The action was tried without a jury at Toronto.

J. H. Fraser and G. M. Willoughby, for the plaintiff.

H. E. Rose, K.C., for the defendants.

CLUTE, J., said that the defendants did not ask for specific performance and did not offer to pay the amount due under the agreement; but, by an amendment made at the trial, the defendants stated their willingness that the plaintiff should have judgment for possession of the lands in question, upon condition that she pay over to the defendant White the amount of the purchase-money already paid, less interest and taxes; or, in the alternative, that payment of the moneys due under the agreement should be postponed until the close of the present war, on condition that the defendants pay the interest and taxes.

The defendants had not brought themselves within sec. 2, sub-sec. 1(*c*), of the Mortgagors and Purchasers Relief Act, 1915; the plaintiff was within the exception declared by sec. 4, sub-sec. 3; and the defendants had neither paid into Court nor tendered to the plaintiff interest, rent, or taxes.

The defendant White did not offer evidence as to the disposition of the chattels or the amount realised therefor, nor to shew why the taxes had not been paid. That defendant was not entitled to claim relief as under a forfeiture.

The defendants were not entitled to a refund of the $1,100 paid.

The learned Judge finds that the plaintiff has suffered loss to an amount in excess of $1,100; that $50 a month would be a reasonable rental for the premises; that the waste committed amounted to $400; that the taxes for the three years amounted to $225.

Judgment declaring that the plaintiff is entitled to possession of the premises free of any claim thereto by the defendants or either of them; that the plaintiff has suffered damage in excess of the purchase-money paid by the defendant Friedman by reason of her default and breach of her contract in not carrying out the agreement; and that the defendants are not entitled to claim a return of any part of the purchase-money paid to the plaintiff.

Reference to Kilmer v. British Columbia Orchard Lands Limited, [1913] A.C. 319; Vansickler v. McKnight Construction Co. (1914), 31 O.L.R. 531; McKnight Construction Co. v. Vansickler (1915), 51 S.C.R. 374.

The plaintiff should have costs of the action.