

C. A. becomes complete. It is for the benefit of the holder that he
 1894 should be able to give notice of dishonour on the last day of
 KENNEDY grace, because by so doing he obtains a right of action against
 v. the drawer and the indorsers earlier than he otherwise would.
 THOMAS. I agree that the appeal should, under the circumstances, be
 allowed with costs, and that judgment should be entered for the
 defendant.

Appeal allowed.

Solicitors : *F. C. Sydney ; Edward Kennedy.*

W. L. C.

1894
 July 28.

[CROWN CASE RESERVED.]

THE QUEEN *v.* SILVERLOCK.

*Criminal Law—False Pretences—Form of Indictment—Evidence—Proof of
 Handwriting by Comparison—Skilled Witness—28 & 29 Vict. c. 18, s. 8.*

A count in an indictment for obtaining a cheque by false pretences charged that the defendant, by causing to be inserted in a newspaper a fraudulent advertisement [setting it out], did falsely pretend to the subjects of Her Majesty the Queen that [setting out the false pretence], by means of which last-mentioned false pretence he obtained from A. a cheque :—

Held, that the count was good, although it did not allege that the false pretence was made to a particular person.

Reg. v. Sowerby ([1894] 2 Q. B. 173) distinguished.

By 28 & 29 Vict. c. 18, s. 8 : "Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses ; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute."

Held, that a witness giving evidence under this section need not be a professional expert, or a person whose skill in the comparison of handwritings has been gained in the way of his profession or business.

CASE stated by the chairman of quarter sessions for the county of Worcester, from which the following facts appeared.

The defendant was tried upon an indictment containing two counts for obtaining a cheque by false pretences. The first count was in the ordinary form, and alleged a false pretence to Rosa Alice Coates, and an obtaining of the cheque from her by means of the false pretence. The second count charged that the

defendant, "by inserting and causing to be inserted in a certain newspaper called the *Christian World* a fraudulent advertisement in the words and figures following, that is to say, "Housekeeper wanted for branch business establishment in Midlands; one from country preferred. Address S. C., *Christian World* office," did falsely pretend to the subjects of Her Majesty the Queen that he, the said George Silverlock, then required a housekeeper for a branch business establishment in the Midlands, by means of which said last-mentioned false pretence the said George Silverlock did then unlawfully obtain from the said Rosa Alice Coates a certain valuable security," &c.

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Before the defendant pleaded, his counsel applied to have the second count quashed, on the ground that it was not stated therein that the false pretence was made to any definite person, but to all the subjects of Her Majesty the Queen, and that therefore it was bad in law on the authority of *Reg. v. Sowerby*. (1) The chairman overruled the objection.

It became necessary to prove that certain documents were in the defendant's handwriting; and to do this the prosecution called as a witness a police superintendent, who produced a letter and envelope that he had seen the defendant write, and a letter that the defendant had told the witness was in his handwriting. It was then proposed to prove a draft advertisement of "S. C.," and certain letters alleged to be in the defendant's handwriting, by comparison of the handwriting of the advertisement and letters with the admitted handwriting of the defendant, and the solicitor for the prosecution was called as an expert for this purpose. It was objected that the solicitor was not an expert, and could not give evidence as to his opinion. The solicitor said that he had since 1884, quite apart from his professional work, given considerable study and attention to handwriting, and especially to old parish registers and wills, and had on several occasions professionally compared evidence in handwriting, but had never before given evidence as to handwriting; also that he had formed an opinion that the defendant was guilty before he began to compare the handwriting. The objection was overruled,

(1) [1894] 2 Q. B. 173.

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and the evidence was admitted. The jury convicted the defendant. (1)

The questions of law for the opinion of the Court were—(1.) whether an indictment for false pretences by advertisement must allege a specific person to whom the false pretence was made, or whether an indictment for such offence alleging a false pretence to all the Queen's subjects was good in law; (2.) whether it was necessary, in the case of proving handwriting by comparison, for the person who draws attention to the points of resemblance to be a professional expert or a person whose ordinary business leads him to have special experience in questions of handwriting, or whether the evidence of any person who has, or states he has, for some years studied handwriting would be admissible for that purpose.

