

a legal result [merely] is bad." 1 Ch. Cr. Law 228\*; *State v. Beasom*, 40 N. H. 374; *State v. Scammon*, 22 N. H. 46; *State v. Barrett*, 42 N. H. 470. All the facts stated in this indictment may be true, and yet the respondents may be innocent of any neglect of duty under the statute. *State v. Hoyt*, 23 N. H. 359.

Exception to the ruling of the court at the trial term must be sustained, and

*The indictment must be quashed.*

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### STATE v. MERRILL.

Where two distinct offenses are charged in the same indictment, whether in the same count or in different ones, the duplicity will be cured by a verdict of guilty as to one of the offenses, and not guilty as to the other.

But in such a case, if the verdict find the respondent guilty of both offenses charged, and they are punishable by different penalties, the judgment will be arrested.

In such cases, if the prosecuting officer enter a *nol. pros.* as to one of these charges, and proceed to trial upon the other, and the respondent be convicted, judgment will not be arrested.

Where the goods of several persons, lying in the same place, are stolen at one and the same time, such stealing constitutes one entire felony, and the stealing of the whole may well be joined in the same indictment. But the value of each article, and the name of each owner, must be separately and specially alleged.

THIS was an indictment for larceny, in which the respondent was charged with stealing, on the 2d day of February, 1863, at Northumberland, certain goods and chattels of C. P. True & Co., and certain other goods and chattels of James P. Spaulding.

The respondent having pleaded not guilty, the case came on for trial at this term, when his counsel moved to quash the indictment for the reason, as alleged, that two separate and distinct offenses were set out in one and the same count; but the court overruled the motion, to which the respondent excepted, and the trial proceeded.

The State's counsel offered evidence tending to prove the stealing of the goods of C. P. True & Co., but no evidence of stealing goods of Spaulding, — the counsel for the State having elected not to proceed therefor; and the jury, having returned a verdict against the respondent, his counsel moves that judgment be arrested, because two distinct offenses are laid in one and the same and only count in the indictment.

Evidence was introduced by the respondent, tending to show that the original complaint charged him with the larceny of Spaulding's property, the same as the indictment, and that the property of Spaulding was taken at the same time with that of True & Co., and the questions of law arising in the case were reserved for the determination of the whole court.

*Burns & Fletcher*, for the respondent.

*Ray*, Solicitor, for the State.

SARGENT, J. In *State v. Nelson*, 8 N. H. 163, the defendant was charged with stealing a horse, a saddle, a bridle, and a frock coat from the same person at the same time, and he was convicted of stealing the horse, and also the other property, which was found to be of the value of \$19, and the judgment was arrested, because, by statute, horse stealing was made an offense of a different grade from that of stealing the other property; and the prisoner had been convicted of two crimes, requiring different punishments. *Commonwealth v. Symonds*, 2 Mass. 163, was a case of the same kind.

There can be no doubt that a man may be indicted and convicted for stealing several different articles of property from the same person, at the same time, and if the value of them all is more than \$20, it will be grand larceny; and if less than that sum, petit larceny, where the law makes no distinction between the several kinds of property stolen. But it is held that duplicity in an indictment, whether in the same count or different ones, will be cured by a verdict of guilty as to one of the offenses, and not guilty as to the other. Wharton's Am. Cr. Law 98; Arch. Cr. Pl. 50. But where an indictment is bad for duplicity, in charging two offenses in one count, the prosecuting officer may enter a *nol. pros.* as to one charge before trial, and a conviction upon the remaining charge will be good; or the prosecutor may be held to make his election upon which charge he will proceed, as in this case, which is equivalent to entering a *nol. pros.* as to the other charge. *Commonwealth v. Tuck*, 17 Mass. 365, and cases cited. We think that the conviction is well enough in this case, even though the indictment were bad as originally drawn, had no part of the charge been abandoned. *Rez v. Smith*, 1 Ry. & M. 295; *Lord v. State*, 20 N. H. 404.

But it seems, upon the authorities, that the indictment was well enough as originally drawn. It is held, in 1 Hale's Pl. Cr. 531 (when, by the laws of England, the stealing of money or goods above the value of twelve pence constituted grand larceny), that if, at the same time, a person steals goods of A of the value of six pence, goods of B of the value of six pence, and goods of C of the value of six pence, being, perchance, in one bundle, or upon a table, or in one shop, this is grand larceny, because it was one entire felony, done at the same time; though the persons had several properties, yet, if in one indictment, they make grand larceny. The same doctrine is held in 2 East P. C. 740, 741. So in 2 Russell on Cr. 126, it is said, "But it seems that if the property of several persons, lying together in one bundle or chest, upon the same table, or even in the same house, be stolen together at one time, the value of the whole may be put together, for such stealing is one entire felony." See, also, 3 Chit. Cr. Law 959, where a form of indictment is given, charging A B with stealing one silver spoon of the value, &c., of the goods and chattels of one J L; two brass candlesticks of the value, &c., and two linen shirts of the value, &c., of the goods and chattels of one E W, then and there being found, &c. Wharton's Am. Cr. L. 99; *Commonwealth v. Williams*, Thatcher C. C. 722; Davis Prec. 141, where the form of an indictment is given like the one above referred to from Chitty, and in a note it is

said, "Where the goods of several persons are taken at the same time, the indictment may include the whole; but not so if taken at different times. The value of each article and the name of each owner must be separately and specially alleged," and authorities cited. There must be

*Judgment on the verdict.*

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JOHNSON v. GRAND TRUNK RAILWAY.

The plaintiff had attached a lot of lumber as the property of P., upon a writ against him, and had left a copy of the writ and return with the town-clerk in the town where the lumber was situated. Afterward P. employed the defendant company to freight this lumber for him, but before it was moved the plaintiff notified the company of his attachment, and forbade their moving the lumber. But the company removed it according to their contract with P.;—*Held*, that the company was liable to the plaintiff in trover for the lumber.

TROVER, for one million feet of pine boards. The issue was tried by the court, and the following facts found: On the 24th of April, 1858, a writ was duly issued in favor of Henry Fling against Moses Pattee, of Bethel, Me., returnable at the November term of the court of common pleas for Coös county, 1858. This writ was given to said Johnson, who was then a deputy sheriff for said county, for service, April 26, 1858, who attached, as the property of the defendant, all the merchantable white pine boards lying about the depot, between the railroad track and the river road, in Berlin, in said county, and left an attested copy of the writ and of his return thereon at the dwelling-house of Dexter Wheeler, town-clerk of said town of Berlin, at 12 o'clock at noon of said day.

On the 26th day of May, 1858, personal service was made on said Pattee at said Berlin.

On said 26th day of May said Johnson found said Pattee and his hands loading this lumber upon the cars. He forbade their moving the lumber, and notified A. A. Knight, the station agent of the railroad at that station, of the attachment of this lumber, and ordered him not to let the lumber go off upon the cars, and notified him, if he did so, said Johnson would hold the railroad company responsible for the same. This was before any of the lumber had started from the depot, though some of it was loaded upon the cars. This lumber was lying upon the company's grounds, kept and used for such purposes, when it was attached, and it was all carried off by the company for said Pattee on their cars, on or immediately after May 26, 1858. At the May term of said court, 1859, judgment was rendered in said action for \$237.18 damages, and \$15.93 costs, and execution issued thereon, which was given to said Johnson for collection, who, August 27, 1859, demanded said lumber of said Knight, then the station agent of said road at said Berlin, and on the 1st day of November, 1859, returned said execution wholly unsatisfied, with the return of *nulla bona*.