The Legal News.

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The *Law Journal* remarks of the *Haileybury College Case*, which will be found in the present issue, that it has ended in something of a compromise, but it has cleared the air of some misapprehensions as to the law regulating the management of schools. "The verdict of the jury, establishing the good faith and reasonableness of the expulsion of the boy in question, relieved the defendants of liability for the expulsion, which was based solely on the contract between the parent and the governors. That contract implies not that the boy shall be educated until he commits an offence making him unfit to associate with his schoolfellows, but until he is honestly and reasonably believed by the head-master to have been guilty of such an offence. The jury having found that there was such a belief, practically disposed also of the claim for libel, because it equally showed that there was no excess of privilege, the existence of which was admitted. There remained the slander to Dr. Bradby, the communication to whom appeared not to be within the privilege, unless it is a privileged communication to ask a friend who has no interest in the matter for advice. Mr. Justice Field did not decide that question, if it be a question, but asked the jury to say whether the statement was made to Dr. Bradby in an honest belief of its truth, to which, of course, they answered in the affirmative, being a corollary from their other answers. Mr. Justice Field's action in so doing need not be considered as throwing any doubt on the absence of privilege in such circumstances, but was due to a desire to have all the facts before the Court in the event of the case being carried further. This has been avoided by the arrangement that £100 damages shall be paid to the plaintiff, and the finding of the jury of the boy's innocence recorded in the school books beside his expulsion, all parties paying their own costs."

The English Attorney General has been requested by a member of the bar to give a definite opinion as to the rule of etiquette which regulates the intercourse of the profession with the general public. The Attorney General, in his reply, which we shall give in another issue, says it is etiquette for a barrister to see a client direct in non-contentious cases, but not in contentious cases, the reason for the distinction being that in the latter case it is important that the facts should be accurately ascertained before advice is given.

SUPERIOR COURT.

AYLMER, (dist. of Ottawa) Feb. 22, 1888.

Before WURTELE, J.

DUPONT et vir v. LA CIE. DE MOULIN À BARDEAU CHANFRÉNÉ, and KENT & TURCOTTE, Opposants.

Constitutional Law—Insolvency—Winding up Act, R. S. ch. 129*—Jurisdiction to grant a winding up order.*

HELD:—1. *That the power to legislate on bankruptcy and insolvency comprises legislation not only for a discharge of the debtor from his contracts, but also for the distribution of his estate among his creditors, either with or without a discharge from his liabilities.*

2. *That the legislative authority of the Parliament of Canada extends to laws providing for the distribution of the property of insolvent debtors without a discharge from their contracts, and that "The Winding Up Act," (R.S.C., ch.* 129,*) which provides for the distribution of the assets of insolvent trading companies, is constitutional.*

3. *That the Superior Court in the district wherein a trading company has its seat or head office, is the court which has jurisdiction to grant a winding up order.*

PER CURIAM. — The action in this cause was brought to recover the amount of a promissory note made by the company defendant, and it was accompanied by an attachment before judgment, under which the property now claimed by the opposants was seized. The company defendant had its seat or head office in Montreal, although it

had its mill and carried on business at Gatineau Point, in this district; and before the cause had been inscribed on the merits, a winding up order was obtained from the Superior Court, in the district of Montreal, and the opposants were appointed liquidators. They forthwith notified the plaintiffs that the company defendant had been placed in liquidation; but, notwithstanding the notice, the plaintiffs took judgment by default, and afterwards sued out a writ of *venditioni exponas*.

The opposants then obtained judicial permission to intervene, and by an opposition to annul, set up the winding up order and their appointment, and claimed, as the liquidators of the company defendant, the property seized. By error they allege that the company defendant had its principal place of business at Gatineau Point, in this district. The plaintiffs contested the opposition and pleaded, among other minor things, that The Winding Up Act was *ultra vires* of the Parliament of Canada and unconstitutional, and that at all events the winding up order and the subsequent proceedings were illegal, as the court in Montreal had no jurisdiction in the matter.

As to the first question, the plaintiffs contend that the power conferred upon the Parliament of Canada to legislate on the subject of bankruptcy and insolvency by paragraph 21 of section 91 of the B. N. A. Act, is limited to laws providing for an insolvent debtor's discharge from his contracts, and does not extend to laws providing for a distribution of an insolvent debtor's estate without a concurrent discharge from his liabilities, and that the Winding Up Act which only provides for the distribution of an insolvent trading company's assets is therefore unconstitutional. As to the other question, they allege that the company carried on its business in this district, and they maintain that, if the Act is constitutional, the proceedings in liquidation should have been instituted and carried on here, and that the proceedings had in Montreal are illegal.

