The RECORDER, however, held that the connection between the parties had been now sufficiently made out to warrant the proof of Tidmarsh's original statement against the prosecutor being given against all the prisoners.

The indictment stated that the defendants, on the 1st November, conspired, &c., and as an overt act went on to aver, that afterwards, to wit, on the day and year aforesaid, the defendants preferred an indictment in the Queen's Bench at Westminster. It appeared, on the production of the indictment itself, that it was preferred on the 22nd November.

Clarkson contended that this was a fatal variance.

Ballantine and *Baldwin*, for the prosecution, insisted that the Court would take judicial notice that the indictment could not have been preferred on the 1st, as Michaelmas Term did not commence until the 2nd. But at least the Court had power to amend in misdemeanours, and this was a case in which it would exercise such an authority.

The RECORDER was of opinion that this was an immaterial variance, but that at any rate it was within the statute which permitted amendments, being, under the circumstances, an impossible day.

The indictment was for conspiring *falsely* to indict the prosecutor for an offence, but no proof of the falsity of the original charge was given.

It was submitted, on behalf of the prisoners, that such proof was absolutely essential to support the present indictment, since, if the original accusation was well founded, there could be no crime in conspiring to prosecute the charge.

Baldwin contended that the truth or falsity of the charge was wholly immaterial. In *R.* v. *Hollingberry* (4 B. & C. 329), it was so laid down under similar circumstances, the offence being the conspiring to extort money by preferring the indictment.

The RECORDER was of this opinion, but he observed, that it was material for the consideration of the jury, as shewing the *bona* or *mala fides* of the original prosecution.

The prisoners were all convicted.

Criminal Law.

HOME CIRCUIT.

KENT SPRING ASSIZES, 1845.

March 12.

(Before Mr. Baron ALDERSON.)

The Queen v Kidman Stewart and Rosina Stewart. (a)

Practice—Right of challenge—Evidence—Larceny.

Where a party has the right of challenge, he is not entitled to ask a juryman questions for the purpose of eliciting whether it would be expedient to exercise such right.

A cheque drawn under circumstances which would render a stamp essential to its validity may be given in evidence, though unstamped, to prove the fact of its having been drawn by the prisoner.

Semble, that a prisoner jointly indicted with another may be examined as a witness in behalf of the other, without an acquittal being first taken; sed quære?

Where goods ordered by a party to be sent to a particular place are so sent by a servant, with directions from the owner not to part with them without the price, and the servant is induced by the buyer to receive a valueless cheque as payment, the case is one of larceny.

THE prisoners were indicted for larceny, under the following circumstances. They passed for husband and wife, and having taken a house at Tunbridge Wells, Mrs. Stewart went to the shop of the prosecutor, selected the goods in question to the amount of 10*l.*, and ordered them to be sent to her home. The prosecutor accordingly despatched the goods by one Davies, and gave him strict injunctions not to leave them without receiving the price. Davies, on arriving at the house, told the two prisoners he was instructed not to leave the goods *without the money; or an equivalent.*

(a) Reported by B. C. ROBINSON, Esq., Barrister-at-law.

owner does not mean to part even with the possession, except in a certain event which does not happen, and the prisoner causes him to part with them by means of fraud, he, the owner, still not meaning to part with the property, then the case is one of larceny. Here, if the owner had himself carried the goods and parted with them as the servant did, no doubt it would have been a case of false pretences: or if the servant had had a *general* authority to act, it would have been the same as though the master acted. But in this instance he had but a limited authority, which he chose to exceed. I am of opinion, as at present advised, that if the prisoner intended to get possession of these goods by giving a piece of paper, which he had no reasonable ground to believe would be of use to anybody, and that the servant had received positive instructions not to leave the articles without cash payment, the charge of larceny is made out.

HOME CIRCUIT.

KENT SPRING ASSIZES, 1845.

Maidstone, March 14.

THE QUEEN *v.* HUGHES. (*a*)

Larceny—Evidence.

Where a prisoner, charged with the larceny of goods found in his possession, gives an account of how he obtained them, it is a question for the jury whether that is such a reasonable account, and furnishes such information to the prosecutor as might enable him to negative the prisoner's statement; if so, he is bound to do it.

THE prisoner was indicted for stealing a cow-hide, and the evidence was, that it was found in his possession a week after the theft. On being asked how he obtained it, he said he got it from Mr. Malins, of Westwell. It appeared that there was no such person at Westwell, but there was a Mr. Malins residing in the adjoining parish, about four or five miles from Westwell.

Russell, for the prisoner, contended, on the authority of *R.* v. *Crowhurst* (1 C. & Kir. 370), that the case for the prosecution was not complete without this Mr. Malins being called to negative the prisoner's statement. In that case it was laid down, that where a person charged with stealing property gives a reasonable account of how he became possessed of it, as for instance, by particularizing a person from whom he bought it, it is the duty of the prosecution to produce the individual if he can be found.

Dowling, Serjt. (who presided in an additional Court), after consulting Mr. Baron Alderson.—His lordship considers that the rule he laid down in *R.* v. *Crowhurst* is the proper one; namely, that where such an account is given, that its accuracy may be easily inquired into and tested, the prosecution is bound to shew that that has been done; but, then, he thinks it is still a question for the jury, whether there is a sufficiently reasonable account given by the prisoner to the prosecutor to enable the latter to find the party named.

The question was so left to the jury, and the prisoner was convicted.

(*a*) Reported by B. C. ROBINSON, Esq., Barrister-at-law.