FEBRUARY 17TH, 1905.

DIVISIONAL COURT.

PHILLIPS v. CITY OF BELLEVILLE.

Municipal Corporations—Acquisition of Lands at Tax Sale —Duty to Sell—Sale by Tender—Resolution of Council to Accept Lower Tender — Action by Person Making Higher Tender — Injunction — Equitable Jurisdiction over Municipal Corporations — Duty of Councillors as Trustees—Administration of Trust Property.

Appeal by plaintiff from judgment of STREET, J., at the trial, refusing to make perpetual an interim injunction granted by ANGLIN, J., restraining defendants the corporation of the city of Belleville from proceeding with a sale to defendant Caldwell of certain lots acquired by the corporation under the Assessment Act in satisfaction of arrears of taxes.

The appeal was heard by BOYD, C., MACMAHON, J., MEREDITH, J.

E. D. Armour, K.C., for plaintiff.

W. C. Mikel, Belleville, for defendant corporation.

W. J. Diamond, Belleville, for defendant Caldwell.

BOYD, C.—In December, 1902, the city of Belleville became the purchasers at tax sale of the lots in question under the provisions of the Assessment Act, R. S. O. 1897 ch. 224, sec. 184 (3). Under this statute, as amended by 61 Vict. ch. 25, sec. 5, it became the duty of the council of the municipality to sell such lands within 7 years, and, pursuant to this requirement, the lots in question were offered to be sold, and sealed tenders invited from two competing private bidders, one of whom is plaintiff, suing for himself and all ratepayers of the city, and the other is one of the defendants.

It does not seem very material to dwell on the preliminary offers and the action of the executive committee thereon, for the matter was brought before the council, and the result was, as I have said, that sealed tenders were called for: both parties responded, plaintiff offering $326.50, accompanied by a cheque marked good, and the defendant offering $265 as cash. The council . . . resolved to accept the lower offer, against the protest of the higher bidder. The only