CHAPTER 622

LARCENY

622.01 LARCENY; WHAT CONSTITUTES.

HISTORY. Penal Code s. 415; G.S. 1894 s. 6709; 1897 c. 279; R.L. 1905 s. 5078; G.S. 1913 s. 8870; G.S. 1923 s. 10358; M.S. 1927 s. 10358.

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1. Generally

Prior to the enactment of the Penal Code effective January 1, 1886, the common law as to crime was in force in this state except where abrogated or modified by statute. The Penal Code abolished all common-law offenses, and now no act or omission is criminal except as prescribed by statute. The Penal Code from which this section was taken (Penal Code, Section 415, as amended by Laws 1897, Chapter 279), abolished all prior forms of larceny and enacted one general provision for all forms, including embezzlement, obtaining property by false pretenses and felonious breaches of trust, offenses which had hitherto been treated separately, requiring different forms of indictment and different proof on its trial. These distinctions, though abolished in form, remain in substance, there being, under this section, several distinct acts or ways by which a person may commit or be guilty of larceny, some of which were not larceny at common law. An indictment under it must charge the act constituting the larceny so as to inform the accused in which one of these different ways he is charged with having committed the offense. An indictment for larceny in the common-law form is insufficient to charge embezzlement or obtaining money under false pretenses. State v Henn, 39 M 464, 40 NW 564; State v Friend, 47 M 449, 50 NW 692; State v Comings, 54 M 359, 56 NW 50; State v Farrington, 59 M 147, 60 NW 1088; State v Kortgaard, 62 M 7, 64 NW 51.

But an indictment which is sufficient to charge larceny by obtaining money under false pretenses is not vitiated by unnecessary allegations appropriate to an indictment for larceny. State v Comings, 54 M 359, 56 NW 50.

The effect of the Penal Code was to do away with the necessity of trespass which was an essential element of every larceny at common law. State v Rieger, 59 M 151, 60 NW 1087.

The word "defraud" as used in this section applies to the second numbered clause as well as the first. State v Southall, 77 M 296, 79 NW 1007.

While the proof of defendant's guilt is largely circumstantial, it is sufficient. State v Greenhagen, 156 M 266, 194 NW 401.

The verdict of guilty was fully justified. State v Haney, 156 M 345, 194 NW 720.

Indictment insufficient because it omits to show existence of a fiduciary relation between the accused and the owner of the property. State v McCullough, 157 M 69, 195 NW 764.

Defendant was not entitled to a dismissal or instructed verdict, nor was his guilt so conclusively established that errors in the admission of evidence may be held without prejudice. State v Staveneau, 158 M 329, 197 NW 667.

Complete statement of the essential elements constituting the crime of grand larceny committed by the use of false statements. State v Anderson, 159 M 247, 199 NW 6.

When the only proof of the guilt of a person indicted upon a charge of larceny is possession of the stolen goods, and an alleged purchase of the goods if offered to explain such possession, the accused should be allowed to testify to the declarations of the seller made at the time of the alleged sale. Such declarations are verbal parts of the transaction and characterize the possession of the goods. State v Fleisher, 160 M 151, 199 NW 576.

A bank cashier was found guilty of larceny in misappropriating the bank's funds. The felonious intent could be found from the writings and entries in the bank records made by defendant. State v Dahlstrom, 162 M 76, 202 NW 51.

Evidence of other crimes perpetrated by defendant was admissible as showing intent. State v McGraw, 163 M 154, 203 NW 771.

A building contractor who built and sold a house falsely representing that there were no liens except a certain described mortgage was properly convicted of grand larceny. State v Anderson, 166 M 453, 208 NW 415; State v Monson, 168 M 384, 210 NW 108.

Defendant, as treasurer of a creamery company, deposited $2,500 in a bank to the credit of the creamery company, gave the bank a credit slip for the amount, and received five $500.00 cashier's checks which he used on his personal account. A conviction for grand larceny is sustained. State v Peterson, 167 M 216, 208 NW 761.

A person may be indicted under this section for having defrauded another by false pretense, when the ingredient of the offense is that such representations have been believed and relied upon, even though the victim may not have been a witness before the grand jury. State v Benham, 168 M 13, 209 NW 633.

Making of false representations is not deprived of criminal character by reason alone of the fact that the intended victim was at the time engaged in a related criminal transaction. State v Wolf, 168 M 505, 210 NW 589.

Evidence supports the charge that defendant, an officer of a bank, had in his possession a special deposit by state rural credit bureau in which Husfeldt, applicant for a loan, had an interest, and appropriated same. State v Johnson, 169 M 298, 211 NW 334.

Where a person induces the owner by fraud to part with the possession but not with the title to property, and converts it to his own use, he is guilty of common law larceny; but where he induces the owner by fraud to part with both possession and title, he is not guilty of common law larceny, but of obtaining property by false pretenses. Crosby v Paine, 170 M 43, 211 NW 947.

Federal courts alone have jurisdiction of defendant indicted for violation of federal statute. State v Thornton, 171 M 466, 214 NW 279.

Findings in a civil suit to which defendant is a party are inadmissible to prove essential facts in a criminal trial. State v Ruthkowski, 180 M 379, 230 NW 818.

Conviction rests upon direct and positive evidence that defendant unlawfully took the gloves and carried them away, and not on the claim that stolen property was subsequently found in defendant's possession. State v Murphy, 180 M 579, 230 NW 476.

Married woman who steals from husband not guilty of larceny. State v Arnold, 182 M 314, 235 NW 373; State v Zemple, 196 M 162, 264 NW 587.

In prosecution of a bank president for grand larceny evidence of the amount of the bank's deposits and the amount of cash on hand on the day of the commission of the offense was competent; but the same information four months later at the time when the bank failed was incompetent and immaterial, but its reception was without prejudice. State v Irish, 183 M 49, 235 NW 625.

Finding of the stolen haybucker in his possession together with defendant's unsatisfactory explanation of how he obtained the article, and his unsubstantiated story, taken all together was sufficient to sustain conviction. State v Bram, 197 M 472, 267 NW 383.

The check was delivered to defendant August 1, 1931. He had it certified August 3, 1931, and deposited it in his own bank August 4, 1931. So far no crime was committed. Later the money was used by defendant, and therefore embezzled. The information filed against him on August 3, 1934, was within the three-year period. State v Chisholm, 198 M 241, 269 NW 463.

