Shee J. (the only other Judge present) concurred.
Order of Sessions confirmed as to stopping up road.

[635] LATHAM AND OTHERS *against* THE QUEEN. Saturday, June 4th, 1864. —Indictment. Several counts. Imperfect finding. Jurisdiction of Quarter Sessions. Conspiracy. False pretences. 7 & 8 G. 4, c. 29, s. 53.—1. Where an indictment contains several counts, it is not ground of error that no verdict has been given on some of them, provided a verdict has been found on one good count and judgment given generally.—2. An indictment at Quarter Sessions alleged that the defendants, contriving and intending to defraud R. B. of his money unlawfully, knowingly, and designedly did amongst themselves combine, conspire, confederate and agree together by divers false pretences against the form of the statute in that case made and provided, the said R. B. of his moneys to defraud, against the form of the statute: held, that the Quarter Sessions had jurisdiction to try this.

[S. C. 9 Cox, C. C. 516; 33 L. J. M. C. 197; 10 L. T. 571; 10 Jur. N. S. 1145; 12 W. R. 908. Referred to, *R.* v. *Paul*, 1890, 25 Q. B. D. 209.]

Writ of error from the Quarter Sessions of the County Palatine of Lancaster.

The indictment was as follows. First count. The jurors for our lady the Queen upon their oaths present that heretofore, before and at the time of the committing of the offences hereinafter stated, Richard Bealey carried on the business of a bleacher and manufacturing chemist, to wit, at Radcliffe, in the county of Lancaster, and during all the time aforesaid Benjamin Latham, Edward Hacking, Henry Ball, Hiram Hardman, Peter Pendlebury, John Mills, John Wild and Edmund Taylor were servants in the employment of the said Richard Bealey, at his works, to wit, at Radcliffe aforesaid, and were during all the time aforesaid employed by the said Richard Bealey in making and manufacturing a certain product, to wit, salt cake, and in the making and manufacturing of the same it became and was necessary divers large quantities of salt to use, consume, roast and boil, and that the wages paid by the said Richard Bealey to the said Benjamin Latham, &c., were paid and calculated upon the number of charges of salt supplied by the said Benjamin Latham, &c., to **[636]** each of the furnaces at which the said Benjamin Latham, &c., were respectively employed, and that the said Benjamin Latham, &c., being evil disposed persons, and intending to cheat and defraud the said Richard Bealey of his money, unlawfully, knowingly, and designedly, did falsely pretend to the said Richard Bealey that they had used at the furnaces of the said Richard Bealey divers charges of salt of the weight of 700 lbs. each charge, by means of which said false pretence the said Benjamin Latham, &c., did then unlawfully obtain from the said Richard Bealey 130l. in money as and for wages, of the money of the said Richard Bealey, with intent thereby then to defraud, whereas in truth and in fact the said Benjamin Latham, &c., had not then used at the furnaces of the said Richard Bealey charges of salt of the weight of 700 lbs. each charge, as they and each of them then, to wit, at the time they did so falsely pretend, well knew; to the great damage and deception of the said Richard Bealey, to the evil example &c., against the form of the statute &c., and against the peace &c.

Second count. And the jurors aforesaid, &c., that the said Benjamin Latham, &c. being evil disposed persons, and contriving and intending to defraud the said Richard Bealey of his money, unlawfully, knowingly, and designedly, did amongst themselves combine, conspire, confederate, and agree together by divers false pretences, against the form of the statute in that case made and provided, the said Richard Bealey of his moneys to defraud, against the form of the statute &c., and against the peace &c.

Plea. Not guilty.

The jury acquitted Edmund Taylor generally, and convicted the other defendants on the second count: **[637]** "Whereupon," proceeded the record, "it is considered and adjudged by the Court here that the said Benjamin Latham &c. be remanded into the custody of the governor of the house of correction at Salford aforesaid and be kept in safe custody and to hard labour for the term of two calendar months each."

The following errors, among others, were assigned.

