (Applicants) *Appellants*

— AND —

WINNIPEG ELECTRIC COMPANY  
(Respondent) *Respondent.*

APPELLANTS' CASE.

RECORD

20 1. This is an appeal by special leave from the Judgment of the  
Supreme Court of Canada given on the 26th day of January 1934.  
That Court consisted of the Chief Justice The Right Honourable  
L. P. Duff and Lamont, Smith, Cannon and Crocket, JJ., and their  
judgment was unanimous.

p. 104.

2. By the said Judgment the unanimous Judgment of the Court of Appeal of the Province of Manitoba, given on the 20th day of January 1933, was reversed, and an Order of the Municipal and Public Utility Board of the Province consisting of three members was set aside. The Court of Appeal of the Province consisting of the Chief Justice and Denniston, Trueman Roberts and Richards, J.J. had dismissed the Respondent's appeal to that Court and determined that the Order appealed from to that Court was within the jurisdiction of the Municipal and Public Utility Board and that it could not be impeached on any objection of fact or law raised before 10 the Court.

The question very shortly stated concerns an order of the Board directing the Respondent to pay part of the cost incurred in laying street railway tracks over two river bridges and their approaches—the two bridges in question being new bridges replacing old bridges carrying street railway tracks previously used by the Respondent.

3. The Supreme Court of Canada decided that the Board had no authority under the Municipal and Public Utility Board Act (Chap. 33 16 Geo. V. 1926) to require the payments from the Respondent ordered by the Board to be made to the Appellants either as a 20 statutory or contractual liability or as payments necessitated by "the renewal of the former service."

4. The renewal of the former service referred to was the renewal of the service of Electric Tramways given by the Respondent over two bridges, the Main Street and Norwood bridges, such service being part of the general system of electric tramways provided and operated in the Cities of Winnipeg and St. Boniface under franchises granted respectively by the Appellants (the two Cities). In the circumstances hereinafter appearing, in the year 1929 that part of the service over the two bridges was temporarily discontinued, 30 and thereafter the two bridges were reconstructed by the Appellants and double tracks with rails on the bridges and approaches were built by the Appellants in place of the former single tracks over the bridges and single tracks on the approaches which switched into double tracks on the streets.

The bridges are now in general use and the Respondent's tram-cars are passing over them.

5. The payments referred to in paragraph 3, supra, are those referred to in Paragraphs 1 and 3 of the Order of the Municipal and

Public Utility Board made on the 31st day of July 1931, while the bridges were in course of construction.

The Order was made on the joint application of the Appellants and the Respondent was party to the proceedings.

The Order was as follows : —

1. That the Winnipeg Electric Company is liable for and shall pay the entire costs of placing rails, ties and foundations therefor on the Main Street and Norwood Bridges now in course of construction, and one half the cost of such works in connection with the several approaches to said bridges. p. 96, l. 18.
- 10 2. That the said Company be and is hereby authorised to charge its expenses occasioned by said works to its street railway depreciation reserve fund.
3. That, as to the kind of and the liability for paving in connection with the said works, such contractual obligations as obtain between the parties shall govern, but subject to Clause 5 hereof.
4. That, as to the construction of the works ordered herein to be done at the expense of the Company, the Winnipeg Electric Company is hereby made primarily responsible where customary arrangements cannot be carried out.
- 20 5. That jurisdiction be retained for the disposal of matters incidental hereto.
6. The cost as estimated by the Respondent in its Factum on appeal to the Supreme Court is between \$50,000 and \$60,000.
7. The Appellants (the Cities of Winnipeg and St. Boniface), are municipal corporations, incorporated by Statutes of the Legislature of the Province of Manitoba.
8. The City of Winnipeg is separated from the City of St. Boniface by the Red River and that river is spanned at one point by a bridge known as the Norwood Bridge. Traffic crossing the  
30 Norwood Bridge from St. Boniface to Winnipeg emerges upon Main Street and after proceeding a short distance on Main Street crosses another bridge known as Main Street Bridge, which latter bridge spans the Assiniboine River.
9. The Respondent is the successor of the Winnipeg Electric Street Railway Company, there having been an amalgamation and a change of name under statutory authority, and as such successor the Respondent is entitled to all the rights privileges and benefits and is subject to the obligations under the franchises granted by the Appellants to the Winnipeg Electric Street Railway Company.

