

which was not to be performed within a year. Lord Justice Bowen, in commenting on this case in *McGregor v. McGregor*, 58 L. T. Rep. 227; 21 Q. B. Div. 424, at p. 433, said he found some little difficulty in understanding the effect of that decision, and expressed no opinion about it; but the ratio decidendi appears to have been that the plaintiff, having expended the money claimed on behalf of the defendant, was entitled to succeed on the claim as money paid at the defendant's request, the court holding that although the declaration was in form upon a special contract, yet in substance the claim was for money paid.

The court really appears to have amended the pleadings, and held that an indebitatus count could be successfully pleaded, although another cause of action co-existing with it might be avoided by the operation of a statute within a year.

A decision similar to that of *Birch v. Earl of Liverpool* (*sup.*) was arrived at in *Dobson v. Collis*, 27 L. T. Rep. O. S. 127; 1 H. & N. 81. There the defendants engaged the plaintiff until the 1st Sept. 1855, and for a year thereafter, unless the said employment were determined by three months' notice given by the plaintiff or defendants respectively. Before the 1st Sept. 1855, the plaintiff was dismissed. Chief Baron Pollock expressed the opinion that *Birch v. Earl of Liverpool* (*sup.*) was exactly in point, which, no doubt, it was, and Baron Alderson explained that the very circumstance that the contract exceeded the year brought it within the statute, and, if it were not so, contracts for any number of years might be made by parol, provided they contained a defeasance, which might come into operation before the end of the first year.

In *McGregor v. McGregor* (*sup.*) the facts were that a husband and wife, having taken out cross-summonses against each other for assaults, entered into an oral agreement with each other to withdraw the summonses and to live apart, the husband agreeing to allow the wife a weekly sum for maintenance, and the wife agreeing to maintain herself and her children. The husband having failed to make the agreed payments, the wife successfully sued him in the County Court, and, on appeal, one