duly and at the proper time considered, the objection is not sustainable.

It was thirdly alleged, that the facts did not shew that the offence of forgery had been committed. It appears to me the offence has been sufficiently charged and proved to constitute the crime of forgery.

If it be under the act of 1823 (see Laws of the United States, Dunlop, p. 678, ch. 38), the offence is a felony.

If it be under the act of 1863 (see United States Statutes at Large, 37th Congress, ch. 67), the offence will I presume be a misdemeanour.

And if it be under the act of 1866, 39 Congress, ch. 24, it is a felony.

But whether a felony or misdemeanour can be of no consequence—it is nevertheless the offence of forgery, and it is with that alone that the treaty and the statute deal.

It was lastly objected that the accused could not be legally apprehended here upon the charge, because the offence, if committed at all, was committed more than two years before the complaint was made against him, and by the law of the United States, the lapse of two years was a bar to the criminal prosecution.

The period of limitation was denied. It was said to be five years in cases which affected the United States revenue. If it be restricted to the term of two years, then it was said the case must fail.

It was answered on the other hand that it was a matter of defence only, and the defence might be repelled by showing that the accused was a fugitive from justice.

It appears to me that what the judicial officer in this country has to do, is to determine the *primâ facie* criminality of the accused, to determine whether the evidence is sufficient to sustain the *charge* or not.

It is not by any means determined in the United States whether a demurrer will lie, or a motion in arrest *of judgment* may be made, if the indictment show the offence to have been committed beyond the statutory period.

The accused is at liberty to take the benefit of the limitation under the general issue, and the prosecutor may show in reply, that the accused is not entitled to the benefit of the protection by reason of his flight from justice.

It appears to me it will be very inconvenient if the magistrate here is compelled to go beyond the law of enquiry as to criminality.

Suppose some pardoning statute to be relied on—with many exceptions and special provisions—and the accused claims the benefit of it on the claim for extradition. Is the magistrate to try this collateral question, whether the accused is or is not within its provisions, or has or has not forfeited his claim to its protection?

The limitation is a matter of defence; the accused is entitled to the advantage of it by plea, or by some proceeding in the nature of a plea, and he may be precluded from getting the advantage of itby a proper replication, or by counter evidence in the nature of a replication.

It affects his liability to be prosecuted or convicted, it does not affect his criminality.

On the whole, I think the accused should be remanded generally to the custody from whence he came, to abide the decision of his Excellency the Governor-General under the statute.

Prisoner remanded.

ENGLISH REPORTS.

The Queen v. Kilham.

False pretences—"Obtaining" goods—Larceny Consolidation Act (24 & 25 Vict. c. 29) s. 88.

To constitute an obtaining by false pretences there must be an intention to deprive the owner wholly of the property.

The prisoner falsely pretended that he had been sent by A. B. to order and obtain a horse for hire for him. The horse was accordingly delivered to the prisoner, who, after driving it during the day, returned it to the owner in the evening.

Held, that the prisoner could not be found guilty of obtaining the horse by false pretences.

[C. C. R., 18 W. R. 957.]

Case stated by the Recorder of the City of York.

James Kilham was tried before me at the last Easter Quarter Sessions for the city of York on an indictment containing three counts, the first count of which was as follows:—"City of York to wit. The jurors for our Lady the Queen upon their oath present that James Kilham, on the 13th day of March, in the year of our Lord, 1870, in the city of York, unlawfully and knowingly, did falsely pretend to Henry Burton, then being an ostler in the service of James Thackray and Edward Thackray, then keeping horses for hire in the city aforesaid, that he the said James Kilham, was then sent by Mr. Hartley (thereby then meaning a son of Mr. Thomas Gibson Hartley, then living in Davygate, in the said city), to order and obtain for hire a horse for him, the said first mentioned Mr. Hartley, to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, by means of which said false pretences the said James Kilham did then unlawfully obtain from the said Henry Burton a certain horse of the goods and chattels of the said James Thackray and Edward Thackray with intent thereby them to defraud. Whereas, in truth and in fact, the said James Kilham was not then sent by the said Mr. Hartley or any son of the said Mr. Thomas Gibson Hartley, then living in Davygate aforesaid, to order and obtain for hire a horse for him to drive on a journey to Elvington, to be ready at half-past nine of the clock the next morning, as he, the said James Kilham well knew at the time when he did so falsely pretend as aforesaid."

There were two other counts, slightly varied in form but the same in substance. The evidence on the part of the prosecution was that the prisoner had called at the livery stables of Messrs. Thackray, who were duly licensed to let out horses for hire, on the evening of the 13th of March last and stated to the ostler that he was sent by a Mr. Gibson Hartley to order a horse to be ready the next morning for the use of a son of Mr. Gibson Hartley, who was a customer of the Messrs. Thackray. Accordingly, the next morning the prisoner called for the horse, which was delivered to him by the ostler. The prisoner was seen in the course of the same day driving the horse, which he returned to Messrs. Thackray's stables in the evening. The hire for the horse, amounting to seven shillings, was never paid by the prisoner. Mr. Hartley and his son denied that they had authorised the prisoner to hire any horse for them, or that the prisoner had used the horse for any purpose of theirs. The prisoner was found guilty, but I respited the sen-