

IX. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof: For remedy thereof, be it enacted, if on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was 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 misdemeanor 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 misdemeanor charged in such indictment; and no person tried as lastly mentioned shall be liable to be afterwards prosecuted for committing or attempting to commit the felony or misdemeanor for which he was so tried.

A party indicted for felony or misdemeanor may be found guilty of an attempt to commit the same.

X. If upon the trial of any person upon an indictment for robbery, it shall appear to the jury, upon the evidence, that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant 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 guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting, with intent to rob; and no person so tried shall be liable to be afterwards prosecuted for the robbery, or for an assault with intent to commit the robbery for which he was so tried.

On the trial of an indictment for robbery, the jury may convict of an assault with intent to rob.

XI. If upon the trial of any person for any misdemeanor, 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 misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards 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 misdemeanor.

Person tried for misdemeanor not to be acquitted, if the offence turn out to be felony, unless the Court so direct.

XII. 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 a clerk or servant, it shall be proved that he took the property in question in any such manner as to

Persons indicted for embezzlement as a