

## Province of Manitoba.

### KING'S BENCH.

Full Court.]

THE KING v. HURST.

[Dec. 21, 1901.

*Criminal Code, 1892, ss. 354, 611—Indictment—Date of commission of offence—Evidence of similar acts at other times—Judge's charge—Fraudulent removal of goods.*

The accused were convicted by the jury at the trial on a count for concealing certain household goods for the purpose of defrauding the insurance company by which they had been insured by representing that they had been destroyed by fire and collecting the insurance money upon them, also on a count which alleged a removal of said goods on or about the 11th day of September, 1900, for a like fraudulent purpose. Both counts were framed under 354 of the Criminal Code, 1892. Evidence was given at the trial shewing the removal of some of the goods in question on the 13th of August and of others on the 11th of September, 1900, and in his charge to the jury the learned judge did not distinguish between the goods removed August 13 and those removed Sept. 11 but left the case to them in such a way that they could convict on both counts or on either of them as to both sets of goods. At the request of the accused the judge reserved for the opinion of the Full Court the following questions: 1. Could the accused be convicted of the offences charged in respect of the goods removed on the 13th of August, 1900? 2. Could the accused be so convicted in respect of the goods removed Sept. 11, 1900? And in stating the case he certified that in his opinion the evidence of the removal of goods Aug. 13, 1900, materially influenced the verdict of the jury.

*Held*, that the conviction of the accused on the count for concealment of goods was right and should be affirmed, but that, although the evidence of the removal in August was probably admissible for the purpose of shewing a criminal intent in the removal in September, yet the conviction for the removal should be set aside on the ground of misdirection by the judge in his charge to the jury in telling them that they could convict for the removal in August.

BAIN, J., in giving the judgment of the court quoted the provisions of s. 611 of the Code and proceeded: "Now here it would seem that, while the count identified the offence which the accused were called upon to meet as having occurred Sept. 11, at the trial they were called on to meet another distinct charge of an offence which, it was alleged, they had committed Aug. 13, and the same count was thus made to apply to two separate transactions. The result could hardly be otherwise than that the prisoners were placed at a disadvantage on the trial of this count, and, as regards this count, I think there may not have been a fair trial. I think, there-