

CHAPTER XXXV.

* THEFT IN GENERAL.

ARTICLE 295.

DEFINITION OF THEFT.

¹THEFT is the act of dealing, from any motive whatever, unlawfully and without claim of right with anything capable of being stolen, in any of the ways in which theft can be committed, with the intention of permanently converting that thing to the use of any person other than the general or special owner thereof. Provided that the offences defined in Articles 339 and 340 do not amount to theft.

The ways in which theft can be committed are specified in Articles 296 to 300, both inclusive. In those articles the word "convert" means such a conversion as is hereinbefore specified.

A claim of right may be founded on a mistake of law.

Illustrations:

(1.)² A takes B's horse from his stable and backs him down a coal-pit a mile off, in order to prevent the horse from being identified in the trial of C for stealing it. A steals B's horse.

(2.)³ A, a post-office clerk, drops two letters down a water-closet in order that a mistake which he had made in sorting them might not be discovered. A steals the letters.

(3.)⁴ A, a servant, gets B's letters from the post-office, and destroys one of them written to B by C, A's mistress, making inquiries of B as to A's character, delivering the rest. A steals the letter.

(4.)⁵ A, a puddler, throws an iron axle into his furnace in order to increase the apparent amount of iron puddled therein, on which A's wages depend. The axle, worth 5s., is destroyed, though the iron of which it is

* 3 Hist. Cr. Law, ch. xxviii. p. 121-176.

¹ *R. v. Holloway*, 1 Den. 370.

² *R. v. Cabbage*, R. & R. 292; 2 Russ. Cr. 146-7.

³ *Wynn's Case*, 1 Den. 365.

⁴ *E. v. Jones*, 1 Den. 188.

⁵ *R. v. Richards*, 2 Russ. Cr. 147-8. This case is not altogether easy to reconcile with *R. v. Webb*; see Illustration (9).

composed, and which is much less valuable, remains for the owner. A has stolen the axle.

(5.)¹ A, without his master's leave, takes his master's corn to feed his master's horses. This was theft till the passing of 26 & 27 Vict. c. 103.

(6.)² A glean's corn, not having, but believing himself to have, a legal right to do so. This is not theft.

(7.)³ B, a gamekeeper, takes snares set by A, a poacher, and a dead pheasant caught therein. A, honestly believing that the snares and pheasant were his property, and that he had a legal right to them, forces B by threats to return them. This is not robbery, and if no violence was used would not be theft.

(8.)⁴ A, believing that B owes him £11, and seeing B receive £7, knocks down B and tries to get the £7 out of his pocket, saying "Pay me the eleven sovereigns you owe me." This is not robbery, and if no violence were used would not be theft.

(9.)⁵ The ore in a mine belongs to adventurers, and is to be excavated by tributers. One set of tributers are to be paid a larger sum in the pound than the other set for the ore excavated by them. The ore excavated by each set is placed in a heap by itself. A, one of the tributers, moves a quantity of ore from the heap to be paid for at the lower to the heap to be paid for at the higher rate. A has not stolen the ore.

(10.)⁶ Workmen in the glove trade are paid according to the number of gloves finished by them. A (a workman) takes gloves from his master's warehouse and puts them in the place where the newly-finished gloves are put to be counted, so as to increase the apparent number of newly-finished gloves, and with intent fraudulently to obtain payment for the gloves so removed from the warehouse. This is not theft.

(11.)⁷ B uses many bags in his trade, and is supplied with them by C. A, B's servant, takes old bags supplied by C to B from B's house, and puts them in a place outside B's house, where new bags were habitually put by C. C, by concert with A, claims payment for the bags from B as for bags newly supplied. A is guilty of theft, and C is an accessory before the fact.

ARTICLE 296.

THEFT BY TAKING AND CARRYING AWAY.

* Theft may be committed by taking and carrying away

¹ *E. v. Morfit*, R. & R. 307.

² 2 Russ. Cr. 164-5. Commenting on Woodfall, Landlord and Tenant.

³ *R. v. Hale*, 3 C. & P. 408.

⁴ *E. v. Boden*, 1 C. & K. 395.

⁵ *R. v. Webb*, R. & M. 431. By 24 & 25 Vict. c. 96, s. 33, which re-enacts an earlier Act passed in consequence of this decision, this is now felony; see Article 270.

⁶ *R. v. Poole*, D. & B. 345; *R. v. Holloway*, 1 Den. 370, is similar in principle.

⁷ *R. v. Manning*, Dear. 21; *R. v. Hales*, 1 Den. 381, is very like this case.

* Cases in Illustrations.

without the consent of the owner (even if he expects and affords facilities for the commission of the offence), anything which is not in the possession of the thief at the time when the offence is committed,¹ whether it is in the possession of any other person or not.

If the thing taken and carried away is on the body or in the immediate presence of the person from whom it is taken, and if the taking is by actual violence intentionally used to overcome or to prevent his resistance, or by threats of injury to his person, property, or reputation, the offence is robbery.

² If the thing taken and carried away is for the first time rendered capable of being stolen by the act of taking and carrying away, and if the taking and carrying away is one continuous act, such taking and carrying away is not theft (except in the cases provided for in Articles 326, 327 (c), (d), (e), (f), 328 (h), (i), (k), (l)). It seems that the taking and carrying away are deemed to be continuous if the intention to carry away after a reasonable time exists at the time of the taking.

Illustrations.

- (1.)³ A finds lost property, knowing who the owner is, and converts it. This is theft.
- (2.)⁴ A, a trespasser, finds a dead rabbit lying in a wood, of which he is not the owner, and converts it. This is theft.
- (3.)⁵ A carpenter finds nine hundred guineas in a bureau lent to him to repair, and converts them. This is theft.
- (4.)⁶ A finds iron dropped from some canal boat or other, at the bottom of a canal, from which the water has been let off, and converts it. This is theft.
- (5.)⁷ A instigates B, C's servant, to help A to steal money in C's desk.

¹ Property in no one's possession is said to be constructively in the possession of its owner, the object of this fiction is to satisfy a supposed necessity for shewing that the taking in theft must be a taking out of some one's possession.

² *R. v. Townley*, L. R. 1 C. C. R. 313.

³ See Article 303 on "Finding."

⁴ *Blades v. Higgs*, 11 H. L. C. 621.

⁵ *Cartwright v. Green*, 8 Ves. 405.

⁶ *R. v. Rowe*, Bell, C. C. 93. In this case, Pollock, C.B., said the company had "sufficient possession to maintain an indictment for larceny." The "possession" in question could scarcely be called actual.

⁷ *R. v. Eggington*, 2 East, P. C. 666. This was similarly decided by the

B tells his master, C. C, in order to detect A, tells B to go on with the business, and so arranges matters as to give A and B opportunities to break open the desk and take the money. This is theft in A.

(6.) ¹ A snatches a bundle from B's hand, and runs away with it. This is theft, and not robbery, as the violence used was only to get possession of the bundle.

(7.) ² A, at a mock auction, knocks down goods to B, who has not bid for them, pretending that she has. On B's offering to go, A says she shall not be allowed to go unless she pays for the goods knocked down to her, which she does. This is theft at least, and perhaps robbery.

(8.) ³ A snatches at a sword worn by B. A and B struggle for the sword, and A gets it. This is robbery.

(9.) ⁴ A, in cutting the string by which a basket is tied, with intent to steal it, accidentally cuts the wrist of the owner, who at the same moment tries to seize and keep it. The cut causes the owner to withdraw her hand, and the thief gets the basket. This is theft, but not robbery, because the actual violence was not intentional.

(10.) ⁵ A, B, and C surround D in such a way as to make resistance by D practically useless, and take his watch, without actual force or threat. This is robbery.

(11.) ⁶ A mob of seventy persons demands money of a person, threatening, if he refuses, to tear his mow of corn and level his house; he gives it. This is robbery.

(12.) ⁷ A compels B to give him money, by threatening to accuse A of an infamous crime. This is robbery.

(13.) ⁸ A rips lead off a church, to the roof of which it is fixed, and carries it away. This is not theft at common law though it is by statute.

Romans, "illud quaesitum est cum Titius servum Mævii sollicitaverit, ut quasdam res domino subriperet et ad eum perferret, et servus eas ad Mævium pertulerit. Mævius autem dum vult Titium in ipso delicto deprehendere permiserit servo quasdam res ad eum perferre, utrum furti an servi corrupti iudicio teneatur Titius an neutro? Et eum nobis super hac dubitatione suggestum est et antiquorum prudentium super hoc altercationes perspeximus quibusdam neque furti, neque servi corrupti actionem praestantibus, quibusdam furti tantummodo: nos huiusmodi calliditati obviam euntes per nostram decisionem sancimus non solum furti actionem sed et servi corrupti contra eum dari."—Institutes, iv. i. 8.

¹ Six cases all to this effect are collected in 2 Russ. Cr. 90.

² *R. v. McGrath*, L. R. 1 C. C. B. 205. The case of *R. v. Morgan*, Dear. 395, is somewhat similar; see, too, *R. v. Lovell*, L. R. 8 Q. B. D. 185, which is to the same effect:

³ *Davie's Case*, 2 East, P. C. 709.

⁴ *R. v. Edwards*, 1 Cox, C. C. 32; 2 Russ. Cr. 110.

⁵ *Hughes's Case*, 1 Lewin, 301.

⁶ *Simon's Case*, 2 East, P. C. 731.

⁷ See cases collected in 2 Russ. Cr. 119–124. Some distinctions arise upon this which I do not notice because this most odious crime is now dealt with specially by statute. See *post*, Article 314.

⁸ See authorities collected 2 Russ. Cr. (5th ed.) 269–10.

(14.) ¹A cuts down timber or growing crops and carries them away immediately. This is not theft at common law though it is by statute.

(15.) ²A, a poacher, kills a number of rabbits, hides them in a ditch on the ground of the owner of the soil on which they were killed, and returns several hours afterwards and carries them away, having all along intended to do so at his convenience. This is not theft.

ARTICLE 297.

THEFT BY A SERVANT. EMBEZZLEMENT.

Theft may be committed by converting, without the consent of the owner, anything of which the offender has received the custody as the servant of the owner, or in order that the thing may be used by the offender for some special temporary purpose in the presence or under the immediate control of the owner or his servant.

³When a clerk, or servant, or person employed in the capacity of a clerk or servant, converts anything received by him from another person for his master or employer, he is deemed to have stolen it, but his offence is commonly called embezzlement, and is distinguished from theft for the purposes and in the manner mentioned in Chapter XXXVI.

Illustrations.

(1.) ⁴A carter converts to his own use a cart which he is driving for his master. He commits theft.

(2.) ⁵A is employed by B to take pigs to C to be looked at, and to bring them back to B, whether C wishes to buy them or not. A sells the pigs to some one else, and keeps the money. This is theft.

(3.) ⁶A sheriff's officer, in possession of goods under a writ of *fi. fa.*, sells part of them. This is theft, as such a person is in the position of a servant.

(4.) ⁷A guest at a tavern carries off a piece of plate set before him to drink from. This is theft, because A had only a permission to use the plate for a special limited purpose.

¹ See authorities collected 2 Russ. Cr. (5th ed.) 209-10.

² *R. v. Townley*, L. R. 1 C. C. R. 315.

³ See Chapter xxxvi.

⁴ *Robinson's Case*, 2 East, P. C. 465.

⁵ *R. v. Harvey*, 9 C. & P. 353.

⁶ *Eushall's Case*, 2 Russ. Cr. 382.

⁷ 1 Hale, P. C. 506.

ARTICLE 298.

THEFT BY A FALSE PRETENCE.

Theft may be committed by fraudulently obtaining from the owner a transfer of the possession of a thing, the owner intending to reserve to himself his property therein, and the offender intending, at the time when the possession is obtained, to convert the thing without the owner's consent to such conversion.¹

Illustrations.

(1.)² A fraudulently persuades B to allow A to take two silver ewers to shew to A's master, to choose one if he pleased. A sells the ewers and keeps the money. This is theft.

(2.)³ A, by pretending to be B, fraudulently obtains B's goods from C, a carrier, to whom they were entrusted by B. This is theft, as the carrier transferred the possession only.

(3.)⁴ A fraudulently bargains with B for the purchase by A of goods for ready money, and fraudulently induces B to let A have the goods, pretending that he is then about to pay B the price. A then takes away the goods, and does not pay the price. This is theft, as in such cases the purchaser does not mean to transfer the property till the money is paid.

(4.)⁵ A fraudulently obtains goods and money from a shopkeeper by pretending to give him diamonds for them. This is not theft, as the shopkeeper means to transfer the property in the goods.

(5.)⁶ A fraudulently induces B to give her ten sovereigns to conjure with, promising to bring back the ten sovereigns and 170*l.*, to which A says B is entitled. A carries off the ten sovereigns. If the ten sovereigns were to be returned, this is theft. If not, it is not theft, but is obtaining money by false pretences.

(6.)⁷ A, B's wife, by a forged order gets money standing to B's credit at B's bankers. This is not theft from the bankers, as the cashier had a general authority to part with the banker's money, and meant to do so.

¹ *R. v. Holles*, L. R. 12 Q. B. D. 25, is the last case on this subject.

² *R. v. Davenport*, 2 Russ. Cr. 201.

³ *R. v. Longsleigh*, 2 Russ. Cr. 203; R. & M. 137. There are a great number of other cases to the same effect. *R. v. Mackail*, e.g., L. R. 1 C. C. R. 125.

⁴ Four cases to this effect are stated in 2 Russ. Cr. 209-11.

⁵ *R. v. Bunce*, 1 F. & F. 523. The offence would be obtaining goods by false pretences.

⁶ *R. v. Bunce*, 1 F. & F. 523.

⁷ *R. v. Prince*, L. R. 1 C. C. R. 154.

ARTICLE 299.

THEFT BY TAKING ADVANTAGE OF A MISTAKE.

¹ Theft may be committed by ¹ converting property which the general or special owner has given to the offender under a mistake which the offender has not caused, but which he knows to be such at the time when it is made, and of which he fraudulently takes advantage.

² But it is doubtful whether it is theft fraudulently to convert property given to the person converting it under a mistake of which that person was not aware when he received it.

Illustrations.

(1.) ¹ A having to receive ten shillings from a post-office savings bank, produces to the clerk a warrant for that amount. The clerk referring by mistake to another letter of advice, puts on the counter 8*l.* 16*s.* 10*d.*, which A takes away. This is theft.

¹ *R. v. Middleton*, L. R. 2 C. C. R. 38. Perhaps "by knowingly accepting with intent to convert" would be a more accurate way of expressing the effect of this case.