10. The Winnipeg Electric Street Railway Company was incorporated by Cap. 56 of 55 Vic. (1892 Manitoba). By the Act (s.9) the Company was authorised and empowered to construct maintain complete and operate, from time to time remove and change and renew a double or single track railway, etc., upon or along any of the streets or highways of the City of Winnipeg and the Town of St. Boniface (now the City of St. Boniface) and Rural Municipality of Assiniboine and the Parishes of St. Boniface, St. John, St. James and Kilnonan by the force of such motive power as might be authorised by the Councils of the City Town or Municipality; and 10 (s.12) with power and authority to use and occupy streets or highways for the purpose of the railway track, etc., subject to the consent of the City and Municipalities first had and obtained who were accordingly authorised to grant such permission upon such conditions and for such periods as might be agreed and. (s.18) the Councils of the City and Municipalities were respectively authorised to enter into any agreement or covenant relating to the construction of the said railway for the construction, paving, macadamising, repairing and grading of the streets, bridges or highways the location of the railway and the particular streets along which the same should be 20 laid, the pattern of rails. the time and speed of running the cars. the amount of fares to be paid by the passengers, etc., and (s.19) for such purposes the City and Municipality were authorised to pass by-laws.

11. By-laws were passed by the first Appellant the City of Winnipeg in the year 1892 and by the second Appellant the City of St. Boniface in 1893 granting franchises in respect of the said railway within their respective jurisdictions.

12. The by-law of the first Appellant the City of Winnipeg No. 543, is contained in Schedule A of the above mentioned Act 55 Vic., and it was by the said Act (s.34) validated and confirmed. 30

13. By Clause 1 of the said by-law No. 543 subject to the fulfilment of the terms conditions and provisoes thereafter contained which terms conditions and provisoes and the due fulfilment thereof were to be taken as thereinbefore stated as conditions precedent to the enjoyment of the rights and privileges thereby granted, the Winnipeg Electric Street Railway Company was granted the exclusive right and privilege to construct, maintain, complete and operate double and single track railways on, over, and along any of the streets and highways of the City of Winnipeg to run its cars, take transport and carry passengers on the same by electric 40 power or such other power as might be found practicable, but such other power should before being used be first approved by the City Council.

14. By Clause 3 (H) provision was made for the fixing by the City Council of the intervals for running cars between certain hours and by Clauses 5 and 6 provision was made as to fares, tickets and transfers.

15. By Clauses 7 and 12 respectively provision was made for paving and for taking up streets.

10 “7. Whenever the City of Winnipeg decides to pave any street or highway traversed by any of such railway lines the Applicants (the Winnipeg Electric Street Railway Company) shall pave in similar manner or in such other manner as may be approved by the City Engineer, and at the same time those parts hereinafter referred to, and in case any streets in which the applicants shall lay a railway track shall have been paved previous to the time of laying such track the applicants shall at once pay to the City the cost of paving such parts less an amount properly allowed for wear and tear which amount shall be ascertained and decided by the City Engineer.

“The parts referred to shall be:—

“In case of a single track, between the rails and eighteen inches on each side of them.

20 “In case of a double track, between both sets of rails and eighteen inches on each outside of both tracks, and two feet on each inside of both tracks, the gauge of said track shall be not less than four feet eight and one half inches (4ft. 8½ins.)”.

30 “12. The City shall have the right to take up the streets traversed by the rails, either for the purpose of altering the grades thereof, constructing or repairing drains, or for laying down or repairing water or gas pipes, or for all other purposes now or hereafter within the province and privileges of the City, the same being replaced by and at the expense of the City without being liable for any compensation or damage that may be occasioned to the working of the railway or to the works connected therewith, and this by-law is made subject to any rights (statutory or otherwise) of any other corporation which now has or hereafter shall have power to take up the streets of the City or otherwise use them”.

16. By Clause 14 the Company was to have in operation before the 1st of December 1892 lines on certain named streets one of which was Main Street from Main Street Bridge to Northern City Limits: and thereafter the Company to become entitled to make other lines in other named streets. The Main Street Bridge is the bridge over the river Assiniboine (supra paragraph 8).

40 Pursuant to by-law 543 the Company established *inter alia* a service in Main Street which ended at Assiniboine river.

