

justices, and it is argued that because in this Act it is provided that the inspector may take proceedings "with the consent of the local authority," the use of the word "consent" instead of "authority" shews that the consent must be specially given in each particular case. I do not agree with that argument. In my opinion s. 14 provides that an inspector is a person who may conduct prosecutions if the local authority consent to his doing so. If it had intended that a separate consent was to be given in each case, I should have expected to find in the Act a very much clearer expression of that intention. The case must go back to the justices for them to convict.

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 TYLER  
*r.*  
 FERRIS.  


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 Lora Alverstone  
 C.J.

LAWRANCE and RIDLEY JJ. concurred.

*Appeal allowed.*

Solicitor for appellant: *Sir R. Nicholson.*

Solicitor for respondent: *W. T. Ricketts.*

F. O. R.

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[CROWN CASE RESERVED.]

THE KING *v.* PAYNE.

1905  


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*Dec. 9.*

*Criminal Law—Indictment—Form—Receipt of Money Stolen by Wife from Husband—Indictment for Misdemeanour—Absence of Allegation that Thief was Wife of Person from whom Money Stolen—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16.*

An indictment charging as a misdemeanour the receipt by a person of money in fact stolen by a wife from her husband knowing the money to have been stolen is good, inasmuch as the stealing by a wife of her husband's property does not amount to a felony either at common law or by virtue of the Larceny Act, 1861, but is made a criminal offence by the Married Women's Property Act, 1882, and therefore the receiving of such stolen property is not a felony within the meaning of s. 91 of the Act of 1861; and as there is no other statute making such receipt a felony, it is a misdemeanour only. It is not necessary (although it may be better) to insert in the indictment an allegation that the money belonged to the husband and had been stolen from him by his wife.

CASE stated by the Common Serjeant of London.

The prisoner William Payne was tried at the November

1905 Session of the Central Criminal Court on an indictment of  
 REX which the following is a copy :—  
 v. Central Criminal Court } The jurors for our Lord the King  
 PAYNE. to wit. } upon their oath present that William  
 Payne on the sixth day of August in the year of our Lord one  
 thousand nine hundred and five at the parish of All Saints,  
 Poplar, in the county of London and within the jurisdiction of  
 the said Court, certain money, to wit eighty-six pounds of the  
 moneys of John William Price before then feloniously stolen, taken  
 and carried away unlawfully, did receive and have, he the said  
 William Payne then well knowing the said money to have been  
 feloniously stolen, taken and carried away against the peace of  
 our Lord the King, his Crown and dignity.

It was proved that the money was stolen by Caroline Price,  
 and that she was the wife of John William Price. There was  
 evidence that William Payne received the money so stolen,  
 knowing both that Caroline Price was the wife of John William  
 Price and that she had stolen the money from him.

Before the trial of William Payne, Caroline Price pleaded guilty  
 to stealing the money from her husband.

It was contended by counsel for the prisoner :—

(1.) That the indictment was bad in law, as alleging the  
 receipt of money stolen by a common law larceny, which  
 is by statute a felony, and charging such receiving as a  
 misdemeanour.

(2.) That the facts proved did not support the indictment, as it  
 did not state that the goods were stolen by a wife from her husband.

(3.) That the receipt of goods with knowledge that they were  
 stolen by a wife from her husband was not a misdemeanour.

The prisoner was found guilty, and sentence was postponed,  
 the following questions being reserved for the consideration of  
 the Court for Crown Cases Reserved :—

(1.) Is the indictment bad after verdict ?

(2.) Do the facts proved support the indictment ?

(3.) Is the receipt of goods with knowledge that they have been  
 stolen by a wife from her husband a misdemeanour ?

The prisoner was committed to prison pending the decision of  
 the Court.

*H. C. Jenkins*, for the prisoner. The question is whether the misdemeanour which is alleged in the indictment is merged in consequence of the crime committed by the prisoner being a felony. The principle laid down in *Rex v. Cross* (1) governs the present case.

[LORD ALVERSTONE C.J. If the receiving with which the prisoner is charged is not a felony by virtue of s. 91 of the Larceny Act, 1861 (2), or at common law, why is it not

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(1) (1702) 1 I.d. Raym. 711.

(2) By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91: "Who-soever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping: Provided, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence."

