

MINNESOTA STATUTES 1953 ANNOTATIONS

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OFFENSES AGAINST PROPERTY BY FORCE 621.06

620.75 FRAUD IN THE SALE OF WEARING APPAREL

HISTORY. 1949 c 203 s 1-4.

620.76 TICKET SCALPING

HISTORY. 1949 c 522 s 1-6.

CHAPTER 621

OFFENSES AGAINST PROPERTY BY FORCE

ARSON

621.02-621.04 Repealed, 1953 c 602 s 6.

621.021 ARSON, FIRST DEGREE

HISTORY. 1953 c 602 s 1.

In a prosecution for arson, both the corpus delicti and the criminal agency of defendant may be established by circumstantial evidence. Where sufficient foundation is laid showing that deputy fire marshal had made a great many investigations of incendiary fires, it was not error to permit him to testify that in his opinion the fire was "torched." Results of lie-detector tests being inadmissible, it was prejudicial error to admit evidence showing that defendant had refused to submit to such tests. Statements of prosecuting attorney in summation of case to the jury held to be prejudicial. The sufficiency of foundation showing qualifications of handwriting expert rests largely in the discretion of the trial court. Evidence showed no abuse of discretion. *State v Kolander*, 236 M 209, 52 NW(2d) 458.

621.025 ARSON, SECOND DEGREE

HISTORY. 1953 c 602 s 2.

621.031 ARSON, THIRD DEGREE

HISTORY. 1953 c 602 s 3.

621.035 ARSON, FOURTH DEGREE

HISTORY. 1953 c 602 s 4.

621.041 INSURED PROPERTY

HISTORY. 1953 c 602 s 5.

A deputy fire marshal, having had considerable experience in investigating fires of an incendiary origin over a period of 19 years, was sufficiently qualified to testify, in a trial for arson by the setting fire to an automobile, that the fire, based on things not affected by the lapse of time, was "torched." Although he examined the automobile three years after it was burned, he testified that the fire was aided by the use of a foreign substance such as gasoline. *State v Kolander*, 236 M 209, 52 NW(2d) 458.

621.05 CONTIGUOUS BUILDINGS; APPURTENANCES

HISTORY. Penal Code s 378; GS 1894 s 6672; RL 1905 s 5039; 1953 c 602 s 7.

621.06 OWNERSHIP OF BUILDING

HISTORY. Penal Code s 382; GS 1894 s 6676; RL 1905 s 5040.

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621.065 OFFENSES AGAINST PROPERTY BY FORCE

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621.065 EFFECT

HISTORY. 1953 c 602 s 8.

BURGLARY

621.07 BURGLARY; FIRST DEGREE

HISTORY. RS 1851 c 101 s 9; PS 1858 c 90 s 9; GS 1866 c 95 s 9; GS 1878 c 95 s 19; Penal Code s 383, 394; GS 1894 s 6677, 6688; RL 1905 s 5041; GS 1913 s 8826.

621.08 BREAKING AND ENTERING

HISTORY. RS 1851 c 101 s 9; PS 1858 c 90 s 9; GS 1866 c 95 s 9; GS 1878 c 95 s 19; Penal Code s 383; GS 1894 s 6677; 1905 c 210 s 1; GS 1913 s 8827.

621.09 BURGLARY; SECOND DEGREE

HISTORY. RS 1851 c 101 s 10; PS 1858 c 90 s 10; 1866 c 95 s 10; GS 1878 c 95 s 20; Penal Code s 384, 394; GS 1894 s 6678, 6688; RL 1905 s 5042; 1907 c 227 s 1; GS 1913 s 8828.

621.10 BURGLARY; THIRD DEGREE

HISTORY. RS 1851 c 101 s 11; PS 1858 c 90 s 11; GS 1866 c 95 s 11; GS 1878 c 95 s 21; Penal Code s 385, 394; GS 1894 s 6679, 6688; RL 1905 s 5043; 1911 c 15 s 1; GS 1913 s 8829.

