

Hacker et a. that they were all of them parties to the contract of the
v.
Young et a. master, and that, if the fact were otherwise, it was incumbent on them to show it. The presumption is that the schooner was in the employment of the owners, and this presumption must prevail until shown by the defendants to be contrary to the fact.

Judgment on the verdict.

L. B. WALKER versus H. G. PRESCOTT.

Assumpsit does not lie to recover mesne profits after a recovery in a real action.

ASSUMPSIT, for the use and occupation of a certain parcel of land in Gilford. The cause was tried here, at August term, 1831, upon the general issue, and a verdict taken, by consent, for the plaintiff, subject to the opinion of the court upon the following case.

It appeared, upon the trial, that the plaintiff was the owner of the land, and that the defendant had been in possession of the same during the time mentioned in the declaration, having originally entered with the permission of the plaintiff. But it further appeared that the plaintiff sought to recover, in this case, for the use and occupation of the land, from the 8th November, 1828, to the 8th November, 1829, and that on the 3d November, 1828, the plaintiff brought a writ of entry against the defendant, for the same land, in which suit judgment was rendered in favor of this plaintiff, and on the 13th November, 1829, he took possession by virtue of a *habere facias possessionem*.

Lyford, for the defendant, insisted, that assumpsit did not lie for mesne profits. 5 N. H. Rep. 529 *Cavis v. McClary*.

Walker
v.
Prescott.

Walker, pro se, relied upon the case of *Cogswell v. Brown*, 1 Mass. Rep. 237.

By the court. We consider it as settled, that assumpsit will not lie to recover mesne profits, and the verdict must be set aside and a nonsuit entered.

Judgment for the defendant.

JAMES LORD *versus* JOHN COLLEY and others.

In order to maintain an action for a false recommendation of the credit of any person, it must be shown that the recommendation was fraudulent as well as false; and the fraud is a matter of fact to be settled by the jury.

THIS was an action on the case, for falsely representing Josiah Hobbs, Junior, to be a man of credit, whereby the plaintiff was induced to trust him and lost a sum of money.

The cause was tried here, at January term, 1832, upon the general issue.

It appeared, that the defendants made and delivered to Josiah Hobbs, Junior, a certificate, in the following words.

“ This may certify, that Josiah Hobbs, Junior, is competent to pay the sum of \$100 within any reasonable term of time, and we hereby recommend him as possessing credit to that extent.

Newfield, April 10, 1829.

G. L. SMITH,
JOHN HOBBS,
JOHN COLLEY.”