Marchant, for the defendant. The second count is bad; it does not contain an allegation of the person to whom the false pretence was made, which is a material and necessary averment: *Reg. v. Sowerby* (2); an allegation that it was made to all the Queen's subjects is too vague, and is insufficient. Secondly, the evidence of the solicitor was not admissible under 28 & 29 Vict. c. 18, s. 8. (3) The witness was not an expert. In order to give evidence on matter of opinion, a witness must be not only skilled, but he must be skilled by virtue of his business; he must be an expert: *Reg. v. Harvey* (4); *Reg. v. Wilbain*. (5)

The mere study of a science or art does not make a man capable of giving evidence upon it: *Bristow v. Sequeville* (6), where a witness who had studied foreign law in a foreign university, but was not a lawyer by profession, was held

(1) It appeared that a general verdict of guilty was taken, and that the verdict was neither taken nor entered separately on each count.

(2) [1894] 2 Q. B. 173.

(3) By 28 & 29 Vict. c. 18, s. 8 (which, by s. 1, applies to all courts of criminal judicature), "comparison of a disputed writing with any writing proved to the satisfaction of the judge

to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute."

(4) 11 Cox, 546.

(5) 9 Cox, 448.

(6) 5 Ex. 275.

incapable of giving evidence as to what the law of the foreign country was.

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[VAUGHAN WILLIAMS, J. No one should be allowed to give evidence as an expert unless his profession or course of study gives him more opportunity of judging than other people. Is not a solicitor in that position?]

No; the study of handwriting is no part of his business.

[He also cited *Rowley v. London and North Western Ry. Co.* (1); Best on Evidence, 8th ed. p. 467; Stephen on Evidence, 4th ed. p. 58; Taylor on Evidence, 8th ed. s. 1870.]

Vachell, for the prosecution, was desired to confine his argument to the first point. The count is good; it sets out the actual facts, instead of alleging a legal fiction. It was unnecessary to allege that the false pretence by advertisement was made to a particular person, for at the time of advertising there was no particular person whom the defendant desired to defraud. There is sufficient in the count to shew that the false pretence was made to the person from whom, as is alleged in the count, the money was obtained. *Reg. v. Sowerby* (2) is not in point; for there was in that case no averment of the person from whom the money was obtained, and it was impossible to cure the omission of the averment of the person to whom the false pretence was made. [He referred to *Reg. v. Cooper*. (3)]

LORD RUSSELL OF KILLOWEN, C.J. I am of opinion that this conviction should be affirmed. The defendant was tried at quarter sessions upon an indictment containing two counts: the first count stated in an unobjectionable way that the defendant made a false pretence to Rosa Alice Coates, that it was false to his knowledge, and that on the faith of it he obtained from her a cheque for 5*l*. The second count, which alone we have to consider, alleged that he inserted an advertisement in a newspaper, setting out the terms of the advertisement, and that by means of the advertisement he falsely pretended to the subjects of Her Majesty the Queen that he required a housekeeper, by means of which false pretence he obtained the cheque from Rosa Alice

(1) Law Rep. 8 Ex. 221.

(2) [1894] 2 Q. B. 173.

(3) 1 Q. B. D. 19.

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Coates. At the trial no objection was, or could have been, taken to the first count; but the second count was objected to as being insufficient, and, as the verdict was taken and entered generally and not separately on each count, the conviction must be quashed if that count is bad.

