TITLE VI.

OFFENCES AGAINST RIGHTS OF PROPERTY AND RIGHTS ARISING OUT OF CONTRACTS, AND OFFENCES CONNECTED WITH TRADE.

PART XXIV.

What Things Can be Stolen.

303. *Every inanimate thing* whatever which is the property of any person, and which either is or may be made moveable, shall henceforth be capable of being stolen as soon as it becomes moveable, although it is made moveable in order to steal it: Provided, that nothing growing out of the earth of a value not exceeding twenty-five cents shall (except in the cases hereinafter provided) be deemed capable of being stolen.

Section 337, *post*, provides for the stealing of trees of a value not exceeding twenty-five cents.

By the above section, whatever remained of the common law rule as to fixtures, things growing, minerals, choses in action, is superseded. The reason why things growing under the value of twenty-five cents are excepted is the harshness of exposing every person to be treated as a thief who picked a flower in a garden or cut a stick from a hedge: 3 Stephen's Hist. 162.

"The rules that documents evidencing certain rights, and that land and things 'savouring of the realty' are not capable of being stolen, appear to us wholly indefensible. It is, no doubt, physically impossible to steal a legal right, or to carry away a field, but this affords no ground at all for the rule that it shall be legally impossible to commit theft upon documents which afford evidence of legal rights, or upon things which, though fastened to, growing out of, or forming part of the soil, are capable of being detached from it and carried away.

"These rules have been qualified by statutory exceptions so wide and intricate that they are practically abolished, but they still give form to a considerable part of the law of theft, and

occasionally produce failure of justice in cases in which the statutory exception is not quite co-extensive with the common law rule. These rules we propose to abolish absolutely."—Imp. Comm. Rep.

ANIMALS CAPABLE OF BEING STOLEN.

304. All tame living creatures, whether tame by nature or wild by nature and tamed, shall be capable of being stolen; but tame pigeons shall be capable of being stolen so long only as they are in a dovecote or on their owner's land.

2. All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in Canada, shall, if kept in a state of confinement, be capable of being stolen, not only while they are so confined but after they have escaped from confinement.

3. All other living creatures wild by nature shall, if kept in a state of confinement, be capable of being stolen so long as they remain in confinement or are being actually pursued after escaping therefrom, but no longer.

4. A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage or small inclosure, stye or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

5. Oysters and oyster brood shall be capable of being stolen when in oyster beds, layings, and fisheries which are the property of any person, and sufficiently marked out or known as such property.

6. Wild creatures in the enjoyment of their natural liberty shall not be capable of being stolen, nor shall the taking of their dead bodies by, or by the orders of, the person who killed them before they are reduced into actual possession by the owner of the land on which they died, be deemed to be theft.

7. Every thing produced by or forming part of any living creature capable of being stolen, shall be capable of being stolen.

As to the stealing of pigeons when away from their owner's land, *see post*, s. 338.

As to stealing oysters, *see post* s. 334.

"As to animals, one rule of the existing law is founded on the principle that to steal animals used for food or labour is a crime worthy of death, but that to steal animals kept for pleasure or curiosity is only a civil wrong. The principle has long since been practically abandoned. Sheep stealing is no longer a capital crime, and dog stealing is a statutory offence; but the distinction still gives its form to the law, and occasionally produces results of a very undesirable kind. It has been lately held, for instance, that as a dog is not the subject of larceny at common law, it is not a crime to obtain by false pretenses two

valuable pointers: R. v. Robinson, Bell, 34. It seems to us that this rule is quite unreasonable, and that all animals which are the subject of property should also be the subject of larceny. This, however, suggests the question, what wild animals are the subject of property, and how long do they continue to be so? This question must be considered in reference to living animals *feræ naturæ* in the enjoyment of their natural liberty; living animals *feræ naturæ* escaped from captivity; and pigeons which, singularly enough, form a class by themselves. The existing law upon this subject, is that a wild living animal in the enjoyment of its natural liberty is not the subject of property; but that when dead it becomes the property of the person on whose land it dies, in such a sense that he is entitled to take it from a trespasser, but not in such a sense that the person who took it away, on killing it, is guilty of theft. This is specially important in reference to game. This state of the law we do not propose to alter. As to living animals *feræ naturæ* in captivity, we think they ought to be capable of being stolen.

"When such an animal escapes from captivity, a distinction appears to us to arise which deserves recognition. If the animal is one which is commonly found in a wild state in this country it seems reasonable that on its escape it should cease to be property.

"A person seeing such an animal in a field may have no reasonable grounds for supposing that it had just escaped from captivity.

"If, however, a man were to fall in with an animal imported as a curiosity, at great expense, from the interior of Africa, he could hardly fail to know that it had escaped from some person to whom it would probably have a considerable money value. We think that a wild animal should, on escaping from confinement, still be the subject of larceny, unless it be one commonly found wild in this country."—Imp. Comm. Rep.

DEFINITION OF THEFT.

305. Theft or stealing is the act of fraudulently and without colour of right taking, or *fraudulently and without colour of right converting to the use of any person*, anything capable of being stolen, with intent—

(*a*) to deprive the owner, or any person having any special property or interest therein, *temporarily* or absolutely of such thing or of such property or interest; or

(*b*) to pledge the same or deposit it as security ; or

(*c*) to part with it under a condition as to its return which the person parting with it may be unable to perform ; or

(*d*) to deal with it in such a manner that it cannot be] restored in the condition in which it was at the time of such taking and conversion.

2. The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

3. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

4. Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become moveable, with intent to steal it.

5. Provided, that no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

6. *Provided, that if any servant, contrary to the orders of his master, takes from his possession any 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, the servant so offending shall not, by reason thereof, be guilty of theft.* R. S. C. c. 164, s. 63.

The words in italics "fraudulently and without colour of right, converting to the use of any person," have the effect of abolishing the distinction between embezzlement and larceny. By that definition the gist of the offence of theft is now a fraudulent conversion, and not an unlawful taking : 3 Stephen's Hist. 166. The word "temporarily" is *new*, and was not in the English draft. It may have been inserted so as to include the enactment of s. 85 R. S. C. c. 164, but is nevertheless wrong. S-s. 6 (*new*) is a partial re-enactment of 26 & 27 V. c. 103, (Imp.), by which the case of R. v. Morfit, R. & R. 307, is not now law in England.

"Technicalities of more importance connected with the taking are those which have led to the distinction between theft and embezzlement. The immediate consequence of the doctrine that a wrongful taking is of the essence of theft is, that if a person obtains possession of a thing innocently, and afterwards fraudulently misappropriates it, he is guilty of no offence. This doctrine has been qualified by a number of statutory exceptions,

each of which has been attended with difficulties of its own. . . . . We have therefore defined theft in such a manner as to put wrongful taking and all other means of fraudulent misappropriation on the same footing. The definition properly expounded and qualified will, we think, be found to embrace every act which in common language would be regarded as theft, and it will avoid all the technicalities referred to as arising out of the common law rules, as well as out of the intricate and somewhat arbitrary legislation on the subject.

"The crime of embezzlement, wherever the subject matter of it is a chattel or other thing which is to be handed over in specie will, come within the definition of theft, but where the subject matter is not to be handed over in specie, but may be accounted for by handing over an equivalent, it requires separate provisions which will be found in ss. 249, 250 & 251 (*ss. 308, 309, 310, post*). It is essential to all of these offences that there should be the *animus furandi*, that guilty intention which makes the difference between a trespass and a theft."—Imp. Comm. Rep.

THEFT OF THINGS UNDER SEIZURE.

306. Every one commits theft and steals the thing taken or carried away who, whether pretending to be the owner or not, secretly or openly, takes or carries away, or causes to be taken or carried away, without lawful authority, any property under lawful seizure and detention. R. S. C. c. 164, s. 50.

Punishment, s. 356, *post*.

The words "and whether with or without force and violence" were in the repealed clause.

Bishop, 2 Cr. L. 790, says: "If one, therefore, has transferred to another a special property in goods, retaining in himself the general ownership, or, if the law has made such transfer, he commits larceny by taking them with felonious intent."

So if a man steal his goods *in custodia legis*. But "if the goods stolen were the general property of the defendant, who took them from the possession of one to whose care they had been committed, as, for instance, from an officer seizing them on an execution against the defendant, it must be shown that the latter knew of the execution and seizure;

otherwise the required intent does not appear. The presumption, in the absence of such knowledge, would be, that he took the goods, supposing he had the right so to do": 2 Bishop, Cr. Proc. 749.

Section 212, c. 32, R. S. C. contains an enactment in a similar sense as to goods seized by the customs officers.

KILLING ANIMALS TO STEAL CARCASES, ETC.

307. Every one commits theft and steals the creature killed who kills any living creature capable of being stolen with intent to steal the carcase, skin, plumage or any part of such creature. R. S. C. c. 164, s. 8. (*Amended*). 24-25 V. c. 96, s. 11. (Imp.).

Punishment, s. 356, *post*.

The repealed section applied to "animals" instead of "living creatures."

Indictment.— one sheep of the goods and chattels of I. N. unlawfully did steal.

Cutting off part of a sheep, in this instance the leg, while it is alive, with intent to steal it, will support an indictment for killing with intent to steal, if the cutting off must occasion the sheep's death: R. v. Clay, R. & R. 387.

So on the trial of an indictment for killing a ewe with intent to steal the carcase, it appeared that the prisoner wounded the ewe by cutting her throat, and was then interrupted by the prosecutor, and the ewe died of the wounds two days after. It was found by the jury who convicted the prisoner that he intended to steal the carcase of the ewe. The court held the conviction right: R. v. Sutton, 8 C. & P. 291. It is immaterial whether the intent was to steal the whole or part only of the carcase: R. v. Williams, 1 Moo. 107.

Any one killing cattle with intent to steal the carcase, should be indicted under s. 499, *post*.

THEFT BY AGENT.

308. Every one commits theft who having received any money or valuable security or other thing whatsoever, on terms requiring him to account for or pay the same, or the proceeds thereof, or any part of such proceeds, to any other person, though not requiring him to deliver over in specie the

identical money, valuable security or other thing received, fraudulently converts the same to his own use, or fraudulently omits to account for or pay the same or any part thereof, or to account for, or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid.

2. Provided, that if it be part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving the same and the person to whom he is to account for or pay the same, and that such last mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of such money or proceeds, or any part thereof, in such account, shall be a sufficient accounting for the money, or proceeds, or part thereof so entered, and in such case no fraudulent conversion of the amount accounted for shall be deemed to have taken place. R. S. C. c. 164, s. 61, *et seq.* (*Amended*). 24-25 V. c. 96, s. 75 *et seq.* (Imp.).

"Valuable security" defined, s. 3; *see post*, under s. 310, and R. v. Barnett, 17 O. R. 649.

THEFT BY PERSON HOLDING POWER OF ATTORNEY.

309. Every one commits theft who, being intrusted, either solely or jointly with any other person, with any power of attorney for the sale, mortgage, pledge or other disposition of any property, real or personal, whether capable of being stolen or not, fraudulently sells, mortgages, pledges or otherwise disposes of the same or any part thereof, or fraudulently converts the proceeds of any sale, mortgage, pledge or other disposition of such property, or any part of such proceeds, to some purpose other than that for which he was intrusted with such power of attorney. R. S. C. c. 164, s. 62. (*Amended*). 24-25 V. c. 96, s. 77, (Imp.).

See under next section.

THEFT OF PROCEEDS UNDER DIRECTION.

310. Every one commits theft who, having received, either solely or jointly with any other person, any money or valuable security or any power of attorney for the sale of any property, real or personal, with a direction that such money, or any part thereof, or the proceeds, or any part of the proceeds of such security, or such property, shall be applied to any purpose or paid to any person specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose or pays to any other person such money or proceeds, or any part thereof.

2. Provided, that where the person receiving such money, security or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply unless such direction is in writing. R. S. C. c. 164, s. 60. (*Amended*).

There is under this code no "embezzlement" as a distinct offence: *see* Imp. Commissioners' Report under s. 305, p. 339, *ante*.

"Valuable security" defined, s. 3.

Punishment under three next preceding sections: ss. 320, 357, *post*. What was embezzlement is now theft purely and simply.

Under s. 310 the direction need not be in writing (except as *per proviso*) as it was needed to be in s. 60 of the repealed statute. But the power of attorney mentioned in s. 309 must be in writing: R. v. Chouinard, 4 Q. L. R. 220; and the power of attorney mentioned in s. 310 would have also to be in writing. As to who is an agent: *see* R. v. Cosser, 13 Cox, 187; R. v. Cronmire, 16 Cox, 42.

The indictment under these three sections may be drawn in the usual short form for simple theft but care must be taken at the trial that the evidence brings the facts within the statute: R. v. Haigh, 7 Cox, 408. Special indictments may be in the following forms: —

Indictment under s. 308.— that A. B. on did receive from C. D., a sum of one thousand dollars, the property of the said C. D. on terms requiring him the said A. B. to pay the said sum of one thousand dollars to one M. N. and that the said A. B. afterwards, in violation of good faith and contrary to his obligation, fraudulently did convert the said sum to his own use and benefit and did thereby steal the same.

Indictment under s. 309.— that A. B. on being intrusted by C. D. with a power of attorney for the sale of a certain piece of land having afterwards sold the same did fraudulently convert the proceeds of the said sale, to wit, the sum of to some purpose other than that for which he was intrusted with such power of attorney by unlawfully applying the said proceeds to his own use and benefit, and did thereby steal the said proceeds, to wit, the said sum of .

Indictment under s. 309.— that A. B. on did give a power of attorney and thereby intrust to C. D., one hundred bales of cotton, of the value of four thousand dollars, for the purpose of selling the same, and that the

said C. D. afterwards, contrary to and without the authority of the said A. B., for his own benefit, and in violation of good faith, unlawfully did deposit the said cotton with E. F. of as and by way of a pledge, lien and security, for a sum of money, to wit, four hundred dollars, by the said C. D., then borrowed and received of and from the said E. F., and that the said C. D. did thereby steal the said one hundred bales of cotton of the goods and chattels of the said A. B.

Indictment under s. 310.— that A. B. on did intrust C. D. with a certain large sum of money, to wit, the sum of four hundred dollars, with a direction to the said C. D. to pay the said sum of money to a certain person specified in the said direction, and that the said C. D. afterwards, to wit, on in violation of good faith and contrary to the terms of such direction, fraudulently did convert to his own use and benefit the said sum of money so to him intrusted as aforesaid, and that the said C. D. thereby did steal the said money of the goods and chattels of the said A. B. (*A count should be added stating particularly to whom the money was to be paid*).

See R. v. Cooper, 12 Cox, 600; R. v. Tatlock, 13 Cox, 328; R. v. Fullagar, 14 Cox, 370; R. v. Brownlow, 14 Cox, 216; *Ex parte* Piot, 15 Cox, 208; R. v. Bowerman, 17 Cox, 151, (1891) 1 Q. B. 112, Warb. Lead. Cas. 177; *Ex parte* Bellencoutre, 17 Cox, 253, [1891] 2 Q. B. 122.

The changes in the law introduced by this code must not be lost sight of in the reference to these cases. All criminal breaches of common law trusts are now either theft under the preceding sections, or punishable under s. 363, *post*, and the distinctions of larceny by bailees, or embezzlements or frauds by agents, bankers, factors, attornies, etc., are superseded. The imperfections in the English law alluded to by the Judges in *Ex parte* Bellencoutre, 17 Cox, 253, [1891] 2 Q. B. 122, have now been removed in Canada.

THEFT BY CO-OWNER.

311. Theft may be committed by the owner of anything capable of being stolen *against a person having a special property or interest therein, or by a person having a special property or interest therein against the owner thereof, or by a lessee against his reversioner*, or by one of several joint owners, *tenants in common* or partners of, or in any such thing against the other persons interested therein, *or by the directors, public officers or members of a public company, or body corporate, or of an unincorporated body or society associated together for any lawful purpose, against such public company or body corporate or unincorporated body or society.* R. S. C. c. 164, s. 58. (*Amended*). 31-32 V. c. 116, s. 1, (Imp.).

See R. v. Robson, Warb. Lead. Cas. 139.

Indictment.— that on at Thomas Butterworth, of was a member of a certain co-partnership, to wit, a certain co-partnership carrying on the business of and trading as waste dealer, and which said co-partnership was constituted and consisted of the said Thomas Butterworth and of John Joseph Lee, trading as aforesaid; and, thereupon, the said Thomas Butterworth, at aforesaid, during the continuance of the said co-partnership, and then being a member of the same as aforesaid, to wit, on the day and year aforesaid, eleven bags of cotton waste of the property of the said co-partnership unlawfully did steal: R. v. Butterworth, 12 Cox, 132.

See R. v. Balls, 12 Cox, 96, for an indictment against a partner for embezzlement, now theft, of partnership property; also, R. v. Blackburn, 11 Cox, 157.

A partner, at common law, may be guilty of larceny of the partnership's property; so may a man be guilty of larceny of his own goods: R. v. Webster, L. & C. 77; R. v. Burgess, L. & C. 299; R. v. Moody, L. & C. 173; that is when the property is stolen from another person in whose custody it is, and who is responsible for it. *See also,* R. v. Diprose, 11 Cox, 185, and R. v. Rudge, 13 Cox, 17.

CONCEALING GOLD OR SILVER WITH INTENT, ETC.

312. Every one commits theft who, with intent to defraud his co-partner, co-adventurer, joint tenant or tenant in common, in any mining claim, or in any share or interest in any such claim, secretly keeps back or conceals any gold or silver found in or upon or taken from such claim. R. S. C. c. 164 s. 31.

Not in the Imperial Statute.

Punishment under s. 356, *post*.

Indictment may be as for simple theft: ss. 611, 613. As to search warrant, s. 571.

HUSBAND AND WIFE. (*New*).

313. No husband shall be convicted of stealing, during co-habitation, the property of his wife, and no wife shall be convicted of stealing, during co-habitation, the property of her husband; but while they are living apart from each other either shall be guilty of theft if he or she fraudulently takes or converts anything which is, by law, the property of the other in a manner which, in any other person, would amount to theft.

