

Sup. Ct.]

NOTES OF CANADIAN CASES.

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pellants for \$2231.37, the balance then due her and the interest under said deeds. To this action the appellants pleaded, *inter alia*, that interest was due from 1st July, 1881 only, the parties having agreed to waive the right to exact interest until the net revenue of the hotel should be sufficient to pay the annual liability for interest, insurance, etc., which was the case only from the 1st July, 1881, and that they were entitled to oppose in compensation a larger sum paid to the Corporation of Montreal for assessment imposed under 42 and 43 Vict. cap. 53 (P. Q.), which statute was passed after the purchase. To this the respondent replied that the appellants had accepted Mrs. L. as a new creditor delegated to receive payment, and had waived all pretension or grounds which they might have set up against their vendors, and that all assessments imposed or attempted to be imposed prior to 42 and 43 Vict. cap. 53, were null and void and had been so declared.

The Superior Court held that the compensation pleaded had taken place, and dismissed the respondent's action.

On appeal, this judgment was reversed by the Court of Queen's Bench for the following, amongst other reasons, that neither the respondent nor her *auteur* Mrs. L. were *garants* of the company, and that the respondent was entitled to be paid, notwithstanding any claim the said company might have against their vendors under the warranty stipulated in their deed of sale. On appeal to the Supreme Court of Canada,

Held, that the above reason given by the Court of Queen's Bench was sufficient to dismiss the appellants' plea of compensation.

Held, also (on cross appeal, affirming the judgment of the court below), that interest should only be charged since 1st July, 1881.

Appeal dismissed with costs, and cross appeal dismissed with costs.

Pagnuelo, Q.C., for appellants.

Gioffrion, Q.C., for respondents.

JAMES FLANAGAN AND JOANNA FLANAGAN (Defendants), Appellants, and JOHN DOE on demise of R. ELLIOTT, ET AL. (Plaintiffs), Respondents.

Assessment on real estate—In name of occupier—Description as to persons and property—Con. Stat. (N. B.), ch. 100, sec. 16—Several assessments in one warrant—Illegal assessment in.

On appeal from the Supreme Court of New Brunswick.

The Consolidated Statutes of New Brunswick, sec. 16 of ch. 100 Con. Stat. of New Brunswick, and relating to rates and taxes, provides that "real estate, where the assessors cannot obtain the names of the occupier or person having ostensible control, but under such description as to persons and property . . . as shall be sufficient to indicate the property assessed, and the character in which the person is assessed."

J. G., the owner of real estate in Westmoreland County, N. B., died, leaving a widow who administered to his estate and resided on the property. The property was assessed for several years in the name of the estate of T. G., and in 1878 it was assessed in the name of "Widow G."

Held (affirming the judgment of the court below), that the last named assessment was illegal, as not comprising such description of persons and property as would be sufficient to indicate the property assessed and the character in which the person was assessed.

When a warrant for the collection for a single sum for rates for several years included the amount of an assessment which did not appear to be either against the owner or the occupier of the property.

Held (affirming the judgment of the court below), that the inclusion of such assessment would vitiate the warrant.

Appeal dismissed with costs.

Borden, for appellants.

R. Barry Smith, for respondents