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Criminal Law - Asportation as an Essential Element of Larceny

J. S. D.

to say that this decision repeals the divorce laws of all the states and substitutes the law of Nevada as to all marriages one of the parties to which can afford a short trip there." Mr. Justice Murphy, also dissenting, raised a very pertinent question as to whether, in an appraisement of relative jurisdictional interests, those of Nevada could fairly be said to prevail over those of North Carolina.[17]

It has been said that "the life of the law is its ability to adjust itself to changing social needs" and that "the law must necessarily conform, to a large extent, to prevailing community standards."[18] These concepts will help to understand the overruling of the *Haddock* case. In the thirty-six years which have elapsed since *Haddock v. Haddock* divorce statistics will show a steady increase in the dissolution of marriages throughout the nation. Undoubtedly the Supreme Court was impressed with the necessity of securing greater uniformity in regulation of the marital status, in order to avoid the undesirable situation of having persons married in one state and unmarried in the others. From such a situation serious social complications would necessarily arise.

Who can tell, however, but that this decision allowing the spouse who has abandoned the other party to obtain a divorce entitled to recognition will create even greater evils.

It is submitted that the advantages of uniformity were scarcely a sufficient reason for thus sacrificing the right of the individual states to govern the marital relations of their citizens. In effect it tends to force the divorce standards of all states down to the level of those jurisdictions which have chosen, for not too laudable reasons, to make the dissolution of the marital status a perfunctory matter.

R. R. A.

CRIMINAL LAW—ASPORTATION AS AN ESSENTIAL ELEMENT OF LARCENY—Defendant was charged, under the cattle stealing act,[1]

17. As stated by Murphy, J., in the dissenting opinion, the Supreme Court has "recognized an area of flexibility in the application of the clause to preserve and protect state policies in matters of public concern. We have said that conflicts between such state policies should be resolved 'not by giving automatic effect to the full faith and credit clause . . . but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.'" Alaska Packer's Ass'n v. Industrial Accident Comm., 294 U.S. 532, 547, 55 S.Ct. 518, 527, 79 L.Ed. 1044, 1052 (1935).

18. Harper, The Myth of the Void Divorce (1935) 2 Law & Comtemp. Prob. 335, 341.

1. La. Act 64 of 1910 [Dart's Crim. Stats. (1932) § 1057].

with larceny of a white-faced heifer. He sold the heifer, which was grazing on a free range, and the vendee took posession immediately. Several months later, while the same heifer was grazing on the range, defendant sold it again. The second purchaser, in perfect good faith, unaccompanied and unaided by the defendant, carried it away. *Held,* defendant was not guilty of larceny as the essential element of asportation was lacking, *State v. Laborde,* 11 So. (2d) 404 (La. 1942).

The instant decision is important in that it is the first case in which the question of asportation was ever squarely presented to the Louisiana Supreme Court. It is a general requirement of common law larceny that there be some "asportation" or "carrying away," but it is sufficient if the property be entirely removed from the place it occupied and be under the control of the taker for only an instant.[2] One state, Texas, has expressly abolished this rule by statute.[3]

The Anglo-American courts have been very liberal in their interpretation of what is sufficient to constitute an asportation. They will, in most cases, find an asportation in the slightest movement of the goods. Asportation was found where the accused took several chickens from a coop and wrung their necks, and then, upon being discovered, fled, leaving them on the premises.[4] When accused killed a cow and removed the hind quarters, it was held to constitute a larceny of the cow.[5] In another similar case evidence that accused tied up a hog's feet and mouth with the intent of taking it, was held sufficient to show asportation.[6] A sufficient asportation was also found where the accused and two others were dragging three sheep out of a field when accosted by the owner.[7] A Kentucky court implied the necessary asportation element of larceny from the circumstances of wrongfully cut

2. Clark and Marshall, A Treatise on the Law of Crimes (4 ed. 1940) 421, § 320.

3. The larceny articles of the Texas Penal Code [Tex. Ann. Pen. Code (Vernon, 1925) arts. 1410, 1412] expressly provide that there need only be a fraudulent taking, and that there is no need for a removing of the object. State v. Earp, 41 Tex. 487 (1874); Hartman v. State, 85 Tex. Cr. Rep. 582, 213 S.W. 936 (1919); Rosenbush, 136 Tex. Cr. Rep. 50, 122 S.W.(2d) 1071 (1938); Commercial Casualty Co. v. Goode, 135 S.W.(2d) 816 (Tex. Civ. App. 1940); Rountree v. State, 140 Tex. Cr. Rep. 188, 143 S.W.(2d) 942 (1940).

