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THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

BY

T. K. RAMSAY AND L. S. MORIN, ESQUIRES,
ADVOCATES.

MONTREAL: pub'ished by
HEW RAMSAY,
St. François Xavier Street.

MONTRÉAL: publié par
HEW RAMSAY,
Rue St. François Xavier.

1854.

INDEX, 1ST PART.

Judicature, 16 Victoria, chaps. cxciv. and cxcv.

1ST PART.

ERRATUM.

P. 3, line 29, read "purported" instead of "preported."

THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

From what occurred in the Court of Appeals during the argument of the case of Dease and Mackintosh, in the last Term, we are induced to make some remarks upon the forms prescribed by Law for the making of entries in the Registers of Baptisms, Marriages and Burials kept by the Priests and Ministers of the various parishes and congregations in Lower Canada. The leading Act upon the subject is the 35 George III., chap. 4, page 611 Revised Statutes. Its preamble is suggestive of the value of such registers, "Whereas the keeping of uniform and authentic registers of the baptisms, marriages and burials in this Province will tend to secure the peace of families, and ascertain various civil rights of His Majesty's subjects therein."

The Act enacts that in each Parish Church of the Roman Catholic Communion, and also in each of the Protestant Churches and Congregations within the Province, there shall be kept by the rector, curate, vicar, or other priest or minister, doing the parochial duty thereof, two registers of the same tenor, each of which shall be reputed authentic and shall be equally considered as legal evidence in all Courts of Justice, in each of which the said rector, curate, vicar, or other priest or minister doing the parochial or clerical duty of such parish or Protestant Church or Congregation, shall be held to enregister regularly and successively all baptisms, marriages and burials so soon as the same shall have been by them performed.

It enacts that previous to any entry in such registers a Justice of the Court of King's Bench, or a Judge, shall number and *paraphe* each leaf thereof, "and such registers so numbered and authenticated or "*paraphé*, and which shall be kept in manner and form as hereinafter "mentioned shall be legal evidence of such baptisms, marriages or "burials."

A Judge need not now *paraphe* each leaf of such registers; the 2 Vic., chap. 4, having made a new regulation on the subject, (see p. 616 of the Revised Statutes.) Section 3 of the 35 Geo. III., prescribes the form for entries of baptisms. Section 4 regulates the entries of marriages, and Section 5 of burials. Too much attention cannot be given to the requirements of these three sections. We transcribe Section 4.

"And be it further enacted, that in the entries of marriages, in the registers aforesaid, shall be inserted in words the day, month, and year on which the marriage shall have been celebrated, with the names,

quality or occupation, and places of abode of the contracting parties. whether they are of age or minors, and whether married after publications of banns or by dispensation, or licence, and whether with the consent of their fathers, mothers, tutors or curators,—if any they have in the country; also the names of two or more discreet persons present at the marriage, and who, if relations of the husband and wife, or either of them, shall declare on what side and in what degree they are related; and such entries shall be signed in both registers by the person celebrating the marriage, by the contracting parties, and by the said two discreet persons at least—and if any of them cannot or know not how to sign his or her name mention shall be made thereof in the said entries."

By Section 6 it is ordered that in six weeks at farthest after the expiration of each year each rector, priest, or minister, shall deliver to the Clerk in the Clerk's office of the Civil Court of King's Bench, or of the Provincial Court of the District, one of the registers; the other one shall remain with such priest, rector or minister to be by him preserved and left to his successor in office or clerical duty; "and it shall be at the option of parties interested to demand copies of the said entries from either of the registers aforesaid; and the Clerks of the said Courts, and the rectors, curates, vicars and other priests in possession of such registers, are required to grant the same certified under their respective signatures, which shall be received as evidence in all Courts of Justice."

By Section 7 it is enacted that every rector, priest or minister who shall neglect to comply with the true intent of the Act, either in the form of the registers of the entries therein to be made, or in the delivery of the same into the Clerk's office aforesaid, shall pay for each neglect not less than two nor more than £20, currency, without prejudice to the suffering parties' rights to all costs, damages and interest. These penalties may be recovered by action of debt in any Court of Record by any person suing for the same, one half of the adjuged penalty to go the Receiver General, the other half to the prosecutor, who shall also get full costs.

