

REVISED LAWS

MINNESOTA

1905

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EDITED AND ANNOTATED BY
MARK B. DUNNELL

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5023. Forcible entry and detainer—Every person using, or procuring, or encouraging, or assisting another to use any force or violence in entering upon, or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, and every person who has been removed from any lands by process of law, or who has removed therefrom pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and afterwards, without authority of law, returns to settle or reside upon, or take possession thereof, shall be guilty of a gross misdemeanor. (6659, 6660)

5024. Aiming or discharging firearms, etc.—Every person who shall aim any gun, pistol, revolver, or other firearm, whether loaded or not, at or towards any human being, or who shall wilfully discharge any firearm, air gun, or other weapon, or throw any deadly missile, in a public place, or in any place where there is any person to be endangered, although no injury actually results, shall be guilty of a misdemeanor. (6661; '95 c. 340)

5025. Use of firearms by minors—No minor under the age of fourteen years shall handle, or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind for hunting or target practice or any other purpose. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor. (6946)

5026. Offences in public conveyances—Punishment—Every person who shall wilfully use profane, offensive, or indecent language, or engage in any quarrel in any railway or street railway car or other public conveyance, or shall interfere with or annoy any passenger therein, or, having refused to pay the proper fare, shall fail to leave any such conveyance upon demand, or, with the intent to avoid the payment of fare, shall ride upon any car not commonly used for the carriage of passengers, or shall take any dog into any such car or conveyance or smoke therein, contrary to the rules of the corporation or person operating the same, shall be guilty of a misdemeanor. (6943, 6944; '99 c. 97)

5027. Conductor—Authority to arrest, etc.—Every conductor of a railway train, with or without warrant, may arrest any person committing any act specified in § 5026, and take him before a magistrate or to the next railway station, and deliver him to the proper officer, or to the station agent, who shall take such person before the proper magistrate or deliver him to such officer. Every such conductor and station agent shall in such case possess all the powers of a sheriff with a warrant. (6945)

5028. Witness not excused, when—No person shall be excused from giving evidence upon an investigation or prosecution for any offence specified in this subdivision upon the ground that his testimony might tend to convict him of a crime. (6662)

CHAPTER 101

CRIMES AGAINST PROPERTY

CRIMES AGAINST STATE PROPERTY, ETC.

5029. Misappropriation and falsification of accounts by public officers—Every public officer, and every other person receiving money on behalf or for account of the people of the state, or of any department of the state government, or of any bureau or fund created by law, in which the people are directly or indirectly interested, or for or on account of any county, city, village, borough, town, or school district, who—

1. Shall appropriate to his own use, or the use of any person not entitled thereto, without authority of law, any money so received by him as such officer or otherwise;

2. Shall knowingly keep any false account, make any false entry or erasure in any account, of or relating to any money so received by him;

3. Shall fraudulently alter, falsify, conceal, destroy, or obliterate any such account; or,

4. Shall wilfully omit or refuse to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, village, borough, town, or school district, or to the proper officer or authority empowered to demand and receive the same, any money received by him as such officer, when it is a duty imposed upon him by law to pay over and account for the same—
Shall be guilty of a felony. (6663)

EMBEZZLEMENT

1. **What constitutes**—22-67; 29-78, 11+233; 38-192, 36+457; 28-226, 9+704.

2. **Indictment**—22-67; 28-226, 9+704; 29-78, 11+233.

3. **Municipality**—The statute is not applicable to a municipality as such (80-165, 83+54).

4. **Punishment**—26-494, 5+369; 69-508, 72+799, 975.

5030. Other violations by officers—Every officer or other person mentioned in § 5029 who shall wilfully disobey any provision of law regulating his official conduct in cases other than those specified in said section shall be guilty of a gross misdemeanor, and punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than two years, or by both. (6664)

80-165, 83+54.

5031. Misappropriation, etc., by county treasurer—Every county treasurer who shall wilfully misappropriate any moneys, funds, or securities received by or deposited with him as such treasurer, or who shall be guilty of any other malfeasance or wilful neglect of duty in his office, shall be guilty of felony, and punished by imprisonment in the state prison for not less than one nor more than five years, or by fine of not less than five hundred dollars nor more than ten thousand dollars, or by both. (6665)

26-183, 2+494, 683; 29-78, 11+233; 28-226, 9+704; 26-494, 5+369.

5032. Officer interested in contract—Every public officer who shall be authorized to sell or lease any property, to make any contract in his official capacity, or to take part in making any such sale, lease, or contract, and every employee of such officer, who shall voluntarily become interested individually in such sale, lease, or contract, directly or indirectly, shall be guilty of a gross misdemeanor. (6666)

88-127, 92+520; 89-402, 95+221.

5033. False statement regarding taxes—Every person who, in making any statement, oral or written, which is required or authorized by law to be made as a basis of imposing or reducing any tax or assessment, who shall wilfully make any statement as to any material matter which he knows to be false, shall be guilty of a gross misdemeanor. (6667)

5034. Wilful trespass on pine lands, how punished—Every person who shall commit any wilful trespass upon lands now or hereafter held in trust or otherwise by the state, by cutting pine timber for lumber purposes, or by evidently endangering or exposing pine timber to fire or decay, or who shall in any manner aid or abet such trespass, or who shall wilfully burn over, or cause to be burned over, any of said lands, shall be guilty of a felony, and punished by imprisonment in the state prison for not more than one year, or by fine of not more than one thousand dollars, or by both. (6907)

CRIMES AGAINST OTHER PROPERTY

5035. Definitions—The following words and terms as used in this chapter shall be construed to mean as follows: The word "night-time," the period between sunset and sunrise; the words "dwelling house," every building or structure which shall have been usually occupied by persons lodging therein

at night, and whenever it shall be so constructed as to consist of two or more parts, occupied or intended to be occupied by different tenants separately by usually lodging therein at night, or for any other separate purpose, each part shall be deemed the separate dwelling house of the tenant occupying the same; the word "building," every house, vessel, railway car, tent, shop, or other structure suitable for affording shelter for human beings, or appurtenant to or connected with a structure so adapted; the term "inhabited building," any building any part of which has usually been occupied by a person lodging therein at night.

The word "break" shall include:

1. Breaking or violently detaching any part, internal or external, of a building;
2. Opening, for the purpose of entering therein by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used and occupied, or any window, shutter, scuttle, or other thing used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another;
3. Obtaining an entrance into such building or apartment by any threat or artifice used for that purpose, or by collusion with any person therein; or
4. Entering such building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building or the walls or foundation thereof.

The word "enter" shall include the entrance of the offender into such building or apartment, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, and used or intended to be used to threaten or intimidate the inmates, or to detach or remove property. The term "director" shall embrace any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or are known in law. (6673-6675, 6680-6685, 6766)

ARSON

5036. First degree—Every person who shall wilfully burn or set on fire, in the night-time—

1. A dwelling house in which there shall be at the time a human being; or
2. A car, vessel, or other vehicle, or a structure or building other than a dwelling house, in which, to the knowledge of the offender, there shall be at the time a human being—

Shall be guilty of arson in the first degree, and punished by imprisonment in the state prison for not less than ten years. (6668, 6671)

5037. Second degree—Every person who—

1. Shall commit an act of burning in the daytime, which, if committed in the night-time, would be arson in the first degree;
2. Shall wilfully burn or set on fire in the night-time a dwelling house in which there is not at the time a human being;
3. Shall wilfully burn or set on fire in the night-time a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there shall be at the time a human being, so that the inhabited building shall be endangered, even though it be not in fact injured by the burning; or
4. Shall wilfully burn or set on fire in the night-time a car, vessel, or other vehicle, or a structure or building ordinarily occupied at night by a human being, although no person be in it at the time—

Shall be guilty of arson in the second degree, and punished by imprisonment in the state prison for not less than seven nor more than fifteen years. (6669, 6671)

50-123, 52+275.

5038. Third degree—Every person who shall wilfully burn or set on fire—

1. A vessel, car, or other vehicle, or building, structure, or other erection, which shall be at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof;

2. A vessel, car, or other vehicle, or a building, structure, or other erection, under circumstances which would not amount to arson in the first or second degree; or

3. Any machinery, vehicle, pile or parcel of boards, timber, or other lumber, any stack of hay, grain, or other vegetable product, severed from the soil, whether stacked or not, or any standing grain, grass, or other standing product of the soil—

Shall be guilty of arson in the third degree, and punished by imprisonment in the state prison for not more than seven years. (6670, 6671)

5039. Contiguous buildings—Whenever an appurtenance to a building is so situated with reference to such building, or whenever any building is so situated with reference to another building, that the burning of the one will manifestly endanger the other, a burning of the one shall be deemed a burning of the other, within the foregoing provisions of this subdivision, against any person actually participating in the original setting on fire, as of the moment when the fire from the one communicates to and sets on fire the other. (6672)

5040. Ownership of building—To constitute arson, it shall not be necessary that another person than the defendant should have had ownership in the building set on fire. (6676)

BURGLARY

5041. First degree—Every person who, with intent to commit some crime therein, shall break and enter, in the night-time, the dwelling house of another, in which there shall be at the time a human being—

1. Being armed with a dangerous weapon;
2. Arming himself therein with such a weapon;
3. Being assisted by a confederate actually present; or
4. While engaged in the night-time, in effecting such entrance, committing any crime in such building, or in escaping therefrom, shall assault any person—

Shall be guilty of burglary in the first degree, and punished by imprisonment in the state prison for not less than ten years. (6677, 6688)

See 1905 c. 210

1. **Indictment**—It must describe with reasonable certainty the dwelling house or buildings entered (5-13, 1). An indictment alleging that the accused broke and entered into the warehouse of Halvorson-Richards Company, with the intent to commit the crime of larceny therein, held sufficient without alleging that the company was a corporation or firm. It is not necessary that there were at the time in the building any chattels which could be the subject of larceny (86-206, 90+398). An indictment charging burglary but stating facts constituting only simple larceny is good for the latter offence (18-518, 464).

2. **Intent**—The criminal intent with which the entrance is made may be inferred from the fact of the larceny committed (33-34, 21+843. See 74-460, 77+302).

3. **Sufficiency of the evidence**—Evidence held sufficient to sustain a conviction (33-34, 21+843; 8-218, 188); held insufficient (74-460, 77+302).

5042. Second degree—Every person who, with intent to commit some crime therein, shall break and enter the dwelling house of another, in which there is a human being, under circumstances not amounting to burglary in the first degree, shall be guilty of burglary in the second degree, and punished by imprisonment in the state prison for not less than five nor more than ten years. (6678, 6688)

See note to § 5041.

5043. Third degree—Every person who—

1. With intent to commit a crime therein, shall break and enter a building, or any part thereof, or a room; or,
2. Being in any building, shall commit a crime therein, and shall break out of the same—

Shall be guilty of burglary in the third degree, and punished by imprisonment in the state prison for not less than one nor more than five years. (6679, 6688)

See note to § 5041.

5044. Unlawfully entering building—Every person who, under circumstances or in a manner not amounting to a burglary, shall enter a building, or any part thereof, with intent to commit a felony or any malicious mischief, shall be guilty of a gross misdemeanor. (6686)

87-396, 92+224.

