

[CROWN CASE RESERVED.]

1892

Aug. 6.

THE QUEEN v. VILLENSKY.

Criminal Law—Receiving—Resumption of Possession by Owner after Theft and before Receiving.

A parcel was handed to the prosecutors, a firm of carriers, for conveyance to the consignees. While in the prosecutors' depôt, a servant of the prosecutors removed the parcel to a different part of the premises, and placed upon it a label addressed to the prisoners by a name by which they were known and at a house where they resided. The superintendent of the prosecutors' business, on receipt of information as to this, and after inspection of the parcel, directed it to be replaced in the place to which the thief had removed it, and to be sent, with a special delivery-sheet, in a van accompanied by two detectives, to the address shewn on the label. At that address it was received by the prisoners under circumstances which clearly shewed knowledge on their part that it had been stolen. The property in the parcel was laid in the indictment in the carriers, and an offer to amend the indictment by substituting the names of the consignees was declined. The prosecutors' servant pleaded guilty to a count for larceny in the same indictment:—

Held, that as the person in whom the property was laid had resumed possession of the stolen property before its receipt by the prisoners, it had then ceased to be stolen property, and the prisoners could not be convicted of receiving it knowing it to have been stolen.

Reg. v. Dolan (Dears. 436) followed.

CASE stated by the Chairman of the County of London Sessions, from which the following facts appeared:—

Jacob Villensky and Mark Villensky were tried on an indictment charging them with having feloniously received two dozen nightgowns, the goods of Carter, Paterson & Co., before then feloniously stolen. George Clark, the actual thief, pleaded guilty to the first count in the same indictment charging him with the larceny of the same goods from Carter, Paterson & Co.

The goods in question were packed in a parcel consigned by Messrs. McIntyre, Hogg, Marsh & Co. of the City of London, to Messrs. Crisp & Co. of Holloway, and the parcel was delivered by the consignors to Carter, Paterson & Co., who are common carriers, for conveyance to the consignees. In the ordinary course it arrived at the Goswell Road depôt of Carter, Paterson & Co., and there, also in the ordinary course, it was (together with many other parcels) unloaded from the van in which it had

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been brought. George Clark, who pleaded guilty, was a carman in the employ of Carter, Paterson & Co., and took part in the unloading; his conduct in reference to this particular parcel excited the suspicion of a fellow-servant named Roberts, by whom he was seen to remove it from that part of the platform appropriated to Holloway parcels, and transfer it to the part appropriated to Spitalfields parcels. On examining the parcel, Roberts found on it a label addressed to "Jacobs & Co., Hanbury Street, Spitalfields." The prisoner, Jacob Villensky, resided and carried on business there as a chandler with the other prisoner, Mark Villensky (his son), and they were known by the name of Jacobs. Roberts reported to Mr. Waters, the superintendent of Carter, Paterson & Co., the finding of the parcel thus addressed.

The superintendent, having inspected the parcel, gave directions that it should be replaced in the Spitalfields part of the platform where Roberts had found it, and that a special delivery-sheet should be made out according to the label "Jacobs & Co., Hanbury Street, Spitalfields," and that the parcel should be forwarded in a van to that address, and by his further directions two detectives travelled in the van to Hanbury Street. It did not appear that either Mr. Waters or Roberts knew at this time who were the consignees to whom the parcel had been addressed, and neither the consignors nor the consignees were informed of the substitution of the false address, nor of the consequent action of Mr. Walters, nor was Clark, the thief, informed of it. The parcel was received by both the Villenskys in Hanbury Street under circumstances pointing clearly to the conclusion of complicity with Clark, and knowledge on their part that it had been stolen. Upon that point no question arose.

At the conclusion of the evidence, the learned chairman offered to amend the indictment by substituting the names of the consignees, Crisp & Co., as the owners of the property, for those of the bailees, Carter, Paterson & Co.; but the prosecution declined to ask for any amendment. It was then objected by counsel for the defence that there was no case to go to the jury, inasmuch as at the time the parcel was received by the Villenskys it had ceased to be stolen property, the bailees, Carter, Paterson & Co., having resumed actual possession of it. He

cited in support of his contention *Reg. v. Dolan* (1) and *Reg. v. Schmidt* (2). The learned chairman overruled the objection, and the prisoners were convicted of felonious receiving, but were admitted to bail pending the decision of the present case.

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The question for the opinion of the Court was whether upon the facts stated the objection was a valid one.

Slade Butler, (*Burnie*, with him), for the prisoner, after reading the case, was stopped by the Court.

G. M. Cohen, for the prosecution.

LORD COLERIDGE, C.J. This is, in my opinion, a perfectly plain case, and is concluded by the decision in *Reg. v. Dolan*. (1) There is no doubt that Clark stole these goods and the other two prisoners intended to receive them; but the carriers, in whose name those responsible for the prosecution insisted on the case going on, had in the meantime, before its receipt by the prisoners, got hold of the property, which, by their special directions, was sent off to the prisoners' house in a special van accompanied by two detectives. I must confess that I cannot conceive of a case of resumption of possession if this is not one.

A. L. SMITH, L.J. I am of the same opinion. The prisoners have been convicted of receiving stolen property knowing it to have been stolen, and the only question for us is whether at the time they received it it was stolen property. There is no doubt that Clark stole it; but after the theft the carriers resumed possession of the property, and delivered it to the persons who have been convicted of receiving it. On the authority of *Reg. v. Dolan* (1), and also I think on that of *Reg. v. Schmidt* (2), I think it clear that possession of the stolen property was resumed by the carriers.

POLLOCK, B. I agree. The decisions in *Reg. v. Dolan* (1) and *Reg. v. Schmidt* (2) are, in my judgment, founded on law and on solid good sense, and they should not be frittered away. It is, of course, frequently the case that when it is found that a person has stolen property he is watched; but the owner of the property,

(1) Dears. 436.

(2) Law Rep. 1 C. C. 15.

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 VILLENSKY. if he wishes to catch the receiver, does not resume possession of the stolen goods; here the owners have done so, and the result is that the conviction must be quashed.

CAVE, J. I am of the same opinion. It is impossible to distinguish this case from *Reg. v. Dolan* (1), which, in my judgment, is directly in point.

BRUCE, J. I am of the same opinion.

Conviction quashed.

Solicitor for prosecution : *Solicitor to the Treasury.*

Solicitor for prisoners : *D. A. Romain.*

W. J. B.

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THE QUEEN v. WAITE.

Criminal Law—Offences against the Person—Carnal Knowledge of Girl under Thirteen—Male under Fourteen—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4.

A male under the age of fourteen years cannot be convicted under s. 4 of the Criminal Law Amendment Act, 1885, of the offence of carnal knowledge of a girl under the age of thirteen years.

CASE reserved by Wright, J.

Enos Waite, aged thirteen, was convicted at the Warwick Assizes of the felony of carnal knowledge of a girl under thirteen years of age—namely, eight years of age. The offence was fully proved. I passed sentence of two months' imprisonment and whipping; but I reserved this case on the question of law which arose at the trial, whether a male of less than fourteen years of age can be guilty of an offence against s. 4 of the Criminal Law Amendment Act. See, as to rape, *Reg. v. Groombridge* (2); *Reg. v. Phillips* (3); 1 Hale P. C. 631.

The prisoner is also sentenced to a concurrent term of imprisonment for two months upon an indictment for a common assault upon another girl of eight years of age. The sentence of

(1) Dears. 436.

(2) 7 C. & P. 582.

(3) 8 C. & P. 736.