

but for its operation, has no obligation imposed upon him.

The construction or maintenance of a ditch or drain, for the benefit of another, should not be imposed upon any one, unless a decided and preponderating benefit is the natural consequence. I think it is the duty of the engineer to weigh the disadvantages against the advantages, and only charge a duty upon an unwilling owner when he is clearly and considerably to be benefited by the work. The present award is, in fact, a reversal of that made by the former engineer, and I am fortified by his opinion. I can find no circumstances which justify any change, but rather the contrary. This award must be amended by restoring the parties to the position they formerly occupied, and the appeal is allowed with costs.

Early Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.]

THE ST. CATHARINES MILLING AND LUMBER CO. ET AL. v. THE QUEEN.

Dominion Lands—Permit to cut timber—Implied warranty of title—Breach of contract to issue license.

1. A permit issued under the authority of the Minister of the Interior, under which the purchaser has the right within a year to cut from the Crown domain a million feet of lumber, is a contract for the sale of personal chattels, and such a sale ordinarily implies a warranty of title on the part of the vendor; but if it appears from the facts and circumstances that the vendor did not intend to assert ownership, but only to transfer such interest as he had in the thing sold, there is no warranty.

2. The Government of Canada, by Order-in-Council, authorized the issue of the usual license to the company (suppliants) to cut timber upon the Crown domain, upon certain conditions therein mentioned. The company did not comply with such conditions; but before the expiry of the year during which such license

might have been taken out, proceedings were commenced by the Government of Ontario against the company, under which it was claimed that the title to the lands covered by the license was vested in the Crown for the use of the Province of Ontario, and that contention was ultimately sustained by the Court of last resort.

Held, that there was a failure of consideration which entitled the company to recover the ground rent paid in advance on the Government's promise to issue such license.

Quære: Will an action by petition or on reference lie in the Exchequer Court against the Crown for unliquidated damages for breach of warranty implied in a sale of personal chattels?

BURBIDGE, J.]

THE VACUUM OIL CO. v. THE QUEEN.

"The Customs Act, 1883," ss. 68, 69, 198, 207—Money deposited in lieu of seizure—Market value—Waiver of notice of claim—Penalties—Prescription.

1. The company (suppliants) were manufacturers of oils, doing business at Rochester, New York. Their principal business in the United States was done directly with the consumer. For several years they did business from their office at Rochester directly with Canadian consumers. In some cases the purchaser paid the duty, and in others the company sold at a price including the duty and the cost of transportation. In the former case they charged the Canadian purchaser the price to consumers at their place of business in Rochester, and the oils were so invoiced and the duty paid on that value by the purchaser. In the latter case, the price to the consumer at Rochester was taken as a basis upon which the price per gallon to the Canadian purchaser was made up, but the goods were entered for duty at a lower value—two sets of invoices being used, one for the purchaser in Canada, and the other for the company's broker at the port of entry.

Held, that the oils were undervalued.

2. The company having changed their manner of doing business in Canada, and having established a warehouse at Montreal, which became the centre and distributing point of their Canadian business, exported oils from Rochester to Montreal in wholesale lots. The invoices