

Sup. Ct.]

NOTES OF CASES.

[Ex. Ct.

Held, (Strong, J., dissenting) that as J. M. could not justify the breach of his agreement with C., J. M. was bound both at law and equity to indemnify C. for any loss he sustained by reason of such breach. Decree of the Court of Appeal affirmed.

MacLennan, Q.C., and *Armour*, for appellant.
I. A. Boyd, Q.C., for respondent.

QUEBEC.

DUPREY, ET AL., V. DUCONDIE.

Sale en bloc—Deficiency—Warranty, effect of.

By a deed executed October 22, 1866, for the purpose of making good a deficiency of fifty square miles of limits which respondents had previously sold to appellants, together with a saw-mill, the right of using a road to mill, four acres of land, and all right and title obtained from the Crown to 256 square miles of limits, for a sum *en bloc* of \$20,000; the respondents ceded and transferred, "with warranty against all troubles generally whatsoever" to the appellants, two other limits containing 50 square miles: in the description of the limits given in the deed the following words are to be found. "Not to interfere with limits granted or to be renewed in virtue of regulations." The limits were, in 1867, found in fact to interfere with anterior grants.

Held, that the respondents having guaranteed the appellants against *all troubles whatsoever* the latter were entitled, pursuant to Art. 1518 C. C., P. Q., to recover the value of the limits from which they had been evicted proportionally upon the whole price, and damages to be estimated according to the increased value of said limits at the time of eviction, and also to recover, pursuant to Art. 1515, C. C., for all improvements, but as the evidence as to proportionate value and damages was not satisfactory it was ordered that the record should be sent back to the Court of first instance, and that upon a report to be made by experts to that Court on the value of the said limits proportionally upon the whole price and on the increased value of the same at the time of eviction, the case be proceeded with as to law and justice may appertain.

HENRY and GWYNNE, JJ., dissenting.
Bethune, Q.C., and *Trenholme*, for appellants.
Pagnuelo, Q.C., and *Conville*, for respondents.

EXCHEQUER COURT.

Taschereau, J.]

[Montreal.

The QUEEN V. McNALLY, and WM. McNALLY, CLAIMANT.

Information in rem—Onus probandi.

The Queen, on the information of the Attorney General for the Dominion of Canada, prayed that a certain quantity of drain pipes, etc., seized as dutiable goods upon which duty had not been paid, remain forfeited. Wm. McNally intervened and claimed the goods.

At the trial, the counsel for the plaintiff called upon the claimant to open the case, the counsel for the claimant contended that the Crown was bound to make out a *prima facie* case.

Held, that under the Customs Act, that the claimant was bound to prove he had paid the duties, and therefore the burden of proof was on him.

Fournier, J.]

MCPHERSON V. THE QUEEN.

Appeal under 42 Vict., ch. 8—Award—Damages resulting from obstructing access to property—Personal damages not proper subjects of compensation—31 Vict., c. 12, sec. 34—Direct or consequent damage to property.

The official arbitrators to whom the Minister of Public Works referred the suppliants' claim for damages sustained by them in consequence of and during the construction of the extension of the Intercolonial Railway at Halifax, awarded the suppliant \$500. On an appeal to the Exchequer Court under 42 Vict., c. 8, the amount awarded was increased to \$3,633.00. The facts are briefly these:—

Suppliant was a ship-builder and owner of a ship yard in Halifax, to which he had access on the north side from Young Street, and on the south side by the harbour of Halifax. The railway was extended along 150 feet of these premises, and Young Street was raised from 2½ to 5 feet; facing the property on the south-east the level of the railway is 19 feet above the suppliant's land. During the progress of the works a drain was built which extended 120 feet on suppliant's land, and some damage was caused to his property by the breaking up of the embankment. The suppliant proved that the construction of the railway through Young Street