The plaintiff relied upon Kilmer v. British Columbia Orchard Lands Limited, [1913] A.C. 319, Steedman v. Drinkle, [1916] 1 A.C. 275, and Brickles v. Snell, [1916] 2 A.C. 599, as establishing his right to a refund of the deposit of $500. But the judgment of the Appellate Division in Walsh v. Willaughan (1918), 42 O.L.R. 455, established that the return of the deposit is ordered only in cases where the plaintiff seeks specific performance and is ready and willing to carry out his contract and the circumstances are such that it would be inequitable to allow the vendor to retain the land and the money. The repayment in such cases is decreed as a form of equitable relief against forfeiture. In this case specific performance was not sought, the defendant having resold the timber limit. The case was on all fours with Walsh v. Willaughan.

The plaintiff's request for an extension of time for paying the $6,500 was granted conditionally—the defendant gave the plaintiff an extra week within which to pay $1,000, and, conditionally, another week to pay the remaining $5,500, but expressly stipulated that if he did not hear from the plaintiff by the 12th January he would close a deal with others.

There is language in the judgment in Steedman v. Drinkle which indicates that a mere extension of time without qualification may amount to a waiver of the right to insist upon time as of the essence of the contract; but it could not have been intended to decide that every extension, however qualified, should constitute such a waiver. What was intimated by the defendant was equivalent to a renewed stipulation that time would be of the essence of the contract for the extended period and a notice of the defendant's intention to avail himself of the right to resell. The $1,000 was not paid, and the defendant resold. The contract went off because of the plaintiff's own default, and he could not recover his deposit.

The claim for damages could have no foundation, there being no breach of the contract by the defendant.

Action dismissed without costs.