Defendant was convicted of grand larceny in stealing forty bufforpington chickens. Because of insufficient corroborating testimony, the judgment of conviction is vacated, and a new trial ordered. State v Scott, 203 M 56, 279 NW 832.

An instruction to the effect that the return of stolen property "does not wipe the slate clean" is in harmony with the statute which provides that "the fact that the defendant intended to restore the property stolen shall be no ground of defense." State v Eggermont, 206 M 275, 288 NW 390.

Obtaining money by "trick or device" is made a public offense under this section. In the instant case, the "trick or device" employed by defendant was overcharging or charging for unauthorized or unnecessary repairs. Defendant was properly convicted of perjury. State v Suman, 216 M 293, 12 NW(2d) 620.

Evidence supported conviction of possessing property stolen while moving in interstate commerce with knowledge that it had been stolen. The fact that the furs were stored in defendant's attic during the hot season is admissible as evidence to show defendant's knowledge. Balman v United States, 94 F(2d) 197.

Evidence that accused registered at hotel under assumed name nine and one-half hours after a $5,000 jewel robbery 325 miles away in another state, that officers after demanding that accused open door of his hotel room, heard window close, found dust from window on accused's hands, found automobile key and jewelry beneath window, and received false explanation for defendant, sufficiently established that jewelry was transported in interstate commerce, and that accused knew it was stolen. This exidence supports a conviction under the national stolen property act. Husten v United States, 95 F(2d) 168.

In prosecution for larceny, evidence of defendant's possession of a large sum of money immediately after the theft is admissible in proof of defendant's impecuniosity and sudden accession of wealth contemporaneous with the theft. This raises a fact presumption that the money is a part of certain money recently stolen. Neal v United States, 102 F(2d) 644.

Five persons were properly convicted of violation of the act against transporting stolen property, 18 U.S.C.A. Section 408. The truck was taken from owner in Minnesota, moved into Iowa, and found in flames after the departure of defendants. It was not necessary to allege the particular part each took in the criminal act. Carpenter v United States, 113 F(2d) 692.

Relating to extradition. Factor v Loubenheimer, 290 US 299.

One who borrowed a car for a short trip and left the country after abandoning the car many miles away may be indicted for larceny as bailee. 1940 OAG 40, Sept. 22, 1939 (133b-45).

Larceny by one spouse of the other's goods. 15 MLR 589.

II. Simple Larceny

1. What constitutes

A larceny at common law always involves a trespass, but this is not so under the Penal Code, effective January 1, 1886. State v McCartey, 17 M 76 (54); State

v Anderson, 25 M 66; State v Friend, 47 M 449, 50 NW 692; State v Farrington, 59 M 147, 60 NW 1088; State v Rieger, 59 M 151, 60 NW 1087

A taking from a servant may be a larceny, although the servant consents to the taking, the servant having the custody as distinguished from the possession of the property. A person may be guilty of simple larceny by obtaining the property through one whose relations to the owner are such as to make him guilty of embezzling. State v McCartey, 17 M 76 (54).

The taking must always be animo furandi (with intention of stealing). State v Welch, 21 M 22; State v Anderson, 25 M 66; State v Fisher, 38 M 378, 37 NW 948.

It is the general rule that the intent to steal and the act of taking and carrying away must concur, but it is sufficient if the intent is formed at the time of carrying away. State v Anderson, 25 M 66.

It is not necessary that the property be taken with intent to convert it to the use of the party taking it. It is sufficient that it is taken with the felonious intent to convert it to the use of a person other than the owner. State v Wellman, 34 M 221, 25 NW 395.

It must be taken from the possession, actual or constructive of the owner and without his consent. State v Friend, 47 M 449, 50 NW 692.

Properly convicted of petit larceny for taking cream cans and 13 gallons of cream. State v Warner, 203 M 445, 281 NW 757.

Where a party took an auto without the owner's permission, drove the car until it collided with a tree and and left it, such facts are sufficient to support a finding of larceny or theft. Mullany v Firemen's Insurance, 206 M 30, 287 NW 118.

A man cannot commit larceny from his wife. OAG July 21, 1944 (494b-20).

2. What may be the subject of larceny

Money given in change may be the subject of larceny. State v Anderson, 25 M 66;

So also illuminating gas. State v Wellman, 34 M 221, 25 NW 395.

A passage ticket completed and ready to be issued is the proper subject of larceny, under Penal Code, Section 423 (section 622.09). But railway passes intended for employees, prepared and left in blank save as respects the printed facsimile signature of the general manager and which have not been countersigned by the officer, without whose signature they are of no avail, are not within the statute. State v Musgang, 51 M 556, 53 NW 874.

A "receipted voucher" may be the subject of larceny under the Penal Code. State v Scanlan, 89 M 244, 94 NW 686.

3. Indictment

The stolen property must be described with sufficient certainty to enable the court to determine that it is subject to larceny as charged and to pronounce judgment on conviction to enable the accused to prepare for trial and to render the judgment an effective bar to a subsequent prosecution for the same offense. State v Hinckley, 4 M 345 (261).

But where it is impossible for the jury to ascertain a particular description, it is sufficient to give a general description and add "that a more particular description of the articles is unknown to the grand jury." Such an allegation is not traversable. State v Hinckley, 4 M 345 (261); State v Taunt, 16 M 109 (99); State v Beebe, 17 M 241 (218).

A description of divers bank bills was held insufficient. State v Hinckley, 4 M 345 (261).

A description of coin held sufficient. State v Hinckley, 4 M 345 (261).

An indictment for petty larceny is not vitiated by use of the word "feloniously". State v Hogard, 12 M 293 (191).

A description of treasury and bank notes held sufficient. State v Taunt, 16 M 109 (99).

An indictment charging the accused "of the crime of burglary, committed as follows" but stating facts constituting the crime of simple larceny, held sufficient for the latter offense. State v Coon, 18 M 518 (464).

A description of money of various denominations has been held sufficient. State v Anderson, 25 M 66.

Whether it is necessary to state the value of the property is an open question. State v Anderson, 25 M 66; State v Friend, 47 M 449, 50 NW 692.

An indictment for stealing warehouse receipts held sufficient, although it did not allege that the company had legal authority under its charter to issue receipts. State v Loomis, 27 M 521, 8 NW 758.

A description of railroad passenger tickets held sufficient. State v Brin, 30 M 522, 16 NW 406.

