CHAPTER 622

LARCENY

622.01 LARCENY; WHAT CONSTITUTES.

Although one accused of crime cannot be convicted upon his confession alone, he may be convicted when his confession is corroborated by the testimony of the accomplice. In the instant case where defendant was indicted for grand larceny in the second degree for stealing hogs, evidence that on that same evening he stole barley was properly admissible to show motive. State v Voss, 192 M 127, 252 NW 843.

If a pledgor effectually affirms an unauthorized sale by the pledgee to himself, he affirms it as an entirety; and his only right then is to have credited on his debt the amount realized from the sale with payment to him of the surplus, if any. If an unauthorized sale by the pledgee to himself is disaffirmed, he remaining in possession of the pledged property, the contract of pledge remains in force and he cannot be charged with conversion; and where in such a case the facts negative the civil wrong of conversion, they negative the criminal wrong of embezzlement. Erickson v Midland National, 205 M 224, 285 NW 611.

The defendants took 46 bales of binder twine from a railroad car, loaded it on their truck, took it to one farmer who refused to permit the twine to be unloaded, and drove it to a second farm where permission was given to keep the property on its premises until morning, when it was taken by the Kyles and returned to the railroad company. The evidence is such as to justify the jury in concluding that defendant aided and abetted others in taking property from the possession of another with intent to deprive the true owner thereof. 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 is no ground of defense." State v Eggermont, 206 M 274, 288 NW 390.

Evidence of a proposal to plead guilty to a charge of embezzlement on the promise or recommendation of a suspended sentence is not admissible on the trial on the subsequent plea of "not guilty" to the same charge. State v McGunn, 208 M 349, 294 NW 208.

Where an employe with the employer's consent retains money belonging to the employer which came into the employe's hands during the period of service covered by the contract of employment, he is not guilty of unfaithful and dishonest service forfeiting his right to compensation. A retention of any of an employer's funds by an employe occurring prior to the time covered by the contract is immaterial and irrelevant. Hlubeck v Beeler, 214 M 485, 9 NW(2d) 252.

Where it is shown that defendant in operating a radio repair shop pursued a course of conduct characterized by overcharging, making unnecessary and unauthorized repairs, the evidence sustains the verdict of vagrancy, pursuant to section 614.57 (8). State v Suman, 216 M 293, 12 NW(2d) 620.

In a 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 acquisition of wealth contemporaneous with the theft. Neal v United States, 102 F(2d) 643.

Under certain circumstances the stopping payment of a check may constitute embezzlement. OAG April 19, 1945 (133-B-45).

Even though the taker intends to restore the motor boat, the taking without the consent of the owner is larceny. OAG Oct. 15, 1945 (133-B-45).

A person other than the payee to whom a school district salary warrant was delivered by mistake, and who knowing it was not his warrant endorsed his name on it and presented it to a bank and received the amount called for, such person may be prosecuted for larceny under the provisions of section 622.01, or for forgery in the second degree under section 620.20. OAG July 19, 1946 (133-B-31).

Intent to deprive the owner of his property or to make use thereof, or to appropriate the same to the use of the taker, is the essence of larceny; but in case of the finding of lost property, or the retention of mistakenly delivered goods, the intent must be clearly proved. OAG Feb. 11, 1947 (605-B-33).

False pretenses. 12 MLR 540.

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

Embezzlement. 22 MLR 211.

622.02 COMMISSION NO DEFENSE.

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

622.03 OBTAINING MONEY BY FRAUDULENT DRAFT.

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

622.04 GIVING CHECK WITHOUT FUNDS.

Plaintiff sold and delivered to defendant its grain elevator and load of grain and received in payment a check drawn by defendant on a bank which refused to pay the check on the grounds that the defendant had no funds therein. An attachment based on an affidavit alleging fraud and taking money with intent to dispose of property to hinder and defraud creditors was a proper allegation under the provisions of section 622.04. Jandera v Lakefield Union, 150 M 476, 185 NW 656.

The fact that at the time a teacher was employed he wrote checks on banks in which he never had funds on deposit, justifies the school board in terminating his contract and dismissing him. OAG Feb. 7, 1942 (172-c-1).

Effect of L. 1931, c. 243, s. 1. 16 MLR 89.

622.05 GRAND LARCENY, FIRST DEGREE; HOW PUNISHED.

The jury could find that defendant and the two others indicted with him had possession of recently stolen goods under such circumstances that they either participated in the actual felonious taking, or planned, aided or abetted the same. State v Morgan, 146 M 197, 178 NW 489.

The court erroneously instructed the jury that defendant was charged with grand larceny in the first degree. The jury found defendant guilty as charged in the information. As the indictment was only for grand larceny in the second degree, the verdict was in effect a verdict of guilty in the second degree. Such conviction is a bar to a subsequent prosecution for the graver offense and, since the defendant escapes the penalty attending such offense, he cannot be heard to say that any of his substantial rights were prejudiced. State v Kaufman, 172 M 139, 214 NW 785.