The advantages of the 35 George III. have been, by latter Acts, conferred upon different denominations of Protestant expressly; for instance, upon the Baptists in Montreal, and upon the various Congregational Societies. The Jews also have had conferred upon their ministers rights to keep such registers.

Notwithstanding that a printed copy of the 35 George III., was transmitted to each rector, curate, priest and minister, and to the Churchwardens of every parish and Protestant Church in the Province, to be by each of them preserved and left to their successors respectively, it is lamentable to see the ignorance or neglect manifested of this law by the Protestant Clergy generally. We state that as a general rule the copies of entries from the registers furnished by the Protestant Clergy are informal, and so much so that they ought not to be "received as evidence" in any Court of Justice. Where these

copies of entries, or extracts as they are commonly called, are formal as copies, and are properly certified it very often happens that they are valueless owing to informalities in the original entries. We have seen a dozen extracts of marriage of minors in none of which was it mentioned "whether they were married with the consent of their fathers, mothers, tutors, or curators," and in none of which was it mentioned "on what side, or in what degree, the two or more discreet persons present at the marriage," (signing the entries as witnesses and as relatives of one, or other, of the parties) "were related to the husband, or wife." It is quite clear that for all of these omissions prosecutions might have been brought successfully. The law is positive.

Dease and Macintosh, before referred to, was an appeal from a judgment of the Superior Court, Montreal. That judgment was rendered in favor of Macintosh, as a minor emancipated by marriage, assisted by John Norton, as his tutor *adhoc*, against *Dease*, as executor of the Will of the late William Mackintosh, ordering Dease to render an account, and also ousting him from the executorship for malfeasance. In appeal *Dease* was confident of obtaining a reversal of the judgment of the Court below chiefly because, (as he said,) the marriage of the minor *Macintosh*, and his consequent emancipation, had not been proved. The evidence of this marriage was an extract of marriage certified by a person calling himself "Incumbent" of Lachine. Both parties married were minors; yet the register shewed no entry of the marriage being with or without "the consent of fathers, mothers, tutors or curators." It was contended that if faith was to be given to registers it was to registers "kept in manner and form" ordered, and to none others; also that the certificate ought to have proported to have been issued or granted by the rector, curate, priest or minister "in possession of the original register." It merely preported to be issued by the "Incumbent of Lachine."

No decision has been rendered upon the appeal referred to; but, however favorable it may be to the Respondent, it must be admitted that it is not at all pleasant to have questions raised such as raised upon that extract, or certificate. There is no doubt that the Incumbent of Lachine has incurred the penalty of 35 Geo. III., owing to the defective form of the entry of Macintosh's marriage in the register. One of the learned Judges of the Court of Appeals expressed himself to the effect that the loose and careless way in which a great many of the Protestant Clergy kept their registers amounted to a crying evil, and that it was desirable that some were punished for their neglects. Certainly we agree with him. It is dreadful to see the irregularities in many of the registers caused by the careless and negligent discharge (or rather want of discharge) of their duties by ministers. How many "enregister regularly and successively all baptisms, marriages and "burials so soon as the same shall have been by them performed?" We venture to say that as a general rule such enregistrations are *not* so soon made. Hence such irregularities as must occur upon the sudden death of a minister of a parish, or congregation. We know a

populous congregation in Montreal which, from such a bad practice as we mention to prevail, is deprived of the benefit of the evidence which the register might afford of births, marriages and burials for upwards of six months of the year 1847! We know of *many* registers in which blanks exist for the signature of one or other of the parties contracting marriage, one or the other of the parents of a child baptised, one, or all, of the witnesses to a burial. This ought not to be, and a heavy responsibility rests upon those who make these irregularities.

It is impossible to foresee all the evil consequence that may flow from them. In the hope of drawing the attention of the proper parties to the subject, we have hastily thrown together these remarks; had time afforded we could have made them longer; *query* would they have therefore been more intelligible?

Nov. 1853.

***Since the above was written, Judgment has been rendered confirming the Judgment of the Superior Court in Macintosh and Dease; perhaps because by his pleas Dease had admitted the marriage, though he urged that it was null. January, 1854.—*Communicated.*

QUELQUES RÉFLEXIONS SUR LE TITRE DES SEIGNEURS DE FIEF.

