NOTES OF CASES.

NOTES OF RECENT DECISIONS IN THE SUPREME COURT OF NEW BRUNSWICK.

(*From* Pugsley's Reports, Vol. 3.)

Public agent — Road master — Personal liability— Where credit given to fund and not to person.

(April, 1875.)

L. was road master and employed C. to do certain work on a public road, the agreement between them being that the work was to be paid for when L. collected the road moneys. L. went out of office before he collected the moneys.

In an action brought by C. against L. The Court held that the credit was given to the fund and not to the personal liability of the road master.—*The Queen* v. *Tapley*, p. 47.

Slander of title—Action on the case for—Necessity of alleging special damage—Injunction order—Malicious service of—Whether a ground of action.

(April, 1875.)

The service of a copy of an order of injunction, even though alleged to have been made maliciously, whereby plaintiffs were prevented from selling certain property to the party served, affords no ground for an action, unless there has been some misrepresentation of law or fact.

To maintain an action for slander of title, the words must be followed as a natural and legal consequence by a pecuniary damage to the plaintiff, which must be specially alleged and proved; and mere words of caution are not enough. There must also be an express allegation of some particular damage resulting to plaintiff from such slander.—*Gordon et al.* v. *McGibbon et al.*, p. 49.

Pleading—When words equivocal—Common Law Procedure Act, 1873— *Promissory note — Action on against endorser—Notice of dishonour—What a sufficient averment of.*

(April, 1875.)

In an action against the endorser of a promissory note, the declaration, which, after stating presentment, contained the averment, that the maker did not pay, "but neglected and refused to do so, of which defendant had notice," was held bad on general demurrer.

In pleading, if the words are equivocal, and two meanings present themselves, that construction shall be adopted which is most unfavourable to the party pleading.—*Bank of Nova Scotia* v. *Estabrooke et al.*, p. 71.

Policy of Insurance—Condition that all statement contained in the application will be taken to be warranties on the part of assured—Verbal agreement.

(April, 1875.

Defendants issued a policy of insurance to plaintiff, insuring his dwelling-house against fire. One of the conditions of the policy required that "all applications for insurance must be made in writing prepared by an authorized agent of the company, and signed by the applicant, or by his authority; *and all statements contained in the application, will be taken and deemed to be warranties on the part of the assured.*"

In the plaintiff's application for insurance he stated that the size of his house was 28x30 feet; that it had been built only about six years; and that it was painted inside and outside. In fact, the size of the house was 24x29 feet; it had been built about thirty years, and was only painted on the inside. The house having been burnt, and an action brought on the policy, the company pleaded these misstatements of the plaintiff as an answer to the action. The plaintiff, in reply to this, pleaded that the company's agent applied to him to insure; that he was absent from home at the time and did not know the exact size of his house, and so stated to the agent, who verbally agreed with him that the statement in the application should not be considered a warranty of the size of the house, and that if it differed from the size stated in the application it should not be considered a misstatement. There was a similar statement with regard to the length of time the house had been built, with this addition—that plaintiff stated to the agent that he believed the house had been built twenty-five or twenty-six years: and also, that he had stated to the agent that the house was painted on the inside only.

Held, on demurrer, That these were no answers to the defendants' pleas; that by the conditions of the policy the statements of the age, size, &c., of the house were expressly made warranties, and that the written contract could not be varied by a mere verbal agreement.—*Dingee* v. *The Agricultural Insurance Company of Watertown, New York*, p. 80.