2. Every one commits theft who, while a husband and wife are living together, knowingly—

(*a*) assists either of them in dealing with anything which is the property of the other in a manner which would amount to theft if they were not married; or

(*b*) receives from either of them anything, the property of the other, obtained from that other by such dealing as aforesaid.

"By the present law a husband or wife cannot steal from his wife or her husband, even if they are living apart, although by recent legislation the wife is capable of possessing separate property.

"So long as co-habitation continues this seems reasonable, but when married persons are separated, and have separate property, it seems to us to follow that the wrongful taking of it should be theft. This section is also framed so as to put an end to an unmeaning distinction, by which it is a criminal offence in an adulterer to receive from his paramour the goods of her husband, but no offence in any one else to receive such goods from the wife."—Imp. Comm. Rep.

PART XXV.

RECEIVING STOLEN GOODS.

314. Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who receives *or retains in his possession* anything obtained *by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada after the commencement of this Act, would have constituted an offence punishable upon indictment* knowing such thing to have been so obtained. R. S. C. c. 164, s. 82. 24-25 V. c. 96, s. 91 (Imp.).

The words in italics are new. *See* s. 627, *post*, as to indictment of receivers in certain cases; also ss. 715, 716, 717 as to trial, and s. 8, *ante*, as to what constitutes "having in possession." See remarks under next section.

Obtaining by false pretenses is punishable by *three* years, s. 359; but knowingly receiving anything so obtained is punishable by *fourteen* years.

Receiving property obtained by *any indictable* offence abroad is punishable under this section; s. 355 is limited to theft and the thief himself.

Indictment against a receiver of stolen goods.— that A. B., on at one silver tankard, of the goods and chattels of J. N. before then unlawfully stolen, did unlawfully receive and have, he the said A. B. at the time when he so received the said silver tankard as aforesaid, then well knowing the same to have been stolen.

Any number of receivers at different times of stolen property may be charged with substantive felonies in the same indictment, s. 627, *post*.

And where the indictment contains several counts for larceny, describing the goods stolen as the property of different persons, it may contain the like number of counts, with the same variations, for receiving the same goods: R. v. Beeton, 1 Den. 414. It is not necessary to state by whom the stealing was committed: R. v. Jervis, 6 C. & P. 156; and, if stated, it is not necessary to aver that the principal

has not been convicted: R. v. Baxter, 5 T. R. 83. Where an indictment charged Woolford with stealing a gelding, and Lewis with receiving it knowing it to have been "so feloniously stolen as aforesaid," and Woolford was acquitted, Patteson, J., held that Lewis could not be convicted upon this indictment, and that he might be tried on another indictment, charging him with having received the gelding knowing it to have been stolen by some person unknown: R. v. Woolford, 1 M. & Rob. 384; 2 Russ. 556.

An indictment charging that a certain evil-disposed person feloniously stole certain goods, and that C. D. and E. F. feloniously received the said goods knowing them to be stolen, was holden good against the receivers, as for a substantive felony: R. v. Caspar, 2 Moo. 101. The defendant may be convicted both on a count charging him as accessory before the fact and on a count for receiving: R. v. Hughes, Bell, 242. The first count of the indictment charged the prisoner with stealing certain goods and chattels; and the second count charged him with receiving "the goods and chattels aforesaid of the value aforesaid so as aforesaid feloniously stolen." He was acquitted on the first count but found guilty on the second: *Held*, that the conviction was good: R. v. Huntley, Bell, 238; R. v. Craddock, 2 Den. 31.

Indictment against the principal and receiver jointly.— that C. D. on at one silver spoon and one table-cloth, of the goods and chattels of A. B., unlawfully did steal, and the jurors aforesaid, do further present, that J. S. afterwards, on the goods and chattels aforesaid, so as aforesaid stolen, unlawfully did receive and have, he the said J. S. then well knowing the said goods and chattels to have been stolen.

Indictment against the receiver as accessory, the principal having been convicted.— that heretofore, to wit, at the general sessions of the holden at on it was presented, that one J. T. (*continuing the for-*

mer indictment to the end; reciting it, however, in the past and not in the present tense:) upon which said indictment the said J. T., at aforesaid, was duly convicted of the theft aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that A. B. after the committing of the said theft as aforesaid, to wit, on the goods and chattels aforesaid, so as aforesaid stolen, unlawfully did receive and have, he the said A. B. then well knowing the said goods and chattels to have been stolen.

Indictment against a receiver where the principal offence is obtaining under false pretenses.— on at one silver tankard of the goods and chattels of J. N. then lately before unlawfully, knowingly, and designedly obtained from the said J. N. by false pretenses, unlawfully did receive and have, he the said A. B. at the time when he so received the said silver tankard as aforesaid, then well knowing the same to have been unlawfully, knowingly, and designedly obtained from the said J. N. by false pretenses.

The indictment must allege the goods to have been obtained by false pretenses, and known to have been so; it is not enough to allege them to have been "unlawfully obtained, taken and carried away": R. v. Wilson, 2 Moo. 52.

At common law receivers of stolen goods were only guilty of a misdemeanour, even when the thief had been convicted of felony: Fost. 373.

The goods must be stolen goods when they are received. If the owner has resumed possession, though the receiver does not know it, there is no receiving of stolen property: R. v. Villensky [1892], 2 Q. B. 597; *see* s. 318 *post;* R. v. Schmidt, Warb. Lead. Cas. 180.

There may be a criminal receiving from a first receiver: R. v. Reardon, L. R. 1 C. C. R. 31.

The goods must be so received as to divest the possession out of the thief: R. v. Wiley, 2 Den. 37. But a person

having a joint possession with the thief may be convicted as a receiver: R. v. Smith, Dears. 494. Manual possession is unnecessary; it is sufficient if the receiver has a control over the goods: R. v. Hobson, Dears. 400; R. v. Smith, Dears. 494; *see ante*, s. 3, and *post*, s. 317, as to the words "having in possession." The defendant may be convicted of receiving although he assisted in the theft: R. v. Dyer, 2 East, P. C. 767; R. v. Craddock, 2 Den. 31; R. v. Hilton, Bell, 20; R. v. Hughes, Bell, 242. But not if he actually stole the goods: R. v. Perkins, 2 Den. 459. Where the jury found that a wife received the goods without the knowledge or control of her husband, and apart from him, and that he afterwards adopted his wife's receipt, no active receipt on his part being shown, it was held that the conviction of the husband could not be sustained; R. v. Dring, Dears. & B. 329; but *see* R. v. Woodward, L. & C. 122.

There must be a receiving of the thing stolen, or of part of it; and where A. stole six notes of £100 each and having changed them into notes of £20 each, gave some of them to B.: it was held that B. could not be convicted of receiving the said notes, for he did not receive the notes that were stolen: R. v. Walkley, 4 C. & P. 132. But where the principal was charged with sheep-stealing, and the accessory with receiving "twenty pounds of mutton, parcel of the goods," it was held good: R. v. Cowell, 2 East, P. C. 617, 781. In the last case the thing received is the same, for part, as the thing stolen, though passed under a new denomination, whilst in the first case nothing of the article or articles stolen have been received, but only the proceeds thereof. And, says Greaves' note, 2 Russ, 561, it is conceived that no indictment could be framed for receiving the proceeds of stolen property. The section only applies to receiving *the* chattel stolen, knowing *that* chattel to have been stolen. In the case of gold or silver, if it were melted after the stealing an indictment for receiving it might be supported, because it would still be the *same* chattel though

altered by the melting; but where a £100 note is changed for other notes the identical chattel is gone and a person might as well be indicted for receiving the money for which a stolen horse was sold, as for receiving the proceeds of a stolen note.

The receiving must be subsequent to the theft. If a servant commit a larceny at the time the goods are received both servant and receiver are principals, but if the goods are received subsequently to the act of larceny it becomes a case of principal and receiver: R. v. Butteris, 6 C. & P. 147; R. v. Gruncell, 9 C. & P. 365; R. v. Roberts, 3 Cox, 74.

The receiving need not be *lucri causa*; if it is to conceal the thief, it is sufficient: R. v. Richardson, 6 C. & P. 365; R. v. Davis, 6 C. & P. 177.

There must be some evidence that the goods were stolen by another person, R. v. Densley, 6 C. & P. 399; R. v. Cordy 2 Russ. 556.

A husband may be convicted of receiving property which his wife has stolen, R. v. McAthey, L. & C. 250, if he receive it knowing it to have been stolen.

The principal felon is a competent witness to prove the larceny: R. v. Haslam, 1 Leach, 418. But his confession is not evidence against the receiver, R. v. Turner, 1 Moo. 347, unless made in his presence and assented to by him: R. v. Cox, 1 F. & F. 90. If the principal has been convicted the conviction, although erroneous, is evidence against the receiver until reversed: R. v. Baldwin, R. & R. 241.

To prove guilty knowledge other instances of receiving similar goods stolen from the same person may be given in evidence, although they form the subject of other indictments, or are antecedent to the receiving in question: R. v. Dunn, 1 Moo. 146; R. v. Davis, 6 C. & P. 177; R. v. Nicholls, 1 F. & F. 51; R. v. Mansfield, Car. & M. 140. But evidence cannot be given of the possession of goods stolen from a different person: R. v. Oddy, 2 Den. 264; *see* now s.

716, *post*. Where the stolen goods are goods that have been found the jury must be satisfied that the prisoner knew that the circumstances of the finding were such as to constitute larceny: R. v. Adams, 1 F. & F. 86. Belief that the goods are stolen, without actual knowledge that they are so, is sufficient to sustain a conviction: R. v. White, 1 F. & F. 665.

Recent possession of stolen property is not generally alone sufficient to support an indictment under this section: 2 Russ. 555; R. v. Perry, 10 R. L. 65. However, in R. v. Langmead, L. & C. 427, the judges would not admit this as law, and maintained the conviction for receiving stolen goods grounded on the recent possession by the defendant of stolen property: *see* also R. v. Deer, L. & C. 240.

An indictment charged S. with stealing eighteen shillings and sixpence, and G. with receiving the same. The facts were: S. was a barman at a refreshment bar, and G. went up to the bar, called for refreshments and put down a florin. S. served G., took up the florin, and took from his employer's till some money, and gave G. as his change eighteen shillings and six pence, which G. put in his pocket and went away with. On leaving the place he took some silver from his pocket and was counting it when he was arrested. On entering the bar signs of recognition took place between S. and G., and G. was present when S. took the money from the till. The jury convicted S. of stealing and G. of receiving. *Held*, that this was evidence which the judge ought to have left to the jury as reasonable evidence upon which G. might have been convicted as a principal in the second degree, and that, therefore, the conviction for receiving could not be sustained: R. v. Coggins, 12 Cox, 517.

On the trial of a prisoner on an indictment charging him with receiving property which one M. had feloniously stolen, etc., the crime charged was proved, and evidence for the defence was given to the effect that M. had been

tried on a charge of stealing the same property and acquitted. The counsel for the crown then applied to amend the indictment by striking out the allegation that M. had stolen the property, and inserting the words "some evil disposed person" which was allowed. *Held*, 1. That the record of the previous acquittal of M. formed no defence on the trial of this indictment, and was improperly received in evidence. 2. That the amendment was improperly allowed: R. v. Ferguson, 4 P. & B. (N.B.) 259.

Defendant sold to C., among other things, a horse power and belt, part of his stock in the trade of a butcher in which he also sold a half interest to C. The horse power had been hired from one M. and at the time of the sale the term of hiring had not expired. At its expiry M. demanded it and C. claimed that he had purchased it from the defendant. Defendant then employed a man to take it out of the premises where it was kept and deliver it to M., which he did. Defendant was summarily tried before a police magistrate and convicted of an offence against 32 & 33 V. c. 21, s. 100. *Held*, that the conviction was bad, there being no offence against that section. Remarks upon the improper use of criminal law in aid of civil rights: R. v. Young, 5 O. R. 410.

On an indictment for receiving stolen goods it is not necessary to prove by positive evidence that the property found in the possession of the prisoner belongs to the prosecutor: R. v. Gillis, 27 N. B. Rep. 30.

RECEIVING STOLEN POST-LETTER, ETC.

315. Every one is guilty of an indictable offence and liable to five years' imprisonment who receives *or retains in his possession* any (*stolen*) post letter, post letter bag, *or any chattel, money or valuable security, parcel or other thing*, the stealing whereof is hereby declared to be an indictable offence knowing the same to have been stolen. R. S. C. c. 35, ss. 83, 84 (*Amended*). 7 Wm. IV. & 1 V. c. 36, s. 30 (Imp.).

See ss. 622 & 627, *post*, as to indictment and trial; also ss. 715, 716, 717, *post*; ss. 326 & 327 are the

enactments on the stealing of post letters, etc. *See* s. 4, *ante*, for definitions of expressions in the Post Office Act.

Indictment.— that A. B., on at one post letter the property of the postmaster-general before then, from and out a certain post letter bag unlawfully stolen, unlawfully did receive and retain in his possession, he, the said A. B., then well knowing the said letter to have been stolen.

Why is the punishment less under this clause than under the preceding one?

For stealing, the fact that the article stolen is a post letter is an aggravation, and renders it liable to imprisonment for life, s. 326, whilst stealing money or other things is punishable by only seven years, s. 356; but for criminal receiving of a stolen post letter, the offence is punishable only by five years, whilst the criminal receiving of any other stolen thing is fourteen years! Then, this s. 315 enacts that every one is guilty of an indictable offence punishable by five years, who receives *any chattel, money, or valuable security, parcel or other thing*, the stealing whereof is *hereby declared to be an indictable offence*, knowing the same to have been stolen, whilst s. 314 enacts a punishment of fourteen years against any one who knowingly receives anything obtained by *any offence punishable on indictment*. The consequence is that s. 314 does not apply to *any chattel, money or valuable security, parcel or other thing*, the stealing whereof is declared by the Code to be an indictable offence. Its provisions are cut down by s. 315. This last section, it may be assumed, was intended to apply only to money or valuable security *stolen out of a post letter*, but it does not say it.

RECEIVING PROPERTY—OTHER CASES.

316. Every one who receives *or retains in his possession* anything, knowing the same to be unlawfully obtained, the stealing of which is punishable, on summary conviction, either for every offence, or for the first and second offence only, is guilty of an offence and liable on summary conviction, for every first, second or subsequent offence of receiving, to the same punishment as if he were

guilty of a first, second or subsequent offence of stealing the same. R. S. C. c. 164, s. 84. 24-25 V. c. 96, s. 97 (Imp.).

This enactment is singularly worded.

WHEN RECEIVING COMPLETE.

317. The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over such thing, or aids in concealing or disposing of it.

See cases, *ante*, under s. 314.

RECEIVING AFTER RESTORATION TO OWNER.

318. When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence although the receiver may know that the thing had previously been dishonestly obtained.

See cases, *ante*, under s. 314, and R. v. Villensky, [1892], 2 Q. B. 597.

PART XXVI.

PUNISHMENT OF THEFT AND OFFENCES RESEMBLING THEFT COMMITTED BY PARTICULAR PERSONS IN RESPECT OF PARTICULAR THINGS IN PARTICULAR PLACES.

THEFT BY CLERKS OR SERVANTS.

319. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who—

(*a*) being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals anything belonging to or in the possession of his master or employer; or

(*b*) being a cashier, assistant cashier, manager, officer, clerk or servant of any bank, or savings bank, steals any bond, obligation, bill obligatory or of credit, or other bill or note, or any security for money, or any money or effects of such bank or lodged or deposited with any such bank;

(*c*) being employed in the service of Her Majesty, or of the Government of Canada or the Government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment. R. S. C. c. 164, ss. 51, 52, 53, 54 & 59 (*Amended*). 24-25 V. c. 96, s. 67 *et seq.* (Imp.).

See s. 628, *post*, as to indictments against public servants.

Special provisions as to embezzlement by post-office officers are contained in s. 105, c. 35, R. S. C.

There is no such thing as *embezzlement* under the Code. What constituted *embezzlement* is now theft.

Indictment under (*a*).— on was clerk to J. N., and that the said J. S., whilst he was such clerk to the said J. N., as aforesaid, to wit, on the day and year aforesaid, certain money to the amount of forty dollars, ten yards of linen cloth, and one hat, of and belonging to the said J. N., his master, unlawfully did steal.

Indictment under (*b*).— being employed in the public service of Her Majesty, and being intrusted, by virtue of such employment, with the receipt, custody, management and control of a certain valuable security, to wit,

did then and there, whilst he was so employed as aforesaid, receive and take into his possession the said valuable security, and the said valuable security then fraudulently and unlawfully did steal: *see* R. v. Cummings, 16 U. C. Q. B. 15.

If the defendant is not shown to be the clerk or servant of J. N., but a larceny is proved, he may be convicted of the larceny merely, and punishable then under s. 356, *post*: R. v. Jennings, Dears. & B. 447. It is not necessary by the statute that the goods stolen should be the property of the master; the words of the statute are, belonging to, or in the possession of the master. A second count stating the goods "then being in the possession" of the master, may be added.

Evidence of acting in the capacity of an officer employed by the crown is sufficient to support an indictment; and the appointment need not be regularly proved: R. v. Townsend, Car. & M. 178; R. v. Borrett, 6 C. & P. 124; R. v. Roberts, 14 Cox, 101.

Upon the trial of any offence under this section, the jury, if the evidence warrants it may convict of an attempt to commit the same, under s. 711.

As to what is sufficient evidence of an attempt to steal: *see* R. v. Cheeseman, L. & C. 140.

On an indictment for larceny as servants the evidence showed that the complainant advanced money to the prisoners to buy rags, which they were to sell to the complainant at a certain price, their profit to consist in the difference between the rate they could buy the rags at, and this fixed price. The prisoners consumed the money in drinks and bought no rags. *Held*, no larceny: R. v. Charest, 9 L. N. 114; but now these same facts would constitute a theft under s. 305, *ante*.