5045. Crime in building, punished separately—Every person who, having entered a building under such circumstances as to constitute burglary in any degree, shall commit any crime therein, shall be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. (6687)

47-425, 50+472.

5046. Making or having burglar's tools—Every person who shall make or mend, or cause to be made or mended, or have in possession in the day or night-time, any engine, machine, tool, false key, picklock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary, larceny, or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same is intended to be so used, shall be guilty of a gross misdemeanor. (6689)

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FORGERY

5047. Definitions—Within the provisions of this subdivision, a "written instrument" or a "writing" shall include an instrument partly written and partly printed or wholly printed, with a written signature thereto, or any signature or writing purporting to be a signature of, or intended to bind, an individual, partnership, corporation, or association, or an officer thereof. The words "forge," "forged," and "forging" shall include false making, counterfeiting, and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature of a party or witness, and the placing or connecting together, with intent to defraud, of different parts of several genuine instruments. A plate is in the "form and similitude" of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble and conform to the similar parts of the genuine instrument. A "trademark" is a mark used to indicate the maker, owner, or seller of any goods, wares, merchandise, mixture, preparation, or compound, and includes, among other things, any name of a person or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label, or other mark lawfully adopted by him, and usually affixed to any goods, wares, merchandise, mixture, preparation, or compound, to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed, or otherwise prepared by him. An "imitation" of a trademark, stamp, brand, wrapper, or label is that which so far resembles the genuine trademark, stamp, brand, wrapper, or label as to be likely to induce the belief that it is genuine, either by the use of words or letters similar in appearance or sound, or by any sign, device, or other means whatsoever. (6693, 6694, 6701, 6913, 6915)

Definition of "forge" (76-211, 78+1042).

5048. First degree—Every person who, with intent to defraud, shall forge—

1. A will or codicil, or the attestation thereof, or a deed or other instrument, being or purporting to be the act of another, by which any right or interest in property is or purports to be transferred, conveyed, or in any way charged or affected;

2. A certificate of the acknowledgment or proof of a will, codicil, deed, or other instrument which may by law be recorded, or given in evidence when duly proved or acknowledged, made or purporting to have been made by a court or officer duly authorized to make such certificate;

3. A certificate, bond, paper, writing, or other public security issued or purporting to have been issued by or under the authority of this state or of the United States, or of any other state or territory of the United States, or of any foreign government, country, or state, or by any officer thereof in his

official capacity, by which the payment of money is promised absolutely or upon any contingency, or the receipt of any money or property is acknowledged, or being or purporting to be evidence of any debt or liability, either absolute or contingent, issued or purporting to have been issued by lawful authority;

4. An indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of such a certificate, obligation, public security, evidence of debt or liability, or of any person entitled to such right or interest;

5. A certificate of stock, bond, or other writing, bank note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued or purporting to be issued by any bank, banking association, or body corporate existing under the laws of this state or of the United States, or of any other state, government, or country, declaring or purporting to declare any right, title, or interest of any person in any portion of the capital stock or property of such body corporate, or promising or purporting to promise or agree to the payment of money or the performance of any act, duty, or obligation; or

6. An indorsement or other writing transferring or purporting to transfer the right or interest of any holder of such certificate, bond, or writing obligatory, or of any person entitled to such right or interest—

Shall be guilty of forgery in the first degree. (6690)

1. **What constitutes—Forgery**, at common law, is defined as “the fraudulent making of a false writing, which, if genuine, would be apparently of some legal efficacy” (16-472, 424; 70-403, 73+177; 76-211, 78+1042). The essential elements of the offence are a writing apparently valid, an intent to defraud and a forging of the writing (76-211, 78+1042; 88-301, 92+980). The writing falsely made must purport to be the writing of another person than the one making it. A false assumption of authority in executing an instrument as the agent of a named principal does not constitute forgery (28-52, 9+28). The signing of another’s name without authority is not necessarily forgery (88-301, 92+980). An alteration, to be criminal, must be such as to alter the legal effect of the instrument. A mere verbal alteration, not affecting the obligation of the instrument, is not enough (27-315, 7+262). The instrument forged must be in fact or appear to be one which, if true, would possess some legal validity (19-98, 70. See 39-464, 40+564). The gist of the offence is the intent to defraud (76-211, 78+1042; 88-301, 92+980). To constitute the offence of forging an instrument by which “any person may be bound, affected, or in any way injured,” it is not necessary that the person be bound. The fraudulent alteration of a mortgage held forgery although the mortgage had been satisfied and although it had been recorded so that the act likewise constituted the offence of mutilating a public record (43-196, 45+152).

2. **Acts held to constitute forgery**—The forging of a promissory note without a revenue stamp (16-472, 424); inserting in a chattel mortgage a description of property not embraced in the mortgage as executed (43-196, 45+152); forging a real estate mortgage (86-418, 90+786); changing the second initial of the name of a party to a contract (60-1, 61+816); making false entries in accounts or books which the party is employed to keep (67-176, 69+815).

3. **Acts held not to constitute forgery**—An indorsement of payment on a promissory note by the maker, no name being signed (8-212, 182—at common law); signing an instrument as agent of a named principal without authority (28-52, 9+28); an immaterial verbal alteration in a written instrument (27-315, 7+262).

4. **Indictment**—An indictment substantially in the language of the statute is sufficient. It is not necessary to allege the acts constituting the forgery if it is alleged that the accused “forged” the instrument set out. An indictment which charges that on a certain day and at a certain place the accused, with intent to defraud, did then and there feloniously forge a certain promissory note, of the tenor following, and then sets out the note in full, is sufficient. It is not necessary that the facts and circumstances showing the fraudulent intent should be alleged, it is enough that they are given in evidence on the trial (76-211, 78+1042). It is the general rule that the instrument forged must be set out in haec verba, that is, according to its tenor (67-176, 69+815. See 80-251, 83+158; 76-211, 78+1042; 19-98, 70; 27-315, 7+262), but an indictment charging that the forgery consisted in indorsing the name of A on a check dated March 8, 1887, for the sum of fifty dollars, signed and drawn by B and payable to the order of C, the name of the drawee not being given, has been held sufficient (39-357, 40+263). Where it does not appear on the face of the instrument forged that some one might be defrauded by it, extrinsic facts must be alleged showing that some person might be defrauded by it (19-98, 70; 27-315, 7+262; 67-176, 69+815; 70-403, 73+177; 76-211, 78+1042; 80-251, 83+158). Where the instrument forged purports to be signed by an agent it is unnecessary to allege the authority of the agent (80-251, 83+158). A

general allegation of intent to defraud is sufficient without naming the party defrauded (§§ 4748, 4781; 67-176, 69+815; 76-211, 78+1042; 43-196, 45+152). It is unnecessary to allege the value of the property added by forgery to the description in a chattel mortgage (43-196, 45+152).—See § 5310.

5. **Variance**—43-273, 45+449.

6. **Sufficiency of the evidence**—43-273, 45+449.

5049. False certificate to certain instruments—Every officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who shall wilfully certify falsely that the execution of such instrument was acknowledged by any party thereto, or that the execution thereof was proved, shall be guilty of forgery in the first degree. (6691)

5050. First degree, how punished—Forgery in the first degree shall be punished by imprisonment in the state prison for not more than twenty years. (6704)

5051. Second degree—Every person who, with intent to defraud—

1. Shall forge the great seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal, or any gold or silver coin, whether of the United States, or of any foreign state, government, or country;

2. Shall forge a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, or of any judgment, order, or decree of any court or officer, or a certified or authenticated copy thereof;

A judgment roll, judgment, order, or decree of any court or officer, or an enrolment thereof, or a certified or authenticated copy thereof;

Any document or writing purporting to be such judgment, decree, enrolment, or copy;

An entry made in any book of record or accounts kept by or in the office of any officer of this state, or of any village, city, town, school district, or county of the state, by which any demand, claim, obligation, or interest in favor of or against the people of the state, or any city, village, borough, town, school district, or county, or any officer thereof, is or purports to be created, increased, diminished, discharged, or in any manner affected; or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected;

An instrument, document, or writing, being or purporting to be a process or mandate issued by a competent court, magistrate, or officer of the state, or the return of an officer, court, or tribunal, to such a process or mandate; or a bond, recognizance, undertaking, pleading, or proceeding, filed or entered in any court of the state; or a certificate, order, or allowance by a competent court or officer; or a license or authority granted pursuant to any statute of the state; or a certificate, document, instrument, or writing made evidence by any law;

An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or in any manner affected, or by which any rights or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting any person may be bound, affected, or in any way injured in his person or property;

3. Shall make or engrave a plate in the form or similitude of a promissory note, bill of exchange, bank note, draft, check, certificate of deposit, or other evidence of debt issued by a banker or by any banking corporation or association incorporated or carrying on business under the laws of this state or

of the United States, or of any other state of the United States, or of any foreign government or country, without the authority of such banker or banking corporation or association; or,

Without like authority, shall have in his possession or custody such a plate, with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression to be uttered;

Without like authority, shall have in his possession or custody any impression taken from such a plate, with intent to have the same filled up and completed for the purpose of being uttered; or

Shall make or engrave, or cause to be made or engraved, upon any plate, any figures or words, with intent that the same may be used for the purpose of falsely altering any evidence of debt hereinbefore mentioned—

Shall be guilty of forgery in the second degree. (6692)

See note to § 5048.

5052. Second degree, how punished—Forgery in the second degree shall be punished by imprisonment in the state prison for not more than ten years. (6705)

5053. Forgery in the third degree—Every person who—

1. Being an officer or in the employment of a corporation, association, partnership, or individual, shall falsify, or unlawfully and corruptly, alter, erase, obliterate, or destroy any accounts, book of accounts, records, or other writing belonging or appertaining to the business of the corporation, association, partnership, or individual;

2. With intent to injure or defraud, shall falsely make, alter, forge, or counterfeit, or shall cause, aid, abet, assist, or otherwise connive at or be a party to the making, altering, forging, or counterfeiting of, any letter, telegram, report, or other written communication, paper, or instrument, by which making, altering, forging, or counterfeiting any other person shall be in any manner injured in his good name, standing, position, or general reputation;

3. Shall utter, or shall cause, aid, abet, or otherwise connive at or be a party to the uttering of, any letter, telegram, report, or other written communication, paper, or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report, or other written communication, paper, or instrument, or other paper purporting to be a copy thereof as aforesaid, the person uttering the same shall know to be false, forged, or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests, or rights of such other person shall be misrepresented or otherwise injuriously affected;

4. With intent to defraud, shall forge, alter, or counterfeit any certificate, card, seal, or receipt for dues, purporting to have been given or issued by any association of railway employees, or any labor organization, trade union, or association of mechanics or laboring men, or any officer or agent thereof, to its members;

5. With intent to defraud, shall forge, alter, or counterfeit any letter or certificate purporting to have been given by any corporation or person, or officer or agent thereof, showing the capacity in which he had been employed by such corporation or person, or the date and cause of his leaving such service;

6. With intent to defraud, shall utter or publish as true any false, altered, forged, or counterfeit letter, certificate, card, seal, or receipt, the forging, altering, or counterfeiting of which is herein prohibited—

Shall be guilty of forgery in the third degree. (6695; '99 c. 23; '01 c. 56).

