

general account represented premiums of insurance which did not belong to the debtor, but were merely collected by him and remitted for policies issued through his agency, the rule in Clayton's case as to the appropriation of the earlier items of credit towards the extinguishment of the earlier items of debit in the general account would not apply.

Held, also, reversing the judgment dismissing the plaintiffs' action in the courts below, that under the circumstances disclosed the proper course would have been to order accounts to be taken upon a reference to the Master.

Appeal allowed with costs.

Holman, for the appellants.

Watson, Q.C., for the respondent.

Ontario]

[Feb. 18.

CANADIAN PACIFIC RY. CO. *v.* TOWNSHIP OF CHATHAM.

Municipal law—Special assessments—Drainage powers of Council as to additional necessary works—Ultra vires resolutions—Executed contract.

After the construction of certain drainage works under the provisions of the Municipal Act, R.S.O., ch. 184, s-s. 569 & 576, which benefited lands in an adjoining township, it was found necessary to construct a culvert under the line of the Canadian Pacific Railway in order to carry off the water brought down by the drain and prevent damages by the flooding of adjacent lands. By contract under seal entered into by plaintiffs and defendants, the plaintiff agreed to construct and did construct the needful culvert at a cost of over \$200. On its completion the works were accepted and used by the municipal corporation, certain officials of the corporation having assured the plaintiffs that should the funds provided under the original by-law for the construction of the drainage works prove insufficient, the necessary amendments would be made under sec. 573 of the Municipal Act, and the additional sum so required obtained. The municipal council passed resolutions approving of the work and paid sums on account, but did not pass a new by-law or make any report or fresh assessment respecting the contract with the plaintiffs or the works executed thereunder.

Held, reversing the decision of the Court of Appeal (22 A. R. 330) and of the Divisional Court (25 O.R. 465), *TASCHEREAU*, J., dissenting, that as the works done by the plaintiffs under the agreement were absolutely necessary to the efficient completion of the drainage works contemplated by the original by-law, the case came within the provisions of the 573rd section of the Municipal Act, R.S.O., c. 184, and the contract under which it had been executed was binding upon the defendants.

Held, (*TASCHEREAU*, J.,) dissenting, that the plaintiffs were guilty of laches in neglecting to ascertain whether the corporation was acting *intra vires* before entering upon their contract, and that it would be contrary to the policy of the statute to grant them a recovery which would be so largely in excess of the expenditure contemplated by the original by-law.

Appeal dismissed with costs.

Moss, Q.C., and *MacMurphy*, for appellants.

Wilson, Q.C., and *Pegley*, Q.C., for respondents.