

Cambridge University Press

978-1-107-45573-3 - A Selection of Cases Illustrative of: English Criminal Law

Courtney Stanhope Kenny

Index

[More information](#)

## INDEX

- Accessory: see *Modes of participating*  
 Accomplice: see *Modes of participating*  
     evidence of, 539–542  
 Age: see *Infancy*  
 Animals, negligence as to, 126  
 Appropriation by bailee: see *Larceny*,  
     223–237  
 Assault, 146–152; 497; 558  
     consent as a defence, 558  
     force allowed in constable's duties, 146  
     indecent, 547, 558  
     in self-defence, 147  
     in removing trespasser, 148  
     limits to self-defence, 149–152  
     evidence as to what was said, 497  
 Attempt, 85–88  
     at an Impossibility, 88  
 Bailee, Appropriation by: see *Larceny*  
 Battery: see *Assault*  
 Bigamy, 423–432  
     second marriage otherwise invalid, 423  
     mistaken belief that spouse dead, 15  
     evidence and burden of proof, 426–429  
     conflict of presumptions, 429  
     burden of proof as to the marriage, 459  
 Blackmail: see *Menaces*  
 Burden of proof, 471–475  
     Usually on affirmant, 471  
     But not if negative avers a crime, 471–  
         474  
     unless affirmative best proveable by  
         accused, 474  
     burden of proof as to infant's mens  
         rea, 41–43  
     in murder cases, 550  
     See *Presumptions*, passim, 446–470  
 Burglary, 160–179  
     must be of a Dwelling-house, 160  
     what is a dwelling-house, 161–165  
     there must be a Breaking, 165  
     what is sufficient Breaking, 166–172  
     Constructive breaking, 169–172  
     what is sufficient Entry, 172–175  
     insertion of instrument, 173–175  
     Intention to commit a felony, 175, 176  
     but not a mere misdemeanour, 176,  
         177  
     not a mere breach of trust, 177  
     This intent must exist at Breaking, 178  
     Presumption from possession of  
         property stolen, 466  
 Carnal knowledge, 547  
 Character: see *Evidence*  
 Children: see *Infancy*  
 Conspiracy, 398–415; 573  
     constituted by mere Agreement, 398  
     direct communication between all con-  
         spirators not essential, 573  
     objects of indictable agreement, 399–  
         401  
     agreements injurious yet not indict-  
         able, 405  
     more than one conspirator necessary,  
         407  
     how proved, 408  
     insufficient proof, 409  
     wide range of evidence, 409–411  
     nature, and evidence, of Conspiracy,  
         412  
 Contract, breach of, 1, 2  
 Corporations, 69  
 Coverture, 64–68  
     evidence of spouses, 579–581  
     husband's presence may excuse, 64  
     but not in the gravest crimes, 66  
     nor where wife the more active, 66  
 Damnum sine injuria, 1  
 Degrees of participation in crime: see  
     *Modes of participating*  
 Duress, 56–61  
     fear of death may excuse, 56  
     but no lesser fear, 57  
 Dwelling-house, what it is, 161–165  
 Embezzlement, 304–323  
     distinguished from Larceny, 304–305  
     statutory enactment, 306  
     who is a Servant, 306–310  
     what can be embezzled, 311–321  
     not earnings from unauthorised  
         dealings, 311–313  
     otherwise if dealings authorised, 314  
     forging master's cheque, 315  
     cashing cheques belonging to master,  
         316  
     property obtained through fellow-ser-  
         vant from master, 318  
     through fellow-servant, from stranger,  
         319  
     delivery to master before appropri-  
         ation, 305, 320, 321  
     proof of appropriation, 323, 324

Cambridge University Press

978-1-107-45573-3 - A Selection of Cases Illustrative of: English Criminal Law

Courtney Stanhope Kenny

Index

[More information](#)

