

upon further directions. Let it be referred to the Master to investigate and report upon the truth of the defence and report specially as to taxes, etc. Further directions and costs reserved. The defendant should as a condition of this relief pay into Court or give security for \$100, to be dealt with by the Court after the conclusion of the case. If this condition is complied with in 14 days, order as above. If not, appeal dismissed with costs.

OCTOBER 22ND, 1902.

DIVISIONAL COURT.

RE RITZ AND VILLAGE OF NEW HAMBURG.

Parties—Summary Application to Quash Municipal By-law—Countermand—Motion to Add or Substitute New Applicant.

Appeal by John F. Katzenmeier from order of MACMAHON, J., in Chambers (*ante* 574), dismissing application for an order allowing appellant to be added as an applicant for a summary order quashing by-law 259 of the village of New Hamburg, or substituting him for Charles Ritz, the original applicant, who had countermanded his notice of motion for the order. When the countermand was served, the time for applying to quash had expired.

New material was allowed to be used upon the appeal, which was heard by BOYD, C., STREET, J., MEREDITH, J.

E. E. A. DuVernet, for Katzenmeier.

A. B. Aylesworth, K.C., for the corporation.

BOYD, C.:—The analogy of proceedings in an action applies to these applications to quash by-laws: *Re Sweetman and Townships of Gosfield*, 13 P. R. 293, approved of by the Court of Appeal in *Re Shaw and City of St. Thomas*, 18 P. R. 454.

When the fact is that the motion to quash is taken on behalf of a number of interested ratepayers who have combined to make the necessary deposit to answer costs, it is as a matter of course to allow any amendment of the papers so as to place that fact on record: *In re Tottenham*, [1896] 1 Ch. 628. And if it be the fact that the motion is in truth on behalf of a number so interested, the failure of the individual put forward to give a title to the proceedings to prosecute, or his attempt to relinquish the proceedings, should not prejudice the others who seek to have the matter adjudicated. In such a case the practice of the Court is to substitute another, being one of those really interested: *Hughes v. Pump House Co.*, [1902] 2 K. B. 485.