To resolve the first question, we have to ascertain the extent and scope of the power conferred by our constitution on Parliament by the empowering to legislate on the subject of bankruptcy and insolvency. By the constitution of the United States of America, "Congress has power to establish uniform "laws on the subject of bankruptcies through- "out the United States." The grant of this power, here and there, is identical; in both countries power is given to pass laws *on the subject of bankruptcies*. For the construction to be given to the power of Parliament over this subject, we can therefore refer to American jurisprudence.

Turning, then, to Pomeroy's Treatise on Constitutional Law, I would quote the following passages: No. 397. "Laws on the "subject of bankruptcies are those whose "principal object is to distribute the estates "of insolvents rateably among their credi- "tors. . . . . Whether the legislation shall "apply to all failing debtors or be confined "to certain classes; . . . . Whether it shall "release the debtor from further liability or "not; . . . . all these are mere matter of "policy, to be adopted or rejected by Con- "gress, according to its views of expediency; "... none of them are necessary to the "proper exercise of its jurisdiction." No. 400. "Mr. Justice Catron says: . . Of this subject, "(bankruptcy) Congress has general juris- "diction, and the true inquiry is, to what "limits is that jurisdiction restricted? I "hold it extends to all cases where the law "causes to be distributed the property of the "debtor among his creditors; this is its least "limit. Its greatest is a discharge of the "debtor from his contracts." All this is applicable in considering the nature and the extent of the power granted to Parliament on the subject of bankruptcy and insolvency; and I hold that the great ends of this subject, here as there, are distribution and discharge, and that in dealing with this subject, Parliament, like Congress, has full discretion to legislate to the extent of its power or within its power, that it can provide for a distribution of the property of an insolvent debtor with a discharge from further liability, or for such a distribution without such discharge. The Winding Up Act provides for the distribution of the assets of insolvent trading companies; and I hold that it was within

the power of Parliament to pass it, and that it is constitutional and is binding in this province.

Wharton in his Treatise on Private International Law, at No. 794, says that "Bankruptcy (*concurs process*), according to the "practice of those countries whose jurisprudence is based on the Roman Law, is a "species of national execution against the "estate of an insolvent." And this definition gives the reason for the grant of power on this subject to Parliament. The Dominion is formed of different provinces, and there is, of course, more or less diversity in their laws regulating the collection of debts and the settlement of the estates of insolvents; and the power of the provincial courts to execute provincial laws does not extend beyond the territory of the province to which they belong. It is therefore in the interest of the trade and commerce of the whole Dominion that there should be one uniform law for all the provinces, regulating proceedings in the case of insolvent debtors, unrestricted in its operation by provincial boundaries; that it should be possible to obtain a national execution, and not merely a limited provincial one, against the estate of an insolvent debtor, who might hold property in several provinces, or transfer it from his own province into another.

Having disposed of the constitutionality of the Act, and having shown the reason for the Act and its importance, the next question is, whether under the Act the Court at Montreal was the proper one to grant a winding up order?

Section 8 provides that when a company becomes insolvent, a creditor may apply by petition to the court in the province where the head office of the company is situated; and this court in this province is declared to be the Superior Court. The Act determines in which province the proceedings are to be instituted, and before which court; but as regards this province, it is silent respecting the district where this should be done. We must therefore supplement the Act by a reference to our provincial law respecting the jurisdiction of our courts. Article 34 of the Code of Civil Procedure, provides that a defendant may be summoned either before the court of his domicile or that of the place where the demand is served upon him personally. The domicile of a trading company is at its seat or head office; and, by article 61, that is the place where service may be made upon it. I hold consequently that the proper court to grant a winding up order, is the Superior Court in the district where the head office of the company is situated.

In the present case it appears from the Letters Patent incorporating the company defendant, which have been produced and filed of record, that its head office is in Montreal; and it was by mistake that it is alleged in the opposition that its seat is at Gatineau Point, in this district. The proceedings to place the company defendant in liquidation were therefore properly brought in Montreal. As regards the erroneous statement in the opposition, although the matter is not of sufficient importance to render its correction necessary, the motion for leave to amend is granted.

