charge, was libelous per se. Flynn v. Western U. T. Co. 199 W 124, 225 NW 742.

"Justification" carries the idea of, and is synonymous with, "reasonable excuse," and is not as final and definite a term as "justified"; "justification" for the use of words may exist without establishing their truth if they were used upon a lawful occasion upon probable cause and from good motives. Where slanderous words have been used they are deemed malicious and a prima facie case has been made; but when the evidence shows or tends to show that the words were spoken with good motives and for justifiable ends, actual malice must be established. State v. Mueller, 208 W 543, 243 NW 478.

Writing and introducing a resolution by a member of a city council, and causing it to be read by the city clerk in proceedings of the council, falsely charging that a circuit judge decided a case favorably to the city in return for appointment of his son to the position of assistant district attorney, charged the judge with an act having a direct tendency to injure him in reputation, degrade and disgrace him in society, and bring him into public distrust, scorn, contempt and hatred; and the malicious publication thereof constitutes libel. In a prosecution for criminal libel under the statute, where the information charged libel and slander in several counts, refusal of the trial court to order it made more definite and certain by limiting it to one specific charge of libel, or to require the district attorney to elect on which count he would proceed, was not prejudicial. Branigan v. State, 209 W 249, 244 NW 767.

In the law of libel, as contrasted with that of slander or oral defamation, comments or epithets of an abusive character tending to bring the person at whom they are directed into contempt, hatred, or ridicule are defamatory per se. Whether use of the words "racketeer" and "Chicago gangster" in a radio broadcast respecting an officer of a co-operative milk pool levying tribute upon farmers was libelous per se presented a question for the jury. Singler v. Journal Co. 218 W 263, 260 NW 431.

A corporation may be guilty of criminal libel, but cannot offend against the so-called criminal gossip law. 4 Atty. Gen. 219.

A person who speaks defamatory words over a telephone line where they may be heard by persons taking down their receivers may be prosecuted. 6 Atty. Gen. 103.

Two witnesses other than the one slandered must hear language used at identically the same time. The date of admission by defendant may be alleged as the date of the crime and proof may be made that the slanderous words were uttered on a date prior to the date of admission. 25 Atty. Gen. 305.

942.02 History: 1955 c. 696; Stats. 1955 s. 942.02.

See notes to sec. 3, art. I, on freedom of speech, citing State v. Evjue, 253 W 146, 32 NW (2d) 305.

942.03 History: 1955 c. 696; Stats. 1955 s. 942.03.

942.04 History: 1955 c. 696; Stats. 1955 s. 942.04; 1959 c. 118; 1965 c. 439.

A master is liable under ch. 223, Laws 1895, for the neglect of his servant to serve a customer in a public restaurant solely because he was colored, notwithstanding the servant's refusal was in direct violation of his master's command, and the servant's act was not ratified. The minimum damages fixed are to be regarded as compensatory. Bryan v. Adler, 97 W 124, 72 NW 368.

A roller-skating rink to which the public is admitted is within the terms of sec. 4398c, Stats. 1898. Jones v. Broadway R. R. Co. 136 W 595, 118 NW 170.

942.04, Stats. 1963, does not apply to the operator of a trailer park who rents space upon which to park house trailers. 52 Atty. Gen. 263.

Resort applications requiring information as to race, creed, color, national origin, etc., would be in violation of 942.04, Stats. 1963. 53 Atty. Gen. 130.

What is a place of "public" accommodation? Arins, 52 MLR 1.

942.05 History: 1955 c. 696; Stats. 1955 s. 942.05.

The superintendent of the Wisconsin school for the deaf has no authority to open U. S. mail addressed to inmates, without authority from them. 12 Atty. Gen. 14.

CHAPTER 943.

Crimes Against Property.

943.01 History: 1955 c. 696; Stats. 1955 s. 943.01; 1969 c. 252.

In a prosecution for wilfully, maliciously or wantonly tearing down a building there must be an allegation and proof that the building was standing or being upon the land of another person than the defendant or the person under whom he seeks to justify the act, and hence evidence that the legal title was in such other person is admissible. Wantonly, as used in sec. 4441, R. S. 1878, means in reckless disregard of the lawful rights of the owner of the building—a heedlessness of the necessary results of the act complained of. Werner v. State, 93 W 266, 67 NW 417.

The evidence was sufficient to sustain a conviction for unlawfully injuring and interfering with the lawful operation of an automobile, and for rioting. Sekat v. State, 218 W 91, 260 NW 246.

In the provision in 343.44, Stats. 1939, for the punishment of any person who "shall wilfully, maliciously or wantonly destroy" or injure any fence, hedge, etc., the quoted adverbs are used in the disjunctive, so that even if they are considered applicable also to the provision in the same section for the punishment of any person who "shall injure or destroy" any personal property of another, neither malice nor wantonness is an essential element that must be proved in addition to wilfulness in order to sustain a conviction for the latter offense. State v. Carroll, 239 W 625, 2 NW (2d) 211.

Where the defendant in a prosecution for destroying a fence admittedly did not own the land on which the fence stood he violated 343.44, Stats. 1953, in tearing down the fence, whether the land belonged to private parties

or to the state. State v. Bednarski, 1 W (2d) 639, 85 NW (2d) 396.

The defendant's deliberately aggressive act of destroying the fence in question was wilful and wanton, and his mistake of law in believing that he had a right to tear down a fence on state-owned lake bed did not relieve his act of those characteristics. State v. Bednarski, 1 W (2d) 639, 85 NW (2d) 396.

The act of a city in laying out and constructing a street over portion of a cemetery owned by it in which graves are located which are not marked by any tombstones, headstones or other distinguishing marks, so that such graves will be covered by an earth fill and hard-surfaced street, does not, under the facts submitted, show any violation of criminal statutes. 33 Atty. Gen. 233.

See note to 943.02, citing 38 Atty. Gen. 566.

943.02 History: 1955 c. 696; Stats. 1955 s. 943.02; 1961 c. 50.

The words "other building" must be given a literal meaning and are not limited by the doctrine of noscitur a sociis. These words extend to and include a fishing shack. Boardman v. State, 203 W 173, 233 NW 556.

See note to sec. 1, art. I, on exercises of police power, citing Voss v. State, 204 W 432, 236 NW 128.

In a prosecution for maliciously burning a dwelling house owned by the defendant, and the burning of household furnishings with intent to defraud the insurance company, resulting from an explosion and fire of concededly incendiary origin which occurred while the defendant was away on a 2-day trip, the evidence was insufficient to sustain a conviction, it being considered that, disregarding proof of motive, every act of the defendant relating to the offense was as consistent with her innocence as with her guilt, and that the evidence with respect to motive was not sufficient in connection with the remainder of the evidence to warrant the jury in finding the defendant guilty beyond a reasonable doubt. Wittig v. State, 235 W 274, 292 NW 879.

On a preliminary examination of a husband and wife on charges of arson of a dwelling house of which they were tenants and arson of personal property to defraud the insurer of the personal property, evidence as to conditions found in and around the burned premises, and as to actions of the defendants in making claim for loss, together with other evidence, was sufficient to arouse a suspicion but was insufficient to show within reasonable probabilities that the fire was of incendiary origin, hence did not warrant binding the defendants over for trial. State v. Janasky, 258 W 182, 45 NW (2d) 78.

Where the fire causes death to another the correct procedure is to bring a single charge of third-degree murder and for the court to submit verdicts of third-degree murder, arson, and not guilty, since the arson is an included crime within 939.66 (1), Stats. 1955. State v. Carlson, 5 W (2d) 595, 93 NW (2d) 354.

Where the circumstances of defendant's entry into a home where he set fires negatives consent, the fact that only one of the joint owners testified to a lack of consent does not constitute a failure to prove the offense. State v. Shoffner, 31 W (2d) 412, 143 NW (2d) 458.

The two elements which must be proved beyond a reasonable doubt in order to sustain a conviction for the crime of arson are: (1) The *corpus delicti*, that is, a fire caused by a criminal agency, and (2) the identity of defendant as the one responsible for the fire. State v. Kitowski, 44 W (2d) 259, 170 NW (2d) 703.

In imposing sentence for an admitted crime (arson, in violation of 943.02) the trial judge may consider other unproven offenses, for these are evidence of a pattern of behavior which, in turn, is an index of the defendant's character, a critical factor in the sentencing. State v. Smith, 45 W (2d) 39, 172 NW (2d) 18.

