

judgment of FALCONBRIDGE, C.J., 2 O. W. R. 880, dismissing the action.

R. S. Robertson, Stratford, for plaintiff.

G. G. McPherson, K.C., for defendant corporation.

J. C. Makins, Stratford, for other defendants.

Moss, C.J.O.—A perusal of the papers and further consideration confirm the opinion I formed during the argument of this motion that plaintiff has not been able to bring this case within the terms of sec. 77 (4) of the Judicature Act. His pecuniary interest is admittedly of the most trifling nature. It is not a case of conflicting decisions of the High Court or Judges thereof. And no other sufficient special reasons for treating the case as exceptional and allowing a further appeal have been shewn.

It was said that the Judges of the Divisional Court had misapprehended the facts with regard to plaintiff's status, that they had overlooked the fact that at the date of the passing of the by-law in question he was tenant of lot No. 9 in the 6th concession of Ellice, and that as such tenant he had a locus standi to impeach the by-law. But this tenancy had terminated before he commenced this action, and but for his tenancy under Mrs. Drown he would have ceased to be a ratepayer altogether. When he instituted these proceedings his sole right as former tenant of lot No. 9—if he had any—was to recover back from the township the few cents of taxes he had paid in excess of what he would have been obliged to pay but for the by-law, and for this he could have sued in the Division Court. Besides, I am not satisfied that, either at the trial or before the Divisional Court, he relied upon his position as tenant of lot No. 9. The written arguments and the notice of appeal to the Divisional Court appear to deal only with his position as Mrs. Drown's tenant. There does not seem to have been any misapprehension on the part of the Court of plaintiff's position.

The case seems to be the not uncommon one of a party who has deliberately selected his appellate tribunal remaining unconvinced notwithstanding the adverse decision of the forum of his choice. Plaintiff has the opinion of two Courts against him, but that of itself is no good reason for a further appeal. In other respects the case presents no features of sufficient importance to take it out of the general rule of the statute.

Motion refused with costs.