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Chapter 132.

Larceny, Embezzlement and Receiving Stolen Goods.

Larceny, Embezzlement and Common Thief.

Sec. 1. Larceny, definition.—Whoever steals, takes and carries away, of the property of another, money, goods or chattels, or any writ, process, public record, bond, bank bill or note, promissory note, bill of exchange, order, certificate, book of accounts, conveyance of real estate, valuable contract, receipt, release, defeasance or instrument in writing whereby any demand, right or obligation is created, increased, diminished or extinguished is guilty of larceny; and shall be punished, when the value of the property exceeds $100, by imprisonment for not less than 1 year nor more than 5 years; and when the value of the property does not exceed $100, by a fine of not more than $100 or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 119, § 1.)

Cross references.—See c. 130, § 16, re robbery; c. 142, § 2, re unlawful conversion of lumber; c. 140, § 1, re domestic animals and dogs.

Larceny is defined in this section. If the value of the property, which is the subject of the larceny, is found to exceed $100, the crime is punishable by imprisonment in the state prison. Such crime, commonly known as grand larceny, is a felony. If the value of the property does not exceed $100, the crime is not so punishable. Such crime, commonly known as petit larceny, is a misdemeanor. Kaye v. Keeper of the Jail, 145 Me 103, 72 A. (2d) 811.

Finder of goods not guilty of larceny if owner unknown.—If a man loses goods, and another finds them, and not knowing the owner, converts them to his own use, this is not larceny, even though he denies the finding of them or secrets them. But it is otherwise if he knows the owner. State v. Furlong, 19 Me. 225.

Presumption of guilt from possession of property.—In prosecutions for larceny, where the goods are proved to have been stolen, it is a rule of law, applicable in these cases, that possession by the accused, soon after they were stolen, raises a reasonable presumption of his guilt, and unless he can account for that possession, consistently with his innocence, will justify his conviction. State v. Merrick, 19 Me. 398.

Generally, wherever the property of one man, which has been taken from him, without his knowledge or consent, is found upon another, it is incumbent on that other to prove how he came by it; otherwise, the presumption is that he obtained it feloniously. State v. Furlong, 19 Me. 225.

The bare circumstance of finding in one's possession property of the same kind which another has lost, unless that other can, from marks or other circumstances, satisfy the court and jury of the identity of it, is not, in general, sufficient evidence of the goods having been feloniously obtained. Though where the fact is very recent, so as to afford reasonable presumption that the property could not have been acquired in any other manner, the court are warranted in concluding it is the same, unless the prisoner can prove the contrary. State v. Furlong, 19 Me. 225.

If goods are stolen in one county, and carried by the guilty party into another, he may be indicted for the larceny in either county. State v. Douglas, 17 Me. 193.

The doctrine of the common law is that the legal possession of goods stolen continues in the owner, and every moment's continuance of the trespass and felony amounts in legal consideration to a new caption and asportation. It is upon this principle, that a person stealing goods in one county and carrying them into other counties is considered as guilty of the crime, and may be indicted and convicted in any county, where he has carried them. State v. Somerville, 21 Me. 14.

Indictment should describe property.—In an indictment for larceny the property should be described with sufficient par-

ticularity to enable the court to see that it is the subject of larceny; to inform the accused of what he is charged with taking and to protect him from being again put in jeopardy for the same offense. States v. Thomes, 126 Me. 163, 136 A. 726.

With reasonable certainty.—Very great particularity is not required. But the articles should be described with reasonable certainty, such certainty as will enable the trial court to determine whether the evidence offered in support of the indictment relates to the same property on which the indictment was founded. State v. Thomes, 126 Me. 163, 136 A. 726.

Or allege reason for failure to describe.—The indictment should describe the property with reasonable certainty and if a sufficiently certain description cannot be given, because unknown, that fact should be alleged in the indictment. The usual allegation causing a complete description is "a more particular description of which is to your jurors unknown." State v. Thomes, 126 Me. 163, 136 A. 726.

An indefinite description of property may be sufficient if the indictment states the reason for the lack of particularity. State v. Thomes, 126 Me. 163, 136 A. 726.

