

# Michigan Law Review

---

Volume 32 | Issue 7

---

1934

## CRIMINAL LAW AND PROCEDURE-LARCENY-HUNGER AND WANT AS DEFENSE

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Criminal Law Commons](#)

---

### Recommended Citation

*CRIMINAL LAW AND PROCEDURE-LARCENY-HUNGER AND WANT AS DEFENSE*, 32 MICH. L. REV. 1005 (1934).

Available at: <https://repository.law.umich.edu/mlr/vol32/iss7/14>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

CRIMINAL LAW AND PROCEDURE—LARCENY—HUNGER AND WANT AS DEFENSE—A large group of unemployed marched on a Red Cross commissary to request a larger ration of flour. After locating the chairman and being answered with a firm and final refusal, a large part of the group went into a private store and carried off groceries without paying for them. At the trial the appellants offered to prove conditions of poverty and want among the unemployed of that county on and prior to the date of the raid, for the purpose of showing a purpose and justification for the raid. *Held*, such evidence was correctly excluded. *State v. Moe*, (Wash. 1933) 24 Pac. (2d) 638.

That hunger is no defense to larceny was early expressed by such eminent textwriters as Lord Hale and Blackstone.<sup>1</sup> Later textwriters have taken the same view,<sup>2</sup> but no direct case in point has been found. The only case indirectly

<sup>1</sup> 1 HALE, PLEAS OF THE CROWN 54 (1736), which expressly contradicts the famous dictum of Lord Bacon that hunger is a defense to the theft of food (Maxims Reg. V); 4 BLACKSTONE'S COMMENTARIES 31 (2 Jones ed. 2198 (1916)).

<sup>2</sup> 2 EAST, PLEAS OF THE CROWN 698 (1806); CLARK, CRIMINAL LAW, 3d ed., 106 (1915); KENNY, OUTLINES OF CRIMINAL LAW, 12th ed., 75 (1926); MAY, CRIMINAL LAW, 3d ed., 70 (1905).

involving the subject is *Regina v. Dudley and Stephens*,<sup>3</sup> where the court cited Lord Hale's position that hunger is no defense to larceny, and reasoned therefrom that it cannot be a defense to murder. As for economic necessity being a defense to riot, there are neither cases nor comments by textwriters, but the law generally judges a man by his act and intent, not by his reasons or motives for so acting.<sup>4</sup> An analogy might be drawn to compulsion which is a recognized defense to practically all crimes.<sup>5</sup> But the courts are agreed that for compulsion to be a good defense there must be an immediate danger to life or person, and in practically all cases where compulsion has been alleged it has not been held a defense because the danger was not imminent.<sup>6</sup> However, such immediate and imminent danger in cases of economic necessity would exist only where death by starvation or exposure could not be postponed except by an immediate wrongful act. In such cases alone can hunger and want logically be legal defenses.<sup>7</sup> And it may be doubted whether such an extreme case is possible today with our fairly well organized welfare and charity systems, defective as they may be.<sup>8</sup> Thus, in

<sup>3</sup> 14 Q. B. D. 273 (1884). In that case the defendants, shipwrecked persons, who put a boy to death for the purpose of saving their own lives by feeding on the body, were held guilty of murder and sentenced to death. But the Crown, thinking the circumstances were mitigating, reduced the sentence to six months imprisonment.

<sup>4</sup> *Regina v. Downes*, 13 Cox. C. C. 111 (1875); *Reynolds v. United States*, 98 U. S. 145, 25 L. ed. 244 (1878); *State v. White*, 64 N. H. 48, 5 Atl. 828 (1886).

<sup>5</sup> Perhaps by statute, e.g., Ga. Penal Code (Park 1914), sec. 41; Cal. Penal Code (Deering 1931), sec. 26; Tex. Ann. Penal Code (Vernon 1928), art. 38. For cases see citations, n. 6, *infra*.

<sup>6</sup> *McGrowther's Case*, 18 How. St. Tr. 391, Fost. C. L. 13, 168 Eng. Repr. 8 (1746); *Respublica v. McCarthy*, 2 Dall. (2 U. S.) 86, 1 L. ed. 300 (1781); *Arp v. State*, 97 Ala. 5, 12 So. 301, 38 Am. St. Rep. 137 (1892); *People v. Martin*, 13 Cal. App. 96, 108 Pac. 1034 (1910); *People v. Sanders*, 82 Cal. App. 778, 256 Pac. 251 (1927); *McCoy v. State*, 78 Ga. 490, 3 S. E. 768 (1887); *Pirkle v. State*, 11 Ga. App. 98, 74 S. E. 709 (1911); *Ross v. State*, 169 Ind. 388, 82 N. E. 781 (1907); *People v. Repke*, 103 Mich. 459, 61 N. W. 861 (1894); *Bain v. State*, 67 Miss. 557, 7 So. 408 (1890); *Burton v. State*, 51 Tex. Cr. App. 196, 101 S. W. 226 (1907). There was not sufficient evidence of compulsion to excuse in *United States v. Vigol*, 2 Dall. (2 U. S.) 346, 1 L. ed. 409 (1795); *Henderson v. State*, 5 Ga. App. 495, 63 S. E. 535 (1908); *Hamilton v. State*, (Ind. 1933) 184 N. E. 170; *Thomas v. State*, 134 Ala. 126, 33 So. 130 (1901); *Harris v. State*, 91 Tex. Cr. App. 446, 241 S. W. 175 (1922). The ultimate result is unknown in *Nall v. Commonwealth*, 208 Ky. 700, 271 S. W. 1059 (1925); *Paris v. State*, 35 Tex. Cr. App. 82, 31 S. W. 855 (1895). Indeed, the only cases actually holding compulsion to be a defense are *Rex v. Crutchley*, 5 Car. & P. 133, 172 Eng. Repr. 909 (1831); *Beal v. State*, 72 Ga. 200 (1883). And in this last case the main reason for the decision was probably the court's desire to permit testimony against the principal, which would not have been possible if the witness had been called an accomplice.

<sup>7</sup> 1 BISHOP, CRIMINAL LAW, 9th ed., 246 (1923); Clark & Marshall, Law of Crimes, 3d ed., 101 (1927).

<sup>8</sup> Provisions for the poor were given as the reason why hunger was not a defense by Lord Hale and Blackstone (citations *supra*, n. 1); 2 EAST, PLEAS OF THE CROWN 698 (1806); 1 BISHOP, CRIMINAL LAW, 9th ed., 246 (1923), and CLARK & MARSHALL, LAW OF CRIMES, 3d ed., 101 (1927).

the instant case, the unemployed were getting some flour though not quite the amount they wanted. On grounds of public policy the court points out that to allow such defenses would give each individual the right to take the law in his own hands. It would tend toward anarchy and make property insecure.<sup>9</sup> The ease with which such defenses could be simulated and the difficulty of disproving them are other factors to be considered. Finally, whatever we think of the moral guilt of the person who commits the crimes of riot or larceny because of hunger or want, such circumstances can ordinarily be given their proper effect in mitigation of the offender's punishment rather than as legal defenses.

G. W. D.

<sup>9</sup> 1 HALE, PLEAS OF THE CROWN 54 (1736); 4 BLACKSTONE'S COMMENTARIES 31 (2 Jones ed. 2198 (1916)).