a place called *Dendera,* Thebes has been celebrated by Homer for its hundred gates ; but Mr Bruce informs us, that no veſtiges of theſe are now remaining, neither can we discover the foundation of any wall it ever had; “ and as for the horsemen and chariots it is ſaid to have ſent out, all the Thebald town with wheat would not have maintained one half of them. @@ Thebes, at leaſt the ruins of the temples called *Medinet Tabu,* are built in a long ſtretch of about a mile broad, moſt parſimoniouſly choſen at the ſandy foot of the mountains. The *Horti Pensiles,* or hanging gardens, were ſurely formed upon the ſides of theſe hills, then supplied with water with mechanical devices. The utmoſt is done to ſpare the plain, and with great reaſon ; for all the ſpace of ground this ancient city has had to maintain its my­riads of horſes and men, is a plain of three quarters of a mile broad between the town and the river, upon which plain the water rises to the height of four and five feet. All this pretended populouſneſs of ancient Thebes I therefore believe to be fabulous.”

Mr Bruce, after examining the ground on which Thebes is ſuppoſed to have stood, thinks that it had no walls, and that conſequently Homer’s ſtory of its having an hundred gates is miſunderſtood. The mountains of the Thebaid ſtand cloſe behind the town, not in a ridge, but ſtanding single, ſo that you can go round each of them. A hundred of theſe are ſaid to be hollowed out for ſepulchres and other purpoſes. Theſe, he thinks, were the hundred gates of Homer ; in proof of this they are ſtill called by the natives *Beeban el Meluke,* “ the ports or gates of the kings.”

All that is said of Thebes by poets or hiſtorians after the days of Homer is meant of Diolpolis, which was built by the Greeks long after Thebes was deſtroyed, as its name teſtifies ; though Diodorus ſays it was built by Buſiris. It was on the eaſt side of the Nile, whereas ancient Thebes was on the west, though both are conſidered as one city ; and Strabo ſays, that the river runs through the middle of Thebes, by which he means between Old Thebes and Dioſpolis.

THEFT, or simple larceny, is “ the felonious taking and carrying away of the personal goods of another.’ This offence certainly commenced then, whenever it was that the bounds of property, or laws of *meum* and *tuum,* were eſta­bliſhed. How far ſuch an offence can exiſt in a ſtate of na­ture, where all things are held to be common, is a queſtion that may be ſolved with very little difficulty. The diſturbance of any individual in the occupation of what he has ſeized to his preſent uſe, ſeems to be the only offence of this kind incident to ſuch a ſtate. But, unqueſtionably, in fa­cial communities, when property is eſtabliſhed, any violation of that property is ſubject to be puniſhed by the laws of ſociety ; though how far that puniſhment ſhould extend is matter of considerable doubt.

By the Jewiſh law it was only puniſhed with a pecuniary fine, and ſatisfaction to the party injured ; and in the civil law, till ſome very late conſtitutions, we never find the pu­niſhment capital. The laws of Draco at Athens puniſhed it with death: but his laws were said to be written with blood; and Solon afterwards changed the penalty to a pecuniary mulct. And so the Attic laws in general continued ; ex­cept that once, in a time of dearth, it was made capital to break into a garden and ſteal figs: but this law, and the in­formers againſt the offence, grew ſo odious, that from them all malicious informers were ſtyled sycophants; a name which we have much perverted from its original meaning. From theſe examples, as well as the reason of the thing, many learned and ſcrupulous men have queſtioned the propriety, if not lawfulneſs, of inflicting capital puniſhment for ſimple theft. And certainly the natural puniſhment ſor injuries to property ſeems to be the loſe of the offender’s own proper­ty ; which ought to be universally the caſe, were all mens fortunes equal. But as thoſe who have no property them­ſelves are generally the moſt ready to attack the property of others, it has been found neceſſary, inſtead of a pecuniary, to ſubſtitute a corporal puniſhment ; yet how far this cor­poral puniſhment ought to extend, is what has occaſioned the doubt. Sir Thomas More and the Marquis Beccaria, at the diſtance of more than two centuries, have very ſenſibly propoſed that kind of corporal puniſhment which ap­proaches the neareſt to a pecuniary ſatisfaction, viz. a tem­porary imprisonment, with an obligation to labour, firſt for the party robbed, and afterwards for the public, in works of the moſt ſlaviſh kind ; in order to oblige the offender to re­pair, by his induſtry and diligence, the depredations he has committed upon private property and public order. But, notwithſtanding all the remonſtrances of ſpeculative politi­cians and moraliſts, the puniſhment of theft ſtill continues throughout the greateſt part of Europe to be capital : and Puffendorf, together with Sir Matthew Hale, are of opi­nion that this muſt always be referred to the prudence of the legiſlature ; who are to judge, ſay they, when crimes are become ſo enormous as to require ſuch ſanguinary restrictions. Yet both theſe writers agree, that ſuch puniſh­ment ſhould be cautiouſly inflicted, and never without the utmoſt neceſſity.

The Anglo Saxon laws nominally puniſhed theft with death, if above the value of twelvepence : but the cri­minal was permitted to redeem his life by a pecuniary raniom ; as, among their anceſtors the Germans, by a stated number of cattle. But in the 9th year of Henry I. this power of redemption was taken away, and all perſons guilty of larceny above the value of twelvepence were directed to be hanged ; which law continues in force to this day. For though the inferior ſpecies of theft, or petit larceny, is only puniſhed by whipping at common law, or (by flat. 4 Geo. I. c. 11.) may be extended to transportation for ſeven years, as is alſo expreſsly directed in the case of the Plate-glaſs Com­pany ; yet the puniſhment of grand larceny, or the ſtealing above the value of twelvepence (which ſum was the ſtandard in the time of king Athelſtan, 800 years ago), is at com­mon law regularly death : which, considering the great in termediate alteration in the price or denomination of mo­ney, is undoubtedly a very rigorous conſtitution ; and made Sir Henry Spelman (above a century since, when money was at twice its preſent rate) complain, that while every thing else was riſen in its nominal value, and become dearer, the life of man had continually grown cheaper. It is true, that the mercy of juries will often make them ſtrain a point, and bring in larceny to be under the value of twelvepence, when it is really of much greater value : but this, though evidently juſtifiable and proper when it only reduces the pre­ſent nominal value of money to the ancient ſtandard, is otherwise a kind of pious perjury, and does not at all excuse our common law in this respect from the imputation of ſeverity, but rather ſtrongly confeſſes the charge. It is likewiſe true, that by the merciful extenſions of the benefit of clergy by our modern ſtatute law, a perſon who commits a ſimple lar­ceny to the value of thirteen pence or thirteen hundred pounds, though guilty of a capital offence, ſhall be excuſed the pains of death ; but this is only for the firſt offence. And in many cases of ſimple larceny the benefit of clergy is taken away by ſtatute; as from horse-ſtealing in the prin­cipals and acceſſories both *before* and *after* the fact ; theft by great and notorious thieves in Northumberland and Cum­berland ; taking woollen cloth from off the tenters, or li­nens, fuſtians, calicoes, or cotton goods, from the place of manufacture (which extends, in the laſt caſe, to aiders, aſ-

@@@[mu] Bruce's Travels.