

tion of the tank car, but on the acid contained in the car at the rate of 27 cents per 100 pounds of acid.

*Held*, that the Crown was only entitled to the freight on the number of pounds delivered to the consignee at Sydney; and that the balance of the amount paid by the consignee should be repaid to the suppliant with interest.

As the suppliant, while succeeding as to part of the amount claimed, had failed on the main issue in controversy, each party should bear its own costs.

*Davidson*, for suppliant. *Mellish*, K.C., for respondent.

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Burbidge, J.]

McLELLAN v. THE KING.

[Jan. 12.

*Contract for sale of railway ties—Delivery—Inspection—Payment—Purchase by Crown from vendee in default—Title.*

In January, 1894, the suppliant agreed with M., acting for the B. & N.S.C. Company, to supply the company with railway ties. The number of the ties was not fixed, but the suppliant was to get out as many as he could, to place them along the line of the Intercolonial Railway, and to be paid for them as soon as they were inspected by the company. The ties were not to be removed from where the suppliant placed them until they were paid for. During the season of 1894 the suppliant got out a number of ties, which were piled alongside the Intercolonial Railway, inspected, those accepted being marked with a dot of paint and the letters B. & S. and thereafter paid for by the company. In 1905 the suppliant made a second agreement with M. to get out another lot of ties for the company upon the same terms and conditions. Under this agreement the suppliant got out ties and placed them along the Intercolonial Railway where the former ties were piled, but the lots were not mixed. The second lot was inspected and marked with the dot of paint, but the letters B. & S. were not put on them. The suppliant demanded payment for them from the company but was not paid. In November, 1896, the company sold both lots of ties to the Crown for the use of the Intercolonial Railway, and was paid for them; and in May or June, 1897, the Intercolonial Railway authorities removed all the ties.

*Held*, that the B. & N.S.C. Company had not at the time when they professed to sell the second lot of ties to the Crown any right to sell them, and the Crown did not thereby acquire a good title to the ties. That being so, the suppliant was entitled to have the