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QUEEN'S BENCH DIVISION — DIVISIONAL COURT (ENGLAND)

PARTINGTON v WILLIAMS

Lord Widgery LCJ, Park and May JJ

18 December 1975

(1975) 120 SJ 80; 62 Cr App R 220; New Law Jo (England) 22 January 1976

CRIMINAL LAW – ATTEMPTED THEFT – WALLET TAKEN TO SEE WHETHER ANY MONEY INSIDE – NO MONEY INSIDE WALLET – DEFENDANT FOUND GUILTY – IMPOSSIBLE ATTEMPT – WHETHER COURT IN ERROR.

P. took a wallet and looked inside to see whether it contained any money. She intended to steal the money if the wallet had any in it, but it did not. She was convicted of an attempt to steal the money, and appealed against conviction.

HELD: Appeal allowed and the conviction quashed. P could not be convicted of the attempted theft of money because the substantive offence, in the circumstances, was impossible. The burden of proof remained throughout on the prosecution. Where the offence charged was an attempt to steal money, the prosecution had to prove that there was money in the wallet to steal. There would still have to be an acquittal if, when all the evidence had been adduced, the justices or jury were not satisfied as to what the wallet contained

***R v Smith (Roger)* (1973) 3 All ER 1109, applied.**

[**NOTE:** The headnote of the cited case reads "***Haughton v Smith* (1973) 3 All ER 1109**". A quantity of goods was stolen from a firm in Liverpool. Some days later a van travelling south was stopped by the police; it contained the stolen goods. It transpired that the van was proceeding to a rendezvous with the accused in Hertfordshire where the accused was to make arrangements for the disposal of the goods in the London area. In order to trap the accused the van was allowed to proceed on its journey with two policemen concealed inside and a disguised policeman beside the driver. At the rendezvous the van was met by the accused and at least one other person and the accused thereupon began to play a prominent role in assisting in the disposal of the van and its load. Finally the trap was sprung and the accused and others were arrested. The prosecutor was of the opinion that, once the police had taken charge of the van, the goods had been restored to lawful custody, within s24(3)a of the *Theft Act* 1968, and were, therefore, no longer stolen goods. Accordingly the accused was not charged with handling 'stolen goods', contrary to s22B of the 1968 Act, but with attempting to handle stolen goods.

HELD: A person could only be convicted of an attempt to commit an offence in circumstances where the steps taken by him in order to commit the offence, if successfully accomplished would have resulted in the commission of that offence. A person who carried out certain acts in the erroneous belief that those acts constituted an offence could not be convicted of an attempt to commit that offence because he had taken no steps towards the commission of an offence. In order to constitute an offence under s22 of the 1968 Act the goods had to be stolen goods at the time of handling; it was irrelevant that the accused believed them to be stolen goods. It followed that, since the goods which the accused had handled were not stolen goods, he could not be convicted of attempting to commit the offence of handling stolen goods.
