that is immaterial, for, if a mistake has been made by counsel, it would not relieve the judge from his duty of seeing that the jury did not act on improper evidence. It is sometimes said, and very erroneously, that the judge is bound to be counsel for the prisoner; but, although he is not to act as counsel, he must at least take care that the prisoner is not convicted on any evidence but that which is legal. The conviction must, in my opinion, be quashed. *Conviction quashed.*

Solicitor for the prosecution, *E. H. Woodcock*, Wigan.

Saturday, March 5.

(Before Lord Coleridge, C.J., Pollock, B., Stephen, Mathew, and Wills, JJ.)

Reg. *v.* Hands and others. (*a*)

Criminal law — Larceny — Automatic box containing cigarettes — Cigarette lawfully obtainable by dropping a penny into box—Attaining cigarette by means of a brass disc of no value.

Against the wall of a public passage was fixed what is known as an "automatic box," the property of a company. In such box was a slit of sufficient size to admit a penny piece, and in the centre of one of its sides was a projecting button or knob. The box was so constructed that upon a penny piece being dropped into the slit and the knob being pushed in, a cigarette would be ejected from the box on to a ledge which projected from it. Upon the box were the following inscriptions: "Only pennies, not halfpennies;" "To obtain an Egyptian Beauties cigarette place a penny in the box and push the knob as far as it will go." The prisoners went to the entrance of the passage, and one of them dropped into the slit in the box a brass disc about the size and shape of a penny, and thereby obtained a cigarette, which he took to the other prisoners.

Held, that the prisoners were guilty of larceny.

Case reserved by the Quarter Sessions for the county of Gloucester, as follows:—

Prisoners Hands and Phelps were severally indicted for that on the 29th Nov. 1886, they did feloniously steal, take, and carry away one cigarette, of the goods and chattels of Edward Shenton, against the peace of our said Lady the Queen.

Prisoner Jenner was indicted for an attempt to steal, &c.

Prisoners Jenner and Phelps pleaded guilty.

Prisoner Henry Hands pleaded not guilty, and was given in charge to the jury.

J. D. S. Sim appeared for the prosecution.

Moore appeared for the prisoner Hands.

This is a case of larceny from what is known as an "automatic box," and the circumstances are as follows:

Mr. Edward Shenton is the lessee of the Assembly Rooms at Cheltenham, and has fixed against the wall of the passage leading from the High-street to the rooms an "automatic box."

This box presents the appearance of a cube of about eight or ten inches, and in the upper right-hand corner (facing the operator) of the front face there is a horizontal slit or opening of sufficient size to admit a penny piece.

In the centre of the face is a projecting button or knob about the size of a shilling.

In the lower left-hand corner is a horizontal slit or opening of sufficient size to allow of the exit of a cigarette.

There is an incription on the face of the box:

Only pennies, not halfpennies.

Also:

To obtain an Egyptian Beauties cigarette place a penny in the box, and push the knob as far as it will go.

If these directions are followed a cigarette will be ejected from the lower slit on to a bracket placed to receive it.

The box is the property of the Automatic Box Company. The cigarettes with which it was charged belonged to Mr. Shenton.

For some time past Mr. Shenton has found, on clearing the box, which he did once or twice a day, that a large number of metal discs (brass and lead) of the size and shape of a penny had been put in, and a corresponding number of cigarettes had been taken out.

In consequence of this discovery a watch was set upon the box, and, upon the day named in the indictment, the box having been previously cleared, two gentlemen were seen to go to it, each put something in, and each took a cigarette, as it appeared.

The box was then examined and found to contain one English penny and one French penny. These coins were left in. The box was locked and the watch was again set.

Shortly after this, three lads (afterwards proved to be the three prisoners) were seen to come to the entrance of the passage, one of them came in, went to the box, put something in, obtained a cigarette, and then rejoined the other two at the entrance. This was repeated a second time. The third time it was observed that the box would not work, and while the lad, who afterwards was found to be the prisoner Jenner, was pushing at the knob, the watchman came from his place of concealment and put his hand upon him.

The box was then opened, and a piece of lead was discovered stuck in the "valve," which had the effect of preventing the machinery of the box from working.

It was then found that the box contained (besides the English and French pennies already mentioned) two discs of brass about the size and shape of a penny.

No other coin or metal piece was found in the box, and no one (but the three lads as above-mentioned) had approached it after the two gentlemen who had put in the English and French pennies.

The prisoner Jenner was given in charge to the police, and the two other prisoners were subsequently apprehended.

Upon being brought together at the police station the prisoners all made statements more or less implicating themselves and each other.

The prisoner Hands said:

Me and Jenner met Phelps about 7.45 p.m., Phelps said, "I want to go to Dodwells." I did not go, and we went down into the High-street. Phelps and Jenner stopped by the Assembly Rooms and went in, I remained outside. I believe Jenner was caught at the box. Mr. Shenton's man took him inside. I afterwards put a penny in the box and had a cigarette myself. The pieces of brass produced are cut in our shop, the blacksmith's shop at Mr. Marshall's.