584

*Select Cases on Criminal Law.***Evidence, 475–544; 579–581**

Relevancy, 479–490

to the points in issue, 479

in trials for conspiracy, 409–411

evidence of prisoner's other crimes, 481–490

Leading questions, 490, 491

inadmissible in examination in chief, 490

but not in cross-examination, 491

Writings, 492–494

contents not proveable by Oral evidence, 492

It suffices for other chattels, 492

Or for condition of a writing, 494

Hearsay, 494–520

usually is not evidence, 494–497

otherwise if it is, or qualifies, a fact in issue, 497

or describes speaker's feelings, 498–501

but not if describing past conduct, 501

complaints of prosecutrix, 503

admissions of party against himself, 506, 507

made during infancy, 508

admission by silent conduct, 509–511

statement by person, now dead, against pecuniary interest, 511–513

by person, now dead, in course of duty, 514, 515

dying declaration by person slain, 515–520

Confessions, 521–528

inadmissible after Inducement connected with prosecution, 521

inducement by person unconnected with prosecution, 524

inducement by religious appeal, 525

Temporal Inducement unconnected

with result of trial, 527

evidence of Character, 528–533

Privilege, 534–539; 579–581

counsel and solicitors, 534

criminating questions, 535

medical advisers, 524

spouses, 579–581

Accomplices, 539–542

corroboration desirable, 539

but not absolutely necessary, 540

effective and ineffective, 541, 542

Discrediting a witness, 543, 544

witness's answers usually final, 543

but not as to Bias, 544

evidence as to Insanity, 49, 50

evidence as to Conspiracy, 408–415

evidence as to Perjury, 422

Circumstantial evidence in Murder, 449, 450

evidence to rebut presumption of Innocence, 450–454

**False pretences, 323–358**

distinguished from Larceny by a trick, 561

statutory definition, 323

the Pretence, 323–339

of an Existing Fact, 323–325

of a merely mental state, 326–332

fact or opinion, 331

representations implied, 333–339

the Obtaining, 339–347

obtaining must follow the pretence, 339

and be caused by it, 340

and not caused too remotely, 342

lapse of time, 344

the Right obtained, 347–358

not mere right to possession, 347

ownership obtained, 348

ownership to pass only on a condition, 249–253

unauthorised agent, 254

the Subject-matter of the right, 355–359

must be personal property, 355

and larcenable, 357

Felonious intent, 106–110; 173–179; 223; 284–292

Felony: death resulting from, 106–110; 554

**Forgery, 179–211**

the document, 179–187

forgery by ante-dating, 188

by exceeding an agent's authority, 191

by using imaginary name, 195

or even one's own name, 197

assumed name not necessarily forgery, 199

nor false oral statement about a writing, 200

intent to defraud usually necessary, 202

where no fraud possible, no forgery, 205

intent to defraud but not to cause loss, 208

intent to obtain your due, 209

Hearsay: see *Evidence*High Treason: see *Treason*Homicide: see also *Suicide, Murder, Manslaughter*

