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SUPREME COURT—GENERAL RULE.

The following general rule was made by the Supreme Court on the 16th March :—

1. That Rule 11 be and the same is hereby amended by striking out the word "immediately" at the beginning of such Rule.

2. That Rule 14 be and the same is hereby amended by striking out the words "one month" therein contained, and by inserting in lieu thereof the words "fifteen days."

3. That Rule 15 be and the same is hereby amended by inserting after the words "and mailing" where they occur in such Rule the words "on the same day," and by striking out the words "in sufficient time to reach him in due course of mail before the time required for service."

4. That Rule 23 be and the same is hereby amended by striking out the words "one month" at the beginning of said Rule, and by inserting in lieu thereof the words "fifteen days."

5. That Rule 31 be and the same is hereby amended by striking out the words "one month" where they occur in said Rule, and by inserting in lieu thereof the words "fourteen days," and by adding at the end of said Rule the words "but no appeal shall be so inscribed which shall not have been filed twenty clear days before said first day of said session without the leave of the Court or a Judge."

6. That Rule 62 be and the same is hereby amended by striking out the words "one month" and by inserting in lieu thereof the words "fifteen days."

7. That Rule 63 be and the same is hereby amended by striking out the words "two weeks" where they occur in said Rule, and by inserting in lieu thereof the words "one week."

In accordance with the changes effected by the above, in any appeal to be brought down for hearing at the Session of the Court beginning on the 3rd of May next, the last day for filing the original case will be the 12th April; for giving notice of hearing and depositing factums the 16th April; and for inscribing the 18th April.

A QUESTION OF COSTS.

A decision of considerable interest to the profession has been recently pronounced by the Court of Review at Quebec. In *Carrier* v. *Coté*, the parties, before the case was returned into court, came to a settlement which did not provide for the payment of the plaintiff's costs by the defendant, although the declaration prayed for distraction of costs. The plaintiff's attorney, being displeased with this arrangement, gave the defendant notice, that notwithstanding the pretended settlement between him and the plaintiff, he (the attorney) intended to continue the cause for his costs. The defendant was called upon to plead, no plea was filed, and the plaintiff having foreclosed the defendant, proceeded to proof, as if there had been no settlement, and submitted his case. The action was, however, dismissed, on the ground that the settlement of the case was not proved, nor even alleged, to be fraudulent. The case was taken to Review, where the judgment, which was unanimous, was rendered by Chief Justice Meredith. The learned President of the Court, after noticing the case of *Ryan* v. *Ward* (6 L.C.R. 201), proceeded to observe: "The case, however, to which our attention has been particularly drawn by the learned counsel for the plaintiff is *Montrait & Williams* (1 L.N. 339; 3 L.N. 10; 24 L.C.J. 144) ..... The doctrine which this judgment tends to establish, if I may be permitted to say so, seems to me very reasonable; but it does not prove and has no tendency to prove that after a case has been settled by the parties, the attorney of the plaintiff, without the consent, and against the will of his client, can continue the case in the name of that client, as if no settlement had taken place, so as to enable the attorney to recover his costs from the defendant. The contention that such a course can be adopted is, in my opinion, contrary to the plainest principles of law, and being condemned, as it is, by the judgment of the court below, I think that judgment ought to be confirmed, and I have the less hesitation in arriving at that conclusion because I think the rights of the bar, which doubtless are entitled to our best consideration, are fully, and at the same time justly, protected by the rules laid down by the Court of Appeal in the case of *Montrait & Williams* already mentioned."

We have directed attention to the above

decision because we think there has been a tendency to stretch the doctrine laid down in *Montrait & Williams* beyond what can fairly be inferred from the opinions of the judges who sat in the case. There was evidence in that case sufficient to satisfy the Court that the settlement had been contrived, at the instance of the defendant (who was plaintiff's husband), so as to defraud the plaintiff's attorneys of their costs in a suit which was well founded, and which the defendant was anxious to settle by the payment of a considerable allowance. In *Carrier* v. *Côté* no fraud was alleged or pretended, and the action had not even been returned, so that there was really no case before the Court at the time of the settlement, and the proceedings taken by the attorney subsequently in the name of the plaintiff were wholly unauthorized, and might perhaps have been disavowed by the client. It is evident that this case also differs essentially from *Laplante* v. *Laplante*, 3 L.N. 330, in which the plaintiff's demand had been substantially proved before the settlement.

