

verdict for \$3,300, which a Divisional Court reduced to \$2,000, if the plaintiff would consent, and in the alternative directed a new trial. The plaintiff accepted the reduction, but the defendants declined to do so, insisting that the damages even as reduced were excessive, and appealed to the Court of Appeal. Their appeal being set down, they moved for leave to give further evidence to show that the damages were excessive, and, in order to show that the plaintiff had recovered his health and that the injury he sustained had not been so serious or of so permanent a character as was anticipated at the trial, they asked that he might be ordered to submit to a bodily examination by a surgeon, under Rule 462.

*Semble*, that the examination under Rule 462 is for discovery only, and is not evidence of the character contemplated by Rule 498 (1).

*Held*, that the only object in getting in the proposed evidence was to reduce the damages still further, or to obtain a new trial, and it was not reasonable that the defendants, having refused the relief the Court below offered, should be allowed to introduce this evidence on the appeal. They did not make out a sufficiently clear case for the admission of the evidence. It opened nothing but a prospect of conflicting statements and opinions as to the present state of the plaintiff's health and the prospects of his ultimate recovery. From the very nature of the case, it must be always a most difficult task to interfere, by reason of matters arising ex post facto with an assessment of damages in respect of personal injuries. It might be done in rare cases, but it was necessary to show some clear definite fact pointing to an over-assessment such as existed in *Sibbald v. Grand Trunk R. W. Co.*, 19 O.R. 164, or in *Cramer v. Waymark*, O.R. 1 Ex. 241. The motion was therefore refused.

*H. D. Gamble*, for the motion. *Aylesworth*, Q.C., contra.

## HIGH COURT OF JUSTICE.

Robertson, J.] RE CALDWELL AND THE TOWN OF GALT. [Feb. 2.

*By-law—Contracting debt—Publication of—Blank dates in—Debentures—Interest—Description of property—Power to apply money—Quashing—Discretion of Court.*

Where a by-law for contracting a debt as published and submitted to the ratepayers, provided that it would come into operation on the day of A.D.

*Held*, that the reference to the date of its taking effect being in blank could be treated as surplusage as sec. 384, sub-sec. 2, of the Municipal Act, provides that, "if no day is named it shall take effect on the day of the passing thereof" and that it is not necessary to its validity to name the day.

The by-law as published left blank the days of payment of the debentures.