Where the indictment accompanying a requisition shows an offense committed against the laws of the demanding state, the court will not consider its sufficiency as a criminal pleading in other respects. State v O'Malley, 38 M 243, 36 NW 462.

Since under this section there are several distinct acts or ways by which a person may commit or be guilty of larceny, the indictment must charge the act constituting the alleged larceny so as to advise the accused in which one of these different ways he is charged with having committed the crime. State v Henn, 39 M 464, 40 NW 564; State v Farrington, 59 M 147, 60 NW 1088.

The intent to derprive the true owner of the property must be alleged, but when it is explicitly charged that the accused feloniously took, stole, and carried away personal property from another person alleged to be the owner, the intent to deprive the true owner thereof is sufficiently charged. State v Hackett, 47 M 425, 50 NW 472.

The taking from the possession of the true owner must be alleged, but it may be done by the use of the word "take". This word has a definite and well understood signification in connection with the offense of larceny and implies a trespass; and the averment "did wrongfully and feloniously take, steal, and carry away involves the possession, and the wrongful taking of the property from the actual or constructive possession of the owner, general or special, and without his consent. State v Friend, 47 M 449, 50 NW 692.

A description which is well known and in common use is sufficient. State v Friend, 47 M 449, 50 NW 692.

In an indictment, the description of a mare is held sufficient. State v Friend, 47 M 449, 50 NW 692.

An indictment good at common law for larceny is good under this section for simple larceny. State v Friend, 47 M 449, 50 NW 692.

An indictment must state the name of the owner of the property and from whom it was taken. State v Nelson, 79 M 373, 82 NW 674; State v Blakeley, 83 M 432, 86 NW 419.

The indictment charging the defendant with being an accessory to a felony after the fact properly alleged facts with the same degree of certainty as though the person who committed the crime were alone indicted. State v King, 88 M 175, 92 NW 965.

It is not necessary to allege that the taking was in the day time. State v Scanlan, 89 M 244, 94 NW 686.

A "receipted voucher" may be the subject of larceny under the Penal Code. State v Scanlan, 89 M 244, 94 NW 686.

It is not necessary to give the name of the owner of the building from which the property is taken, if the building is fully described. State v Muick, 94 M 50, 102 NW 207.

III. False Pretenses

1. What constitutes

Under the Penal Code from which this section is taken, there is no such offense as obtaining money or property under false pretenses, eo nomine. It is treated as a form of larceny. State v Henn, 39 M 464, 40 NW 564.

Where the false token is a written instrument, it need not be such as, if genuine, would be of legal validity. State v Henn, 39 M 464, 40 NW 564; State v Southall, 77 M 296, 79 NW 1007.

An indictment will lie for obtaining a deed on the false representation that the land is unencumbered. An indictment will not lie on a mere false warranty, nor on representations to be implied by mere promises or contract obligations. But, although there be a warranty or contract on the part of the accused, if there be also false representations of fact, an indictment will lie, provided the representation, and not the warranty or contract, induced the act of the other party. State v Butler, 47 M 483, 50 NW 532.

The statute is not aimed at false pretenses that can do no harm, and where the signature to an instrument is obtained by false pretenses, the case comes within the statute only if the instrument, or the affixing of the signature, may possibly prejudice the party who is thus induced to fix it. State v Butler, 47 M 483, 50 NW 532.

An intent to defraud is the gist of the offense. Hence a party is not guilty of an offense in obtaining money by a worthless check if he had good reason to believe and did believe that the check would be paid in the ordinary course of business. State v Johnson, 77 M 267, 79 NW 968.

To constitute false pretense, the conduct and acts of the party may be sufficient without any verbal assertion. The mere act of offering for sale or as collateral security for the loan of money forged on false paper, amounts, by implication, to an affirmation that it is genuine. It is not necessary that the false pretense or representation should be one which is calculated to deceive men of ordinary intelligence or business prudence; it is sufficient that it is calculated to deceive the weak and ignorant. State v Southhall, 77 M 296, 79 NW 1007; State v Bourne, 86 M 432, 90 NW 1108.

An indictment charging grand larceny arising out of the sale of Minnesota corporate stock, wherein the defendant knowingly and falsely represented that the stock was not subject to assessment after the purchase price was paid, fails to state facts sufficient to constitute a public offense because the misrepresentation relates to a matter of law. State v Edwards, 178 M 446, 227 NW 495.

Defendant with intention to defraud Curry, in selling him a real estate mortgage, made material false representations. The crime of larceny was complete regardless of the financial responsibility of the maker of the note secured by the mortgage. State v Talcott, 178 M 564, 227 NW 893.

Evidence did not sustain the finding that the automobile was stolen within the meaning of the words "theft, robbery or pilferage," as used in the instant insurance policy. Repp v American Insurance Co. 179 M 167, 228 NW 605.

In a criminal action wherein the defendant was convicted of the crime of grand larceny based on alleged false representations concerning real estate involved in an exchange of equities, the sentence was vacated and a new trial granted. The evidence did not sustain a finding of fraud. State v Sack, 179 M 502, 229 NW 801.

Indictment for second degree grand larceny found to contain such allegations as would permit the introduction of evidence showing that the crime was perpetrated by means of trickery. State v Nuser, 199 M 315, 271 NW 811.

A partner is chargeable with forgery in the third degree for making false entries in the partnership books with intent to defraud his partner. State v MacGregor, 202 M 581, 279 NW 372.

False pretense relates to a past or an existing fact. OAG July 7, 1944 (494b-16).

False pretenses; fraud. 12 MLR 540.

2. Indictment

The property obtained must be definitely described. State ex rel v O'Connor, 38 M 243, 36 NW 462.

The common form of larceny at common law is insufficient under this section. State v Henn, 39 M 464, 40 NW 564.

Where a promise is connected with false pretenses and cooperates with them to influence the party deceived thereby, the promise may be alleged and shown as a part of the charge, if the pretense of the past or existing facts is sufficient. State v Thaden, 43 M 325, 45 NW 614.

An indictment for obtaining a party's signature to a deed by false representations that the land was unencumbered held sufficient. State v Butler, 47 M 483, 50 NW 532.

