

had been pronounced and whilst the appeals in the cross actions were before the Queen's Bench, the respondents McDougall, Beard and Rough sought to put in evidence that judgment. The application made with that view was refused by the Court on the ground apparently either that the judgment not being a final one it was not competent to introduce it, or that the rules of procedure did not admit of its being then introduced. The judgment of the Queen's Bench in the action brought by the appellant Bank condemned the defendants in that action to pay the sum demanded by the Bank, but suspended the execution of this condemnation until the Bank had put an end to the trouble and danger of eviction complained of. In the action brought by Rough it remitted the proceedings to the Court of first instance to be proceeded with according to the rights and obligations of the parties defined and established by the judgment of the Court of Appeal, after the regular introduction in that cause of the definitive decree of nullity pronounced at the instance of the Bank of Hochelaga.

The Court of Queen's Bench in the judgment now under review came to the conclusion that the appellant Bank were not strangers to the acts which rendered the sale by the sheriff invalid and that their warranty was therefore not fulfilled. Their lordships see no reason whatever to differ from that conclusion.

The appellant Bank insist, however, that seeing that the postscript to the letter of the 8th of January made it one of the conditions that they should "deed without warranty," they are entitled to the purchase money and are under no obligation to the purchasers even though these should be evicted from the property on the ground that the Bank acquired no title from the sheriff. It was contended that although the deed of sale by the Bank to Rough contains an express warranty as regards their own acts, the Bank are entitled to appeal to the agreement which the deed of sale was intended to carry out, and which when examined shows that there was to be no warranty at all.

It is not necessary for their lordships to consider whether it is competent to the parties thus to go behind the provisions of the deed and to absolve themselves from one of its express stipulations. Assuming it to be so their lordships do not think that this appeal to the document of January, 1883, is calculated to improve the case of the Bank. It is clear that the basis of the