

piles or logs on the roadway. The appeal should be allowed with costs and the action dismissed with costs.

MULOCK, C.J.Ex., and SUTHERLAND, J., agreed with KELLY, J.

RIDDELL, J., agreed in the result.

CLUTE, J., read a dissenting judgment. He was of opinion that the judgment of the trial Judge was in all respects right.

Appeal allowed (CLUTE, J., dissenting).

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

JANUARY 6TH, 1919.

ELECTRICAL DEVELOPMENT CO. OF ONTARIO LIMITED v. ATTORNEY-GENERAL FOR ONTARIO.

*Constitutional Law—Action against Attorney-General for Declaration
that Order in Council Ultra Vires—Order Setting aside Writ of
Summons on Summary Application.*

Appeal by the plaintiffs from an order of the Master in Chambers, made upon the application of the defendant, setting aside the writ of summons, on the ground that the plaintiffs had no right or authority to sue the Attorney-General without having first obtained a fiat.

The claim in the action was for a declaration that the Lieutenant-Governor and Executive Council had no power, under the Water Power Regulation Act or otherwise, to make a certain order, dated the 27th June, 1918, whereby the plaintiffs were directed to operate their works to their full capacity and to supply part of the electricity developed, at prices specified, to the Hydro-Electric Power Commission.

D. L. McCarthy, K.C., for the plaintiffs.

Edward Bayly, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that he could not find any way of distinguishing this case from the decision of the Appellate Division in *Electric Development Co. of Ontario Limited v. Attorney-General for Ontario and Hydro-Electric Power Com-*