

name being substituted for that of Charles Ritz, or to his name being added as one of the applicants, was filed.

E. E. A. DuVernet, for Katzenmeier.

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

MACMAHON, J.—The control of the proceedings to quash the by-law rested with Ritz, and when he served notice of countermand on the village corporation the proceedings on his application came to an end. And what Katzenmeier asks is to have his name substituted as an applicant on the motion to quash, when the original applicant has put an end to the proceeding by his notice of countermand.

The authority relied upon by Mr. DuVernet—*McPherson v. Gedge*, 4 O. R. 246—does not support his claim to the order. That was an action under the Mechanics' Lien Act, sec. 15 of which provides that suits brought by a lienholder shall be taken to be brought on behalf of all the lienholders of the same class; and the Court held that upon the death of a lienholder who had brought a suit, or his refusal or neglect to proceed, the suit might by leave of the Court be prosecuted by any lienholder of the same class. There the statute gives express power to the Court to allow a lienholder, under certain circumstances, to intervene and become a party to the suit. And the statute (R. S. O. ch. 223, sec. 231), in case of quo warranto proceedings, permits a new relator to intervene and prosecute. So also where a creditor brings an action on behalf of himself and all other creditors to set aside as fraudulent a conveyance made by his debtor, there, in the event of the plaintiff declining to prosecute the action, another creditor would, on application, be allowed by the Court to intervene, on proper terms as to costs, as the action is framed so as to include such other creditor. And had Ritz in his notice of motion to quash alleged that he was acting not only for himself but for all other ratepayers interested in quashing the by-law, if Ritz refused to proceed with the motion, the Court would, on an application by one of the other ratepayers interested, have permitted him to be joined in the notice of motion as one of the class referred to therein.

Katzenmeier does not even allege that he was one of those who induced Ritz to institute the proceedings to quash.

There is no authority to make the order asked for, and the motion must be dismissed with costs.