

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Sec. 39-A. Trespass on certain buildings. — Whoever willfully enters any dwelling house, camp, cottage or locked building, without the permission of the owner or occupant thereof, shall be punished by a fine of not more than \$100, or by imprisonment for not more than 90 days or by both such fine and imprisonment. (1955, c. 407.)

Sec. 41. Trespass on timber or wood standing, etc. — Whoever, except a road commissioner acting within the scope of his lawful authority, willfully commits any trespass by cutting, destroying or carrying away timber or wood on the land of another; by digging up, taking and carrying away therefrom earth, sand, stone, grass, corn, grain, fruit, hay or other vegetables, or by carrying away from any wharf or landing place goods in which he has no interest, shall be punished by a fine of not more than \$100 and by imprisonment for not more than 2 months. (R. S. c. 118, § 41. 1955, c. 198. 1961, c. 189.)

Effect of amendments.—The 1955 amendment increased the maximum fine from \$50 to \$100. The 1961 amendment inserted “sand”.

Sec. 42. Limitations of prosecutions.—Prosecutions for offenses described in sections 13 to 41, except those set forth in sections 15, 16, 19, 29, 31, 35 and 36, must be commenced within 4 years after the commission thereof. (R. S. c. 118, § 42. 1963, c. 402, § 208.)

Effect of amendment.—The 1963 amendment deleted the last portion of the section, which gave trial justices jurisdiction in certain cases and fixed the maximum punishment in such cases.

Application of amending act.—See note to § 19.

Chapter 132.

Larceny, Embezzlement and Receiving Stolen Goods.

Section 10-A. Willful Concealment of Merchandise.

Larceny, Embezzlement and Common Thief.

Sec. 1. Larceny, defined.—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 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. (R. S. c. 119, § 1. 1963, c. 21, § 2.)

Cross references.

See notes to c. 145, § 12, re-ownership of property of corporations and unincorporated associations.

Effect of amendment.—The 1963 amendment deleted “less than 1 year nor” formerly preceding “more than 5 years” and deleted “such fine and imprisonment” at the end of the section.

Essential element of larceny.—That the property alleged to have been stolen was the property of one other than the accused is an essential element of larceny which must be alleged and proved. *State v. Small*,

156 Me. 10, 157 A. (2d) 874.

Felonious intent must be shown. — A conviction for larceny will not be sustained unless a felonious intent at the time of the taking is shown. *State v. Greenlaw*, 159 Me. 141, 189 A. (2d) 370.

In order to constitute a larceny, there must be not only a taking and carrying away of the goods of another, but there must also exist contemporaneously the felonious intent, the *animus furandi*, on the part of the taker, which means a taking without excuse or color or right with the intent to deprive the owner permanently of

his property and all compensation therefor. The felonious intent is the very gist of the offense. *State v. Greenlaw*, 159 Me. 141, 189 A. (2d) 370.

The intent must be to deprive the owner permanently of the property. *State v. Greenlaw*, 159 Me. 141, 189 A. (2d) 370.

To verify robbery or larceny, the evidence adduced must demonstrate beyond any reasonable doubt a taking by a defendant with intent to deprive the chattel's owner or possessor permanently of the object appropriated. *State v. Greenlaw*, 159 Me. 141, 189 A. (2d) 370.

And merely borrowing property for temporary use is insufficient.—Merely borrowing property for a temporary use does not constitute larceny. *State v. Greenlaw*, 159 Me. 141, 189 A. (2d) 370.

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 more than 15 years; and when the offense is committed in the daytime, by a fine of not more than \$1,000 or by imprisonment for not more than 6 years. (R. S. c. 119, § 3. 1963, c. 21, § 3.)

Effect of amendment.—The 1963 amendment deleted “less than 1 year nor” formerly preceding “more than 15 years” and substituted “by a fine of not more than \$1,000 or by imprisonment for not more

Intent is a jury question. *State v. Greenlaw*, 159 Me. 141, 189 A. (2d) 370.

Allegation of ownership in indictment.—If known, the name of the owner of the goods alleged to have been stolen must be set forth in the indictment; when unknown, the ownership may be alleged to be in persons unknown. *State v. Small*, 156 Me. 10, 157 A. (2d) 874.

When motion in arrest of judgment proper.—Where an indictment for larceny is fatally defective in not properly alleging all of the elements of the crime, a motion in arrest of judgment is the proper method to take advantage of this defect. *State v. Small*, 156 Me. 10, 157 A. (2d) 874.

than 6 years” for “by imprisonment for not more than 6 years or by a fine of not more than \$1,000” at the end of the section.

