day and time he would be on the lot to assign her dower, and for that purpose he requested her attendance

On the day named the tenant attended, with a neighbour, whom he had asked to come to set out the dower. No one appeared on the demandant's part. On the next day this neighbour was sent for again, and the demandant's son was there The tenant said he was ready to set off the portion the law allowed—to give what he thought the law would give: that he would give a field, pointing it out, and one-third of the bush land. The demandant's son said he had no authority to take it, but would go home and consult his mother; he made no objection. McCurry, who served the notice on demandant, was present. The demandant had a claim against him also for dower. McCurry asked her son if he had any written authority from the demandant, and learning there was none, said tenant ought to see his lawyer and meet next day, to which the tenant apparently assented.

A witness called by the demandant stated that he was asked to go and receive the dower for the demandant, and was present on the occasion above stated, that on the next day they (this witness and the son) went to the tenant's at the tenant's request, that he pointed out what land he would assign, but did not stake off or ou. to stake off any specific portion. He said there were about forty-five acres of woodland, and he would give one-third of that: that when demandant's husband sold the property there were only three or four acres cleared, and he would give three acres of that, which he said was more than the commissioners would give, and he asked them to accept that, which they refused to do. The witness said the tenant seemed to wish the demandant to have her dower, but not to have to pay costs. They did not tell the tenant what they wanted. The husband died seven or eight years before the trial, and there was about the same quantity of land cleared as at present.

The learned judge left the question in the words of the issue to the jury, to be decided by them according to their view of the evidence, and they gave a verdict for the tenant.

Robert A. Harrison obtained a rule calling on the tenant to shew cause why a new trial should not be granted, on the ground of misdirection, in this, that the learned judge refused to tell the jury, that in order to constitute a good offer to assign the dower the tenant should have staked out the land offered, or have done some act on the ground sufficient to entitle the demandant at once legally to take and retain possession of the land intended to be offered, and that the learned judge refused to tell the jury that there was no evidence of an offer by the tenant according to law to assign dower; or on the ground that the verdict is contrary to law and evidence, because it was not shewn that the tenant had staked out the land intended to be offered, nor done any act on the ground sufficient to enable the demandant to take and retain possession: that the offer proved was of one third of the wood land and only three or four acres of the cleared land, whereas there was about sixty acres of cleared land, in respect of which the demandant was entitled to dower; and because the offer was not made to the demandant. He cited *Quin* v. *McKibbin*, 12 U. C. Q. B 329; *Ryckman* v. *Ryckman*, 15 U. C. Q. B. 266, *Read* v. *Foster*, 19 U. C. Q. B. 298.

James Miller shewed cause, citing *Rishoprick* v. *Pearce*, 12 U. C. Q. B. 306.

DRAPER, C. J., delivered the judgment of the court.

As to the alleged misdirection we do not find in the notes of the learned judge that he was asked or refused to give the direction stated in the rule, though it does not appear that he told the jury that to constitute a good offer to assign, the land offered must be staked out, or some act be done on the ground sufficient to entitle the demandant to enter and retain possession. The same point, however, is taken on the objection that the verdict is against law and evidence.

As to the last ground for a new trial taken in the rule, we do not remember that it was mentioned on moving for the rule, and we are clearly of opinion it should not be entertained; first, because a notice in writing was personally served on the demandant, stating the tenant's willingness to assign dower to her, and, secondly, because she was represented when the proposal to assign certain portions of the land was made by a person who swore that he was sent to receive the dower.

The plea in this case is not confined to the averment that the tenant did within one month after the demand, and before the commencement of the suit, offer to assign the dower. It also contains the substantial averments of a plea of *tout temps prist*, which under the old law, if duly pleaded, excused the tenant from damages. (Co. Lit. 32*b*.) But such a plea cannot *primâ facie* at least be treated as tendering an immaterial issue. It is similar to that in *Cook* v. *Philips*, 23 U. C. Q. B. 69, in which we granted a new trial.

As an answer to the statement contained in the declaration of a demand made in order to give the demandant a right to costs under the statute, it follows the words of the section, (Consol. Stats. U. C., ch. 28. sec. 7,) which provides that "if it appears on the trial that the tenant offered to assign the dower demanded before action brought, the demandant shall not recover costs." There certainly was evidence to go to the jury of such an offer. We do not construe the words "offered to assign" to mean "made a complete assignment," which is the interpretation put on them when it is contended that the land must be staked out, or some other act be done so that the demandant may at once enter into possession. No doubt the offer must be *bonâ fide*—not illusory, but so made as to indicate, first, a concession of the demandant's right to dower, and, secondly, a readiness to do what is requisite to render it. The determination of metes and bounds, of the giving and accepting certain specific parcels of land or premises, must be a question of discussion and agreement on both sides. The tenant has no abstract right to insist that a particular parcel shall be accepted, nor the demandant that some other parcel shall be assigned. If the circumstances shew that the offer to assign was made in bad faith, without any real intention to assign dower, the jury would doubtless treat it as no offer to assign, but we cannot accept the proposition that an offer to assign is only proved by the making an actual assignment. A *bonâ fide* offer to assign is all that the statute requires to exempt the tenant from costs where the demandant has no legal right to recover damages. Where that right exists, the right to costs follows the recovery of damages, though the tenant did offer to assign, because we do not construe the statute (sec. 7) to take away any right to costs which before its passing the demandant had, but to confer a new right not existent before, though in hazarding that opinion we are free to confess that as the clause is framed there is an opening for a contrary conclusion.

The whole matter involved in this issue is the right to recover costs, and unless there was a most palpable miscarriage, we ought not to grant a new trial to determine such a question. We think there was evidence to go to the jury, and that the question being for them, we should not disturb their finding, in order to give the demandant the chance of burdening the tenant with costs, besides obtaining her dower, which this verdict does not affect.

We all feel the law is not in a satisfactory state, and the frequent litigation on the subject shews the difficulty that is found in its administration. We content ourselves, however, with expressing an earnest hope that the legislature, in mercy to suitors, will so alter or explain it as to make their rights and liabilities more readily ascertainable.

In our opinion this rule should be discharged.

Rule discharged.

PERRY v. THE CORPORATION OF OTTAWA.

Municipal Corporation—Liability of for work, without corporate seal or by-law.

A committee of the corporation was appointed in June, 1860, with power, among other things, to treat with and recommend to the council an engineer to make the requisite surveys, &c. for supplying the city with water, and making application to the government for a site for the reservoir. The chairman of this committee employed the plaintiff to make plans, which the commissioner of public works required to see, and one of the aldermen being in Quebec wrote to the plaintiff to come down, and assist in pressing their application for a site, which he did, the chairman having also told him to go. The report of their proceedings there was adopted by the council.

Held, that the plaintiff was entitled to recover for his work, and the journey to Quebec, though there was no contract under seal, and no by-law relating to the matters out of which his claim arose.

Draper, C. J., and Morrison, J., *held* that the case was governed by *Pim* v. *The Municipal Council of Ontario*, but for which they would have thought a by-law indispensable under the municipal act.

Hagarty, J., thought the plaintiff entitled, without reference to that decision as employed by a duly appointed committee, whose proceedings had been reported and adopted by resolution.

[2 B E. T. 27 Vic.]

Declaration for work and labor as civil engineer in drawing plans, maps and sections, and the appraisement and valuation of