And it should allege value of property.—Indictments for larceny must allege the value of the article alleged to have been stolen. This rule had its origin in the practice of distinguishing between grand and petit larceny with reference to the extent of the punishment, that being dependent in some measure upon the value of the article stolen; and it is still maintained, because under our statutes, the punishment for larceny is also graduated with reference to the value of the property stolen. State v. Perley, 86 Me. 427, 30 A. 74.

Entirely aside from the matter of description, a definite allegation of value is necessary, in this state, as a matter of determining the degree of offense charged. Value may not be proved as alleged but the allegation must appear. State v. Thomes, 126 Me. 163, 136 A. 726.

Which allegation of value must definitely relate to the article or articles described. State v. Thomes, 126 Me. 163, 136 A. 726.

And these rules apply to money stolen.—A description of money is incomplete without a statement of its value, and without some further identifying particulars, unless excuse is offered for lack of them. An allegation of simply so many dollars, or so many dollars in money, without further description or reason for the omission, is too indefinite. State v. Thomes, 126 Me. 163, 136 A. 726.

In an indictment for larceny, the descriptive allegation so many dollars, or so many dollars in money, is bad. State v. Thomes, 126 Me. 230, 137 A. 396.

An indictment for stealing money is not sufficient if it states only the aggregate amount stolen without specification of the number, kind or denomination of the pieces unless the insufficient averment is cured by an allegation of lack of knowledge of these details on the part of the grand jury. State v. Thomes, 126 Me. 230, 137 A. 396.

But name of bank which issued stolen bills need not be alleged.—Where the indictment describes the number and denomination of the bank bills stolen and alleges the value of each, it is not necessary to set forth the names of the banks by which they are issued, nor to assert their genuineness more distinctly than is done in the allegation of their value. State v. Stevens, 62 Me. 284.

Indictment held sufficient. — See State v. Leavitt, 66 Me. 440.

The spoils of a single larcenous act may all be included in one count, and the indictment is not thereby vitiated on the ground of duplicity. State v. Stevens, 62 Me. 284.

And if one article is sufficiently described indictment not vitiated. — If, in an indictment charging the larceny of several distinct articles or groups of articles, any one article or group is described with sufficient certainty, an insufficient description of the other articles will not vitiate the indictment. State v. Thomes, 126 Me. 163, 136 A. 726.

And property may be valued in the aggregate.—An indictment is good in which several articles of property, each described properly, have been valued in the aggregate, instead of separately. State v. Thomes, 126 Me. 163, 136 A. 726.

It is not necessary to allege separate value, provided the group is sufficiently described otherwise, but such an allegation is often useful as an assistance in identifying a group or an article and becomes a part of the description thereof. State v. Thomes, 126 Me. 163, 136 A. 726.

Proof must show goods are property of person named as owner in indictment.—It must be proved that the goods alleged to be stolen are the property of the person named as owner in the indictment. This is so essential that, if he is described

in the indictment as a certain person to the jurors unknown, and it appears in evidence that his name is known, the defendant should be acquitted of that indictment, and tried upon a new one, for stealing the goods of the owner, by name. State v. Furlong, 19 Me. 225.

But proof that such person had special property is sufficient.—Proof that the person alleged to be the owner had a special property, or that he held it to do some act upon it, or for the purpose of conveyance, or in trust for the benefit of another, will be sufficient to support the allegation in the indictment. State v. Somerville, 21 Me. 14. See State v. Furlong, 19 Me. 225.

Applied in State v. Mullen, 72 Me. 466.

Cited in State v. Doran, 99 Me. 329, 59 A. 440.

Sec. 2. Larceny from the person.—Whoever commits larceny from the person of another shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 years. (R. S. c. 119, § 2.)

Punishment not dependent on value of property.—The punishment for larceny from the person under this section does not depend upon the value of the property stolen. State v. Perley, 86 Me. 427, 30 A. 74.

