

Main street from Kincardine street to the river Garry. The total cost of the drain was \$3,644.

M. Wilson, K.C., for applicants.

J. Leitch, K.C., for the village corporation.

BRITTON, J.— . . . The engineer had no authority to alter the route in the manner he did, substantially making a new work and one not asked for. The council should not have accepted the new route without a new petition, unless they were prepared to enter upon it and proceed under sec. 669 of the Municipal Act. The distinction between local assessments, or assessments for local improvements, and those for general revenue purposes, must be recognized. The statute giving the power of local taxation must be strictly followed: *McCullough v. Township of Caledonia*, 25 A. R. 417. The council acted in good faith. Although the cost is larger than estimated, the amount is not oppressive. Upon the evidence, the work is a beneficial one to the village. Therefore, the costs should be limited. Order made quashing the by-law, with costs fixed at \$80.

JULY 8TH, 1903.

DIVISIONAL COURT.

SOUTHAMPTON LUMBER CO. v. AUSTIN.

*Contract—Unascertained Goods—Appropriation—Passing of Property—Acceptance and Part Payment.*

Appeal by defendant from judgment of LOUNT, J. (1 O. W. R. 548), which was partly in favour of plaintiffs, for the recovery of \$700 in an action for a balance alleged to be due on a contract for a supply of railway ties, posts, and pavements, and dismissing defendant's counterclaim.

J. H. Rodd, Windsor, for defendant.

C. A. Masten, for plaintiffs.

FALCONBRIDGE, C.J. — There was no cross-appeal by plaintiffs as to the ties, in respect of which the judgment was in defendant's favour. The only question was as to the posts. The trial Judge found that the request by defendant to peel posts was an acceptance of all the posts, and a waiver of the right to inspect. Plaintiffs have established satisfactorily the peeling (and payment therefor) of only 9,212 posts, and to this extent only has there been an acceptance and passing of the property. In no view of the evidence was there any acceptance or appropriation so as to pass the property in the