

was given identifying the deceased as an Indian woman, known by the Indian name laid in the indictment, but there was no evidence that she was known by the name of Agnes Jacobs. The prisoner was convicted of manslaughter.

*Held*, affirming the judgment of the Court of Crown Cases Reserved for the Province of Quebec, that proof of the Indian name was sufficient to justify the conviction. *Regina v. Frost* (Dears C. B. 474) distinguished. Appeal dismissed.

*Cornellier*, Q.C., for appellant.

*Trenholme* for the Crown.

[April 30.]

RODEURN *v.* SWINNEY.

*Mortgage—Power of sale—Exercise of—Sale under power of attorney—Authority of Attorney—Purchase money—Promissory note.*

A mortgage authorized the mortgagees to sell in default of payment on giving a certain notice, and contained a clause that the purchaser at such sale should not be required to see that the purchase money was applied as directed. The mortgagee gave R. a power of attorney to sell under the mortgage, which he did, taking part of the purchase money in cash, and for the balance a promissory note, payable to himself, which he discounted and appropriated the proceeds. The note was paid by the maker at maturity. In a suit to have the sale set aside as fraudulent and made in collusion between R. and the purchaser:

*Held*, affirming the judgment of the court below, that R. had no authority to take the said note in payment, and the purchaser was bound to see that his powers were properly exercised. The sale was therefore void and must be set aside.

Appeal dismissed.

*Geo. C. Gilbert*, Q.C., for appellants.

*F. E. Barker*, Q.C., for respondents.

[April 30.]

GEROW *v.* ROYAL CANADIAN INS. CO.

GEROW *v.* BRITISH AMERICAN INS. CO.

*Marine Insurance—Constructive total loss.—Cost of repairs—Estimate of—Deduction of new for old.*

A policy of insurance on a ship contained the following clause:

"In case of repairs the usual deduction of one-third will not be made until after six months from the date of first registration, but after such date the deduction will be made. And the insurers shall not be liable for a constructive total loss of the vessel in case of abandonment or otherwise, unless the cost of repairing the vessel, under an adjustment as of partial loss, according to the terms of this policy, shall amount to more than half of its value, as declared in this policy."

The ship being disabled at sea put into port for repairs, when it was found that the cost of repairs and expenses would exceed more than one-half of the value declared in the policy if the usual deduction of one-third allowed in adjusting a partial loss, under the terms of the policy, was not made, but not if it was made.

*Held*, affirming the judgment of the court below. *PATTERSON*, J. dissenting, that the "costs of repairs" in the policy means the net amount after allowing one-third of the actual cost in respect of new for old, according to the rule usually followed in adjusting a partial loss, and not the estimated amount of the gross costs of the repairs forming the basis of an average adjustment in case of claim for partial loss, and therefore the cost of repairs did not amount to half the declared value.

Appeal dismissed.

*Weldon*, Q.C., for the appellant.

*Barker*, Q.C., for the respondents.

[April 30.]

MILLER *v.* WHITE.

*Evidence—Admissibility of—Entries in defendant's books—New trial.*

In an action for goods sold and delivered against McK. and M., the defence was that the goods were sold to C. McK. & Co., the defendant, McK. being a member of both firms. On the trial McK. was called for the plaintiff, and on cross-examination he produced, subject to objections, his books which showed that the plaintiff's goods were credited to C. McK. & Co., though he swore they had been delivered to McK. & M. In the plaintiff's books the goods were charged to C. McK. & Co., which plaintiff swore was done at the request of McK. A verdict having been found for the defendant, the Supreme Court of New Brunswick ordered