

and proper, and they may apply money in their hands to meet the cost of such works and may, if they see fit, draw upon any money which they have in the interim paid to the Council. Any money paid over from time to time must remain to the credit of the water works system until the commissioners determine it is not required for it; then and then only may it be used for municipal purposes.

The motion is refused. No order need be made as to costs, as the parties both represent the municipality.

HON. MR. JUSTICE MIDDLETON.

JUNE 4TH, 1914.

WINNIFRITH v. FINKLEMAN.

6 O. W. N. 432.

Vendor and Purchaser — Agreement for Sale of Land—Time Fixed for Closing Sale—Extension of Time — Payment of Money by Purchaser to Vendor—Repudiation by Vendor—Time of Essence of Contract—Right of Vendor to Treat Agreement as Terminated and to Recover Money Paid—Equitable Relief.

Plaintiff made contract with defendant, W., for purchase of land, and defendant, F., in whom was the title, also made contract with W. to convey such land to plaintiff, and with plaintiff to same effect. A deposit was paid, and the matter was to be closed on a certain day, but plaintiff finding himself unable to complete by that day a new agreement was made in writing to have matter stand over for two days on condition that plaintiff paid F. a certain sum, which was done. On the day named F. deliberately repudiated the contract. By the next day F., having changed his mind, wished to renew the bargain, but plaintiff refused and brought action to recover the sum paid:—

MIDDLETON, J., *held*, defendant F. was guilty of breach of agreement since time was of the essence of the contract, and that there was, therefore, no ground for equitable relief by way of specific performance.

Action brought to recover \$1,000 paid to defendant Smith on behalf of the defendant Finkleman.

Tried at Toronto 26th May, 1914.

D. L. McCarthy, K.C., and H. E. Wallace, for the plaintiff.

G. H. Watson, K.C., and A. L. Fleming, for the defendants.

HON. MR. JUSTICE MIDDLETON:—The plaintiff is a clerk in the employ of the National Trust Company, and entered into an agreement as trustee and agent for the com-