

impeach any remedy at law or in equity, which any party aggrieved by any offence against this Act might have had if this Act had not been passed; . . . and nothing in this Act contained shall affect or prejudice any agreement entered into, or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated."

*Held*, affirming the judgment of the Supreme Court of British Columbia, that the class of trustees referred to in said Act were those guilty of misappropriation of property held upon express trusts.

*Semble*, that the section only covered agreements or securities given by the defaulting trustee himself.

*Quere*, is this Imperial Act in force in British Columbia? If in force it would not apply to a prosecution for an offence under R.S.C., c. 264 (the Larceny Act), s. 58.

An action was brought on a covenant given for the purpose of stifling a prosecution for the embezzlement of partnership property under R.S.C., c. 264, s. 58, which was not re-enacted by the Criminal Code, 1892.

*Held*, that the alleged criminal act having been committed before the Code came into force, was not affected by its provisions and the covenant was illegal at common law. Further, the partnership property not having been held on an express trust, the civil remedy was not preserved by the Imperial Act. Appeal dismissed with costs.

*Robinson*, Q.C., for appellant. *Chrysler*, Q.C., for respondent.

Ont.]

MAKINS v. PIGGOTT.

[Nov. 21, 1898.]

*Negligence—Use of dangerous material—Evidence—Trespass.*

Work on the construction of a railway was going on near the unused part of a public cemetery, in connection with which were used detonating caps containing fulminate. M., a boy of fifteen years of age, in passing through the cemetery with some companions, found some of these caps lying about on the bank above the works, in front of a tool-box used by one of the gangs of workmen, and put them in his pocket. Later on the same day he was scratching the fulminate end of one of them with a stick when it exploded and injured his hand. On the trial, on an action against the contractors for damages, there was no direct evidence as to how the caps came to be where they were found, but it was proved that when a blast was about to take place that the workmen would hurriedly place any explosives they might have in their possession under their tool-box, and then run away. It also was proved that caps of the same kind were kept in the tool-box near which those in question were found by M., and were taken out and put back by the workmen as occasion might require.

*Held*, reversing the judgment of the Court of Appeal, that in the absence of evidence of circumstances leading to a different conclusion, the act of