621.11 UNLAWFULLY ENTERING BUILDING

HISTORY. RS 1851 c 101 s 12; 1852 Amer'd p 23 s 110; PS 1858 c 90 s 12; GS 1866 c 95 s 12; GS 1878 c 95 s 22; 1883 c 65 s 1; Penal Code s 392; GS 1894 s 6686; RL 1905 s 5044; GS 1913 s 8830.

EXTORTION, BLACKMAIL, OPPRESSION

621.18 BLACKMAIL

No proof of third person having read the libel; criminal statute applied to a civil suit. 32 MLR 841.

Law of defamation. 33 MLR 609.

621.19 WRITTEN AND VERBAL THREATS

HISTORY. RS 1851 c 100 s 38; PS 1858 c 89 s 37; GS 1866 c 94 s 38; GS 1878 c 94 s 48; Penal Code s 444-446; GS 1894 s 6740-6742; RL 1905 s 5101; GS 1913 s 8894.

INJURIES TO PROPERTY

621.20 REMOVING PROPERTY FROM MORTGAGED LAND

Severance and removal of buildings by a purchaser under a contract for a deed and without the consent of the vendor should be prosecuted under section 621.26 which deals with the injury to property. The offense should not be prosecuted under 620.20 nor should it be prosecuted under larceny statute. OAG Aug. 1, 1952 (133-B-59).

621.21 SELLING OR CONCEALING MORTGAGED CHATTELS

Where the conditional sales contract is followed by an absolute bill of sale giving the buyer absolute title, there is no basis for criminal prosecution for removing

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the mortgaged property. The later bill of sale operated to wipe out the first one. OAG Dec. 3, 1948 (133-B-59).

The intent to place the mortgaged personal property beyond the reach of the mortgagee or his assigns is an essential element of the crime defined by section 621.21, and as section 627.01 prescribes that every criminal cause shall be tried in the county in which the offense was committed, the venue of the prosecution must be laid in the county from which the mortgaged personal property was taken. OAG March 21, 1951 (133-B-59).

621.23 WILFUL DESTRUCTION OF VESSEL

HISTORY. RS 1851 c 101 s 31, 36; PS 1858 c 90 s 35, 36; GS 1866 c 95 s 35, 36; GS 1878 c 95 s 46, 47; Penal Code s 458, 459; GS 1894 s 6754, 6755; RL 1905 s 5112; GS 1913 s 8910.

Restricted covenants in furtherance of a general plan are recognized under certain circumstances. Where the owners of a tract of land have platted same into many lots and formed and carried out a plan to sell the lots subject to covenants restricting them to the construction of homes of a certain character, equity will protect the rights of other grantees who accepted deeds in the same locality with similar restrictions. The burden of proving a general plan of improvement is upon the plaintiff. The existence of the plan is determined by examining and appraising the conditions of the platting, the sale of the lots, and all surrounding circumstances as indicated verbally or in writing. The intentions of the original owners in platting the district is germane. It was not the intentions of the owners to include defendant's lots in such general plan and the plaintiffs are not permitted, in this case, to obtain a restraining order and enjoining the defendant from erecting a building to be used exclusively for religious purposes. *Rose v Kenneseth Israel Congregation*, 228 M 240, 36 NW(2d) 791.

621.25 INJURY OF PROPERTY

A person who wilfully and unlawfully enters upon the private lands of another and cuts and removes standing timber is punishable by imprisonment in the county jail for not more than six months, or by a fine of \$250, or by both. OAG April 5, 1948 (133-B-64).

Laws 1885, an act to establish a Penal Code approved March 9, 1885, effective Jan. 1, 1886, abolished the common law as it relates to crimes, and from and since Jan. 1, 1886, no act or omission is deemed criminal or punishable except as prescribed by statute. Sections 622.05 to 622.07 define and designate the degrees and prescribe the punishment for larceny. A wilful trespass performed in the unlawful entry and cutting and removing standing timber from the land is deemed larceny. Section 90.35 prohibits the unlawful taking of timber from the lands of that state. Section 621.25 defines the crime of unlawful taking of timber and prescribes a punishment. Apparently prosecution may be had under any of the above quoted sections. Treble damages are now provided for cutting and carrying out timber from the lands of another under sections 548.05 and 561.04. OAG April 5, 1948 (133-B-64).