Sec. 3. Larceny by night in a dwelling house, or at any time breaking and entering certain other buildings, vessel or railroad car.—Whoever, without breaking, commits larceny in the nighttime, in a dwelling house or building adjoining and occupied therewith, or breaks and enters any office, bank, shop, store, warehouse, barn, stable, vessel, railroad car of any kind, courthouse, jail, meetinghouse, college, academy or other building for public use or in which valuable things are kept, and commits larceny therein, shall be punished by imprisonment for not less than 1 year nor more than 15 years; and when the offense is committed in the daytime, by imprisonment for not more than 6 years or by a fine of not more than $1,000. (R. S. c. 119, § 3.)

Applied in State v. Hume, 146 Me. 129, 78 A. (2d) 496.

Sec. 4. Larceny at a fire.—Whoever commits larceny in a building on fire, or steals property removed on account of an alarm of fire, shall be punished by a fine of not more than $500 or by imprisonment for not more than 5 years. (R. S. c. 119, § 4.)

See c. 97, § 58, re plundering at fires.

Sec. 5. Larceny, by falsely personating another. — Whoever falsely personates or represents another and thereby receives anything intended to be delivered to the party personated, with intent to convert the same to his own use, is guilty of larceny and shall be punished accordingly. (R. S. c. 119, § 5.)

Sec. 6. Larceny by taking beasts or birds kept in confinement.—Whoever without the consent of the owner and with a felonious intent takes any beast or bird ordinarily kept in a state of confinement, and not the subject of larceny at common law, shall be deemed guilty of larceny. (R. S. c. 119, § 6.)

Sec. 7. Larceny by embezzlement or fraudulent conversion of property; receiver liable.—If an officer, agent, clerk or servant of a person, copartnership or corporation, not an apprentice nor less than 16 years of age, embezzles or fraudulently converts to his own use, or takes and secretes with intent to do so, without the consent of his employer or master, any property of another in his possession or under his care, by virtue of his employment; or, if a public officer, collector of taxes, or an agent, clerk or servant of a public officer or tax collector, embezzles or fraudulently converts to his own use, or loans or permits any person to have or use for his own benefit without authority of law, any money in his possession or under his control by virtue of his office or employment by such officer, he is guilty of larceny and shall be punished accordingly; and whoever knowingly receives from a public officer, collector of taxes,

or his clerk, servant or agent, with intent to convert the same to his own use without authority of law, any money in the possession or under the control of such officer by virtue of his office, is guilty of larceny and shall be punished accordingly. The foregoing provisions in relation to public officers, collectors of taxes, their clerks, servants or agents shall not apply to deposits by such officer in any bank, nor to any advances made towards the salary of such officer, nor to any person in the employment of the state or to whom the state is indebted, if the sums advanced do not exceed the sum due him. (R. S. c. 119, § 7.)

Cross references.—See c. 32, § 23, re penalty for defrauding agricultural or horticultural societies; c. 59, § 66, re use of savings bank funds by officer thereof; c. 142, § 2, re unlawful conversion of lumber.

Section declares offenders guilty of larceny.—This section declares that offenders of three distinct classes, who would otherwise at most be held liable for embezzlement or breach of trust, or for fraudulent connivance in such breach of trust, shall be deemed guilty of larceny. State v. Walton, 62 Me. 106.

Although elements of that offense are lacking.—More or less of the elements necessary to constitute the crime of larceny, as elsewhere defined, are wanting in each of the cases provided for by this section. But it was clearly competent for the lawmaking power to extend the definition of the offense, so as to include these cognate cases. State v. Walton, 62 Me. 106.

Embezzlement or fraudulent conversion of funds by a public officer is declared by this section to be larceny. It is not so at common law for the reason that the taking is not felonious. State v. Shuman, 101 Me. 158, 63 A. 665.

The fiduciary relation must be declared in an indictment under this section. It is the basis of the charge. State v. Thomes, 126 Me. 230, 137 A. 396.

But indictment need not allege lack of owner's knowledge.—An allegation that the embezzlement took place without the "knowledge" of the owner is not necessary. The words of the statute are "without his consent." State v. Thomes, 126 Me. 230, 137 A. 396.

