

The defendant testified that the money of the prosecutrix, with other moneys of his own, was lent to a builder named Thomas, on the security of some houses he was building, and that they were deeded to the defendant to secure the loan. It was also testified by the defendant, but denied by the prosecutrix, that she was told that her money was lent in that way.

The County Court Judge found that the money was entrusted to the defendant for investment, and was of opinion that it was the defendant's duty to invest in securities, whereas the securities taken by the defendant were not securities at all, within the meaning of the authorisation of the prosecutrix; and, consequently, that the defendant appropriated the money to his own use, and was, therefore, guilty of the theft charged.

If the statement of the County Court Judge could be looked at, it shewed that he erred in convicting the defendant, because his investing the money in improper securities could not properly be held to be an appropriation to his own use, and still less the theft of the money.

Counsel for the Crown contended that this statement was not part of the case and could not be looked at; but the learned Chief Justice did not see why, when it was sent up with the evidence, it might not be looked at. If necessary, the case should go back to the County Court Judge to be amended so as to shew what his finding of fact as to this was.

But, even excluding this statement, the conviction could not be sustained. The uncontradicted evidence was, that the money of the prosecutrix was lent to Thomas, as the defendant testified, on the security which he said he took. The fact that such an investment was an improper one, and the further fact that the security was taken in the defendant's own name, did not warrant a finding that the money was stolen by the defendant, however improper his conduct was in so dealing with money entrusted to him for investment, as, according to the testimony of the prosecutrix and the finding of the County Court Judge, it was.

The question submitted should be answered in the negative.

*Conviction quashed.*