SUPREME COURT DECISIONS.

As nearly as we can discover, the appeals to the Supreme Court from the Court of Queen's Bench in the Province of Quebec, prosecuted to judgment, stand thus:

Montreal.....25
Quebec..... 8

Of the former 10 appear to have been reversed, and of the latter 4.

The reversals from Montreal are:

Johnston & St. Andrew's Church, reported 1 S. C. R., p. 235. There is also a special report of the whole case by McGibbon.

Caverhill & Robillard, reported 2 S. C. R., p. 575.

Regina & Scott, reported 2 S. C. R., p. 349.

L'Union St. Joseph & Lapierre, reported 4 S. C. R., p. 164.

Bulmer & Dufresne, not reported.

Reeves & Geriken, not reported.

Ames & Fuller, not reported.

Chevalier & Cuvillier, not reported.

Shaw & McKenzie, not reported.

Regina & Abrahams, not reported

The last three cases are very recent decisions, which explains their not being reported.

The reversals from Quebec are:

Bell & Rickaby, 2 S. C. R., p. 560.

Connolly & Provincial Insurance Co., not reported.

Reed & Levis, not reported.

Desilets & Gingras, not reported.

The last two cases are also recent decisions. We have thus nine cases, new and old, which have been reversed in the Supreme Court, out of 14, and we know really nothing certain as to the grounds on which they were decided. The short notices which appear in the newspapers, and elsewhere, are rather perplexing than otherwise. An evidence of this may be found in the notes supplied by the reporter to the Supreme Court in the 12th number of the Legal News for this year (pp. 89–96.) Notes of four cases are given, and it is to be hoped they are all defective. The first is the case of *Shaw & Mackenzie*. It is said that the ruling of the Court was "that the affidavit was defective; the fact of a debtor, about to depart for England, refusing to make a settlement of an over-due debt, is not sufficient reasonable and probable cause for believing that the debtor is leaving *with intent to defraud his creditors*." In the first place there was no question as to the sufficiency or insufficiency of the affidavit. In the second place, no one pretended, that refusal to pay an over-due debt, accompanied by departure, was sufficient reasonable and probable cause. What the Court of Queen's Bench held was, that misrepresentation and false excuses, and precarious credit, accompanied by departure, amounted to probable cause. The second is *Abrahams & The Queen*, where it is said it was held "that under the 32 & 33 Vic. c. 29, s. 28, the attorney general has no authority to delegate to the judgment and discretion of another the power which the Legislature has authorised him personally to exercise, that no power of substitution had been conferred, and therefore the indictment was improperly laid before the Grand Jury." This was not the point submitted. Incidentally it was alluded to; but the real question was whether the signatures of the prosecuting counsel were sufficient attestation of the attorney general's direction.

The third case is that of *Gingras & Desilets* where it is said it was held, "that inasmuch as the damages awarded were not of such an excessive character as to show that the Judge

who tried the case had been either influenced by improper motives or led into error, the amount so awarded by him ought not to have been reduced." (Taschereau, J., dissenting.) It is difficult to suppose that this ruling is a mistake of the reporter. It is too like a bit of English law rudely fitted on to the law of this country by an inexpert mechanic. It is a very fragmentary and imperfect exposition of the English rules as to according a new trial before a jury, and it is not our law at all. No one ever heard of the motives of a judge being a consideration in appeal. Where the appeal is from a Court it is a rehearing, and the appeal Court is not dispensed from looking at the evidence and judging of it independently on its merits. An appeal Court failing to do so would be neglecting its duty. The rule invariably insisted on by the Court of Queen's Bench is that it would look at the evidence; but that it would not disturb the judgment unless it thought the decision absolutely wrong. This is the disposition of our positive law, which in its turn is in accordance with general principle. Sir James Stephen, in an article in "The Nineteenth Century" Review of January last, has thus exposed the difficulty which seems to have embarrassed others besides the majority of the Supreme Court: "First, then, I say, that the full introduction of what is called the one judge system is inconsistent with the maintenance of trial by jury in civil cases. It is surprising to me that this obvious fact should require to be stated, and should apparently have been generally overlooked. It is, however, self-evident. The essence of the one judge system is, that the case is first tried by a single judge, who decides both the fact and the law, and then retried by three judges, who also decide both on the fact and the law. The appeal, in fact, is a rehearing.

