

took place earlier than the 12th Sept., nevertheless refused a new trial on the ground that no substantial wrong or miscarriage had taken place. (See Rule 556, Ont. Jud. Act. s. 28 (1)).

The Court of Appeal also held that, whereas in this case the plaintiff was unfit for marriage on the day named for the marriage, the onus was on her to show that she was fit within a reasonable time thereafter, but that slight evidence is sufficient to discharge that onus, and that the evidence in this case was sufficient for that purpose; and they agreed that the onus was then cast on the defendant to show that she was in fact unfit, and that he had not discharged it; and also that the fact that the defendant honestly believed she was unfit would be no defence, if the plaintiff was not in fact unfit.

**MINES—MINING LEASE—SUBSEQUENT GRANT OF BUILDING LEASE
RESERVING MINES—COMPENSATION FOR INJURY CAUSED BY
MINING.**

Jones v. Consolidated Anthracite Collieries (1916), 1 K.B. 123. The plaintiff in this case was a lessee under a building lease, which contained a reservation of mines under the demised plot and the right to work them, "reasonable recompense and satisfaction being made for any injury done to the demised premises by reason of the exercise of any of the rights aforesaid, whether by the letting down the surface or otherwise." The mines had been previously leased to the defendant company, who had worked them under a system, which it was common knowledge would cause subsidence. This method the Judge, at the trial, found as a fact had been followed by collieries in the district for the past fifty years. The plaintiff erected two houses on the demised land in 1910, and in 1911 they were damaged by the subsidence caused by the working of the mines. The plaintiff sued both his own lessor and the lessees of the mines. Scrutton, J., who tried the action, held that the lessees of the mines were not liable to the plaintiff, because they had the right to work the mines, and, having done so in accordance with the mode universally used in the district, they must be taken to have an implied leave to cause subsidence, but that the plaintiff's lessor was liable under the clause relating to compensation, which constituted a covenant on his part, and also because he could not derogate from his own grant. As to whether the plaintiff's lessor was liable on his covenant for quiet enjoyment, the learned Judge thought it unnecessary to decide.