doing a good business was ground for a civil action, but not for indictment, as it was a question merely of degree. [Smith J.—But here the learned judge reports that the prisoner was carrying on no business whatever, and, therefore, no such question arises.]

Besley, for the prosecution, was not called on; but stated that in the case referred to, before Byles, J., there was evidence that business to some extent was in fact carried on.

Kelly, C. B.—I do not think the objection can be maintained. In order to support this indictment there must be a pretence of an existing fact. It must appear that the party defrauded has been induced to part with his money by the pretence, and the pretence must be untrue. There is all that here. The jury find that he was not carrying on any business whatever.

Conviction affirmed.

QUEEN'S BENCH.

Kettlewell v. Dyson.

Common Law Procedure Act, 1854 (17 & 18 Vic. cap. 121, sec. 51—Interrogatories—Grounds for not answering—Action of ejectment.

A plaintiff in ejectment is bound to answer an interrogatory in which a defendant who is in possession asks him to state through what links he (plaintiff) traces his claim as heir-at-law; and therefore where A. and B. claimed in an action of ejectment, brought by the former against the latter, certain premises, each alleging that he was the heir-at-law of C., deceased, but A. claimed through a maternal, and B. through a paternal, ancestor; a judge at chambers having made an order calling on A. to answer the following interrogatory—"If you claim as heir-at-law to C., through what links do you trace?"

Held, on motion to rescind the order, that A. (the plaintiff) was bound to answer this interrogatory, though it appeared that the judge who made the order had declined, on the application of A., to make an order on B., the defendant, to answer a similar interrogatory.

[Q. B., 16 W. R., 851, April 13, 1868.]

This was a motion to set aside or rescind an order made by Willes, J., at chambers, calling on the plaintiff in an action of ejectment to answer the following interrogatory—"If you claim as heir-at-law to Sarah Kettlewell, through what links do you trace?" The order after directing the plaintiff to answer this interrogatory, concluded thus—"or give particulars of how you claim at your election." The plaintiff and defendant both claimed certain premises, of which the latter was in possession. Each claimed as heir-at-law, the plaintiff through a maternal and the defendant through a paternal ancestor. The plaintiff had previously applied to the same judge to order the defendant to answer a similar interrogatory, but he refused to make it.

Anderson now moved to rescind the order. You cannot obtain discovery on a matter which is the case of the other side. The right of the defendant to administer such an interrogatory depends on the case of *Flitcroft* v. *Fletcher*, 11 Ex. 543, and that case has not been approved of in some cases which followed it. In *Pearson* v. *Turner*, 16 C. B. N. S. 157, 12 W. R. 801, it was held by Erle, C. J., and Willes, J., that a defendant was not entitled to administer such an interrogatory to the plaintiff, except under special circumstances, as where the defendant has been a long time in possession, and knows nothing of the nature of the plaintiff's claim. The case of *Stoat* v. *Rew*, 14 C. B. N. S. 209, 11 W. R. 295, is to the same effect. Again, it is laid down in *Moor* v. *Roberts*, 5 W. R. 693, that the defendant cannot interrogate the plaintiff on the plaintiff's case, or *vice versa*.

I submit it would be very hard if the plaintiff should be compellable to answer this interrogatory, while the plaintiff is not entitled to have a similar question answered by the defendant. [Cockburn, C. J.—We must at present confine our attention to the order which is before us. Besides, there is a very great difference between administering interrogatories to a person in possession whom another seeks to oust, and administering them to the person who thus seeks to oust him.] Lush, J.—I think the distinction between the two cases was drawn in *Horton* v. *Bott*, 5 W. R. 792, 26 L. J. Ex. 267, where it has been held that a plaintiff in ejectment cannot interrogate the defendant as to his title, though the defendant may interrogate the plaintiff.] I submit that the case of *Flitcroft* v. *Fletcher* (*ubi sup.*) after the other cases cited, cannot be safely followed. He also cited Chitty's Forms, 9th ed. p. 165, note; Cole on Ejectment, 204.

Cockburn, C. J.—I think, independently of the Common Law Procedure Act, 1854, the Court may order particulars of claim to be furnished in a case like the present. We think that *Flitcroft* v. *Fletcher* (*ubi sup.*) is a very sound and salutary decision, and we must refuse the rule.

Lord v. Lee.

Award—Power to enlarge time—Common Law Procedure Act, 1854 (17 & 18 Vict. cap. 125) sec. 15.

The Court or a judge has power under the Common Law Procedure Act, 1854, to enlarge the time for making an award, although the arbitrator has actually made his award after the time originally limited, and before the application to enlarge, and the effect of such enlargement is to give validity to the award already made.

[Q. B., 16 W. R. 356, April 27, 1868.]

This was an action on an award tried before Mellor, J., at the sittings in Middlesex, after Trinity Term, 1867.

At the trial of the cause it appeared that an agreement to refer certain matters in dispute between the plaintiff and the defendant was made on the 8th of August, 1866. No time was mentioned in the submission for making the award, and on the 17th of January, 1867, the arbitrator gave notice that it was prepared. On the 27th of February, 1867, the submission was made a rule of Court.

The Common Law Procedure Act, 1854 (17 & 18 Vic. cap. 125) sec. 15, enacted that the arbitrator, acting under any such document [*i.e.* any document authorizing a reference to arbitration, or compulsory order or reference, or under any order referring the award back] shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party; but the parties may, by consent in writing, enlarge the time for making the award; and it shall be lawful for the superior Court, of which such submission, document, or order is or may be made a rule or order, or for any judge thereof,