

of its coming in contact with a large stone, negligently left by the defendant on the public highway. In the first two counts of the declaration, the female plaintiff claimed damages for personal injuries sustained by her, and in the last two counts the husband sued for the loss of the comfort and services of his wife, expenses incurred in nursing and attendance, and for injuries to the horse and buggy. The evidence shewed that the wife was very seriously injured, and that the buggy was injured to the amount of \$30.00, and that he incurred the losses and expenses set out in the declaration. The jury found the following verdict:—Verdict for plaintiffs on 1st and 2nd counts, with \$130 damages. No damages on the last two counts.

The Court refused to grant a new trial alone for the smallness of damages on the first two counts, but being of opinion that there must be a new trial on the last two counts, as the husband was clearly entitled to damages thereunder, and as no additional expense would thereby be incurred, the new trial was granted on the whole case.

H. J. Scott for the plaintiff.

McCarthy, Q. C., for the defendant.

FITCH V. MCCRIMMON ET AL.

Partnership and individual debts—Appropriation of payments.

The defendants, McC. & McL. had been partners, and had purchased goods from the plaintiff to the amount of \$442.85; afterwards they dissolved partnership, the defendant McC. continuing the business and taking over the assets, which included a considerable portion of the said goods. He made further purchases from the plaintiff, and from time to time paid him sums of money, and the question was as to the appropriation of these payments. The defendant McL. contended that they should be applied in payment of the balance due on the partnership debt, and the plaintiff to McC.'s individual debt. The jury found a verdict for the defendant.

A new trial was granted to enable the defendant, McL., to explain the transaction between McC. and himself, McC. having stated that McL. expressly agreed to as-

sume the payment of the debt now sued for.

J. A. Paterson for the plaintiff.

Hector Cameron, Q. C., for the defendants.

HUNTSMAN V. LYND.

Ejectment—Patent from the Crown—General and particular description—Falsa demonstratio.

Ejectment to recover a piece of land claimed by the plaintiff as part of the south half of lot 23, in the 10th concession of the Township of Clinton, as being included in the patent from the Crown of this lot. The defendant claimed that this portion had never been so granted, but was ungranted land lying between the western boundary of lot 23 and the township line. According to the plans in the Crown Lands Department, and other evidence produced, lot 23 appeared to extend to the township line, and there was no evidence of any work on the ground inconsistent therewith; it also appeared that the Government had never made any claim to this land as ungranted land, but had always assumed it to have been included in the patent of lot 23. In the patent there was a general grant of the lot as lot 23, and also by metes and bounds.

Held, that the general grant, which would accord with the plans, &c., must govern, and that the particular description, which was inconsistent therewith, must be rejected as *falsa demonstratio*.

McClive for the plaintiff.

Bethune, Q. C., for the defendant.

CRANDELL QUI TAM V. NOTT.

Qui tam action—Verdict against evidence—New trial—Property qualification—Reception of evidence—Misdirection.

In a *qui tam* action against defendant for acting as a justice of the peace without sufficient property qualification, where the jury find in favour of the defendant, a new trial will not be granted because the verdict is against the weight of evidence.

In a *rule nisi* for a new trial for the reception of improper evidence, it is not sufficient merely to state that improper evidence has been received, but the evidence ob-