

sted & Langton's Jud. Act, p. 465. But, if an averment regarding the by-law and agreement is found, upon reference to the by-law and agreement, to be untrue in fact, I think I must take notice of the untruth. It is alleged that by the agreement in question the electric company contracted to supply the city corporation "with electrical current for power for private users." There is in fact no such term in the agreement. The defendant company do undertake to furnish electric current to private users in and near Brantford, at prices not to exceed a certain maximum; but they do not agree to supply the city corporation with electric current for power for users, or for any but the public purposes of the corporation. The averment of fact in the pleading on this point, being contradicted by the very agreement upon which it is said to be founded, cannot, in my opinion, be regarded as true, even for the purpose of this motion.

The by-law is not, I think, invalid because not sanctioned by the electors. Neither the by-law nor the agreement falls within the prohibition of 9 Edw. VII. ch. 75 (O.), which applies only to by-laws and agreements passed or entered into after the 16th March, 1909. The by-law and agreement attacked escape by one day.

The by-law does not call for raising of money "not required for the ordinary expenditure of the municipality and not payable within the same municipal year," and sec. 389 of the Consolidated Municipal Act, 3 Edw. VII. ch. 19, has no application to it. Moreover, sec. 568 of the same Act empowers a municipal council to contract "for a supply of electric light for street lighting and other public uses for any number of years not in the first instance exceeding ten, and for renewing such contract from time to time for such period not exceeding ten years as the council may desire." The agreement attacked is but for five years, with the right on the part of the municipality, at its option, to extend the term for two successive terms, each of five years. The agreement falls within the scope of the power to make it, thus conferred on the municipality, and the averment—if such it may be called—in the statement of claim, that the by-law has not received the sanction of the electors, sets forth no ground upon which the by-law may be impeached.

Having regard to the provisions of the by-law, and the power of the municipality in the premises, I am of the opinion that the pleading discloses no cause of action, and should be struck out with costs. The plaintiff may, if he so desires, file an amended statement of claim within one week.