

and applied to dismiss the bill for want of prosecution.

*Held*, that there being no summons in the suit, the suit was not in Court, and that the plaintiffs could not be compelled to issue the summons and proceed with the suit, or be dismissed, and that the application should be refused.

Goslin v. Goslin, 27 N. B. 221, distinguished.

*Query*, whether a defendant who has appeared before summons issued can apply to dismiss the suit for want of prosecution if a summons is not issued.

An application in June, 1890, upon bill and affidavits for an injunction order stood over until the 15th of August, 1891, when it was refused. Notice of appeal was given

on the 10th of October following, and on the same day the summons in the suit was issued. On the 16th the defendants filed an appearance, and gave notice of application to dismiss the bill for want of prosecution, on the ground that the summons should have been issued immediately after the refusal of the injunction order.

*Held*, that the plaintiffs were not in default, and also that they were not compellable to issue the summons in the suit pending the appeal, and that the application should be refused. **NEW BRUNSWICK RAILWAY COMPANY AND BROWN v. KELLY. NEW BRUNSWICK RAILWAY COMPANY AND BROWN v. KELLY. (No. 2)..... 442**  
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