

CITY OF HAMILTON *v.* CORPORATION OF  
TOWNSHIP OF BARTON.

1891

\*Mar. 17, 18.

\*Nov. 17.

*Municipal Corporation—Construction of sewer—Right to enter lands of adjoining municipality—Restrictions—R. S. O. (1887) c. 184 s. 479 ss. 15—51 V. c. 28 s. 20 (O.).*

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Divisional Court (2) in favour of the respondents.

The action in this case was brought to restrain the city of Hamilton from entering upon lands in the township of Barton for the purpose of extending a sewer constructed by the city into the territory of the township. The defendants relied upon the provisions of 50 V. c. 28 s. 20, amending the Municipal Act of Ontario, R. S. O. (1887) c. 184 s. 479 as giving them authority to enter the adjoining municipality without first obtaining the latter's assent, and also claimed that the private owners of the lands affected were the only persons who could complain. The courts below held, however, that the amending act did not take away the restrictions imposed by the Municipal Act, and that it is still necessary that the two municipalities should settle, by agreement, the terms and conditions of such entry, and if such agreement cannot be had the said terms and conditions must be settled by arbitration.

The Supreme Court affirmed the decision appealed from adopting the reasons given by the judges of the Court of Appeal for deciding against the contention of the city of Hamilton.

*Appeal dismissed with costs.*

*MacKelcan* Q.C. and *Moss* Q.C. for the appellants.

*S. H. Blake* Q.C. and *Bell* for the respondents.

\*PRESENT:—Sir W. J. Ritchie C.J., and Strong, Fournier, Gwynne and Patterson JJ.