A person who by dynamite destroys a partially constructed building on his own land does not violate 343.422 or 343.44, Stats. 1949, or any other criminal statute, notwithstanding that the lien of the contractor who performed the construction was thereby impaired. 38 Atty. Gen. 566.

943.03 History: 1955 c. 696; Stats. 1955 s. 943.03.

943.04 History: 1955 c. 696; Stats. 1955 s. 943.04; 1961 c. 50.

See note to 943.02, citing Wittig v. State, 235 W 274, 292 NW 879.

943.05 History: 1955 c. 696; Stats. 1955 s. 943.05.

943.06 History: 1967 c. 124; Stats. 1967 s. 943.06.

943.10 History: 1955 c. 696; Stats. 1955 s. 943.10.

An allegation in an indictment that a building was the dwelling house of A is a sufficient averment that it was A's place of residence and that he occupied it as such. It must be alleged that there was some person lawfully in the house at the time. Bell v. State, 20 W 559.

Sec. 4410, R. S. 1878, must be read as though instead of the words "or other felony" it had been written "or any other offense for which the offender, on conviction, shall be liable by law to be punished by imprisonment in the state prison." "Or other felony" is not a limitation, but extends the scope of the section. Hall v. State, 48 W 688, 4 NW 1068.

Where one enters a moving car in one county with intent to commit larceny in such car, and with the same intent continues in the car until it passes into another county, and there commits the intended larceny, there is in law a fresh entry in the latter county and the offense is indictable therein. Powell v. State, 52 W 217, 9 NW 17.

The possession of goods shown to have been in the house is admissible, though not owned by the owner of the house. Neubrandt v. State, 53 W 89, 9 NW 824.

The grade of the offense established by sec. 4409, R. S. 1878, was unknown at the common law, and is a lower grade of the offense by reason of its making a certain kind of burglary consist of breaking and entering a building which is neither a dwelling house nor one immediately connected therewith. State v. Kane, 63 W 260, 264, 23 NW 488.

One who secretes himself in a box which he procures to be placed by the agents of an express company in an express car, with the intention of robbing an express agent in the car, is guilty of a constructive breaking. If it charges the breaking and entering of a "freight and express car of the A. Express Co.," it sufficiently charges the offense to have been committed in a railroad freight car. Nicholls v. State, 68 W 416, 32 NW 543.

An information need not describe the building otherwise than as "a certain building." Gundy v. State, 72 W 1, 38 NW 328.

"Building" does not necessarily mean a structure so far completed as to be in all respects fit for the purpose for which it was intended. It doubtless means an edifice or structure erected upon land and so far completed that it may be used temporarily or permanently for the occupation or shelter of man or beast, or for the storage of tools or other personal property for safekeeping. Pooler v. State, 97 W 627, 73 NW 336.

It is not necessary to show by direct proof that the entering and breaking was in the nighttime. Where store was closed about 7 p. m. on the 26th of June and opened at 6 a. m. the following day and it appeared that it had been broken into between those hours, the testimony of the defendant in his own behalf that he obtained certain goods found upon his person in the vicinity of the store at one o'clock in the morning was sufficient to show that the breaking was in the nighttime. Winsky v. State, 126 W 99, 105 NW 480.

The evidence was sufficient to sustain a conviction under sec. 4409, Stats. 1898. Birmingham v. State, 145 W 90, 129 NW 670.

The evidence was sufficient to sustain a conviction under 343.11, Stats. 1925. Strabel v. State, 192 W 452, 211 NW 773.

The element of criminal intent must be shown in a prosecution for burglary and must be proved beyond a reasonable doubt. The grant or refusal of a separate trial to defendants in a criminal case rests largely in the discretion of the trial court where the offenses arise out of the same transaction. Smith v. State, 195 W 555, 218 NW 822.

See note to sec. 6, art. I, on cruel punishments, citing State v. Grulkowski, 205 W 164, 236 NW 523.

In a prosecution for bank robbery, the evidence was sufficient to sustain a conviction. Ford v. State, 206 W 138, 238 NW 865.

Counts of an information charging the defendant with breaking and entering a dwelling house in the nighttime with intent to commit adultery, and with intent to commit a felony, and with assaulting another lawfully therein stated offenses under the statute. State ex rel. Wagner v. Lee, 220 W 150, 264 NW 484.

An instruction, in relation to a defendant charged with breaking and entering a dwelling with intent to commit larceny, but who did not participate in the actual breaking and entering, that the only question the jury needed to determine was whether this defendant aided and assisted in the commission of the offense, was not prejudicial as misleading the jury as to the importance of an acquaintance with the plan and an intent to assist, when considered in connection with additional instructions on the subject. Smith v. State, 251 W 68, 27 NW (2d) 773.

See note to 939.05, citing State v. Kopacka, 260 W 505, 50 NW (2d) 917.

943.10 is applicable to the entry of public buildings. State v. Kennedy, 15 W (2d) 600, 113 NW (2d) 372.

See note to 939.66, citing Cullen v. State, 26 W (2d) 652, 133 NW (2d) 284.

An inference of intent to steal does not arise from proof of the breaking and entering of a building, or attempt to do so, without consent in the nighttime. State v. Reynolds, 28 W (2d) 350, 137 NW (2d) 14.

Felonious intent may be found more readily where the building broken into is a private office or dwelling than where it is a public building. Galloway v. State, 32 W (2d) 414, 145 NW (2d) 761, 147 NW (2d) 542.

The evidence was sufficient to sustain a conviction of burglary of a pharmacy from which narcotics were taken. Kluck v. State, 37 W (2d) 378, 155 NW (2d) 26.

The evidence was sufficient to sustain a conviction of burglary of a church from which money was taken. State v. Harris, 40 W (2d) 200, 161 NW (2d) 385.

The evidence was sufficient to sustain a conviction of burglary of a jewelry store from which merchandise was taken. State v. Doyle, 40 W (2d) 461, 162 NW (2d) 60.

The evidence was sufficient to sustain a conviction of armed burglary of an office building containing a safe. Curl v. State, 40 W (2d) 474, 162 NW (2d) 77.

When there is proof of an unlawful entry without consent of the person in lawful possesson, in the absence of a rational explanation, proof of circumstances which would lead the ordinary person to conclude beyond reasonable doubt that the entry was with the intent to steal is sufficient to sustain a finding of guilt. Strait v. State, 41 W (2d) 552, 164 NW (2d) 505.

While to constitute burglary it is the intent to steal at the time of entering, not at the time of burglarizing, that controls, a jury is entitled to find the intent from all the physical facts. Ferguson v. State, 41 W (2d) 588, 164 NW (2d) 492.

When there is proof of an unlawful entry without consent of the person in lawful possession, in the absence of a rational explanation, proof of circumstances which would lead the ordinary person to conclude beyond reasonable doubt that the entry was with the intent to steal is sufficient to sustain a finding of guilt. (State v. Kennedy, 15 W (2d) 600, overruled in part.) State v. Holmstrom, 43 W (2d) 465, 168 NW (2d) 574.

The evidence was sufficient to sustain a conviction of burglary of an industrial plant. Jandrt v. State, 43 W (2d) 497, 168 NW (2d) 602.

There was credible evidence to sustain a burglary conviction of an accused who was found on the roof of allegedly burglarized premises from which nothing was missing. Galloway v. Burke, 297 F Supp. 624.

See note to sec. 8, art. I, on double jeopardy, citing 5 Atty. Gen. 906.

943.11 History: 1955 c. 696; Stats. 1955 s. 943.11.

943.12 History: 1955 c. 696; Stats. 1955 s. 943.12.

The intent of ch. 63, Laws 1893, is a general intent to accomplish the result stated. An information in the words of the statute is good without alleging that the defendant intended feloniously to steal money or property found in the building or room which he intended to enter. Scott v. State, 91 W 552, 65 NW 61.

A bottle of nitroglycerine and a fuse and detonating cap, though not actually in combination when found in the possession of a person, constitute a "machine, tool or implement designed and adapted for * * * forcing or breaking open any building, room," etc. State v. Boliski, 156 W 78, 145 NW 368.

Although they may be within 343.131, Stats. 1943, under some circumstances, simple tools such as a small screwdriver, pencil-type flashlight, metal hammer, chisel, and whetstone are not as a matter of law tools "designed and adapted for cutting, or burning through, forcing, or breaking open any building, room or vault," within the statute. Diefenbach v. State, 245 W 468, 14 NW (2d) 908.