First. That, although the jury were sworn to try the issues joined on both counts of the indictment, the verdict was only given on the issue joined on the second count.

Second. That the second count, on which the defendants were found guilty, did not contain any offence in law.

Third. That the second count, on which the defendants were found guilty, did not contain any offence which the Court of Quarter Sessions had jurisdiction to determine.

Joinder in error.

Cottingham, for the plaintiffs in error.—First. At the trial of this indictment, the prisoners were in jeopardy on the whole, and if they were convicted and punished upon it, they could not plead autrefois acquit to a second indictment for any part of it. In *O'Connell* v. *The Queen* (11 Cl. & F. 155), Parke B., in answering the questions put by the House of Lords, says, p. 295-7, "I should say, that where an indictment contains several counts, each ought to be brought to its proper legal termination by a proper judgment. The practice has grown up, and much increased in modern times, of introducing many counts into one indictment; and though we know practically that these are most frequently descriptions, only in different words, of the same offence, they are allowable **[638]** only on the presumption that they are different offences, and every count so imports on the face of the record, as Mr. Justice Buller states in *Rex* v. *Young* (3 T. R. 98, 106). . . . The question then being how these counts are to be dealt with on the face of the record, I should have said, à priori, that it was the duty of the Court acting between the Crown and the accused, and the right of the accused, to have the charge of each offence (for as such I must treat it) properly and finally disposed of on the record, so that the accused as well as the Crown might know for what offence the punishment was inflicted, and for what not; and so that the accused might plead his conviction in bar of another indictment for the offence for which he was punished, and that the Crown might also know that it might again prosecute for that offence for which he was not. . . . In short, I should have said that the defendants should on the face of the record be put precisely in the same condition as if the several counts had formed the subject of several indictments." [Blackburn J. That authority does not bear you out. Why is not a man to be punished for crime A. because there is an imperfect record as to crime B., with which he is also charged?] Even the discharge of the jury by the Judge on a former trial gives no right to the accused to plead autrefois acquit to a fresh indictment for the same offence; *Reg.* v. *Charlesworth* (1 B. & S. 460). The law is thus laid down in 1 Stark. Cr. Pl., p. 346, 2nd ed., "It has been adjudged that the verdict, in case of a partial acquittal, should extend to the whole of the charge, so as to leave no part upon which the defendant has not been either convicted or acquitted. . . . p. 347. And where several offences are charged in the indictment, and upon a general **[639]** plea of not guilty the jury find the facts specially, and leave the question of guilt or innocence for the opinion of the Court upon those facts, the verdict will be sufficient, though from those facts it appears that the defendant was guilty of one only of the offences charged," for which *Rex* v. *Hayes* (2 Ld. Raym. 1518) is cited. [Shee J. Do you contend that whenever counsel for the prosecution is put to elect on which count he will proceed, there must be a verdict on each count?] Yes. Or a nolle prosequi as to some. [Shee J. In *Reg.* v. *Jones* (2 Moo. C. C. 94) it was held that where counts for felony and misdemeanour were improperly joined in an indictment, a verdict might be taken on the count for felony, and the count for misdemeanour disregarded.]

Secondly. The Quarter Sessions have no jurisdiction on the second count, on which alone the verdict was pronounced. They have no jurisdiction to try conspiracy generally, and can only do so when the conspiracy is to commit an offence which the Sessions would have power to try if committed by one person, stat. 5 & 6 Vict. c. 38, s. 1; which the preamble of cap. 43 speaks of as a restraining enactment. The gist of the offence described in stat. 7 & 8 G. 4, c. 29, s. 53, is the obtaining the property of another by means of a false pretence, *Reg.* v. *Jones* (1 Den. C. C. 551), *Reg.* v. *Garrett* (1 Dears. C. C. 232); and a conspiracy to obtain money by false pretences could therefore be tried by the Sessions. But the offence described in this count is conspiring to defraud, a matter over which the Sessions have no jurisdiction. Neither does the count set out the false pretences used.

