

exact authority given to the learned counsel." The court, he said, was being asked for its assistance (*i.e.* for an order of reference) and "to suggest that a court of justice was so far bound by the unauthorized act of learned counsel that it was deprived of its general authority over justice between the parties" was, to his mind, "the most extraordinary proposition" he ever heard. In other words (*per* Middleton, J., *Lovejoy v. Mercer*, 23 O.L.R. at p. 32) he asserted the right of the Court "so to supervise and mould its own process as to avoid injustice."

It is submitted that this decision has no such extensive effect as has sometimes been attributed to it in altering the then existing law. The earlier cases, referred to in the judgments appealed from, were not overruled. On the contrary, Lord Halsbury says that he can very well adopt and feels that he could safely affirm every one of them, and further, at p. 470 he says: "Where the contract is something which the parties are themselves by law competent to agree to, and where the contract has been made, I have nothing to say to the policy of the law which prevents the contract being undone. The contract is by law final and conclusive."

The most noticeable limitation of the decision is that its authority is confined to cases where the court is asked for its assistance. There are observations which seem to be of a more general application, but, in view of the facts, they were unnecessary for the decision. This point is very clearly made by Bray, J., in the subsequent case of *Little v. Spreadbury* (1910), 2 K.B. at p. 663, where he says, "It seems to me to be quite clear that the ground upon which the Lord Chancellor based his judgment in that case was that the party seeking to uphold the arrangement was coming to the court to ask it to enforce by an order a certain thing being done, and that he excepts altogether the case of a contract which can be carried out by the parties without the intervention of the court for the purpose of saying that something shall or shall not be done."

The case, then, would appear to be authority for no more