expressed in the former simple language rather than in the latter involved way.

The second objection is that the trust is not set forth. What has been said with regard to the general form is equally applicable to this objection, and in practice in England, it seems, it is not usual to set out the trust. Even where the trust is created by an instrument in writing it would be sufficient to describe it by its usual name or by its designation. Sect. 24, 32 and 33 Vic., c. 29.

The defendant will therefore take nothing by his motion.

Davidson, *Q. C.*, for the Crown.
Kerr, *Q. C.*, for the defendant.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, March 1885.

Before RAMSAY, J.

THE QUEEN V. JUDAH.

False Pretence—Warranty in deed.

A clause of a deed by which the borrower of a sum of money falsely declares a property well and truly to belong to him may constitute a false pretence.

The defendant was charged with having obtained $25,000 by false pretences. See 7 Legal News, pp. 371, 385, 396.

The evidence establishes that defendant wished to pay off an hypothec on certain real estate, and applied to a broker to procure him the money on the same security as the hypothecary claim to be paid off. The broker opened communications with the complainant, and finally it was agreed that if the titles were satisfactory, complainant would furnish the money. The name of the defendant was then furnished, and the complainant left the termination of the affair in the hands of a notary, with verbal instructions that the money, which he paid over to the notary, should not be delivered to the defendant except in payment of the hypothecs on the property. The defendant agreed to all this, and went to the notary's office and signed the deed, which contained in printed form, after describing the property to be hypothecated, this unusual warranty: "Which "he declares well and truly to belong to him, "and to be free and clear of all hypothecs "and incumbrances whatsoever." In fact this statement was untrue. To defendant's knowledge, two-thirds belonged to his daughter, as heir of her mother, who had been *commune en biens* with defendant and of her only brother deceased since the mother's death.

The notary being examined as a witness said, that after signing the deed, defendant "said there were some pretty strong clauses in the deed, pointing to the clause referred to and read by Mr. Burland in his evidence. He said the property belonged to him, and he said that he knew of no other encumbrances or mortgages on the property, except the three mortgages which I was to discharge, viz., Chadwick, the Seminary and the Nuns mortgages. He said he would not like to sign anything that would put him in jail. I then said to him, is the property not all clear, except above mentioned mortgages? The defendant answered yes. I then said he could sign without fear." The notary further swore that he would not have given the money without the assurance from the defendant, that the property was his. He also established that the money was applied to the discharge of defendant's indebtedness, as it was understood it should be applied.

In cross-examination it was shown that the notary not only had the titles but that he had been guided, to some extent, by a legal opinion he found among the papers, and in which it was declared that the title was satisfactory.

In the cross-examination of Mr. Withers, the financial agent through whom the loan was effected, a witness produced by the prosecution, it was established that loans on the mortgage of real estate were never made on the assurances of the borrower, but on the report of a lawyer or notary, or both.

It was established that the defendant knew of the defect in his title, which was not apparent either by the deeds themselves or by registration, for that the matter had twice since 1874 been brought to his notice.

The case for the crown being closed, the defendant, who conducted his own defence, moved the Court to direct the jury to acquit, there being no false pretence proved but only