

1887

Dec. 10.

[CROWN CASE RESERVED.]

## THE QUEEN v. BUCKMASTER.

*Criminal Law—Larceny—Money deposited to abide Event of a Wager—Property remaining in Depositor—Possession obtained by Fraud—Larceny by a Trick.*

The prisoner was at a race-meeting offering to lay odds against different horses. He made a bet with the prosecutor laying odds against a particular horse, and the money for which the prosecutor backed the horse was deposited with the prisoner. The prosecutor admitted that he would have been satisfied if he did not receive back the same coins. The horse won, but the prisoner went away with the money, and afterwards when the prosecutor met him he denied that he had made the bet.

The prisoner was convicted of larceny, and a case was reserved, the question being whether there was any evidence to be left to the jury :—

*Held*, that as it appeared that the prosecutor parted with his money with the intention that in the event of the horse winning it should be repaid, while the prisoner obtained possession of the money fraudulently, never intending to repay it in any event, there was no contract by which the property in the money could pass, and therefore there was evidence of larceny by a trick.

CASE stated by the chairman of the Berkshire quarter sessions.

The prisoner was tried upon an indictment which charged that he did feloniously steal, take, and carry away certain money of the moneys of John Rymer.

It was proved that the prisoner and another man, during the Ascot Race meeting, were standing upon a platform, or stand, made to represent "safes" or iron safe chests. The words "Griffiths the Safe Man," were printed upon it. The stand was outside the course, on a spot on Ascot Heath, where carriages were placed, and was not within any betting inclosure or ring.

The prisoner with a book in his hand was calling out "2 to 1 against the field." Just before a race was about to be run the prosecutor went up to him, and asked "What price Bird of Freedom?" to which he replied "7 to 1 to win." The prosecutor then deposited 5s. with the prisoner, who told him that if the horse won he (the prosecutor) would win 35s., and get his own 5s. back. He also deposited another 5s. with the prisoner, who told him that he would have 15s. back, including his own 5s., if the

horse was first or second. The man who was with the prisoner, and was acting with him, received the money, and the latter, with whom all the conversation took place, appeared to take down the bet in his book, and gave the prosecutor a card ticket with the words "Griffiths Safe Man" upon it.

While the race was being run the prisoner and the other man were seen by one of the witnesses to walk quietly away. They were followed for about twenty yards, and on the witness at once returning the stand was gone.

The horse "Bird of Freedom" won the race, and thereupon the prosecutor went back to the place where the stand had been, and he found that the prisoner and the other man had gone. He waited there for half-an-hour, and then left. Later in the afternoon the prosecutor saw the prisoner on another part of Ascot Heath, and said "I want 2*l.* 15*s.* from you." The prisoner said he knew nothing about it. Upon being told by the prosecutor that he would be detained, he admitted the bet, and said he had not the money, but that he was only the clerk, and could take the prosecutor to the man who had it. He was then taken into custody, and upon him were found card tickets with the words "Griffiths the Safe Man" upon them.

It was elicited from the prosecutor in cross-examination that he would have been satisfied if he did not receive back the same particular coins he had deposited.

On behalf of the prisoner it was submitted that the prosecutor, having parted voluntarily with the money, there was no evidence of larceny, nor of any taking by the prisoner, and none of obtaining by false pretence or trick.

No evidence was called on the part of the prisoner.

A verdict of guilty was returned.

The question for the opinion of the Court was whether there was any evidence to be left to the jury.

*Keith Frith*, for the prisoner. There was no evidence on which the prisoner could rightly be convicted of larceny. It is clear that he was not guilty of larceny as a bailee within the meaning of 24 & 25 Vict. c. 96, s. 3. Neither was he guilty of larceny at common law, for the prosecutor when he deposited the money

1887

---

THE QUEEN  
v.  
BUCKMASTER.

---

1887  
THE QUEEN  
v.  
BUCKMASTER.

intended to part with the property in the specific coins which he handed over. This is clear from his own statement that he would have been satisfied if he did not receive back the same particular coins he had deposited. What the prisoner did could not be larceny by a trick; if he was guilty of any crime he was guilty of obtaining the money by false pretences. The distinction is pointed out by Parke, B., in *Powell v. Hoyland* (1) thus: "If a person, through the fraudulent representations of another, delivers to him a chattel, intending to pass the property in it, the latter cannot be indicted for larceny, but only for obtaining the chattel under false pretences." That covers the present case. Either the prosecutor parted with the property in the money in consequence of a false pretence of an existing fact, or he was induced to part with it by the prisoner's promise to pay if the horse won the race, in which case there was no crime at all. If the horse had not won the prisoner would have been entitled to retain the money, and in that event he could not have been guilty of larceny, and the fact that the horse won can make no difference, for the guilt or innocence of the prisoner cannot depend on the result of the race.

No counsel appeared for the prosecution.

LORD COLERIDGE, C.J. I am of opinion that the conviction ought to be affirmed.

The only question left to us by the case is whether there was any evidence to be left to the jury of larceny. I am of opinion that there was abundant evidence.

It was argued on behalf of the prisoner that the money was intended to be parted with, that is, that the prosecutor intended to part with, not only the possession of the money, but the property in the money, and consequently that the taking by the prisoner was not larceny, but obtaining money by false pretences, if it was a crime at all, in other words, that it was false pretences or nothing.

To this contention there are two answers, both of them founded on good sense and supported by authority.

