

improvement of the landed estate, and in maintaining in good habitable repair the houses and tenements on the property." It was conceded that so far as the direction to invest the surplus income in the purchase of additional land was concerned it was a direction to accumulate, and would be within the Thellusson Act, and could not extend beyond the period of twenty-one years from the testator's death. It was, however, contended that the direction to apply the surplus in improvements and repairs was also an attempt to accumulate and could not extend beyond the twenty-one years. Chitty, J., held that the latter direction did not fall within the statute, and on appeal his decision was affirmed; but the Court of Appeal (Lindley, Lopes and Kay, L.JJ.) added a declaration that the application of the income to purposes the expense of which ought to be defrayed out of capital was not authorized by the will. The Court of Appeal were of opinion that all improvements in substance which could in any fair sense be regarded as coming under the words "maintaining in good habitable repair the houses and tenements on the property" are outside the Thellusson Act altogether. But building houses on the land would be within the Act.

MANDATORY INTERIM INJUNCTION—ERECTION OF BUILDINGS AFTER NOTICE OF MOTION FOR INJUNCTION—ATTEMPT TO ANTICIPATE INJUNCTION.

*Daniel v. Ferguson* (1891), 2 Ch. 27, shows that a defendant who attempts to anticipate an injunction by proceeding with the erection of a building objected to by the plaintiff, after notice of the plaintiff's motion for an interim injunction, does so at his own risk; and if he turns out to be in the wrong, the court will not only restrain him by an interlocutory injunction from further proceeding with the building, but will also compel him to remove that part of the erection made after notice of the plaintiff's motion was served. The order of Stirling, J., so directing was affirmed, on appeal, by Lindley and Kay, L.JJ.

PRACTICE—ACTION AGAINST FIRM—PARTNERS RESIDENT OUT OF JURISDICTION—JURISDICTION—AMENDMENT OF WRIT—SERVICE OUT OF JURISDICTION—RULE 64 (ONT. RULE 271).

In *Indigo Co. v. Ogilvy* (1891), 2 Ch. 31, the effect of the rules allowing a partnership to be sued in the firm name again came up for consideration. The facts of the case were somewhat involved, but may be briefly stated as follows: The plaintiffs were an English firm, and had entered into contracts with Gillanders & Co., an Indian firm, for the manufacture and purchase of indigo. Ogilvy & Co. were the English correspondents of Gillanders & Co., and there were some partners common to both firms, and some of the partners were resident in India. Gillanders & Co. consigned indigo to Ogilvy & Co., and the action was commenced by the plaintiffs against Ogilvy & Co., in the firm name, claiming the indigo; and all the members of the firm, both those in England and those in India, appeared. The plaintiffs then obtained an *ex parte* order to amend their writ by adding Gillanders & Co. as defendants, and making consequential alterations in the writ, and also obtained leave to serve the amended writ out of the jurisdiction. Under this order they amended the writ by adding Gillanders & Co. by the firm name as defendants, and also amended the claim indorsed on the