

strated, that Col. By, has in the whole course of his proceedings been governed by a sound discretion, it cannot fail to be gratifying to the discerning and generous public, to learn, that he has succeeded in defeating every action. The first of which was as follows :—

In the Kings Bench, Trinity Term Second,

WILLIAM IV.

Nicholas Sparks Plaintiff

vs

Leut. Col. By, Defendant

This was an action of trespass, instituted against the Defendant, to recover damages, for his having entered upon, and taken possession of a certain quantity of ground, the property of the Plaintiff, for the service of the Rideau Canal, by virtue of and under the authority of the Provincial Statute above quoted. The land in dispute, was taken possession of by the Defendant, on the part of the Crown for the Rideau Service, and was marked out immediately, by monuments, and land marks, and a plan thereof, made, and sent to Mr. Sparks, with a written notice, that it had been taken possession of by Col. By for the service of the Government. Part of the land so taken was cleared, and fenced, and part sown with grass seed. The Plaintiff in this case, complained, that more land had been taken than was necessary for the purposes of the Canal, or that could be proved to be required for the said purposes, under the authority of the Act already quoted; and therefore, prosecuted for the restitution of his property, or the payment for it, at the price per acre at which he had disposed of lots of ground adjoining the same premises. The argument used on the side of the Plaintiff, was, that the quantity of ground (upwards of one hundred acres) was exorbitantly great, and could not be proved to the satisfaction of the Court, and jury, to be necessary for any one of the purposes specified in the Act, and as collateral proof of this, it was shown that a portion of the land thus taken, had been appropriated to a burial ground, while a part had been sown with oats: he therefore endeavored to recover by law, damages to the amount of £10,000, which he declared he had sustained, being prohibited from selling the ground taken by Government. On the other hand, it was proved to the satisfaction of the Court, and jury, chiefly by Col. Durnford Commanding Royal Engineer in Canada, that part of the land in question was necessary for making a basin, or reservoir, to supply the eight Locks at Bytown, and that the remaining part was required for the erection of works for their defence, and this opinion was formed in conjunction with that of Sir. James Kempt, who was then President of a Board of Officers, appointed to fix the route of the Canal, after it had been laid out and surveyed by the Commanding Engineer, and who had given his certified opinion, that the land in question was necessary, which was proved by Col. Durnford upon this trial. The evidence of Col. Durnford was confirmed by other professional men of acknowledged talent and experience in their profession. It was further proved to the Court, that the circumstances of a burial ground having been formed there, was purely accidental, originating in the death of a child

of one
plete
where
partic
any rel
recomm
wards,
deceas
earth
sity, b
would
so app
ment o
out fo
Col. By
posed t
person
it down
ed, tha
whole
menced
lue had
dence,
his poss
paid by
The
Jury to
investe
authori
the pur
ties whi
to put s
sonable
from no
that in t
acter, an
necessa
that Col
cretion
cised re
totally u
that the
ry store
its agric
fitted so
if after
ernment
breach c
plain me
ed, and