L'objet des quelques lignes qui suivent est d'examiner, de discuter les propositions nouvellement émises sur le titre des seigneurs de fiefs. M. l'avocat des seigneurs dans son discours prononcé à la barre de la Chambre d'Assemblée, lors de la dernière session a pris pour base de ses raisonnemens le droit sacré de propriété. Il a établi que les seigneurs avaient des titres de propriété incontestables. Il s'appuya sur tous les auteurs qui ont traité des fiefs, sur les décisions des tribunaux. Il n'était pas difficile de citer des autorités, de s'appuyer sur des principes universellement reconnus par tous ceux qui ont fait quelqu'étude sur ce sujet. Dans tous les auteurs qui ont traité des fiefs le mot de propriété se trouve partout suivi de l'hérédité du droit de disposer, etc.

Ces propositions unef ois admises rendaient absurde et immoral le système d'abolition.

La chose fut bien comprise et il n'était pas difficile de s'appercevoir qu'en reconnaissant ces principes on donnait gain de cause aux seigneurs. Les uns feignirent d'abord d'avoir des doutes. Quelques autres témoignèrent de la surprise a la vue de cette idée d'un titre d'un droit de propriété. Tout le monde sentait que l'avocat des seigneurs était retranché derrière une forteresse qui résisterait a toute attaque tant qu'on ne saperait pas les fondemens. Pour rassurer les esprits de ceux qui tout en désirant le réglement de la question seigneuriale ne voulaient pas violer de justes droits, il devint nécessaire d'attaquer et de renverser la proposition émise de la part des seigneurs

et de prouver que ce titre ou droit de propriété n'existait pas. Voici le moyen auquel l'on a cru devoir recourir. L'on a dit l'on a osé dire: " Les seigneurs de fiefs ne sont pas des propriétaires." Ils ne sont que des fidei-commissaires !

Tout le monde se rappelle ce que dit M. Hincks le premier jour des débats en mai dernier. Voici les paroles de cet homme qui s'exprime en jurisconsulte, car sans doute il se considère bon juge en pareille matière.

(Voir le *Pays* du 18 mai.)

" La chambre a eu l'occasion d'entendre un discours habile d'un " savant avocat qui a affirmé en la manière la plus positive que les " seigneurs possèdent leurs seigneuries avec un droit de propriété, " aussi absolu que les propriétaires sous d'autres tenures. Tout ce que " je puis dire, c'est que le savant avocat a été bien loin de me convain- " cre. (Hear, Hear !) et je crois encore que les seigneurs ne sont " point propriétaires absolus du sol de leurs seigneuries, mais simple- " ment fidei-commissaires *(trustees)*."

Eh bien ! Si l'on ne peut respecter l'opinion de M. Hincks comme jurisconsulte on peut au moins reconnaître là le sentiment d'un homme d'esprit, qui voit que tout gît dans la discussion de cette question de la nature du droit du seigneur. Est-ce propriété ou fidei-commis ? Et c'est là que le savant avocat a l'avantage sur lui. Oui, monsieur Hincks, si le seigneur n'a qu'un fidei-commis on peut l'attaquer avec bien plus de plausibilité et même quelque avantage. Car qu'est-ce qu'un fidei-commissaire ou *trustee*, pour résister au pouvoir ? Mais il en est autrement du propriétaire. Le pouvoir est sans force, à moins qu'il ne parle de spoliation et la pudeur s'y oppose.

Le propriétaire n'a à craindre que l'action des tribunaux ou son titre sera mis en question, s'il est nul, il sera déclaré tel, s'il est résoluble en vertu d'une clause résolutoire ou autrement, il sera rescindé par un jugement. Le pouvoir Législatif n'a d'autre droit que de le forcer à vendre dans l'intérêt public en lui payant la juste valeur.

M. Dunkin avait donc bien raison de s'appuyer sur le droit de propriété de ses clients. Il a senti que c'était là le boulevard qui les protégeait, et l'accusation d'avoir été trop loin, portée contre lui donne beaucoup a penser que ses auteurs ne connaissaient aucunement la question.

Ce n'est pas que l'on doive craindre que le titre des seigneurs tel qu'on le nomme ne les protège pas contre la spoliation, la moralité publique les protège, mais l'on se fait une morale politique, et sans admettre qu'il s'agisse de spoliation, l'on dépouille le propriétaire sous ce prétexte des petits esprits ; j'oserais dire des ignorans, que les seigneurs ne sont que des fidei-commissaires. . . . . Qu'on recourre donc à la définition du mot, qu'on cite l'auteur dont l'autorité justifierait cette idée absurde autant qu'elle est injuste et immorale. Où se trouve-t-il ?

