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SUPREME COURT OF CANADA.

Quebec.] OTTAWA, June 22, 1891.

ROSS v. HANNAN.

Sale of goods by weight—Contract when perfect—Art. 1474, *C. C.—Damage to goods before weighing—Possession retained by vendor—Effect of—Arts.* 1063, 1064, 1802, *C. C.—Depositary.*

Held, 1st. Per Ritchie, C. J., Fournier and Patterson, J J., affirming the judgment of the court below, M. L. R., 6 Q. B. 222, that where goods and merchandise are sold by weight the contract of sale is not perfect, and the property of the goods remains in the vendor and they are at his risk until they are weighed, or until the buyer is in default to have them weighed, and this is so, even where the buyer has made an examination of the goods and rejected such as were not to his satisfaction.

Held, also, Per Ritchie, C. J., Fournier and Taschereau, J J., that where goods are sold by weight and the property remains in the possession of the vendor, the vendor becomes in law a depositary, and if the goods, while in his possession, are damaged through his fault and negligence, he cannot bring an action for their value.

Appeal dismissed with costs.

Abbott, Q.C., & Campbell for appellant.
Doherty, Q.C., for respondent.

Quebec.]

THE EXCHANGE BANK v. FLETCHER.

Bank stock given to another bank as collateral security—Banking Act—43 Vic. ch. 22, s. 8—Arts. 1970, 1973, 1975, *C. C.*

The Exchange Bank, in advancing money to F. on the security of Merchants Bank shares, caused the shares to be assigned to their managing director and an entry to be made in their books that the managing director held the shares in question on behalf of the bank as security for the loan. The bank subsequently credited F. with the dividends accruing thereon. Later on, the managing director pledged these shares to another bank and absconded.

Held, affirming the judgment of the court below, M. L. R., 7 Q. B. 11, that upon repayment by F. of the loan made to him, the Exchange Bank was bound to return the shares or pay their value.

Appeal dismissed with costs.

Macmaster, Q. C., for appellants.
Archambault Q.C., and *Lacoste, Q.C.*, for respondent.

Quebec.]

NORDHEIMER v. ALEXANDER.

Responsibility—Vis major—Fire—Fall of wall after fire—Negligence—Damages.

Held, affirming the judgment of the courts below, M. L. R., 3 S. C. 283, and M. L. R., 6 Q. B. 402, that the owner of a wall of a house, who allows it to remain standing after a fire in a dangerous condition and takes no precautions to prevent an accident, is liable for the damage caused by the falling of the wall, even if the falling takes place seven days after the fire during a high wind.

Appeal dismissed with costs.

Laflamme, Q.C., Cameron, Q.C., & Butler, Q.C., for appellant.
Duhamel, Q.C., & Marceau for respondent.

Quebec.]

SCHWERSENSKI v. VINEBERG.

Questions of fact—Error—Parol evidence—Art. 1234—*Art.* 14, *C. C.*

S. brought an action to compel V. to render an account of the sum of $2,500, which S. alleged had been paid on the 6th October, 1885, to be applied to S.'s first promissory notes maturing and in acknowledgment of which V.'s bookkeeper gave the following receipt:—"Montreal, October 6th, 1885. Received from Mr. D. S. the sum of $2,500 to be applied to his first notes maturing. M. V. Fred.," and which V. failed and neglected to apply. V. pleaded that he never got the $2,500, and that the receipt was given in error and by mistake by his clerk. After documentary and parol evidence had been given the Superior Court, whose judgment was affirmed by the Court of Queen's Bench, dismissed S.'s action.

On appeal to the Supreme Court of Canada,

Held, 1st, that the finding of the two courts on the question of fact as to whether the receipt had been given through error should not be interfered with.

2. That the prohibition of art. 1234, C. C., against the admission of parol evidence to contradict or vary a written instrument is not *d'ordre public*, and that if such evidence is admitted without objection at the trial it cannot subsequently be set aside in a court of appeal.

3. That parol evidence in commercial matters is admissible against a written document to prove error. *Ætna Ins. Co.* v. *Brodie*, 5 Can. S. C. R. 1., followed.

