

1934 Supplement

To

**Mason's Minnesota Statutes**

**1927**

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



Edited by

WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR. }  
R. O. MASON } Assistant Editors  
J. S. O'BRIEN }

CITER- DIGEST CO.  
SAINT PAUL, MINNESOTA.  
1934

in assisting such officer; nor shall this Act apply to the armed forces of the United States or of the State of Minnesota. (Act Apr. 10, 1933, c. 190, §2.)

**10255-3. Machine guns prohibited.**—Any person who shall own, control, use, possess, sell or transport a machine gun, as herein defined, in violation of this Act, shall be guilty of a felony. (Act Apr. 10, 1933, c. 190, §3.)

**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, 229NW 797.

Statutory signals for trains approaching crossing are immaterial when and where train is actually occupying crossing when automobile runs into side thereof. Crosby v. G., 187M263, 245NW31. See Dun. Dig. 8175.

**10278-1. Peyote declared illegal.**—No person shall use, sell, transport or have in possession any peyote or preparation of peyote. (Act Apr. 20, 1933, c. 333, §1.)

**10278-2. Violation a misdemeanor.**—The violation of this act shall be a misdemeanor. (Act Apr. 20, 1933, c. 333, §2.)

Sec. 3 of Act Apr. 20, 1933, cited, provides that the Act shall take effect from its passage.

**10278-3. Definitions.**—A public bathing beach as the term is used in this act, shall be taken to mean any public land, road or highway adjoining public waters, which have been or may be used for bathing or swimming, or any privately owned place which the public is permitted to frequent or use for bathing. (Act Apr. 21, 1933, c. 364, §1.)

**10278-4. Unlawful to bathe at public beaches at certain times.**—In all counties which now have or shall hereafter have a population of 450,000 or more, it shall be unlawful for any person to frequent a public

bathing beach or public waters upon which the same immediately borders for the purpose of swimming or bathing, or congregating with others, or to swim or bathe or congregate thereat, between the hours of 10:30 p. m. and 5:00 a. m. of the day following. (Act Apr. 21, 1933, c. 364, §2.)

**10278-5. Ordinances to regulate beaches.**—The governing bodies or boards of all counties having a population of more than 450,000, and all cities, villages and towns situated within such counties, shall have authority by ordinance, resolution or by-law, to regulate the use of public bathing beaches and public waters immediately bordering thereon for the purpose of bathing or swimming or congregating with the others thereat, within their respective territorial limits not inconsistent herewith. (Act Apr. 21, 1933, c. 364, §3.)

**10278-6. May close beaches.**—If any such body or board shall reasonably determine that the safety, health, morals or general welfare of the public shall so require, it may by ordinance, resolution or by-law, provide that any such public bathing beach shall be closed to bathing, swimming and congregating after the hour of 9:00 p. m. or after any time between 9:00 p. m. and 10:30 p. m. of any day. (Act Apr. 21, 1933, c. 364, §4.)

**10278-7. Act not restrictive.**—Nothing in this act shall limit or abrogate any of the existing powers of any body or governing board of any county, city, village or town. (Act Apr. 21, 1933, c. 364, §5.)

**10278-8. Provisions separable.**—If any part or section of this act shall be held to be invalid, it shall not invalidate any of the other provisions hereof. (Act Apr. 21, 1933, c. 364, §6.)

**10278-9. Violation a misdemeanor.**—Any person violating any of the provisions hereof shall be guilty of a misdemeanor. (Act Apr. 21, 1933, c. 364, §7.)

## CHAPTER 100

### Crimes Against Public Peace

**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. Saftro v. L., 184M336, 238NW641.

**10287. Flight out of the state.**

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

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

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

**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.

## 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 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. (R. L. '05, §5032; G. S. '13, §8817; 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*, 182M10, 234NW1. 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.

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 policies 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 depository 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 depository 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.

## 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.

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.

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.

### 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. 171M345, 214NW262.

Evidence held to warrant a conviction. 171M345, 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, 223NW452.

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.

**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.

**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 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.

**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*, 180M579, 230NW 476(1).

Findings in civil suit, held inadmissible. 180M378, 230NW318.

**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, 227 NW495.

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, 229NW 801.

**6. Indictment.**

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

**EMBEZZLEMENT****7. What constitutes.**

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

**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, 217NW598.

**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. ('11, c. 272, §1; G. S. '13, §8873; '19, c. 94, §1; 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, 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.

**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.

**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. 179M 490, 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.

#### 10369. Conversion by trustee.

Prosecution of guardian of incompetent for grand larceny in embezzling money, held not barred by limitations. State v. Thang, 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. State v. Thang, 246NW891. See Dun. Dig. 5498.

#### 10373. Intent to restore property.

179M167, 228NW605.

Evidence held not admissible under this section. 174 M323, 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, 182M513, 235NW274. 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., 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.

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.

#### 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 mort-

gage 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.

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.

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.

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.

### 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, 248NW751. See Dun. Dig. 7240n, 58.

#### 10422. Injury to property.

Transplanting mosses 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.)

**10422-5. 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. 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.

#### **10432. Injury to other property.**

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.

#### **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., 247NW680.

#### **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

#### **10443. Overworking animals, etc.**

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

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

#### **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, 233NW870. 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., 182M368, 234 NW453. See Dun. Dig. 8436(1).

Contracts should be so construed as to uphold rather than defeat them. Pittsburgh Plate Glass Co. v. P., 182 M368, 234NW453. See Dun. Dig. 8434(92).

#### **10493. Gift enterprises defined.**

It is not a gift enterprise to enclose a penny sucker within the paraffin wrapper of loaves of bread where the same kind and value is included with each loaf. Op. Atty. Gen., Jan. 9, 1932.

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

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