See note to § 5048.

5054. Concealing larceny, etc., forgery—Every person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property—

1. Shall alter, erase, obliterate, or destroy any account, book of accounts, record, or writing belonging or appertaining to the business of a corporation, association, public office, officer, partnership, or individual;

2. Shall make a false entry in any such account or book of accounts; or
3. Shall wilfully omit to make a true entry of any material particular in any such account, or book of accounts, made, written, or kept by him or under his direction—

Shall be guilty of forgery in the third degree. (6696)

67-176, 69+815.

5055. Forging passage tickets—Every person who, with intent to defraud, shall forge, counterfeit, or falsely alter any ticket, check, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway, vessel, or other public conveyance, or who, with like intent, shall sell, exchange, deliver, keep, or offer for sale, exchange, or delivery, or receive upon any purchase, exchange, or delivery, any such ticket, knowing the same to have been forged, counterfeited, or falsely altered, shall be guilty of forgery in the third degree. (6697)

5056. Forging postage or revenue stamps—Every person who shall forge, counterfeit, or alter any postage or revenue stamp of the United States, or who shall sell, offer, or keep for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited, or falsely altered, shall be guilty of forgery in the third degree. (6698)

5057. Forgery in third degree, how punished—Forgery in the third degree shall be punished by imprisonment in the state prison for not more than five years. (6706)

5058. Officer of corporation selling shares—Every officer, agent, or other person employed by any company or corporation, domestic or foreign, who shall wilfully, and with a design to defraud, sell, pledge, or issue, or cause to be sold, pledged, or issued, or who shall sign, or procure to be signed, with intent to sell, pledge, or issue, or cause to be sold, pledged, or issued, a false, forged, or fraudulent paper, writing, or instrument, being or purporting to be a scrip, certificate, or other evidence of the ownership or transfer of any share of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, shall be guilty of forgery in the third degree, and upon conviction, in addition to the prescribed punishment for that offence, may also be sentenced to pay a fine of not more than three thousand dollars. (6699)

5059. Falsely indicating person as corporate officer—The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree as if that person was in truth such officer or agent of the corporation, association, state, or government. (6700)

5060. Uttering forged instruments, coins, etc., forgery—Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of, or put off as true, or have in his possession with intent to utter, offer, dispose of, or put off—

1. A forged seal or plate, or any impression of either;
2. A forged coin; or
3. A forged will, deed, certificate, indorsement, record, instrument, or writing, or other thing, the false making, forging, or altering of which is punishable as forgery—

Shall be guilty of forgery in the same degree as if he had forged the same. (6702)

1. What constitutes—The instrument uttered or published must be one the false making of which would be forgery. Making and uttering a deed as an agent of a named principal under a false assumption of authority is not criminal (28-52, 9+28; 70-403, 73+177). The gist of the offence of uttering a forged instrument is that the accused, knowing it to be false, utters it as true, with intent to defraud (67-176, 69+815). Uttering false entries in accounts or books which the utterer is employed to keep, knowing them to be false and intending to defraud, is criminal (67-176, 69+815). The

intent to defraud and uttering the instrument "as true" are essential elements of the offence (65-121, 67+798). The intent to defraud must appear from facts reasonably calculated to show such guilty purpose (88-301, 92+980). Uttering several forged instruments at the same time and to the same party, as one act, constitutes but one offence (86-422, 90+787).

2. Forging and uttering—The forging of an instrument and the uttering of it were, prior to the Penal Code, separate offences, and are still where each act is committed by a different person, or by the same person but at different times and as separate acts (13-121, 112; 67-176, 69+815; 91-406, 98+99). The forging of an instrument and the uttering of it by the same person, at the same time, as one transaction, constitute but one offence (91-406, 98+99. See 86-422, 90+787).

3. Indictment—It need not allege who made the false instrument, or how it was done, or the intent in making it (67-176, 69+815). It must allege that the instrument was uttered "as true" (5-19, 6; 65-121, 67+798). If the instrument uttered does not import on its face a legal liability it may be invested with apparent legal validity by allegations of extrinsic facts (70-403, 73+177). All the acts enumerated in this section may be charged in a single count (76-207, 78+1044, 1117). An indictment for uttering as true forged paper, purporting on its face to be issued by an agent in the name of his principal, which sets out the instrument in haec verba, need not aver the authority of the agent (80-251, 83+158). An indictment for uttering counterfeit bills under Comp. St. c. 91 § 6 held insufficient for not alleging that the bills purported to have been issued by a bank authorized by law to issue such bills (5-19, 6). In an indictment for uttering a forged mortgage it is not necessary to allege that the accused had in his possession a note which the mortgage secured and that he passed it off with the mortgage (86-418, 90+786).

4. Presumption of intent to defraud—88-301, 92+980.

5. Former conviction—86-422, 90+787. See 91-406, 98+99.

6. Evidence admissible—43-253, 45+447; 70-403, 73+177; 88-301, 92+980.

5061. Uttering writing signed with wrongdoer's name—Whenever the false making or uttering of any instrument or writing is forgery in any degree, every person who, with intent to defraud, shall offer, dispose of, or put off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretence that such subscription or indorsement is the act of another person of the same name, or of a person not in existence, shall be guilty of forgery in the same degree. (6703)

COUNTERFEITING—FRAUDULENT PRACTICES

5062. Possession of counterfeit coin—Every person who shall have in his possession a counterfeit of any gold or silver coin, whether of the United States or any foreign country or government, knowing the same to be counterfeit, with intent to sell, utter, use, circulate, or export the same as true or as false, or to cause the same to be so uttered or used, shall be punished by imprisonment in the state prison for not more than five years, or by fine of not more than five hundred dollars, or by both. (6707)

5063. Advertising counterfeit money—Every person who, with intent to defraud, shall print, circulate, or distribute a letter, circular, card, pamphlet, handbill, or any other written or printed matter, offering or purporting to offer, for sale, exchange, or as a gift, counterfeit coin or paper money, or giving or purporting to give information where counterfeit coin or paper money can be procured, shall be punished by imprisonment in the state prison for not more than five years, or by fine of not more than five hundred dollars, or by both. (6708)

5064. False certificate of registration of animals—False representation as to breed—Every person who by any false pretence shall obtain from any club, association, society, or company for the improvement of the breed of cattle, horses, sheep, swine, fowls, or other domestic animals, or birds, a certificate of registration of any animal in the herd, or other register of any such association, society, or company, or a transfer of any such registration, and every person who shall knowingly represent any animal used for breeding purposes to be of a greater degree of any particular strain of blood than such animal actually possesses, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars. (6905, 6906)

5065. Wilful false branding of animals—Every person who shall wilfully mark any of his horses, cattle, sheep, or hogs with the same mark or brand previously recorded by any other resident of the same county, and while such mark is still used by such other resident, or shall wilfully mark or brand the horses, cattle, sheep, or hogs of any other person with his own brand or mark, or shall wilfully destroy or alter any mark or brand upon any horses, cattle, sheep, or hogs of another, shall be guilty of a misdemeanor. (6875)

5066. Counterfeiting trademark, brand, etc.—How punished—Every person who shall knowingly and wilfully forge or counterfeit, or procure to be forged or counterfeited, any representation, likeness, similitude, copy, or imitation of the private stamp, brand, wrapper, label, or trademark usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman to or upon his goods, wares, merchandise, or preparation, with intent to pass off any work, goods, manufacture, compound, or preparation to which such forged or counterfeited representation, likeness, similitude, copy, or imitation is affixed or intended to be affixed, as the work, goods, manufacture, compound, or preparation of such mechanic, manufacturer, druggist, merchant, or tradesman, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not less than six nor more than twelve months, or by a fine of not more than five thousand dollars. (6908)

5067. Possession of dies, plates, etc.—How punished—Every person who, with intent to defraud any person or corporation, shall have in his possession any die, plate, brand, engraving, or printed label, stamp, imprint, wrapper, or trademark, or any representation, likeness, similitude, copy, or imitation of the private stamp, brand, wrapper, label, or trademark usually affixed by a mechanic, manufacturer, druggist, merchant, or tradesman to or upon articles made, manufactured, prepared, or compounded by him for the purpose of making impressions or selling the same when made, or using it upon any other article made, manufactured, prepared, or compounded, and passing the same off upon the community as the original goods, manufactures, preparations, or compounds of any other person or corporation, or who shall wrongfully and fraudulently sell or use the genuine stamp, brand, imprint, wrapper, label, or trademark, with intent to pass off any goods, wares, merchandise, mixtures, compounds, or other articles not the manufacture of the person or corporation to whom such stamp, brand, imprint, wrapper, label, or trademark properly belongs, as genuine and original, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not less than six nor more than twelve months, or by fine of not more than five thousand dollars. (6909)

5068. Selling goods having false stamp—How punished—Every person who shall sell or keep for sale any goods, wares, merchandise, mixture, or preparation upon which any forged or counterfeit stamp, brand, imprint, wrapper, label, or trademark shall be placed or affixed, and intended to represent the said goods, wares, merchandise, mixture, or preparation as the genuine article of any other person, knowing the same to be counterfeit, shall be guilty of a gross misdemeanor, and punished by a fine of not more than five hundred dollars for each offence. (6910)

5069. Affixing false stamps—How punished—Every person who, with intent to defraud any person or corporation, shall knowingly affix or cause to be affixed to or upon any bottle, case, box, or package, containing any goods, manufacture, mixture, preparation, or compound, any stamp, brand, label, wrapper, imprint, or trademark containing words or characters which shall appear, either wholly or in part, the same to the eye or in sound to the ear as the words or characters, or some of them, used by any other person for designating any similar goods manufactured or prepared by or for such other person, or who shall knowingly sell or expose, or offer for sale, any such bottle, case, box, or package with any such stamp, brand, label, wrapper, imprint, or mark affixed to or upon it, shall be guilty of a gross misdemeanor, and punished by imprisonment in the county jail for not less than six nor

more than twelve months, or by a fine of not more than five thousand dollars. (6911)

52-389, 54+193.

