

company: Rule 590; and it was so sworn in the affidavit filed in support of the motion. But the case, as developed by the materials now on file, and by the arguments, was that the insurance company was not at that time indebted to the lumber company, but to the town corporation, if the town corporation's contention was correct, or to the bank, if the bank's contention was entitled to prevail. The town corporation's own claim, as now presented, was thus destructive of the case made upon the application for the attaching order; and, upon that ground, the attaching order and the order directing the issue, which depended upon it, must be set aside. This was sufficient to dispose of the appeal, but it was to be noted that the orders appealed against would probably be ineffective to produce a speedy determination of all the questions raised. For instance, if it was determined that the policy moneys were payable to the town, the bank would still be free to press, as against the insurance company, the claim based upon estoppel. Similarly, if the policy moneys were found to be payable to the bank, the town would be free to press, as against the insurers, the second of its alternative claims. Naturally, the insurance company did not wish to pay the money into Court, unless by so doing it would obtain a discharge of all liability; and it did not seem quite fair that it should be asked to do so. It seemed, then, that giving effect to what appeared to be the strict legal view, and leaving the parties free to present such issues as they might desire, in such manner as seemed to them to be best, was what it would be well to do as a matter of discretion, if there was room for the exercise of discretion upon an application for such an order.

The orders appealed from should be set aside, and the town corporation should pay the costs of the bank and of the insurance company, both of the motions before the Local Judge and of the appeal.

LENNOX, J.

MAY 9TH, 1919.

HATTON v. CITY OF PETERBOROUGH.

Municipal Corporations—By-law Authorising Construction of Sewer—Illegality—Powers of Council—Extra-territorial Operation—Benefit of Suburban Area—Public Policy—Public Health Act—Local Improvement Act—Notice of Intention to Pass By-law—Insufficiency—Mala Fides—Ulterior Purpose—Ultra Vires.

George W. Hatton made a summary application for an order quashing by-law No. 2125 of the City of Peterborough; and on