said defendant with his deceased wife, Dame Elizabeth Schoyer, had to renounce to all the rights which she might have upon the thereby hypothecated lots of land, one of which had been acquired by defendant during his said marriage. Furthermore, he was advised by Mr. Cramp, advocate, about one year before obtaining the loan from Mr. Burland, that a community of property had existed between him and his late wife; and thereupon he gave in his own handwriting the name of Mrs. Kilby as the sole representative of his late wife and of his late son Alfred, to the Sun Insurance Company, from whom Mrs. Kilby was then obtaining a loan.

Now, at the last hour, it turns out that the late Mrs. Judah had made her will in due form of law before a notary, by which she bequeathed the usufruct and enjoyment of all her property to her husband, the defendant, during his lifetime, and after his death the usufruct and enjoyment of the same to her children during their lifetime, and after their death the right of property to her grandchildren. This will, which was made in the defendant's own office, seems to have been entirely ignored since, never was registered, and only came to light recently, having been filed in this cause by the complainant.

Its dispositions may explain perhaps why it has been left so long in oblivion. One thing is certain, however, if it had been disclosed to Mr. Burland, this gentleman would never have parted with his money, not even with Mrs. Kilby's intervention, because by the will it appears that she is not proprietor at all.

The case of *Rex* v. *Codrington* decided in England in the year 1825 has been cited as a precedent governing the present case. In that case it was held "that where the prisoner sold to the prosecutor a reversionary interest which he had previously sold to another, and the prosecutor took a regular assignment of it with the usual covenant for title, the prisoner could not be convicted for obtaining money by false pretences." There may have existed some circumstances to justify this decision, which do not appear in the report, but I must say that as it is, it seems to be rather a peculiar one. At all events it has been over-ruled, rightly I believe, in several more recent cases and particularly in the case of *Reg.* v. *Meakin*, reported in 11 Cox, p. 270. And if it had not been over-ruled I should certainly not take it upon myself, as examining magistrate, to be guided by that ruling. I readily admit that a mere defect in a deed or in a title, or an exaggeration of the value of real property could not bring the mortgages under the operation of the statute concerning false pretences. The recent decision of the Court of Queen's Bench, Montreal, in the case of *Reg.* v. *Brien dit Durocher* upheld that view. But here there is no question of defective title or exaggeration of value, there is an absolute want of title. The defendant says: I own that property, meaning all that property, whilst in truth he only owns five-eighths, and on that assertion he obtains the money. Is that not obtaining by false pretences? And if there could be a doubt whether this amounts to false pretences, there remains the following section of the consolidated statutes of Lower Canada, cap. 37, which cannot be got over: "114. Whoever pretends to hypothecate any real estate to which he has no legal title, shall be guilty of a misdemeanor, and being convicted, shall be imprisoned for a period not exceeding twelve months, and to a fine not exceeding one hundred dollars, and the proof of the ownership of the real estate shall rest with the person so pretending to hypothecate the same."

The strongest contention of the defendant's counsel at the argument was that whilst the complainant presses this charge of false pretences against the defendant, he at the same time contests in the civil court the right of Mrs. Kilby to the property seized, showing thereby inconsistency on his part. If Mr. Burland is right in his pretension in the civil court that the mortgage and the seizure are good, then he cannot claim that there were false pretences used.

I adopted this view to a certain extent and suspended my examination until such time as the civil court would have decided the question in the first instance. There was nothing new in this, a similar course had been followed by magistrates before, though not very frequently, both in England and in