view. In the case of the *United States* v. *Mann*, quoted in a note to Potter's Dwarris, p. 157, the reservation was for *suits for penalties and forfeitures*, and this was held not to include a prosecution for an offence punishable by fine and imprisonment. In a case reported, 7 Wheat. p. 551, decided by Chief Justice Marshall, whose opinion is entitled to the highest consideration, from the brevity of the report it is somewhat difficult to seize the distinction. It seems, however, that a temporary Act was passed, and before it expired by limitation, it was repealed, and the Court held "that an offence against a temporary Act, committed after the time it would have ceased to have force of law, cannot be punished after the expiration of the Act, unless a particular provision be made by law for the purpose," and that a proviso in the following words was not sufficient: "Provided, nevertheless, that persons having offended against any of the Acts aforesaid may be prosecuted, convicted and punished as if the same were not repealed, and no forfeiture heretofore incurred by a violation of any of the Acts aforesaid shall be affected by such appeal. "The obvious construction of this clause," said Chief Justice Marshall, "is that the power to prosecute, convict and punish offenders against either of the repealed Acts, remains as if the repealing Act had never been passed. It does not create a power to punish, but preserves that which before existed."

I think, therefore, that the indictment must be quashed, because the proviso is not practically applicable to this criminal prosecution. *Being of this opinion, it becomes unnecessary to examine the other objections taken.

The same objection, of course, applies to indictments Nos. 32 and 33, which are also quashed.

*Geoffrion* for the private prosecutor.

*W. H. Kerr, Q.C.*, for the defendant.

---

## COURT OF QUEEN'S BENCH.

[APPEAL SIDE.]

MONTREAL, Feb. 3, 1880.

SIR A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

LEDUC (plff. below), Appellant; and THE WESTERN ASSURANCE Co. (defts. below), Respondents.

*Insurance (Marine)—Seaworthiness—Burden of Proof—Proof made by statement and protest of Master and adopted by the insured.*

The action claimed $1000, insurance on freight in a certain schooner called *Providence*, for a voyage "from Mingan, on the north shore, to Recollect, *via* Cow Bay, Cape Breton, $500, and from Port Recollect to Montreal $500." The alleged loss took place after leaving Cow Bay.

The defence was that the vessel was unseaworthy at the time the policy attached, that is, before leaving Mingan.

It appeared that the schooner left Montreal, in the spring of 1868, with a cargo of flour, &c., which was discharged at Mingan, and thence the vessel proceeded to Cow-Bay where it was loaded with a cargo of coal. After leaving Cow Bay, the vessel was found to be sinking, and it put into Sydney, but after repairs there it was still unseaworthy, and vessel and cargo were subsequently lost.

The judgment of the Court below, (BELANGER, J.) dismissed the action for the following reasons:—

"Considérant que pour avoir droit d'action contre la défenderesse pour le montant de la police d'assurance émanée en sa faveur le 22 Juin 1868, par la défenderesse, sur le fret de la goélette *Providence* depuis le port de Mingan, jusqu'à Montréal, en passant par Cow-Bay et le Port Recollet *alias* Regollet; et ce, à raison de la perte du dit vaisseau, dans le golfe St. Laurent, le 31 Août 1868: ainsi que le dit montant ($1000) est réclamé dans et par son action en cette cause, le dit demandeur était tenu, par et en vertu de la dite police, de fournir préliminaires

---

* At the argument, the attention of the Court was not directed to the Interpretation Act of 1867 (31 Vic., Cap. 1, Sec. 7, 37thly), in which this disposition exists: "No offence committed and no penalty or forfeiture incurred, and no proceeding pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable, when necessary, to the repealing Act, and that, where any penalty, forfeiture or punishment shall have been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal." It is evident that this statute does not cover the case decided by the Court; but it would seem to furnish ground for allowing an amendment of the indictment to make it "conformable to the repealing Act," if such amendment had been asked for. See Thirty-fifthly.