

agent made several attempts to put the machinery into good running order, but defendant claimed the condition was broken and returned the machine. Plaintiffs then sued for the price agreed on.

*Held*, affirming the Court below, that the condition of the sale was not satisfied by the putting in of the new spikes, but that plaintiffs were bound to put the machine into good running order, and that the appeal from the verdict of the County Court in favour of defendant should be dismissed with costs.

*Howell*, Q.C., for plaintiffs. *Pitblado*, for defendant.

Full Court.]

REGINA v. BUCHANAN.

[June 27.

*Criminal Code*, s. 645—*Criminal procedure—Interpretation Act*, R.S.C., c. 1, s. 7 (4)—“*Shall*”—*Initialling names of witnesses on indictment—That party assaulted consented to fight immaterial.*

*Held*, on a case reserved for the opinion of the Court,

(1) That the omission of the foreman of the Grand Jury to put his initials opposite the names of the Crown witnesses on the back of the bill of indictment, as required by s. 645 of the Criminal Code, 1892, is not fatal to the indictment, and that notwithstanding the language of the Interpretation Act, R.S.C., c. 1, s. 7 (4), the word “shall” in that provision is not imperative in the sense that a failure to observe the direction will invalidate the proceedings. *O’Connell v. The Queen*, 11 C. & F. 155; *Queen v. Townsend*, 28 N.S. 468, followed.

(2) That the crime of assault may be committed, although the party assaulted may have consented to fight. *Regina v. Coney*, 8 Q.B.D. 534, followed. Conviction affirmed.

Full Court.]

CASE v. BARTLETT.

[June 27.

*Registry Act*, R.S.M., c. 135, ss. 68, 69, 72—*Registered judgments—Unregistered prior charge—Priority—56 Vict. (M.), c. 17—57 Vict. (M.), c. 14.*

Appeal from the order of DUBUC, J. noted ante p. 281, dismissing a motion by holders of certain registered judgments against the Master’s order, making them subsequent incumbrancers in his office, and giving priority to the plaintiffs’ unregistered agreement for a lien or charge on the defendant’s land, for the price of machinery bought from the plaintiffs. The certificates of judgment had been registered after the execution and delivery of the machine agreement. By 56 Vict., c. 17, the document under which the plaintiffs claimed could not be registered, and by 57 Vict., c. 14, every document of the kind is made void as against any person claiming under a registered instrument, irrespective of any notice, actual or constructive.

*Held*, that notwithstanding these statutes and ss. 68, 69 and 72 of the Registry Act, the registration of the judgments bound only the interest or estate the debtor then had in the lands which was subject to the charge existing in favour of the plaintiffs, and that the Master was right in making the appellants subsequent incumbrancers. Appeal dismissed with costs.

*Mulock*, Q.C., for plaintiffs. *Howell*, Q.C., and *Mathers*, for judgment creditors.