² *R. v. Ashwell* (L. R. 16 Q. B. D. 190) was reserved in consequence of the expression of doubt in the text. Keogh meaning to lend Ashwell a shilling, put into his hand a coin which at the time each believed to be a shilling. It was a sovereign, and Ashwell found this out an hour afterwards and kept it. The question whether this was larceny or not was twice argued, the last time before fourteen judges, of whom I was one. Seven thought that it was, and seven that it was not larceny, and the result was that the conviction stood. In *R. v. Flowers* (L. R. 16 Q. B. D. 643), the facts of which appear to me not distinguishable from those in *R. v. Ashwell*, several of the judges who affirmed the conviction of Ashwell explained that they did not mean by that decision to throw doubt on the rule that an innocent taking succeeded by a fraudulent misappropriation is not larceny. *R. v. Ashwell* must therefore be regarded as at most an authority for a case precisely similar in all its circumstances, but even this is not clear. No doubt in *R. v. Windsor* (8 H. of L. 39) Lord Campbell treated *R. v. Millis* as an authority binding on the House, though it was decided in a case of equality of votes by the help of the maxim "præsumitur pro neganti"; but I doubt whether this would apply to *R. v. Ashwell*. The Court being equally divided no judgment was given, and therefore the conviction was not quashed, but I do not see what more can be said. The maxim "præsumitur pro neganti," it might surely be argued, would apply, if at all, to the view which negatived Ashwell's guilt. For myself I doubt its application to the case. On the whole there is strong evidence of the correctness of my opinion that the matter is doubtful, and I have accordingly left my statement as it was.

(2.)¹ A gives a cabman a sovereign for a shilling. The cabman, seeing that it is a sovereign, keeps it. This is theft of the sovereign. If he does not discover the mistake at once, but subsequently, it is doubtful whether he commits theft or not.

(3.)² A receives a letter containing a cheque. The letter is addressed, and the cheque is payable, to another person of the same name as A. A receives the letter innocently, but, on discovering the mistake made, converts the cheque to his own use. This is not theft.

(4.)³ A buys a bureau at a public auction, and finds in it property not intended to be sold, which he converts to his own use. This is theft.

ARTICLE 300.

THEFT BY BAILEES.

⁴Theft may be committed by the conversion by a bailee of the thing bailed, but this does not extend to any offence punishable on summary conviction.

⁵This article applies to bailments to infants incapable of entering into a contract of bailment by reason of infancy [and it is submitted to bailments upon a void, and perhaps upon an illegal, consideration].

ARTICLE 301.

BY AND FROM WHOM THEFT MAY BE COMMITTED.

Theft may be committed by a general owner to the pre-

¹ Per eight Judges, in *R. v. Middleton*, L. R. 2 C. C. R. at p. 45.

² *R. v. Mucklow*, 1 Mood. C. C. 180; *R. v. Davies*, Dear. 640.

³ *Merry v. Green*, 7 M. & W. 623. There was a question in this case whether the bureau was not sold with its contents. *Cartwright v. Green*, 8 Ves. 405, is almost precisely similar. I am unable to distinguish these cases from those on which Illustration (3) is founded. It is remarkable that in the judgments, and apparently in the argument (which is not reported), in *R. v. Middleton*, no notice is taken of any of these cases, nor are the cases about the bureaus referred to in *R. v. Davies*, which was decided, without argument, solely on the authority of *R. v. Mucklow*. *Cartwright v. Green* is not referred to in *R. v. Mucklow*, which was decided before *Merry v. Green*. *Merry v. Green* does not refer to *R. v. Mucklow*. The result is that the cases appear to contradict each other. This is also the view of Mr. Justice Cave in his judgment in *R. v. Ashwell*.

⁴ 24 & 25 Vict. c. 96, s. 4. For a recent instance of this offence, see *R. v. Ozenham*, 46 L. J. (M. C.) 125. For a case in which it was doubtful whether or not there was evidence of a bailment, see *R. v. De Banks*, L. R. 13 Q. B. D. 29. See also *R. v. Ashwell*.

⁵ *R. v. MacDonald*, L. R. 15 Q. B. D. 323.

judice of a special owner upon a chattel in which both general and special ownership exist.

¹ Theft may be committed by a member of a ² co-partnership, or by one of two or more beneficial owners of any money, goods, effects, bills, notes, securities, or other property, to the prejudice of the other co-partners or beneficial owners.

³ Theft may be committed by a member of a corporation to the prejudice of that corporation upon a thing which is the property of the corporation.

⁴ A married woman cannot (⁵ so long as she lives with her husband) commit theft upon things belonging to her husband.

If any other person assists a married woman (⁶ living with her husband) in dealing with things belonging to her husband in a manner which would amount to theft in the case of other persons, ⁶ such dealing is not theft ⁷ unless the person so assisting commits or intends to commit adultery with the woman, ⁸ in which case he, but not she (⁹ unless she intends to desert her husband), commits theft. ⁹ But this exception does not apply to the case of an adulterer or person intending to commit adultery, who assists a married woman to carry away her own wearing apparel only from her husband.

¹⁰ It is doubtful whether the mere presence and consent of a

¹ 31 & 32 Vict. c. 116, s. 1.

² A co-partnership means an association for profit. A Christian Young Men's Society is not a co-partnership, though its members may be joint beneficial owners. *R. v. Robson*, L. R. 16 Q. B. D. 140.

³ Roscoe's Crim. Ev. 8th ed. 652. This is Mr. Roscoe's inference from Hale, P. C. 513, and appears to be correct.

⁴ 1 Hale, P. C. 514.

⁵ These parentheses seem to be required since 45 & 46 Vict. c. 75, s. 12 (The Married Women's Property Act, 1882). See Article 285A.

⁶ *Harrison's Case*, 2 East, P. C. 539.

⁷ *R. v. Avery*, Bell, 150.

⁸ *R. v. Tolfree*, Mood. 243; *R. v. Thompson*, 1 Den. 549; *R. v. Tollett*, Car. & Mar. 112; *R. v. Featherstone*, Dear. 369; *R. v. H. Mutters*, L. & C. 511. A note to this case, 516-19, collects and reviews all the authorities on the subject. These cases were all decided before the Married Women's Property Act, 45 & 46 Vict. c. 75, ss. 12, 16.

⁹ *R. v. Fitch*, D. & B. 187.

¹⁰ *R. v. Avery*, Bell, C. C. 153. I submit that the wife's presence and consent in

married woman on an occasion when some person deals with her husband's goods in a way which would otherwise amount to theft excuses such person if he acts as a principal in the matter, and not as her assistant.

Illustrations.

(1.) ¹ A bails goods to B for exportation, upon which A would become entitled to an exemption from a duty on the goods of 2s. 6d. a pound. B gives a bond to the Crown for exportation, and sends the goods in his barge to a ship to be exported. A, to get the goods duty free, takes them from B's barge. A has stolen the goods from B, and it seems it would have been larceny if no bond had been given by B.

(2.) ² A gives his servant goods to carry to a certain place. A then disguises himself and robs his servant in order to charge the hundred with the robbery. This is robbery.

ARTICLE 302.

³ FINDING GOODS.

A finder of lost goods who converts them commits theft if at the time when he takes possession of them he intends to convert them, knowing who the owner is, or having reasonable grounds to believe that he can be found;

Such a conversion is not theft

(a.) if at the time when the finder takes possession of the goods he has not such knowledge or grounds of belief as aforesaid, although he acquires them after taking possession of the goods, and before resolving to convert them; or

(b.) if he does not intend to convert the goods at the time

such a case would be no excuse. See the history of the growth of the doctrine in the note to *R. v. Muttons*.

¹ *R. v. Wilkinson*, 2 Russ. Cr. 286.

² *Foster*, 123-4. I have not met with any case in which a man has been convicted of theft for stealing a pledge (his own property) from a pawnbroker; but no doubt such an act would be theft. Before 31 & 32 Vict. c. 116, s. 2, a case occurred in which a part owner was convicted of stealing money from another part owner, in whose special custody it was, and who was solely responsible for its safety, the money being the property of a co-operative store: *R. v. Webster*, L. & C. 77. The same point was decided, as to the property of a friendly society, in *R. v. Burgess*, L. & C. 299.

³ 3 Hist. Cr. Law, 170.

when he takes possession of them, whether he has such knowledge or grounds of belief or not at any time.

If the circumstances are such as to lead the finder reasonably to believe that the owner intended to abandon his property in the goods, the finder is not guilty of theft in converting them.

Illustrations.

(1.) ¹ A finds a bank note, accidentally dropped on the floor of his shop. He picks it up, intending to keep it for himself, whoever the owner might be, believing at the time that the owner could be found. This is theft.

(2.) ² A, a carpenter to whom a bureau was entrusted to mend, finds money in it, the existence of which was obviously unknown to the owner of the bureau. A appropriates the money. This is theft, as A knew to whom the bureau belonged.

(3.) ³ A finds iron in the bottom of a canal, from which the water had been let off, and appropriates it. This is theft, as the fact that the iron was in the canal raised a presumption that it had fallen from a canal boat and that therefore the canal company had a special property in it.

(4.) ⁴ A finds a sovereign in the road, and picks it up, intending to keep it, whoever the owner might be, but not knowing who he was, and having no reason to believe he could be found. This is not theft.

(5.) ⁵ A finds a bank note in the road, with no mark upon it, and no circumstance to indicate who was the owner, or that he might be found. Next day he hears who the owner is, and after that changes the note and keeps the money. This is not theft.

(6.) ⁶ A finds a bank note in the road with the owner's name upon it, and takes it, intending at the time to return it to the owner, but afterwards changes his mind and keeps it for himself. This is not theft.

(7.) ⁷ A finds an apple, which appears to have been thrown away in a road, and eats it. If A reasonably believed that the apple had been abandoned by its owner, this is not theft.

¹ *R. v. Moore*, L. & C. 1.

² *Cartwright v. Green*, 8 Ves. 405; see, too, *Merry v. Green*, 7 M. & W. 623.

³ *E. v. Rowe*, Bell, C. C. 93. This case was decided on the question of the possession of the canal company, but it illustrates the principle as to finding also.

⁴ *R. v. Hyde*, L. R. 1 C. C. R. 139.

⁵ *R. v. Thurborn*, 1 Den. 387.

⁶ *Preston's Case*, 2 Den. 353. The illustration does not represent the actual facts in *Preston's Case*, but a state of facts which the Court said might have existed and upon which the jury might have convicted him under the terms in which the very able judge who tried the case (the late M. D. Hill, Recorder of Birmingham) directed them.

⁷ Per Rolfe, B., in *R. v. Peters*, 1 C. & K. 245; and see the summing up of Cockburn, C.J., in *R. v. Hyde*, L. R. 1 C. C. R. 140-1. In some of the cases on

ARTICLE 303.

CONVERSION AFTER A TAKING AMOUNTING TO TRESPASS.

If a person takes into his custody any chattel belonging to any other person in a way which constitutes an actionable wrong to that person and afterwards converts it, he commits theft, although he may not have intended to convert it when he took it into his custody.

Illustrations.

(1.) ¹ A, having a flock of lambs in a field, drives them out, and negligently drives away with them a lamb belonging to B which happened to be there. At the time of driving away the lamb A does not intend to convert it, but afterwards, on discovering what had happened, he sells the lamb and keeps the money. This is theft.

(2.) ² A takes home B's umbrella from a club by mistake, and having afterwards found out that it is B's, converts it. A commits theft.

ARTICLE 304.

CONVERSION AFTER INNOCENT TAKING.

If a person innocently in any way not referred to in any of the preceding Articles, has the possession of any chattel, and converts such chattel, he does not commit theft, although such chattel may have been entrusted to him by the owner, or may be the proceeds of something which was entrusted to him by the owner for the owner's benefit, or for the benefit of some person other than the person so entrusted, unless such conversion falls within the provisions of Chapter XLI. or Article 309.

On this subject a distinction is taken between property absolutely lost, and property only mislaid: see *R. v. West*, Dear. 402. It would appear, however, that the only real difference is that in the latter case the finder must know that the owner may be found. The distinction was useful as a step towards modifying the generality of the rule laid down by the old text writers: see e.g. 1 Hawkins, P. C. 142. "One who finds such goods as I have lost, and converts them to his own use, *animo furandi*, is no felon."

¹ *R. v. Riley*, Dear. 149.

² Per Pollock, C.B., and Parke, B., in *Riley's Case*, p. 156; see the question of *Martin, B.*, in *Preston's Case*, 2 Den. 359.

Illustrations.

(1.) ¹ A assigns his goods by deed to trustees for the benefit of his creditors. The trustees do not take possession, but leave A's possession undisturbed. A makes away with the goods, intending to deprive his creditors of them. This is not theft.

(2.) ² B's house being on fire, A takes B's goods to A's house for protection, B acquiescing as to some of them. A's intention at the time is to keep them for B, but A afterwards changes his mind and converts them. This is not theft.

(3.) ³ B gives his broker A a cheque to buy Exchequer bills. A buys Exchequer bills for B with part of the proceeds of the cheque and absconds with the rest. This is not theft.

(4.) ⁴ B, a boy unable to read, finds a cheque and gives it to A, asking A to tell him what it is. A, on various false pretences, withholds it from B in hopes of getting a reward from the owner. A has not stolen the cheque.

(5.) ⁵ A, the acting treasurer of a local Church Missionary Society, whose duty it is to deposit or invest the moneys received by him on account of the society, converts them. This is not theft.

(6.) ⁶ A is the treasurer of a money club, the nature of which is that certain persons deposit a weekly sum and are liable to fines in default. Loans might be made on interest to the members at A's discretion. The total amount, including interest on the loans, but subject to small deductions, to be divided amongst the members at the end of the year. A converts the balance in his hands at the end of the year. This is not theft.

ARTICLE 305.

OBTAINING BY FALSE PRETENCES NOT THEFT.

It is not theft to persuade any person by fraud to transfer

¹ *R. v. Pratt*, Dear. 360.

² *Leigh's Case*, 2 East, P. C. 694-5. This case seems to shew that if A were to find a bank note for £1000, which he knew to be B's, and were to take it up intending to give it to B, and were afterwards to be tempted to go to a gaming house, and were there to stake and lose it, he would not commit theft, and I believe that such is the law.

³ *Walsh's Case*, 2 Lea. 1054. *Walsh's Case* was the occasion of the first of a series of statutes now represented by 24 & 25 Vict. c. 96, ss. 75, 79. See *post*, chapter XLI.

