

This plaintiff is not a proper representative of the body of ratepayers, who alone are interested in the money now sought to be recovered as assets of the municipality. The evidence given is in accord with this result. The witness called by the plaintiff (who was also the town clerk) said that the plaintiff is not and is not looked on as a ratepayer for this year, 1911; and it has not been proved that he is or that he will be. Hence his alleged status of ratepayer is of too vague and fugitive a character to justify his interference on behalf of the class he undertakes to represent.

I prefer to place my judgment on this ground rather than on that which appears in the judgment below. Many grave questions arise as to the pertinence of the Trustee Act, 62 Vict. ch. 15(O.), to a municipal corporation applying municipal funds to the payment of costs of their chief constable, in an action against him as an officer of justice acting in the enforcement of the Liquor License Act. I do not find it needful to discuss these questions on this record and at the suit of this plaintiff.

Judgment affirmed with costs.

MIDDLETON, J.

DECEMBER 8TH, 1911.

O'NEIL v. TOWNSHIP OF LONDON.

*Highway—Obstruction—Injury to Traveller—Cause of Injury—Negligence of Municipality—Contributory Negligence—Weigh-scales Erected on Highway by Licensee—Injury not Caused by.*

Action by Melvin O'Neil, a farmer, against the Corporation of the Township of London and one Clatworthy to recover damages for personal injuries sustained by the plaintiff by reason of an obstruction in a highway in the township, the existence of which was alleged to be owing to the negligence of the defendants or one of them.

T. G. Meredith, K.C., for the plaintiff.

E. Meredith, K.C., and W. R. Meredith, for the defendants the Corporation of the Township of London.

J. M. McEvoy, for the defendant Clatworthy.

MIDDLETON, J.:—The evidence in this case discloses the following situation:—