

BRITTON, J., in a written judgment, said that the plaintiff alleged that one Warner was the defendant's agent for the sale of the land, and made the agreement with the plaintiff, at the price of \$700, of which amount the plaintiff paid Warner \$150. A number of letters passed between the defendant and Warner, but nothing definite was agreed upon. Warner's duty involved the solicitation of offers. He had no authority to sign any deed or accept any money on account of the purchase-price. The plaintiff made an offer, but the acceptance of it rested entirely with the defendant, and no definite acceptance of it was given. Then the prospective buyer disappeared, and, after a delay of nearly 4 months, returned and deposited another \$50 with Warner. Warner had no authority to receive the money so as to bind the defendant. There was no writing signed by the defendant to take the case out of the Statute of Frauds. The plaintiff's delay was fatal; he was not entitled to the relief asked. Apart from the question of contract, there was a discretion which should be exercised in favour of the defendant in refusing the plaintiff specific performance. The action should be dismissed with costs, fixed at \$100. C. R. Fitch, for the plaintiff. A. G. Murray, for the defendant.

ONTARIO DRAINAGE COURT.

HENDERSON, DRAINAGE REFEREE.

JUNE 12TH, 1918.

RE EDWARDS AND WYNNE.

Appeal—Leave to Appeal from Judgment of County Court Judge in Matter Arising under Ditches and Watercourses Act, R.S.O. 1914 ch. 260—Drainage Referee—When Leave should be Granted—Question of Law—Amending Act, 7 Geo. V. ch. 56, sec. 5.

An application by an owner of land for leave to appeal from the judgment of a County Court Judge upon appeal from an award made under the provisions of the Ditches and Watercourses Act, R.S.O. 1914 ch. 260, the application being made under the provisions of an Act to amend the Ditches and Watercourses Act, 7 Geo. V. ch. 56, sec. 5.

F. D. Hogg, for the applicant.

F. B. Proctor, for the respondent.