5070. False branding by manufacturer—Every person who, with intent to defraud, or enable another to defraud, any person, shall manufacture or knowingly sell, or cause to be manufactured or sold, any article marked, stamped, or branded, or incased or inclosed in any box, bottle, or wrapper having thereon any engraving or printed label, stamp, imprint, mark, or trademark, which articles are not the manufacture, workmanship, or production of the person named, indicated, or denoted by such mark, stamp, or brand or by or upon such engraving, printed label, stamp, imprint, mark, or trademark, shall be guilty of a gross misdemeanor. (6912)

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5071. Trademark—When deemed affixed—A trademark shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation, or compound, whenever it is in any manner placed in or upon either the article itself, or a box, bale, barrel, bottle, case, cask, or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing in, by, or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition. (6914)

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5072. Trademarks of workmen's unions—Whenever any person, or any association or union of workmen, shall have adopted or used any label, trademark, term, design, device, or form of advertisement for the purpose of designating, making known, or distinguishing any product of labor as having been made, produced, prepared, packed, or put on sale by such person, association, or union, or by a member thereof, it shall be unlawful to counterfeit or imitate the same, or to use, sell, offer for sale, or in any way utter or circulate any counterfeit or imitation of any such label, trademark, term, design, device, or form of advertisement. ('95 c. 122 s. 1)

5073. Same—Counterfeiting or dealing in counterfeits—How punished—Every person who shall counterfeit or imitate any such label, trademark, term, design, device, or form of advertisement, or shall sell, offer for sale, or in any way utter or circulate any counterfeit or imitation thereof; or who shall keep, or have in his possession with intent that the same shall be sold or disposed of, any product of labor to or upon which any such counterfeit or imitation is attached, affixed, or impressed; or who shall knowingly sell or dispose of any product of labor contained in any box, case, can, or package to or upon which any such counterfeit or imitation is attached, affixed, or impressed; or who shall have in his possession, with intent that the same shall be sold or disposed of, any product of labor in any box, case, can, or package to which or upon which any such counterfeit or imitation is attached, affixed, or impressed—shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars. ('95 c. 122 s. 2)

5074. Registration—Every such label, trademark, term, device, design, or form of advertisement may be filed for record in the office of the secretary of state on payment of a fee of one dollar each. In so filing the same, two copies, counterparts, or facsimiles thereof shall be left with such secretary, together with a sworn statement specifying the names of the persons, association, or union in whose behalf the same is filed, the class and description of the goods or products of labor to which it is or is intended to be appropriated, that the party in whose behalf the same is filed has the sole right to its use, and that the counterparts or facsimiles filed are correct. But no label, trademark, term, design, device, or form of advertisement shall be so filed or recorded which could reasonably be mistaken for one theretofore filed. ('95 c. 122 s. 3)

5075. Fraudulent registration or use—Penalty—Every person who shall for himself, or on behalf of any other person, association, or union, procure the filing of any label, trademark, term, design, device, or form of advertisement with such secretary under the foregoing provisions by any fraudulent means, and every person who shall use the name or seal of any such person,

association, or union, or officer thereof in or with reference to the sales of goods or products of labor, not being authorized to use the same, shall be guilty of a misdemeanor. ('95 c. 122 ss. 3, 6)

5076. Certificates—Illegal use—Penalty—Such secretary shall deliver to the person, association, or union filing any such label, trademark, term, design, device, or form of advertisement such number of certificates of the record thereof as shall be applied for, on payment of a fee of one dollar for each certificate, and such certificates shall in all cases be prima facie evidence of the adoption of such label, trademark, term, design, device, or form of advertisement. Every person who, without authority of the owner thereof, shall use or display the genuine label, trademark, term, design, device, or form of advertisement of any such person, association, or union, shall be guilty of a misdemeanor. ('95 c. 122 ss. 3, 6)

5077. Incriminating evidence—No testimony or evidence given or produced in a civil action, or on any reference or other proceeding in said action, by any party thereto or any witness therein, shall be used in any criminal prosecution against such witness or party under the provisions of this subdivision; nor shall any party or witness refuse to testify or produce books or papers as evidence in any civil action by reason of such provisions. (6916)

Insufficient under 142 U. S. 547; 161 U. S. 591. The subject is sufficiently covered by § 4778.

LARCENY

5078. What constitutes—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—

1. Shall take from the possession of the true owner, or of any other person, or obtain from such possession by color or aid of fraudulent or false representation or pretence, or of any false token or writing, or secrete, withhold, or appropriate to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt, or contract, or article of value of any kind;

2. Having in his possession, custody, or control as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as a public officer, or person authorized by agreement or by competent authority to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, shall appropriate the same to his own use, or that of any other person than the true owner or person entitled to the benefit thereof; or

3. Having in his possession as storage, forwarding, or commission merchant, carrier, warehouseman, factor, or broker, or as the clerk, agent, or employee of any such storage, forwarding, or commission merchant, carrier, warehouseman, factor, or broker, with intent to defraud, shall sell or in any way dispose of, or apply or convert to his own use or the use of any other person, any bill of lading, customhouse permit, or warehouse receipt intrusted or consigned to him, or the proceeds or profits of the sale of any such property, or shall fraudulently fail to pay over any such proceeds after deducting charges or usual commission; and any consignor of any property or his agent, not being the absolute owner thereof, who, with intent to defraud, after delivery thereof for transportation on any wharfboat, water craft, vehicle, or to any common carrier, shall in any way stop, countermand, or change the consignment thereof, or shall sell, dispose of, or incumber such property, during transit, after the delivery thereof, or shall in any way convert the same to his own use or the use of any other person than the true owner thereof or the person entitled to the benefit thereof; and every person or officer of any corporation who having given a receipt for agricultural products, or any goods, wares, or merchandise, whether such receipt shall have been given to the owner of said property or issued as security on the same, shall sell, dispose of, incumber, or in any way convert the same or any part thereof to his own

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use, or to the use of any person other than the one entitled thereto or to the benefit thereof—

Steals such property, and shall be guilty of larceny. (6709; '97 c. 279)

THE STATUTE GENERALLY

1. **Different forms of larceny**—The Penal Code, from which this section was taken, abolished all prior forms of larceny and enacted one general provision for all forms, including embezzlement, obtaining property by false pretences, and felonious breaches of trust—offences which had hitherto been treated separately, requiring different forms of indictment and different proof on the trial (62-7, 64+51; 47-449, 50+692. See 59-151, 60+1087). These distinctions, though abolished in form, remain in substance. There being, under this section, several distinct acts or ways by which a person may commit or be guilty of larceny, some of which were not larceny at common law, an indictment under it must charge the act constituting the larceny so as to inform the accused in which one of these different ways he is charged with having committed the offence. An indictment for larceny in the common form is insufficient to charge embezzlement or obtaining money under false pretences (39-464, 40+564; 47-449, 50+692; 59-147, 60+1088; 54-359, 56+50), but an indictment which is sufficient to charge the latter offences is not vitiated by unnecessary allegations appropriate to an indictment for larceny (54-359, 56+50). The word "defraud" as used in this section applies to the second subdivision as well as to the first (77-296, 79+1007). The effect of the Code was to do away with the necessity of a trespass which was an essential element of every larceny at common law (59-151, 60+1087. See Note 2 infra).

SIMPLE LARCENY

2. **What constitutes**—It is not necessary that the property be taken with intent to convert it to the use of the party taking it. It is sufficient that it is taken with the felonious intent to convert it to the use of a person other than the owner (34-221, 25+395). It must be taken from the possession, actual or constructive, of the owner and without his consent (47-449, 50+692). A taking from a servant may be larceny although the servant consents to the taking, the servant having the custody as distinguished from the possession of the property. A person may be guilty of simple larceny by obtaining the property through one whose relations to the owner are such as to make him guilty of embezzling (17-76, 54). A larceny at common law always involves a trespass (17-76, 54; 47-449, 50+692; 25-66; 59-147, 60+1088). The rule is otherwise under the Penal Code (59-151, 60+1087). The taking must always be *animus furandi* (25-66; 38-378, 37+948; 21-22). It is the general rule that the intent to steal and the act of taking and carrying away must concur, but it is sufficient if the intent is formed at the time of carrying away (25-66).

3. **What may be the subject of larceny**—Illuminating gas (34-221, 25+395), money given in change (25-66), and a receipted voucher (89-244, 94+686) have been held subject to larceny. Unsigned railroad passes held not subject of larceny under G. S. 1894 § 6718 (51-556, 53+874).

4. **Indictment**—Since under this section there are several distinct acts or ways by which a person may commit or be guilty of larceny the indictment must charge the act constituting the alleged larceny so as to advise the accused in which one of these different ways he is charged with having committed the crime (39-464, 40+564; 59-147, 60+1088). It must state the name of the owner of the property and from whom it was taken (79-373, 82+674; 83-432, 86+419). It is not necessary to give the name of the owner of the building from which the property is taken if the building is fully described (94-50, 102+207). It is not necessary to allege that the taking was in the day time (89-244, 94+686). The intent to deprive the true owner of the property must be alleged, but when it is explicitly charged that the accused feloniously took, stole, and carried away personal property from another person alleged to be the owner, the intent to deprive the true owner thereof is sufficiently alleged (47-425, 50+472). The taking from the possession of the true owner must be alleged, but it may be done by the use of the word "take." This word has a definite and well understood signification in connection with the offence of larceny and implies a trespass; and the averment, "did wrongfully and feloniously take, steal, and carry away," involves the possession, and the wrongful taking of the property from the actual or constructive possession, of the owner, general or special, and without his consent (47-449, 50+692). The property stolen must be described with sufficient certainty to enable the court to determine that it is subject to larceny as charged and to pronounce judgment on conviction, to enable the accused to prepare for trial, and to render the judgment an effective bar to a subsequent prosecution for the same offence (4-345, 261. See 25-66; 89-244, 94+686; 38-243, 36+462). But when it is impossible for the jury to ascertain a particular description it is sufficient to give a general description and add "that a more particular description of the articles is unknown to the grand jury." Such an allegation is not traversable (4-345, 261; 16-109, 99; 17-241, 218). A description which is well known and in common use is sufficient (47-449, 50+692). A description of railroad passenger tickets (30-522, 16+406); of treasury and bank notes (16-109, 99); of a mare (47-449, 50+692); of money of various

denominations (25-66); of coin (4-345, 261); and of a receipted voucher (89-244, 94+686), held sufficient. A description of divers bank bills held insufficient (4-345, 261). Whether it is necessary to state the value of the property is an open question (See 25-66; 47-449, 50+692). An indictment for petty larceny is not vitiated by the use of the word "feloniously" (12-293, 191). An indictment good at common law for larceny is good under this section for simple larceny (47-449, 50+692). An indictment charging the accused "of the crime of burglary, committed as follows," but stating facts constituting the crime of simple larceny, held sufficient for the latter offence (18-518, 464). An indictment for stealing warehouse receipts held sufficient although it did not allege that the company had legal authority under its charter to issue the receipts (27-521, 8+758). An indictment held sufficiently direct and specific (88-175, 92+965).—See §§ 5320, 5321.

FALSE PRETENCES

5. What constitutes—Where the false token is a written instrument, it need not be such as, if genuine, would be of legal validity (39-464, 40+564; 77-296, 79+1007). An indictment will lie for obtaining a deed on the false representation that the land is unincumbered. An indictment will not lie on a mere false warranty, nor on representations to be implied by mere promises or contract obligations. But, although there be a warranty or contract on the part of the accused, if there be also false representations of fact, an indictment will lie, provided the representation, and not the warranty or contract, induced the act of the other party (47-483, 50+532). The statute is not aimed at false pretences that can do no harm, and, where the signature to an instrument is obtained by false pretences, the case comes within the statute only if the instrument, or the affixing of the signature, may possibly prejudice the party who is thus induced to affix it (47-483, 50+532). To constitute false pretence the conduct and acts of the party may be sufficient without any verbal assertion. The mere act of offering for sale or as collateral security for the loan of money forged or false paper, amounts, by implication, to an affirmation that it is genuine. It is not necessary that the false pretence or representation should be one which is calculated to deceive men of ordinary intelligence or business prudence; it is sufficient that it is calculated to deceive the weak and ignorant (77-296, 79+1007; 86-432, 90+1108). An intent to defraud is the gist of the offence. Hence a person is not guilty of an offence in obtaining money by a worthless check if he had good reason to believe and did believe that the check would be paid in the ordinary course of business (77-267, 79+968). Under the Penal Code from which this section is taken there is no such offence as obtaining money or property by false pretences *eo nomine*. It is treated as a form of larceny (39-464, 40+564).