⁴ *R. v. Gardner*, L. & C. 243.

⁵ *R. v. Garrett*, 8 Cox, C. C. 368, and 2 Russ. Cr. 247-8. This would not even now be an offence. As the offender had not to pay over or return the specific coins intrusted to him, he was not a bailee; and as there was no express trust of the money created by an instrument in writing he was not within the fraudulent trustee clauses of the Larceny Act.

⁶ Nor is it any offence at all. *R. v. Hassall*, 1 L. & C. 58.

the property of any chattel to any person, though such an act may be an offence under Chapter XL.

ARTICLE 306.

TEMPORARY TAKING IS NOT THEFT.

¹ It is not theft to deal with anything in any of the ways in which theft can be committed with the intention only to obtain the temporary use thereof, and not with the intention to convert it permanently to the use of some person other than the owner; but if a thing is so dealt with with the intention of totally depriving the owner of his property in it, the returning of the goods after a temporary use of them will not prevent the act from amounting to larceny.

Illustrations.

- (1.) ² A takes B's horse without B's leave, rides about on it to find some cattle, and then turns it loose on the common. This is not theft.
- (2.) ³ A rides B's horse, without B's leave, to a place thirty miles off, and leaves him at an inn, saying he will call for him. A does not call for the horse but pursues his journey on foot. The jury must consider whether A meant permanently to deprive B of his horse, or only to make that particular journey on him. In the first case A's act is theft, in the second, not.

ARTICLE 307.

TAKING TAME ANIMAL WANDERING NOT THEFT.

⁴ It seems that it is not theft to take and carry away an animal which, though really tame, is wandering at a distance from its habitation as if it were wild, and when it is not known to be tame by the person who takes and carries it away.

¹ See Illustrations, and for the latter part of the Article note to *R. v. Phetheon*, 9 C. & P. 554, and *R. v. Trebilcock*, Dears. & B. C. C. 453.

² 1 Hale, P. C. 509.

³ *R. v. Phillips*, 2 East, P. C. 662; *R. v. Addis*, 1 Cox, C. C. 78, is to the same effect.

⁴ 1 Hawkins, P. C. p. 149, ch. 19, s. 40.

ARTICLE 308.

EVIDENCE AS TO THEFT.

The inference that property alleged to have been stolen has in fact been stolen may be drawn from other facts than the fact that it is identified by a witness.

The inference that an accused person has stolen property, or has received it knowing it to be stolen, may be drawn from the fact that it is found in his possession after being stolen, and that he gives no satisfactory account of the way in which it came into his possession.

Illustration.

¹ A is seen coming out of a lower room in a warehouse in the London Docks, in the floor above which a quantity of pepper is deposited, some being loose on the floor. A's pockets are full of pepper. On being stopped he throws down the pepper, and says, "I hope you will not be hard upon me." A may be convicted of stealing the pepper, although no pepper was missed from the warehouse and the pepper on A was not otherwise identified than by being shown to be similar to that in the warehouse.

¹ *R. v. Burton*, Dear. 282. In this case Maule, J., characteristically remarked, "If a man go into the London Docks sober, without means of getting drunk, and comes out of one of the cellars very drunk, wherein are a million gallons of wine, I think that would be reasonable evidence that he had stolen some of the wine in that cellar, though you could not prove that any wine was stolen, or any wine was missed."

As to the rule as to recent possession of stolen goods, many cases have been decided on the subject (see 2 Russ. Cr. 337-42), but they seem to me to come to nothing but this, that every case depends on its own circumstances, and that the nature of the thing stolen, the length of the interval between the theft and the possession, and the behaviour of the accused may all vary the force of the evidence indefinitely. The unexplained possession of a single stolen coin by a shopkeeper doing a large business in whose till it was found ten minutes after the theft, would prove nothing. The finding of a lost will ten years after its loss, locked up in the strong box of a careful person deeply interested in its temporary concealment, and peculiarly jealous of his strong box, would prove a great deal. Between these extremes there may be infinite degrees in the weight of such evidence.

CHAPTER XXXVI.

EMBEZZLEMENT BY CLERKS AND SERVANTS.

ARTICLE 309.

EMBEZZLEMENT BY CLERKS AND SERVANTS—WHO ARE SERVANTS.

² WHEN a clerk or servant, or person employed in the capacity of a clerk or servant, commits theft by converting any chattel, money, or valuable security delivered to or received, or taken into possession by him for or in the name or on account ³ of his master or employer, his offence is called embezzlement.

Such a conversion is not a criminal offence (except in the cases hereinafter specially provided for) unless the person who converts stands to the owner of the property converted in the relation of a clerk or servant, or person employed in the capacity of a clerk or servant.

⁴ It is a question for a jury whether a person accused of embezzlement is a clerk or servant or not.

⁵ A clerk or servant is a person bound either by an express contract of service or by conduct ⁶ implying such a contract to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact.

A man may be a clerk or servant

⁷ although he was appointed or elected to the employment in respect of which he is a clerk or servant by some other person than the master whose orders he is bound to obey;

¹ § Hist. Cr. Law, 151-6. Cf. Draft Code, ss. 249, 250, 258.

² Enacted on 24 & 25 Vict. c. 96, s. 68, See Art. 325 (A).

³ For an instance in which money was received in the name of one person and on the account of another, see *R. v. Thorpe*, D. & B. 562.

⁴ *Beamwell*, B., doubted as to this in *Wather's Case*, D. & B. 602; but see *R. v. Negus*, L. R. 2 C. C. R. 34; *R. v. Tite*, L. & C. 33; *R. v. May*, L. & C. 13.

⁵ *R. v. Negus*, L. R. 2 C. C. R. 37 (judgment of Blackburn, J.); *R. v. Tite*, L. & C. 33.

⁶ *R. v. Foulkes*, L. R. 2 C. C. R. 152.

⁷ Illustration (*).

¹ although he is paid for his services by a commission or share in the profits of a business ;

² although he is a member of any co-partnership, or is one of two or more beneficial owners of the ³ property embezzled ;

⁴ although he is the clerk or servant of more masters than one ;

⁵ although he acts as clerk or servant only occasionally, or only on the particular occasion on which his offence is committed.

⁶ But an agent or other person who undertakes to transact business for another, without undertaking to obey his orders, is not necessarily a servant

because he receives a salary, or

because he has undertaken not to accept employment of a similar kind from any one else, or

because he is under a duty (statutory or otherwise) to account for money or other property received by him.

It seems that in order that a clerk or servant may be within the meaning of this Article it is necessary that the objects of his service should not be criminal, but a man may be such a clerk or servant although the objects of his service are in part illegal as being contrary to public policy.

Illustrations.

(1.) ¹ A, elected collector of rates by the vestry of a parish, and having to obey a committee of management, is the servant of the committee of management.

(2.) ² A was cashier and collector to B at a salary of £150 a year, besides 12½ per cent on the profits of the business. A was not to be responsible for losses and had no control over the management of the business. A was servant to B.

¹ Illustrations (2) and (3).

² 31 & 32 Vict. c. 116, s. 1.

³ "Money, goods, or effects, bills, notes, securities, or other property."

⁴ Illustration (3).

⁵ Illustration (4).

⁶ Illustrations (6)—(9).

¹ *R. v. Callahan*, 8 C. & P. 154. See now 12 & 13 Vict. c. 103, s. 15, which applies also to assistant overseers; *R. v. Carpenter*, L. R. 2 C. C. R. 29; and see *R. v. Person*, 1 Moo. C. C. 434.

² *M. Donald's Case*, L. & C. 85.

(3.)¹ A took orders for B and collected money for him according to a journey book given to him by B, showing the sums to be received and the persons from whom they were due. A was paid by a commission. A was clerk to B, though he was principally employed by C, D, and others.

(4.)² A was employed by B to go on messages when A had nothing else to do, and B was to give A whatever B chose. A was B's servant.

(5.)³ A, a drover, was employed by B, a farmer, on one single occasion to drive a cow and calf to a person to whom they were sold, and to bring back the money. A was B's servant.

(6.)⁴ A, the master of a charity school, on one particular occasion consents to get a subscription to the funds of the school, at the request of the treasurer of the committee of management by which A was appointed, and which managed the school. It was no part of A's duty as master to collect any subscriptions. In getting the subscription A was not the servant of B.

(7.)⁵ A, a drover, is employed by B, a grazier, to drive oxen to London, to sell them on the road, if possible, and to take those remaining unsold to a salesman in Smithfield. A is not B's servant.

(8.)⁶ B engaged A, who kept a refreshment house at Birkenhead, to get orders for manure manufactured by B. A was not bound to give any definite amount of time or labour to the purpose. The manure was sent to stores under A's control, and of which he was tenant, though B paid the rent, and was forwarded by A to the customers. A was paid £1 a year salary and a commission. A was B's agent, not his servant.

(9.)⁷ A was engaged by B to solicit orders. He was to be paid by commission. He was at liberty to apply for orders whenever he thought most convenient, but was not to employ himself for any other person than B. A was not B's servant.

(10.)⁸ The treasurer of a friendly society under 18 & 19 Vict. c. 63, is

¹ *R. v. Carr*, R. & R. 198. A doubt was expressed as to this last point referred to in this illustration in *R. v. Goodbody*, 8 C. & P. 665; but *R. v. Batty*, 2 Moo. C. C. 257, and *R. v. Tate*, L. & C. 29, uphold *R. v. Carr* and recognise the principle that a man may be servant to several persons at once.

² *R. v. Spencer*, R. & R. 299.

³ *R. v. Hughes*, Moo. C. C. 370.

⁴ *R. v. Nettleton*, 1 Moo. C. C. 259.

⁵ *R. v. Goodbody*, 8 C. & P. 665. The difference between this case and *R. v. Hughes* in illustration (5) lies in the power of sale.

⁶ *R. v. Walker*, D. & B. 600.

⁷ *R. v. Negus*, L. R. 2 C. C. R. 34.

⁸ *R. v. Tyree*, L. R. 1 C. C. R. 177. A treasurer would appear, as a rule, to be rather a banker than a servant, but every case depends on its special circumstances. In *R. v. Murphy*, 4 Cox, C. C. 101, the prisoner was both clerk and treasurer (see the explanation of this case given in *R. v. Tyree*). In *R. v. Welch* (1 Den. 199), the circumstances were very similar to those of *R. v. Tyree*, and Coleridge, J., appears to have been satisfied that the prisoner was a servant, and did not reserve the point. It is singular that this case is not referred to in *R. v. Tyree*.

not the servant of the trustees of the society, though by sect. 22 he is bound before seven days after being required by the trustees (in whom the money is vested by sect. 18) to account to the trustees.

(11.)¹ A parish clerk is not a servant, because he is not under the orders of any particular person.

(12.)² The chamberlain of the commons of a corporation chosen and sworn in at a court, but whose duty it is to superintend the commons and to receive certain duties which he kept till the end of the year, when his accounts were audited and the balance paid over to his successor, is not a servant, because he holds a distinct office, and is not bound to pay at any time.

(13.)³ The servant of a trade union may be convicted of the embezzlement of its funds, although some of its rules are void as being in restraint of trade.

(14.)⁴ The servant of a society, the members of which took an unlawful oath under 37 Geo. 3, c. 123, and 52 Geo. 3, c. 104, cannot be convicted of embezzlement for misappropriating the funds of the society.

ARTICLE 310.

THE PROPERTY EMBEZZLED MUST BE THE MASTER'S.

The offence of embezzlement cannot be committed by the appropriation of property which does not belong to the master of the alleged offender, although such property may have been obtained by such alleged offender by the improper use of the property entrusted to him by his master, but property which does belong to the master of the offender may be embezzled, although the offender received it in an irregular way.

Illustrations.

(1.)⁵ B, the high bailiff of a county court, appointed A a bailiff. By rules of practice it was A's duty to pay over moneys levied by him to the

¹ *R. v. Burton*, M. C. C. R. 237, explained in *Williams v. Stott*, 3 Tyrw. 688; 1 Car. & M. 675.

² *Williams v. Stott*, 3 Tyrw. 688; 1 Car. & M. 675.

³ *R. v. Stainer*, L. R. 1 C. C. R. 230. In the argument on this case both sides assumed that if the society was criminal the conviction could not be sustained. Cockburn, C.J., said, "It is unnecessary to consider how far the criminal purposes of a society might affect its title to property." As stolen property may be stolen from the thief who stole it (1 Hale, P. C. 507), the question might deserve consideration if it ever arose. *R. v. Hunt*, in the next illustration, is in point, but it is only a *nisi prius* decision.

⁴ *R. v. Hunt*, 8 C. & P. 642, by Mirehouse (Com. Serj.), after consulting Bosanquet and Coleridge, JJ.

⁵ *R. v. Glover*, L. & C. 466.

registrar. A received certain money and appropriated it, the money being the money of the registrar and not B's whose servant (if any one's) A was. This was not embezzlement.

(2.)¹ A railway company contracted with B to deliver the railway's coals in the railway's carts, B finding horses and carmen, but the terms of the contract were such as to make the carmen, after receiving the money, answerable to the railway. A, a carman, received money for coals and appropriated it. This was not embezzlement, as the money was not the money of B, but of the railway company.

(3.)² A, a bargeman, was forbidden by B, his master, to take a cargo on his barge on part of a particular voyage. A took the cargo, appropriated the freight to himself, and denied the receipt of it when questioned by his master. The person from whom he took the cargo and freight knew of no one in the transaction except A. This was not embezzlement, as the freight did not belong to B.

(4.)³ A, intrusted with a cheque for B, gets it cashed by a friend, and not, as was the regular course, at a bank, and appropriates the proceeds. This is embezzlement.

ARTICLE 311.

DISTINCTION BETWEEN EMBEZZLEMENT AND OTHER KINDS OF THEFT.

The distinction between embezzlement by a clerk or servant and other kinds of theft is, that in other kinds of theft the property stolen is taken out of the possession of the owner, whereas, in embezzlement by a clerk or servant the property embezzled is converted by the offender whilst it is in the offender's possession on account of his master and before that possession has been changed into a mere custody.

Illustrations.

(1.)⁴ A, B's servant, has authority to take orders, but none to send out goods from B's shop. A takes an order for pickles and treacle, enters in his master's book an order for pickles only, takes from the shop and

¹ *R. v. Beaumont*, Dear. 270. The circumstances of this case are at first sight identical with those of *R. v. Thorpe*, D. & B. 362, in which the conviction was affirmed; but the special terms of the contract, I suppose, make the difference. It is singular that *R. v. Beaumont* is not referred to in *R. v. Thorpe*, otherwise than in a note by the reporter at the end of the case.