Or felonious taking.—In State v. Stevenson, 91 Me. 107, 39 A. 471, the requisites of an indictment under this section were stated to be that there should be set forth (1) Fiduciary relation, (2) Fraudulent conversion, (3) Larceny in apt phrase. The last requirement is stated too broadly. One element in larceny is the original felonious taking. Such an averment in an indictment for embezzlement would be obviously objectionable, as such a taking would negative the necessary proposition of fiduciary relation, but with that limitation the rule may be accepted. Good authority demands that an indictment for embezzlement should conclude with the averment, "did feloniously, take, steal and carry away." This was, without doubt, the averment which the court had in mind, in its use of the words "larceny in apt phrase." State v. Thomes, 126 Me. 230, 137 A. 396.

Court not to look beyond indictment to see if it can be maintained.—In order to ascertain whether an indictment can be maintained against an offender of either of the three classes covered by this section, the court must look to see whether it includes allegations of those facts which the legislature have declared essential to constitute the offense which it purports to charge. Beyond these the court is not to seek. It is not for the court to require either allegation or proof of that which the legislature has omitted in their definition of the crime, nor to carry that which is descriptive of one class of offenses into either of the others, as an essential requisite. State v. Walton, 62 Me. 106.

Section provides punishment for fraudulent breach of official duty and trust.—It is the fraudulent breach of official duty and trust, which but for this statute, could not be held to amount to larceny that the legislature aimed to punish. State v. Walton, 62 Me. 106.

And felonious taking from owner is unnecessary.—When money is received by a public officer, this section makes the fraudulent appropriation of it to his own use, in violation of his official oath, tantamount to larceny and punishable as such, though there is no felonious taking and asportation from the possession of the owner, and though the fraudulent official and his sureties may be held bound by his contract with the town to account for it under circumstances when an ordinary bailee would be excused. State v. Walton, 62 Me. 106.

And allegation of conversion of money obtained by virtue of office is sufficient.—As against a public officer, it is suffi-

cient to allege and prove the fraudulent conversion to his own use of any money that comes into his possession or under his control by virtue of his office. As against a public officer the allegation of these acts and facts will suffice without going further, and without alleging that the money was the property of another, or whose money it was, or that the offender was not an apprentice, nor less than sixteen years old, or that he appropriated the money without the consent of any of the inhabitants of the municipal corporation whose officer he was. State v. Walton, 62 Me. 106.

But indictment without such allegation is defective.—An indictment for embezzlement under this section is insufficient which simply charges that the defendant did, by virtue of his office and employment, have, receive and take into his possession certain money to a large amount; and does not charge that the defendant embezzled or fraudulently converted such money, or any money, to his own use. Such a material omission in an indictment that fails to express the gravamen of the crime of embezzlement cannot be supplied by intendment. State v. Carkin, 90 Me. 142, 37 A. 878.

Officer criminally responsible without demand.—An officer has no right to use the town's money for any purpose of his own whatsoever. If he does so use it knowingly, it is a conversion, fraudulent as to the town, for which he becomes indictable at once, as he would be for any other indictable offense. He becomes ipso facto criminally responsible, without demand or refusal to account. State v. Shuman, 101 Me. 158, 63 A. 665.

An officer's responsibility is not measured or acquitted by his ability to pay over the balance due at the end of his term, upon demand or otherwise, but it depends upon his use or misuse of the money during the term, or later. If it is alleged that the defendant "did unlawfully embezzle and fraudulently convert" the town's money to his own use, on a day named during his term, that is sufficient in this respect. State v. Shuman, 101 Me. 158, 63 A. 665.

And an officer de facto is punishable for embezzlement under this section the same as an officer de jure.—State v. Goss, 69 Me. 22.

Thus indictment need not allege officer duly elected, etc.—An indictment under this section against a public officer need not allege that the officer was duly elected or appointed or that he was duly qualified as such. State v. Goss, 69 Me. 22.

Stated in State v. Whitehouse, 95 Me. 179, 49 A. 869.

