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# Larceny Act 1916

## LAWS OF THE UNITED KINGDOM

### THE LARCENY ACT, 1916

(6 & 7 Geo. 5, c. 50.)

*An Act to consolidate and simplify the Law relating to Larceny triable on Indictment and Kindred Offences.*

[31st October, 1916.]

This Act consolidates the common law and the statute law relating to larceny and kindred offences punishable on indictment. The Larceny Act, 1861 (c. 96), p. 542, *ante*, dealt also with offences punishable summarily, and these provisions remain standing in that Act, which also deals with certain offences not strictly akin to larceny.

This Act contains the first statutory definition of larceny, which, while it substantially reproduces the old law, slightly enlarges the category of things capable of being stolen, particularly in regard to animals. The question whether an animal was fit for the food of man, formerly of importance in this connection, is now immaterial, the only tests of whether a thing is capable of being stolen being value and ownership.

The offence of larceny is defined in s. 1, and s. 46 contains the definition of certain terms used in the Act.

Simple larceny, i.e. larceny for which no special punishment is provided, is punishable under s. 2.

Larceny of certain specified things is dealt with in the succeeding sections, i.e. s. 3 (cattle); s. 5 (dogs); s. 6 (wills); s. 7 (documents of title to land and legal documents); s. 8 (fixtures, trees, plants, etc.); s. 9 (goods in process of manufacture); s. 10 (electricity); s. 11 (minerals); and s. 12 (postal packets, etc.).

S. 4 deals with killing animals with intent to steal, and s. 8 with damaging fixtures, trees, plants, etc., with intent to steal.

Larceny in certain specified places is dealt with in s. 13 (dwelling-houses), and s. 15 (ships, docks, etc.).

Larceny by certain specified persons is dealt with in s. 16 (tenants and lodgers); s. 17 (clerks, servants, and persons employed in the public service); s. 18 (officers of the Post Office).

Embezzlement is dealt with in ss. 17-19; fraudulent conversion in ss. 20-22; robbery in s. 23; sacrilege in ss. 24, 27; burglary, housebreaking and the like in ss. 25-28; blackmail in ss. 29-31; obtaining property by false pretences in s. 32; and receiving property stolen or fraudulently obtained in s. 33.

Ss. 5 and 34 deal with the corrupt taking of rewards in respect of stolen property. S. 45 deals with restitution.

The remaining sections deal with procedure, punishment, etc.

**1. Definition.** - For the purposes of this Act -

(1) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof;

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner:

(2) - (i) the expression "takes" includes obtaining the possession -

(a) by any trick;

(b) by intimidation;

(c) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained;

(d) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps;

(ii) the expression "carries away" includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached;

(iii) the expression "owner" includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen:

(3) Everything which has value and is the property of any person, and if adhering to the realty then after severance therefrom, shall be capable of being stolen:

Provided that -

(a) save as hereinafter expressly provided with respect to fixtures growing things, and ore from mines, anything attached to or forming part of the realty shall not be capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof; and

(b) the carcase of a creature wild by nature and not reduced into possession while living shall not be capable of being stolen by the person who has killed such creature, unless after killing it he has abandoned possession of the carcase.

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The definition contained in this section is of considerable importance:-

*"Without the consent of the owner."*

Where the owner consents for the purpose of securing the apprehension of the accused, this will not prevent the taking being larceny (*R. v. Egginton* (1801), 2 Leach, 913; *R. v. Williams* (1843), 1 Car. & Kir. 195; *R. v. Simmons* (1848), 13 J.P. 90); but this does not extend to the case of an owner or his agent actually handing the property to the accused (*R. v. Lawrence* (1850), 4 Cox, C.C. 438).

See, further, English and Empire Digest, Vol. 15, pp. 883-884.

Where possession and property (i.e. ownership) are both parted with it is not larceny (see English and Empire Digest, Vol. 15, pp. 873-875).

*"The owner."*

See para. (iii) of sub-s. (2).

As to obtaining from a person with limited authority, see *R. v. Prince* (1868), L.R. 1 C.C.R. 150; *R. v. Tideswell*, [1905] 2 K.B. 273 (from servant); *R. v. Little* (1867), 10 Cox., C.C. 559 (from carman); *R. v. Middleton* (1873), L.R. 2 C.C.R. 38 (from postal official).

See, further, English and Empire Digest, Vol. 15, pp. 871-873.

As to possession, see *ibid.* pp. 912-913.

Persons having control or special property include a bailee (*R. v. Cole* (1850), 4 Cox, C.C. 280); agent (*R. v. Jennings* (1858), 7 Cox, C.C. 397); buyer of undelivered goods (*R. v.*

*Church* (1845), 9 J.P. 249); finder of lost property (*R. v. Swinson* (1900), 134 J.P. 73); and even a thief (*Anon.* (1510), Keil. 160).

See, further, English and Empire Digest, Vol. 1.5, pp. 913-915.

"*Fraudulently and without a claim of right made in good faith.*" See *ibid.* pp. 888-890.

*Obtaining possession by a Trick.*

See para. (1) of sub-s. (2). Obtaining possession by a trick is defined in *R. v. Buckmaster* (1877), 20 Q. B. D. 182; *Oppenheimer v. Frazer and Wyatt*, [1907] 2 K.B. 50; *Whitehorn Bros. v. Davison*, [1911] 1 K.B. 463.

There are many forms of obtaining by a trick. As to personation, see *R. v. Longsireeth* (1826), 1 Mood. C.C. 137 (personation of buyer of goods); *R. v. Hench* (1810), Russ. & Ry. 163 (personation of servant); *R. v. Kay* (1857), 26 L.J.M.C. 119 (personation of owner of property); *R. v. Gillings* (1858), 1 F. & F. 36 (personation of addressee of letter).

As to obtaining delivery of goods, see *R. v. Slowly* (1873), 12 Cox, C.C. 269; *R. v. Stephens* (1910), 4 Cr. App. R. 52; *R. v. Edmundson* (1912), 8 Cr. App. R. 107 (pretence of purchase); *R. v. Hands* (1887), 16 Cox, C.C. 188 (use of disc in automatic machine); *R. v. Griffiths* (1850), 14 J.P. 40 (pretence of taking on approval); *R. v. Rodway* (1841), 9 C. & P. 784 (pretence of inspection); *R. v. Smith* (1848), 12 J.P. 585 (pretence of repairing); *R. v. Armstrong* (1823), 1 Lew. C.C. 195 (pretence of borrowing); *R. v. Semple* (1786), 1 Leach, 420 (pretence of hiring); *Folkes v. King*, [1922] 2 K.B. 348 (pretence of selling for owner).

As to money-changing, see *R. v. Johnson* (1851), 5 Cox, C.C. 372 (offer to get money changed); *R. v. Williams* (1834), 6 C. & P. 390 (offer to change money); *R. v. McKale* (1868), L.R. 1 C.C.R. 125; *R. v. Hollis* (1883), 12 Q.B.D. 25; *R. v. Greenaway* (1908), 72 J.P. 389 ("ringing the changes").

As to other methods of obtaining by a trick, see *R. v. Buckmaster* (1887), 20 Q.B.D. 182 (welshing); *R. v. Hilliard* (1913), 83 L.J.K.B. 439 (cheating at cards); *R. v. Patch* (1782), 1 Leach, 238 (ring-dropping); *R. v. Morgan* (1854), 6 Cox, C.C. 408; *R. v. Russell*, [1892] 2 Q.B. 312 (pretence of supplying goods); *R. v. Thompson* (1862), 9 Cox, C.C. 244 (pretence of taking ticket); *R. v. Jones* (1850), 5 Cox, C.C. 156 (pretence of paying account). See, further, English and Empire Digest, Vol. 15, pp. 865-871.

*Obtaining possession by intimidation.*

As to obtaining possession by intimidation, see *R. v. Robertson* (1864), 34 L.J.M.C. 35 (threat to imprison); *R. v. McGrath* (1869), L.R. 1 C.C.R. 205 (mock auction); *R. v. Hazell* (1870), 11 Cox, C.C. 597; *R. Lovell* (1881), 8 Q.B.D. 185 (payment through fear). See, further, English and Empire Digest, Vol. 15, pp. 875-876.

*Obtaining possession by mistake of owner.*

As to obtaining possession under mistake of the owner with knowledge of the accused, see *R. v. Middleton* (1873), L.R. 2 C.C.R. 38 (withdrawal of incorrect sum from bank).

Where the mistake was made by both parties at the time of delivery, and the accused subsequently appropriated the property on discovering the mistake, it is doubtful whether the offence of larceny has been committed (*R. v. Ashwell* (1885), 16 Q.B.D. 190 (delivery of a sovereign in mistake for a shilling)).

The innocent receipt of a chattel coupled with its subsequent fraudulent appropriation does not amount to larceny (*R. v. Flowers* (1886), 16 Q.B.D. 643; *R. v. Fish* (1900), 64 J.P. 137). See, further, English and Empire Digest, Vol. 15, pp. 876-877.

*Obtaining possession by finding.*

As to obtaining possession by finding, the intention to appropriate must exist at the time of finding (*R. v. Thurborn* (1849), 18 L.J.M.C. 140).

Where the intention at the time of finding is innocent, it is not larceny (*R. v. Preston* (1851), 21 L.J.M.C. 41).

Retaining property found with the intention of securing a reward does not amount to larceny (*R. v. Yorke* (1848), 18 L.J.M.C. 30); but if there was an original intention to appropriate, and restitution is only made when a reward is offered, this is larceny (*R. v. Peters* (1843), 1 Car. & Kir. 245).

The belief of the finder is to be gathered from his means of discovering the owner (*R. v. Dixon* (1855), 25 L.J.M.C. 39). See also *R. v. Kerr* (1837), 8 C. & P. 176 (duty to inquire); *R. v. Wynne* (1786), 1 Leach, 413 (property left in vehicle); *R. v. West* (1854), 24 L.J.M.C. 4 (property left on stall). As to the duty of railway servants in respect of property found in a railway carriage, see *R. v. Pierce* (1852), 6 Cox, C.C. 117. See, further, English and Empire Digest, Vol. 15, pp. 877-881.

*Carrying away.*

See para. (ii) of sub-s. (2). The slightest asportation is sufficient (*R. v. Goodwin* (1910), 4 Cr. App. R. 196). See, further, English and Empire Digest, Vol. 15, pp. 881-883.