Mais j'entends quelqu'un dire: " Un droit d'usufruit est aussi un droit de propriété. Pourquoi cette distinction !"

Il y a de la mauvaise foi dans cette réflexion. Car l'on sait, quelle espèce de propriété est l'usufruit, qui n'est que le droit de jouir d'une chose dont un autre a la propriété et dont il ne peut alterer la substance. Et le fidei-commis c'est un usufruit rien de plus. Mais l'usufruitier que la loi dépouillerait de son bien par une expropriation forcée, mais légale sera-t-il indemnisé comme le propriétaire? Oh! la différence est grande. . . . . Et c'est la principalement qu'il y a un grand intérêt chez les seigneurs qu'on ne les considère pas comme des usufruitiers quand il sera question de les indemniser en les expropriant par une commutation législative.

Aujourd'hui le nombre de ceux qui ne voulaient qu'une mince indemnité ou plutôt la ruine de cette classe, est petit. Leur tour est passé. Les seigneurs n'ont plus affaire qu'à des personnes qui veulent une commutation des droits seigneuriaux, équitable et juste. Du moins ceux qui veulent l'injustice sentent qu'ils doivent renoncer à toute espérance de cette spoliation. Ce qu'il convient de faire maintenant c'est d'entrer en négociation à ce sujet. Le devoir des Seigneurs, et des Censitaires est de faire etablir et fixer suivant les régles ordinaires le montant de l'indemnité a payer.

Ce sera une législation toute morale puisqu'elle respectera les droits acquis. Il ne s'agira plus que d'avoir recours au droit civil toujours fondé sur l'équité pour connaître les régles de l'expropriation forcée dans l'intérêt public pour l'estimation et le paiement de l'indemnité au propriétaire. Car la commutation que l'on demande n'est autre chose que cette expropriation. Elle est dans les principes, suivons donc ces principes de loi et d'équité.

Tous ceux qui veulent se faire une idée juste du titre du seigneur poivent considérer la nature de ce contrat qu'on appelle *contrat de fief* ou infeodation.

En Canada il est intervenu entre le souverain et ceux qu'il a voulu gratifier, c'est disent certains auteurs une donation onéreuse (souvent rémunération.)

Voir la Définition. 1. Hervey p. 372, 375 et 376. Concession de la pleine propriété: "D'abord (dit l'auteur) les fiefs ne furent pas " considérés comme une propriété parfaite, mais quand ils sont devenus " héréditaires et qu'ils ont absolument tombé dans le patrimoine du " vassal, on a dû prendre d'autres idées. Quand je puis vendre, donner, " aliéner de toutes les manières, détériorer une chose, en un mot, en " disposer à mon gré, j'ai bien le *jus utendi et abutendi*, dans lequel " consiste la vraie propriété, etc."

Voir à la p. 388 du contrat et de ses charges et conditions. Réglé comme les autres contrats par le droit romain.

Le titre du seigneur n'est autre chose que la concession royale qui lie la couronne comme le concessionaire. Contrat *synnalagmatique*.

Et qu'on ne dise pas que le roi de France par cela qu'il était roi absolu, pouvait ajouter aux obligations de ses vassaux, contenues dans

le titre de concession. La chose n'est pas soutenable. Alors que deviennent en principe tous ces édits du roi de France rendus postérieurement aux concessions de fiefs? Qu'on put les exécuter sous un gouvernement arbitraire même à l'aide des tribunaux, à la bonne heure mais en demander l'exécution depuis que le pays est sous la domination de l'Angleterre, la chose est plus qu'absurde. Tous ces édits et ordonnances, ces quelques décisions des cours par des arrêts que l'on cite ont dès lors dû cesser d'avoir aucun effet, aussi depuis un siècle ils sont *lettre morte*. C'est le sens commun qui le dit à tous ceux qui ne sont pas aveuglés par les préjugés.

