

such convict, upon such recovery of his reason, to be returned to the jail from which he was removed, and to be confined there until the said term expires, or may order his discharge, in its or his discretion. The provisions of this section shall not apply to the Baltimore City Jail.

See sec. 711 and art. 59, sec. 46.

Kidnapping.

An. Code, sec. 283. 1904, sec. 259. 1888, sec. 154. 1809, ch. 138, sec. 4. 1867, ch. 179. 1910, ch. 46 (p. 92).

316. Every person, his counsellors, aiders or abettors, who shall be convicted of the crime of kidnapping and forcibly or fraudulently carrying or causing to be carried out of this State any person with intent to have such person carried out of this State, shall be sentenced to the penitentiary for not more than twenty-one years.

An. Code, sec. 284. 1904, sec. 260. 1888, sec. 155. 1819, ch. 132. 1910, ch. 46 (p. 92).

317. Every person, his counsellors, aiders or abettors, who shall be convicted of kidnapping and forcibly or fraudulently stealing, taking or carrying away any child under the age of sixteen years shall be sentenced to the penitentiary for not more than twenty-one years.

Larceny.

An. Code, sec. 285. 1904, sec. 261. 1888, sec. 156. 1715, ch. 26. 1809, ch. 138, sec. 6. 1882, ch. 84.

318. Every person convicted of the crime of simple larceny to the value of five dollars or upwards, or as accessory thereto before the fact, shall restore the money, goods or things taken to the owner, or shall pay him the full value thereof, and be sentenced to the penitentiary for not less than one year nor more than fifteen years; provided, however, that in all cases where the money, goods or things taken shall amount to less than fifty dollars in value, the judge passing sentence shall have discretionary power to sentence the said person so found guilty to imprisonment in jail or in the house of correction instead of the penitentiary.

Where a statute creates an offense which did not exist at common law or changes the nature or degree of an existing common law offense, the indictment must conclude against the form of the statute; *contra*, if a statute only inflicts a different mode of punishment for a common law offense. Since act of 1809, ch. 138, repealed the common law so far as it provided for the punishment of the offense, an indictment merely concluding *contra pacem*, is sufficient—see sec. 554 *State v. Negro Evans*, 7 G. & J. 290. And see *State v. Hodges*, 55 Md. 137 (decided prior to act, 1882, ch. 84).

A sentence should be framed as near as possible in words of act inflicting the punishment, but if penalty is in no wise varied by the phraseology of the sentence, no error is committed; fact that a part of sentence provides that prisoner "serve and labor" for a certain period in penitentiary, is not error. The restoration of property forms no part of the sentence proper; if a lighter burden is imposed by a sentence than the law authorizes, the prisoner cannot secure a reversal on that ground. *Isaacs v. State*, 23 Md. 414 (decided prior to act, 1882, ch. 84).

It is inaccurate to say that the restoration of property under this section is a part of the punishment. It is not design of this section to withhold from the real owner until conviction of thief the common law remedies for restoration of property wrongfully taken or for the recovery of value thereof. Action of *assumpsit* lies to recover stolen money, and an attachment may issue. *Downs v. Baltimore City*, 111 Md. 689.