The evidence was sufficient to warrant holding the defendant for trial on a charge of possession of burglarious tools as against a contention that the tools seized in a search of the trunk of the defendant's automobile and introduced in evidence were not burglarious within the purview of the statute. State ex rel. Tessler v. Kubiak, 257 W 159, 42 NW (2d) 496.

The evidence was sufficient to sustain a conviction of possession of burglarious tools, in violation of 943.12, Stats. 1967. State v. Holmstrom, 43 W (2d) 465, 168 NW (2d) 574.

943.13 History: 1955 c. 696; Stats. 1955 s. 943.13; 1959 c. 293; 1969 c. 147.

943.14 History: 1955 c. 696; Stats. 1955 s. 943.14.

943.20 History: 1955 c. 696; Stats. 1955 s. 943.20; 1959 c. 193; 1967 c. 301; 1969 c. 55.

Editor's Note: With few exceptions the decisions and opinions construing statutes penalizing activities covered by the comprehensive term "theft" in 943.20 have to do with statutes in effect during the period 1849-1955. Because the older statutes embodied common-law concepts, such as the definitions of "larceny", "embezzlement", and "obtaining property by false pretenses", it seems necessary and appropriate to group the notes of decisions and opinions in accordance with those concepts.

1. General.
2. Larceny and larceny by bailee.
3. Embezzlement and conversion.
4. Obtaining property by false pretenses.

1. General.

On burglary see notes to 943.10; on robbery see notes to 943.32; on receiving stolen property see notes to 943.34; and on forgery see notes to 943.38.

See note to sec. 7, art. I, on place of trial, citing Dix v. State, 89 W 250, 61 NW 760.

See notes to 971.19, on place of trial, citing Podell v. State, 228 W 513, 279 NW 653, 1 Atty. Gen. 161, 3 Atty. Gen. 229, 21 Atty. Gen. 1051, and 28 Atty. Gen. 426.

Criminal misappropriation in Wisconsin. Baldwin, 44 MLR 253 and 430.

2. Larceny and Larceny by Bailee.

Where stolen property, a short time after the theft, is found in possession of the prisoner, the burden devolves upon him of showing how he came by it; otherwise he may be presumed to have obtained it feloniously, but the presumption may be rebutted. Crilley v. State, 20 W 231.

An indictment for "feloniously stealing" legal tender notes will not lie against one who, after selling and transferring a note and mortgage executed to him, and after notice of transfer to the mortgagor, received the sum due on the mortgage and converted it to his own use. State v. McDougal, 20 W 482.

Where stolen property was found in defendants' possession and such possession was unexplained, it was error to charge that if this was established they must be found guilty, since such possession is thus made conclusive evidence of guilt. It is doubtful whether there can be any conviction on such presumption alone, as it is not a presumption of law, but of fact merely. State v. Snell, 46 W 524, 1 NW 225.

Possession of stolen goods, where proof discloses its origin to have been subsequent to the larceny, does not create a strong presumption that the possessor committed the larceny. Heed v. State, 25 W 421; Neubrandt v. State, 53 W 89, 9 NW 824.

An information, warrant or complaint which does not state the value of the thing stolen, when the degree of punishment depends upon such value, is insufficient to support any judgment of conviction. Frazier v. Turner, 76 W 562, 45 NW 411.

It is well that the person having the general ownership of property stolen should be named in the information as such owner, but it seems to be sufficient if the bailee or person having a special property therein be named as owner. Baker v. State, 88 W 140, 59 NW 570.

One who receives from a bank upon a check more money than he is entitled to, and with knowledge of the fact refuses to pay it back on demand, is guilty of larceny. Bergeron v. Peyton, 106 W 377, 82 NW 291.

Where the goods taken by the defendant were placed so that he could have access to them and that the person in charge was given directions to let him take them, such arrangement being made at the solicitation of the owner of the goods through an agent for the purpose of detecting the theft, the defendant was not guilty of larceny, because of the absence of trespass. Topolewski v. State, 130 W 244, 109 NW 1037.

An attorney who by false representations induced his client to furnish him with money to purchase stock for the client, which money he converted to his own use, is guilty of larceny, under sec. 4415, Stats. 1923. State v. Burke, 189 W 641, 207 NW 406.

Where defendant, who was charged with the theft of bricks which he had conveyed by a bill of sale, claimed the bill of sale was given as a cover to protect him against his creditors, evidence offered by him as to the circumstances attending the giving of the bill of sale was material on the intent of the defendant in taking the bricks. Benedict v. State, 190 W 266, 208 NW 934.

In the instant prosecution for the larceny of 2 automobiles, an instruction to find the defendants guilty if the jury were satisfied beyond a reasonable doubt that said automobiles were taken and converted by the defendants for their use with intent to steal said automobiles was a sufficient instruction on the elements of larceny, in the absence of any request for further instructions on that subject. Schroeder v. State, 222 W 251, 267 NW 899.

Contraband property may be the subject of larceny, and a defendant cannot escape prosecution for robbery and larceny of a gambling device on the ground that its use was forbidden by law and that it was contraband and had no value. State v. Clementi, 224 W 145, 272 NW 29.

See note to 274.37, on criminal actions, citing State v. Clementi, 224 W 145, 272 NW 29.

In a prosecution for larceny in violation of 343.17, Stats. 1949, by taking 800 pounds of lead lining out of 2 vats which had been left by the owner in a public alley immediately behind an industrial building from which the owner was moving to a new location, the evidence was sufficient to support a verdict of guilty as against the defendant's claim that he had no felonious intent but thought that the vats had been abandoned so that he had a right to appropriate the property which he admittedly took. Pleau v. State, 259 W 105, 47 NW (2d) 330.

See note to 939.66, citing Cullen v. State, 26 W (2d) 652, 133 NW (2d) 284.

The evidence was sufficient to sustain a conviction of theft of a snowblower having a value in excess of $100. Johnson v. State, 43 W (2d) 374, 168 NW (2d) 607.

Intent to permanently deprive the owner of his property is one of the primary elements of theft. 943.20, Stats. 1967, in using the terms "intentionally" and "with intent to deprive the owner permanently" of possession of his property, proscribes acts accompanied by the intentional creation of an unreasonable risk of permanent loss to the owner; accordingly, the jury may find the necessary element of intent where the actor takes property for temporary use and abandons it under circumstances amounting to a reckless exposure to loss. Sartin v. State, 44 W (2d) 138, 170 NW (2d) 727.

While value of the property stolen is not an element of the crime of theft, it is of the utmost importance in determining the applicable penalty upon conviction where ascertainment of the dividing line determines whether the crime is a felony or a misdemeanor. Sartin v. State, 44 W (2d) 138, 170 NW (2d) 727.

A person may be convicted of larceny as bailee upon an information charging common-law larceny. 1910 Atty. Gen. 243.

One who, as bailee, converts to his own use property of another, left in his custody, may be prosecuted for either larceny as bailee or embezzlement. 1 Atty. Gen. 161.

A member of a county board who appropriated to his own use goods paid for by the county is guilty of larceny, although the element of trespass is absent. 11 Atty. Gen. 87.

3. Embezzlement and Conversion.

The municipalities of the state are protected against the frauds of their officers and agents in the conversion and sale of bonds of which they themselves were the makers. Unissued negotiable bonds lawfully in the custody of a municipal officer are property, and the taking and conversion of them is embezzlement regardless of the liability of the municipality for them. State v. White, 66 W 343, 28 NW 202.

An officer of a corporation dealing with corporate stock may pledge his interest therein, and so long as he does not attempt anything beyond that there is no offense committed under sec. 4419, R. S. 1878. Williamson v. State, 74 W 263, 42 NW 111.

Deposits of state funds made by a state treasurer in his official capacity, and which could only be drawn upon in such capacity, though they were made upon contracts to pay interest thereon, which interest the treasurer intended to keep if it came to his hands, so long as there was no intention but to pay the amount deposited to the persons who might lawfully be entitled thereto, does not constitute a conversion of the funds to his own use nor amount to an embezzlement thereof. It cannot be held the statute requires the state treasurer to pay out the identical pieces of money received by him officially for the state, but only that he should not receive good money into the treasury and pay public creditors with depreciated funds, if any such are in circulation. State v. McFetridge, 84 W 473, 54 NW 998.