6. Indictment—The common form of indictment for larceny at common law is insufficient under this section (39-464, 40+564). The property obtained must be definitely described (See 38-243, 36+462). An indictment for obtaining a party's signature to a deed by false representations that the land was unincumbered held sufficient (47-483, 50+532). It is not necessary to use the exact words, "with intent to defraud." Equivalent language will suffice. An allegation that the accused unlawfully, knowingly, etc., and with intent to deprive the true owner of his property, by means, color, and aid of certain false writings and representations, then and there known to the accused to be false, amounts to an allegation of an intent to defraud (77-296, 79+1007). An indictment charging the accused with having obtained money from a railroad company by falsely representing that he had been injured while in the company's employ held sufficient against the objection that the names of the natural persons to whom the representations were made were not given and that the truth of the statements alleged to have been made to the company was not directly denied (78-524, 81+532). An indictment for obtaining bank deposits held insufficient because the fraudulent representations were alleged argumentatively and not directly and positively (82-448, 85+229). Where a promise is connected with false pretences and co-operates with them to influence the party deceived thereby, the promise may be alleged and shown as a part of the charge, if the pretence of past or existing facts is sufficient (43-325, 45+614).

EMBEZZLEMENT

7. What constitutes—The two essential elements of the offence are: first, the appropriation of the property of another by the offender to his own use, or to that of some other person than the true owner; secondly, such appropriation must have been made with the intent to deprive or defraud the true owner of the property, or of the use or benefit thereof. The appropriation of the property must be made with the same intent to deprive the owner of it with which the taking must be done to constitute larceny at common law. The form or method of appropriation is immaterial (62-7, 64+51). An element that enters into the definition of embezzlement is the fiduciary and confidential relation between the owner and the custodian of the property. Embezzlement may consist of a series of acts running through a considerable period of time (65-230, 68+11). The Penal Code, from which this section is taken, repealed prior statutes and enacted a single provision covering all forms of embezzlement. There is now no such offence as embezzlement *eo nomine*. It is treated as a form of larceny (62-7, 64+51; 39-464, 40+564).

8. **The criminal intent**—An intent to defraud or deprive another of his property is an essential element of the offence (62-7, 64+51; 79-94, 81+750; 72-296, 75+235). An intent to convert the property to the use of the accused is not essential (72-296, 75+235). When the act is in itself unlawful the fraudulent intent may be inferred from the intentional commission of the act (62-7, 64+51; 88-77, 92+458). The question of intent is for the jury (72-296, 75+235). When the original possession is lawful the mental act of fraudulent appropriation has to be inferred from the conduct of the accused (28-226, 9+704).

9. **By officer, agent, clerk, servant, or bailee**—It seems that the fraudulent conversion by one of two joint owners may be embezzlement (§ 5079; 63-211, 65+349. See 22-41). Where there has been an actual embezzlement and fraudulent appropriation by a servant of money intrusted to him for delivery, a demand and refusal to return the same are not necessary to constitute a conversion punishable as larceny under G. S. 1866 c. 95 § 23 (22-76. See 54-359, 56+50). If a bank officer appropriates to his own use the funds of the bank intrusted to his custody, with intent to deprive the bank of its property, it is none the less embezzlement because done under the guise or form of a loan to himself or an overdraft of his account. An officer of a bank held to have such possession, custody or control of the bank funds as to render him liable for embezzlement (62-7, 64+51). An accused held an agent or trustee of a principal although he was also employed by another principal who paid his services for both. As such agent he procured the maker of his principal's notes to renew the same, and make the new notes payable to a third party, who never owned or held them, and subsequently converted them to his own use. Held that he was properly indicted for embezzling the new notes (72-296, 75+235). There must be an intent to defraud (79-94, 81+750). The offence differs from common law larceny in that the property must have already been in the lawful possession or control of the accused under or by virtue of some employment, trust or agency under and with the consent of the owner; while common law larceny involves the element of an unlawful taking of the property from the actual or constructive possession of the owner (62-7, 64+51).

10. **Indictment of officer, agent, clerk, servant or bailee**—It is not necessary to state that the property was embezzled without the consent of the owner (72-296, 75+235). The goods and the ownership must be set out with the same exact completeness as in an indictment for simple larceny. An indictment of an assignee in insolvency held insufficient for failure to show the ownership of the property (79-373, 82+674). An indictment of a bailee must allege the name of the bailor and in concise terms the purpose or use for which property was intrusted to the accused (88-171, 92+541. See 77-128, 79+656). An indictment of a bailee need not allege a demand in addition to an actual conversion (54-359, 56+50). An indictment of a bailee held sufficient although it did not set out the particular facts constituting the bailment (77-128, 79+656). The use of the superfluous words "steal and carry away" does not render the indictment subject to the objection that it states two offences. The omission of the words "and defraud" after the word "deprive" held not fatal (54-359, 56+50). An indictment of an employee of an express company for the embezzlement of money intrusted to his care held sufficient (22-76). An indictment of an agent of a firm for the embezzlement of money collected by him for the firm on a note owned by the firm, held sufficient as respects the name of the maker of the note and the name of the firm (26-90, 1+821). An indictment under G. S. 1878 c. 95 § 33 held insufficient for failure to allege that the conversion was without the consent of the owner (26-191, 2+492. See 72-296, 75+235). Under G. S. 1894 § 7262, in an indictment of a bank officer, it is sufficient to allege generally an embezzlement of a certain sum without specifying the particulars (62-7, 64+51). An indictment for the embezzlement of notes held sufficient although it did not state the name of the payee (72-296, 75+235). An indictment under G. S. 1866 c. 95 § 23 for the embezzlement and fraudulent conversion of money properly accuses the person indicted of the crime of larceny (22-76; 26-90, 1+821). An indictment of a carrier under G. S. 1878 c. 95 § 24 (34) held insufficient for failure to allege that the property was to be carried "for hire" (26-191, 2+492).—See §§ 5320, 5321.

5079. Commission no defence—It shall be no defence to a prosecution under § 5078 subd. 2 that the accused was entitled to a commission, out of the money or property appropriated, as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the party accused; but it shall not be larceny for any bailee, servant, attorney, agent, clerk, trustee, or any other person mentioned in § 5078 subd. 2 to retain his reasonable collection fee or charges. (6710)

Commission (25-490). Part ownership (22-41; 63-211, 65+349).

5080. Obtaining money by fraudulent draft—Every person who shall wilfully, with intent to defraud, by color or aid of a check, draft, or order for the payment of money or the delivery of property, when such person knows

that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount or delivery of the property, although no express representation is made in reference thereto, shall obtain from another any money or property, shall be guilty of stealing the same, and punished accordingly. (6711)

38-243, 36+462; 66-291, 68+1089; 77-267, 79+968. See note to § 5078.

5081. Grand larceny in first degree—How punished—Every person who shall steal, or unlawfully obtain or appropriate in any manner specified in this chapter—

1. Property of any value by taking the same from the person of another in the night-time;

2. Property of the value of more than twenty-five dollars by taking the same in the night-time from any dwelling house, office, bank, shop, warehouse, vessel, railway car, or any building of any kind or description; or

3. Property of the value of more than five hundred dollars in any manner whatsoever—

Shall be guilty of grand larceny in the first degree, and punished by imprisonment in the state prison for not less than one nor more than ten years. (6712, 6715; '97 c. 17)

See note to § 5078.

5082. Grand larceny in second degree, how punished—Every person who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this chapter, shall steal or unlawfully obtain or appropriate—

1. Property of the value of more than twenty-five dollars, but not exceeding five hundred dollars, in any manner whatever;

2. Property of any value by taking the same from the person of another;

3. Property of any value, by taking the same in the day time from any dwelling house, office, bank, shop, warehouse, vessel or railway car, or any building whatever;

4. Property of less value than twenty-five dollars by taking the same in the night-time from any dwelling house, office, bank, shop, warehouse, vessel, or railway car, or any building whatever; or

5. A record of a court or officer, or a writing, instrument, or record kept, filed, or deposited according to law with or in keeping of any public officer or officers—

Shall be guilty of grand larceny in the second degree, and punished by imprisonment in the state prison for not more than five years, or by imprisonment in the county jail for not exceeding one year, or by fine of not more than five hundred dollars. (6713, 6716)

See note to § 5078.

5083. Petit larceny—Every larceny, except in the first and second degrees as described in this chapter, shall be petit larceny, and punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars. (6714, 6717)

An indictment for petit larceny is not vitiated by the use of the word "feloniously" (12-293, 191).

5084. Application to unissued instruments and fixtures—Every provision of this chapter in reference to larceny shall apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, a passage ticket completed and ready to be issued or delivered, although never in fact issued or delivered by the maker to a purchaser or owner; and to cases where the thing taken is a fixture, or part of the realty, or any growing tree, plant, or produce, and is severed at the time of taking, in the same manner as if the thing had been severed by another person at a previous time. (6718, 6719)

51-556, 53+874.

5085. Dogs personal property, when—Dogs are hereby declared to be personal property within the meaning of Part IV of the Revised Laws. (6904)

79-254, 82+577.

5086. Lost property—Every person who shall find lost property under circumstances which give him knowledge or means of inquiry as to the true owner, who shall appropriate such property to his own use, or to the use of another person not entitled thereto, without having first made reasonable effort to find the owner and restore the property to him, shall be guilty of larceny. (6720)

89-307, 94+873; 36-538, 32+780; 23-104.

5087. Bringing stolen goods into state or another county—Every person who, at any place out of the state, shall have stolen the property of another, or received such property knowing it to have been stolen, and shall bring the same into the state, may be tried and punished in the same manner as if such larceny or receiving had been committed within the state, and the offence may be charged to have been committed, and indictment found, and tried, in any county into or through which the stolen property shall have been brought; and every person who, at any place in the state, shall have taken the property of another, or received such property knowing it to have been stolen, and brought the same into any other county, shall be guilty of the larceny of the same in any county into or through which such stolen property shall have been brought, and may be indicted and tried in any such county. (6721, 6722)

5088. Conversion by trustee—Every person acting as executor, administrator, committee, guardian, receiver, collector, or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who shall secrete, withhold, or otherwise appropriate to his own use, or that of any person other than the true owner or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his office, employment, or appointment, shall be guilty of grand or petit larceny in such degree as in this chapter prescribed with reference to the value of such property. (6723)

59-147, 60+1088; 79-373, 82+674.