It was the prisoner's duty as a country traveller to collect moneys and remit them at once to his employers. On the 18th of April he received money in county Y. On the 19th and 20th he wrote to his employers not mentioning that he had received the money; on the 21st, by another letter, he gave them to understand that he had not received the money. The letters were posted in county Y. and received in county M. *Held*, that the prisoner might be tried in county M. for the offence of embezzling the money: R. v. Rogers, 14 Cox, 22.

Embezzlement means the appropriation to his own use by a servant or clerk of money or chattels received by him for or on account of his master or employer. Embezzlement differs from larceny in this, that in the former the property misappropriated is not at the time in the actual or legal possession of the owner, whilst in the latter it is. The distinctions between larceny and embezzlement were often extremely nice and subtle and it was sometimes difficult to say under which head the offence ranged. But embezzlement and theft are now offences of the same nature.

Greaves says: "The words of the former enactment s-s. (*a*) were "shall *by virtue of such employment* receive

or take into his possession any chattel, etc., for, or in the name, or on the account of his master." In the present clause, the words "by virtue of such employment" are advisedly omitted in order to enlarge the enactment, and get rid of the decisions on the former enactment. The clause is so framed as to include every case where any chattel, etc., is delivered to, received or taken possession of by the clerk or servant, for *or* in the name *or* on account of the master. If therefore a man pay a servant money for his master the case will be within the statute, though it was neither his duty to receive it, nor had he authority to do so; and it is perfectly just that it should be so; for, if my servant receive a thing, which is delivered to him for me, his possession ought to be held to be my possession just as much as if it were in my house or in my cart. And the effect of this clause is to make the possession of the servant the possession of the master wherever any property comes into his possession within the terms of this clause, so as to make him guilty of embezzlement if he converts it to his own use. The cases of R. v. Snowley, 4 C. & P. 390; Crow's Case, 1 Lewin, 88; R. v. Thorley, 1 Moo. 343; R. v. Hawtin, 7 C. & P. 281; R. v. Mellish, R. & R. 80, and similar cases are consequently no authorities on this clause. It is clear that the omission of the words in question, and the change in the terms in this clause, render it no longer necessary to prove that the property was received by the defendant by virtue of his employment; in other words, that it is no longer necessary to prove that the defendant had authority to receive it. . . ." Greaves adds: 'Mr. Davis says "still it must be the master's money which is received by the servant, and not money wrongfully received by the servant by means of false pretenses or otherwise.' This is plainly incorrect. A.'s servant goes to B., who owes A. £10, and falsely states that A. has sent him for the money, whereupon B. pays him the money. This case is clearly within the clause; for the money is delivered to *and* received *and* taken into

possession by him for *and* in the name *and* on the account of his master, so that the case comes within every one of the categories of the clause, and if it came within any one it would suffice; in fact, no case can be put where property is delivered to a servant for his master that does not come within the clause, and it is perfectly immaterial what the moving cause of the delivery was": Greaves, Cons. Acts, 156.

The words "by virtue of his employment" are inserted in s-s. (c).

If the defendant has been guilty of other acts of stealing within the period of six months, the same not exceeding three in number, may be charged in the same indictment in separate counts, (s. 626), as follows: And the jurors aforesaid, do further present, that the said J. S., afterwards, and within six calendar months from the time of the committing of the said offence in the first count of this indictment charged and stated, to wit, on in the year aforesaid, being then employed as clerk to the said A. B., did then, and whilst he was so employed as last aforesaid, receive and take into his possession certain other money to a large amount, to wit, to the amount of for and in the name and on the account of the said A. B., his said master, and the said last mentioned money then, and within the said six calendar months, fraudulently and unlawfully did steal; and so the jurors aforesaid upon their oath aforesaid, do say, that the said J. S. then, in manner and form aforesaid, the said money, the property of the said A. B., his said master, from the said A. B., his said master, unlawfully did steal, *(and so on for a third count, if required.)*

The indictment must show *by express words* that the different sums were stolen within the six months: R. v. Noake, 2 C. & K. 620; R. v. Purchase, Car. & M. 617. It was the duty of the defendant, an agent and collector of a coal club, to receive payment, by small weekly instalments, and to send in weekly accounts on Tuesdays, and on each

Tuesday to pay the gross amount received into the bank to the credit of the club; the defendant was a shareholder and co-partner in the society, and indicted as such; the indictment charged him with three different acts of embezzlement during six months; each amount as charged was proved by the different payments of smaller sums, making altogether each amount charged; *held*, that the indictment might properly charge the embezzlement of a gross sum and be proved by evidence of smaller sums received at different times by the prisoner, and that it was not necessary to charge the embezzlement of each particular sum composing the gross sum, and that, although the evidence might show a large number of small sums embezzled, the prosecution was not to be confined to the proof of three of such small sums only: R. v. Balls, 12 Cox, 96; R. v. Furneaux, R. & R. 335; R. v. Flower, 8 D. & R. 512; R. v. Tyers, R. & R. 402, holding it necessary in all cases of embezzlement to state specifically in the indictment some article embezzled, are not now law. In case the indictment alleges the embezzlement of money such allegation, so far as regards the description of the property, is sustained by proof that the offender embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or by proof that he embezzled any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly; but an indictment for embezzling money is not proved by showing merely that the prisoner embezzled a cheque without evidence that the cheque had been converted into money: R. v. Keena, 11 Cox, 123. The indictment must allege the goods embezzled to be the property of the master: R. v. McGregor, 3 B. & P. 106, R. & R. 23; R. v. Beacall, 1 Moo. 15; and it has been said that it must show that the

defendant was servant at the time: R. v. Somerton, 7 B. & C. 463. *See*, however, R. v. Lovell, 2 M. & Rob. 236. It is not necessary to state from whom the money was received: R. v. Beacall, 1 Moo. 15, and *note* in R. v. Crighton, R. & R. 62. But the judge may order a particular of the charge to be furnished to the prisoner: R. v. Bootyman, 5 C. & P. 300; R. v. Hodgson, 8 C. & P. 422; s. 613, *post*.

A female servant is within the meaning of the Act: R. v. Smith, R. & R. 267; so is an apprentice though under age: R. v. Mellish, R. & R. 80; and any clerk or servant, whether to person in trade or otherwise: R. v. Squire, R. & R. 349; R. v. Townsend, 1 Den. 167; R. v. Adey, 1 Den. 571. A clerk of a savings bank, though elected by the managers, was held to be properly described as clerk to the trustees: R. v. Jenson, 1 Moo. 434. The mode by which the defendant is remunerated for his services is immaterial, and now, if he has a share or is a co-partner in the society whose monies or chattels he embezzled, he may be indicted as if he was not such shareholder or co-partner: R. v. Hartley, R. & R. 139; R v. Macdonald, L. & C. 85; R. v. Balls, 12 Cox, 96. So, where the defendant was employed as a traveller to take orders and collect money, was paid by a percentage upon the orders he got, paid his own expenses, did not live with the prosecutors, and was employed as a traveller by other persons also, he was holden to be a clerk of the prosecutors within the meaning of the Act: R. v. Carr, R. & R. 198; R. v. Hoggins, R. & R. 145; R. v. Tite, L. & C. 29, 8 Cox, 458. Where the prisoner was employed by the prosecutors as their agent for the sale of coals on commission, and to collect monies in connection with his orders, but he was at liberty to dispose of his time as he thought best, and to get or abstain from getting orders as he might choose, he was held not to be a clerk or servant within the statute: R. v. Bowers, 10 Cox, 250. In delivering judgment in that case, Erle, C.J., observed: "The cases have established that a clerk or servant must be under the orders of his master, or employed

to receive the monies of his employer, to be within the statute; but if a man be intrusted to get orders and to receive money, getting the orders where and when he chooses, and getting the money where and when he chooses, he is not a clerk or servant within the statute: *see* R. v. Walker, Dears. & R. 600; R. v. May, L. & C. 13; R. v. Hall, 13 Cox, 49. A person whose duty it is to obtain orders where and when he likes, and forward them to his principal for execution, and then has three months within which to collect the money for the goods sent, is not a clerk or servant; if such a person, at the request of his principal, collects a sum of money from a customer, with the obtaining of whose order he has had nothing to do, he is a mere volunteer, and is not liable to be prosecuted for embezzlement if he does not pay over or account for the money so received: R. v. Mayle, 11 Cox, 150. The prisoner was employed by a coal merchant under an agreement whereby "he was to receive one shilling per ton procuration fee, payable out of the first payment, four per cent. for collecting, and three pence on the last payment; collections to be paid on Friday evening before 5 p.m., or Saturday before 2 p.m." He received no salary, was not obliged to be at the office except on the Friday or Saturday to account for what he had received; he was at liberty to go where he pleased for orders: *Held*, that the prisoner was not a clerk or servant within the statute relating to embezzlement. R. v. Marshall, 11 Cox, 490. Prisoner was engaged by U., at weekly wages to manage a shop; U. then assigned all his estate and effects to R. and a notice was served on prisoner to act as the agent of R. in the management of the shop. For fourteen days afterwards R. received from U. the shop moneys. Then the shop money was taken by U. as before. Prisoner received his weekly wages from U. during the whole time. Some time after a composition deed was executed by R. and U. and U.'s creditors, by which R. reconveyed the estate and effects to U., but this deed was not registered until after the embezzlement charged against the

prisoner; *Held*, that prisoner was the servant of U. at the time of the embezzlement: R. v. Dixon, 11 Cox, 178. The prisoner agreed with the prosecutor, a manufacturer of earthenware, to act as his traveller, and "diligently employ himself in going from town to town, in England, Ireland and Scotland, and soliciting orders for the printed and decorated earthenware manufactured by the prosecutor, and that he would not, without the consent in writing of the prosecutor, take or execute any order for vending or disposing of any goods of the nature or kind aforesaid for or on account of himself or any other person." It was further agreed that the prisoner should be paid by commission, and should render weekly accounts. The prosecutor subsequently gave the prisoner written permission to take orders for two other manufacturers. The prisoner being indicted for embezzlement: *Held*, that he was a clerk or servant of the prosecutor within the meaning of the statute: R. v. Turner, 11 Cox, 551. Lush, J., in this case, said: "If a person says to another carrying on an independent trade, 'if you get any orders for me I will pay you a commission,' and that person receives money and applies it to his own use, he is not guilty of embezzlement, for he is not a *clerk* or *servant*; but if a man says; 'I employ you and will pay you, not by salary, but by commission,' the person employed is a servant. In the first case the person employing has no control over the person employed; in the second case the person employed is subject to the control of the employer. And on this, this case was distinguished from R. v. Bowers, and R. v. Marshall, *supra*. So, in R. v. Bailey, 12 Cox, 56, the prisoner was employed as traveller to solicit orders, and collect the moneys due on the execution of the orders, and to pay over moneys on the evening of the day when collected, or the day following. The prisoner had no salary but was paid by commission. The prisoner might get orders where and when he pleased within his district. He was to be exclusively in the employ of the prosecutors, and to give the whole of his time, the

whole of every day, to their service. *Held*, that the prisoner was a clerk and servant within the statute": *see* R. v. Foulkes, 13 Cox, 63.

A person engaged to solicit orders and paid by commission on the sums received, which sums he was forthwith to hand over to the prosecutors, was at liberty to apply for orders, when he thought most convenient, and was not to employ himself to any other person. *Held*, not a clerk or servant within the statute; the prisoner was not under the control and bound to obey the orders of the prosecutors: R. v. Negus, 12 Cox, 492, Warb. Lead. Cas. 185; R. v. Hall, 13 Cox, 49; R. v. Coley, 16 Cox, 226.

Prisoner was employed by O. to navigate a barge, and was entitled to half the earnings after deducting the expenses. His whole time was to be at O.'s service, and his duty was to account to O. on his return after every voyage. In October prisoner was sent with a barge load of bricks to London, and was there forbidden by O. to take manure for P. Notwithstanding this prisoner took the manure, and received £4 for the freight which he appropriated to his own use. It was not proved that he carried the manure or received the freight for his master, and the person who paid the £4 did not know for whom it was paid. *Held*, that the prisoner could not be convicted of embezzlement, as the money was not received by him in the name of or for, or on account of his master: R. v. Cullum, 12 Cox, 469; *see* R. v. Gale, 13 Cox, 340.

It is not necessary that the employment should be permanent; if it be only occasional it will be sufficient. Where the prosecutor having agreed to let the defendant carry out parcels when he had nothing else to do, for which the prosecutor was to pay him what he pleased, gave him an order to receive two pounds, which he received and embezzled, he was holden to be a servant within the meaning of the Act: R. v. Spencer, R. & R. 299; R. v. Smith, R. & R. 516. And in R. v. Hughes, 1 Moo. 370,

where a drover, who was employed to drive two cows to a purchaser and receive the purchase money, embezzled it, he was holden to be a servant within the meaning of the Act by the Judges; but the Judge presiding at the trial seemed to be of a contrary opinion, and R. v. Nettleton, 1 Moo. 259; R. v. Burton, 1 Moo. 237, appear to be adverse to R. v. Hughes: *see* R. v. Tongue, Bell 289; R. v. Hall, 1 Moo. 374; R. v. Miller, 2 Moo. 249; R. v. Proud, L. & C. 97, 9 Cox, 22. The treasurer of a friendly society, into whose hands the monies received on behalf of the society were to be paid, and who was to pay no money except by an order signed by the secretary and countersigned by the chairman or a trustee, and who by the statute was bound to render an account to the trustees, and to pay over the balance on such accounting when required, but was not paid for his services, is not a clerk or servant, and cannot be indicted for embezzlement of such balance: R. v. Tyrie, 11 Cox, 241. And before the statute making it larceny or embezzlement for a partner to steal or embezzle any of the co-partnership property, the secretary of a friendly society, and himself a member of it, could not be convicted on an indictment for embezzling the society's monies, laying the property in, and describing him as the servant of, A. B. (another member of the society) and others, because the "others" would have comprised himself, and so the indictment would in fact have charged him with embezzling his own money, as his own servant: R. v. Diprose, 11 Cox, 185; R. v. Taffs, 4 Cox, 169; R. v. Bren, L. & C. 346. But a stealing by a partner is now provided for by s. 311 *ante*.

The trustees of a benefit building society borrowed money for the purpose of their society on their individual responsibility; the money, on one occasion, was received by their secretary and embezzled by him: *Held*, that the secretary might be charged in the indictment for embezzlement of the property of W. and others, W. being one of the

trustees, and a member of the society; R. v. Redford, 11 Cox, 367. A person cannot be convicted of embezzlement as clerk or servant to a society which, in consequence of administering an unlawful oath to its members, is unlawful, and prohibited by law: R. v. Hunt, 8 C. & P. 642. But an unregistered friendly society or trades union may prosecute its servants for embezzlement of its property, though some of its rules may be void as being in restraint of trade, and contrary to public policy. Rules in a trades union or society imposing fines upon members for working beyond certain hours, or for applying for work at a firm where there is no vacancy, or for taking a person into a shop to learn weaving where no vacant loom exists, though void as being in restraint of trade, do not render the society criminally responsible: R. v. Stainer, 11 Cox, 483. If the clerk of several partners embezzle the private money of one of them it is an embezzlement within the Act, for he is a servant of each. So where a traveller is employed by several persons and paid wages, to receive money he is the individual servant of each: R. v. Carr, R. & R. 198; R. v. Batty, 2 Moo. 257. So a coachman, employed by one proprietor of a coach to drive a certain part of the journey, and to receive money and hand it over to him, may be charged with embezzling the money of that proprietor, though the money, when received, would belong to him and his partners: R. v. White, 2 Moo. 91.

In R. v. Glover, L. & C. 466, it was held that a county court bailiff, who has fraudulently misappropriated the proceeds of levies made under county court process, cannot be indicted for embezzling the monies of the high-bailiff, his master; these monies are not the property of the high-bailiff. A distraining broker employed exclusively by the prosecutor, and paid by a weekly salary and by a commission, is a servant within the statute: R. v. Flanagan, 10 Cox, 561.

Where the prisoner was charged with embezzlement, but his employer who made the engagement with him was

not called to prove the terms thereof, but only his managing clerk, who knew them through repute alone, having been informed of them by his employer, it was held that there was no evidence to go to the jury that the prisoner was servant to the prosecutor: R. v. Taylor, 10 Cox, 544.

Money received by the defendant from his master himself for the purpose of paying it to a third person, and appropriated by the defendant, is larceny: R. v. Peck, 2 Russ. 449; R. v. Smith, R. & R. 267; R. v. Hawkins, 1 Den. 584; R. v. Goodenough, Dears. 210.

In R. v. Grove, 1 Moo. 447, a majority of the Judges (eight against seven) are reported to have held that an indictment for embezzlement might be supported by proof of a general deficiency of monies that ought to be forthcoming, without showing any particular sum received and not accounted for. *See also*, R. v. Lambert, 2 Cox, 309; R. v. Moah, Dears. 626. But in R. v. Jones, 8 C. & P. 288, where, upon an indictment for embezzlement, it was opened that proof of a general deficiency in the prisoner's accounts would be given, but none of the appropriation of a specific sum, Anderson, B., said: "Whatever difference of opinion there might be in R. v. Grove, (*ubi supra*) that proceeded more upon the particular facts of that case than upon the law; it is not sufficient to prove at the trial a general deficiency in account; some specific sum must be proved to be embezzled, in like manner as in larceny some particular article must be proved to have been stolen. *See also*, R. v. Lister, Dears. & B. 118; R. v. Guelder, Bell, 284; Greave's note, 2 Russ. 455; R. v. Chapman, 1 C. & K. 119, 2 Russ. 460, and R. v. Wolstenholme, 11 Cox, 313; R. v. Balls, 12 Cox, 96.

On a trial for embezzlement, *held*, that evidence of a general deficiency having been given the conviction was right, though it was not proved that a particular sum coming from a particular person on a particular occasion, was embezzled by the prisoner: R. v. Glass, 1 L. N. 41; R. v. Slack, M. L. R. 7 Q. B. 408.

