

Eng. Rep.]

REG. V. GLYDE.

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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 the owner be supposed to have given up his property: thus, e.g., a purse of gold, or a pocket-book containing bank notes, found in the road, could not possibly be supposed to have been intentionally placed there; or a diamond ornament, found outside the door of an assembly room, to have been intentionally dropped by the lady who had worn it, or a box or parcel left in a public conveyance or a hack cabriolet, to have been left with the intention of abandoning the property. That in all these cases as the property remained in the owner, and the presumption of abandonment was plainly negatived by the circumstances, a person finding such an article and appropriating it to himself with an intention of wronging the owner, if he knew who the owner was, or had the means of finding the owner—as where the name of and address of the owner were on the thing found—or had the means of ascertaining the owner, as in the case of a cabman who knew the house at which he had taken up or set down a person by whom an article must have been left in the carriage—would clearly be guilty of larceny. And even where the finder did not know the owner, if the nature of the thing found precluded the presumption of abandonment, and gave every reason to suppose that the owner would come forward and assert his claim, and the finder nevertheless determined to appropriate the

chattel, and to keep it though he should afterwards become aware who the owner was, this too, if done with the intention of wrongfully depriving the unknown owner of property, which the finder knew still to belong to him, would be larceny, provided such intention was contemporaneous with the original taking of possession.

I told the jury that while, to constitute larceny in appropriating an article thus found, there must be a guilty intention of taking that which was known to belong to some one else, and which the party appropriating knew he had no right to treat as his own, this intention may be gathered from the value of the article and the other circumstances of the case, especially the conduct of the party accused, as to concealment or otherwise.

In this respect, I told them they might properly take into account the conduct of the prisoner Glyde in maintaining silence when he heard the question put by the prosecutrix to Hilder, if they believed that portion of her evidence; or, at all events, in refusing to say whether he had found a sovereign or not, and only acknowledging it when Hilder had told him he was prepared to speak to the fact.

As the result of this reasoning, I left it to the jury to say whether the prisoner, on finding the sovereign, believed it to have been accidentally lost, and nevertheless with a knowledge *that he was doing wrong*, at once determined to appropriate it to himself, and to keep it, notwithstanding it should afterwards become known to him who the owner was. I told the jury, if they were of that opinion, to find the prisoner guilty. But inasmuch as there was nothing to show that the prisoner, on appropriating the sovereign on finding it, had any reason to suppose that the owner would afterwards become known to him (or any belief that he would), I doubted whether an intention on his part of keeping it even if the owner should become known to him—he not believing that the latter event would come to pass—would amount to larceny. I therefore thought it right to take the opinion of this Court whether the conviction can be sustained on the facts I have stated.

The jury having found the prisoner guilty, I admitted him to bail, on his own recognizances to come up for judgment at the next assizes, if required so to do. Had I passed sentence at the time, I should have condemned him to imprisonment and hard labour for one calendar month.

No counsel appeared for the prisoner.

*Lumley Smith* for the prosecution.—In *R. v. Moore*, 9 W. R. 276, 1 L. & C. 1, 30 L. J. M. C. 77, where a shopkeeper appropriated a note dropped in his shop, he was convicted, and that case differs from the present mainly in the fact that there the jury found specifically that when he picked up the note he believed the owner could be found. [BLACKBURN, J.—In that case, Wightman, J., referring to *R. v. Thorburn*, 13 L. J. M. C. 140, 1 Den. 387, asks if there is any case of a conviction being quashed where the three ingredients concur—first, that the prisoner intended to appropriate the property from the first; second, that he believed at the time he took it that the owner could be found; third, that he acquired the knowledge of who the owner was before the conversion. It, therefore,