

Mr. Bigelow's Proposed Test.

Before proceeding with the argument, however, we wish to notice an article which appeared in a late number of *The Quarterly Review*, in which Mr. Bigelow proposes a test, to which the question of the right to rescind under a mistake of law, may be brought. "The case of *Hunt v. Rousmaniere*, 8 Wheat. 174; S. C., 1 Peters, 1," he says, "decides, then, this very intelligible and sound principle, that where a particular course is taken upon deliberation, in preference to another present to the minds of the parties, that action, so far, is final." For example, we suppose, if a married woman agrees to sell to A. her real estate, and a stupid conveyancer advises that a conveyance by the husband, with a bar of dower by the wife, is a form preferable to one in which the wife is a grantor, and the parties thereupon adopt the wrong form, the purchaser is without remedy. We propose to show that this is *not* the law.

Hunt v. Rousmaniere : What it does not Decide.

We are afraid that Mr. Bigelow has misread *Hunt v. Rousmaniere*. It is certainly no authority for his proposition, and its *dicta* are destructive of his test. The facts of the case were as follows:—Hunt agreed to lend money to Rousmaniere upon the security of two vessels. Advice of counsel was taken as to the form of the security, and a power of attorney giving authority to sell the property, was agreed upon, under the mistaken idea that by this means the vessels would be charged with the payment of the debt. The debtor having died, and the power of attorney being therefore at an end, the lender asked to be declared to be entitled to a mortgage upon the vessels. He was unsuccessful, not upon the ground mentioned by Mr. Bigelow, viz., that a particular course was taken upon deliberation in preference to another present to the minds of the parties, but upon the ground that *the agreement* was for a power of attorney, and that *there was no agreement at all to give a mortgage*. The Court in its judgment said, "This is not a bill asking for a specific performance of an agreement to