It is not necessary to use the exact words "with intent to defraud." Equivalent language will suffice. An allegation that the accused unlawfully knowingly, et cetera, and with intent to deprive the true owner of his property by means, color, and aid of certain false writings and representations, then and there known to the accused to be false, amounts to an allegation of an intent to defraud. State v Southhall, 77 M 296, 79 NW 1007.

An indictment charging the accused with having obtained money from a railroad company by falsely representing that he had been injured while in the company's employ held sufficient against the objection that the names of the natural persons to whom the representations were made were not given and that the truth of the statements alleged to have been made to the company was not directly denied. State v Hulder, 78 M 524, 81 NW 532.

An indictment for obtaining bank deposits held insufficient because the fraudulent representations were alleged argumentatively and not directly and positively. State v Clements, 82 M 448, 85 NW 229.

An indictment for larceny by false pretenses which sufficiently charges the obtaining of money by intentionally false representations of the genuineness and value of forged commercial paper is not fatally deficient, because it fails explicitly to aver that the paper was forged. State v Taran, 176 M 178, 222 NW 906.

Indictment sufficient to cover sale of worthless corporate stock through false representations. State v Heffelfinger, 200 M 268, 274 NW 234.

IV. Embezzlement

1. What constitutes

The Penal Code from which this section is taken, repealed prior statutes and enacted a single provision covering all forms of embezzlement. There is now no such offense as embezzlement eo nomine. It is treated as a form of larceny. State v Henn, 39 M 464, 40 NW 564; State v Kortgaard, 62 M 7, 64 NW 51.

The essential elements of the offense are: first, the appropriation of the property of another by the offender to his own use, or to that of some other person than the true owner; second, such appropriation must have been made with the intent to deprive or defraud the true owner of the property, or of the use or benefit thereof. The appropriation of the property must be made with the same intent to deprive the owner of it with which the taking must be done to constitute hearsay at common law. The form or method of appropriation is immaterial. State v Kortgaard, 62 M 7, 64 NW 51.

An element that enters into the definition of embezzlement is the fiduciary and confidential relation between the owner and the custodian of the property. Embezzlement may consist of a series of acts running through a considerable period of time. State v Holmes, 65 M 230, 68 NW 11.

In a criminal prosecution an alleged confession of the accused is not sufficient to warant conviction, unless it is corroborated by independent evidence of the corpus deliciti. Where circumstantial evidence is relied upon for a conviction in criminal prosecution, the circumstances must be proved and not themselves presumed. State v Wylie, 151 M 375, 186 NW 707.

An indictment under this section which fails to show the existence of a fiduciary relation of some sort between the accused and the owner of the property unlawfully appropriated by virtue of which the accused was rightfully in possession or control of the property is defective. State v McCullough, 157 M 69, 195 NW 764.

Manager of egg marketing association was convicted of embezzlement on appeal there was a reversal. He should not have been convicted through loss resulting from inefficient management. State v Matsen, 188 M 376, 246 NW 861.

If an unauthorized sale by the pledgee to himself is disaffirmed, the control of pledge remains in force, and the pledgee retains the right of possession. He cannot be charged with conversion. If in such case the facts negative the civil wrong, they negative even more emphatically the criminal wrong of embezzlement. Erickson v Midland National, 205 M 225, 285 NW 611.

When the original possession of property is lawful, the mental act of fraudulent appropriation has to be inferred from the conduct of the accused. State v Hokensen, 211 M 70, 300 NW 193.

The venue of a criminal case must be laid in the county where the crime was committed. State v Heidelberg, 216 M 383, 12 NW(2d) 781.

Embezzlement. 22 MLR 211.

2. Criminal intent

When the original possession is lawful, the mental act of fraudulent appropriation has to be inferred from the conduct of the accused. State v Baumhager, 28 M 296, 9 NW 704.

An intent to defraud or deprive another of his property is an essential element of the offense. State v Kortgaard, 62 M 7, 64 NW 51; State v Rue, 72 M 296, 75 NW 235; State v Cowdery, 79 M 94, 81 NW 750.

When the act is in itself unlawful, the fraudulent intent may be inferred from the intentional commission of the act. State v Kortgaard, 62 M 7, 64 NW 51; State v McGregor, 88 M 77, 92 NW 458.

An intent to convert the property to the use of the accused is not essential. The question of intent is for the jury. State v Rue, 72 M 296, 75 NW 235.

Upon the trial of appellant charged with larceny under Revised Laws 1905, Section 5078 (2), (section 622.01), it was error to charge the jury that in determining the question of intent they might consider Revised Laws 1905, Section 3045 (section 48.75), and that under the provisions of that section guilty intent might be inferred, if appellant knowingly became indebted to the company. State v Barnes, 108 M 227, 122 NW 4.

The state having proved that defendant had settled civil suits brought to recover alleged shortages, it was error to exclude proof that when he made the settlement he had asserted that he had not misappropriated any funds of the company. State v Kiewel, 173 M 473, 217 NW 598.

That a public official clandestinely took public money, put it into his own bank account without making return and that the money is gone, shows as a matter of law the intent necessary under the statute. State v Cater, 190 M 485, 252 NW 421.

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

Where there has been an actual embezzlement and fraudulent appropriation by a servant of money intrusted to him for delivery, a demand and refusal to return the same are not necessary to constitute a conversion punishable as larceny under General Statutes 1866, Chapter 95, Section 23. State v New, 22 M 76; State v Comings, 54 M 359, 56 NW 50.

The offense differs from common law larceny in that the property must have already been in the lawful possession or control of the accused under or by virtue of some employment, trust or agency under and with the consent of the owner, while common law larceny involves the element of an unlawful taking of the property from the actual or constructive possession of the owner. State v Kortgaard, 62 M 7, 64 NW 51.

If a bank officer appropriates to his own use the funds of the bank intrusted to his custody, with intent to deprive the bank of its property, it is none the less embezzlement, because done under the guise or form of a loan to himself or an overdraft of his account. An officer of a bank held to have such possession, cus-

tody or control of the bank funds as to render him liable for embezzlement. State v Kortgaard, 62 M 7, 64 NW 51.

The fraudulent conversion by one of two joint owners may be embezzlement. (Modifying State v Kent, 22 M 41). Turle v Sargent, 63 M 215, 63 NW 349.

An accused held an agent or trustee of a principal, although he was also employed by another principal who paid his services for both. As such agent, he procured the maker of his principal's notes to renew the same and make new notes payable to a third party who never owned or held them, and subsequently converted them to his own use. He was properly indicted for embezzling the new notes. State v Rue, 72 M 296, 75 NW 235.