Under the circumstances of this case, the plaintiffs had no right to proceed to judgment, nor to execute it when obtained; their recourse was and is solely by a claim upon the insolvent estate of the company defendant. The opposition must, therefore, be maintained, and the property seized must be handed over to the liquidators, the opposants in this cause.

The judgment of the court will be recorded as follows:—

"The court, after having heard the opposants and contestants, by their counsel, as well upon the motion of the opposants for leave to amend their opposition to annul as upon the merits of the opposition, having examined the proceedings and the proof of record, and having deliberated;

"Considering that the subject of bankruptcy and insolvency falls under the exclusive legislative authority of the Parliament of Canada;

"Considering that the subject of bankruptcy and insolvency comprises not only laws tending to the discharge of insolvents, but also laws providing for a general execution against the entire estate of insolvents;

"Considering that Chapter 129 of the Re-

vised Statutes of Canada, known as "The Winding Up Act," provides for the liquidation and for the distribution of the assets of insolvent trading companies, and that the subject thereof, therefore falls within the classes of subjects assigned exclusively to the legislative authority of the Parliament of Canada;

"Considering that the said act is constitutional, and that its provisions have force of law in the province of Quebec;

"Considering that the company defendant falls within the classes of companies to which the said act applies;

"Considering that the head office of the company defendant was and is situated in the city of Montreal, and that the application for a winding up order was properly made to the Superior Court, sitting in the district of Montreal;

"Considering that a winding up order was duly made under the said act by the Superior Court sitting in the district of Montreal, on the 16th day of September last, 1887, for the liquidation of the company defendant, and that the opposants were duly appointed liquidators of the company by the court on the 21st day of September last, 1887;

"Considering that a copy of the judgment appointing the liquidators, was duly served upon the plaintiffs and their attorneys on the 15th day of October last, (1887,) prior to the rendering of the judgment and to the issue of the writ of *venditioni exponas* in this cause;

"Considering that it is provided by the 16th section of "The Winding Up Act," that when a winding up order has been made no suit shall be proceeded with against the company in liquidation, except with the leave of the court; and by the 17th section of the said Act, that every attachment or execution put in force against the estate or effects of a company after the making of such winding up order shall be void;

"Considering that under the provisions of "The Winding Up Act" the recourse of the plaintiffs against the company defendant must be exercised by a claim upon its insolvent estate;

"Considering that the liquidators were allowed and authorized by one of the judges of this court, on the 29th day of November last, 1887, to make, in their names as liquidators, the opposition to annul in this cause, and that the said judge did not deem it necessary that previous notice should be given to the creditors, contributories, shareholders or members of the company defendant;

"Considering that the opposants were not bound to pay the costs incurred by the plaintiffs in this cause before making their opposition to annul, and that the plaintiffs may exercise any recourse and enforce any privilege which they may have for such costs by a claim upon the estate of the company defendant;

"Considering that the court has the power at any time before judgment to allow any pleading to be amended so as to agree with the facts proved, that it appears by the letters patent incorporating the company defendant, which have been produced in proof, that its chief office and principal place of business was established in the city of Monreal, in the district of Montreal, and not as alleged in the opposition in this cause at Gatineau Point, in the district of Ottawa, and that the plaintiffs have not been debarred by such error from making a full answer to the opposition, and that such error should be corrected, without allowing costs or the right to replead;

"Adjudicating first upon the motion for leave to amend, doth grant the same, and doth order that the opposition to annul in this cause be amended by striking out the words "That their principal place of business is at Gatineau Point, in the district of Ottawa," and by substituting therefor the words "That their chief office and principal place of business is at the city of Montreal, in the district of Montreal," but doth allow no costs on the said motion; and then adjudicating upon the merits of the opposition to annul in this cause, doth maintain the same, doth declare the attachment and seizure made in this cause to have become void in consequence of the making of the winding up order against the company defendant, doth order the guardian to deliver the goods and effects attached and seized in this cause to the liquidators of the com-

pany defendant, and doth condemn the female plaintiff to pay the costs on the opposition to annul in this cause."

Opposition maintained.

N. A. Belcourt, for opposants.

Rochon & Champagne, for plaintiffs and contestants.

COUR D'APPEL DE PARIS.

23 mars 1888.

Présidence de M. Fauconneau-Dufresne.

Consorts O'Rorke v. Grados.

Légitimation—Mariage subséquent—Mari étranger — Femme Française — Loi Anglaise — Ordre public—Mariage—Prêtre catholique —Validité.

