

all the circumstances, the learned Judge was of opinion that the defendant also acted reasonably, and that, in the words of sec. 37 of the Trustee Act, R.S.O. 1914 ch. 121, he "ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court," and should be wholly relieved from personal liability accordingly.

*Action dismissed without costs.*

KELLY, J.

OCTOBER 9TH, 1920.

RE ROWELL AND FORBES.

*Vendor and Purchaser—Agreement for Sale of Land—Charge under Tile Drainage Act, R.S.O. 1914 ch. 44—Whether Borne by Vendor or Purchaser—Incumbrance or Rate.*

An application by a vendor of land, under the Vendors and Purchasers Act, for an order determining whether a certain charge upon the land should be borne by the vendor or the purchaser.

The application was heard in the Weekly Court, Toronto.

A. W. Langmuir, for the vendor.

W. Lawr, for the purchaser.

KELLY, J., in a written judgment, said that the contract between the parties, dated the 10th November, 1919, was for the sale of 50 acres of land in the township of Sarnia, at a specified price, the purchaser covenanting to pay the purchase-money and "all taxes, rates, and assessments wherewith the said land may be rated and charged from and after the 31st December, 1919;" and the vendor covenanting, on payment of these moneys, to convey the lands to the purchaser in fee simple, subject to the conditions and reservations expressed in the original grant from the Crown. The contract, which was prepared on a printed form, contained a further provision, that unearned fire insurance premiums, taxes, interest, rentals, and all local improvement rates and water rates should be apportioned and allowed to the date thereof.

The purchaser raised the objection that the charge under the Tile Drainage Act, R.S.O. 1914 ch. 44, as amended, upon the land, or the part of it still unpaid, should be borne by the vendor; while the vendor contended that under the contract the charge was apportionable in the same manner as taxes and local improvement rates.