*"With intent permanently to deprive the owner."*

See sub-s. (1). The intent must be at the time of taking (*R. v. Thistle* (1849), 19 L.J.M.C. 66). The nature of the intent is a question for the jury (*R. v. Farnborough*, [1895] 2 Q.B. 484). As to the effect of pledging property, see *R. v. Phetheon* (1840), 9 C. & P. 552; *R. v. Trebilcock* (1858), 27 L.J.M.C. 103; *R. v. Wynn* (1887), 16 Cox, C.C. 231. As to destroying property taken, see *R. v. Jones* (1846), 2 Cox, C.C. 6; *R. v. Wynn* (1849), 3 Cox, C.C. 271. See, further, English and Empire Digest, Vol. 15, pp. 884-888.

*"Capable of being stolen."*

See sub-s. (3). The value need not be measurable in terms of money (*R. v. Morris* (1840), 9 C. & P. 349).

As to subjects of ownership, there is no property in a corpse (*R. v. Sharpe* (1857), 26 L.J.M.C. 47); though there may be in the shroud or the coffin (*R. v. Garlick* (1843), 1 Cox, C.C. 52). As to goods abandoned, see *R. v. White* (1912), 23 Cox, C.C. 190. See, further, English and Empire Digest, Vol. 15, pp. 904-906.

*Larceny by a bailee.*

As to who may be a bailee, see Halsbury's Laws of England, Vol. 1, pp. 524 *et seq.*; English and Empire Digest, Vol. 3, pp. 53 *et seq.*; Vol. 15, pp. 894-895.

The conversion must consist in some act inconsistent with the purposes of the bailment (*R. v. Jackson* (1864), 9 Cox, C.C. 505).

A refusal to return to the owner goods bailed may, if the intention be fraudulent, amount to larceny (*R. v. Wakeman* (1912), 8 Cr. App. R. 18). The conversion of goods bailed is prima facie fraudulent, and the onus of disproof rests on the accused (*R. v. Price* (1913), 9 Cr. App. R. 15). Mere intention to repay is not a defence (*R. v. Wells* (1858), 1 F. & F. 109).

As to forms of bailment, see English and Empire Digest, Vol. 15, pp. 896-899.

As to larceny by a part-owner, see s. 40 (4), p. 835, *post*.

As to larceny by persons having physical possession only, see s. 17, p. 822, *post* (larceny by a servant); *R. v. Jenkins* (1839), 9 C. & P. 38; *R. v. Smith* (1844), 1 Car. & Kir. 423 (larceny by persons with bare custody).

See, further, English and Empire Digest, Vol. 15, pp. 890-894.

An owner of goods may be guilty of larceny in respect of those goods, e.g. if he takes them from a bailee with intent to charge the bailee with their loss. See *ibid.* p. 900.

As to larceny by a husband or wife, see s. 36, p. 833, *post*.

As to the taking of the husband's goods by another, see English and Empire Digest, Vol. 15,

pp. 903-904; Married Women's Property Act, 1882 (c. 75), s. 16, Vol. 9, title HUSBAND AND WIFE.

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**2. Simple larceny.**-Stealing for which no special punishment is provided under this or any other Act for the time being in force shall be simple larceny and a felony punishable with penal servitude for any term not exceeding five years, and the offender, if a male under the age of sixteen years, shall be liable to be once privately whipped in addition to any other punishment to which he may by law be liable.

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For summary trial see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2. Vol. 11, title MAGISTRATES.

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**3. Larceny of cattle.**-Every person who steals any horse, cattle, or sheep shall be guilty of felony, and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

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The words "horse" (*R. v. Aldridge* (1849), 4 Cox, C.C. 143), and "sheep" (*R. v. McCulley* (1838), 2 Mood. C.C. 34; *R. v. Spicer* (1845), 1 Car. & Kir. 699), are generic terms. This section applies to the theft of live animals only. The theft of the carcase of an animal is punishable under s. 2, *supra*. See also s. 4, *infra*.

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**4. Killing animals with intent to steal.** - Every person who wilfully kills any animal with intent to steal the carcase, skin, or any part of the animal killed, shall be guilty of felony, and on conviction thereof liable to the same punishment as if he had stolen such animal, provided that the offence of stealing the animal so killed would have amounted to felony.

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A charge under this section is supported by proof that the accused cut off part of an animal while it was alive, with intent to steal, if the injury must occasion the animal's death (*R. v. Clay* (1819), Russ. & Ry. 387).

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. II, title MAGISTRATES.

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**5. Larceny, etc., of dogs.**-Every person who -

- (1) steals any dog after a previous summary conviction of any such offence; or
- (2) unlawfully has in his possession or on his premises any stolen dog, or the skin thereof, knowing such dog or skin to have been stolen, after a previous summary conviction of any such offence; or

(3) corruptly takes any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any stolen dog, or any dog which is in the possession of any person not being the owner thereof;

shall be guilty of a misdemeanour, and on conviction thereof liable to imprisonment for any term not exceeding eighteen months, with or without hard labour.

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As to the punishment for stealing dogs on a first conviction, see Larceny Act, 1861 (c. 96), s. 18, p. 545, *ante*, and for the unlawful possession of stolen dogs, see *ibid.* s. 19, p. 545, *ante*. As to proof of previous conviction, see Larceny Act, 1861 (c. 96), s. 116, p. 558, *ante*; Prevention of Crimes Act, 1871 (c. 112), s. 18, p. 678, *ante*. For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

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**6. Larceny of wills.** - Every person who steals any will, codicil, or other testamentary instrument, either of a dead or of a living person, shall be guilty of felony, and on conviction thereof liable to penal servitude for life.

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See s. 43 (2), (3), p. 837, *post*.

For the fraudulent destruction, concealment, etc., of wills, see Larceny Act, 1801 (c. 96), s. 29, p. 549, *ante*.

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### **7. Larceny of documents of title to land and other legal documents.-**

Every person who steals the whole or any part of -

(1) any document of title to lands; or

(2) any record, writ, return, panel, petition, process, interrogatory, deposition, affidavit, rule, order, warrant of attorney, or any original document of or belonging to any court of record, or relating to any cause or matter, civil or criminal, begun, depending, or terminated in any such court; or

(3) any original document relating to the business of any office or employment under His Majesty, and being or remaining in any office appertaining to any court of justice, or in any of His Majesty's castles, palaces, or houses, or in any government or public office;

shall be guilty of felony, and on conviction thereof liable to penal servitude for any term not exceeding five years.

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The term "document of title to lands" is defined in s. 46, p. 840, *post* See s. 43 (2), (3), p. 837, *post*.

For the fraudulent destruction, concealment, etc., of documents of title to lands, see Larceny

Act, 1861 (c. 96), s. 28, p. 549, *ante*.

For the fraudulent destruction, concealment, etc., of the documents mentioned in sub-ss. (2) and (3), see Larceny Act, 1861 (c. 96), s. 30, p. 549, *ante*.

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### **8. Damaging fixtures, trees, etc., with intent to steal.** - Every person who -

(1) Steals, or, with intent to steal, rips cuts severs or breaks -

(a) any glass or woodwork belonging to any building; or

(b) any metal or utensil or fixture, fixed in or to any building; or

(c) anything made of metal fixed in any land being private property, or as a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial-ground;

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"Building" includes a church (*R. v. Parker* (1782), 1 Leach, 320, n.); summer-house (*R. v. Morris* (1804), Russ. & Ry. 69); shed on wharf (*R. v. Rice* (1859), 28 L.J.M.C. 64); and cartshed (*R. v. Worrall* (1836), 10. & P. 516). As to an unfinished building, see *R. v. Worrall*, *supra*.

The following have been held to be "fixtures": window-sashes (*R. v. Hedges* (1779), 1 Leach, 201) rails of a tomb (*R. v. Davis* (1792), 1 Leach, 496, n.); brass fixed to tombstone (*R. v. Blick* (1830), 4 C. & P. 377); copper sundial fixed to wooden post in churchyard (*R. v. Jones* (1858), 27 L.J.M.C. 171).

As to what is a dwelling-house within this section, see *R. v. Brummitt* (1861), 8 Cox, C.C. 413; *R. v. Finch* (1834), 1 Mood. C.C. 418.

As to larceny of fixtures by *mala fide* tenants, see *R. v. Munday* (1799), 2 Leach, 850, *R. v. Richards*, [1911] 1 K.B. 260.

Where on indictment for simple larceny the facts proved disclose an offence under this section, there cannot be a conviction for simple larceny (*R. v. Molloy* (1914), 24 Cox, C.C. 226). And on an indictment for stealing fixtures there cannot be a conviction for simple larceny (*R. v. Molloy*, [1921] 2 K.B. 364).

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(2) Steals, or, with intent to steal, cuts, breaks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub, or underwood growing -

(a) in any place whatsoever, the value of the article stolen or the injury done being to the amount of one shilling at the least, after two previous summary convictions of any such offence; or

(b) in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, the value of the article stolen or the injury done exceeding the amount of one pound; or

(c) in any place whatsoever, the value of the article stolen or the injury done exceeding the amount of five pounds:

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As to summary conviction for larceny of or damage to trees, etc, see Larceny Act, 1861 (s. 96), s. 33, p. 550, *ante*.

Where several trees, etc., have been stolen or damaged at the same time the value of or the damage done to the different trees, etc., may be added together, to make up the amounts mentioned in the section (*R. v. Shepherd* (1868), L.R. 1 C.C.R. 118).

The damage is the direct injury to the trees, and not the consequential damage occasioned by planting new trees and protecting them (*R. v. Whiteman* (1854), 23 L.J.M.C. 120).

"Ground adjoining a dwelling-house" imports actual contact (*R. v. Hodges* (1829), Mood. & M. 341).

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(3) Steals, or with intent to steal, destroys or damages any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery-ground, hothouse, green-house or conservatory, after a previous summary conviction of any such offence;

shall be guilty of felony, and on conviction thereof liable to be punished as in the case of simple larceny.

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As to summary conviction for larceny or damage to plants, etc., growing in gardens, etc., see Larceny Act, 1861 (c. 96), s. 36, p. 551, *ante*.

"Plant" or "vegetable product" does not include a young fruit tree (*R. v. Hodges* (1829), Mood. & M. 341).

For summary trial under all these sub-sections, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

See also Larceny Act, 1861(c. 96), ss. 34-37, pp. 550, 551, *ante*; Malicious Damage Act, 1861 (c. 97), ss. 20-24, pp. 567, 568, *ante*.

