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To

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1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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and a resulting disturbance of the public peace. State v. Winkels, 204M466, 283NW763.

The public peace means that tranquility enjoyed by a community when good order reigns amongst its members. Id.

Common purpose can be inferred from circumstances and acts committed. Id.

A person may be convicted for riot even though not actively engaged therein when he was present and ready to give support if necessary. Id.

In a prosecution for rioting, where defendant's counsel on cross examination asked sheriff to explain his presence at the place of the riot, it was proper to have sheriff tell of events which occurred several days before. Id. See Dun. Dig. 3233.

In a prosecution growing out of a riot at a store, employees of the store were properly permitted to testify as to their reason for retiring to remote parts of store, and reason for taking a policeman with them when they passed through the crowd Id. See Dun. Dig. 3233.

10281. Riot, how punished.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

10282. Unlawful assembly.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

10283. Remaining after warning.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

10285. Combination to resist process.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

10286. Prize fighting—Aiding—Betting or stakeholding.

Repealed by Act Jan. 28, 1933, c. 7, §17, effective May 1, 1933, so far as inconsistent with the repealing act (§§3260-1 to 3260-18).

Since the enactment of Laws 1915, c. 363, contract for management of prize fighter is not illegal. Safro v. L., 184M336, 238NW641.

10287. Fight out of the state.

Safro v. L., 184M336, 238NW641; note under §10286.

10288. Apprehension of person about to fight—Bail, etc.

Safro v. L., 184M336, 238NW641; note under §10286.

10289. Forcible entry and detainer.

One moving back day following his removal under writ of restitution and using seed and grain belonging to owner is not guilty of trespass but may be prosecuted for larceny and also for unlawful entry. Op. Atty. Gen. (494b-20), Nov. 26, 1934.

10290. Aiming or discharging firearms, etc.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

A landlord who shot windows out of house with shot gun for sole purpose of forcing tenants to move, without intent to hit anyone, could be prosecuted under this section, but would not be guilty of assault. Op. Atty. Gen. (494b-4), Aug. 29, 1934.

10291. Use of firearms by minors.

A father who furnished him with the pistol cannot be held liable for an accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, recklessness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. Clarine v. A., 182M310, 234NW295. See Dun. Dig. 4466, 10200.

Since a minor under fourteen can hunt protected game only on home premises of his parent or guardian, he can have a bag limit of game only if it was taken on such premises. Op. Atty. Gen. (209g), Sept. 19, 1934.

10299. Language provocative of assault.

Strutwear Knitting Co. v. O., (USDC-Minn), 13FSupp 384.

CHAPTER 101

Crimes Against Property

10302. Misappropriation and falsification of accounts by public officers.

Where a justice of the peace was elected in 1929 and due to the change in date of village elections his term expired and no successor was elected, and during such vacancy he continued to act and collect fines which he refused to turn over to the village, he might technically be prosecuted under §9971, but preferably under §10302. Op. Atty. Gen., Jan. 6, 1932.

10303. Other violations by officers.

City treasurer did not commit an offense under this section by making deposits in excess of collateral securities given by a bank in lieu of a depository bond under §1973-1. 172M324, 215NW174.

10305. 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: provided, however, that any village or city council, town board, or school board, of any town, village or city of the fourth class, otherwise having authority to designate depositary for village, city, town or school district funds, of any town, village, or city of the fourth class, may designate a bank in which a member of such board is interested as a depositary for village, city, town or school funds of any town, village or city of the fourth class by a two-thirds vote of such board. (R. L. '05, §5032; G. S. '13, §8817; Apr. 20, 1931, c. 212.)

172M392, 215NW673.
Op. Atty. Gen. (90d), July 23, 1934; note under §1096.
Op. Atty. Gen. (90b), July 24, 1934; note under §990.

When the funds are deposited in a bank of which the treasurer, being a member of the school board, is also an officer and stockholder, the exception to the general rule is inoperative. 173M428, 217NW496.

There being no over deposits when the depository banks failed, prior overdeposits or irregularities could not be proximate or any cause for any loss that may arise from the insolvency of the bank. County of Marshall v. Bakke, 182M10, 234NW1. See Dun. Dig. 2263b, 2323(77), 2699.

A city treasurer is guilty of malfeasance by depositing city funds in an undesignated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding stipulation in bond relieving surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for funds wrongfully deposited during its term, though bank does not fail until afterwards. City of Marshall v. G., 193M188, 259NW377. See Dun. Dig. 8000, 8004, 8022.

Where a municipal officer sells to his municipality property within its corporate powers to acquire and use, and same is so acquired and used by it, liability may be enforced quasi ex contractu, but not beyond value of such property to municipality. Mares v. J., 196M87, 264 NW222. See Dun. Dig. 8004.

Does not prohibit town treasurer from contracting with town. Op. Atty. Gen., Apr. 27, 1929.

Where school district contracts with municipality for library service, member of school board cannot be employed as librarian by the district and municipality jointly, but may be employed by the municipality independent of the contract for library service. Op. Atty. Gen., Sept. 9, 1929.

Does not prohibit school treasurer from depositing funds in bank of which he is stockholder where there has been no designation of a depository. Op. Atty. Gen., Oct. 8, 1929.

Provision in a home rule charter recognizing validity of municipal contract in which officer is interested, if such officer is the lowest bidder, is invalid, in view of this section and Const. art. 4, §36. Op. Atty. Gen., Feb. 10, 1930.

Requiring applicant for dance hall permit to pay expense of patroling in vicinity of hall to prevent sale of liquor, held not violative of requirement that officers shall not be interested in contracts. Op. Atty. Gen., June 4, 1930.

State may enter into contracts with members of the legislature for architectural service, consulting engineering service, and construction work. Op. Atty. Gen., May 12, 1931, and May 8, 1931.

Purchases in small quantities by a city from a firm in which a member of the council is interested violates this section. Op. Atty. Gen., May 27, 1931.

A bank of which one of the school board members is a director may legally be designated as depository of school funds. Op. Atty. Gen., July 21, 1931.

It is not lawful to designate a bank as a depository for county funds where a commissioner is either a stockholder or director therein, though the designation is made by the board of audit. Op. Atty. Gen., Aug. 11, 1931.

It is legal for a bank to be designated as a depository of school funds where a member of the board of education is a director or stockholder in the bank desiring to be designated. Op. Atty. Gen., Aug. 11, 1931.

County board improving a county aid road cannot purchase a strip of land from a county commissioner for a consideration similar to that being paid to other persons in the vicinity for similar strips of land. Op. Atty. Gen., Aug. 14, 1931.

It is not legal to purchase through a school auxiliary fund authorized by Laws 1917, c. 112, from business men who are on the school board. Op. Atty. Gen., Sept. 30, 1931.

A town treasurer does not violate this section by purchasing town orders at a discount and then receiving payment from the town treasury for the full amount thereof; but since he is an agent for the town, the town could probably recover the profit made by him. Op. Atty. Gen., Oct. 6, 1931.

It is illegal for members of village council, members of water and light commission, and street commissioners to purchase their coal through the village, even though the village is reimbursed in full for the cost. Op. Atty. Gen., Oct. 7, 1931.

A city officer may purchase a bond or certificate of indebtedness of the city. Op. Atty. Gen., Dec. 19, 1931.

President of bank should not be permitted to write insurance polices on city property, commissions going to bank where cashier of bank is city treasurer and is stockholder in bank. Op. Atty. Gen., Mar. 30, 1932.

Doctor, on city council of Granite Falls, was entitled to receive compensation from insurance company for caring for injured city employees. Op. Atty. Gen., Mar. 30, 1932.

Railroad station agent, though member of city council of Granite Falls, may send freight or receive freight or express on railroad for which he works, providing he receives salary from railroad unaffected by city freight or express. Op. Atty. Gen., Mar. 30, 1932.

Veterinarian, who is member of city council of Granite Falls, may not be employed as city dairy inspector and receive salary therefor. Op. Atty. Gen., Mar. 30, 1932.

