

[IN REVISION]

1913.

*Present: Pereira J.*ANDRIS *v.* DON CHARLES.*P. C. Colombo, 43,575.**Theft—Accused drunk—Intention necessary to constitute offence.*

When a crime is such that the intention of the party committing it is one of its constituent elements, the fact that the accused was drunk may be taken into consideration in deciding the question whether he had the intention necessary to constitute the crime.

THE accused in this case was charged under section 367 of the Penal Code with having committed theft of a necklace, and was sentenced to undergo one month's rigorous imprisonment.

He moved the Supreme Court by way of revision.

De Jong, for the petitioner (accused).—Section 79 of the Penal Code enacts that if a particular knowledge or intention is necessary to constitute an offence, the accused, if drunk, is liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. The section does not say "as if he had the same intention or knowledge."

Garvin, Acting S.-G., was heard as *amicus curiæ*. He admitted that English authorities were in favour of the view that drunkenness is an element to be considered in deciding the question whether the accused had a particular intention.

Cur. adv. vult.

December 12, 1913. PEREIRA J.—

In this case Mr. de Jong has moved, with notice to the Attorney-General, that the judgment and sentence be dealt with in revision, the reason for this application for revision being that the sentence is below the appealable limit. I think it is clear that, on the evidence, the accused cannot be said to have had that intention that is necessary to constitute the offence of theft. It is only a dishonest removal of property that constitutes theft, and to do a thing dishonestly is to do it with the intention of causing wrongful loss to one person or wrongful gain to another. The Magistrate says: "The accused was drunk, and may have taken the ornament because he saw it lying there when he picked the clothes." Under

1913. section 79 of the Penal Code intoxication does not negative know-
ledge when that is an element of an offence; but as to intention, our
PENEIRA J. law is the same as the English law on the subject, that is to say,
Andris v. " when a crime is such that the intention of the party committing
Don Charles it is one of its constituent elements, you may look at the fact that
the man was drunk in considering whether he had the intention
necessary to constitute the crime " (1 Gour. 346). Considering the
condition of the accused at the time of the alleged offence, it is,
to say the least, very doubtful that he intended to commit theft.
He does not appear to have subsequently misappropriated the
property. The string of beads was eventually found on the window
of the complainant's own house. If he misappropriated the
property, he might have been charged with criminal misappropriation
of property.

I set aside the conviction, and direct that the accused be forthwith
released from further custody.

Set aside.

