

[Crown Case reserved.]

May, 1884.

REGINA V. DE BANKS.

*Larceny by baillee.*

*The prisoner was engaged by the owner of a horse to look after it for a few days, with authority to sell it. He sold it for £15. The owner having sent his wife to receive the money the prisoner showed her a check, but refused to hand it over, saying that he would go to the bank to cash it. He came out of the bank and said they would not cash it. Being again asked to hand it over, he ran away. Held, by Lord Coleridge, C.J., Grove, Field and Smith, J.J., (Stephen, J., dissenting), that the prisoner was rightly convicted of larceny of the £15.*

The prisoner was indicted at the Shropshire Quarter Sessions for embezzling the money of his employer. The evidence, so far as it is material to the point reserved, was as follows:—Joseph Tucker, the prosecutor, proved: On the 11th January, I drove a chestnut mare into Chester with prisoner; I left her at Mr. Wild's, a butcher; I engaged the prisoner to look after her. I said to him: "Do the mare well, and I will be here on Wednesday morning and will pay you for your work;" he was to have charge of her till I came; I told him to pay for the keep till I came; I meant him to look after her altogether; I should not have objected to his doing anything else; on Saturday, January 12th, I saw prisoner; I asked him how the mare looked, and he said she was as lame as a cat; he said he had removed her to his father's house; I said I should be at Chester by the first train; I told him the mare should be sold on the Wednesday morning when I went, as she would not do for me; I sent my wife on that morning; I have never received a farthing from prisoner on account of the mare.

Annie Suker, wife of prosecutor, proved: I went to Whitchurch on the 16th of January; I saw prisoner in the street; I asked him if he had sold the mare he said he had not; I went with him to Wild's stables; saw mare taken out of the stables into the street; prisoner was riding the mare about the fair; Mr. Foster bought her; prisoner, Mr.

Foster and Arthan went to the Queen's Head together; I was outside the door and watched; I saw Foster give prisoner some money; prisoner came out and showed me a check; he did not give it to me; he said we would go to the bank and get it cashed; I asked him for it several times but he would not part; he told me he had sold the mare for £13; he came out of the bank and said they would not cash him the check; I asked him to give it to me, and said I would pay his expenses; he would not do so; I said he must come with me to Whitchurch, and I must have either the money or the mare; I had great difficulty in getting him to the station; at Whitchurch, when we got to the gasworks, he bolted down a little alley which leads to the canal; I ran after him and called, but he did not answer; I have never received any money for the mare.

Joseph Arthan proved the sale of the mare by the prisoner to Foster, and payment of £15 to the prisoner.

Robert Thomas, sergeant of police, proved that the prisoner absconded from Whitchurch on the 18th of January. The prisoner was arrested at Chester on the 31st of January.

The Chairman held there was no evidence to go to the jury of the defendant's employment as a servant, so as to make him guilty of embezzlement. It was then contended, on behalf of the defendant, that there was no evidence of the larceny of £15. The case was left to the jury who found "that the prisoner had authority to sell the mare and converted the money to his own use," and a verdict of "guilty of larceny" was recorded.

The question reserved for the opinion of this court was whether there was any evidence of larceny which could properly have been left to the jury.

No counsel appeared.

LORD COLERIDGE, C.J.—I think this conviction may be supported. There may be considerable room for doubt whether under the circumstances the prisoner was not entrusted as a servant; but we have not now to consider this point, the chairman having ruled otherwise, and the jury not having had the question left to them. The only point remaining is whether there is any evidence of