

*Theft.* Now first for the manner. C H A P. CLV. V. 102.

**I**N Larceny two things must concur, *sc.* to take, and to carry away, or to remove the thing taken, with a purpose to steal the same; for the Indictment must be, *Cepit & asportavit*, or *cepit & abduxit*; and yet in these words, the letter is not so much to be insisted upon, as the meaning, and that for the better suppressing of offenders in this kind.

For although by the Law in Mr. *Glanvils* time, *A furto omnimodo excusat*, *qui initium habuerit suae detentionis per dominum illius rei*; yet at this day it may be Felony, though the offender take not the thing, but comes first unto it by delivery from the Owners own hand, and so cometh lawfully to the Possession.

13 E. 4. 9.  
Stamf. 25. If a Taverner do set a piece of Plate before his Guest to drink in, and the Guest carrieth it away; this is Felony: For the Taverner gave him no Possession thereof, but only the use to drink in it for the time.

If I deliver Goods to a Carrier (or other person) and bargain with him to carry them to a certain place appointed; if he carrieth them to the place, and then conveyeth them away fraudulently, this is Felony: For the privity of Bailment was determined when they came at the place appointed. *Ibid.*

So if the Carrier shall take out parcel of the Goods; this is Felony. *Ibid.*

Also if the Carrier shall carry them to another place, and there breaketh them up, and converteth part, or all, to his own use; this is Felony. *Ibid.*

But if the Carrier shall sell, or give away, or otherwise imbezle the whole as he received them; this is holden to be no Felony, because it was delivered him. *Stamf. 25. a. Cromp. 96. a.*

And yet in this last case there is besides the delivery, a bargain and agreement to carry the Goods, and the delivery was only to that intent; so that the Property of those Goods did always remain in the first owner. *Idea quere.*

But if *A.* lendeth his Horse to *B.* being a stranger, who rideth quite away with the Horse; this is no Felony in *B.* by reason of the delivery. And so did Sir *John Dodderidge* Knight, give direction at *Cambridge Assizes*, 1617, upon an Indictment of Felony preferred in such case. *Quere*, if the Horse had been delivered to a servant, who rideth away therewith. *Vide postea, sub hoc tit.*

7 Jac. c. 7. If a Clothier shall deliver any Wool or Yarn to his Carder, Spinster, or Weaver, &c. to dress, and they shall convey away, imbezle, or sell any part thereof; this seemeth to be no Felony, by reason of the delivery, but they shall be punished by the discretion of two Justices of Peace, by whipping or stocking, &c. *Vide antea, tit. Cloth.*

13 E. 4. 9. So if I deliver my Goods to another to keep, and he fraudulently consumeth them, or otherwise converteth them to his own profit; this is no Felony; because of the delivery.

And so (it seemeth) if I deliver Money or Goods to *A.* to deliver to *B.* and *A.* flight away with them, consumeth them, or converteth them to his own use; this is no Felony, by reason of the delivery.

21 H. 4. 14.  
13 E. 4. 10.  
7 H. 7. 12.  
21 H. 7. 15. If a Man deliver Money to his Servant to keep, or Plate to his Butler, or Vessel to his Cook, or Horse to his Horse-keeper, or Sheep to his Shepherd, and such Servant doth go away with them, this is Felony by the Common

§. 3.  
Servants.