judgment of the Court of Queen's Bench, that the condition precedent on which the promise of sale was made not having been complied with within the time specified in the contract, the contract and the law placed the plaintiff *en demeure*, and there was no necessity for any demand, the necessity for a demand being inconsistent with the terms of the contract, which immediately on the failure of the performance of the condition *ipso facto* changed the relation of the parties from vendor and vendee to lessor and lessee.

Judgment of Q. B. reversed.

Doutre, Joseph & Dandurand for Appellant.
Davidson & Cross for Respondent.
R. Laflamme, Q.C., counsel.

SUPREME COURT OF CANADA.

OTTAWA, April 19, 1883.

Before RITCHIE, C.J., STRONG, FOURNIER, HENRY, TASCHEREAU and GWYNNE, JJ.

HARRINGTON et al. (defts. *en gar.*), Appellants, and CORSE (plff. *en gar.*), Respondent. (9 S.C. Rep. Can. 412.)

Will, Construction of—C.C. 899—Liability of universal legatee for hypothec on immoveables bequeathed to a particular legatee.

The appeal was from a judgment of the Court of Queen's Bench, Montreal, reported in 6 L.N. 148; 27 L.C.J. 79.

On the 30th April, 1869, S. being indebted to P. in the sum of $3,000, granted a hypothec on certain real estate which he owned in the city of Montreal. On the 28th June, 1870, S. made his will, in which the following clause is to be found: "That all my just "debts, funeral and testamentary expenses "be paid by my executors hereinafter named "as soon as possible after my death." By another clause he left to H. in usufruct, and to his children in property, the said immoveables which had been hypothecated to secure the said debt of $3,000. In 1879, S. died, and a suit was brought against the representative of his estate to recover the sum of $3,000 and interest.

The Supreme Court held (Strong, J., dissenting), reversing the judgment of the Court of Queen's Bench: That the direction by the testator to pay all his debts included the debt of $3,000 secured by the hypothec.

Per FOURNIER, TASCHEREAU, and GWYNNE, JJ.: When a testator does not expressly direct a particular legatee to discharge a hypothec on an immoveable devised to him, Art. 889 of the C.C. does not bear the interpretation that such particular legatee is liable for the payment of such hypothecary debt without recourse against the heir or universal legatee.

Judgment of Q.B. reversed.

Doutre & Joseph for Appellant.
S. Bethune, Q.C., and *Robertson, Q.C.*, for Respondent.

HIGH COURT OF JUSTICE.

[Crown Case Reserved.]

Nov. 29, 1884.

REGINA v. WELLARD.

Nuisance—Indecent Exposure—Public Place.

Case stated by the chairman of the Kent Quarter sessions.

The prisoner was convicted of the misdemeanour of indecently exposing his person to divers liege subjects of the Queen in a certain open and public place. The evidence showed that in the middle of the day the prisoner induced seven or eight little girls to go with him along a public footpath, and, after some distance, to turn off the footpath on to a place called the Marsh. Here the prisoner lay down out of sight of the footpath and committed the offence. When the prisoner and the girls turned off from the footpath they were, legally speaking, trespassing; but all persons who desired to do so were in the habit of going on to the Marsh, and no one interfered with them.

F. J. Smith, for the prisoner, contended that the Marsh was not at law a public place, and that the offence charged could not be committed on private property unless in view of persons in some public place and as of right.

No counsel appeared for the prosecution.

THE COURT (LORD COLERIDGE, C. J., GROVE, J., HUDDLESTON, B., MANISTY, J., and MATHEW, J.) affirmed the conviction, holding that to constitute the offence charged it was not necessary that it should be committed in a place to which the public were admitted to have access as of right.

Conviction affirmed.