

amount of repetition of the foregoing, the letter concludes as follows:—"If you desire to get the matter settled up, you can call on Mr. Elsey and get the cheque in question and sign the receipt, and thereby get the matter cleaned up."

The foregoing seems to be an unqualified admission of a "balance due" the plaintiff, which the other affidavits shew to be over \$400. Mr. McCarthy relies on this as bringing the case within the principle of *Duffy v. Donovan*, 14 P. R. 159, and *Thibaudeau v. Herbert*, 16 P. R. 420. The letter was written on the 18th June last, and the plaintiff's solicitor positively asserts in his affidavit that the writer made the same admission in July. The solicitor has not been cross-examined. And Mr. Davidson and Mr. Elsey are not very positive in their denial of the admissions alleged to have been made by them, while the letter itself is not stated to be without prejudice. Had anything of that sort appeared, it would have been a different matter.

I think there is prima facie a sufficient admission of a substantial liability to the plaintiff. The letter of the 18th June was written "ante litem motum," and is of great weight on that account.

After consideration of the whole material, I think the order for security should be set aside. The costs of this motion to be costs in the cause.

The defendants appealed.

The same counsel appeared.

FERGUSON, J., affirmed the Master's order.

MACMAHON, J.

OCTOBER 26TH, 1903.

WEEKLY COURT.

RE WATEROUS AND CITY OF BRANTFORD.

Municipal Corporations—By-law—Closing Highway—Private Interests—Notice—Publication—Compensation to Person Injured.

Motion by Julius E. Waterous for an order quashing by-law No. 770 of the corporation of the city of Brantford, authorizing the diversion of Jex street in that city, on the grounds: (1) That the by-law was passed not to subserve the interests of the public, but those of the Waterous Engine Works Company. (2) That the passing of the by-law was not a bona fide exercise of the powers of the corporation. (3) That the effect of the by-law was to cause damage and injury to the applicant, for the benefit of the company, and to discriminate against the company. (4) That the closing of the