Clause 15 provided that :

“The Council may during the year 1893, or any subsequent year, by  
 “written notice served on the Applicants—(the Winnipeg Electric Street  
 “Railway Company)—demand the construction of any new line or lines  
 “within the City limits, on any street or streets. Line or Lines must be  
 “designated as to route and terminus, and must extend from line or lines  
 “already in operation. At the date of such notice there must be an average  
 “actual *bona fide* resident population of at least four hundred persons, of  
 “above five years of age, for each half mile of proposed line, living within  
 “a distance of one quarter of a mile on each side thereof, and not within one 10  
 “eighth of a mile of any parallel line already in operation, that is an average  
 “of four hundred for each quarter square mile measured as above. The  
 “applicants shall construct and operate such new line or lines within twelve  
 “months from such notice. A *bona fide* commencement must be made within  
 “such time as may be fixed by Council when giving notice”.

Although there is nothing on the records to show that the City  
 of Winnipeg ever demanded an extension of service over the Main  
 Street bridge in a southerly direction under the said clause yet such  
 extension had in fact been made while the old bridge was in existence  
 and had been operated for many years and the evidence indicates 20  
 that there is ample population to meet the terms of the clause and  
 the first Appellant the City of Winnipeg submits that in the circum-  
 stances it would in any event have been entitled to an order for the  
 restoration of the service over the new bridge.

By-law of the  
 Appellant the  
 City of St.  
 Boniface  
 p. 166.

17. The by-law of the second Appellant the City of St. Boniface  
 is dated the 6th of June 1893, and was amended by by-laws of the  
 12th of June 1893, 31st July 1902 and 7th of July 1903. Clause 1 of  
 by-law No. 111 of the 6th of June 1893 conferred the right on the  
 Winnipeg Electric Street Railway Company to construct and operate  
 single and double lines of street railway with all proper switches 30  
 and turnouts on any street of the Town of St. Boniface, to be operated  
 by any system of motive power according to plans and regulations  
 to be submitted to and approved by the Council of the Town. Clause  
 3 provided :

p. 166, l. 24.

“3. The fares to be charged on the said line of railway shall not exceed  
 “the fares at present charged by the said Company in the City of Winnipeg .  
 “and no more than one fare to be paid for any continuous trip ; this to include  
 “a continuous trip from the town of St. Boniface to the City of Winnipeg  
 “or from the City of Winnipeg to the Town of St. Boniface”.

And by an amendment of the said by-law made on the 31st July 40  
 1902 it was provided that :

“4. Transfers shall be given on said railway in Winnipeg to passengers p. 169, l. 4.  
 “from St. Boniface and to St. Boniface in the same manner as transfers are  
 “at present given in Winnipeg.

“5. The intervals of service of the cars shall not be more than 30  
 “minutes between the hours of 6.15 a.m. and 11 p.m.”

18. By s.2 of Chapter 87 of 3 & 4 Ed. VII assented to on 18th  
 February 1904, an agreement between the Town of St. Boniface and  
 the Winnipeg Electric Street Railway Company of the 17th of  
 September 1903, being Schedule A to the Act, and the by-laws therein  
 10 referred to were confirmed and declared to be binding on the said  
 town and the said Company to all intents and purposes as therein  
 expressed. The said agreement contained *inter alia* an agreement  
 and covenant on the part of the Company to carry out and perform  
 in all respects the terms and conditions of by-law No. 111 of the  
 said Town and by-laws amending the same and an agreement and  
 covenant by the Town of St. Boniface with the Company that the  
 Company should have all the rights provided for in the said by-laws  
 and an agreement and covenant on the part of the Town to perform  
 and carry out the same as far as the Town was concerned.

20 19. On the 10th of May 1904 the Winnipeg Electric Street p. 170.  
 Railway Company made an agreement with the Norwood Improve-  
 ment Company Limited which had constructed a bridge (the  
 Norwood Bridge) across the Red River, the centre thread of which  
 forms the boundary between the City of Winnipeg and the Town  
 (now the City) of St. Boniface and was then maintaining it as a  
 toll bridge, whereby the Improvement Company granted the right  
 to the Street Railway Company to lay out an electric street railway  
 track upon the easterly side of the bridge and the approaches thereto  
 and to operate passenger cars upon the track for a period of eight  
 30 years. By clauses 2, 3 and 5 it was provided respectively as  
 follows:—

“2. That the Street Railway Company shall at all times during p. 170, l. 37.  
 “the continuance of this agreement keep so much of the surface of the said  
 “bridge as may be between the rails of the said track and for the space of  
 “two feet on the outside of each rail in good repair and cleared of obstructions  
 “and shall not cause or place any snow or ice or any obstruction to or on the  
 “said bridge or approaches.”