Cited in Cumberland County v. Pennell, 69 Me. 357; Parsons v. Monmouth, 70 Me. 262.

Sec. 8. Prosecutions for embezzling, or fraudulently converting money, etc., by cashier or other officer.—In prosecutions for embezzling, fraudulently converting to one's own use, or taking and secreting with intent so to embezzle or fraudulently convert, the bullion, money, notes, bank notes, checks, drafts, bills of exchange, obligations or other securities for money, of any person, bank, incorporated company or copartnership, by a cashier or other officer, clerk, agent or servant of such person, bank, incorporated company or copartnership, it is sufficient to allege generally in the indictment an embezzlement, fraudulent conversion or taking with such intent, of money to a certain amount, without specifying any particulars of such embezzlement; and at the trial, evidence may be given of such embezzlement, fraudulent conversion or taking with such intent, committed within 6 months before the time stated in the indictment; and it is sufficient to maintain the charge in the indictment, and is not a variance, if it is proved that any bullion, money, note, bank note, check, draft, bill of exchange or other security for money, of such person, bank, incorporated company or copartnership, of whatever amount, was fraudulently embezzled, converted or taken with such intent by such cashier or other officer, clerk, servant or agent, within such period of 6 months. (R. S. c. 119, § 8.)

The phrase "lawful money of the United States" is not a necessary part of the description in an indictment under this section. State v. Thomes, 126 Me. 230, 137 A. 396.

Sec. 9. Larceny by one trusted with property; insurance or other agent appropriating money to own use.—Whoever embezzles, or fraudulently converts to his own use, or secretes with intent to embezzle or fraudulently

convert to his own use, money, goods or property delivered to him, or any part thereof, which may be the subject of larceny, shall be deemed guilty of larceny and shall be punished accordingly. Any insurance agent, or agent of any corporation doing business in the state, who fraudulently appropriates to his own use any money, or substitutes for money, received by him as such agent, or refuses or neglects to pay over and deliver the same to the party entitled to receive it, for 30 days after written demand upon him therefor, is guilty of larceny and shall be punished accordingly. (R. S. c. 119, § 9.)

History of section.—See Smith, Petitioner, 142 Me. 1, 45 A. (2d) 438.

The law of embezzlement is statutory. It sprang from attempts to amend the law of larceny and is indeed a sort of statutory larceny. State v. Cates, 99 Me. 68, 58 A. 238.

Embezzlement was not an offense at common law. It is purely a statutory crime. It partakes of the nature of larceny but differs from the latter in that the original taking in embezzlement is lawful, or with the consent of the owner, whereas in larceny the felonious intent existed at the time of taking. It has often been stated that embezzlement is larceny committed by a certain class of persons, without a trespass. State v. Thomes, 126 Me. 230, 137 A. 396.

And offense punishable only as statute provides.—Embezzlement is a statutory offense. As such it is punishable only as by statute provided and to the extent that the legislature has specified. State v. Snow, 132 Me. 321, 170 A. 62.

By the enactment of this section a peculiar species of larceny was created where felonious taking is wanting. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

And person violating section is guilty of larceny.—This section does not declare that a violation of its provisions shall constitute the offense of embezzlement. It does declare that a person found to be guilty of their violation shall be deemed to have committed larceny. State v. Haskell, 33 Me. 127.

Section applies to conversions not punishable as larceny.—The mischief giving rise to this section must have been that persons entrusted with property of others, under conditions that rendered prosecution for larceny inapplicable, had converted to their own use that of which the eventual owners should not be deprived. State v. Snow, 132 Me. 321, 170 A. 62.

And it applies to those persons not enumerated in § 7.—Section 7 obviously does not apply to many cases that might arise where money or other property had been intrusted to a person upon some trust and confidence, and was embezzled and fraudulently converted by him to his own use, and where such person could not be convicted of larceny because the felonious taking would be wanting. The purpose of this section was to obviate this defect and to make embezzlement by others than those already enumerated in § 7 larceny by additional legislation rather than to change any existing statute. State v. Whitehouse, 95 Me. 179, 49 A. 869.

