Cases Reserved, 38, the prisoner, a depositor in a post-office savings bank, received by the mistake of the clerk a larger sum than he was entitled to. The jury found that he had the *animus furandi* at the time of taking the money, and that he knew it to be the money of the postmaster-general. The majority of the court held it to be larceny. In a case in 1885 (Reg. *v.* Ashwell, *Law Rep.,* 16 Queen’s Bench Division, 190), where the prosecutor gave the prisoner a sovereign believing it to be a shilling, and the prisoner took it under that belief, but afterwards discovered its value and retained it, the court was equally divided as to whether the prisoner was guilty of larceny at common law, but held that he was not guilty of larceny as a bailee. The procedure in prosecutions for larceny has been considerably affected by recent legislation. The incon­veniences of the common-law rules of interpretation of indictments led to certain amendments of the law, now contained in the Larceny Act, for the purpose of avoiding the frequent failures of justice owing to the strictness with which indictments were construed. Three larcenies of property of the same person within six months may now be charged in one indictment. On an indictment for larceny the prisoner may be found guilty of embezzlement, and *vice versa* ; and if the prisoner be indicted for obtaining goods by false pretences, and the offence turn out to be larceny, he is not entitled to be acquitted of the misdemeanour. A count for receiv­ing may be joined with the count for stealing. In many cases it is unnecessary to allege or prove ownership of the property the sub­ject of the indictment. The Act also contains numerous provisions as to venue and the apprehension of offenders. In another direc­tion the powers of courts of Summary Jurisdiction (*q.v.*) have been extended, in the case of charges of larceny, embezzlement, and receiving stolen goods, against children and young persons and against adults pleading guilty or waiving their right to trial by jury. The maximum punishment for larceny is fourteen years’ penal servitude, but this can only be inflicted in certain exceptional cases, such as horse or cattle stealing and larceny by a servant or a person in the service of the crown or the police. The extreme punishment for simple larceny after a previous conviction for felony is ten years’ penal servitude. Whipping may be part of the sen­tence on boys under sixteen.

*Robbery* is larceny accompanied by violence or threatened violence. Whether obtaining money by threats to accuse of crime was robbery at common law was open to some doubt. It is now a specific offence under the Larceny Act, punishable by penal servitude for life. Whipping may be added as part of the sentence for robbery by 26 and 27 Vict. c. 44.

*Cheating* is either a common-law or statutory offence. An indictment for cheating at common law is now of comparatively rare occurrence. The statutory crime of obtaining money by false Pretences is the form in which the offence generally presents itself.

∣ike embezzlement, this offence dates as a statutory crime from the last century. It now depends upon the Larceny Act. A false pretence is defined by Mr Justice Stephen as “a false representa­tion made either by words, by writing, or by conduct that some fact or facts existed” (*Digest of the Criminal Law,* § 330). The principal points to notice are that the false pretence must he of an existing fact (*e.g.,* it was held not to be a false pretence to promise to pay for goods on delivery), and that property must have been actually obtained by the false pretence. The broad distinction between this offence and larceny is that in the former the owner intends to part with his property, in the latter he does not. By 22 and 23 Vict. c. 17, no indictment for obtaining money by false pretences is to be presented or found by the grand jury unless the defendant has been committed for trial or the indictment is authorized in one of the ways mentioned in the Act. The maximum punishment for the common-law offence is fine or imprisonment at discretion, for the statutory five years’ penal servitude.

