

to found the application for a mandamus, the action of a deputation which waited on the council and urged the submission of the by-law, was a sufficient demand; and that, although there may have been no express refusal by the council formally announced, the proceedings in the council shew that there was a withholding of compliance with the prayer of the petition, a determination not to comply, which was the equivalent of a refusal.

Semble, also, per ANGLIN, J., that the statute is imperative, and it is the duty of the court, upon the application for a mandamus, to determine for itself whether or not a petition sufficiently signed has in fact been filed, whatever view the municipal council may have taken of it.

Haverson, K.C., for Walsh, a councillor, appellant. *Middleton*, K.C., and *McFadden*, K.C., for Williams, the applicant, and for Pringle and Ashley, councillors. *Raney*, K.C., for Jackson, deputy-reeve, and Watson, a councillor. *T. J. Blain*, for the mayor. The reeve, appeared in person.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

[Nov. 30, 1908.

BENT v. ARROWHEAD LUMBER COMPANY.

*Practice — Cross appeal — King's Bench Act, rule 652(a) —
Relief against party not an appellant.*

The plaintiff brought this action for \$50,000 commission on a sale of land. After delivery of the statement of defence the plaintiff obtained leave to amend his statement of claim by adding the president of the company (one Meredith) as a defendant, and claiming alternative relief against him in case he was not authorized by the company to employ the plaintiff on its behalf. At the trial judgment was given against the company for \$25,000, and the action was dismissed as against the defendant Meredith without costs.

The company appealed and the plaintiff thereupon served a notice under rule 652(a) of the King's Bench Act by way of cross appeal on the solicitors for the company and also on the solicitors for Meredith, claiming that the amount awarded by