thought, that the prisoner, who at the moment of taking the coin was under a mistake as to what it was, could be guilty of taking it feloniously. As there was a mistake as to the coin, no property passed; and the question was as to possession, as to which he thought the person taking the thing could not acquire possession of it until he found what it was. Here the prisoner, when he took the coin, was not aware what it was, and did not become aware of it until afterward. He was unable to reconcile the cases, and thought the law correctly laid down in *Merry* v. *Green*, 7 M. & W. 623. In his judgment a man could not be presumed to assent to the possession of a thing until he knew what it was, and here the prisoner did not assent to the possession of the coin until he knew it was a sovereign. He had consented to the responsibility of the possession only of a shilling. In this case the prisoner did not at the time of taking render himself responsible for the possession of a sovereign, and therefore could not set up a lawful possession of it, for at the moment he knew what it was he elected fraudulently to keep it, and therefore was guilty of larceny at common law.

MATHEW, J., declared that he was of the same opinion as Smith, J., that is that the prisoner was not guilty of larceny. There was no dishonest act in the taking, and it would not do, he thought, by a sort of fiction to refer the taking to the time of changing the sovereign. And certainly, even if that was a taking it was not a felonious taking, for he might honestly have changed the coin, and it would only be dishonest if he meant to keep the whole. In his view there was no evidence of a felonious taking at any time; and if this conviction could be supported, then any one guilty of any dishonesty could be convicted of larceny. That was a change in the law which could only be effected by statute. He thought, therefore, that the conviction should be quashed.

STEPHEN, J., read a lengthy and elaborate judgment, in which he said, Day and Wills, JJ., concurred, to the same effect. From the earliest time, in the history of our law, larceny had been defined to be a felonious taking against the will of the owner and with the *animus furandi*—that is the intention to steal—at the time. For this he cited Glanville, Bracton, and the Year-books, from Edward III. to Edward IV. He especially cited Bracton defining larceny as *contrectatio rei alieni fraudulenter, cum animo furandi*, and he dwelt upon the case in the 13 Edw. 4, the case of the carrier, in which all the judges held that a carrier was not liable for taking the whole bulk of a package, though he would be if he "broke bulk," as it was called, that is, opened the package and took out something. So that if he took a pint of wine out of a cask he was guilty, but not if he took the whole pipe. The rule of law he had stated was established, he said, by all the authorities, and he cited 3 Coke Inst., 1 Hale's Pleas of the Crown, Hawkins' Pleas of the Crown, and Foster's Crown Law. That being the rule of law, he said, here the prisoner took the coin innocently, and though he dealt with it dishonestly an hour afterward, that did not make him guilty of larceny at common law. In cases of finding it had been laid down that there was no larceny, though in modern cases it was held that there was if the finder knew the owner. *Re Thorburn*, 1 Den. Crown Cas. 387. The cases under this head, however, established the doctrine that a person to be guilty of larceny must have intended stealing at the time he took the thing; and if the present conviction was upheld it would be quite inconsistent with those cases and cause a curious anomaly in the law. It could not, he thought, be held that a mere alteration of intention after the taking made the original taking felonious. The case showed that the first taking—the actual physical taking—must have been felonious in order to make it a case of stealing. In the case of *Reg.* v. *Glyde*, L. R., 1 C. C. 139, in 1868, the prisoner had picked up a sovereign and intended to keep it, but did not know the owner, and was held not guilty of larceny. In the cases of finding, the guilty knowledge—the knowledge of the owner—was required to have been at the time of finding and taking up. But in this case Ashwell received the coin honestly, not knowing it was a sovereign. He was, therefore, not guilty of larceny at common law. As to the point as to bailment he agreed with Smith J.