

Reported Parliament of theft act 2i Parl. i J. 6. And it is law
 full to the purpouse of Common theiues Entering into houses
 to burne such houses with intent to take and slay the
 theiues act 5 Parl. 3 J. 5 act 23 Parl. i J. 6. In England the
 taker and profector to Conviction of any Burglar or
 house breaker in the day tyme, is for his Encouragement
 charged of all parish officers where the Crime was Committed
 1088 11 H. 3 cap. 23 and gets a reward from the Sheriff of
 40 pounds Sterling 3. H. cap. 33.

Voluntary Restitution of stolen goods to the owner
 or the owners passing over the wrong done to him, will
 not hinder the thief to be punished Criminally. See
 publicam 2 Decemb. 1669 Finlay McCibbon alias. Was
 5 Aprile 1676 Coriol Jomovole. It had indeed been
 pleaded, that the the Kings advocate may punish the same
 officij leuious publick Criminal as treason Murder false
 hood where the publick peace is broken and Disturbed
 without the Concurrence of private persons Interests
 Yet he could not pursue the private Crime of theft,
 Unless the owner of the goods was seeking Reparation
 or to have the offender punished. Because a private
 person pursuing behouds by his oath that the goods were
 taken to be stolen were freely given by him, or taken
 away with his Consent, from which Benefit the Criminal
 is bit off in a trial at the feet of his Majesty the
 vocator. But this plea is always overruled: Because the
 Interest of the Republick, and Criminals Impair
 tye, the the silence or Negligence of private parties.
 2^d The King hath a particular Interest in the
 of theiues falling to his Majesty by their Conviction,
 which the private party cannot hinder. Sir George
 Johnsons Crim. part. 1. p. 133 thinks, that in
 some Statutory thefts Declared to be such when
 Committed without Licence of the owner of the goods

Act 13 Parl. 14 J. 3 act 24 Parl. 6 J. 6. The owners Declara-
 tion is a sufficient ground to absolve the offender, tho not
 in other thefts: Because Statutory thefts were introduced
 in favour of the owners, and the quality with out
 the owners Consent or good Will had also been made
 But this opinion is all founded: for no theft can be Com-
 mitted with the owners Consent, and the question is
 whether the theft already Committed against the owner is
 good by his subsequent Consent.

Receipt of theft being a secondary part of the theft,
 the Receiver of a thief or of stolen goods, cannot by the
 old law of England be punished, tho an assize, but the
 principal thief be first tried and Discovered or a Chain
 the Stat. 22 Hen. 8. 2. cap. 27. Quia Attache cap. 83 Hen. 8. 2.
 Crim. part. 1. p. 20. 54. And so it was Decided 16. August 1587
 John Curror 18 June 1623 John Douglass and 10. 1. 1. 1. 1.
 19 March 1634 James Clark. Because he is not guilty
 of any crime, cannot be punished in a trial, tho the principal
 be proved. And it was hard to find the Receiver guilty,
 when the Principal Actor may have a Defense not known
 to the Receiver Relevant to Exculpate him, viz. that the
 thing said to be stolen was false, or given to him by the
 Owner, the proving whereof would take off any Charge of
 guilt against the Receiver. So that while there is any pro-
 bability that the principal Actor may be absolved, the
 person can be put to the knowledge of an assize upon the
 Account of Receipt. Hence arise several Doubts and
 questions as Quæritur 19. if the principal thief be dead,
 in Grants or in any foreign County, must he in that
 case be first tried? 2^d if the principal thief be dead,
 may the Receiver be tried? being the Principal thief
 cannot in that case be provisionally tried. And the law
 Privileges of Discretion be favourable while the prin-
 cipal thief is alive upon the Account that it seems Mal-
 icious