We think these facts show a ground upon which the case must be decided in favor of the defendants, without going into the question whether the deed created a trust in the town; for, assuming (what was probably the fact) that, when the town accepted the deed from Nicholas Knight containing the explicit declaration that the premises were for a parsonage, and for the use and support of the ministers of the gospel, a charitable use was created for the object specified, and that the town, either in its municipal or parochial capacity, was therefore invested with the legal title as trustee, charged with the duty of administering the fund in behalf of the charity mentioned in the deed, we still think it is impossible to reach any other conclusion than that there has been such a distinct disavowal and renunciation of the trust by the town, and such an uninterrupted occupation, for a period of more than sixty years,—or more than fifty years, if we reckon from 1819, when what is known as the Toleration Act was passed,—adverse to the right of the plaintiffs and all others, who may have had an interest in the premises, as must perfect the title in the trustee, even against a *cestui que trust*. The act was unequivocal. During all this long time the town took and applied the profits of the premises to its municipal purposes, under a claim of right to do so, and with the knowledge of the plaintiff society. No more unmistakable disavowal of the trust can well be conceived. When the town thus distinctly repudiated the trust, not only these plaintiffs, but all others, if there were others, who claimed an equitable interest and right in the premises, as *cestuis que trust*, were bound to come forward and assert their claims. There is no pretence that the plaintiffs were under any disability during this period, and we think their right is gone by reason of the adverse occupation of the property by the town.

It is true, that, to enable a trustee without giving up the possession to turn it into an adverse holding against the *cestui que trust*, the evidence must be clear and unmistakable, and such adverse claim must be brought home to the *cestui que trust* beyond question or doubt. Perry on Trusts, sec. 864. We think these conditions are entirely fulfilled in the present case, and that the *Bill must be dismissed.*

SLOTTS *v.* ROCKINGHAM COUNTY.

It is the duty of county commissioners, under Gen. Stats., ch. 267, sec. 2, to take all necessary precautions against sickness and infection in the common jails of the county; and that implies that the necessary expenses of such precautions shall be paid, in the first instance at least, by the county.

The county commissioners omitted to cause the dead body of an inmate of the jail, who had died of small-pox, to be removed and buried; the

jailer, after the lapse of thirty-two hours, employed persons to move and bury the body. *Held*, that the charge for such service should be paid by the county, whether the deceased was a pauper when committed to jail or not.

The question in this case is, whether the bill of the plaintiffs (James D. Slott and James Slott) should be allowed against the county of Rockingham, and if so, at what sum, upon the following statement of facts: One Felch, a prisoner in jail at Exeter on criminal process, was taken sick with small-pox. Felch belonged to Seabrook. The sheriff of the county notified the selectmen and health officers of Exeter, and requested them to remove him. The jailer called a physician, who declared that Felch had small-pox. Thereupon the county commissioners ordered his discharge from jail. In point of fact, it would not have been humane nor safe, either to the prisoner or to the public, to have discharged him at any time after it was ascertained he had the small-pox.

Felch died, and the body remained in the jail thirty-two hours, because the jailer could not get any one to remove and bury it. The selectmen of Exeter made some efforts to have the body buried, but failed. Finally, the jailer employed the plaintiffs to perform the service, and they did it under circumstances which were shown, but which need not be here detailed. For this service they claim to recover of the county the sum of $225. Felch was a poor person, without means of support, and his legal settlement was in Seabrook.

LADD, J. Section 2, chapter 267 of the General Statutes, imposes upon the county commissioners, among other things, the duty of taking all necessary precautions against sickness or infection in the common jails of the county. The case shows that the dead body of Felch, who had died of small-pox, remained in the jail thirty-two hours, because the jailer could not get any one to bury it; and further, that, when it was ascertained that his sickness was small-pox, the county commissioners ordered his discharge from jail, although humanity to the prisoner, as well as the safety of the public, forbade a compliance with the order. Ordinarily, such conduct on the part of public officers, especially in view of the fact that county commissioners are not by law entrusted with the power of discharging prisoners from jail, would call for comment; but we forbear, because there may be, and it is to be hoped are, other facts bearing upon the matter, which are not reported for the information of the court.

Under the statute above referred to, there can be no doubt but that it was the duty of the county commissioners to have the infected dead body removed from the jail and buried; and this, of course, implies that it shall be done, in the first instance, to say the least, at the expense of the county. For some reason, the county commissioners did not do it, but the jailer, after the lapse of thirty-two hours, em-

yed the persons to do it who are here now seeking remuneration for ir services.

It is true, the statute does not, in terms, give to the jailer authority to take precautions against infections, as it does to the county commissioners; but he is to have the custody of the jail and of the prisoners, and is to keep the prisoners in the jail. Gen. Stats., ch. 267, sec. 3. Under these circumstances, if he in good faith performs a public duty, as urgent and imperative as that shown in the case before us, although that duty is required by law at the hands of other county officers, we think there can be no doubt but that he should be paid for such service from the county treasury. This claim, in substance, stands no differently from a claim by the jailer for the same service. It comes to the same thing as though the jailer had paid for the service, and was now seeking to recover it back from the county.

As to the claim of the jailer for extra services, under sec. 4, chap. 267, Gen. Stats., if extra services were rendered by him, we see no reason why they should not be allowed in this case the same as in other cases.

We consider it entirely immaterial that Felch was a pauper, and had a settlement in Seabrook, or anywhere else. Public officers are in the first place to discharge their public duties, in the custody and treatment of prisoners, and in the care of the jails; and the expense necessarily incurred in the discharge of such duties is, in the first instance, to be borne by the county. Whether, in the case of a poor person, some town may ultimately be liable for such expense, is another thing, and has nothing to do, so far as we can see, with any question presented here.

The claim of the plaintiff is to be allowed at $150; and as to the claim of the jailer for extra services, that matter must be presented to the county commissioners, who should be governed in their action upon it by the views herein expressed.

PINKHAM *v.* MATTOX.

It is not necessary that the absolute legal title to goods sold should pass to the buyer at the time of the contract of sale, in order that there may be an acceptance within the meaning of section 14, chapter 201, General Statutes; but if there is a contract for sale, although upon condition that the property shall not pass until the price is paid, and the buyer receives and accepts the goods upon the terms of such contract, his acceptance will be sufficient to answer the requirement of the statute.

A sold to B a sewing-machine for $80, to be paid for in monthly instalments of from $5 to $10, at the option of the buyer; and it was agreed that the machine should remain the property of A until paid for. The