There must be an intent to defraud. State v Cowdery, 79 M 94, 81 NW 750.

Rule as to appellate practice. State v Billings, 96 M 533, 104 NW 1150.

Charge being that, while vice president of insurance company, defendant feloniously appropriated to his own use check, property of the company, history of the company, and of his relations to it were proper lines of investigation for purpose of throwing light on charge. State v Force, 100 M 396, 111 NW 297.

One employed on commission to sell stock of corporation and report sales and forward moneys received less commission, is an agent. State v Phillips, 105 M 375, 117 NW 508.

Where the president of a bank was convicted of embezzling proceeds of its certificates of deposit, the finding that he received the certificates as agent of the owner for the purpose of investing the proceeds for her is sustained by the evidence. State v Thorton, 174 M 323, 219 NW 176.

Evidence that defendant had been treasurer of a school district and short in his account, and that the proceeds of the bonds were used to make up such shortage, was admissible to show motive and the disposition made of the proceeds of the bonds. State v Lindstrom, 180 M 435, 231 NW 12.

Where a guardian embezzled funds of his ward and paid them to a bank, the bank employees having no notice that he was using anything but his own funds, the guardian cannot recover the fund from the bank in the absence of a showing that recovery is necessary to protect the ward from loss. The primary liability is upon the guardian and his sureties. Galloway v Security State Bank, 193 M 104, 258 NW 10.

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

An indictment of an employee of an express company for the embezzlement of money intrusted to his care held sufficient. State v New, 22 M 76.

An indictment under General Statutes 1866, Chapter 95, Section 23, for the embezzlement and fraudulent conversion of money properly accuses the person indicted of the crime of larceny. State v New, 22 M 76; State v Butler, 26 M 90, 1 NW 821.

An indictment of an agent of a firm for the embezzlement of money collected by him for the firm on a note owned by the firm held sufficient as respects the name of the maker of the note and the name of the firm. State v Butler, 26 M 90, 1 NW 821.

An indictment under General Statutes 1878, Chapter 95, Section 33, held insufficient for failure to allege that the conversion was without the consent of the owner. (This has been overruled by Penal Code, Section 415. See State v Rue, 72 M 296, 75 NW 235.) State v Mims, 26 M 191, 2 NW 492.

Indictment held insufficient (old law prior to Penal Code) for failure to allege that the property was to be carried "for hire". State v Mims, 26 M 191, 2 NW 492.

An indictment of a bailee need not allege a demand in addition to an actual conversion. State v Comings, 54 M 359, 56 NW 50.

The use of the superfluous words "steal and carry away" does not render the indictment subject to the objection that it states two offenses. The omission of the words "and defraud" after the word "deprive" is not fatal. State v Comings, 54 M 359, 56 NW 50.

Under General Statutes 1894, Section 7262, in an indictment of a bank officer, it is sufficient to allege generally an embezzlement of a certain sum without specifying the particulars. State v Kortgaard, 62 M 7, 64 NW 51.

It is not necessary to state that the property was embezzled without the consent of the owner; and an indictment for the embezzlement of notes held sufficient, although it did not state the name of the payee. State v Rue, 72 M 296, 75 NW 235.

An indictment of a bailee held sufficient, although it did not set out the particular facts constituting the bailment. State v Barry, 77 M 128, 79 NW 656.

The goods and the ownership must be set out with the same exact completeness as in an indictment for simple larceny. An indictment of an assignee in insolvency held insufficient for failure to show the ownership of the property. State v Nelson, 79 M 373, 82 NW 674.

An indictment of a bailee must allege the name of the bailor and in concise terms the purpose or use for which the property was intrusted to the accused. State v Holton, 88 M 171, 92 NW 541; State v Schoemperlen, 101 M 8, 111 NW 577.

An indictment charging defendant with having unlawfully and wrongfully appropriated to his own use, certain money and property in his hands, and under his control as "agent", "servant", and "bailee", sufficiently charged larceny by agent. "Bailee" may be rejected as surplusage. State v Fellows, 98 M 179, 107 NW 542, 108 NW 825.

Indictment of one attempting to pick a pocket was held sufficient. An attempt to commit the crime of larceny is an overt act or acts done with intent to deprive the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, and tending to effect the commission of the crime, but failing to accomplish it. State v Miller, 105 M 24, 114 NW 88.

An indictment under section 622.01, which charges larceny from an unincorporated association, sufficiently alleges ownership of the property, since that section specifically recognizes an association as an entity from which it is larceny for one of its officers to appropriate funds, either for his own use or for that of any other person. State v Postal, 215 M 427, 10 NW(2d) 373.

622.02 COMMISSION NO DEFENSE.

HISTORY. Penal Code s. 415½; G.S. 1894 s. 6710; R.L. 1905 s. 5079; G.S. 1913 s. 8871; G.S. 1923 s. 10359; M.S. 1927 s. 10359.

Under General Statutes 1866, Chapter 95, Section 23, prior to the enactment of the Penal Code effective January 1, 1886, fraudulent conversion by one of two joint owners, in this instance a collector of pew rent on commission is not properly indictable. See Penal Code, Section 415½. State v Kent, 21 M 41.

As respects the offenses described in General Statutes 1878, Chapter 95, Section 23, in cases in which the defense that the person charged is entitled to a commission or collection fee out of the money collected by him does not exist, said section is not abrogated by General Statutes 1878, Chapter 95, Section 33. State v Herzog, 25 M 490.

Where the wholesale distributor of coal employed defendant to operate a retail coal yard for the wholesale distributor but under the name of defendant, the property being held by defendant as agent or servant and not as bailee, on default defendant was indicted, and the indictment sufficiently charges the crime of grand larceny. State v Fellows, 98 M 179, 107 NW 542, 108 NW 825.

One who is employed upon a commission basis to sell the capital stock of a corporation and is required to report all sales, and to forward to his principal all moneys received, less his commission, is an agent within the meaning of the statute defining larceny, and defendant was properly convicted of grand larceny. State v Phillips, 105 M 375, 117 NW 508.

When an indictment alleges grand larceny in the first degree committed by obtaining "current and genuine money" by fraudulent representations, and the evidence shows cashable exchange, there is no fatal variance. State v Cary, 128 M 481, 151 NW 186.

