

NEW BRUNSWICK REPORTS.

or you must pay in sufficient to meet the costs of the sale.' I cannot see that this has been done. The application must be dismissed."

Application dismissed.

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NOTES OF CASES.

SUPREME COURT OF NEW BRUNSWICK.

From reports by WILLIAM PUGSLEY, B.C.L., and GEO. W. BURBIDGE, A.M., Barristers at Law. (Vol. II. No. 2.)

ACTION AGAINST SERVANT OF CROWN.

Staying Proceedings—Trespass—Where defendant committed alleged trespass as Superintendent of Government Railways.

Defendant was sued for trespass to land, claimed to belong to plaintiff, but which had been taken and used for the Intercolonial Railway. Defendant was Superintendent of Government Railways, and an application was made for a stay of proceedings on an affidavit alleging that the alleged trespass was committed by him in the employ of the Government as such superintendent, and not otherwise. Plaintiff in answer swore that the action was brought against the defendant for personally trespassing on his land, and denied that the land had been legally taken by the Government.

Held, per ALLEN, C.J., and FISHER and WETMORE, J.J., WELDON, J., dissenting, that the Court ought not, on a summary application, to stay the proceedings, but should leave the defendant to resist the action by plea in the ordinary way. *Milner v. Brydges*, 113.

CONTRACT BY GOVERNMENT OFFICIAL.

Intercolonial Railway Commissioners—Personal liability—Where contract verbal—Whether should be submitted to jury.

Defendant was one of the Commissioners for the construction of the Intercolonial Railway, appointed by the Governor-Gen-

eral. Plaintiff had a contract with the Commissioners to grade the station grounds at M., according to a certain plan and specification. While plaintiff was performing his contract, defendant directed him to fill up a cellar where he was working, and upon the railway grounds, which required attending to at once, and was not included in plaintiff's contract. Plaintiff stated that he would do the work if defendant would pay him, and defendant stated that he would, and told him to do the work immediately. On being applied to afterwards for the pay, defendant told plaintiff he would see the Engineer in charge and have the amount put in the estimates, to be, paid by the Government. The amount however, not being paid, plaintiff sued defendant, personally, and was nonsuited.

Held, on motion to set aside the nonsuit, per DUFF, J., that, as in the case of contracts with public agents, the presumption is that the public faith or the justice of the Crown is relied upon, and the work in question was done for the public, and defendant in ordering it done was acting within the scope of his authority as a Railway Commissioner, he did not incur any personal liability, and that the nonsuit was therefore right; but per FISHER, J., that, as the contract was entirely verbal, it should have been left to the jury to determine, under the direction of the Judge as to the relationship of the parties, whether the defendant had personally contracted and agreed to pay for the work. *Sumner v. Chandler*, 177.

CONVEYANCE.

After acquired property—Does not pass—Remedy in equity—Statute—Construction of—Merchant Shipping Act—Ferry-boats.

At law, a bill of sale or conveyance cannot pass the property in goods which are not in existence or which do not belong to the grantor at the time the deed is given; though in equity such a contract would operate to transfer to the vendee the beneficial interest in the property as soon as it was acquired by the grantor, and the grantee might enforce specific performance of the contract.