5089. Verbal false pretence—A purchase of property by means of a false pretence is not criminal where the false pretence relates to the purchaser's means or ability to pay, unless such pretence shall be made in writing and signed by the party to be charged. (6724)

5090. Value of evidence of debt, how ascertained—Whenever the thing stolen is a written instrument, being an evidence of debt, other than a public or corporate certificate, scrip, bond, or security having a market value, or being the transfer of or evidence of title to any property, or of the creating, releasing, or discharging of any demand, right, or obligation, the amount of money due thereupon or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereupon or thereby, or the value of the property transferred or affected, or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be, shall be deemed the value of the thing stolen. If the thing stolen be a ticket, paper, or other writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket entitling a person to a like passage is usually sold shall be deemed its value. In every case not otherwise regulated by statute, the market value of the thing stolen shall be deemed its value. (6725-6727)

89-244, 94+686.

5091. Claim of title, when ground of defence—Upon an indictment for larceny it shall be a sufficient defence that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even

though the claim be untenable. But this shall not excuse the retention of the property of another to offset or pay demands held against him. (6728)
43-378, 45+847; 61-101, 63+250.

5092. Intent to restore property—The fact that the defendant intended to restore the property stolen shall be no ground of defence, nor shall it be received in mitigation of punishment unless the property shall have been restored before complaint charging the commission of the crime has been made to a magistrate. (6729)

5093. Receiving stolen property—Averment and proof—Every person who shall buy or receive any stolen property, or any property which has been wrongfully appropriated in such manner as to constitute larceny under this chapter, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, promise, or agreement for the same, shall conceal, withhold, or aid in concealing or withholding, any property, knowing the same to have been stolen or appropriated wrongfully in such manner as to constitute larceny under the provisions of this chapter, if such misappropriation has been committed within the state, whether such property was so stolen or misappropriated within or without the state, shall be guilty of criminally receiving such property, and shall be punished by imprisonment in the state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both. In an indictment under this section it shall not be necessary to aver or prove upon trial that the principal who stole the property has been convicted or is amenable to justice. (6730, 6731)

17-76, 54.

5094. Larceny at fires, how punished—Every person who shall commit larceny in a building that is on fire, or steal any property removed in consequence of an alarm caused by a fire, shall be punished, whenever the value of the property is more than one hundred dollars, by imprisonment in the state prison for not more than five years, or by a fine of not more than five hundred dollars; whenever the value of the property is one hundred dollars or less, by imprisonment in the county jail for not more than two years, or by fine of not more than two hundred dollars. (6863)

5095. Restoration of stolen property—Duty of officers—The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his hands, and shall annex a schedule thereof to his return of the warrant. Whenever the county attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his demand, shall deliver it to him and take his receipt therefor, after which such county attorney shall be responsible for the same. Upon conviction of the offender, whoever shall hold such property shall turn it over to the owner. (6872)

EXTORTION OR OPPRESSION

5096. Extortion—Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right. Every person who shall induce another, by a threat, to do an unlawful injury to the person or property of the one threatened, or to a relative or member of his family, or to accuse him or any of them of any crime, or to expose or impute to him or any of them any deformity or disgrace, or to expose any secret affecting him or any of them; every person who by force or threat shall compel or induce another to make, subscribe, execute, alter, or destroy any valuable security, or instrument or writing affecting or intended to affect any cause of action or defence, or any property; every person indebted to another for labor, or any agent of any person, copartnership, or corporation so indebted, who, with intent to secure a discount upon such indebtedness, shall wilfully refuse to pay the same, or falsely deny the amount or

5096
89-M - 487
110-NW 5

5096
99-M - 487
110-NW 5

validity thereof, or that the same is due; and every person who shall extort any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat hereinbefore mentioned—shall be guilty of extortion, and punished by imprisonment in the state prison for not more than five years. (6732-6736)

5-13, 1.

5097. Interfering with employee or membership in union—It shall be unlawful for any person, company, or corporation, or any agent, officer, or employee thereof, to coerce, require, or influence any person to enter into any agreement, written or verbal, not to join, become, or remain a member of any lawful labor organization or association, as a condition of securing or retaining employment with such person, firm, or corporation. It shall be unlawful for any two or more corporations or employers to combine, agree to combine, or confer together for the purpose of interfering with any person in procuring, or in preventing him from procuring, employment, or to secure the discharge of any employee by threats, promises, circulating blacklists, or any other means whatsoever. It shall be unlawful for any company or corporation, or any agent or employee thereof, to blacklist any discharged employee, or by word or writing seek to prevent, hinder, or restrain a discharged employee, or one who has voluntarily left its employ, from obtaining employment elsewhere. Every person and corporation violating any of the foregoing provisions shall be guilty of a misdemeanor. ('95 cc. 172, 174)

85-279, 88+759.

5098. Oppression under color of office—Every public officer, or person pretending to be such, who, unlawfully and maliciously, under pretence or color of official authority—

1. Shall arrest another or detain him against his will;
2. Seize or levy upon another's property;
3. Dispossess another of any lands or tenements; or
4. Do any other act whereby another person shall be injured in his person, property, or rights—

Commits oppression, and shall be guilty of a gross misdemeanor. (6737)

5099. Extortion by public officer—Every public officer who shall ask or receive, or agree to receive, a fee or other compensation for his official services, either in excess of that allowed him by statute, or, where no fee or compensation is allowed to him by statute therefor, commits extortion, and shall be guilty of a misdemeanor. (6738)

12-490, 393; 14-456, 340.

5100. Blackmail—Every person who, knowing its contents, and with intent by means thereof to extort or gain any money or other property, or to do or abet or procure any illegal or wrongful act, shall send, deliver, or in any manner cause to be forwarded or received, or who shall make and part with for the purpose of being delivered, any letter or writing, threatening—

1. To accuse any person of a crime;
2. To do any injury to any person or property;
3. To publish or connive at publishing any libel; or
4. To expose or impute to any person any deformity or disgrace—

Shall be punished by imprisonment in the state prison for not more than five years. (6739)

5-13, 1.

5101. Written and verbal threats—Every person who, knowing the contents thereof, shall send, deliver, or in any manner cause to be sent or received, any letter or other writing, threatening to do any unlawful injury to the person or property of another, or who, under circumstances not amounting to robbery, or an attempt at a robbery, with intent to extort or gain any money or other property, shall verbally make such threat as would be criminal under §§ 5096-5100, if made or communicated in writing, shall be guilty of a misdemeanor. And it is not material whether such threat be made of things to be done or omitted by the offender or by any other person. (6740-6742)

FALSE PERSONATION, ETC.

5102. Falsely personating another—Every person who shall falsely personate another, and in such assumed character shall—

1. Marry or pretend to marry or to sustain the marriage relation towards another;

2. Become bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety;

3. Confess a judgment;

4. Subscribe, verify, publish, acknowledge, or prove a written instrument which by law may be recorded, with intent that the same may be delivered or used as true; or

5. Do any other act in the course of any action or proceeding whereby, if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender or to any other person—

Shall be punished by imprisonment in the state prison for not more than five years; but no indictment can be found for the crime specified in the first clause of this section except upon complaint of the person injured, if living, and within a year after its commission. (6743, 6744)

5103. Receiving property in false character—Every person who shall falsely personate another, and in such assumed character receive any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, shall be punished in the same manner and to the same extent as for larceny of the money or property so received. (6745)

5104. Personating an officer—Every person who shall falsely personate a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who, without authority, shall assume any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character shall do an act purporting to be official, whereby another is injured or defrauded, shall be guilty of a gross misdemeanor. (6746)

5105. Obtaining signature by false pretences—Every person who, with intent to cheat or defraud another, shall designedly, by color or aid of a false token or writing or other false pretence, obtain the signature of any person to a written instrument, shall be punished by imprisonment in the state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both. (6747)

47-483, 50+532.

5106. False representation concerning titles—Every person who shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and execute a deed of the same, with intent to defraud any other person, shall be punished by imprisonment in the state prison for not more than two years, nor less than six months. (6873)

5107. Obtaining employment by false letter or certificate—Every person who shall obtain employment, or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. (6748)

5108. Removing property from mortgaged land—Every mortgagor or other person who shall remove any building, fixture, or fence situate or being upon any real estate on which a mortgage or mechanic's lien exists, either before or after the foreclosure of such mortgage or lien, to the prejudice of the holder thereof, with intent to impair or lessen the value of such mortgage or lien, without first having obtained the consent of the person owning or holding the same, shall be punished by imprisonment in the county jail for

not more than six months, or by fine of not more than five hundred dollars, or by both. (6880)

5109. Selling or concealing mortgaged property—Every person who, with intent to place mortgaged personal property beyond the reach of the mortgagee or his assigns, shall remove or conceal, or aid or abet in removing or concealing, any such property, and any mortgagor of such property who shall assent to or knowingly suffer such removal or concealment, or, at any time before the debt secured by a chattel mortgage has been fully paid, shall sell, convey, or in any manner dispose of the personal property so mortgaged, or any part thereof, without the written consent of the mortgagee or his assigns, or without informing the person to whom he shall sell, convey, or dispose of the same that it is mortgaged, and the true amount then due on the debt secured by such mortgage, shall be punished by imprisonment in the state prison or county jail for not more than one year, or by fine of not more than five hundred dollars. (6749, 6750)

5110. Same—Indictment—In any prosecution under § 5109, it shall be a sufficient allegation and description of the mortgage and the mortgaging of personal property to state that such property was duly mortgaged by a certain chattel mortgage, giving the date thereof and the names of the mortgagor and mortgagee. (6751)

27-309, 7+264; 32-537, 21+746; 34-339, 25+708.

5111. Selling, etc., borrowed property—Every person who, without the consent of the owner thereof, shall sell, pledge, pawn, or otherwise dispose of any property which he has borrowed or hired from the owner, shall be guilty of a misdemeanor. But this shall not apply to a person leasing or lending property for a time not exceeding that for which the same was hired or lent to himself. (6752, 6753)

FRAUDULENT INJURY OF VESSELS

5112. Wilful destruction of vessel—Every person who shall wreck, burn, sink, scuttle, or otherwise injure or destroy a vessel or its cargo, or wilfully permit the same to be done, with intent to prejudice or defraud an insurer or any other person, or who shall fit out any vessel, or shall load any cargo on board thereof, with intent to permit or cause the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby defraud or prejudice an insurer or other person, shall be punished by imprisonment in the state prison for not more than five years. (6754, 6755)

5113. Making false manifest, invoice, etc.—Every person who shall prepare, make, or subscribe a false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, shall be punished by imprisonment in the state prison for not more than three years, or by a fine of not more than one thousand dollars, or by both. (6756)

5114. Fraudulent destruction of insured property—Every person who, with intent to defraud or prejudice the insurer thereof, shall wilfully burn or in any manner injure or destroy property not specified or included hereinbefore in this subdivision, which is insured at the time against loss or damage by fire or any other casualty, under such circumstances that the offence is not arson in any of its degrees, shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than five hundred dollars, or by both. (6757)

FALSE WEIGHTS AND MEASURES

5115. Using false weights and measures—Every person who shall injure or defraud another by using, with knowledge that the same is false, a false weight, measure, or other apparatus for determining the quantity of any commodity or article of merchandise, or by knowingly delivering less than the quantity he represents; or who shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable

doubt that it was so retained without intent to use it, or permit it to be used in violation of the foregoing provisions of this section; or who shall knowingly mark or stamp false or short weights or false tare on any cask or package, or knowingly sell or offer for sale any cask or package so marked—shall be guilty of a misdemeanor. (6758-6760)

83-441, 86+431.

