Held, that his administrators were entitled to recover the quarterly payments accrued before his death.

This was an action by the administrators of one Stubbs, for work done by the deceased, and salary payable before his death.

The defendants paid £100 into court, and denied their liability to any further extent.

The case was tried before Mellor, J., at the Manchester Spring Assizes, when the facts proved were as follows:—

In December, 1865, the deceased was employed by the defendants as their engineer to complete certain specified works upon their line. The work was intended to be completed within fifteen months, and the deceased was to be paid a sum of £500 by five equal quarterly payments.

The deceased entered upon the work and at the end of the first quarter, in March, 1866, he was paid £100. He proceeded with the work for a second and third quarter, and soon after the end of the third quarter he died. Less than three-fifths of the whole work was then finished, but it did not appear that there had been any default on the part of the deceased.

The plaintiffs songht to recover £200, the amount of the two quarterly payments accrued before the death of the deceased. For the defendants it was contended that as the whole contract was unperformed the plaintiffs were at any rate only entitled to recover the actual value of the work done upon a *quantum meriut*.

The jury found the value of the work to be $50 beyond the amount paid into court.

A verdict was entered for the plaintiff for the full amount, with leave to the defendants to move to reduce it to the amount found by the jury.

Holker, in Easter Term, obtained a rule *nisi* accordingly.

R. G. Williams now showed cause. This was an employment at so much per quarter. The death of the deceased no doubt dissolved the contract, for it could not be performed by any one but himself. But it cannot affect a right of action already vested, and the present claim was a vested right of action in him before he died.

Holker, in support of the rule.—If a special contract is put an end to, whether by death or otherwise, it is rescinded. That rescission relates back to the making of it, and it puts an end to all rights founded on the contract. The only right that any one can then have is to treat the contract as if it had never existed, and sue upon a *quantum meruit* for the value of the services actually rendered. The law is laid down in the notes to *Cutter* v. *Powell*, 2 Smith's Lead. Cas. 1; and it is there shown that all the cases in which any right of action exists, while a special contract remains unperformed, rest on the doctrine of rescission. [MARTIN, B.—This is a verbal ambiguity. In most of the cases in trat note the contract is broken, not rescinded.] It is broken by one party, and thereupon rescinded by the other. [CHANNELL, B.—The case of a contract for personal services, and the death of the party is rather the case of a condition unfulfilled. The contract is subject to the condition that he shall live to perform it.]

KELLY, C.B.—I am of opinion that the plaintiffs are entitled to retain their verdict. The deceased entered into a contract for work to be finished within a year and a quarter, his payment to be £100 a quarter. At the end of the first quarter he received £100. He then proceeded with the work for two more quarters, and thereupon became entitled to two more sums of £100. This right of action vested in him the moment after his third quarter was finished. Soon afterwards he died. His death put an end to the contract; but it did not divest the right of action already vested in him, and which survived to his administrators. It may be a case of hardship, for less than three-fifths of the work was completed; but that cannot take away the right of action vested in the deceased.

MARTIN, B.—I am of the same opinion; and really the law is very clear, though it has been much confused by talking of rescission and *quantum meruit*. If a man is employed to do a job, the price is not to be paid unless he does it, even though he die. But if he is to be paid so much a month, he earns his money each month. If he failed or refused to do his work in such a case, he could not recover, for he could not prove his readiness and willingness to fulfil his part of the contract. Where a man dies, in a case like this, the contract is at an end, for he must do his work in person; in other words his living to do it is a condition of the continuance of the contract. But no right of action once vested is taken away. It is in this sense that death puts an end to the contract. Rescission is a totally different thing, and must be by the consent of both parties. No one has a higher respect for Mr. Smith's opinion than I have; but I think some of his positions in the note cited cannot be upheld. The subject is before the Exchequer Chamber, and I think the view taken in a case in the Exchequer will be found to be the true one.*

CHANNELL, B.—I am of the same opinion. I think on the death of the deceased the contract was at an end as to things future, but not so as to affect things past. I entirely agree that this is not the case of a contract rescinded, but of a contract annulled for the future, by failure of that which was the condition of its continuance. If the evidence showed a want of readiness and willingness in the deceased to perform his contract, or any default on his part, the case might be different, but nothing of the kind appears. A right of action had vested in him; and his administrators may enforce it.

Rule discharged.

TURNER v. BURKINSHAW.

Principal and agent—Interest—Negligence of principal.

Where the plaintiff had entrusted the defendant with the entire management of his affairs, and years occasionally elapsed without any accounts being furnished by the defendant or demanded by the plaintiff, and the defendant retained in his own hands a large sum which should have been paid over to the plaintiff's account.

The court refused to charge the defendant with interest.

[L. C. Chancery, April 24.]

In 1842 the plaintiff, who was the vicar of Grasby, and the owner of much freehold property in the vicinity, entrusted the defendant, the son of a neighbouring farmer, with the entire management of this property. No express agreement was made between the parties, but the plaintiff reposing entire confidence in the defendant, the arrangement between them was, in

* The case in the Exchequer Chamber, referred to by his lordship, appears to be *Appleby* v. *Meyers*, reported in the Court below, 14 W. R. 835, 1 L. R. C. P. 616. The case in the Exchequer is apparently *Clay* v. *Yates*, 1 H. & N. 73.