"On the other hand, the essence of trial by jury is, that the jury find the facts under the direction of the judge, who tries the case, and that the judges, to whom the appeal lies, do not enter upon the question of fact for the purpose of deciding it, but only for the purpose of considering the correctness of the direction given to the jury by the judge who tries the case, in order to decide whether the matter of fact shall be remitted to another jury."

It would seem, then, that the majority of the Supreme Court has confused two systems essentially different.

In the case of *Levi & Reed* the Supreme Court appears to have been guided by the same erroneous analogy with the jury trial system.

A complete report of the cases may of course show that the majority of the Supreme Court did not fall into this error, but that they thought that a reasonable *solatium* for a labouring man having the end of his finger crushed in a squabble where he was nearly as much to blame as his adversary, was $3,000, (more than the principal of the greatest wages he could possibly make, capitalized at six per cent.) The Dominion Government provides the necessary means for supplying full reports; it seems strange that the public does not obtain the full benefit of the expenditure. On a better method let us hope that the government of Quebec will see the necessity of supplying means for complete reports of its local courts, as a necessary part of the administration of justice, for which the local authority has undertaken to provide. R.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Nov. 30, 1880.

SICOTTE, TORRANCE, JETTÉ, JJ.

[From S. C., Montreal.

Re DAVID, insolvent, BEAUSOLEIL, assignee, & THE TRUST & LOAN CO., petr.

Sale by assignee—Commission payable on the whole price, including the amount of the hypothecs assumed by the purchaser.

The assignee of the insolvent estate of David sold fourteen pieces of immovable property, subject to the hypothecs which existed thereon in favor of the Trust & Loan Company.

The Trust & Loan Company became the purchasers, for the sum of $5 in addition to the amount of the hypothecs; and the Company now asked that the assignee be ordered to execute a deed of sale to them.

The question was whether the assignee was entitled to his commission on the sum actually received, or on the whole amount of the price, including the hypothecs.

The Court below (Mackay, J.) held that the assignee is entitled to his commission on the whole *prix de vente*.

SICOTTE, J. (*diss.*), was of opinion that the judgment was incorrect, and that the assignee, like the sheriff, is not entitled to commission on any greater sum than the amount actually received.

JETTÉ, J., for the majority of the Court, held that the commission was payable on the *prix de vente*, including the amount of the hypothecs which the purchaser undertakes to pay. This was evidently the case where the purchaser is a third party, and why should it be otherwise when the hypothecary creditor becomes the *adjudicataire?* The commission is allowed as remuneration, and would be illusory where the sale is subject to hypothecs, unless allowed to be charged on the whole price.

Judgment confirmed.

Judah & Branchaud for petitioners.

Geoffrion & Co. for Beausoleil, contesting.

SUPERIOR COURT.

MONTREAL, March 26, 1881.

Before TORRANCE, J.

CHEVRIER v. VACHON et vir.

Practice—Faits et articles—Service.

On the 24th November, 1875, the female defendant obtained from the Court a suspension of the order for *faits et articles* which had been served, requiring her to appear before the Court to answer interrogatories.

The suspension did not fix any time when the plaintiff should be required to make answer.

The defendant now moved the Court that a delay be fixed within which the plaintiff should appear and make answer. Notice of the motion was given to the attorneys of defendants.

J. O. Joseph, for them, objected that the notice should have been served upon the party herself, like the rule for interrogatories, and that the motion should be dismissed.

The COURT maintained the objection and dismissed the motion.

Motion dismissed.

Scallon for plaintiff.

J. O. Joseph for defendants.

SUPERIOR COURT.

MONTREAL, March 24, 1881.

Before TORRANCE, J.

Ex parte GAGNON.

Petition of wife of absentee to be authorized to do business as a marchande publique.

The petitioner, Dame Emelie Gagnon, of Montreal, was a married woman separated as to property from her husband, David Godin, an absentee. She represented him to be an absentee gone to parts unknown, and prayed that she be authorized to do business as a *marchande publique*, and so earn a living for herself and only child.

The petition was granted, and the Judge referred to 1 Marcadé on C. C. Nap. 220, n. 739.

Petition granted.

J. O. Turgeon for petitioner.

SUPERIOR COURT.

MONTREAL, March 15, 1881.

