

NOVEMBER 3RD, 1906.

C. A.

GOODWIN v. CITY OF OTTAWA.

Appeal to Court of Appeal—Leave to Appeal from Order of Divisional Court — Special Grounds — Assessment and Taxes.

Motion by plaintiff for leave to appeal from order of a Divisional Court, ante 77, affirming judgment of TEETZEL, J., 7 O. W. R. 204, after trial without a jury at Ottawa, dismissing the action.

H. S. Osler, K.C., for plaintiff.

W. E. Middleton, for defendants.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.), was delivered by

MOSS, C.J.O.:—The action is, in form, one to restrain defendants from collecting or enforcing payment of taxes upon an assessment for income in respect of dividends from shares held by plaintiff in the Ottawa Electric Railway Company.

The question, so far as monetary value is concerned, is whether plaintiff is liable to pay a sum of about \$25 a year for the next 17 years at the furthest, or about \$425 in all. It is said that there is a special feature, in that there are other shareholders of the railway company resident in Ottawa who are in the same plight.

But there are other shareholders resident in other parts of Ontario who, when assessed in the several municipalities in which they reside, could not avail themselves of the agreement sought to be set up against defendants. Plaintiff himself could not do so if he went to reside in another municipality.

It cannot be said that the litigation is one affecting the rights of the whole body of shareholders. In point of fact, all the shareholders, including plaintiff, are obtaining an incidental advantage from the exemption given the company,