

within six months after the act complained of, and the defendant claimed the protection of the Public Authorities Protection Act, 1893 (see R.S.O. c. 89, s. 13). The Court of Appeal held that the act complained of was not done in the direct execution of any statute or in the discharge of a public duty or in the exercise of a public authority, but in the execution of a voluntary contract, and, therefore, the Act did not apply, and the House of Lords (Lord Buckmaster, L.C., and Lords Haldane, Dunedin, Atkinson and Shaw) agreed.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—TIME OF ESSENCE OF THE CONTRACT—DEFAULT OF PURCHASER—FORFEITURE OF MONEY—PENALTY—RELIEF AGAINST PENALTY.

Steedman v. Drinkle (1916) A.C. 275. This was an appeal from the Supreme Court of Saskatchewan. The action was brought for the specific performance of a contract for the sale of lands. The contract provided that time should be of the essence of the contract, and in case of default all payments made on account of purchase money should be retained by the vendors as liquidated damages. The contract price was \$16,000, of which \$1,000 was paid down and the balance was to be paid by yearly instalments of \$1,000. Default having been made in the payment of the first instalment, the vendor cancelled the agreement. In these circumstances the plaintiffs, as assignees of the purchaser, sued for specific performance. The Supreme Court granted relief, relying on the case of *Kilmer v. British Columbia Orchard Lands* (1913), A.C. 319. The Judicial Committee of the Privy Council (Lords Haldane, Parker and Sumner), however, held that that case did not apply, because there, although the contract made time of the essence, the vendors had in fact waived it by agreeing to an extension of time. In the present case there had been no such waiver, and their Lordships held the condition to be binding, but, notwithstanding the terms of the contract that the payments made on account were to be retained as "liquidated damages," their Lordships held that this was in the nature of a penalty from which relief should be granted on proper terms.

ARBITRATION CLAUSE IN CONTRACT—DISPUTE ARISING OUT OF THE CONTRACT—CUSTOM AFFECTING RIGHTS UNDER CONTRACT—JURISDICTION OF ARBITRATOR TO DETERMINE EXISTENCE OF CUSTOM.

Produce Brokers Co. v. Olympia Oil & Cake Co. (1916) A.C. 314. In this case the simple question was whether, under a