

BRITTON, J.—The plaintiff's evidence was sufficiently corroborated. *Re Ross*, 29 Gr. 385, is distinguishable. Deceased was not a trustee. This is not the case of a deposit of money for safety until demand as in *Tidd v. Overell*, 3 Ch. D. 154. There was a debt here due to plaintiff of \$450, but it is barred by statute. The defendants are not indebted to plaintiff for the \$100 claimed. The defendants are indebted to plaintiff in the sum of \$5 paid into Court in respect of the claim for work done in 1899, and he is entitled to that sum, but the action is dismissed with costs.

BRITTON, J.

APRIL 17TH, 1902.

TRIAL.

BENTLEY v. MURPHY.

Ship—Contract to Sell—Specific Performance—Discretion—Balance of Purchase Money Unsecured—Damages.

Action tried at Toronto brought for specific performance of a contract for the sale of the steamer "Island Queen."

L. G. McCarthy and A. M. Stewart, for plaintiffs.

R. T. Walkem, K.C., and H. T. Kelly, for defendant Craig.

T. Mulvey, for defendant Murphy.

BRITTON, J.—At the time of sale the defendants were the real owners of the steamer, and it is clear that the contract of sale was made by defendant Murphy on behalf of himself and his co-defendant Craig. It cannot be said that any advantage was taken of the vendors by reason of the balance of purchase money not being agreed to be secured by mortgage. The offer by letter to purchase was good under the Merchant Shipping Act of 1854, though before that Act it would be void because not reciting the certificate of registration: *Hughes v. Morris*, 2 DeG. M. & G. 349. But it is not a case for specific performance, a discretionary remedy which should be cautiously applied. In this case, though no fraud is shewn, the contract was not an ordinary one. It was close bargaining on the plaintiffs' part, paying only part of the purchase money, and giving no security for balance. Vessels are subject to marine risk and other casualty. The plaintiffs are seeking equity, but are not prepared to do equity by giving a mortgage, and though not required so to do by contract, it is a valid reason why specific performance should be refused: *Mortloch v. Buller*, 10 Ves. 292; *Robinson v. Harris*, 21 S. C. R. 39. Judgment for plaintiffs for damages. Reference to Master in Ordinary.