

for the balance of their claims *pari passu* with the claimants for loss of property.

*Per* Idington, J., dissenting:—Section 503 of the Act is effective only upon the application of the owner of the ship to a competent Court, invoking limitation of his liability.

Appeal allowed with costs.

*Aimé Geoffrion*, K.C., and *A. R. Holden*, K.C., for appellants; *G. F. Gibsone*, K.C., *E. Languedoc*, K.C., and *Eug. Angers*, for respondents.

Alta.]

SIMSON v. YOUNG.

[March 25, 1918.

*Sale of land—Foreign vendor—Agreement for sale—Place of completion—Time essence of agreement—Extension of time—Waiver.*

Y., residing in Ireland, through an agent in Calgary, listed land there for sale with a real estate broker. An agreement by S. to purchase this land, signed by the broker for Y., provided for a part payment in cash to be forfeited to the vendor, and the contract to be null and void if the balance was not paid in one year, time to be the essence of the contract. When the balance became due, March, 1914, S. went to the broker to complete the purchase, but was told that the conveyance had to be sent to Ireland for execution and to return in six weeks, which he did, and found the situation the same. Subsequent inquiries succeeded no better, and in December, 1914, he formally tendered the money to the broker and shortly after wrote to Y. repudiating the agreement and demanding the return of the money paid under it. Receiving no reply in January, 1915, he took an action for rescission and repayment of the money in which Y. by counterclaim asked for specific performance. In February Y. tendered a conveyance of the land to S.

*Held*, that while no place was named in the agreement for completion of the purchase, it was to take place at Calgary, and as Y. was to prepare the conveyance it was her duty to have it there for delivery to S. at the appointed time.

*Held*, also, that the assent by S. to the request of the broker to wait after the time of completion for the conveyance could not be considered an agreement for extension nor evidence of an intention not to rescind.

In the agreement the address of the vendor was given as Belfast, Ireland, instead of Dublin, where she lived, and the vendee's letter of repudiation was not delivered.