

Herschell's judgment the various authorities pro and con are elaborately reviewed, and the conclusion is reached that *Labouchere v. Dawson* was rightly decided, and applying the principle of that case to the one in hand their Lordships held that the plaintiff was entitled to an injunction notwithstanding *Pearson v. Pearson*, to the contrary. Whether the obligation is founded on the principle that a grantor may not derogate from his grant, as Lord Romilly declared, or whether it rests on an implied contract on the part of the vendor to refrain from canvassing the customers of the business sold, their lordships do not decide, but content themselves with declaring that the obligation exists on whatever ground it may rest. It may be well to note that Lord Macnaghten expresses the opinion that there is a material distinction between the sale of a good will made by the beneficial owner and a sale made by process of law, *e.g.*, by a trustee in bankruptcy.

LIBEL—MISDIRECTION—NEW TRIAL—"SUBSTANTIAL WRONG OR MISCARRIAGE"—
ORD. XXXIX., r. 6—(ONT. RULE 791).

Bray v. Ford, (1896) A. C. 44, is a decision of the House of Lords on the construction of Ord. xxxix. r. 6 (Ont. Rule 791). The action was for libel, and a verdict had been given in favor of the plaintiff for £600. The defendant moved for a new trial on the ground of misdirection. The Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.), although of opinion that there had been misdirection, nevertheless refused a new trial on the ground that if the direction had been the other way the jury might, and probably would, have given the same verdict. Their Lordships (Halsbury, L.C., Macnaghten, Watson, Herschell and Shand) were, however, of the opinion that the defendant was entitled to a new trial, and that inasmuch as the defendant's real case had not been properly submitted to the jury, it was impossible to say whether, if it had been, it might not have influenced their verdict, and that under the circumstances there had been "a substantial wrong or miscarriage" within the meaning of Ord. xxxix. r. 6 (Ont. Rule 791), entitling the defendant to a new trial, which was accordingly ordered.