

nineteen shillings, that being in substance all that he actually did fraudulently appropriate to his own use, he could not be convicted of stealing a sovereign.

Whilst this argument is ingenious, we cannot see our way to accept it. If we understand the case of *Reg. v. Ashwell* correctly, the decision rested upon the Common Law, and it was held by one-half of the Court that it was necessary for larceny at common law that there should be a felonious taking and a felonious carrying away. Under sec. 305 of the Criminal Code, theft, as larceny is now designated, may be either "fraudulently and without colour of right taking," or "fraudulently and without colour of right converting," etc., and sub-sec. 3 provides that "it is immaterial whether the thing taken was taken for the purpose of conversion or whether it was at the time of conversion in the legal possession of the person converting."

The subject, of course, is not free from difficulty, but the law at present, as we understand it, is that a party seeking to borrow a shilling and having been handed a sovereign by mistake, and learning subsequently of the mistake, would render himself liable to a charge of larceny of the whole sovereign by converting any portion of that sovereign to his own use. It was the borrower's duty, immediately he discovered the mistake, to return intact the sovereign, which it was never intended should come into his possession. We are inclined to think, therefore, that in case he converted the sovereign by changing it and then used the proceeds, he could be convicted for the larceny of the whole sovereign, and not simply of the nineteen shillings, a portion thereof, and that a conviction for the larceny of the whole amount would be good in law. If, however, the borrower immediately returned the nineteen shillings, telling its owner that he had obtained the sovereign by mistake, and had changed it, using the shilling which he had sought to borrow, that would be an answer to a charge of larceny and would show that the man had never intended to convert to his own use anything more than that which he originally sought to borrow. But if, on discovering the mistake, he