

If the defendant should not, within one month, or such further time as a Judge may allow, amend his notice of appeal and ask for rescission, his appeal should be dismissed without costs. If he should so amend, there should be a reference to settle conveyances, fix compensation, and adjust all matters between the parties growing out of their rights as determined by this judgment, and further directions and costs of the reference should be reserved.

If the defendant should not so amend, the plaintiff's appeal should be dismissed with costs.

RIDDELL and SUTHERLAND, JJ., agreed in the result.

MASTEN, J., read a dissenting judgment. He was of opinion that rescission had become impossible; that the plaintiff's appeal should be dismissed with costs, and the defendant's cross-appeal dismissed without costs.

Judgment below varied (MASTEN, J., dissenting).

SECOND DIVISIONAL COURT.

NOVEMBER 19TH, 1920.

RE SARNIA METAL PRODUCTS CO. LIMITED.

Sale of Goods—Reliance of Buyer on Skill of Seller—Machine Required for Specific Purpose to Knowledge of Seller—Right to Reject as Unworkable—Waiver—Return of Machine—Return "on Consignment"—Evidence—Findings of Master—Appeal—Allowance of Claim of Creditor against Insolvent Estate in Winding-up Matter.

Appeal by the A. R. Williams Machinery Company Limited from the order of KELLY, J., 18 O.W.N. 98, dismissing an appeal from a report of the Local Master at Sarnia stating that he had disallowed all of the appellants' claim of \$4,292.49, filed with the liquidator of the Sarnia company in a winding-up, except \$300.

The appeal was heard by MULOCK, C.J. Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

G. W. Mason, for the appellants.

J. M. Bullen, for the liquidator, the respondent.

THE COURT allowed the appeal and the appellants' full claim, with costs of proving the claim and of the two appeals.