

and mode of culling and packing, or the time for payment. The plaintiff picked the apples and placed them in piles, and told the defendant that they were ready for packing. The defendant was not at the time able to obtain barrels. About three weeks later, however, he took delivery of twelve barrels of apples. Two weeks after this a severe frost occurred, and the rest of the apples were destroyed, neither the plaintiff nor the defendant having taken any steps to protect them :—

*Held*, that the inference from the circumstances was that the culling was to be done by the defendant, with the plaintiff's concurrence ; that until the culling took place there could be no ascertainment of the apples intended to be sold ; that the property had, therefore, not passed ; and that the loss must fall on the plaintiff. Judgment of the County Court of Lincoln, reversed.

*Middleton*, for appellant. *Collier*, K.C., for respondent.

Divisional Court.] SMITH v. CLARKSON. [July 9.

*Staying proceedings—Vexatious action—Security for costs.*

An appeal by the plaintiff from the judgment of ANGLIN, J., reported ante p. 394, was argued before a Divisional Court (MEREDITH, C.J., MACMAHON, and TEETZEL, JJ.,) on the 13th of June, 1904.

The appeal was dismissed with costs, the Court being of opinion that under the circumstances set out in the judgment below, the term of giving security was rightly imposed.

*F. E. Hodgins*, K.C., for plaintiff. *Middleton*, for defendant.

Meredith, J.] [July 12.

BELL TELEPHONE CO. v. TOWN OF OWEN SOUND.

*Municipal corporations—Highways—Bell Telephone Company.*

The plaintiffs, whose system of communication had been in operation in the town of Owen Sound for some years, changed their office, and, in connection with the change, wished to carry their wires to that office across the street in which it was situated underground in a conduit, instead of overhead by poles, and the defendants refused to consent :—

*Held*, on the evidence, that no danger of injury to the street or inconvenience to the public having been shewn, the defendants were not justified in fact in refusing their consent.

*Held*, also, that there was no justification in law for the refusal, since s. 3 of the plaintiffs' Act of incorporation, 43 Vict. c. 67 (D.), does not as was contended by the defendants, empower municipal councils to determine, as they may see fit, where and how the plaintiffs shall construct their lines.

*Lynch-Staunton*, K.C., for plaintiffs. *Aylesworth*, K.C., for defendants.