Appeal dismissed with costs.

Cooke for appellant.
Hutchinson for respondent.

Quebec.]

OWENS v. BEDELL.

Conventional subrogation—What will effect—Art. 1155, *C.C. sec.* 2—*Erroneous noting of deed by registrar.*

Conventional subrogation under art. 1155, sec. 2, C. C., takes effect when the debtor borrowing a sum of money declares in his deed of loan that it is for the purpose of paying his debts, and that in the acquittance it be declared that the payment has been made with the monies furnished by the new creditor for that purpose, and no formal or express declaration is required.

Where subrogation is given by the terms of a deed, the erroneous noting of the deed by the Registrar as a discharge and the granting by him of erroneous certificates, cannot prejudice the party subrogated.

Appeal dismissed with costs.

Butler, Q.C., and *Geoffrion, Q.C.*, for appellant.
Morris, Q.C., for respondent.

Ontario.]

MCRAE v. MARSHALL.

Master and servant—Agreement for service—Arbitrary right of dismissal—Exercise of—Forfeiture of property.

By an agreement under seal between M., the inventor of a certain machine, and McR., proprietor of patents therefor, M. agreed to obtain patents for improvements on said machine and assign the same to McR., who, in consideration thereof, agreed to employ M. for two years to place the patents on the market, paying him a certain sum for salary and expenses, and giving him a percentage on the profits made by the sales. M. agreed to devote his whole time to the business, the employer having the right, if it was not successful, to cancel the agreement at any time after the expiration of six months from its date by paying M. his salary and share of profits, if any, to date of cancellation.

By one clause of the agreement the employer was to be the absolute judge of the manner in which the employee performed his duties, and was given the right to dismiss the employee at any time for incapacity or breach of duty, the latter, in such case, to have his salary up to the date of dismissal, but to have no claim whatever against his employer.

M. was summarily dismissed within three months from the date of the agreement for alleged incapacity and disobedience to orders.

Held, reversing the judgment of the Court of Appeal and of the Divisional Court, that the agreement gave the employer the right at any time to dismiss M. for incapacity or breach of duty without notice, such right being absolute and not required to be exercised judicially, but only in good faith.

Held, per Ritchie, C. J., Fournier, Taschereau and Patterson, J J., that such right of dismissal did not deprive M. of his claim for a share of the profits of the business.

Per Strong and Gwynne, J J., that the share of M. in the profits was only a part of his remuneration for his services, which he lost by being dismissed equally as he did his fixed salary.

Appeal allowed with costs.

Dalton McCarthy, Q.C., for appellant.

Nova Scotia.] OTTAWA, May 12, 1891.

MERCHANTS BANK OF HALIFAX v. WHIDDEN.

Bank—Agent of—Excess of authority—Dealing with funds contrary to instructions—Liability to bank—Discounting for his own accommodation—Position of parties on accommodation paper.

K., agent of a bank and also a member of a business firm, procured accommodation drafts from a customer of the bank, which he discounted as such agent, and without indorsing the drafts, used the proceeds, in violation of his instructions from the head office, in the business of his firm. The firm, having become insolvent, executed an assignment in trust of all their property by which the trustee was to pay "all debts by the assignors or either of them due and owing or accruing or becoming due and owing" to the said bank as first preferred creditor and to the makers of the accommodation paper among others, as second preferred creditors. The estate not proving sufficient to pay the bank in full, a dispute arose as to the accommodation drafts, the bank claiming the right to disavow the action of the agent in discounting them and appropriating the proceeds in breach of his duty, the makers claiming that they were really debts due to the bank from the insolvents. In a suit to enforce the carrying out of the trusts created by the assignment,

Held, affirming the judgment of the court below, Gwynne, J., dissenting, that the drafts were "debts due and owing" from the insolvents to the bank and within the first preference created by the deed.

Per Ritchie, C. J.: K. procured the accommodation paper for the sole purpose of borrowing the money of the bank for his firm, and when the firm received that money they became debtors to the bank for the amount.