Where city attorney received compensation from one performing services for city in matter of bond issue, such fees should be paid back to person who paid them, not to city. Op. Atty. Gen., May 25, 1932.

This section applies to members of village council of Litchfield. Op. Atty. Gen., July 28, 1932.

One purchasing land containing gravel pit under contract for deed from county auditor and clerk of court, requiring money received for gravel to be applied on purchase price, could not submit a bid to county for gravel. Op. Atty. Gen., Aug. 9, 1932.

Laws 1931, c. 212, amending this section contravenes the equal protection clause of the 14th Amendment to the Federal Constitution and the special legislation inhibition of Article 4 of state constitution. Op. Atty. Gen., Mar. 23, 1933.

Amendment of this section by Laws 1931, c. 212, authorizing city council to designate as depositary bank in which member is interested, is unconstitutional. Op. Atty. Gen., Mar. 24, 1933.

Neither city councilman nor his partner could take employment as laborer with contractor contracting well for city. Op. Atty. Gen., June 3, 1933.

Section applies to a county road foreman. Op. Atty. Gen., June 6, 1933.

A road overseer may not sell gravel to town. Id.

Town treasurer who is also cashier of depositary bank designated by town board is not personally liable for loss of town money. Op. Atty. Gen., June 10, 1933.

It is not lawful for banks to write insurance on school buildings where one of its officers is member of school board. Op. Atty. Gen., June 26, 1933.

Member of school board violates this section where he requires seller of wood to school to employ his team in hauling it. Op. Atty. Gen., June 30, 1933.

Member of school board owning only drug store may not accept business from school board, though only nominal. Id.

It is not proper for printing of school board to be handled by newspaper in which board member has small interest, though it is only newspaper in district. Id.

Township road overseer may employ and use own team in repair of town roads but compensation therefor must be fixed and allowed by town board. Id.

A county commissioner who is a veterinarian may not test cattle for tuberculosis on the county area plan, though carried out under livestock sanitary board. Op. Atty. Gen., July 12, 1933.

Village council may grant a license for sale of beer to one of its members. Id.

Drug store in which member of city water and light commission is interested may not sell merchandise to city library board. Op. Atty. Gen., Sept. 18, 1933.

Laundry operated by city councilman may not do laundry work for fire department. Id.

Laws 1931, c. 212, amending this section, is unconstitutional. Id.

Member of school board purchasing company which has contract with board violates this section. Op. Atty. Gen., Oct. 2, 1933.

Officers of city may deal with one another if not for purpose of influencing official action. Op. Atty. Gen., Oct. 20, 1933.

School board cannot designate as a depositary a bank of which members of board are stockholders or officers. Op. Atty. Gen., Nov. 13, 1933.

Laws 1931, c. 212, amending this section, is unconstitutional. Id.

Member of public utility board of Rochester may not enter into contract with city. Op. Atty. Gen., Jan. 10, 1934.

Probate judge owning newspaper is not prohibited from publishing citations, orders, etc., in his own newspaper where fees are paid by private individuals. Op. Atty. Gen., Feb. 6, 1934.

Manager of a local concern which sells supplies to water and light department of villages cannot hold office as member of water and light board. Op. Atty. Gen., Mar. 16, 1934.

Member of village council may enter into contract with water, light, power and building commission, having full charge of construction work. Op. Atty. Gen., Mar. 19, 1934.

City may not appoint member of council as dairy inspector. Op. Atty. Gen. (90e), Apr. 16, 1934.

Village officer is not entitled to contract with village so as to be paid for trucking flour for the Red Cross. Op. Atty. Gen. (90a), Apr. 27, 1934.

Member of library board may not enter into contract of employment with such board. Op. Atty. Gen. (59a-26), May 8, 1934.

It is unlawful for member of village council to contract to furnish supplies or to do work for village, but supplies having been furnished or work done, recovery may be had for the benefits received. Op. Atty. Gen. (90e), May 31, 1934.

Village may insure property in company in which member of village council is an employee on a straight salary and has no pecuniary interest in the contract of insurance. Op. Atty. Gen. (471k), July 20, 1934.

Newly elected mayor prior to time for taking office may write city insurance as agent for an insurance company. Op. Atty. Gen. (407b-6), Nov. 30, 1934.

Mayor-elect is not officer until he qualifies and takes office. Op. Atty. Gen. (707b-6), Dec. 26, 1934.

County board cannot enter into contract with oil company in which one of commissioners is a stockholder. Op. Atty. Gen. (707b-6), Jan. 11, 1935.

Board member cannot be compensated either by board or by voters for teaching services. Op. Atty. Gen. (768b), Feb. 9, 1935.

Where president of village council is a mere employee of an elevator company, working on a salary basis and not a stockholder or an officer and has no direct or indirect financial interest in elevator company's business, except as a salaried manager, and receives no commission or bonus or other remuneration except such monthly salary, elevator may sell coal to village. Op. Atty. Gen. (707b-6), Feb. 13, 1935.

A license is not a contract and an alderman of a city may receive a license to sell intoxicating liquors, except that he cannot vote on his own application. Op. Atty. Gen. (218g), Feb. 15, 1935.

Members of town board may not receive compensation for time spent in supervising construction of bridge nor for labor on such bridge, nor for gasoline used in automobile in looking after town business, and minor son of member of board may not receive compensation for work on bridge. Op. Atty. Gen. (437a-4), Mar. 15, 1935.

A member of board of public work of city of Alexandria may not be employed by city council and receive compensation for work not connected with public utilities system nor can the board of public works or the city council employ a member of such board to serve in the public works system so that he could receive compensation. Op. Atty. Gen. (707b-6), Mar. 27, 1935.

Substitute teacher must have teacher's certificate and may not be a board member. Op. Atty. Gen. (161b-14), Mar. 28, 1935.

Village councilman cannot be employed in exclusive liquor store operated by village. Op. Atty. Gen. (218g-13), Apr. 4, 1935.

Village councilman cannot receive compensation for services in connection with a municipal liquor store, and all employees must be hired by council and all obligations handled as other obligations of village. Op. Atty. Gen. (218g-13), Apr. 16, 1935.

County health officer receiving no remuneration of any kind is not a county officer and he may receive compensation from county for operations upon poor relief patients and for hospitalization for them in hospital owned by him. Op. Atty. Gen. (707b-6), Apr. 16, 1935.

Mortuary partnership of which coroner is a member cannot handle funerals for those on poor relief and bill county therefor. Id.

County physician is a county officer and hospital in which he owned an interest is not entitled to contract with county or charge for services. Id.

Member of town board may not sell gravel to township, and cannot do so indirectly by selling gravel pit to county. Op. Atty. Gen. (437a-4), Apr. 27, 1935.

City cannot make official publication in newspaper owned by mayor, even though such newspaper is the only one in the city and was designated as official newspaper prior to election of mayor. Op. Atty. Gen. (707b-6), July 22, 1935.

Village operating municipal liquor store cannot lease a building owned by a member of the council. Op. Atty. Gen. (217b-8), Jan. 21, 1936.

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. Op. Atty. Gen. (707b-6), Feb. 11, 1936.

An assistant cashier of bank owning stock in the bank may serve on city council though bank is designated as city depository, but exception as to bankers may be unconstitutional. Op. Atty. Gen. (90c-2), Mar. 11, 1936.

An employee of a local power company who owns a few shares of stock may not serve on city council when city has valuable contracts with his company, and mayor of city may not purchase wood belonging to poor department of city. Id.

Town treasurer may draw pay for work performed on roads in town. Op. Atty. Gen. (706b-6), Mar. 13, 1936.

If management and control of city owned utilities including power to enter into contract for purchase and installation of electrical equipment, is vested in the water and light board, and not under supervision of city council, a member of the water and light board may not receive compensation for installation. Op. Atty. Gen. (707b-6) Mar. 18, 1936.

Village council has no power to remove one of its members, such as the recorder, proper procedure being appropriate action in district court. Op. Atty. Gen. (475), Mar. 26, 1936.

City could purchase goods of a cooperative society of which member of city council is employed as manager, if such councilman is not a stockholder or member of the association and receives a salary not based on sales made. Op. Atty. Gen. (90e), Mar. 27, 1936.