1o. *En France, la légitimation par mariage subséquent est d'ordre public. Elle a lieu notamment pour l'enfant naturel né en France d'une mère française et d'un père appartenant à une nationalité, notamment la nationalité anglaise, qui n'admet pas ce mode de légitimation, lorsque le mariage subséquent de ceux-ci a été célébré en France, et qu'ils avaient déjà alors en France leur domicile.*

2o. *Aucune loi n'interdit, en France, le mariage à un prêtre catholique au regard de la loi civile ; son mariage est donc régulier et valable.*

La dame Louise O'Rorke, veuve Sinibaldi, est décédée à Fontainebleau le 27 août 1882. Elle laissait comme seule héritière, connue au moment de son décès, la dame Rosalie Grados, veuve de Thomas O'Rorke, sa mère, qui appréhenda la totalité de la succession de la défunte, savoir, la moitié afférente à la ligne maternelle, en sa qualité de seule héritière dans cette ligne, et l'autre moitié, à défaut d'héritiers, dans la ligne paternelle. La veuve O'Rorke est elle-même décédée laissant pour unique héritier le sieur Henri Grados, le 29 janvier 1885. Ultérieurement diverses personnes se sont présentées, arguant de leur parenté au degré successible avec la dame Sinibaldi, pour réclamer la part afférente à la ligne paternelle dans la succession de la dite dame, et sur le refus d'Henri Grados de reconnaître leur qualité, ils l'ont assigné devant le Tribunal civil de Fontainebleau, en compte, liquidation, et partage de la dite succession. Leur demande ayant été rejetée par jugement en date du 4 mars 1886, par le motif qu'ils ne justifiaient pas suffisamment de leur qualité prétendue de parents et héritiers de la *de cujus*, ils ont frappé d'appel le dit jugement.

Devant la Cour, Henri Grados a persisté à contester la force probante des documents produits par les appelants, et tendant à établir leur origine commune avec Louise O'Rorke, veuve Sinibaldi. Il a été soutenu, en outre, que ces documents fussent-ils suffisants pour établir un lien de parenté avec Thomas O'Rorke, père de la *de cujus*, ceci serait insuffisant encore pour établir leurs droits à la succession de celle-ci, qui n'aurait pu être considérée comme fille légitime, mais seulement comme fille naturelle de Thomas O'Rorke, par le double motif: 1o. qu'elle était née le 27 mars 1826, antérieurement au mariage de Thomas O'Rorke et de Rosalie Grados célébré seulement le 17 avril 1830, à Paris, et sans que ce mariage eût pu opérer sa légitimation, Thomas O'Rorke étant sujet britannique, et la loi anglaise ne reconnaissant pas la légitimation par mariage subséquent; 2o. qu'en tout cas ce mariage de Thomas O'Rorke avec Rosalie Grados était nul, le dit Thomas O'Rorke se trouvant alors engagé dans les ordres sacrés, comme prêtre de l'église catholique, ce qui constituait, d'après l'intimé, un empêchement dirimant à la validité du dit mariage.

La Cour de Paris a rendu l'arrêt infirmatif dont le teneur suit :

La Cour,

Considérant que la dame Louise O'Rorke veuve Sinibaldi, est décédée à Fontainebleau le 27 août 1882, et que la succession a été appréhendée par sa mère, dame Rosalie Grados, veuve Thomas O'Rorke, laquelle est décédée le 29 janvier 1885, et se trouve représentée au procès par Henri Grados ; que les appelants revendiquent la moitié de la succession afférente à la ligne paternelle en qualité de cousins germains de la dame veuve Sinibaldi ;

Considérant que ces derniers justifient de leur parenté avec la *de cujus*, tant par les extraits qu'ils produisent du registre des baptê-

mes et du registre de mariage de la paroisse de Lusk, comté de Dublin (Irlande), que par des actes de l'état civil français ; qu'ils établissent que O'Rorke (James), leur auteur commun, marié en 1754 à Jeanne Seyrave, a eu deux fils : O'Rorke (Thomas), marié à Rosalie Grados le 17 avril 1830, et O'Rorke (James), marié en 1798 à Marie Monks, le père et la mère des appelants ; que par leur acte de mariage à Paris en date du 17 avril 1830, Thomas O'Rorke et Rosalie Grados ont déclaré légitimer l'enfant, issu de leurs relations et inscrit sur les registres de la commune de Meaux le 27 mai 1886, sous les noms et prénoms de Louise O'Rorke ;

