

On the 28th of the same month Plummer, to whom Hughes referred Hamilton, wrote the latter explaining his title, and saying it was all he had, and on 3rd April, 1901, Plummer tore up the deed sent him for execution, saying that he would not complete by reason of the delay. The action was commenced on 9th April. Plaintiff's application to add the defendant Plummer as a party defendant, threw the case over the summer sittings of 1901; it was not reached in September; was not brought on at the special sittings in November; and was tried only at the Winter Assizes. Nothing was ever paid upon the contract.

A. B. Aylesworth, K.C., and J. E. Irving, Sault Ste. Marie, for plaintiff.

M. McFadden, Sault Ste. Marie, for defendant Hughes.

W. R. Riddell, K.C., and P. T. Rowland, Sault Ste. Marie, for defendant Plummer.

STREET, J., held that the objection as to plaintiff being a mere agent, though perhaps of weight, did not need to be given effect to, it having been made for the first time at the trial, and in view of the decision on the merits. On the merits, the value of the land was of a speculative and fluctuating character, and the purchaser was, therefore, bound to proceed with reasonable diligence. He, however, had slept upon his rights, and his conduct was open to the charge that he had been endeavouring to keep alive his claim upon the land as long as possible in order that he might take it if it increased in value, without committing himself actually to buy in case it should happen to depreciate. See *Huxham v. Llewellyn*, 21 W. R. 570; *Glasbrook v. Richardson*, 23 W. R. 51. Action dismissed with costs.

FALCONBRIDGE, C.J.

TRIAL.

JANUARY 9TH, 1903.

WHELIHAN v. HUNTER.

Municipal Corporations—Expenditure—Valid Debt—By-law—Contract—Injunction—Costs

Action by plaintiffs, on behalf of themselves and all rate-payers of the town of St. Mary's, against the corporation of the town, and against the members of the finance, fire, water, and light committees of the council for 1902, as individuals, for a declaration that an item of \$3,170 in the report of the finance committee, which it was alleged was introduced into the estimates for the purpose of building a certain water-main, was a valid debt of the corporation which they were bound to provide for during the current year, and for an injunction restraining them from making any payment upon the contract for the water-main in question, on the ground that there was no valid or subsisting contract for the