

showed a price which was not below the fair market value of such oils when sold at wholesale for home consumption in the principal markets of the United States.

Held, that there was no undervaluation.

3. When goods are procured by purchase in the ordinary course of business and not under any exceptional circumstances, an invoice disclosing truly the transaction affords the best evidence of the value of such goods for duty. In such a case the cost to him who buys the goods abroad is, as a general rule, assumed to indicate the actual market value thereof. It is presumed that he buys at the ordinary market value. It is not the value at the manufactory, or the place of production, but the value in the principal markets of the country, *i.e.*, the price there paid by consumers or dealers to dealers that should govern. Such value for duty must be ascertained by reference to the fair market value of such or like goods when sold in like quantity or condition for home consumption in the principal markets of the country whence so imported.

4. Goods seized for fraudulent undervaluation were released upon a deposit of money. The importer made no claim by notice in writing under the 198th section of "The Customs Act, 1883," but there was no question that he claimed the goods. Subsequently he submitted evidence to show there was no ground for the seizure, and the Minister having considered such evidence, and having heard the parties, acquitted the importer of the charge of fraudulent undervaluation, but found there had been an undervaluation of these and other goods. No proceedings were taken to condemn the goods within the three years mentioned in section 207 of "The Customs Act of 1883." On petition to recover the money deposit, it was

Held, that the Minister had waived the notice of claim required by section 198 of the said Act.

Quære: Does section 198 apply to the case where money is deposited in lieu of goods seized?

5. The additional duty of 50% on the true duty payable for undervaluation under section 102 of the Customs Act of 1883 is a debt due to Her Majesty, which is not barred by the three years prescription contained in section 207, but may be recovered at any time in a court of competent jurisdiction.

Quære: Is such additional duty a penalty?

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

BOYD, C.]

[Nov. 1.

RE GRAYDON *v.* HAMMILL.

Contact of sale—Incumbrances—Local improvement rate—Sewers—Vendor and purchaser.

Where parties had contracted in writing, the one with the other, to sell to each other certain lands free from incumbrances,

Held, that though the contract also provided that taxes were to be proportioned and allowed to date of completion of sale, special frontage rates imposed for local improvements and construction of sewers prior to the contract, the period of which had not expired, were incumbrances to be discharged by the vendors respectively.

A. Cassels for vendor.

Marsh, Q.C., contra.

FERGUSON, J.]

[Oct. 4.

SMITH *v.* TENNANT.

Contract—Conveyance—Merger of contract in conveyance.

The plaintiff agreed in writing to give certain lands of his for five houses of one, for whom the defendant was assignee for creditors, which were in course of erection on S. avenue. By the contract, which was dated March 24th, these five houses were to be completed by May 30th, similar to certain houses on O. street. Mutual conveyances were to be exchanged between the parties within sixty days, *i.e.*, by May 24th, and as a matter of fact they were executed and exchanged about May 9th.

The plaintiff claimed damages for non-completion of and defects in the finishing of the five houses on S. avenue.

The deed from the defendant contained no covenants covering the matter complained of.

Held, that nevertheless the plaintiff was, on the original contract, entitled to recover.

It was impossible to arrive fairly at the conclusion that a contract to perform certain work.