Embezzlement is the fraudulent conversion of the money or personal property of another which is in the possession of a trustee, agent or bailee in a trust capacity. There can be no embezzlement unless the property charged to have been embezzled was, at the time of the conversion, held in trust. A mere debtor does not embezzle the money of his creditor by failing to pay the debt when due. Milwaukee T. Co. v. Fidelity & C. Co. 92 W 412, 66 NW 360.

Where money was left with a partnership for investment, and such partnership was succeeded by a corporation engaged in the same business, and such corporation became insolvent and the money was mingled with the funds of such corporation by direction of one who had practical control of the corporation, such person was guilty of converting such money to his own use. State v. Milbrath, 138 W 354, 120 NW 252.

Sec. 4418, Stats. 1898, refers only to cases where a demand is necessary and makes such demand prima facie evidence of embezzlement. Prinslow v. State, 140 W 131, 121 NW 637.

The purpose of sec. 4415, Stats. 1898, was to abolish the distinction between conversion by a bailee of an entire thing and the unlawful breaking of the package and conversion of

part or all of the contents. Burns v. State, 145 W 373, 128 NW 987.

The refusal to pay on demand is made prima facie proof of fraudulent intent, which presumption the accused may rebut by proof of circumstances which would disprove conversion. Glasheen v. State, 188 W 268, 205 NW 820.

Where defendant intentionally converted funds of which he was custodian to his own use, the offense of embezzlement was complete when the conversion took place; and the fact that defendant thereafter expected to restore the money to the public treasury from which he had wrongfully taken it was immaterial. Glasheen v. State, 188 W 268, 205 NW 820.

See note to 221.39, citing Sprague v. State, 188 W 432, 206 NW 69.

The mere deposit by an agent in the ordinary course of business of funds belonging to a principal in his own bank account, and so intermingling it with his own funds, amounts to a conversion, but it may lack the element of fraud necessary to constitute a fraudulent conversion. Where the agent subsequently converts the whole fund to his use and flees from the state the element of fraudulent intent may be inferred from his acts. Whether defendant, an agent accused of embezzlement, retained the amount appropriated, believing in good faith that he was entitled to do so under his arrangement with the principal, raised a question of fact. Adrian v. State, 191 W 193, 210 NW 367.

Defendant, who was vice president of an investment corporation, accepted payment of certain notes secured by a mortgage which it had assigned to its customers, gave a receipt in the name of the corporation, and gave the money to another officer of the corporation, who deposited the same in the bank to the credit of the corporation, where it was mingled with corporate funds and subsequently disbursed. The defendant in fact was a mere employe of the corporation and was not guilty of embezzlement, although the mortgage was never paid. (Weber v. State, 190 W 257, 208 NW 923, followed.) Kralovetz v. State, 191 W 374, 211 NW 277.

A defendant charged with larceny and embezzlement did not, simply by giving notes, create a debtor-creditor relationship, if the notes were a mere incident in a fraudulent scheme. That defendant, after accepting money ostensibly for investment, absconded, following the investor's efforts to obtain settlement, sufficiently indicated a conversion sustaining convictions for embezzlement. Stecher v. State, 202 W 25, 231 NW 168. Compare Hanser v. State, 217 W 587, 259 NW 418.

The terms of the sentences being within those authorized by statute, the supreme court is without power to reduce them although the circumstances might have justified greater leniency. Mueller v. State, 208 W 550, 243 NW 411.

Giving a promissory note in payment of a shortage does not expunge or contradict the guilt of one who is already guilty of a completed embezzlement, just as one converting public funds is guilty of embezzlement even though he restores them before the wrongful conversion is discovered. Mueller v. State, 208 W 550, 243 NW 411.

Although criminal responsibility is not imposed upon a director merely because he failed to exercise care and prudence, there is sufficient participation to impose such responsibility when there is an act or omission on his part which logically leads to the inference that he has had a share in the wrongful acts of the corporation which constitute the offense. State ex rel. Kropf v. Gilbert, 213 W 196, 251 NW 478.

The subsequent restoration of the fund embezzled or the payment of the shortage does not expunge or conclusively contradict the guilt of one who has completed the embezzlement, and the repayment of money unlawfully converted is material only so far as it may bear on the defendant's intent to defraud. McGeever v. State, 239 W 87, 300 NW 485.

In a prosecution of a clerk of courts for embezzlement of funds received by him in his official capacity, based on an audit showing shortages in his accounts, the evidence was insufficient to sustain a verdict of guilty, in that the evidence merely showed poor bookkeeping and that the defendant had receipted for money never received by him, and there was no evidence of any criminal motive or intent or of attempted concealment by false entries or otherwise, and hence the trial court properly set aside the verdict. State v. Witte, 243 W 423, 10 NW (2d) 117.

Where intent to defraud the owner is an essential element, which must be duly established in order to convict a defendant of embezzlement, the jury should be instructed to that effect when instructions on that subject are properly requested. Although containing no specific instruction on the element of intent to defraud, instructions under which the jury could not convict the defendant of embezzlement unless duly satisfied that the defendant had received the money, and that he had received it, not as a loan to him, but for the purpose of delivering it to a third person, and that after so receiving it he had appropriated the money for his personal use, were not prejudicial. State v. Legg, 243 W 449, 10 NW (2d) 187.

In enacting 943.20 (1) (b), it was the intention of the legislature to retain the previous substantive law and at the same time eliminate a multitude of specific statutes and irrelevant technical differences between classes of fiduciaries who bear special responsibilities toward the owners of entrusted property. State v. Halverson, 32 W (2d) 503, 145 NW (2d) 739.

The purpose of charging ownership in an indictment for embezzlement are to show that the title or ownership is not in the accused, to bring notice to the accused of the particular offense for which he is called to answer, and to bar subsequent prosecution of the accused for the same offense. Peters v. State, 42 W (2d) 541, 167 NW (2d) 250.

Value is important to the crime of theft only with reference to the punishment; hence in a prosecution therefor, where the state has proved any one sum that would support the sentence, that sentence should stand. As a general rule, wide latitude is allowed in prov-

ing the amount charged to have been embezzled, thus where the embezzlement is complex, amounting to a myriad of transactions, some traceable and some not, the state is not required to prove the total amount of money embezzled, but just such amount as will support the sentence imposed. Peters v. State, 42 W (2d) 541, 167 NW (2d) 250.

Where one of the joint owners of a debt collects the entire debt and converts it to his own use he is guilty of embezzlement. 3 Atty. Gen. 229.

Where A employs B in one county and authorizes him to sign checks on A for a specific purpose, and B goes into an adjoining county and signs a check on A for his own purpose, contrary to his authority, B is guilty of either embezzlement or larceny if the check is paid. 28 Atty. Gen. 426.

A trustee (automobile dealer) under a trust receipt, made pursuant to the uniform trust receipts act, which provides that the trustee upon sale of automobiles shall hold the proceeds in trust, separate from his own funds, and immediately pay them over to the entruster (finance company), is guilty of embezzlement under 343.20, Stats. 1955, if he fraudulently converts the proceeds to his own use. 44 Atty. Gen. 319.

4. Obtaining Property by False Pretenses.

An indictment is insufficient unless it alleges that the party defrauded was induced to part with his property by relying upon the truth of statements made. State v. Green, 7 W 676.

An allegation that the pretenses made were sufficient to deceive a person of ordinary intelligence and of belief in them is sufficient. State v. Kube, 20 W 217.

An indictment need not set out the means by which an act was accomplished. If it appears that a transaction on the part of the person from whom money was obtained, or from whom defendants conspired to obtain it, would have been unlawful if the representations made by them had been true, there can be no conviction. State v. Crowley, 41 W 271.

The statute (sec. 45, ch. 165, R. S. 1858) gives no force to an argument that it is illegal for a person to make a deed of lands to which he has no title, where he notifies his grantee at the time that he has none. North v. Henneberry, 44 W 306.

Under the rule noscitur a sociis the words "other property" must be limited to such tangible classes of property as sec. 4423, R. S. 1878, previously enumerates; they did not include the mere obtaining of board and lodging. State v. Black, 75 W 490, 44 NW 635.

The crime is a statutory one, and all the requisites of the statute to constitute it must be stated. If it is alleged that the false pretenses were made to, and money obtained from, A which money belonged to B, the information is not good unless it is alleged that A was the agent of, or had some connection with, B. Ownes v. State, 83 W 496, 53 NW 736.

