

# [The possession which is not even the incident](https://assignbuster.com/the-possession-which-is-not-even-the-incident/)

The word ‘ property’ has been used in Section 410 to denote only ‘ movable property’. The expression ‘ the possession whereof has been transferred’ does not mean that the receiver should receive directly from the thief. All it implies is that the receiver should receive property which has been obtained by theft. In this case, an innocent intermediate transferee does not purge the property of its taint as stolen property which it continues to be in the hands of all subsequent transferees, except the person legally entitled to its possession. The word ‘ possession’ is used here in its widest sense as implying custody or control, whether temporary or permanent or exclusion of or jointly with the thief.

Manual possession is not necessary. The expression whether the transfer has been made or the misappropriation of breach of trust has been committed, within or without India’ means whether the substantive offence of theft or the subsidiary offence of receiving was committed within or without India. These words were inserted by Section 9 of the Indian Penal Code (Amendment) Act 1682, though the term ‘ India’ was substituted in 1951, for the term ‘ the State’. To be termed stolen property, the property must have gone out of the control of the owner and it must have been received by the accused as stolen property and not in any other manner. Property, the possession of which has been transferred by theft or the other offences is designated stolen property.

It is, therefore, a term which equally applies to property in the hands of the thief or of a receiver other than the thief. As regards property acquired by theft, extortion and robbery, the property is called stolen property. The property in the possession of a thief who runs away with stolen property is property so-called, though there has not been ‘ transfer’ in the real sense of the term, and though his possession is insecure. But insecurity of possession is an incident of all stolen property and its transfer does not demand complete transmutation of possession which is not even the incident of a legal transfer. Indeed, the gist of the term lies in the intention as will be seen presently. To be termed stolen property, the properly must have gone out of the control of the owner and it must have been received by the accused as stolen property, and not in any other manner. Section 410 merely specifies the attributes of stolen property which however by themselves do not constitute an offence. Section 410 confined the definition of stolen property only to property which was the actual subject-matter of theft.

It excludes all property which the stolen property has been converted into or exchanged for. When it will cease as stolen property: It stolen property subsequently comes into the possession of a person legally entitled to the possession thereof; it then ceases to be stolen property. Property once stolen retains that character so long as it remains out of the possession of the person lawfully entitled to it. Hence, as an owner may commit theft of his own property, so he may be also in possession of stolen property which is his own.

This is obvious from the fact that the three offences of theft, extortion and robbery are intended only to property misappropriated “ if such property subsequently comes into the possession of a person legally entitled to the possession thereof”, must mean the owner as distinct from the person in possession. This is evident from the fact that the possession of a misappropriator is not ab initio wrongful. It becomes wrongful only with the change of intention. Consequently, legal possession of property may, with the change of intention, be converted into stolen property. In R. V. Villensy [(1892) 2 QB 597], a parcel was handed to the prosecutors, a firm of carriers, for conveyance to the consignees.

While in the prosecutor’s depot, a servant of the prosecutor’ removed the parcel to a different part of the premises and placed upon it a label addressed to the accused. The superintendent of the prosecutor’s business, on receipt of information as to this, and after inspection of the parcel, directed it to be sent to the addressee in a van, along with two detectives. The parcel was duly received by the accused under the belief that it was stolen. It was still held by the court that the property having come under the possession of the actual owners before its receipt by the accused, it had ceased to be stolen property and the accused could not be convicted of receiving it knowing it to have been stolen.

In Kishan Lal v. State of Uttar Pradesh [(1979) CrLJ 309 (All)], four thieves stole goods from the custody of a railway company and sent them by a parcel in the same company’s line addressed to the accused. During the transit, the theft was discovered, and on the arrival of the parcel at the station for delivery, a policeman in the service of the company opened it, and then returned it to the porter, who was under the duty to deliver it, under instructions to keep it till further order. On the following day, the policeman ordered the porter to take it to address, where it was received by the accused. The police thereafter got hold of him.

The court held that the goods had reached its lawful owner, the railway company, so that it could no longer be called stolen goods and thus, the receipt of it could in no way be receipt of stolen property.