² *R. v. Cullum*, L. R. 2 C. C. R. 28.

³ *R. v. Gale*, 46 L. J. (M. C.) 134.

⁴ *R. v. Wilson*, 9 C. & P. 27. The prisoner having been indicted for embezzlement escaped.

delivers to the customer both pickles and treacle, and keeps the price of the treacle. This is a theft of the treacle, as A had no authority to deliver it, but it is not an embezzlement of the price, as it was not received on B's account, but in fraud.

(2.)¹ A, a clerk to a navy tailor goes on board a man-of-war with clothes delivered to him by his master to sell to the marine artillerymen on board. He afterwards enters as a seaman on another ship, carrying off the clothes. A commits theft, and not embezzlement.

(3.)² A, the manager of a branch bank, has in his office a safe, the property of the bank, and of which the bank manager keeps the key at the head office. A's duty is to put money received during the day into this safe. He takes part of it out of the safe and applies it to his own purposes. This is theft, and not embezzlement.

(4.)³ A's duty is to get bills accepted and discounted for his master. A having got a bill accepted for his master, lays it with other bills on his master's desk. He then takes it from his master's desk, gets it cashed, and appropriates the money. This is theft.

(5.)⁴ A receives from his master B, dock warrants enabling him to get property from the docks, and is induced by B to carry the property to London. A on the road appropriates part of the property. This is theft.

(6.)⁵ A, B's servant, is sent by B to fetch 240 quarters of oats, which B has purchased, and which are lying on a vessel in the Thames. Whilst the oats are being measured into B's barge, A causes five quarters to be put up in sacks and set aside, the rest being loose. A then sells the sacks of oats for his own benefit from the vessel, and before they were put into the barge.⁶ This is theft.

(7.)⁷ A, B's servant, gets plate for his master from a silversmith, puts it in B's plate-chest, and then takes it out and appropriates it. This is theft. [⁸ If he appropriates it before he puts it into the plate-chest, he commits embezzlement.]

(8.)⁹ A, B's servant, receives from C, a fellow-servant, £3 of B's money, and appropriates 10s. to his own use. This is not embezzlement [but is theft].

¹ *R. v. Hawkins*, 1 Den. C. C. 584.

² *R. v. Wright*, D. & B. 431.

³ *Chipchase's Case*, 2 Lea. 699.

⁴ *R. v. Norval*, 1 Cox, C. C. 95; 2 Russ. Cr. 388.

⁵ *Abraham's Case*, 2 East, P. C. 569.

⁶ 2 Russ. Cr. 387.

⁷ *Ear Coleridge, J.*, in *R. v. Watts*, 7 Den. 14.

⁸ A dictum of Wilde, C.J., in *R. v. Watts* seems to say the opposite, but if this were so, the whole distinction between embezzlement and theft would be taken away (as no doubt it ought to be as a matter of common sense). See Mr. Greaves' remarks on Wilde, C.J.'s dictum and on the whole case of *R. v. Watts*, 2 Russ. Cr. 389, notes (b) and (c).

⁹ *R. v. Murray*, 2 Russ. Cr. (5th ed.) 314; 5 C. & P. 145; 1 Moody, 276.

(9.)¹ A, a banker's clerk, whose business it is to receive notes over the counter and put them in a drawer, receives a note for £100 from the servant of a customer, and appropriates it to himself without putting it into the drawer. This is not theft at common law, but is embezzlement.

ARTICLE 312.

EVIDENCE AS TO EMBEZZLEMENT.

² The inference that a prisoner has embezzled property by fraudulently converting it to his own use, may be drawn from the fact that he has not paid the money or delivered the property in due course to the owner, or

from the fact that he has not accounted for the money or other property which he has received, or

from the fact that he has falsely accounted for it, or

from the fact that he has absconded, or

³ from the fact that upon the examination of his accounts there appeared a general deficiency unaccounted for ;

⁴ but none of these facts constitutes in itself the offence of embezzlement, nor is the fact that the alleged offender rendered a correct account of the money or other property entrusted to him inconsistent with his having⁵ embezzled it.

¹ *Bazley's Case*, 2 Lea. 835; 2 East, P. C. 571. This case occasioned the passing of the 39 Geo. 3, c. 85, now re-enacted in substance by 24 & 25 Vict. c. 96, s. 68.

² These facts are the common evidence of embezzlement given in every instance, and require no illustration. That the non-payment is only by way of delay, the false accounting a mistake, &c., are common topics of defence.

³ *R. v. Grove*, 1 Moody, 447; 2 Russ. Cr. 459-60. The authority of this case, decided by eight judges to seven, has been doubted. See *R. v. Moah*, Dear. 626, 639: see, too, *R. v. Lambert*, 2 Cox, C. C. 309; *R. v. Lloyd Jones*, 8 C. & P. 288; *R. v. Chapman*, 1 C. & K. 119; *R. v. King*, 12 Cox, C. C. 73.

⁴ *R. v. Hodgson*, 3 C. & P. 422; *R. v. Winnall*, 5 Cox, C. C. 326. Mr. Greaves' note on this case disapproves of the summing-up of Erle, J., on what appears to me to be a misconception of its purport. Mr. Greaves' view that the fraudulent conversion constitutes the offence, and that everything else is only evidence of it is obviously correct; but I think that Erle, J., did not mean to say anything inconsistent with this. Wilful false accounting is now a substantive offence. See 38 & 39 Vict. c. 24, s. 2, and Article 352, *post*.

⁵ *R. v. Guelder*, Bell, C. C. 28; *R. v. Lister*, D. & B. 118.

CHAPTER XXXVII.

¹ ROBBERY AND EXTORTION BY THREATS.² ARTICLE 313.

ROBBERY.

EVERY one is guilty of felony and is liable upon conviction thereof, as a maximum punishment, to be kept in penal servitude in the case of the offences defined in clauses (a.) and (b.) for life, in the case of the offence defined in clause (c.) for fourteen years, and in the case of the offence defined in clause (d.) for five years, who does any of the following things (that is to say),

(a.) ³ who, being armed with any offensive weapon or instrument, robs any person, or

being together with any person or persons, robs or assaults with intent to rob any person, or

(b.) ³ who robs any person, and at the time of, or immediately before, or immediately after such robbery, wounds, beats, strikes, or uses any other personal violence to any person, or

(c.) ⁴ who robs any person, or

(d.) ⁵ who assaults any person with intent to rob.

ARTICLE 314.

EXTORTION BY THREATS.

Every one commits felony and is liable upon conviction

¹ 3 Hist. Cr. Law, 149-150. Draft Code, Part XXVII, ss. 288-296.

² For definition of robbery, and illustrations as to the nature of the fear and violence involved, see Article 296.

³ 24 & 25 Vict. c. 96, s. 43. Offenders against this section are liable, if males, to be thrice privately whipped in addition to the other punishments above specified. 26 & 27 Vict. c. 44, s. 1. As to the manner of inflicting this punishment, see Article 12 (d), *ante*.

⁴ 24 & 25 Vict. c. 96, s. 40.

⁵ *Ibid.* s. 42, S.

thereof to a maximum punishment of penal servitude for life in cases *a. i.*, *a. ii.*, *b* and *c*, for ten years in case *a. iii.*, and five years in case *d*, who

(*a.*) sends, delivers, utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing

(*i.*)¹ demanding any valuable thing of any person with menaces, and without any reasonable and probable cause.

(*ii.*)² Accusing, or threatening to accuse, any other person of any crime punishable by law with death or penal servitude for not less than³ seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any⁴ infamous crime, with a view or intent to extort or gain any valuable thing from any person by means of such letter or writing.

(*iii.*)⁵ Threatening to burn or destroy any house, barn, or other building, or any grain, hay, or straw, or other agricultural produce in a rick or stack, or in or under any building, or any ship, or vessel, or to kill, maim, or wound any cattle; or

(*b.*)⁶ who accuses, or threatens to accuse, any person whatever of any of the crimes specified in *a. ii.*, with the view or intent to extort or gain any valuable thing from any person whatever, or

(*c.*)⁷ who, with intent to defraud or injure any other person, compels or induces any person to deal with any valuable security in any of the manners mentioned in note 8,⁸

¹ 24 & 25 Vict. c. 96, s. 44, S. W. See *ante*, p. 209, Article 296, Illustration (7).

² *Ibid.* s. 46, S. W.

³ This must mean penal servitude for seven years or more. There is no crime for which penal servitude for seven years is a minimum punishment.

⁴ I.e. buggery, committed either with mankind or beast, every assault with intent to commit the same, every attempt or endeavour to commit the same, every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the same (*Ibid.* c. 96, s. 46).

⁵ 24 & 25 Vict. c. 97, s. 50, S. W.

⁶ 24 & 25 Vict. c. 96, s. 47, W. An intent to compel a person by threats to buy a mare is within this section. *R. v. Redman*, L. R. 1 C. C. R. 12.

⁷ *Ibid.* s. 48, S.

⁸ "Execute, make, accept, indorse, alter, or destroy the whole or any part of

by any unlawful violence to, or restraint of the person of another, or by any threat of such violence or restraint, or

by accusing, or threatening to accuse, any person of treason or felony, or any such crime as is mentioned in clause *a. ii.*; or

(*d.*)¹ who, with menaces or force, demands any valuable thing of any person with intent to steal the same (² whether the thing demanded is received or not).

³ It is immaterial whether the menaces or threats mentioned in clauses *a. i.*, *a. ii.*, *b.*, *c.*, and *d.* be of violence, injury, or accusation to be caused or made by the offender or by any other person.

The expression "valuable thing" in this article means any property, chattel, money, valuable security, or other valuable thing.

any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any 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 the same may be afterwards made or converted into, or used, or dealt with as a valuable security."

¹ 24 & 25 Vict. c. 96, s. 45, S. *R. v. Ogden* (L. & C. 288) shews what sort of menaces fall within this section. A obtained five shillings from B by pretending to be a bailiff, and threatening to distrain. It was held that his guilt depended on the question whether or not he made the threat in such a way as to "unsettle B's mind, and take away from his acts that element of free, voluntary action which alone constitutes consent."

² *R. v. Robertson*, L. & C. 483. In that case it was held that a policeman who said he would lock a man up for speaking to a prostitute unless he received five shillings used a "menace," notwithstanding his having no power to do so.

³ 24 & 25 Vict. c. 96, s. 49. There is no similar section in the Act relating to offences against the person (see Article 234 (*a*)), or in the Act relating to malicious injuries to property, from which *a. ii.* and *a. iii.* are taken. I think, however, both on authority and on principle, that those clauses would be construed as if there were. The language of the sections on which this Article is founded has been condensed and rearranged, but it will be found on examination that the Article accurately represents the seven sections which it embodies. As to threats to publish libels with intent to extort, see Art. 278, p. 207.

CHAPTER XXXVIII.

¹ BURGLARY, HOUSEBREAKING, ETC.

ARTICLE 315.

DEFINITIONS.

IN this chapter the following words are used in the following senses:—

² Night means the interval between nine of the clock at night and six of the morning.

House means a permanent building in which the owner, or the tenant, or any member of the family habitually sleeps at night.

³ If a building is so constructed as to consist of several parts having no internal communication between each other, and if these parts are occupied and habitually slept in by different tenants, they may constitute separate dwelling-houses.

⁴ A building occupied with and within the same curtilage with any dwelling-house, is deemed to be part of the said dwelling-house if there is between such building and dwelling-house a communication either immediate or by means of a covered and inclosed passage leading from the one to the other, but not otherwise.

The word "break" means

(a.) the breaking of any part, internal or external, of the

¹ 3 Hist. Cr. Law, 150. Draft Code, Part XXVIII, ss. 297-308.

² 24 & 25 Vict. c. 96, s. 1. It may be worth while to observe that the expression "nine of the clock," "six of the clock," indicate mean as opposed to solar time, but a question might arise as to whether they mean local mean time or the mean time commonly observed at any given place. London time, or, as it is called, railway time, is now very generally observed, and there is a difference of more than twenty minutes between London and Cornwall. Local mean time is the natural meaning.

³ The cases and authorities on this subject are collected in Archbold, 518-520, but there is so little principle in the matter, and each case depends so much on its peculiar circumstances, that I have not thought it advisable to give illustrations.

⁴ 24 & 25 Vict. c. 96, s. 53.

building itself, or the opening by any means whatever (including lifting, in the case of things kept in their places by their own weight) of any door, window, shutter, cellar flap, or other thing intended to cover openings to the house, or to give passage from one part of it to another, and getting down the chimney;

(b) obtaining an entrance into the house by any threat or artifice used for that purpose, or by collusion with any person in the house.

The word "enter" means the entrance into the house of any part of the offender's body, or of any instrument held in his hand for the purpose of intimidating any person in the house, or of removing any goods, but does not include the entrance of part of an instrument used to break the house open.

Illustration.

¹ A opens a sash window, puts a crowbar under a shutter three inches inside the window, and tries to break open the shutter, but was not within the sash window. Here there is a breaking, but no entry.

ARTICLE 316.

ROBBING PLACES OF WORSHIP—BURGLARY.

Every one commits felony, and is liable upon conviction thereof to penal servitude for life as a maximum punishment, who

(a.) ² breaks and enters any church, chapel, meeting-house or other place of divine worship, and commits any felony therein; or

(b.) ³ breaks and enters any dwelling-house by night with intent to commit a felony therein. The offence in this case is called burglary.

ARTICLE 317.

HOUSEBREAKING AND COMMISSION OF FELONY.

⁴ Every one commits felony and is liable, upon conviction

¹ *R. v. Rust*, 1 Moo. 183; and see *R. v. Roberts*, 2 East, P. C. 487.

² 24 & 25 Vict. c. 98, s. 50, S.

³ *Ibid.* s. 52, S. for punishment; 2 Russ. Cr. 2 (5th ed.), for definition.

⁴ *Ibid.* ss. 55, S. and 56, S.

thereof, to a maximum punishment of fourteen years penal servitude, who breaks and enters and commits any felony in any dwelling-house, or any building being within the curtilage of a dwelling-house and occupied therewith (but not being part thereof within Article 315), or any schoolhouse, shop, warehouse, or counting-house.

ARTICLE 318.

ENTERING DWELLING-HOUSE WITH INTENT.

¹ Every one commits felony, and is liable upon conviction thereof to seven years penal servitude as a maximum punishment, who breaks and enters any of the buildings mentioned in Articles 316 or 317, or who by night enters any dwelling-house with intent in either case to commit felony therein.

