CHAPTER 621

OFFENSES AGAINST PROPERTY BY FORCE

ARSON

621.02 ARSON; FIRST DEGREE.

In a prosecution for arson for the deliberate burning of a clothing store, evidence that defendant suffered a similar fire three months earlier, the plans and details of which, indicating deliberation, were the same as those of the fire in question, was admissible in corroboration of that tending to show the guilt of the charge on trial. State v Ettenberg, 145 M 39, 176 NW 171.

An attempt by a person under indictment for crime to bribe an adverse witness who is likely to be called at the trial to testify against him is evidence of guilt and may be so considered by the jury. State v Ettenberg, 145 M 39, 176 NW 171.

In a prosecution for arson, it was competent for the state to prove the condition of defendant's bank accounts, presence of bill-collectors at his place of business, and his outstanding obligations as relative to motive. State v Rosenswieg, 168 M 459, 210 NW 403.

In a prosecution for arson, where an admitted accomplice in the crime is called by the state as a witness and, on cross-examination, statements contradicting his testimony for the state are introduced, the state may introduce other statements, made by the witness at about the same time, consistent with his testimony on direct examination. State v Lynch, 192 M 534, 257 NW 278.

The circumstantial evidence introduced by the state was sufficient to justify the jury in finding that the fire, which the defendant was accused of setting, was an incendiary fire and that defendant set it. Experienced firemen who observed the fire were properly permitted to testify that, from the manner and speed with which the fire burned and spread, it was a "boosted" fire, that is, that some inflammable substance other than that of which the building was constructed or which it contained contributed to its burning and spreading. State v Lytle, 214 M 171, 7 NW(2d) 305.

621.03 ARSON; SECOND DEGREE.

In a prosecution for arson where a house was burned from the inside, the doors were locked, a chair was blocked against the front door hinged under the door knob, there were several centers of the fire with "leads" from one to another, pieces of celluloid were scattered about, and there was an odor of kerosene. There was no fire in the furnace and examination showed that nothing was wrong with the electric wiring. The evidence sustains a finding that the fire was of incendiary origin. State v Goldman, 166 M 292, 207 NW 627.

621.04 ARSON; THIRD DEGREE.

Where in a criminal case the evidence of defendant's guilt is all circumstantial, the requirement of proof beyond a reasonable doubt is not satisfied if the inference of innocence is as reasonable as that of guilt. State v Kaster, 211 M 119, 300 NW 897.

See, State v Lytle, 214 M 171, 7 NW(2d) 305, noted under section 621.02.

621.06 OWNERSHIP OF BUILDING.

A husband may be guilty of arson for the wilful burning of his wife's building not occupied by them as their mutual abode. The statute does away with the common law limitation. State v Roth, 117 M 404, 136 NW 12.

BURGLARY

621.07 BURGLARY; FIRST DEGREE.

In a criminal prosecution the state offered in evidence in corroboration of the testimony of the complaining witness a letter written by him two years before the trial, containing the statement of a fact upon a vital issue in the case, to the same effect as testified to him on the trial. The trial court was in error in permitting this evidence; a witness cannot thus be corroborated. State v Moses, 150 M 470, 186 NW 303.

621.10 BURGLARY; THIRD DEGREE.

Defendant had been a member of a club but ceased to be a member by withdrawing his deposit. He was in the clubroom during the evening, was intoxicated, and went out the back door when the front door was locked. He came back, knocked at the front door, and kicked a hole in the door through which he crawled. He awakened the watchman but when out through the hole he had made. Later he was admitted by the watchman. The facts do not show burglary in the third degree. The evidence was insufficient to support such conviction. State v Riggs, 74 M 460, 77 NW 302.

In indictment for burglary in the third degree, alleging that the defendant broke and entered the warehouse of the Halvorson-Richards Company, with intent to commit the crime of larceny therein, sufficiently alleges the ownership of the building. It was not necessary to allege that the company was a corporation or a copartnership, nor that there were then in the building any chattels which could be the subject of larceny. State v Golden, 86 M 206, 90 NW 398.

EXTORTION, BLACKMAIL, OPPRESSION

621.14 EXTORTION.

Payment of money to another, induced by fear of exposure by such person of a compromising situation with a woman, constitutes extortion within the meaning of section 621.14, and it is not necessary to prove intent as an independent fact. The essential facts constituting extortion being established, intent is presumed. Appellant brought about a series of events which resulted in placing P. in a compromising situation, and which induced him to pay money to appellant as the result of fear, to avoid exposure. It is immaterial that appellant may have originally intended merely to secure evidence against P. to be used in a divorce suit. Having created the situation, he could not accept hush money, paid under the stress of fear, and claim immunity simply because no express threat was made. The real relations between the state's witnesses, P. and the girl who lured him into the compromising situation, was a collateral matter, having nothing to do with the offense charged. State v Coleman, 99 M 487, 110 NW 5.

Extortion; threat to discharge employee. 19 MLR 341.

621.16 INTERFERING WITH EMPLOYEE OR MEMBERSHIP IN UNION.

Industrial disputes. 6 MLR 536.

Interference with employment as actionable. 10 MLR 449.

Interference with contract. 12 MLR 171.

Extortion; threat to discharge employee. 19 MLR 341.

Labor injunction in Minnesota. 24 MLR 759.

INJURIES TO PROPERTY

621.20 REMOVING PROPERTY FROM MORTGAGED LAND.

Section 621.20 does not make it a crime to sell timber on mortgaged land. Timber is not a fixture within the meaning of the statute. 1944 OAG 85, Nov. 18, 1943 (27-G).

The restriction against removal of buildings from mortgaged land without the consent of the mortgagee applies where a village is owner of the property. OAG May 11, 1945 (928-a-8).

