

Ont. Rep.]

IN RE CRONK—REGINA v. BERTHE.

[Que. Rep.

is now alleged, the insolvent owed her for either principal or interest.

The claimant says she does not claim the whole \$800, because the \$258 paid the daughter was to be deducted out of it, so that that would leave a balance due and claimed by her of \$542 and interest. I may say with regard to that, that I think the claim a just one, inasmuch as the debt was plainly secured to her, and she parted with her interest in the estate, upon which it was secured, on the distinct understanding and contract on the part of her husband, that the insolvent was to procure her another house in lieu of such security. The purpose for which she parted with her interest in the real estate was to make it appear that he was the sole owner of it, whatever his personal liabilities in respect to the change of title might be; and, as I have no doubt that the Court of Chancery would have, on a bill filed for the purpose, had the insolvent been in a position to carry out the arrangement, ordered the husband to have satisfied the balance due her by the purchase of another property (see *Ex parte Pyke v. Gleaves*, 7 L. T. N. S. 46), I think I am justified in deciding this contestation as to the said sum of \$542 and interest due thereon in favour of the claimant.

I therefore find that there was and is due to the claimant for principal the sum of \$542, and for interest for six years, \$195, making together the sum of \$737, for which sum I order the said claimant to be colloated on the said estate as a creditor thereof.

And lastly, I order the costs of the said contestation to be paid by the contestant out of the said estate, after taxation.

QUEBEC.

QUEEN'S BENCH.

REGINA v. BERTHE.

Indictment—Setting fire maliciously to manufactured lumber—22-23 Vic. c. 22, s. 11.

[July Term, 1880.

The prisoner Berthé was indicted for having, "at the township of Wright, feloniously, unlawfully, and maliciously set fire

"to a certain quantity of manufactured lumber, to wit, three thousand shingles and nineteen piles of boards," and the indictments against the other prisoners, after setting forth that Berthé had set fire to the lumber in question, charged them with having aided and abetted Berthé in so doing.

Aylan and *Foran*, for Berthé, upon his arraignment, moved to quash the indictment on the ground that it did not allege that the setting fire was done "so as to injure or to destroy" the lumber in question;—32-33 Vic. c. 22, s. 11 (Ca).

Fleming, for the Crown, and *Gordon*, for the private prosecution urged that if the indictment were insufficient under s. 11, it was valid under s. 21, which makes the setting fire to "any stack of corn . . . any steer or pile of wood or bark" a felony.

The defence replied that s. 21 applied only to firewood or wood in an unmanufactured condition.

BOURGEOIS, J. I have given much thought to the points raised by the defence. The indictment is assailed on several grounds, but more especially because it is not averred that the setting of the fire injured or destroyed the lumber. A party charged with a statutory offence has a right to see that every ingredient of the offence is stated. No matter how grievous the charge, no one should be held to answer an indictment which sets forth no crime. It has been urged that the accused should be put upon his trial, and be left his recourse in error; but this would be most unfair, and where there is a material irregularity, the Court will even stop the trial after evidence has been put in. The charge cannot evidently be sustained under sec. 11. It was suggested by the Crown that it might be upheld under sec. 12, and this shows the unfairness of the pretensions of the prosecution. How can the accused know what to plead when the accuser is ignorant or doubtful of the charge he intends to prefer? No attempt is set out, so that sec. 12 cannot be relied on. The argument that the prisoner may be held under sec. 21 is plausible. The perusal of that section, however, shows that it cannot be held to apply to manufactured lumber. "Wood"