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Indictments--Larceny--Description of Stolen Money

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STUDENT NOTES

INDICTMENTS—LARCENY—DESCRIPTION OF STOLEN MONEY.—Upon a demurrer to the following indictment the Supreme Court of Appeals of West Virginia was forced to rule upon its sufficiency. It read, "and the Grand Jurors aforesaid do further present that on the —— day of November, 1921, the said A. F. Robinson in the County aforesaid, and in the State aforesaid, thirty-five hundred dollars ($35,000.00), the property of G. A. Bowyer, feloniously did steal, take, and carry away, against the peace and dignity of the State". This indictment was held bad because of insufficient description of the property stolen. The court held that it should have alleged that the stolen money was lawful money of the United States, and further suggests that the indictment should have stated whether the money stolen was coin or paper currency — judgment reversed — defendant discharged. (Hatcher, Judge, dissenting). *State of West Virginia v. A. F. Robinson.*[1]

[1] 155 S. E. 649 (1930).

This decision is undoubtedly in accord with the Common Law Rule.[2] American decisions on this question in the absence of statutes have almost uniformly followed the early Common Law of England, seemingly trusting to its appropriateness because of its antiquity without seriously considering its adaptability to conditions in the new world.[3] Judge Hatcher suggests that when this rule was formulated in England requiring indictments to state the "nationality" of money it possibly served a useful purpose because at that time, we are told, soldiers were returning from Continental wars, sailors and traders were returning from ports of foreign countries and because of no well developed system of foreign exchange this money was put in circulation in England. Consequently in speaking of money in those days it was necessary to designate its kind, because the word, money, might refer to any one of a dozen different varieties. Then it would seem there was good cause to require an indictment for the larceny of money to designate its "nationality" in order to enable a plea of res judicata from the description therein contained, and also to enable the one accused to prepare his defense properly, then the description was unmistakably a matter of substance and its omission would rightly make an indictment bad; but without settling the reason for the rule in England, and conceding its usefulness there, it does not follow that it should be applied in this state unless conditions are the same. An early West Virginia case held that "The Common Law of England is in force in this state only so far as it is in harmony with its institutions and its principles applicable to the state of the Country and the condition of society".[4] This case would indicate that the rule of common law in question in this case was never intended to be forced upon the courts of this state. Certainly conditions are much different here from what they were in England—we are an inland state, engaged in no foreign wars or commerce, foreign money here is an object of extreme curiosity; in England it was common. Here "whenever the word dollar is mentioned it always means one and the same thing, the monetary unit of the lawful currency of the United States."[5] Here we con-

[2] Note (1912) 36 L. R. A. (N. S.) 933.

[3] Merwin v. People, 26 Mich. 298, 12 Am. Rep. 314 (1873).

[4] Powell v. Sims, 5 W. Va. 1 (1871).

[5] State v. Robinson, *supra* n. 1, Judge Hatcher's dissent, p. 651. *Cf.* United States v. Van Auken, 96 U. S. 366, 380, 24 L. ed. 852 (1877). "A dollar is the unit of our currency, it always means money or what is regarded as money". *Cf.* Halstead v. Meeker, 18 N. J. Eq. 136, 139 (1866). "There is no ambiguity in the word Dollars. If any word has a settled meaning at law and in the courts, it is this. It can only mean the legal currency of the United States".

tract with reference to payment in dollars; every monetary transaction is carried on with reference to dollars and at no time when we speak of dollars do we feel it necessary to explain that we refer to United States currency. The word, dollar, to us has as definite a meaning as the word, chicken, and it is no more necessary when you use the word dollar to say United States money, than it is when you use the word, chicken, to say an animal with two legs. Therefore, does it not follow that since the word, dollar, has in this state such an implied meaning in our statute books, in the social and business world, that it should have the same meaning by implication when found in an indictment?[6] Thus since the meaning of the word, dollar, follows it into the indictment by way of implication it is there in substance and for the court to insist upon the descriptive words to be physically there in form, when they in no way add to the meaning, is to insist upon sheer *technicality*. It is to insist that surplusage be incorporated in the indictment.[7]

The writer's belief that the courts are unusually and unnecessarily technical at this point is strengthened when it is observed how courts allow implied meanings in other situations.

1. Where money stolen is described as United States money the value is implied and this we see is very important because upon the value depends the degree of the crime.[8]
2. It is generally conceded that where the Grand Jury does not know the nationality of the money and so states in the indictment, that the indictment will not be held bad.[9] Does this not go to show that it is form rather than substance, because if substance certainly the indictment could not be held good and the defendant made to suffer simply because the Grand Jury alleged ignorance of the facts? If it were really substance, of course, the indictment should in such a case be held bad.
3. Where coins are stolen it is not necessary to allege the nationality. In *United States v. Rigsby* it was held in

[6] "Law is or should be a practical matter". 2 MODERN LEGAL PHILOSOPHY SERIES 386 (1912) quoted in Judge Hatcher's dessenting opinion, State v. Robinson, *supra* p. 651.

[7] To aver the value of United States currency was held to be surplusage, its value being implied. ENCY. OF FORMS AND PRECEDENTS Vol. 11, p. 245; cited in Judge Hatcher's dissenting opinion, State v. Robinson, *supra* n. 1, p. 651. Also State v. Walker, 22 La. Ann. 425 (1870).

