

MULOCK, C.J.Ex., read a judgment in which he said that the plaintiff, a ratepayer of the township, who sued on behalf of himself and all other ratepayers, contended that the payment made to the defendants, who were the members composing the township council and who directed the payment to be made, was illegal, and that the defendants should be ordered to repay the amount, \$219.13, to the municipal corporation.

Objection was taken to the constitution of the action, it being argued that it could not be maintained at the suit of an individual ratepayer, though suing on behalf of himself and all other ratepayers, but should have been brought in the name of the corporation.

The learned Chief Justice said that the corporation was the proper plaintiff, but circumstances may entitle an incorporator, on behalf of himself and all others of his class, to bring an action for the benefit of the corporation; in such a case he must first shew to the Court sufficient reason for the corporation not being a party plaintiff, and must make the corporation a party defendant. If the corporation is not a party, there is no person before the Court to receive any moneys that may be found due to it or to give acquittance in respect thereof. Moreover, the corporation would not be bound, and the defendants would be liable to as many actions as there are ratepayers: *Bowes v. City of Toronto* (1858), 11 Moore P.C. 463, and other cases.

So far as appeared, no attempt was made before action to make the corporation bring the action, but after the defendants (other than Barker) had denied the right of the plaintiff to maintain the action, the plaintiff's solicitor wrote to the township council asking that the corporation should join in the action as a party plaintiff. The council by resolution refused the request, and intimated that the council would not bring an action in the corporation's name for the purpose of recovering the \$219.13.

In these circumstances, the plaintiff, suing on behalf of himself and all other ratepayers, was entitled, on adding the corporation as a defendant, to maintain the action, and leave so to amend should be given.

The council, unless authorised by statute, would have no right to expend moneys of the ratepayers in payment of the travelling expenses of the delegation. The defendants contended that the payment was authorised by sec. 427 of the Municipal Act, as enacted by 4 Geo. V. ch. 33, sec. 19, which provides that the council of a township may pay "for or towards the travelling or other expenses incurred in respect to matters pertaining to or affecting the interests of the corporation in any year." The object of the delegation's mission to Ottawa was to induce the