

DUNEDIN.—Sergeant W. Higgins, No. 265, has been awarded 10s. for services in connection with the conviction of Charles Hoggan for failing to give due notice to the Clerk of the Court that liquor was sent into a no-license district. (10/2533.)

DUNEDIN.—Constable F. J. Baker, No. 1598, has been awarded £1 for the arrest of Donald John McDonald, an absconder from Burnham Industrial School. (10/864.)

LAW REPORT.

[IN THE COURT OF APPEAL.]

REX v. MUIR.

("N.Z. Law Reports," Vol. xxix, page 1049.)

Criminal Law — Theft — Larceny by a Trick — False Pretences.

A by means of a trick obtained possession of and converted to his use the property of B, who did not intend to pass the property to A.

Held by the Court of Appeal (*Stout, C.J., and Williams, Edwards, Cooper, and Chapman, JJ.*), that A was rightly convicted of theft under the Crimes Act, 1908.

CASE stated by Cooper, J., for the opinion of the Court of Appeal under sections 442 and 443 of the Crimes Act, 1908. The prisoner was convicted of theft under the following circumstances. He represented to the National Mortgage and Agency Company of New Zealand (Limited), of whom he was an employee, that a person named Kerson had sold to the company certain produce. In addition, he made up bogus returns showing delivery of goods by Kerson, upon which the company made out cheques payable to Kerson and forwarded the same at the request of the prisoner to an address given by him as the address of Kerson. There was, in fact, no such person as Kerson, but the prisoner collected and converted to his use certain of the cheques. The Judge upon the above facts directed the jury to find the prisoner guilty of theft. The main question for the Court's consideration, and the only one actually dealt with by the Court of Appeal, was whether the offence disclosed was false pretences or theft.

STOUT, C.J. :—

I am of opinion that the conviction should be upheld. In my opinion it was larceny at common law, and it is not necessary to rely upon the express provisions of the Crimes Act, 1908, as to fraudulent conversion of goods that are lawfully in the possession of a person. At common law, in 2 East's Pleas of the Crown, there is an illustration of a case where a man gave another man a horse. He gave him that horse to ride to a certain place. The man fraudulently sold the horse and converted it to his own use. He had only a loan of the horse, and had no property in the horse; and it was held that it could not be said that he was not guilty of larceny. Another case was where a man meaning to discount a bill gave it to another to discount, and that man ran away with the bill and converted it to his own use. It was held that as there was no intention to pass the property in the bill the man was properly convicted of larceny. Another case was where a man asked a letter-carrier for letters he was not entitled to receive. The letter-carrier gave him the letters, and that was held to be larceny, because the letter-carrier had no power to pass the property in the letters except to the person entitled to receive them.

In this case what happened was this: the man intended to steal the cheque even before he received the cheque. Therefore it comes within some of the cases that may be cited to show that where there is a prior intention to steal the getting possession is of no moment. Here the man comes and gets a letter not addressed to him. The person who gave him the letter had no business to give him the letter. There was no intention to pass the property to him. The company only intended to pass the property to a person named Kerson. There was no such man named Kerson. Therefore the company never had the intention to pass the cheque to Kerson. I am of opinion that this case comes within Middleton's case and other cases that may be referred to. Where there is no intention to pass the property, as here, a person is properly convicted of larceny at common law. In this case, however, there is an express mention in section 240 of the Crimes Act, 1908, of fraudulent conversion. We have a new definition of larceny, and we do not need to invoke the idea of a trespass which was the old notion of larceny. Under the provisions of our statute, even if the cheque was in his lawful possession at the time he fraudulently converted it, he was guilty of larceny, for there

was no intention of passing the property to him. It is not a case of false pretences where there was an intention to pass the property. I am therefore of opinion that the conviction should be affirmed.

EXTRACTS FROM NEW ZEALAND GAZETTE.

(From Gazette, 1910, pages 4213, 4217, and 4218.)

Regulations as to taking and marking Trout in the Southern Acclimatization District.

ISLINGTON, Governor.

ORDER IN COUNCIL.

At the Government House, at Wellington, this twelfth day of December, 1910.

Present :

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS by Order in Council dated the twenty-first day of September, one thousand nine hundred and four, and published in the *New Zealand Gazette* No. 78, of the twenty-second day of the same month, regulations were made for trout, perch, and tench fishing in the Southern Acclimatization District :

And whereas it is desirable to make additional regulations to provide for the netting of trout at the mouths or entrances of any rivers or streams within the boundaries of the Canterbury Acclimatization District for the purpose of numbering trout so taken in order to ascertain their migratory habits; and to provide for the allocation of numbers for such purpose to Acclimatization Societies in the Southern Acclimatization District, which are herein or may hereafter be authorized to net trout for such purpose in their respective districts :

Now, therefore, His Excellency the Governor of the Dominion of New Zealand, in pursuance and exercise of the power and authority conferred upon him by the Fisheries Act, 1908, and of all other powers and authorities enabling him in that behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby make the following additional regulations.

REGULATIONS.

1. NOTWITHSTANDING anything contained in Regulation 13 of the said regulations of the 21st day of September, 1904, it shall be lawful for the Canterbury Acclimatization Society to net trout at the mouths or entrances of the rivers or streams within that society's district which extends from the mouth or entrance of the Conway River to the northern mouth or entrance of the Rakaia River, both inclusive, for the purpose of numbering such trout in order to ascertain their migratory habits.
2. The Minister of Marine may, on the application of any acclimatization society in the Southern Acclimatization District, allocate to such society numbers which shall be affixed to trout taken for the purpose of ascertaining their migratory habits.
3. Any person taking, by accident or otherwise, any trout so numbered shall immediately return the same alive into the water, and shall notify the fact of its having been so taken and returned, together with the number of the trout, to the secretary of the acclimatization society in whose district the trout is taken.
4. Any licensed angler catching during the fishing-season any trout so numbered shall forward same, together with the number affixed to same, to the secretary of the acclimatization society in whose district the trout is caught, or in the event of difficulty being experienced in forwarding such trout, then the anglers must forward full particulars as to the date of catch, exact weight, where trout is caught, together with the number referred to, and such particulars shall be verified and certified to by another licensed angler or responsible person.
5. Any person committing a breach of or failing to comply with clause 4 of these regulations, or any person other than a person acting under the direction of a society to which numbers have been allotted, who affixes such numbers to trout, is liable to a fine not exceeding £5.

J. F. ANDREWS,
Clerk of the Executive Council.