

sum of money due to said firm by Henry Sternberg. Another count sets up the same thing, with intent to defraud the creditors of the said Henry Sternberg generally, and also the said London firm. There is no allegation that H. Sternberg was insolvent, and that it was in contemplation of insolvency this secreting was carried out. On general principle I don't think it sufficient to allege a conspiracy with intent to defraud, and I don't think the accusation is made more complete by alleging that they did secrete with intent to defraud. We all of us secrete quantities of our property daily, and there is no harm in that. Can it be said that doing so with another person could make it a crime? I think not, and no case has been brought to my notice to support such a pretension.

It has been said that by our civil law it is unlawful to secrete with intent to defraud, and that therefore two or more persons doing so may be indicted for the conspiracy to do such a thing. This is an ingenious argument. It is, however, to be observed that the prohibition is to the secreting by the owner with intent to defraud. Again, this particular Act gives two remedies against the owner—the right to *capias* him and the right to attach his property. And lastly, these remedies can only be acquired on a special affidavit as to a reunion of circumstances of which we have no evidence here. The limits of conspiracy are tolerably vague, and much is left to the discretion of the judge, but I am not disposed to extend these limits so far as is sought to be done in this case, even though there is serious ground for supposing that fraud has been practised.

The jury was directed to acquit.
Archambault, Q. C., for the defendant.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, March 23, 1885.

Before RAMSAY, J.

THE QUEEN V. JOSHUA STANSFELD.

Indictment—Trustee fraudulently converting property.

1. In an indictment of a trustee for fraudulently converting property, it is sufficient to set out

that A "being a trustee" did, etc., instead of that A "was a trustee and being such trustee" did, etc.

2. It is not necessary to set out the trust in the indictment.

RAMSAY, J. This is a motion to quash an indictment under 32 and 33 Vic., c. 21, sect. 81. Trustees fraudulently converting property.

Two objections are taken to the indictment. The first is, that the indictment is not in positive terms. The words are "then being a trustee." The accepted form of criminal pleading is to lay every act directly in the indicative and not as it is called inferentially; thus instead of saying that, "—being a trustee did," it is usual to say that "—was a trustee," and being such trustee did, and so on.

After verdict, all objections of this sort are cured by the latter part of section 79, 32 and 33 Vic., cap. 29. But in addition to this, section 27 of the same act specially declares that the forms of indictment contained in schedule A to this act shall be sufficient, as respects the several offences to which they respectively relate; and as respects offences not mentioned in the schedule, the said forms shall serve as a guide to shew the manner in which the offences are to be charged, and the indictment is declared to be good if, in the opinion of the court, the prisoner will sustain no injury from its being held to be so, and the offence or offences intended to be charged by it can be understood from it. Turning to the schedule A, we find that the general form instructs the pleader to "describe the offence in the terms in which it is described in the law; or" etc. That has been done. Then in the special forms given in the schedule for "embezzlement," "offences against the habitation," and "bigamy," the present participle is used, precisely as in the indictment before us.

Lastly, it appears to me that, grammatically speaking, it is the same thing to say, that "A being a trustee did," and to say, that "A was a trustee, and so being such trustee did." If one is inferential so is the other. Further, I think the accused cannot suffer any injury by it; but that on the contrary the offence charged is more easily understood when