

CRIMINAL LAW—LARCENY—MONEY PAID OR DEPOSITED UNDER CONTRACT INDUCED BY FRAUD—POSSESSION OBTAINED BY FRAUD—LARCENY BY A TRICK.

*The Queen v. Russett* (1892), 2 Q.B. 312, is a case stated by justices at Quarter Sessions for the opinion of the court. The prisoner agreed at a fair to sell a horse to the prosecutor for £23, of which £8 was paid by the prosecutor at once, and the remainder upon the delivery of the horse. After the prisoner had got the £8, for which he gave a receipt which stated that the balance was to be paid on the delivery of the horse, he caused the horse to be removed from the fair under circumstances from which the jury inferred that he had no intention of delivering it to the prosecutor, and he never, in fact, did deliver it. Under these circumstances, the court (Lord Coleridge, C.J., Pollock, B., and Hawkins, Smith, and Wills, JJ.) were agreed that the prisoner might properly be convicted of larceny by a trick of the £8. Lord Coleridge refers with approval to the following statement of Kelly, L.C.B., in *Reg. v. McKale*, L.R. 1. C.C. 125, as to the distinction between fraud and larceny, viz.: "The distinction between fraud and larceny is well established. In order to reduce the taking under such circumstances as in the present case from larceny to fraud, the transaction must be complete. If the transaction is not complete, if the owner has not parted with the property in the thing, and the accused has taken it with a fraudulent intent, that amounts to larceny." In the present case, the prosecutor, as the court found, could only have intended to part with the possession of the £8 as a deposit, but the property in it was not to be changed until the horse was delivered.

PRACTICE—DISCOVERY IN LIBEL ACTION IN MITIGATION OF DAMAGES—ORD. XXXVI., R. 37 (ONT. RULE 573).

In *Scaife v. Kemp* (1892), 2 Q.B. 319, the defendant, pursuant to Ord. xxxvi., r. 37 (Ont. Rule 573), had given particulars of the matters on which he intended to rely in mitigation of damages in the action, which was one for libel, and he claimed the right to examine the plaintiff for discovery in reference to such particulars. Denman, J., held that the defendant was entitled to the discovery, and Mathews and Smith, JJ., upheld his decision.

PRACTICE—DISCOVERY—ACTION FOR PENALTIES.

*Saunders v. Wiel* (1892), 2 Q.B. 321, was an action brought to recover £50 under s. 58 of the Patents, Designs, and Trademark Act, 1883, which provides that "any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding £50 to the registered proprietor of the design, who may recover such sum as a simple contract debt by action," and the question was whether the defendant was liable to make discovery. The plaintiff contended that he was relying on *Adams v. Batley*, 18 Q.B.D. 625, (*ante* vol. 23, p. 229), but the Court of Appeal (Lord Esher, M.R., Bowen and Smith, L.JJ.), affirming the judgment of Day and Charles, JJ., (1892), 2 Q.B. 18, noted *ante* p. 430, held that the action was one for a penalty, and the defendant was therefore not liable to make discovery.