and while the judge was proceeding to give judgment by refusing it he interrupted him very improperly by saying that he had instituted proceedings against the plaintiff for perjury. The judge then gave his own opinion on the case, as he had a right to do in any case, and in this case it would have been wrong for him not to have done so, as silence might have been taken as a tacit assent to Mr. Turner's observations. It was upon his saying, under these circumstances, that he agreed with the jury, and thought that Mr. Turner had obtained the plaintiff's money by false pretences, that Mr. Turner said, "That is a most unjust remark." That was a clear insult of the grossest nature on the part of Mr. Turner. It had been argued for him that the insult was not wilful, but that the words were spoken in the heat of the moment. There might have been something in that argument if the words had been withdrawn or apologised for, but Mr. Turner had insisted on them and refused to apologise. The order of the judge fining Mr. Turner £5 or six days' imprisonment, erred, if it erred at all, on the side of leniency; for this was not the case of an uneducated person, but of a person, it was to be presumed, educated and intelligent, who also was a solicitor, an officer of the Court, whose duty it was to set an example to others of the respect due to the judge, and the Court was bound to act when he thus afforded an example of offering a flagrant and wilful insult to it. As to the objection taken to the form of the warrant, there did not seem to be any authority in the Act for the gaoler to receive the fine; but the only course for a person imprisoned to adopt was to pay the fine into Court, and, upon the registrar's certificate, to apply to the judge for his discharge. The warrant was therefore free from the technical objection; and both points being thus decided against the applicant, the rule for *certiorari* must be discharged.

Mr. Justice Smith concurred.

## SUPREME COURT OF CANADA.

Ontario.]

McKenna v. McNamee.

*Contract—Consideration—Failure of—Impossibility of performance.*

McNamee & Co. had been contractors for the construction of certain public works in British Columbia, which the Government of the Province had taken out of their hands. Believing that they could effect its restoration they entered into an agreement with McKenna and Mitchell, by which the latter were to complete the work and receive 90 p.c. of the profits, McNamee & Co. to be still the recognized contractors with the Government, there being a clause in the contract against sub-letting. McKenna & Mitchell were fully aware of the state of affairs and had examined all the provisions of the contract.

Mitchell went to British Columbia and endeavored to obtain the restoration of the contract, but failed to do so, and it not being restored, McKenna and Mitchell brought an action against McNamee & Co. for breach of contract to take them into their service, and claiming for damages and monies expended in the work, $125,000.

*Held*, affirming the judgment of the Court of Appeal for Ontario (14 Ont. App. R. 339), Henry, J., dissenting, that as the agreement was made with a view to the restoration of the contract, and as such restoration failed without fault on either side, the defendants were not liable.

*McCarthy, Q. C.*, and *Mahon*, for the appellants.

*O'Gara, Q.C.*, for the respondents.

City of London Fire Insurance Co. v. Smith.

*Fire Insurance—Description of property—Mutuality of contract—Estoppel—Statutory condition—Variation.*

The agent of an insurance company filled in an applicatian, on behalf of Smith, for insurance on the building of the latter which he described as being built of boards. The word "boards" was very badly written, but the character of the building was sufficiently designated on a diagram on the back of the application which the agent was instructed