

came for trial before a jury; but the objection was overruled, the court holding that where an accused person elects before a magistrate to be tried by a jury the accused may be committed to take his trial in respect of any indictable offence disclosed by the depositions, except in cases falling within the provisions of the Vexatious Indictments Act.

RAILWAY COMPANY, ACTION AGAINST, BY PASSENGER, FOR NEGLIGENCE OF SERVANT
—TORT—CONTRACT.

In *Taylor v. Manchester, Sheffield & L. Ry. Co.*, (1895) 1 Q.B. 134; 14 R. Jan. 350, it became necessary, for the purpose of determining the proper scale of costs applicable, to consider whether the action, which was one brought by a passenger by defendants' railway for an injury caused by the defendants' servant negligently slamming the door of a passenger carriage, into which the plaintiff was getting, and thereby crushing his thumb. The Court of Appeal (Lindley and Smith, L.JJ.) held that, even though the plaintiff had purchased a ticket, the action was founded on tort and not on contract, and the reason given is that the act complained of was not mere non-feasance, but was an act of misfeasance—of positive negligence, for which, quite apart from any contract, an action would lie against the defendants; and though a plaintiff in an action of this kind might declare either in contract or tort, yet that is not the governing consideration, for, whatever its form, the real gist of the action is misfeasance, without proof of which he could not succeed. The fact that the plaintiff has a contract is useful as showing his right to be where he was when injured, but that is not of the essence of the action, because that fact might be shown in some other way, and proof of a contract is not essential to success.

HUSBAND AND WIFE—GIFT OF JEWELS BY HUSBAND TO WIFE—"PARAPHERNALIA"
—MARRIED WOMAN'S PROPERTY ACT, 1882 (45 & 46 VICT., c. 75), ss. 1, 2—
(R.S.O., c. 132, s. 3).

Tasker v. Tasker, (1895) P. 1; 11 R. Feb. 137, was a dispute between husband and wife as to the ownership of certain jewels which had been given by the husband to the wife during coverture on various occasions as presents. They were of considerable value, and the husband claimed that they were gifts as paraphernalia, and that they still remained his property. Jeune, P.P.D., though of opinion that the Married Woman's Property