Before TORRANCE, J.

LORANGER, Atty. Gen., v. DORION et al.

Acting as a corporation—C.C.P. 997.

This was a petition under C C.P. 997 to have the defendants restrained from acting illegally as a corporation under the name of the Silver Plume Mining Company.

Two of the defendants, Doucet and Marshall, alleged specially by separate pleas that when the petition was served on them (17th November, 1880) they had no connection with the Company, either in the capacity of director or stockholder, and held no office therein. In other respects the pleas of Doucet and Marshall were similar to those of the three other defendants who had pleaded (Dorion, Masson and Boyd).

The plea was to the effect that the Company was a private association, which the defendants never represented to be a corporation; that the relator, W. F. Lighthall, knew it to be a private association, and, moreover, by purchasing the stock of the association, he had himself become a member.

The facts were that on the 17th April, 1880, Dorion, one of the defendants, with Bickerdyke and Matheney, appeared before Mr. Hart, N.P., and declared that they owned two certain min-

ing lots in Dakota Territory, U.S., in the proportion of 6-10 to Dorion, 3-10 to Bickerdyke, and 1-10 to Matheney, under a deed of sale before Doucet, N.P., on the 10th March, 1880, and had associated themselves for the purpose of carrying on the business of mining under the name of the Silver Plume Mining Company, according to the rules and regulations attached to the deed. The property cost $15,000, and was taken as representing a capital of $1,000,000, paid-up, divided into 10,000 shares. Thereupon Dorion transferred to Charlebois and Doucet, who intervened, ten shares and one share respectively, to qualify them; and the Company was organized, Dorion becoming President, Charlebois Vice-President, and Doucet Secretary. Under the constitution and by-laws annexed to the deed, article 22, the stock of the Company was to be issued to a trustee, who was to sign all transfers and certificates to shareholders. Under article 5, to constitute membership, there must be subscription and ownership appearing by the books of the Company. By article 1, the Company was to be a corporation, and under article 7 it was to have a corporate seal. The minutes of the meeting of the Company, produced by Mr. Doucet on his examination as witness for petitioner, showed that the first thing done was to decide upon the shape of a corporate seal. Mr. Dorion, as president of the Company, would then appear to have issued certificates with the corporate seal, mentioning the number of shares which each represented, and those certificates were accompanied by a printed transfer containing the name of the transferee in blank, which was signed by Mr. Dorion as trustee. In this way these certificates could be transferred from hand to hand until some one desired to become an actual and regular shareholder, when, under the conditions in the printed form of transfer, he was to exchange his certificate from the President as trustee for certificates to be signed by the Secretary, and registered in the books of the Company.

PER CURIAM. The Court has no difficulty in deciding this case. The constitution of the Company shows it to be a corporation. It has a corporate seal. It has a board of directors with power to make by-laws. All these circumstances show that the defendants have assumed to act as a corporation. In England it has been a question whether assuming to act as a corporation was an offence at common law. There have been conflicting decisions there, and Lindley—Partnership—summing up, p. [153] of American edition of 1860, says, "it is by no means clear that it is illegal at common law to assume to act as a body corporate." But our Code of Procedure is clear, 997: "Whenever any association or number of persons acts as a corporation without being legally incorporated or recognized, &c., it is the duty of Her Majesty's Attorney-General for Lower Canada to prosecute in Her Majesty's name such violation of the law," &c. Lindley says: "What distinguishes corporations from other bodies is their independent personality, and no society which does not arrogate to itself this character can be fairly said to assume to act as a corporation." The converse may be said, that a society which arrogates to itself this character of independent personality does assume to act as a corporation. At p. [148] he says:—"With respect to acting or presuming to act as a body corporate, considerable difficulty was felt as to the meaning of the words. It was held in *R.* v. *Webb* that having a committee, general meetings, and power to make by-laws, was not unequivocally assuming to act as a body corporate; but in the later case of *Joseph* v. *Pelser* the Court was of a different opinion. To create transferable shares in a common stock has also been said to amount to assuming to act as a body corporate, although only such bodies corporate as are specially empowered so to do can lawfully possess stock, the shares in which are transferable." In the present case, we have, in addition, the declaration that the company was a corporation and in the possession of the corporate seal.