*Stolen Goods.—*The owner of the goods stolen has an action against the thief for the goods or their value. How far he is entitled to pursue his civil right to the exclusion of criminal prosecution does not seem very clear upon the authorities. One of the latest statements of the law was that of Mr Justice Watkin Williams :—“ It has been said that the true principle of the common law is that there is neither a merger of the civil right, nor is it a strict condition precedent to such right that there shall have been a prosecution of the felon, but that there is a duty imposed upon the injured person not to resort to the prosecution of his private suit to the neglect and exclusion of the vindication of the public law ; in my opinion this view is the correct one” (Midland Insur­ance Company *v.* Smith, *Law Rep.,* 6 Queen’s Bench Division, 568). Dealing with stolen goods by persons other than the thief may affect the rights of such persons either criminally or civilly. Two varieties of crime arise from such dealings. (1) Receiving stolen goods knowing them to have been stolen, a misdemeanour at common law, is by the Larceny Act a felony punishable by penal servitude for fourteen years where the theft amounts to felony, a misdemeanour punishable by penal servitude for seven years where the theft is a misdemeanour, as in obtaining goods by false pretences. Recent possession of stolen property may, according to circumstances, support the presumption that the prisoner is a thief or that he is a receiver. The Prevention of Crime Act, 1871, made important changes in the law of evidence in charges of receiving. It allows, under proper safeguards, evidence to be given in the course of the trial of the finding of other stolen property in the possession of the accused, and of a previous conviction for any offence involving fraud and dishonesty. (2) Compounding theft, or theftbote, that is, taking back stolen goods or receiving compensation on condition of not prosecuting, is a misdemeanour at common law. It need not necessarily be committed by the owner of the goods. Under the Larceny Act it is a felony punishable by seven years’ penal servi­tude to corruptly take money or reward for helping to recover stolen goods without using all due diligence to bring the offender to trial. By the same Act, to advertise or print or publish any advertisement offering a reward for the return of stolen goods, and using any words purporting that no questions will be asked, &c., renders the offender liable to a penalty of £50. This penalty must, by 33 and 34 Vict. c. 65, be sued for within six months, and the assent of the attorney-general is necessary. Various Acts provide for the liabilities of pawnbrokers, publicans, marine-store dealers, and others into whose possession stolen goods come. Search for stolen goods can only be undertaken by a police officer under the protection of a search warrant. The law as to stolen goods, as far as it affects the civil rights and liabilities of the owner and third parties, is shortly as follows. As a general rule a purchaser takes goods subject to any infirmities of title. The property in money, bank-notes, and negotiable instruments passes by delivery, and a person taking any of these *bona fide* and for value is entitled to retain it as against a former owner from whom it may have been stolen. In the case of other goods, a *bona fide* purchaser of stolen goods in market overt (see Sale) obtains a good title (except as against the crown), provided that the thief has not been convicted. After conviction of the thief the property revests in the owner, and the court before which the thief was convicted may order restitu­tion, except in the cases specially mentioned in the Larceny Act, *i.e.,* the *bona fide* discharge or transfer of a security for value with­out notice and the fraudulent dealing by a trustee, banker, &c., with goods and documents of title to goods entrusted to him. After conviction of the thief the goods must be recovered from the person in whose hands they are at the time of the conviction, for any sales and resales, if the first sale was in market overt, are good until conviction of the thief. If the goods were obtained by false pretences and not by larceny, the question then is whether the property in the goods has passed or not, and the answer to this question depends upon the nature of the false pretences employed. If the vendee obtains possession of goods with the intention by the vendor to transfer both the property and the possession, the property vests in the vendee until the vendor has done some act to dis­affirm the transaction. But if there was never any such inten­tion,—if, for instance, the vendor delivers the goods to A. B. under the belief that he is C. D.,—the property does not vest in the transferee, and the owner may recover the goods even from a *bona fide* purchaser.@@1

*Scotland.—*There is a vast quantity of Acts of the Scottish parlia­ment dealing with theft. The general policy of the Acts was to make thefts what were not thefts at common law, *e.g.,* stealing fruit, dogs, hawks, or deer, and to extend the remedies, *e.g.,* by giving the justiciar authority throughout the kingdom, by making the master in the case of theft by the servant liable to give the latter up to justice, or by allowing the use of firearms against thieves. The general result of legislation in England and Scotland has been to assimilate the law of theft in both kingdoms. As a rule, what would be theft in one would be theft in the other. There can be theft of children in Scots as in Roman law, under the name of *plagium.* The crime of stouthrief is robbery accom­panied by exceptional violence. The English receiving stolen goods and obtaining money under false pretences are represented by the reset and fraud of Scots law. Theftbote or *redemptio furti* appears in legislation as early as the assizes of King William, c. 2. The offender was there subjected to the ordeal of water if convicted on the oath of three witnesses, to be immediately hanged if the oath of three *seniores* were added. The offence was made punish­able by 1436, c. 1, 1515, c. 2, and appears still to be a crime. Blackmailing, under that name, was forbidden by 1567, c. 27. There is no consolidation Act for Scotland like the Larceny Act for England and Ireland, but various Acts are in force dealing with specific offences or with procedure. Thus 7 Anne c. 21, § 7, makes theft by landed men no longer treason, as it had previously been. 4 Geo. II. c. 32 deals with theft of lead, &c., fixed to houses, 21 Geo. II. c. 34 with the admissibility of an accomplice as witness in a charge of cattle stealing, 51 Geo. III. c. 41 with theft of linen, &c. The most important Act relating to procedure is 31 and 32 Vict c. 95, § 12, by which a previous conviction for theft may be libelled and proved as aggravation of robbery, and a

@@@1 For the Roman and English law, see, besides the authorities cited. Hunter, *Roman Law* ; Muirhead, *Roman Law* ; 4 Stephen, *Commentaries,* pt. vi. chap. v. ; 3 Stephen, *Hist. of the Criminal Law,* chap. xxviii.