

LATCHFORD, J.

DECEMBER 3RD, 1909.

HOGAN v. CITY OF BRANTFORD.

Pleading—Statement of Claim Disclosing no Reasonable Cause of Action—Con. Rule 261—Reference to By-law and Contract—Pleading Contradicted by Documents Referred to—Municipal Corporation—Contract with Company for Supply of Electric Light, etc.—By-law—Powers of Council—Assent of Electors—Statutes.

Motion by the defendants under Con. Rule 261 to strike out the statement of claim, on the ground that it disclosed no reasonable cause of action.

The statement of claim set forth that the plaintiff was a ratepayer of the city of Brantford and brought this action on behalf of himself and all other ratepayers and electors of Brantford to have by-law No. 1015 of the defendants the city corporation declared ultra vires and quashed. The by-law, passed on the 15th March, 1909, was stated to have authorised the making of the agreement therein referred to, of the same date, between the defendants, whereby the defendants the Western Counties Electric Company "agreed to supply the defendants the city corporation with electric arc lights, to supply and maintain electric current lamp poles, conductors, attachments, and all plant and apparatus required in connection with the said lights, and with electric current for power and lighting for municipal purposes, and with electrical current for power for private users." The plaintiff alleged that he protested against the passing of the by-law, yet the municipal council of Brantford passed it with knowledge that it was illegal, and the agreement between the defendants was thereupon entered into. And the plaintiff alleged that "the by-law is ultra vires and bad because the said electors have not sanctioned the moneys necessary to be expended in connection with the same."

W. T. Henderson, for the defendants the city corporation.

W. S. Brewster, K.C., for the defendants the Western Counties Electric Co.

W. E. Middleton, K.C., for the plaintiff.

LATCHFORD, J.:— . . . The by-law and agreement were produced upon the argument. As they are referred to in the statement of claim, they may, I think, be considered as forming part of it. The facts alleged in the pleading must, the defendants concede, be taken to be true for the purposes of this motion: Holme-