FRAUD IN THE MANAGEMENT OF CORPORATIONS

5116. Fraud in stock subscriptions—Every person who shall sign the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation existing or proposed, and every person who shall sign to any subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor. (6761)

5117. Fraudulent issue of stock, scrip, etc.—Every officer, agent, or other person in the service of any joint-stock company or corporation, domestic or foreign, who wilfully and knowingly, with intent to defraud, shall—

1. Sell, pledge, or issue, or cause to be sold, pledged, or issued, or sign or execute, or cause to be signed or executed, with intent to sell, pledge, or issue, or to cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt or writing purporting to be a bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or

2. Reissue, sell, pledge, or dispose of, or cause to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificates or other evidence of the transfer or ownership of any such share or shares—

Shall be punished by imprisonment in the state prison for not less than three nor more than seven years, or by fine of not more than three thousand dollars, or by both. (6762)

67-267, 69+904.

5118. Receiving deposit in insolvent banks—Every officer, director, stockholder, cashier, teller, manager, member, messenger, clerk, person, party, or agent of any bank, banking corporation, association or firm, banking house, savings bank, banking exchange, brokerage deposit company and private bank, and every person, company, and corporation engaged in whole or in part in banking, brokerage, exchange, or deposit business in any way, who shall accept or receive on deposit in such bank or banking institution as aforesaid, with or without interest, from any person, any money, bank bills, or notes, or certificates or currency, or other notes, checks, bills, drafts, or paper circulating as money, when he knows, or has good reason to know, that such person, bank, banking corporation, association or firm, banking house, savings bank, banking exchange, brokerage deposit company or private bank as aforesaid is unsafe or insolvent, and every person knowing such insolvency or unsafe condition who shall be accessory to, or permit, or connive at the accepting or receiving on deposit therein or thereby any such deposits as aforesaid, shall be guilty of felony, and punished by imprisonment in the state prison for not less than one nor more than ten years, or by fine of not less than five hundred dollars nor more than ten thousand dollars. (6763; '95 c. 219)

62-540, 64+1022; 70-1, 72+797; 80-322, 83+190; 82-434, 85+234; 82-448, 85+229; 91-321, 98+92; 94-384, 102+913.

5119. Frauds in keeping accounts, etc.—Every director, officer, or agent of any corporation or joint-stock association, who shall knowingly receive or

possess himself of any property of such corporation or association, otherwise than in payment of a just demand, and, with intent to defraud, shall omit to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association, who, with intent to defraud, shall destroy, alter, mutilate, or falsify any of the books, papers, writings, or securities belonging to such corporation or association, or shall make, or concur in the making of, any false entry, or shall omit or concur in the omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, shall be punished by imprisonment in the state prison for not more than ten years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both. (6764)

5120. False reports of corporations—Every director, officer, or agent of any corporation or joint-stock association who shall knowingly concur in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are elsewhere in the Revised Laws specially made punishable, shall be guilty of a misdemeanor. (6765)

FRAUDULENT BILLS OF LADING, ETC.

5121. Fictitious bills of lading—Every master, owner, or agent of any vessel, and every officer or agent of any railway, express, or transportation company, or other carrier, who shall deliver any bill of lading, receipt, or other voucher by which it shall appear that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express, or transportation company, or other carrier, unless the same has been so shipped or delivered, and shall be at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. (6767)

44-224, 237, 46+342, 560.

5122. Fictitious warehouse receipts—Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who shall issue any receipt, bill of lading, or other voucher for grain or merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether the same shall be issued to a person as owner, or as security for any indebtedness, shall be punished by imprisonment in a county jail for not more than one year, or by fine of not more than one thousand dollars, or by both; but no person shall be convicted under this section or § 5121 for the reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description contained in such instrument, if such description corresponds substantially with the mark, label, or brand upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels, or brands were untrue. (6768, 6769)

5123. Duplicate receipts—Selling stored property, etc.—Every person mentioned in §§ 5121, 5122, who shall issue any second or duplicate receipt or voucher of a kind specified in said sections, while a former receipt or voucher for the grain or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, and every such person who shall sell or pledge any merchandise for which a bill of lading, receipt, or voucher has been issued by him, without the consent thereto in writing of the person holding such bill, receipt, or voucher, shall be punished by imprisonment in a county jail for not more than one year, or by fine of not more than one thousand dollars, or by both. (6770, 6771)

MALICIOUS MISCHIEF—INJURIES TO PROPERTY

5124. Injuries to railways, etc.—Every person who—

1. Shall displace, remove, injure, or destroy a rail, sleeper, switch, bridge, viaduct, culvert, embankment, or structure, or any part thereof, attached or appertaining to or connected with a railway, whether operated by steam, electricity, or any other motive power;

2. Shall place any obstruction upon the track of such a railway; or

3. Shall wilfully discharge a loaded firearm, or project or throw a stone or other missile, at a railway train, locomotive, car, or vehicle standing or moving upon a railway—

Shall be punished as follows:

a. If thereby the safety of any person is endangered, by imprisonment in the state prison for not more than ten years.

b. In every other case, by imprisonment in the state prison for not more than three years, or by fine of not more than two hundred and fifty dollars, or by both. (6772)

Subd. 1. Not applicable to fences (43-444, 45+721). Subd. 2. 28-421, 10+475; 53-541, 55+741.

5125. Endangering life and property by explosives—Every person who shall place gunpowder or any other explosive substance in, upon, under, against, or near to any building, car, vessel, or structure, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstances that, if the intent should be accomplished, human life or safety would thereby be endangered; although no damage be actually done, shall be guilty of a felony. Every person who shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy or damage any building or vessel, shall be punished as follows:

1. If the life or safety of a human being is endangered, by imprisonment in the state prison for not more than ten years;

2. In every other case, by imprisonment in the state prison for not more than five years. (6773, 6784)

5126. Burning growing crops, etc.—Every person who shall wilfully burn or set fire to any grain, grass, growing crop, standing timber, or to any building, fixture, or appurtenance to real property of another, under circumstances not amounting to arson in any degree, shall be punished by imprisonment in a county jail for not more than one year. (6774)

5127. False signals for vessel, etc.—Every person who, with intent to endanger a vessel, railway engine, or railway train, shall show, mask, extinguish, alter, or remove a light or signal, or exhibit any false light or signal, shall be punished by imprisonment in the state prison for not more than ten years. (6775)

5128. Injury to United States lights—Every person who shall wilfully break, injure, deface, or destroy any lighthouse station, post, platform, steps, lamps or other structure pertaining to such lighthouse station, the same being the property of the United States, or shall extinguish any light erected by the United States upon or along the navigable waters of this state, to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished as follows:

1. Whenever such act is done with intent to endanger the safety of any vessel navigating said waters, or to jeopardize the safety of any person or property in or upon any such vessel, by imprisonment in the state prison for not more than five years;

2. In all other cases, by imprisonment in the county jail for not more than one year, or by fine of not more than one hundred dollars, or by both. (6776, 6777)

5129. Buoys or beacons—Mooring to—Injuring—Every person who shall moor any vessel, boat, skiff, barge, scow, raft, or part of a raft, to any buoy or beacon placed in the navigable waters of the state, or in any bay or river thereof, by authority of the United States, or shall in any manner hang on,

with any vessel, boat, skiff, barge, scow, raft, or part of a raft, to any such buoy or beacon, or shall wilfully remove, damage, or destroy any such buoy or beacon, or shall cut down, remove, damage, or destroy any beacon erected on land in this state by the authority of the United States, shall for every such offence be punished by a fine of not less than one hundred dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both. One-half of all fines collected under this section and § 5128 shall be paid to the informer, and the other half into the common school fund of the county where conviction is had. (6778, 6779)

5130. Injuring highways, etc.—Every person who shall wilfully or maliciously displace, remove, injure, or destroy—

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1. A highway, or a private way laid out by authority of law, or a bridge upon such public or private way;

2. A pile or other material fixed in the ground, and used for securing any bank or dam of any river or other water, or any dock, quay, jetty, or lock;

3. A buoy or beacon lawfully placed in any waters within the state;

4. A tree, rock, post, or other monument which has been erected or marked for the purpose of designating a point in the boundary of the state, of a county, city, village, town, or of a farm, tract, or lot of land, or any mark or inscription thereon;

5. A mileboard, milestone, or guidepost erected upon a highway, or any inscription thereon;

6. A line of telegraph or telephone, or any part thereof, or any appurtenance or apparatus connected with the working of any magnetic or electric telegraph or telephone, or the sending or conveyance of messages thereby;

7. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith;

8. A sewer or drain, or a pipe or main connected therewith or forming part thereof; or

9. Who shall destroy, or damage with intent to destroy or render useless, any engine, machine, tool, or implement intended for use in trade or husbandry—

Shall be guilty of a misdemeanor. (6780)

5131. Interfering with dam, etc.—Every person who shall wilfully or maliciously displace, remove, injure, or destroy any pier, boom, or dam lawfully erected or maintained upon, in, or across any water within the state, or any stream forming a boundary thereof, or shall hoist any gate in or about such dam, shall be guilty of a felony, and punished by imprisonment in the state prison for not less than one nor more than ten years, or by fine of not less than three hundred dollars nor more than one thousand dollars. (6780; '95 c. 220)

5131
101-M - 220

5132. Obstructing public levees—It shall be unlawful for any houseboat, or other craft not used for the transportation of freight or passengers, to moor to or lay at the public levee of any city, village, or town, on the navigable waters of this state, where it will interfere with, inconvenience, or endanger the landing of any freight, passenger, or towing vessel. Every owner or person in charge of any such boat or craft, upon notice by the police of any city, village, or town, or the owner or agent of any freight, passenger, or towing craft, that it is obstructing the levee, interfering with, inconveniencing, or endangering the landing of any freight, passenger, or towing vessel, shall immediately cause the same to be removed, and, upon neglect or refusal so to do, shall be punished by imprisonment in the county jail for not more than sixty days, or by a fine of not more than fifty dollars. ('95 c. 345)

5133. Injury of property—Every person who shall wilfully—

1. Cut down, destroy, or injure any wood or timber standing or growing, or which has been cut down and is lying upon lands of another or of the state;

2. Cut down, girdle, or otherwise injure a fruit, shade, or ornamental tree standing on the lands of another or of the state;

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3. Sever from the freehold of another or of the state any produce thereof, or anything attached thereto;

4. Dig, take, or carry away, without lawful authority or consent, from any lot of land in any city or village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil, or stone;

5. Enter, without the consent of the owner or occupant, any orchard, fruit garden, vineyard, or ground whereon is cultivated any fruit, with intent to take, injure, or destroy anything there grown or growing;

6. Cut down, destroy, or in any way injure any shrub, tree, or vine being or growing within any such orchard, garden, vineyard, or upon any such ground, or any building, framework, or erection thereon; or

7. Untie, unfasten, or liberate, without authority, the horse or team of another, or lead, ride, or drive away, without authority, the horse or team of another from the place where left by the owner or person in charge thereof—

Shall be punished by imprisonment in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both. (6781)

Subd. 3 (103+728).

