Peter White, K.C., for the plaintiff.

G. H. Kilmer, K.C., and J. M. McNamara, K.C., for the defendants.

KELLY, J.:—By a proclamation issued by the Lieutenant-Governor of the Province of Ontario in Council, dated the 7th April, 1910, it was declared that certain parts therein particularly described of the township of Widdifield, in the district of Nipissing, should be withdrawn from that township and be annexed to the town of North Bay, and that such withdrawal and annexation should take effect on and after the 1st January, 1911.

On the 10th August, 1910, a by-law was passed by the municipal council of the township of Widdifield authorising the expenditure of $33,000 for the carrying out of the work of making certain permanent improvements for the purpose of opening, improving, grading, and gravelling certain streets, the opening, making, and constructing of certain storm sewers, and the constructing certain waterworks and watermains in that part of the township of Widdifield so to be annexed to the town of North Bay, and providing for the issue of debentures of the township for the purpose of raising these moneys.

On the 12th December, 1910, an application was made to the Court to quash this by-law, and the application was dismissed; but on appeal the by-law was quashed by a Divisional Court on the 23rd June, 1911: Re Angus and Township of Widdifield, 24 O.L.R. 318.

Some time prior to the 15th October, 1910, the council of the township proceeded to call for tenders for the construction of the storm sewers and works in connection therewith; and the plaintiff put in a tender for that work, and it is alleged that the council accepted his tender, following which what is alleged to be an agreement, dated the 15th October, 1910, was made between the plaintiff and the defendants the Corporation of the Township of Widdifield, for the carrying out of the work so tendered for by the plaintiff.

The municipal council of the township consisted of the reeve and four other members.

Prior to the opening and consideration of the tenders, there was evidently a difference of opinion amongst the members of the council as to the advisability of proceeding with the work, the reeve and two other members being in favour of it, while the other two disapproved of it.