A partner making false entries in the partnership books for the purpose of defrauding a partner by concealing misappropriation of funds is guilty of an indictable offence. State v MacGregor, 202 M 579, 279 NW 372.

Right to additional commission for services as testamentary trustee. 17 MLR 213.

622.03 OBTAINING MONEY BY FRAUDULENT DRAFT.

HISTORY. Penal Code s. 416; G.S. 1894 s. 6711; R.L. 1905 s. 5080; G.S. 1913 s. 8872; G.S. 1923 s. 10360; M.S. 1927 s. 10360.

The offense was that defendant in New York gave his check for a large amount and thus procured possession of goods. The check was drawn on a bank where he had no funds. He was detained here on a warrant from the governor of New York and extradition requested. On habeas corpus proceedings here, it appearing that in New York the offense as above described is larceny, the papers being in proper shape the writ of habeas corpus is quashed. State ex rel v O'Connor, 38 M 243, 36 NW 462; State ex rel v Goss, 66 M 291, 68 NW 1089.

Defendant was convicted under the provisions of General Statutes 1894, Section 6711 (section 622.03). The circumstances are such that there is no wilful or intentional wrong. The verdict is set aside and a new trial granted. State v Johnson, 77 M 267, 79 NW 968.

Plaintiff was arrested for overdrawing his account at Milaca, which the bank permitted because of a draft on plaintiff's Duluth office, payment of which was refused. The prosecution was abandoned. This is an action in damages for false arrest. It was conceded at the trial, and on the argument that the criminal complaint on which plaintiff was arrested stated no offense. Verdict in damages sustained. Peake v Milaca Bank, 120 M 455, 139 NW 813.

The indictment set out in the opinion is sufficient, and there is ample evidence to sustain the conviction of one who established a credit at a bank by depositing worthless checks, and then drew checks against the credit so established. State v Scott, 190 M 462, 252 NW 225.

The holder of a note has parted with "property" when he surrenders it in exchange for a check. OAG Nov. 15, 1944 (133b-43).

622.04 GIVING CHECK WITHOUT FUNDS.

HISTORY. 1911 c. 272 s. 1; G.S. 1913 s. 8873; 1919 c. 94 s. 1; G.S. 1923 s. 10361; M.S. 1927 s. 10361; 1931 c. 243 s. 1.

The check was stated to be "in payment of contract in full," and "if not correct, return without alteration, stating differences." The creditor erased the words "in full" and used the check. The acceptance of the check under such circumstances constituted an accord and satisfaction. Thompson v Jastrow, 163 M 333, 203 NW 960.

Plaintiff was indicted, arrested, and tried for checking on a bank where he had no funds, and was acquitted. This action for malicious prosecution followed. He obtained a judgment, and a motion non obstante verdicto was granted. This was reversed on appeal. It is the province of the court to determine whether the established facts constituted probable cause for the arrest; but it is the province of the jury to determine the facts. Polzin v Lischefska, 164 M 260, 204 NW 885.

Stopping payment on a check does not constitute giving a check without funds. It may be fraud. OAG Dec. 7, 1934 (494b-7).

It is not a criminal offense to give a bad check in payment of a gambling debt. OAG Aug. 25, 1937 (605b-10).

Generally the giving of a postdated check is not covered by this section. OAG Dec. 5, 1944 (133b-43).

Effect of Laws 1931, Chapter 243, Section 1. 16 MLR 89.

622.05 GRAND LARCENY, FIRST DEGREE; HOW PUNISHED.

HISTORY. Penal Code ss. 417, 420; G.S. 1894 ss. 6712, 6715; 1897 c. 17; R.L. 1905 s. 5081; G.S. 1913 s. 8874; G.S. 1923 s. 10362; M.S. 1927 s. 10362.

The offense charged in an indictment is determined by the facts alleged and not necessarily by the offense designated by name. Under an indictment which states facts constituting grand larceny in the first degree, although designating the offense in the second degree, the accused may be found guilty in the second degree. State v Snyder, 113 M 244, 129 NW 375.

A person is not given immunity from prosecution for a criminal offense committed in this state merely because he has been brought into the state in violation of his legal rights. His stay of sentence was properly revoked. State v Chandler, 158 M 447, 197 NW 847.

The information alleged that in the night time defendant stole men's clothing of a value greater than $25.00, but failed to allege a taking from the building. The information cannot be sustained as charging grand larceny in the first degree, but sufficiently charges grand larceny in the second degree. State v Kaufman, 172 M 139, 214 NW 785.

The evidence sustains the charge of larceny in the night time. Circumstantial evidence was sufficient to convict. Evidence of another crime introduced but stricken out was not prejudicial. State v Johnson, 173 M 543, 217 NW 683.

The stealing of property of a value less than $25.00 from a building whether day or night is grand larceny in the second degree. State v Ostensoe, 181 M 106, 231 NW 804.

It is not necessary to sustain a conviction in a case of this kind that the complaining witness be shown to have believed the false representations made with intent to defraud him. State v Smith, 192 M 240, 55 NW 826.

622.06 GRAND LARCENY, SECOND DEGREE; HOW PUNISHED.

HISTORY. Penal Code ss. 418, 421; 1887 c. 194; G.S. 1894 ss. 6713, 6716; R.L. 1905 s. 5082; G.S. 1913 s. 8875; G.S. 1923 s. 10363; M.S. 1927 s. 10363.

The evidence justified the jury in finding that the currency taken was money of the United States and of value. State v Dale, 159 M 455, 199 NW 99.

See State v Kaufman, 172 M 142, 214 NW 785; State v Ostensoe, 181 M 108, 231 NW 804.

The evidence sustains a conviction of grand larceny in the second degree. State v Carlson, 178 M 118, 226 NW 206.

Defendant was properly convicted of grand larceny in the second degree in stealing hogs. The admission of evidence of the commission of another crime (stealing barley to feed the hogs), was admissible to show intent. State v Voss, 192 M 127, 255 NW 843.

The statute does not violate either state or federal constitutions prohibiting cruel or unusual punishment. State v Tremont, 196 M 36, 263 NW 906.

Defendant was not entitled to an instruction that the furrier had no lien on the coat in question entitling to possession, unless the labor and material furnished in repairs enhanced its value. State v Cohen, 196 M 40, 263 NW 922.

When the original possession of the property is lawful, the mental act of fraudulent appropriation must be inferred from the conduct of the accused. State v Hokenson, 211 M 70, 300 NW 193.