621.26 INJURY TO OTHER PROPERTY

Where plaintiff's fence had been built within the road right-of-way, the supervisors of the town and their employees could not be held for treble damages for destroying the fence. *Moose v Vesey*, 225 M 64, 29 NW(2d) 649.

The right to recover treble damages for trespass or injury to realty is purely statutory. Exemplary damages against municipal corporations are not recoverable except by virtue of statutory authorization. Section 621.26 by its terms is made inapplicable to section 621.25. There being no statutory authorization for the recovery of treble damages for violation of section 621.25, the trial court's instruction that the jury may not assess treble damages was erroneous. *Desforge v City of West St. Paul*, 231 M 205, 42 NW(2d) 633.

In an action alleging defendant's wrongful removal of dirt, sand and gravel from plaintiff's city lot without plaintiff's consent, treble damages could not be recovered. *Desforge v City of West St. Paul*, 231 M 205, 42 NW(2d) 633.

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Severance and removal of a building from realty by the vendee under a contract for a deed without the consent of the vendor is not larceny nor does it come under the provisions of section 621.20. Prosecution should be under section 621.26. OAG Aug. 1, 1952 (133-B-59).

621.28 INJURING MISCELLANEOUS PROPERTIES

HISTORY. 1867 c 22 s 1; GS 1878 c 95 s 82; Penal Code s 480; GS 1894 s 6780; RL 1905 s 5130; GS 1913 s 8931.

No servient owner to make change in location without the consent of the dominant owner. 35 MLR 494.

In an action to recover for damages to a bridge where a trench digger struck the bridge while being transported on a truck and in an action for damages by the state against the common carrier, the owner of the trench digger and an employee of the owner, the case was properly based and tried on the theory of negligence and rules governing liability of the carrier to a shipper for damage done to goods in transit were not applicable. State v Paskewitz, 233 M 452, 47 NW(2d) 199.

621.29 INJURIES TO RAILWAYS

HISTORY. 1868 c 57 s 1; 1877 c 98 s 6, 7; GS 1878 c 95 s 54, 89, 90; Penal Code s 476; GS 1894 s 6772; RL 1905 s 5124; GS 1913 s 8925.

621.33 INTERFERING WITH ELECTRIC APPARATUS

A distributor of electric power was not liable for a customer's death from electrical shock on the ground of negligence in failing to anticipate that a customer in the rural area would take down a firmly fastened guy wire supporting a pole on the customer's land thus violating section 621.33 and would permit guy wire to come in contact with a high-tension wire. Greenwald v Northern States Power, 226 M 216, 32 NW(2d) 320.

621.41 BURNING GROWING CROPS, TREES, OR OTHER PROPERTY

HISTORY. 1858 c 29 s 1; PS 1858 c 90 s 50; 1860 c 72 s 1; GS 1866 c 95 s 50; 1877 c 36 s 1-6; GS 1878 c 95 s 67-72; 1883 c 123 s 1; Penal Code s 478; GS 1894 s 6774; RL 1905 s 5126; GS 1913 s 8927.

621.48 DRAINING MEANDERED LAKES; USE AS LOG RESERVOIRS

HISTORY. 1867 c 40 s 1, 2; GS 1878 c 95 s 75, 76; 1885 c 28; GS 1894 s 6878, 6879; RL 1905 s 5146; GS 1913 s 8949.

Rights incident to lands assessed in drainage proceedings for benefits can be taken away only by due process of law. OAG Feb. 21, 1952 (602-B).

621.49 INTERFERING WITH DAM OR APPURTENANCES

HISTORY. RS 1851 c 101 s 41; PS 1858 c 90 s 41; GS 1866 c 95 s 41; GS 1878 c 95 s 52; Penal Code s 480; GS 1894 s 6780; 1895 c 220; RL 1905 s 5131; GS 1913 s 8932.

