

guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanour charged in the indictment, and no person shall hereafter be prosecuted for any attempt to commit any felony or misdemeanour who has been previously tried for committing the same offence.

be found guilty of an attempt to commit it.

XII. If upon the trial of any person for larceny, it shall appear that the property taken shall have been obtained by such person by fraud, under circumstances which do not amount to such taking as constitutes larceny, such person shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of obtaining such property under false pretences, if the evidence prove such to be the case, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for obtaining property under false pretences, and no person so tried for larceny as aforesaid shall be liable to be afterwards prosecuted for obtaining property under false pretences upon the same facts.

Persons indicted for larceny may be found guilty of obtaining under false pretences.

XIII. If upon the trial of any person for any misdemeanour it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour, and no person tried for such misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the Court before which such trial may be had shall think fit in its discretion, to discharge the Jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects, as if he had not been put upon his trial for such misdemeanour.

Provision where the indictment is for misdemeanour and the evidence proves a felony.

XIV. If upon the trial of any person indicted for embezzlement as a clerk, servant, or person employed for the purpose or in the capacity of clerk, or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk servant, or person employed for the purpose, or in the capacity of a clerk or servant, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted on an indictment for such larceny; and if upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict, that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, and no person so tried for embezzlement or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Where the indictment is for embezzlement, and the evidence proves a felony or vice versa.