

New Brunswick.]

[May 6.]

BRADSHAW v. THE FOREIGN MISSION BOARD.

Practice—Equity suit—Application for new trial—Construction of statute—53 Vict., c. 4, s. 85 (N.B.).

By 53 Vict., c. 4, s. 85 (N.B.), relating to proceedings in equity, it is provided that in a suit in equity "either party may apply for a new trial to the judge who tried the case."

Held, reversing the decision of the Supreme Court of New Brunswick, TASCHEREAU, J., dissenting, that the Act does not mean that the application must be made to the individual who had tried the case, but to a judge exercising the same jurisdiction. Therefore, when the judge in equity who tried the case had resigned his office, his successor could hear the application.

Appeal allowed with costs.

C. A. Stockton for the appellant.

Palmer, Q.C., for the respondent.

New Brunswick.]

[May 6.]

TOWN OF ST. STEPHEN v. COUNTY OF CHARLOTTE.

Canada Temperance Act—Application of penalties—Incorporated town—Separated from county for municipal purposes.

By an Order in Council made in September, 1886, "all fines, penalties, or forfeitures recovered or enforced under the Canada Temperance Act, 1878, and amendments thereto, within any city, or county, or any incorporated town separated for municipal purposes from the county, which would otherwise belong to the Crown for the public uses of Canada, shall be paid to the treasurer of the city, incorporated town, or county, as the case may be, for the purposes of the said Act.

St. Stephen is an incorporated town in the county of Charlotte, N.B., having its own mayor and governing body, police magistrate, and other officials. It contributes, jointly with the county, to the support of the county gaol, registry office, sheriff's office, and other institutions. A number of convictions for offences against the Canada Temperance Act having taken place in the town, a special case was stated for the opinion of the Supreme Court of the Province as to whether the town treasurer or that of the municipal council of the county was entitled to the fines therefor. The Supreme Court decided in favour of the county.

Held, reversing such decision, KING, J., dissenting, that an incorporated town separated from the county for municipal purposes in the Order in Council did not mean a town separated for all purposes, but included any town that was self-governing and practically free from control by the county. St. Stephen, therefore, notwithstanding that it was joined to the county for the purposes mentioned, was a town "separated from the county for municipal purposes" within the meaning of the Order in Council.

Appeal allowed with costs.

Blair, Q.C., Attorney-General of New Brunswick, for the appellants.

Pugsley, Q.C., and Grimmer for the respondents.