

tence and admitted him to bail till the opinion of the Court for Crown Cases Reserved could be taken. I desire the opinion of the Court as to whether the prisoner could properly be found guilty of obtaining a chattel by false pretences within the meaning of the statute 24 & 25 Vict. c. 96, s. 88. The case of *Reg. v. Boulton*, 1 Denison's Crown Cases, 508, was relied on in the part of the prosecution.

EDWIN PLUMER PRICE, Recorder.

April 19, 1870.

May 7.—No counsel appeared for the prisoner.

A. Simpson, for the prosecution. Obtaining money by way of loan by a false pretence has been held to be within the former statute, 7 & 8 Geo. 4. c. 29, s. 53; *Reg. v. Crossley* 2, Moo. & R. 17, Patteson, J., laying it down that the terms of that Act embrace every mode of obtaining money by false pretences, by loan as well as by transfer. *Reg. v. Boulton* (1 Den. C. C. 508), is very like the present case. There the prisoner obtained by a false pretence a railway ticket for a journey from Bendford to Huddersfield, which would have had to be given up at the end of the journey; though in fact the prisoner was stopped on the line and the ticket taken from him. What the prisoner obtained there was the use only of the ticket for the time during which the journey would last; and it appears from the judgment, which was a considered one, that the fact that the ticket was to be returned was present to the mind of the Court. The learned editor of Russell on Crimes (vol. 2, p. 645, note p.) questions that decision, and puts the very case now before the Court as on the same footing with it. In that he is right, but it is submitted that the case cannot now be questioned, and is binding on the Court. This Court has already, in *Morrison's case*, 7 W. R. 554, Bell, 158, 167, held itself bound by *Reg. v. Boulton*. The statutes relating to false pretences were originally passed to avoid the difficulty which existed of convicting of larceny any person who had obtained the property in the goods by fraud, and "they were not intended to mitigate the common law." 2 East, P. C. 689. The first statute was 33 Hen. 7, c. 1, and was confined to the case of obtaining goods by false tokens, and that was extended by 80 Geo. 2, c. 3, to all cases where goods were obtained by false pretences of any kind. [WILLES, J.—The words in the preamble of 33 Hen. 8, c. 1, are "get into their hands or possession." The note to 2 East, P. C. 689, goes to show that that was not meant to apply to a case of obtaining the use only, but rather to cases where actual possession was obtained.]

PER CURIAM.—The question raised by this case is a very important one, and the rule to be laid down will be one of general application. The Court is much indebted to the learned counsel for the prosecution for his able argument, and will take time to consider its judgment.

Cur. adv. vult.

June 4.—The judgment of the Court was now delivered by

BOVILL, C.J.—We are of opinion that the conviction in this case cannot be supported. The statute 24 & 25 Vict. c. 96, s. 88, enacts that, "whosoever shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall

be guilty of misdemeanour." The word "obtain" in this section does not mean obtain the loan of, but obtain the property in any chattel, &c. This is to some extent indicated by the proviso, that if it be proved that the person indicted obtained the property in such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted; but it is made more clear by referring to the earlier statute from which the language of section 88 is adopted. The 7 & 8 Geo 4, c. 89, recites that "a failure of justice frequently arises from the subtle distinction between larceny and fraud," and for remedy thereof enacts that if any person shall by any false pretence, obtain, &c. The subtle distinction which the statute was intended to remedy was this, that if a person by fraud induced another to part with the possession only of goods, and converted them to his own use, this was larceny; while, if he induced another by fraud to part with the property in the goods as well as the possession, this was not larceny. But to constitute an obtaining by false pretences it is equally essential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, and this intention did not exist in the case before us. In support of the conviction the case of *Reg. v. Boulton*, 1 Den. C. C. 508, 19 L. J. M. C. 67, was referred to. There the prisoner was indicted for obtaining by false pretence a railway ticket with intent to defraud the company. It was held that the prisoner was rightly convicted, though the ticket had to be given up at the end of the journey. The reasons for this decision do not very clearly appear, but it may be distinguished from the present case in this respect, that the prisoner by using the ticket for the purpose of travelling on the railway, entirely converted it to his own use for the only purpose for which it was capable of being applied. In this case the prisoner never intended to deprive the prosecutor of the horse or the property in it, or to appropriate it to himself, but only intended to obtain the use of the horse for a limited time. The conviction must, therefore, be quashed.

Conviction quashed.

CORRESPONDENCE.

Division Courts — Subpœnas — Fees to Attorneys.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—Section 100 of the Division Court Act allows parties "to obtain from either of the superior courts of common law a subpœna requiring the attendance of witnesses residing out of the county," but no provision is made either in the Act or Rules for its cost.

Some time since, on behalf of a plaintiff, I issued a superior court subpœna, on which the witness attended, and a verdict was given for the plaintiff. The clerk now refuses to allow him the fees taxable thereon, according to the superior court tariff, stating that he has no