

course exceeded the value of the stone in the quarry ; which Simpson sold as if it had been his own property, got out for private purposes, and not for the Public Service. Soon after Mr. Simpson had abandoned his contract, Lieuts. Pooley and Froom, were ordered to measure all the stone that they might find dressed, in the quarry, or about the works at Smith's Falls, and to ascertain the quantity for which Simpson had been paid. In the first attempt they made to execute their orders they were forcibly opposed by individuals, who were employed as sub-contractors under Simpson, to quarry and dress the stone in dispute. Two days after, the said Officers had been forcibly prevented from carrying their orders into effect, they made a second attempt, when to their great astonishment, the same persons who had before resisted them, rendered them every assistance, in pointing out Simpson's stone, showing their private marks by which they knew it, although they confessed, they had been most positively desired by the Plaintiff not to do so.

The only trespass committed by any of the persons summoned in this Action, was in entering the quarry opened by Simpson, & transferred by him, to the Plaintiff, Simpson's Clerk, and in measuring the stone they found prepared for the Public Service, and drawing it to the works at Smith's Falls, for which section of the Canal it was got out. The main arguments of the Plaintiff in this action, were, that the stone in question was quarried upon land, other, than that required for the Service of the Canal, and that therefore, Simpson had a right to transfer the said stone, the same as if he had got it off his own private property, and for his own use, and that he had so transferred the said stone to Plaintiff, which had afterwards been taken away, and made use of, for the Rideau Canal.

It appeared to the satisfaction of the Court, from the Plaintiff's own witnesses, that Simpson had no right to transfer the stone in question, in as much as it was got out for a particular service, and was, and had been in fact paid for & applied to a particular work in that service. So clear was was the Law, on this subject, that the Solicitor General called no witnesses for the Crown, but after the evidence on the part of the Plaintiff was closed, moved the Court, upon several points particularly on the ground that stone, or any other material got out under any particular agreement, and for a special purpose, could not legally be transferred, or made over in any shape by the person so getting it out. The Chief Justice perfectly agreed with the Solicitor General, and after stating the Law points, that bore upon the question, strongly recommended the Plaintiffs Attorney to take a Nonsuit, who not feeling satisfied, insisted upon its going to the Jury, (a thing almost unprecedented in the Courts of Justice for any one of the respectable part of the profession, to go in direct opposition to the Judges opinion.) The Judge then summed up the evidence, and in his charge to the Jury, gave it as his positive opinion, that both Law and Equity required, they should give a verdict for the Defendants. The Jury, either misconceiving the grounds, upon which the Judge recommended the Nonsuit, or being previously biassed in favor of the Plaintiff, he being considered, a poor and persecuted man, and there being some shadow of evidence to show, that the said stone had been actually