

thereto; though really I do not quite see how it makes any difference, for sub-sec. 5 does not require that the approval shall be under any statute or statute-conferred power.

So far the case seems to me to be a plain one; the case is plainly one within the very words of the sub-section. But it is said that by the enactment confirming the agreement the provisions of the Ontario Railway Act were, with some exceptions, made part of that enactment, including a section providing that no tolls should be levied or taken until approved by the Lieutenant-Governor in council, and published as therein provided; and that is so; but surely it is a non sequitur that the approval of the Commissioners is not also requisite. There is no difficulty in giving full effect to all the provisions of the enactments as well as the agreement. The tariff is subject to the approval of the Commissioners, parties to the agreement, in the interests which they specially represent; but it is also subject to higher approval in the interests of the public generally. There is nothing extraordinary or inconsistent in that, and it is a course which seems to have been in the past followed; the parties to the agreement must first act, and then the higher power must supervise.

Section 170 is not applicable, but, under sec. 169, besides approval by the Commissioners, approval by the Board, now taking the place of the Lieutenant-Governor in council, is required.

I would allow the appeal, but the case, having regard to all that has occurred in it, is not one for costs.

Moss, C.J.O., reached the same conclusion; reasons to be given in writing.

OSLER, GARROW, and MACLAREN, J.J.A., also concurred.

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DECEMBER 31ST, 1909.

## PRINGLE v. CITY OF STRATFORD.

(TWO ACTIONS.)

*Assessment and Taxes—Exemption of Factories—Municipal By-law—Validating Statute—Contract—Construction—"Exemption from Taxation"—School Taxes—General Act—Special Act—Mandamus—Declaratory Judgment—Remedy by Appeal to Court of Revision.*

Appeals by the defendants and cross-appeal by the plaintiff from the judgment of MACMAHON, J., at the trial, in the nature