Kentucky Law Journal

Volume 20 | Issue 2 Article 9

1932

Criminal Law--Larceny--Necessary Elements

James Lyne
University of Kentucky

STUDENT NOTES

CRIMINAL LAW — LARCENY — NECESSARY ELEMENTS. — Appellant Wright was convicted of stealing chickens. The instructions of the lower court did not require the jury to believe that the chickens were taken from the owner with the intent to *permanently* deprive him of them. The case did not hold that this was reversible error but the court stated that the word "permanently" should be used in the instruction upon the next trial as it is part of the old common law definition of larceny that the taking must be with the intent to permanently deprive the owner of the property so taken. Also the instructions of the court below did not require the jury to believe that appellant took the chickens with the intent to convert them to his own use. The court held upon this instruction that it is a necessary element of larceny that the person taking the property must have done so with the intent to convert it to his own use and that the instruction was therefore erroneous. *Wright* v. *Commonwealth*, 33 S. W. (2nd) 645.

It is generally held, in Kentucky and in other jurisdictions that the intent to deprive permanently is an indispensable component of larceny. *Stewart* v. *Commonwealth*, 191 Ky. 538, 230 S. W. 950; *Ford* v. *Commonwealth*, 175 Ky. 126, 193 S. W. 1026; *State* v. *South*, 28 N. J. L. 28, 75 Am. Dec. 250; *Keety* v. *State*, 14 Ind. 36; *Witt* v. *State*, 9 Mo. 671. It is true that the court does not decide that the omission of the word "permanently" is reversible error. But there were other grounds for reversal upon which the court could base its opinion without meeting the issue squarely, and it is the opinion of the writer that, since the word is a part of the old common law definition of larceny and since it is so generally held that there must be a permanent deprivation, if the court were to be met with the issue and should be forced to decide whether or not this were erroneous, it would hold that the omission of the word "Permanently" from the instruction is reversible error.

The prevailing rule in Kentucky and in some other jurisdictions is that the taking must be with the intent to convert the thing taken to the taker's own use. *Alexander* v. *Commonwealth*, 14 Ky. 290, 20 S. W. 254; *Ford* v. *Commonwealth*, 175 Ky. 126, 193 S. W. 1026; *Groover* v. *State*, 82 Fla. 427, 90 S. 473, 26 A. L. R. 375. However, it is not necessary that the benefit be of a pecuniary nature; it is sufficient if some service or benefit is derived therefrom. *Lopez* v. *State*, 46 Tex. Cr. 473, 80 S. W. 1016; *State* v. *Wellman*, 34 Minn. 221, 25 N. W. 395.

By the weight of authority however, it is not necessary that the taking be for the sake of gain, as long as the owner will be permanently deprived of the thing taken. *Best* v. *State*, 155 Ind. 46, 57 N. E. 534; *Delk.* v. *State*, 63 Miss. 77, 60 Am. Rep. 46; *State* v. *Ryan*, 12 Nev. 401, 28 Am Rep. 802; *Dignowitty* v. *State*, 17 Tex. 521, 67 Am. Dec. 670.

Upon the other elements of larceny there seems to be very little difference of opinion. The taking must be wrongful and by trespass

but need not be by stealth, if the criminal intent is apparent. But regardless of its nature, there must always be a *taking*. *Alexander* v. *Commonwealth*, 14 Ky. 290, 20 S. W. 254; *Ross* v. *Commonwealth*, 14 Ky. 259, 83 S. W. 214. It may be by a non-human agency, i. e. not necessarily with the hands. *Commonwealth* v. *Shaw*, 4 Allen (Mass.) 308, 81 Am. Dec. 706. The taking must also be without the owner's consent. *State* v. *England*, 8 Jones (N. C.) 399, 80 Am. Dec. 334.

There must be some asportation or carrying away of the property and it must be under the dominion and control of the trespasser, even though it be but for an instant. *Adams* v. *Commonwealth*, 153 Ky. 88, 154 S. W. 381; *Thompson* v. *State*, 94 Ala. 535, 10 S. 520, 33 Am. St. Rep. 145.

Since Larceny at common law was confined to goods and chattels, it is now the rule that the thing taken must be personal property. *Blackburn* v. *Clark*, 19 Ky. L. Rep. 659, 41 S. W. 430. It must be something the law regards as property and of some value, but the least value to the owner is sufficient. *Wilson* v. *State*, 1 Port. (Ala.) 118; *Commonwealth* v. *Cabot*, 241 Mass. 131, 135 N. E. 465.

For there to be larceny the goods taken must be the property of another than the taker. *Love* v. *State*, 78 Ga. 66, 3 S. E. 893. Special property in another is sufficient and possession is enough as against others than the owner. *Ward* v. *People*, 3 Hill (N. Y.) 395; *Triplett* v. *Commonwealth*, 28 Ky. at 978, 91 S. W. 281; *Commonwealth* v. *Rourke*, 10 Cush. (Mass.) 397, 399.

Lastly, there must be a felonious intent or *animus furandi* which exists both at the time of taking and of carrying away. *State* v. *Holmes*, 17 Mo. 379, 57 Am. Dec. 269. Taking by mistake is not larceny. *Criswell* v. *State*, 24 Tex. App. 606, 7 S. W. 337. Neither is it larceny to take under a *bona fide* claim of ownership no matter how unfounded. *Ross* v. *Commonwealth* (Ky.) 20 S. W. 214; *People* v. *Schultz*, 71 Mich. 315, 38 N. W. 868; *Triplett* v. *Commonwealth*, 28 Ky. 974, 91 S. W. 281. Ignorance here does not excuse as it might seem, but it does negative a criminal intent.

JAMES LYNE.

NEGLIGENCE—LIABILITY OF MANUFACTURER TO USER OF GOODS.—Plaintiff purchased a bottle of pop in X's place of business and drank part of its contents. A quantity of arsenic troxide wrapped in tinfoil was in the bottle; as a consequence plaintiff became ill and received permanent internal injuries. Judgment for the plaintiff was reversed on the ground that plaintiff failed to show that X procured the pop from the defendant. However the following rule of law was laid down by the court: "One who puts articles inherently or intrinsically dangerous to life on the market owes the duty of care to all those persons who ought to have been reasonably foreseen as likely to use them". *Nehi Bottling Company* v. *Thomas*, 236 Ky. 684, 33 S. W. (2nd) 701 (1930).

The liability of manufacturers or vendors to the ultimate user of articles was first recognized in its present form of application in Judge Sanborn's decision in *Huset* v. *J. I. Case Threshing Machine Co.*, 120