

**Larceny, What is Sufficient Proof of Ownership of Property Stolen.**

Although the person from whom property is stolen is not the true owner thereof, if he was in possession and entitled to the possession thereof at the time it was stolen, the person unlawfully taking the property with intent to steal it may be convicted of larceny.

If the information alleges that the person from whom the property was stolen was the owner thereof at the time it was stolen, and the proof shown that he was in possession and entitled to the possession thereof at the time it was stolen, this would be sufficient proof of ownership to meet the requirement of the statute with reference to ownership.

Jan. 10, 1911.

Mr. Sharpless Walker,  
County Attorney,  
Miles City, Montana.

Dear Sir:

Your letter of January 6th has been received, requesting my opinion upon the following statement of facts:

"A" stole a horse in North Dakota and brought it to Montana and sold and delivered it to "B" and then stole it from "B". Can "A" be convicted of larceny of the horse from "B"?

Sec. 8642 of the Revised Codes defines larceny and is taken from Sec. 1290 of the Criminal Code of New York, as follows:

"Every person who, with intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker or of any other person, either:

1. Takes from the possession of the true owner, or of any other person \* \* \* any money, personal property, etc., \* \* \* steals such property and is guilty of larceny."

As a matter of fact "B" is not the true owner of the horse, but he is the owner and entitled to the possession thereof against all persons except the true owner. "A" sold the horse, to "B" and could not deny "B's" ownership thereof.

The fact that the property was in the possession of "B" at the time of the taking is sufficient evidence of ownership in him.

People v. Davis, 97 Cal., 149; 31 Pac. 1109.

People v. Nelson, 56 Cal., 77.

People v. Oldham, 111 Cal. 648; 44 Pac. 312.

If the information alleged that "B" was the owner of the horse at the time it was stolen by "A" and the proof shows that "B" was in the possession of the horse and obtained his possession by purchase from "A", this, in my opinion, would be sufficient evidence of ownership to meet the requirements of the statute, and "A" would be estopped to deny that "B" was the owner, having sold the horse to him.

I am of the opinion that "A" can be convicted of larceny provided it can be shown that he took the horse from the possession of "B" with intent to deprive him of the ownership of the property and to appropriate the same to his own use.

Yours very truly,

ALBERT J. GALEN,

Attorney General.