As to simple larceny, see s. 2, p. 817, *ante*.

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**9. Larceny of goods in process of manufacture.** - Every person who steals, to the value of ten shillings, any woollen, linen, hempen or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed or exposed, during any stage, process or progress of manufacture in any building, field or other place, shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

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The process of manufacture is not complete until the articles are in a marketable condition (*R. v. Woodhead* (1836), 1 Mood. & R. 549).

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

See, further, Hosiery Act, 1843 (c. 40), ss. 2, 3, 11, Vol. 19, title TRADE AND TRADE UNIONS.

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**10. Abstracting of electricity.** - Every person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity shall be guilty of felony, and on conviction thereof liable to be punished as in the case of simple larceny.

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"Maliciously" means intentionally and without lawful excuse (cf. Malicious Damage Act, 1861 (c. 97), s. 1, *ante*).

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

For other offences in relation to electricity, see Electric Lighting Act, 1882 (c. 56), Vol. 7, title ELECTRIC LIGHTING.

As to simple larceny see s. 2, p. 817, *ante*.

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**11. Larceny, etc., of ore from mines.** - Every person who steals, or severs with intent to steal, the ore of any metal, or any lapis calaminaris, manganese, mundick, wad, black cawke, black lead, coal, or cannel coal from any mine bed or vein thereof, shall be guilty of felony and on conviction thereof liable to imprisonment for any term not exceeding two years with or without hard labour.

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See also Larceny Act, 1861 (c. 96), s. 39, p. 552, *ante*.

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**12. Larceny of postal packets, etc.** - Every person who -

- (1) steals a mail bag; or
- (2) steals from a mail bag, post office, officer of the Post Office, or mail, any postal packet in course of transmission by post; or
- (3) steals any chattel, money or valuable security out of a postal packet in course of transmission by post; or
- (4) stops a mail with intent to rob the mail;

shall be guilty of felony and on conviction thereof liable to penal servitude for life.

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This section reproduces s. 50 of the Post Office Act, 1908 (c. 48), Vol. 13, title POST OFFICE, and is included in order that the Act may form a complete code. The section in the Post Office Act is left unrepealed, as that Act also constitutes a code. Charges may, therefore, be laid either under this Act or under the Post Office Act, but see s. 77 of that Act enabling the court to direct that proceedings shall be taken at common law or under some other Act instead of the Post Office Act.

For other Post Office offences, see ss. 18, 33 (2), pp. 823, 831, *post*, and the Post Office Act, 1908 (c. 48), ss. 50-58.

For definitions, see s. 46, p. 839, *post*.

As to jurisdiction of quarter sessions, see Criminal Justice Act, 1925 (c. 86), s. 18, sched. 1, Vol. 11, title MAGISTRATES.

For summary trial, see *ibid.* s. 24, sched. 2.

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**13. Larceny in dwelling-houses.** - Every person who steals in any dwelling-house any chattel, money, or valuable security shall -

(a) if the value of the property stolen amounts to five pounds; or

(b) if he by any menace or threat puts any person being in such dwelling-house in bodily fear;

be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

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As to what is a dwelling-house, see s. 46 (2), p. 840, *post.*

A person may commit this offence in his own house (*R. v. Bowden* (1843), 2 Mood. C.C. 285).

For the meaning of "valuable security," see s. 46 (1), p. 840, *post.*

Under para. (a) property to the value of £5 must be stolen at one time or as the result of one continuous transaction, but the value of articles stolen at the same time may be added together in order to make the value amount to £5 (*R. v. Stonehouse* (1844), 1 Cox, C.C. 69).

As to what property is under the protection of the house, see *R. v. Fry* (1850), 14 J.P. 484 (purse produced in public house); *R. v. Carroll* (1825), 1 Mood. C.C. 89 (property left by mistake); *R. v. Campbell* (1792), 2 Leach, 564 (property obtained from the person); *R. v. Taylor* (1820), Russ. & Ry. 418 (property of lodger's guest).

If the value of the property is under £5, the offence is simple larceny and punishable under s. 2, p. 817, *ante.*

For summary trial of offences under para. (a), see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

Under para. (b), the menaces or threats must be such as to put the person in bodily fear, as to which see *R. v. Jackson* (1783), 1 Leach, 267.

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**14. Larceny from the person.** - Every person who steals any chattel, money, or valuable security from the person of another shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

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Complete separation of the article from the person is necessary to constitute this offence, but the slightest degree of such separation is sufficient (*R. v. Lapiere* (1784), 1 Leach, 320; *R. v. Simpson* (1854), 24 L.J.M.C. 7; *R. v. Taylor*, [1911] 1 K.B. 674).

The article stolen must be in the personal possession of the owner (*R. v. Hamilton* (1837), 8 C. & P. 49).

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

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**15. Larceny from ships, docks, etc.** - Every person who steals -

- (1) any goods in any vessel, barge or boat of any description in any haven or any port of entry or discharge or upon any navigable river or canal or in any creek or basin belonging to or communicating with any such haven, port, river, or canal; or
- (2) any goods from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek, or basin; or
- (3) any part of any vessel in distress, wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such vessel;

shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

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The term "goods" in this section must apparently be restricted to such goods as are usually lodged in vessels or upon docks and quays.

Thus, foreign money not current has been held to be excluded (*R. v. Grimes* (1752), 1 Leach, 53, n.; *R. v. Leigh* (1764), 1 Leach, 52); but passengers' luggage is included (*R. v. Wright* (1835), 7 C. & P. 159).

A man cannot be guilty of this offence in his own ship (*R. v. Madox* (1805), Russ. & Ry. 92). Under sub-s. (1) the goods need not be actually removed from the ship, but under sub-s. (2) removal from the dock, etc., is essential.

As to the meaning of "navigable river" see *R. v. Pike* (1784), 1 Leach, 317.

As to the application of sub-s. (3) of this section to aircraft, see Air Navigation Act, 1920 (c. 80), s. 11, Vol. 19, title STREET AND AERIAL TRAFFIC.

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

See, further, Larceny Act, 1861 (c. 96), ss. 6.5, 66, pp. 552, 553, *ante*; Merchant Shipping Act, 1894 (c. 60), ss. 512, 513, 518, 519, 535, 536, Vol. 18, title SHIPPING.

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**16. Larceny by tenants or lodgers.** - Every person who, being a tenant or lodger, or the husband or wife of any tenant or lodger, steals any chattel or fixture let to be used by such person in or with any louse or lodging shall be guilty of felony and on conviction thereof liable -

- (a) if the value of such chattel or fixture exceeds the sum of five pounds, to penal servitude for any term not exceeding seven years;
  - (b) in all other cases, to imprisonment for any term not exceeding two years, with, or without hard labour;
  - (c) in any case, if a male under the age of sixteen years, to be once privately whipped in addition to any other punishment to which he may by law be liable.
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As to larceny of fixtures by *mala fide* tenants, see *R. v. Munday* (1799), 2 Leach, 850; *R. v. Richards*, [1911] 1 K.B. 260.

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

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**17. Larceny and embezzlement by clerks or servants.** - Every person who -

(1) being a clerk or servant or person employed in the capacity of a clerk or servant -

(a) steals any chattel, money or valuable security belonging to or in the possession or power of his master or employer; or

(b) fraudulently embezzles the whole or any part of any chattel, money or valuable security delivered to or received or taken into possession by him for or in the name or on the account of his master or employer:

(2) being employed in the public service of His Majesty or in the police of any place whatsoever -

(a) steals any, chattel, money, or valuable security belonging to or in the possession of His Majesty or entrusted to or received or taken into possession by such person by virtue of his employment; or

(b) embezzles or in any manner fraudulently applies or disposes, of for any purpose whatsoever except for the public service any chattel, money or valuable security entrusted to or received or taken into possession by him by virtue of his employment:

(3) being appointed to any office or service by or under a local marine board -

(a) fraudulently applies or disposes of any chattel, money or valuable security received by him (whilst employed in such office or service) for or on account of any local marine board or for or on account of any other public board or department, for his own use or any use or purpose other than that for which the same was paid, entrusted to, or received by him; or

(b) fraudulently withholds, retains, or keeps back the same, or any part thereof, contrary to any lawful directions or instructions which he is required to obey in relation to his office or service aforesaid;

shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years, and in the case of a clerk or servant or person employed for the purpose or in the capacity of a clerk or servant, if a male under the age of sixteen years, to be once privately whipped in addition to any other punishment to which he may by law be liable.

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As to the meaning of the term "clerk or servant," see English and Empire Digest, Vol. 15, pp. 921-928.

As to larceny by a servant, see *ibid.* pp. 890-893. As to what amounts to a receiving "for or in the name or on in the account of his master," see *ibid.* pp. 928-930.

As to what amounts to embezzlement, see *ibid.* pp. 930-932.

As to the collusive sale by a servant of his master's property, see *R. v. Hornby* (1844), 1 Car. & Kir. 3055; *R. v. Tideswell*, [1905] 2 K.B. 273.

As to a gift by a servant of his master's property, see *R. v. White* (1840), 9 C. & P. 344. See also *R. v. Hampton* (1915), 84 L.J.K.B. 1137. See, further, Misappropriation by Servants Act, 1863 (c. 103), s. 1 p. 637, *ante*.

As to who are persons employed in the public service of His Majesty, see *R. v. Graham*

(1875), 13 Cox, C.C. 57 (police); *R. v. Glover* (1864), 33 L.J.M.C. 169 (county court bailiff); *R. v. Parsons* (1888), 16 Cox, C.C. 498 (assistant to high bailiff); and see English and Empire Digest, Vol. 15, pp. 925-926, 932.

See also, as to sub-s (3), Merchant Shipping Act, 1894 (c. 60), s. 248, Vol. 18, title SHIPPING.

For other statutes dealing with similar offences, see Naval Discipline Act, s. 33, and Army Act, ss. 17, 18, Vol. 17, title ROYAL FORCES; Public Stores Act, 1875 (c. 25), p. 683, *ante*; Customs Consolidation Act, 1876 (c. 36), ss. 29, 85, Vol. 16, title REVENUE.

