

1891

SIMONDS *v.* CHESLEY.

*May 6. *Trespass to land—Title—New trial—Misdirection—Misconduct of party at*
 *Nov. 17. *view of premises—Nominal damages.*

APPEAL from a decision of the Supreme Court of New Brunswick refusing the plaintiff, Simonds, a new trial.

The action in this case was for trespass to plaintiff's land by placing ships' knees thereon whereby plaintiff was deprived of a use of a portion of said land and prevented from selling or leasing it. The defendants denied plaintiff's title. At the trial plaintiff gave no evidence of actual damage but claimed that an action was necessary to protect his title. Evidence was given to show that the alleged trespass was committed beyond the street line, and plaintiff claimed that the street had never been dedicated to the public and his ownership extended to the centre. Before the verdict was given the jury viewed the premises, one of the terms on which the view was granted being that "nothing said or done by any of the parties or their counsel should prejudice the verdict." The judge charged the jury strongly against the plaintiff and a verdict was given in favour of defendants. Plaintiff moved for a new trial on the grounds of misdirection and of improper conduct of one of the defendants at the view. The court below refused a new trial.

The Supreme Court held that plaintiff was precluded by the terms on which the view was granted from setting up misconduct thereat in support of the application; that there was no misdirection, and that as all plaintiff could obtain at a new trial would be nominal damages it was properly refused by the court below.

Appeal dismissed with costs.

Skinner Q.C. and *Simonds* for the appellant.

Currey for the respondents.

*PRESENT :—Sir W. J. Ritchie C.J., and Strong, Fournier, Tasche-
 reau and Patterson JJ.