But a general deficiency alone is not sufficient to support an indictment for larceny: R. v. Glass M. L. R. 7 Q. B. 405. If it was sufficient before the Code to support an indictment for embezzlement, it would seem that it would be sufficient now to support an indictment for larceny.

A conductor of a tramway car was charged with embezzling three shillings. It was proved that on a certain journey there were fifteen threepenny fares, and twenty-five twopenny fares, and the conductor was seen to give tickets to each fare and to receive money from each, but what sum did not appear. He made out a way bill for the journey debiting himself with only nine threepenny fares and sixteen twopenny fares. The mode of accounting was to deliver the way bills for each journey to a clerk, and to hand in all the money received during each day on the following morning. The prisoner's money should have been £3 1s. 9d., according to his way bills for the day, but he paid in only £3 0s. 8d. *Held*, that there was sufficient evidence of the receipt of seven shillings and eleven pence, the total amount of fares of the particular journey, and of the embezzlement of three shillings, part thereof: R. v. King, 12 Cox, 73.

Where the indictment contains only one count, charging the receipt of a gross sum on a particular day, and it appears in evidence that the money was received in different sums on different days, the prosecutor will be put to his election, and must confine himself to one sum and one day: R. v. Williams, 6 C. & P. 626.

The prisoner, not having been in the employment of the prosecutor, was sent by him to one Milner with a horse as to which Milner and the prosecutor, who owned the horse, had had some negotiations, with an order to Milner to give the bearer a cheque if the horse suited. On account of a difference as to the price the horse was not taken and the prisoner brought him back. Afterwards the prisoner, with-

out any authority from the owner, took the horse to Milner and sold it as his own property, or professing to have a right to dispose of it, and received the money, giving a receipt in his own name.

Held, that a conviction for embezzlement could not be sustained as the prisoner, when he received the money, did not receive it as a servant or clerk but sold the horse as his own and received the money to his own use: R. v. Topple, 3 R. & C. (N. S.) 566.

PUNISHMENT UNDER SECTIONS 308, 309, 310.

320. Every one is guilty of an indictable offence and liable to *fourteen years'* imprisonment who steals anything by any act or omission amounting to theft under the provisions of sections three hundred and eight, three hundred and nine and three hundred and ten.

See ante, ss. 308, 309, 310, pp. 341 & 342.

PUBLIC SERVANTS REFUSING TO DELIVER UP BOOKS, ETC.

321. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, being employed in the service of Her Majesty or of the Government of Canada or the Government of any province of Canada, or of any municipality, and intrusted by virtue of such employment with the keeping, receipt, custody, management or control of any chattel, money, valuable security, book, paper, account or document, refuses or fails to deliver up the same to any one authorized to demand it. R. S. C. c. 164, s. 55. (*Amended*).

See s. 623 as to indictment. The repealed clause made this offence an embezzlement. The present one does not make it a theft. "Valuable security" defined, s. 3. A special enactment as to postmasters is contained in s. 101, c. 35, R. S. C.

Indictment.— that A. B. on at being employed in the service of the Government of Canada as a and intrusted by virtue of such employment with the books and papers of his office, did unlawfully refuse (*or fail*) to deliver up the said books and papers to C. D., then and there duly authorized to demand the said books and papers. It would seem that after an officer has ceased to be in the employment of Her Majesty, it might be contended that this section does not apply.

STEALING BY TENANTS AND LODGERS.

322. Every one who steals any chattel or fixture let to be used by him or her in or with any house or lodging is guilty of an indictable offence and liable to *two years'* imprisonment, and if the value of such chattel or fixture exceeds the sum of twenty-five dollars to *four* years' imprisonment. R. S. C. c. 164, s. 57. 24-25 V. c. 96, s. 74 (Imp.).

Fine, s. 958.

If the indictment be for stealing a chattel it may be, by s. 625 *post*, in the common form for larceny, and in case of stealing a fixture the indictment may be in the same form as if the offender were not a tenant or lodger, and the property may be laid either in the owner or person letting to hire.

There may be a conviction of an attempt to commit any offence mentioned in this section, upon a trial for that offence, s. 711, *post*.

By common law a lodger had a special property in the goods which were let with his lodgings; during the lease he, and not the landlord, had the possession; therefore the landlord could not maintain trespass for taking the goods; in consequence, the taking by the lodger was not felonious: Meere's Case, 2 Russ. 519; R. v. Belstead, R. & R. 411. Hence, the statutory enactments on the subject.

STEALING TESTAMENTARY INSTRUMENTS.

323. Every one is guilty of an indictable offence and liable to imprisonment for life who, either during the life of the testator or after his death, steals the whole or any part of a testamentary instrument, whether the same relates to real or personal property, or to both. R. S. C. c. 164, s. 14. 24-25 V. c. 96, s. 29 (Imp.).

"Testamentary instrument" defined, s. 3.

Indictment.— a certain will and testamentary instrument of one J. N. unlawfully did steal. (*Add counts varying description of the will, etc.*)

The cases of R. v. Skeen, Bell 97, and R. v. Strahan, 7 Cox, 85, are not now law: Greaves Cons. Acts, 126.

STEALING DOCUMENTS OF TITLE TO LANDS OR GOODS.

324. Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any document of title to lands *or goods*. R. S. C. c. 164, s. 13. 24-25 V. c. 96, s. 28 (Imp.).

See s. 3 for definitions of "title to lands or goods."

Fine, s. 958. The words in italics are new.

Indictment.— a certain document of title to lands, the property of J. N., being evidence of the title of the said J. N. to a certain real estate called in which said real estate the said J. N. then had and still hath an interest, unlawfully did steal.

STEALING JUDICIAL DOCUMENTS.

325. Every one is guilty of an indictable offence and liable to three years' imprisonment who steals the whole or any part of any record, writ, return, affirmation, recognizance, *cognovit actionem*, bill, petition, answer, decree, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or of any original document whatsoever of, or belonging to any court of justice, or relating to any cause or matter begun, depending or terminated in any such court, or of any original document in any wise 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 government or public office. R. S. C. c. 164, s. 15 (*Amended*). 24-25 V. c. 96, s. 30 (Imp.).

Indictment for stealing a record.— a certain judgment-roll of the Court of Our Lady the Queen, before the Queen herself, unlawfully did steal.

Stealing rolls of parchment will be larceny at common law, though they be the records of a court of justice, unless they concern the realty: R. v. Walker, 1 Moo. 155; but it is not so if they concern the realty: R. v. Westbeer, 1 Leach, 13.

A commission to settle the boundaries of a manor is an instrument concerning the realty, and not the subject of larceny at common law: R. v. Westbeer, *loc. cit.*

An indictment describing an offence within 32 & 33 V. c. 21, s. 18, as feloniously stealing an information taken in a police court, is sufficient after verdict: R. v. Mason, 22 U. C. C. P. 246.

The destroying, taking, concealing, etc., judicial documents is provided for by ss. 353 & 354, *post*.

STEALING POST LETTER BAGS, ETC.

326. Every one is guilty of an indictable offence and liable to imprisonment for life, or for any term not less than *three years* who steals—

(*a*) a post letter bag ; or

(*b*) a post letter from a post letter bag, or from any post office, or from any officer or person employed in any business of the post office of Canada, or from a mail ; or

(*c*) a post letter containing any chattel, money or valuable security ; or

(*d*) any chattel, money or valuable security from or out of a post letter. R. S. C. c. 35, ss. 79, 80 & 81. 7 Wm. IV. & 1 V. c. 36 (Imp.).

"Valuable security" defined, s. 3.

See s. 4, *ante*, as to meaning of words in enactments relating to post office, and s. 624, *post*, as to indictment.

Indictment.— that A. B., on unlawfully did steal one post letter, the property of the postmaster-general, from a post letter bag *(or from a post office) (or a post letter containing a sum of money) (or a sum of money out of a post letter).*

To unlawfully open a post letter bag is punishable by five years: ss. 82, 89, c. 35, R. S. C.; *see* R. v. Jones, 1 Den. 188; R. v. Pearce, 2 East P. C. 603; R. v. Poynton, L. & C. 247.

STEALING LETTERS, ETC.

327. Every one is guilty of an indictable offence and liable to imprisonment for any term not exceeding *seven* years, and not less than three years, who steals—

(*a*) any post letter, except as mentioned in paragraph (*b*) of section three hundred and twenty-six ;

(*b*) any parcel sent by parcel post, or any article contained in any such parcel ; or

(*c*) any key suited to any lock adopted for use by the Post Office Department, and in use on any Canada mail or mail bag. R. S. C. c. 35, ss. 79, 83 & 88.

See under preceding section.

STEALING OTHER MAILABLE MATTER.

328. Every one is guilty of an indictable offence and liable to five years' imprisonment who steals any printed vote or proceeding, newspaper, printed paper or book, packet or package of patterns or samples of merchandise or goods, or of seeds, cuttings, bulbs, roots, scions or grafts, or any post card or other mailable matter (not being a post letter) sent by mail. R. S. C. c. 35, s. 90.

Fine, s. 958 ; *see* remarks under s. 326, *ante*.

STEALING ELECTION DOCUMENTS.

329. Every one is guilty of an indictable offence and liable *to a fine in the discretion of the court, or* to seven years' imprisonment, *or to both fine and imprisonment* who steals, or unlawfully takes from any person having the lawful custody thereof, or from its lawful place of deposit for the time being, any writ of election, or any return to a writ of election, or any indenture, poll-book, voters' list, certificate, affidavit or report, ballot or any document or paper made, prepared or drawn out according to or for the requirements of any law in regard to *Dominion*, provincial, municipal or civic elections. R. S. C. c 8, s. 102; c. 164, s. 56.

The words in italics are new. S. 102, c. 8, R. S. C. is unrepealed. *See* under s. 551, *post*, a reference to the above section.

STEALING RAILWAY TICKETS, ETC.

330. Every one is guilty of an indictable offence and liable to *two* years' imprisonment who steals any tramway, railway or steamboat ticket, or any order or receipt for a passage on any railway or in any steamboat or other vessel. R. S. C. c. 164, s. 16.

Fine, s. 958.

STEALING CATTLE.

331. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any cattle. R. S. C. c. 164, ss. 7 & 8.

See ante, s. 3, for interpretation of the word *cattle*.

Indictment.— that J. S. on at one horse of the goods and chattels of J. N. unlawfully did steal. (*The indictment must give the animal one of the descriptions mentioned in the statute; otherwise the defendant can be punished as for simple larceny merely*): R. v. Beaney, R. & R. 416.

If a person go to an inn, and direct the ostler to bring out his horse, and point out the prosecutor's horse as his, and the ostler leads out the horse for the prisoner to mount, but, before the prisoner gets on the horse's back, the owner of the horse comes up and seizes him, the offence of horse-stealing is complete: R. v. Pitman, 2 C. & P. 423.

The prisoners enter another's stable at night, and take out his horses, and ride them 32 miles, and leave them at an inn, and are afterwards found pursuing their journey on foot. On a finding by the jury that the prisoners took the

horses merely with intent to ride and afterwards leave them, and not to return or make any further use of them, *held*, trespass and not larceny: R. v. Philipps, 2 East, P. C. 662. But now, it would be theft under s. 305, *ante*.

If a horse be purchased and delivered to the buyer, it is no felony though he immediately ride away with it without paying the purchase money: R. v. Harvey, 1 Leach, 467.

If a person stealing other property take a horse, not with intent to steal it, but only to get off more conveniently with the other property, such taking of the horse is not a felony: R. v. Crump, 1 C. & P. 658.

Obtaining a horse under the pretense of hiring it for a day, and immediately selling it, is a felony at common law if the jury find the hiring was *animo furandi*: R. v. Pear, 1 Leach, 212; R. v. Charlewood, 1 Leach, 409: *see* now s. 305, *ante*. It is larceny (at common law) for a person hired for the special purpose of driving sheep to a fair to convert them to his own use, the jury having found that he intended so to do at the time of receiving them from the owner: R. v. Stock, 1 Moo. 87; *see* now s. 305, *ante*. Where the defendant removed sheep from the fold into the open field, killed them, and took away the skins merely, the judges held that removing the sheep from the fold was a sufficient driving away to constitute larceny: R. v. Rawlins, 2 East P. C. 617.

Any variance between the indictment and the proof, in the description of the animal stolen, may be amended: s. 723, *post;* R. v. Gumble, 12 Cox, 248.

STEALING DOGS, BIRDS, ETC.

332. Every one is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty dollars over and above the value of the property stolen, or to one months' imprisonment with hard labour, who steals any dog, or any bird, beast or other animal ordinarily kept in a state of confinement or for any domestic purpose, *or for any lawful purpose of profit or advantage*.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable to three months' imprisonment with hard labour. R. S. C. c. 164, s. 9. 24-25 V. c. 96, ss. 18, 21 (Imp.).

The words in italics are not in the English Act.

For injuries to such animals, *see* s. 501, *post*.

KILLING PIGEONS, ETC.

333. Every one who unlawfully *and wilfully* kills, wounds or takes any house-dove or pigeon, under such circumstances as do not amount to theft, is guilty of an offence and liable, *upon complaint of the owner thereof*, on summary conviction, to a penalty not exceeding ten dollars over and above the value of the bird. R. S. C. c. 164, s. 10. 24-25 V. c. 96, s. 23 (Imp.).

The words in italics are new.

This clause does not extend to killing pigeons under a claim of right: Taylor v. Newman, 9 Cox, 314, 4 B. & S. 89; *see ante*, s. 304, and note.

This section is out of place. It ought to be under Part XXXVII. *post*.

STEALING OYSTERS.

334. Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals oysters or oyster brood.

2. Every one is guilty of an indictable offence and liable to three months imprisonment who unlawfully and wilfully uses any dredge or 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 are actually taken, or unlawfully and wilfully with any net, instrument or engine, drags upon the ground of any such fishery.

3. Nothing herein applies to any person fishing for or catching any swimming fish within the limits of any oyster fishery with any net, instrument or engine adapted for taking swimming fish only. R. S. C. c. 164, s. 11. 24-25 V. c. 96, s. 26 (Imp.).

See s. 304, s-s. 5, *ante*, and s. 619 (*e*), *post*.

Indictment for stealing oysters or oyster brood.—

from a certain oyster-bed called the property of J. N. and sufficiently marked out and known as the property of the said J. N., one thousand oysters unlawfully did steal.

Indictment for using a dredge in the oyster fishery of another.— within the limits of a certain oyster-bed called the property of J. N., and sufficiently marked out and known as the property of the said J. N., unlawfully

and wilfully did use a certain dredge for the purpose of then and there taking oysters.

In support of an indictment for stealing oysters in a tidal river it is sufficient to prove ownership by oral evidence as, for instance, that the prosecutor and his father for forty-five years had exercised the exclusive right of oyster fishing in the *locus in quo*, and that in 1846 an action had been brought to try the right, and the verdict given in favour of the prosecutor: R. v. Downing, 11 Cox, 580.

STEALING THINGS FIXED TO BUILDINGS

335. Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material, or of both, respectively 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. R. S. C. c. 164, s. 17.

The repealed section covered the "ripping, severing, cutting and breaking" of the things therein specified, as well as the stealing thereof.

At common law larceny could not be committed of things attached to the freehold. Hence, the necessity heretofore of such statutory enactments. But in this Code they are perfectly useless.

This part of the Commissioners' draft, recopied *verbatim* in this Code, well says Sir James Stephens, "is needlessly minute, and shows an undue anxiety to avoid changes in the existing law which might greatly simplify it": 3 Stephen's Hist. 167. It would have been better perhaps to leave out such a provision as this one contained in s. 335 than the one relating to the stealing of promissory notes and other valuable securities as has been done in s. 353, *post*.

This enactment extends the offence much further than the prior Acts did, as it includes all utensils and fixtures of whatever materials made, either fixed to buildings or in land, or in a square or street. A church, and indeed all

buildings are within the Act, and an indictment for stealing lead fixed to a certain building without further description will suffice: Greaves' note; R. v. Parker, 2 East P. C. 592; R. v. Norris, R. & R. 69. An unfinished building boarded on all sides, with a door and a lock, and a roof of loose gorse, was held a building within the statute: R. v. Worrall, 7 C. & P. 516. So also where the lead stolen formed the gutters of two sheds built of brick, timber and tiles upon a wharf fixed to the soil, it was held that this was a building within the Act: R. v. Rice, Bell, 87. But a plank used as a seat, and fixed on a wall with pillars, but with no roof, was held not to be a building: R. v. Reece, 2 Russ. 254. Where a man, having given a false representation of himself, got into possession of a house under a treaty for a lease of it, and then stripped it of the lead, the jury, being of opinion that he obtained possession of the house with intent to steal the lead, found him guilty, and he afterwards had judgment: R. v. Munday, 2 Leach, 850.

The prisoners were found guilty of having stolen a copper sun-dial fixed upon a wooden post in a churchyard. Conviction held right: R. v. Jones, Dears. & B. 555.

The ownership of the building from which the fixture is stolen must be correctly laid in the indictment: 2 Russ. 255. If necessary, it may now be amended at the trial, and if not laid in the indictment at all the omission will not vitiate it.

Indictment for stealing metal, etc.— two hundred pounds weight of iron, the property of J. N., then fixed in a certain land then being private property, to wit, in a garden of the said J. N., situate did unlawfully steal.

TREES, SAPLINGS, ETC.

336. Every one is guilty of an indictable offence and liable to *two* years' imprisonment who steals the whole or any part of any tree, sapling or shrub, or any underwood, the thing stolen being of the value of twenty-five dollars, or of the value of five dollars if the thing stolen grows in any park, pleasure

ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house. R. S. C. c. 164, s. 18. 24-25 V. c. 96, s. 32 (Imp.).

Fine, s. 958.

Injuring trees is provided for in s. 508, *post*.