Maintenant l'on semble en général abandonner ces prétentions outrées et reconnaître (et il le faut bien) que le seigneur à un titre, que ce titre doit être respecté comme celui de tous les propriétaires de bien fonds, et que si l'on veut l'exproprier par une commutation forcée dans l'intérêt public, il faut lui en payer la valeur. C'est en venir où l'on aurait du commencer. Maintenant pour estimer la seigneurie ou les droits seigneuriaux, comment éviter de voir dans le seigneur un propriétaire de bien fonds, qu'il possède par un titre absolu permanent, efficace suivant sa nature et avec des droits et priviléges reconnus par le texte de la loi, par la jurisprudence uniforme et d'après un usage suivi depuis un siècle et plus. N'est-ce donc rien qu'un tel usage? L'usage fait la loi et établit la jurisprudence, c'est ce que tout le monde sait. Qu'on ouvre le premier livre de droit, l'on y trouve ce principe. Il n'y a donc pas de droit mieux reconnus que ceux qui le sont par un long usage, approuvé par les décisions des tribunaux, c'est là dans le fait ce qui les établit. C'en est la loi déclaratoire.

Il est si simple de considérer la question seigneuriale sous ce point de vue, qu'il doit paraître étonnant qu'on ait pu quelque temps s'en éloigner en adoptant des idées subversives du droit de propriété.

L'on ne peut autrement rendre compte de cette aberration qu'en en trouvent la source dans cette fausse idée que s'étaient faite certaines personnes, d'un *fidei-commis* que M. Hincks le jurisconsulte appelle *trust*. Il y a réellement une illusion bien grande à voir un fidei-commis, dans un contrat d'inféodation *en toute* propriété, sans condition autres que celles qui y sont exprimées et en l'absence de clauses résolutoires. Où est donc le fidei-commis? en faveur de qui existerait-il s'il en eut été question dans la concession du fief? En faveur du peuple. . . . dira-t-on. Quoi! Les rois de France avaient établi un fidei-commis en faveur de la population, et où trouve-t-on cela? Mais c'était sous-entendu. . . . . cela n'est pas tout à fait conforme à la loi des contrats, mais n'importe, chaque sujet du roi de France pouvait se prévaloir de ce fidei-commis tacite et puis après la conquête il changeait sans doute de nom, il était appellé *trust* en faveur sans doute des sujets britanniques; peut-être aussi des étrangers. Qui sait?

Il est impossible de ne pas se laisser aller au badinage. Mais le badinage n'est guère de mise, quand il s'agit du droit sacré de propriété. C'est sérieusement qu'on doit en traiter. Il faut avoir recours à des principes de droit et non pas à des suppositions de fantaisie com-

me sont les conventions tacites ou sous-entendues, surtout lorsqu'il s'agit d'un titre qui depuis un siècle a été interprété suivant sa teneur et suivant la loi des contrats, j'ose dire, la loi du pays.

Si l'on veut ne s'occuper plus comme cela semble aujourd'hui être la résolution de la partie pensante et raisonnable dans notre société qui a vraiment intention d'opérer un bien, sans spolier qui que ce soit, si, dis-je, il n'est plus question que de racheter les droits seigneuriaux pour abolir la tenure voyons de suite a fixer l'indemnité à donner à celui que l'on contraint de vendre (au seigneur) en lui payant la valeur de son bien. Puis, l'on parlera d'une commutation, c'est-à-dire d'un moyen da payer cette indemnité. Les seigneurs s'y prêteront, tout peut se faire à l'amiable.

ANONYME.

(A continuer.)

(From London Legal Observer.)

Court of Criminal Appeal.

Regina v. *Reason.* Nov. 12, 1853.

INDICTMENT FOR STEALING POST-OFFICE LETTER.—"OFFICER."

A letter-carrier, on the request of a post-master, assisted him gratuitously in sorting letters, and stole a letter with 10s. *in it.* Held, *that he had been properly convicted under the* 7 *Wm.* 4, *and,* 1 *Vict. c.* 36, *s.* 26, *as he was an "Officer" within the interpretation clause.*

In this indictment against the prisoner as a person employed under the Post-office, for stealing a letter containing the sum of 10s., it appeared that the prisoner was employed to carry the letters in a sealed bag to the post-master at Tywach, and that he had committed the offence in question while sorting letters on being asked by the post-master. On the trial, at the last Glamorgan assizes, the prisoner was found guilty, subject to this case reserved by *Platt*, B.

Giffard for the prisoner, on the ground the prisoner was performing a gratuitous service, and was not therefore within the 7 Wm. 4 and, 1 Vict. c. 36, s. 26.