Where a draft is caused to be written by false pretenses the crime is committed when the money is paid. Where the draft is sent to a person in another state named by defendant and the money paid there, prosecution for obtaining money by false pretenses can only be maintained in that state. The crime specified in sec. 4423, Stats. 1898, does not exist until the money or property is obtained, and where a title or control exists at the time that the falsity of the pretenses is discovered no conviction can be had. Bates v. State, 124 W 612, 103 NW 251.

The offense of obtaining property by false pretenses involves 4 essential elements: (1) there must be an intent to defraud; (2) there must be an actual fraud committed; (3) false pretenses must be used for the purpose of perpetrating the fraud; and (4) the fraud must be accompanied by means of the false pretenses made use of for that purpose. The first 2 of these elements do not exist where the property obtained was only such as the accused had the legal right to receive. Clawson v. State, 129 W 650, 109 NW 578.

An information under sec. 4423, Stats. 1898, was good although it did not allege that the person parted with his money relying upon the false pretenses and believing them to be true. Davis v. State, 134 W 632, 115 NW 150.

An indictment under sec. 4423, Stats. 1898, was sufficient. State v. Brown, 143 W 405, 127 NW 956.

Where information under sec. 4423, Stats. 1898, alleged that money was obtained by means of a false statement in writing of the assets and liabilities of a corporation of which the defendant was secretary, a conviction of the offense stated in sec. 4438h might be had. Law v. State, 152 W 33, 139 NW 416.

An information charging that defendants with intent to defraud obtained from R certain personal property, and also obtained his signature to a bill of sale thereof and to a deed conveying his farm to one of the defendants, by means of false pretenses and representations that the grantee was a man of great wealth and of high standing and credit, and that said mortgage conveyed and was a lien upon said farm and was given to secure the purchase price thereof, stated an offense under sec. 4423, Stats. 1911. Krenn v. State, 157 W 439, 147 NW 367.

The contents and sufficiency of a complaint under sec. 4423 are stated and declared in State v. Solomon, 158 W 146, 147 NW 640, 148 NW 1095, and Stecher v. State, 168 W 183, 169 NW 287.

Sec. 4423 seems to contemplate that some visible material token or symbol shall be used or manipulated in such a manner that the confidence of the victim is gained, or in such a manner as to inspire confidence in the victim that he can beat the manipulator at his own game. It does not contemplate false and fraudulent advertisements or false and fraudulent impersonations. State ex rel. Labuwi v. Hathaway, 168 W 518, 170 NW 654.

A false representation that the proceeds of a celebration would be turned over to the Red Cross could be prosecuted under sec. 4423 where the proof showed beyond a reasonable doubt that the conspirators received more than $100 from people who patronized the celebration in consequence of such false representation. State v. Labuwi, 172 W 204, 178 NW 479.

A false pretense penalized by sec. 4423 must be a false representation or statement of a past or existing fact made by accused or by someone instigated by him with knowledge of its falsity, with intent to deceive and defraud, and which is adapted to deceive the person to whom made, who relies on the statement and is actually defrauded by it. Corscot v. State, 178 W 661, 190 NW 465.

Representations may be so utterly absurd that a court would be justified in ruling as matter of law that they could not deceive the most credulous; but it is no defense to a prosecution for obtaining money by false pretenses to show that the person defrauded failed to exercise ordinary care and prudence. The questions are whether the representations were calculated to deceive and did deceive. A verdict that a pretended spiritual healer was guilty of obtaining money by false representations was sustained where he represented to persons of low mentality that he would cure them of diseases afflicting them and received pay for his treatments. False representations as to past and present facts are not rendered innocent by being mingled with statements as to future events. A variance as to the date of false representations is not fatal; the date is immaterial. Palotta v. State, 184 W 290, 199 NW 72.

There is a substantial difference between larceny and obtaining money by false pretenses, and the latter offense includes larceny by trick. Brockman v. State, 192 W 15, 211 NW 936.

Evidence that defendant with intent to procure credit filed deliberately false statement of assets and received credit from banks thereon, to the prejudice of the banks, did not sustain a felony charge of obtaining money under false pretenses, where there was no evidence of intent to defraud and no obtaining of money, goods, wares and merchandise such as is necessary to maintenance of a felony charge. Pepin v. State ex rel. Chambers, 217 W 568, 259 NW 410.

343.25 does not include obtaining of credit by false pretenses. Lochner v. State, 218 W 472, 261 NW 227.

Where all the other elements of the crime of obtaining money by false pretenses are proved, the intent to defraud may be inferred from the circumstances proved. State ex rel. Hull v. Larson, 226 W 585, 277 NW 101.

It is not necessary, to constitute the offense of obtaining money or other property by false pretenses, that the defrauded person relied solely on the pretense in parting with his property, it being sufficient if the pretense was one of the material matters relied on, as where a defrauded vendor of an automobile relied both on a down payment, in the form of a worthless check, and a conditional sales contract. Whitmore v. State, 238 W 79, 298 NW 194.

Evidence that the defendant in obtaining a loan for which he was to give a mortgage represented the premises to be presently unincumbered and eligible for a first mortgage was sufficient, as showing a false representation of fact, to support a prosecution for obtaining money by false pretenses, even though by resort to the office of register of deeds the true state of the title could have been ascertained, and hence was sufficient to warrant holding the defendant for trial. Frank v. State ex rel. Meiers, 244 W 658, 12 NW (2d) 923.

In a prosecution for obtaining money by false pretenses in violation of 343.25, Stats. 1953, the intent to defraud need not be proved by direct evidence but may be inferred from all of the circumstances proved. It is for the trier of the facts to determine whether an intent to defraud has been established in the light of all of the evidence produced at the trial, and this is not a matter to be determined on preliminary examination or on a hearing on a petition for a writ of habeas corpus. State ex rel. Brill v. Spieker, 271 W 237, 72 NW (2d) 906.

To constitute the offense of obtaining money by false pretenses it is not necessary that the defrauded person relied solely on the pretense in parting with his money but it is sufficient if the pretense was one of the material matters relied on. State ex rel. Brill v. Spieker, 271 W 237, 72 NW (2d) 906.

The evidence was sufficient to establish the statutory elements of theft by fraud. Lehmann v. State, 39 W (2d) 619, 159 NW (2d) 607.

The evidence was sufficient to sustain a conviction in a prosecution for theft by fraud. Hansen v. State, 40 W (2d) 195, 161 NW (2d) 289.

A justice and a constable who have obtained from a county sums of money as pretended fees earned in fictitious cases may be prosecuted under sec. 4423, Stats. 1898. 1904 Atty. Gen. 93.

A person misrepresenting herself to be an ex-nun, for the purpose of securing attendance at a public meeting to which an admission fee is charged, is guilty of obtaining money under false pretenses. 4 Atty. Gen. 348.

It is not criminal to induce one to render personal services by false representations. 4 Atty. Gen. 811.

A person who procures a dentist to render service upon the misrepresentation that he has money with which to pay for the same incurs no criminal liability. 5 Atty. Gen. 376.

A railway employe obtaining a pass ostensibly for his wife's use, but really intending to sell it to a third party, is guilty of obtaining property by false pretenses. 12 Atty. Gen. 132.

No prosecution under sec. 4423, Stats. 1923, can be sustained on proof that false pretenses related to a future event or promise. 13 Atty. Gen. 643.

One who obtains a check by false pretenses may be guilty of violating 343.25, Stats. 1933, though the check was not cashed. One instrumental in getting another to obtain property by false pretenses may be indicted as an accessory before the fact. 24 Atty. Gen. 145.

See note to 943.24, citing 37 Atty. Gen. 602.

943.203 History: 1969 c. 493; Stats. 1969 s. 943.203.

943.205 History: 1965 c. 438; Stats. 1965 s. 943.205; 1967 c. 226.

943.21 History: 1955 c. 696; Stats. 1955 s. 943.21; 1969 c. 131, 244, 331; 1969 c. 392 s. 78n.

The statute is violated if the person departs

without the knowledge of the operator of the place and without paying his bill; the fact that he leaves baggage behind is immaterial. State v. Croy, 32 W (2d) 118, 145 NW (2d) 118.

A house where rooms are rented to 3 or more persons at a stipulated rental per week, which includes furniture and services necessary to keep rooms in orderly condition, is a "lodging house." 15 Atty. Gen. 114.

