

reference to the inspectors or creditors. A new assignee appointed in his stead applied for an order directing the trial of an issue to determine whether the settlement was valid.

Held, that it was not necessary to bring another action to vacate the settlement, and it was more convenient to revive the action in the name of the new assignee as plaintiff, and let him continue it, leaving the defendants to move summarily to stay it, or to plead the settlement in bar, than to direct the trial of an issue. *Rees v. Carruthers*, 17 P.R. 51, distinguished. *Johnson v. Grand Trunk R. W. Co.*, 25 O.R. 64, and *Haist v. Grand Trunk R. W. Co.*, 22 A.R. 504, followed.

S. B. Woods, for the applicant. *R. McKay*, for the defendants.

Province of New Brunswick.

SUPREME COURT.

Full Court.]

EX PARTE MCELROY.

[April 23.]

Malicious destruction of fence on highway--Excessive costs.

The applicant and two other young men were convicted separately of breaking down a fence, enclosing certain school grounds. A portion of the fence so broken was on the highway, and it was sought to set aside the convictions on this ground, and also on the ground of excessive costs taxed by the convicting magistrate, the costs of the three cases aggregating upwards of \$100.

Held, that inasmuch as the evidence indicated that the fence was destroyed wantonly and not in the assertion of any right as regards the highway, the conviction should not be disturbed for this reason, but the rule was made absolute for a certiorari on the ground of the excessive costs, with directions to the convicting magistrate to return an itemized statement of the same.

F. B. Carvell, for the applicant. *G. F. Gregory*, Q.C., and *J. R. Murphy* contra.

Full Court.]

EX PARTE KILLAM.

[April 23.]

Insolvent--Orders for payment of judgment debt by instalments--Future income--Civil servant.

59 Vict. c. 28, s. 53, providing for orders for the payment of judgment debts by instalments applies only to present ability to pay and does not contemplate future earnings or income that may be uncertain, *LANDRY, J.*, dissenting.

Held, also, per *TUCK, C.J.*, and *HANI. GTON, J.*, that civil servants and all persons in the employ of the Federal Government are, so far as their incomes as such are concerned, exempt from such orders. Rule absolute for certiorari.

J. D. Hazen, Q.C., *A. A. Stockton*, Q.C., and *D. Grant*, in support of rule. *O. S. Crocket* and *C. A. Stockton*, contra.