City of Warren under its charter provision could not designate as city depository a bank whose officers were city aldermen and city treasurer respectively. Op. Atty. Gen. (90e-2), Apr. 7, 1936.

Mayor may not be interested as an officer and director in a municipal depository, but a director of a regularly designated depository of city funds may be appointed as city attorney, the matter of what should be done by the appointee to place himself outside of pale of statutory provisions not being considered. Op. Atty. Gen. (90e-20), Apr. 14, 1936.

In view of G. S. 1894, §1801, a bank of which mayor of city of Marshall is a stockholder cannot be appointed depository of city, but it would be immaterial that member of water and light commission or city attorney were stockholders if they took no part in appointment of depository. Op. Atty. Gen. (90e-7), May 1, 1936.

Purchase of gravel from county commissioner's wife would violate section. Op. Atty. Gen. (90b), May 6, 1936.

Sanatorium commissioner may not sell drug supplies to sanatorium. Op. Atty. Gen. (90b), July 25, 1936.

Board member cannot enter into contract with school district. Op. Atty. Gen. (90c-8), Mar. 11, 1937.

School board may not purchase land held in trust fund of bank of which member of school board is a director. Op. Atty. Gen. (90c-8), Mar. 23, 1937.

An officer and stockholder in a bank though he has "nothing to do with the operation of" the bank, may not permit bank to handle insurance on property of water, light, power and building commission while he is a member. Op. Atty. Gen. (90a-2), Apr. 7, 1937.

Mayor of Alexandria performing an emergency operation upon a poor person taken to him is not entitled to compensation from the city. Op. Atty. Gen. (90e), Apr. 12, 1937.

County coroner may not enter into contract with county for burial of pauper though he is compensated on a fee basis without any regular salary. Op. Atty. Gen. (90b), Apr. 20, 1937.

Prohibits council from designating a bank depositary in which a council member is a stockholder. Op. Atty. Gen. (140b-5), May 12, 1937.

State board of electricity may not employ as office or field man one of its own members. Op. Atty. Gen. (290u), May 14, 1937.

Mayor of village may not be interested in a contract with the village as an attorney representing police officer sued for assault. Op. Atty. Gen. (476a-5), May 20, 1937.

An officer of a village or city may not insure property of municipality in company he represents as an agent. Op. Atty. Gen. (476b-9), May 24, 1937.

Physician as member of county welfare board may not be employed by board or purchase merchandise from one of its members. Op. Atty. Gen. (125a-64), June 12, 1937.

Contract with city did not become void by one of the contractors becoming a member of the city council, further action on the contract being merely ministerial. Op. Atty. Gen. (90e-7), July 9, 1937.

Though a public officer who becomes voluntarily interested in a contract with municipality may be convicted of a gross misdemeanor, he may sue city and recover value of benefits received by city as the result of void contract. Id.

Law prohibits member of county welfare board from being directly or indirectly interested in a contract with county, and does not forbid wife of a member of board from being interested in such a contract, but there is always an issue of fact whether a member is interested in a contract entered into by wife. Op. Atty. Gen. (125a-64), July 29, 1937.

Public policy would render it improper for member of county welfare board to receive grants of benefits in way of old age assistance, aid to dependent children, aid to the blind, direct relief, or other direct benefits administered by county welfare board. Id.

Statute does not apply to member of city council who does printing for school board of city, where school board is entirely independent of city council in matter of making contracts. Op. Atty. Gen. (90e), Sept. 20, 1937.

Village treasurer, not being a member of the village council, is not precluded from being interested in a contract with village. Op. Atty. Gen. (707a-15), Jan. 21, 1938.

Employee of lumber company working on a salary basis and having no direct or indirect financial interest in company's business does not have the "interest" referred to in this section. Op. Atty. Gen. (707a-15), Jan. 21, 1938.

County commissioner may not be employed by county board and be paid therefor. Op. Atty. Gen. (90b), Sept. 15, 1938.

City council member who is agent of surety company may not act for surety company in furnishing contractor's bond. Op. Atty. Gen. (471f), Sept. 17, 1938.

Members of water, light, power and building commission of a village may enter into contract with village to furnish material for construction of a new sewer system if commission has no voice in making of contract. Op. Atty. Gen. (469a-2), Oct. 22, 1938.

County commissioner who is also member of county welfare board and stockholder in an incorporated general merchandise store may not enter into contract with store on behalf of county welfare board. Op. Atty. Gen. (358a-3), Nov. 30, 1938.

Clerk of school district may be employed to do legal work for district, not being member of board. Op. Atty. Gen. (162c), Dec. 5, 1938.

City clerk cannot accept employment for compensation to make investigations of poor relief cases. Op. Atty. Gen. (470b), Dec. 19, 1938.

Lumber company whose local agent, receiving straight salary, is mayor of city, is not disqualified from selling materials to public contractor. Op. Atty. Gen. (90e-5), Jan. 10, 1939.

Member of school board may not act as agent in writing of insurance or in renewing policy, but insurance written by one before he becomes a member is valid. Op. Atty. Gen. (90c-5), March 1, 1939.

City alderman may not sell groceries and supplies to poor persons on city relief. Op. Atty. Gen. (90E-5), March 6, 1939.

Fact that engineers recommend site for disposal plant which is owned by mayor does not alter rule that a village officer may not contract with village, but this would not prevent condemnation of property. Op. Atty. Gen. (90e-6), March 27, 1939.

Renewal of insurance after a councilman has qualified and assumed office would violate statute. Op. Atty. Gen. (90B-4), April 1, 1939.

School board proceedings may not be published in a newspaper of which editor is a member of school board. Op. Atty. Gen. (90c-8), April 21, 1939.

City officers can not be interested in contracts with city. Op. Atty. Gen. (90e-5), May 18, 1939.

Library board members should not be employed and paid by same board of which he is a member. Op. Atty. Gen. (285B), June 30, 1939.

Member of police civil service commission is an "officer" of city, and a member who is an insurance agent may not issue surety bonds to city contractor or carry insurance upon city property. Op. Atty. Gen. (90e-3), July 13, 1939.

Contract for bus transportation made by a school board with husband of one of its members is illegal. Op. Atty. Gen. (90c-6), July 14, 1939.

County treasurer may act as director of a national bank in his county wherein county deposits funds, but members of county board of audit, consisting of chairman of the board, clerk of court, and county auditor, may not be interested in depository. Op. Atty. Gen. (90B-2), July 21, 1939.

Register of Deeds may purchase forfeited lands, provided price is fair value of property. Op. Atty. Gen. (90B), August 21, 1939.

School board may not purchase coal from cooperative of which school board member is a stockholder. Op. Atty. Gen. (90c-4), Sept. 14, 1939.

Interest of officer in municipal contract. 23MinnLaw Rev239.

10306. False statement regarding taxes.

Person intentionally making a false return in listing property for money and credits tax, if made under oath, is guilty of perjury, and one making false returns may also be guilty of a gross misdemeanor. Op. Atty. Gen. (133b-53), June 15, 1938.

CRIMES AGAINST OTHER PROPERTY

10308. Definitions.

"Day time" is the period between sunrise and sunset. Op. Atty. Gen., Dec. 23, 1931.

ARSON

10309. First degree.

Charge on reasonable doubt held proper. 173M368, 217NW378.

Evidence held to support conviction of attempt to commit arson. 173M368, 217NW378.

It was competent to show that a few months before an auto driven by the defendant under similar circumstances and conditions in the same vicinity had burned. 173M420, 217NW489.

Evidence sustains finding that defendant participated in the burning of an automobile by adjusting carburetor for leakage. 173M420, 217NW489.

Proof of corpus delicti in arson case includes proof that fire was criminally set. State v. McTague, 190M449, 252NW446. See Dun. Dig. 520a, 2453.

Fact that fire was criminally set may be proved circumstantially. Id.

Evidence held to sustain a finding that fire was criminally set, and that defendant set it. Id. See Dun. Dig. 520a.

