

dence, whichever it may be called, arising from the reading to the jury by the plaintiff's counsel of the whole or portions of the judgment of Hanington, J., in this Court, and of Idington, J., in the Court on appeal, delivered by these Judges when this case was before these respective Courts on the previous motion for a new trial. It appears by the return that the plaintiff's counsel claimed the right on going to the jury to read as part of his address passages from the two judgments I have mentioned, both of them being the opinions of dissenting Judges. This course was objected to as being an attempt to influence the jury as to questions of fact by giving them the views of two prominent Judges as expressed in the same case on the same state of facts. The trial Judge then said to the plaintiff's counsel: "If you feel it is going to make an impression on the jury you can go to the jury on that, and when I come to address the jury I will have to be guided by the majority and not by the minority. I have never known a case where the reading of the judgment of the Court, at *Nisi Prius*, has been shut out." Mr. Mullin then read from the judgment of Idington, J., as reported in 35 S. C. R. 636. He also read from the judgment of Hanington, J., subject to the objection of the defendant's counsel. Towards the close of the Judge's charge the plaintiff's counsel interrupted him to explain that on consideration he himself doubted the correctness of the course he had taken, and he asked the Judge to direct the jury in reference to it—that is, I suppose, as to what consideration they should give to the extracts which he had read. He did not suggest that they should be withdrawn. Landry, J., then directed the jury as follows: "I might say this to you; that so far as a judgment of the Court is concerned I believe counsel have a right to read the judgment of the Court to the Court and jury, even if it is a dissenting judgment, while the case is going on, and it is a privilege of counsel on the other side to point out that it is a dissenting judgment and was overruled by the Court. As to Mr. Mullin reading a part of Judge Hanington's judgment to you, I will say this:—I think not very much fault can be found with Judge Hanington's exposition of the law with relation to negligence. He has expressed it, I think, according to the authorities; but the expression of the opinion of a Judge in a judgment on facts ought not to sway you one bit because he is a Judge. If his argument commends itself to your judgment because you are convinced from the evidence