By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12:

"Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife."

By s. 16: "A wife doing any act

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a misdemeanour? At the time the Act of 1861 was passed a wife could not steal her husband's goods. You must contend that the Married Women's Property Act, 1882, enlarges the ambit of the Larceny Act, 1861, and makes the theft by a wife of her husband's property a felony under s. 91 of the Larceny Act, 1861, so that the receipt by the prisoner of the stolen goods also amounts to a felony by virtue of that section.]

At the present time there is no statute making the receipt by the prisoner a felony, and therefore he cannot be convicted at all. *Reg. v. Streeter* (1) shews that the prisoner could not have been indicted for felony.

Secondly, this indictment is bad upon the ground that it does not upon the face of it disclose any offence in law. The prisoner is charged with a misdemeanour, and there is nothing upon the face of the indictment to shew that it is not an ordinary case of feloniously receiving goods within the meaning of s. 91 of the Act of 1861, knowing them to have been feloniously stolen, either at common law or under the Act of 1861. The indictment ought to have contained something to shew that it was a receiving which was a common law misdemeanour; it ought to have contained an allegation that the money was stolen by a wife from her husband, and that the prisoner received it knowing it to have been so stolen.

[LORD ALVERSTONE C.J. That appears to be contrary to the decision in *Rex v. James*. (2)]

[Chitty on Criminal Law, 2nd ed. p. 951a; Foster's Crown Cases, p. 373; Archbold's Criminal Pleading, 23rd ed. p. 21; and the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 4, were also referred to.]

No counsel appeared for the prosecution.

LORD ALVERSTONE C.J. In my judgment this conviction must be affirmed. Upon behalf of the prisoner it has been contended

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with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife

under this Act, shall in like manner be liable to criminal proceedings by her husband."

(1) [1900] 2 Q. B. 601.

(2) [1902] 1 K. B. 540.

that the offence which he committed amounted to felony, and that therefore upon an indictment for misdemeanour the prisoner could not be convicted. If it could have been established that the offence which the prisoner committed was made felony either by s. 91 of the Larceny Act, 1861, or by any other statute, the objection to the conviction would have been good. But we cannot uphold the contention consistently with *Reg. v. Smith* (1) and *Reg. v. Streeter*. (2) In *Reg. v. Smith* (1), where there was an indictment under s. 91 of the Larceny Act, 1861, for receiving goods knowing them to have been feloniously stolen, it was held that it is not an offence under s. 91 of that Act to receive stolen goods knowing them to have been stolen, if the stealing is not a crime either at common law or under the Act of 1861, although the stealing is a felony under s. 1 of the Larceny Act, 1868. A considered judgment of the Court, composed of Bovill C.J., Willes, Byles and Hannen JJ., and Cleasby B. was delivered. Bovill C.J. went at length into the matter, and decided that in order to support an indictment under s. 91 of the Act of 1861 for receiving goods knowing them to have been feloniously stolen, there must be a stealing which amounts to a felony either at common law or under s. 91 of the Act of 1861. That case being decided in 1870, in *Reg. v. Streeter* (2) a point somewhat nearer that arising in the present case was considered. In that case property had been stolen by a wife from her husband, and the Married Women's Property Act, 1882, was in force. The point therefore was open for argument that the Married Women's Property Act, 1882, had extended the ambit of the Larceny Act, 1861, so as to bring within that Act the stealing by the wife of the husband's goods, and that therefore a felony had been committed by her under the Act of 1861, which by virtue of s. 91 rendered the receipt of the goods knowing them to have been stolen a felony. The head-note of that case in the Law Reports correctly states the decision. Mathew J., referring to s. 91 of the Larceny Act, 1861, to the Larceny Act, 1868, and to certain sections of the Married Women's Property Act, 1882, comments upon *Reg. v. Smith* (1), which he says "was a case in which partnership property had been stolen by a partner and

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(1) (1870) L. R. 1 C. C. R. 266.

(2) [1900] 2 Q. B. 601.

