

ages, although general evidence of reputation may perhaps be admissible.

*Wallace Nesbitt and W. M. Douglas* for the plaintiff.

*Shepley*, for the defendant.

### Chancery Division.

Divisional Court.]

[Sept. 22.

REGINA v. LOGAN.

*Conviction—R. S. C. c. 158, s. 6—Distress for the penalty—R. S. C. c. 178, ss. 87, 88.*

A conviction under R. S. C. c. 158, s. 6, was quashed, because it provided for distress in default of payment of the fine.

*Held*, also, that as the extreme penalty for the offence was imposed, the irregularity in the conviction in the provision for distress was not cured under R. S. C. c. 178, ss. 87, 88.

*Regina v. Sparham*, 8 O. R. 580, approved of.

*McMichael*, Q.C., and *Osler*, Q.C., for the motion.

*Shepley and Badgerow*, contra.

Boyd, C.]

[Oct 6.

MCLEOD v. AVEY.

*Second mortgagee taking timber.—Right of first mortgagee to make him account on security proving insufficient to satisfy his claim.*

The court will not restrain a mortgagor in possession, or any one claiming under him, at the suit of a mortgagee, from cutting standing timber, unless it is proved that the acts complained of are likely to render the security scanty.

The defendant F., being a second mortgagee, entered into possession of the mortgaged premises, and cut down and sold timber thereon. In an action by the first mortgagee to realize the amount due him in which the lands were sold, but did not realize enough to pay his claim, it was

*Held*, that a reference should be directed to ascertain the value of the timber sold by F., and that he must account therefor.

The remedy is not limited to a mere prevention of the mischief by way of injunction ;

if the security falls short of satisfying the first mortgagee's claim, he can pursue the other, and make him account, by way of damages, for injury done to the property.

*Brown v. Sage*, 11 Gr. 239, referred to.

*C. J. Holman*, for the plaintiff.

*Moss*, Q.C., contra.

Boyd, C.]

[Oct. 16.

THE LONDON AND CANADIAN LOAN AND AGENCY CO. v. GRAHAM.

*Acquisition and retention of land by Co.—Sale within certain time—Sale not carried out—Power to re-sell—Recital of facts in deed to subsequent purchaser.*

A loan company which, by the terms of its charter, was bound "to sell any real estate acquired in satisfaction of any debt within five years after it shall have fallen to them." acquired certain land from a mortgagor by quit claim deed, dated Oct. 21, 1878, in which was contained a provision against the merge of the debt in the estate acquired by agreement, dated August 23, 1882, the company sold to a purchaser, who went into possession ; but, on default by the purchaser in the terms of the agreement, the company had to resume the property.

In a suit to compel the defendant, a subsequent purchaser, to carry out a purchase, who objected to the title on the ground that the company had not sold the land within five years, and that a release should be obtained from the former purchaser and registered, it was

*Held*, that giving the liberal construction against forfeiture, which is a principle of statutory construction in cases like this, any *bona fide* sale was enough, though it fell short of conveyance, to prevent a forfeiture—a sale not carried out through the default of the purchaser, is such a transaction as satisfied the statute—and that, as by the contract, any default left the company at liberty to determine the agreement, and as power to re-sell is a term of any contract respecting the sale of lands, it was competent to the company to sell to the defendant.

*Held*, also, that no necessity existed for obtaining a release from the former purchaser, and that as a matter of conveyance, and for