

1895

July 27.

[CROWN CASE RESERVED.]

THE QUEEN *v.* FARNBOROUGH.*Criminal Law—Larceny—Animus Furandi—Function of Jury.*

Upon a trial for larceny the question whether the goods were taken *animo furandi* is a question of fact for the jury.

A prisoner was tried at quarter sessions for larceny; at the conclusion of the case the jury announced that they had not agreed upon their verdict. They were then asked by the chairman whether they believed the evidence for the prosecution, and answered the question in the affirmative; the chairman then directed a verdict of guilty to be entered:—

Held, that the conviction was bad, there having been no finding by the jury that the prisoner had acted *animo furandi*.

CASE stated by the chairman of the Middlesex Quarter Sessions in the following terms.

The prisoner was charged with stealing milk. The facts of the charge are immaterial to this case. It appeared to me that, if the jury believed the evidence for the prosecution the prisoner was in law guilty as charged, and I so directed them. No evidence except as to character was called for the defence, and the counsel for the defence did not seriously dispute my ruling. The jury retired to consider their verdict; and after they had been absent some time I sent for them and asked if they were agreed, and they replied that they were not. I then asked them, did they believe the evidence for the prosecution, and the foreman replied that they did. Counsel for the prisoner objected that no question could be asked except the ordinary ones, "Are you agreed in your verdict?" and "Do you find the prisoner guilty or not guilty?" I overruled the objection, and directed the jury that their verdict amounted to one of guilty, and it was so recorded; but I released the prisoner on his own recognizance pending the decision of this case.

It is laid down in 4 Bl. Com. (ed. 1813), p. 328: "Such public or open verdict may be either general, Guilty or Not Guilty; or special, setting forth all the circumstances of the case and praying the judgment of the Court whether, for instance, on

the facts stated it be murder, manslaughter, or no crime at all. This is where they doubt the matter of law and therefore choose to leave it to the determination of the Court; though they have an unquestionable right of determining upon all the circumstances and finding a general verdict if they think proper so to hazard a breach of their oaths." He then goes on to shew how, by laws either since repealed or fallen into desuetude, such jurors cannot be punished.

The question is, Had I the power to put the question and direct such verdict to be recorded, the facts in the judgment of the Court clearly constituting in law the offence charged, if proved to the satisfaction of the jury?

Hutton, for the prisoner, was not called upon to argue.

Grain, for the prosecution, intimated that he could not argue in support of the conviction.

LORD RUSSELL of KILLOWEN C.J. If this case did not raise a question of very considerable public importance, I should be content to say that this conviction cannot be allowed to stand. In dealing with the important question raised we must confine ourselves to what is stated in the case itself, from which it appears that the course which the proceedings took may be described thus. The prisoner was charged with stealing milk; evidence was called in support of the charge, and the case was left to the jury on that evidence, no witnesses, except as to character, being called for the defence. The jury retired to consider their verdict, and some time elapsed, during which they made no communication to the chairman as to any point of difficulty in the case; the chairman then very properly sent for them, and asked if they were agreed on their verdict; they answered that they were not; whereupon he asked them whether they believed the evidence given for the prosecution. I do not stop to inquire whether he was right in inviting the opinion of the jury in this shape; the foreman, however, answered that question in the affirmative; whereupon the chairman said that their answer amounted in law to a verdict of guilty, and directed that verdict to be recorded. But what did that answer of the

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foreman amount to, assuming that it expressed the opinion of the rest of the jury? The foreman, as the mouthpiece of the jury, had said that they were not agreed; and at the second question put to him he answered that they believed the evidence for the prosecution. What did that amount to? That they had heard certain witnesses depose to certain facts, and that they believed they were telling the truth. But it is quite consistent with the credit of the witnesses that the facts proved by them were not such as to shew an animus furandi on the part of the prisoner, which is an essential ingredient of the crime of larceny; the jury might have assumed that the prisoner took the milk by leave, or that he intended to pay for it, or that the matter was too trivial to justify a conviction; indeed, it is easy to see that the facts might be such as to justify the jury in believing the evidence, and yet declining to draw the inference that the prisoner had any animus furandi. The chairman in effect drew that inference himself, and found that the prisoner had acted with a guilty intent—a fact essential to be found before his guilt could be established; in doing so he went beyond his function, and infringed the well-established principle that the jury are to decide all questions of fact and the judge only questions of law.

POLLOCK B. I entirely agree, and should add nothing but that I am anxious to say that our present decision must not be taken in any way to affect the right of a jury in appropriate cases to find a special verdict. If a special verdict includes all the evidence required to find a prisoner guilty of the offence charged, the judge may act upon it and direct a verdict of guilty to be entered; but it cannot be suggested in the present case that the answer of the jury in any way amounted to a special verdict.

GRANTHAM, LAWRENCE, and WRIGHT JJ., concurred.

Conviction quashed.

Solicitor for prosecution: *C. H. Mason.*

Solicitor for prisoner: *H. Firth.*

W. J. B.