

## THE HAMILTON STREET RAILWAY CO.

v.

## THE CITY OF HAMILTON.

1906

\*Nov. 27.

\*Dec. 26.

*Tramway—Contract with municipality—Limited tickets—Specific performance—Injunction—Right of action—Parties.*

**A**PPEAL from the judgment of the Court of Appeal for Ontario(1), affirming the judgment at the trial (2) in favour of the respondent.

The action was to enforce specific performance of certain agreements entered into by the appellants in virtue of by-laws of the corporation of the City of Hamilton, and for a mandamus or mandatory injunction to compel the defendants to provide and keep for sale on their tramcars, operated in the city, limited transportation tickets, called "workmen's tickets," good for the payment of passenger fares on the tramway during certain fixed hours of each day.

At the trial Street J. held that the respondent, plaintiff, was entitled to succeed in the action and made an order restraining the defendants, appellants, from operating tram-cars in which they did not have such limited tickets for sale. By the judgment appealed from, this decision was affirmed and it was held that the agreement of which the enforcement was sought was *intra vires*; that the defendants were

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\*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington and Duff JJ.

(1) 10 Ont. L.R. 594.

(2) 8 Ont. L.R. 642.

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obliged to sell the tickets in question and to receive them from all persons tendering the same in payment of passenger fares during the specified hours of each day; that the action could be maintained without the aid of the Attorney-General of the province, and that specific performance of the contract could be enforced by injunction.

After hearing counsel on behalf of the parties, on the appeal, the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the appeal with costs. The only written notes of the reasons for judgment were those delivered, as follows, by

IDINGTON J.—The respondents' right to the injunction granted herein by the late Mr. Justice Street is maintainable for the reasons appearing in the judgment of that learned judge and in the judgments of the Court of Appeal.

The appeal should be dismissed with costs.

*Appeal dismissed with costs.*

*Wallace Nesbitt K.C.* and *Armour K.C.* for the appellants.

*Blackstock K.C.* and *Rose* for the respondent.