40 “3. That the Improvement Company shall have the right whenever the  
 “Improvement Company shall deem it necessary, to take up the rails or that  
 “part of the bridge covered by the rails for the purpose of altering or  
 “repairing the said bridge or for any other purpose within the province or

“privilege of the Improvement Company; the same being replaced by and  
 “at the expense of the Improvement Company, without being liable for any  
 “compensation or damage which may be occasioned to the working of the  
 “Street Railway Company or to the works connected therewith.”

“5. It is hereby understood and agreed that it is upon this distinct  
 “understanding that this agreement is entered into by the Improvement  
 “Company that the Street Railway Company has examined the said bridge,  
 “and that it does and will assume all responsibility and risk and liability  
 “of and in connection with the strength and sufficiency of the said Bridge  
 “for the purposes for which the leave and license hereby given is granted, and 10  
 “in respect of or subject to the opening and swinging and closing of the said  
 “bridge and should any strengthening or altering of the said bridge be required  
 “now or at any future time, during the continuance of this agreement, to  
 “make the same sufficient for such purposes such strengthening and altering  
 “shall be done by the Street Railway Company at its own expense and to the  
 “satisfaction of the Improvement Company.”

p. 173.

**20.** On the 24th of March 1909 by an agreement made between the  
 Norwood Improvement Company, the second Appellant the City of  
 St. Boniface and the Winnipeg Electric Street Railway Company  
 (now Winnipeg Electric Company) the City of St. Boniface purchased 20  
 the Norwood Bridge and the approaches thereto, the bridge to be  
 conveyed subject to and for highway and public street purposes and  
 toll free and the Winnipeg Electric Street Railway Company in  
 consideration of the execution of the agreement by the City of  
 St. Boniface and the Norwood Improvement Company Limited  
 consented to the presents and accepted the City of St. Boniface in  
 substitution for the said Norwood Improvement Company in all  
 contracts and agreements between that Company and the Railway  
 Company and in respect of all duties owed by that Company to the  
 Railway Company whether arising out of the contract, imposed by 30  
 law or otherwise arising or imposed.

p. 176.

**21.** On the same date namely the 24th March 1909 by an  
 agreement between the Appellant the City of St. Boniface and the  
 Winnipeg Electric Street Railway Company it was agreed:—

“1. The Company agrees with the City that it will when-  
 “ever the City shall pave the balance of the bridge, pave and  
 “maintain the pavement of that portion of the bridge known as  
 “the Norwood Bridge across the Red River, lying between the  
 “tracks of the Company on the same, during the term of the  
 “operation of the Company’s cars and tracks in the City of 40  
 “St. Boniface as provided by by-law 111 and by-laws amending



“the same, and keep same in as good condition as the balance  
“of the pavement on the bridge shall be kept and maintained  
“by the City.”

“2. The City agrees with the Company to make and keep  
“the said bridge as a public highway for the free passage of the  
“public and the cars and passengers of the Company.”

10 **22.** After the street railway service had been established in  
the City of St. Boniface under the by-law and after the Agreement  
of the 10th of May, 1904 before mentioned the Company operated  
its street railway system over the Norwood bridge over the Red River  
and over the Main Street bridge over the Assiniboine River in the  
City of Winnipeg connecting the St. Boniface system with that of  
the City of Winnipeg and providing a continuous service at one fare  
between the two Cities.

20 **23.** On the 30th of June 1925, the Respondent in a letter of p. 177.  
that date addressed to the City Council of St. Boniface called atten-  
tion to the increasing traffic over the Norwood bridge and to the  
Respondent's view that the bridge was no longer safe and that as  
the bridge was used by the Respondent for the transportation of  
thousands of its patrons passing between St. Boniface and the City  
of Winnipeg the Respondent would not continue to take the respon-  
sibility for operating over the bridge under the present conditions,  
and that some means must be found to relieve the present traffic  
conditions or the Respondent must discontinue its services over the  
bridge. The second Appellant the City of St. Boniface in July called p. 178.  
the Respondent's attention to the Agreement of the 10th of May 1904  
(supra. para. 19) and in the year 1926 the Respondent at its own  
expense put in stringers and made substantial repairs to strengthen  
the bridge and make it safe.

