

sible unless the punishment be such as naturally to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions." In another recent case, *Boyd v. State*, before the Supreme Court of Alabama, 7 So. Rep. 268, a similar principle was enunciated by the Court. In this case, in which a schoolmaster was tried for assault and battery committed upon a pupil of 18 years of age, the evidence showed that after a severe chastisement inflicted in the school-room, the defendant followed the pupil into the school-yard, and struck him with a stick, and then "put his hands in his pocket as if to draw a knife;" that he "afterwards struck him in the face three licks with his fist, and hit him several licks over the head with the butt end of the switch." From these blows the eye of the boy was considerably swollen, and was closed for several days. The defendant was apparently very angry all the time, and very much excited; and after he got through with the whipping, he remarked, in an angry tone, in the presence of all the pupils and others, that he "could beat any man in China Grove beat." The Court held that there was ample room for the inference of legal malice, such as to justify a verdict of guilty.

#### EXCHEQUER COURT.

Nov. 4.

BURBIDGE, J.

THE SAINT CATHARINES MILLING AND LUMBER COMPANY, et al., Suppliants, v. THE QUEEN, Respondent.

*Dominion Lands—Permit to cut timber—Implied warranty of title—Breach of contract to issue license.*

1. A permit issued under the authority of the Minister of the Interior, under which the purchaser has the right within a year to cut from the Crown domain a million feet of lumber, is a contract for the sale of personal chattels, and such a sale ordinarily implies a warranty of title on the part of the vendor; but if it appears from the facts and circumstances that the vendor did not intend to assert ownership, but only to transfer such interest as he had in the thing sold, there is no warranty.

2. The Government of Canada by order-in-council authorized the issue of the usual license to the company (suppliants) to cut timber upon the Crown domain, upon certain conditions therein mentioned. The company did not comply with these conditions, but before the expiry of the year during which such license might have been taken out, proceedings were commenced by the Government of Ontario against the company, under which it was claimed that the title to the lands covered by the license was vested in the Crown for the use of the Province of Ontario, and that contention was ultimately sustained by the Court of last resort.

*Held*:—That there was a failure of consideration which entitled the company to recover the ground rent paid in advance on the Government's promise to issue such license.

*Quære*:—Will an action by petition, or on reference, lie in the Exchequer Court against the Crown for unliquidated damages for breach of warranty implied in a sale of personal chattels?

Nov. 17.

Present: BURBIDGE, J.

THE VACUUM OIL COMPANY, Suppliants, and THE QUEEN, Defendant.

*Customs duties*—"The Customs Act, 1883," secs. 68, 69, 198, 207—*Money deposited in lieu of seizure—Market value—Waiver of notice of claim—Penalties—Prescription.*

The company (suppliants) were manufacturers of oils, doing business at Rochester, New York. Their principal business in the United States was done directly with the consumer. For several years they did business from their office at Rochester directly with Canadian consumers. In some cases the purchaser paid the duty, and in others the company sold at a price including the duty and the cost of transportation. In the former case they charged the Canadian purchaser the price to consumers at their place of business in Rochester, and the oils were so invoiced and the duty paid on that value by the purchaser. In the latter case the price to the consumer at Rochester was taken as a basis upon which the price per gallon to the Canadian purchaser was made up, but the goods