when not a crime, 136–143

by mere accident, 136, 137

in self-defence, 137–139

or defence of near relation, 140

self-defence when retreat possible, 141, 142

in effecting arrest, 143

declarations of person slain, 515–520

Housebreaking: see *Burglary*, 165–179

Husband and wife, evidence of, 579–581

Cambridge University Press

978-1-107-45573-3 - A Selection of Cases Illustrative of: English Criminal Law

Courtney Stanhope Kenny

Index

[More information](#)*Index.*

585

- Ignorance  
   of fact, 27, 28  
   of law, 29  
   See *Mens Rea*  
 Inchoate Crimes, 83–88  
 Incitements, 83  
 Indecent assault, 547; 558  
 Infancy, 41–43; 550  
   infant above seven capable of crime, 41  
   but age now raised to eight, 550  
   but until fourteen presumably incapable, 41–43  
 Insanity, 43–53  
   some forms may excuse, 43–48  
   how proved, 48  
   insane Impulse, 50–52  
 Intoxication, 54–56  
   compatible with mens rea, 54  
   but may shew mistake of fact, 54  
   or disprove a special mens rea, 55
- Jury  
   determining negligence in Homicide, 122  
   function in Libel trial, 444  
   methods of forming verdict, 467
- Larceny, 211–304; 561  
   Demanding with menaces, 562–572  
   Distinguished from False Pretences, 561  
   Taking is essential, 211, 212  
     taking by act of owner's agent, 213  
     by present possessor, 214  
     by mere custodian, 216–218, 225  
   Carrying Away essential, 218–222  
     slightest asportation suffices, 219, 220  
     goods need not be retained, 220–222  
   Appropriation by a Bailee, 223–237  
     is not a taking, 223–225  
     unless bulk broken first, 223–225  
     statutory enlargement of larceny, 226 (note)  
     bailees who must deliver identical thing, 227–229  
     bailments of cash, 229  
     what creates such bailment, 231  
     conversion must be quite inconsistent with the bailment, 235  
     pawning may be, 236  
     selling after bailment ended, 237  
   No larceny of Real Property, 238–244  
     even what originally was personal, 238  
     unless Realty merely by a fiction, 239  
     realty rendered personalty by the theft, 241–244  
   No larceny of what has no Value, 244  
     but the slightest value suffices, 245–248
- Larceny, (*cont.*)  
   No larceny of things having No Owner, 249  
     ownership of living things, 249  
     defeasible ownership, 251  
     mere right to possession, 253, 254  
     ownership created by theft, 255  
   No larceny if Claim of Right, 259–283  
     owner's consent, 259, 266  
     consent in order to detect, 260  
     consent through intimidation, 262  
     consent through fraud, 264  
     larceny by a Trick, 265  
     owner's consent, 266  
     owner's wife's consent, 274, 275  
     finder of a lost article, 276–280  
     taker's claim of ownership, 280, 281  
     claim of equivalent, 282  
     claim of lien, 281  
   the necessary Intention, 284–304  
     intent to acquire temporary possession, 284  
     intent wholly inconsistent with true possessor's interest, 285  
     ignorance of law, 287, 288  
     wrongful intent necessary at time of appropriation, 288–292  
     mutual mistake, 292–304  
     stealing by a Wife or by a Partner, 367–369  
   Possession of goods recently stolen, 464–470  
   Larceny by a trick, 561  
   Leading questions: see *Evidence*  
 Libel, 432–445  
   nature of the offence, 432  
   libel without words, 434  
   Oral defamation, 436, 437  
   publication to person libelled, 437, 438  
   truth as a defence, 438  
   publication in Parliament, 440  
   fair comment on matter of public concern, 441  
   publication invited by person defamed, 441  
   to person having a joint interest, 441  
   reports of judicial proceedings, 442  
   functions of judge and jury, 444
- Malice, 13–69, 100–120, 144–146, 152–160  
 Malicious offences against property, 152–160  
   what Malice is necessary, 152–160  
 Manslaughter: see *Murder*  
 Master and Servant, 35–40  
 Mayhem: see *Assault*  
 Menaces, demanding with, 562–572  
 Mens Rea, 13–73; 547–550  
   essential to crime, 13–20  
   slight, suffices, 20  
   may exist, though crime not intended, 20–26; 547–550

Cambridge University Press

978-1-107-45573-3 - A Selection of Cases Illustrative of: English Criminal Law

Courtney Stanhope Kenny

Index

[More information](#)

586

*Select Cases on Criminal Law.***Mens Rea** (*cont.*)