Extending to agricultural fixtures the rule permitting removal of trade fixtures. 22 MLR 563.

Liability of mortgagor or his grantee to mortgagee for waste. 27 MLR 407.

621.21 SELLING OR CONCEALING MORTGAGED CHATTELS.

Effect of the amendment, L. 1931, c. 343. 16 MLR 89.

Validity of after acquired property. 25 MLR 514.

621.24 FRAUDULENT DESTRUCTION OF INSURED PROPERTY.

See, State v Ettenberg, 145 M 39, 176 NW 171, noted under section 621.02.

621.25 INJURY OF PROPERTY.

Necessity of malice against the owner in a prosecution for malicious mischief. 7 MLR 167.

621.26 INJURY TO OTHER PROPERTY.

A verdict in treble damage for malicious injury to plaintiff's property was justified when defendant castrated plaintiff's bull which had broken into defendant's pasture. Mitzel v Zachman, 219 M 253, 16 NW(2d) 472.

A person may be prosecuted under section 621.26 for malicious destruction of property where he takes a motor boat without the owner's consent and deliberately and intentionally causes damage thereto. OAG Oct. 15, 1945 (133-B-45).

621.28 INJURING HIGHWAYS AND VARIOUS.

A person who places an obstruction on a township road may be prosecuted under section 621.28 or the township may bring injunction proceedings. OAG Aug. 14, 1940 (377-A-5).

621.30 INTERFERING WITH RAILWAY GATES AND OBSTRUCTING.

In an action to recover damages for the loss of stock alleged to have been killed by the wanton and wilful negligence of defendant's trainmen, the evidence sustains the verdict for the plaintiff as the ponies were discovered on the track in a perilous position by those in charge of the defendant's train in time, with safety to the train and those on it, to have avoided hitting them by the exercise of ordinary care, and they failed to do so. Best v Great Northern, 95 M 67, 103 NW 709.

The evidence justified a finding that defendant was free from negligence in the operation of its train at an excessive speed or in failure to keep a proper lookout for persons or animals near the track. Erickson v Chicago, Great Western, 116 M 535, 133 NW 1133.

Wilful negligence in killing stock by a railroad train can only be predicated on the fact that the trainmen saw the animals in their place of danger in time to avoid injuring them. The evidence in this case is insufficient to show such wilful negligence. Lindemann v Chgo. Rock Island, 154 M 363, 191 NW 825.

621.31 TRESPASS ON RAILWAY TRACK.

To render a railroad company liable for injuries resulting from the operation of its trains or other conduct of its business and affairs it must appear that the company failed in the performance of some duty it owed to the injured party; and a railroad company as a general rule owes no duty to a trespasser upon its premises, child or adult, except to refrain from wantonly or wilfully injuring him. El-

lington v Great Northern, 96 M 176, 104 NW 827; Piper v Chicago, Milwaukee, & St. Paul, 116 M 238, 133 NW 984; Palon v Great Northern, 135 M 154, 160 NW 670.

In the instant case where a pedestrian used a railroad bridge which was not the direct or most convenient way was negligent as a matter of law and is barred from recovery for death caused by a passing train. Hanks v Great Northern, 131 M 281, 154 NW 1088; Darrington v Chicago & Northwestern, 134 M 30, 158 NW 727.

Trainmen owe no duty to unknown and unexpected trespassers on the track until they become aware of them, and then they owe the duty of exercising ordinary care not to do them harm. An instruction to the effect that the trainmen owe trespassers the duty of exercising ordinary care in discovering them upon the tracks is erroneous. Denzer v Great Northern, 188 M 580, 248 NW 44.

The law recognized the track of an operated railroad as a place of danger, of which danger a view of the track conveys notice; and when a person goes upon such track, or so near it as to be within the overhang of the cars or engine, ordinary care requires that he be alert in the use of his senses of sight and hearing to guard himself from harm, and no reliance on the exercise of care by persons in control of trains will excuse his failure to exercise such care. If the use of these senses is interfered with by obstructions or by noises, ordinary reasonable care calls for porportionately increased vigilance. Garlich v Northern Pac. Ry. Co. 131 F. 837.

621.32 INJURY TO BAGGAGE.

Liability of carrier for loss of baggage not accompanied by the passenger. 6 MLR 315.

621.44 ENDANGERING LIFE AND PROPERTY BY EXPLOSIVES.

A Minneapolis city ordinance, approved November 24, 1924, requiring a permit from the city council for maintenance of structures or premises for storage of oil and other named purposes, is not so inconsistent with the building and safety code adopted April 3, 1934, or with the ordinance for the prevention of fires, approved December 16, 1936, as to be impliedly repealed by either. State v Northwest Linseed Co. 209 M 422, 297 NW 635.

Liability for damages done to land by blasting. 19 MLR 322.

621.48 DRAINING MEANDERED LAKES; USE AS LOG RESERVOIRS.

By the establishment of a county ditch certain lands were assessed for drainage benefits. Where land is so benefited and assessed there comes into being a property right appurtenant to the land not to be taken away or impaired except by due process; and in the instant case, the assessed landowner's rights were limited both under the drainage act and the proceedings had thereunder to the benefits accruing within the stated purposes and that subsequent erosion of the lake outlet whereby the natural water level was much lowered cannot be claimed to be a barrier against the state in now seeking restoration of the lake level to its natural and normal height. Clarke v Wenzel, 208 M 158, 293 NW 140.

621.56 COERCION.

Distinction between guests, landlords, and tenants when prosecuting the offense of coercion. 22 MLR 1055.

Labor injunction in Minnesota. 24 MLR 757, 760, 771, 800.