On these grounds I think the conviction should be quashed.

Edwards, J. :—

[After stating the facts His Honour proceeded :] The question of law involved is whether or not the evidence of any of the boys except G. was admissible on the trial of the prisoner for the offence charged in the first count.

[His Honour then reviewed the evidence, and proceeded :] In this state of the facts the Solicitor-General for the Crown contends that the evidence to which exception is taken was admissible upon two grounds—1, to show a system or course of conduct on the part of the prisoner evidencing design; 2, to rebut a defence which would otherwise have been open to the prisoner. To this counsel for the prisoner answers—1, that evidence is admissible to show system involving criminal intent only when the act charged is otherwise capable of an innocent interpretation, and that here the act, if done, was unequivocal and incapable of explanation; 2, that evidence is not admissible to rebut any defence which has not already been raised, either directly or by inevitable inference; and that as he had, before the Judge in Chambers, clearly intimated that the prisoner did not intend to rely on innocent association with these boys the Crown was bound by this disclaimer unless that defence should subsequently be raised, in which case the Crown would be at liberty to adduce the evidence objected to in rebuttal of that defence.

In Makin *v.* Attorney-General for New South Wales ([1894] A.C. 57, 65; 17 Cox C.C. 704, 708) the Judicial Committee laid down a rule as to the admissibility of evidence of prior acts of a person charged with crime, notwithstanding that such evidence may show that the prisoner has been guilty of other crimes, in the following words : [His Honour here quoted the passage set out in the judgment of Denniston, J., *supra*, p. 293.]

Now, if this rule is exhaustive it excludes evidence of system in every case in which, as in the present case, the act charged is in itself of such a nature as, if proved, to be incapable of explanation. This pronouncement of the law must be read, however, in connection with the facts of the case in which it was made. It does not purport to be an exhaustive statement of all the circumstances which may make evidence of other crimes relevant and admissible, but merely a statement that in such circumstances as appeared in the case before their Lordships the evidence adduced was relevant and admissible. Other authorities show, I think, that this statement of the rule is not exhaustive.

The result of the cases was stated by Bray, J., in Rex *v.* Bond ([1906] 2 K.B. 414) in the following passage, which was approved by the Court of Criminal Appeal in Rex *v.* Ball ([1911] A.C. 57) and in Rex *v.* Rodley ([1913] 3 K.B. 468), and was adopted in the High Court of the Commonwealth of Australia by Griffith, C.J., in Rex *v.* Finlayson ([1912] 14 C. L.R. 678) : "A careful examination of the cases where evidence of this kind has been admitted shows that they may be grouped under three heads : 1, Where the prosecution seeks to prove a system or course of conduct; 2, where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake; 3, where the prosecution seeks to prove knowledge by the prisoner of some fact."

I do not feel sure whether or not the learned Judge intended, in the second class of cases thus defined by him, to refer to cases in which the evidence is tendered by the Crown "to rebut a defence which would otherwise be open to the accused." If so, the definition of the learned Judge is a substantial limitation of the rule as thus stated by the Judicial Committee in Makin's case ([1894] A.C. 57, 65). The law as to this point as defined by the Judicial Committee was expressly adopted by the House of Lords in Rex *v.* Ball ([1911] A.C. 71), and has thus been conclusively established.

There must therefore either be substituted for Mr. Justice Bray's definition of the second class of cases in which evidence of the character under consideration may be admitted, the words "cases in which the evidence is tendered by the Crown to rebut a defence which would otherwise be open to the accused," or these words must be added to Mr. Justice Bray's definition as the fourth class of such cases. This is of some importance in considering whether or not the evidence objected to in the present case was admissible upon the ground thus defined.