As, to summary proceedings for embezzlement in certain cases, see Hosiery Act, 1843 (c. 40), ss. 2, 3, 11; and Trade Union Acts, 1871 (c. 31), s. 12, and 1876 (c. 22), s. 5, Vol. 19, title TRADE AND TRADE UNIONS; Building Societies Act, 1874 (c. 42), s. 31, Vol. 2, title BUILDING SOCIETIES; Industrial and Provident Societies Act, 1893 (c. 39), s. 64, Vol. 9, title INDUSTRIAL SOCIETIES; Friendly Societies Act, 1896 (c. 25), s. 87, Vol. 8, title FRIENDLY SOCIETIES; Merchant Shipping Act, 1894 (c. 60), s. 225, Vol. 18, title SHIPPING; and, as to paragraphs (1) and (2), see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

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**18. Embezzlement by officer of the Post Office.**- Every person who, being an officer of the Post Office, steals or embezzles a postal packet in course of transmission by post shall be guilty of felony and on conviction thereof liable -

(a) if the postal packet contains any chattel, money or valuable security, to penal servitude for life:

(b) in all other cases to penal servitude for any term not exceeding seven years.

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This section reproduces s. 55 of the Post Office Act, 1908 (c. 48), Vol. 13, title POST OFFICE (see note to s. 12, p. 820, *ante*).

As to jurisdiction of quarter sessions, see Criminal Justice Act, 1925 (c. 86), s. 18, sched. 1, Vol. 11, title MAGISTRATES.

For summary trial, see *ibid.* s. 24, sched. 2.

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**19. Embezzlement, etc., by officers of the Bank of England or Ireland.** - Every person who, being an officer or servant of the Bank of England or of the Bank of Ireland; secretes, embezzles, or runs away with any bond, deed, note, bill, dividend warrant, warrant for the payment of any annuity, interest or money, security, money or other effects of or belonging to the Bank of England or Bank of Ireland and entrusted to him or lodged or deposited with the Bank of England or Bank of Ireland, or with him as such officer or servant, shall be guilty of felony and on conviction thereof liable to penal servitude for life.

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As to the meaning of "entrusted," see *R. v. Bakewell* (1802), Russ. & Ry. 35; *R. v. Aslett* (1804), Russ. & Ry. 67.

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**20. Conversion.-** (1) Every person who -

- (i) being entrusted either solely or jointly with any other person with any power of attorney for the sale or transfer of any property, fraudulently sells, transfers, or otherwise converts the property or any part thereof to his own use or benefit, or the use or benefit of any person other than the person by whom he was so entrusted; or
- (ii) being a director, member or officer of any body corporate or public company, fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company; or
- (iii) being authorised to receive money to arise from the sale of any annuities or securities purchased, or transferred under the provisions of Part V. of the Municipal Corporations Act, 1882, or under any Act repealed by that Act, or under the Municipal Corporation Mortgages, etc., Act, 1860, or any dividends thereon, or any other such money as is referred to in the said Acts, appropriates the same otherwise than as directed by the said Acts or by the Local Government Board or the Treasury (as the case may be) in pursuance thereof; or
- (iv) (a) being entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; or  
(b) having either solely or jointly with any other person received any property for or on account of any other person; fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof;

shall be guilty of a misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding seven years.

(2) Nothing in paragraph (iv) of sub-section (1) of this section shall apply to or affect any trustee under any express trust created by a deed or will, or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

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For other offences committed by officers of companies, see Larceny Act, 1861 (c. 96), ss. 82-84, pp. 553, 554, *ante*, the notes to which are part applicable to this section.

As to proof of fraud, see *Nelson v. R.*, [1902] A.C. 250.

For Municipal Corporations Act, 1882 (c. 50), see Vol. 10, title LOCAL GOVERNMENT, The Act of 1860 was repealed as to boroughs in England by s. 5 and sched. 1 of that Act. As to what amounts to entrustment in relation to fraudulent conversion under this section, see *R. v. Noel*, [1914] 3 K. B. 848; *R. v. Grubb*, [1915] 2 K.B. 683; *R. v. Laurens* (1915), 11 Cr. App. R. 215; *R. v. Cuffin* (1922), 27 Cox, C.C. 293; *R. v. Smith*, [1924] 2 K.B. 194; *R. v. Sheaf* (1925), 89 J.P. 207; *R. v. Morter* (1927), 20 Cr. App. R. 53.

For the meaning of "retain in safe custody," see *R. v. Fullagar* (1879), 14 Cox, C.C. 370; *R. v. Newman* (1882), 8 Q.B.D. 706; *Re Bellencontre*, [1891] 2 Q.B. 122.

As to money deposited as security for honesty, see *R. v. Hotine* (1904), 68 J.P. 143; *R. v. O'Brien* (1911), 75 J.P. 392. See also *R. v. Scranton* (1920), 15 Cr. App. R. 104. As to what is property received on account of any person under this section, see *R. v. Lord* (1905), 69 J.P. 467; *R. v. South* (1907), 71 J.P. 191; *R. v. Solomons*, [1909] 2 K.B. 980; *R. v. Messer*, [1913]

2 K.B. 421; *R. v. Grubb*, [1915] 2 K.B. 683; *R. v. Bottomley* (1922), 27 Cox, C.C. 302. See s. 43 (2), (3), p. 837, *post*, as to evidence. As to the jurisdiction of quarter sessions, see s. 38, p. 834, *post*; but see as to sub-s. (1) (iv), Criminal Justice Act, 1925 (c. 86), s. 18, sched. 1, Vol. 11, title MAGISTRATES. As to restitution, see s. 45 (2), p. 838, *post*.

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**21. Conversion by trustee.** - Every person who, being a trustee as herein-after defined, of any property for the use or benefit either wholly or partially of some other person, or for any public or charitable purpose, with intent to defraud converts or appropriates the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise disposes of or destroys such property or any part thereof, shall be guilty of a misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding seven years. Provided that no prosecution for any offence included in this section shall be commenced -

(a) by any person without the sanction of the Attorney-General, or, in case that office be vacant, of the Solicitor-General;

(b) by any person who has taken any civil proceedings against such trustee, without the sanction also of the court or judge before whom such civil proceedings have been had or are pending.

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As to the subsistence of trusteeship, see *R. v. Fletcher* (1862), 31 L.J.M.C. 206; *R. v. Townshend* (1884), 15 Cox, C.C. 466; *R. v. Davies*, [1913] 1 K.B. 573; *Lanier v. R.*, [1914] A.C. 221; *R. v. Tuttle* (1929), 45 T.L.R. 357.

See s. 43 (2), (3), p. 837, *post*, as to evidence, and, as to jurisdiction of quarter sessions, s. 38, p. 834, *post*. As to restitution, see s. 45 (2), p. 838, *post*.

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**22. Factors obtaining advances on the property of their principals.** - (1) Every person who, being a factor or agent entrusted either solely or jointly with any other person for the purpose of sale or otherwise, with the possession of any goods or of any document of title to goods contrary to or without the authority of his principal in that behalf for his own use or benefit, or the use or benefit of any person other than the person by whom he was so entrusted, and in violation of good faith -

(i) Consigns, deposits, transfers, or delivers any goods or document of title so entrusted to him as and by way of a pledge, lien, or security for any money or valuable security borrowed or received, or intended to be borrowed or received by him; or

(ii) Accepts any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, transfer, or deliver any such goods or document of title;

shall be guilty of a misdemeanour, and on conviction thereof, liable to penal servitude for any term not exceeding seven years:

Provided that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, transfer, or delivery, was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal and accepted by such factor or agent.

(2) - (a) Any factor or agent entrusted as aforesaid and in possession of any document of title to goods shall be deemed to have been entrusted with the possession of the goods represented by such document of title.

(b) Every contract pledging or giving a lien upon such document of title as aforesaid shall be deemed to be a pledge of and lien upon the goods to which the same relates.

(c) Any such factor or agent as aforesaid shall be deemed to be in possession of such goods or documents whether the same are in his actual custody or are held by any other person subject to his control, or for him or on his behalf.

(d) Where any loan or advance is made in good faith to any factor or agent entrusted with and in possession of any such goods or document of title on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or documents of title and such goods or documents of title are actually received by the person making such loan or advance, without notice that such factor or agent was not authorised to make such pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of such goods or documents of title and within the meaning of this section, though such goods or documents of title are not actually received by the person making such loan or advance till the period subsequent thereto.

(e) Any payment made whether by money or bill of exchange or other negotiable security shall be deemed to be an advance within the meaning of this section.

(f) Any contract or agreement whether made direct with such factor or agent as aforesaid or with any person on his behalf shall be deemed to be a contract or agreement with such factor or agent.

(g) Any factor or agent entrusted as aforesaid, and in possession of any goods or document of title to goods shall be deemed, for the purposes of this section, to have been entrusted therewith by the owner thereof, unless the contrary be shown in evidence.

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A "factor" is a person to whom goods, or the documents of titles thereto, are entrusted for sale (*Baring v. Corrie* (1818), 2 B. & Ald. 137). "Agent" in this section must presumably be construed *eiusdem generis* with factor (*R. v. Portugal* (1885), 16 Q.B.D. 487).

See s. 43 (2), (3), p. 837, *post*, as to evidence, and as to jurisdiction of quarter sessions, see s. 38, p. 834, *post*. As to restitution, see s. 45 (2), p. 838, *post*.

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### **23. Robbery.-** (1) Every person who -

(a) being armed with any offensive weapon or instrument being together with one other person or more, robs, or assaults with intent to rob, any person;

(b) robs any person and, at the time of or immediately before or immediately after such robbery, uses any personal violence to any person;

shall be guilty of felony and on conviction thereof liable to penal servitude for life, and, in addition, if a male, to be once privately whipped.

(2) Every person who robs any person shall be guilty and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

(3) Every person who assaults any person with intent to rob be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding five years.

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Robbery is the felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear (*R. v. Hickman* (1783), 1 Leach, 278).

As to what amounts to this offence, see English and Empire Digest, Vol. 15, pp. 941-944.

As to the meaning of "offensive weapon or instrument," see cases under the Night Poaching Act, 1828 (c. 69), s. 9, Vol. 8, title GAME, and the Customs Consolidation Act, 1876 (c. 36), s. 189, Vol. 16, title REVENUE.

For the punishment by whipping, see s. 37 (6), p. 834, *post*.

On an indictment under sub-s. (1) the accused may be found guilty of an offence under sub-s. (2) or sub-s. (3).

