

RITCHIE, J. )  
In Chambers. )

Feb. 7.

LYND v. McCONNELL.

*Claim for unliquidated damages—Negligence—Tender and payment into court—Embarrassing pleas.*

In an action for damages arising out of the alleged negligence of defendant the latter pleaded in paragraph 7 of his defence: "As to the whole of plaintiff's claim the defendant made tender before action of \$30, and has paid the same into Court." On application to strike out said paragraph as embarrassing,

*Held*, that as a plea of tender could not properly be raised in such an action, the above paragraph was embarrassing and must be struck out.

Application granted with costs.

*Whitman*, for plaintiff.

*Sinclair*, for defendant.

## Province of New Brunswick.

### SUPREME COURT.

EN BANC.]

[Feb. 7.

BANK OF NOVA SCOTIA v. FISK.

*Practice—Attachment for costs.*

Plaintiffs sued defendants in St. John Circuit Court. The case was appealed to N. B. Supreme Court and from there to the Supreme Court of Canada, which set aside the judgment of the Supreme Court of N. B. (ordering a new trial), and ordered the defendant to pay costs of appeal and also certain other costs. Plaintiffs had this order made a rule of the Supreme Court of N. B., and then obtained a rule *nisi* for an attachment for non-payment of costs.

*Pugsley*, Q.C., opposed the granting of the attachment on the ground that the Supreme and Exchequer Court Act provisions were not either rules or orders such as are contemplated by the following, "any Court or Judge may enforce the payment of any money ordered to be paid by such Court or Judge by attachment, etc." (Col. Stat., c. 38, s. 26), under which the application was made.

Rule absolute for attachment.

*Coster*, contra.

EN BANC.]

[Feb. 7.

GLEESON v. DOMVILLE.

*Practice—Entry docket not filed—Estoppel—Execution not issued within a year and a day.*

Plaintiff sued defendant in 1879, and a verdict was given for defendant in 1880. On appeal to the N. B. Supreme Court and Supreme Court of Canada,