Prosecution of one who gave a check during federal-declared bank holiday payment of which check was refused on reopening of the bank is not recommended. 1934 OAG 300, Sept. 18, 1934 (494b-7).

622.07 PETIT LARCENY.

HISTORY. Penal Code ss. 419, 422; G.S. 1894 ss. 6714, 6717; R.L. 1905 s. 5083; G.S. 1913 s. 8876; G.S. 1923 s. 10364; M.S. 1927 s. 10364.

It was not error as the word is used in our statute to charge that petit larceny was "committed feloniously." State v Hogard, 12 M 293 (191).

By pleading not guilty to a complaint in a justice court charging defendant with petit larceny, he submitted himself to the jurisdiction of the court, and there was no error in denying defendant's motion to withdraw the plea. State v Henspeter, 199 M 359, 271 NW 700.

622.08 MINIMUM PUNISHMENT FOR LARCENY OF FOWL.

HISTORY. 1929 c. 203; M. Supp. s. 10364-1.

622.09 APPLICATION TO UNISSUED INSTRUMENTS AND FIXTURES.

HISTORY. Penal Code ss. 423, 424; G.S. 1894 ss. 6718, 6719; R.L. 1905 s. 5084; G.S. 1913 s. 8877; G.S. 1923 s. 10365; M.S. 1927 s. 10365.

A passage ticket, completed and ready to be issued, is the proper subject of larceny, under Penal Code, Section 423 (section 622.09). But railway passes intended for employees, prepared and left blank save as respects the printed facsimile signature of the general manager, and which have not been counter-signed by the officer without whose signature they are of no avail, are not within the statute. State v Musgang, 51 M 556, 53 NW 874.

622.10 DOGS PERSONAL PROPERTY, WHEN.

HISTORY. Ex. 1881 c. 82; 1885 c. 177; G.S. 1878 Vol. 2 (1888 Supp.) c. 95 s. 100; G.S. 1894 s. 6904; R.L. 1905 s. 5085; G.S. 1913 s. 8878; G.S. 1923 s. 10366; M.S. 1927 s. 10366.

Dogs are personal property, and an action will lie in favor of the owner of a dog having a substantial money value, for its destruction through the negligence of a third party. Smith v St. Paul City Co. 79 M 254, 82 NW 577; Oldenburg v Petersdorff, 160 M 404, 200 NW 446.

Defendant shot, as he thought, at a dog, and wounded plaintiff's minor son. Shooting at the dog was unlawful, for the dog was not endangering either persons or animals. Corn v Sheppard, 179 M 490, 229 NW 869.

The fact that dogs are personal property and assessed as such, in no way invalidates a municipal ordinance licensing dogs. OAG July 19, 1939 (146d-4).

622.11 LOST PROPERTY.

HISTORY. Penal Code s. 425; G.S. 1894 s. 6720; R.L. 1905 s. 5086; G.S. 1913 s. 8879; G.S. 1923 s. 10367; M.S. 1927 s. 10367.

Upon a charge of larceny of property which has been lost by the owner, an instruction to the jury that "to render the finder of lost property guilty of larceny, two things must concur: (1) the finder must, at at the time of the finding and taking, have and entertain the intention of feloniously appropriating the property to his own use, without the consent of the owner; (2) he must, at the time of the finding, either know the owner, or have the immediate means of ascertaining him, or have reason to believe, and actually believe, that the owner will be found" states the correct rule. It is not necessary that the finder should have actual knowledge of who the owner is. State v Levy, 23 M 104.

Under Penal Code, Section 425 (section 622.11), to render the finder of lost property guilty of larceny in appropriating it to his own use, it is necessary that he found it "under circumstances which gave him knowledge or means of inquiry as to the true owner." State v Boyd, 36 M 538.

The finder of lost property is not guilty of larceny thereof, unless he appropriates the same to his own use with knowledge or means of inquiry as to the true owner, and fails to make every reasonable effort to find the owner and restore the property. It was error to refuse to so instruct the jury. State v Hoshaw, 89 M 307, 94 NW 873.

Outline of requirements of indictment charging larceny of lost property. OAG Aug. 25, 1930.

To consider the marked logs as lost property will afford no solution of the question of salvaging them in view of General Statutes 1913, Section 8879 (section 622.11). 6 MLR 150.

622.12 BRINGING STOLEN GOODS INTO STATE OR ANOTHER COUNTY.

HISTORY. Penal Code ss. 426, 427; G.S. 1894 ss. 6721, 6722; R.L. 1905 s. 5087; G.S. 1913 s. 8880; G.S. 1923 s. 10368; M.S. 1927 s. 10368.

622.13 CONVERSION BY TRUSTEE.

HISTORY. Penal Code s. 428; G.S. 1894 s. 6723; R.L. 1905 s. 5088; G.S. 1913 s. 8881; G.S. 1923 s. 10369; M.S. 1927 s. 10369.

An indictment for larceny under Penal Code, Section 428 (section 622.13), the general allegations that the defendant withheld the money from the true owner, and appropriated it to his own use, are so limited and qualified by the allegations of the specific facts upon which the general allegations are predicated that the facts stated in the indictment do not constitute a public offense. State v Farrington, 59 M 147, 60 NW 1088.

The indictment states specifically that the money appropriated was the property of Peterson. Defendant was assignee of Peterson under our assignment laws. The court erred in overruling a general demurrer to the indictment. State v Nelson, 79 M 373, 82 NW 674.

The evidence sustains a verdict finding that the defendant was guilty of grand larceny in the first degree in embezzling money of the estate of an incompetent of which defendant was the probate guardian. State v Thang, 188 M 225, 246 NW 891.

622.14 VERBAL FALSE PRETENSE.

HISTORY. Penal Code s. 429; G.S. 1894 s. 6724; R.L. 1905 s. 5089; G.S. 1913 s. 8882; G.S. 1923 s. 10370; M.S. 1927 s. 10370.

Defendant represented that he "was the brother of V. V. Harris, and that he and his brother had a contract with the Oliver Iron Mining Company." This is an altogether different representation than that described in Revised Laws 1905, Section 5089 (section 622.14), and does not relate to defendants "ability to pay." The indictment and conviction are sustained. State v Harris, 116 M 401, 133 NW 980.