On an indictment under sub-s. (2) the accused may be found guilty of an offence under sub-s. (3) (s. 44, p. 837, *post*), or of larceny from the person or of simple larceny.

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**24. Sacrilege.** - Every person who -

- (1) breaks and enters any place of divine worship and commits any felony therein; or
- (2) breaks out of any place of divine worship, having committed any felony therein;

shall be guilty of felony called sacrilege and on conviction thereof liable to penal servitude for life.

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As to breaking and entering a place of divine worship with intent to commit a felony therein, see s. 27 (2), p. 828, *post*.

"Place of divine worship" includes the vestry (*R. v. Evans* (1842), Car. & M. 298), and a church tower (*R. v. Wheeler* (1829), 3 C. & P. 585).

As to what amounts to breaking and entering, see English and Empire Digest, Vol. 15, pp. 949-953.

As to jurisdiction of quarter sessions, see Criminal Justice Act, 1925 (c. 86), s. 18, sched. 1, Vol. 11, title MAGISTRATES

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**25. Burglary.** - Every person who in the night -

- (1) breaks and enters the dwelling-house of another with intent to commit any felony therein;  
or  
(2) breaks out of the dwelling-house of another, having -  
(a) entered the said dwelling-house with intent to commit any felony therein; or  
(b) committed any felony in the said dwelling-house;

shall be guilty of felony called burglary and on conviction thereof liable to penal servitude for life.

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For the meaning of "night" see s. 46 (1), p. 840, *post*. As to what amounts to breaking and entering, see English and Empire Digest, Vol. 15, pp. 949-953.

For the meaning of "dwelling-house," see s. 46 (2), p. 840, *post*, and English and Empire Digest, Vol. 15, pp. 953-957.

As to the intent to commit a felony, see *ibid.* 957-958.

On an indictment under this section the accused may be convicted of entering a dwelling-house in the night with intent to commit a felony (see s. 27 (1)); or of house-breaking (see ss. 26, 27 (2)); or of larceny in a dwelling-house to the value of £5, if such larceny is alleged (see s. 13); or of simple larceny, where that is alleged.

As to jurisdiction of quarter sessions, see s. 38 (1), p. 834, *post*.

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## **26. Housebreaking and committing felony.-** Every person who -

- (1) breaks and enters any dwelling-house, or any building within the curtilage thereof and occupied therewith, or any school-house, shop, warehouse, counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to His Majesty, or to any Government Department, or to any municipal or other public authority, and commits any felony therein; or  
(2) breaks out of the same, having committed any felony therein;

shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding fourteen years.

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As to the meaning of "breaks and enters" and "dwelling-house," see note to preceding section. "Curtilage" is a garden, yard, field or piece of void ground lying near and belonging to the messuage (*Termes de la Ley*). See also *R. v. Woods* (1843), 7 J.P. 164; *R. v. Gilbert* (1843), 1 Car. & Kir. 84.

"Shop" means a place where retail trade is carried on; cf. *R. v. Sanders* (1839), 9 C. & P. 79 (not a workshop). See *R. v. Carter* (1843), 1 Car. & Kir. 173 (blacksmith's shop).

"Warehouse" means a place where a man keeps his goods which are not immediately wanted for sale; cf. *R. v. Hill* (1843), 2 Mood. & R. 458 (may include a cellar).

As to "counting-house," see *R. v. Potter* (1851), 20 L.J.M.C. 170 (machine-house where wages were paid); *Re Creek* (1863), 32 L.J.Q.B. 89 (solicitor's office).

As to breaking and entering these buildings with intent to commit a felony therein, see s. 27 (2), *infra*.

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**27. Housebreaking with intent to commit felony.**- Every person who, with intent to commit any felony therein,-

- (1) enters any dwelling-house in the night; or
- (2) breaks and enters any dwelling-house, place of divine worship or any building within the curtilage, or any school-house, shop, warehouse, counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to His Majesty or to any Government Department, or to any municipal or other public authority;

shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding seven years.

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See notes to two preceding sections.

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**28. Being found by night, armed or in possession of house-breaking implements.**- Every person who shall be found by night -

- (1) armed with any dangerous or offensive weapon or instrument, with intent to break or enter into any building and to commit any felony therein; or
- (2) having in his possession without lawful excuse (the proof whereof shall lie on such person) any key, picklock, crow, jack, bit, or other implement of house-breaking; or
- (3) having his face blackened or disguised with intent to commit any felony; or
- (4) in any building with intent to commit any felony therein;

shall be guilty of a misdemeanour and on conviction thereof liable

- (a) if he has been previously convicted of any such misdemeanour or of any felony, to penal servitude for any term not exceeding ten years;
- (b) in all other cases, to penal servitude for any term not exceeding five years.

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For the meaning of "night," see s. 46 (1), p. 840, *post*. The finding and the possession must both be by night (*R. v. Harris* (1925), 18 Cr. App. R. 157).

As to "dangerous or offensive weapon or instrument," see note to s. 23, p. 827, *ante*. As to what may be implements of housebreaking, see *R. v. Oldham* (1852), 21 L.J.M.C. 134; *R. v. Percival* (1905), 69 J.P. 320.

Under sub-s. (2) it is not necessary to prove an intent to commit a felony (*R. v. Bailey* (1853), 23 L.J.M.C. 13).

As to lawful excuse, see *R. v. Ward*, [1915] 3 K.B. 696.

See also Vagrancy Act, 1824 (c. 83), s. 4, Vol. 12, title POOR LAW.

An offence under this section is a "crime" with reference to habitual criminals under the

Prevention of Crime Act, 1908 (c. 59), See s. 10 (6) and schedule of that Act, pp. 753, 757, *ante*.

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**29. Demanding money, etc., with menaces.-** (1) Every person who -

- (i) utters, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property or valuable thing;
- (ii) utters, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person (whether living or dead) of any crime to which this section applies, with intent to extort or gain thereby any property or valuable thing from any person;
- (iii) with intent to extort or gain any property or valuable thing from any person accuses or threatens to accuse either that person or any other person (whether living or dead) of any such crime;

shall be guilty of felony, and on conviction thereof liable to penal servitude for life, and, if a male under the age of sixteen years, to be once privately whipped in addition to any other punishment to which he may by law be liable.

(2) Every person who with intent to defraud or injure any other person -

- (a) by any unlawful violence to or restraint of the person of another, or
- (b) by accusing or threatening to accuse any person (whether living or dead) of any such crime or of any felony,

compels or induces any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix the name of any person, company, firm or co-partnership, or the seal of any body corporate, company or society upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of felony and on conviction thereof liable to penal servitude for life.

(3) This section applies to any crime punishable with death, or penal servitude for not less than seven years, or any assault with intent to commit any rape, or any attempt to commit any rape, or any solicitation, persuasion, promise, or threat offered or made to any person, whereby to move or induce such person to commit or permit the abominable crime of buggery, either with mankind or with any animal.

(4) For the purposes of this Act it is immaterial whether any menaces or threats be of violence, injury, or accusation to be caused or made by the offender or by any other person.

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A letter is "uttered" within this section if it is left where it is likely to be found by the prosecutor (*R. v. Wagstaff* (1819), Russ. & Ry. 398; *R. v. Grimwade* (1844), 1 Cox, C.C. 85), or delivered through the medium of another person (*R. v. Paddle* (1822), Russ. & Ry. 484). See, further, English and Empire Digest, Vol. 15, p. 945, and compare Malicious Damage Act; 1861 (c. 97), s. 50, p. 577, *ante*, and Offences against the Person Act, 1861 (c. 100), s.

16, p. 604, *ante*.

As to what amounts to "demanding," see *R. v. Robinson* (1796), 2 Leach, 749; *R. v. Studer* (1915), 85 L.J.K.B. 1017.

As to what amounts to "menaces," see *R. v. Boyle and Merchant*, [1914] 3 K.B. 339, and cases cited in English and Empire Digest, Vol. 15, p. 946. The menaces need not amount to a threat of violence to person or property or to accuse of crime (*R. v. Tomlinson*, [1895] 1 Q.B. 706 (threat to disclose improper behaviour)).

"Reasonable or probable cause" relates to the demand and not to the menaces (*R. v. Hamilton* (1843), 1 Car. & Kir. 212); and it is no defence that the accused believed he had a reasonable cause for making the demand (*R. v. Dymond*, [1920] 2 K.B. 260).

It is unnecessary to prove felonious intent (*R. v. Denyer*, [1926] 2 K.B. 258).

The threat to accuse need not be a threat to accuse before a judicial tribunal (*R. v. Robinson* (1837), 2 Mood. & R. 14), nor a threat to accuse of an offence within this section (*R. v. Stuart*, *R. v. Leonard*, *R. v. Maples*, *R. v. Tannen*, *R. v. Taylor* (1927), 20 Cr. App. Rep. 74).

The guilt of the person accused is immaterial (*R. v. Gardner* (1824), 1 C. & P. 479). As to what amounts to a threat, see English and Empire Digest, Vol. 15, p. 948.

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**30. Demanding with menaces, with intent to steal.** - Every person who with menaces or by force demands of any person anything capable of being stolen with intent to steal the same shall be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding five years.

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An express demand by words is not necessary (*R. v. Robinson* (1796), 2 Leach, 749).

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**31. Threatening to publish, with intent to extort.** - Every person who with intent -

(a) to extort any valuable thing from any person, or

(b) to induce any person to confer or procure for any person any appointment or office of profit or trust,

(1) publishes or threatens to publish any libel upon any other person (whether living or dead);  
or

(2) directly or indirectly threatens to print or publish or directly or indirectly proposes to abstain from or offers to prevent the printing or publishing of any matter or thing touching any other person (whether living or dead);

shall be guilty of a misdemeanour and on conviction thereof liable to imprisonment, with or without hard labour, for any term not exceeding two years.

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The intent may be inferred from the facts of the case, and proof of an express demand is not necessary (*R. v. Coghlan* (1865), 4 F. & F. 316).

As to intent to procure office, see *R. v. Plaisted* (1909), 22 Cox, C.C. 5 (motive immaterial).

"Threaten" is not confined to written words, and means "expresses an intention to" or "says that he will" (*R. v. Wyatt* (1921), 91 L.J.K.B. 402).

As to "offering to prevent publication," see *R. v. Fates* (1853), 6 Cox, C.C. 441 (offer to prevent criminal proceedings not sufficient).

Publishing a libel upon a corporation is not within the section (*R. v. McLaughlin* (1850), 14 J.P. 291).

