

tiff's assignor had contracted with the defendant for the purchase of the defendant's stock in a certain railway for \$10,000,000, and on receipt of that sum the defendant was to transfer his stock. The agreement also provided that bonds were to be issued by the company to the amount of \$11,000,000, part of which the vendor, as a creditor of the company, was beneficially entitled to, and which he agreed to transfer to the purchaser on payment of the purchase money. The purchaser undertook to have the bonds prepared for execution by the company. \$250,000 was paid down by the purchaser as a deposit, which it was agreed was to be forfeited as liquidated damages in case he made default. The purchaser, or his assigns, never delivered the bonds for execution by the company, and made default in payment of his purchase money. Whereupon the defendant claimed that the deposit was forfeited, and the subject-matter of the contract was subsequently sold to other persons. The plaintiff claimed that both parties had made default, because the bonds had not been delivered as stipulated for, and therefore that he was entitled to recover back the deposit, but the Judicial Committee of the Privy Council (Lords Macnaghten, Dunedin and Collins, and Sir A. Wilson) were of the opinion that the plaintiff, or those through whom he claimed, were responsible for the non-delivery of the bonds, and therefore were not able to rely on their non-delivery as an excuse for their not carrying out the contract, and therefore that the action failed and was rightly dismissed.

EXCHEQUER COURT OF CANADA—JURISDICTION—ADMIRALTY—
ACTION TO ENFORCE MORTGAGE OF SHIP—COUNTERCLAIM FOR
BREACH OF CONTRACT.

Bow v. The Camosun (1909) A.C. 597, was an action in rem commenced in the Exchequer Court in British Columbia to enforce payment of a mortgage on a ship, which though given in respect of the price, was expressed to be made in consideration of money lent. The defendants set up by way of equitable defence pro tanto, a claim for damages for breach of the contract for building the ship. The local judge in British Columbia held that the Exchequer Court had jurisdiction to deal with such a claim, and his decision was affirmed by Burbidge, J., and subsequently by the Supreme Court of Canada. The Judicial Committee of the Privy Council (Lords Loreburn, L.C., and Lords Ashbourne, James, Gorrel and Shaw), however, came to the conclusion that the Exchequer Court has no jurisdiction to entertain