

14/1980

## COURT OF APPEAL (ENGLAND)

**ATTORNEY-GENERAL'S REFERENCES (Nos 1 and 2 of 1979)**

Roskill LJ, Bristow and Michael Davies JJ

18 June 1979 — (1979) WLR 577

**CRIMINAL LAW – BURGLARY – INTENT TO COMMIT OFFENCE – THEFT – ENTRY OR ATTEMPTED ENTRY OF BUILDING WITH INTENTION TO TAKE VALUABLES IF FOUND – WHETHER OFFENCE COMMITTED – FORM OF INDICTMENT – THEFT ACT 1968 (c60), S9(1)(a).**

In the first reference a grocer who lived above his shop heard the back door open and close late one night and intercepted the defendant who was ascending the stairs. The police were called and arrested the defendant. They asked him why he had entered the house and he replied: "To rob £2,000" and on being asked why he thought there was £2,000 there he said: "I don't know, I was just going to take something." The indictment before the Crown Court averred that he had entered the grocer's premises as a trespasser "with intent to steal therein." The trial judge withdrew the case from the jury at the close of the prosecution case and directed an acquittal. The Attorney-General referred to the court for opinion the question whether a man who had entered a house as a trespasser with the intention of stealing money therein was entitled to be acquitted of an offence against section 9(1)(a) of the *Theft Act* 1968 on the ground that his intention to steal was conditional upon his finding money in the house.

In the second reference a householder heard a sound at the French windows at the rear of her house. She called the police who went to the rear of the house and found the defendant holding and turning the handle of the French windows and inserting a long thin stick between the door and the door frame. Later at the police station the defendant made a written statement in which he said: "I wasn't going to do any damage in the house, only see if there was anything lying around." The indictment averred that the defendant had attempted to enter the dwelling house concerned "with intent to steal therein." At the close of the prosecution case the judge directed the jury to return a verdict of not guilty upon the ground that the evidence did not disclose a present intention to steal but merely a conditional intention. The Attorney-General referred to the court for opinion the question whether a man who was attempting to enter a house as a trespasser with the intention of stealing anything of value which he might find therein was entitled to be acquitted of the offence of attempted burglary on the ground that at the time of the attempt his intention was insufficient to amount to "the intention of stealing anything" necessary for conviction under section 9 of the *Theft Act* 1968. On the hearing of both references—

**HELD: Both questions in the references answered in the negative.**

**1. Under Section 9(1)(a) of the *Theft Act* 1968, the offence of burglary was committed if a person entered a building as a trespasser with an intention to steal. Where a person was charged with burglary, it was no defence to show that he did not intend to steal any specific objects, and the fact that the intention to steal was conditional on finding money in the house did not entitle a person to be acquitted on a charge of entering premises as a trespasser with intent to steal therein.**

*Dictum in R v Hussey* (Note) (1977) 67 Cr App R 131, 132, explained.

*R v Walkington* (1979) 1 WLR 1169, applied.

*R v Easom* (1971) 2 QB 315, distinguished.

**2. Both principle and logic required the same answer whether the charge were burglary, attempted burglary, theft or attempted theft, or loitering with intent to commit an arrestable offence.**

*Per curiam:* Plainly it may be undesirable in some cases to frame indictments by reference to the theft or attempted theft of specific objects. There is no reason in principle against more imprecise pleading, if the justice of the case requires it, as for example, attempting to steal some or all the contents of a car or some or all the contents of a handbag.