

“a matter of sufficient importance to deserve whatever amount of deliberation and care the law aims at securing by requiring the action of the council to take the form of a by-law.”

Nor can it be contended that the contract was an executed contract, or that the defendants in any way became bound by acceptance of the benefits thereof. The plaintiff admits that whatever work he did for the defendants was done to “test them out.”

I can come to no other conclusion than that the plaintiff is not entitled to succeed; and I, therefore, dismiss his action. In view, however, of the circumstances surrounding the holding of what was intended as a meeting of the township council, and of the irregularity and want of care shewn in dealing with a matter of such importance to the municipality, the dismissal of the action is without costs.

It was contended by the defendants at the trial that the plaintiff's action should fail on other grounds shewn in the evidence, such as the quashing of the by-law authorising the issue of the debentures from the proceeds of which it was intended to pay the cost of the work tendered for by the plaintiff; that the plaintiff was not entitled to proceed with the work except at such time and place as the engineer of the defendants the Corporation of the Township of Widdifield should direct, and that the engineer did not give him any direction so to proceed; and that the defendants were bound only conditionally upon their making satisfactory financial arrangements, which they failed to make.

In view of the conclusion I have come to, for the reasons given above, I have not thought it necessary to consider these contentions.

SWALE V. CANADIAN PACIFIC R.W. CO.—MASTER IN CHAMBERS—
JAN. 19.

Parties—Third Party Notice Served after Issue Joined—Setting aside—Indemnity—Con. Rule 209.]—Motion by the third party to set aside the third party notice served by the defendants under an order made ex parte on the 2nd December, 1911. The action was begun on the 1st February, 1910. The statement of claim was delivered on the 21st March, 1910, and was never amended. The statement of defence and counterclaim was delivered on the 8th April, 1910, and was amended on the 9th October, 1911. The cause was for a long time at issue, and was even set down for trial. The trial was delayed