See also Libel Act, 1843 (c. 96), ss. 4, 5, Vol. 10, title LIBEL.

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**32. False pretences.** - Every person who by any false pretence -

(1) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or

(2) with intent to defraud or injure any other person, fraudulently causes or induces any other person -

(a) to execute, make, accept, endorse, or destroy the whole or any part of any valuable security; or

(b) to write, impress, or affix his name or the name of any other person, or the seal of any body corporate or society, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security;

shall be guilty of a misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding five years.

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A "false pretence" within this section must be a representation as to a past or existing fact (*R. v. Welman* (1853), 22 L.J.M.C. 118).

This may be coupled with a statement of future intention (*R. v. Pates* (1848), 3 Cox, C.C. 201). But mere representations or promises as to the future are not within the section (*R. v. Lee* (1863), 9 Cox, C.C. 304).

See, further, English and Empire Digest, Vol. 15, pp. 939-992; Summary Jurisdiction Act, 1899 (c. 22), s. 3, Vol. 11, title MAGISTRATES.

The pretence may be by words, writing, or conduct (*R. v. Barnard* (1837), 7 C. & P. 784).

See, further, English and Empire Digest, Vol. 15, pp. 992-993. As to particular kinds of pretences, *ibid.* pp. 994-1004.

It is essential to prove that the pretence was at the time it was made false to the knowledge of the accused (*R. v. Dunleavy* (1908), 73 J.P. 56; *R. v. Dutt* (1912), 8 Cr. App. R. 51).

As to intent to defraud, see English and Empire Digest, Vol. 15, pp. 1004-1008. It is not necessary to prove an intent to defraud any particular person (s. 40, p. 83.5, *post*).

The property must have been "obtained" as a result of the false pretences alleged (*R. v. Roebuck* (1856), 25 L.J.M.C. 101); though it is immaterial that other considerations may also have weighed with the prosecutor (*R. v. Lince* (1873), 12 Cox, C.C. 451). See, further, English and Empire Digest, Vol. 15, pp. 984-987.

As to the meaning of "obtains," see *R. v. Garrett* (1853), 23 L.J.M.C. 20; *R. v. Cosneit* (1901), 20 Cox C.C. 6.

The pretence must not be too remote (*R. v. Button*, [1900] 2 Q.B. 597). See, further, English and Empire Digest, Vol. 15, pp. 993-994.

The pretence need not have been made to the person from whom the property was obtained

(*R. v. Brown* (1847), 2 Cox, C.C. 348; *R. v. Silverlock*, [1894] 2 Q.B. 766).

See, further, English and Empire Digest, Vol. 15, pp. 983-984.

"Chattel" includes a railway ticket (*R. v. Chapman* (1910), 74 J.P. 360), but not apparently a dog (*R. v. Robinson* (1859), 28 L.J.M.C. 58).

"Chattel, money or valuable security" does not include credit (*R. v. Crosby* (1843), 1 Cox, C.C. 10), nor lodging (*R. v. Bagley* (1923), 17 Cr. App. R. 162).

As to loans, see *R. v. Crossley* (1837), 2 Mood. & R. 17; *R. v. Burgon* (1856), 25 L.J.M.C. 105; *R. v. Kilham* (1870), L.R. 1 C.C.R. 261.

As to ordering food in a restaurant, see *R. v. Jones*, [1898] 1 Q.B. 119. See, further, English and Empire Digest, Vol. 15, pp. 981-982.

As to conviction where the facts amount to larceny, see s. 4,1 (4), p. 838, *post*.

As to inducing the execution of a valuable security by false pretences, see *R. v. Gordon* (1889), 23 Q.B.D. 354; *R. v. Brixton Prison (Governor), Ex p. Stallmann*, [1912] 3 K.B. 424; *R. v. Graham* (1913), 8 Cr. App. R. 149 (document invalid).

For summary trial of offences under paragraph (1), see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

As to obtaining credit by false pretences or other fraud, see Debtors Act, 1869 (c. 62), s. 13, Vol. 1, title BANKRUPTCY, p. 577.

As to fraud at gaming, see Gaming Act, 1845 (c. 109), s. 17, Vol. 8, title GAMING. As to fortune-telling, see Witchcraft Act, 1735 (c. 5), s. 4, p. 346, *ante*.

See also County Courts Act, 1888 (c. 43), s. 180, Vol. 3, title COUNTY COURTS, p. 912; Moneylenders Act, 1900 (c. 51), s. 4, Vol. 12, title MONEY AND MONEY-LENDING; School Teachers (Superannuation) Act, 1918 (c. 55), s. 11, Vol. 7, title EDUCATION, p. 308; Police Pensions Act, 1921 (c. 31), s. 16, Vol. 12, title POLICE.

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**33. Receiving.** - (1) Every person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour, shall be guilty of an offence of the like degree (whether felony or misdemeanour) and on conviction thereof liable -

- (a) in the case of felony, to penal servitude for any term not exceeding fourteen years;
- (b) in the case of misdemeanour, to penal servitude for any term not exceeding seven years;
- (c) in either case, if a male under the age of sixteen years, to be once privately whipped in addition to any punishment to which he may by law be liable.

(2) Every person who receives any mail bag, or any postal packet, or any chattel, or money, or valuable security, the stealing, or taking, or embezzling, or secreting whereof amounts to a felony under the Post Office Act, 1908, or this Act, knowing the same to have been so feloniously stolen, taken, embezzled, or secreted, and to have been sent or to have been intended to be sent by post, shall be guilty of felony and on conviction thereof liable to the same punishment as if he had stolen, taken, embezzled, or secreted the same.

(3) Every such person may be indicted and convicted, whether the principal offender has or has not been previously convicted, or is or is not amenable to justice.

(4) Every person who, without lawful excuse, knowing the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed

in the United Kingdom the person committing it would have been guilty of felony or misdemeanour, receives or has in his possession any property so stolen or obtained outside the United Kingdom, shall be guilty of an offence of the like degree (whether felony or misdemeanour) and on conviction thereof liable to penal servitude for any term not exceeding seven years.

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In order to constitute the offence of receiving, it must be shown that the property has been stolen or otherwise fraudulently obtained. This may in some cases be inferred from the circumstances (*R. v. Austin* (1916), 12 Cr. App. R. 171; *R. v. Sbarra* (1918), 87 L. J. K. B. 1.003). Where possession of stolen property has been resumed by the owner it ceases to be stolen property (*R. v. Schmidt* (1866), L. R. 1 C. C. R. 15; *R. v. Hancock* (1878), 14 Cox, C. C. 119; *R. v. Villensky*, [1892] 2 Q. B. 597).

A conspiracy to obtain goods by fraud is a misdemeanor within the meaning of "circumstances which amount to felony or misdemeanor." (*R. v. Kutas* (1623), 87 J. P. 196). See, further, English and Empire Digest, Vol. 15, pp. 960-965. See also Larceny Act, 1861 (c. 96), s. 97, p. 555, *ante*.

Proof of possession is also essential (*R. v. Berger* (1915), 84 L. J. K. B. 541); mere knowledge is insufficient (*R. v. Watson*, [1916] 2 K. B. 385).

As to what amounts to possession, see *R. v. Hobson* (1854), 6 Cox, C. C. 410 (control of goods); *R. v. Smith* (1855), 24 L. J. M. C. 135 (absolute control over person in possession); *R. v. Gleed* (1916), 12 Cr. App. R. 32 (manual possession unnecessary); *R. v. Parr* (1841), 2 Mood. & R. 346 (receipt by servant with knowledge of master); of. *R. v. Pearson, No. 2* (1908), 72 J. P. 451 (receipt by servant without knowledge of master); *R. v. Payne* (1909), 3 Cr. App. R. 259 (exclusive possession not necessary). As to pawning, see *R. v. Rowland*, [1910] 1 K. B. 458.

See, further, English and Empire Digest, Vol. 15, pp. 966-968.

There must also be proof of guilty knowledge at the time of the receipt of the property (*R. v. Johnson* (1911), 75 J. P. 464). The onus of proving this lies on the prosecution (*R. v. Badash* (1917), 87 L. J. K. B. 732; *R. v. Hamilton* (1917), 87 L. J. K. B. 734).

See, further, English and Empire Digest, Vol. 15, pp. 969-970.

As to proof of guilty knowledge, see s. 43 (1), p. 837, *post*, and English and Empire Digest, Vol. 15, p. 970.

Where property recently stolen is found in the possession of the accused, there is a presumption of guilty knowledge in the absence of any explanation by the accused; but where a reasonable explanation is given the onus is on the prosecution to rebut it (*R. v. Schama, R. v. Abramovitch* (1914), 84 L. J. K. B. 396).

See, further, English and Empire Digest, Vol. 15, pp. 971-973. As to receiving by husband and wife, see *ibid.* pp. 973-974.

See, further, Hosiery Act, 1843 (c. 40), ss. 4, 5, 11, Vol. 19, title TRADE AND TRADE UNIONS; Prevention of Crimes Act, 1871 (c. 112), s. 13, p. 676, *ante*; Pawnbrokers Act, 1872 (c. 93), s. 38, Vol. 12, title PAWNS.

As to sub-s. (2), see Post Office Act, 1908 (c. 48), s. 52, Vol. 13, title POST OFFICE. As to sub-s. (4), see *R. v. Panse* (1897), 61 J. P. 536; *R. v. Graham* (1901), 65 J. P. 248.

For summary trial of offences under sub-ss. (1) and (2) see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES. For jurisdiction of quarter sessions under sub-s. (2), see *ibid.* s. 18, sched. 1.

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**34. Corruptly taking a reward.** - Every person who corruptly takes any money or reward, directly or indirectly, under pretence or upon account of helping any person to recover any property which has, under circumstances which amount to felony or misdemeanour, been stolen or obtained in any way whatsoever, or received, shall (unless he has used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony and on conviction thereof liable to penal servitude for any term not exceeding seven years, and, if a male under the age of sixteen years, to be once privately whipped in addition to any other punishment to which he may by law be liable.

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As to this offence, see English and Empire Digest, Vol. 15, p. 706. For a similar offence in relation to dogs, see s. 5 (3), p. 818, *ante*.

As to advertising a reward for the return of stolen property, see Larceny Act, 1861 (c. 96), s. 102, p. 556, *ante*.