In the first place, supposing there was an intention on the

(1) 6 Ex. 67, at p. 70.

part of the prosecutor to part with the property in the money, in order to pass that property from the prosecutor to the prisoner there must be a contract, that is, the bringing together of two minds, but here there was nothing in the shape of a contract by which the property could pass, for if the prosecutor meant to part with the money, it was on the terms that the prisoner should do something with it, that is, should return the money to the prosecutor if the horse won. But the prisoner did not do so, and never intended to do so. The facts here are somewhat similar to those in *Oliver's Case* (1), where the prisoner offered to procure gold for the prosecutor in exchange for bank notes, whereupon the prosecutor put down 35*l.* in notes for the purpose of receiving back their amount in gold, and the prisoner took up the notes and went out of the house with them, promising to return immediately with the gold, but did not return. It was argued that the prosecutor intended to part with the property, but "Wood, B., held that the case clearly amounted to larceny, if the jury believed that the intention of the prisoner was to run away with the notes, and never to return with the gold; and that whether the prisoner had, at the time, the animus furandi was the sole point upon which the question turned; for if the prisoner had, at the time, the animus furandi, all that had been said respecting the property having been parted with by the delivery was without foundation, as the property, in truth, had never been parted with at all. The learned judge further said that *a parting with the property in goods could only be effected by contract, which required the assent of two minds*; but that in this case there was not the assent of the mind, either of the prosecutor or of the prisoner; the prosecutor only meaning to part with his notes on the faith of having the gold in return; and the prisoner never meaning to barter, but to steal." (2) That appears to me to be both good sense and sound law, and to be applicable to the present case, even assuming that there was here an intention to part with the property.

But, secondly, I think the true view is that the property in the money was not intended to pass to the prisoner.

(1) 2 Russell on Crimes, 169, 170, at pp. 274, 275; 2 Lea. C. C. at pp. 5th Ed., cited in *R. v. Walsh* (4 Taunt. 1072, 1073.

(2) 2 Russell on Crimes, 170, 5th Ed.

1887

THE QUEEN  
v.  
BUCKMASTER.  
—  
Lord Coleridge,  
C.J.

1887

THE QUEEN  
v.  
BUCKMASTER.  
Lord Coleridge,  
C.J.

In *Rex v. Robson* (1) the circumstances were even more like those of the present case. There "the prosecutor was drawn in to deposit twenty guinea notes on a bet that one of the prisoners could not guess right three times successively on the hiding of a halfpenny by another of the prisoners under a pot; he put the notes in the hands of one of the prisoners, and then, the other guessing right, the notes were handed over. The question was left to the jury whether, at the time the notes were taken, there was not a plan between the prisoners that they should be kept, under the false colour of winning a bet; and the jury so found. Upon a case reserved, the judges held that the conviction was right, because at the time of the taking the prosecutor parted with the possession only." (2) It was held there that the taking was felonious, because the parting with the money was obtained by fraud, and only the possession and not the property passed. Bayley, J., when reserving the case for the consideration of the judges, pointed out that at the time the prisoners took the prosecutor's notes, the latter parted with the possession only, not with the property; and that the property was only to pass eventually if Gill (the man with whom the prosecutor made the bet) *really* won the wager. The prosecutor expected to have been paid had Gill guessed wrong. (3)

I am of opinion that the true view of the present case is exactly what was there stated. Here the prosecutor deposited the money with the prisoner, not intending to part with the property, for he was to have his money back in a certain event, whereas the prisoner when he received the money never intended to give it back in any event. It is true that the prosecutor would have been satisfied if he had received back, not the identical coins which he deposited, but other coins of equal value, but that does not shew that he meant to part with his right to the money. In my opinion the evidence clearly shews that he meant to do nothing of the kind.

For these reasons I think the prisoner was properly convicted.

POLLOCK, B., concurred.

(1) MS. Bayley, J.; R. & R. 413.

(2) 2 Russell on Crimes, 176; from MS. of Bayley, J. (3) R. & R. at p. 414.

MANISTY, J. On the authorities it is settled law that if the owner of goods or money parts with the possession, and does not intend to pass the property, and there is at the time an intention to steal in the mind of the person who obtains the possession, that is evidence of larceny.

Here the prosecutor never intended to part with the property, and the prisoner had the animus furandi at the time when he received the possession.

HAWKINS, J. The only question is whether there was any evidence of larceny to be left to the jury. I am of opinion that there was abundant evidence. The whole of the prisoner's conduct shews a preconcerted design to get the money fraudulently.

A. L. SMITH, J. The prosecutor never intended to part with his money except for a bonâ fide bet. There is also evidence that possession of the money was obtained by a preconcerted premeditated trick. There is therefore evidence of larceny at common law.

*Conviction affirmed.*

Solicitor for prisoner: *Bassett*.

P. B. H.

---

[CROWN CASE RESERVED.]

*Dec. 10.*

---

THE QUEEN *v.* BECKLEY AND OTHERS.

*Justices—Jurisdiction—Offence committed in one Petty Sessional Division of a County—Committal in different Division of same County.*

Justices of the peace sitting in and acting for one petty sessional division of a county have jurisdiction to commit for trial on a charge arising in another petty sessional division of the same county, and are not bound to remand such charge for hearing in the division in which the offence was committed.

CASE stated by the chairman of quarter sessions for the county of Cambridge.

The defendants were tried and convicted upon an indictment charging them with conspiracy.

When the defendants were called upon to plead it was objected that the indictment ought to be quashed, as the provisions of the Vexatious Indictments Act (22 & 23 Vict. c. 17), s. 1,