

in exceptional cases where the proceedings are clearly wanting in bona fides or are vexatious or oppressive, and the strong powers given should only be exercised in cases which are clear and beyond all doubt. In the present case the plaintiff's rights were unquestionably materially affected by the alleged invalid contract.

3. A contract similar to the one in controversy here had been held to be invalid in *Scott v. Patterson* (ante, vol. 44, p. 621), and further, that it had not been validated as claimed by the defendants by 8 Edw. VII. c. 22. The language of Mr. Justice Anglin in that case on both these points was adopted by Mr. Justice Latchford. It could not therefore be said that the plaintiff's action disclosed no cause of action or was obviously unsustainable.

4. The case of *Atlantic & Pacific Tel. Co. v. Dominion Tel. Co.*, 27 Grant 592, is not applicable here to prevent the plaintiff maintaining his action until the Commission should be made a party. Con. Rule 202 enables the court to adjudicate on matters arising between parties who are some only of those interested in the property in question without making the other persons interested in the property parties, and "if the court can adjudicate in regard to property in the absence of all parties interested, why cannot the court do so in regard to a contract, especially when the plaintiff has exhausted all means of bringing in the party whose absence the defendants complained. The general principle is undoubtedly that all parties interested in the subject matter of the suit should be before the court, but it is not open to the Commission to complain that the plaintiff has done all that is within his power to make the Commission a party and the Commission has resisted his efforts. I do not feel called upon to attempt to determine upon a motion of this kind whether such legislation (i.e., s. 23, granting immunity to the Commission), however extraordinary from a juristic point of view, is ultra vires or not, but I am asked to close the doors of the court against a litigant who questions the power of the legislature to free the Commission from the liability which would otherwise be cast upon it by law. The ground of decision in *Atlantic & Pacific Tel. Co. v. Dominion Tel. Co.*, apart from the rule mentioned, is the injustice of proceeding in the absence of one of the parties to the contract without giving that party an opportunity to be heard. The Commission has been given an opportunity to be heard in this action and cannot reasonably object if, in its absence, an opportunity is given to the plaintiff to have his rights