

In the Privy Council

No. 103 of 1939

**ON APPEAL FROM THE COURT OF APPEAL
FOR ONTARIO**

BETWEEN

EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUNNINGHAM and HARRIE R. DINGWALL,
suing on behalf of themselves and all other ratepayers of the Corporation of the Town of Walkerville;

And suing on behalf of themselves and all other holders of debentures of the Town of Walkerville;

And suing on behalf of themselves and all other holders of debentures of the Walkerville-East Windsor Water Commission;

And suing on behalf of themselves and all other holders of debentures of the Essex Border Utilities Commission;

And suing on behalf of themselves and all other holders of debentures of the Walkerville Hydro-Electric Commission;

And suing on behalf of themselves and all other holders of Local Improvement Debentures issued by the Town of Walkerville;

And suing on behalf of themselves and all other holders of debentures issued by the Essex Border Utilities Commission and chargeable against the ratepayers of the Town of Walkerville.

(Plaintiffs) Appellants

and

GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR, RUSSELL A. FARROW;

THE CORPORATION OF THE TOWN OF WALKERVILLE;

THE CORPORATION OF THE CITY OF EAST WINDSOR;

THE CORPORATION OF THE CITY OF WINDSOR;

THE CORPORATION OF THE TOWN OF SANDWICH;

THE ESSEX BORDER UTILITIES COMMISSION;

THE WALKERVILLE-EAST WINDSOR WATER COMMISSION;

THE WATER COMMISSIONERS OF THE CITY OF WINDSOR;

THE BOARD OF WATER COMMISSIONERS OF THE TOWN OF SANDWICH;

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF EAST WINDSOR;

THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF WALKERVILLE;

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF WINDSOR;

THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF SANDWICH;

THE CORPORATION OF THE CITY OF WINDSOR and

THE WINDSOR UTILITIES COMMISSION, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, chapter 74, being The City of Windsor (Amalgamation) Act, 1935; and

THE ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO,

(Defendants) Respondents

CASE FOR THE RESPONDENTS. GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR and RUSSELL A. FARROW.

- Record.
P. 101.
P. 90.
1. This is an appeal from a judgment of the Court of Appeal for Ontario (Latchford, C. J., Masten and Henderson, J. J. A.) dated the 17th day of May, 1938, affirming a judgment of Hogg, J., dated the 26th day of July, 1937, dismissing the action with costs.
- P. 237.
- P. 238.
2. Prior to the 18th day of April, 1935, the Cities of Windsor and East Windsor and the Towns of Walkerville and Sandwich existed as separate municipalities, when the Legislature of the Province of Ontario passed an Act known as The City of Windsor (Amalgamation) Act, 1935, (hereinafter referred to as the Amalgamation Act) amalgamating the said four municipalities under the name of The Corporation of the City of Windsor. By virtue of the said Act the amalgamation became complete on the 1st day of January, 1936, upon which date the Act declared that each of the said old municipalities "shall then be dissolved and cease to exist and the new City shall take their place."
- P. 238.
- P. 238.
3. These Respondents comprised The Windsor Finance Commission constituted under Section 5 of the Amalgamation Act, and with the exception of the Respondent George Bennett were appointed by The Lieutenant-Governor in Council for Ontario. The Respondent George Bennett was duly elected mayor of The Corporation of the City of Windsor on the 24th day of June, 1935 and consequently by virtue of the provisions of Subsection 5 of the said Section 5 became ex officio a member of the said Windsor Finance Commission from the 1st day of July, 1935.
- P. 243.
- P. 244.
4. On the 8th day of August, 1936, the City of Windsor (Amalgamation) Amendment Act, 1936, came into force and by virtue thereof The Windsor Finance Commission was dissolved and ceased to exist. By Section 2 of the said Act, Section 7 of the Amalgamation Act was repealed and a new Section 7 enacted by which all acts of the said Commission were "ratified and confirmed and declared to be and to have been legal, valid and binding for all purposes and upon all persons."
- P. 1.
5. These Respondents are parties to this action in their personal capacities only and no claim whatever is made against them by the Appellants.
- P. 6.
P. 139.
- P. 239.
6. For some reason not apparent the Appellants claim in paragraph 28A of the Statement of Claim that the proposed plan for funding and refunding the debts of the amalgamated municipalities of East Windsor, Walkerville, Windsor and Sandwich which The Windsor Finance Commission was directed to prepare and submit under Subsection (c) of Section 7 of the Amalgamation Act, was prepared without authority and that such proposed plan does not comply with The Department of Municipal Affairs Act, 1935.
- P. 239.
7. The preparation of the said proposed plan was expressly authorized and directed by the said Subsection (c) of Section 7 of the Amalgamation Act, and the same was not prepared under the provisions of The Department of Municipal Affairs Act, 1935.

8. No grounds exist for a declaratory judgment against these Respondents and even if such existed the learned Trial Judge has in the exercise of his discretion refused to do so, and it is submitted the discretion exercised should not be interfered with. Record.
p. 85.

9. These Respondents therefore submit that the judgment of the Court of Appeal for Ontario affirming the judgment of the Trial Judge was right and should be affirmed for the following

REASONS

- 10 (a) Because these Respondents are sued in their individual capacities and no claim is made against them as such.
- (b) Because any duties which they performed in respect of the funding and refunding plan were ministerial only under express statutory authority.
- (c) Because no legal effect flowed from any act of these Respondents acting as members of The Windsor Finance Commission.
- (d) Because in any event all acts performed by these Respondents in their capacity as members of the said Commission were ratified and confirmed by statute.
- 20 (e) Because in any event The Windsor Finance Commission has ceased to exist and no judgment, declaratory or otherwise, can be given against these Respondents as members thereof.

J. H. RODD,

L. Z. McPHERSON,

of Counsel for George Bennett,
Harry J. Mero, W. Donald Mc-
Gregor and Russell A. Farrow.

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BETWEEN

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(Plaintiffs) Appellants

and

GEORGE BENNETT, HARRY J. MERO, W. DONALD McGRÉGOR, RUSSELL A. FARROW, THE CORPORATION OF THE TOWN OF WALKERVILLE; (and other corporations), THE CORPORATION OF THE CITY OF WINDSOR, THE WINDSOR UTILITIES COMMISSION AND THE ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO

(Defendants) Respondents

CASE FOR THE RESPONDENTS

GEORGE BENNETT, HARRY J. MERO,
W. DONALD McGRÉGOR and
RUSSELL A. FARROW

BLAKE & REDDEN,
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