943.22 History: 1955 c. 696; Stats. 1955 s. 943.22.

943.23 History: 1955 c. 696; Stats. 1955 s. 943.23.

The offense defined by 343.18, Stats. 1925, is not a lesser degree of the crime of larceny, and an acquittal of the charge of larceny of an automobile is not a bar to a prosecution under this section. Eastway v. State, 189 W 56, 206 NW 879.

The mere unauthorized or extended use of an automobile by one who has lawfully obtained the owner's consent to its taking for use and operation on a public highway on a specified trip is not a violation of 343.18. State v. Mularkey, 195 W 549, 218 NW 809.

See note to sec. 8, art. I, on double jeopardy, citing Schroeder v. State, 222 W 251, 267 NW 899.

The taking of an automobile without the consent of the owner is a separate crime and is neither synonymous with nor a lesser degree of the crime of larceny. An intention to permanently deprive the owner of possession of his property (the gravamen of larceny) is not an element of the offense. The offense may be committed by one whose original possession of the vehicle was lawful, but who subsequently uses the vehicle for his own purposes without the consent of the owner. Bass v. State, 29 W (2d) 201, 138 NW (2d) 154.

The statutory language, "whoever intentionally takes and drives any vehicle without the consent of the owner", as used in 943.23, Stats. 1967, does not mean that the driver at the time of the apprehension has to be the person who actually took the vehicle from the rightful owner. State v. Robbins, 43 W (2d) 478, 168 NW (2d) 544.

See note to 971.19, citing 22 Atty. Gen. 904.

943.24 History: 1955 c. 696; Stats. 1955 s. 943.24.

The offense created by sec. 4438a, Stats. 1917, is complete when, with knowledge of an insufficiency of funds or credit as therein stated, a bank check is made, drawn, or uttered with intent to defraud. The proviso relating to nonpayment within 5 days after notice of dishonor is a rule of evidence only. In prosecutions under this section entries in bank books may be proved as provided by sec. 4189b. Merkel v. State, 167 W 512, 167 NW 802.

If the officers of a bank knew when it issued its drafts on out-of-town banks that the drawer bank was insolvent and did not have sufficient funds at the drawee bank to meet the drafts when presented, there was a violation of 343.401. Union S. Bank v. Peoples S. Bank, 192 W 28, 211 NW 931.

Under 943.24 (1), creating the crime of writing a worthless check, and specifically designating it a misdemeanor and providing for a fine of not more than $1,000 or imprisonment of not more than one year, or both, but not stating the place of imprisonment, the punishment of such misdemeanor, when the sentence is for one year, may, in the discretion of the trial court, be served either in the state prison or in the county jail. Pruitt v. State, 16 W (2d) 169, 114 NW (2d) 148.

Where the accused purchased horses on Sunday, giving in payment a check on a bank in which he had no funds, he is guilty of each of the following offenses: Giving a check upon a bank with intent to defraud, sec. 4438a; confidence game, sec. 4568m; and obtaining property by false pretenses, sec. 4423. The fact that the transaction took place on Sunday, rendering the contract void, is no defense. 4 Atty. Gen. 25.

A treasurer of a corporation who draws a check in the name of the corporation, signed by himself as treasurer, upon a bank in which there are no funds, offends against sec. 4438a, if done with intent to defraud. 4 Atty. Gen. 418; 7 Atty. Gen. 166.

Drawing a check on a bank in which there are sufficient funds if presented in a reasonable time, but which were subsequently withdrawn, is no crime. 11 Atty. Gen. 137.

A postdated check may come under statute provided fraud can be shown; but it is necessary to show fraud beyond a reasonable doubt. 13 Atty. Gen. 499.

343.401 is not violated by issuing a check in payment of a past due account. 26 Atty. Gen. 50.

A person who procures delivery of goods by giving in payment a personal check, intending to stop payment thereon before it could be presented, and who does so stop payment, does not violate either 343.401 or 343.25. (25 Atty. Gen. 687 retracted in part.) 37 Atty. Gen. 602.

943.25 History: 1955 c. 696; Stats. 1955 s. 943.25; 1963 c. 158.

Legislative Council Note, 1963: The revision of s. 943.25, made by sections 38 and 39 of this bill, consists of 2 parts.

The first part involves a technical change. In the statutory prima facie case stated in s. 943.25 (2) of the statutes (and restated in s. 943.25 (3)) about the phrase "authorization by law or by the agreement creating the security interest" was changed to "authorization by the security agreement". The reference to authorization by law was deleted for the purpose of avoiding any implication that s. 409.311 of the commercial code constitutes an authorization by law to sell encumbered property which would negate the prima facie case set forth in s. 943.25. The commercial code's revision of the law relating to chattel security renders the reference to "authorization by law" obsolete in any event.

The second part of the revision consists of the creation of sub. (2) (b) and the last 2 definitions in sub. (4). Sub. (2) (b) is based upon s. 241.495 of the statutes which pertains only to trust receipt transactions. Since the commercial code does not deal specifically with trust receipt transactions as such, the

new provision necessarily is broader than the old. That part of s. 241.495 which deals with the situation wherein the debtor has no "liberty of sale" is covered by sub. (2) (a) of the revised section. (Bill 1-S)

Though the parties to a contract may render themselves liable to a penalty under sec. 4437, R. S. 1878, the contract may be valid as to them. Davy v. Kelley, 66 W 452, 29 NW 232.

Sec. 4431a, derived from ch. 244, Laws 1887, may be violated by a person who does not himself execute the conveyance, but procures its execution by another who holds the legal title in trust for him, and who is not aware of the incumbrance. State v. Hunkins, 90 W 264, 63 NW 167.

Where the purchaser bought with full knowledge of the existence of the chattel mortgage, he was chargeable with knowledge that any sale of incumbered property by the owner without the consent or knowledge of the mortgagee was at least a questionable transaction, if not an absolute violation of law. Porter v. Burtis, 197 W 227, 221 NW 741.

In an action against a mortgagee to recover damages for malicious prosecution of a mortgagor on a charge of removing the mortgaged property in violation of 343.69, Stats. 1947, the affidavits on the mortgagee's motion for summary judgment required the conclusion that the release of the mortgagor in the criminal proceedings was at his procurement and that of the district attorney as part of a transaction amounting to a compromise or settlement of the private controversy between the parties, and that this was not such a termination of the criminal proceedings favorable to the mortgagor as could form the basis for an action for malicious prosecution. Bristol v. Eckhardt, 254 W 297, 36 NW (2d) 56.

The president of a bank may be prosecuted for not informing the bank of an incumbrance on real estate which he mortgaged to the bank; his knowledge is not imputed to the bank in a transaction between himself and the bank. 20 Atty. Gen. 459.

Where an individual has complete control of a corporation he may be prosecuted personally for the act of corporation in selling mortgaged property in violation of 343.69, Stats. 1931. 21 Atty. Gen. 108.

Removal from the state, without the mortgagee's previous written consent, of personal property mortgaged to the department of veterans affairs is illegal. The department has power to give such consent when it deems it advisable. The rule is the same in removing pledged personal property from one county to another within the state. 35 Atty. Gen. 364.

Criminal liability of minor for sale of encumbered property. Boden, 35 MLR 30.

943.26 History: 1955 c. 696; Stats. 1955 s. 943.26.

943.27 History: 1969 c. 252; Stats. 1969 s. 943.27.

943.28 History: 1969 c. 252; Stats. 1969 s. 943.28.

943.30 History: 1955 c. 696; Stats. 1955 s. 943.30; 1969 c. 252.

A threat to expose a public official unless a certain sum of money was paid is not a threat to do an injury to the person, property, business or calling of that individual. The mere fact that some injury to the property, business, trade or calling might incidentally result from the accusation is not sufficient. The threat must be a direct threat to injure the person or particular thing specified in the statute. Schultz v. State, 135 W 644, 114 NW 505.

It is sufficient to allege in an information for extortion that defendant threatened to accuse the complaining witness of forgery with the intent to extort money, although the information does not set out the circumstances upon which the defendant proposed to base the threatened prosecution. Whether the complaining witness was guilty of forgery is irrelevant. State v. McDonald, 192 W 612, 213 NW 295.

The business agent of a cooks' and waiters' union who had threatened the president and manager of corporations operating restaurants that the business agent would call a strike unless he was paid a certain sum of money was properly found guilty of malicious threatening to do injury to the business of another with intent thereby to extort money. (Schultz v. State, 135 W 644, distinguished.) Mayer v. State, 222 W 34, 267 NW 290.