The words "grounds adjoining" mean grounds in active contact with the dwelling-house. Whether the ground be a park or garden, etc., is a question for the jury. It seems it is not material that it should be in every part of it a park or garden: R. v. Hodges, M. & M. 341. The amount of injury mentioned in this and the following section must be the actual injury to the tree or shrub itself, and not the consequential injury resulting from the act of the defendant: R. v. Whiteman, Dears. 353. The respective values of several trees, or of the damage thereto, may be added to make up the twenty-five dollars, in case the trees were cut down, or the damage done as part of one continuous transaction: R. v. Shepherd, 11 Cox, 119.

Indictment for stealing trees, etc., in parks, etc., of a value above five dollars.— one oak tree of the value of eight dollars, the property of J. N., then growing in a certain park of the said J. N., situate in the said park, unlawfully did steal.

Indictment under first part of the section.— one ash tree of the value of thirty dollars, the property of J. N., then growing in a certain close of the said J. N., situate in the said close, unlawfully did steal.

It is not necessary to prove that the close was not a park or garden, etc.

STEALING SAPLINGS, SHRUBS, ETC.

337. Every one who steals the whole or any part of any tree, sapling or shrub, or any underwood, the value of the article stolen, or the amount of the damage done, being twenty-five cents at the least, is guilty of an offence and liable on summary conviction, to a penalty not exceeding twenty-five dollars over and above the value of the article stolen or the amount of the injury done.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable on summary conviction, to three months' imprisonment with hard labour.

3. Every one, who, having been twice convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence and liable to five years' imprisonment. R. S. C. c. 164, s. 19. 24-25 V. c. 96, s. 33 (Imp.).

Fine, under s-s. 3, s. 958.

Injuring trees, etc.: *see post*, s. 508, *et seq.*

Indictment under s-s. 3.— that J. S. on one oak sapling of the value of forty cents, the property of J. N., then growing in certain land situate unlawfully did steal, and the jurors aforesaid, do say, that heretofore, and before the committing of the offence herein before mentioned, to wit, on at the said J. S. was duly convicted before J. P., one of Her said Majesty's justices of her peace for the said district of for that he, the said J. S., on (*as in the first conviction*); and the said J. S. was thereupon then and there adjudged, for his said offence, to forfeit and pay the sum of twenty dollars, over and above the value of the said tree so stolen as aforesaid, and the further sum of forty cents, being the value of the said tree, and also to pay the further sum of for costs; and in default of immediate payment of the said sums, to be imprisoned in the common gaol of the said district of for the space of unless the said sums should be sooner paid. And the jurors aforesaid, do further say, that heretofore and before the committing of the offence first hereinbefore mentioned, to wit, on at the said J. S. was duly convicted before O. P., one of Her said Majesty's justices of the peace for the said district of for that he (*setting out the second conviction in the same manner as the first, and proceed thus*). And so, the jurors aforesaid, do say, that the said J. S., on the day and year first aforesaid, the said oak sapling of the value of forty cents, the property of the said J. N., then growing in the said land situate unlawfully did steal: Greaves on s. 116 of the *Larceny Act*, and 37 of the *Coin Act;* R. v. Martin, 11 Cox, 343; *see* s. 628 and s. 676, *post*, as to previous convictions.

TIMBER FOUND ADRIFT.

338. Every one is guilty of an indictable offence and liable to *three* years' imprisonment who—

(*a*) without the consent of the owner thereof :

(i) fraudulently takes, holds, keeps in his possession, collects, conceals, receives, appropriates, purchases, sells or causes or procures or assists to be taken possession of, collected, concealed, received, appropriated, purchased or sold, any timber, mast, spar, saw-log or other description of lumber which is found adrift in, or cast ashore on the bank or beach of, any river, stream or lake ;

(ii) wholly or partially defaces or adds, or causes or procures to be defaced or added, any mark or number on any such timber, mast, spar, saw-log or other description of lumber, or makes or causes or procures to be made any false or counterfeit mark on any such timber, mast, spar, saw-log or other description of lumber ; or

(*b*) refuses to deliver up to the proper owner thereof, or to the person in charge thereof, on behalf of such owner, or authorized by such owner to receive the same, any such timber, mast, spar, saw-log or other description of lumber. R. S. C. c. 164, s. 87.

Fine, s. 958.

See s. 572, *post*, as to search warrant, and s. 708, as to evidence.

STEALING FENCES, ETC.

339. Every one who steals 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, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article or articles so stolen or the amount of the injury done.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable, on summary conviction, to three months' imprisonment with hard labour. R. S. C. c. 164, s. 21. 24-25 V. c. 96, s. 34, (Imp.).

Injuring fences, etc.: *see* s. 507, *post*.

UNLAWFUL POSSESSION OF TREE, SAPLING, ETC.

340. Every one who, having in his possession or on his premises with his knowledge, the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile or gate, or any part thereof, of the value of twenty-five cents at the least, is taken or summoned before a justice of the peace, and does not satisfy such justice that he came lawfully by the same, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding ten dollars, over and above the value of the article so in his possession or on his premises. R. S. C. c. 164, s. 22.

"Having in possession" defined: s. 3.

This section does not apply to cord-wood: R. v. Caswell, 33 U. C. Q. B. 303.

PLANTS, ETC., IN GARDENS.

341. Every one who steals any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hot-house, green-house or conservatory is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars over and above the value of the article so stolen or the amount of the injury done, or to one month's imprisonment with or without hard labour.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is guilty of an indictable offence and liable to *three* years' imprisonment. R. S. C. c. 164, s. 23. 24-25 V. c. 96, s. 36 (Imp.).

Fine, s. 958; injuring plants, etc., s. 509, *post*.

The words *plant* and *vegetable production* do not apply to young fruit trees: R. v. Hodges, M. & M. 341. Stealing trees would fall under ss. 336 and 337.

Indictment under s-s. 2.— that J. S., on twenty pounds' weight of grapes, the property of J. N., then growing in a certain garden of the said J. N., situate unlawfully did steal; and the jurors aforesaid, do say that, heretofore, and before the committing of the offence hereinbefore mentioned, to wit, on at the said J. S., was duly convicted before J. P., one of Her Majesty's justices of the said district of for that he, the said J. S., on (*as in the previous conviction*) and the said J. S., was thereupon then and there adjudged for the said offence to forfeit and pay the sum of twenty dollars, over and above the value of the article so stolen as aforesaid, and the further sum of six shillings, being the amount of the said injury; and also to pay the sum of ten shillings for costs, and in default of immediate payment of the said sums, to be imprisoned in for the space of unless the said sum should be sooner paid, and so the jurors aforesaid, do say, that the said J. S., on the day and in the year first aforesaid, the said twenty pounds' weight of grapes, the property of the said J. N., then growing in the said garden of the said J. N., situate unlawfully did steal.

See ss. 628 and 676, *post*, as to previous convictions.

PLANTS ETC., NOT IN GARDENS.

342. Every one who steals any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground, or nursery ground, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding five dollars over and above the value of the article so stolen or the amount of the injury done, or to one months' imprisonment with hard labour.

2. Every one who, having been convicted of any such offence, afterwards commits any such offence is liable to three months' imprisonment with hard labour. R. S. C. c. 164, s. 24. 24-25 V. c. 96, s. 37 (Imp.).

Injuring roots, etc., s. 510, *post*.

Clover has been held to be a cultivated plant: R. v. Brumby, 3 C. & K. 315; but it was doubted whether grass were so: Morris v. Wise, 2 F. & F. 51.

STEALING ORE, MINERALS, ETC.

343. Every one is guilty of an indictable offence and liable to *two* years' imprisonment who steals the ore of any metal, or any quartz, lapis calaminaris, manganese, or mundic, or any piece of gold, silver or other metal, or any wad, black cawk, or black lead, or any coal, or cannel coal, *or any marble, stone or other mineral*, from any mine, bed or vein thereof respectively.

2. It is not an offence to take, for the purposes of exploration or scientific investigation, any specimen or specimens of any ore or mineral from any piece of ground uninclosed and not occupied or worked as a mine, quarry or digging.

R. S. C. c. 164, s. 25. 24-25 V. c. 96, s. 38 (Imp.).

Fine, s. 958.

See ss. 571, 621 & 707, which apply to this section.

Sections 312 and 354 provide for the concealing of gold and silver from a mine, or of anything that can be stolen.

The words "or any marble, stone, or other mineral" are not in the English Act.

R. v. Webb, 1 Moo. 431; R. v. Holloway, 1 Den. 370; R. v. Poole, Dears. & B. 345, would now fall under s. 354, *post*. It must be alleged and proved that the ore was stolen from the mine: R. v. Trevenner, 2 M. & Rob. 476.

Indictment.— twenty pounds' weight of copper ore, the property of J. N., from a certain mine of copper ore of the said J. N., situate unlawfully did steal.

STEALING FROM THE PERSON.

344. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals any chattel, money or valuable security from the person of another. R. S. C. c. 164, s. 32. 24-25 V. c. 96, s. 40 (Imp.).

"Valuable security" defined, s. 3; and *see* remarks under s. 358, *post*.

Indictment for stealing from the person.— one watch, one pocket-book and one pocket handkerchief of the goods and chattels of J. N., from the person of the said J. N., unlawfully did steal.

The words "from the person of the said J. N." constitute the characteristic of this offence, as distinguished from simple larceny; the absence of force, violence or fear distinguishes it from robbery.

The indictment need not negative the force or fear necessary to constitute robbery; and though it should appear upon the evidence that there was such force or fear, the punishment for stealing from the person may be inflicted: R. v. Robinson, R. & R. 321; R. v. Pearce, R. & R. 174.

To constitute a stealing from the person the thing taken must be completely removed from the person. Where it appeared that the prosecutor's pocket-book was in the inside front pocket of his coat, and the prosecutor felt a hand between his coat and waistcoat attempting to get the book out, and the prosecutor thrust his right hand down to his book, and on doing so brushed the prisoner's hand; the book was just lifted out of the pocket an inch above the top of the pocket, but returned immediately into the pocket; it was held by a majority of the judges that the prisoner was not rightly convicted of stealing from the person, because from first to last the book remained about the person of the prosecutor, but the judges all agreed that the simple larceny was complete. Of ten judges, four were of opinion that the stealing from the person was complete: R. v. Thompson, 1 Moo. 78.

Where the prosecutor carried his watch in his waistcoat pocket, fastened to a chain, which was passed through a button-hole of the waistcoat, and kept there by a watch-key at the other end of the chain; and the defendant took the watch out of the pocket, and forcibly drew the chain and key out of the button-hole, but the point of the key caught upon another button, and the defendant's hand being seized the watch remained there suspended, this was held a sufficient severance. The watch was no doubt temporarily, though but for a moment, in the possession of the prisoner: R. v. Simpson, Dears. 421. In this case Jervis, C.J., said he thought the minority of the judges in Thompson's case, *supra*, were right.

Where a man went to bed with a prostitute, leaving his watch in his hat, on the table, and the woman stole it whilst he was asleep, it was held not to be stealing from the person, but stealing in the dwelling-house: R. v. Hamilton, 8 C. & P. 49.

Upon the trial of any indictment for stealing from the person, if no asportation be proved the jury may convict the prisoner of an attempt to commit that offence, under s. 711.

In R. v. Collins, L. & C. 471, it was held that there can only be an attempt to commit an act, where there is such a beginning as if uninterrupted would end in the completion of the act, and that if a person puts his hand into a pocket with intent to steal, he cannot be found guilty of an attempt to steal, if there was nothing in the pocket. But that case is overruled: *see* s. 64, p. 42, *ante*, and cases cited.

STEALING IN A DWELLING-HOUSE.

345. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(*a*) steals in any dwelling-house any chattel, money or valuable security to the value in the whole of twenty-five dollars or more; or,

(*b*) steals any chattel, money or valuable security in any dwelling-house, and by any menace or threat puts any one therein in bodily fear. R. S. C. c. 164, ss. 45 & 46. 24-25 V. c. 96, ss. 60, 61 (Imp.).

As to the meaning of the words "valuable security": *see ante*, s. 3, and remarks under s. 353, *post*.

Indictment under (a).— one silver sugar basin, of the value of twenty-five dollars, of the goods and chattels of A. B., in the dwelling-house of the said A. B., situate unlawfully did steal.

If no larceny is proved the defendant must of course be acquitted altogether, except if the jury should find him guilty of the attempt to commit the offence *charged*, under s. 711, but the jury could not find him guilty of an attempt to commit a simple larceny: R. v. McPherson, Dears. & B. 197; but *see* now s. 713.

The word "*dwelling-house*" has the same meaning as in burglary. If the proof fails to prove the larceny to have been committed in a dwelling-house or in the dwelling-house described, or that the value of the things stolen at any one time amounts to twenty-five dollars, the defendant must be acquitted of the compound offence, and may be found guilty of the simple larceny only.

The goods must be stolen to the amount of twenty-five dollars or more at one and the same time: R. v. Petrie, 1 Leach, 294; R. v. Hamilton, 1 Leach, 348; 2 Russ. 85.

It has been held in several cases that, if a man steal the goods of another in his own house, R. v. Thompson, R. v. Gould, 1 Leach, 338, it is not within the statute, but these cases appear to be overruled by R. v. Bowden, 2 Moo. 285. Bowden was charged with having stolen Seagall's goods in his, Bowden's house, and having been found guilty the conviction was affirmed. Where a lodger invited an acquaintance to sleep at his lodgings, without the knowledge of his landlord, and, during the night, stole his watch from his bed's head, it was doubted at the trial whether the lodger was not to be considered as the owner of the house with respect to the prosecutor; but the judges held that the defendant was properly convicted of stealing in the dwelling-house of the landlord; the goods were under the protection

of the dwelling-house: R. v. Taylor, R. & R. 418. If the goods be under the protection of the *person* of the prosecutor, at the time they are stolen, the case will not be within the statute; as, for instance, where the defendant procured money to be delivered to him for a particular purpose and then ran away with it: R. v. Campbell, 2 Leach, 564; and so, where the prosecutor, by the trick of ring-dropping, was induced to lay down his money upon the table, and the defendant took it up and carried it away: R. v. Owen, 2 Leach, 572. For a case to be within the statute the goods must be under the protection of the house. But property left at a house for a person supposed to reside there will be under the protection of the house, within the statute. Two boxes belonging to A., who resided at 38 Rupert street, were delivered by a porter, whether by mistake or design did not appear, at No. 33 in the same street; the owner of the house imagining that they were for the defendant who lodged there delivered them to him; the defendant converted the contents of the boxes to his own use, and absconded; it was doubted at the trial whether the goods were sufficiently within the protection of the dwelling-house to bring the case within the statute, but the judges held that they were: R. v. Carroll, 1 Moo. 89. If one on going to bed put his clothes and money by the bedside these are under the protection of the dwelling-house and not of the person; and the question whether goods are under the protection of the dwelling-house, or in the personal care of the owner, is a question for the court, and not for the jury: R. v. Thomas, Carr. Supp. 3rd Ed. 295. So where a man went to bed with a prostitute, having put his watch in his hat on a table, and the woman stole the watch while he was asleep; this was held to be a stealing in a dwelling-house, and not a stealing from the person: R. v. Hamilton, 8 C. & P. 49. But if money be stolen from under the pillow of a person sleeping in a dwelling-house this is not stealing in the dwelling-house within the meaning of the Act: 2 Russ. 84. In ascertaining the value of the articles

stolen the jury may use that general knowledge which any man can bring to the subject, but if it depends on any particular knowledge of the trade by one of the jurymen this juryman must be sworn and examined as a witness: R. v. Rosser, 7 C. & P. 648. Under s-s. (*b*) the indictment must expressly allege that some person in the house was put in fear by the defendant: R. v. Etherington, 2 Leach, 671.

The observations, *post*, under the head "Burglary" upon questions which may arise as to what shall be deemed a dwelling-house, will apply to the offence under this clause: 2 Russ. 78.

The value, if amounting to twenty-five dollars, had better always be inserted, as then, if no menace or threat, or no person in the house being put in fear, are proved, the defendant may be convicted of stealing in the dwelling-house to the value of twenty-five dollars, under s-s. (*a*). If there is no proof of a larceny in a dwelling-house, or the dwelling house alleged, or if the goods stolen are not laid and proved to be of the value of twenty-five dollars, the defendant may still be convicted of simple larceny if the other aggravating circumstances are not proved.

The value is immaterial if some person was in the house at the time, and was put in bodily fear by a menace or threat of the defendant, which may either be by words or gesture: R. v. Jackson, 1 Leach, 267.

It is clear that no breaking of the house is necessary to constitute this offence; and it should seem that property might be considered as stolen in the dwelling-house, within the meaning of the statute, if a delivery of it out of the house should be obtained by threats, or an assault upon the house by which some persons therein should be put in fear. But questions of difficulty may perhaps arise as to the degree of fear which must be excited by the thief. Where, however, the prosecutor, in consequence of the threat of an armed mob, fetched provisions out of his house

and gave them to the mob, who stood outside the door, this was holden not to be a stealing in the dwelling house: R. v. Leonard, 2 Russ. 78. But Greaves adds: "It is submitted with all deference that this decision is erroneous; the law looks on an act done under the compulsion of terror as the act of the person causing that terror just as much as if he had done it actually with his own hands. Any asportation, therefore, of a chattel under the effects of terror is in contemplation of law the asportation of the party causing the terror": *Note* g, 2 Russ. *loc. cit.*

It does not appear to have been expressly decided under the repealed statute whether or not it was necessary to prove the actual sensation of fear felt by some person in the house, or whether fear was to be implied, if some person in the house were conscious of the fact at the time of the robbery. But it was suggested as the better opinion, and was said to have been the practice, that proof should be given of an actual fear excited by the fact, when committed out of the presence of the party, so as not to amount to a robbery at common law. And it was observed that where the fact was committed in the presence of the party, possibly it would depend upon the particular circumstances of the transaction whether fear would or would not be implied; but that clearly, if it should appear that the party in whose presence the property was taken was not conscious of the fact at the time, the case was not within that statute. But now, by the express words of the statute, the putting in fear must have been by an actual menace or threat: 2 Russ. 79; Archbold, 401.

