

COMMON PLEAS.

MICHAELMAS TERM, 1875.

ROBERT CAMPBELL ET UX. V. JAMES CAMPBELL.

(December, 13, 1875.)

Slander—Adultery of wife—Special damage—Damages—Arrest of judgment—Evidence—Effect of judgments in crim. con. and suit for alimony.

In a declaration by a husband and wife, for the slander of the wife in accusing her of adultery, it was alleged as special damage that the wife had lost and been deprived of the hospitality of friends with whom she was in the habit of associating, and who now refused to associate with her.

Held, on a motion for arrest of judgment, a sufficient allegation of special damage to support the action.

Quære, whether the allegation of the loss of the *consortium* of the husband would have been alone sufficient.

Held also, that the declaration claiming the damages as the wife's, although when recovered they might belong to the husband, was no objection, and, at all events, merely a matter of form and so amendable.

Held also, that the course adopted by the husband at the trial, with the defendant's concurrence, in conceding the action to be, in substance, that of the wife alone, and coming forward as a witness for the defence in support of a plea of justification, and allowing the case to be submitted to the jury on the question of the truth or falsity of the accusation, would now preclude the motion in arrest of judgment.

The husband had sued the person accused of the adultery, for charging which this action was brought, and recovered a judgment against him in an action of crim. con., and judgment had been given in Chancery against the wife, on the ground of adultery, in a suit brought by her against the husband for alimony.

Held, that under these circumstances the verdict entered for the plaintiff must be set aside, when the plaintiff, Robert Campbell, if so advised might raise the question whether he was not *dominus litis*.

M. C. Cameron, Q.C., for plaintiff.

Harrison, Q.C., for defendant.

DAVIES V. APPLETON ET AL.

(December 13, 1875.)

Contract—Not to be performed in the year—Statute of Frauds—Agreement—Construction of—Right to terminate.

The plaintiff entered into a verbal agreement with the defendant to canvass Canada for sub-

scribers to a certain book, and on completing Canada to go to Liverpool and canvass for subscribers in England, the plaintiff to be paid \$3 for each subscriber he should obtain in Canada, and \$8 in England. In an action for terminating this agreement it was stated by the plaintiff in his evidence that the agreement as to Canada and England was all one, and that it would take from eight to twelve months to complete Canada and over two years to do this work in England.

Held, a contract not to be performed within a year, that being the intention of the parties and apparent from the nature of the employment, that the plaintiff therefore could not recover.

Held also, that the agreement was only to pay the plaintiff for every subscriber he should obtain, neither party having the right to terminate the engagement, and the only claim the plaintiff could have against the defendant was for subscribers obtained before his dismissal, which the evidence here shewed that the plaintiff had been paid for.

M. C. Cameron, Q.C., and R. P. Stephens for plaintiff.

Lash for defendants.

MILLER V. THE GRAND TRUNK RAILWAY CO.

(December 13, 1875.)

R.W. Co.—Approaching highway crossings—Neglect to give signals—Liability—Misdirection.

Persons approaching and passing over level railway crossings are bound to exercise their ordinary powers of observation, and the omission to ring the bell or sound the whistle, as directed by the statute, in no way releases them from the exercise of such care.

In this case there was evidence that the morning, when the accident happened, was rather wild and blustering, with snow blowing in the plaintiff's face. The plaintiff swore that he approached the crossing on a walk, and looked both ways along the track, but saw nothing until the engine was close upon him. He then whipped up his horses, but the engine struck the sleigh, and killed one of them. Defendants' witnesses, on the other hand, said that the plaintiff could not have failed to have seen the train approaching had he looked. It was clear that the bell was not rung as directed nor the whistle sounded.

The jury were told that they must be satisfied that the plaintiff in crossing took all the precautions which a prudent man would have taken; and that if he did, taking into consideration the weather, the manner of approaching the cross-