FALCONBRIDGE, C.J.K.B., read a judgment in which he said, as to the defence that there was no contract under seal, that he was of opinion that there had been sufficient acceptance of the plaintiff's plans and adoption by the Board of the action of the committee and of individual members of the Board to take the case out of Waterous Engine Works Co. v. Town of Palmerston (1892), 21 S.C.R. 556, and like cases. It was rather within the lines of Bernardin v. Municipality of North Dufferin (1891), 19 S.C.R. 581; Campbell v. Community General Hospital of Ottawa (1910), 20 O.L.R. 467.

The Board paid for the advertising for tenders, and the plaintiff was authorised to return Newman's marked cheque (on his reducing the tender to the amount named by the next lowest tenderer) and accept instead an unmarked cheque.

As to the misunderstanding regarding the alleged limit of cost, both parties were to blame in not having some memorandum in writing on the subject. The plaintiff and all the other witnesses should have credit for speaking the truth according to their best recollection. The members of the Board and of the committee, no doubt, had the limit in their minds, and thought that the plaintiff thoroughly understood it; but, if the plaintiff had understood it, it was inconceivable that he would have imperilled his professional reputation by preparing plans and specifications so palpably and hopelessly far beyond that limit.

It was to be borne in mind also that the cost of the completed plans was increased by many thousands of dollars by the addition of four class-rooms, by putting an assembly-room at the top of the building, and by adding that the building should be of fire-proof construction.

One of the defendants' witnesses, an architect of eminence, declared that, even if the facts regarding the communication of a limit of cost to the plaintiff were in favour of the defendants' evidence and contention, the plaintiff ought to be paid $1,000 as about the amount of his disbursements on the first set of plans and two and a half per cent. on the second set.

That suggestion was accepted by the learned Chief Justice, and the plaintiff was allowed $1,000 in addition to $3,613.52 paid into Court, with costs, and with a direction for payment out to the plaintiff of the amount in Court.