

Criminal Law - Larceny - Something of Value

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RECENT DECISION

CRIMINAL LAW—LARCENY—SOMETHING OF VALUE.—The defendants entered a tavern and took out a "Pace's Races" machine, driving it away in a truck. They were later apprehended and held on charges of larceny and robbery. Upon the trial, the defendants showed that the machine was a gambling device, that its use was forbidden and that it was therefore contraband and without value. The theory of this evidence was that an article which is contraband and without value cannot be the subject of larceny, and that therefore the defendants could not be convicted of that crime. The trial court entered a judgment of conviction and sentence. On appeal, *held*, judgment reversed, because the trial court did not submit the question of value to the jury. However, the article taken had sufficient value to be the subject of larceny. "One who has unlawfully procured possession of an article belonging to another ought not to be permitted to defend himself on the ground that that which he has stolen has no value because its use is forbidden." *State v. Clementi*, (Wis. 1937) 272 N.W. 29.

An essential element of larceny is that the article stolen must be something of value. *Vought v. State*, 135 Wis. 6, 114 N.W. 518 (1908). Because of this rule, a frequent defense in cases involving the taking of an article illegally possessed by the owner has been that the article was contraband and without value, and therefore could not be the subject of larceny. In some jurisdictions the argument has been successful. For example, a conviction of grand larceny for stealing a lottery ticket was reversed in California, even though the ticket drew a prize larger than the amount necessary to constitute the grade of offense. *People v. Cardis*, 29 Cal. App. 166, 154 Pac. 1061 (1915). (In the principal case, the court rejects this decision.) In *State v. Wilmore*, 9 Oh. Dec. (Reprint) 61, the trial court charged that there could be no larceny of a "kit of gambling tools," because the implements were made and kept solely for gambling. The majority of decisions, however, holds with the principal case that an article may be the subject of larceny, although theoretically it has no value because its use or possession is illegal. *Bales v. State*, 3 W. Va. 685 (1868); *Smith v. State*, 187 Ind. 253, 118 N.E. 954 (1918); *State v. Sego*, 161 Iowa 71, 140 N.W. 802 (1913); *People v. Steurnthal*, 154 Misc. 130, 276 N. Y. Supp. 689 (1935). The argument that an article illegally possessed cannot be the subject of larceny was frequently used during the time of the Eighteenth Amendment, when defendants were charged with larceny of liquor. The defense then was that since the Amendment provided that there should be no property rights in contraband liquor, such liquor could not be the subject of larceny. It was so held in *People v. Spencer*, 54 Cal. App. 54, 201 Pac. 130 (1921). But the vast majority of courts took the opposite view, and held that even though liquor was contraband under the Volstead Act, it might be the subject of larceny. *Arner v. State*, 19 Okla. Crim. Rep. 23, 197 Pac. 710 (1921). Today, the Kansas Supreme Court holds that beer can be the subject of larceny, despite the state's Bone Dry Law, making the possession of liquor unlawful. *State v. Stover*, 144 Kan. 25, 58 P. (2d) 472 (1936). A leading decision on the subject of illegally possessed articles as the subject of larceny was written in early Massachusetts jurisprudence. *Commonwealth v. Rourke*, (Mass. 1852) 10 Cush. 397. The case holds that money acquired by illegal sale of intoxicating liquors is the subject of larceny. The decision was placed on the public policy which is behind all the majority holdings. The court said that even stolen property can be the subject of larceny: "Even he who larcenously takes the stolen object from a thief whose hands have but just closed upon it may himself be convicted therefor in spite of the criminality of the possession of his immediate predecessor in crime."

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