Considérant que si les ascendants des demandeurs sont dénommés *Rorke*, dans les documents irlandais, alors que le père de la *de cujus* s'y trouve désigné sous le nom de *Rourke* et sous celui de O'Rorke dans les actes de l'état civil français, ces variantes s'expliquent par la rédaction sommaire et l'ancienneté des documents étrangers, qui sont produits ; qu'au surplus les appelants rapportent la preuve que, dans la paroisse de Lusk, ils ont été et sont encore indifféremment désignés sous les noms de *Rorke*, de *O'Rorke*, de *Rourk* et de *Rourke* avec ou sans *e* muet ;

Considérant, d'autre part, qu'il est établi que Thomas O'Rorke, tel qu'il est désigné dans les actes de l'état civil français et le Thomas Rourke du registre paroissial de Lusk sont bien la même personne ; que si l'extrait du registre de baptême de mars 1779 de Thomas O'Rorke ne relève pas le nom patronymique de la mère de l'enfant, ce nom est constaté par des papiers de famille, émanés du père de l'auteur commun James O'Rorke, papiers dont l'authenticité n'est pas douteuse, et qu'il est, en outre, constant que la mère désignée par son prénom dans l'acte de baptême de 1779, s'appelait réellement Jeanne Seyrave ; qu'en présence des preuves d'identité de Thomas Rourke baptisé en mars 1779, et Thomas O'Rorke, décédé à Fontainebleau en 1852, il n'y a lieu de s'arrêter à cette circonstance, que dans l'acte de naissance de sa fille Louise, Thomas O'Rorke est déclaré âgé de 37 ans, lorsqu'il en avait en réalité 47, cette inexactitude étant rectifiée par son acte de décés ; que cette identité n'est nullement compromise par cette autre circonstance que Thomas O'Rorke est désigné dans son acte de décès comme né à Dublin ; que l'acte de baptême de 1779 est extrait du registre de la paroisse de Lusk ; que cette paroisse dépendant du comté et étant proche de la ville de Dublin, on s'explique que les personnes qui ont déclaré le décès de Thomas O'Rorke, aient pu donner une indication approximative au lieu d'une désignation rigoureusement exacte ; qu'il résulte de ce qui précède que les appelants justifient de leur qualité d'héritiers de la dame veuve Sinibaldi, née Louise O'Rorke, en vertu de laquelle ils réclament la part de sa succession afférente à la ligne paternelle ;

Considérant, d'autre part, qu'en 1818, Thomas O'Rorke a quitté définitivement l'Irlande pour établir en France le siège de son domicile ; qu'il est justifié qu'il était, à cette époque, prêtre catholique ; que, pour apprécier la validité du mariage qu'il a contracté en France, il faut, en l'espèce, d'après la législation anglaise, s'en référer à la loi du domicile, qui règle le statut personnel et la capacité des parties contractantes ; qu'en France la légitimation par mariage subséquent est d'ordre public, et qu'en second lieu, aucune loi n'interdit le mariage au prêtre catholique au regard de l'autorité civile ; que conséquemment il n'y a lieu de s'arrêter aux conclusions de l'intimé tendant à faire prononcer la nullité du mariage, comme ayant été contracté par un prêtre catholique ;

Considérant, d'autre part, qu'il résulte des pièces produites et des explications fournies à la Cour, que l'immeuble dépendant de la succession de la dame Sinibaldi, née O'Rorke, sis à Fontainebleau rue Damesme, No. 28, a été vendu à la requête de Henri Grados, suivant procès-verbal d'adjudication du 18 mai 1885 ; qu'il n'y a lieu, dès lors, en l'état, d'ordonner la licitation de cet immeuble, mais bien de renvoyer les parties devant un notaire pour procéder aux comptes, liquidation et partage de la dite succession ;

Par ces motifs,

Infirme le jugement dont est appel.

THE AUTHORITY OF SCHOOL-MASTERS.