The complaint does not state a cause of action under 340.45, since there is no allegation of injury to the plaintiff's business as a contractor or his trade as a carpenter, and injury to reputation is not within the statute. (Muetze v. Tuteur, 77 W 236, overruled as to statement of scope of statute.) Judevine v. Benzies-Montanye F. & W. Co. 222 W 512, 269 NW 295.

In order to sustain a conviction for maliciously threatening to accuse another of a crime with intent thereby to extort money, the state need not establish that the victim's mind was so influenced by the threat in question that he acted under duress and that the money was actually obtained thereby, since the gist of the offense is the attempt to extort money and the commission of the offense is not made to depend either on the victim's state of mind or on whether money was actually obtained. O'Neil v. State, 237 W 391, 296 NW 96.

If the object of a conspiracy was to extort money by maliciously threatening to prosecute another for a criminal libel, the state could institute a prosecution under 340.45, specifically providing as to such offense, and was not required to prosecute under 343.681 because of the existence of a conspiracy. O'Neil v. State, 237 W 391, 296 NW 96.

Although a criminal libel is only a misdemeanor and the discharge of a defendant in a prosecution for a misdemeanor is authorized if the injured party appears in court and acknowledges satisfaction, the belief on the part of the libeled person that he has a right to recover damages when he demands payment thereof in connection with stating that he will prosecute the wrongdoer if the latter fails to pay, does not necessarily constitute a defense to a charge of extortion, since there is still the crucial issue as to whether the pros-

ecution was threatened maliciously with intent thereby to extort money instead of being merely mentioned incidentally in seeking to obtain a settlement by the payment of reasonable compensation for the damage sustained. O'Neil v. State, 237 W 391, 296 NW 96.

A threat contained in a written communication that, if the person addressed does not pay, the sender "will take it out of his hide" constitutes an offense under sec. 4380, Stats. 1915. 4 Atty. Gen. 972.

Delivery of an obscene letter containing a threat to accuse of crime in order to coerce is punishable under sec. 4380; unless the letter is published to another than the person defamed, the offense is not punishable as libel. 10 Atty. Gen. 229.

A threat to publish in a newspaper an alleged fact that a deceased person embezzled money is not an offense under sec. 4380. 13 Atty. Gen. 423.

Persons wearing masks and robes while entering a restaurant, and informing the owner that she must "clean up * * * and run this place respectable. * * * Unless you obey our orders we are going to * * * ship you straight back to England," are making threats to injure the business of the owner, and to compel her to do an act against her will, in violation of sec. 4380. In such case it may be alleged and proved at the trial that offenses were committed while persons' faces were masked, increasing the penalty pursuant to sec. 4738t. 14 Atty. Gen. 466.

943.31 History: 1955 c. 696; Stats. 1955 s. 943.31.

943.32 History: 1955 c. 696; Stats. 1955 s. 943.32.

Description of property which would be sufficient to sustain an indictment for larceny is sufficient under sec. 15, ch. 165, R. S. 1858. McEntee v. State, 24 W 43.

It is an essential element of the crime covered by sec. 4375, Stats. 1898, that defendant be armed with a dangerous weapon. Lipscomb v. State, 130 W 238, 109 NW 986.

The failure to state that the defendant was not armed with a dangerous weapon does not invalidate an information under sec. 4378, Stats. 1898. An information which charged robbery "forcibly and by violence" is sufficient. Gillotti v. State, 135 W 634, 116 NW 252.

Evidence that a revolver which defendant used in committing a robbery was loaded was sufficient to support a verdict of guilty. A loaded revolver pointed at a person within shooting distance is a dangerous weapon as a matter of law. Proof that a revolver was pointed at a person within shooting distance, accompanied by words indicating an intention to fire, presented a prima facie case that the revolver was loaded and consequently a dangerous weapon. Schiner v. State, 178 W 83, 189 NW 261.

Accused could not escape prosecution for the robbery and larceny of a gambling device on the ground that its use was forbidden and was contraband and had no value, since contraband property may be the subject of larceny. State v. Clementi, 224 W 145, 272 NW 29.

A pellet gun is a "compressed-air weapon" which when pumped up and used at close range had a muzzle velocity sufficient to cause the pellet ejected therefrom to become embedded in a wall and was a "dangerous weapon" as defined in 939.22 (10), and as used in 943.32 (2). A pellet gun when used as a bludgeon is also a dangerous weapon as defined in 939.22 (10). Rafferty v. State, 29 W (2d) 470, 138 NW (2d) 741.

The evidence was sufficient to support a conviction of the crime of robbery. Zillmer v. State, 39 W (2d) 607, 159 NW (2d) 669.

The evidence was sufficient to support a conviction of the crime of armed robbery. Hundhauser v. State, 44 W (2d) 447, 171 NW (2d) 397.

Forcibly retaking money lost at gambling. 23 MLR 215.

943.34 History: 1955 c. 696; Stats. 1955 s. 943.34.

Possession of stolen goods may raise a presumption of guilt against one charged only with feloniously receiving them, even though they were not found until more than 3 months after they were stolen, when they had been in defendant's possession for a considerable time before their discovery. One who assists in the theft may be convicted of receiving. Jenkins v. State, 62 W 49, 21 NW 232.

An allegation that the defendant received the goods of a stranger knowing that they had theretofore been stolen is a substantial statement of the offense. State v. Whitton, 72 W 18, 38 NW 331.

Sec. 4417, Stats. 1915, includes 2 substantive offenses, that of knowingly receiving stolen goods and that of knowingly concealing stolen goods. Such offenses, when committed by the same person at substantially the same time and consisting of one continued transaction may be joined in one count as constituting one offense; and a verdict finding the defendant guilty of one of such offenses is valid. The information need not charge the offense in the precise language of the statutes. It was sufficient to allege that the defendant did "feloniously receive, have, and aid in the concealment of" goods, knowing them to have been stolen. Huotte v. State, 164 W 354, 160 NW 64.

Evidence of concealment of other stolen automobiles was admissible against defendants charged with concealment of certain stolen automobiles to show knowledge and intent. If conspiracy be proved at the trial, declarations of one conspirator are admissible against the others, though conspiracy be not charged in the information. State v. Vincent, 202 W 47, 231 NW 263.

In a prosecution under 343.19, Stats. 1939, for receiving stolen property, knowing the same to be stolen, it is essential to a conviction that the jury shall find beyond a reasonable doubt that the defendant receiver knew or had a guilty belief that the property was stolen; and it is not sufficient that the evidence convinces the jury beyond a reasonable doubt that the defendant ought to have known that the property was stolen, but it must go further and satisfy them that he did know or believe. Oosterwyk v. State, 242 W 398, 8 NW (2d) 346.

In a prosecution for receiving stolen property, the fact that the defendant failed to produce any evidence of ownership of the automobile involved, that he did not claim to possess registered title, and that his testimony as to how and under what circumstances he came into possession of the property was contradictory and unsatisfactory, did not establish that he received the property knowing the same to have been stolen. State v. Godsey, 272 W 406, 75 NW (2d) 572.

Belief that the goods received were stolen is the equivalent of knowledge that they were stolen. The circumstantial evidence in the instant case was sufficient to warrant a finding that the contents of certain suitcases, if not the suitcases themselves, were stolen. Heyroth v. State, 275 W 104, 81 NW (2d) 56.

943.35 History: 1955 c. 696; Stats. 1955 s. 943.35.

943.37 History: 1955 c. 696; Stats. 1955 s. 943.37.

943.38 History: 1955 c. 696; Stats. 1955 s. 943.38.

An indictment for uttering a forged school order should aver that the forged order which was altered purported to be one of a corporation authorized to issue it. Snow v. State, 14 W 479.

Where several drafts, precisely alike except as to numbers, were uttered by the same person at the same time, the uttering was one act, and the forgery of each was a distinct offense. Barton v. State, 23 W 587.

False making with fraudulent intent of an instrument in the general form of a bank check constituted forgery. State v. Coyle, 41 W 267.

An instrument in the form of a promissory note for the payment of "25.00 as per deed, 10 per cent till paid," is a note for $25, and an information for the forgery thereof need not allege extrinsic facts to show that such is its character. State v. Schwartz, 64 W 432, 25 NW 417.

Where defendant was charged with forging a check payable to the order of a certain person, the fact that the indorsement of such person would be necessary to render the check available in the hands of a forger might be material if the defendant were charged with uttering the paper but not where he was charged with forging it. Norton v. State, 129 W 659, 109 NW 531.

