

FEBRUARY 13TH, 1909.

DIVISIONAL COURT.

BEARDMORE v. CITY OF TORONTO.

SMITH v. CITY OF LONDON.

Pleading—Statement of Claim—Motion to Strike out—Rule 261—Reasonable Cause of Action—Action not Frivolous or Vexatious—Dismissal of Action or Stay of Proceedings—Municipal Corporation—Contract with Hydro-Electric Power Commission—Action to Declare Invalid—Statutes—Orders in Council—Parties—Fiat of Attorney-General—Fraud and Misrepresentation—Amendment—Ultra Vires—Discretion—Appeal—Order in Chambers—Rule 1278.

Appeal by the defendants in both actions from orders of LATCHFORD, J., 13 O. W. R. 198, 207, dismissing their motions to strike out the statements of claim in these actions as frivolous and vexatious and disclosing no reasonable causes of action, pursuant to Rule 261, or staying the actions until the plaintiffs should have added as co-defendants the Hydro-Electric Power Commission.

J. S. Fullerton, K.C., and F. R. MacKelcan, for defendants the Corporation of the City of Toronto.

E. E. A. DuVernet, K.C., for defendants the Corporation of the City of London.

E. F. B. Johnston, K.C., and H. O'Brien, K.C., for plaintiff Beardmore.

J. M. McEvoy, London, for plaintiff Smith.

The judgment of the Court (ANGLIN, MAGEE, and CLUTE, JJ.), was delivered by

ANGLIN, J.:—In each action it is sought to have declared ultra vires a contract made, or about to be made, by the municipal corporation with the power commission, on the ground that such contracts can be validly entered into by municipalities only with the assent of the electors, and that there is material variation between the contract at