But it does not apply to guardians.—This section does not apply to the case of a guardian who, in violation of his trust, embezzles the property of his ward, of which he has the charge and custody by reason of his guardianship. It was not the intention of the legislature to make this section applicable to the case of embezzlement by a guardian, for which a special statute has been enacted. State v. Whitehouse, 95 Me. 179, 49 A. 869; Smith, Petitioner, 142 Me. 1, 45 A. (2d) 438. See c. 158, § 35.

Nor to cases of conversion of money paid by mistake.—Where money is paid by mistake and fraudulently converted, no conviction can be had under this section, inasmuch as the moral turpitude is not so great as in those cases usually comprehended within the offense of embezzlement, and the legislature could not have intended to place them on the same footing. State v. Stevenson, 91 Me. 107, 39 A. 471.

This section does not establish numerous independent offenses. The offense alleged is in effect larceny, and the section particularizes the modes in which the offense may be committed, namely, by embezzling or secreting with intent to embezzle, and the same punishment applies in whatever form the guilty participation consists. State v. Cates, 99 Me. 68, 58 A. 238.

And offender subject to but one penalty.—The offense charged in this section may be defined as statutory larceny. It is not embezzlement nor secreting with intent to embezzle. These phrases simply describe the modes by which the single act of larceny may be committed, the acts

which constitute the offense. The penalty for larceny, by necessary implication, follows the offense. But it should be observed that the acts, whether done together or separately, constitute but one offense, larceny, and are subject to but one and the same penalty. State v. Cates, 99 Me. 68, 58 A. 238.

Although various acts making the offense are charged separately.—The punishment is the same for one as for all of the prohibited acts. If each of the acts is charged separately, in different counts, only one punishment can be inflicted. The several acts mentioned are but so many modes of describing one and the same offense, statutory larceny. State v. Cates, 99 Me. 68, 58 A. 238.

This section clearly states that embezzlement, or secreting with intent to embezzle, are but different ways of committing one and the same offense, an offense which "shall be deemed larceny," and to which is attached but one and the same penalty. The defendant may have committed the offense charged in the section by one of the modes or both of them. If he secreted with intent to embezzle he would be guilty of the offense charged, and if he executed the intent he would be guilty of no more. The only effect of proving both offenses would be to show circumstances of aggravation. When the statute defines an offense and states one or more modes in which it may be committed, and prescribes but one penalty therefor, a single count in an indictment may contain a statement of facts which show that the offense has been committed by all the modes named in the statute. And although it appears upon the face of the indictment that the acts set forth constitute several modes by which the defendant committed the offense, if it also appears that the acts were committed at the same time, were connected and parts of the same transaction, the charge is not subject to the objection of duplicity. State v. Cates, 99 Me. 68, 58 A. 238.

Section punishes fraudulent breach of duty and trust.—It was the fraudulent breach of duty and trust, which, but for the statute, could not be held to amount to larceny, that the legislature wanted to punish. State v. Cates, 99 Me. 68, 58 A. 238.

And a fraudulent intent to deprive the owner of his property and appropriate same is the gravamen of the offense. State v. Morin, 131 Me. 349, 163 A. 102.

Under this section, one may not be found guilty unless the conversion is fraudulent or he acted with felonious intent. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

And must be alleged to distinguish it from larceny.—The purpose of this section is to create a peculiar species of larceny, where the felonious taking is wanting; and all authorities agree that in such case an indictment for larceny proper cannot be maintained. That is, proof of embezzlement will not support an indictment for larceny. It logically follows, therefore, that an indictment for larceny by embezzlement must distinguish the offense by apt averment, and the distinguishing element is the breach of some trust of confidence. That is the gist of the crime, and therefore must be charged. State v. Stevenson, 91 Me. 107, 39 A. 471.

Person acting in good faith is not guilty.—Where one, although he does that which he has no legal right to do, acts with an honest and well founded belief that he has such right, he cannot be found guilty under this section. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

Thus bailee acting in good faith not guilty.—If the respondent sold his bailor's property under an honest and well founded belief that he had the right so to do, the necessary felonious intent is lacking and a verdict of guilty is not warranted. State v. Morin, 131 Me. 349, 163 A. 102.

