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LARCENY.

An interesting question of criminal law was discussed in the case of *People v. Justices*, etc., recently decided by the Supreme Court of New York. A saloon-keeper, who had supplied a customer with twenty-five cents worth of liquor, received from him a \$20 gold piece, with directions to go out and change it, and bring back to the customer the change due to him. The saloon-keeper went out, but gambled with the money, and lost it. The Court, following English precedent, already approved by the N. Y. Court of Appeals, held that he could not be convicted of larceny. Judge Davis, in rendering judgment, remarked: "If the question presented by this case were a new one, we should have no hesitation in holding that the conviction was justified by the evidence, for it is clear that there was no intention on the part of the complainant in handing the twenty-dollar gold piece to be changed to part with his property in it, but that he simply parted with possession for the specific purpose of having it changed so as to enable him to pay to the appellant twenty-five cents out of the change; and that the appellant having it for a specific purpose and without property, his possession was in law the possession of the owner of the coin, and his subsequent act in gambling it away was such a conversion as ought, and in our opinion does, constitute the crime of larceny. But the case is precisely parallel in all its features to that of *Reg. v. Thomas*, 9 C. & P. 741. In that case the prisoner took a sovereign to go out and get it changed, but never returned either with it or the change. Coleridge, J., held that the prosecutor having permitted the sovereign to be taken away for change could never have expected to receive back that specific coin; he had therefore divested himself at the time of the entire possession of the sovereign, consequently there was not a sufficient trespass to constitute larceny." After remarking that the judge evidently overlooked *Ann Atkinson's* case, Cas. Cro. Law, 247, the court continued: "But we are not at liberty to follow our own opinion of this case because the Court of Appeals have distinctly

recognized the case of *Reg. v. Thomas* as sound law. In *Hildebrand v. People*, 56 N. Y. 394; S. C., 16 Am. Rep. 435, the facts were these: The prosecutor handed to the prisoner a fifty-dollar bill to take out ten cents in payment for a glass of soda. The prisoner put down a few coppers upon the counter, and when asked for the change he took the prosecutor by the neck and shoved him out of doors and kept the money. The question was whether larceny could be predicated upon those facts. The Court of Appeals affirming the decision of this court held that the prisoner was rightfully convicted. The prisoner relied upon the case of *Reg. v. Thomas*, and after reciting the facts in that case the court proceeded to distinguish it from the one then at bar by stating that in the *Thomas* case 'all control, power and possession was parted with, and the prisoner was intrusted with the money and was not expected to return it. Here, as we have seen, the prosecutor retained the control, and legally the possession and property. The line of distinction is a narrow one, but it is substantial and sufficiently well defined.'

* * * The distinction in the cases is so extremely 'narrow' that we should have felt entirely justified in disregarding it, but for the fact that the Court of Appeals, in *Hildebrand v. People*, gave its sanction to the case of *Reg. v. Thomas*, and declared it to be sound law, thereby holding in effect that a conviction of larceny could not be sustained in a case like this." The *Albany Law Journal* says the New York case is supported by *Reg. v. McKale*, 11 Cox's C. C. 32, and refers also to *State v. Anderson*, 25 Minn. 66; S. C. 33 Am. Rep. 455, where A. offering a \$5 bill to pay forty cents ferriage, received and kept the \$4.60 in change, but refused to deliver the five-dollar bill; held, larceny.

THE LATE LORD JUSTICE HOLKER.

A fatality would seem to attend the office of Lord Justice of Appeal, the decease of Sir John Holker, reported by cable, adding another to the long list of those who have passed away from this tribunal within a few years, including Lord Justices Turner, Knight Bruce, Rolt, Giffard, James, Thesiger, and Lush. Sir John Holker's appointment to the bench is quite recent, and was noticed at p. 51 of this volume. He was attorney general under the last Conservative Government, and was generally admitted to be a very able lawyer.