

DIVISIONAL COURT.

DECEMBER 16TH, 1909.

SMITH v. CITY OF LONDON.

Constitutional Law—Ontario Acts 8 Edw. VII. ch. 22 and 9 Edw. VII. ch. 19—Intra Vires—Actions Impeaching Validity of Contracts between Municipal Corporations and Hydro-Electric Power Commission—British North America Act, sec. 92—Power of Legislature to Vary Contract—Power to Stay Pending Actions.

Appeal by the plaintiff from the judgment of RIDDELL, J., 13 O. W. R. 1148.

The plaintiff by the action sought to annul the contract entered into by the defendants with the Hydro-Electric Power Commission, as authorised, amended, and validated by the following Ontario statutes: 6 Edw. VII. ch. 15, an Act as to electrical power; 7 Edw. VII. ch. 19, superseding the former, except as to contracts already entered into; 8 Edw. VII. ch. 22 and 9 Edw. VII. ch. 19, both providing for the validation of by-laws and contracts made under the former Acts.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

E. F. B. Johnston, K.C., and J. M. McEvoy, for the plaintiff.

E. E. A. DuVernet, K.C., and A. H. F. Lefroy, K.C., for the defendants.

J. R. Cartwright, K.C., for the Attorney-General for Ontario.

BOYD, C.:— . . . It would appear that both by-law and contract would be open to successful attack in the Courts, but for their legislative validation by 7 Edw. VII. ch. 73, sec. 2; 8 Edw. VII. ch. 22, sec. 4; and 9 Edw. VII. ch. 19, sec. 4. In the schedule to this legislation appears for the first time the contract which was executed by the defendants and the Commission. The legislative change was made in April, 1908, the contract signed on the 9th June, 1908, and this action begun on the 16th June of that year. The final piece of legislation recites that doubts had been raised as to the validity and binding character of the contract. . . . It then enacts that the contract as varied shall be valid and binding according to the terms thereof, and shall not be called in question on any ground whatever in any Court, but shall be held and adjudged to be valid and binding on the corporation—which shall be conclusively deemed to have entered