

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.

the deed is lawfully and properly executed to the satisfaction of my attorney, I will pay the amount of balance due on said deed, provided I am given a good warrantee deed, and the mortgage which is on record is properly cancelled if required." In an action brought by plaintiff on this agreement, a verdict was given to the plaintiff for \$572 and interest; but the jury found in answer to a question left to them, that the writing signed by the defendant on the 2nd October was not a new agreement for the payment of the purchase money of the land.

This verdict was subsequently set aside by the Supreme Court of New Brunswick, and a new trial ordered. The case having come on for trial again in January, 1884, a verdict was found for the defendant, the present appellant. The plaintiff, the present respondent, afterwards moved to set aside the verdict and for a new trial, or for a verdict to be entered for him, under leave reserved, for nominal damages, (the purchase money having been paid to W., after this suit was brought,) which a majority of the Court ordered, and against which order an appeal was taken to the Supreme Court of Canada, and it was

Held (reversing the judgment of the Court below, STRONG, J., dissenting), that there was no new contract created between appellant and respondent, and the action against appellant was not maintainable.

Appeal allowed with costs.

Hannington, Q.C., for appellant.

Blair, Q.C., for respondent.

New Brunswick.]

TOWN OF PORTLAND V. GRIFFITHS.

Defective sidewalks—Damages—Corporation, Liability of—Contributory negligence.

Declaration by first count alleged that defendants had the care of the public streets of the town of Portland. That it was their duty to keep them in a safe and proper condition, for citizens passing to and fro; that there was a street in such town under such care and subject to such duty, known as Main Street; that plaintiff was walking and passing over said street, and by reason of negligence and improper conduct of defendants, in not keeping the same in repair, etc., was injured.

Second count set out that plaintiff travelling upon said street, and using due care, was injured.

Third count that defendants negligently allowed a hole to remain on said street, and that plaintiff while lawfully using the street, and without negligence on her part, was hurt.

The evidence of the plaintiff showed that the accident whereby she was injured happened while she was engaged in washing the window of her dwelling from the outside of the house, and, that in taking a step backward, her foot went into a hole in the sidewalk, and she was thrown down and hurt. She also swore that she knew the hole was there.

The jury awarded her \$300 damages, and the Supreme Court of New Brunswick refused to set aside the verdict.

Held (HENRY, J., dissenting), that the plaintiff was neither walking and passing over, travelling upon, or lawfully using the said street, as alleged in the declaration, and that the verdict must be set aside.

Held, also, that the accident, if occasioned by the defective sidewalk, was due to plaintiff's own negligence.

Appeal allowed with costs.

A. A. Stockton, for appellant.

Skinner, Q.C., for respondent.

New Brunswick.]

CHAPMAN V. RAND.

Canada Temperance Act—Scrutiny—Powers of County Judge.

A judge of the County Court, on holding a scrutiny of votes under the provisions of the Canada Temperance Act, can only determine which side has a majority of the votes polled, by inspection of the ballots, and has no power to enquire into corrupt acts, such as bribery, etc., which might avoid the election. (HENRY, J., dubitante.)

Appeal allowed with costs.

Blair, Q.C., for appellant.

R. B. Smith, for respondent.