There is no doubt as to what are the essentials of the offence of obtaining money by false pretences: there must be a false pretence made to a definite person, and it must be proved that such person on the faith of the false pretence parted with his money or goods. Those essentials must be stated in the count charging the offence, and the question here is whether the second count complies with these conditions. I cannot say that I have felt no doubt or hesitation upon the matter, but upon the whole I think that the count does sufficiently state the offence. The advertisement is addressed to all persons to whose knowledge it may come, and who may desire to act upon it; and if a particular person, after seeing or hearing it, acts upon it and goes to the person from whom it proceeds, and upon the faith of it parts with his money or goods, it becomes an advertisement to that particular person, who is one of the class of persons for whom it was intended. Does that sufficiently appear in this count? I think that it does: it states that the defendant procured the insertion of the advertisement, that by so doing he made a false pretence to Her Majesty's subjects, and proceeds with the important averment that by means of that false pretence he obtained a cheque from Rosa Alice Coates. I think, therefore, that this count does satisfy the requirements of the law by stating the essential conditions of the offence, although I feel bound to add that it is loosely, inartistically, and anything but clearly drawn.

The case of *Reg. v. Sowerby* (1) was referred to during the argument. We should, of course, regard that decision, if in point, as a binding authority; but when it comes to be examined it proves to be no authority at all for the defendant's contention. In that case two essential averments were wanting. In the first place, there was no allegation that the false pretence was

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made to any person ; whereas here it is alleged to have been made to all the Queen's subjects—an allegation which becomes particular as regards the particular person who acts upon it ; and, secondly, the indictment in *Reg. v. Sowerby* (1) does not contain the material allegation of the person from whom the money was obtained—an averment which appears in the count under consideration. The decision in *Reg. v. Sowerby* (1), therefore, only came to this, that in the absence of those two material allegations the count was insufficient, and, therefore, bad.

We now come to the second objection, as to the proof of the handwriting, which affords a good illustration of that class of evidence called evidence of opinion. It is true that the witness who is called upon to give evidence founded on a comparison of handwritings must be peritus ; he must be skilled in doing so ; but we cannot say that he must have become peritus in the way of his business or in any definite way. The question is, is he peritus ? Is he skilled ? Has he an adequate knowledge ? Looking at the matter practically, if a witness is not skilled the judge will tell the jury to disregard his evidence. There is no decision which requires that the evidence of a man who is skilled in comparing handwriting, and who has formed a reliable opinion from past experience, should be excluded because his experience has not been gained in the way of his business. It is, however, really unnecessary to consider this point ; for it seems from the statement in the present case that the witness was not only peritus, but was peritus in the way of his business. When once it is determined that the evidence is admissible, the rest is merely a question of its value or weight, and this is entirely a question for the jury, who will attach more or less weight to it according as they believe the witness to be peritus. Two cases have been cited, one as containing a decision of Blackburn, J., the other (an Irish case) a decision of Pigot, C.B. ; but neither of them is an authority for the proposition contended for ; they come only to this—that in each case the witness was a policeman, and that the judge thought that under the circumstances of the case his evidence was not such as ought to be received. I think, therefore, that there has been

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1894 here no mis-reception of evidence, and, as the second count is
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MATHEW, J. I am of the same opinion. The first question is the only one which presents any real difficulty, and the difficulty might have been avoided had the verdict been taken separately on each count—a practice that it is important to bear in mind, seeing that we are still hampered with regard to indictments by the rules of pleading which were in force in civil actions before the Common Law Procedure Act. In an action for deceit, it was necessary to state with particularity all the ingredients which went to make up the defendant's liability, and in an indictment for false pretences the ingredients of the offence must be set forth in the same way. There is an excellent description of the requirements of the law in this respect in the judgment of the present Master of the Rolls in *Reg. v. Aspinall* (1), where that learned judge says: "To support a charge of obtaining money, &c., by false pretences, it is necessary to shew, and therefore to allege, that the prisoner, with a wicked or criminal mind, stated something which, if true, would be an existing fact; that he did so with intent to procure the possession of money, &c.; that he knew his statement was—that is to say, that so far as his mind was concerned he intended that his statement should be—false; that by the statement he did so act on the mind of the prosecutor as that he did thereby obtain money, &c.; that the statement was in fact untrue, in the sense of being incorrect." If we take the present count, it is clear that it offends against the old rules which were applicable. But there is this important qualification—that although after verdict we cannot supply an absent averment, an imperfect averment may be treated as cured by verdict. In the present case it is not shewn in the second count how the money was obtained in consequence of the advertisement; but that is clear from the first count, upon which the accused was convicted, and we are therefore entitled to infer that the jury had all the facts before them, and that it was in consequence of the advertisement that she parted with her money. In connection

