

OSLER, J.A.—The trial Judge had the right to dispose of the case. It is not suggested, even if that would now have been of any avail to plaintiff, that there really is any further information to be obtained of tangible value. The staleness of the claim and all the circumstances surrounding it, emphasized in the judgment of the Divisional Court, point strongly to the probability that there is no merit in it, and there being two concurrent findings to that effect, with which no possible fault can be found, leave to prosecute a further appeal should not be granted.

Motion refused with costs.

BOYD, C.

SEPTEMBER 25TH, 1902.

WEEKLY COURT.

RE ALLEN AND TOWN OF NAPANEE.

*Municipal Corporations—Resolution of Council—Trimming of Trees in Streets—Towns and Villages—Powers of Council—Necessity for By-law.*

Motion by Allen for a summary order quashing a resolution of the town council of Napanee, that "the street committee have instructions to see that the street trees, where necessary, be properly trimmed." The Municipal Act, R. S. O. ch. 223, sec. 574, sub-sec. 4, relating to the planting and trimming of trees on or adjacent to streets, purports to confer jurisdiction to pass by-laws thereupon to the councils of cities, towns, and villages having a population of 40,000 or more. There are no towns and villages in Ontario with such a population. Yet sec. 575 contemplates that by-laws for cutting and trimming and removal of such trees on streets may be passed by towns and villages. Napanee is a town of 3,200 inhabitants.

C. R. W. Biggar, K.C., for the applicant, contended that the resolution was ultra vires, and that a by-law was at all events necessary.

W. E. Middleton, for the town corporation, contra.

BOYD, C.—I incline to think the proper construction of sec. 574 (4) is that towns and villages may pass by-laws authorizing some officer appointed for that purpose by the council to trim all trees, whether on or adjacent to the streets, whereof the branches extend over the streets. That is to say, power is conferred on the municipality to provide that these trees do not by their growth and extension of branches