

Held, that the cashier of the bank had authority to pass the property and possession of the note to Mrs. Allen; that he had done so, though under a mistake; that therefore there was no larceny by Mrs. Allen; and that the conviction must be quashed.—*Conviction quashed.*—*Regina v. Prince*, L. J. Notes of Cases, 248.

LARCENY.—The prisoner was convicted of stealing eleven tame partridges. The birds had been reared from eggs placed under a common hen. They were about three weeks old and could fly a little. The coop under which the hen had been originally confined had been removed, but the young birds remained about the place as her brood, and slept under her wings at night, and were practically in the power and dominion of the prosecutor. The question was, whether such birds could be the subject of larceny.

Held, that they might be, and therefore the conviction was affirmed.—*Conviction affirmed.*—*Regina v. Shickle*, L. J. Notes of Cases, 248.

ONTARIO REPORTS.

COMMON PLEAS.

(Reported by S. J. VAN KOUGHNET, Esq., Reporter to the Court.)

HAYMAN v. HEWARD.

Parent and child—Liability of parent for child's indebtedness.

Plaintiff, upon their order, furnished to several of defendant's sons, who were at the time living with their father, certain articles of wearing apparel, charging the same to defendant, and delivering them at his house. Previously to this defendant had caused to be once, in one of the daily papers published in the place and taken in by the person by whom plaintiff was employed, a notice to the effect that he would not be responsible for any debt contracted in his name from that date without his written order, but after the goods in question had been furnished to his sons he wrote to the plaintiff, stating that he would not in any way be responsible for any debt incurred by any of his sons from and after that date unless under his written order;

Held, that in the absence of evidence repelling the presumption of defendant's authority to his sons to contract the liability in his name, the fact of the delivery of the articles at defendant's house for his sons and the language of his letter to plaintiff were quite sufficient to justify the jury in finding the defendant liable, and that it was not necessary to go further and prove the infancy of the sons.

[Common Pleas, Easter Term, 1868.]

This was an appeal from the County Court of the County of York.

The declaration was on the common counts for goods bargained and sold, goods sold and delivered, work and materials, &c.

The defendant pleaded never indebted, upon which issue was joined.

It appeared from the evidence that the defendant's three sons, who were at the time residing with him, went to the shop of the plaintiff on several different occasions and ordered articles of clothing there on the defendant's account, and

that the articles in question were sent to the defendant's house for his sons. Before this, it was proved, the defendant had notified the public through the columns of a daily paper published in the place where he resided that he would not be responsible for any debt contracted in his name from and after that date without his written order, and that two copies of the paper containing this notice had been taken to the establishment in which plaintiff at the time of this action carried on business, and one of them handed to the then proprietor, who was also a subscriber to the paper, and another to some one else there. There was no evidence that a copy of the paper had been sent to the plaintiff, but he was then in the establishment and subsequently succeeded to the business. Some months after the goods in question had been ordered, the defendant wrote to the plaintiff informing him that he would not in any way be responsible for any debt incurred by any of his sons from and after that date, unless under his written order, stating that he wished him to consider the communication confidential. There was also evidence that the defendant had been called upon by some one in plaintiff's name for a settlement of the accounts rendered for the goods, and that defendant had told him he was then too busy to see him, and that no objection was then made to the accounts. At the close of this evidence defendant's counsel moved for a nonsuit, on the ground that there was no evidence to go to the jury; that the goods had been supplied to the sons and the contract was with them; that there was no evidence under the Statute of Frauds that he undertook to pay the debt, and that orders given by the sons were not his, they not being his agents.

The motion for a nonsuit was overruled, and the case went to the jury, who returned a verdict for the plaintiff for the full amount claimed.

In the following County Court Term the defendant moved and obtained a rule nisi for a new trial, which the learned Judge made absolute, on the ground that there should have been evidence of the sons of defendant being infants, and that there was non-direction in omitting to mention to the jury the absence of such evidence.

From this judgment the plaintiff appealed.

McBride, for the appeal, cited *Shelton v. Springett*, 11 C. B. 452; *Mortimore v. Wright*, 6 M. & W. 482.

Anderson, contra, cited *Baker v. Keene*, 2 Star-
kie, 501; *Blackburn v. Mackey*, 1 C. & P. 1;
Fluck v. Tollmache, ib. 5; *Camen v. Baker*, ib.
268; *Nichle v. Allen*, 3 C. & P. 36; *Rolfe v. Ab-
bot*, 6 C. & P. 286; *Clements v. Williams*, 8 C. &
P. 58; *Seabourne v. Neaddy*, 9 C. & P. 497; *Ur-
mston v. Newcomen*, 4 A. & E. 899; *Law v. Wilkin*,
6 A. & E. 718; *Mortimore v. Wright*, 6 M & W. 482.

RICHARDS, C. J., delivered the judgment of the Court.

The doctrine laid down in *Chitty* on Contracts, 8th edition, p. 146, to which we have been referred by the defendant's counsel is, "that a father is not under any legal obligation to educate his child, and that he cannot be made liable if the circumstances absolutely negative his assent to any contract with the party who instructed the child; and when a parent gives no authority, and enters into no contract, he is no more liable to pay a debt contracted by his child, even for