The fact that no attempt was made to imitate the signature of the apparent drawer of a check is not conclusive of innocence. The crime of forgery is committed if there was an intent to injure or defraud. Schmidt v. State, 169 W 575, 173 NW 638.

See note to 971.19, citing Zeidler v. State, 189 W 44, 206 NW 872.

The evidence in a trial for knowingly and wilfully concurring in the making and publication of a false statement of a bank with intent to deceive the members, shareholders or creditors thereof was sufficient to warrant the jury's findings of the falsity of items in the published statement and of the knowledge of such fact on the part of the defendant who was the president of the bank. Hobbins v. State, 214 W 496, 253 NW 570.

In a prosecution for uttering forged certificates of indebtedness, whether the defendant had an intent to defraud was for the jury, and the evidence, showing that the defendant before circulating the same had purchased $2,500 of such forged certificates for $700, when genuine certificates were circulating freely at about face value, was sufficient to sustain a finding of guilty. Lurye v. State, 221 W 68, 265 NW 221.

To warrant a conviction for forgery under 343.56, Stats. 1945, this section, when the evidence establishes that the defendant falsely made an accountable receipt for money with intent to injure or defraud, it is not necessary to prove also that there was a simulation or forgery of some person's handwriting. State v. Arndt, 249 W 510, 25 NW (2d) 72, 742.

943.38 (1) (a) and (2), created in 1955, merged forgery and uttering into a single offense, so that one who both forges and utters a check is guilty of but one offense. State v. Nichols, 7 W (2d) 126, 95 NW (2d) 765.

Under 943.38 a writing may be forged if it is falsely made or altered, and false making relates to genuineness of execution, while alteration may relate to falsity of content. Copies of invoices having no intrinsic value in themselves and being non-negotiable are not the usual subjects of counterfeiting or forgery, and when they are fictitious (only in the sense that they contain an implicit or explicit representation that a valid, collectible, but uncollected, receivable exists), it is very doubtful, whatever writing appeared upon them, that they could be held to be the subject of counterfeiting or forgery so long as the writing did not misrepresent their origin. First American State Bank v. Aetna C. & S. Co. 25 W (2d) 190, 130 NW (2d) 824.

If a person attempts to pass off the fictitious name as representing a person other than himself, such use would constitute a forgery, and it is not necessary that the person purported to have made the instrument be a person in existence or a real person so long as the instrument purports not to be the act of the one altering or making the instrument; likewise, the use of an assumed name may be a forgery if done for a fraudulent purpose. State v. Lampe, 26 W (2d) 646, 133 NW (2d) 349.

See note to 971.19, citing Smazal v. State, 31 W (2d) 360, 142 NW (2d) 808.

In a prosecution for forgery of 2 bank checks in violation of 943.38 (2), conviction of defendant as a principal was sustained by evidence which established that she induced a minor to steal blank checks and a driver's license from the home of another, caused the checks to be falsely made and endorsed, and received the proceeds in whole or in part when the same were uttered. La Vigne v. State, 32 W (2d) 190, 145 NW (2d) 175.

Although the forged signature of the maker to an instrument purporting to be a corporate check did not indicate corporate capacity, the writing nonetheless was a subject of forgery within the meaning of 943.38 (2). State v. Pierce, 33 W (2d) 104, 146 NW (2d) 395.

Knowingly passing a forged instrument as genuine constitutes conclusive proof of intent

to defraud, regardless of who the intended victim may be. It is not a defense that the person whose name was forged owed the defendant money nor that the defendant believed the offense would be ratified by that person. State v. Christopherson, 36 W (2d) 574, 153 NW (2d) 631.

In a prosecution charging defendant with forgery because he aided and abetted the commission of the act, ample proof supported his conviction of the substantive crime. Krueger v. State, 39 W (2d) 729, 159 NW (2d) 597.

Forgery may be accomplished by fraudulent application of a false signature to a true instrument or a real signature to a false statement and the essence of the offense is intent to injure or defraud. The president of a corporation, to which a bank lent money on security of duplicate invoices, was guilty of forgery under 343.56 by signing an assignment of invoices where no goods had been delivered under them. Security National Bank of Durand v. Fidelity & Cas. Co. of New York, 246 F (2d) 581.

Signing by a wife of a husband's signature to a nomination paper without authority is forgery unless done in the bona fide belief that the wife had authority to sign for him. 37 Atty. Gen. 431.

943.39 History: 1955 c. 696; Stats. 1955 s. 943.39; 1969 c. 324.

Ample credible evidence supported a verdict of guilty under 943.39 (2), Stats. 1965; the evidence established that defendant, an officer of two corporations, signed and swore to financial statements on their behalf, and filed them with the department of agriculture (as required by 100.06 (1)) to induce the department to issue renewal milk plant licenses, that he intended to defraud the department, and that accounts receivable and inventories which he had theretofore prepared and priced were grossly overstated in the financial statement filed with the applications. State v. Laabs, 40 W (2d) 162, 161 NW (2d) 249.

943.395 History: 1969 c. 324; Stats. 1969 s. 943.395.

943.40 History: 1955 c. 696; Stats. 1955 s. 943.40.

943.41 History: 1963 c. 67; Stats. 1963 s. 943.41; 1967 c. 155.

943.45 History: 1961 c. 248; Stats. 1961 s. 943.45; 1963 c. 489.

943.50 History: 1969 c. 254; Stats. 1969 s. 943.50.

CHAPTER 944.

Crimes Against Sexual Morality.

944.01 History: 1955 c. 696; Stats. 1955 s. 944.01.

It must be alleged that the act was committed by force and against the will of the female. State v. Erickson, 45 W 86.

Final consent after resistance is fatal. Voluntary submission while the power to resist lasts, no matter how reluctant, removes an essential element of the crime. Connors v. State, 47 W 523, 2 NW 1143.

It is never proper or safe to instruct the jury that rape may be committed with woman's consent, however obtained. Whittaker v. State, 50 W 518, 7 NW 431.

Because the proof necessary to establish the crime of rape establishes every element of the offense necessary to constitute an assault to commit rape, a conviction for the latter crime may be sustained under an information charging the former. State v. Mueller, 85 W 203, 55 NW 165.

Mere verbal objections by the female over the age of consent, unaccompanied by any outcry or actual resistance, are not enough to make the acts of the accused the crime of rape or an attempt to commit rape. O'Boyle v. State, 100 W 296, 75 NW 989.

To establish the crime of rape the utmost resistance on the part of the prosecutrix must be shown, and it must also appear that she availed herself of every reasonable opportunity to make the utmost resistance in repelling the assailant and preventing him from accomplishing his purpose. Devoy v. State, 122 W 148, 99 NW 455.

Subject to the exception where the power of resistance is overcome by unconsciousness, threats, or exhaustion, in order to constitute the crime of rape not only must there be entire absence of mental consent or assent, but there must be the most vehement exercise of every physical means and faculty within the woman's power to resist. Brown v. State, 127 W 193, 106 NW 536.

The evidence was sufficient to sustain a conviction. Lam Yee v. State, 132 W 527, 112 NW 425.

To constitute rape the act must be committed by force and against the will of the female; but where she is rendered insensible through fright, or ceases resistance under fear of death or great bodily harm, the consummated act is rape. Loescher v. State, 142 W 260, 125 NW 459.

In a prosecution for rape, it was not error in distinguishing between rape and fornication to instruct the jury that "rape is a brutal crime, standing next in the category to murder," as it is a mere statement of a plain truth. Wilson v. State, 184 W 636, 200 NW 369.

The power of resistance need not necessarily be overcome by superior physical force, it being sufficient if it is overcome by fraud or fear of serious personal injury, or if the physical resistance becomes so useless as to warrant it ceasing upon that ground. Purpero v. State, 190 W 363, 208 NW 475.

The evidence was sufficient to warrant a conviction. Starr v. State, 205 W 310, 237 NW 96.

A person may be convicted of rape on the prosecutrix' uncorroborated testimony, if the jury is satisfied of the truth thereof beyond a reasonable doubt. Where the prosecutrix' testimony bears evidence of unreliability on its face, it should be corroborated by other evidence as to the principal facts relied on to constitute the crime. Cleaveland v. State, 211 W 565, 248 NW 408.

The term "by force and against her will" employed in defining the crime of rape is a codification of the prior existing law. While