A person outside a house may be a principal in the second degree to menaces used in the house; menaces used out of the house may be taken into consideration with menaces used in the house: R. v. Murphy, 6 Cox, 340.

Upon the trial of any offence mentioned in this section the jury may, under s. 711, convict of an attempt to commit such offence.

Indictment under (b).— one silver basin (*of the value of twenty-five dollars*) of the goods and chattels of J. N., in the dwelling house of the said J. N., situate unlawfully did steal; one A. B. then, to wit, at the time of the committing of the offence aforesaid being in the said dwelling-house, and therein by the said (*defendant*) by a certain menace and threat then used by the said (*defendant*) then being put in bodily fear. (As to value, *see ante* p. 387.)

STEALING BY PICKLOCKS, ETC. (*New*).

346. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who, by means of any picklock, false key or other instrument steals anything from any receptacle for property locked or otherwise secured.

This enactment is taken from the English draft code.

Indictment.— that A. B. on at unlawfully did steal by means of a picklock (*false key or other instrument*) the sum of *ten dollars*, of the goods and chattels of C. D., from a receptacle for property locked and secured.

STEALING IN MANUFACTORIES.

347. Every one is guilty of an indictable offence and liable to *five* years' imprisonment who steals, to the value of two dollars, any woollen, linen, hempen or cotton yarn, or any goods or articles of silk, woollen, linen, cotton, alpaca or mohair, or of any one or more of such materials mixed with each other or mixed with any other material, while laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place. R. S. C. c. 164, s. 47. 24-25 V. c. 96, s. 62 (Imp.).

Fine, s. 958. Injuring such goods, s. 499. *post*.

If you prove the larceny, but fail to prove the other circumstances so as to bring the case within the statute, the defendant may be found guilty of the simple larceny only.

Goods remain in "a stage, process or progress of manufacture," though the texture be complete, if they be not yet brought into a condition fit for sale: R. v. Woodhead, 1 M. & Rob. 549. *See* R. v. Hugill, 2 Russ. 517; R. v. Dixon, R. & R. 53.

Upon the trial of any offence mentioned in this section the jury may, under s. 711, convict the prisoner of an attempt to commit the same.

Indictment.— on thirty yards of linen cloth, of the value of four dollars, of the goods and chattels of J. N., in a certain building of the said J. N., situate unlawfully did steal, whilst the same were laid, placed and exposed in the same building, during a certain state, process and progress of manufacture. *(Other counts may be added, stating the particular process and progress of manufacture in which the goods were when stolen.)*

FRAUD IN DISPOSAL OF GOODS FOR MANUFACTURE.

348. Every one is guilty of an indictable offence and liable to *two* years' imprisonment, when the offence is not within the next preceding section, who, having been intrusted with, for the purpose of manufacture or for a special purpose connected with manufacture, or employed to make, any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax or silk, or any such materials mixed with one another, or having been so intrusted, as aforesaid, with any other article, materials, fabric or thing, or with any tools or apparatus for manufacturing the same, fraudulently disposes of the same or any part thereof. R. S. C. c. 164, s. 48. 6-7 V. c. 40, s. 2 (Imp.).

Fine, s. 958.

Indictment.— that A. B. on at having been intrusted with, for the purpose of manufacture, a large quantity of, to wit of felt, of the goods and chattels of C. D., fraudulently disposed of the same *(or any part thereof)*.

STEALING FROM SHIPS, WHARVES, ETC.

349. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who—

(*a*) 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

(*b*) steals any goods or merchandise from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek or basin. R. S. C. c. 164, s. 49. 24-25 V. c. 96, s. 63 (Imp.).

See sched. one, form F. F., under s. 611 *post*.

Indictment for stealing in a vessel on a navigable river.— on twenty pounds weight of indigo of the goods and merchandise of J. N., then being in a certain ship called the Rattler upon the navigable river Thames, in the said ship, unlawfully did steal.

Indictment for stealing from a dock.— on twenty pounds weight of indigo of the goods and merchandise of J. M., then being in and upon a certain dock adjacent to a certain navigable river called the Thames, from the said dock, unlawfully did steal.

The value is immaterial, and need not be laid. If the prosecutor fails to prove any of the circumstances necessary to bring the case within the statute, but proves a larceny, the defendant may be convicted of the simple larceny.

The construction of the old statutes was generally confined to such goods and merchandise as are usually lodged in ships, or on wharves or quays; and therefore where Grimes was indicted for stealing a considerable sum of money out of a ship in port, though great part of it consisted in Portugal money, not made current by proclamation, but commonly current, it was ruled not to be within the statute: R. v. Grimes, Fost. 79 : R. v. Leigh, 1 Leach, 52. The same may be said of the present statute, by reason of the substitution of the words "goods or merchandise" for the words "chattel, money or valuable security" which are used in other parts of the Act: Archbold.

It would not be sufficient, in an indictment for stealing goods from any vessel on a certain navigable river, to prove in evidence that the vessel was aground in a dock in a creek of the river, unless the indictment were amended: R. v. Pike, 1 Leach, 317. The words of the statute are "*in* any vessel," and it is therefore immaterial whether the defendant succeeded in taking the goods from the ship or not, if there was a sufficient asportation in the ship to constitute larceny: 3 Burn, 254.

The words of the statute are "from any dock," so that, upon an indictment for stealing from a dock, wharf, etc., a mere removal will not suffice; there must be an actual removal *from* the dock, etc: Archbold, 409.

A man cannot be guilty of this offence in his own ship: R. v. Madox, R. & R. 92; but *see* R. v. Bowden, 2 Moo. 285. And now, s. 305, *ante*, would apply to such a case, being stealing by fraudulent conversion.

The luggage of a passenger going by steamer is within the statute. The prisoners were indicted for stealing a portmanteau, two coats and various other articles, in a vessel upon the navigable River Thames. The property in question was the luggage of a passenger going on board the Columbian steamer from London to Hamburg; and it was held that the object of the statute was to protect things on board a ship, and that the luggage of a passenger came within the general description of goods: R. v. Wright, 7 C. & P. 159.

Upon an indictment for any offence mentioned in this section the jury may convict of an attempt to commit the same, under s. 711, if the evidence warrants it.

STEALING WRECKS.

350. Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals any wreck. R. S. C. c. 81, s. 36 (*c*). 24-25 V. c. 96, s. 64, (Imp.).

"Wreck" defined, s. 3.

Indictment.— that on at a certain ship, the property of a person or persons to the jurors unknown (*or of*) was stranded, and that A. B., on the said day, ten pieces of oak planks, being parts of the said ship (*or twenty pounds weight of cotton of the goods and merchandize of a shipwrecked person belonging to the said ship*), unlawfully did steal.

STEALING ON RAILWAYS. (*New*).

351. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who steals anything *in* or *from* any railway station or building, or *from* any engine, tender or vehicle of any kind on any railway.

Indictment.— that A. B., at on unlawfully did steal a leather portmanteau of the goods and chattels of C. D. in (*or from*) a railway station, to wit, the station there situate belonging to the Canadian Pacific Railway.

The value is immaterial. A verdict for attempt, s. 711, or for simple larceny, s. 713, may be given if the evidence warrants it. In the first case, the punishment would be under s. 528, *post:* in the latter case, under s. 356.

See remarks under s. 349 as to the words *in* or *from* in this section.

STEALING THINGS IN INDIAN GRAVE.

352. Every one who steals, or unlawfully injures or removes, any image, bones, article or thing deposited in or near any Indian grave is guilty of an offence and liable, on summary conviction, for a first offence to a penalty not exceeding one hundred dollars or to three months' imprisonment, and for a subsequent offence to the same penalty and to six months' imprisonment with hard labour. R. S. C. c. 164, s. 98. (*Amended*).

This enactment by the repealed statute applied only to British Columbia.

DESTROYING DOCUMENTS.

353. Every one who destroys, cancels, conceals or obliterates any document of title to *goods* or lands, or any valuable security, testamentary instrument, or judicial, official or other document, for any fraudulent purpose, is guilty of an indictable offence and liable to the same punishment as if he had stolen such document, security or instrument. R. S. C. c. 164, ss. 12, 13, 14. (*Amended*). 24-25 V. c. 96, ss. 27, 28, 29 (Imp.).

See ante remarks under s. 335. S. 101, c. 35, R. S. C., provides for certain offences of the same nature by postmasters.

"Document of title to goods or lands," "valuable security" and "testamentary instrument" defined, s. 3. Punishment, for stealing testamentary instruments, is provided for by s. 323; documents of title to lands or goods, by s. 324; and judicial or official document, by s. 325. For stealing other documents not specially provided for in this Code, and for promissory notes, bills of exchange, and other valuable securities, the punishment falls under

ss. 356 & 357. The repealed section (12, c. 164, R. S. C.) provided in express terms for the stealing of such securities, but the Code has no express provision on the subject. S. 303 is the only one under which the stealing of these securities may be held to be indictable: s. 353 merely assumes that they are.

As to what constitutes a "valuable security," it must be remarked that the interpretation given to this word, in s. 3, *ante*, is wider or, at least, more explicit than the interpretation given in the Imperial Act, 24 & 25 V. c. 96, s. 1. The case of Scott v. R., 2 S. C. R. 349, and (in first instance) 21 L. C. J. 225, refers to a number of cases as to unstamped documents, where stamps are necessary. R. v. Phipoe, 2 Leach, 673, and R. v. Edwards, 6 C. & P. 521, would now fall under s. 405, *post*. An instrument need not be negotiable to be a "valuable security" under the statute: R. v. John, 13 Cox, 100. *See* Austin and King's cases, 2 East P. C. 602; R. v. Hart, 6 C. & P. 106; R. v. Clark, R. & R. 181; R. v. Watts, 6 Cox, 304; R. v. Morton, 2 East P. C. 955; R. v. Dewitt, 21 N. B. 17; R. v. Bowerman, 17 Cox, 151, [1891] 1 Q. B. 112. The cheque of a firm before it is endorsed by the payee, and while still in the hands of one of the members of the firm, is not a valuable security within the meaning of this Act: R. v. Ford, M. L. R. 7 Q. B. 413; but a receipt is: R. v. Doonan, M. L. R. 6 Q. B. 186.

Indictment under s. 353.— on a certain valuable security, to wit, one bill of exchange for the payment of one hundred dollars (*drawn*) unlawfully did, for a fraudulent purpose, destroy and cancel (*conceal or obliterate*), the said bill of exchange, being then due and unsatisfied. (*In another count detail the purpose.*)

Upon an indictment for taking a record from its place of deposit, with a fraudulent purpose, the mere taking is evidence from which fraud may fairly be presumed, unless it be satisfactorily explained.

The first count charged the prisoner with stealing a certain process of a court of record, to wit, a certain warrant of execution issued out of the county court of Berkshire, in an action wherein one Arthur was plaintiff and the prisoner defendant. The second count stated that at the time of committing the offence hereinafter mentioned, one Brooker had the lawful custody of a certain process of a court of record, to wit, a warrant of execution out of the county court of that defendant intending to prevent the due course of law, and to deprive Arthur of the rights, benefits and advantages from the lawful execution of the warrant, did take from Brooker the said warrant, he, Brooker, having then the lawful custody of it. Brooker was the bailiff who had seized the defendant's goods, under the said writ of execution. The prisoner, a day or two afterwards, forcibly took the warrant out of the bailiff's hand, and kept it. He then ordered him away, as having no more authority, and, on his refusal to go, forcibly turned him out. The prisoner was found guilty, and the conviction affirmed upon a case reserved. Cockburn, C.J., said: "I think that the first count of the indictment which charges larceny will not hold. There was no taking *lucri causa*, but for the purpose of preventing the bailiff from having lawful possession. Neither was the taking *animo furandi*. I may illustrate it by the case of a man who, wishing to strike another person, sees him coming along with a stick in his hand, takes the stick out of his hand, and strikes him with it. That would be an assault, but not a felonious taking of the stick. There is, however, a second count in the indictment which charges in effect that the prisoner took the warrant for a fraudulent purpose. The facts show that the taking was for a fraudulent purpose. He took the warrant forcibly from the bailiff, in order that he might turn him out of possession. That was a fraud against the execution creditor, and was also contrary to the law. I am therefore of opinion that it amounts to a fraudulent purpose within the enactment, and that the

conviction must be affirmed": R. v. Bailey, 12 Cox, 129. Such a case would now fall under next section.

Maliciously destroying an information or record of the police court is a felony within 32 & 33 V. c. 21, s. 18; R. v. Mason, 22 U. C. C. P. 246.

CONCEALING. (*New*).

354. Every one is guilty of an indictable offence and liable to two years' imprisonment who, for any fraudulent purpose, takes, obtains, removes or conceals anything capable of being stolen.

Fine, s. 958. *See* remarks and cases under ss. 343 and 353, *ante*. S. 26, c. 164, R. S. C. was confined to the concealing of minerals.

Indictment.— on did unlawfully take (*or obtain, remove or conceal*) ten bushels of oats, the property of of the value of five dollars, for a fraudulent purpose, to wit, for the purpose of .

BRINGING BY THIEF INTO CANADA OF ANYTHING STOLEN ELSEWHERE.

355. Every one is guilty of an indictable offence and liable to *seven* years' imprisonment who, *having obtained elsewhere than* in Canada any property by any act which, if done in Canada, would have amounted to *theft*, *brings* such property into *or has the same in Canada*. R. S. C. c. 164, s. 88. (*Amended*).

"Property" defined, s. 3: *see* R. v. Hennessey, 35 U. C. Q. B. 608.

The repealed section extended to property obtained by false pretenses. There is no statutory enactment of this kind in England: R. v. Prowes, 1 Moo. 349; R. v. Debruiel, 11 Cox, 207. One was proposed in the draft code.

Receiving in Canada property stolen abroad by any other person does not fall under the above clause. It falls under s. 314, *ante*.

On a charge of having in possession goods stolen in a foreign country not always necessary to prove state of the law in that country. Crown proved that prisoner had in Canada property taken in another country under circumstances which would have made it felony in Canada if so

taken there. Offence held proved. Allegation in indictment that prisoner "feloniously had taken and carried away," the goods does not impose any additional burden of proof on the Crown: R. v. Jewell, 6 Man. L. R. 460.

PUNISHMENT IN OTHER CASES.

356. Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything for the stealing of which no punishment is otherwise provided, *or commits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same.*

2. The offender is liable to ten years' imprisonment if he has been previously convicted of *theft*. R. S. C. c. 164, ss. 5, 6 & 85. (*Amended*).

As to previous convictions, *see* ss. 628, 676. The words "any felony" stood in lieu of the word "theft" in the repealed clause. The words in italics are superfluous.

PUNISHMENT WHEN VALUE EXCEEDS $200.

357. If the value of anything stolen, or in respect of which any offence is committed for which the offender is liable to the same punishment as if he had stolen it, exceeds the sum of two hundred dollars, the offender is liable to *two* years' imprisonment, in addition to any punishment to which he is otherwise liable for such offence. R. S. C. c. 164, s. 86. (*Amended*).

The indictment must specially aver that the value exceeds two hundred dollars. The additional punishment was seven years by the repealed clause, which also applied to obtaining by false pretenses.

PART XXVII.

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

DEFINITION.

358. A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

2. Exaggerated commendation or depreciation of the quality of anything is not a false pretense, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

3. It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact.

This definition is taken from the English draft, where it is given as existing law.

PUNISHMENT.

359. Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud, by any false pretense, *either directly or through the medium of any contract obtained by such false pretense, obtains anything capable of being stolen*, or procures anything capable of being stolen to be delivered to any other person than himself. R. S. C. c. 164, s. 77. (*Amended*).

As to what things are capable of being stolen, *see* remarks under s. 353, *ante*.

The first part of this section is based on 24 & 25 V. c. 96, s. 88, the second part on s. 89 of the Imperial Act.

Section 198 of the Procedure Act, which allowed a conviction for obtaining under false pretenses on a trial for larceny, and s. 196 of the same Act which enacted that on a trial for obtaining under false pretenses, if a larceny was proved the defendant could nevertheless be found guilty of the offence charged, have not been re-enacted: 3 Stephen's Hist. 162; R. v. Adams, 1 Den. 38; R. v. Rudge, 13 Cox, 17; R. v. Bryan, 2 Russ. 664, *note*; R. v. Solomons, 17 Cox, 93; R. v. Gorbutt, Dears. & B. 166.

By s. 711, upon an indictment under this section, the jury may return a verdict of guilty of an attempt to commit the offence charged, if the evidence warrants it: R. v. Roebuck, Dears. & B. 24; R. v. Eagleton, Dears. 376, 515; R. v. Hensler, 11 Cox, 570; R. v. Goff, 9 U. C. C. P. 438.

By ss. 613 and 616 *post*, in indictments for obtaining or attempting to obtain under false pretenses, a general intent to defraud is a sufficient allegation, and it is not necessary to allege any ownership of the chattel, money or valuable security.

To constitute the offence of obtaining goods by false pretenses three elements are necessary. 1st, the statement upon which the goods are obtained must be untrue; 2nd, the prisoner must have known at the time he made the statement that it was untrue; 3rd, the goods must have been obtained by reason and on the representation of that false statement: R. v. Burton, 16 Cox, 62; *see* R. v. Buckmaster and R. v. Solomons, Warb. Lead. Cas. 158, 160; R. v. Russett, 17 Cox, 534.

The distinction between larceny and false pretenses is that, if by means of any trick or artifice the owner of property is induced to part with the possession only, still meaning to retain the right of property, the taking by such means will amount to larceny; but if the owner part with not only the possession of the goods, but the right of property in them also, the offence of the party obtaining them will not be larceny, but the offence of obtaining goods by false pretenses.

