Shaw vs. Pickleham.

demander que le verdict soit mis à néant ? Son adversaire, qui trouvera qu'il est de son intérêt de ne pas demander un *nouveau procès*, quoique mécontent du verdict, s'abstenant lui-même de faire cette demande, ne pourra-t-il pas lui opposer cet acquiescement, puisque cet acquiescement une fois donné doit lui profiter comme tout autre acquiescement de la part d'un adversaire ?

Sur la question de l'inadmissibilité de l'appel dans un cas comme celui-ci, les autorités suivantes sont décisives. On les trouve dans les rapports des causes devant le *Conseil Privé*, par *Moore*, sur des appels des colonies.

Vol. 3, p. p. 87 et suiv : *Ramdass*, appelant, contre Madowdass et autres intimés, sur un appel de *Bombay*, 7 fév. 1840 : "Such appeal does not, however, extend to the finding of a jury upon issues directed from the equity side of the court ; no motion for a new trial having been made, nor exceptions taken to the master's report founded on the verdicts in such issues." Mr. Baron Parke dit : "In the present case, the appellant meaning to object to the finding of the court on the facts, should have applied to the equity side for a new trial, as a verdict against evidence ; and having brought all the evidence before the court, the refusal of a new trial and consequent adoption of the finding, as one of the grounds for a decree, would then have been the subject of appeal ; and the propriety of the decision on the facts would be considered and decided in a court of appeal....

"As there has been no application for a new trial in this case, the facts proved on the issues, and the propriety of the finding upon it, cannot now be brought under our review....

Ib ; p. p. 150 et suiv. : *in Re* John Muir, de l'Isle de Tobago ; 5 déc. 1839 : Sur action du pétitionnaire pour assaut et faux emprisonnement, il avait obtenu contre les défendeurs un verdict pour £115 de dommages. Les défendeurs avaient fait motion *to set aside the verdict*, mais la cour étant partagée d'opinion, il n'y eut pas de jugement sur la motion. Plus tard le pétitionnaire fit motion pour jugement, "when the court, being divided in opinion, the following minute was entered : "The court divided, so that there was no order made." No motion was made by the defendants in arrest of judgment."

A la suite de quelques autres incidents, le demandeur présenta sa pétition à Sa Majesté en Conseil, priant qu'il fût ordonné "that judgment might forthwith be granted and entered upon the said verdict, and execution issued thereon."

"Mr. [illegible] "Upon the facts of the case, there is no doubt the judges have done wrong. The petitioner brought an action of assault in the court of Common Pleas below, and recovered large damages £115 ; the defendant applied for a new trial. It appears to be the practice of the court of Common Pleas, in *Tobago*, that (instead of moving a side-bar rule for judgment, as here,) it is a motion in open court, by the party applying to the court ; but one would suppose that such a motion would be granted as of course, unless there was a motion in arrest of judgment, and we have no difficulty in saying the judges ought to have granted that motion. *They had no right to consider the propriety of the verdict.* After verdict, the motion to enter up judgment is a motion of course, and that motion ought to have been granted unless there was some reason for it."