

carrying away any child under the age of sixteen years shall be sentenced to death or to the penitentiary for not more than thirty years, in the discretion of the Court.

Larceny.

An. Code, 1924, sec. 318. 1912, sec. 285. 1904, sec. 261. 1888, sec. 156. 1715, ch. 26. 1809, ch. 138, sec. 6. 1882, ch. 84. 1933 (Special Sess.), ch. 78, sec. 318.

387. Every person convicted of the crime of larceny to the value of twenty-five dollars or upwards, or as accessory thereto before the fact shall be deemed guilty of a felony, and 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 more than fifteen years, or to the House of Correction or Jail for not more than ten years.

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 Since act of 1809, ch. 138, repealed the common law so far as it provided for the punishment of the offense, an indictment merely concluding *contra pacem*, is sufficient—see sec. 650. *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.

Where there are several counts in indictment charging defendant with more than one distinct and separate felony, the court may in its discretion either compel an election between the counts, or in a clear case quash indictment. Several counts held to relate to same transaction and indictment held valid. While ordinarily a motion to quash is addressed to the discretion of the court, its discretion is to be governed by rules, and if it acts in violation of these rules, its judgment may be reviewed. *State v. McNally*, 55 Md. 563 (decided prior to act of 1882, ch. 84).

Larceny defined. The offenses of principal and accessory before the fact in larceny are distinct, and there cannot be a conviction of one charge upon an allegation of the other, and an acquittal upon one charge is no bar to a trial upon the other. Suit on a liability bond guaranteeing against embezzlement or larceny. *Canton Bank v. American Bonding Co.*, 111 Md. 51.

Larceny defined. When a person steals goods in another state and brings them into Maryland, he cannot be indicted here for the crime committed in the other state; but the act of bringing such stolen goods into this state is a new larceny for which he may be indicted here. *Worthington v. State*, 58 Md. 403 (decided July 11, 1882).

Indictment charging that property stolen was worth so many dollars, current money, whereas this section required the value to be of \$5, meaning gold or silver, is valid in the light of art. 29, sec. 1, *et seq.*; at most the words objected to were surplusage or such as should have been excepted to on demurrer. An objection that the record did not show original indictment, overruled. Suggestion of removal made in time. *Gardner v. State*, 25 Md. 150 (decided prior to act, 1882, ch. 84).

An indictment describing the articles stolen as "one hide of the value," etc., is sufficient. *State v. Dowell*, 3 G. & J. 310.

One who procures another to commit larceny is, if present, guilty as principal, and, if absent, as accessory. Master and Servant. *Stansbury v. Luttrell*, 152 Md. 562.

This section does not require one whose money has been taken to wait until after conviction to recover it. *Rasin v. State*, 153 Md. 439.

See sec. 155.

As to thieves and pickpockets, see sec. 581, *et seq.*

As to receiving stolen goods, etc., see sec. 548.

As to indictments for larceny, see sec. 655.