T. Campbell Foster, contrà (having been directed by **[640]** the Court to confine himself to the first point). It is enough that there be one good count in an indictment and a lawful judgment awarded upon it; *Peake* v. *Oldham, in Error* (Cowp. 275, 276;

per Ld. Mansfield), *Holloway* v. *The Queen* (2 Den. C. C. 287). [Blackburn J. That is where one count is good and the others bad. But here the complaint is that a complete verdict on all the counts has not been given.] In *O'Connell* v. *The Queen* (11 Cl. & F. 155) the tenth question put by the House of Lords to the Judges was, p. 232, "Is there any sufficient ground for reversing the judgment by reason of its not containing any entry as to the verdicts of acquittal?" In answer to this, Tindal C.J. says, p. 255, "After causing search to be made in the Crown Office, no instance can be found of such an entry, where the party is found guilty of any part of the indictment on which he receives judgment; and we think such practice is in conformity with the law." The third question was, p. 231, "Is there any sufficient ground for reversing the judgment, by reason of any defect in the indictment, or of the findings, or entering of the findings, of the jury upon the said indictment." In answer to which, Tindal C.J. says, p. 238, "I conceive it to be the law, that in the case of an indictment, if there be one good count in an indictment, upon which the defendants have been declared guilty by proper findings on the record, and a judgment given for the Crown, imposing a sentence authorized by law to be awarded in respect of the particular offence, such judgment cannot be reversed by a writ of error, by reason of one or more of the counts in the indictment being bad in point of law." [He cited *Gregory* v. *The Queen, in Error* (15 Q. B. 957). There being no entry on the **[641]** first count, it must be presumed that the defendants were acquitted upon that count. If there be error here in the mode of entering the verdict, the defendants can at any time have it amended by application to the officer of the Court below.

Cottingham replied.

Blackburn J. Our judgment must be for the Crown. The first objection taken to this record is that here are two counts, to try both of which the jury were sworn, and unquestionably they ought to have given a verdict on both. I have very little doubt that in fact they found a verdict of acquittal on the first count, and of guilty on the second, and the verdict being entered in its present form is a misprision of the clerk. If in due time application had been made to the Court below to amend the record, and there was anything to amend by, as there probably was, the mischief would have been set right; and if the prisoners are likely to suffer any inconvenience from a verdict of not guilty not being entered on the first count, it might be amended now. But we cannot speculate on that, and must take the case as if the jury were silent on the first count; and the question is, does that vitiate the proceedings?

When an issue is left to a jury to try, they must dispose of the whole of it, and if they neglect to do this, and leave it imperfectly disposed of, there must be a venire de novo if the case be one of misdemeanour; if one of felony, it is a question not yet finally determined whether a venire de novo should be awarded, or the above omission on the part of the jury is a fatal objection frustrating the ends of justice. We **[642]** need not, however, go into that question, for where an indictment consists of several counts, they are to all intents and purposes several indictments, and the same as if separate juries were trying them. Although a finding being imperfect or defective in itself might justify a venire de novo, why should that affect a good count, and save prisoners, who have been convicted upon it, from punishment because another charge on the record has not been disposed of? On principle there is nothing to shew that it should do so.

Then it is said we are concluded by authority. There is only one case which has the least bearing on the question, namely, *Rex* v. *Hayes* (2 Ld. Raym. 1518). In that case the indictment contained three counts, and a special verdict was returned, finding the prisoners guilty on two of them, but said nothing on the third, and the question was whether judgment could be given against them as guilty on the whole. The Court held, that as the jury had virtually found, and the facts shewed, the prisoners not guilty on the third count, the record established that they were guilty on two counts, and not on the third. The counsel who argued that case for the defendants referred to authorities to shew that where a verdict finds but a portion of an issue, or only one of several issues, it is bad and ground for a venire de novo; but the Court did not determine that point at all,—there was no occasion to decide that no verdict being given on one count vitiates a verdict on another count which is good. In civil cases there is only one process against the defendant, and therefore if a new trial is granted on one part of the case it is granted on the whole. But in a criminal case,