Per Strong and Patterson, J J.: That the agent, being bound to account to the bank for the funds placed at his disposal, became a debtor to the bank, on his authority being revoked, for the amount of these drafts as money for which he failed to account. The right the bank had to elect to treat the act of the agent as a tort was not important, as in any case there was a debt due.

Per Gwynne, J.: The evidence does not establish that these drafts were anything else than paper discounted in the ordinary course of banking business, as to which the bank had its recourse against all persons whose names appeared on the face of the paper, and were not obliged to look to any other for payment.

Appeal dismissed with costs.

Henry, Q.C., and *Ross, Q.C.*, for appellant.

W. Cassels, Q.C., and *W. B. Ritchie* for respondent.

Nova Scotia.]

MUNICIPALITY OF CAPE BRETON v. MCKAY.

Municipal corporation—Appointment of board of health—R. S. N. S. 4th ser. c. 9—37 Vic. c. 6 s. 1 (N. S.)—42 Vic. c. 1 s. 6 (N. S.)—Employment of physician—Reasonable expenses—Construction of contract—Attendance upon small-pox patients for the season—Dismissal—Form of remedy—Mandamus.

Sec. 67 of the Act by which municipal corporations were established in Nova Scotia (42 Vic. c. 1) giving them "the appointment of health officers . . . and a board of health" with the powers and authorities formerly vested in courts of sessions, does not repeal c. 29 of R.S.N.S. 4th ser. providing for the appointment of boards of health by the Lieutenant Governor in Council. Ritchie, C. J., *dubitante* as to appointment by the executive in incorporated counties.

A board of health appointed by the executive council, by resolution, employed M. a physician to attend upon small-pox patients in the district "for the season" at a fixed rate of remuneration per day. Complaint having been made of the manner in which his duties were performed, he was notified that another medical man had been employed as a consulting physician, but refused to consult with him and was dismissed from his employment. He brought an action against the municipality setting forth in his statement of claim the facts of his engagement and dismissal, and claiming payment for his services up to the date at which the last small-pox patient was cured and special damages

for loss of reputation by the dismissal. The Act allows the board of health to incur reasonable expenses, which are defined to be services performed and bestowed and medicine supplied by physicians in carrying out its provisions, and makes such expenses a district, city or county rate to be assessed by the justices and levied as ordinary county rates.

Held, 1. Per Fournier, Taschereau and Gwynne, JJ., that the employment of M. "for the season" meant for the period in which there should be small-pox patients requiring his professional services.

2. *Per* Fournier, Taschereau, Gwynne and Patterson, J J., that notwithstanding no provision was made for supplying the muncipality with funds in advance to meet the reasonable expenses that might be incurred under the Act, a claim for such expenses could be enforced against a municipality by action.

3. *Per* Ritchie, C. J., and Strong, J., that the only mode of enforcing such a claim is by a writ of mandamus to oblige the municipality to levy an assessment.

4. *Per* Fournier, Taschereau and Gwynne, J J., affirming the judgment of the Court below, that M. was entitled to payment at the rate fixed by the resolution of the board up to the time in which there ceased to be any small-pox patients to attend.

5. *Per* Ritchie, C. J., Strong and Patterson, J J., that the claim of M. was really one for damages for wrongful dismissal, which is not within the provision in the Act for reasonable expenses.

Appeal dismissed without costs.

W. B. Ritchie, for appellant.

Henry, Q.C., for respondent.

New Brunswick.]

LAMB v. CLEVELAND.

Statute—Repeal of—Restoration of former law—Distribution of intestate estate—Feme coverte—Husband's right to residuum—Next of kin.

The Legislature of New Brunswick, by 26 Geo. 3, c. 11, ss. 14 and 17, re-enacted the Imperial Act 22 and 23 Char. 2 c. 10 (Statute of Distributions) as explained by s. 25 of 29 Char. 2 c. 3 (Statute of Frauds), which provided that nothing in the former Act should be construed to extend to estates of femes covertes dying intestate, but that their husbands should enjoy their personal estates as theretofore.

When the Statutes of New Brunswick were revised in 1854 the Act 26 Geo. 3 c. 11 was re-enacted, but sec. 17, corresponding to sec. 25 of the Statute of Frauds, was omitted. In the administration of the estate of a feme coverte her next of kin claimed the personalty on the ground that the husband's rights were swept away by this omission.

