

once fully justified for a moment, at Sparks, originally of Col. By; for in necessary for the remuneration.— document produced that he had been in every way ease of his pro- Canal, passing so much so, as to any amicable rously so, when or the whole pre- been appropriat- re! By the issue w proceedings, inted out by the recommended refused, and de- the Government reviewing the persons should t, as to advance most cases alto-

e most simple explicit deci- the Command- n of lands for ows, is more eing the pos- trusted with ed in the per- t to another of the right of ls necessary ds lying con- his right to may find an

ught to re- pass said to Defendants, nding Offi-

cer Lieut. Col. By, in entering upon the close of the Plaintiff, and marking out lands for the service of the Rideau Canal, and also, for taking materials for the construction of the said work from the land in dispute. It must be borne in mind, in the recital of this case, that the Plaintiff was one of the firm of Rykert, Simpson & Co. contractors on the Line of Canal, who failed in the fulfilment of their contract, which was again let out to other persons, agreeably to the provisions of a clause in the Contract most explicitly laid down. It is also proper to be remarked, that the Plaintiff, as one of the firm of Contractors, had worked a quarry, at a distance from the Canal, and which was situated on a lot of land the proprietor of which, was not known. This quarry supplied stone for the Locks, and other works, at Merrick's Mills, Edmond's Rapids, and Smith's Falls. The labour and expense attending the quarrying, and dressing of the stone, Simpson was paid for, while he was a Contractor, as 'appeared in evidence, on what was called progress measurement. The land was held in joint Tenancy by the Plaintiff, and formed part of the Rideau Canal, usually Known by the name of Smith's Falls. He prosecuted to recover damages for the land taken for the Rideau service; complaining, that it was of greater extent, than necessary for the purposes of the Canal, and attempted to prove the said appropriation, to be wholly unauthorized by the Act of the Legislature; and also, for the value of the materials taken from the said lands, which were used in the construction of the Canal. The declaration in this action, contains two counts, common in actions of trespass; the one for entering a certain house, and close, the property of the Plaintiff, and the second, for taking away stone, puddle and other materials for the service of the Canal.

In regard to the land required for Canal purposes, the evidence in this action, on the part of the Plaintiff was precisely the same, as that advanced in the previous case (and therefore need not be recapitulated.) The Plaintiff complaining, that it was too much, and that Government Stores had been built upon a part of it, which he insisted were not required for the service. In answer to this, it was given in evidence by Col. Durnford, and Col. By, that no more land had been taken by Government, than was positively necessary, for the proper completion and preservation of the Rideau Canal; and Col. Durnford particularly stated, in giving his evidence, that in his opinion, the quantity that they were now in possession of, was barely sufficient for the purposes of the Canal, and, that Lieut. Pooley, in marking out the said land by boundaries, had acted strictly in obedience to the orders he had received.

In respect to materials, it was proved, that in the article of Puddle, that which was appropriated to the service was obtained from land set apart for the service of the Canal, in conformity to the Act, and, that no puddle of so good quality, or so conveniently situated, could be obtained. And in regard to the stone obtained from the quarry, and dressed by Mr. Simpson, for the Locks at Smith's Falls, it was shown in evidence, that the quarry had been opened by the Government, and that the stone thus obtained, was bona fide the property of the Government; and that the Plaintiff had been paid for the quar-