she had done all her life, that is, as a labouring woman. I shall direct the jury to acquit the prisoner on the ground that the indictment is insufficient.

It is very fortunate that the case has been brought up in its present form, for there was evidently no further evidence to support the indictment if otherwise framed, and it permits of the Court dealing with the matter of law which it is important to consider.

C. P. Davidson, Q.C., for the Crown.

Prefontaine, for the prisoner.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

Before TORRANCE, DOHERTY & RAINVILLE, JJ.

BELLHOUSE v. LAVIOLETTE.

Master and servant—Responsibility of master for negligence of servant.

The rule which makes a master responsible for the negligence of his servant does not apply where the servant at the time is absent from service and is engaged about his own affairs.

The judgment brought under Review was rendered by the Superior Court, Montreal, Loranger, J., Sept. 13, 1883.

The action was to recover damages for injury done to the plaintiff's horse by the defendants' servant, in a collision of two sleighs, one driven for plaintiff by one Macgregor, the other driven by Alfred Cypiot, the servant of defendants. The defendants were condemned to pay $110.

It was contended in review that the judgment was erroneous in so far as it held that the horse and sleigh which collided with that of plaintiff, belonged to defendants, and was at the time of the accident, driven by their servant while in their employ, the proof, they contended, being that such horse and sleigh were not their property, and were at the time being driven by Alfred Cypiot, who, it was true, was in their employ, but was at the time absent from their service, and was so driving said horse and sleigh in and about his personal business and affairs.

TORRANCE, J. I find that though Cypiot was in the employ of the Laviolettes, he was not doing their work or employed by them at the time of the accident, but was driving a horse and sleigh which he had borrowed from Mrs. Thomas, the adjoining occupant, for his own affairs. This fact is proved without any doubt by Cypiot and by young Geo. Finch who gave him his mother's horse and sleigh. The ordinary rule cannot here apply which makes a master responsible for the negligence of his servant. We are all agreed that the action should be dismissed. The loss of the number on the horse which the policeman took possession of but lost, is to be regretted. It would have been a useful link to make clearer the evidence of proprietorship.

Judgment reversed.

Dunlop & Lyman, for plaintiff.

Doherty & Doherty, for defendants.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

Before TORRANCE, DOHERTY & RAINVILLE, JJ.

LES RELIGIEUSES DE L'HOTEL-DIEU v. NELSON et vir, and NELSON et al. v. HARRISON, and HARRISON v. NELSON et vir.

Usufruct—Debt of estate—C. C. 474.

A usufructuary by general title is bound to contribute with the proprietor, out of a sum of ready money received from the estate, to pay a debt of the estate which became due after the testator's death.

The judgment under Review was rendered by the Superior Court, Montreal, Papineau, J., May 31, 1883.

The principal plaintiffs were creditors of the Estate Colin Campbell for $1,187. The principal defendants represented Campbell as *nus propriétaires* and Dame Sarah Harrison was usufructuary by universal title of one-half of the whole estate of Campbell. When Campbell died, he left in his estate a sum of ready money after payment of all debts then due (which was not the case with the present debt), and one-half of this ready money was paid over to the usufructuary Sarah Harrison. The present claim became due in 1880. Nelson et vir, being sued, sued in turn the usufructuary to have her condemned to pay out of the money received by her from the estate.

The latter contended, under C. C. 474, that an attempt was being made to compel her to advance her own moneys to pay the debts of