Evidence sustained conviction of arson. State v. Tsiolis, 202M117, 277NW409. See Dun. Dig. 520a.

Where one set fire to a grocery store in the night time with knowledge that a person resided on an upper floor not connected by stairway with the store room, the county attorney advised to charge arson in the first degree and ask for conviction of lower degree if circumstances warranted. Op. Atty. Gen., Apr. 1, 1930.

10310. Second degree.

One burning his wife's house which is their joint abode is guilty of arson. State v. Zemple, 196M159, 264 NW587. See Dun. Dig. 517b.

In prosecution for arson for burning wife's house, there was no prejudicial error in admitting in evidence partly burned matches, two candles tied together, and neck of broken glass jar, though they had no probative value whatever as to origin of second fire following a former one, and though there was some change in condition in exhibits between time they were found and time they were introduced in evidence. Id. See Dun. Dig. 517b, 3251.

10311. 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, served from the soil, whether stacked or not, or any standing grain, grass, timber, 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. (R. L. '05, §5038; G. S. '13, 8823; Apr. 11, 1935, c. 144.)

Evidence as to intent in arson case held sufficient to be submitted to jury. State v. Lynch, 192M534, 257NW278. See Dun. Dig. 520a.

Evidence held sufficient to sustain conviction of arson in third degree. Id. See Dun. Dig. 520a.

10313. Ownership of building.

One burning his wife's house which is their joint abode is guilty of arson. State v. Zemple, 196M159, 264 NW587. See Dun. Dig. 517b.

BURGLARY

10314. First degree.

3. Sufficiency of the evidence.

Exclusive possession of stolen property is a circumstance from which guilt may be inferred. State v. Zoff, 196M382, 265NW34. See Dun. Dig. 5496.

FORGERY

10321. Definitions.

Foundation for introduction of samples of handwriting of defendant. Testimony of expert in handwriting. 173M567, 218NW112.

It would constitute forgery to antedate licenses under game law so as to cover period when violators hunted without a license. Op. Atty. Gen., Sept. 26, 1933.

Money paid out by bank on forged check may be recovered from bank. Op. Atty. Gen. (29a-11), Dec. 4, 1935.

10323. False certificate to certain instruments.

A notary public, who knowingly, willfully, and falsely certifies that the execution of a mortgage was acknowledged by the persons named as mortgagors, is guilty of forgery in the first degree, though mortgage was never recorded in the proper county. 171M345, 214NW262.

The violation of section 6946 as well as this section does not prevent a prosecution under this section. 171M 345, 214NW262.

Evidence held to warrant a conviction. 171M345, 214 NW262.

Motion for new trial for newly discovered evidence held properly denied. 171M345, 214NW262.

10325. Second degree.

Evidence held sufficient to sustain conviction. 176M349, 223NW452.

In prosecution for forgery it was not error to ask defendant to execute samples of his handwriting to use for comparison. 176M349, 223NW452.

In prosecution for forgery evidence held sufficient to corroborate testimony of an accomplice in issuance of fraudulent relief orders. State v. Stuart, 203M301, 281 NW299. See Dun. Dig. 3799.

State emergency relief administration is an instrumentality of the state for special and limited purposes, and one falsely writing the name of payee in a relief order upon back thereof was guilty of forgery, though relief order was neither acknowledged nor verified. State v. Stuart, 203M301, 281NW299. See Dun. Dig. 3794.

It would constitute forgery to antedate licenses under game law so as to cover period when violators hunted without a license. Op. Atty. Gen., Sept. 26, 1933.

10326. Second degree, how punished.

Minimum term for a second conviction is two years, in view of Mason's Stat. 1927, §9921-1. Op. Atty. Gen., July 19, 1929.

10327. Forgery in the third degree.

(1).

Evidence of other crimes is admissible if it tends directly or corroboratively to prove a guilty intent of commission of wrong charged or some essential element thereof. State v. Omodt, 198M165, 269NW360. See Dun. Dig. 2459, 3798a.

Mere carelessness or negligence in bookkeeping would not constitute forgery. Id. See Dun. Dig. 3794.

10328. Concealing larceny, forgery.

A partner making false entries in books to conceal misappropriation of funds is guilty of forgery in third degree. State v. MacGregor, 202M579, 279NW372. See Dun. Dig. 3794.

10334. Uttering forged instruments, coins, etc., forgery.

Evidence held to sustain conviction for knowingly uttering a forged county warrant. State v. Stearns, 184M 452, 238NW895. See Dun. Dig. 3800.

COUNTERFEITING—FRAUDULENT PRACTICES

10346. Trade-marks of workmen's union.

A foreign trust company is not entitled to register a trade-mark of its business in this state. Op. Atty. Gen., Mar. 30, 1933.

10348. Registration.

Secretary of state cannot register name already reported by another person. Op. Atty. Gen. (218m), Apr. 24, 1935.

Trade-mark must be registered with secretary of state to be filed with liquor control commissioner, and one filing trade-mark with secretary of state prima facie has right to ship liquors into state as against one who has filed trade-mark only with liquor control commissioner. Op. Atty. Gen. (218m), Apr. 27, 1935.

10357-1. Issue of labor check without funds a misdemeanor.—Every person, firm or corporation who shall issue any check, draft or order upon a bank or other depository for the payment of money in payment of wages to any laborer or employee without having sufficient funds in, or credit in, such bank or other depository for the payment of such check, draft or order in full upon its presentation shall be guilty of a misdemeanor. (Act Apr. 21, 1931, c. 282.)

Giving of postdated check does not violate this section. Op. Atty. Gen. (133b-43), Nov. 29, 1938.

LARCENY

10358. What constitutes.

THE STATUTE GENERALLY

½. In general.

Status of marriage has not been modified by the Married Women's Act, and only property rights and contracts are affected thereby. State v. Arnold, 182M313, 235NW373. See Dun. Dig. 4258.

Does not apply to a married woman when accused of the theft of property from her husband. State v. Arnold, 182M313, 235NW373. See Dun. Dig. 5487.

In prosecution of bank president for grand larceny, evidence of amount of bank's deposits and of amount of cash on hand on day of commission of offense was competent, but same information four months later when bank failed, was incompetent. State v. Irish, 183M49, 235NW625. See Dun. Dig. 5497(6).

Evidence held sufficient to convict bank president of grand larceny. State v. Irish, 183M49, 235NW625. See Dun. Dig. 5498(9).

In prosecution of president of bank for grand larceny, a letter from the commissioner of state banks to the bank, directing that it should not take any paper in which defendant was interested, held properly admitted. State v. Irish, 183M49, 235NW625. See Dun. Dig. 5497(6).

There is a distinction between robbery and larceny, and the theft of several articles at the same time and place by the same act constitutes a single offense whether the articles belong to the same owner or to different owners. Op. Atty. Gen., Dec. 15, 1931.

Mere fact that employee did not have actual possession of money was not material, since he had control as represented by bank account, and drew money and converted it to his own uses. Op. Atty. Gen., Feb. 2, 1933.

If miller falsely stated that mill had broken down and borrowed flour from farmer which he had stored for his own personal use was guilty of larceny if he intended not to return the flour and the farmer relied on his false statements. Op. Atty. Gen. (494b-20), July 25, 1934.

Stopping payment on check may constitute fraud but does not constitute giving checks without funds. Op. Atty. Gen. (494b-7), Dec. 7, 1934.

Effect of statute with respect to consolidation of crimes. 22MinnLawRev211.

1. Different forms of larceny.

Value of stolen property is retail market value at time and place of taking if it has a market value, and not the loss of the party from whom goods are stolen. Husten v. U. S., (CCA8), 95F(2d)168.

One moving back day following his removal under writ of restitution and using seed and grain belonging to owner is not guilty of trespass but may be prosecuted for larceny and also for unlawful entry. Op. Atty. Gen. (494b-20), Nov. 26, 1934.

1a. Elements of offense.

179M167, 228NW605.

1c. Evidence.

179M502, 229NW801.

180M435, 231NW12.

1c. Evidence.