It is right then that the conclusions of the Attorney-General should be granted. It remains to say against whom the judgment should go. There is no question as to Dorion, the President, Boyd and Masson, the Directors, and Doucet, the Secretary. A question has been raised as to the liability of Marshall. He resigned his office of director on the 6th of October, and it was accepted on the 7th of October and notified to him on the 13th. But he is a shareholder and owner of scrip, for his offer to the company of his shares does not appear to have been accepted, and the Court

does not see that he can escape condemnation any more than the others. He was elected director for a year in June, and there was no publication of his resignation.

Judgment for plaintiff.

E. Barnard, for Attorney-General.

T. W. Ritchie, Q.C., for defendants.

SUPERIOR COURT.

MONTREAL, July 9, 1879.

Before MACKAY, J.

EVANS v. LIONAIS, es qual. & DOUCET, T.S.

Créancier saisissant—Tiers et ayant cause—Acte sous seing privé.

Le demandeur Evans, en exécution d'un jugement obtenu en sa faveur contre Hardoin Lionais, ès-qualité, a fait pratiquer une saisie-arrêt après jugement entre les mains de Alexis Doucet, lequel déclara ne rien devoir au défendeur ès-qualité.

Le demandeur contesta sa déclaration sur le principe qu'il occupait une maison appartenant au dit défendeur ès-qualité, et qu'il payait $15 de loyer par mois.

A cette contestation, Alexis Doucet répondit qu'en effet il avait u bail avec le défendeur, ès-qualité, mais que le dit défendeur l'avait chargé de payer le dit loyer à son acquit à J. D. E. Lionais, ce que ce dernier avait accepté, et que, par conséquent, il ne devait rien.

Le demandeur fit à l'encontre de ce plaidoyer une réponse en droit, alléguant que le dit acte est un acte sous seing privé qui, n'ayant aucune des qualités requises par la loi, pour donner contre les tiers une date aux écritures privées, est nul et de nul effet contre les créanciers du dit défendeur. (C. C., art. 1225).

La cause étant inscrite sur cette réponse en droit, le tiers-saisi prétendit à l'argument que le créancier n'était pas un tiers vis-à-vis du tiers-saisi, mais était son ayant-cause, que par conséquent le bail, quoique sous seing privé, pouvait être opposé au demandeur. (C. C., art. 1222).

La COUR a maintenu la réponse en droit du demandeur à l'exception péremptoire plaidée par le tiers-saisi, Alexis Doucet.

E. Barnard, avocat du demandeur contestant.

P. Moreau, avocat du tiers-saisi.

RECENT DECISIONS AT QUEBEC.

Assault—Defence, mutiny—A sailor on a merchant ship brought an action of damages for assault, against the owner and master. The defence was that the seaman had refused to perform the duty assigned to him, and when an attempt was made to put him in irons, he resisted and was mutinously supported by others of the crew. The master was knocked down, whereupon the owner came to his assistance and struck the plaintiff with a cutlass. G. Okill Stuart, J., in the Vice-Admiralty Court, Quebec, referred to the opinion of Lord Stowell in the case of the *Agincourt* (1 Hagg. 271), "that in a case of gross behavior the master of a merchant ship has a right to inflict corporal punishment on the delinquent mariner. The mode of correction may be not only by personal chastisement but by confinement or imprisonment on board the ship. The extent of the punishment must depend upon circumstances. In general deadly weapons cannot be employed. But cases of necessity may justify the use of them." In the present case, the owner of the vessel, with a defiant and mutinous crew before him, and the authority of the master subverted, acted with energy and decision, and his conduct was justifiable.—Action dismissed.—*The Bridgewater*, 6 Q. L. R. 290.

Security for Costs—Power of attorney.—1. D'après l'article 120 du code de procédure, le cautionnement *judicatum solvi* peut être demandé aussi bien par motion que par exception dilatoire.—*Mitchell* v. *Flanaghan*, 6 Q. L. R. 295. (Cour de Circuit, jugement par Caron, J.)

2. Le délai pour produire l'exception dilatoire, basé sur le fait que le demandeur qui réside hors la province n'a pas produit une procuration de sa part, ne compte que du jour où le cautionnement a été fourni.—*Ib.*

Promissory Note—Demand of payment.—Dans une action sur billet à demande, la simple demande de paiement par n'importe qui, même sans montrer le billet et sans l'avoir, est une mise en demeure suffisante en loi.—*Marcotte* v. *Falardeau*, 6 Q. L. R. 296. (Cour de Circuit, jugement par Casault, J.)

