

and sale are limited, relate only to certain indispensable acts specified in the schedule thereto, and consequently that the parties were left free to contract in reference to any other expenses of realization which might be shewn to be reasonable and necessary and no ground had been shewn for imposing the penalty which their Lordships held was permissive and not imperative, since the defendants had acted reasonably and prudently. Thirdly, with regard to the question of interest, which the Supreme Court of Canada had allowed at 7%, their Lordships held that the stipulation for payment of 8% was inoperative under the Bank Act, R.S.C. 1906, c. 29, s. 91. and therefore as no rate had been fixed, only the legal rate of 5% was recoverable, but that the plaintiffs were not entitled to recover back the excess which they had voluntarily paid.

RELIEF AGAINST FORFEITURE—CONTRACT FOR SALE OF LAND—FORFEITURE ON DEFAULT OF PAYMENT OF ANY INSTALMENT OF PURCHASE MONEY—SPECIFIC PERFORMANCE—TIME OF ESSENCE OF CONTRACT.

*Kilmer v. British Columbia Orchard Lands* (1913) A.C. 319. This was an appeal from the Court of Appeal of British Columbia. The plaintiffs had entered into an agreement to sell land to the defendant, the purchase money to be paid in instalments, and the contract provided that in case default should be made in payment of any instalment, the agreement and all past payments should be forfeited, and time was declared to be of the essence of the contract. The defendant having made default in the payment of an instalment of purchase money, the plaintiffs brought the action claiming a declaration that their agreement of sale to the defendant was null and void. The defendant counter-claimed for specific performance, and at the trial obtained leave to pay into court the amount due to the company. The judge at the trial dismissed the plaintiff's action and decreed specific performance, but the Court of Appeal of British Columbia set his judgment aside and gave judgment for the plaintiffs. The Judicial Committee of the Privy Council (Lords Macnaghten, Atkinson, and Moulton) have reversed the latter decision and restored the judgment at the trial, holding that the condition of forfeiture was in the nature of a penalty from which the defendant was entitled to be relieved on payment of the purchase money due.