30 **24.** The Respondent continued its service over the Norwood  
bridge until the year 1929 when owing to the condition of that bridge  
the City of St. Boniface stopped vehicular traffic over it. The service  
between the two Cities over the bridge was discontinued and in lieu  
thereof a temporary substitute was provided with the consent of  
the Appellants such substitute consisting of a motor bus service on  
the Winnipeg side and a loop line on St. Boniface side connecting  
with a service over Provencher bridge, passengers being required  
to walk over the Norwood bridge to make use of the bus service on  
the Winnipeg side. The Supreme Court, the Appellants submit, took  
40 the mistaken view that the substituted service instead of being  
temporary was intended to be permanent.

p. 181, l. 31.  
p. 182, l. 5  
27  
p. 183.

25. Thereafter the Appellants with the assistance of the Governments of the Dominion and of the Province of Manitoba considered the question of the reconstruction of the Norwood bridge and the Main Street bridge in connection with a street widening and negotiations took place between the Appellants and the Respondent as to a contribution by the Respondent and in a letter dated the 17th October 1930, addressed by the Respondent to the Chairman of the Norwood Bridge Committee the Company stated :

p. 185, l. 37.

“ Upon his return to the City I informed Mr. Anderson, the  
“ President, that a delegation representing the Cities of 10  
“ Winnipeg and St. Boniface had called at this office on October  
“ 14th to ascertain what contribution the Company was pre-  
“ pared to make towards the construction of the proposed new  
“ Norwood bridge over the Red River, and am instructed by him  
“ to advise you that the Company is not in a position to incur  
“ any financial obligation in connection with public improve-  
“ ments, and that the Company’s attitude towards the proposed  
“ new Norwood bridge over the Red River is that by reason of  
“ circumstances over which the Company had no control,  
“ operation of street cars over Norwood Bridge and Main Street 20  
“ Bridge was abandoned some time ago, and a new route of  
“ transportation opened up.

“ Under these circumstances the Company is not at the  
“ moment in a position to say that it is advisable to again change  
“ its plan and consider street railway operation over the Bridges  
“ in question, and, until it has made the necessary study  
“ to determine this question, is not in any position to say whether  
“ or not it will make any contribution towards Norwood Bridge,  
“ but in case it should after study appear necessary or advisable  
“ to provide for street railway transportation over this bridge 30  
“ then the Company would feel that the only contribution it  
“ could properly be called on to make would be the cost of rails,  
“ ties and overhead trolley.

“ In view of the above, might I suggest that it might be advis-  
“ able for the municipalities concerned, in case they decide on  
“ building these new bridges, to provide car tracks when they are  
“ being built and in the event of street car service being operated  
“ over the bridges in the future, the Company could then reim-  
“ burse the municipalities on the above basis as has been done  
“ in certain cases in the City of Winnipeg heretofore.” 40

The cases here referred to are those of the Arlington Provencher and Maryland bridges referred to in the decision of the Board of the

1st of June 1931 a Summary of which is set out in paragraph 29 hereof.

26. Further negotiations ensued and on the 23rd October 1930, the Respondent submitted a proposal that the Appellants were unable to accept namely :—

“So that there may be no misunderstanding I deemed it  
 “advisable to incorporate in a letter the proposals which were  
 “discussed with you to-day with reference to this Company’s  
 “contribution to the new Norwood and Main Street bridges, as  
 10 “in my opinion they should all be embraced in one picture, and  
 “as I told you verbally I will recommend to my Directors that  
 “we approve of an arrangement whereby the Company will  
 “pay the interest and sinking fund payments on such amount  
 “of money as may be necessary to build street car tracks on  
 “Norwood and Main Street bridges, together with any addi-  
 “tional outlays which may have to be made to connect up the  
 “existing tracks with these bridges, and any other changes  
 “which may result from their construction; the interest to be  
 20 “the actual rate of interest paid on the bonds issued for the  
 “purpose and not in any event to exceed  $5\frac{1}{2}\%$ ; the entire sum  
 “for which we would be responsible as above not to exceed  
 “\$50,000. It is my understanding that the bonds to be issued  
 “will be twenty-five year bonds.

“It is also to be understood that we shall have the same  
 “privileges as we now enjoy on the existing bridges of using  
 “the new bridges for the transmission of gas and electricity.”