For the present, however, I propose to limit my observations to the question whether or not the evidence objected to comes within the first branch of Mr. Justice Bray's definition, as evidence admissible for the purpose of showing a system or course of conduct on the part of the prisoner. I shall therefore now proceed to the consideration of the more recent cases in which this question has been discussed in the Court of Criminal Appeal in England, and in which the evidence has been either admitted or rejected. I pass by those cases in which the evidence considered has been so clearly on one side or the other of the dividing-line as to make it quite clear upon which side they fall.

The first of the recent cases which appears to me to be instructive upon the point to be determined is Rex *v.* Fisher ([1910] 1 K.B. 149). I take the statement of the facts from the judgment of the Court (Lord Alverstone, C.J., Channell and Lord Coleridge, JJ.) delivered by Channell, J. (*Ibid.* 151–3) :—

"The appellant obtained on June 4th, 1909, a pony and cart from the owner, saying he wanted it for his invalid wife, and that he would take it on a week's trial; he agreed to pay £2 for the use of the pony and cart for a week if he did not keep it, and as some sort of security for the price he gave a bill of exchange for £25. That was the transaction; and it was proved that his wife was not an invalid, and that the whole story was false, and that a reference which he had given to a bank was a useless reference because he had kept the account at the bank in a different name, and moreover the account had been closed some time before. The substance of the case for the prosecution was that this was a fraudulent transaction. In the circumstances I should have thought that the evidence was amply sufficient to enable the prosecution to ask the jury to convict the appellant, but the prosecution proceeded to call witnesses to speak to other cases in which the appellant was alleged to have obtained goods by false pretences. In one of those cases the circumstances were very similar to those of the present case, but as the jury were not satisfied that the appellant was the man concerned in that case it has no bearing on the present question; otherwise I should have been inclined to think that the evidence as to that case was material and admissible. The other cases of which evidence was given were cases where the appellant had obtained provender by falsely representing in substance that he was carrying on a business, and was therefore in a position to pay for goods supplied to him. The question is whether this evidence was admissible, on the authority of the cases in which it has been held that evidence is admissible to prove that the prisoner has committed other offences besides the one charged in the indictment. The question is one which has frequently come before this Court and before Judges at the Assizes, and it is one that is not always easy to decide. The principle is clear, however, and if the principle is attended to I think it will usually be found that the difficulty of applying it to a particular case will disappear.

"The principle is that the prosecution are not allowed to prove that the prisoner has committed the offence with which he is charged by giving evidence that he is a person of bad character, and one who is in the habit of committing crimes, for that is equivalent to asking the jury to say that because the prisoner has committed other offences he must therefore be guilty of the particular offence for which he is being tried. But if the evidence of other offences does go to prove that he did commit the offence charged it is admissible because it is relevant to the issue, and it is admissible not because, but notwithstanding that, it proves that the prisoner had committed another offence. . . . Applying those principles to this case the charge here is that the prisoner obtained the pony and cart from the prosecutor by making certain statements. The falsity of those statements is not proved by giving evidence that in other cases the prisoner made other false statements, though it does tend to show that the prisoner was a swindler. . . . We are of the opinion that the evidence as to the other cases was inadmissible in this case, because it was not relevant to prove that he had committed the particular fraud for which he was being charged, in that it only amounted to a suggestion that he was of a generally fraudulent disposition. On the other hand, if all the cases had been frauds of a similar character, showing a systematic course of swindling by the same method, then the evidence would have been admissible."

I confess that I find some difficulty in understanding the reasoning by which the learned Judges came to the conclusion that the evidence which they thus rejected was not admissible. If it was admissible to prove, upon an indictment for obtaining goods by false pretences, that the prisoner had obtained by false pretences other goods from other persons, it appears to me that logically it would follow that it was quite immaterial whether or not the false pretence so admitted to proof resembled in detail those charged : Rex *v.* Francis (L.R. 2 C.C. 128, 132). Nor can I understand how the proof of false pretences made to one person can be proof of the falsity of pretences, similar only in character, made to another, unless the offences are so connected together as to show a systematic course of swindling by means of false pretences. These matters, however, are immaterial to the