

the consent of the accused, and not upon summary complaint, under the summary conviction procedure, and sections 864, 865 and 866 do not apply, but section 799, which does not bar a civil action. *Flick v. Brisbin*, 26 O. R. 423 distinguished. Appeal dismissed with costs.

W. R. Riddell for defendant.

Mulvey for plaintiff.

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ARMOUR, C.J. } [Oct. 7.  
FALCONBRIDGE, J. }  
STREET, J. }

SMITH v. McARTHUR.

*Chattel Mortgage—Preference—Pressure.*

Appeal by Louise Warner, the claimant, under a chattel mortgage in an interpleader issue from the judgment of the Fifth Division Court in the County of Victoria, in favour of the plaintiffs, the execution creditors, upon the trial of the issue.

Held that if the chattel mortgage were made for a pre-existing debt, and when the mortgagor was in insolvent circumstances to the knowledge of the mortgagee, still the mortgage was not on that account invalid, if made under pressure. *Beattie v. Wenger*, 24 A.R., 72, and cases there cited. Appeal allowed with costs, and judgment directed for claimant in court below, with costs.

Watson, Q.C.; and A. C. McMaster, for claimant.

Hopkins (Lindsay) and J. Parkes for execution creditors.

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ROSE, J. } [Oct. 6.

GOFF v. STROHM.

*Legacy—Payable When 24—Vesting at 21.*

Motion for payment out of court to Mary Ethel Goff of her share of moneys paid in by the executors of the will of Joseph Goff, deceased, she having attained the age of 21

years, and the moneys representing the amount of a legacy given to her by the will in the following words:—“I give, devise, and bequeath to Mary Ethel Goff, daughter of George Goff, two hundred dollars and interest, to be paid on her 24th birthday, said amount to be placed in the Bank of Commerce, Simcoe.”

Held, following *re Young's Settlement*, 18 Beav., 199, and *Curtis v. Lukin*, 5 Beav., 147, that applicant was entitled to the money on her attaining the age of twenty-one, the legacy having vested, notwithstanding the provision as to payment on her 24th birthday. Order made for the payment out of court as asked.

H. M. Mowat for applicant.

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BOYD, C. } [Oct. 6.  
FERGUSON, J. }  
MEREDITH, J. }

THE QUEEN v. HAMILTON.

*Criminal Law—Attempt—Evidence of Principal Offence.*

Application by defendants, under section 746 of the Criminal Code, for leave to appeal from a conviction upon an indictment for abortion, or an attempt to commit such offence. The defendants were found guilty of the lesser offence. The Attorney-General gave a fiat for the initiation of the appeal, and did not oppose this application. The defendants contended there was no evidence to support a conviction for an attempt, apart from the evidence showing the greater offence, and as the jury apparently did not believe the evidence given to support the charge of abortion, the defendants should be discharged, or there should be a new trial. The court held that, as there was evidence to show the commission of the offence, the jury might believe a portion of it and properly convict for the lesser offence. Motion refused.

Osler, Q.C., and W. D. McPherson for defendants.