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HON. SIR JOHN BOYD, C.

NOVEMBER 8TH, 1912.

TRIAL.

WATERLOO v. BERLIN.

4 O. W. N. 256.

Street Railways—Ontario Railway and Municipal Board—Jurisdiction of — Agreement between Municipalities — “Net Annual Profits”—Right to Deduct Taxes—No Jurisdiction in Court—6 Edw. VII., ch. 31, secs. 17, 51, 63, and 64.

Action by town of Waterloo against the city of Berlin to enforce proper accounting under an agreement between the parties dated January 18th, 1910. The agreement was superimposed on the parties by an order of the Ont. Rv. & Mun. Board, and provided that defendants should operate the railway running between the two towns and pay to plaintiffs one-quarter of the annual net profits arising from such operation. In making up a statement of such profits defendants assumed to deduct taxes which plaintiff claimed should not be deducted.

BOYD, C., *held*, that the Court had no jurisdiction to hear the action, all such matters having been left to Ont. Rv. & Mun. Board by 6 Edw. VII., ch. 31.

Action dismissed with costs.

Action by the town of Waterloo against the city of Berlin to enforce proper accounting under clause 20 of an agreement between these parties dated 18th January, 1910. The agreement as a whole makes provision for the operation of the street railway between these municipalities; the railway itself being owned and operated by the defendants.

Clause 20 provides that Berlin shall pay to Waterloo one-quarter of the annual net profits earned by the railway, on the 1st January of each year. Plaintiff's complaint is that Berlin has wrongly assumed to make deductions from the total profits "under the guise of taxes" and has so reduced the amount properly payable to the plaintiffs; and also with like effect the defendant has charged to maintain-