

# THE LEGAL NEWS.

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## SUPREME COURT OF CANADA.

Quebec.]

### McINTOSH V. THE QUEEN.

*Criminal appeal—Criminal Code, 1892, sec. 742—Undivided property of co-heirs—Fraudulent misappropriation—Unlawfully receiving—R. S. C. ch. 164, secs. 85, 83, 65.*

Where on a criminal trial, a motion for a reserved case made on two grounds is refused, and on appeal to the Court of Queen's Bench (Appeal side) that Court is unanimous in affirming the decision of the trial judge as to one of such grounds, but not as to the other, an appeal to the Supreme Court can only be based on the one as to which there was a dissent.

A conviction under sec. 85 of the Larceny Act, R. S. C., ch. 164, for unlawfully obtaining property, is good, though the prisoner, according to the evidence, might have been convicted of a criminal breach of trust under sec. 65.

A fraudulent appropriation by the principal and a fraudulent receiving by the accessory may take place at the same time and by the same act.

Two bills of indictment were presented against A. and B. under sections 85 and 83 of the Larceny Act.

By the first count each was charged with having unlawfully and with intent to defraud, taken and appropriated to his own use \$7,000 belonging to the heirs of C. so as to deprive them of their beneficiary interest in the same.

The second count charged B. (the appellant) with having unlawfully received the \$7,000, the property of the heirs, which