The *Court* said, that according to the interpretation clause* in the Act, the prisoner was a person employed under the Post-office, and the conviction was confirmed.

* Which extends the word "officer" to any "person employed in any business of the Post-office, whether employed by the Post-master General, or by any person under him, or on behalf of the Post-office.

Regina v. *Vodden*. Nov. 12, 1853.

CONVICTION AFTER DISCHARGE UNDER MISTAKE AS TO VERDICT.—REGULARITY OF.

A prisoner was discharged from custody on the Clerk understanding the verdict of the jury to be "Not Guilty," but on the mistake being discovered, he was taken into custody again and sentenced. The conviction was affirmed.

On this trial for felony, it appeared that the prisoner had been discharged from custody, on the jury being understood by the Clerk of the Court to deliver a verdict of "Not Guilty," but that he had been taken again into custody on its being discovered that the jury had given an unanimous verdict of "Guilty," and sentenced to two months imprisonment. The question was whether the Court had rightly allowed the entry of the verdict to be amended.

Giffard for the prisoner, on the ground the Clerk's entry of the verdict was matter of record and could not be altered.

The *Court* said, it was clearly a mistake and could be amended, and the conviction was accordingly affirmed.

Regina v. *Snelling*. Nov. 12, 1853.

FORCED ORDER FOR PAYMENT OF MONEY.—OMISSION OF PAYEES NAME,

A prisoner was convicted under the 11 *Geo.* 4 *and Wm.* 4, *c.* 66, *s.* 3, *for uttering the following order for payment of money:—"Hotton, March* 31. *Sirs,—Please pay to beariss, Mrs. Smart, the sum of eighth hundred & 50,4l ten shillngs for me. James Rumsey."* Held, *confirming the conviction, that the omission to address the order was immaterial, as it appeared in the evidence the word "Sirs" was intended by the prisoner to mean the bankers to whom it was presented.*

This was a question reserved under the 11 & 12 Vict., c. 78, s. 1. It appeared that the prisoner had been indicted for uttering the following forged order for payment of money:—"Hotton, March 31. Sirs, —Please to pay beariss, Mrs. Smart, the sum of eighth hundred & 50,4*l* ten shillings for me. James Rumsey;" and it was directed on the outside "Mrs. Smart." On the trial, at the East Suffolk assizes, before *Jervis*, L. C. J., it was objected, that it did not amount to an order for the payment of money under the 11 Geo. 4, and 1 Wm. 4, c. 66, s. 3, not being addressed to the parties to pay it.

Darent for the prisoner, cited *Rex v. Clinch*, 1 Leach, 540: *Worlledge* for the prosecution.

The *Court* said, that as there was evidence to show the word "Sirs" was intended by the prisoner to mean the bankers to whom the order had been presented, the omission of its being addressed to them would not prevent it from being an order for the payment of money, and the conviction must be affirmed.*

Regina v. *Stone.* Nov. 19, 1853.

PERJURY ASSIGNED ON AFFIDAVIT IN ADMIRALTY COURT SWORN BEFORE MASTER-EXTRA, IN CHANCERY.—JURISDICTION.

Held, *that a Master-extra, in Chancery has not such jurisdiction to take affidavits in the Court of Admiralty as to support an indictment for perjury thereon, and a conviction was reserved.*

This was a point reserved for the opinion of this Court, on an indictment for wilful and corrupt perjury in an affidavit in the Court of Admiralty, in a salvage case. It appeared on the trial before *Erle*, J., at the last York assizes, that the affidavit was sworn before a Master-extra in Chancery, and that it was the practice of the Court of Admiralty to receive affidavits so sworn. The Defendant was convicted, subject to this point reserved.

Cross for the Defendant.

F. Perronet Thompson and *W. Digby Seymour*, in support of the conviction.

The *Court* said, that a Master-extra had no authority to administer the oath in the Admiralty Court, and that the fact of such affidavits being acted on in that Court did not confer the authority. Although, therefore, the offence might amount to a misdemeanor for attempting to impose on the Admiralty Court, it was not perjury, and the conviction was accordingly reversed.

Regina v. *Bailey.* Nov. 19, 1853.

INDICTMENT FOR POSSESSION OF HOUSE-BREAKING IMPLEMENTS.—EVIDENCE OF INTENTION TO COMMIT FELONY.

