

to do so by the federation. He alleged that, to exclude him from membership, the local body went through the form of dissolving itself, with the object of forming a new body from which he should be excluded, and so deprived of his membership in the federation.

J. H. Moss, for plaintiff.

J. G. O'Donoghue, for the individual defendants except Joseph Weber.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—It was objected by defendants that the question at issue between plaintiff and defendants is one which must be determined by the tribunal appointed by the rules of the association, and that it is not the habit of the Courts to interfere until recourse has been had to them. It may very possibly appear, when the parties are brought before the Court, that this is the case, but to determine that question now would be to try the case, which we should not do upon a mere question of adding parties. . . .

The same order should be made as in *Small v. Hyttenrauch*, except that defendants in this action should be sued as representing the members of the London Musical Protective Association other than the plaintiff, Cresswell; and there should be no costs here or below.

JULY 18TH, 1903.

DIVISIONAL COURT.

McGILLIVRAY v. MUIR.

Justice of the Peace—Penalty—Action for—Wilfully Receiving Larger Fee than Authorized—Amendment—Notice of Action—Fee Received in Case where none Authorized—Jurisdiction—Recovery—of Fee—Costs.

Appeal by defendant from judgment of junior Judge of County Court of Bruce in favour of plaintiff in a *qui tam* action for a penalty.

T. Dixon, Walkerton, for defendant.

J. Idington, K.C., for plaintiffs.