

rying and dressing of the said stone, by what is called progress measurement, as has been already stated; and it also clearly appeared at the trial, that Mr. Simpson's object, in transferring the said stone, to Mittleburger (his Clerk was to enable him, if possible to force the Government to pay twice over for the said stone; the circumstances attending which will be more amply detailed in the case which follows this, and to which this question more particularly refers.

It must be borne in mind in this case, that PREVIOUS to the failure of the Plaintiff in the performance of his contract, no difficulty of any kind whatever occurred, either in regard to land, or materials required; but that AFTER the contract had been let to other individuals, every obstacle was thrown in the way of the Government by the Plaintiff. The pickets marked with the broad arrow, placed by the Officer in charge, to designate the boundaries (and which the Statute requires) were torn up by the Plaintiff, and thrown into the water, almost immediately after they were put down by Lieutenant Pooley, the most of them in his presence; that the Plaintiff had used the most abusive language to the servants of the Government upon all occasions; and that both himself and his servants had carried this opposition so far, that they could not in some instances proceed properly in the execution of the work; that during a temporary cessation, of that particular description of work, which required puddle, he had fenced in the bank from which puddle had always been obtained; that the occupants of certain houses, built by said Plaintiff, when a Contractor, for the convenience of individuals in his employment, refused to leave them, after notices were duly served upon them so to do; in which perverse conduct Mr. Simpson encouraged them, and in fact requested them to hold possession against the servants of the Crown. The said houses, either standing in the way of the embankment, or in situations to be inevitably overflowed by the waters of the Canal, Mr. Simpson had been given, most explicitly to understand, would of necessity be required to be removed, as the works advanced, in which he had all along contentedly acquiesced. Under these circumstances the Houses and fence were removed. It appeared from all the evidence, that this action was brought from vexatious motives, and with a view of recovering exorbitant requital, for damages, done to lands, which comparatively speaking, were not worth any thing, two years prior to the works of the Rideau Canal going into operation.

The defence in this Action rested solely upon the Provincial statute, already quoted, and it necessarily went into general detail, because it not only involved the question as to the issue of the appropriation of land for Canal purposes, by the Commanding Officer, but also to that of materials necessary in the construction of the work. The Chief Justice charged the Jury at great length, clearly illustrated, the powers the Provincial Act conferred, upon the Com. Officer, and how far he was personally liable for abusing those powers. Stating, that so long as he could justify his conduct, as he had done upon this trial, the Jury were bound to protect him. The Jury retired for a few moments, and returned with a verdict for the Defendant, which plainly showed

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