

ing, said lands and to permit the then owner, "his heirs, executors, administrators, assigns (and the owner or owners for the time being of the said lands and premises or any part thereof and each of them) "to use the same for the purpose of any lawful business to be carried on or done on the said lands or premises." By order of Court the suppliant's predecessor in title was declared to be entitled to the execution of such undertaking. The undertaking was given in 1907, and at that time the lands in question were not being used for any particular purpose. The Crown in execution of its undertaking subsequently laid down a siding in front of or adjoining the said lands. There was, however, a retaining wall between the siding and such lands, and the Crown informed the solicitor of the suppliant on the 5th October, 1909, that "at any time you may desire, we are prepared to open a way through this retaining wall so as to give access to the siding in order that you may conduct your business in the manner contemplated in the order of the Court"; but, although the suppliant presented his claim for damages on the basis that the Crown had not given him a siding suitable for carrying on a corn-meal milling business, at the time of the institution of the present proceedings nothing had been done to utilize the property for any particular business.

Held, that upon the facts the Crown had fully complied with the terms of the undertaking mentioned, and that the suppliant had not made out a claim for damages.

Quaere, whether the suppliant had any right to take proceedings to compel the execution of the undertaking by the Crown until the property was occupied for the purposes of some business.

2. Whether the suppliant would have any right to enforce a claim for damages in view of the fact that he had no assignment of any such claim from his predecessor in title.

W. B. A. Ritchie, K.C., and *E. P. Allison*, for suppliant.
R. T. McIlreith, K.C., and *C. F. Tremaine*, for the Crown.

Cassels, J.]

[Oct. 3.]

IN RE EUGENE MICHAUD v. THE KING.

Contract—Railway ties—Inspection—Inspector exceeding authority in respect of acceptance—Subsequent rejection of ties improperly accepted—Right to recover price.

The suppliant, in reply to an advertisement calling for tenders for ties for the use of the Intercolonial Railway offered