Nor is an executor so acting.—An executor cannot be guilty under this section, unless his conversion was fraudulent or unless he acted with a felonious intent. State v. Smith, 140 Me. 255, 37 A. (2d) 246. See State v. Snow, 132 Me. 321, 170 A. 62, wherein it was held that an indictment charging in apt words that a person converted the property of another while in the possession of that person as an administrator or executor is good as against a demurrer.

Defendant entitled to show he acted in good faith.—In a prosecution under this section, the defendant is entitled to introduce evidence tending to show that he acted in good faith and had no intention to convert. State v. Morin, 131 Me. 349, 163 A. 102.

The parol evidence rule does not apply to a prosecution under this section. In prosecutions for embezzlement against a party to a written contract, parol evidence is admissible to show the belief under which the accused acted, although it

tends to alter or contradict the terms of the instrument. State v. Morin, 131 Me. 349, 163 A. 102.

Indictment in language of section is sufficient.—This section sufficiently sets out the facts which make the crime, so that a person of common understanding may have adequate notice of the nature of the charge which he is called upon to meet. That being so, employment of the language of the section in the indictment is legally sufficient. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

And it need not allege the offense of larceny. The offense in itself is not larceny. State v. Cates, 99 Me. 68, 58 A. 238.

Nor is it necessary that the indictment specify the value of the property. State v. Cates, 99 Me. 68, 58 A. 238.

Nor its ownership.—In an indictment based on this section it is not incumbent upon the state to allege ownership of the property claimed to have been converted. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

This section does not itself specifically require that there shall be any allegation of ownership of the property. Conviction should follow proof beyond a reasonable doubt that one has embezzled or fraudulently converted to his own use property delivered to him which may be subject to larceny. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

The word "delivered" as used in this section was intended to mean property entrusted to him in some fiduciary capacity. One does not ordinarily entrust his own property to himself in fiduciary capacity. The word "delivered" would seem to have been intended by the legislature sufficiently to denote property belonging to another without statement of whose property it was. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

But its delivery and receipt must be alleged.—In an indictment based on this section, it is necessary for the state to allege the delivery to and receipt by the accused of the property. State v. Smith, 140 Me. 255, 37 A. (2d) 246.

And the property should be described with the particularity required in an indictment for larceny. State v. Thomes, 126 Me. 230, 137 A. 396.

The rule of pleading concerning description of property in indictments under statutes such as this section, is the same as in indictments charging larceny. State v. Thomes, 126 Me. 230, 137 A. 396.

The necessity of describing the property with the same clearness and precision as in larceny flows from the idea that embezzlement is rather a species of larceny than an offense of a distinct nature. State v. Thomes, 126 Me. 230, 137 A. 396.

And an averment of the embezzlement of a certain amount of money in dollars and cents is insufficient. State v. Thomes, 126 Me. 230, 137 A. 396. See note to § 1.

Former provision of section.—For a consideration of a former provision of this section concerning the conversion by carriers, see State v. Haskell, 33 Me. 127.

Sec. 10. Common thief.—Whoever, after being convicted of larceny as principal or as accessory before the fact, is again convicted thereof, or is convicted of 3 distinct larcenies at the same term of court, shall be deemed a common thief and be punished by imprisonment for not less than 1 year nor more than 15 years. (R. S. c. 119, § 10.)

Former conviction may be shown by docket entries if record not extended.—When the record in a case has not been fully extended, the docket entries may be read to the jury in support of the allegation of a former conviction. The docket is deemed to be the record until a more extended record is made, and the same rules of imported verity apply to the docket entries as to the completed record. State v. Simpson, 91 Me. 77, 39 A. 286.

