As the matter of putting in a new wheel, flume and bulk-head, and the proportion of the expenses which should be paid by each party in the event of their being put in, was not referred to the arbitrators by the submission as a substantive dispute, over and above the dispute concerning the giving of the lease and the terms of it, they had no right to make a substantive order in their award, touching the same, or touching the work for which the present action is brought; or to give any independent directions out of the lease concerning the proportion of the expenses to be paid by each of the parties, as they have done according to the award set out in the declaration.

The submission does not support the award in respect of the presentation set forth in the declaration. The interposition of a lease is necessary before the defendants can become liable on a cause of action, like the present under the submission. The arbitrators according to the submission, I apprehend, could direct and order a clause or stipulation to be inserted in a lease to be made in pursuance of their award the alleged cause of action disclosed in the declaration, but they had no authority so far as I can see to order or direct it out of the lease, as a matter independent of, and besides the lease, as they have done according to the award declared upon. The submission contemplated that in the event of the arbitrators, ordering a lease to be executed between the parties in pursuance of the submission, that they should order and direct covenants, stipulations and regulations to be inserted and which would cover every matter in difference, and every matter which *might become a source of dispute between the parties, thereafter* during their joint occupation of the premises so as to prevent disputes afterwards arising between them as to the occupation of the premises and the manner of using and regulating the water-wheel, and the machinery during the term. Instead of directing such covenants, stipulations and regulations to be inserted in a lease, the arbitrators have by their award, as set out in the declaration, assumed the right to authorize the plaintiff if he thought proper so to do to put in a new wheel, flume and bulk-head, and o order the defendants to pay one-fifth of the expenses which might be incurred, in putting in the same independent of any lease and beside it.

The award set out in the declaration, is not warranted, in my opinion, by the submission produced at the trial. Under that submission, an action like the present cannot be maintained without the interposition of a lease made and executed in pursuance of an award founded on a submission. The rule for entering a nonsuit, therefor, must be made absolute.

*Per Cur.*—Rule absolute to enter a nonsuit.

## GENERAL CORRESPONDENCE.

*Contract—Decision—Sufficiency.*

To the Editors of the Law Journal.

GENTLEMEN,—Will you oblige me with your opinion, in the next number of the *Law Journal*, on the following questions:

A. sells B. a pair of horses for $200, and takes a chattel mortgage to secure the amount. Before the mortgage becomes due, A. takes back the horses, with B.'s consent. There is nothing said about cancelling the mortgage. A. advertises the horses, and sells them by auction to C. for $117. A. ther sues B. for $83, *being the balance of the consideration.*

It is not shown that B. had attempted to sell or dispose of the horses, or to remove them out of the county, nor that default had been made in payment.

1. A. having taken back the horses before the mortgage became due, could this be considered as satisfaction; or would A. have the same remedy under the mortgage as if the time for payment had expired, and default been made?

2. The contract being by specialty, could its terms be so varied, by parol, as to give A. the right to sell the horses before default had been made in payment by B, and to proceed for the balance?

Your obedient servant, S. P. Y.

Sarnia, 16th May, 1861.

[*No satisfactory opinion can be given on a case so bald as* that above stated. Everything depends upon the nature, form and contents of the chattel mortgage, and the intention of the parties when the horses were taken by A. from B. We have no copy of the former before us; the latter is a question of fact, to be submitted to the decision of a jury. A jury might find either that the contract was rescinded, or that there was a re-sale of the horses. If the latter, then a further question would be, whether they were re-sold at the original price of $200, or, in the absence of all stipulation as to price, *at a quantum meruit*; if *a quantum meruit*, then whether they were not worth more than $117, the price paid for them by C. to A, on a sale by public auction. It is certainly a rule at law that a contract under seal can only be discharged by an instrument *of equal force and validity; but now that it is open to a party* sued in a court of law to plead an equitable defence, we apprehend no practical difficulty would be found in defending an action at law on the chattel mortgage.—EDS. L. J.]

*Attorney and clerk—Sufficiency of service.*

London, C. W., 29th April, 1861.

To the Editors of the Law Journal.

SIRS,—In consequence of an article in a late number of your valuable journal, several discussions have arisen in regard to the service of students under articles.

I therefore request that you will give your opinion on the following question:

Is the service of an articled clerk, serving with an attorney to whom he is not articled, good? Or in other words, A. and B. are practising attornies, residing in the same place. A. has two articled clerks, but not sufficient practice to keep both employed. One of A.'s clerks, wishing to get a more extensive knowledge of the practice, serves, with A.'s consent, in the office of B., who has already as many clerks as the law allows. Is this service good, and will an affidavit of the facts be sufficient proof of his service under articles?

An answer in your next issue will greatly oblige

Yours, &c., A STUDENT.

[Our opinion upon the facts stated by our correspondent, is decidedly against the sufficiency of the service. We refer to *Ex parte Hill*, 7 T. R. 456; and *Ex parte Bruton*, 23 L. J. Q. B. 290.—EDS. L. J.]

*Interpleader—Security for costs.*

Picton, 27th May, 1861.

To the Editors of the Law Journal.

GENTLEMEN,—An answer to the following question in your next issue will much oblige.