27. On the 19th of March 1931, before the completion of the  
 rebuilding of the bridges the Appellants filed the first of the two  
 applications dealt with by the Judgments herein with the Municipal  
 30 and Public Utility Board (hereinafter called “the Board”). It was  
 a joint application for an order “defining or prescribing the terms  
 “and conditions upon which the Winnipeg Electric Company shall  
 “or may use for the purposes of the street railway system of the Com-  
 “pany the bridge now being constructed by the two said Cities over  
 “the Red River, connecting Main Street in the City of Winnipeg  
 “with the district known as Norwood in the City of St. Boniface”,  
 and the first Appellant the City of Winnipeg in the same applica-  
 tion applied for an Order “defining or prescribing the terms and  
 “conditions upon which the Winnipeg Electric Company shall or  
 40 “may use for the purpose of its street railway system. . . . .  
 “a certain bridge now being constructed by the City of Winnipeg

“over the Assiniboine River at Main Street” that is to say Main Street bridge.

**28.** The jurisdiction and powers of the Municipal and Public Utility Board are prescribed in Part III of the Municipal and Public Utility Board Act of Manitoba Cap. 33 of 16 Geo. V. (1926). The following are the material provisions of the Act:—

114. Subject to the terms of any contract between any owner of a public utility and any municipality and of the franchise or rights of the owner, the Board may define or prescribe the terms and conditions upon which the owners shall or may use, for any of the purposes of the public utility, any highway or any public bridge or subway constructed or to be constructed by the municipality, or two or more municipalities, and may enforce compliance with such terms and conditions. 10

115. (1) The Board shall have a general supervision over all public utilities and the owners thereof subject to the legislative authority of the Province, and may make such Orders regarding equipment, appliances, safety devices, extension of works or systems, reporting and other matters, as are necessary for the safety or convenience of the public or for the proper carrying out of any contract, charter or franchise involving the use of public property or rights. 20

119. The Board shall have power by order in writing and notice to and hearing of the parties interested to require every owner of a public utility

(a) to comply with the laws of this Province and any municipal by-law affecting the public utility or its owner, and to conform to the duties imposed thereby or by the provisions of its own charter, or by any agreement with any municipality or other owner :

\* \* \* \* \*

(c) to establish, construct, maintain and operate any reasonable extension of its existing facilities when in the judgment of the Board such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same and when the financial condition of the owner reasonably warrants the original expenditure required in making and operating such extension. 30

p. 90.

**29.** The parties appeared before the Board and after hearing evidence and arguments and stating that prior to the hearing the parties at several conferences both amongst the parties themselves and jointly with the members of the Board had failed to find a common ground on which an agreement could be reached, the Board on 1st June 1931 decided :

1. That so far as regards the cost of the construction of the bridges (as distinguished from the cost of the street car track and paving) the Respondent was not in law liable to contribute and, in so far as the matter was discretionary with the Board, the Respondent should not be required to contribute.

10 In coming to this conclusion the Board followed the previous precedents of the Arlington Provencher and Maryland Bridges in respect of which the cost of construction had been borne by the Municipal Authorities, while the proportionate cost for street car track and paving had been repaid by the Respondent. The practice established in these cases was affirmed by the Board to be correct.

2. That as to the operation of the street railway over the bridges when completed, it was doubtful if street car services could safely be left unprovided for and the Company should prepare to operate its street cars over this route when the bridges were opened; that this provision was necessary both as an alternative to the Provencher bridge route and for future traffic requirements not apparent at the present time.

20 3. That the application be dismissed except that the matters might be re-opened in the event of disagreement for the determination of the Company's liability for those portions of the expense arising from the placing of the street car rails on the bridges, for which the Company was liable as indicated, and for the settlement of the terms by which street car services across the bridges might be provided when construction completed.

30 30. The Respondent having refused to make any contribution towards the cost of laying the rails or of the paving of either of the bridges, the Appellants on the 30th of June, 1931, filed a joint application to re-open, pursuant to the first Order of the Board, the matter of the liability of the Respondent for those portions of the expense in connection with the construction of the Norwood Bridge and to fix the amount payable by the Respondent as its share of the cost of paving and for placing street car rails on the bridges and approaches and on Main Street and for settlement of the terms by which street car services across the bridges might be provided when construction was completed; and the first Appellant the City of Winnipeg made application for an order to re-open the matter of the liability of the Respondent for those portions of the expense in connection with the construction of the Main Street Bridge and to fix  
40 the amount payable by the Respondent as its share of the cost of

p. 93.

paving and for placing street car rails on the bridge and approaches and on Main Street and for settlement of the terms by which street car services across the bridge might be provided when construction completed.

p. 94, l. 13.

