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No. 5

FALCONBRIDGE, C.J.

JUNE 10TH, 1907.

CHAMBERS.

RE SHUPE v. YOUNG.

Division Court—Territorial Jurisdiction — Action on Contract — Provision in Contract as to Forum for Action — Waiver of Statute Making such Provisions Illegal—Effect of.

Motion by defendant for prohibition to the 4th Division Court in the county of York. The cause of action did not wholly arise in nor did defendant reside within the territory of the Division Court, but the contract sued upon contained a clause providing that any action arising upon it might be brought where plaintiff carried on business, and waiving the benefit of 6 Edw. VII. ch. 19, sec. 22.

G. H. Kilmer, for defendant.

T. J. Robertson, Newmarket, for plaintiff.

FALCONBRIDGE, C.J.:—The Act of 1906 (6 Edw. VII. ch. 19, sec. 22) was passed expressly to protect persons like defendant from the operation of contracts compelling them to come from the other end of the province to defend themselves in the Court of the division where the plaintiff resides and carries on business. The ingenious attempt is here made to evade the statute by the addition of the words “and I hereby waive my right to the benefit of the Act 6 Edw. VII. ch. 19, sec. 22.” This “waiver” is a “proviso, condition, stipulation, agreement, or statement” which provides for the place of trial. To allow the purchaser when making his