621.52 INJURY TO WORKS OF ART, ETC.

HISTORY. RS 1851 c 101 s 44, 46; RS 1851 c 108 s 16; PS 1858 c 90 s 44, 46; PS 1858 c 96 s 16; GS 1866 c 95 s 44, 46; GS 1866 c 100 s 16; GS 1878 c 95 s 56, 58; GS 1878 c 100 s 17; 1883 c 32 s 2; Penal Code s 486; GS 1878 c 95 s 56; GS 1894 s 6786, 6874; 1905 c 90 s 1; RL 1905 s 5137; GS 1913 s 8938, 8939.

621.53 INJURY TO ARTICLES IN MUSEUM OR LIBRARY

HISTORY. 1875 c 89 s 1, 2; GS 1878 c 95 s 64, 65; Penal Code s 487; GS 1894 s 6787; RL 1905 s 5138; GS 1913 s 8940.

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LARCENY 622.01

621.57 WILFUL TRESPASS A MISDEMEANOR

The grocery store and restaurant owner may require persons, whether they are customers or not, to stay away from his premises if they persist in calling him names and otherwise antagonizing him. OAG Nov. 27, 1951 (605-B).

CHAPTER 622

LARCENY

622.01 LARCENY; WHAT CONSTITUTES

HISTORY. PS 1851 c 101 s 13, 15, 23; PS 1858 c 90 s 13-15, 23; 1866 c 95 s 13-15, 23; 1876 c 55 s 1; GS 1878 c 95 s 23-25, 33; 1883 c 65 s 1; 1883 c 72; 1883 c 321 s 1; Penal Code s 415; GS 1894 s 6709; 1897 c 279; RL 1905 s 5078; GS 1913 s 8870.

Applicability of statutes making part ownership no defense as applied to larceny by a partner. 32 MLR 68.

Larceny; principal convicted as receiver of stolen goods. 34 MLR 255.

In an action for an accounting for funds allegedly embezzled by defendant employee, the burden was on the employer to produce evidence showing what funds came into the employee's possession. The employee's admission made in the course of an investigation rather than in negotiations for settlement was admissible in evidence in an action for accounting for funds allegedly embezzled by the defendant in the amount of \$20,920.71 plus interest, but the evidence was insufficient to establish that \$80,995.42 additional, was misappropriated. Physicians and Hospitals Supply Co. v Johnson, 231 M 548, 44 NW(2d) 224.

All profits made by an agent in the course of an agency belong to the principal, whether they are fruits of performance or of violation of the agent's duty, and it is immaterial that the principal has suffered no damage, or even that the transaction concerned was profitable to him. Where the agent of the buyer received a secret commission from the seller of a business, election by the buyer, upon discovery of fraud in the transaction to rescind the contract of sale and recover from the seller that with which he had parted, did not preclude a subsequent action by the buyer against his agent to recover secret commissions obtained in violation of duties of the agency. Tarnowski v Resop, 236 M 33, 51 NW(2d) 801.

In a prosecution for larceny by false pretenses in order to introduce evidence of other frauds or attempted frauds the evidence must show a common scheme or plan to obtain money from others in a manner similar to the other fraudulent representation involved in the prosecution. State v Gulbrandson, M, 57 NW(2d) 419.

One who is induced to part with his automobile for a check on a bank in which the pretended buyer had no account is entitled to recover under a policy insuring the owner against theft or larceny of the automobile. Central Surety & Insurance Corp. v Williams, 211 SW(2d) 891.

Where the owner of a motor car had it repaired, paid the sum of \$187.66 to a mechanic, and after obtaining possession of the car stopped payment on the check, he was guilty of the crime of larceny. The mechanic had a lien upon the car under the provisions of sections 514.18 and 514.19. Such lien was a special property interest entitling the mechanic to the possession of the car until the lien was lawfully discharged. The giving and stopping of the check was a fraudulent act depriving the mechanic of special property and it constituted the crime of larceny. OAG June 25, 1948 (133-B-45).

A promise to repay a loan out of his next pension check and failure to do so is not a misrepresentation as to a past or existing fact. OAG Dec. 5, 1949 (133-B-35).