4. People v. Ostrosky, 95 Misc. 104, 160 N.Y. Supp. 493 (1916). Similarly, the crime of larceny was complete at the time the chickens were taken from the roost and put into a sack, regardless of the fact that upon taking them the defendant was shot before he removed the chickens from the premises. Warnke v. State, 87 Ind. App. 683, 167 N.E. 138 (1929).

5. Davis v. State, 41 Ariz. 12, 15 P.(2d) 242 (1932).

6. Reynolds v. State, 199 Ark. 961, 136 S.W. 1028 (1940).

7. State v. Priestly, 97 Utah 158, 91 P.(2d) 447 (1939).

timber being found on accused's premises.[8] Thus it might be said that in most cases the court will "bend over backwards" to find an asportation. However, if the property is not, at least for a moment, in the *entire* control of the taker there is no asportation; as where the accused compels *A* to lay down his bundle but is frightened away before he can seize it,[9] where accused knocks money from *A*'s hand,[10] or where defendant attempted to steal an overcoat on a dummy secured by a chain.[11] Similarly, the asportation is lacking if the defendant, although having taken possession of the goods, has not moved them. Thus where defendant kills an animal and partly skins it, thereby taking possession of it, but not having begun to remove it, there is no asportation.[12] "Asportation" or "carrying away" usually implies force, such as may be required in removing the article stolen or taking it into possession; but in some cases fraud may take the place of force. So the enticing of an animal away by food may be as much a taking as if the animal were hauled away.[13]

It has generally been held that the asportation may be by means of an innocent third party. The leading case for such a doctrine is *Commonwealth v. Barry*,[14] where defendant was convicted of larceny when he switched checks on a baggage trunk, thus causing the trunk to go on the same train with his accomplice. Likewise, a defendant was convicted of larceny of tubs of butter when he changed the address on the refrigerator car, and the butter was subsequently delivered to him as addressee. The railroad company was said to be the innocent agent of the defendant.[15] It has also been held to constitute larceny where a defendant pointed out a hog and sold it as his own, and the pur-

8. Griffin v. Commonwealth, 221 Ky. 178, 298 S.W. 390 (1927).
9. State v. Jones, 65 N.C. 358 (1871).
10. Thompson v. State, 94 Ala. 535, 10 So. 520 (1892).
11. People v. Meyer, 75 Cal. 383, 17 Pac. 431 (1888).
12. Molton v. State, 105 Ala. 18, 16 So. 796 (1895); Williams v. State, 63 Miss. 58 (1885); State v. Alexander, 74 N.C. 232 (1876). Contra: State v. Nelson, 121 W.Va. 310, 3 S.E. (2d) 530 (1939), where accused was caught and convicted of larceny just after killing two hogs and not moving them. Meador v. State, 201 Ark. 1083, 148 S.W. (2d) 653 (1941), tying a heifer in the woods out of sight of a highway was held larceny. Driggers v. State, 96 Fla. 232, 118 So. 20 (1928), held larceny where defendant entered inclosure of another and shot down a cow. Davis v. State, 97 Fla. 987, 122 So. 579 (1929), held larceny where defendant was accosted while butchering cow at place where it was shot.
13. 2 Bishop, Criminal Law (1923) § 806; Reg. v. Simpson, 29 Eng. L. & Eq. 530, Dears 421, 18 Jur. 1030 (1854). Contra: Edmonds v. State, 70 Ala. 8, 45 Am. Rep. 67 (1881).
14. 125 Mass. 390 (1878).
15. State v. Rozeboom, 145 Iowa 620, 124 N.W. 783, 29 L.R.A. (N.S.) 39 (1910).

chaser took it away in good faith;[16] and where defendant claimed an impounded animal and sold it to a third party, who took it away.[17] There is a split of authority on this question, however, and a number of courts have refused to recognize an asportation by an innocent third party as sufficient. Thus where accused sold a bull belonging to another, and the purchaser subsequently took the bull away in the absence of the accused, it was held that there was no asportation.[18] In another case it was held that there was no asportation by one who sold property which did not belong to him, and the property was hauled away by the purchaser.[19] This latter more restrictive view appears to have been adopted in the principal case, wherein the Louisiana Supreme Court refuses to hold that the asportation requirement may be met by the act of an innocent purchaser of the heifer.

