

default, a motion was made to attach her for contempt, when she set up that she had not been personally served with the order as required by rule; it was not denied that the defendant had not had notice of the order. Phillimore, J., granted the application, but ordered the writ to lie in the office for a few days to enable the defendant to attend and submit to examination. The Court of Appeal (Stirling and Mathew, L.J.J.) held that this order was right, and the rule requiring personal service of an order could not be relied on by a defendant who evaded service of an order of which he had notice.

MINING LEASE—CONSTRUCTION—COVENANT TO WIN, WORK, AND GET, ETC., THE WHOLE OF THE COAL.

Watson v. Charlesworth (1905) 1 K.B. 74 was an action by the lessors of a mining lease against the lessees to recover damages for breach of a covenant whereby the lessees covenanted "to win, work and get, fairly, duly and honestly, the whole of the coal" as lay under certain lands of the lessors. The rent was to be an annual rent of £100 an acre as soon as the lessees commenced to work the coal, and until then an annual rent of £5 an acre. Owing to faults in the ground the lessees found that they could not win and work the coal except at a loss, and they therefore desisted from any attempt to get it. Channel, J., who tried the action, gave judgment for the lessees, the Court of Appeal (Collins, M.R., and Stirling and Mathew, L.J.J.) came to the conclusion that he had erred, and that, upon a proper construction of the lease it did not mean that the lessees were to mine if it could be done in the fair, due and honest course of working, but, on the contrary, it was an absolute undertaking to win and mine it, from which they were not excused by the fact that it would be unprofitable to themselves to do so, and that the plaintiffs were entitled to damages to the amount which would probably have been payable to them if the lessees had in fact won and got the coal under their covenant.

TRADE MARK—INVENTED WORD—"ABSORBINE."

Christy v. Tipper (1905) 1 Ch. 1 may be briefly noticed for the fact that Joyce, J., decided, and the Court of Appeal (Williams, Romer and Cozens-Hardy, J.J.) affirmed his decision, that the word "absorbine," as applied to a veterinary preparation for absorbing and removing swellings, is a mere variation of an existing English word, and therefore is not an "invented word" capable of registration as a trade mark.