

If the learned Judge's order were allowed to stand, then the effect of it would be that should Lawson succeed in defeating the claims in question, he would rank on the estate with creditors not in respect of a creditor's claim but because of his defeating a claim to be a creditor.

We are of opinion that the section is not open to such construction, and that this appeal should be allowed.

We are not satisfied with the conduct of the assignee, and therefore we give him no costs, either here or below.

HON. MR. JUSTICE MIDDLETON.

JUNE 4TH, 1914.

RE BERLIN & BREITHAUP, WATER COMMISSIONERS OF THE CITY OF BERLIN.

6 O. W. N. 423.

*Municipal Corporation—Board of Water Commissioners—Rights and Duties—Alteration and Extension of Plant and Equipment—Surplus of Revenue over Cost of Operation—Payment by Commissioners to Municipal Treasurer—Power of Commissioners to Draw upon—Right of Commissioners to Determine what Extensions Necessary—Municipal Waterworks Act, R. S. O. 1897 ch. 235, secs. 2, 38, 40, 47—Public Utilities Act, 3 & 4 Geo. V. ch. 41, secs. 3, 26, 34, 35, 43.*

By virtue of the Municipal Waterworks Act, R. S. O. (1897) ch. 235, secs. 2, 38, 40, 47 and the Public Utilities Act, 3 & 4 Geo. V. ch. 41, secs. 3, 26, 34, 35, 43, the Water Commissioners of the Corporation of Berlin were empowered by the said corporation to construct, operate and maintain waterworks.

MIDDLETON, J. *held*, that the commissioners had a right to deduct all expenditure before paying over the surplus to the corporation; that after payment over, such surplus was not to be used for general purposes until the commissioners should determine that it was not required for their work, when it might be used for municipal purposes.

Motion on behalf of the city for a mandatory order directing the Board of Commissioners to pay over to the City Treasurer the surplus of revenue over the cost of operation

Argued 8th May, 1914.

I. F. Hellmuth, K.C., for applicants.

E. F. B. Johnston, K.C., and E. P. Clement, K.C., for respondents.

HON. MR. JUSTICE MIDDLETON:—The question raised upon this motion is of importance, and the motion has been argued upon broad lines, for the purpose of obtaining a de-