exercise of powers, and discharge of duties, assigned to them by Statute, see *Metcalfe* v. *Hetherington*, 11 Ex. 257; S. C. 5 H. & N. 719.

I think the demurrer must be allowed; but, having reference to the state of the authorities, without costs

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STINSON v. PENNOCK.

Mortgagor—Mortgagee—Fire insurance—Re-building.

Where a mortgage contains no covenant on the part of the mortgagor to insure, but he does insure, and a loss by fire occurs whereby the insurance money becomes payable, the mortgagee is entitled, under the Act (14 George III. ch. 78, sec. 83), to have the insurance money laid out in re-building.

This was a motion by a mortgagee to restrain the defendant, the mortgagor, from receiving money which had become payable under a policy of insurance effected by him on the mortgaged premises.

Roaf, Q. C., in support of the application relied on the Statute 14 George III. ch. 78, secs. 83 & 84,—*Marriage* v. *The Royal Exchange Assurance Co.*, 18 L. J. N. S. Cham. 216; *Exp. Garrie*, 10 Jur. N. S. 1085; *Garden* v. *Ingram* Ib. 478; *Bunyan* on Life Insurance, 151.

Boys, contra.

MOWAT, V. C.—The plaintiff is mortgagee of certain freehold estate, and the mortgagor. The Mortgage contains no covenant to insure. The mortgagor after executing the mortgage took out a policy; and the houses on the property have since been burnt (18th March, 1868). The mortgagee claims that he is entitled to have the insurance money laid out in re-building. The defendant says that he intends to lay it out re-building, but contends that the plaintiff has no right to compel him to do so.

The Statute 14 George III. ch. 78, sec. 83, was relied on upon the part of the plaintiff, and seems to sustain his claim. The object of that section is stated in the preamble to be, "to deter and hinder ill-minded persons from wilfully setting their house or houses or other buildings on fire, with a view of gaining for themselves the insurance money, whereby the lives and fortunes of many families may be lost and endangered;" and the section provides, "that it shall be lawful for the governors and directors of the several insurance offices, and they are thereby authorised and required, upon the request of any person or persons interested in, or entitled to, any house or houses or other buildings, which may thereafter be burnt, demolished or damaged, * * to cause the insurance money to be laid out and expended, so far as the same will go, towards re-building, re-instating, or repairing such house or houses or other buildings, unless the party claiming the insurance money shall, within sixty days, next after his, her, or their claim is adjusted, give a sufficient security to them that the money shall be laid out as aforesaid, or unless it shall be in that time settled and disposed of amongst all the contending parties to the satisfaction of the insurers." The title to this Act would indicate that it refers to certain localities only, and not to the whole kingdom; and most of its provisions are expressly confined to certain limits described in the Act; by Lord *Westbury* held in *Re Barker*, 34 Law J., Bankr., 1.; that the section I have quoted is general, and not local; and if so, it became part of the law of this Province when the body of English law was introduced by legislative enactment.

Then, is a mortgagee a person interested within the meaning of the section? I do not see how I can hold that he is not He is within the words of the enactment, and his case is within the mischief against which Parliament was providing, See *Brooke* v. *Stone*, 34 Law Jour. N. S. Chancery, 251.

The mortgage money is not yet due, but I am clear that that circumstance makes no difference; especially as it appears that without the buildings the property is not worth the mortgage money.

The motion was to restrain the defendant from receiving the money from the Insurance Company. The more proper course would seem to have been a motion to restrain the Company from paying the money except as provided by the Statute, or to have the money paid into Court, *Marriage* v. *The Royal Exchange Assurance Co.*, 18 Law Jour. N. S. Chancery, 216 (Wigram 1849), with a view to its being applied as the Statute directs, if the Company were going otherwise to pay it to the defendant No objection, however, was made to the form of the motion, and the only question discussed was the one on which I have expressed my opinion.

COMMON LAW CHAMBERS.

EX. PARTE GEORGE HENRY MARTIN.

Extradition—Ashburton Treaty—Con. Stat. Can., cap. 89—Stat. 24 Vic. cap. 6—29 & 30 Vic., cap. 45—Regularity of Proceedings—Admissibility of Evidence.

Where a prisoner in custody under the Ashburton Treaty obtained a *habeas corpus* and *certiorari* for his discharge, it was held that the argument as to the regularity or irregularity of the initiatory proceedings, such as information, warrant, &c., was a matter of no consequence; the material question being, whether—being in custody—there was a sufficient case made out to justify the commitment for the crime charged.

It was held that certified copies of depositions sworn in the United States, after proceedings had been initiated in Canada, and after the arrest in Canada, were admissible evidence before the Police Magistrate.

[Chambers, June 29, 1868.]

McMichael obtained a *habeas corpus* directed to the Gaoler of the Gaol in Hamilton, where the prisoner was confined, to have his body before the presiding judge in Chambers, &c., and at the same time he obtained a writ of *certiorari* under 29–30 Vic. cap. 45, addressed to the Police Magistrate of the City of Hamilton, for a return of the informations, examinations and depositions touching the prisoner's commitment.

It appeared by the return to the *habeas corpus*, that the prisoner was in custody under a warrant of commitment issued by the Police Magistrate of Hamilton, upon a charge of robbery committed in the United States, and for the purpose of extradition, and that he was detained until surrendered according to the stipulations of the Ashburton Treaty, &c.

The examinations and depositions returned with the *certiorari* shewed that, early on the morning of the 1st of May, two persons broke into an express car on the Hudson River Railway, on its way to New York,—one Browne, an express messenger of the Merchants' Union Express Company, being in charge of a safe containing a large amount of money and securities. Browne