

of the by-law provides for the fares to be charged by the company, these being less than the maximum mentioned in the Act of 1873, sec. 8. In 1919 the company and the city corporation entered into a new agreement whereby the rates were increased; and the by-law attacked, No. 5935, was passed for the purpose of bringing the new agreement into operation. The by-law was not submitted to the people.

The appeal was heard by MAGEE, J.A., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

I. F. Hellmuth, K.C., for the appellants.

W. R. Meredith, for Joyce, the ratepayer who applied for the order quashing the by-law.

CLUTE, J., in a written judgment, said that the principal ground for the motion was that the by-law attacked, No. 5935, purported to amend by-law No. 916, which had become a part of an Ontario statute, 59 Vict. ch. 105; and that by-law 5935 was therefore *ultra vires* of the council. But by-law No. 916 was not incorporated in the Act of 1896. The provision of sec. 2 of that statute is: "The agreement . . . and by-law No. 916 therein referred to, which are set out in schedule A to this Act, are hereby declared to be valid and effective in all respects. . . ." There is no clause in the statute which has the effect of making the by-law a part of the statute.

By sec. 25 (*d*) of by-law No. 916 the limit of the change which the railway company may make is fixed, and by-law No. 5935 does not go beyond that. For anything that appeared in by-law No. 916 or the statute validating it, the city corporation and the company had a perfect right to agree to any rate they saw fit, provided it did not exceed 5 cents.

There was no necessity for submitting the new by-law to the electors—it was quite within the contemplation of the former by-law, which had their approval.

By-law No. 5143, which was confirmed by the Hydro-Electric Railway Act, 6 Geo. V. ch. 37, sec. 5 (3), had no application to the present case.

There was no reason whatever for the suggestion that the by-law was passed for any fraudulent or improper purpose.

The original by-law fixed a limit not exceeding 5 cents for fares. The by-law here in question did not exceed that limit; it was not contrary to any other by-law or any Act of the Legislature; and it was within the original intendment of by-law 916.

The by-law was, therefore, valid; and the appeal should be allowed with costs and the order quashing the by-law should be set aside with costs.