

DIVISIONAL COURT.

APRIL 14TH, 1910.

HADLEY v. WESTMAN.

*Municipal Water Commissioners — Status and Qualification —
Right of Ratepayer to Attack — Contract of Water Taker—
“Flat” Rate of Payment—Duration—Termination—Notice.*

Appeal by the plaintiffs from the judgment of CLUTE, J., at the trial, dismissing the action.

Action by ratepayers of the city of Chatham to restrain the defendants, as water commissioners, from stopping the plaintiffs' supply of water. The plaintiffs alleged a contract for a continuous supply of water to their factory at a specific price of \$65 per year, and denied the defendants' right to install a meter in their (the plaintiffs') premises and to compel the plaintiffs to pay for their supply according to the meter indications, and, in default of the plaintiffs consenting, to turn off the water.

The appeal was heard by FALCONBRIDGE, C.J.K.B., LATCHFORD and SUTHERLAND, JJ.

M. Wilson, K.C., for the plaintiffs.

O. L. Lewis, K.C., for the defendants.

The judgment of the Court was delivered by FALCONBRIDGE, C.J.—It is quite clear that the plaintiffs cannot in these proceedings attack the status or qualification as water commissioners of Chatham of the defendants Westman and Lamont: see Dillon on Municipal Corporations, 4th ed., vol. 2, secs. 892, 1078, and note sub fin. 1079.

In Lewis v. Brady, 17 O. R. 377, it was held that the effect of the defendant (collector of taxes) not having made and subscribed the declaration required by sec. 271 of the Municipal Act, R. S. O. 1887 ch. 184, was not to make his acts void, citing *Margate Pier Co. v. Haman*, 3 B. & Ald. 266, and *Rex v. Justices of Herefordshire*, 1 Chit. 700.

[Reference also to *Town of Peterborough v. Hatton*, 30 C. P. 455, 461; *Martin v. City of St. Catharines*, 13 O. W. R. 559.]

It is further contended by the plaintiffs that the agreement for a “flat” rate of \$65 per year has never been terminated and still exists; that it is on its face indefinite and unlimited in point of time, and therefore perpetual, and that it cannot be rescinded (unless the plaintiffs broke the contract in the use and disposition of the water.)