

RESTITUTION OF STOLEN PROPERTY.

case), that on the conviction of the thief the property in the stolen goods reverted in the owner, though the goods may have passed in the meantime into the hands of an innocent purchaser in market overt. In *Hill v. Chester* the court seemed to incline to the opinion that this was still the law, and that a sale of stolen chattels, not being negotiable instruments, even in market overt, will not divest the property of the person from whom they have been stolen. The case of *Cundy v. Lindsay*, L. R. 3 App. Cas. 459, however, does not appear to have been brought to the attention of the Court, and although the *dictum* of Lord Cairns in that case to which we intend to refer was not necessary for the decision, yet coming as it does from so eminent a member of the ultimate Court of Appeal it appears to be sufficient to warrant the belief that the *dicta* in *Harwood v. Smith* would not now be regarded as a correct statement of the law. In *Cundy v. Lindsay* Lord Cairns laid down the law on this point as follows:—"With regard to the title to personal property, the settled and well known rules of law may, I take it, be thus expressed: by the law of our country the purchaser of a chattel takes the chattel, as a general rule, subject to what may turn out to be certain infirmities in the title. If he purchases the chattel in market overt he obtains a title which is good against all the world; but if he does not purchase the chattel in market overt, and it turns out that the chattel has been found by the person who professed to sell it, the purchaser will not obtain a good title as against the real owner. If it turns out that the chattel has been stolen by the person who has professed to sell it, the purchaser will not obtain a title." Even before the Canadian Statute, it had been held in Ontario that the *bona fide* transferee for value of a stolen negotiable instrument, acquired a good title thereto as against the owner from whom it had been stolen: *Trust and Loan Company v. City of Hamilton*, 7 C. P. 98.

The result of the matter therefore would

seem to be that, so far as stolen negotiable instruments are concerned, a *bona fide* transferee thereof for value may acquire a good title as against the person from whom they may have been stolen; as regards other stolen chattels it is also possible that a *bona fide* purchaser in market overt may also acquire a good title as against the person from whom they have been stolen; but this, in the present state of the law, seems to be a doubtful point; but it seems to be clear that the acquisition of stolen chattels (not being negotiable instruments) in any other way than by purchase in market overt, will not divest the property of the person from whom they have been stolen: *Bowman v. Yielding*, Robinson & Jos. Dig. 3676.

We may before leaving the subject, notice that in Clarke and Sheppard's Criminal Law, at p. 248, the learned authors have assumed that the English and Canadian Acts are identical, and that restitution can only be ordered upon a conviction taking place, but the Canadian Act is really more extensive than the English Act in this respect, and enables the court to order restitution upon a trial for felony or misdemeanour, although the person tried for the felony or misdemeanour be not convicted, where the jury finds the property in question to be the property of the prosecutor, or even of any witness. *Regina v. The Lord Mayor of London*, L. R. 4 Q. B. 371, referred to by Messrs. Clarke and Sheppard, cannot therefore be said to be an authority for the construction of the Canadian Act.

The right to restitution of goods alleged to be stolen, has been still further extended by the Provincial Act, 45 Vict. c. 12, which enables the court to order restitution of property alleged to have been stolen, which is found in the possession of a person afterwards convicted of stealing, embezzling, or receiving other property, where the Crown does not intend to proceed upon any charge in respect of the property of which restitution is claimed.