A prisoner was indicted under the 14 *&* 15 *Vict. c.* 19, *of having been found at* 12 *o'clock at night with implements of house-breaking in his possession without lawful excuse. There was no evidence of an intention to commit a felony. The conviction was confirmed.*

It appeared that the prisoner had been indicted under the 14 & 15 Vict. c. 19, s. 1,† of having been found at 12 o'clock at night with cer-

* And see *Regina* v. *Rogers*, 9 Car. and P. 41.

† Which enacts that "if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person), any" "implement of house-breaking" "shall be guilty of a misdemeanor."

tain implements of house-breaking in his possession, without lawful excuse. On the trial, at the Middlesex Sessions, in October last, the prisoner was found guilty of the possession, but the jury found there was no evidence of an intent to commit a felony, whereupon the point was reserved, whether the conviction was valid.

Hudleston for the prosecution.

The *Court* said, the conviction must be confirmed.

Regina v. *Garret.* Nov. 26, 1853.

INDICTMENT FOR OBTAINING MONEY UNDER FALSE PRETENCES.

The prisoner had altered a letter of credit for 210*l.* *on the Union Bank of London into* 5,210*l.*, *and had obtained in St. Petersburg* 1,200*l.*, *giving a cheque for such sum on the English bank to the firm at St. Petersburg, who presented the cheque, which was dishonoured.* Held, *reversing a conviction that the prisoner could not be indicted for attempting to obtain moneys under false pretences under* 7 *&* 8 *Geo.* 4, *c.* 29, *s.* 53.

It appeared on this indictment for attempting to obtain moneys under false pretences, that the prisoner had obtained a circular letter of credit from Messrs. Duncan & Co., of New York, for 210*l.*, on their correspondents, the Union Bank of London, and that he had altered the sum to 5,210*l.* The prisoner had obtained certain sums of money from Messrs. Wilson & Co., at St. Petersburg, and had given them a cheque for 1,200*l.* on the Union Bank, but which was dishonoured on presentation, and on the prisoner's coming to this country, he was indicted in respect of such cheque. On the trial, before *Parke*, B., the jury returned a verdict of guilty, subject to this point reserved.

Byles, S. L., and *Robinson*, for the prisoner, citing the 7 & 8 Geo. 4, c. 29, s. 63,* and *Rex v. Wavell*, 1 Mood, 224.

Huddleston in support of the conviction.

The *Court* said, even if the cheque had been duly honoured, the prisoner could not have been indicted for obtaining money under false pretences, as the obtaining within the meaning of the Statute contemplated an obtaining according to the wishes or in order to gain some advantage. But in the present case the prisoner had obtained his object on receiving the money in St. Petersburg, and no advantage could arise to him from the cheque being honoured, but on the contrary, it was more to his advantage if it had been destroyed. Although, therefore, there had been a gross fraud, there was no obtaining of money under false pretences within the Statute, and the conviction must be reversed.

* Which is follows:—"Whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud; for remedy thereof, be it enacted, that if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor."

Regina v. *Sleeman*. Nov. 26, 1853.

CONFESSION.—ADMISSION IN EVIDENCE.

Circumstances under which the confession of a prisoner charged with arson, was admitted in evidence on an indictment for such offence.

On this indictment for arson, before *Martin*, B., evidence was received of the prisoner's confession, which had been given upon the person having charge of her saying, "Don't run yourself into more sin, but tell the truth." The prisoner had previously denied her guilt on the witness expressing her regret at her situation and inquiring whither she were guilty or not.

The *Court* said, the evidence was admissible, as no threat or inducement had been held out, and confirmed the conviction.

Regina v. *Luckhurst*. Nov. 26, 1853,

INDICTMENT, INADMISSIBILITY OF EVIDENCE OF CONFESSION MADE UNDER THREAT.

Held, *that the confession of a prisoner was inadmissable in consequence of the witness saying "If you don't tell me, I will give you in charge to the police till you do tell me;" and the conviction was quashed.*

On this indictment, before *Cresswell*, J., at the last Maidstone assizes, it appeared that evidence had been received of the prisoner's confession to one Willard, who had gone to the prisoner and said, "If you don't tell me, I will give you in charge to the police till you do tell me." The question as to the admissibility of the evidence had been reserved on the prisoner being found guilty.

The *Court* said, that as the confession was made under a threat it could not be received; and the conviction was accordingly quashed.