5134. Divulging telegram—Every person who shall wrongfully obtain, or attempt to obtain, any knowledge of a telegraphic message, by connivance with a clerk, operator, messenger, or other employee of a telegraph company, and every clerk, operator, messenger, or other employee who shall wilfully divulge to any but the person for whom it was intended the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or shall wilfully refuse or neglect duly to transmit or deliver the same, shall be punished by imprisonment in the county jail for not more than six months, or by fine of not more than one thousand dollars, or by both. (6782)

75-368, 375, 77+985.

5135. Opening sealed letters, etc.—Every person who shall wilfully and without authority open or read, or cause to be opened or read, a sealed letter or telegram, or shall publish the whole or any portion of such a letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. (6783)

5136. Injury to standing crops—Every person who shall maliciously injure or destroy any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which punishment has not been otherwise prescribed by statute, shall be guilty of a misdemeanor. (6785)

5137. Injury to works of art, etc.—Every person who, not being the owner thereof, and without lawful authority, shall wilfully injure, disfigure, remove, or destroy a gravestone, monument, work of art, useful or ornamental improvement, shade tree or ornamental plant, whether upon private ground, or upon a road, street, sidewalk, cemetery, or public park or place; or who shall remove from any grave in a cemetery any flowers, memorials, or other tokens of affection, or anything connected therewith; or who shall wilfully mar or deface any building or signboard; or who shall extinguish a lamp, or break, destroy or remove any lamp or lamp-post, or any railing or post erected on a bridge, sidewalk, road, street, court, or passage—shall be guilty of a misdemeanor. (6786, 6874)

See 1905 c. 90

5138. Injury to articles in museum—Every person who shall maliciously cut, tear, deface, soil, obliterate, break, or destroy a book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen, or other work of literature, or object of art or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, shall be punished by imprisonment in the state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both. (6787)

5139. Injury to house of worship, etc.—Every person who shall wilfully and without authority break, deface, or otherwise injure any house of religious worship, or any part thereof, or any appurtenance thereto, any ornament, musical instrument, articles of silver or plated ware, or other chattels kept therein, for use in connection with religious worship, or who shall wilfully break, deface, or otherwise injure any schoolhouse or appurtenance, or other public building, or who shall wilfully break, deface, or injure any globe, map, or chart, or any other article kept and used in connection with such schoolhouse or other public building, shall be guilty of a gross misdemeanor, and punished as follows:

1. If the value of the property broken, defaced, or injured is thereby diminished by an amount less than one hundred dollars, by imprisonment for not more than ninety days, or by fine of not more than one hundred dollars, or by both.

2. If the value of such property shall be diminished more than one hundred dollars, by imprisonment for not less than six months nor more than two years.

In addition to the punishment herein prescribed, he shall be liable in treble damages for the injury done, to be recovered in a civil action by the owner of the property, or by the public officer having charge thereof. (6789)

5140. Coercion—Every person who, with intent to compel another to do or abstain from doing an act which such other person has a legal right to do, or abstain from doing, shall wrongfully and unlawfully—

1. Use violence or inflict injury upon such other person or his family, or a member thereof, or upon his property, or threaten such violence or injury;

2. Deprive any such person of any tool, implement, or clothing, or hinder him in the use thereof; or

3. Attempt to intimidate such person by threats or force—

Shall be guilty of a misdemeanor. (6790)

5141. Injury to other property—Every person who shall unlawfully and wilfully destroy or injure any real or personal property of another, which is not specially described herein, and where the punishment is not specially prescribed by statute, shall be punished as follows:

1. If the value of the property destroyed, or the diminution in value by injury to the same, shall be less than twenty dollars, by imprisonment in the county jail for not more than three months, or by fine of not more than one hundred dollars;

2. If the value of the property destroyed, or the diminution in value by the injury, shall be twenty dollars or more, by imprisonment in the county jail for not more than one year, or by fine of not more than five hundred dollars, or by both.

And in addition to the punishment herein prescribed, he shall be liable in treble damages for the injury done, to be recovered in a civil action by the owner of the property, or the public officer having charge thereof. (6791)

Treble damages (47-335, 50+232).

5142. Interfering with electrical apparatus—Every person who shall wilfully destroy, injure, disconnect, displace, cut, break, deface, ground, or in any way interfere with any pole, cable, or wire legally erected, put up, or strung, or any underground conduit, subway, or cable, or any electrical or other apparatus, lamps, transformer, switch, appliance, instrument, or machinery of any kind used in the construction or operation of any electric or telephone plant, line, or system, or used in the producing, generating, or transmitting of electric light, heat, or power, or who shall aid, agree with, employ, or conspire with any other person to do any of said acts, shall be guilty of a misdemeanor. ('03 c. 48)

5143. Fraudulent appropriation of electricity—Every person who shall wilfully make any connection with any meter, pipe, conduit, wire, line, or other apparatus belonging to any person or company using, or engaged in the manufacture, supply, sale, or distribution of, electricity or of electric current, for the purpose of taking, using, or wasting such electricity or electric current, or shall wilfully prevent an electric meter from duly measuring or register-

ing the quantity of electricity supplied, or shall in any way interfere with its proper action or just registration, or shall, without the consent of such person or company, wilfully divert any electrical current or power of such person or company, or in any way wilfully use or cause to be used, without the consent of such person or company, any electricity manufactured or distributed by such person or company, or shall aid, agree with, employ, or conspire with any other person to do any of said acts, shall be guilty of a misdemeanor. ('03 c. 48)

5144. Obstructing extinguishment of fire—Every person who, within twenty-four hours prior to or during the burning of a building or other property, shall wilfully and maliciously cut or remove any bell rope or telegraph wire in the vicinity of such building or property, or otherwise prevent an alarm being given, or shall cut, injure, or destroy an engine, hose, or other fire apparatus in said vicinity, or shall otherwise wilfully and maliciously prevent or obstruct the extinguishing of any fire, shall be punished by imprisonment in the state prison not more than seven years, or in a county jail for not more than three years, or by fine of not more than one thousand dollars. (6862)

5145. Smoking where prohibited—Every person who shall light a pipe or cigar in, or shall enter with a lighted pipe or cigar, any mill or other building on which is posted in a conspicuous place, over or near each principal entrance, a notice, in plain, legible characters, stating that no smoking is allowed in such building, and every person who shall deface, destroy, or remove any such notice, shall be guilty of a misdemeanor, and punished for each such offence by a fine of ten dollars. (6876, 6877)

5146. Draining meandered lakes, etc.—Every person who shall drain or cause to be drained, or shall attempt to drain in any manner any lake, pond, or body of water which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a gross misdemeanor, and punished by a fine of not less than twenty-five dollars nor more than five thousand dollars. But this shall not prevent the reasonable use of such bodies of water as reservoirs for any milling or manufacturing establishment, for the purpose of driving logs, or supplying any city, village, or town with water, and none of the provisions of this section shall apply to any case where the county board shall drain such body of water under the provisions of law. (6878, 6879)

77-231, 241, 79+964, 1026, 1064.

5147. Interfering with railway gates, etc.—Every person who, without lawful authority, shall break down or carry away any part of any fence, bars, or gate at a crossing over any railway track, or plank used for such crossing, or shall destroy or injure any hedge, ditch, or other structure used or intended as a fence to inclose any railway tracks; every person using any gate or bars, or opening the same for any purpose, at any railway crossing, who shall permit any animal to stray upon a railway track or inclosed right of way, or who shall leave such bars down, or gate open, so that animals may stray upon such railway track; and every person who shall lead, drive, or turn upon such track any animal for grazing or other purposes—shall be guilty of a misdemeanor, and punished for each such offence by imprisonment in the county jail for not more than thirty days, or by a fine of not less than ten dollars nor more than fifty dollars. (6886-6888)

5148. Trespass on railway track—Every person, not an employee of a railway company, who, without permission from such company, on foot or with any animal or vehicle, shall enter upon any railway bridge or trestle, or who, without a permit, shall ride, operate, or propel a velocipede, track bicycle, or tricycle on or along the track of any railway, shall be guilty of a misdemeanor. (6890; '03 c. 262)

5149. Injury to buildings—Every person who shall in any manner wilfully damage any building or part thereof, throw any stone or other missile at or

break any window therein, or who shall aid, counsel, hire, or procure any person so to do, shall be guilty of a misdemeanor. (6894)

5150. Injury to baggage—Every person employed by a railway or other corporation, every express agent, stage driver, drayman, hackman, or other person who shall handle, remove, or take care of trunks, valises, boxes, packages, or other baggage, who, while handling, loading, transporting, unloading, delivering, or storing the same, shall wilfully, wantonly, or carelessly break, injure, or destroy the same, or any part thereof, shall be guilty of a misdemeanor. (6895)

CHAPTER 102

CRUELTY TO ANIMALS

5151. Definitions—The word "animal" shall include every living creature except the human race; the word "torture" or "cruelty," every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death shall be caused or permitted. The term "impure and unwholesome milk" shall include all milk obtained from animals in a diseased or unhealthy condition, or fed on distillery waste, usually called "swill," or upon any substance in a state of putrefaction or fermentation. (6809)

5152. Overworking animals, etc.—Every person who shall—

1. Overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work the same when unfit for labor, whether belonging to himself or another;

2. Deprive of necessary food, water, or shelter any animal of which he has charge or control;

3. Keep cows or other animals in any inclosure without wholesome exercise and change of air;

4. Feed cows on food which produces impure or unwholesome milk;

5. Abandon any maimed, sick, infirm, or disabled animal to die in any public place;

6. Allow any such animal to lie in the street, road, or other public place for more than three hours after notice; or

7. Wilfully set on foot, instigate, or in any way further any act of cruelty to animals, or any act tending to produce such cruelty—

Shall be guilty of a misdemeanor. (6792, 6793)

22-271.

5153. Cruelty in transportation—Every person who shall carry, or cause to be carried, any live animals upon any vehicle or otherwise, without providing suitable racks, cars, crates, or cages in which such animals can both stand and lie down during transportation and while awaiting slaughter; every person who shall carry or cause to be carried upon a vehicle or otherwise any live animal having feet or legs tied together, or in any other cruel or inhuman manner; and every person or corporation engaged in transporting live stock who shall detain the same in cars or compartments for more than twenty-four hours without food, water, and attendance, or shall permit the same to be crowded together without sufficient space to stand, or so as to overlie, crush, wound, or kill each other—shall be guilty of a misdemeanor. (6792, 6793)

5154. Docking horses—Every person who shall cut the bony part of a horse's tail for the purpose of docking it, or cause or knowingly permit the same to be done upon premises of which he is owner, lessee, or user, or who shall assist in such cutting, shall be punished by imprisonment in the county jail for not less than thirty nor more than ninety days, or by a fine of not less than twenty-five dollars nor more than one hundred dollars. Whenever a horse shall be found so cut, and the wound resulting unhealed, upon the premises or in the custody of any person, such fact shall constitute prima