

founded on the unilateral nature of the instrument was taken and insisted upon.

I am of the opinion that this defendant Gardner, standing, as I think, in the position of a plaintiff quoad his claim for specific performance, is entitled to the order that he asks in this regard.

The plaintiff's action to set aside the document and to have it delivered up to be cancelled will be dismissed with costs, and the defendant will have the order or judgment for specific performance asked by him. This should also be with costs. But it is apprehended that the costs of the action have not been very seriously increased by this claim being made.

Judgment accordingly.

JULY 11TH, 1903.

DIVISIONAL COURT.

WAECHTER v. PINKERTON.

*Assessment and Taxes—Distress for Taxes—Tender of Part—Divisibility of Amount—Statute Labour—Illegal Assessment—Gross Charge in Lieu of Apportionment by Lots—Imperative Provision of Statute—Costs—Set-off—Solicitor's Lien.*

Appeal by defendants from judgment of County Court of Bruce in favour of plaintiff in action by Andrew Waechter against Thomas Pinkerton, the collector of taxes for the township of Greenock, for 1901, and Ezra Briggs, the collector's bailiff, for illegal seizure of plaintiff's chattels as a distress for taxes, and for a return of the goods.

G. F. Shepley, K.C., for defendants.

J. Idington, K.C., for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J.), was delivered by

BRITTON, J.—The trial Judge found that there was a tender of all taxes except those for statute labour. Defendants contended that tender of part was no valid tender. Tender of part of one entire demand or entire contract debt or liability is ineffective: *Dixon v. Clark*, 5 C. B. 365; but, if a tender is specifically made as to one distinct item in an account fairly divisible into items or parts, it is a good tender as to that item. Whether there was specific appropriation by plaintiff when making the tender is a question of fact, and the Judge has found the fact in plaintiff's favour: *Hardingham v. Allen*, 5 C. B. 793. This leaves but the one ques-