

Q. B.]

NOTES OF CASES.

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DONALDSON V. SMITH.

Sale of goods—Implied warranty of title.

R., a merchant at M., having obtained advances from a bank there on a quantity of brandy held by him, employed H., a broker in T., to procure advances for him on the same brandy, in order to enable him to pay off the bank. Application was made to the defendant, and after defendant had had the brandy tested by three merchants, of whom L., of the firm of L. & C., was one, he made advances upon, or rather indorsed R.'s paper to a certain extent on account of it. In order that the brandy might be tested it was sent to T., and, when the bank had been satisfied, the brandy was stored in defendant's name. Before the advance, R. & H., and, after the advance, defendant attempted to sell the brandy, which was finally disposed of to L. & C., who afterwards went into insolvency, plaintiff becoming their assignee.

L. & C. insisted that they bought the brandy from the defendant, claiming, as owners, the right to sell it. It was afterwards seized and confiscated for non-payment of duties.

L. & C. were compelled to give up the brandy in their possession, and to refund the moneys they had received from other parties to whom they had sold portions of it.

Plaintiff, as assignee of L. & C., sued the defendant on the implied warranty of title, and defendant denied that he ever sold as owner, contending that his true position as pledgee was well known to L. & C., as also H., and that H., and not he, negotiated the sale.

On this point the evidence was very contradictory, H. having made out and delivered bought and sold notes, as between R. and L. & C., as also an invoice between the same parties after the quantity of brandy had been determined, and he received a commission from R. on the sale.

Defendant, who had received a commission for indorsing R.'s paper, also received from him a commission for guaranteeing and indorsing L. & C.'s paper.

Defendant collected the money as it became due, retired the notes of R. indorsed

by himself as they matured, and remitted the balance, after deducting his commission, to R.

There was no express warranty of title.

Held, that a sale by a person professing to be the owner, and being able to transfer possession, was an implied warranty of title.

Held, also, Armour, J., dissenting, that in this case the true position of defendant was known to all parties; that L. & C. knew that the brandy belonged to R., and that defendant only had it in pledge, and that therefore they did not buy it on the warranty or on the faith of defendant's being the owner; that they knew what title defendant had, and that in fact he had all the title he professed to have; and that his negotiating the sale, if he did so, as alleged, did not, with the knowledge L. & C. had of his true position, involve a warranty of title in himself or a representation of ownership.

Per ARMOUR, J.—The verbal evidence shewed that defendant had claimed and asserted absolute ownership, and was therefore liable for a breach of warranty of title, and if L. & C. knew his true position, what he did was a warranty of title to them whether he was owner or not.

MASSON V. ROBERTSON ET AL.

Award under railway act—Action on bond for purchase money—Evidence—Notice of award—Adding plea.

A railway requiring the immediate possession of plaintiff's land, defendants gave their bond to the plaintiff for the purchase money thereof, conditioned to be void upon payment or deposit in Court, under the provisions of the Railway Act, of the amount of the purchase money to be ascertained by arbitration proceedings then pending under said Act, within one month from the making of the award.

Held.—(1) That an award having in fact been made, its merits could not be tried in an action upon the bond.

(2) That the award was not necessarily vitiated by reason of the arbitrators having allowed compensation for increased risk of loss by fire.

(3.) That in such an action the defendants could not examine one of the arbitra-