

press Company, with orders not to give them up until the draft and expenses were paid, whereupon the goods were seized by the appellant in the hands of the company. On this Cowell intervened, and pleaded the facts already related. The Court below, by its judgment, declared that Cowell had a lien on the goods for the amount of the draft, costs of protest and travelling expenses, in all amounting to \$74.15. Mr. Kennedy now complains that he should not have been charged the \$11 for travelling expenses, and that, therefore, he has a right to have the judgment reversed with costs. We do not agree with Mr. Kennedy in his pretention, and without laying down any abstract principle of what expenses a man placed in Mr. Cowell's position by the misconduct of another may incur, we think the Court below has exercised a wise discretion in condemning Mr. Kennedy to pay this moderate charge before he can recover his goods, and we, therefore, confirm the judgment appealed from with costs.

E. Carter, Q. C., for Appellant.

Trenholme & MacLaren, for Respondent.

MONTREAL, Dec. 20, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

THE QUEEN v. SIR FRANCIS HINCKES.

Banking Act, 34 Vic. cap. 5 and 36 Vic. cap. 43—False and deceptive return—Classification of loans made to Bank—Demand Notes—When new trial will be ordered.

This was a case reserved by Mr. Justice Monk, in the Court of Queen's Bench, Crown side, after the conviction of the defendant (see p. 357 of this volume).

RAMSAY, J. The defendant was indicted under the Banking Act (34 Vic., cap. 5, and 36 Vic., cap. 43), for making a wilfully false and deceptive return, and convicted.

Section 13 of the 34 Vic. enacts that "monthly returns shall be made by the Bank to the Government in the following form, and shall be made up within the first ten days of each month, and shall exhibit the condition of the Bank on the last juridical day of the month preceding, and such monthly returns shall be signed by the President or Vice-President, or the Director (or, if the Bank be *en commandite*, the principal

partner), then acting as President, and by the Manager, Cashier or other principal officer of the Bank, at its chief seat of business. Then follows a form of return which is amended by the 36 Vic. The form in this last Act prescribes 11 headings under which the liabilities should be classified, and 18 headings under which the assets should be classified. Section 62 of the 34 Vic. proceeds to enact that "the making of any wilfully false or deceptive statement in any account, statement, return, report, or other document respecting the affairs of the Bank, shall, unless it amounts to a higher offence, be a misdemeanor, and any and every president, vice-president, director, principal partner *en commandite*, auditor, manager, cashier or other officer of the Bank preparing, signing, approving or concurring in such statement, return, report or document, or using the same with intent to deceive or mislead any party, shall be held to have wilfully made such false statement, and shall further be responsible for all damages sustained by such party in consequence thereof."

It will be at once observed that the gist of the offence consists in making a wilfully false or deceptive return. It is not, however, less clear that no return can be wilfully false or deceptive within the meaning of the Act if it gives all the information required by the statutory form. I would go a step further and say that if the officers of the Bank introduced a classification which, going beyond the statute, created distrust and panic likely to depreciate the value of the stock, they would be over-stepping the line of their duty, and it would not be difficult to suppose circumstances in which they might expose themselves to indictment for a false return, as being injurious to the standing of the Bank. In a word, the object of the law appears to me to be to oblige Banks not to give a statement to show their weakness, as has been said, but to give certain details of information as to their affairs. In the present case it is not pretended that there is any mis-statement as to the aggregate assets or liabilities of the Bank. The charge is that the statement is false in this, that there is an improper classification of the items. It must be apparent that such a charge must give rise to questions of extreme nicety, unless the statutory form be constructed with logical precision, to which, I fear, it has no claim. These difficulties at once presented themselves