

The Act makes provision for a person assessed as and being the actual owner of land in a municipality making application to the municipal council to borrow money for the purpose of tile, stone, or timber drainage, and for the council lending money to such applicant for that purpose. Throughout the Act the transaction was treated as a loan upon the security of the land itself, repayable by instalments, with the privilege to the borrower to obtain at any time a discharge, on payment of the unpaid portion of the amount borrowed and interest. That the council is given power to levy and collect an annual sum in repayment of the amount lent and interest does not take from the transaction its character of a loan which has become an incumbrance upon the land. In the absence of an express provision to the contrary, this must be regarded as an incumbrance to be borne by the vendor, who expressly covenanted, on payment of the purchase-money, to convey to the purchaser in fee simple, subject only to the conditions and reservations expressed in the original Crown grant.

Costs of the application should be borne by the vendor, if exacted.

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KELLY, J.

OCTOBER 9TH, 1920.

MERRILL v. WADDELL.

*Damages—Breach of Warranty—Sale of Hay—Quantum of Damages—Evidence—Costs.*

An action for damages for breach of a warranty upon the sale of hay.

The action was first tried by KELLY, J., without a jury, at Brantford, in 1919. He found in favour of the plaintiff and assessed the damages. Upon appeal, his finding that the defendant was liable for damages was upheld, but a new trial, limited to the question of the amount of damages, was directed: *Merrill v. Waddell* (1920), 47 O.L.R. 572, 18 O.W.N. 279.

The new trial took place before KELLY, J., without a jury, at Brantford.

W. S. Brewster, K.C., for the plaintiff.

F. H. Thompson, K. C., and J. C. Makins, K. C., for the defendant.