[8] *Supra* n. 7.

[9] Where the Grand Jury allege they do not know the kind of money an indictment is good without it. People v. Hunt, 251 Ill. 446, 96 N. E. 220 (1911); Leonard v. State, 115 Ala. 80, 22 So. 564 (1897); Enson v. State, 58 Fla. 37, 50 So. 948 (1909); Brown v. People, 29 Mich. 232 (1874); People v. Dimick, 107 N. Y. 13, 14 N. E. 178 (1887).

> an indictment for larceny "one silver coin of the value of 50 cents is a sufficient description of the property stolen".[10]

In *State v. Green,* a Louisiana case, it was held an indictment for stealing $75 the property of, naming the owner, is good so far as the description of the stolen property is concerned. *To allege what kind of dollars taken was held unnecessary.*[11] It is submitted by the writer that the Louisiana view, as expressed in this case, is preferable and more in keeping with justice and the needs of the times.

The suggestion made by the court that the indictment should have stated whether the money stolen was paper money or coin seems equally unsubstantial, because since to us the word dollar means a dollar of United States money the value is implied and is the same as the number of dollars stolen. Then, to charge a defendant with the larceny of $3500 would certainly be to charge him with a substantial crime and it is held that where an indictment does charge a substantial crime, then according to the case of *State v. Counts* a bill of particulars is available for the purpose of furnishing details omitted from the accusation or indictment to which the defendant is entitled before trial.[12] Again in *Commonwealth v. Wood*[13] it is said "If the indictment fails to set forth the charges with reasonable certainty, the court in the exercise of a sound discretion will direct a bill of particulars". Finally in the case of *United States v. Bayard*[14] it is said, "a bill of particulars is an answer to the suggestion that the indictment is not sufficiently definite to allow the defendant to plead the acquittal or conviction as res judicata upon a second charge for the same offense".

Would it not seem that since the nationality of the money is implied, and a bill of particulars can be supplied furnishing the necessary details of the offense that this indictment is sufficient? It has been said that "no greater particularity is required in an indictment than to express the same fact in everyday parlance".[15]

[10] Fed. Cas. No. 16,163, 2 Cranch C. C. 606 (1822); Commonwealth v. Gallagher, 82 Mass. (16 Gray) 240 (1860); United States v. Baney, Fed. Cas. No. 14,530, 4 Cranch C. C. 606 (1835).

[11] 27 La. Ann. (1875); State v. Walker, 22 La. Ann. 425 (1870).

[12] 90 W. Va. 342, 110 S. E. 812 (1922); State v. Lewis, 69 W. Va. 472, 72 S. E. 1025 (1911). Under an indictment for simple larceny a bill of particulars is permissible to prove the character of the larceny.

[13] 70 Mass. (4 Gray) 11 (1855).

[14] 16 Fed. 376 (1883).

[15] 12 STRAND ENCY. PRO. 304 note (a), cited in Judge Hatcher's dissenting opinion, State v. Robinson *supra* p. 651.

Besides "an accused is only entitled to such particularity of allegation as may be of service to him in enabling him to understand the charge and to prepare his defense".[16]

If the objection to this indictment is, as is believed, technical should it be tolerated contrary to our reason mainly because an inappropriate and antiquated rule of common law has so decreed? Mr. Justice Holmes has said, "We must beware of the pitfalls of antiquarianism and must remember that for our purposes our only interest in the past is for the light it throws upon the present".[17]

If we admit the indictment is proper and that the rule which would exclude it is bad we may achieve the correct result in either of two ways. First, by holding that since the objection is technical, an overnicety of the common law, that it is cured by our criminal statute of jeofails;[18] or secondly, and preferably, by refusing to be bound by the strict rule of *stare decisis* and instead recognizing that the common law "is a living organism that grows and moves in response to the larger and fuller development of the nation".[19] When thus free to decide the question unfettered a decision could be rendered based upon reason, "the accepted social standards or the *mores* of the times".[20] Does the ruling in this case not sacrifice the spirit of the law in order to keep it's letter? Does this ruling not give the criminal more protection than he deserves? Unfortunately, to the mind of the writer, the court did not see it so and as the case now stands reversed and as it is believed upon a technicality it will without guaranteeing the accused any needed protection subject the state to additional expense for an unnecessary trial, besides bringing the law and the courts into greater disrepute among the laymen of the commonwealth. "There is no doubt that if the law and the interpretation and application of the law are in harmony with (present day) prevailing views of justice society will be more inclined to obey the law".[21]

—JACK D. JENNINGS.

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[16] Commonwealth v. Robertson, 162 Mass. 90, 38 N. E. 25 (1893).
[17] Holmes, *The Path of the Law* (1897) 10 HARV. L. REV. 457, 469.
[18] W. VA. CODE ANN. (Barnes 1923), c. 155, § § 10, 11.
[19] Oppenheim v. Kridel, 236 N. J. 156, 140 N. E. 257 (1923).
[20] Hardman, *Stare Decisis and the Modern Trend* (1926) 32 W. VA. L. Q. 163, 188.
[21] *Ibid,* at p. 189.