

4-1-1952

Criminal Law—Larceny—Criminal Intent

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Recommended Citation

Charles R. Desmond, *Criminal Law—Larceny—Criminal Intent*, 1 Buff. L. Rev. 326 (1952).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol1/iss3/19>

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Coope v. Loew's Gates Theater, 215 App. Div. 259, 261, 213 N. Y. Supp. 254, 256 (3rd Dept. 1926). Cf. *Katz v. Kadans*, *supra*. In the Loew's case a ticket seller was assaulted by a jealous woman who imagined the claimant was seeing her husband. An award was reversed because the assault was not out of the employment due to the fact that the claimant was safer in the ticket booth, and consequently was not exposed to any special peril.

In the instant case the trial examiner found that the employee had not been seeing the assailant's wife. The employee, therefore, being an innocent party would be entitled to workmen's compensation if his type of work exposed him to a special danger. A laundryman who must regularly visit the homes of customers is likely to be subjected to suspicious and jealous husbands, and an assault on him by such an assailant during the *course* of his employment should be compensable as arising *out of* the employment.

Sheldon Hurwitz

CRIMINAL LAW—LARCENY—CRIMINAL INTENT

The defendant carried away three tons of bomb casings from a Government bombing range and was convicted for violation of 18 U. S. C. Sec. 641 which provides that "whoever embezzles, steals or knowingly converts government property is punishable by fine or imprisonment." Defendant alleged that he believed the casings to be abandoned property. The trial court refused to allow the question of defendant's wrongful or criminal intent to be presented to the jury. The Court of Appeals affirmed, construing the statute as not requiring a showing of criminal intent. *Morissette v. United States*, 187 F. 2d 427 (6 Cir. 1951). The Supreme Court reversed on the ground that intent is a prerequisite under any of the alternatives stated within the statute. *Morissette v. United States*, 342 U. S. 246 (1952).

Ordinarily a criminal intent is an intent to do knowingly and wilfully that which is condemned as wrong by the law and common morality of the country. *People v. Corrigan*, 195 N. Y. 1, 87 N. E. 792 (1909). At common law *actus non reum facit, sed mens* was a valid maxim. To constitute crime, there must not only have been the act itself but also the criminal intention. It was necessary that they concur for both were equally essential. *Stokes v. People*, 53 N. Y. 164, 13 Am. Rep. 492 (1873).

When an act denounced by the law is proved to have been committed, in the absence of contrary evidence, the criminal intent is inferred from the commission of the act. *Nassan v. United States*, 126 F. 2d 613 (4 Cir. 1942). The inference

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may be removed by the attending circumstances showing the absence of such intent. If the intent be dependent on knowledge of certain facts, a want of such knowledge, not resulting from negligence or carelessness, will relieve the act of criminality. *Gordon v. State*, 52 Ala. 308, 23 Am. Rep. 575 (1875).

It is not necessary for an act to be criminal that the offender intend to commit the crime to which his act amounts; it is merely necessary that he intend to do the act which constitutes the crime. *State v. Fulco*, 194 La. 545, 194 So. 14 (1940). Whether it is incumbent on the sovereign to show a criminal knowledge as an element of statutory offenses, is now a matter of construction to be determined from the statute's language and purpose. *Commonwealth v. Jackson*, 345 Pa. 456, 28 A. 2d 894 (1942). When an act is prohibited and made punishable by statute only, the statute is to be construed in the light of the common law and the existence of a criminal intent is to be regarded as essential even though in terms not required. *Smith v. State*, 233 Ala. 346, 136 So. 270 (1931). The circumstance that the word "knowingly" or its equivalent does not appear in a statute is not conclusive; but the question whether words expressing criminal intent or guilty knowledge are to be implied is again a matter of construction. The evil sought to be prevented and the consequence of the various construction to which the statute may be susceptible will determine its construction. *State v. Laundry*, 103 Ore. 443, 204 Pac. 958 (1922). The Legislature does have this power to eliminate the element of intent from statutory crimes but that purpose should be so clearly stated as to leave no room for doubt. *United States v. Great A. & P. Co of America*, 111 W. Va. 148, 161 S. E. 5 (1951).

The intent to steal is a necessary ingredient of the offense of larceny. The burden rests on the people to show that the property was taken *animo furandi*. *Downs v. New Jersey Fidelity & P. G. Ins. Co.*, 91 N. J. L. 523 103 Atl. 205 (1918).

If it appears that the taking was consistent with honest conduct, the taker cannot be convicted. Larceny demands felonious intent and without it there can be only trespass which, however aggravated, would not constitute this crime. *McCourt v. People*, 64 N. Y. 253 (1876); *Flint v. State*, 143 Fla. 259, 196 So. 619 (1940).

In the instant case, the statute provided that one must knowingly convert in order that he may be found guilty. These words have been construed, when used in a statute, to require that the person accused have knowledge of the essential facts from which the law may presume a knowledge of the legal consequences. *United States v. Martinez*, 73 F. Supp. 403 (M. D. Pa. 1947); *People v. McGalla*, 63 Cal. App. 783, 220 Pac. 436 (1923); *Gottlieb v. Commonwealth*, 126 Va. 807 101 S. E. 873 (1920).

Where there has been an exception to the necessity for intent, it has accrued in statutes intended to maintain a public policy. Many instances are to be found in regulatory measures stemming from the exercise of the police power which emphasizes the achievement of some social betterment rather than the punishment of crime. *Shevrin Carpenter Co. v. Minnesota*, 218 U. S. 57 (1909). The crimes created primarily for the purpose of singling out wrongdoers for punishment or correction commonly require *mens rea*. Those punishable without it are mainly offenses which are regulatory in nature and involve light fines rather than imprisonment. Sayre, *Public Welfare Offenses*, 33 Col. Law Rev. 55 (1933).

The defendant's conviction was properly reversed. Ordinarily for there to be a felony conviction the defendant's physical act must be accompanied by *mens rea*. This is particularly true in the principal case where the statute's express words are "knowingly converts," and where the statute is a codification of the common law crime of larceny which had required a guilty mind.

Charles Ryan Desmond

FULL FAITH AND CREDIT—COLLATERAL ATTACK OF DIVORCE DECREE RENDERED IN A SISTER STATE

This was an action brought by Arthur Cook, the Respondent, against Florence Cook, the Petitioner, to annul two marriages between the parties. Petitioner and Respondent were married in 1943. Respondent then learned that his wife was still married to her previous husband. The parties agreed that Petitioners should go to Florida and obtain a divorce. Shortly after the divorce Petitioner and Respondent were remarried. Marital difficulties followed. Respondent brought the present action in the Vermont courts, to have his two marriages to the Petitioner annulled. He alleged that at the time of his two marriages to Florence Cook, she was already married. The Supreme Court of Vermont granted the annulments on the grounds that full faith and credit need not be given to the Florida decree because Petitioner was not a bona fide domiciliary of Florida at the time of her divorce. *Cook v. Cook*, 116 Vt. 374, 76 A. 2d 593 (1950). In as much as the record does not show whether or not the husband was personally served or whether he appeared in the Florida proceedings, the United States Supreme Court remanded the cause for a determination of this issue before it would allow a collateral attack on the Florida decree. *Cook v. Cook*, 72 S. Ct. 157 (1951).

Prior to 1942, in order for a spouse to obtain a divorce which was entitled to full faith and credit, it was necessary that the suit be instituted at the matrimonial domicile, *Atherton v. Atherton* 181 U. S. 155, (1901); or there had to