

and repaid to the bank. The only question on this appeal was, therefore, as to the costs of this action.

W. Proudfoot, K.C., for plaintiff.

E. L. Dickinson, Goderich, for defendants other than the bank.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.), was delivered by

STREET, J.:—The Court is bound to hear and decide the merits of the appeal: *Fleming v. City of Toronto*, 19 A. R. 318. The plaintiff's personal interest is not a bar to his bringing the action.

On the merits, the town had no power to procure the loan, for two reasons. First, because, looking at sub-sec. 4 of sec. 435 of the Municipal Act, R. S. O. ch. 223, it is clear that in order to ascertain the amount which a municipality may borrow for current expenses under that section, the amount of taxes collected for school purposes in the previous year must be deducted from the whole sum collected, and eighty per cent. of the difference only borrowed. Since the town had in 1900 only collected \$21,774, deducting school rates, they could in 1901 only borrow for current expenses \$17,419, and since, before this loan was made, they had already borrowed \$17,000, this loan caused the legal limit to be exceeded. Secondly, because the borrowing power under sec. 435 (3) is limited to what is required for the ordinary expenses of the municipality, and an outlay which had not been contemplated when the estimates were prepared, and for which no provision, either special or as a possible contingency, had been made in the estimates, could not possibly be deemed part of the "ordinary expenditure" for the year.

Appeal allowed. Costs of action and appeal against defendants other than the Bank of Montreal.

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DECEMBER 15TH, 1902.

DIVISIONAL COURT.

PRITCHARD v. FICK.

*Contract—Construction—Evidence to Aid—Reformation after Breach.*

Appeal by defendant from judgment of STREET, J., at trial at Brantford without a jury, in favour of the plaintiffs for \$684 and costs. The action was brought for damages for non-performance of an agreement by defendant to supply plaintiffs in 1900 with 500 barrels of apples, of which only 196 barrels were delivered. The defendant set up an agree-