

and the survey will consist, under R.S.O. 1887, c. 152, s. 39, of planting posts at the angles of the lots on Bailey Street, Joseph Street, . . . and a street . . . which, it appears, has no name. These are the streets on which the Bailey lots front, and I presume that a post planted at the front angles of these lots would be all that the municipality would require. . . . Let us know at once, and . . . give us the name of the surveyor to whom you wish instructions to issue." Thereafter a resolution was passed by the village council "That the clerk be instructed to order a surveyor to locate the streets of the village at once." The clerk then wrote to the Commissioner of Crown Lands that the council had decided to employ C., land surveyor, "To run the lines on certain streets and lots on the Bailey estate." An order-in-Council was passed, by which C. was instructed to survey the village lots of the Bailey estate and to plant durable monuments at the front angles of each of these lots, on Joseph Street, Bailey Street, and a street south of Bailey Street, unnamed in the original survey, and he did as he was instructed. The village council then passed a by-law directing that the sum of \$290.77 should be levied on the proprietors of the lands surveyed, being the village lots of the Bailey estate.

Held, 1. The survey directed was not authorized and was illegal, the requirements of the statute (R.S.O. 1887, c. 152, s. 391) not having been complied with so as to give the Lieutenant-Governor-in-Council jurisdiction to authorize the survey.

2. The survey being illegal, the municipal council had no power to pass a by-law to levy the cost of it.

3. If there was jurisdiction to authorize the survey, it could only be at the cost of the proprietors of the lands in each range or block interested, and not of all the proprietors, whether interested or not.

In re Scott and County of Peterborough, 26 U.C.R. 36, followed. *Regina v. McGregor*, 19 C.P. 69, distinguished.

R. D. Gunn and T. E. Godson, for plaintiffs. *C. E. Hewson*, for defendants.

LOVELL T. COLE.

Master in Chambers—Street, J.]

[Jan. 18, 27.

Contract—Breach of—Traveller—Action within jurisdiction.

The defendant was employed by the plaintiffs, who resided and carried on business in Ontario, to act as their traveller, at an agreed on remuneration, in selling and taking orders for their goods over a prescribed route to British Columbia and return, his duties on such return requiring him to call at a number of places in Ontario; to make his report to the plaintiffs, and return his samples. After entering on the performance of the contract, and while in British Columbia, he wrote resigning his position, which the plaintiffs refused to accept, and, after allowing a sufficient time to elapse for the performance of the contract, they brought an action in Ontario for the breach of the said contract.