Held, per Ritchie, C. J., Fournier and Patterson, J J., that the right of a husband to the personal property of his deceased wife does not depend upon the Statute of Distributions, but he takes it *jure mariti*.

Per Strong, J., that the repeal by the Revised Statutes of 26 Geo. 3, c. 11, which was passed in the affirmance of the Imperial Acts, operated to restore sec. 25 of the Statute of Frauds as part of the common law.

Per Gwynne, J.; When a colonial legislature re-enacts an Imperial Act it enacts it as interpreted by the Imperial courts, and *a fortiori*, by other Imperial Acts. Hence, when the English statute of Distributions was re-enacted by 26 Geo. 3, c. 11 (N.B.) it was not necessary to enact the interpreting section of the Statute of Frauds, and its omission in the Revised Statutes did not affect the construction to be put upon the whole Act.

Held, Per Ritchie, C. J., Fournier, Gwynne and Patterson, J J., that the Married Woman's Property Act of New Brunswick (C.S.N.B., c. 72), which exempts the separate property of married women from liability for her husband's debts and prohibits any dealing with it without her consent, only suspends the husband's rights in the property during coverture, and on the death of the wife he takes the personal property as he would if the Act had never been passed.

The Supreme Court of New Brunswick, while deciding against the next of kin on his claim to the residue of a feme coverte, directed that his costs should be paid out of the estate. On appeal the decree was varied by striking out such direction.

Appeal dismissed with costs.

W. W. Wells, for appellant.

Skinner, Q.C., for respondent.

ENGLISH COURT OF APPEAL.

LONDON, Feb. 6, 1891.

MEDAWAR v. GRAND HOTEL CO.

Innkeeper—Liability to guests—Onus of proof.

[Concluded from page 287.]

LORD ESHER, M. R. The solution of this case will, to my mind, depend upon the inference of fact to be drawn from events as to which there is no doubt. There is no question here of the credibility of witnesses. We have the facts found by the learned judge, and we have to determine whether he has drawn the right inference from those facts. We are entitled to bring to bear on the facts our knowledge of the world, and I shall therefore bring to bear in this case my knowledge of the manner in which the business of hotels is conducted. The plaintiff then goes to an hotel in Liverpool. With what intention does he go there? Certainly not with the intention of making a contract. He goes there in the exercise of his right as one of the public to use the house as an hotel. An innkeeper does not make a specific contract with every individual who comes to his inn. He has no right to refuse any one; and in return for that obligation he is given a lien on his guest's luggage for his charges. Of course he is not bound to take any one if there is no room for him in the inn; in that case he can do nothing else but refuse to take him. In the present case, the plaintiff was told by the person left in authority for that purpose that they could not give him a room,

