lant) the factory and *sous la simple garantie de ses faits et promesses*, whatever rights he might have under his agreement with the farmers, for the bulk sum of $7,000.

Then G. D. assigned to B. the factory and the same rights, but excluding warranty, *sans garantie aucune*, for $7,500.

A company was subsequently formed, to whom B. assigned the factory and the rights, and one of the farmers to the original agreement having sold milk to another cheese factory, the company sued him, but the action was dismissed on the ground that N. D. could not validly assign personal rights he had against the farmers. Thereupon G. D. brought an action against N. D. to recover the price paid by him for rights which he had no right to assign. At the trial it was proved that although the price mentioned in the deed, and paid, was a bulk sum for the factory and the rights, the parties at the time valued the rights under the agreement with the farmers at $5,000. G. D. also admitted that the action was taken for the benefit of the present owners of the factory.

Held, affirming the judgment of the Court below (STRONG and FOURNIER, JJ., dissenting), that, inasmuch as the appellant, by the sale he had made to B., had received full benefit of all that he had bought from respondent and had no interest in the suit, he could not claim to be reimbursed a portion of the price paid.

Per TASCHEREAU, J.—If any action be laid at all, it could only have been to set the sale aside, the parties being restored to the *status quo ante* if it were maintained.

Appeal dismissed with costs.

Irvine, Q.C., for appellant.

Casgrain, Q.C., for respondent.

WEIR *v.* CLAUDE.

Pollution of running stream—Long-established industry—Nuisance—Injunction.

W. acquired a lot adjoining a small stream at Cote des Neiges, Montreal, and finding the water polluted from certain noxious substances thrown into the stream, brought an action in damages against C., the owner of a tannery situated fifteen arpents higher up the stream, and asked for an injunction. At the trial it was proved that C. and his predecessors from time immemorial carried on the business of tanning leather there, using the waters of the stream, and that it was the principal industry of the village; that the stream was also used as a drain by the other proprietors of the land adjoining the stream and manure and filthy matter were thrown in, and that every precaution was taken by C. to prevent any solid matter from falling into the creek, and that W.'s property had not depreciated in value by the use C. made of the stream.

Held, affirming the judgment of the Court below, that, as between neighbors there are other obligations than those created by servitudes, which must be determined according to the quality of the locality, the extent of the inconvenience, and also according to existing usages; under the circumstances proved in this case, W. was not entitled to an injunction to restrain C. from using the stream as he did.

Appeal dismissed with costs.

Rielle & Lafleur for appellant.

Laflamme, Q.C., for respondent.

MITCHELL *v.* MITCHELL.

Removal of executor—Arts. 282, 285, 917, C.C.

Held, affirming the judgment of the Court of Queen's Bench for Lower Canada (Appeal side), that Art. 282, C.C., does not apply to executors chosen by the testator, and that in an action for the removal of one executor, when there are several executors, the existence of a law suit between such executor and the estate he represents, and the evidence of irregularities in his administration, but not exhibiting any incapacity or dishonesty, are not a sufficient cause for his removal. Arts. 917—285, C. C. (STRONG, J., dissenting.)

Appeal dismissed with costs.

Rielle for appellant.

DeLisle for respondent.

LES ECCLESIASTIQUES DU SEMINAIRE DE ST. SULPICE *v.* THE CITY OF MONTREAL.

Municipal taxes—Special assessments—Exemption—41 Vict. (Q.), c. 6, s. 26—Educational Institution—Tax.

By 41 Vict., c. 6, sect. 26, all educational houses or establishments, which do not receive any subvention from the corporation or municipality in which they are situated, are exempt from municipal and school assessments; "whatever may be the act, in virtue of which such assessments are imposed and notwithstanding all dispositions to the contrary."