

All the cases on the subject, illustrate the correctness of the rule laid down by Mr. Justice Erle, and I have always acted upon that rule in deciding upon what constitutes a splitting of a cause of action.

In this case the actions are not brought upon the notes directly, for then they would form distinct causes of action, but for money paid by the plaintiff for the use of the defendant in taking up the notes. In a Superior Court there would have been one count for money paid, under which the amounts of the three notes could have been recovered, making one cause of action though the notes were payable to different persons; as in *Grimsbey v. Aykroyd*, 1 Ex. 479, where the orders were given to different persons, but were held to give only one cause of action. The plaintiff should have sued for the whole at once, and not having done so, he cannot now recover the amount claimed in this action.

ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. V. GLYDE.

Larceny—Finding lost property—Belief that owner will come forward.

Where a man found a sovereign on the highway, and, with a knowledge that he was doing wrong, at once determined to appropriate it, whether the owner came forward or not, and did so; but, also, at the time of finding, believed the sovereign to have been accidentally lost, and had no reason to suppose or believe that the owner would become known to him, it was

Held, on the authority of *R v. Thurborn*, 1 Den. 387, that he was not guilty of larceny.

[16 W. R. May 30, 1174.]

Case reserved by Cockburn, C. J.:

William Glyde was convicted before me at the last assizes for the county of Sussex on an indictment for larceny, in which he was charged with having stolen a sovereign, the property of Jane Austin.

It appeared that, on the evening of the 16th January last, the prosecutrix, being on her way home from Robertsbridge, where she had been to pay some bills, to her home at Brightling, and having some money loose in her hand, had occasion, owing to the dirty state of a part of the road, to hold up her dress, and in doing so let fall a sovereign. It being then dark, she did not stop to look for the sovereign, but on the following morning she started to go to the spot in the hope of finding the lost coin. In the meantime the prisoner, coming from Robertsbridge towards Brightling, in company with a man named Hilder and his son, and seeing, at the spot where the prosecutrix had dropped her sovereign, a sovereign lying in the road, picked it up and put it in his pocket, observing that it was a good sovereign and would just make his week up.

Proceeding onwards the men soon afterwards met the prosecutrix, then on her way to the spot where the sovereign had been dropped. According to her statement, on meeting the men, she addressed Hilder, whom she knew, and asked in the hearing of the prisoner, "if he had stumbled on a sovereign," stating that she had lost one and was going to look for it, to which inquiry Hilder answered in the negative. She was however, contradicted by Hilder, and his son, who were called as witnesses for the prosecution,

as to any such conversation having taken place. But it was clear that the fact of the sovereign thus picked up by the prisoner being one which had been lost by the prosecutrix was speedily brought to the prisoner's knowledge. The fact of the prosecutrix having lost a sovereign and of the prisoner having found one having come to his master's ears—the master asked him if he had found a sovereign, to which he answered that he "was not bound to say." The master further asked if he had not heard that Mrs. Austin had lost one, to which the prisoner made the same reply. On the master asking whether it would not be more honest to give the sovereign up to her, he answered that "he could just manage to live without honesty."

Being asked by a police constable whether he remembered going up the Brightling road, and picking up a sovereign, he answered, "I do not know that I did." On the officer saying "I have been informed by witnesses that you did so, and if you did it did not belong to you—more particularly as you know to whom it belonged," the prisoner said he did not want to have anything more to say to the officer, and went into his house. On a subsequent occasion, however, he admitted to the same witness that he had picked up the sovereign.

The witness Hilder also stated that the prisoner afterwards came to him and asked him if he could say that he (prisoner) had picked up a sovereign, and on receiving an answer in the affirmative, said that if that was so he must go and see the prosecutrix, who had applied to him several times, about it.

In summing up to the jury on this state of facts, I told them that where property was cast away or abandoned, any one finding and taking it acquired a right to it, which would be good even as against the former owner, if the latter should be minded to resume it. But that when a thing was accidentally lost, the property was not divested but remained in the owner who had lost it, and that such owner might recover it in an action against the finder. As to how far larceny might be committed by a person finding a thing accidentally lost, it depended on how far the party finding believed that the thing found had been abandoned by its owner or not. That where the thing found was of no value, or of so small value that the finder was warranted in assuming that the owner had abandoned it, he would not be guilty of larceny in appropriating it; or if, not knowing or not having the means of discovering the owner, the finder, from the inferior value of the thing found, might fairly infer that the owner would not take the trouble to come forward and assert his right, so that practically there would be an abandonment, and so believing appropriated the thing found as virtually abandoned by the owner, he would not be guilty of larceny. So, although the value of the article might render it impossible in the first instance to presume abandonment by the owner, yet if, from the fact of no owner coming forward within a sufficient time, the finder might reasonably infer that the owner had abandoned and given up the thing as lost, there would be no criminality in an appropriation of it by the latter.

On the other hand, I pointed out that there were things as to which it could not be supposed that they had been intentionally abandoned, or