where each count is as it were a separate **[643]** indictment, one count not having been disposed of no more affects the proceedings with error than if there were two indictments. In *O'Connell* v. *The Queen* (11 Cl. & F. 155), which has been referred to, Parke B. says, p. 296-7, "So in respect of those counts on which the jury have acted incorrectly, by finding persons guilty of two offences (on a count charging only one), if the Crown did not obviate the objection, by entering a nolle prosequi as to one of the offences, *Rex* v. *Hempstead* (R. & R. C. C. 344), and so *in effect* removing that from the indictment, the Court ought to have granted a venire de novo on those counts, in order to have a proper finding; and then upon the good counts it should have proceeded to pronounce the proper judgment. In short, I should have said that the defendants should on the face of the record be put precisely in the same condition as if the several counts had formed the subject of several indictments." That is exactly what I say here. Each count is in fact and theory a separate indictment, and no authority has been produced to shew that we ought to defeat the ends of justice by such a technical error as this.

As to the second question. The second count of this indictment, on which the defendants have been convicted, is for a conspiracy, charging that they, being evil disposed persons, and contriving and intending to defraud Richard Bealey of his money, unlawfully, knowingly, and designedly did amongst themselves combine, conspire, confederate and agree together by divers false pretences, against the form of the statute in that case made and provided, the said Richard Bealey of his moneys to defraud, against the form of the statute &c. The object of the conspiracy is to defraud, contrary to the **[644]** form of the statute. It is argued that, as the Quarter Sessions cannot try a conspiracy unless it is a conspiracy to commit an offence which, if committed by one person, they could try; although the Quarter Sessions can try what we may call shortly "swindling," *i.e. obtaining money by false pretences* with intent to defraud, and attempts to do so; that that is not the offence charged here, because it is not stated that the conspiracy was to obtain money, but to defraud. We do not however, when looking at a charge of conspiracy to commit an offence, require it to be set forth with all the precision requisite in describing the offence itself; it is enough to shew that the conspiracy is to commit an offence that could be tried at Quarter Sessions. Here therefore, before the jury could convict of this conspiracy, they must be satisfied that the parties had conspired to defraud by false pretences and against the statute, and if that was the object of the conspiracy it was an offence over which the Quarter Sessions had jurisdiction. As to the false pretences not being set out in the indictment, it has frequently been decided that this is not necessary. *Sydserff* v. *The Queen, in Error* (11 Q. B. 245), may be taken as an example.

Shee J. (the only other Judge present) concurred.

Judgment for the Crown.

[645] IN RE TIVNAN AND OTHERS. Wednesday, May 25th, 1864.—International law. Extradition. Jurisdiction. Piracy. Belligerent Act. 6 & 7 Vict. c. 76. Warrant of justice.—1. Stat. 6 & 7 Vict. c. 76, s. 1, enacts, that in case requisition shall be made by the authority of the United States of America, in pursuance of a treaty between them and this country of the 9th August, 1842, for the delivery up of any person charged with certain crimes therein specified, among which is "piracy," committed within the jurisdiction of the United States, who shall be found within the territories of her Majesty, such person may be apprehended and delivered up to justice: Held, by Crompton, Blackburn and Shee JJ., dissentiente Cockburn C.J., that "piracy" here must not be understood in the sense of piracy by the law of nations, but of acts made piracy by the municipal law of the United States.—2. In order to enable a justice of the peace to issue his warrant under this statute for the apprehension and committal for trial of an accused person, it need not appear that there was an original warrant for his apprehension in the United States, or depositions taken against him there.—3. The warrant of such justice of the peace need not allege that the evidence before him was taken upon oath.—4. Concessum. In time of peace any act of depredation on a ship is primâ facie an act of piracy: but in time of war between two countries the presumption is that depredation by one of them on a ship of the other is an act of legitimate