In leaving the case to the jury the learned

(*a*) Reported by R. Cunningham Glen, Esq., Barrister-at-Law

Chairman told them that they would have to consider: First, was there a theft committed; that is, was Mr. Shenton unlawfully deprived of his property without his knowledge or consent? Secondly, if that were so, were they satisfied that the prisoner (Hands) took any part in the robbery? He also told them that if they thought that the prisoner was one of the three lads who came to the entrance of the passage, and that he was there with the others for the common purpose of unlawfully taking the cigarettes from the box, or that he afterwards partook of the proceeds of the robbery, or that he had taken a part in making the discs knowing for what purpose they were to be used, that they would be justified in finding him guilty, although he might not actually have put the discs into the box or have taken out a cigarette.

The jury found the prisoner (Hands) guilty, and, upon motion in arrest of judgment on the ground that "the facts as disclosed by the evidence were not sufficient to constitute a larceny," all the prisoners were allowed to stand out on bail until the next quarter sessions.

The question for the court was, whether the facts as disclosed by the evidence were sufficient to constitute a larceny?

No one appeared on either side.

Lord COLERIDGE, C.J.—In this case a person was indicted for committing a larceny from what is known as an "automatic box," which was so constructed that, if you put a penny into it and pushed a knob in accordance with the directions on the box, a cigarette was ejected on to a bracket and presented to the giver of the penny. Under these circumstances there is no doubt that the prisoners put in the box a piece of metal which was of no value, but which produced the same effect as the placing a penny in the box produced. A cigarette was ejected which the prisoners appropriated; and in a case of that class it appears to me there clearly was larceny. The means by which the cigarette was made to come out of the box were fraudulent, and the cigarette so made to come out was appropriated. It is perhaps as well to say that the learned chairman somewhat improperly left the question to the jury. He told them that, if they thought that the prisoner Hands was one of the three lads who came to the entrance of the passage, and that he was there with the others for the common purpose of unlawfully taking the cigarettes from the box, or that he afterwards partook of the proceeds of the robbery—he did not say, larcenously or feloniously; and he further directed them that, if they thought the prisoner had taken a part in making the discs knowing for what purpose they were to be used, they would be justified in finding him guilty, although he might not actually have put the discs into the box or have taken out a cigarette. Now I am not quite sure that simply the fact of doing an unlawful thing, as joining in the manufacture of a disc that someone else was to use, would make him guilty of larceny. He might be guilty of something else, but I doubt very much whether he could be convicted of larceny. As upon the facts of the case, however, I do not think that the jury could have been misled; and as upon the facts there was undoubtedly a larceny committed, I am not disposed to set aside the conviction.

POLLOCK, B., STEPHEN, MATHEW, and WILLS, JJ., concurred.

Conviction affirmed.

Saturday, March 5.

(Before Lord COLERIDGE, C.J., POLLOCK, B., STEPHEN, MATHEW, and WILLS, JJ.)

REG. *v.* RILEY. (*a*)

Criminal law—Attempt to rape—Denial by prosecutrix of previous connection with prisoner—Admissibility of evidence to contradict denial.

Upon an indictment which charges a prisoner with an attempt to commit a rape, the prosecutrix may be cross-examined as to the fact of her having had connection with the prisoner previously to the commission of the alleged offence; and should she deny the fact of such connection having taken place, evidence may be given in order to contradict such denial.

CASE reserved for the consideration of this court by the Chairman of Quarter Sessions for the hundred of Salford, in the county of Lancaster, in which it was stated that:—

1. At the intermediate sessions held at Manchester in the said county for the hundred of Salford, on the 18th Aug. 1886, James Riley was tried upon an indictment charging him with an assault upon one Alice Cresswell with intent to commit a rape upon her; there were two other counts in the indictment, one charging an indecent assault, the other a common assault.

2. The defence raised by the prisoner's counsel was, that whatever was done by the prisoner to the said Alice Cresswell was done with her consent. The said Alice Cresswell was at the time of the commission of the alleged offence by the prisoner a woman of or about thirty years of age.

3. She was cross-examined by the counsel for the prisoner as to previous repeated voluntary acts of connection with the prisoner at specified times and places before the time of the commission of the alleged offence, which she denied, and swore that she never at any time or place had had connection with the prisoner.

4. Counsel for the defence proposed to call several witnesses to prove these several alleged acts of connection between the prosecutrix and the prisoner, but the court refused to allow the said witnesses to be called or examined for the purpose of giving such evidence, upon the ground that such evidence was not admissible for the prisoner upon the said indictment, and that the counsel for the prisoner was bound to take the answer of the prosecutrix for the purposes of that trial, but the court reserved for the opinion of this honourable court the question as to whether it was right in so ruling.

The prisoner was convicted on the first count of the said indictment, but the court respited judgment and admitted him to bail pending the decision of this honourable court.

If the court should be of opinion that the court was right in rejecting the said evidence, the said conviction is to stand; otherwise to be quashed.

Addison, Q.C. for the prisoner.—There are two grounds upon which this evidence was admissible: the first, that it went directly to the issue, and

(*a*) Reported by E. CUNNINGHAM GLEN, Esq., Barrister-at-Law.