

The owner of land grants an equitable mortgage upon it, by depositing his title-deeds with his banker, or other lender of money, and to make the matter clear, he gives a memorandum to that effect. He receives the money, and next day conveys the property to some one, who, not seeing the title-deeds, probably gives a price below its value, but indeed may have been assured that there has been sixty years' possession, and that there are no title-deeds. The owner thus commits a gross fraud upon two parties; the lender, whom he compels to get a legal conveyance by a chancery suit, and the purchaser, who has paid his money for a parchment worth absolutely nothing. It is usually said that such cases, if more than one be concerned in them, come within the great drag-net of the law, under the head of "conspiracy to defraud." It would, we believe, be difficult to frame an indictment if only one offender were implicated. It would hardly be held an obtaining money on false pretences. But indeed the gross fraud, the crime, we venture to call it, though the law does not, of concealing a prior mortgage and granting a second, only works a foreclosure; though instances of this kind are of daily occurrence, offences perpetrated by persons, some of whom, we grieve to say, have belonged to the profession which they disgraced, and had risen high in the legal ranks. Personal property is made in the same way the subject of gross and barefaced frauds, amounting morally, not merely to cheating, but to robbery. The owner of goods sells them, or pledges them again and again; and if he only avoids that which amounts to larceny, and takes care that he shall not be held to obtain money on false pretences, he is only a debtor and not a criminal. Take the instance which has recently occurred of a shipowner: he gives, to cover his balance due to his banker or other creditor, some half-dozen vessels in pledge; but the creditor omitting to take due precautions as to the register, the crafty debtor sells all the six, pockets the price, and leaves his creditor's security worth absolutely nothing.

These are, compared with other cases of fraud, equally gross in reality, somewhat in appearance more glaring, because more plain in the statement. But perhaps, the frauds that have a less revolting semblance are on that account the more difficult to guard against, and the more likely to be committed. The parties to a banking or other speculation, finding that they have been unsuccessful, and are in a state of hopeless insolvency, besides committing the more ordinary breach of trust, by appropriating to themselves the funds under their control, and thereby carrying on their individual speculations unconnected with that of the joint concern, endeavour to protract its existence, and to obtain more funds for their own accommodation, by making false statements of the condition of the partnership, representing to some as profitable a concern which they know and to others confess, to be not only unprofitable, but desperate; keep up this delusion by paying dividends out of the almost exhausted capital, and thus draw in solvent parties to become associates in their risks, as well as to contribute towards their funds. It is not to be doubted that a trader, be he banker or merchant, may, without committing any offence even in a moral view, conceal from his customers a momentary embarrassment in his affairs, amounting to a risk of failure, because he may reasonably hope that this cloud shall pass away, and his security be

restored, whereas a disclosure might work his ruin, and also injure his creditors at large. But it must always be a question how far he shall carry this concealment, and how long continue to receive money or goods which must be involved in the hazards of his position. But there is all the difference in the world between the mere suppression of the truth, how long soever it may be continued, and the positive affirmation of a falsehood; not merely answering a question, but volunteering a statement that he is solvent and thriving in his trade, when he knows that he is in hopeless, irremediable insolvency, and must be utterly ruined, even after receiving the contribution he seeks. That this is a fraud of the deepest die, and, morally speaking, tantamount to robbery can admit of no doubt. That the law of England at present would regard it as an indictable offence, and punish it as such, is, to say the least of it, far enough from certain. We may, indeed, positively affirm that it would not.

Now, for all such frauds as we have been describing, it appears to be absolutely necessary that specific penal enactments should be provided. In matters of criminal jurisprudence there can be no such thing as declaratory laws. There must be a distinct statutory provision denouncing the practice as an offence, and attaching to its commission condign punishment. We cannot in this case adopt the maxim of Cicero, "*sunt animadvertenda peccata maxims que difficillime preceventur*,"* if by *maxims* is to be intended the heaviness of the penal visitation; because regard must always be had to the novelty of the infliction, and to the circumstance of the matter having hitherto so long been treated as not legally, but only morally, criminal. But if it be only meant that such offences are peculiarly deserving of some punishment, as are with difficulty prevented from injuring society by the facilities afforded for their perpetration, and by the tendency of unprincipled persons to commit them—then, doubtless, the great moralist's dictum, anticipating in his earliest orations his future ethical eminence, is well entitled to our respect.

That there may be considerable difficulty in framing statutory provisions with this view, we are far from denying; but we can, on no account, believe that this may not be surmounted. We trust that the same committee of the Law Amendment Society which examined the other and kindred subject of criminal breaches of trust, may speedily apply itself to this enquiry likewise; and it is with the hope of drawing their attention to it that we have put together these remarks. (*Law Mag. and Rev.*, May, 1857.)

ALIBIS.

There is no more curious and mysterious subject in the annals of the criminal courts than the question of *alibis*. Occasionally, and it is to be feared frequently, it comes before a jury under the perplexing and painful aspect of an

* It is singular that he is really speaking of the kind of fraudulent practices which form the subject of this article.—"*Tecti esse ad alienos possumus; intimi multa apertiora videntur, necesse est. Socium vero cavere qui possumus? Quem etiam si metuimus, jus officii lædimus. Recte igitur majores eam, qui socium sefellisset, in virorum honorum numero non putarunt haberi oportere.*"—(*Pro S. Roscia. Amer. XL.*)