ARTICLE 319.

BREAKING OUT AFTER COMMITTING FELONY.

² Every one who, being in any of the buildings mentioned in Articles 316 or 317, commits a felony therein, and breaks out of the same, commits felony, and is liable to the same punishment as if he had broken in and committed felony therein. If such building is a dwelling-house, and the offence is committed at night, the offender commits burglary.

Every one who enters any dwelling-house with intent to commit a felony therein, and breaks out of the same by night, is guilty of burglary.

ARTICLE 320.

BEING FOUND IN POSSESSION OF HOUSEBREAKING INSTRUMENTS.

³ Every one commits a misdemeanor, and is liable for the first offence to a maximum punishment of five, or if he has been previously convicted of felony or of such misdemeanor, of ten years penal servitude ;

¹ 24 & 25 Vict. c. 96, ss. 54, S., and 57, S.

² Ibid. ss. 50, 51, 55, 58, S. These sections are re-arranged.

³ Ibid. ss. 58 and 59.

¹ who is found by night armed with any dangerous or offensive weapon or instrument whatever with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein;

or is found by night having in his possession, without lawful excuse (the proof of which excuse lies upon him), any picklock key,¹ crow, jack, bit, or other instrument of house-breaking;

or is found by night having his face blackened or otherwise disguised with intent to commit any felony;

or is found by night in any dwelling-house or other building whatsoever, with intent to commit any felony therein.

¹ A common key may be such an instrument. *R. v. Oldham*, 2 Den. 472. Maule and Cresswell, JJ., were both of opinion that there should be a comma between "picklock" and "key." *R. v. Oldham*, however, makes this unimportant.

CHAPTER XXXIX.

PUNISHMENTS FOR STEALING PARTICULAR THINGS AND RECEIVING GOODS UNLAWFULLY OBTAINED.

ARTICLE 321.

PUNISHMENT FOR STEALING THINGS FOR WHICH NO SPECIAL PUNISHMENT IS PROVIDED.

² EVERY one commits felony and is liable upon conviction thereof to a maximum punishment of five years penal servitude who steals anything capable of being stolen, and for the stealing of which no specific punishment is hereinafter provided.

³ If the conviction takes place after a previous conviction for felony, either upon an indictment or under 8 & 9 Vict. c. 126, the maximum punishment is increased to ten years penal servitude.

If the conviction takes place after a previous conviction for any misdemeanor indictable under 24 & 25 Vict. c. 96, or

If the conviction takes place after two summary convictions under 24 & 25 Vict. c. 96, or 24 & 25 Vict. c. 97, or any Act mentioned in the footnote hereto,

the maximum punishment is increased to seven years penal servitude.

ARTICLE 322.

KILLING ANIMALS WITH INTENT TO STEAL EQUIVALENT TO STEALING.

⁴ Every one who wilfully kills any animal with intent to

¹ 3 Hist. Cr. Law, 146-60. Draft Code, Part XXV.

² 24 & 25 Vict. c. 96, s. 4, S. W. Thefts falling under this Article appear to be the "simple larceny" referred to in 24 & 25 Vict. c. 96, ss. 33 and 36 (Article 328 (a) and (k)). Hale means by "simple larceny" larceny without violence.

³ 24 & 25 Vict. c. 96, ss. 7, 8, 9, S. W. The statutes are 7 & 8 Geo. 4, cc. 29, 30; 9 Geo. 4, cc. 55, 56; 10 & 11 Vict. c. 82; 11 & 12 Vict. c. 59; 14 & 15 Vict. c. 92. These are earlier Acts on the same subjects as the two Consolidation Acts.

⁴ 24 & 25 Vict. c. 96, s. 11

steal the carcass, skin, or any part of the animal so killed, commits felony, and is liable upon conviction thereof to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed is felony.

ARTICLE 323.

STEALING AND CONCEALING VALUABLE SECURITIES.

¹ Every one who steals, or for any fraudulent purpose destroys, cancels, or obliterates the whole or any part of any ² valuable security, other than a document of title to land, commits felony of the same nature and in the same degree, and punishable in the same manner as if he had stolen any chattel of the like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned, or referred to in or by the security.

Provided that no person who commits any offence against this Article or clause (a.) of the next succeeding Article, is liable to be convicted of any such offence by any evidence whatever in respect of any act done by him, if previously to being charged with such offence, he first discloses such act on oath in consequence of any compulsory process of any Court which, on the 6th of May, 1861, was a court of law or equity, in any action, suit, or proceeding *bonâ fide* instituted by any party aggrieved, or if he first discloses the same in any compulsory examination or deposition before

¹ 24 & 25 Vict. c. 96, s. 27. This would probably involve S. W.

² Sect. 1. "Valuable security" includes any order, Exchequer acquittance, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and also includes any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money, or for payment of money, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state, and any document of title to lands or goods as defined in Article 327, note 3.

any Court upon the hearing of any matter in bankruptcy or insolvency.

ARTICLE 324.

THEFTS PUNISHABLE WITH PENAL SERVITUDE FOR LIFE.

Every one commits felony and is liable upon conviction thereof to penal servitude for life as a maximum punishment, and in respect of the offences defined in clause (b.), to a maximum alternative term of imprisonment with hard labour for four years, who does any of the following things (that is to say):

(a.)¹ who, either during the life of the testator, or after his death, steals, or for any fraudulent purpose destroys, cancels, obliterates, or conceals the whole or any part of any will, codicil, or other testamentary instrument, whether it relates to real or personal estate, or to both;

(b.)² or who steals a post letter-bag, or a³ post letter from a post letter-bag, or from a post office, or from an office of the post office, or from a mail;

¹ 24 & 25 Vict. c. 96, s. 29, S.

² 7 Will. 4 & 1 Vict. c. 36, ss. 27, 28, for punishments, ss. 41, 42 (S.), and for definitions, s. 47.

³ "Post letter" means any letter or packet transmitted by the post under the authority of the Postmaster-General from the time of its being delivered to a post office letter-carrier, or other person authorized to receive letters, to the time of its being delivered to the person to whom it is addressed, or to his house or office, or to his servant or agent, or other person considered to be authorized to receive the letter, according to the usual manner of delivering that person's letters. A letter not posted in the proper course, but put amongst the letters so posted for a sorter to sort is not a post letter. *R. v. Shepherd*, Dear. 606.

"Post letter-bag" includes a mail bag, or box, or package or parcel or other envelope or covering in which post letters are conveyed, whether it contains post letters or not.

"Mail" includes every conveyance by which post letters are carried, every person or horse employed in conveying or delivering post letters, every vessel employed by or under the Post-office or the Admiralty for the transmission of post letters, or not regularly so employed but under contract for the conveyance of post letters, and every ship of war or vessel in the service of Her Majesty so employed.

"Valuable security" is defined in sect. 47 in nearly the same terms as in sect. 1 of the Larceny Act: see above. The only difference of much importance is that the definition in the Post Office Act includes any warrant or order for the delivery or transfer of any goods or valuable thing (s. 47).

or any chattel, money, or valuable security, from or out of a post-letter;

or who stops a mail with intent to rob or search the same;

(c.)¹ or who secretes, embezzles, or runs away with any of the things mentioned below,² or any part of any such thing, being an officer or servant of the Governor and Company of the Bank of England, or of the Bank of Ireland, and being intrusted with any such thing lodged or deposited with the said governor and company,³ or with him as an officer or servant of the said governor and company.

ARTICLE 325.

THEFTS PUNISHABLE WITH PENAL SERVITUDE FOR FOURTEEN YEARS.

Every one commits felony, and is liable, upon conviction thereof, to a maximum punishment of fourteen years penal servitude, who does any of the following things (that is to say):

(a.)⁴ who steals any horse, mare, gelding, colt, filly, bull, cow, ox, heifer, calf, ram, ewe, sheep, or lamb, or wilfully kills any such animal with intent to steal the carcase, skin, or any part thereof; or

(b.)⁵ who steals any chattel, money, or valuable security from the person of another; or

(c.)⁶ who steals in any dwelling-house any chattel, money, or valuable security, if the value of the property stolen is in the whole £5 or more, or if the offender puts any one, being in such dwelling-house, in bodily fear by any menace or threat; or

¹ 24 & 25 Vict. c. 96, s. 73, S.

² Any bond, deed, note, bill, dividend warrant, or warrant for the payment of any annuity, or interest, or money, or any security, money, or other effects of any other person, or body politic or corporate.

³ This must mean "either of the said governors and companies."

⁴ 24 & 25 Vict. c. 96, ss. 10, S., 11.

⁵ Ibid. s. 40, S.

⁶ Ibid. ss. 60, 61, S.

(d.) ¹ who steals to the value of ten shillings any of the goods mentioned below, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place; or

(e.) ² who steals any goods or merchandise in any vessel, barge, or boat of any description whatsoever, in any haven or in 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

(f.) ³ who steals any goods or merchandise from any dock, wharf, or quay, adjacent to any such haven, port, river, canal, creek, or basin, as is mentioned in the last clause; or

(g.) ⁴ who ⁵ plunders or steals any part of any ship or vessel in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to any such ship or vessel; or

(h.) ⁶ who, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, or fraudulently embezzles any chattel, money, or valuable security delivered to or received and taken into possession by the offender, for or in the name or on the account of his master or employer; or

(i.) ⁷ who, being employed in the public service of Her Majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, steals, embezzles, or in any manner fraudulently applies for his own benefit, or for any purpose except the public service, the whole or any part of any chattel, money, or valuable security belonging to or in the possession or

¹ 24 & 25 Vict. c. 96, s. 62, S.

² 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 these materials mixed with each other, or mixed with any other material.

³ 24 & 25 Vict. c. 96, s. 63, S.

⁴ Ibid. s. 64, S.

⁵ I do not know that this word has any special legal signification.

⁶ 24 & 25 Vict. c. 96, ss. 67, 68, S. W.

⁷ Ibid. ss. 69 S., 70.

power of Her Majesty, or intrusted to the offender, or received or taken into possession by him in virtue of his employment.

ARTICLE 326.

THEFTS PUNISHABLE WITH PENAL SERVITUDE FOR SEVEN YEARS.

¹ Every one commits felony, and is liable upon conviction thereof to seven years penal servitude, as a maximum punishment, who steals any chattel or fixture of the value of more than £5, let to be used by him or her in or with any house or lodging, whether the contract was entered into by the offender or his wife, or her husband, or by any person on his or her, or on her husband's, behalf.

If the value of the thing stolen do not exceed £5, the offender is liable to a maximum punishment of two years imprisonment and hard labour.

ARTICLE 327.

THEFTS PUNISHABLE WITH PENAL SERVITUDE FOR FIVE YEARS.

Every one commits felony, and is liable upon conviction thereof to a maximum punishment of five years penal servitude, who does any of the following things (that is to say):

- (a.) ² who steals or for any fraudulent purpose destroys, cancels, obliterates, or conceals the whole or any part of any ³ document of title to lands; or
- (b.) ⁴ who steals or for any fraudulent purpose takes from its place of deposit for the time being, or from any person

¹ 24 & 25 Vict. c. 96, s. 74, S. W.

² Ibid. s. 28.

³ The term "document of title to lands" includes any deed, map, 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 (24 & 25 Vict. c. 96, s. 1).

⁴ 24 & 25 Vict. c. 96, s. 30, S.

having the lawful custody thereof,¹ or unlawfully and maliciously cancels, obliterates, injures, or destroys the whole or any part of any of the judicial or official documents mentioned below; ² or

(c.) ³ who steals, rips, cuts, severs, or breaks, with intent to steal, any glass or woodwork belonging to any building whatsoever, or any ⁴ metal, or any utensil or fixture of whatever material, fixed in or to any building whatsoever, or

anything made of metal fixed in any land, being private property, or for 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; or

(d.) ⁵ who steals, or cuts, breaks, roots up, or otherwise destroys or damages with intent to steal the whole or any part of any tree, sapling, or shrub, or any underwood, if the value of the article or articles stolen, or the amount of the

¹ Taking a warrant of execution from a county court bailiff, under the impression that his authority depends on its possession, is "a taking for a fraudulent purpose," but is not stealing under this section: *R. v. Bailey*, L. R. 1 C. C. R. 347.

² Any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney. Any original document whatsoever belonging to any Court of record, or relating to any matter civil or criminal begun, depending, or terminated in any such Court. Any bill, petition, answer, interrogatory, deposition, affidavit, order or decree, or any original document whatsoever of or belonging to any Court of Equity, or relating to any cause or matter begun, depending, or terminated in any such Court. Any original document in anywise relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any Court of Justice, or in any of Her Majesty's castles, palaces or houses, or in any government or public office.

³ 24 & 25 Vict. c. 96, s. 31, S. W. as in case of simple larceny. The words "burial ground" were added to do away with a doubt expressed by Baron Bramwell (*R. v. Jones*, D. & B. 558) as to whether a churchyard was a "public place" within 7 & 8 Geo. 4, c. 29, s. 44. The other judges did not share this doubt. The present enactment does not absolutely remove it, as there are many churchyards which are not burial grounds. However, the case of *R. v. Jones* distinctly decided the point.

⁴ "Lead, iron, copper, brass, or other metal."

⁵ 24 & 25 Vict. c. 96, s. 32, S. W. The section is re-arranged for the sake of brevity, and the word "grow" substituted for "grows" to meet the grammar. The change also represents the sense, for it has been held that in estimating the damage done the value of several trees injured at the same time may be put together: *R. v. Shepherd*, L. R. 1 C. C. R. 118.

injury done exceeds £5, or exceeds the value of £1, if the article or articles stolen or damaged grow in any park, pleasure ground, garden, orchard, or avenue, or in ground adjoining or belonging to any dwelling-house; or

(e.)¹ who steals any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person and sufficiently marked out and known as such,

(f.)² who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity.

³ Every one who commits any of the offences specified in clauses (c.), (d.), or (e.), after being previously convicted of any misdemeanor indictable under 24 & 25 Vict. c. 96, or after two previous summary convictions under 24 & 25 Vict. c. 96, or c. 97, or any Act mentioned in note (2) to Article 321, is liable to a maximum punishment of seven years penal servitude.

ARTICLE 327A.

THEFT PUNISHABLE WITH TWO YEARS IMPRISONMENT.

⁴ Every one commits felony and is liable on conviction thereof to two years hard labour as a maximum punishment who steals or severs with intent to steal the ore of any metal or any lapis calaminaris, manganese, or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal from any mine, bed, or vein thereof respectively.

