

have stated, of the statute R. S. O. 1887 ch. 152, sec. 39, now R. S. O. 1897 ch. 181, sec. 15, not having been complied with, so as to give the Lieutenant-Governor in council jurisdiction to authorize the survey; therefore the survey was illegal, and therefore there is no power to pass the by-law to levy its cost. If there was jurisdiction to authorize the re-survey, it could only be at the cost of the owners of lots in each range or block, or part of each range or block, interested, and not on all lot-owners, whether or not they are interested. Neither has sub-sec. 5 of sec. 38 of ch. 152 (sub-sec. 5 of sec. 14 of ch. 181) been followed, no estimate of the cost having been made. . . . Reg. v. McGugan, 19 C. P. 69, is distinguishable. In that case there was a petition and memorial for a survey of the first concession of a township, but in this case no street, range, or block, or parts of them, were particularized, and I adopt the language of Draper, C.J., in the Scott case, *supra*, where he says: "The powers to tax, confided in councils, can only be exercised in the manner specified by the Act," etc. I refer on this point to Cooper v. Welbanks, 14 C. P. 364. The by-law must be quashed, the injunction made perpetual, and the corporation must pay the costs of the action on the High Court scale. There was no necessity for making the defendant Martin a party, and the action is dismissed against him without costs.

R. D. Gunn, Orillia, solicitor for plaintiff.

Hewson & Creswicke, Barrie, solicitors for defendants.

JANUARY 23RD, 1902.

DIVISIONAL COURT.

BARTLETT v. CANADIAN BANK OF COMMERCE.

Discovery—Examination for, of Local Manager of Bank—Subsequent Examination of Teller Refused.

Appeal by plaintiffs from order of LOUNT, J., in Chambers, affirming order of Master in Chambers refusing an application by the plaintiffs for leave to examine for discovery one Fralick, teller in the branch of the Canadian Bank of Commerce at Ayr. The action is brought to recover from the Bank of Commerce and the Dominion Bank the sum of \$3,000, the amount of a cheque drawn in favour of plaintiffs by one Thamer upon the Ayr branch of the former bank, and indorsed by plaintiffs and deposited by them in the Dominion Bank at Toronto, who indorsed it to the Bank of Commerce, who sent it to their branch at Ayr, where there was no funds for it. It reached Ayr on May 13th last, and was protested on May 15th, and notice of