

members of its council, to recover moneys of the municipality spent in practically re-constructing a sidewalk in the town which had fallen into disrepair by reason of the neglect of former councils, and so required the re-construction which was carried out. The claim was based upon sec. 5 of the special Act incorporating the town (47 Vict. ch. 57 (O.)), which provided that "all expenditure in the municipality for the improvements and services for which special provisions are made in secs. 612-624 of the Consolidated Municipal Act, 1883, shall be by special assessment on the property benefited and not exempt."

H. L. Drayton and D. Mills, Port Arthur, for plaintiff.

N. W. Rowell, K.C., and W. F. Langworthy, Port Arthur, for defendants.

STREET, J., held, that the members of the council had the authority of Meredith, C.J., in *Re Medland* and the City of Toronto, 31 O. R. 243, for believing that what they did was no more than they could be compelled to do under 63 Vict. (2) ch. 26, sec. 41. They had acted in perfect good faith, and in the bona fide belief that they were doing their duty as trustees for the general body of ratepayers. The Act 62 Vict. (2) ch. 15, sec. 1, seemed wide enough to apply to protect them, even if not within its strict letter, in view of the disinclination of the Courts, even before that Act, to render liable municipal officers honestly doing their duty: *Baxter v. Kerr*, 13 Gr. 367.

Action dismissed with costs.

STREET, J.

JANUARY 8TH, 1903.

TRIAL.

SMITH v. HUGHES.

Specific Performance—Contract for Sale and Purchase of Land—Action by Nominal Purchaser—Undisclosed Principal—Property of Speculative Value—Purchaser Sleeping on his Rights

Action for specific performance of a contract dated 29th August, 1900, signed by defendant Hughes, whereby he agreed to sell to plaintiff for \$1,500, of which \$50 was to be paid in cash, a certain brickyard. The defendant Plummer was under agreement to sell the yard to the defendant Hughes. The plaintiff made the contract as agent for an undisclosed principal, and on the day following the making of the contract went to Hughes and got from him an agreement to pay him (plaintiff) \$50 for his services in procuring the sale, since, as he said, the purchaser would pay nothing. This purchaser was one Hamilton, who on 21st September told Hughes he was ready to complete upon the title being made satisfactory.