Sec. 7. Larceny by embezzlement or fraudulent conversion of property; receiver liable.—If an officer, agent, clerk or servant of a person, co-partnership or corporation, except an apprentice or a person not having attained his 16th birthday, 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. 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. 1963, c. 331, § 6.)

Effect of amendment.—The 1963 amendment divided the first sentence into two sentences and substituted “except an apprentice or a person not having attained

his 16th birthday" for "not an apprentice nor less than 16 years of age" near the beginning of the first sentence.

The crime is fraudulent conversion with felonious intent.—In the embezzlement of funds by a public officer, the crime involved is not withdrawing funds from a town account without warrant, but rather is the embezzlement or fraudulent conversion of town funds with felonious in-

tent. *State v. Huff*, 157 Me. 269, 171 A. (2d) 210.

And felonious intent must be shown beyond a reasonable doubt in order to convict under this section. *State v. Huff*, 157 Me. 269, 171 A. (2d) 210.

For instructions on felonious intent, see *State v. Huff*, 157 Me. 269, 171 A. (2d) 210.

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, copartnership, municipal or quasi-municipal corporation, public officer or tax collector, by a cashier or other officer, clerk, agent or servant of such person, bank, incorporated company, copartnership, municipal or quasi-municipal corporation, public officer or tax collector, or by such public officer or tax collector, 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, copartnership, municipal or quasi-municipal corporation, public officer or tax collector, of whatever amount, was fraudulently embezzled, converted or taken with such intent by such cashier or other officer, clerk, servant, agent, public officer or tax collector, within such period of 6 months. (R. S. c. 119, § 8, 1955, c. 28.)

Effect of amendment.—The 1955 amendment made this section applicable to embezzlement of the money, etc., of a "municipal or quasi-municipal corporation.

public officer or tax collector," and to embezzlement by a "public officer or tax collector."

Sec. 9-A. Larceny by trustee in trust receipt transaction. — Any trustee, as defined under chapter 189, who fraudulently appropriates to his own use any money, goods or documents received by him in connection with a trust receipt transaction, 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. (1961, c. 267.)

Sec. 9-B. Larceny by officer, partner or agent of trustee in trust receipt transaction.—In any case in which the trustee in a trust receipt transaction would be guilty of larceny under section 9-A, and the trustee is a corporation or partnership, any officer or director, partner or agent of such a trustee who willfully and wrongfully sells or disposes of or causes the trustee to sell or dispose of the goods, documents or instruments involved in a trust receipt transaction in which the trustee had no liberty of sale or other disposition, or who willfully or wrongfully diverts or causes the trustee to fail to account to the entruster for the proceeds of sale or other disposition or to pay to the entruster the amount due to the entruster under the trust receipt after such sale or other disposition where the trustee had liberty of sale or other disposition, shall be guilty of larceny and shall be punished as herein provided. (1961, c. 267.)

Sec. 10. Common thief.

Quoted in *State v. Mottram*, 158 Me. 325, 184 A. (2d) 225.

Willful Concealment of Merchandise.

Sec. 10-A. Willful concealment of merchandise. — Whoever, without authority, willfully conceals the goods or merchandise of any store, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$100, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Goods or merchandise found concealed upon the person shall be prima facie evidence of a willful concealment. (1955, c. 66.)

Buying, Receiving or Aiding to Conceal Stolen Goods.

Sec. 11. Buying, receiving or aiding to conceal stolen property; restoration of stolen property; subsequent conviction.

Applied in *State v. Sanborn*, 157 Me. 424, 173 A. (2d) 854. Cited in *State v. Jutras*, 154 Me. 198, 144 A. (2d) 865.

Sec. 13. Compensation to prosecutor and officer. — The court, other than the district court, 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. 1963, c. 402, § 209.)

Effect of amendment.—The 1963 amendment substituted “the district court” for “a municipal court or trial justice.”

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the

act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Chapter 133.**Forgery, Counterfeiting, False Pretenses and Frauds.**

Sections 11 to 29-B. False Pretenses and Other Frauds.

Forgery and Counterfeiting.

Sec. 1. Forgery, definition. — Whoever, with intent to defraud, falsely makes, alters, forges or counterfeits any public record or proceeding filed or entered in any court; or process issued, or purporting to be issued by a competent court, magistrate or officer; or attestation or certificate of any person required by law or receivable as legal proof in relation to any matter; or any charter, deed, will, testament, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note, order or acceptance, or indorsement or assignment thereof, or of any debt or contract; or acquittance, discharge or accountable receipt for anything of value; or a motor vehicle operator's license or registration certificate; or any other written instrument of another, or purporting to be such, by which any pecuniary demand or obligation or any right in any property is or purports to be created, increased, conveyed, transferred, diminished or discharged; and whoever utters and publishes as true any instrument before-mentioned, knowing it to be false, forged or counterfeit,