(1) 2 Q. B. D. 48.

with this, the same learned judge says, in *Reg. v. Aspinall* (1): "There is another rule with regard to pleading which must be enunciated, the rule with regard to the effect to be given to pleadings after verdict. It is thus stated in *Heymann v. Reg.* (2): 'Where an averment, which is necessary for the support of the pleading, is imperfectly stated, and the verdict on an issue involving that averment is found, if it appears to the Court after verdict that the verdict could not have been found on this issue without proof of this averment, then, after verdict, the defective averment, which might have been bad on demurrer, is cured by the verdict.' Upon this it should be observed that the averment spoken of is 'an averment imperfectly stated,' i.e., an averment which is stated but which is imperfectly stated. The rule is not applicable to the case of the total omission of an essential averment." That is distinctly applicable to the present case, and if any further authority were wanted it would be found in *Hamilton v. Reg.* (3)

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It is necessary to say a word about *Reg. v. Sowerby*. (4) The distinction between that case and the present is that in that case averments were absent which were indispensable to the statement of the offence, and which could not be supplied—averments of the person to whom the false pretence was made, and of the person from whom the money was obtained. Had the defendant been acquitted on that count, and subsequently prosecuted for the same offence upon a good count, there might have been a difficulty in the way of the defence. That decision is no authority in the present case.

Upon the other point, as to the proof of the defendant's handwriting, I am of opinion that the evidence was clearly admissible.

DAY, J. I concur in the judgment pronounced by my lord.

VAUGHAN WILLIAMS, J. I am of the same opinion, and I only desire to say that in my opinion it seems unnecessary to refer to the principle of the correction of an imperfect averment after

(1) 2 Q. B. D. 48.

(2) Law Rep. 8 Q. B. 102.

(3) 9 Q. B. 271.

(4) [1894] 2 Q. B. 173.

1894 verdict, because the second count of the indictment, though
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KENNEDY, J. I concur in the judgment of my lord.

Conviction affirmed.

Solicitors for the prosecution: *Bernard King & Sons, Stour-
 bridge.*

Solicitor for defendant: *Garratt, Dudley.*

W. J. B.

1894 TRUMAN, HANBURY, BUXTON & CO., LIMITED v. KERSLAKE.

July 12 ;
 Aug. 8.

*Local Government—Nuisance—Abatement—"Owner"—Premises not let at a
 Rack-rent—Sub-lease—Public Health (London) Act, 1891 (54 & 55 Vict.
 c. 76), s. 141.*

Where the lessee of premises not let at a rack-rent has sub-let them for the whole term, less a few days, the rent reserved and the covenants and conditions being the same as in the original lease, the sub-lessee and not the lessee is the "owner" of the premises within the meaning of s. 141 of the Public Health (London) Act, 1891, which enacts that "owner" shall mean "the person for the time being receiving the rack-rent of the premises . . . or who would so receive the same if such premises were let at a rack-rent."

CASE stated by the Court of Quarter Sessions for the administrative county of London.

The appellants, Truman, Hanbury, Buxton & Co., Limited, were, in December, 1893, summoned before a metropolitan magistrate to answer a complaint made by the respondent, the sanitary inspector for St. Giles, Camberwell, that a certain nuisance existed at No. 73, Wyndham Road, Camberwell, after notice had been served upon them to abate such nuisance, under the Public Health (London) Act, 1891, and that they as owners had made default in complying with such notice. The magistrate convicted the appellants, who appealed to the Court of Quarter Sessions. That Court affirmed the conviction, but stated a case for the opinion of the Court.

It appeared that on September 21, 1874, one George Hastings had leased No. 73, Wyndham Road, together with the adjoining house, No. 71, to one Gurney Hanbury, for a term of thirty-nine and a half years (less ten days), to commence on June 24, 1885,