¹ 24 & 25 Vict. c. 96, s. 26, S.

² 45 & 46 Vict. c. 56, s. 23, declares that every such person shall be "guilty of simple larceny and punishable accordingly." "Electricity" is defined in s. 32 as meaning "Electricity, electric current or any like agency." Probably the latter applies only to electricity used commercially. It would hardly apply to a person who in order to spoil a philosophical experiment maliciously caused electricity to be wasted.

³ 24 & 25 Vict. c. 96, s. 8, S. W., makes this provision as to all offences punishable under the Act as simple larceny. The offences in question are created by ss. 26, 31, 32, 33, 36. The case of a conviction of one of these offences after a previous conviction for felony is provided for, I suppose, by 7 & 8 Geo. 4, c. 28, s. 11. See Article 19, *ante*.

⁴ 24 & 25 Vict. c. 96, s. 38, S.

ARTICLE 328.

SUNDRY OFFENCES RESEMBLING THEFT—PUNISHED BY VARIOUS
TERMS OF IMPRISONMENT, ETC.

Every one who does any of the following things is liable to the consequences stated in the schedule in the note hereto as a maximum punishment (that is to say):

(a.) ¹ who steals any dog; or

(b.) ² who unlawfully has in his possession, or on his premises, any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen, or such skin to be the skin of a stolen dog; or

(c.) ³ who 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 in the possession of any person not its owner; or

(d.) ⁴ who steals, or wilfully kills with intent to steal the same, or any part thereof, any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law; or

(e.) ⁵ who has in his possession, or on his premises any

SCHEDULE.

24 & 25 Vict. c. 96, Clauses.	Maximum punishment and other consequences.	How inflicted.
a. Sect. 18.	<i>First offence.</i> Six months imprisonment with hard labour, or £20 fine, besides value of dog.	Conviction before two justices.
	<i>Second offence.</i> Misdemeanor. Eighteen months imprisonment and hard labour.	Indictment.

¹ 24 & 25 Vict. c. 96, s. 18.

³ *Ibid.* s. 20.

² *Ibid.* s. 19.

⁴ *Ibid.* s. 21.

⁵ *Ibid.* s. 22.

such bird; or the plumage thereof, any such animal or the skin, or any part thereof, as is mentioned in the last clause, knowing that the same has been stolen, or was part of a stolen bird or animal; or

(f.) ¹ who unlawfully and wilfully kills, wounds, or takes any house-dove or pigeon under such circumstances as do not amount to larceny at common law; or

(g.) who ² unlawfully and wilfully uses any dredge or any net, instrument, or engine whatsoever, within the limits of any oyster-bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken; or unlawfully and wilfully drags upon the ground or soil of any such fishery, with any net, instrument, or engine; or

(h.) ³ who steals, or cuts, breaks, roots up, or otherwise destroys, or damages, with intent to steal the whole or any part of any tree, sapling, or shrub, or any underwood, the

SCHEDULE.

24 & 25 Vict. c. 96. Clauses.	Maximum punishment and other consequences.	How inflicted.
b. Sect. 19.	<i>First offence.</i> £20 fine.	Conviction before two justices.
	<i>Second offence.</i> Same as second offence (a).	Indictment.
c. Sect. 20.	Misdemeanor. Eighteen months imprisonment and hard labour.	Indictment.
d and e. Sects. 21, 22.	<i>First offence.</i> Six months imprisonment and hard labour, or £20 fine, besides the value of the animal.	Conviction before one justice.
	<i>Second offence.</i> Hard labour for twelve months.	Do.

¹ 24 & 25 Vict. c. 96, s. 23.

² *Ibid.* s. 26.

³ *Ibid.* s. 33, S. W.

value of the thing stolen, or the amount of the damage done, being a shilling at the least; or

(i.)¹ who steals, or cuts, breaks, or throws down, with intent to steal any part of any live or dead fence, or any wooden post, pale, wire, or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively; or

(j.)² who fails to satisfy a justice of the peace, on being taken or summoned before him, that he came lawfully by any of the things mentioned in clauses (h.) or (i.) found in his possession, or on his premises with his knowledge; or

(k.)³ who steals, or destroys, or damages with intent to steal any plant, root, fruit, or vegetable production, growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory; or

(l.)⁴ who steals or destroys, or damages with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or

SCHEDULE.

24 & 25 Vict. c. 96, Clauses.	Maximum punishment and other consequences.	How inflicted.
f. Sect. 23.	£2 for each bird killed over and above its value.	Conviction before one justice.
g. Sect. 26.	Misdemeanor. Three months imprisonment and hard labour.	Indictment.
h. Sect. 33.	<i>First offence.</i> £5 fine over and above the value of the thing stolen.	Conviction before one justice.
	<i>Second offence.</i> Hard labour for twelve months.	Do.
	<i>Subsequent offences.</i> Felony. Punished as simple larceny. (Article 321.)	Indictment.

¹ 24 & 25 Vict. c. 96, s. 34.

² Ibid. s. 35.

³ Ibid. s. 36, S. W.

⁴ Ibid. s. 37.

for or in the course of and manufacture, and growing in any land open or enclosed, not being a garden, orchard, pleasure ground, or nursery ground; or

(*m.*)¹ who, being taken or summoned before a justice, does not satisfy such justice that he came lawfully by any goods, merchandise, or articles of any kind belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, found in his possession, or on his premises with his knowledge; or

(*n.*)² who, being summoned by a justice of the peace, does not appear and satisfy such justice that he came lawfully

SCHEDULE.

24 & 25 Vict. c. 96, Clauses.	Maximum punishment and other consequences.	How inflicted.
<i>i.</i> Sect. 34.	<i>First offence.</i> £5 fine over and above the value of the thing stolen.	Conviction before one justice.
	<i>Second offence.</i> Hard labour for twelve months.	Do.
<i>j.</i> Sect. 35.	£2 fine over and above the value of the thing.	Conviction before one justice.
<i>k.</i> Sect. 36.	<i>First offence.</i> Six months imprisonment and hard labour, or £20 fine over and above the value of the thing stolen or injury done.	Conviction before one justice.
	<i>Second offence.</i> Felony. Punished as simple larceny. (Article 321.)	Indictment.
<i>l.</i> Sect. 37.	<i>First offence.</i> One month's imprisonment and hard labour, or £1 fine over and above the value of the thing stolen. Payment of costs may be ordered. In default of payment a month's imprisonment with or without hard labour, unless payment.	Conviction before one justice.
	<i>Second offence.</i> Hard labour for six months.	Do.

¹ 24 & 25 Vict. c. 96, s. 65.

² *Ibid.* s. 66.

by any goods, merchandise, or articles whatsoever, offered or exposed for sale by him, and unlawfully taken, or reasonably suspected so to have been taken from any ship or vessel in distress, or wrecked, stranded, or cast on shore.

¹ Every one who commits any of the offences specified in clauses (h.) or (k.), after being previously convicted of any misdemeanor indictable under 24 & 25 Vict. c. 96, or after two previous summary convictions under 24 & 25 Vict. c. 96, or c. 97, or any of the Acts mentioned in note (2) to Article 321, is liable to a maximum punishment of seven years penal servitude.

SCHEDULE.

24 & 25 Vict. c. 96. Clauses.	Maximum punishment and other consequences.	How inflicted.
m and n. Sects. 65, 66.	Six months imprisonment and hard labour, or £20 fine over and above the value of the property. Property to be restored to owner.	Conviction before one justice.

¹ 24 & 25 Vict. c. 96, s. 8, S. W. See note to last Article.

CHAPTER XL.

OBTAINING PROPERTY BY FALSE PRETENCES AND OTHER
CRIMINAL FRAUDS AND DEALINGS WITH PROPERTY.

ARTICLE 329.

OBTAINING GOODS, ETC., BY FALSE PRETENCES.

EVERY one commits a misdemeanor, and is liable upon conviction thereof to five years penal servitude as a maximum punishment, who

(a.)² by any false pretence obtains from any other person any chattel, money, or valuable security with intent to defraud, or who,

(b.)³ with intent to defraud or injure any other person by any false pretence, fraudulently causes or induces any other person to⁴ execute any valuable security, or to write, impress, or affix his name, or the name of any other person,⁵ upon any paper or parchment, in order that the same may afterwards be made or converted into, or used or dealt with as, a valuable security.

It is not an offence to obtain by false pretences any chattel which is not the subject of larceny at common law, but it is immaterial whether such a chattel so obtained is or is not in existence at the time when the false pretence is made if the thing when made is obtained by the false pretence.

It is not an offence to obtain credit in a partnership account by false pretences as to the amount which a partner is entitled to charge against the partnership funds.

¹ 3 Hist. Cr. Law, 160-2.

² 24 & 25 Vict. c. 96, s. 88, S., as explained by the cases.

³ Ibid. s. 90, S. This section was meant to cover such cases as *R. v. Danger*, D. & B. 307, and greatly extends the old law on the subject. See Mr. Greaves's note to the section in his edition of the Acts.

⁴ Make, accept, endorse, or destroy the whole or any part of.

⁵ or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society.

Illustrations.

(1.) ¹ A obtains two pointers worth £5 each by a false pretence. This is not an offence within this Article.

(2.) ² A orders a van from B, and gets it made and delivered by falsely pretending to be agent to a company. This is an offence, although the van was not in existence when the pretence was made.

(3.) ³ A travels as agent for his partners, and obtains commission from them by falsely pretending he has received orders. His commission would form a charge on the partnership funds. This is not an offence within this Article.

ARTICLE 330.

DEFINITION OF "FALSE PRETENCE."

The expression "false pretence," in Article 329, means a false representation made either by words, by writing or by conduct, that some fact exists or existed, and such a representation may amount to a false pretence, although a person of common prudence might easily have detected its falsehood by inquiry, and although the existence of the alleged fact was in itself impossible.

But the expression "false pretence" does not include

(a.) a promise as to future conduct not intended to be kept, unless such promise is based upon or implies an existing fact falsely alleged to exist; or,

(b.) such untrue commendation or untrue depreciation of an article which is to be sold as is usual between sellers and buyers, unless such untrue commendation or untrue depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined.

Illustrations.

(1.) ⁴ A, not being a member of the University of Oxford, represents himself to be such by wearing a student's cap and gown, and thereby

[¹ *R. v. Robinson*, Bell, 34.

² *R. v. Martin*, L. R. 1 C. C. R. 56.

³ *R. v. Evans*, L. & C. 755. I am unable to follow the reasoning of this judgment.

⁴ *R. v. Barnard*, 7 C. & P. 784. The defendant said he was a member of Magdalen College, but Bolland, B., said he would have left the case to the jury on the mere wearing of the dress if nothing had been said.

obtaining a pair of straps from a tradesman in Oxford. This is a false pretence by conduct.

(2.) ¹ A presents a note for £5 as a good note for that amount, knowing that the bank by which it was issued had stopped. This is a false pretence by conduct.

(3.) ² A gives a cheque in discharge of a debt. This is a representation that A has authority to draw upon the bank for the amount of the cheque, and that the cheque is a good and valid order for the payment of money. If these representations are untrue to the knowledge of A, and if he intends to defraud and obtain goods by making them, he commits the offence of obtaining goods by false pretences, but the mere giving of a cheque is not necessarily a representation that the drawer has funds at the bank to meet it.

(4.) ³ The secretary of an Odd Fellows' lodge tells a member that he owes the lodge 13s. 6d., and thereby obtains that sum from him, whereas in fact he owed only 2s. 2d. This is a false pretence, though an inquiry might easily have been made.

(5.) ⁴ A represents to B that A has power to bring back B's husband (who had run away) over hedges and ditches, and that a certain stuff which A has is sufficient and effectual for that purpose, and thereby obtains from B a dress and two sixpences. This is a false pretence, although the alleged fact is impossible.

(6.) ⁵ A tells B that A is going to pay his rent on the 1st of March, and wants £10 to make up his rent, whereby he obtains £10 from B. This statement though false, is not a false pretence, as it relates to something intended to be done at a future time.

(7.) ⁶ A falsely tells B that A has bought skins, and wants £4 10s. to fetch them by the railway, and that he will sell them to B if B will let A have the £4 10s. on account, which B does, partly because B believes that A has bought the skins, and partly because B believes that A will sell the skins to B. This is a false pretence, as part of it alleges falsely an existing fact.

(8.) ⁷ A obtains money from B by promising to marry her, and to furnish

¹ Per Crompton, J., in *Evans's Case*, Bell, C. C. 192. The rest of the Court seemed to be of the same opinion.

² *R. v. Hazleton*, L. R. 2 C. C. R. 134. See, too, *R. v. Jackson*, 3 Camp. 370; *R. v. Parker*, 2 Moo. 1. There was some slight difference of opinion (or rather of expression) amongst the judges in this case. The judges were anxious to point out that to give a cheque on a bank where the drawer has no balance is not necessarily an offence, as he may have a right to overdraw or a reasonable expectation that if he does his drafts will be honoured. These considerations would seem to affect not the falseness of the pretence, but the defendant's knowledge of its falsehood and his intent to defraud.

³ *Woolley's Case*, 1 Den. 559. See, too, *R. v. Jessop*, D. & B. 442.

⁴ *R. v. Giles*, L. & C. 502.

⁵ *Lee's Case*, L. & C. 309.

⁶ *R. v. West*, D. & B. 575.

⁷ *R. v. Jennison*, L. & C. 157.

a house with the money, representing himself to be an unmarried man. A in fact is married. The representation that A was unmarried is a false pretence, though the promises based upon it would not have been false pretences without it.

(9.)¹ A induces B to lend him money by saying that certain spoons are of the best quality, that they are equal to Elkington's A (a description known in the trade), that the foundation is of the best material, and that they have as much silver in them as Elkington's A. These words being construed as mere exaggeration of the quality of the spoons, and not as containing a statement of a definite fact as to the quality of silver in the spoons, are not a false pretence.

(10.)² A induces B to buy a chain by saying, "It is 15-carat gold, and you will see it stamped fine on every link. It was made for me, and I paid nine guineas for it. The maker told me it was worth £5 to sell as old gold." The chain had on every link the mark 15-ct. The chain in fact was 6-carat gold, worth in all £3 Os. 3d. This is a false pretence.

ARTICLE 331.

OF "OBTAINING."

³The word "obtains," in Article 329, means an obtaining by the offender from the owner, with an intent on the part of the offender to deprive the owner permanently and entirely of the thing obtained, and it includes cases in which things are obtained by a contract which is obtained by a false pretence, unless the obtaining under the contract is remotely connected with the false pretence.

