

*mercantile Cable Co. v. Government of Newfoundland*, [1916] 2 A.C. 610.

The real point at issue is, whether the Executive can be subjected to the control of the Courts where its discretion is involved. But, in another aspect, can the Court make a declaration against the express words of an Act of the Legislature? See secs. 3 and 7 of 6 Geo. V. ch. 20.

The appeal as against the Attorney-General should be dismissed with costs.

The appeal as against the Commission seemed to be completely covered by the cases of *Re Florence Mining Co.* (1909), 18 O.L.R. 275; *Smith v. City of London* (1909), 20 O.L.R. 133; and *Beardmore v. City of Toronto* (1910), 21 O.L.R. 505.

Counsel in support of the appeal cited appendix A. in vol. 3 of R.S.O. 1914, embodying ch. 322 of R.S.O. 1897, as indicating that the Act prohibiting an action being brought against the Commission except on the fiat of the Attorney-General was ultra vires. But that section was part of an Act of the Legislature itself, while its predecessors, embedded in English statutory enactments, were expressly repealed by R.S.O. 1897 ch. 13, sec. 61. So that whatever was enacted in 1897 was enacted as a statute of the Ontario Legislature. It carried with it the express power of repeal or amendment under the Interpretation Act. The Power Commission Act, R.S.O. 1914 ch. 39, sec. 16, requiring the consent of the Attorney-General to bring an action against the Commission, is a modification of the general right of resort to the Courts, and a legal legislative curtailment of that right.

Other contentions of the appellants were also answered by the learned Judge.

The action, he concluded, was not one that ought to be allowed to proceed to trial in the usual way. The Commission are protected against an action by the terms of the statute. The Attorney-General is made a party only to represent the Lieutenant-Governor in Council. To allow the action to proceed against either defendant would be an abuse of the process of the Court so long as the statutes referred to remain unrepealed.

The appeal as against the Commission should also be dismissed with costs.