

Quarter Sessions, "is ratable under the denomination of land which implies a possessory interest in the soil itself, but not mere easements or incorporeal hereditaments which are incapable of occupancy, unless they are connected with the enjoyment of land and form part of its value. Our statute, however, limits the term land to all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty. The term realty is used in contradistinction to incorporeal hereditaments, and means something visible and capable of being handled. If Paxton were to build a wharf on his island, that would be, I presume, something tangibly affixed to his land, and would be taxable as real estate; but a mere right to fish, if he does possess it, is neither visible or tangible, and cannot be affixed to his land according to the meaning of the statute. To all the fisheries there are, I suppose, attached landing-places and sheds or houses. These may be looked upon as part of the realty; and if we value them at \$500 and the land at \$700, it will make the total value \$1,200, to which I think the assessment ought to be reduced.

Order accordingly.

ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. V. RITSON AND RITSON.

Forgery—Ante-dating a deed—24 & 25 Vict. c. 98, s. 20.

A deed really executed by the parties between whom it purports to be made, but ante-dated with intent fraudulently to defeat a prior deed, is a forged deed.

[C. C. R., 18 W. R. 73.]

Case stated by Hayes, J:—

The prisoners were indicted at the last Manchester Assizes under 24 & 25 Vict. c. 98, s. 20, for forging a deed with intent to defraud James Gardner. William Ritson was the father of Samuel Ritson, and prior to May, 1868, had been the owner in fee of certain building land, on the security of which he had borrowed of James Gardner more than £730 for which he had given him on the 16th of January, 1868, an equitable mortgage by written agreement and deposit of title deeds.

On the 5th May, 1868, William Ritson conveyed all his estate real and personal to a trustee for the benefit of his creditors, and on the 7th of May, 1868, there being then due to James Gardner from William Ritson a sum in excess of the value of the land, William Ritson and the trustee conveyed the land, in fee, to James Gardner, covenanting that they had good right to convey, except as appeared by the deed. The deed contained no mention of the deed which the prisoners were charged with forging.

James Gardner entered into possession of the land so conveyed to him, and about March, 1869, he employed William Ritson to erect some buildings on adjoining land, and permitted him to erect a shed on the land conveyed to him as aforesaid. He afterwards wished to have the shed removed, and upon Ritson's refusing to do so, removed it himself; Samuel Ritson thereupon brought an action of trespass against him, claiming under the deed charged as a forged deed.

This deed was dated the 12th of March, 1868, and purported to be a demise from William Ritson to Samuel Ritson for 999 years from the 25th March, then instant, of a large part of the frontage and most valuable part of the land which had been conveyed to James Gardner. It was executed by both the Ritsons, and professed to have been attested by a witness; but such witness was not called at the trial, nor was any evidence given as to the professional man by whom the deed was prepared. Although the deed was dated 12th March, 1868, it was proved by the stamp distributor who had issued this stamp, that it was not issued before the 7th of January, 1869, nor was the deed ever mentioned by the prisoners before that year.

It was contended on the part of the prosecutor that the deed was a forged deed, made after the prosecutor's conveyance, and ante-dated for the fraudulent purpose of over-reaching that conveyance, and so endeavouring to deprive the prosecutor of his estate under the said conveyance, and of a considerable part of the property for a long term, and leaving only a valueless reversion in him in such part of the property.

The counsel for the prisoners contended that the deed could not be a forgery, as it was really executed by the parties between whom it purported to be made, and that there was no modern authority in support of the doctrine contended for by the prosecution. He also contended that the prosecutor had obtained his conveyance by fraud, and that it was void against the prisoners, and if so, the lease would be rightfully made.

The jury found that there was no ground for imputing any fraud to the prosecutor with regard to his security and conveyance; and the learned judge having expressed an opinion in conformity with the authorities cited, on the part of the prosecution, informed the jury that if the alleged lease was executed after the prosecutor's conveyance, and ante-dated, with the purpose of defrauding him, it would be a forgery. The jury found both the prisoners guilty, and in pursuance of the request of the prisoners' counsel, the question whether the prisoners were properly convicted of forgery under the circumstances was reserved for the opinion of the Court for the consideration of Crown Cases reserved.

Torr for the prisoners.—There is no authority for holding this to be forgery, except the case of *Salway v. Wale*, Moore, 656, cited by Coke, 3rd Inst. p. 169. Coke there says:—"The statute of 1 Hen. 6 hath these words [forge of new any false deed] and yet if A. make a feoffment by deed to B. of certain lands, and after A. maketh a feoffment by deed to C. of the same land, with an ante-date before the feoffment to B, this was adjudged to be a forgery within that statute, and, by like reason, within this statute also" (5 Eliz. c. 14); "and the rather in respect of the words subsequent [or make, &c.]." But there are no such words in 24 & 25 Vict. c. 98, s. 20, upon which this indictment is framed. The section only applies, to "forging or altering," and what was done here did not amount to forgery, and came within no definition of that offence. [MARTIN, B.—It is defined in 2 East, P. C. 852, as "a false making of any written instrument for the purpose of fraud and deceit]. There is a distinction between a mere false statement and an instrument false in itself, and this