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received by the prisoner, the stealing being a criminal offence by virtue of the Larceny Act, 1868, and it was held that the prisoner could not be convicted of receiving under the Larceny Act, 1861, s. 91. Our decision must be to the same effect . . . .” Wright J. said: “I agree that this prisoner could not be properly convicted under the Larceny Act, 1861, s. 91; but in future cases it seems that there might be an indictment for receiving at common law.” Wright J., in making this observation, must have had in his mind an indictment for misdemeanour. Counsel for the prisoner has been unable to point out any other statute under which an indictment could be framed for feloniously receiving the goods. The decisions in *Reg. v. Smith* (1) and *Reg. v. Streeter* (2) turned upon the express words of s. 91 of the Act of 1861. We cannot give effect to the argument upon behalf of the prisoner in the present case without overruling those decisions. If there had been any statute making the receiving of the goods stolen by a wife from her husband a felony, the present case would have been brought within the decision in *Rex v. Cross*. (3) But as that cannot be done, in my opinion the first objection to the indictment fails.

The second objection, viz., that the indictment only states that the goods were feloniously stolen from Price and received by Payne, raises the same kind of question as that which we considered in *Rex v. James* (4); this objection taken upon behalf of the prisoner is that it should have appeared upon the face of the indictment that the goods were stolen under such circumstances that there was no offence at common law or under the Larceny Act, 1861. In my opinion to give effect to this objection would be contrary to the principle of our decision in *Rex v. James*. (4) The conviction must be affirmed.

LAWRANCE J. I am of the same opinion.

CHANNELL J. I agree. I think there is a little more doubt about the second objection, but on the whole I think that *Rex v. James* (4) covers it. I would, however, venture to suggest that in drawing an indictment in future for receiving property

(1) L. R. 1 C. C. R. 266.

(2) [1900] 2 Q. B. 601.

(3) 1 Ld. Raym. 711.

(4) [1902] 1 K. B. 540.

stolen by a wife from her husband, it would be better to allege that the property stolen belonged to the husband and was stolen from him by the wife.

WALTON J. I agree.

SUTTON J. I also agree.

*Conviction affirmed.*

Solicitor for the prisoner: *Cyril Renton.*

F. O. R.

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 Channell J.

[IN THE COURT OF APPEAL.]

BANNATYNE *v.* D. & C. MACIVER.

C. A.  
 1905  
 Nov. 22.

*Principal and Agent—Borrowing by Agent—Excess of Authority—Debts of Principal paid with Money borrowed—Belief of Lender in Authority of Agent—Equitable Right of Lender to Recover.*

The defendants, a country firm, opened a branch of their business in London, and appointed an agent to carry it on. The defendants had an account with a London bank in their name, upon which the agent was entitled to draw. The agent had no authority to borrow money, but the banking account being low, he borrowed a sum of money of the plaintiff, who was told that it was for the use of the firm, and believed that the agent had authority to borrow. The money was paid into the bank, and part of it was used by the agent in the payment of obligations of the defendants. Subsequently the defendants supplied further sums of money, which would have been sufficient to meet their obligations, but for the agent drawing, on his own account, sums to which he was not entitled. The agent meanwhile borrowed other sums of money of the plaintiff, portions of which were alleged to have been used in discharging further obligations of the defendants. In an action to recover the amount so borrowed:—

*Held* that, to the extent to which the money borrowed should be found on inquiry to have been in fact applied in paying legal debts of the defendants, the plaintiff was entitled in equity to stand in the same position as if that amount had been originally borrowed by them.

APPEAL from the judgment of Grantham J. at the trial without a jury.

The claim on the writ was against the defendants as acceptors of a bill of exchange for 372*l.* 10*s.*, drawn by the plaintiff, or in the alternative for money lent, and for interest. An application was made for judgment under Order xiv., and a direction was

# ERRATA AND ADDENDA.

<i>Page</i>	<i>Line</i>	<i>For</i>	<i>Read</i>
99	1	<i>H. C. Jenkins</i>	<i>Huntly Jenkins.</i>
125	9 from bottom	1882	1892.
301	4 & 5 from bottom	<i>Edinburgh Southern Cemetery v. Kinmont</i>	<i>Edinburgh Southern Cemetery Co. v. Solicitor of Inland Revenue.</i>
523	foot-note (2)	{ <i>Knight's Local Government Reports</i> }	L. G. R.
587	foot-note (1)	add [1906] 1 Ch. 740.	
588	„ (1)	add and see [1906] 1 Ch. 747 n.	