

1900 GEORGE H. ALLAN (PLAINTIFF).....APPELLANT;
 *Oct. 5, 8.

AND

WILLIAM PRICE (DEFENDANT)RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN
 REVIEW, AT QUEBEC.

*Sale of land—Warranty—Special agreement—Knowledge of cause of
 eviction—Damages—Art. 1512 C. C.*

A warranty of title accompanying a sale of lands does not constitute
 the special agreement mentioned in Article 1512 of the Civil Code
 of Lower Canada in respect to liability to damages for eviction.

APPEAL from the judgment of the Superior Court, sitting in review, at the City of Quebec, which affirmed the judgment of the Superior Court, District of Quebec, by which the plaintiff's action was dismissed with costs.

The defendant sold to the plaintiff certain lands with buildings thereon which had previously been used as a sawmill and residences for employees, the description including "a dam forming part of the said property" according to the cadastral plan and book of reference with warranty of title. The evidence shewed that there was some doubt as to the title of the vendor to the dam in question and that, at the time of the sale, the purchaser was aware that the St. Francis Mill Company claimed to be proprietors of the dam and of the ground on which it stood. Subsequently the St. Francis Mill Company recovered a judgment against the purchaser in an action in which the vendor was made a party whereby the purchaser was evicted from

*PRESENT :—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

the dam property and the said company declared to be owner thereof.

The present action was then brought by the plaintiff to recover \$20,000 damages on account of his eviction and the defendant's default to make good the title and place him in possession of the dam property. The defendant denied any special agreement of warranty in regard to the dam property, alleged that the plaintiff was aware, at the time of the sale, of the causes which led to his eviction therefrom and tendered into court the full amount paid to him by the purchaser with costs as a sufficient indemnity under the provisions of Article 1512 of the Civil Code. It appeared that the sale had been made by the vendor in good faith believing himself to be the owner of all the property sold including the dam property, and that he had paid the costs in the action whereby the purchaser was evicted, in addition to the amounts tendered by his plea.

The judgment of the trial court declared the tender sufficient and dismissed the action, and the appeal is from the decision of the Court of Review affirming that judgment. The questions at issue on the present appeal sufficiently appear in the judgment reported.

Lasfleur Q.C. and *Cate* for the appellant.

Pentland Q.C. for the respondent.

The judgment of the court was delivered by ;

GIROUARD J.—This is an action in damages resulting from the eviction of part of an immovable property which was sold by the respondent to the appellant “with warranty against all hindrances whatsoever.”

The respondent met this action by alleging that at the time of the sale the appellant knew of the causes of the eviction, but that there was no special agreement with regard to the same and that consequently

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he had a right to recover only the price of the thing sold in accordance with Article 1512 of the Civil Code and he tendered him not only the value of the part he was evicted from, but the total amount of the price of the whole property sold with costs. Both the Superior Court and the Court of Review maintained this plea.

The appellant before this court contends for the first time that the above expressed warranty amounts to the "special agreement" mentioned in Article 1512 C. C. He quotes several French authorities to establish that when a warranty is stipulated, the vendor is bound to return the price and also to pay damages, but he admits that the French Code has no enactment corresponding to Article 1512 of the Quebec Code. We have no hesitation in holding that the "special agreement" referred to in Article 1512 is more than the conventional warranty; it is an agreement made with reference to the very cause or causes of the eviction which are known to the buyer. The French version of Article 1512 of the code is perhaps more explicit than the English one.

Dans le cas de garantie (and this undoubtedly means conventional warranty) si l'acheteur avait connaissance, lors du contrat des causes d' viction, *et qu'il n'y ait eu aucune stipulation à cet égard*, il ne peut alors réclamer que le prix de la chose vendue.

The words "*à cet égard*" are not to be found in the English version, but they are clearly understood.

As to the question of fact as to whether the appellant knew the causes of this eviction, two courts have unanimously found against him and there is ample evidence to support that finding.

The appeal is therefore dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Cate, Wells & White.*

Solicitors for the respondent: *Caron, Pentland & Stuart.*