From June 14 to June 19, before Mr. Justice Field and a special jury, the case of *Hutt et al.* v. *The Governors of Haileybury College et al.* was tried. It was an action by the Rev. William Wayman Hutt for damages for breach of contract to retain his son at Haileybury College for the purposes of education ; and by Henry Robert Mackenzie Hutt, the son, for assault and false imprisonment, libel and slander. It was alleged in the statement of claim that on March 15, 1887, the defendant James Robertson, the head-master of Haileybury College, had wrongfully, and in breach of contract with Mr. Hutt, sen., expelled Mr. Hutt, jun., from that school and declined to have him back ; that on March 12, the defendants Robertson and Fenning, his house-master, assaulted young Hutt and caused him to be locked up in one of the college rooms until March 15 ; that on March 12

the defendant William Dunkin Fenning, falsely and maliciously wrote and published of the plaintiff Hutt, jun., these words, viz.: "He has been caught stealing; suspicion has long been directed to him as guilty of a series of thefts from the studies;" that on March 16, 1887, the defendant James Robertson falsely and maliciously wrote and published of Hutt, jun., the words, "He has lied to the last;" that on March 17 Fenning had libelled young Hutt in these words: "There is not a court of law that would have hesitated to convict him. Short of actually being caught in the act, no boy was ever convicted on clearer evidence. You plead for him a character free from dishonesty. He holds among his companions here a quite different character. What would Harry's faith have been at the assizes?"; that on March 12 the defendant Fenning had slandered the plaintiff Hutt, jun., by saying of him, "He will not confess; it is a great pity that he will not;" and that on March 14 both the defendants Robertson and Fenning had slandered Hutt, jun., by repeating the words set out in the first of the above alleged libels.

The defendants pleaded denying that Mr. James Robertson expelled young Hutt save in the discharge of his duty as the headmaster of the school, and alleged that Hutt was removed upon reasonable suspicion of having stolen money, and that before the alleged expulsion the defendant Robertson, as master, *bonâ fide* investigated the charge and came to the conclusion that it was true. In the alternative the defendants alleged that Hutt, jun., was in fact guilty of theft, and that in the defendant's (Robertson's) judgment it was necessary to expel him for such an offence. The defendants denied the alleged assault and false imprisonment. In the alternative they pleaded that they had acted *bonâ fide* and with reasonable cause, to the best of their judgment, in separating Hutt from his companions, and acted in the interests of the school discipline. With regard to the alleged libels and slanders, the defendants pleaded privilege. The defendants, the governors of the school, pleaded separately, in substance supporting the action of their masters. Upon these pleas issue was joined.

The following questions were left to and found by the jury on the direction of the learned judge: (1) Was it agreed between the father and governors that Henry Hutt should be liable to expulsion for reasonable cause? Answer: Yes, it was. (2) Did Mr. Robertson come to the conclusion upon reasonable grounds that Hutt had committed the theft, and honestly believed that he had? Answer: Yes, he did. (3) And did such reasonable grounds exist in fact? Answer: No. (4) Did Henry Hutt, in fact, steal the money out of the cash-box of study No. 17? Answer: No. (5) Had Robertson and Fenning reasonable grounds for suspecting Henry Hutt? Answer: Yes. After March 12, 1887, and the discovery of the money in Hutt's box. (6) Did Robertson and Fenning honestly consider and come to the conclusion that the confinement of Hutt in the sick-room was necessary for the well-being of the college and the correction of the boy? Answer: Yes. (7) Was such confinement reasonable under the circumstances? Answer: Yes. (8) Are the libels and slanders true? Answer: Not true. (9) If not, did Robertson and Fenning honestly believe them to be true and publish them in that belief and from no indirect motive? Answer: Yes. (10) Did Robertson make the statement complained of to Dr. Bradby in an honest belief of its truth and for the purpose of obtaining his advice and assistance in the matter and with no indirect motive? Answer: Yes. (11) Did Robertson make the entry of Hutt's expulsion in the school notice-book with an honest intention and no indirect motive? Answer: Yes.

The learned judge, in the course of his summing-up, gave the following directions and explanations in the points of law involved in the case: With regard to the libels, that is, his lordship said, admitted, and therefore on them no action is maintainable unless you are of opinion that the defendants published them not believing in them, but from some indirect motive. That was their question; his was the one of privilege. As to the libels, the question of privilege did not arise, as it was admitted; but it was not admitted in the case of the alleged slander. But he would not yet decide that point. Besides relying upon the above pleas, the defendants further alleged that the libels and words were true. That again was for them to decide. This morning, he said he was prepared to hold that there was no such absolute discretion in masters of schools as that claimed in the governors' statement of defence as was originally pleaded. Such a power would be far too great and dangerous: viz., that any boy at school should be liable to be branded for life by expulsion simply because a master on his sole authority and discretion—however distinguished he may be—had come to the conclusion that such a course was necessary for the well-being of his school. Such an absolute discretion could never be permitted. All large bodies must, of course, be governed in the public interest, and in some cases such absolute discretion is necessary, but not in such a case as this. Passing from this, the learned judge said he would now go to the facts and first read the questions out which he was, he said, going to leave them. The first thing to be considered was, What is the authority of a master of a public school? There was, he observed, very little, if any, legal authority

