

## The Legal News.

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### UNPUNISHED FRAUD.

The English law is usually considered somewhat more complete than our own in providing for the punishment of frauds of every class; yet a recent prosecution has recalled attention to an omitted case. The facts as stated by the *London Law Journal* were as follows:—The "under boots" at a hotel was charged with stealing £25 from a commercial traveller. It appeared that a £25 note had been given by the prosecutor to the defendant to change. Instead of bringing back the change, the defendant disappeared and spent the money. The deputy stipendiary magistrate at Cardiff decided that the man could not be punished criminally, and the *Law Journal* says: "He could not be convicted of larceny at common law in respect of the note, because he received it with the full consent of the prosecutor. He could not be convicted of larceny as a bailee, because there was no bailment, the prosecutor never intending to get back the note. He could not be convicted of embezzling the change, because he was not a clerk or servant of the prosecutor. This, we believe, exhausts the possible criminality of the man; and therefore criticisms should be directed not to the decision but to the law, which has long been known to provide no punishment for this class of fraud."

The *Albany Law Journal* refers to a New York case, *Hildebrand v. People*, 66 N. Y. 394; 15 Am. Rep. 435, where the prosecutor handed to a bar-tender a \$50 bill to take out ten cents in payment for a glass of soda. The bar-tender put down a few cents on the counter, and refused to deliver any more money. This was held larceny, the Court distinguishing the case from *Reg. v. Thomas*, 9 C. & P. 741, where the prosecutor gave the prisoner a sovereign to go out and get it changed.

### THE PROOF OF PERJURY.

In the case of *Reg. v. Leonard*, which will be found in the present issue, the Court of Queen's

Bench sitting in appeal has affirmed the decision of Mr. Justice Ramsay, noted at p. 138 of this volume. The case is distinguished from that of *Reg. v. Martin* on the ground that in the latter the witness was not sworn before the Judge in open Court, but by the Prothonotary, and the written consent of the parties was essential to give him jurisdiction to administer the oath. Judge Ramsay directed attention to the case of *Reg. v. Hughes*, 2 Legal News, p. 39, in which a point was raised much like the case of *Leonard*. It will be observed that the notes of the stenographer are not taken as proof of the false statement. They must be supported by his evidence of what was said, or by the testimony of other witnesses, and it is competent for the defendant to call witnesses to establish that he never said what the notes contain.

### REVOCATION OF ACCEPTANCE OF TENDER.

The case of *Snowdon & Nelson* involves a point of considerable interest. The respondent, Nelson, an architect, had undertaken to make plans and superintend the erection of a house for the appellant. By an error in the specifications, the contract for the roof provided for a gravel instead of a tin roof. The appellant requested the roofer to make a change to a tin roof, in accordance with his original instructions, and this involving an extra cost of \$84, appellant notified the architect that he would hold him liable for the consequence of his mistake, and deduct the \$84 from the balance of commission due to him. This led to some correspondence, which ended in the appellant making a formal tender by notary of the balance of the commission, less the \$84. This tender, which was made 24th Nov., 1876, was rejected by the architect, and the matter lay over till 17th January, 1878, when the architect signified by letter his willingness to settle on the terms proposed. "If you will send me your cheque for the amount tendered last year," he wrote, "I will return you a receipt for payment in full, reserving my rights however in case you may have since come to the conclusion that you don't owe anything." On the 5th February following, the architect wrote again: "As you have not seen fit to acknowledge