Indictment.— that J. S., on unlawfully, and with a fraudulent intent, did falsely pretend to one A. B. that he, the said J. S., then was the servant of one O. K., of tailor, (*the said O. K. then and long before being well known to the said A. B., and a customer of the said A. B. in his business and way of trade as a woollen draper*), and that he, the said J. S., was then sent by the said O. K. to the said A. B. for five yards of superfine woollen cloth, by means of which said false pretenses, the said J. S. did then unlawfully and fraudulently obtain from the said A. B. five yards of superfine woollen cloth.

A form is given in schedule one, F. F.: *see* under s. 611. Under s. 982, an indictment drawn upon that form is sufficient. But, to avoid the necessity of giving particulars, which the court will not refuse to the defendant, ss. 616, 617, the false pretenses should be averred in the indictment. It is not necessary, however, as heretofore, to aver that the *false pretenses were not true.*

The pretense must be set out in the indictment: R. v. Mason, 2 T. R. 581; R. v. Goldsmith, 12 Cox, 479; *see* now s. 616, *post*. And it must be stated to be false: R. v. Airey, 2 East, 30. And it must be of some existing fact; a pretense that the defendant will do some act, or that he has got to do some act is not sufficient: R. v. Goodhall, R. & R. 461; R. v. Johnston, 2 Moo. 254; R. v. Lee, L. & C. 309. Where the pretense is partly a misrepresentation of an existing fact, and partly a promise to do some act, the defendant may be convicted, if the property is parted with in consequence of the misrepresentation of fact, although the promise also acted upon the prosecutor's mind: R. v. Fry, Dears. & B. 449; R. v. West, Dears. & B. 575; R. v. Jennison, L. & C. 157, Warb. Lead. Cas. 167.

Where the pretense, gathered from all the circumstances, was that the prisoner had power to bring back the husband of the prosecutrix, though the words used were merely promissory that she, the prisoner, would bring him back, it was held a sufficient pretense of an existing fact, and that it is not necessary that the false pretense should be made in express words, if it can be inferred from all the circumstances attending the obtaining of the property: R. v. Giles, L. & C. 502.

Where the indictment alleged that the prisoner pretended to A.'s representative that she was to give him twenty shillings for B., and that A. was going to allow B. ten shillings a week, it was held that it did not sufficiently appear that there was any false pretense of an existing fact: R. v. Henshaw, L. & C. 444.

An indictment alleged that the prisoner obtained a coat by falsely pretending that a bill of parcels of a coat, value £0 14s. 6d. of which £0 4s. 6d. had been paid on account, and £0 10s. 0d. only was due, was a bill of parcels of another coat of the value of twenty-two shillings. The evidence was that the prisoner's wife had selected the £0 14s. 6d. coat for him, subject to its fitting him, and had paid

£0 4s. 6d. account, for which she on received a bill of parcels giving credit for that amount. On trying on the coat it was found to be too small, and the prisoner was then measured for one to cost twenty-two shillings. When that was made it was tried on by the prosecutor, who was not privy to the former part of the transaction. The prisoner when the coat was given to him handed the bill of parcels for the £0 14s. 6d. and also £0 10s. 0d. to the prosecutor, saying "There is £0 10s. 0d. to pay." The bill was receipted, and the prisoner took the twenty-two shillings coat away with him. The prosecutor stated that believing the bill of parcels to refer to the twenty-two shillings coat he parted with that coat on payment of £0 10s. 0d. otherwise he should not have done so: *Held*, that there was evidence to support a conviction on the indictment: R. v. Steels, 11 Cox, 5.

So the defendant may be convicted although the pretense is of some existing fact, the falsehood of which might have been ascertained by inquiry by the party defrauded: R. v. Wickham, 10 A. & E. 34; R. v. Woolley, 1 Den. 559; R. v. Ball, C. & M. 249; R. v. Roebuck, Dears. & B. 24; or against which common prudence might have guarded: R. v. Young, 3 T. R. 98; R. v. Jessop, Dears. & B. 442; R. v. Hughes, 1 F. & F. 355. If, however, the prosecutor knows the pretense to be false: R. v. Mills, Dears. & B. 205; or does not part with the goods in consequence of defendant's representation: R. v. Roebuck, Dears. & B. 24; or parts with them before the representation is made: R. v. Brooks, 1 F. & F. 502; or in consequence of a representation as to some future fact: R. v. Dale, 7 C. & P. 352; or if the obtaining of the goods is too remotely connected with the false pretense, which is a question for the jury: R. v. Gardner, Dears. & B. 40; R. v. Martin, 10 Cox, 383, Warb. Lead. Cas. 173; or if the prosecutor continues to be interested in the money alleged to have been obtained, as partner with the defendant, R. v. Watson, Dears. & B. 348; R. v. Evans, L. & C. 252; or the object of the false pretense

is something else than the obtaining of the money: R. v. Stone, 1 F. & F. 311, the defendant cannot be convicted.

Falsely pretending that he has bought goods to a certain amount, and presenting a check-ticket for them: R. v. Barnes, 2 Den. 59; or overstating a sum due for dock dues or custom duties: R. v. Thompson, L. & C. 233; will render the prisoner liable to be convicted under the statute (*See* reporter's note to this last case.)

The pretense need not be in words but may consist of the acts and conduct of the defendant. Thus the giving a cheque on a banker with whom the defendant has no account: R. v. Flint, R. & R. 460; R. v. Jackson, 3 Camp. 370; R. v. Parker, 2 Moo. 1; R. v. Spencer, 3 C. & P. 420; R. v. Wickman, 10 A. & E. 34; R. v. Philpotts, 1 C. & K. 112; R. v. Freeth, R. & R. 127; or the fraudulently assuming the name of another to whom money is payable: R. v. Story, R. & R. 81; R. v. Jones, 1 Den. 551; or the fraudulently assuming the dress of a member of one of the universities, is a false pretense within the statute: R. v. Barnard, 7 C. & P. 784, Warb. Lead. Cas. 162.

The prisoner obtained a sum of money from the prosecutor by pretending that he carried on an extensive business as an auctioneer and house agent, and that he wanted a clerk, and that the money was to be deposited as security for the prosecutor's honesty as such clerk. The jury found that the prisoner was not carrying on that business at all. *Held*, that this was an indictable false pretense: R. v. Crab, 11 Cox, 85; R. v. Cooper, 13 Cox, 617.

The defendant, knowing that some old country bank notes had been taken by his uncle forty years before, and that the bank had stopped payment, gave them to a man to pass, telling him to say, if asked about them, that he had taken them from a man he did not know. The man passed the notes, and the defendant obtained value for them. It appears that the bankers were made bankrupt. *Held*, that the defendant was guilty of obtaining money by

false pretenses, and that the bankruptcy proceedings need not be proved: R. v. Dowey, 11 Cox, 115.

The indictment alleged that the prisoner was living apart from her husband under a deed of separation, and was in receipt of an income from her husband, and that he was not to be liable for her debts, yet that she falsely pretended to the prosecutor that she was living with her husband, and was authorized to apply for and receive from the prosecutor goods on the account and credit of her husband, and that her husband was then ready and willing to pay for the goods. The evidence at the trial was that the prisoner went to the prosecutor's shop and selected the goods, and said that her husband would give a cheque for them as soon as they were delivered, and that she would send the person bringing the goods to her husband's office, and that he would give a cheque. When all the goods were delivered the prisoner told the man who delivered them to go to her husband's office, and that he would pay for them. The man went but could not see her husband, and ascertained that there was a deed of separation between the prisoner and her husband, which was shown to him. He communicated what he had learned to the prisoner who denied the deed of separation. The goods were shortly after removed and pawned by the prisoner. The deed of separation between the prisoner and her husband was put in evidence, by which it was stipulated that the husband was not to pay her debts; and it was proved that she was living apart from her husband, and receiving an annuity from him, and that she was also cohabiting with another man. *Held*, that the false pretenses charged were sufficiently proved by this evidence: R. v. Davis, 11 Cox, 181.

On an indictment for fraudulently obtaining goods in a market by falsely pretending that a room had been taken at which to pay the market people for their goods, the jury found that the well known practice was for buyers to

engage a room at a public house, and that the prisoner, pretending to be a buyer, conveyed to the minds of the market people that she had engaged such a room, and that they parted with their goods on such belief: *Held*, there being no evidence that the prisoner knew of such a practice, and the case being consistent with a promise only on her part to engage such a room and pay for the goods there, the conviction could not be sustained: R. v. Burrows, 11 Cox, 258.

On the trial of an indictment against the prisoner for pretending that his goods were unencumbered, and obtaining thereby eight pounds from the prosecutor with intent to defraud, it appeared that the prosecutor lent money to the prisoner at interest, on the security of a bill of sale on furniture, a promissory note of prisoner and another person and a declaration made by prisoner that the furniture was unencumbered. The declaration was untrue at the time it was handed to the prosecutor, the prisoner having a few hours before given a bill of sale for the furniture to another person, but not to its full value: *Held*, that there was evidence to go to the jury in support of a charge of obtaining money by false pretenses: R. v. Meakin, 11 Cox, 270.

A false representation as to the value of a business will not sustain an indictment for obtaining money by false pretenses. On an indictment for obtaining money by false pretenses it appeared that the prisoner, on engaging an assistant from whom he received a deposit, represented to him that he was doing a good business, and that he had sold a good business for a certain large sum, whereas the business was worthless and he had been bankrupt: *Held*, that the indictment could not be sustained upon either of the representations: R. v. Williamson, 11 Cox, 328.

It has been seen, *ante*, that in R. v. Mills, Dears. & B. 205, Warb. Lead. Cas. 172, it was held that the defendant cannot be convicted if the prosecutor knows the pretense

to be false. The defendant, however, in such cases may, under s. 711, *post*, be found guilty of an attempt to commit the offence charged, or be, in the first instance, indicted for the attempt. In R. v. Hensler, 11 Cox, 570, the prisoner was indicted for attempting to obtain money by false pretenses in a begging letter. In reply to the letter the prosecutor sent the prisoner five shillings; but he stated in his evidence at the trial that he knew that the statements contained in the letter were untrue; it was held, upon a case reserved that the prisoner might be convicted, on this evidence, of attempting to obtain money by false pretenses. But an indictment for an attempt to obtain property by false pretenses must specify the attempt: R. v. Marsh, 1 Den. 505. The proper course is to allege the false pretenses, and to deny their truth in the same manner as in an indictment for obtaining property by false pretenses, and then to allege that by means of the false pretenses the prisoner attempted to obtain the property; *note* by Greaves, 2 Russ. 698.

An indictment charged that the prisoner falsely pretended that he had got a carriage and pair, and expected it down to T. that day or the next, and that he had a large property abroad. The evidence was that the prisoner was at E., assuming to be a man of position and wealth, but was in a destitute condition, and could not pay his hotel and other bills. That three days after he came to T., and induced prosecutor to part with goods on the representation that he had just come from abroad and had shipped a large quantity of wine to R., from England, and expected his carriage and pair to come down, and that he had taken a large house at T., and was going to furnish it: *Held*, that the false pretenses charged were sufficient in point of law, and also that the evidence was sufficient to sustain a conviction: R. v. Howarth, 11 Cox, 588.

Prisoner was indicted for obtaining from George Hislop, the master of the workhouse of the Strand Union, one pint

of milk and one egg, by falsely pretending that a certain child then brought by him had been by him found in Leicester Square, whereas these facts were untrue. The facts were that the prisoner was waiter at an hotel in George Street, Hanover Square. A female servant there, named Spires, had been delivered of a child by him, which was put out to nurse. The child falling ill the nurse brought it to the hotel, and the prisoner, saying that he would find another nurse, took the woman with him to Westminster, where the nurse put the child into his arms and went away. He took it to the work-house of St. Martin-in-the-Fields, which is in the Strand Union, and delivered it to the Master, stating that he had found it in Leicester Square. It was by the master delivered to the nurse to be taken care of, and the nurse fed it with the pint of milk and egg which was the subject of the charge of the indictment as the property obtained by the false pretenses alleged: *Held*, that this evidence did not sustain the indictment, and that the food given to the child was too remote an object: R. v. Carpenter, 11 Cox, 600.

In R. v. Walne, 11 Cox, 647, the conviction was also quashed on the deficiency of the evidence, as no false pretense of an existing fact was proved: *see* R. v. Speed, 15 Cox, 24.

Prisoner by falsely pretending to a liveryman that he was sent by another person to hire a horse for him for a drive to E., obtained the horse. The prisoner returned in the same evening but did not pay for the hire: *Held*, that this was not an obtaining of a chattel with intent to defraud within the meaning of the statute. To constitute such an offence, there must be an intention to deprive the owner of the property: R. v. Kilham, 11 Cox, 561, Warb. Lead. Cas. 175. It may, perhaps, be stealing now in Canada.

There may be a false pretense made in the course of a contract, by which money is obtained under the contract: R. v. Kenrick, D. & M. 208; R. v. Abbott, 2 Cox, 430;

R. v. Burgon, Dears. & B. 11; as to weight or quantity of goods sold when sold by weight or quantity: R. v. Sherwood, Dears. & B. 251; R. v. Ragg, Bell, 214; R. v. Goss, Bell, 208; R. v. Lees, L. & C. 418; R. v. Ridgway, 3 F. & F. 838; but, in all such cases, there must be a misrepresentation of a definite fact.

But "puffing" or a mere false representation as to quality is not indictable: R. v. Bryan, Dears. & B. 265, and the comments upon it by the judges, in Ragg's case, Bell, 214; R. v. Pratt, 8 Cox, 334; *see* R. v. Foster, 13 Cox, 393. Thus representing a chain to be gold, which turns out to be made of brass, silver and gold, the latter very minute in quantity, is not within the statute: R. v. Lee, 8 Cox, 233; *sed quære?* And *see* Greaves' observations, 2 Russ. 664, and R. v. Suter, 10 Cox, 577; and cases collected in R. v. Bryan, Warb. Lead. Cas. 170.

It is not a false pretense, within the statute, that more money is due for executing certain work than is actually due, for that is a mere wrongful overcharge: R. v. Oates, Dears. 459. So, where the defendant pretended to a parish officer, as an excuse for not working, that he had no clothes, and thereby obtained some from the officer, it was held that he was not indictable, the statement being rather a false excuse for not working than a false pretense to obtain goods: R. v. Wakeling, R. & R. 504.

Where the prisoner pretended, first, that he was a single man, and next, that he had a right to bring an action for breach of promise, and the prosecutrix said that she was induced to pay him money by the threat of the action, but she would not have paid it had she known the defendant to be a married man, it was held that either of these two false pretenses was sufficient to bring the case within the statute: R. v. Copeland, Car. & M. 516.

Where the prisoner represented that he was connected with J. S., and that J. S. was a very rich man, and obtained goods by that false representation, it was held within the

statute: R. v. Archer, Dears. 449. Obtaining by falsely pretending to be a medical man or an attorney is within the statute: R. v. Bloomfield, Car. & M. 537; R. v. Asterley, 7 C. & P. 191.

It is no objection that the moneys have been obtained only by way of a loan: R. v. Crossley, 2 M. & Rob. 17; 2 Russ. 668, and R. v. Kilham, 11 Cox, 561.

Obtaining goods by false pretenses intending to pay for them is within the statute: R. v. Naylor, 10 Cox, 149, Warb. Lead. Cas. 169.

It must be alleged and proved that the defendant knew the pretense to be false at the time of making it: R. v. Henderson, 2 Moo. 192; R. v. Philpotts, 1 C. & K. 112; R. v. Gray, 17 Cox, 299. After verdict, however, an indictment following the words of the statute is sufficient: R. v. Bowen, 3 Cox, 483; Hamilton v. R. in error, 2 Cox, 11. It is no defence that the prosecutor laid a trap to draw the prisoner into the commission of the offence: R. v Adamson, 2 Moo. 286; R. v. Ady, 7 C. & P. 140.

Upon a charge of obtaining money by false pretenses it is sufficient if the actual substantial pretense, which is the main inducement to part with the money, is alleged in the indictment, and proved, although it may be shewn by evidence that other matters not laid in the indictment in some measure operated upon the mind of the prosecutor as an inducement for him to part with his money: R. v. Hewgill, Dears. 315. The indictment must negative the pretenses by special averment, and the false pretense must be proved as laid. Any variance will be fatal, unless amended: 3 Burn, 277. But proof of part of the pretense, and that the money was obtained by such proof is sufficient: R. v. Hill, R. & R. 190; R. v. Wickham, 10 A. & E. 34; R. v. Bates, 3 Cox, 201; *see* s. 616 and form F. F., sched. one, under s. 611.

But the goods must be obtained by means of some of the pretenses laid: R. v. Hunt, 8 Cox, 495; R. v. Jones, 15

Cox, 475. And where the indictment alleged a pretense which in fact the prisoner did at first pretend, but the prosecutor parted with his property in consequence of a subsequent pretense, which was not alleged, it was held that the evidence did not support the indictment: R. v. Bulmer, L. & C. 476.

Where money is obtained by the joint effect of several mis-statements, some of which are not and some are false pretenses within the statute, the defendant may be convicted: R. v. Jennison, L. & C. 157; but the property must be obtained by means of one of the false pretenses charged, and a subsequent pretense will not support the indictment: R. v. Brooks, 1 F. & F. 502; *see* R. v. Lince, 12 Cox, 451.

Parol evidence of the false pretense may be given, although a deed between the parties, stating a different consideration for parting with the money, is produced, such deed having been made for the purpose of the fraud: R. v. Adamson, 2 Moo. 286. So also parol evidence of a lost written pretense may be given: R. v. Chadwick, 6 C. & P. 181. On an indictment for obtaining money from A., evidence that the prisoner about the same time obtained money from other persons by similar false pretenses is not admissible: R. v. Holt, 8 Cox, 411, Bell, 280. But other false pretenses at other times to the same persons are admissible, if they are so connected as to form one continuing representation, which it is the province of the jury to determine: R. v. Welman, Dears. 188, 6 Cox, 153. *See* R. v. Durocher, 12 R. L. 697.