⁴Whoever, by any false pretence, causes or procures any money to be paid, or any chattel or valuable security to be delivered to any other person for the use or benefit, or on

¹ *R. v. Bryan*, D. & B. 265. This, I think, is the true view of the case. Willes, J., and Bramwell, B., thought the conviction should be sustained on the ground that the representation that the spoons had as much silver as them as Elkington's A was a specific false pretence as to an existing fact. Ten other judges (Campbell, C.J., Cockburn, C.J., Pollock, C.B., Coleridge, Cresswell, Erie, Compton, Crowder, J.J., and Watson and Channel, BB.), all said in different words that the language used was mere puffery. The principle does not appear to have been doubted. The case is often, but I think wrongly, supposed to decide that a misrepresentation as to quality cannot be a false pretence. This depends on the further question whether the representation is made by means of alleging the existence of a fact which does not exist. *R. v. Foster*, 46 L. J. (M. C.) 128, is a later illustration of the principle of *R. v. Bryan*.

² *R. v. Ardley*, L. R. 1 C. C. R. 301.

³ Illustrations (1)-(6).

⁴ 24 & 25 Vict. c. 96, s. 89.

account of the person making such false pretence, or of any other person, with intent to defraud, is deemed to have obtained such money, chattel, or valuable security within the meaning of Article 329.

¹ If the person from whom anything is obtained by a person making a false pretence is not deceived by such false pretence, but delivers the thing intended to be obtained by it, knowing the pretence to be false, such thing is not deemed to have been obtained by such pretence.

² If a thing is obtained by the joint effect of several false pretences, any one of which is a false pretence within the meaning of the last Article, and if the thing would not have been obtained without that false pretence, it is deemed to have been obtained by such false pretence.

Illustrations.

(1.) ³ A draws a bill upon B in London and gets it discounted by C in Russia by falsely pretending, by means of a forged authority, that he is authorized to draw upon B for the amount of the bill. A does not attempt to obtain money by false pretences from B, though he meant that C should forward the draft to B, and should obtain payment of the amount, and though his act if done in England would have been an obtaining by false pretences from C.

(2.) ⁴ A by a false pretence obtains from B, a livery stable keeper, the use of a horse for the day, for which he would have been charged 7s. This is not obtaining goods by false pretences, as the horse was returned.

(3.) ⁵ A, by false pretences, induces B to enter into partnership with him, and to advance £500 as part of the capital of the concern. B treats the partnership as an existing one, and endeavours to dispose of his interest in it. A has not obtained £500 by false pretences, as B, as partner, retained his interest in it.

(4.) ⁶ A induces B to buy a cheese at a higher price than it is worth, by inserting in it a taster of superior quality to the rest of the cheese, and so

¹ Illustration (7).

² Illustration (8).

³ *R. v. Garrett*, Dear. 232.

⁴ *R. v. Kilham*, L. R. 1 C. C. R. 261.

⁵ *R. v. Watson*, D. & B. 348. The judges guarded in their judgment against the notion that fraudulently inducing a man to enter into a partnership could in no case be within the statute, as, for instance, of the alleged existence of any trade which was a false pretence.

⁶ *R. v. Abbott*, 1 Den. 273.

making B believe that the whole cheese was of the same quality as the taster. This is obtaining money by a false pretence.

(5.) ¹ A induces B to lend him £100 on a deposit of title deeds to land, by falsely pretending that a house had been built upon it worth £300. This is obtaining £100 by a false pretence.

(6.) ² A, by falsely pretending to be a naval officer, induces B to enter into a contract to board and lodge him at a guinea a week, and under this contract is supplied with food for a week. This is not obtaining food by false pretences, as the supply of food in consequence of the contract is too remotely the result of the false pretence to become the subject of an indictment.

(7.) ³ A makes a false pretence to B to obtain money, which pretence is false to B's knowledge. B pays A the money and prosecutes him for obtaining it by a false pretence. This is not obtaining money by a false pretence.

(8.) A falsely pretends to B, 1, that he is an unmarried man; 2, that he will marry B; 3, that if B will give him £8 he will furnish a house for himself and her to live in after marriage. By these false pretences he obtains the £8. He is deemed to have obtained the £8 by the false pretence that he is an unmarried man, which is a false representation as to an existing fact.

ARTICLE 332.

INTENT TO DEFRAUD.

An intent to defraud, in the case of offences against Article 329, is consistent with an intent to undo the effect of the fraud if the offender should be able to do so.

Illustration.

⁴ A by false pretences induces B to let him have some carpets, intending to pay for them if he should be able to do so. This is an intent to defraud.

ARTICLE 333.

CHEATING AT PLAY.

⁵ Every one is deemed guilty of obtaining money or a

¹ *R. v. Burgon*, D. & B. 11.

² *R. v. Gardner*, D. & B. 40.

³ *R. v. Mills*, D. & B. 205. It was, however, an attempt to obtain money by a false pretence.

⁴ *R. v. Naylor*, L. R. 2 C. C. R. 4.

⁵ 8 & 9 Vict. c. 109, s. 17. See *R. v. Hudson*, Bell, C. C. 263, for an illustration of what does not amount to a "game." As to "winning," it has been doubted whether the money, &c., must be actually obtained, or whether winning the game by a false pretence would be within the section if the loser refused to pay the money: *R. v. Moss*, D. & B. 104.

valuable thing by a false pretence with intent to cheat or defraud, and is liable to be punished accordingly, who wins from any other person to himself or any other or others, any sum of money or valuable thing by any fraud or unlawful device, or its practice in playing at or with cards, dice, tables, or other game, or in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise.

ARTICLE 334.

OBTAINING CREDIT, ETC., BY FALSE PRETENCES.

¹ Every one commits a misdemeanor, and is liable upon conviction thereof to twelve months imprisonment and hard labour, as a maximum punishment, who,

(a.) in incurring any debt or liability, obtains credit under false pretences, or by means of any other fraud; or,

(b.) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery, or transfer of or any charge on his property; or,

(c.) with intent to defraud his creditors, conceals or removes any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

ARTICLE 335.

CONCEALING DEEDS AND INCUMBRANCES.

² Every one commits a misdemeanor and is liable, upon conviction thereof, to a maximum punishment of two years imprisonment and hard labour, who, being a seller or mortgagor of land, of any chattels, real or personal, or choses in

¹ 32 & 33 Vict. c. 62, s. 13: The Debtors Act, 1869. This section applies to all debtors and not merely to bankrupts and liquidating debtors. *R. v. Rowlands*, L. R. 8 Q. B. D. 530.

² 22 & 23 Vict. c. 35, s. 24. The Attorney-General's consent is necessary to a prosecution for this offence.

action conveyed or assigned to a purchaser,¹ or mortgagee, or, being the solicitor or agent of any such seller or mortgagor, conceals from the purchaser any settlement, deed, will, or other instrument material to the title, or any incumbrance, or falsifies any pedigree on which the title does or may depend, in order to induce him to accept the title offered or produced to him, and with intent to defraud.

ARTICLE 336.

CONSPIRACY TO DEFRAUD OR EXTORT.

Every one commits the misdemeanor of conspiracy who agrees with any other person or persons to do any act with intent to defraud the public, or any particular person, or class of persons, or to extort from any person any money or goods. Such a conspiracy may be criminal although the act agreed upon is not in itself a crime.

² An offender convicted of this offence may be sentenced to hard labour.

Illustrations.

The following are instances of conspiracies with intent to defraud:—

- ³ A conspiracy to defraud the public by a mock auction.
- ⁴ A conspiracy to raise the price of the funds by false rumours.
- ⁵ A conspiracy to defraud the public by issuing bills in the name of a fictitious bank.
- ⁶ A conspiracy to induce a person to buy horses by falsely alleging that they were the property of a private person and not of a horse dealer.
- ⁷ A conspiracy to induce a man to take a lower price than that for which he had sold a horse, by representing that it had been discovered to be unsound and re-sold for less than had been given for it.

¹ 22 & 23 Vict. c. 35, s. 24. The words "or mortgagee" were added by 23 & 24 Vict. c. 38, s. 8.

² 14 & 15 Vict. c. 100, s. 29.

³ *R. v. Lewis*, 11 Cox, C. C. 404.

⁴ *R. v. De Berenger*, 3 M. & S. 67.

⁵ *R. v. Heven*, 2 East, P. C. 838.

⁶ *R. v. Kenrick*, 5 Q. B. 49.

⁷ *Carlisle's Case*, Dear, 337.

¹ A conspiracy to defraud a partner by false accounts, the fraud not being in itself criminal when it was committed.

² A conspiracy to defraud generally by getting a settling day for shares of a new company.

ARTICLE 337.

PRETENDING TO EXERCISE WITCHCRAFT.

³ Every one commits a misdemeanor and must, upon conviction thereof, be imprisoned for a year, and may be obliged to give sureties for his good behaviour in such sum and for such time as the Court thinks fit, who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult or crafty science to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found.

ARTICLE 338.

CHEATING.

Every one commits the misdemeanor called cheating, who fraudulently obtains the property of another by any deceitful practice not amounting to felony, which practice is of such a nature that it directly affects, or may directly affect, the public at large. But it is not cheating within the meaning of this Article to deceive any person in any contract or private dealing by lies unaccompanied by such practices as aforesaid.

Illustrations.

(1.) The following are instances of cheating :—

⁴ Selling by a false weight or measure even to a single person.

⁵ Selling clothing with the almager's seal forged upon it.

¹ *R. v. Warburton*, L. R. 1 C. C. R. 274.

² *R. v. Aspinall*, L. R. 1 Q. B. D. 730.

³ 9 Geo. 2, c. 5, s. 4. The offender was also to be pilloried every quarter for an hour in a market town on a market day, but the pillory is abolished by 7 Will. 4 & 1 Vict. c. 23. Would it be a good defence to an indictment for this offence to prove that the defendant not only "pretended," but actually practised witchcraft? As to witchcraft, see 2 Hist. Cr. Law, 430-6.

⁴ *R. v. Young*, 3 T. R. 104.

⁵ 2 Russ. Cr. 609.

¹ Selling a picture by means of an imitation of the name of a well-known artist inscribed upon it.

² Maiming oneself in order to have a pretext for begging.

³ Selling unwholesome bread as if it were wholesome.

(2.) The following cases are instances of frauds not amounting to cheating:—

⁴ Delivering short weight of bread, no false weights or tokens being used.

⁵ Receiving barley to grind and delivering a mixture of oat and barley meal.

⁶ Selling as a Winchester bushel a sack of corn which is not a Winchester bushel, but greatly deficient.

ARTICLE 339.

SERVANTS FEEDING HORSES, ETC., AGAINST ORDERS.

¹ Every servant commits a misdemeanor, and is liable upon summary conviction thereof before two justices of the peace, as a maximum punishment, to three months imprisonment and hard labour or to a fine of £5, and in default of payment before a time to be fixed by the justices, to imprisonment with hard labour for three months, unless the fine is sooner paid,

who, contrary to the orders of his master, takes from his possession any corn, pulse, roots, or other food, for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master. But the commission of such an offence does not amount to larceny, notwithstanding anything hereinbefore contained.

ARTICLE 340.

FRAUDULENTLY CONCEALING ORE.

¹ Every one commits felony and is liable upon conviction

¹ *R. v. Closs*, D. & B. 460.

² 1 Hawk. P. C. 55; 2 Russ. Cr. 609.

³ 2 East, P. C. 322; *R. v. Dixon*, 3 M. & S. 11.

⁴ *R. v. Eagleton*, Desr. 376.

⁵ *R. v. Haynes*, 4 M. & S. 214.

⁶ *Pinckney's Case*, 2 East, P. C. 818.

⁷ 26 & 27 Vict. c. 103, s. 1.

⁸ 24 & 25 Vict. c. 96, s. 39, S. Re-enacting earlier provisions. Passed in consequence of decision in *R. v. Webb*, 1 Moo. 431.

thereof to a maximum punishment of two years imprisonment and hard labour,

who, being employed in or about any mine, takes, removes, or conceals any ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found, or being in such mine with intent to defraud any proprietor of, or any adventurer in, any such mine, or any workman or miner employed therein.

ARTICLE 341.

TAKING MARKS FROM PUBLIC STORES.

¹ Every one commits felony, and is liable upon conviction thereof to a maximum punishment of seven years penal servitude,

who, with intent to conceal Her Majesty's property in any stores under the care, superintendence, or control of a Secretary of State, or the Admiralty, or any public department or office, or of any person in the service of Her Majesty, takes out, destroys, or obliterates wholly or in part any mark described in the 1st schedule to the Public Stores Act, 1875 (38 & 39 Vict. c. 25), or any mark whatsoever denoting the property of Her Majesty in any stores.

ARTICLE 342.

CONCEALING TREASURE TROVE.

² Every one commits a misdemeanor who conceals from the knowledge of our Lady the Queen the finding of any treasure, that is to say, of any gold or silver in coin, plate, or bullion, hidden in ancient times, and in which no person can shew any property. It is immaterial whether the offender found such treasure himself or received it from a person who found it, but was ignorant of its nature.

¹ 38 & 39 Vict. c. 25, s. 5. The same Act contains many offences punishable on summary conviction too special to be inserted here.

² 3rd Inst. 132. And see *R. v. Thomas*, L. & C. 313.

CHAPTER XLI.

FRAUDS BY AGENTS, TRUSTEES, AND OFFICERS OF PUBLIC COMPANIES—FALSE ACCOUNTING.

ARTICLE 343.

PUNISHMENT OF MISDEMEANORS IN THIS CHAPTER.

EVERY one who commits any of the misdemeanors defined in this chapter is liable, upon conviction thereof, to a maximum punishment of seven years penal servitude.

ARTICLE 344.

"MISAPPROPRIATE" DEFINED.

²In this chapter the word "misappropriate" means converting any of the things in respect of which the offences defined in it are committed to the use or benefit of the offender, or to the use or benefit of any person other than the person by whom the offender was intrusted therewith. In regard to each of the offences defined in Articles 345, 346, and 347, it is immaterial whether the offender was intrusted with the thing in respect of which the offence was committed solely, or jointly with any other person.

³ARTICLE 345.

MISAPPROPRIATIONS BY BANKERS, MERCHANTS, ETC.

Every banker, merchant, broker, solicitor, or ⁴other agent commits a misdemeanor,

¹ 3 Hist. Cr. Law, 150-160.

² This Article is simply a drafting abridgment from the sections referred to in the following Articles.