But further evidence of court's jurisdiction is required.—It is a settled rule in this state that, when the record in a case has not been fully extended, the docket entries may be read to the jury in support of the allegation of a former conviction; but as there is no presumption in favor of the jurisdiction of an inferior court of limited statutory jurisdiction, the docket entries from the records of such a court cannot be accepted as sufficient proof of a former conviction of larceny without further evidence that the court had jurisdiction of the particular offense of which the respondent was convicted. State v. Simpson, 91 Me. 77, 39 A. 286.

In the absence of prima facie evidence that a court of limited statutory jurisdiction had jurisdiction of the offenses charged, the docket entries are not sufficient to establish the former conviction alleged in the indictment. State v. Simpson, 91 Me. 77, 39 A. 286.

Applied in State v. Simpson, 91 Me. 83, 39 A. 287.

Buying, Receiving or Aiding to Conceal Stolen Goods.

Sec. 11. Buying, receiving or aiding to conceal stolen property; restoration of stolen property; subsequent conviction. — Whoever buys, receives or aids in concealing stolen property, knowing it to be stolen, shall be punished:

I. If the value thereof does not exceed $100, by a fine of not more than $100 or by imprisonment for not more than 6 months;

II. If the value thereof exceeds $100, by a fine of not more than $500 or by imprisonment for not more than 5 years.

The conviction of the person who stole the property need not be averred or proved. If the stealing was simple larceny and the person restores or makes satisfaction to the party injured for the full value of such property, he shall not be sentenced to the state prison. If, after conviction, he is again convicted of a like offense, or if he is convicted of 3 such distinct offenses at the same term of court, the imprisonment shall not be for less than 1 year nor more than 10 years. (R. S. c. 119, § 11.)

Section provides for only one offense.— This section makes the buying, receiving, or aiding in the concealment of stolen goods but one offense, although it may be committed in three modes. If it is charged in all three of the modes, still but one offense is committed, and only one punishment can be inflicted. The offense is established by proof of either of the modes, but the penalty is the same for one as for all three of them. There is, therefore, but one crime charged. State v. Nelson, 29 Me. 329.

And such offense is a distinct and substantive crime in itself, and is not merely accessorial to the principal one of larceny. Nissenbaum v. State, 135 Me. 393, 197 A. 915.

Applied in State v. Davis, 123 Me. 317, 122 A. 868.

Sec. 12. Officer to secure and keep stolen property for the owner; if owner not found.—The officer, who arrests a person charged with an offense under the provisions of this chapter, shall secure the property alleged to have been stolen, be answerable for it and annex a schedule of it to his return; and, upon conviction of the offender, the property stolen shall be restored to the owner. If the owner cannot be found, the state police, the sheriff of any county or the police department of any city may convert said property, which has been in their possession for at least 2 years, into money, after public notice published 3 weeks successively in a newspaper published in the county in which the stolen property was recovered or, if none, in the state paper. This money shall be paid over to the treasurer of the county in which said property was recovered for deposit into the general funds of the county. (R. S. c. 119, § 12.)

Sec. 13. Compensation to prosecutor and officer. — The court, other than a municipal court or trial justice, upon conviction before it of burglary, robbery or larceny, and when there is no conviction by reason of the death of the offender or of his escape without their fault, may allow to the prosecutor and to the officer who has secured or kept the property a fair compensation for their actual expenses, time and trouble in arresting the offender and securing the property stolen. (R. S. c. 119, § 13.)

Sec. 14. Action for stolen property. — An action for the recovery of property stolen may be maintained by the owner against the person liable therefor, although the thief is not convicted. (R. S. c. 119, § 14.)

Assumpsit for money had and received may be maintained under this section.— When specific articles have been stolen, and have not been converted into money, it may be that the remedy is by an action of trespass, or case, instead of by an action of assumpsit. But if the stolen property was money, or has been converted into money, an action of assumpsit, for money had and received, is maintainable,

according to the established doctrine that when one man has money in his hands that in equity and good conscience belongs to another, it may be recovered in this form of action. The plaintiff may waive the tort in this case, as well as in any other case of wrongful taking. Howe v. Clancey, 53 Me. 130.

Applied in Carleton v. Lewis, 67 Me. 76.

Cited in Nowlan v. Griffin, 68 Me. 235.