that they had no room to give him; but after reflection, the same person said that she could give him a room for the purpose of washing at that time, but that it was engaged by persons who were to arrive later. So it comes to this, that he was told that they could not give him a room to sleep in. Then his luggage is taken up to the room. The effect of what was said and done seems to me to be this: That he was to have a room in the hotel as a guest, but only for a time. Supposing that the people who were expected had not come, the manager of the hotel would never have thought of saying to plaintiff that he could not have the room for the night. His things were there and would have been allowed to remain there. There was a tacit understanding that his things were to be left in the room till the other people came. Then was the relationship of innkeeper and guest established between the plaintiff and the defendants at any time? There certainly was such a relationship, to my mind, while he was actually using the room. What other relationship could it be at that time? But it was argued that the relationship only lasted while he was washing and dressing, and then came to an end. That argument admits that the plaintiff was received as a guest into the hotel. It certainly is not the ordinary custom in hotels that a guest should carry his own luggage up or down the stairs. In this case the hotel servants carried his luggage up. If he he ceased to be a guest when he had finished using the room, why did they not carry his luggage down? It is said that he ought to have given them notice to do so. Why? If the defendants knew, when the plaintiff applied for a room, that he could only have it for the purpose of washing and dressing, what need was there for him to give any notice? Supposing that to have been the understanding, it would have been the manager's duty in the ordinary course to have told the porter that the room was only given to the plaintiff to wash and dress in, and that when he had washed and dressed, his things were to be fetched down. In that case, after the guest had had breakfast, if the things had not come down, the manager should have sent up for them. There was no new contract entered into with reference to the plaintiff's luggage after the plaintiff had left the room; nor indeed was there any contract made at any time, except such as necessarily arose out of the relationship of innkeeper and guest. The plaintiff was therefore a guest at all events up to the time when his things were taken out of the room. What is an innkeeper bound to do with respect to a guest's luggage? He is bound to keep it safely. If a guest's property is lost while it is in an inn, the innkeeper is *prima facie* liable. But the innkeeper can get rid of that *prima facie* case if he shows that the goods were lost by the negligence of the guest. The onus of proof of that is upon him. I think that in this case the defendants did prove that the plaintiff was guilty of negligence in leaving his jewellery in an unlocked drawer of his dressing case which he had taken out of his bag; and if they had also proved that the goods were lost in the room, then they could have shown that the goods were lost by the negligence of the plaintiff. But the defendants, through their servants, cut themselves off from the possibility of proving that by turning the things out into the corridor. What happened was, that the parties to whom the room was let arrived; that they are taken up to the room by a page boy, who finds the plaintiff's things there; that he asks what to do with them, and is told by the head porter to put them out in the corridor; and that he puts them out in the corridor just as they were, with the dressing case outside the bag. There can be no doubt that this was gross negligence on the part of the porter and the page boy. The defendants therefore could not prove that the things were lost while they were in the room. It is just as likely that they were lost in the corridor. The effect of their being stolen in the corridor and not in the room is, that the loss then is the result of the negligence of the defendants' servants in placing the things there, and not of the negligence of the plaintiff in leaving his things about. It is like the case of the donkey left carelessly in the road and run over when it could have been avoided. The fact that the plaintiff had been negligent did not entitle the defendants' servants to be negligent afterward. The matter therefore

stands thus: The plaintiff has proved that the loss in question was of property that he had at the hotel as a guest; the defendants have left it in doubt whether the loss occurred through the negligence of the plaintiff or through the negligence of their own servants; in order to escape liability they were bound to prove that the loss occurred through the negligence of the plaintiff; and the defendants are therefore liable, apart from the act of Parliament which I am about to refer to, for the whole amount of the claim. The act of Parliament (26 & 27 Vict., chap. 41) leaves the rights and obligations of the parties as they were before, but says that the plaintiff shall only recover £30, unless he can show that the loss arose through the wilful act, default or neglect of the defendant or his servants. To get rid of this limitation of the defendants' liability the plaintiff has to prove that the loss has been the result of such wilful act, default or neglect, and I think that he must prove that the loss was solely so caused, and that if it may have been caused partly by his own negligence, he fails to get rid of the limitation. In the present case I think that the plaintiff has not shown that the loss was caused solely by the wilful act, default or neglect of the defendants' servants. If the goods were lost after they were placed in the corridor the loss was so caused; but the burden of proof is upon the plaintiff to show that. As it is not proved whether the loss occurred in the room or in the corridor, and as, for this purpose, the onus of proof is shifted, I think that the plaintiff has failed to get rid of the limitation of liability given to the defendants by the act of Parliament.

In my opinion there ought to have been judgment for the plaintiff for £30.

