

afterwards the finding was in favour of the plaintiff for the value of the goods. The defendant moved for a new trial, which the Judge granted on payment of costs. From this judgment defendant appealed.

The Court dismissed the appeal, holding that it involved only a question of costs.

*G. W. Allen*, K.C., for appellant. *A. R. Slipp*, for respondent.

En Banc.]

EX PARTE MCGOLDRICK.

[Nov. 27, 1903.]

*Review from inferior Court—Power to review on question of fact where debt under forty dollars.*

In an action in The Small Debt Court of Fredericton to recover a balance on contra accounts between plaintiff and two defendants, who were partners, the defence being that the partnership was discharged by the plaintiff's acceptance from one of the members of the firm after its dissolution of his individual promissory note in satisfaction of the debt, the jury, found for the plaintiff. On review before a Supreme Court Judge the latter ordered a new trial. On the second trial the verdict was for the defendants. The plaintiff obtained an order for review from the County Court Judge and the latter set aside the verdict and ordered a verdict for the plaintiff for the full amount of his claim.

*Held*, on motion to make absolute a rule nisi to quash on certiorari, that, the amount of the claim being less than forty dollars, the County Court Judge had no power to review the finding of the jury, the issue being entirely one of fact.

Rule absolute to quash review order with directions to County Court Judge to dismiss the review with costs.

*O. S. Crockett*, in support of rule. *J. H. Barry*, K.C., contra.

En Banc.]

MCCOY v. BURPEE.

[Nov. 27, 1903.]

*Action for use and occupation—Ejection.*

Plaintiff let to defendant a farm of about 250 acres for one year, from May 1, 1901, at \$250, payable half yearly, and in case of "a chance to sell" agreed to give him the refusal. Defendant went into possession and occupied the buildings for the whole year. In Sept. 1901, however, plaintiff sold the farm, all but 4 or 5 acres, on which the buildings were situated, to one H., who a few weeks later re-sold to the Dominion Government for a rifle range. Before the deeds were executed surveying parties went over the premises and laid out roads and other work for the location of the proposed range. Construction work was begun that fall and continued in the following spring before the expiration of the defendant's tenancy. Defendant paid the first six month's rent but in an action to recover for the last six months he alleged that the acts referred to were done without