

## RESTITUTION OF STOLEN PROPERTY.

with an attendant demon vainly endeavouring to piece together the charred remains of half-set copy and half-pierced type; and who has had his feelings further lacerated by the true but quite unnecessary remark by the printer, that though he promised "proof," he did not guarantee it "fire-proof."

For reasons upon which we need not further enlarge we are late with this issue, and must combine the number due in the middle of the month with that of July 1st, which will be issued in good season.

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In *Chichester v. Hill*, 48 L. T. N. S. 364, an important point affecting the construction of the Imperial Statute 24-25 Vict. c. 96, s. 100, (from which the Canadian Statute 32-33 Vict. c. 21, s. 113, is mainly taken), was recently decided by the English Q. B. Divisional Court, composed of Field and Williams, JJ., and it seems strange that although the Imperial Act has now been in force over twenty years the point decided seems never before to have come up for adjudication. The section of the statute referred to provides that on the conviction of any person for stealing, taking, etc., or knowingly receiving any chattel, money, valuable security, or other property whatsoever, the property shall be restored to the owner; and it goes on to provide that the court may make an order for the restitution of the property to the owner; provided, that if it shall appear before any such order for restitution is made, that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bona fide* taken, or received, by transfer or delivery by some person, or body corporate, for a just and valuable consideration, without any notice, or without any

reasonable cause to suspect that the same had, by felony or misdemeanour, been stolen, taken, etc., in such case the court shall not award or order the restitution of the security. The question for the court was whether a stolen negotiable instrument which gets into the hands of a *bona fide* holder for value, without notice of the theft, can, on conviction of the thief, be recovered by the original owner from the transferee in a civil action, and it was held by the court that the proviso in the Act not only prevented the court from making any summary order for restitution in such a case, but also protected the transferee from any liability to the original owner in any civil action. It was argued for the plaintiff that the beginning of the section providing that "the property shall be restored to the owner," applied to all kinds of property, and that the concluding words merely restricted the right to a summary order for restitution, but the court very reasonably considered that the proviso would be insensible if it merely protected the *bona fide* transferee from an order for restitution, etc., yet left him liable to an action to which he could have no defence. The case reveals the somewhat curious fact that an Act of Parliament has been construed judicially, contrary to the opinions of all the judges as to its meaning at the time it was passed. At common law the property in stolen goods was not altered by larceny *per se*, but it was liable to be divested by a subsequent sale in market overt, and Williams, J., says that he finds that it was the opinion of all the judges, when the 21 Henry VIII. c. 11, was passed, that that statute, which authorized the restitution of stolen property upon conviction of the thief, was not intended to affect the title acquired by a purchaser in market overt. But it seems a practice sprang up, at the Old Bailey, of disregarding that title, and the practice became too inveterate to be disregarded by the judges, and it was laid down by the judges, in *Harwood v. Smith*, 2 Durn. & E. 750, (although the *dicta* on this point were not necessary for the decision of that