

and, if the agreement actually made by council be what plaintiff alleges, the alteration effected is most material, and entails a loss to the municipality of at least \$3,000, or, if the estimate of the Consumers' Company as to the value of supplies put into plant after 30th April be correct, of \$6,771.79. If plaintiff has, as a ratepayer suing on behalf of himself and other ratepayers, a right to maintain an action to protect the municipality against such a loss, his proceedings certainly should not be burked on the ground of frivolity or vexatiousness.

Defendants contend that, in so far as it is sought to control the action of an officer of the municipal corporation and to compel payment of moneys by him to which the municipal corporation are entitled (if there be any liability on the part of its officer), plaintiff, suing as he does, cannot maintain this action; that, at all events, he cannot do so without alleging and proving that the municipal corporation have refused to bring such an action, or otherwise to protect the interests of the municipality in the premises; that, the acts of the mayor being capable of ratification by the municipal corporation through their council, no action lies by a ratepayer qua corporator in respect of it; and that the acts complained of have in fact been acquiesced in and ratified by the council, and must therefore now be treated as if originally authorized.

For the purpose of the present applications plaintiff's allegations of fact must be taken to be true, just as they would have been upon a demurrer.

Excepting that plaintiff does not here charge that the mayor acted fraudulently and for his own personal profit, the analogy between the present case and *Paterson v. Bowes*, 4 Gr. 170, is in many respects very close. An allegation of such fraud does not seem to me to be essential to plaintiff's cause of action. In substance, he alleges an illegal and unauthorized application of funds of the municipality by the mayor—an expenditure for which the municipality has received no consideration. No doubt, the municipal corporation would . . . be entitled to maintain the present action in respect of most of the relief which plaintiff seeks; and, unless they should be unwilling and refuse to sue, no ratepayer can bring such action. Plaintiff has not in his statement of claim alleged such unwillingness or refusal, as he no doubt should have done, and, under the strict practice