

committee of the whole. The money was on hand. The majority of the council of 1902 desired that this money should be paid. The action is defended, so it is evident that the council of 1903 does not sympathize with or concur in plaintiff's action. The plaintiff, technically, has a right to bring an action, and he has done so, instead of moving to quash the by-law; but there is no evidence that the ratepayers, the persons mainly interested, are with the plaintiff, or are objecting to the proposed payment of the small sum mentioned to the mayor of 1902. The inference from the material before us is rather the other way. Plaintiff is hostile to the late mayor, and he ought not to be allowed to thwart the will of the council merely because, by a slip, the council did not consider the by-law in committee of the whole council, but considered it as a council. If there can be a case in which it can be said that there is any discretionary power on the part of the Court or a Judge as to granting or refusing an injunction, this is such a case.

No doubt the majority of the council desired to recoup the mayor, to some extent, for his loss in law costs incurred in the action brought against him by plaintiff. This law suit was against the mayor for what he did as mayor in the interest or supposed interest of the town. I see no objection to this course; but, unfortunately, the council did not comply with the by-law they had previously passed, in putting by-law No. 764 through its different stages. The plaintiff's examination as a judgment debtor is in, and it shews him to be a shifty man, not candid or frank, and that he will never, if he can avoid it, pay one penny of the judgment; and it seems to me perfectly clear upon the evidence that this action was not brought by him in the interest of the ratepayers, but purely as a personal matter, to prevent Cryderman recovering anything to reduce his loss.

As to discretion, see *Doherty v. Allman*, 3 App. Cas. 709.

If, instead of the action and motion for judgment, plaintiff had moved to quash the by-law, the Court might, in the exercise of its discretionary power, refuse to quash. See *Re Huson and Township of South Norwich*, 19 A. R. 343, 21 S. C. R. 669.

In the exercise of our discretion, in the circumstances of this case, we should not allow the appeal.

FALCONBRIDGE, C.J.—I agree in the result of my brother Britton's judgment. This appeal will, therefore, be dismissed with costs.

STREET, J., dissented, giving reasons in writing.