Inducing a person by a false pretense to accept a bill of exchange is not within this section: R. v. Danger, Dears. & B. 307; *see* R. v. Gordon, 16 Cox, 622; *see* s. 360, *post*.

A railway ticket obtained by false pretenses is within the statute, R. v. Boulton, 1 Den. 508; R. v. Beecham, 5 Cox, 181; ss. 330, 359; and so is an order by the president of a burial society on a treasurer for the payment of money: R. v. Greenhalgh, Dears. 267.

Where the defendant only obtains credit and not any specific sum by the false pretenses it is not within the statute: R. v. Wavell, 1 Moo. 224; R. v. Garrett, Dears. 232; R. v. Crosby, 1 Cox, 10.

There must be an intent to defraud. Where C. B.'s servant obtained goods from A.'s wife by false pretenses, in order to enable B., his master, to pay himself a debt due from A., on which he could not obtain payment from A., it was held that C. could not be convicted: R. v. Williams, 7 C. & P. 354. But it is not necessary to allege nor to prove the intent to defraud any person in particular. *With intent to defraud* are the words of the statute.

But these words "with intent to defraud" are a material and necessary part of the indictment; their omission is fatal, and cannot be remedied by an amendment inserting them. By Lush, J., R. v. James, 12 Cox, 127; R. v. Davis, 18 U. C. Q. B. 180; R. v. Norton, 16 Cox, 59. *At the trial* the court might, it seems, allow the amendment; s. 723, *post*.

An indictment for false pretenses charged that the defendant falsely pretended that he had a lot of trucks of coal at a railway station on demurrage, and that he required forty coal bags. The evidence was that defendant saw prosecutor and gave him his card, "J. W. and Co., timber and coal merchants," and said that he was largely in the coal and timber way, and inspected some coal bags, but objected to the price. The next day he called again, showed prosecutor a lot of correspondence, and said that he had a lot of trucks of coal at the railway station under demurrage, and that he wanted some coal bags immediately. Prosecutor had only forty bags ready, and it was arranged that defendant was to have them, and pay for them in a week. They were delivered to defendant, and prosecutor said he let the defendant have the bags in consequence of his having the trucks of coal under demurrage, at the station; there was evidence as to the defendant having taken premises, and doing a small business in coal,

but he had no trucks of coal on demurrage at the station. The jury convicted the prisoner, and on a case reserved the judges held that the false pretense charged was not too remote to support the indictment, and that the evidence was sufficient to maintain it: R. v. Willot, 12 Cox, 68.

The prisoner induced the prosecutor to buy a chain by knowingly and falsely asserting, (*inter alia*), "it is a 15-carat fine gold, and you will see it stamped on every link." In point of fact, it was little more than 6-carat gold: *Held*, upon a case reserved, that the above assertion was sufficient evidence of the false representation of a definite matter of fact to support a conviction for false pretenses: R. v. Ardley, 12 Cox, 23; R. v. Bryan, Dears. & B. 265, was said by the judges not to be a different decision, but that there was in that case no definite matter of fact falsely represented: *see* Warb. Lead. Cas. 170.

On an indictment for inducing the prosecutor, by means of false pretenses, to enter into an agreement to take a field for the purpose of brick-making, in the belief that the soil of the field was fit to make bricks, whereas it was not, he being himself a brickmaker, and having inspected the field and examined the soil: *Held*, that nevertheless, if he had been induced to take the field by false and fraudulent representations by the defendant of the specific matters of fact relating to the quality and character of the soil, as, for instance, that he had himself made good bricks therefrom, the indictment would be sustained: *Held*, also, that it would be sufficient, if he was partly and materially, though not entirely, influenced by the false pretenses: R. v. English, 12 Cox, 171.

If the possession only and not the property has been passed by the prosecutor the offence is larceny and not false pretenses: R. v. Radcliffe, 12 Cox, 474.

All persons who concur and assist in the fraud are principals, though not present at the time of making the

pretense or obtaining the property: R. v. Moland, 2 Moo. 276; R. v. Kerrigan, L. & C. 383.

On the last part of this s. 359, Greaves says: "This clause is new. It is intended to meet all cases where any person by means of any false pretense induces another to part with property to any person other than the party making the pretense. It was introduced to get rid of the narrow meaning which was given to the word 'obtain' in the judgments in R. v. Garrett, Dears. 232, according to which it would have been necessary that the property should either have been actually obtained by the party himself, or for his benefit. * * This clause includes every case where a defendant by any false pretense causes property to be delivered to *any other person*, for the use either of the person making the pretense, or *of any other person*. It, therefore, is a very wide extension of the law as laid down in R. v. Garrett, and plainly includes every case where any one, with intent to defraud, causes any person by means of any false pretense to part with any property to any person whatsoever."

Prisoner was indicted for an attempt to obtain money from a pawnbroker by false pretenses, (*inter alia*) that a ring was a diamond ring. To show guilty knowledge evidence that he had shortly before offered other false articles of jewellery to other pawnbrokers was held to be properly admissible: R. v. Francis, 12 Cox, 612, Warb. Lead. Cas. 176.

Goods fraudulently obtained by prisoner on his cheque on a bank where he had no funds: *Held*, that he cannot be found guilty of having falsely represented that he had money in the bank, but that he was guilty of falsely representing that he had authority to draw the cheque, and that they were good and valid orders for the payment of money: R. v. Hazelton, 13 Cox, 1, Warb. Lead. Cas. 164.

See R. v. Holmes, 15 Cox, 343, as to where is the jurisdiction when offence is committed by a letter.

Prisoner convicted of obtaining his wages by false pretenses in representing falsely that he had performed a condition precedent to his right to be paid : R. v. Bull, 13 Cox, 608.

The indictment must state the pretense which is pretended to have been false, and must negative the truth of the matter so pretended with precision : R. v. Kelleher, 14 Cox, 48. *See* R. v. Perrott, 2 M. & S. 379 ; *see* s. 616 and form F. F., sched. one, under s. 611

Obtaining by false pretenses. What constitutes false pretenses : R. v. Durocher, 12 R. L. 697 ; R. v. Judah, 7 L. N. 385 ; R. v. Lavallée, 16 R. L. 299 ; R. v. Ford, M. L. R. 7 Q. B. 413.

To prove intent to defraud, evidence of similar frauds having recently been practiced upon others is admissible : R. v. Durocher, 12 R. L. 697.

An indictment for obtaining board under false pretenses is too general : R. v. McQuarrie, 22 U. C. Q. B. 600.

A clause of a deed by which the borrower of a sum of money falsely declares a property well and truly to belong to him may constitute a false pretense : R. v. Judah, 8 L. N. 124.

On a trial for obtaining under false pretenses property of a joint stock company, parol evidence that the company has acted as an incorporated company is sufficient evidence of its incorporation : R. v. Langton, 13 Cox, 345.

The prisoner who had been discharged from the service of A. went to the store of D. and S. and represented herself as still in the employ of A., who was in the habit of dealing there, and asked for goods in A.'s name, which were put up accordingly, but sent to A.'s house instead of being delivered to the prisoner. The prisoner, however, went directly from the store to A.'s house, and remaining in the kitchen with the servant until the clerk delivered the parcel, snatched it from the servant, saying "that is for me, I was going to

see A." but, instead of going in to see A., went out of the house with the parcel. Conviction for having obtained goods from D. & S. by false pretenses, held good: R. v. Robinson, 9 L. C. R. 278.

Where the prosecutor had laid a trap for the prisoner who had written to induce him to buy counterfeit notes, and prisoner gave him a box which he pretended contained the notes, but which, in fact, contained waste paper and received the prosecutor's watch and $50.

Held, that the prisoner was rightly convicted of obtaining the prosecutor's property under false pretenses: R. v. Corey, 22 N. B. Rep. 543; *see* R. v. Cameron, 23 N. S. 150.

OBTAINING VALUABLE SECURITY BY FALSE PRETENSES.

360. Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretense, causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. R. S. C. c. 164, s. 78. 24-25 V. c. 96, s. 90 (Imp.).

"Valuable security" defined, s. 3.

See remarks under s. 353. *See* ss. 613, 616, as to indictment.

On the corresponding clause Greaves says: "This clause is principally new; it will include such cases as R. v. Danger, Dears. & B. 307."

Indictment.— that A. B., on unlawfully, knowingly and designedly did falsely pretend to one J. N., that by means of which false pretense the said A. B. did then unlawfully and fraudulently induce the said J. N. to accept a certain bill of exchange, that is to say, a bill of exchange for five hundred dollars, with intent thereby then to defraud and injure the said J. N., whereas, in truth and in fact (*here negative the false pretenses*).

Prisoner was indicted at the Court of Queen's Bench for having induced, by false and fraudulent pretenses, one B., a farmer, to endorse a promissory note for $170.45 and

moved to quash on the ground that the indictment did not state that the endorsement in question had been declared false in any manner by competent authority, etc., nor that the said endorsement had been obtained for the purpose of converting the said note or paper-writing into money—Motion rejected. And a motion to quash, on the ground that the crown prosecutor, representing the attorney general, had refused to furnish to prisoner the particulars of the false pretenses charged, although demanded, was refused: R. v. Boucher, 10 R. L. 183.

Proof that the defendant had obtained from the prosecutor a promissory note on a promise to pay the plaintiff what he owed him out of the proceeds of the note when discounted is not sufficient to sustain a conviction of obtaining a signature with intent to defraud under this section: R. v. Pickup, 10 L. C. J. 310.

An indictment charging prisoner with unlawfully and fraudulently, with intent to defraud them, inducing prosecutors to "make a certain valuable security," to wit, a promissory note for £100 by the false pretense that he was prepared to pay them or one of them £100; held good. It must be taken by necessary inference to allege a false pretense of an existing fact, viz., that he was prepared to pay prosecutors £100 and had the money ready for them on their signing the note. It also showed the offence of fraudulently causing a person to "make a valuable security" under 24 & 25 V. c. 96, s. 90, though note might not be of value until delivered to prisoner: R. v. Gordon, 23 Q. B. D. 354, 16 Cox, 622.

Prisoner fraudulently induced prosecutor to sign a contract for seed wheat, representing that he was agent of H. named in contract. H. afterwards induced prosecutor to give him a note for price of wheat, though contract did not provide for a note. Prosecutor swore he gave note because he had entered into the contract. Indictment for, by false pretenses, fraudulently inducing prosecutor to write his

name on a paper so that it might be afterwards dealt with as a valuable security; 2nd count, for procuring, by false pretenses, prosecutor to deliver to H. a valuable security. *Held,* on case reserved, that charge of false pretenses could be sustained as well as where the money was obtained or note procured to be given through the medium of a contract, as when obtained or procured without a contract; that a note instead of money was given did not relieve prisoner from consequences of his fraud; giving of note was direct result of the fraud upon which the contract was procured and that defendant was properly convicted on 1st count under c. 174, s. 78. But *held,* that note before delivery to H. was not a valuable security, but only a paper on which prosecutor had written his name so that it might be used as such, and conviction on 2nd count could not stand: R. v. Danger, Dears. & B. 307, followed; R. v. Rymal, 17 O. R. 227.

Prisoner indicted on two counts. First, for obtaining from H. a note with intent to defraud; second, inducing H, to make a note with said intent. Evidence showed that prisoner's agent obtained from H. an order on prisoner for wheat which H. was to put out on shares and to pay prisoner $240 on delivery, and equally divide balance of proceeds with holder of order. Later, prisoner by false and fraudulent representations as to quality of wheat, etc., induced H. to sign a note, telling him it would not be negotiable. Evidence was given, subject to objection, of similar frauds on others, and that prisoner was pursuing a series of like frauds. Prisoner was convicted.

Held, on case reserved, that conviction should be sustained on second count, as evidence showed that H. signed note on faith of representations made and not merely to secure the carrying out of the contract; that it was immaterial that a note was given when the order called for cash, and that the evidence objected to was admissible: R. v. Hope, 17 O. R. 463.

FALSELY PRETENDING TO INCLOSE MONEY IN A LETTER.

361. Every one is guilty of an indictable offence and liable to three years' imprisonment who, wrongfully and with wilful falsehood, pretends or alleges that he inclosed and sent, or caused to be inclosed and sent, in any post letter any money, valuable security or chattel, which in fact he did not so inclose and send or cause to be inclosed and sent therein. R. S. C. c. 164, s. 79. (*Amended*).

This section is not in the English statutes: "Valuable security" defined, s. 3. *See* s. 618, *post*, as to indictment and trial under this section.

OBTAINING PASSAGE BY FALSE TICKETS.

362. Every one is guilty of an indictable offence and liable to six months' imprisonment who, by means of any false ticket or order, or of any other ticket or order, fraudulently and unlawfully obtains or attempts to obtain any passage on any carriage, tramway or railway, or in any steam or other vessel. R. S. C. c. 164, s. 81.

The clause provides for the offence and the attempt to commit the offence. Under s. 711, *post*, upon the trial of an indictment for any offence the jury may convict of the attempt to commit the offence charged, if the evidence warrants it.

CRIMINAL BREACH OF TRUST.

363. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust. R. S. C. c. 164, s. 65. 24-25 V. c. 96, s. 80, (Imp.).

See R. v. Cox, 16 O. R. 228; R. v. Stansfeld, 8 L. N. 123.

Section 197 of the Procedure Act, which allowed a conviction under this clause though a larceny was proved, has not been re-enacted in express terms.

"Trustee" defined, s. 3.

By s. 547, *post*, no prosecution is to be commenced under this section without the consent of the Attorney-General of the province.

Indictment.— that A. B., at on then being the trustee of certain property under the will of

for a certain public (or charitable) purpose, to wit, for unlawfully, with intent to defraud and in violation of his trust, did convert and appropriate the same to a use not authorized by the said trust, and for a purpose other than the said public (or charitable) purpose, contrary to s. 363 of the Criminal Code of 1892.

PART XXVIII.

FRAUD.

By Directors, Etc.

364. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a director, manager, public officer or member of any body corporate or public company, with intent to defraud—

(*a*) destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company; or

(*b*) makes, or concurs in making, any false entry, or omits or concurs in omitting to enter any material particular, in any book of account or other document. R. S. C. c. 164, s. 68. 24-25 V. c. 96, s. 83 (Imp.).

"Valuable security" defined, s. 3.

Section 197 of the Procedure Act, which applied to the repealed section, has not been re-enacted.

Sections 97 *et seq.* of the Banking Act, 53 V. c. 31, provide for offences by bank officers.

Indictment against a director for destroying or falsifying books, etc.— that C. D., on then being a director of a certain body corporate, called unlawfully, with intent to defraud, did destroy (*alter, or mutilate, or falsify*) a certain book (*or paper, or writing, or valuable security*), to wit, belonging to the said body corporate.

FALSE STATEMENT BY PROMOTERS, DIRECTORS, ETC.

365. Every one is guilty of an indictable offence and liable to five years' imprisonment who, being a *promoter*, director, public officer or manager of any body corporate or public company, *either existing or intended to be formed*, makes, circulates or publishes, or concurs in making, circulating or publishing, *any prospectus*, statement or account which he knows to be false in any material particular, with intent to induce persons (*whether ascertained or not*) to become shareholders or partners, or with intent to deceive or defraud the members, shareholders or creditors, or any of them (*whether ascertained or not*), of such body corporate or public company, or with intent to induce any person to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof. R. S. C. c. 164, s. 69 (*Amended*). 24-25 V. c. 96, s. 84 (Imp.).

The words in italics are new.

Fine, s. 958; "Property" and "public officer" defined, s. 3.

Indictment against a director for publishing fraudulent statements.— that before and at the time of the committing of the offences hereinafter mentioned, C. D. was a director of a certain public company, called and that he, the said C. D., so being such director as aforesaid, on did unlawfully circulate and publish a certain statement and account, which said statement was false in certain material particulars, that is to say, in this, to wit, that it was therein falsely stated that (*state the particulars*), he the said C. D., then well knowing the said written statement and account to be false in the several particulars aforesaid, with intent thereby then to deceive and defraud J. N., then being a shareholder of the said public company (*or with intent*) . (*Add counts stating the intent to be to deceive and defraud "certain persons to the jurors aforesaid unknown, being shareholders of the said public company," and also varying the allegation of the intent as in the section*): *see* s. 616, *post*.

FALSE ACCOUNTING BY CLERKS. (*New*).

366. Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being or acting in the capacity of an officer, clerk, or servant, with intent to defraud—

(*a*) destroys, alters, mutilates or falsifies any book, *paper writing*, valuable security or document 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 concurs in so doing; or

(*b*) makes, or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from, any such book, *paper writing*, valuable security or document. 38-39 V. c. 24 (Imp.).

There should be a comma between *paper* and *writing*.

"Valuable security" and "writing" defined, s. 3.

Indictment.— that A. B., on, &c., at, &c., being then clerk (*officer, servant, or any person employed or acting in the capacity of a clerk, officer, or servant*) to C. D., did then and whilst he was such clerk to the said C. D. as aforesaid, unlawfully, wilfully, and with intent to defraud, destroy, to wit, by burning the same (*destroy, alter, mutilate, or falsify*) a certain book (*any book, paper, writing, valuable security, or document*), to wit, a cash-book, which said book then belonged to (*which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer*) the said C. D., his employer.

Second Count.—That the said A. B., on the day and in the year aforesaid, being then clerk to the said C. D., did then and whilst he was such clerk to the said C. D., as aforesaid, unlawfully, wilfully, and with intent to defraud, make (*make or concur in making any false entry in, or omit, or alter, or concur in omitting, or altering any material particular*) a certain false entry in a certain book (*from, or in any such book, paper, writing, valuable security, or document*), to wit, a cash book which said book then belonged to the said C. D., his employer, by falsely entering in such books under the date of a sum of , as having been paid on that day to one E. F., whereas in truth and in fact the said sum of was not paid on the said day to the said E. F. as he, the said A. B., well knew at the time when he made such false entry as aforesaid, and which said entry was in the words and figures following (*setting it out*); *see* R. v. Butt, 15 Cox, 564.