³ 24 & 25 Vict. c. 96, s. 75, S.

⁴ i.e., other agent like a banker, merchant, broker, or solicitor. The section is aimed at those classes who carry on the occupations or similar occupations to those mentioned in the section, and not at those who carry on no such occupation, but who may happen from time to time to undertake some fiduciary position whether for money or otherwise: *R. v. Portugal*, L. R. 16 Q. B. D. 487, 491.

(a.) who, having been intrusted as such with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof respectively, or the proceeds, or any part of the proceeds of such security, for any purpose or to any person specified in such direction, misappropriates the same in violation of good faith and contrary to the terms of such direction, or

(b.) who, being intrusted as such with any chattel or valuable security, or any power of attorney for the sale or transfer of any stock, for safe custody or for any special purpose, and without any authority to sell, negotiate, transfer, or pledge the same, sells, negotiates, transfers, pledges, or misappropriates the same, or the proceeds of the same, or any part thereof, or the share or interest to which such power of attorney relates or any part thereof, in violation of good faith and contrary to the object or purpose for which it was intrusted to him, or

(c.) who, being intrusted as such with the property of any other person for safe custody, with intent to defraud, sells, negotiates, transfers, pledges or misappropriates the same or any part thereof.

⁵ Clause (b.) does not extend

to an agent who disposes of a chattel, valuable security, or power of attorney according to unwritten instructions given to him, and subsequently misappropriates the proceeds thereof, unless (possibly) he is proved to have had an intention to misappropriate the proceeds at the time when he disposed of the chattel, valuable security, or power of attorney, nor

⁶ to a solicitor who being intrusted with money to lay out

¹ As to what amounts to a direction in writing, see *R. v. Christian*, L. R. 2 C. C. R. 94.

² 24 & 25 Vict. c. 96, s. 75.

³ Stock means "any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company, and society."

⁴ 24 & 25 Vict. c. 96, s. 76, S.

⁵ This seems to be the effect of *R. v. Tutlock*, 2 C. B. D. 157, and *R. v. Cooper*, L. R. 2 C. C. R. 123. In *R. v. Tutlock* the judges were not altogether unanimous.

⁶ *R. v. Newman*, L. R. 8 Q. B. D. 706; *R. v. Fullagar*, L. R. 2 C. C. R. 123.

on mortgage for his client misappropriates it, unless it appears specifically that he was to keep it with him for safe custody until it could be so invested.

ARTICLE 346.

MISAPPROPRIATION UNDER POWER OF ATTORNEY.

¹ Every one commits a misdemeanor who, being intrusted with any power of attorney for the sale or transfer of any property, fraudulently sells or transfers, or misappropriates the same, or any part thereof.

ARTICLE 347.

MISAPPROPRIATION BY FACTORS OR AGENTS.

² Every factor or agent intrusted, for the purpose of sale or otherwise, with the possession of any ³ goods, or of any document of title to goods, commits a misdemeanor who, contrary to or without the authority of his principal and for the use or benefit of himself or any person other than the person by whom the goods were intrusted to him, and in violation of good faith,

(a.) ⁴ makes any consignment, deposit, transfer, or delivery of any goods or document of title so intrusted to him as and by way of a pledge, lien, or security for any money or

¹ 24 & 25 Vict. c. 96, s. 77, S.

² *Ibid.* s. 78, S.

³ Any factor or agent intrusted as mentioned above, and possessed of any such document of title, whether derived immediately from the owner of such goods, or obtained by reason of such factor or agent having been intrusted with the possession of the goods, or of any other document of title thereto, is deemed to have been intrusted with the possession of the goods represented by such document of title (s. 79), S.

A factor or agent is deemed to be in possession of goods whether the same are in his actual custody or held by any other person subject to his control, or for him or on his behalf (s. 79).

A factor or agent in possession of such goods or documents is taken to have been intrusted therewith by the owner thereof unless the contrary is shewn (s. 79).

⁴ Every contract, pledging, or giving a lien upon such document of title is deemed to be a pledge of and lien upon the goods to which the same relates (s. 79).

valuable security thereon borrowed or received, or intended to be thereafter borrowed and received by him; or

(b.) ¹ accepts any advance of any money or valuable security on the faith of any ² contract or agreement to consign, deposit, transfer or deliver any such goods or document of title.

² Provided, in each case, that the amount for which such goods or documents are made security in any of the ways aforesaid exceeds the amount justly due to such agent from his principal at the time when the security is given, together with the amount of any bill of exchange drawn by or on account of such principal and accepted by such factor or agent.

ARTICLE 348.

CLERKS, ETC., ASSISTING IN PROCURING ADVANCES.

³ Every clerk, or other person, who knowingly and wilfully acts and assists in making any ⁴ security, or accepting or procuring any advance mentioned in Article 347, commits a misdemeanor.

ARTICLE 349.

FRAUDULENT TRUSTEES.

⁵ Every ⁶ trustee of any property for the use or benefit,

¹ Where any loan or advance is *bona fide* made to any such factor or agent 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 the loan or advance without notice of the factor's or agent's want of authority, the loan or advance is deemed to be made on the security of the goods, though the goods or documents of title are not actually received by the person making the advance till "the period subsequent thereto" (s. 79). The necessity for this explanation, which is taken from part of s. 79, is not very obvious, nor do I understand what particular period is referred to by the concluding words.

² Any contract or agreement, whether made direct with such factor or agent, or with any clerk or other person on his behalf, is deemed to be a contract or agreement with such factor or agent (s. 79). Of course it is.

³ 24 & 25 Vict. c. 96, s. 78, S.

⁴ "Any such consignment, deposit, transfer, or delivery."

⁵ 24 & 25 Vict. c. 96, s. 80, S.

⁶ "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

either wholly or partially, of some other person, or for any public or charitable purpose, who with intent to defraud misappropriates the same, or otherwise disposes of or destroys such property or any part thereof, commits a misdemeanor.

A public purpose is such a purpose as would be recognized as public in a court of law, and not a purpose the execution of which is a matter of public importance.

Illustrations.

(1.) ¹The trustees of a savings bank, which has printed rules, one of which directs the manner in which the funds are to be invested, are trustees on an express trust created by an instrument in writing, but not for a public purpose.

(2.) ²The purposes of an institution exempted from liability to the poor-rate would be public.

ARTICLE 350.

FRAUDS BY DIRECTORS AND PUBLIC OFFICERS.

Every director or public officer of any body corporate or public company commits a misdemeanor who

(a.) ³fraudulently 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

(b.) ⁴as such receives or possesses himself of any of the property of such body corporate or public company, otherwise than in payment of a just debt and demand, and, with intent to defraud, omits to make, or to cause and direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company; or

(c.) ⁵with intent to defraud, destroys, alters, mutilates

such trustee and any other person upon or to whom the duty of such trust has devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer acting under any present (6 Aug. 1861) or future Act of Parliament relating to joint stock companies, bankruptcy, or insolvency: 24 & 25 Vict. c. 96, s. 1.

¹ *R. v. Fletcher*, L. & C. 180.

² *R. v. Fletcher*, L. & C. 203.

³ 24 & 25 Vict. c. 96, s. 81, S.

⁴ *Ibid.* s. 82, S.

⁵ *Ibid.* s. 83, S.

or falsifies any book, paper, writing, or valuable security belonging to the body corporate or public company; or makes or concurs in the making of any false entry; or omits or concurs in omitting any material particular in any book of account or other document; or

(*d.*)¹ makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which he knows to be false in any material particular with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company;

or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof.

The offences defined in clauses (*a.*) and (*c.*) may be committed by members, and the offences defined in clauses (*b.*), (*c.*), and (*d.*) by managers of bodies corporate and public companies, as well as by the directors or public officers thereof.

ARTICLE 351.

RULE OF EVIDENCE.

² No one is entitled to refuse to make a full and complete discovery by answer to any statement of claim for discovery, or to answer any question or interrogatory in any civil proceeding in any Court, or upon the hearing of any matter in bankruptcy, upon the ground that his doing so might tend to shew that he had committed any of the offences defined in Articles 345 to 350, both inclusive.

No one is liable to be convicted of any such misdemeanor by any evidence whatever in respect of any act done by him if he has at any time, previous to his being charged with such offence, ³ first disclosed such act on oath in consequence of any compulsory process of any Court which, in 1861, was

¹ 24 & 25 Vict. c. 96, s. 84, S.

² *Ibid.* s. 85.

³ On this word, which was not in the earlier Act, 5 & 6 Vict. c. 39, s. 6, see *R. v. Sheen, Bell, C. C. 97.*

a Court of either law or equity, in any action, suit, or proceeding *bonâ fide* instituted by any party aggrieved, or if he has ¹ first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency.

ARTICLE 352.

FRAUDULENT FALSE ACCOUNTING.

² Every one commits a misdemeanor who, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer;

or wilfully and with intent to defraud, makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering any material particular from or in any such book, or any document or account.

¹ On this word, which was not in the earlier Act, 5 & 6 Vict. c. 39, s. 6, see *R. v. Sheen*, Bell, C. C. 97.

² 38 & 39 Vict. c. 24, s. 1.

CHAPTER XLII.

RECEIVING.

ARTICLE 353.

RECEIVING DEFINED.

¹ A PERSON is said to receive goods improperly obtained as soon as he obtains control over them from the person from whom he receives them.

Where goods are received by a wife or servant, in the husband's or master's absence, with a guilty knowledge on the part of such wife or servant, the husband or master does not become a receiver only by acquiring a guilty knowledge of the receipt of the goods by such wife or servant, and passively acquiescing therein, but he does become a receiver with a guilty knowledge if, having such knowledge, he does any act approving of the receipt of the goods.

Property ceases to be stolen or otherwise improperly obtained within the meaning of this Article as soon as it comes into the possession of the general or special owner, and if such general or special owner delivers it to some one who delivers it to a person who receives it knowing of the previous theft or other obtaining, such receiving is not an offence within this Article.

¹ *R. v. Wiley*, 2 Den. 37. In this case the thieves carried stolen fowls into a stable belonging to the receiver's father. The receiver lighted them in, and was taken in the act of bargaining for them as they lay on the ground between the three men. Eight judges to four held that the conviction must be quashed; substantially they all agreed in the proposition given in the text, but they differed on the question whether, under the circumstances, the receiver had the control of the fowls or not. There was also some difference as to the effect of the terms in which the question had been left to the jury by the chairman of sessions who stated the case. For these reasons I have not attempted to turn the case into an illustration. The case of *R. v. M. Smith*, Dear. 494, is somewhat similar. See, too, *R. v. Hill*, 1 Den. 453. In *R. v. Miller*, 6 Cox, C. C. 353, a person was found guilty of receiving who had never had possession of the goods except by a servant.

Illustrations.

(1.) ¹ A's wife in A's absence receives stolen potatoes knowing them to be stolen. The jury find that A "afterwards adopted his wife's receipt." This finding is not sufficient to sustain a verdict of guilty, as it is consistent with A's having passively consented to what his wife had done without taking any active part in the matter.

(2.) ² A's wife in A's absence receives stolen goods and pays the thief 6*d.* on account. The thief then tells A, who strikes a bargain with the thief, and pays him the balance. A has received stolen goods knowing them to be stolen.

(3.) ³ B steals C's property. C finds it in B's pocket, restores it to B, and tells B to sell it at the same place where he has sold other property of C's. B sells it to A, who knows that it has been stolen. A commits no offence, as the property after being stolen has got into the owner's hands.

(4.) ⁴ B steals goods from a railway to which they have been bailed. B then sends the goods to A by the same railway. A receives them, knowing them to have been stolen, from the railway porter knowing them to have been stolen. A policeman employed by the railway discovers whilst the goods are in transit that they have been stolen, and causes them to be delivered to A in order to detect them. A has committed no offence under this Article.

ARTICLE 354.

RECEIVING PROPERTY UNLAWFULLY OBTAINED.

Every one commits an offence amounting, in cases (a.), (b.), and (d.), to felony, and in case (c.) to misdemeanor, and is liable upon conviction thereof, as a maximum punishment, to penal servitude for life in case (a.), and to penal servitude for fourteen years in case (b.), and to penal servitude for seven years in cases (c.) and (d.), who does any of the following things (that is to say):—

(a.) ⁵ who receives any post letter or post letter-bag, or any chattel, or money, or valuable security, the stealing, taking, embezzling, or secreting whereof is referred to in Article 324, clause (b.), knowing the same to have been

¹ *R. v. Dring*, D. & B. 329.

² *R. v. Woodward*, L. & C. 122. A husband can receive from a wife who steals on her own account in his absence: *R. v. M'Athey*, L. & C. 230.

³ *R. v. Dolan*, Dear. 436.

⁴ *R. v. Schmidt*, L. R. 1 C. C. R. 15. Erle, C.J., and Mellor, J., dissented, on the ground that the company were the innocent agent of the thieves, and that the policeman merely looked at the goods, and took no possession of them.

⁵ 7 Will. 4 & 1 Vict. c. 36, s. 30.

feloniously stolen, taken, embezzled, or secreted, and to have been sent or to have been intended to be sent by the post; or

(b.)¹ who receives any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof is a felony, either at common law or by the 24 & 25 Vict. c. 96 (² but not by 31 & 32 Vict. c. 116), knowing the same to have been so dealt with; or

(c.)³ who, knowing the same to have been so dealt with, receives any chattel, money, valuable security, or other property which may have been stolen, taken, obtained, converted, or disposed of in such a manner as to amount to a misdemeanor by 24 & 25 Vict. c. 96; or

(d.)⁴ who corruptly takes any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, stolen, taken, obtained, extorted, embezzled, converted, or disposed of by any felony or misdemeanor prohibited by 24 & 25 Vict. c. 96, unless he uses all due diligence to cause the offender to be brought to trial for the same.

¹ 24 & 25 Vict. c. 96, s. 91, S. W.

² Which makes stealing by a partner, &c., felony, see *supra*, Art. 301: *R. v. Smith*, L. R. 1 C. C. R. 266, an instructive, but I think a most unfortunate, decision. It is exactly in the same spirit as *R. v. Sadi*, 1 Lea. 468, in which it was held that to receive a bank note knowing it to be stolen was not felony, because bank notes are not the subject of larceny at common law. See, too, *R. v. Robinson*, Bell, C. C. 34, Art. 329, Illustration (1).

³ 24 & 25 Vict. c. 96, s. 95, S. W.

⁴ *Ibid.* s. 101, S. W. (in the case of males under eighteen. In all other cases whipping is confined to males under sixteen).