Bowen, L. J. This case turns on inferences of fact, but it is an interesting case to a lawyer, because the result depends upon nice questions as to onus of proof. In order to arrive at a correct conclusion, it is necessary to follow the shifting of that onus from the defendants to the plaintiff. The reason why we have to determine whether the relation of innkeeper and guest existed between the defendants and the plaintiff is, that if the plaintiff can only rely on the negligence of the defendants as bailees, it is, of course, for him to prove his case; whereas, if he can bring himself within the relationship of landlord and guest, it lies on the landlords to discharge themselves from liability. There is no doubt that during the whole of the day on which the plaintiff arrived at the hotel his goods were on the permises, and that in the course of the day some of them disappeared. The difficulty in the case arises from the fact, that if the loss of the goods happened before they were removed by the defendants from the room where the plaintiff had left them to the corridor, there would then have been such negligence on the plaintiff's part causing the loss as would prevent him from recovering, notwithstanding the subsequent negligence of the defendants; if the loss happened after they were removed, then the plaintiff would be entitled to recover. We desire to know therefore whether the goods were lost before or after they were removed; but we are unable to ascertain. Thereupon it becomes necessary to decide upon which of the parties the onus of proof rests. And this depends, as I have said, upon whether the relationship of host and guest ever existed between them, and upon whether, if it ever existed, it ceased when the plaintiff left the hotel in the morning. If such a relationship never existed, or if it ceased in the morning, the plaintiff would have to show that the goods were lost after they were put out into the corridor, which he could not do, and his action would consequently fail. In considering what was the relationship between the parties, you start with this, that a person who goes to an hotel has the right to the use of an unoccupied room. If a room is let to a guest who has not arrived, that is an unoccupied room. Until the room is actually wanted for the guest who has engaged it, it seems to me that the hotelkeeper is bound not to refuse accommodation at his house to any person applying for it. The hotel is not full until those who have engaged the rooms have arrived. The plaintiff, when he arrived at this hotel, was told by the manageress that the hotel was full, that he could not have a bed room, but that there was a room then vacant, which was engaged by a lady and gentleman who were expected to arrive during that day, but that the plaintiff could

then utilize it for the purpose of washing and dressing. I think that that meant that they could not guarantee the plaintiff a room beyond the time that the people who had engaged it should arrive, but that till those people arrived he might have it. The subsequent facts seem to bear out that view. His luggage was taken up to the room, and he went down to breakfast, leaving his things there. No bill was made out for the use of the room. It is true that his name was not entered in the guest book of the hotel; but that was because it was not certain that he would sleep there. Although it may have escaped their memory during the day, the hotel servants must have known at the time the plaintiff went out in the morning that his luggage had not been brought down. Mr. Taylor argued, that at any rate, the plaintiff ceased to be a guest when he left the hotel in the morning. That to my mind is not a true proposition of law. I think that the relationship of host and guest continued until a reasonable time after a demand had been made for the room.

I think therefore that the plaintiff is entitled to a verdict; but I think that he is only entitled to recover to the extent of £30, for the reasons given by the master of the rolls.

FRY, L. J. On the questions that arise in this case as to the burden of proof, I agree with what has been said by the master of the rolls and Bowen, L. J.; but with regard to what is the true inference to be drawn from the facts, I differ from them, and agree with the learned judge who tried the case. Now it is quite clear that on arriving at the hotel, the plaintiff was told he could not have a bed room. He was told by the manageress that the hotel was full, but that there was one room vacant which was engaged by a lady and gentleman who were expected to arrive during the day, and that the plaintiff could then utilize it for the purpose of washing and dressing. The plaintiff might perhaps have insisted on engaging the room for the day, until the persons who had engaged it arrived. The usual thing is to engage a room for the night, and not for the day. However I say nothing as to what his rights would have been if he had insisted on his right to engage the room for the day. But he did nothing of the kind. He was quite free to go to another hotel. He accepted the offer of a room to wash and dress in that was made by the manageress. He would require a portion of his luggage for the purpose of dressing; and as it was obviously convenient that it should be kept together, it was all taken to the room. He occupies the room for the purpose for which it was offered, and then comes down to the coffee room for breakfast. Having had his breakfast he pays for it then and there. That is not the ordinary course for a person staying in the hotel. He does not receive the ticket which, according to ordinary usage, he would have received if he had been staying at the hotel. After breakfast he goes away. What ought the plaintiff to have done before he left, even if he had engaged the room till the other guests arrived? Knowing that they might arrive before his return, he ought to have made some provision as to the disposal of his luggage. We all know that the people of the hotel do not interfere with a guest's luggage till they are told that it is ready. I think therefore that the true inference from all the facts is, that the plaintiff occupied the room for the purpose of washing and dressing only. He could not, in my opinion, have been charged for anything more than that. It has been suggested that he was entitled to occupy the room till the arrival of the other guests. If he was entitled to make such an arrangement he did not do so. He did not even ask at what hour the other guests were expected to arrive. On these grounds, I think that the view taken by the learned judge below was correct. Appeal allowed.