Requested instruction that mere possession of stolen property raises no presumption of guilt by itself, though not incorrect if limited to a presumption of law, was too broad because omitting the presumption of fact which is present where the possession is recent. Balman v. U. S., (CCA8), 94F(2d)197.

Instruction that proof of recent possession raises presumption of guilty knowledge in the absence of an explanation and requiring jury to determine whether explanation was sufficient to overcome the presumption, was erroneous, as such possession did not raise presumption of law as to guilt though it might have justified the inference of guilt. Id.

Unexplained possession of stolen property shortly after theft is sufficient to justify conclusion by jury of knowledge by possessor that property was stolen. Husten v. U. S., (CCA8), 95F(2d)168.

Proof that defendant, after principal's flight, secreted over $5,000 of principal's money and expunged entries of contributions by principal to corporation amounting to $250, held not to sustain charge of misprision of principal's theft of large sums of money subsequent to certain date, where there was as much likelihood that the moneys secreted were fruits and proceeds of prior thefts as of the theft charged, and amount of expunged contributions not being sufficient to raise presumption that they were not savings from principal's salary. Neal v. U. S., (CCA8), 102F(2d)643.

Proof that defendant, after principal's flight, secreted over $5,000 of principal's money in golf bag, held not to sustain charge of being accessory after the fact to principal's theft, where there was as much likelihood that the moneys secreted were fruits and proceeds of prior thefts aggregating $100,000 as of the theft charged. Id.

Proof of commission of other thefts is admissible as corroborative evidence on a prosecution for a particular theft of a series, to show a prearranged plan. 173M598, 218NW117.

Findings in civil suit, held inadmissible. 180M378, 230NW818.

Evidence held to sustain conviction of shoplifting of three pairs of gloves. State v. Murphy, 180M579, 230NW476(1).

Evidence held to sustain conviction of petit larceny of bucker which defendant claimed he purchased from a stranger. State v. Bram, 197M471, 267NW383. See Dun. Dig. 5498.

Evidence held insufficient to connect defendant with larceny of chickens. State v. Scott, 203M56, 279NW832. See Dun. Dig. 5498.

Evidence held to sustain verdict of guilty of petit larceny of cream and cream cans. State v. Warner, 203M445, 281NW757. See Dun. Dig. 5498.

Under rules embodied in statutes defining larceny, evidence that a party took an automobile without owner's permission, drove car until it collided with a curb and tree, where wrongdoer left it, is sufficient to support a finding of larceny or theft. Mullany v. F., 287NW118. See Dun. Dig. 5487.

SIMPLE LARCENY

2. What constitutes.

Act of president of a national bank in receiving money of another and misapplying it was a violation of a federal statute (Mason's Code, Tit. 12, §592), and he could not be prosecuted in state court for grand larceny. 171M466, 214NW279.

A member of a partnership may not be prosecuted for embezzlement of partnership funds. Op. Atty. Gen., Feb. 20, 1932.

FALSE PRETENSES

5. What constitutes.

Representation that corporate stock was not liable to assessment under Const., Art. 10, §3, was one of law and not of fact, and there was no larceny. 178M446, 227NW495.

False representation as to character of land covered by mortgage sold, held an assent irrespective of financial responsibility of mortgagor. 178M564, 227NW893.

Representation of value of property. 179M502, 229NW801.

Actionable fraud cannot be based on mere assertions of value or "puffing." State v. Nuser, 199M315, 271NW811. See Dun. Dig. 5486.

To constitute crime of obtaining money by false pretenses, there need only be reliance on a false representation of a past or existing fact, made by accused with knowledge of its falsity and with intent to deceive and defraud, which is adapted to deceive person to whom it is made and an actual defrauding in obtaining something of value without compensation. Id.

Evidence held to support a conviction where it indicated that defendant obtained loan on valuable stone and replaced stone in package with a stone of small value. Id.

Evidence held sufficient to sustain conviction for grand larceny by false and fraudulent representation in exchange of worthless stock. State v. Heffelfinger, 200M268, 274NW234. See Dun. Dig. 5498.

A solicitor for advertising service promising that he would give merchant a certain kind of camera free of charge for distribution to customers, was not guilty of obtaining money under false pretenses because cheaper cameras were delivered to merchant, unless it could be shown that solicitor knew that merchant would not receive kind of cameras demonstrated. Op. Atty. Gen. (494b-16), Aug. 31, 1935.

There must be a false representation or statement of a past or existing fact. Op. Atty. Gen. (494b-16), Mar. 27, 1937.

6. Indictment.

Indictment was not fatally deficient because it failed to explicitly aver that paper was forged. 176M175, 222NW906.

Indictment for second-degree grand larceny found to contain such allegations as would permit introduction of evidence showing that crime was perpetrated by means of trickery. State v. Nuser, 199M315, 271NW811. See Dun. Dig. 5486.

Indictment for grand larceny in the first degree held sufficient. State v. Heffelfinger, 200M268, 274NW234. See Dun. Dig. 5490.

EMBEZZLEMENT

7. What constitutes.

Manager of egg marketing association held not guilty of embezzlement through loss resulting from inefficient management. State v. Matsen, 188M376, 246NW861. See Dun. Dig. 2997.

Where pursuant to wire from man in H. County liberty bonds were mailed by resident of our county to H. county, and afterwards owner was informed that bonds had been sold and money invested, where as a matter of fact money was appropriated, venue of prosecution was in H. County. Op. Atty. Gen. (605a-24), Oct. 15, 1935.

8. The criminal intent.

That a public official clandestinely took public money, put it into his own bank account, without making return, and that money is gone, shows, as matter of law, intent necessary to deprive or defraud the true owner of his property. State v. Cater, 190M485, 252NW421. See Dun. Dig. 2999.

9. By officer, agent, clerk, servant, or bailee.

Embezzlement of proceeds of certificates of deposit. 174M323, 219NW176.

Evidence held to sustain conviction of bank cashier, and evidence of shortage as school district treasurer held admissible to show motive. 180M435, 231NW12.

Where a guardian embezzled funds of his ward and paid them to a bank, all representatives of latter supposing that he was using his own funds and having no reason to think otherwise, guardian cannot recover fund from bank in absence of a showing that recovery is necessary to protect ward from loss, primary liability in such case being upon guardian and his sureties. Galloway v. S., 193M104, 258NW10. See Dun. Dig. 783, 4103, 4122.

A partner may be guilty of a larceny or embezzlement or misappropriation of partnership funds. State v. MacGregor, 202M579, 279NW372. See Dun. Dig. 2998, 3003.

If an unauthorized sale by pledgee to himself is disaffirmed, contract of pledge remains in force, and pledgee retains right of possession, and cannot be charged with conversion, or embezzlement. Erickson v. M., 285NW611. See Dun. Dig. 2997.

Where traveling salesman collected money and failed to immediately send it in to employer, venue of crime was where collection was made and not county of salesman's residence or place of employment. Op. Atty. Gen. (605a-24), Apr. 25, 1935.

10. Indictment of officer, agent, clerk, servant or bailee.

Statute of limitation held not to have run against prosecution for embezzlement. State v. Chisholm, 198M 241, 269NF463. See Dun. Dig. 2419a.

12. Evidence.

State having proved that accused had settled civil suit brought to recover shortage, it was error to exclude proof that he had always asserted he had not misappropriated any funds. 173M473, 217NW598.

Proof of other similar acts is admissible as bearing on question of intent. 173M473, 217NW598.

10359. Commission no defense.

A partner may be guilty of a larceny or embezzlement or misappropriation of partnership funds. State v. MacGregor, 202M579, 279NW372. See Dun. Dig. 2998, 3003.

10360. Obtaining money by fraudulent draft.

Indictment held sufficient to charge defendant with crime of obtaining money by fraudulent checks. State v. Scott, 190M462, 252NW225. See Dun. Dig. 3734, 3738, 3739.

Venue was properly laid in county where bank cashing checks and suffering loss was located. Id.

Issue being that of fraud and intent, court properly refused to strike out exhibits consisting of a number of checks to show interchange of checks known as "kiting." Id.