622.15 VALUE OF EVIDENCE OF DEBT, HOW ASCERTAINED.

HISTORY. Penal Code ss. 430 to 432; G.S. 1894 ss. 6725 to 6727; R.L. 1905 s. 5090; G.S. 1913 s. 8883; G.S. 1923 s. 10371; M.S. 1927 s. 10371.

A "receipted voucher" may be the subject of larceny. State v Scanlan, 89 M 244, 94 NW 686.

622.16 CLAIM OF TITLE, WHEN GROUND OF DEFENSE.

HISTORY. Penal Code s. 433; G.S. 1894 s. 6728; R.L. 1905 s. 5091; G.S. 1913 s. 8884; G.S. 1923 s. 10372; M.S. 1927 s. 10372.

The fact that in the execution of their unlawful purpose, Brady assumed, without authority from the owner, to sell, and defendant to buy, a part of the goods stolen, would not constitute an appropriation by defendant under claim of title in good faith. State v Colwell, 43 M 378, 45 NW 847.

An attorney was properly convicted for embezzling moneys collected for his client. The claim of title under which defendant assumed to appropriate the money was untenable. State v Brame, 61 M 101, 63 NW 250.

Defendant was not entitled to an instruction that the furrier had no lien entitling him to possession. State v Cohen, 196 M 39, 263 NW 922.

Defendants and other members of Local 544, A. F. of L. being in danger of expulsion claimed good faith in taking from the treasury the moneys taken. The evidence sustains the conviction, the claim of title by defendant and other officers of the local being untenable. State v Postal, 215 M 427, 10 NW(2d) 373.

622.17 INTENT TO RESTORE PROPERTY.

HISTORY. Penal Code s. 434; G.S. 1894 s. 6729; R.L. 1905 s. 5092; G.S. 1913 s. 8885; G.S. 1923 s. 10373; M.S. 1927 s. 10373.

In the instant case, defendant's claim that he invested the proceeds of the certificates for the owner has no basis of fact to support it; and evidence to show a settlement of the civil claim was properly excluded. State v Thornton, 174 M 323, 219 NW 176.

In an action on a policy of insurance issued by the defendant covering loss or damage to an auto by theft, robbery, or pilferage, the evidence does not sustain a finding of liability. Repp v American Farmers Co. 179 M 167, 228 NW 605.

Where a party took an automobile without the owner's permission, collided with a tree, and left the auto, such acts are sufficient to support a finding of larceny. Mullaney v Firemen's Co. 206 M 30, 287 NW 118.

An instruction that the return of stolen property "does not wipe the slate clean" is in harmony with the statute which provides that "the fact that the defendant intended to restore the property stolen shall be no ground of defense." State v Eggermont, 206 M 275, 288 NW 390.

622.18 RECEIVING STOLEN PROPERTY; AVERMENT AND PROOF.

HISTORY. Penal Code ss. 435, 436; G.S. 1894 ss. 6730, 6731; R.L. 1905 s. 5093; G.S. 1913 s. 8886; G.S. 1923 s. 10374; M.S. 1927 s. 10374.

Under Laws 1866, Chapter 95, Section 23, a person may be guilty of simple larceny, although he obtains the goods, alleged to have been stolen, from and through another person, whose relation to the owner of the goods is such that his acts in reference to the goods makes him an embezzler, and guilty of constructive larceny. State v McCartey, 17 M 76 (54).

To sustain a conviction on an indictment for buying and receiving stolen goods, the state must bear the burden of showing that defendant bought the property described, that the property received was stolen, and that the defendant knew it to be stolen when he bought it. The testimony of an accomplice must be corroborated. The evidence may be circumstantial. State v Gordon, 105 M 217, 117 NW 483.

A city ordinance requiring pawnbrokers to keep a registry of all goods purchased and of loans made, and to report the same to the police department, is admissible in evidence as bearing on the guilt of a pawnbroker charged with receiving stolen goods, who fails to keep complete registry or report. State v Hersvitz, 108 M 174, 121 NW 905.

A fur store was burglarized in the early morning June 30, and the goods, still with the store tags thereon, were found in defendant's attic the afternoon of July 3. This fact and other evidence were sufficient to sustain a verdict of grand larceny in the first degree. State v Couplin, 146 M 189, 178 NW 486.

Information charged defendant with concealing stolen securities. Defendant's motion to set aside the information, because not presented to the court within three years, being denied, on appeal there was a remand with direction to set aside the information. State v Rank, 162 M 393, 203 NW 49.

Prosecution for receiving stolen property. The evidence made the question of defendant's guilt a question for the jury. Although guilty knowledge may be shown by circumstantial evidence, it must be proven beyond a reasonable doubt. State v Friedson, 170 M 72, 211 NW 958.

Evidence that defendant, shortly prior to the offense charged, had received other stolen property from the same parties involved in the principal action is admissible to prove guilty knowledge. State v Gifis, 195 M 276, 262 NW 637.

Limitation of actions; acquisition of title to stolen property by adverse possession for statutory period. 15 MLR 714.

622.19 LARCENY AT FIRES, HOW PUNISHED.

HISTORY. 1874 c. 49 s. 2; G.S. 1878 c. 95 s. 10; G.S. 1894 s. 6863; R.L. 1905 s. 5094; G.S. 1913 s. 8887; G.S. 1923 s. 10375; M.S. 1927 s. 10375.

622.20 RESTORATION OF STOLEN PROPERTY; DUTY OF OFFICERS.

HISTORY. R.S. 1851 c. 101 s. 20; P.S. 1858 c. 90 s. 20; G.S. 1866 c. 95 s. 21; 1867 s. 86 s. 1; G.S. 1878 c. 95 s. 31; G.S. 1894 s. 6872; R.L. 1905 s. 5095; G.S. 1913 s. 8888; G.S. 1923 s. 10376; M.S. 1927 s. 10376.

622.21 STEALING FROM CARS.

HISTORY. 1903 c. 278; R.L. 1905 s. 5191; G.S. 1913 s. 9025; G.S. 1923 s. 10529; M.S. 1927 s. 10529.

622.22 STEALING OR PRINTING TRANSPORTATION TICKET, COUPON, OR PASS.

HISTORY. Penal Code s. 8; G.S. 1894 s. 2792; R.L. 1905 s. 5186; G.S. 1913 s. 9020; G.S. 1923 s. 10524; M.S. 1927 s. 10524.