

part I have no sympathy with the suggestion. It should not be considered beneath the dignity of the Court to consider on its merits any question properly before it—and contracting parties should not be allowed wilfully to break their contracts because the damage is small.

Leave should be reserved to the plaintiffs to bring an action for damages if for any reason the defendant fail to make title.

HON. MR. JUSTICE BRITTON:—I agree.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—I agree in the result.

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HON. MR. JUSTICE MIDDLETON.

OCTOBER 26TH, 1912.

STODDART v. OWEN SOUND.

4 O. W. N. 171.

*Elections — Municipal — Declaration of an Election to be a Nullity by Trial Judge — Right of Ratepayer to Appeal when Municipal Council Refused to Appeal.*

MIDDLETON, J., *held*, that there was no principle nor authority which would permit the Court to allow a ratepayer to intervene and appeal from a decision of a trial Judge declaring a certain municipal election a nullity where the municipal council had decided not to appeal, municipal action or inaction being decided by the council alone.

Motion by F. W. Millhouse, a ratepayer of Owen Sound, for leave to intervene and appeal, either in his own name or in the name of the defendants, and upon proper terms as to indemnity, from a judgment of the HON. MR. JUSTICE LENNOX, 4 O. W. N. 83; O. L. R.

W. E. Raney, K.C., for the applicant.

H. S. White, for the plaintiff.

Joseph Montgomery, for the defendants.

HON. MR. JUSTICE MIDDLETON:—The action was brought by a ratepayer for the purpose of having it declared that the submission of a by-law to repeal a local option by-law in January last was, by reason of the failure to observe the provisions of the Municipal Act, a nullity, and does not operate to prevent the submission of a repealing by-law in January next, if the municipality sees fit.