ENGLISH CAUSES CÉLÈBRES.

SAURIN v. STAR.*

In this case the plaintiff, Miss Susanna Mary Saurin, sued the defendants, Mrs. Star, the Lady Superior, and Mrs. Kennedy, one of the members of a convent at Hull, for having conspired to procure her expulsion from said convent, for assault and false imprisonment, and for having libelled her to

* Cf. 'The Annual Register for 1869,' pp. 177-218.

the Roman Catholic Bishop of Beverley. The defendants denied the charges, alleged that the matters in dispute had been referred to the bishop, (whose award had been unfavorable to the plaintiff), and put on record the plea of 'leave and license'. The case was tried before Lord Chief Justice Cockburn and a jury in the Court of Queen's Bench, and lasted for three weeks. The Solicitor-General (Sir John Coleridge), Mr. Digby Seymour, Q.C., and the present Mr. Justice Wills appeared for the plaintiff, while Mr. (now Mr. Justice) Hawkins, the late Lord Justice Mellish, and Mr. (now Sir) Charles Russell represented the defendants. The material facts were as follows: The plaintiff, who was the daughter of an Irish gentleman, entered the convent at Hull in 1858, taking upon herself the vows of chastity, poverty, and obedience. For two years all went well. But in 1860 the defendant Mrs. Star, according to the plaintiff's story, was seized with a sudden desire to know what passed between Miss Saurin and her father confessor, pressed the plaintiff repeatedly for information on this point, and set about procuring her expulsion from the convent when it was withheld. These statements were, of course, denied by the defendants. The conflict of testimony to which the case gave rise was very severe. According to her own account, Miss Saurin was subjected to a system of continuous persecution, was compelled to black stoves, brush boots, and do other household work which belonged to the province of the lay sisters and not of the nuns; was obliged to eat mutton, towards which she was 'known to have a constitutional aversion;' was deprived of writing materials, of clothing, and of bedding, was watched night and day, was falsely accused of levity, if not unchastity of behaviour, and, to crown all, was deposed from the rank of sister as the result of an *ex parte* and grossly unfair commission of inquiry before the Bishop of Beverley. By the defendants and their witnesses these charges were either denied or 'explained,' and the plaintiff's character was painted in colours very different from those in which she had herself portrayed it. According to the defendants, Miss Saurin was a very troublesome person to deal with. She 'borrowed boots,' and ate 'at improper hours.' Her letters to her father and mother were 'too tender in their affection.' She 'meddled with the laundry work by washing her own things when another had been appointed to that duty,' 'gathered unripe gooseberries,' 'had a candle to go to bed with and hid the bits left,' would not hurry herself to avoid the 'grievous sin' of being late for mass on Sunday, altered the clock without permission, gave hard crusty bread to a sister suffering from the 'mumps,' wrote letters without leave, told lies, once made a younger sister 'blush' by asking her if she 'intended to marry,' and moistened the dying lips of one of the sisterhood with salt-butter. Some of these enormities Miss Saurin may possibly have committed; but the following points, elicited by Sir John Coleridge in the course of a series of very skillful cross-examinations, told heavily against the defendants and eventually gained her a verdict of 200*l.* damages.* (1) One of the charges on which the plaintiff relied was that the defendant Mrs. Star had taken from her certain parcels of papers and relics. Mrs. Star alleged that she had no other motive for this act than to prevent the plaintiff from writing upon them 'anything that was disparaging' to the sisterhood. Thereupon the Solicitor-General handed to the witness a small card representing our Saviour kneeling at the cross, and underneath the words, 'Pray for your sister Mary Theresa Magdalen,' and asked her if she supposed Miss Saurin would write upon that? The witness answered in the affirmative! (2) The defendant was cross-examined as to plaintiff's conduct with a priest at Hull. The following passage is so short that we shall transcribe it. 'You say in your statement that you perceived a great forwardness, and that she was in a state of excitement when he was at the convent, and that you had an undefined feeling of uneasiness, &c., now what do you mean by all that? Do you mean a charge of improper behaviour against her?—By no means. What do you mean by excitement? That she was not in

