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Dec. 5.

[COURT OF CRIMINAL APPEAL.]

THE KING *v.* RICHARDS.

*Criminal Law—Larceny—Fixtures—Agreement for Tenancy of House—Taking Possession with Intention to steal Fixtures—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 31.*

A person who procures possession of a house under an agreement between him and the owner for a lease thereof with the fraudulent intention of stealing the fixtures thereto belonging, and upon obtaining possession severs and steals the fixtures, is guilty of larceny under s. 31 of the Larceny Act, 1861.

*Rex v. Munday*, (1799) 2 Leach, C. C. 850, followed.

## APPEAL against a conviction.

The appellant was indicted at the Middlesex quarter sessions under s. 31 of the Larceny Act, 1861 (1), for having stolen certain lead and zinc piping, zinc guttering, iron stoves, tanks and cisterns, then being fixed to certain dwelling-houses, the property of one King.

King was the lessee for a long term of years of fifteen dwelling-houses, five of which were unoccupied, the rest being let to weekly tenants. By an agreement in writing dated July 6, 1910, and made between King and the appellant, it was agreed that the appellant should be entitled to possession of the houses upon the signing of the agreement, and to the rents payable in respect thereof, and that he would within three months at his own cost put the houses into substantial repair and condition to King's satisfaction; that upon completion of the work within the three months King would grant to him a lease of the houses for twenty-one years at a yearly rent, but that if the appellant should fail to commence the work within seven days, or should fail to complete the same in accordance with the agreement,

(1) 24 & 25 Vict. c. 96, s. 31:  
 "Whosoever shall steal, or shall rip, cut, sever, or break with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fix-

ture, whether made of metal or other material or of both, respectively fixed in or to any building whatsoever . . . shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny . . ."

King should be at liberty to re-enter and resume possession of the houses, and the agreement should thereupon be determined; and that until the lease should be granted the appellant should be deemed a tenant at will.

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According to the evidence for the prosecution the repairs which were necessary to be done to the houses consisted of certain whitewashing, papering and painting, and repairing broken glass. The appellant, when he entered into possession of the houses, took down and removed from some of the houses the zinc guttering and lead piping, some iron stoves, flush tanks, and wood cisterns lined with zinc. All these things were stated to be in good condition.

The chairman, in his summing up, referred to the case of *Rex v. Munday* (1), and, after saying that it was almost identical with the present, he directed the jury as follows: "I will ask you to say, did the prisoner Richards get possession of these houses with the fraudulent intention in his mind at the time to defraud his landlord of the goods when he got in possession; and being in possession did he take out these goods with the intent to steal these goods and these fixtures from his landlord? . . . . If it is clear to you as men of the world that it was his intention to act in a fraudulent manner to his landlord and to deprive him of his goods, and that he was carrying out his purpose up to the time of his arrest, you have no alternative but to find him guilty of stealing these fixtures from his landlord." The appellant was convicted.

*Lawless*, for the appellant. The appellant, being in possession of the houses and fixtures, could not be guilty of stealing the fixtures. Sect. 31 of the Larceny Act, 1861, under which the appellant was indicted, does not apply to a tenant in occupation. Sect. 74 applies to such a case as that, but the appellant was not indicted under that section. The chairman misdirected the jury in telling them that the case of *Rex v. Munday* (1) was almost identical with the present one. The head-note in that case states that "a person who procures possession of a house under a written agreement between him and the landlord for a lease of

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twenty-one years with a fraudulent intention to steal the fixtures thereto belonging, is, by stealing the lead affixed to the house, guilty of larceny on the statute, 42 Geo. 2, c. 32." Though that Act was in somewhat similar terms to s. 31 of the Larceny Act, 1861, the decision in that case ought not now to be followed. To apply it to s. 31 of the Larceny Act, 1861, would be to apply the doctrine of larceny by a trick to real property. That has never yet been done. Further, there was a false representation in that case, whereas here there was none.

*S. C. N. Goodman*, for the prosecution. Upon the verdict of the jury it must be taken that the appellant obtained possession of the houses by fraud for the purpose of stealing the zinc and lead piping and other articles from the houses. He never intended to become a tenant at all. The entering into the agreement was a mere trick to get possession of the houses for the purpose of stealing the fixtures. The case of *Rex v. Munday* (1) is exactly in point, and it is cited in Archbold's Criminal Pleading, 24th ed., p. 568, as applicable to s. 31 of the Larceny Act, 1861. That case has now stood for 110 years and ought to be followed. Sect. 74 only applies to a tenant in occupation of the house, and therefore does not apply here. But even if it does apply, the appellant was properly indicted under s. 31.

*Lawless* in reply.

The judgment of the COURT (Lord Alverstone C.J., Pickford and Avory JJ.) was delivered by

PICKFORD J. This case raises the question whether or not we ought to follow the decision in *Rex v. Munday*. (1) If that case is to be followed, then a person who procures possession of a house under an agreement for a lease with the fraudulent intention of stealing the fixtures thereto belonging is, by stealing the fixtures, guilty of larceny. In the present case the jury must be taken to have found that when the appellant entered into the agreement for the tenancy of the houses he had no intention of becoming a bona fide tenant of the houses, that is to say, of becoming a tenant for the purpose either of occupying the houses himself or of sub-letting them, but that he entered into the

(1) 2 Leach, C. C. 850.

agreement in order to get possession of the houses for the purpose of stealing the fixtures specified in the indictment. That is what the jury must be taken to have found, and it brings the case within the decision in *Rex v. Munday*. (1) It is somewhat difficult to follow the train of reasoning in that case, because the report does not state what the arguments were, nor does there seem to have been any considered judgment or opinion delivered. The judges, however, confirmed the conviction. That case was decided more than a century ago on reference to all the judges, and it has been considered as an authority from that date to the present time. We think that we ought to follow it, and therefore there was no misdirection, and the conviction must stand.

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*Conviction affirmed.*

Solicitor for prosecution : *Director of Public Prosecutions.*

Solicitor for defendant : *Registrar of Court of Criminal Appeal.*

(1) 2 Leach, C. C. 850.

W. F. B.