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**35. Accessories and abettors.** - Every person who knowingly and wilfully aids, abets, counsels, procures or commands the commission of an offence punishable under this Act shall be liable to be dealt with, indicted, tried and punished as a principal offender.

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See Accessories and Abettors Act, 1861 (c. 94), p. 539, *ante*.

For summary trial, see Criminal Justice Act, 1925 (c. 86), s. 24, sched. 2, Vol. 11, title MAGISTRATES.

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**36. Husband and wife.** - (1) A wife shall have the same remedies and redress under this Act for the protection and security of her own separate property as if such property belonged to her as a feme sole:

Provided that no proceedings under this Act shall be taken by any wife against her husband while they are living together as to or concerning any property claimed by her, nor while they are living apart as to or concerning any act done by the husband while they were living together concerning property claimed by the wife, unless such property has been wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife.

(2) A wife doing an act with respect to any property of her husband, which, if done by the husband in respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall be in like manner liable to criminal proceedings by her husband.

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This section reproduces the provisions of the Married Women's Property Act, 1882 (c. 75), ss. 12, 16, Vol. 9, title HUSBAND AND WIFE. As to the effect of this section, see *R. v. James*, [1902] 1 K.B. 540; *R. v. Payne*, [1906] 1 K.B. 97; *R. v. King* (1914), 24 Cox C.C. 146; *R. v. Creamer*, [1919] 1 K.B. 564.

As to the meaning of "living together," see *R. v. Creamer, supra*; as to the meaning of "about

to leave or desert," see *R. v. King, supra*. See, further, English and Empire Digest, Vol. 15, pp. 973-975.

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**37. Punishments.** - (1) Every person who commits the offence of simple larceny after having been previously convicted of felony shall be liable to penal servitude for any term not exceeding ten years.

(2) Every person who commits the offence of simple larceny, or any offence made punishable like simple larceny, after having been previously convicted -

(a) of any indictable misdemeanour punishable under this Act; or

(b) twice summarily of any offence punishable under section six of the Summary Jurisdiction (Ireland) Act, 1851, or under the Larceny Act, 1861, or under the Malicious Damage Act, 1861, or under this Act (whether each of the convictions has been in respect of an offence of the same description or not, and whether such convictions, or either of them have been before or after the passing of this Act);

shall be liable to penal servitude for any term not exceeding seven years.

(3) In every case in this section before mentioned the offender, if a male under the age of sixteen years, shall be liable to be once privately whipped in addition to any other punishment to which he may by law be liable.

(4) Where a sentence of penal servitude may be imposed on conviction of an offence against this Act, the court may instead thereof impose a sentence of imprisonment, with or without hard labour, for not more than two years.

(5) - (a) On conviction of a misdemeanour punishable under this Act the court, instead of or in addition to any other punishment which may be lawfully imposed, may fine the offender.

(b) On conviction of a felony punishable under this Act the court, in addition to imposing a sentence of penal servitude or imprisonment, may require the offender to enter into his own recognisances, with or without sureties, for keeping the peace and being of good behaviour.

(c) On conviction of a misdemeanour punishable under this Act the court, instead of or in addition to any other punishment which may lawfully be imposed for the offence, may require the offender to enter into his own recognisances, with or without sureties, for keeping the peace and being of good behaviour.

(d) Provided that a person shall not be imprisoned for more than one year for not finding sureties.

(6) Where a sentence of whipping may be imposed under this Act -

(a) in the case of an offender whose age does not exceed sixteen years, the number of strokes at such whipping shall not exceed twenty-five and the instrument used shall be a birch-rod;

- (b) in the case of any other offender, the number of strokes at such whipping shall not exceed fifty;
- (c) in each case the court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used;
- (d) such whipping shall not take place after the expiration of six months from the passing of the sentence;
- (e) such whipping to be inflicted on any person sentenced to penal servitude shall be inflicted on him before he is removed to a convict prison with a view to his undergoing his sentence of penal servitude.
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For Larceny Act, 1861 (c. 96), and Malicious Damage Act, 1861 (c. 97), see pp. 542, 560, *ante*.

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### **38. Jurisdiction of quarter sessions - (1) A court of quarter sessions-**

- (a) notwithstanding anything in the Quarter Sessions Act, 1842, shall in England have jurisdiction to try an indictment for burglary;
- (b) shall not have jurisdiction to try an indictment for any offence against sections twenty, twenty-one, and twenty-two of this Act.

(2) A justice of the peace in England when committing for trial a person charged with burglary shall commit him for trial before a court of assize unless, owing to the absence of any circumstances which make the case a grave or difficult one, he thinks it expedient in the interest of justice to commit him for trial before a court of quarter sessions; and the Assizes Relief Act, 1889, shall apply.

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Sub-ss. (1) (a) and (2) replace the Burglary Act, 1896 (c: 57), which was repealed by s. 48 of this Act.

As to jurisdiction of quarter sessions, see Quarter Sessions Act, 1842 (c. 38). The Criminal Justice Act, 1925 (c. 86), s. 18, sched. 1, gives jurisdiction to quarter sessions in cases of conversion under a.20 (1) (iv), p. 824, *ante*. For these Acts see Vol. 11, title MAGISTRATES.

For Assizes Relief Act, 1889 (c. 12), see p. 715, *ante*.

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### **39. Venue. - [Sub-s. (1) rep. 15 & 16 Geo. 5, s. 86, s. 49 (4).]**

(2) Every person who steals or otherwise feloniously takes any property in any one part of the United Kingdom may be dealt with, indicted, tried, and punished in any other part of the United Kingdom where he has the property in his possession in the same manner as if he had actually stolen or taken it in that part.

(3) Every person who receives in any one part of the United Kingdom any property stolen or

otherwise feloniously taken in any other part of the United Kingdom may be dealt with, indicted, tried, and punished in that part of the United Kingdom where he so receives the property in the same manner as if it had been originally stolen or taken in that part.

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This section provides a uniform venue for the trial of all offences under the Act, and widens the pre-existing law in that respect, but see now Criminal Justice Act, 1925 (c. 86), s. 11, Vol. 11, title MAGISTRATES.

See also, *R. v. Hooley*, *R. v. Macdonald*, *R. v. Wallis* (1922), 92 L.J.K.B. 78 (publication of fraudulent document) *R. v. Devon JJ., ex p. Director of Public Prosecutions*, [1924] 1 K.B. 503 (larceny on British warship in tidal waters of Firth of Forth).

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**40. Procedure.** - (1) On the trial of an indictment for obtaining or attempting to obtain any chattel, money, or valuable security by any false pretence, it shall not be necessary to, prove an intent to defraud any particular person, but it shall be sufficient to prove that the person accused did the act charged with intent to defraud.

(2) An allegation in an indictment that money or banknotes have been embezzled or obtained by false pretences can, so far as regards the description of the property, be sustained by proof that the offender embezzled or obtained any piece of coin or any banknote or any portion of the value thereof, although such piece of coin or banknote may have been delivered to him in order that some part of the value thereof should be returned to any person and such part has been returned accordingly.

(3) In an indictment for feloniously receiving any property under this Act any number of persons who have at different times so received such property or any part thereof may be charged and tried together.

(4) If any person, who is a member of any co-partnership or is one of two or more beneficial owners of any property, steals, or embezzles any such property of or belonging to such co-partnership or to such beneficial owners he shall be liable to be dealt with, tried, and punished as if he had not been or was not a member of such co-partnership or one of such beneficial owners.

[Sub-s. (5). Application to Ireland.]

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Cf. sub-s. (2) with s. 18 of the Criminal Procedure Act, 1851 (c. 100), p. 530, *ante*. In sub-s. (4), as to what is a co-partnership, see *R. v. Robson* (1885), 16 Q.B.D. 137. As to who are beneficial owners, see *R. v. Tankard*, [1894] 1 Q.B. 548; *R. v. Neat* (1899), 69 L.J. Q.B.118.

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**41. Arrest without warrant.** - (1) Any person found committing any offence punishable under this Act except an offence under section thirty-one may be immediately apprehended without a warrant by any person and forthwith taken, together with the property, if any, before a justice of the peace to be dealt with according to law.

(2) Any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that any offence has been committed against this Act with respect to such property, shall, if in his power, apprehend and forthwith take before a justice of the peace the person offering the same, together with such property, to be dealt with according to law.

(3) Any constable or peace officer may take into custody without warrant any person whom he finds lying or loitering in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed or being about to commit any felony against this Act, and shall take such person as soon as reasonably may be before a justice of the peace to be dealt with according to law.

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Cf. Larceny Act, 1861 (c. 96), ss. 103, 104, p. 556, *ante*.

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**42. Search warrants.** - (1) If it is made to appear by information on oath before a justice of the peace that there is reasonable cause to believe that any person has in his custody or possession or on his premises any property whatsoever, with respect to which any offence against this Act has been committed, the Justice may grant a warrant to search for and seize the same.

(2) - (a) Any constable or peace officer may, if authorised in writing by a chief officer of police, enter any house, shop, warehouse, yard, or other premises, and search for and seize any property he believes to have been stolen, and, where any property is seized in pursuance of this section, the person on whose premises it was at the time of seizure or the, person from whom it was taken shall, unless previously charged with receiving the same knowing it to have been stolen, be summoned before a court of summary jurisdiction to account for his possession of such property, and such court shall make such order respecting the disposal of such property and may award such costs as the justice of the case may require.

(b) It shall be lawful for any chief officer of police to give such authority as aforesaid-

(i) when the premises to be searched are or within the preceding twelve months have been in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves; or

(ii) when the premises to be searched are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty and punishable with penal servitude or imprisonment.

(c) It shall not be necessary for such chief officer of police on giving such authority to specify any particular property, but he may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods.

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As to the issue of search warrants, see *Jones v. German*, [1897] 1 Q.B. 374.

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**43. Evidence.**- (1) Whenever any person is being proceeded against for receiving any

property, knowing it to have been stolen, or for having in his possession stolen property, for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings -

(a) the fact that other property stolen within the period of twelve months preceding the date of the offence charged was found or had been in his possession;

(b) the fact that within the five years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty.

This last-mentioned fact may not be proved unless -

(i) seven days' notice in writing has been given to the offender that proof of such previous conviction is intended to be given;

(ii) evidence has been given that the property in respect of which the offender is being tried was found or had been in his possession.