* On the counts of libel and conspiracy; there was no evidence worthy of the name to support the charges of assault and false imprisonment.

her ordinary state, so that it made you uneasy?—Yes. Now you saw the statements of the other sisters and the lay sisters?—Yes. Well, in one of them there is this passage: "I have noticed her manner very familiar with one of the priests; I saw her once on her knees beside him entreating him to go with her." Now what did you mean by sending that to the Bishop?—It turns entirely on the rules. Turns on the rules—what rules? The witness referred to a passage in the rules, which was read, as to a becoming gravity of demeanour. "Then all you meant by sending that statement was that she had not preserved in her deportment a gravity becoming a religious. That was all you meant?—Yes. *Don't you think it would have been better to have said so?*—It did not occur to me."'

Sir Alexander Cockburn summed up the case to the jury with his accustomed power. His charge contains only one passage of distinctly legal interest—that in which he dealt with the constitution of the convent and the authority that the Lady Superior was entitled to exercise. 'There are three vows entered into, but we have only to deal with two of them—poverty and obedience. What is the meaning of the vow of poverty? It is the renunciation of all rights of property, of all capacity for acquiring any, so that any which is acquired is for the benefit of the community, and to be administered at the will of the Superior, so that what is done in the honest exercise of that authority cannot be complained of. It is important, again, to observe the scope of that authority. The vow is that of obedience to this unlimited extent, that the voice of the Superior is as the voice of God. A form more emphatic could not be used, nor to my mind one more shocking, though by that, as I have already said, we must not allow ourselves to be influenced. But we have to consider the extent to which this authority can be considered as legitimately going, and whatever is intended under it a sister has sworn on all occasions to submit to. I take it to be clear that it must be reasonably exercised, and must be restrained within reasonable limits. There must be nothing contrary to the laws of God or man; and, further, what is meant by obedience is obedience to the rules or customs, whether written or traditional, established or exercised in the community. For instance, suppose it had occurred to the Superior that the discipline of flagellation would be salutary for the soul of (Miss Saurin), and the sister protested against it as contrary to the rules and customs, and it was forcibly inflicted upon her, I do not doubt that an action would be maintainable for it. . . . . So here, if the Superior has committed an assault, I should hold it not within the scope of her authority. But as to other matters within the scope of her authority there would be no legal cause of complaint, unless you thought that they were vexatiously committed.' This charge, and indeed the trial as a whole, will be found to form a fitting prelude to the study of the class of cases of which *Allcard* v. *Skinner* is the latest, and not the least interesting, example.—*Law Journal* (London).

GENERAL NOTES.

CROSSES IN CHURCHYARDS.—A certain vicar died and was buried, his friends desired to place a cross over his grave, but the new vicar demurred, considering a cross in the churchyard would promote idolatry. The parishioners thereupon took the case before the Consistory Court at Wells, and the Chancellor declared that there was not the slightest ground for apprehending any offence being caused to the conscience of any reasonable or educated man. It was pointed out that Englishmen do not worship crosses wherever they see them, and that crosses in churchyards and cemeteries are quite legal. They are not confined to one particular creed or sect either, as Nonconformists, as well as other religious persuasions, erect them over the graves of relatives. The symbol of the cross has of recent years, if one may say so reverently, become so popular, that when the practice of cremation increases it will, doubtless, be the custom to surmount or paint on the urn the cross, and there would be no idolatry in doing so.—*Law Journal.*

JACKDAW LAW.—A paragraph has been running the round of the dailies under the above title. A lady had lost a jackdaw, and, seeking to recover it from a man who said he had bought it, she now desired the assistance of a bench of magistrates. It was pointed out to her that a jackdaw is an English wild bird, and if it flies out of the possession of the person who has been keeping it, and is caught by someone else, the person so catching it cannot be charged with unlawful detention, for there is no criminal act by such retention. It was suggested to the applicant that she could proceed in the County Court as regards the bird.—*Ib.*