

such agreement. The case seems to affirm the general principle that the consent of parties cannot give a Court jurisdiction which it does not otherwise possess.

PRACTICE—TRIAL WITHOUT A JURY—RE-HEARING IN COURT OF APPEAL—DECISION OF JUDGE ON FACTS.

In *Colonial Securities Trust Co. v. Massey*, (1896) 1 Q.B. 38, the Court of Appeal (Lord Esher, M.R., Lopes and Kay, L.JJ.) enunciate the rule which governs the practice of that Court in the hearing of appeals. In cases tried by a Judge without a jury, Lord Esher, M.R., and Lopes, L.J., are of opinion that the same rule should be followed as used to prevail in the case of re-hearings in the Court of Chancery, and that the finding of the Judge appealed from on any question, should be taken as *prima facie* correct, and that the onus should rest on the appellant to make out clearly that it is wrong, and where the matter is left in doubt, the decision of the Judge at the trial ought not to be disturbed. Kay, L.J., however, thought that the Court of Appeal ought to try the case and give its independent judgment on the facts, as well as the law, but he concedes that in a doubtful case the judgment of the Court below on the facts is entitled to great weight. A writer in the *English Law Times* of 14th Dec. last seems to think that the theory of the supposed infallibility of Judges' findings on questions of fact, has received a somewhat rude shock by the decision of the House of Lords in *McLeod v. Cammell*, 73 L.T. N.S., 634, where, on a pure question of fact, viz., "whether or not the evidence established that an engine-driver and fireman, or one of them, was in charge or control of a train," the House reversed the decision of the Court of Appeal itself, there being eight Judges in favor of the view which ultimately prevailed, as against five who were of the contrary opinion.

PRACTICE—ORDER FOR PAYMENT OF COSTS, ACTION UPON—SOLICITOR—APPLICATION TO STRIKE OFF ROLLS—ORD. XLIII., R. 24—(ONT. RULE 866).

*Godfrey v. George*, (1896) 1 Q.B. 48, was an action brought upon an order of the Court for payment of costs, made upon an application to strike the defendant (who was a solicitor) off