Court did not err in excluding evidence of statement by cashier of bank that defendant had been making overdrafts for several years, prosecution being based on checks drawn on bank in question. Id.

Evidence of kiting of checks held to sustain conviction. Id.

10361. Giving check without funds.—Any person who with intent to defraud shall make or draw or utter or deliver any check, draft or order for the payment of money upon any bank or other depositary, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has not sufficient funds in or credit with such bank or other depositary for the payment of such check, draft, or order in full upon it presentation, shall be guilty of a gross misdemeanor, and upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

The making, drawing, uttering or delivering of such check, draft or order as aforesaid, shall be prima facie evidence of intent to defraud and as against the maker or drawer of knowledge of insufficient funds in or credit with such bank or other depositary; where such check, draft or order has been protested for insufficient funds or no account, the notice of a protest thereof shall be admissible as proof against the maker or drawer of such presentation, non-payment and protest, and shall be prima facie evidence that there was a lack of funds in or credit with such bank or other depositary.

The word "credit," as used herein, shall be construed to mean an arrangement or understanding with the bank or depositary for the payment of such check, draft or order. ('11, c. 272, §1; G. S. '13, §8873; '19, c. 94, §1; Apr. 20, 1931, c. 243, §1.)

Stopping payment on check may constitute fraud, but does not constitute giving checks without funds. Op. Atty. Gen. (494b-7), Dec. 7, 1934.

Place of imprisonment for offense of checking at bank without funds should be county jail and not reformatory. Op. Atty. Gen. (605b-10), July 12, 1935.

Giving bad check in payment of gambling debt is not criminal offense. Op. Atty. Gen. (605b-10), Aug. 25, 1937.

One giving a check of $20.15, receiving from payee $18 in cash and applying $2.15 on an outstanding account, with statement "you can hold it until I come around or cash it, just as you want to", could be prosecuted. Op. Atty. Gen. (494B-7), July 17, 1939.

Prosecution may be had in justice court under a complaint for petty larceny where amount of money or property received is less than $25. Id.

10362. Grand larceny in first degree.

Alleged variances between the proof and the facts alleged concerning ownership of the stolen goods and the place from which they were stolen were not material. 172M139, 214NW785.

Error of the court in charging that defendant was charged with first degree grand larceny, when in fact the information only charged second degree grand larceny, was without prejudice where the jury found the defendant guilty as charged in the information, the verdict being in effect guilty of the lesser offense and an acquittal of the more serious offense. 172M139, 214NW 785.

Information alleging the stealing of men's clothing in the nighttime, but failing to allege that they were taken from a building, charged second degree grand larceny, and not first degree grand larceny. 172M139, 214NW 785.

Evidence sustains charge that larceny was committed in the nighttime. 173M543, 217NW683.

Evidence held to sustain conviction of attempted grand larceny in the first degree. State v. Smith, 192M237, 255 NW826. See Dun. Dig. 3734, 5498.

It is not necessary to sustain a conviction that complaining witness be shown to have believed false representations made with intent to defraud him. Id.

Subd. 2.

181M106, 231NW804.

10363. Grand larceny in second degree.

181M106, 231NW804.

Alleged variances between the proofs and the facts alleged concerning ownership of the stolen goods and the place from which they were stolen were not material. 172M139, 214NW785.

Information alleging the stealing of men's clothing in the nighttime, but not alleging that they were taken from a building, charged second degree grand larceny, and not first degree grand larceny. 172M139, 214NW745.

Evidence sustained conviction. State v. Carlson, 178 M118, 226NW206.

In prosecution for grand larceny of hogs evidence of theft of barley to feed such hogs was admissible to show criminal intent and to connect defendants with larceny of hogs. State v. Voss, 192M127, 255NW843. See Dun. Dig. 2459.

It was not error to instruct that jury either convict defendant of second degree larceny or acquit where evidence was conclusive that property was worth more than $25. Id. See Dun. Dig. 2479.

In prosecution of owner of fur coat for larceny, defendant was not entitled to an instruction that furrier had no lien entitling to possession unless labor and material furnished in repair of coat enhanced its value, and court rightly excluded testimony of an expert that value of coat was not enhanced by furrier's material and labor. State v. Cohen, 196M39, 263NW922. See Dun. Dig. 5497.

Evidence supports verdict finding defendant guilty of larceny of a fur coat from a furrier to whom she had delivered it for alteration and repair at agreed price of $50. Id. See Dun. Dig. 5498.

Failure to instruct jury in grand larceny prosecution that defendant might be found guilty of petit larceny does not call for a new trial in absence of a request for such instruction. See Dun. Dig. 5500. Id.

Drawer of check during bank holiday when all banks were closed by executive order should not be prosecuted for issuing check without funds, since receiver of check knew the check could not be presented for payment and that bank might not reopen. Op. Atty. Gen. (494b-7), Sept. 18, 1934.

(3).

Statute is constitutional. State v. Tremont, 196M36, 263NW906.

It was not error to admit in evidence a conversation had between defendant and two of employees of owner of store from which goods were taken, it appearing from that conversation that defendant admitted her guilt in language free from doubt, conversation having taken place immediately after theft of goods which were found upon defendant's person hidden from view under her coat. Id. See Dun. Dig. 5497.

10364. Petit larceny.

Evidence held to sustain conviction for petty larceny. State v. Henspeter, 199M359, 271NW700. See Dun. Dig. 5498.

10364-1. Minimum punishment for larceny of fowl.—In any case of grand larceny in the second degree or petit larceny, when the property stolen or any part thereof shall consist of any domestic animal or fowl, the minimum punishment shall be 45 days imprison-

ment in the county jail; but this shall not affect the maximum punishment for the offense. (Act Apr. 16, 1929, c. 203.)

10366. Dogs personal property, when.

Defendant, held liable for wounding plaintiff's minor child in the act of wrongfully shooting at a dog. 179M 490, 229NW869.

Exemplary damages may be allowed for such tort. Id.

License ordinance for dogs is not invalid because they are also assessed as personal property. Op. Atty. Gen. (146d-4), July 19, 1939.

10367. Lost property.

Indictment may charge larceny in the usual form without setting out the special circumstances. Op. Atty. Gen., Sept. 17, 1929.

Form of complaint or indictment charging larceny of lost or mislaid property. Op. Atty. Gen., Aug. 25, 1930.

10369. Conversion by trustee.

Prosecution of guardian of incompetent for grand larceny in embezzling money, held not barred by limitations. State v. Thang, 188M224, 246NW891. See Dun. Dig. 2419a.

Evidence held to sustain a verdict of grand larceny in first degree in embezzling money of estate of an incompetent of which defendant was probate guardian. Id. See Dun. Dig. 5498.

10372. Claim of title, when ground of defense.

In prosecution of owner of fur coat for larceny, defendant was not entitled to an instruction that furrier had no lien entitling to possession unless labor and material furnished in repair of coat enhanced its value, and court rightly excluded testimony of an expert that value of coat was not enhanced by furrier's material and labor. State v. Cohen, 196M39, 263NW922. See Dun. Dig. 5488.

Evidence supports verdict finding defendant guilty of larceny of a fur coat from a furrier to whom she had delivered it for alteration and repair at agreed price of $50. Id. See Dun. Dig. 5498.

10373. Intent to restore property.

179M167, 228NW605.

Evidence held not admissible under this section. 174 M323, 219NW176.

Under rules embodied in statutes defining larceny, evidence that a party took an automobile without owner's permission, drove car until it collided with a curb and tree, where wrongdoer left it, is sufficient to support a finding of larceny or theft. Mullany v. F., 287NW118. See Dun. Dig. 5487.

10374. Receiving stolen property—Averment and proof.

In a prosecution for receiving stolen property, evidence that defendant, shortly prior to offense charged, had received other stolen property from the same parties was admissible to prove guilty knowledge. State v. Gifis, 195M276, 262NW637. See Dun. Dig. 8267.

Evidence held to sustain conviction for receiving stolen property. Id. See Dun. Dig. 8267a.

Acquisition of title to stolen property by adverse possession for statutory period. 15MinnLawRev714.

