

The rule will be, that the plaintiff be at liberty to amend and proceed to a new trial. I don't know which party it was who was unwilling to have a *stet processus* entered, but it seems to me that that would be a proper ending of the case.

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#### ABSTRACTS OF RECENT ENGLISH DECISIONS.

*Accord and Satisfaction.*—In an action for an injury sustained through a railway accident, it appeared that the plaintiff, at the time, not supposing that he had sustained any serious injury, accepted of the company 2*l.* as compensation for damage to his clothes: Held, that the receipt of this sum could not be set up as an accord and satisfaction for a patent and severe injury to the brain or spine. *Roberts vs. Eastern Counties Railway Company*, 1 F. & F. 460. COCKBURN.

*Action at Law where maintained generally for Injury to Private Rights.*—Where a person would have, at common law, a right of action grounded upon an interference with a given public right, when such interference had operated to his individual injury, if the public right is taken away by statute, and vested in a body of conservators, to be exercised or controlled for a special subject, *e. g.* the benefit of trade and commerce, then, the right being thus resigned by the public, the individual right of action is lost also, and there can be no redress by action on account of any interference, duly authorized by such body, with private rights, of the nature of those to which the powers of the body relate. *Kearns vs. Cordwainer's Company, Cordwainer's Company vs. Kearns*, 5 Jur. N. S. 1126; 28 L. J. C. P. 285.

*Ambassador—Privileges.*—The public minister of a foreign State, duly accredited to and received by the Queen, having no real property in this country, and having done nothing to disentitle him to the privileges belonging to such minister, is privileged from all liability to be sued in this country in civil actions. *Magdalena Steam Navigation Company vs. Martin*, 5 Jur. N. S. 1360; 28 L. J. Q. B. 310; 7 W. R. 598.

*Arbitration and Award.*—Courts of law cannot be ousted of their jurisdiction by the mere agreements of parties. *Horton vs. Soyer*, 4 H. & N. 643; 5 Jur. N. S. 989; 7 W. R. 735; 33 L. T. 287.

If parties agree that all disputes that may arise between them shall be

referred to arbitration, that will not prevent either of them bringing an action against the other. But they may, by agreement, make it a condition precedent to bringing an action, that the amount to be paid shall be settled by arbitration. *Ib.*

To an action for a breach of covenant contained in an indenture of lease, the defendant pleaded that it was agreed by and between the parties to the indenture, that if any difference, variance, controversy, doubt, or question should arise between the parties, touching or concerning any covenant, clause, proviso, matter, or thing in the indenture contained, then all and every such matter in difference should be discussed, resolved, and finally ended by arbitrators, chosen as therein provided; that the parties to the indenture should not prosecute any suit or seek any remedy either in law or equity for relief in the premises, without first submitting to such arbitration and reference that the plaintiff's claim and the defence thereto were a matter in difference, which arose touching and concerning the covenants in the indenture; that the defendant was ready and willing to submit the same to arbitration, and had done all things necessary to entitle him to have the same submitted: Held, that the plea was bad, since the covenant was an absolute agreement to oust the superior courts of their jurisdiction, and therefore void. *Ib.*

*Attorney and Solicitor—Compromise of Client's Action or Suit.*—Where a cause is compromised by the counsel and attorneys in court, in the presence of the client, and after conference had with him, with a view to an arrangement, and the client do not dissent, and the terms of the compromise have been embodied in an order of nisi prius, subsequently made a rule of court, the arrangement will not be disturbed upon a suggestion by the client, that though present when it was made, he did not understand what was going on. *Chambers vs. Mason*, 5 C. B. N. S. 59; 5 Jur. N. S. 148; 28 L. J. C. P. 10.

If an attorney, retained to bring an action, compromises it against the express directions of his client, he is liable to an action. *Fray vs. Vowles*, 5 Jur. N. S. 1253; 28 L. J., Q. B. 232; 7 W. R. 44; 33 L. T. 133.

*Attorney and Solicitor—Negligence—Liability for—In Conduct of Business.*—A mere error in judgment, or a mistake upon a point of law, or in the construction of a difficult act of Parliament, is not such negligence as renders an attorney liable to his client for a loss sustained in consequence of such error or mistake; in such cases regard must be had to all the circumstances of the transaction, and if they are such as show

gross or culpable neglect on the part of the attorney, he will be responsible. *Crosbie vs. Murphy*, 8 Irish Com. Law Rep. 301, Q. B.

*Bailment*.—"Gross negligence" is a term properly used to describe the sort of negligence for which a gratuitous bailee is responsible; it cannot properly be said of an unskilled person who does not use skill; it is only applicable where a skilled person does not use the skill he has. *Phillips vs. Clark*, 5 Jur. N. S. 1081, C. P.

Trover maintained by the bailor of a bailee against a wrongful taker, and allowed to recover the costs of suit by his own bailor. *Pritchard vs. Blick*, 1 F. & F. 404. COCKBURN.

*Barrister—Authority to consent to Compromise*.—During the trial of an issue devisavit vel non, the counsel for the heir and the devisee agreed to compromise the case, on the terms of the devisee giving up the estate and receiving a life annuity. It was well known to the counsel and attorney of the devisee that she was opposed to any compromise at the time when these terms were come to; her arrival in court was immediately expected, but the heads of agreement were signed and a juror withdrawn before she arrived. The agreement was embodied in a nisi prius order. The devisee having refused to comply with its terms, the heir applied to a court of common law for an order to commit her, which was refused. He then filed a supplemental bill for specific performance of the agreement: Held, that assuming counsel to have without express authority such power to bind their clients by a compromise as to make the agreement good at law, still an agreement made under such circumstances was one of which, in the absence of subsequent acquiescence or confirmation by the devisee, specific performance ought not to be decreed against her. *Swinfen vs. Swinfen*, 2 DeG. & J. 381; 4 Jur. N. S. 774; 27 L. J. Chanc. 491.

Where two causes stand for trial at the assizes, *A. vs. B.* and *C. vs. D.*; and the parties in each are mutually interested, *A.* and *D.* having the same attorney and counsel, and *B.* and *C.* also their attorney and counsel the same, and before the trial of *A. vs. B.*, terms of compromise are offered on behalf of *C.*, on which *A.* and *D.*, and their attorney and counsel confer together, and *D.* and *A.* profess their willingness to accept part of the terms offered, but desire, besides, to have certain costs paid, and the counsel, on leaving them, says that "he would do his best for them," and no dissent is expressed, and the actions are immediately afterwards settled in court, the parties all being present, and expressing no dissent, and an arrangement is made, which is signed by the attorneys and counsel on both sides,