"and conveyed, with warranty against all dis-
"turbances generally, whatsoever they may
"be, to Cushing, the said quantity of 50 miles
"of limits on the said River Assumption,
"described as follows in the English tongue."
The description is contained in two other licenses, Nos. 25 and 26. License 25 is in these terms:—"Commencing at the upper "end limit No. 94 on the southwest side of "L'Assomption River, granted to late Ed-"ward Scallon, and extending five miles on "said River and five miles back from its "banks, making a limit of 25 square miles, "not to interfere with limits granted or to be "renewed in virtue of regulations." *Mutatis mutandis*, license 26 is in the same terms. The deed states that McConville has, for his principals, paid the sum of $500 to Cushing, on account generally of all claims which Cushing may have against the heirs of Scallon, and Cushing further declares that by reason of this deed he has nothing to claim, for any cause or reason whatever, against the heirs of Scallon; and a general release is given. McConville on his part gives a general release to Cushing for all claims by the heirs of Scallon.

It is on that deed that the present question arises. The difficulty which has arisen is this: that when the grantee, Cushing, came to work on the limits contained in the licenses 25 and 26 he was stopped by a man of the name of Hall, who claimed to be possessed of the same land in virtue of a prior license from the Crown. There has been a great deal of controversy as to whether the interference by Hall has been properly proved in this suit; but for the purposes of the present decision all that part of the case is assumed in favor of the respondents. Cushing could not get the benefit of all the land described in licenses 25 and 26, by reason of a prior grant to Hall. Cushing accordingly, or his assignee, Dupuy, the present respondent, sues the heirs of Scallon upon the warranty which he alleges that they have given for 50 square miles of timber limits. The question is whether the appellants have given a warranty for those 50 miles of limits absolutely, or only a warranty for the licenses which purport to give a title to the 50 square miles. It is a question of very considerable difficulty. The Courts in Montreal have taken one view, in favor of the appellants; and the majority of the Supreme Court has taken the other view, in favor of the respondent.

There has been a good deal of question, both in the Courts below, and at the bar here, whether it is proper to go behind the deed of October, 1866. It is quite plain what the course of a court of justice must be. In one sense we cannot go behind the deed of 1866; that is to say, the rights of the parties must be regulated by the construction of that deed, and of that deed alone. In another sense we have to go behind it, because the deed itself refers to prior transactions. It professes to be founded upon the liability arising out of those prior transactions; and a court cannot properly construe the deed without ascertaining what the position of the parties was at the time when they came to execute it. Now the position of the parties appears to their Lordships to be this: Scallon contracted to sell his right and title to the 13 licenses, which purport to contain 256 square miles. He was not liable to make good a title to the 256 square miles any further than the licenses themselves made a title to them. But he was liable to have and to deliver the licenses which he purported to sell. In point of fact he had not got two of those licenses, and when that fact is discovered his heirs come to make up the deficit, as they call it "*completer le déficit*;" that is to say, to do that which Scallon was bound to do. At that time Scallon was bound to make good in some way the loss sustained by the non-existence of licenses 97 and 98.

What then do the parties do? They make up the deficit by assigning two other licenses. They call it, "50 miles of limits described as follows." Even taking the word "limits" to be an ambiguous term, their Lordships are of opinion that "limits described as follows" must be taken to indicate the thing which is sold according to the description which is given. Into that description is imported the condition that the license sold is not to interfere with limits granted or to be renewed in virtue of regulations. Therefore the two licenses which formed the subject of the assignment of 1866 are to be taken exactly