EXTORTION OR OPPRESSION

10377. Extortion.

180M450, 231NW225.

Where indictment charged extortion by threat to expose another to disgrace by accusing him of operating a gambling house, proof that money was extorted by threat to arrest him for operating such house held not a material variance. 179M439, 229NW558.

Threats of criminal prosecution and exposure to disgrace used to frighten a person into the payment of money are sufficient to support a charge of extortion. State v. McKenzie, 182M613, 235NW274. See Dun. Dig. 3701, 3702a(91).

It is not illegal for labor union to advertise that its membership does not patronize certain businesses, if there is no fraud, duress, intimidation, coercion, malice or defamation. Op. Atty. Gen. (641), July 6, 1936.

10379. Oppression under color of office.

Railroad held liable for unlawful arrest by special agent at depot. 176M203, 223NW94.

10380. Extortion by public officer.

180M450, 231NW225.

10381. Blackmail.

It is not illegal for labor union to advertise that its membership does not patronize certain businesses, if there is no fraud, duress, intimidation, coercion, malice or defamation. Op. Atty. Gen. (641), July 6, 1936.

FALSE PERSONATION, ETC.

10388. False statements to obtain credit.

Evidence held sufficient to warrant a conviction for knowingly making a false statement for the purpose of obtaining credit. 172M208, 215NW206.

Evidence held insufficient to show that bank officer knowingly participated in making false statements, for a corporation. 173M23, 216NW316.

Evidence that defendant, on advice of his doctor, abstained from taking part in the affairs of the corporation, held improperly excluded. Id.

The evidence sustains a finding of the jury that the defendants maliciously and without probable cause instituted a criminal action against the plaintiff upon the charge of signing a false property statement to obtain credit from a bank. Krienke v. C., 182M549, 235NW24. See Dun. Dig. 5730, 5734.

To maintain an action for malicious prosecution, it must be shown that the defendant maliciously and without probable cause instituted the proceeding; and his good-faith reliance upon the advice of counsel after a full and fair disclosure is a defense. Krienke v. C., 182 M549, 235NW24. See Dun. Dig. 5730, 5731, 5734.

10390. False statement in advertisement.

Evidence held insufficient to warrant conviction for false advertisements as to amount of salary paid to meat cutters. State v. Andrew Schoch Grocery Co., 193M 91, 257NW810.

Commissioner of Agriculture, Dairy and Food in discharging the duties incumbent upon him under this section may exercise the powers conferred by sections 6025, 6026, 6027. Op. Atty. Gen., Oct. 15, 1931.

Duty of enforcement of this section now devolves upon the Commissioner of Agriculture, Dairy and Food. Op. Atty. Gen., Oct. 15, 1931.

Section 6241 is not applicable to any investigation which the Commissioner may institute under this section. Op. Atty. Gen., Oct. 15, 1931.

Advertisement of coal as "furnace coal" is not fraudulent. Op. Atty. Gen., Dec. 8, 1933.

There was no violation of this section by mailing tickets stamped with word "complimentary" followed by words "subject to service charge," twenty-five cents being charged on presentation of these tickets at box office of Roller Derby. Op. Atty. Gen. (641b), July 13, 1937.

10394. Removing property from mortgaged land.

Sand and gravel is not a fixture within meaning of this section. Op. Atty. Gen. (301a), July 21, 1936.

10395. Selling or concealing mortgage chattels.—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.

Chattel mortgage within the meaning of this act shall include every written instrument whether in form a chattel mortgage or contract of conditional sale, whereby the title of personal property therein described is mortgaged, held or reserved as security for a debt; mortgaged personal property shall include all personal property which is described in or covered by any such instrument; and the provisions and penalties of this act shall apply to all vendors and vendees of personal property, the title to which is so held or reserved, in the same manner and with the same force and effect as applicable to mortgagors and mortgagees.

Whenever in any prosecution under this section it shall appear that default has occurred in the payment of the debts secured by the mortgage or conditional sale contract, and it shall further appear that the mortgagor or conditional vendee has failed or refused to reveal the location of the mortgaged property or the property to which the title was reserved, it shall then be considered as prima facie evidence that said mortgagor or conditional vendee has removed, concealed or disposed of said property. (R. L. '05, §5109; G. S. '13, §8907; '17, c. 90, §1; Apr. 25, 1931, c. 343, §1.)

FRAUD IN THE MANAGEMENT OF CORPORATIONS

10407. Receiving deposit in insolvent banks.

Direct proof of director's knowledge of insolvency is not required in action against him personally to recover deposit. 177M60, 224NW466.

Guilt of bank officers fraudulently representing condition of bank in civil action for damages held for jury. 177M354, 225NW276.

One is not excused by the absence of guilty knowledge or intention and his consequent moral innocence. 178M 9, 225NW927.

Complaint against bank officer for recovery of deposits made while bank was insolvent, held to state a cause of action. 181M261, 232NW324. See Dun. Dig. 789.

No loss or damage resulted from action of bank officers in renewing a certificate of deposit within one hour before bank closed. Johnson v. B., 183M461, 237 NW23. See Dun. Dig. 789.

The surrender of a certificate of deposit and taking a renewal certificate does not constitute a deposit within this section. Barsness v. T., 184M188, 238NW161. See Dun. Dig. 789.

A certificate of deposit in a bank is in legal effect a promissory note, and its renewal extends the time of payment and is not a payment by the bank and the making of a new deposit. Barsness v. T., 184M188, 238 NW161. See Dun. Dig. 789.

An action under this section is not an action for relief on the ground of fraud within section 9191(6), and the six-year limitation applies. Olesen v. R., 184 M624, 238NW12. See Dun. Dig. 5652.

A cause of action by creditors to recover of the directors of a bank because the bank received deposits when insolvent is not barred by the three-year limitations. Olesen v. R., 184M624, 239NW672. See Dun. Dig. 5657.

Where president of bank knowing it is hopelessly insolvent accepts a deposit, the fraud avoids implied contract by which relationship of debtor and creditor would ordinarily arise. Forsythe v. F., 185M255, 241NW66. See Dun. Dig. 780.

Provisions do not apply to commissioner of banks. Aichele Bros. v. S., 194M291, 260NW290. See Dun. Dig. 789.

Commissioner of banks is endowed with discretion as to whether or not he will take possession of a bank and his determination is quasi judicial, and he is not, under circumstances alleged personally liable to a depositor who may have deposited money in a bank while it was insolvent. Id. See Dun. Dig. 789.

MALICIOUS MISCHIEF—INJURIES TO PROPERTY

10419. Injuring highways, etc.

Special injury to person suing. 179M475, 229NW583.

Landowner removing rock on land supporting embankment for state highway is guilty of maintaining a public nuisance and is guilty of a misdemeanor. State v. Nelson, 189M87, 248NW751. See Dun. Dig. 7240n, 58.

(1).

Op. Atty. Gen., Jan. 24, 1934; note under §2615(1).

10420. Interfering with dam, etc.

Injury to a fish screen erected on a dam with consent of county board by sportsmen organizations would constitute a violation of this statute. Op. Atty. Gen. (494a), June 1, 1938.

10422. Injury to property.

Wilful trespass of property defined. Laws 1939, c. 377.

Transplanting moccasin flowers from marshes to home garden is not an offense, but may afford cause of action for damages. Op. Atty. Gen., June 12, 1930.