Attorney—Costs.—The parties, before the case was returned into Court, came to a settlement which did not provide for the payment of the plaintiff's costs by the defendant, although the declaration prayed for distraction of costs.

Held, that the plaintiff's attorney could not continue the case for his costs.—*Carrier* v. *Coté*, 6 Q. L. R. 297 (Court of Review, opinion by Meredith, C.J.)

Collision—Negligence.—In the case of a steam vessel lying at anchor upon an anchorage ground while using her bell and showing two white lights, one upon her foremast and the other at the gaff aft, each in an oblong lantern: *Held*, 1. That a sailing vessel which, misled by the whistle of another steamer in motion, struck her, was in fault for going too fast; and 2. That the lights, though not in globular lanterns, as directed by the "Act respecting the navigation of Canadian waters," being equal in power, were a substantial compliance with the Act.—*The General Birch*, 6 Q. L. R. 300. (Vice-Admiralty Court, opinion by G. Okill Stuart, J.)

Lease—Right of tenant to resiliate, in consequence of interference with light.—L'auteur des défendeurs avait loué au demandeur une maison pour y établir un atelier de photographie. Plus tard les défendeurs érigèrent sur une propriété avoisinante à eux appartenant, un mur de 22 pieds qui a effet d'enlever au demandeur partie de la lumière dont il avait besoin pour exercer son métier. *Jugé*, que l'érection du mur en question constitue pour le locataire un trouble dans sa jouissance, et lui donne droit à la réailiation du bail et à des dommages contre les représentants de son locateur.—*Remillard* v. *Cowan*, 6 Q. L. R. 305 (Cour Supérieure, jugement par Casault, J.)

Capias—Bail.—A defendant who has given special bail is not bound to file a statement and make the declaration mentioned in Art. 766 C.C.P.—*Poulet* v. *Launière*, 6 Q. L. R. 314. (Superior Court; judgment by Meredith, C.J.)

Sale—Registration—Commencement of proof.—L'acquéreur d'un immeuble, n'y ayant pas de droits incommutables et effectifs sans un titre et son enregistrement, est présumé faire dépendre son consentement de l'existence d'un titre, et en conséquence, il faut, pour trouver dans un écrit le commencement de preuve d'une acquisition verbale d'un immeuble, une énonciation plus formelle et plus positive que pour un contrat qui n'a besoin que du consentement des parties pour le compléter.—*Anctil* v. *Déchène*, 6 Q. L. R. 317 (Cour de Révision; opinion par Casault, J.)

RECENT ENGLISH DECISIONS.

Master and Servant—Assault—Consent—Submission.—The plaintiff was a domestic servant in the service of Captain and Mrs. Braddell. In consequence of a suspicion entertained by Mrs. Braddell, she sent for her doctor, Dr. Sutton, and requested him to make an examination of the plaintiff's person, to ascertain whether she was pregnant. The doctor did so, without using any force or doing anything more than was necessary for the purpose of the examination. The plaintiff strongly expressed her dislike to be examined, but offered no further resistance, and did what the doctor told her. She afterwards brought an action for assault against her master and mistress and the doctor. The judge at the trial withdrew the case from the jury as against the master and mistress, and the jury found a verdict for the other defendant, Dr. Sutton. A rule was subsequently obtained to set aside the verdict and grant a new trial, on the ground that the judge ought not to have withdrawn the case from the jury against any of the defendants, and that the verdict was against the weight of evidence. The case came before Lindley and Lopes, JJ. (Common Pleas Division, Jan. 15, 1881) who differed in opinion.

Held, by Lopes, J., (1) That it was not correct to tell the jury, that to maintain the action, the plaintiff's will must have been overpowered by force or the fear of violence. A submission to what is done, obtained through a belief that the plaintiff was bound to obey her master and mistress, is a consent obtained through fear of evil consequences to herself, induced by her master and mistress' conduct, and is not sufficient. (2) That the action is maintainable unless what was done was so unmistakably with the plaintiff's consent, that there was no evidence of non-consent upon which a jury could reasonably act. *Held*, by Lindley, J., (1) That a verdict in the plaintiff's favor could not be supported in point of law against her master and mistress. (2) That the plaintiff had it entirely in her own power physically to comply or not with her mistress' orders. (3) That there was no evidence of want of consent as distinguished from reluctant obedience or submission to her mistress' orders, and that in the absence of all evidence of coercion as distinguished from an order which the plaintiff could

comply with or not as she chose, the action could not be maintained.