Receiving evidence of another crime, which would have been competent if the defendant's connection therewith could have been established, and which was stricken out and the jury instructed to disregard it upon failure of the state sufficiently to connect the defendant therewith, was not reversible error. State v Johnson, 173 M 543, 217 NW 683.

Appellant claims that while the indictment charged that the money was purported to have been the property of Winsett, and that a defendant received and held the money as Winsett's agent and bailee, the evidence shows the property to have been the property of one Gordhammer, and that defendant held it as his agent

and bailee. The circumstances are such that there is no variance between the indictment and the proof. State v Uglum, 175 M 607, 222 NW 280.

622.06 GRAND LARCENY, SECOND DEGREE; HOW PUNISHED.

Where a shoplifter took two sets of curtains from a department store, she could be charged and convicted of the crime of grand larceny in the second degree, pursuant to section 622.06 (3). State v Tremont, 196 M 36, 263 NW 906.

In a criminal prosecution the accused is entitled to "the right to a trial, by an impartial jury of the county wherein the crime shall have been committed." This guaranty is constitutional and statutory. See as to historical development of this rule, State v Brown, 103 Vt. 112, 154 At. 579. State v Heidelberg, 216 M 385, 12 NW(2d) 781.

The district court sentence to state prison was valid and not subject to collateral attack in habeas corpus proceeding. Willoughby v Utecht, 223 M 572, 27 NW(2d) 780.

622.07 PETIT LARCENY.

In prosecution against alleged shoplifter, conversation with employees of store owner from which the goods were taken, wherein defendant admitted her guilt, the conversation taking place soon after theft of goods, which were found in defendant's shopping bag, was admissible in evidence. Her written confession was also admissible. State v Priebe, 221 M 318, 22 NW(2d) 1.

622.10 DOGS PERSONAL PROPERTY, WHEN.

Dogs may be killed under statutory authority when they are nuisances, or when they molest live stock or poultry. Under the common law, one may kill a dog in the defense of his property; but the killing must be a fair act of prudence and under such circumstances creating a reasonable belief that such killing is necessary to prevent injury. This rule was not abrogated by above quoted statutes. O'Leary v Wangensteen, 175 M 368, 221 NW 430.

622.11 LOST PROPERTY.

Intent to deprive the owner of his property or to make use thereof, or to appropriate the same to the use of the taker, is the essense of larceny; but in case of the finding of lost property, or the retention of mistakenly delivered goods, the intent must be clearly proved. OAG Feb. 11, 1947 (605-B-33).

Salvage of sunken logs. 6 MLR 149.

Finding lost goods; right of custody where locus of goods is found is private. 9 MLR 390.

Since the statute makes it larceny for a finder of lost property to appropriate it to his own use when he has knowledge of the true owner, the return by the plaintiff was an act required by law and constitutes no consideration to support the promise to pay the reward. 31 MLR 627.

622.13 CONVERSION BY TRUSTEE.

Prosecution is not barred by the three-year limitation against a guardian for grand larceny based on embezzlement of money from an incompetent's estate. State v Thang, 188 M 224, 246 NW 891.

Wrongful concealment of facts by one party is ground for the other to have a release set aside and sue for the value of the property converted. Norris v Cohen, 223 M 471, 27 NW(2d) 277.

An action for money had and received will lie whenever one person has possession of money which in equity belongs to another and ought to be delivered to him; and where an employee retained the proceeds of merchandise sold he was liable in conversion. Norris v Cohen, 223 M 471, 27 NW(2d) 277.

622.18 RECEIVING STOLEN PROPERTY; AVERMENT AND PROOF.

Evidence disclosing a general system practiced by defendant of stealing or receiving stolen automobiles and so disfiguring them as to render indentification by the owner difficult or impossible, and then disposing of them on the market, is admissible in corroboration of the inference of guilt arising from the possession and control by him of a recently stolen automobile which, while so in his possession, had been subjected to the systematic treatment given other stolen cars. The fact that such evidence tends also to prove defendant guilty of other crimes does not render it objectionable or inadmissible. State v Monroe, 142 M 394, 172 NW 313.

Receiving stolen goods; national stolen property act; interstate transportation of forged or falsely made checks. 31 MLR 376.

622.20 RESTORATION OF STOLEN PROPERTY; DUTY OF OFFICERS.

On trial of a defendant charged with falsely receiving stolen goods, it is proper to receive evidence that defendant received stolen goods from the same property on other occasions, either to show a system of operation, or to show guilty knowledge of the accused. State v Rosenberg, 155 M 37, 192 NW 194.