10422-1. Cutting of certain trees forbidden.—No person shall cut, remove or transport for decorative purposes or for sale, in its natural condition and untrimmed, any growing pine, cedar, evergreen or coniferous tree, bush, sapling or shrub (except nursery stock) without the written consent of the owner of the land on which the same is grown, whether such land be publicly or privately owned. Such written consent shall contain the legal description of the land where such tree, bush, or sapling or shrub was cut, as well as the name of the legal owner thereof, and such written consent, or a copy thereof certified as a true copy by the person to whom such consent was given, or by the register of deeds of the county in which the land is situated, if recorded in his office, shall be carried by every person cutting, removing or transporting any such trees, bushes, saplings or shrubs untrimmed or in their natural condition, or in any way aiding therein, and shall be exhibited to any officer of the law, forest ranger, forest patrolman, game warden or other officer of the department of conservation at his request at any time. Any such officer shall have power to inspect any such trees, bushes, saplings, or shrubs when being transported in any vehicle or other means of conveyance or by common carrier and to make such investigation with reference thereto as may be necessary to determine whether or not the provisions of this act have been complied with, and to stop any vehicle or other means of conveyance, found carrying any such trees, bushes, saplings, or shrubs upon any public highways of this state for the purpose of making such inspection and investigation and to seize and hold subject to the order of the court any such trees, bushes, saplings, or shrubs, found being cut, removed, or transported in violation of this act. No common carrier or agent thereof shall receive for shipment or transportation any such trees, bushes, saplings, or shrubs unless the consignor, whose name and address shall be recorded, exhibited at the time of consignment the written consent or certified copy thereof herein provided for. Failure to so exhibit such written consent shall be prima facie evidence that no such consent was given or exists. ('27, c. 10, §1; Apr. 22, 1929, c. 285, §1.)

10422-2. Penalties.—Any person who violates any of the provisions of this act shall, for the first violation, be guilty of a misdemeanor; and for a second and each subsequent violation during the same calendar year shall be guilty of a gross misdemeanor. Every written consent for any purpose specified in this act and every certified copy of such consent shall be deemed to be a written instrument within the meaning of the laws relating to forgery, and any person who shall forge any such written consent or certified copy thereof shall be guilty of forgery in the second degree, and shall be punished accordingly. Any person who shall lend or transfer or offer to lend or transfer any such written consent or certified copy thereof to another person who is not entitled to use the same, and any person not entitled to use any such written consent or certified copy thereof who shall use any such written consent or certified copy thereof, or who shall borrow, receive, or solicit from another any such written consent or certified copy thereof, shall be guilty of a gross misdemeanor, and punished accordingly. ('27, c. 10, §2; Apr. 22, 1929, c. 285, §2.)

10422-3. Certain acts to be misdemeanor.—Every person who shall willfully place or deposit or cause to be placed or deposited, or who aids or abets or who conspires to aid or abet in the placing or depositing in, upon, under, against, or near to any building, car, vessel, or structure any foul, offensive or injurious substance or compound, or any gas, fluid or substance injurious to life or property, or any noxious or offensive gas, fluid or substance, with intent to wrongfully injure, molest or coerce another, or to injure the property or person of another, or to molest another in the use, management, conduct or control of his business or property; shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars or by imprisonment in the county jail for not more than one year. (Act Mar. 24, 1931, c. 86, §1.)

10431. Coercion.

To sustain an action for damages on the ground of coercion there must be some wrongful or unlawful act, acts or conduct sufficient to constrain the plaintiff against his will. 174M535, 219NW908.

A threat to shoot an officer if he takes property under replevin papers is a misdemeanor under this section and officer to whom threat is made may arrest without a warrant. 177M307, 225NW148.

Statutory costs denied respondents for failure of brief to comply with paragraph 3. 177M222, 225NW85.

Proprietor of an apartment hotel, who prevented tenant from entering rooms, let by the week, for purpose of removing personal property, was not an innkeeper having a lien against property but was a landlord, and was guilty of coercion. State v. Bowman, 202M44, 279NW214. See Dun. Dig. 2848, 4514, 5361, 5382.

Landlord compelling tenants to remove by taking off door and window in cold weather was guilty of coercion under this section. State v. Brown, 203M505, 282NW136.

It is not illegal for labor union to advertise that its membership does not patronize certain businesses, if there is no fraud, duress, intimidation, coercion, malice or defamation. Op. Atty. Gen. (641), July 6, 1936.

Distinction between guests, lodgers, and tenants as affecting offense of coercion. 22MinnLawRev1055.

10432. Injury to other property.

Cause of action, for damages arising out of breach of statute intended for benefit of plaintiff, against local brokerage association and one copartnership, held properly joined with action against second copartnership on its undertaking to account to plaintiff for stocks and moneys delivered by plaintiff to association in part payment of bucketed orders and delivered to second copartnership, on transfer of association's account from first copartnership, and received by second copartnership with full knowledge of the bucketing activities of association. Kaiser v. B., 200M545, 274NW680. See Dun. Dig. 3941.

Person hiring young man to put emery dust and waste *in oil tank of automobile, resulting in damage, may be* prosecuted under this section. Op. Atty. Gen., Mar. 4, 1933.

Throwing thistle seeds on neighbor's farm constitutes violation of this section. Op. Atty. Gen. (605a-18), Aug. 26, 1935.

Where aeroplane was taken without owner's consent and was wrecked when forced landing was made, no prosecution could be had for willful destruction of plane. Op. Atty. Gen. (494b-20), Aug. 23, 1937.

Injury to a fish screen erected on a dam with consent of county board by sportsmen organizations would constitute a violation of this statute. Op. Atty. Gen. (494a), June 1, 1938.

10433. Interfering with electrical apparatus.

Section is without application to action for death of house mover attempting to get house under wires. Faribault v. N., *183M514, 247NW680.*

This statute was directed against a wilful or malicious tampering or interference, and in this respect term "wilful" denotes an evil or malice. Ekdahl v. M., 203M374, 281NW517. See Dun. Dig. 2410.

Boy fifteen years of age removing hasp on cable holding mast upon which was suspended street light, through mere curiosity was not guilty of negligence as a matter of law or of violation of this section. Id. See Dun. Dig. 2996.

A boy who ran to aid of another boy who had disconnected cable supporting street lamp following his cry for help was not guilty of contributory negligence where his object in touching cable was only for purpose of saving defendant's property from injury. Schorr v. M., 203 M384, 281NW523. See Dun. Dig. 7025.

10437. Draining meandered lakes, etc.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

This section was not repealed by §6602-68. Op. Atty. Gen. (273c-1), July 29, 1938.

Unauthorized drainage of meandered lakes is a violation of §10437 and may be subject of inquiry on order of commissioner under §6602-51, et seq. Id.

10441-1. Willful trespass a misdemeanor.—Every person who has no right of possession and who refuses to depart from and surrender possession of property when ordered to do so by the owner thereof and who thereafter wilfully continues to trespass upon said property shall be guilty of a misdemeanor, provided, however, that this Act shall not apply in any case where immediately prior thereto there existed between the owner and the person in possession *the relationship of landlord and tenant, vendor* and vendee, or mortgagor and mortgagee or their respective successors or assigns. (Act Apr. 21, 1939, c. 377.)

CHAPTER 102

Cruelty to Animals

10443. Overworking animals, etc.

Evidence held sufficient to support finding that horse's death resulted from starvation. State v. Maguire, 188M 627, 248NW216. See Dun. Dig. 279.

One in possession of horse under claim of lien is guilty if he permits it to starve to death. Id.

10444. Cruelty in transportation.

Prosecution must be for violation of statute and not "regulations" issued thereunder. Op. Atty. Gen. (293b-19), July 8, 1937.

10448. Poisoning animals.

Section is constitutional. State v. Eich, 204M134, 282 NW810.

Information charging that defendant unjustifiably exposed poison with intent that it should be taken by a dog held sufficiently definite to state an offense. Id. See Dun. Dig. 279.

One placing meat containing strychnine in a shed on his property for purpose of killing rats is not chargeable with death of a dog under this section, intent being necessary. Op. Atty. Gen. (494a-2), July 29, 1938.

10450. Animal with infectious disease.

Seller of infected hogs, held not entitled to directed verdict for price. 180M78, 230NW259.

CHAPTER 103

Miscellaneous Crimes

10453 to 10455-3. [Repealed.]

Repealed Mar. 19, 1937, c. 74, §25, post, §10455-28.

UNIFORM NARCOTIC DRUG ACT

This act was adopted by Alaska, Arizona, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

10455-4. Definitions.—The following words and phrases, as used in this act shall have the following meanings, unless the context otherwise requires:

(1) "Persons" includes any corporation, association, co-partnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and for the purposes of this act only, any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.