SOME COMPARATIVE LAW — FURTUM CONCEPTUM.

BY

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It is generally assumed that the *vestigii minatio*, the pursuit of a thief and the search in his house under certain formalities ¹), is a practice peculiar to the Indo-Germanic race. *La chasse au voleur correspond à des pratiques répandues chez tous les Indo-Européens, et probablement antérieures à l'époque des grandes migrations* — thus P. Huvelin expresses the common opinion on this point ²). Up to the present time historians have taken pains in carefully collecting all traces of the *vestigii minatio* which can be found among Indo-Germanic peoples ³).

However, the basis of these studies may be questionable. Apart from the fact that the connection between the Indo-Europeans is one of language rather than of common descent or common civilisation ⁴), there are a number of customs which must always arise wherever and whenever a certain stage of development is reached. If a man has been with me and after he has gone I miss my pet slippers, the natural thing to do is to follow him whether I am Semite or Indo-Germanic. Similarly, intruding into another’s house is regarded as a serious offence.

¹) The expression *vestigii minatio*, to be found e.g. in lex Salica 37, may be admitted here because of its shortness.


⁴) At least one may say that the question of descent and civilisation is not yet definitely settled.
all over the world. We may therefore expect that, if the thief reaches his home without being caught, the law of any country will provide an etiquette for the further pursuance of my claim. This etiquette may vary in many respects according to the character of a people, the more or less advanced conditions and the individual history of a community. But it will always contain measures to parry chicanery or even fraud on the part of the accuser and, on the other hand, to ensure effective proceedings against the accused.

In Genesis ch. 31 we find an amusing case of search for stolen goods. Jacob and his family flee from Laban, Jacob's father-in-law, with whom he is no longer on good terms, and Jacob's wife, Rachel, takes Laban's penates away.

"And it was told Laban on the third day that Jacob was fled. And he took his brethren with him, and pursued after him seven days' journey; and they overtook him in the mount Gilead . . . . And Laban said to Jacob, . . . . And now, though thou wouldest needs be gone, because thou sore longedst after thy father's house, yet wherefore hast thou stolen my gods? And Jacob answered and said to Laban, . . . . With whomsoever thou findest thy gods, let him not live: before our brethren discern thou what is thine with me, and take it to thee. For Jacob knew not that Rachel had stolen them. And Laban went into Jacob's tent, and into Leah's tent, and into the two maidservants' tents; but he found them not. Then he went out of Leah's tent, and entered into Rachel's tent. Now Rachel had taken the images, and put them in the camel's furniture, and sat upon them. And Laban searched all the tent, but found them not. And she said to her father, Let it not displease my lord that I cannot rise up before thee; for the custom of women is upon me. And he searched, but found not the images. And Jacob was wroth, and chode with Laban: and Jacob answered and said to Laban, What is my trespass? what is my sin, that thou hast so hotly pursued after me? Whereas thou hast searched all my stuff, what hast thou found of all thy household stuff? set it here before my brethren and thy brethren, that they may judge betwixt us both . . . ."

1) Genesis 31, 22—37.