

## ANIMUS FURANDI.

The Court for Crown Cases Reserved, in Ireland, have been recently deliberating on a case of a similar kind to that of *Reg. v. Ashwell*, 16 Q.B.D. 190, and have arrived, by a majority of one in a Court of nine, at a conclusion—whereas, in the English case, the Court, composed of fourteen Judges, was equally divided in opinion. In *Reg. v. Ashwell*, the prisoner had asked the prosecutor for the loan of a shilling, and by mistake the prosecutor handed him a sovereign, which the prisoner received, believing it to be a shilling. Sometime afterwards the prisoner discovered the mistake, and then fraudulently appropriated the sovereign to his own use. Lord Coleridge, C.J., Huddleston and Pollock, BB., and Grove, Denman, Hawkins and Cave, JJ., were of opinion that the prisoner was guilty of larceny; whereas Field, Manisty, Stephen, Mathew, Smith, Day and Wills, JJ., were of opinion that he was not. The prisoner had been convicted, and the result of this division of opinion was that the conviction was affirmed.

In the Irish case, *Reg. v. Hebir*, (1895) 2 Ir. 709; L.T. Jour. 100, p. 113, the facts were very similar; the prosecutor handed the prisoner a £10 note in mistake for a £1 note, and the prisoner received it under the belief that it was a £1 note; he subsequently discovered the mistake and kept the note. O'Brien, C.J., Palles, C.B., Andrews, O'Brien and Johnson, JJ., decided that it was not larceny (Murphy, Holmes, Gibson and Madden, JJ., dissenting). The crucial point upon which this difference of opinion arises is, whether or not at the very time the chattel comes into the possession of the prisoner, there must be an *animus furandi*.

The Judges who deny that the act is criminal, found themselves on the ground that the original possession of the chattel was acquired lawfully, and that a subsequent fraudulent determination to act dishonestly in reference to it cannot convert the act into larceny. The Judges who favor the opposite view consider that it is sufficient if there is an *animus furandi* as soon as the prisoner discovers the true nature of the article. It is conceded that if, after receiving the article under