(2) No person shall be liable to be convicted of any offence against sections six, seven sub-section (1), twenty, twenty-one, and twenty-two of this Act upon any evidence whatever in respect of any act done by him, if at any time previously to his being charged with such offence he has first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding which has been bona fide instituted by any person aggrieved.

(3) In any proceedings in respect of any offence against sections six, seven sub-section (1), twenty, twenty-one, and twenty-two of this Act, a statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible in evidence against that person.

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Sub-s. (1) reproduces the provisions of the Prevention of Crimes Act, 1871 (c. 112), s. 19 (rep.), but widens the scope of that section by providing for the admissibility of such evidence, even though the property is no longer in the possession of the accused.

It is immaterial that this property may form the subject of another indictment against the accused (*R. v. Jones* (1877), 14 Cox, C.C. 3).

The evidence which may be given under this sub-section is not limited to the fact of the property having been so found, but includes evidence as to the circumstances in which it was found and as to statements made at the time by the accused in explanation of the property being found in his possession (*R. v. Smith*, [1918] 2 K.B. 415).

Such evidence should not be admitted if the real offence charged is stealing and not receiving (*R. v. Girod* (1906), 70 J.P. 514).

It is not necessary to serve a notice to produce the notice referred to in para. (b) (*R. v. Whitley* (1908), 72 J.P. 272).

See also as to sub-s. (2), the Larceny Act, 1861 (c. 96), ss. 29, 85, and notes thereto, pp. 549, 554, *ante*.

Admissions in a preliminary examination in bankruptcy do not come under sub-s. (3), and can therefore be given in evidence (*R. v. Tuttle* (1929), 45 T.L.R. 357).

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**44. Verdict.** - (1) If on the trial of any indictment for robbery it is proved that the defendant committed an assault with intent to rob, the jury may acquit the defendant of robbery and find

him guilty of an assault with intent to rob, and thereupon he shall be liable to be punished accordingly.

(2) If on the trial of any indictment for any offence against section seventeen of this Act (relating to embezzlement) it is proved that the defendant stole the property in question, the jury may find him guilty of stealing, and thereupon he shall be liable to be punished accordingly; and on the trial of any indictment for stealing the jury may in like manner find the defendant guilty of embezzlement or of fraudulent application or disposition, as the case may be, and thereupon he shall be liable to be punished accordingly.

(3) If on the trial of any indictment for stealing it is proved that the defendant took any chattel, money, or valuable security in question in any such manner as would amount in law to obtaining it by false pretences with intent to defraud, the jury may acquit the defendant of stealing and find him guilty of obtaining the chattel, money, or valuable security by false pretences, and thereupon he shall be liable to be punished accordingly.

(4) If on the trial of any indictment for obtaining any chattel, money, or valuable security by false pretences it is proved that the defendant stole the property in question, he shall not by reason thereof be entitled to be acquitted of obtaining such property by false pretences.

(5) If on the trial of any two or more persons indicted for jointly receiving any property it is proved that one or more of such persons separately received any part of such property, the jury may convict upon such indictment such of the said persons as are proved to have received any part of such property.

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Cf. the Criminal Procedure Act, 1851 (c. 100), s. 12, p. 529, *ante*.

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**45. Restitution.**- (1) If any person guilty of any such felony or misdemeanour as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving, any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative.

(2) In every case in this section referred to the court before whom such offender is convicted shall have power to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner:

Provided that where goods as defined in the Sale of Goods Act, 1893, have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not re-vest in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender:

And provided that nothing in this section shall apply to the case of-

(a) any valuable security which has been in good faith paid or discharged by some person or body corporate liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person or body corporate for a

just and valuable consideration without any notice or without any reasonable cause to suspect that the same had been stolen;

(b) Any offence against sections twenty, twenty-one, and twenty-two of this Act.

(3) On the restitution of any stolen property if it appears to the court by the evidence that the offender has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

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Writs and orders of restitution can only be awarded by the court before whom the accused has been convicted (*R. v. London Corporation* (1869), L.R. 4 Q.B. 371).

In practice it is usual to make an order rather than award a writ. The person against whom it is proposed to make an order has the right to be heard in opposition thereto (*R. v. Macklin* (1850), 5 Cox, C.C. 216).

The making of an order is discretionary, but a refusal to make an order is no bar to any other proceedings which may be taken for the recovery of the property (*Ex p. Davison* (1896), 60 J.P. 808).

The effect of the first proviso to this section, which re-enacts the Sale of Goods Act, 1893 (c. 71), s. 24, Vol. 17, title SALE OF GOODS, is that, in general, unless the conviction is for larceny, no order can be made.

Where, however, the person defrauded has disaffirmed the transaction and the goods are still in the possession of the convicted person, it has been held that an order may be made, although the conviction has not been for larceny (*R. v. George* (1901); 65 J.P. 729; *R. v. Cohen* (1807), 71 J.P. 190 (obtaining by false pretences)).

An order has also been made where the conviction was for obtaining by false pretences, but the facts amounted to larceny (*R. v. Walker* (1901), 65 J.P. 729).

The property which may be made the subject of an order of restitution must be property specified in the indictment and identified at the trial (*R. v. Smith* (1873), 12 Cox, C.C. 597). Restitution cannot be ordered of current coin as such, which has passed from the possession of the thief; but see *Moss v. Hancock*, [1899] 2 Q.B. 111 (coin kept as curiosity).

An order may be made not only on the convicted person, but also on his agent or trustee in bankruptcy or on any person to whom the property has passed, including even an innocent purchaser (*R. v. Goldsmith* (1873), 12 Cox, C.C. 594), subject to the second proviso to sub-s. (2)

Where property has passed from the hands of the convicted person, but the proceeds thereof can be earmarked in his possession, an order may be made as to such proceeds (*R. v. Central Criminal Court JJ.* (1886), 18 Q.B.D. 314; *R. v. Cohen* (1907), 71 J.P. 190). But an order cannot be made as to both property and proceeds (*R. v. London County JJ., Ex p. Dettmer & Co.* (1908), 72 J.P. 513).

As to the position of factors, see Factors Act, 1889 (c. 45), Vol. 1, title AGENCY, p. 37; and Sale of Goods Act, 1893 (c. 71), ss. 24, 25, Vol. 17, title SALE OF GOODS.

As to restitution on summary conviction, see Criminal Law Amendment Act, 1867 (c. 35), s. 9, p. 641, *ante*; Summary Jurisdiction Act, 1879 (c. 49), s. 27, Vol. 11, title MAGISTRATES. See, further, Pawnbrokers Act, 1872 (c. 93), s. 30, Vol. 12, title PAWNS AND PLEDGES; Police (Property) Act, 1897 (c. 30), s. 1, Vol. 12, title POLICE; Probation of Offenders Act, 1907 (c. 17), s. 1 (4), Vol. 11, title MAGISTRATES.

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**46. Interpretation.-** (1) In this Act, unless the context otherwise requires,-

The expression "chief officer of police" means -

- (a) In the city of London, the Commissioner of City Police;
  - (b) In the Metropolitan Police District, the Commissioner of Police of the Metropolis;
  - (c) In any other police district in England, the officer having the chief command of the police in such police district;
  - (d) In the police district of Dublin Metropolis, either of the commissioners of police for the said district;
  - (e) In any other police district in Ireland, the sub-inspector of the Royal Irish Constabulary;
- and shall include any person authorised by such said chief officer of police to act in his behalf:

The expression "document of title to goods" includes any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to:

The expression "document of title to lands" includes any deed, map, roll, register, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate or to any interest in or out of any real estate:

The expressions "mail," "mail bag," "officer of the Post Office," "postal packet," "post office," and "in course of transmission by post," shall have the same meanings in this Act as in the Post Office Act, 1908:

The expression "night" means the interval between nine o'clock in the evening and six o'clock in the morning of the next succeeding day:

The expression "property" includes any description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise:

The expression "trustee" means a trustee on some express trust created by some deed, will, or instrument in writing, and includes the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official receiver, assignee, liquidator, or other like officer acting under any present or future Act relating to joint stock companies or bankruptcy:

The expression "valuable security" includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any part of His Majesty's Dominions, or of any foreign state, or in any stock, annuity, fund, or debt of any body corporate, company, or society, whether within or without His Majesty's Dominions, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order, or other security for payment of money, or any accountable receipt, release, or discharge, or any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal, and any document of title to lands or goods as herein-before defined.

(2) The expression, "dwelling-house" does not include a building although within the same curtilage with any dwelling-house and occupied therewith unless there is a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other.

(3) References in this Act to any Act in force at the commencement of this Act shall be held to include a reference to that Act as amended, extended, or applied by any other Act.

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Cf. the definitions in the Larceny Act, 1861 (c. 96), s. 1, p. 542, *ante*.

As to what amounts to a "valuable security," see English and Empire Digest, Vol. 15, pp. 908-910. The term includes currency notes (Currency and Banknotes Act, 1914, (c. 14), s. 1 (5), Vol. 1, title BANKERS AND BANKING, p. 560; money orders (Post Office Act, 1908 (c. 48), s. 59 (1), Vol. 13, title POST OFFICE); and a transfer of shares in a limited company (*R v Smith* (1898), 62 J.P. 231). Cf. the definition in the Forgery Act, 1913, (. 27), s. 18, p. 797, *ante*.

As to what amounts to a "dwelling-house", see English and Empire Digest, Vol. 15, pp. 953-957.

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**47. Savings.** - (1) Where, by virtue of some other Act, an offence s Act subjects the offender to any forfeiture or disqualification, or to any penalty other than penal servitude or fine, the liability of the offender to punishment under this Act shall be in addition to and not in substitution for his liability under such other Act.

(2) Where an offence against this Act is by any other Act, whether re or after the commencement of this Act, made punishable on conviction, proceedings may be taken either under such other Act or under this Act: Provided that where such an offence was at the commencement of this Act punishable only on summary conviction, it shall remain only so punishable.

[S. 48 rep. 17 & 18 Geo. 5, c. 42. (S.L.R.)]

**49. Extent** - This Act shall not extend to Scotland, except as hereinbefore otherwise expressly provided.

**50. Short title and commencement.** – This Act may be cited as the Larceny Act, 1916, [*and shall come into operation on the first day of January, nineteen hundred and seventeen*].

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The words in italics were repealed by the Statute Law Revision Act, 1927 (c. 42).

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[*Sched. Rep. 17 & 18 Geo. 5, c. 42. (S.L.R.)*]

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