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[Dec. 6, 1911.]

WEBSTER v. SNIDER.

Vendor and purchaser—Agreement to convey lands—Consideration—Price in money—Breach of contract—Recovery for "money had and received"—Sale or exchange—Damages.

S. sold his interest in certain lands to W. for a consideration, fixed at \$19,000, of which \$16,000 was to be satisfied by the conveyance of other lands, alleged to be owned by W. W. then executed a written agreement purporting to sell these other to S. for the sum of sixteen thousand dollars, acknowledged then and there to have been received by the vendor; bound himself to convey them to the purchaser, with a clear title, within one year from the date of the agreement, and time was stated to be of the essence of the contract. Upon default by the vendor to convey the lands, according to the agreement, the plaintiff sued to recover the \$16,000, as money had and received for which no consideration had been given. In his defence, W. contended that the consideration mentioned in the agreement was not actually in cash but consisted merely of lands to be conveyed in exchange at a valuation fixed at that amount, and, consequently, that the plaintiff could recover only damages to be assessed according to the value of the lands which he had failed to convey.

Held, that, in the absence of evidence of any special purpose as the basis of the agreement, the terms of the contract in writing governed the rights of the parties that the consideration mentioned in the agreement should be regarded as a price paid in money and consequently, the plaintiff was entitled to the relief sought. Judgment appealed from (20 Man. R. 562) affirmed.

A. C. Galt, K.C., for appellant. Hugh Phillipps, for respondent.

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[Dec. 6, 1911.]

CITY OF WINNIPEG v. BROCK.

Municipal corporation—Closing streets—"Passage of by-law"—Coming into force of by-law—Time for appealing—3 and 4 Edw. VII. c. 64 (Man.)—"Winnipeg City Charter"—Construction of statute.

A municipal by-law for the diversion and closing of certain highways and the transfer of the land to a railway company provided that it should "come into force and effect" on the exe-