applicant, Thomas Smith, to compensation for the injury which he states himself to have received. It appears that the injury is not occasioned by any alteration made in the line of the street or road as originally laid out by public authority, but is merely the consequence of the corporation having made and shaped (and as we must suppose properly) the public allowance for road which existed at the time the plaintiff's lot was laid out.

We do not think that the statute was intended to apply, or does in terms apply to any such case, but only to cases where the original allowance for road has been *changed*; that is, altered or diverted from its course; whereby it is taken for the first time through the private property of an individual, or is otherwise injurious to him, as it may be, even where it does not encroach upon his land.

We think the provision referred to, forming, as it now does, part of the 12 Vic., cap. 81, is to be looked on as one of a series of clauses intended to protect private proprietors against injurious consequences from alterations made by the municipal council in the line of any road. It might be reasonably assumed that such *changes* in the road could not have been foreseen, when the property was built upon, or till possession of the land, and that the consequences of the change might expose them to injuries which they could not by any reasonable caution have guarded against. And it is not just that the benefit to the public of giving them a shorter or a better road than that which had been provided for them, should be conferred at the expense of individuals.

There are some cases, perhaps, where, without making any change in the line of the road, the method taken of improving it, either by raising or sinking it, according to circumstances, may prove so injurious to the owner of adjoining land as to make it appear reasonable that he should be compensated, and and the present may be one of those cases.

But we have no discretion to distinguish between cases all depending on the same principles in regard to the right. As a general rule, it does not seem that the claim to compensation for the consequences of improvement made in the proper original line of the highway can be recognized as just and reasonable, because the proprietor of land taking possession of his lot, which has a street running past it, is called upon to consider that for the sake of the public the street will in progress of time be made as level and dry as it may be, either by raising the ground where it is low, or by reducing hills which are inconveniently steep; and having due regard to the make of the ground in its natural state, he has an opportunity of foreseeing such alterations in the level of the street as a regard to public inconvenience will lead to, and he should be governed by that in placing his buildings so as to suit such probable alterations.

In some cases it may be that from the nature of the ground the proprietor could not so place his building as to escape inconvenience from a change made in the level in the road, and in those cases the claim to compensation would be more reasonable. We say nothing of any fair ground of complaint that may arise from any abuse of the power given by law. Such abuse is not shown to exist in this case, and it would point to another remedy; but what we determine is, that anything done within the proper line of the road as originally laid out, for making the use of it more convenient to the public, is not a "*changing*" of the road, such as was intended to give to the adjacent private proprietor a claim to compensation under the statute 12 Vic., cap. 81, as it is now to be read, or was originally framed.

We do not think the legislature meant the clause referred to to be so applied, nor that the words they have used fairly import it. If they did mean it, and we are in error in our interpretation of the clause, it will be necessary for them to make the intention more plain. But we apprehend it has not hitherto been considered, that as a general rule there is any claim to compensation, either by arbitration or by action, where the line of road has not been altered, and where no unnecessary injury has been done. There are numerous instances throughout the country, where parties coming to occupy their lands at an early day, have built close to the front of their lot, along the slope of a hill. They had no right in such cases to assume that the public would never make an improvement in the hill by digging it down, and it would be obvious that if ever they should do so the buildings which they had placed close to the road must be left in an inconvenient situation.

The legislature could hardly mean to make compensation to all such proprietors, and we cannot discriminate between them according to the circumstances of each case. No such case, in our opinion, is provided for by the statute.

Judgment for defendants.

McMurtry v. Munro.

(Easter Term, 19 Vic.)

(*Reported by C. Robinson, Esq., Barrister-at-Law.*)

County Court—Jurisdiction of, where sum reduced by payment—Evidence of account stated.

Appeal from a County Court. The declaration contained three counts, claiming each £50, but the damages were laid only at £50, and the particulars were for account rendered £55 15s., less by cash £22 10s.—£33 5s. At the trial the plaintiff relied on the count on account stated, in proof of which he produced a draft by himself on defendant for £55 15s. 1d., "being the balance in full of your account;" and proved that when presented defendant acknowledged the amount to be correct, but refused to accept it, as he was afraid he would be sued. A verdict having been found for £34 2s. 3d.,

Held, that the claim was within the jurisdiction of the Co. Court; and *Semble*, that the evidence of an account stated was sufficient.

[14 Q. B. R. 100.]

Assumpsit.—1st count—£50, for goods sold and delivered; 2nd count—£50 for interest; 3rd count—£50 on account stated; claiming £50.

Pleas. First—Non-assumpsit.

Second—Payment in full before action brought; on which issue was joined.

The particulars of demand were:—

"May 8th, 1855.

To amount of account rendered.....	£55	15	0
By cash.....	22	10	0
"Interest."	£33	5	0

At the trial the evidence given for the plaintiff was as follows:—

George E. Jones, sworn—Knows the defendant, presented him with the draft now produced. He acknowledged the amount therein stated to be coming to the plaintiff. He said he would not accept it, though it was correct; he was afraid witness would sue him if he did so. The following is a copy of the draft produced:—

"Mr. C. J. Munro,

Sir,—You will please pay to Mr. G. E. Jones, or bearer, fifty-five pounds fifteen shillings and one penny, being the balance in full of your account, and oblige

Your obedient servant,

£55 15s. 1d. cy. (Signed) Thos. McMurtry."

A rule *Nisi* was obtained to set aside the verdict and enter a nonsuit, on the grounds that the amount claimed exceeded the jurisdiction of the County Court, and that no sufficient evidence was given of an account stated; and upon hearing the parties, this rule was made absolute to enter a nonsuit. The plaintiff appealed.

J. D. Armour, for the appeal, cited Jordan v. Marr, 4 U. C. R. 54; Kimpton v. Willey, 19 L. J. (C. P.) 269.

Read, contra.

Robinson, C.J.—In the first place, did the plaintiff prove an account stated by Mr. Jones' evidence? That may be doubted. It was a conversation with a third party, not an agreement of the plaintiff's, or with any view to settling a balance between them. It was evidence of an admission of a debt to that amount, such as would enable the plaintiff to recover on a count