

Nineteen Hundred Thirty-One  
Supplement

to

# Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the  
Legislature, both new and amendatory, and notes showing repeals,  
together with annotations from the various courts, state  
and federal, construing the constitution, statutes,  
charters and court rules of Minnesota



Edited by  
WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR., Assistant Editor

CITER-DIGEST CO.  
ST. PAUL, MINNESOTA  
1931

and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as

not to interfere with the peace, repose and comfort of the community, may be played between the hours of one p. m. and six p. m. on the Sabbath day. (As amended Apr. 23, 1929, c. 308, §1.)

CHAPTER 99

Crimes against Public Health and Safety

§10241. Public nuisance defined.

Logging railroad over highway under Mason's Minn. Stat. 1927, §2558-1, etc., is not a public nuisance under this section. 174M305, 219NW172.

A newspaper business conducted in violation of §§10123-1 to 10123-3 is a public nuisance. 174M457, 219NW770.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

Act making possession of foul, offensive or injurious substance, compound or gas with wrongful intent a gross misdemeanor. Laws 1931, c. 86.

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.

A misdemeanor. Op. Atty. Gen., June 20, 1930.

§10242. Itinerant carnivals prohibited.

174M457, 219NW770.

§10245. Maintaining or permitting building as a nuisance.

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.

§10250. Adulteration or imitation of foods, etc.

Whether milk was free from adulteration held question for jury. 174M320, 219NW159.

§10255. Deadly weapons.

There was no fatal variance where information charged carrying of a revolver and proof showed weapon to be an automatic pistol. 176M238, 222NW925.

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be compelling defendant to furnish evidence against himself. 176M238, 222NW925.

The question of criminal intent of defendant in carrying automatic pistol, held so far doubtful as to require new trial. 176M238, 222NW925.

Does not prohibit the use or possession of a pistol in the absence of an intent to use it against another. *Clarine v. A.*, 234NW295. See Dun. Dig. 10200a(2).

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.*, 234NW295. See Dun. Dig. 10200.

§10263. Failure to ring bell, etc.

Liabilities for death resulting from failure to give signals. 173M7, 216NW245.

Failure to give crossing signal as proximate cause of collision at crossing. 178M322, 227NW45.

Evidence of failure to give signal. 179M480, 229NW797.

CHAPTER 100

Crimes against Public Peace

§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, reckless-

ness, 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.*, 234NW295. See Dun. Dig. 4466, 10200.

CHAPTER 101

Crimes against Property

§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 con-

tract, 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 depository 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 depository 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. (As amended Apr. 20, 1931, c. 212.)

172M392, 215NW673.

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, 234 NW1. See Dun. Dig. 2263b, 2323(77), 2699.

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 patrolling 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.

## ARSON

### §10309. First degree.

Charge on reasonable doubt held proper. 173 M368, 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, 217 NW489.

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.

## FORGERY

### §10321. Definitions.

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

### §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, 214NW 262.

The violation of section 6946 as well as this section does not prevent a prosecution under this section. 171M345, 214NW262.

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

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

### §10325. Second degree.

Evidence held sufficient to sustain conviction. 223NW452.

In prosecution for forgery it was not error to ask defendant to execute samples of his handwriting to use for comparison. 176M349, 223NW 452.

### §10326. Second degree, how punished.

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

## COUNTERFEITING—FRAUDULENT PRACTICES

§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.)

## LARCENY

### §10358. What constitutes.

#### THE STATUTE GENERALLY

Status of marriage has not been modified by the Married Woman's Act, and only property rights and contracts are affected thereby. State v. Arnold, 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, 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, 235NW625. See Dun. Dig. 5497(6).

Evidence held sufficient to convict bank president of grand larceny. State v. Irish, 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, 235 NW625. See Dun. Dig. 5497(6).

#### 1a. Elements of offense.

179M167, 228NW605.

#### 1c. Evidence.

179M502, 229NW801.

180M435, 231NW12.

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.

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

Findings in civil suit, held inadmissible. 180M 378, 230NW818.

**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, 214NW 279.

**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.

**6. Indictment.**

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

**EMBEZZLEMENT**

**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.

**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, 217NW 598.

**§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 depository, 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 depository for the payment of such check, draft, or order in full upon its 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 depository; 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 depository.

The word "credit," as used herein, shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order. (As amended Apr. 20, 1931, c. 243, §1.)

**§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, 214NW785.

Information alleging the stealing of men's clothing in the night-time, but failing to allege that they were taken from a building, charged second degree grand larceny, and not first degree grand larceny. 172M139, 214NW785.

Evidence sustains charge that larceny was committed in the night-time. 173M543, 217NW 683.

**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 night-time, 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, 226NW206.

**§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 imprisonment 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. 179M490, 229NW869.

Exemplary damages may be allowed for such tort.—Id.

**§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.

**§10373. Intent to restore property.**

179M167, 228NW605.

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

**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, 235NW 274. See Dun. Dig. 3701, 3702a(91).

**§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.

**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.*, 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.*, 235NW24. See Dun. Dig. 5730, 5731, 5734.

**§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. (As amended 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. 178M9, 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. E.*, 237NW23. See Dun. Dig. 789.

**MALICIOUS MISCHIEF—INJURIES TO PROPERTY****§10419. Injuring highways, etc.**

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

**§10422. Injury to property.**

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 highway 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, exhibits 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. (As amended 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 ac-

cordingly. (As amended Apr. 22, 1929, c. 285, §2.)

**§10422-5. 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. 174 M535, 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.

#### **§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.

## CHAPTER 102

### Cruelty to Animals

#### **§10450. Animal with infectious disease.**

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

## CHAPTER 103

### Miscellaneous Crimes

#### **§10463. Trusts and combinations in restraint, etc.**

A patent pooling agreement held not an unlawful attempt to restrain trade. 181M606, 233 NW870. See Dun. Dig. 8437.

Contract which restrained trade and limited competition in a reasonable way only, was not obnoxious to the statute. Pittsburgh Plate Glass Co. v. P., 234NW453. See Dun. Dig. 8436(1).

Contracts should be so construed as to uphold rather than defeat them. Pittsburgh Plate Glass Co. v. P., 234NW453. See Dun. Dig. 8434 (92).

#### **§10497. Gift enterprise defined.**

Contest held not the sort of gift enterprise defined in this section. 173M337, 217NW345.

#### **§10520. Fraudulently presenting claims, etc.**

If one presents a claim against a town for bounties on gophers and crows which he did not kill within the town, he violates this section. Op. Atty. Gen., Mar. 18, 1931.

#### **§10522-1. Wild flowers protected.**

Transplanting moccasin flowers from marshes to home flower garden is not violation of this section, but might afford cause of action for damages. Op. Atty. Gen., June 12, 1930.

#### **§10530. Railway cars obstructing roads and streets.**

Civil liability for placing car so as to obstruct view of main track. 174M404, 219NW554.