- may be excluded by ignorance of fact, 26–28

- if the ignorance be reasonable, 28

- or may not be excluded, 21; 547–550

- but not by ignorance of law, 29

- nor by religious motive, 31

- in certain crimes a less mens rea suffices, 32

- servant's unauthorised act, 35

- servant's act in ordinary course, 38

- servant obeying without mens rea, 39

- See also *Infancy, Insanity, Intoxication, Perjury*

- Mental element in crime: see *Mens Rea*

- Mischief, see *Public Mischief*

- Mistake, 547–550: see *Ignorance*

- Modes of participating in a crime, 73–88

- principals in first and second degree, 73–78

- accessory before the fact, 78–82

- accessory after the fact, 82

- accessories in murder cases, 554–557

- Murder and Manslaughter, 91–135; 550–557

- accessories, 554–557

- burden of proof, 550–554

- the external act, 91–100

- the King's Peace, 91

- prisoner's act not immediate cause of death, 92–100

- the mental state in Murder, 100–110

- intent to kill, 100, 102

- intent to do unlawful dangerous act, 103; 104; 554

- dangerous excess in lawful act, 105

- intent to commit a felony, 106–110; 554

- the mental state in Manslaughter, 111–135

- intent to do grievous harm on sudden provocation, 111–115

- intent merely to hurt, 116–120

- mere negligence, 120–135

- high degree of negligence necessary, 120

- the question of degree is for jury, 122

- negligence with regard to firearms, 122, 123

- improper medical treatment, 124

- negligence in lawful but dangerous act, 125

- dangerous animals, 126

- driving, 130

- lawful games, 131

- mere omission, 132

- negligence, when too remote, 133, 134

- where diligence would not have averted the death, 134

- contributory negligence, 135

- homicide by infant under fourteen, 41–43

- circumstantial evidence of murder, 449, 450

- Necessity, 61

- Overt act: see *Treason*

- Participation: see *Modes*

- Penalty

- sued for by private informer, 4

- sued for by public official, 7

- Perjury, 415–423

- a crime, 415

- in a judicial proceeding, 416

- extra-judicial false oath, 417

- perjury must be material to proceeding, 418

- what may be material, 419

- mens rea necessary, 421

- what evidence required, 422

- Piracy, 578

- Possession of goods recently stolen: see *Presumptions*

- Presumptions, 446–470

- against the commission of crime, 446–450; 459; 550–554

- evidence to rebut presumption of innocence, 450–454

- statutory presumptions of mens rea, 454

- master's liability for servant's act, 454

- presumption against immorality, 458

- ritè esse acta*, 460–463

- due licence, 460

- due appointment of official, 461

- fulfilment of statutory condition, 461

- Natural Consequences of a man's act, 463, 464

- Continuance of existing state of things, 464

- possession of goods recently stolen, 464–470

- See also: *Burden of proof*

- Principal: see *Modes of participating*

- Privilege: see *Evidence*

- Public Mischief, 575–577

- Receiving stolen goods, 359–369

- the goods must already have been stolen, 359

- and not yet returned to owner, 360

- and must have reached prisoner's possession, 361

- and been received with guilty knowledge, 364

- a felony, if original taking a felony, 367

- common law and statute, 369

- possession of goods recently stolen, 464–470

- Remoteness of a cause of death, 92–100; 133

- Riot: see *Unlawful Assembly*

*Index.* 587

Self-defence, 137–143, 147–152	Treason-felony, 379–384
Spouses, evidence of, 579–581	what it is, 379
Statutory offences against the person,	how proved, 380
144–146; 547	
the kind of intent necessary, 144	Unlawful Assembly and Riot, 384–397
Suicide, 89	Riot by statute and common law, 384
	Riot and Unlawful Assembly distin-
Tort, 2–4, 116, 117, 176	guished, 387
Treason, 369–379	what renders assemblies unlawful,
constructive compassing the king's	388–394
death, 369	magistrate's power of suppressing,
constructive levying of war, 370	394
what amounts to war against king,	his duty of suppressing, 396
372–375	
adhering to king's enemies, 375	Wife and husband, evidence of, 579–
what amounts to an overt act, 377–379	581