**31.** The Board made its Order on the 31st of July, 1931, in the terms set out in paragraph 5 supra. In arriving at their conclusion the Board stated their reasons as follows :—

1. That some form of transportation over the bridges was a necessity.

2. That the Cities asked for rail services and after careful study the Board agreed. Of the alternatives proposed by the Respondent namely the trackless trolley and the gasoline 'bus, the trackless trolley appeared to the Board the best suited for the present transportation demand but for the initial expense stated to be in the neighbourhood of \$31,000, greater by about \$25,000 than the amount required for the rail services and too large an expenditure to be undertaken in the event of rail services becoming necessary in the future; that the gasoline 'bus would be the cheapest of all but that type of service was of doubtful efficiency having regard to the transfers of passengers which might be necessary.

3. Primarily the functions of the Board were regulative, devoted more to carrying out than the determination of policy and if the Municipal Authorities backed as they appear to be by competent engineering advice have determined as a policy upon the street car as the vehicle of transportation that should be the guiding policy unless the weight of evidence was clearly in favour of an alternative proposal.

That the former services over the old bridges were carried on by rails and notwithstanding that much of the evidence submitted had been referable to the extension of existing facilities, the Board regarded the application as one for renewal of the former services that were temporarily abandoned because of the condition of the old bridges.

4. That following the precedent in the case of other bridges referred to in their previous Order the Respondent should, as to the laying of rails and the related works on the bridges proper, be liable for such work.

5. That as to the approaches to the bridges taking into consideration the fact that the new bridges crossed the river

from different bridge heads and in different alignment from the old bridges and that the old bridges were single-tracked and the approaches were single tracked and also clause 12 of the Winnipeg By-law No. 543 (supra paragraph 15) and that the Respondent would benefit from the double trackage across the bridges by the elimination of stops the Respondent should pay the cost of building the second rails and related works on the approaches and the Board fixed the liability as one half of the total cost of such works rather than rely on estimates for details.

10       **32.** The Respondent appealed to the Court of Appeal of the Province of Manitoba and that Court delivered judgment on the 20th January, 1933, when the Appeal was dismissed on the ground that the Order of the Board appealed from was within the jurisdiction of the Board and that it could not be impeached on any objection of fact or law raised before the Court. p. 104.

20       **33.** The Respondent appealed to the Supreme Court of Canada and judgment was given on the 26th day of January, 1934, allowing the Appeal, reversing the Judgment of the Court of Appeal of Manitoba and setting aside the Order of the Board on the ground that the Board had no authority under the Municipal and Public Utility Act to require the payments from the Respondent ordered to be paid by the Board either as a statutory or contractual liability or as payments necessitated by the renewal of the former service.

**34.** The Appellants respectfully submit that the Appeal should be allowed, that the judgment of the Supreme Court dated the 26th of January, 1934, should be reversed and set aside and that the Order of the Municipal and Public Utility Board dated the 31st of July, 1931, should be restored for the following among other

### REASONS.

- 30       1. Because the Municipal and Public Utility Board had jurisdiction and authority to make the Order in question and the Order was rightly made.
2. Because upon the facts and the law applicable thereto the judgment of the Appeal Court of the Province of Manitoba was correct and that of the Supreme Court was erroneous.

WILFRID GREENE.

HORACE DOUGLAS.

In the Privy Council.

**ON APPEAL**

**FROM THE SUPREME COURT OF CANADA.**

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**IN THE MATTER of THE MUNICIPAL AND  
PUBLIC UTILITY BOARD ACT,**

— AND —

**IN THE MATTER of an ORDER of the said  
BOARD dated the 31st July, 1931, whereby  
Winnipeg Electric Company was directed to  
contribute to certain costs of Main Street and  
Norwood bridges and approaches thereto.**

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BETWEEN :

**THE CITY OF WINNIPEG and  
THE CITY OF ST. BONIFACE  
(Applicants) *Appellants***

— AND —

**WINNIPEG ELECTRIC COMPANY  
(Respondent) *Respondent.***

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**APPELLANTS' CASE.**

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LAWRENCE JONES & Co.,  
Lloyd's Building,  
Leadenhall Street, E.C.3.