

council has no power finally to deal with this question in its council chamber. It was argued that the special Act gives power to build outside the Province, and that for the limitation of \$5,000,000 I should substitute the order of the Board. I cannot divorce what the Legislature has so solemnly joined together. Neither covertly, by borrowing \$5,000,000 for an \$8,000,000 work, nor in any other way, can the Ontario special Act be stretched or distorted to embrace the present scheme.

I was asked to withhold judgment, in case I formed an opinion adverse to the by-law, until application could be made to the Legislature. I will not do this. The only thing that would induce me to delay judgment would be if it would result in the saving of time. It would not have that effect; and, in my opinion, it is better that the decks should be cleared for the unhampered action of the Legislature, if legislative action is to be invoked.

There are no two opinions about the crying need of good water for the city of Ottawa; no doubt about the duty of the council to act with vigilance; there is no insuperable obstacle in the way. There should not be an hour wasted—there need not be. There is an open, straight, and narrow path. Go direct to the rate-payers and take their ballots, or go to them, indirectly, through the Legislature; and, in view of the stringent provisions as to approval of plans, the latter course is, perhaps, to be preferred. Side-stepping will inevitably make for loss of time.

The by-law will be quashed with costs. The applicant will be entitled to take the deposit out of Court.

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KELLY, J.

JANUARY 8TH, 1914.

### FINE v. CREIGHTON.

*Vendor and Purchaser—Agreement for Sale of Land—Objections to Title—Tender by Vendor of Conveyance—Refusal of Purchaser to Accept—Termination of Agreement under Provision therefor—Action by Vendor for Specific Performance or Damages—Dismissal.*

Action by the purchaser for specific performance of a contract for the sale and purchase of land, or for damages for the breach thereof by the vendor, the defendant.

A. Cohen, for the plaintiff.

L. E. Awrey, for the defendant.