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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, 11th December, 1895.

*Present*:—LORD HERSCHELL, LORD WATSON, LORD DAVEY.

THE EASTERN TOWNSHIPS BANK, Appellant, and

ROUGH *et al.*, Respondents.

*Sale—Mandate—Agreement to re-sell—Warranty.*

*HELD*:—Where an agreement was entered into between two parties that in the event of one of them becoming the purchaser of a certain property at Sheriff's sale, the other might exercise within ten days the option of buying the same from the first party on certain terms stated, that the purchaser at the sale did not act as mandatory for the other, but became the actual proprietor. Therefore, where the Sheriff's sale was subsequently set aside, after the purchaser at the sale had transferred the property to the other and received part of the price, it was held that, as his warranty as vendor was not fulfilled, he was bound to reimburse to the other the amount paid in respect of the sale.

The appeal was from a judgment of the Court of Queen's Bench, delivered at Montreal, in the consolidated cases of the Eastern Townships Bank *v.* Rough, McDougall and Beard, and the Eastern Townships Bank *v.* Rough.

LORD HERSCHELL:—

Although the facts of this case are somewhat complicated, the