Under the theft article of the new Criminal Code the crimes of larceny, embezzlement and obtaining goods by false pretences are consolidated. "Theft is the misappropriation or *taking* of anything of value which belongs to another."[20] All types of stealing cases are to come under this provision, and with the unqualified use of the word taking, Louisiana courts may construe the articles as eliminating the generally essential element of larceny —asportation; and Justice Higgins so indicates in his opinion in the *Laborde* decision when he declares that in the present case, "the Court was not referred to any statute of Louisiana which dispensed with asportation as one of the essential elements of the crime of theft or larceny. The transaction between the accused and Jeansonne having taken place on June 15, 1939, obviously the Louisiana Criminal Code, Act 43 of 1942, and particularly Article 67 thereof, is inapplicable. Consequently, under the law of this state, asportation of the alleged stolen property is necessary in order to constitute the crime of larceny or theft."[21] Giving full effect to possible implications of this dictum statement, it may be suggested that the offender would have been found guilty of "Theft" if his offense had been committed subsequent to the enactment of the Criminal Code. As a

16. Cummins v. Commonwealth, 5 Ky. L. Rep. 200, 12 Ky. Op. 215 (1883).

17. State v. Hunt, 45 Iowa 673 (1877). Contra: People v. Gillis, 6 Utah 84, 21 Pac. 404 (1889).

18. Ridgel v. State, 110 Ark. 606, 162 S.W. 773 (1914).

19. Henderson v. State, 79 Ark. 333, 916 S.W. 359, 10 L.R.A. (N.S.) 816 (1906).

20. Art. 67, La. Crim. Code.

21. 11 So.(2d) 404, 406 (La. 1942).

practical matter, the mere fact that the purchaser, rather than the defendant, hauled the heifer away should not preclude the defendant's criminal liability.

J. S. D.

CRIMINAL LAW—BRIBERY OF A PUBLIC OFFICER—Defendant, a city policeman, accepted one hundred dollars upon the pretense and representation that he could and would improperly influence the official action of a municipal officer of the city. Defendant was convicted of bribery and appealed urging that he, being a policeman, was not a municipal officer, but merely an employee of the city, and thus was not within the statute making it an offense to accept a bribe under color of office. The decision of the lower court was affirmed. *State v. Sheffield,* 10 So. (2d) 894 (La. 1942).

Originally the offense of bribery was limited to the offering or giving of a reward to a judge or other person concerned in the administration of public justice; but the offense was subsequently broadened so as to include the receiving or offering of a reward by or to any person in a public office to influence his official behavior. Modern statutes cover the bribery of all persons whose official conduct is in any way connected with the administration of government, whether general or local, judicial, legislative or executive.[1] Bribery in Louisiana was formerly covered by numerous conflicting and confusing statutes. In 1878, however, the legislature enacted a general bribery statute which was for the purpose of punishing anyone who should offer or give a bribe, present, or reward to any public officer of the state with the intent to induce or influence such officer to show partiality or favor contrary to law in the performance of his duty. The statute also included the asking for or receiving of a bribe.[2]

These modern statutes were of a comprehensive nature, yet in some cases they did not appear to be as inclusive as the criminal activity they sought to prescribe. Only public officers were included, and the question often arose as to whether the accused, in fulfilling his duty as a public servant, could be designated a

1. Clark and Marshall, A Treatise on the Law of Crimes (4 ed. 1940) 594, § 434.

2. La. Act 59 of 1878, as amended by La. Act 162 of 1920, and partly repealed by La. Act 78 of 1890, § 1 [Dart's Crim. Stats. (1932) § 796]. See redactor's "Comment on Former Statutes," La. Crim. Code (1942) 121.