upon the point. The only case had been referred to in the course of the trial. It seemed, however, clear that the master is the delegate of the parent. Then, what is a parent's authority over his infant child? By Roman law it was absolute over life and death even. There is no such power in this land, but still he has a great power over his child. It is his duty, if the child will not do what he advises it to do, to take whatever steps he considers reasonably necessary for its correction. But he must act honestly in this course. There must be a cause which a reasonable father honestly believes requires punishment. In a case of a mere childish fault for a parent to use weapons would be, for instance, so unreasonable as to destroy a parent's right. The law therefore does justify a parent in a case where he honestly considers correction necessary in administering blows in a reasonable and proper manner. But then this power is not limited to corporal punishment, but extends to detention and restraint. I think, he said, that the father parts with all these powers and delegates them to the master under whose charge he places his child. We have all experienced, no doubt, a parent's punishments. Therefore, unless limited by special contract, I think that the master has the power of judging when a punishment is required, and also to what extent. His lordship then referred to the case of *Fitzgerald* v. *Northcote* (F. & F. 609), and said, as to the question of justification, that it was grounded in that case upon breach of disciplinary rules, and there could be no doubt the boy had committed those breaches. There had been, he said, and there still existed, a sad state of things at Haileybury, viz., the thefts that they had heard of; and those things must be all considered in gauging the action of the master. Reverting to the above case, his lordship read the judgment therein of Chief Justice Cockburn, and, continuing, said: I adopt the views laid down therein, and you will have to say, therefore, whether the conduct of the masters in the present case was reasonable and honest in that light. While the child remains in its own family its interests are synonymous with those of its fellows; but when the delegation I alluded to occurs, and the child enters a public school, these interests are greatly extended, and the master must take into consideration the interests, not only of the one boy, but those of the whole school. No doubt there were circumstances under which a master might be called upon to decide a case upon what at the time he considered to be facts, but which eventually turned out not to be so. Would he not in such a case be justified if the nature of the case required immediate action and he had acted honestly and his conclusions were under the circumstances reasonable? What amount of power is actually delegated by a parent to a master must depend upon the circumstances in each case. Those circumstances might be very greatly varied by any special terms in the contract. This college had existed, he continued, under a royal charter since 1864. By it it was made a corporation and a council was appointed, and it was "willed and ordained" that the education, both moral and secular, should be conducted by a member of a university and selected by the council. There was also a power given to make bye-laws. Among these, those from 27 to 42 regulated the pupils. On one side it has been contended that these are a part of the contract; while the defendants say this is not so, but rather that they merely draw out a form of guidance as to the admission, &c., of the pupils for the guidance of the executive, and were in fact not brought to the parents' notice. By these the fees were payable in advance, and among them was this very important bye-law, viz., No. 37: "Pupils may be removed or expelled by the master for any grave offence, or for the repetition of any offence, or for disobedience when it shall seem to him necessary to resort to that extremity." Now, was this bye-law a part of the contract between the father and the governors? A prospectus was produced, dated January 1, 1888, and it no doubt substantially sets out what the terms were, and it is agreed that Mr. Hutt had seen it. The question, therefore, would be whether he put his son at the school under its terms. It contained no reference at all as to expulsion. Under it boys could not choose their house of residence. There is also on the prospectus a notice that, by a bye-law of the college, if any boy shall at any time be taken or kept away from the college during the term time he can only be admitted again by the master's leave. These appear to be all the essential elements embraced in the question of the contract. I will now deal with the question of detention. I think—but that is for you—that a larger discretion must be given to masters on this than on the head of expulsion. For the consequences are not serious to the same extent, and there ought to be some such discretion of restraint given to masters in the interests of school order and discipline. To what extent was for them. In regard to the question whether the boy had stolen the money the jury must be satisfied here, as in an ordinary criminal case, beyond reasonable doubt that the lad had stolen it. The lad had from the first denied it, and had done so on oath in court. All these things they must consider.

In the result the effect of the findings of the jury given above was reserved for further consideration by Mr. Justice Field. (See p. 225.)