Lopes, J., said: "I know not what more a person in the plaintiff's position could do, unless she used physical force. She is discharged without a hearing; forbidden to speak; sent to her room; examined by her mistress' doctor, alone, no other female being in the room; made to take off all her clothes and lie naked on the bed; she complains of the treatment; cries continually; objects to the removal of each garment; and swears the examination was without her consent. Could it be said in these circumstances her consent was so unmistakably given that her state of mind was not a question for a jury to consider. I cannot adopt the view that the plaintiff consented because she yielded without the will having been overpowered by force or fear of violence. That, as I have said, is not, in my opinion, an accurate definition of consent in a case like this. I do not understand why, if there was a case against the doctor, there was none against Captain and Mrs. Braddell. The doctor was employed to see if the plaintiff was in the family way. The plaintiff does not suggest in her evidence that he did more than was necessary for ascertaining that fact. If this is so, the Braddells are responsible for what was done by the doctor. It is said there ought to be no new trial as against the doctor. I cannot agree with the definition of consent given by the learned judge, and I think the withdrawing the case against the Braddells influenced the jury in finding for the doctor. They would naturally think the doctor only did what he was told; the Braddells put him in motion, and it would be hard when the principals are acquitted to find the agent guilty. There should be a rule absolute for a new trial." Lindley, J., said: "The plaintiff had it entirely in her own power physically to comply or not to comply with her mistress' orders, and there was no evidence whatever to show that anything improper or illegal was threatened to be done if she had not complied ..... The plaintiff was not a child; she knew perfectly well what she did, and what was being done to her by the doctor; she knew the object with which he examined her, and upon the evidence there is no reason whatever for supposing that any examination would have been made or attempted if she had told the doctor she would not allow herself to be examined." The Court being divided in opinion, the rule was discharged.—*Latter* v. *Braddell & Wife, & Sutton*, 43 L.T. (N.S.) 605.

Contract—Restraint of Trade—B. and L, carrying on business as ironmongers in partnership, agreed that the partnership should be dissolved; that the stock and good-will should be taken by L., who would continue the business on his own account; and that B. would retire from the business, and not commence business as an ironmonger in Bradford, or within ten miles thereof, for ten years (except in Leeds, in which case he should not do business in Bradford directly or indirectly.) The defendant within the ten years commenced business as an ironmonger at Leeds, and solicited customers of the old firm. *Held*, that an injunction ought to be granted only to restrain the defendant from soliciting the customers of the old firm, but not to restrain him from dealing with them. If parties made an executory contract, which is to be carried out by a deed afterwards executed, the real completed contract is to be found in the deed, and the former contract can only be looked at for the purpose of construing the deed.—*Leggott* v. *Barrett*, Court of Appeal, 43 L.T. Rep. (N.S.) 641.

GENERAL NOTES.

The Law Society, on the 26th March, proceeded to the election of office-bearers, which resulted as follows:—President, the *Batonnier;* Vice-President, T. W. Ritchie; Treasurer, S. Pagnuelo; Secretary, F. L. Beique; Committee, Hon. R. Laflamme, J. M. Loranger, J. J. Curran, C. P. Davidson, C. A. Geoffrion.

WILLS.—In the House of Lords, Lord Brougham once mentioned two somewhat remarkable facts, showing the necessity of having a safe place for the deposit of wills. The first case was one in which one of his noble friends, as heir-at-law, lost, and another of his noble friends, as a devisee, gained £30,000 a year. How the first lost it, and the last gained it, was by a will being found in an old rusty box in an old travelling carriage, and which, therefore, might have been very naturally lost by accident or destroyed from ignorance. The second case was one also in which some of his noble friends were concerned, and the sum in question was no less than £160,000. This sum would have been entirely lost to the purposes for which it was intended, if the inquiries relative to the existence of a will with respect to it had been instituted in the winter instead of in the summer. The will was searched for, everywhere, but could nowhere be found, until at last it was discovered in a grate, and stuffed like a piece of waste paper through the bars. If it had been winter instead of summer, in all probability when the fire had been lighted it would have been destroyed.