

applicants, but in the Divisional Court adversely to them, they should not be precluded from carrying the question further, if so disposed.

Order made for leave to appeal upon security being given by bond for \$200 or by paying \$100 into Court.

If the appeal should proceed, the costs of the application to be costs in the cause; if it should not proceed, the applicants to pay them.

J. H. Spence, for the applicants. *J. S. Denison*, for the residuary legatees.

Osler, J.A.] *TEETZEL v. DOMINION CONSTRUCTION CO.* [Dec. 10, 1897.]

Appeal—Printed case—When ordered—Rule 802—Terms.

Except where for the convenience of the Court appeal cases ought to be printed, the Court will not, as a rule, force that course upon an unwilling appellant at the instance of the respondent, upon a motion under Rule 802 (3).

If the respondent desires to have the appeal case printed, he may have it done at his own expense; and the appellant may be put upon terms, in the event of a further appeal by him, upon which a printed case will be necessary, as to the use of the books printed by the respondent.

Aylesworth, Q.C., for the respondent. *D'Arcy Tate*, for the appellants.

Moss, J.A.] *MACDONALD v. CITY OF TORONTO.* [Dec. 17, 1897.]

Parties—Substitution of plaintiff—Class suit—Dismissal of action—Appeal to Court of Appeal—Security for costs—Time extension.

A motion on behalf of the plaintiff for an order substituting a new plaintiff for him, and extending the time for giving security for the costs of the appeal to this Court, and for delivering reasons of appeal.

The action was brought by the plaintiff, on behalf of himself and all other ratepayers of the city of Toronto, against the city corporation and R. J. Fleming, to have the appointment of the latter as assessment commissioner declared illegal, etc. On the 11th November, 1897, MEREDITH, J., gave judgment dismissing the action with costs. Notice of appeal from his decision was given by the plaintiff on the 9th December, 1897.

The plaintiff wished to be a candidate for the office of mayor or alderman for the city of Toronto at the next municipal election, and feared that the continuance of the action in his name might disqualify him as a candidate.

The application was opposed by the defendants.

Held, that where a judgment has been pronounced in favor of the plaintiff in a class action, that judgment enures to the benefit of the class, and he cannot deprive the others of that benefit; but not so where the action has been dismissed; the reasons which apply in favor of depriving a plaintiff of the control of a favorable judgment do not exist in the case of an appeal decision. There was no ground upon which, unless by consent of the defendants, an order for substitution could be made in this case.

The plaintiff, however, in the event of his wishing to prosecute the appeal in his own name, was allowed further time to give security and deliver the draft appeal case, together with his reasons of appeal.

Bradford, for the plaintiff

Fullerton, Q.C., and *W. C. Chisholm*, for the defendants.