

The plaintiff in bringing this action desires to clear the way for the council to introduce and submit, if they desire to do so, another repealing by-law before the expiration of three years from the 4th January, 1909.

I am of opinion that, if the repealing by-law had been approved by the requisite majority of the electors, it would have been impossible, upon the facts shewn, and for reasons given, to have quashed it; and so I am of opinion that nothing in the directions to voters, or in any other matter or thing brought before the Court, can avail to set aside the submission of or voting upon the repealing by-law.

Even if my decision had been the other way, I am of opinion that the plaintiff could not, upon the facts, maintain this action. It is not shewn that the ratepayers, or any of them, desire to have another by-law submitted, or that the council either desire to submit or intend to submit or refuse to submit another by-law.

In *Re Vandyke and Village of Grimsby*, 19 O. L. R. 402, a petition had been presented to the council, signed by 143 ratepayers, asking to have another repealing by-law submitted. That was a motion to a Judge in Chambers for a mandamus. Such an application gives no warrant for an action at law by a ratepayer who, without petition or application to the council, and without knowing what, if any, action the council intends to take, finds some flaw in what the council has done.

A further objection strongly urged by the plaintiff's counsel was that the change of the territorial limits of Owen Sound, by county by-laws 728 and 735, in some way affected the voting upon the repealing by-law. The former of these county by-laws did not come into force until the 15th January, 1909, and the latter until the 29th January, 1909. In no way has either by-law any bearing upon the repealing by-law or the voting thereon. Part of the township of Brooke was attached to Owen Sound by order of the Ontario Railway and Municipal Board. That order was not made until the 4th February, 1909, and it signifies nothing, as to the matter now under consideration, that the order, for the purpose of adjusting matters dealt with, took effect as if passed on the 31st December, 1908.

I agree with the decision of the learned trial Judge. There are not any grounds disclosed in the evidence or mentioned in argument upon which this action is maintainable.

The motion should be dismissed with costs.

SUTHERLAND, J.:—I agree.