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CRIMINAL LAW AND PROCEDURE - FRAUDULENT DEPRIVATION OF POSSESSORY LIEN AS LARCENY

CRIMINAL LAW AND PROCEDURE — FRAUDULENT DEPRIVATION OF POSSESSORY LIEN AS LARCENY — Defendant engaged a furrier to repair her fur coat. After the repairs were completed, she obtained possession of the coat on the pretense of trying it on and refused to return it or to pay for the work done. She was charged with grand larceny, the theory of the prosecution being that she feloniously deprived the furrier of his property (his repairmen's lien). *Held*, conviction affirmed. The court seemed to say that the value of the coat rather than the amount of the lien determined the degree of the larceny. *State v. Cohen*, (Minn. 1935) 263 N. W. 922.

At common law trespass was an essential element of larceny.[1] Justice Holmes explained this requirement, saying, "primitive law in its weakness did not get much beyond an effort to prevent violence, and very naturally made a wrongful taking, a trespass, part of its definition of the crime." [2] Modern law is concerned with protecting other rights than freedom from violence, and the requirement of a trespass has been generally eliminated either by a statute, as

[1] MILLER, CRIMINAL LAW, § 111 (1934).
[2] Holmes, "The Path of the Law," 10 HARV. L. REV. 457 at 470 (1897).

in Minnesota,[3] or by judicial fiction—it is said that there is a trespass when possession (as distinguished from title) is obtained by trick or fraud.[4] As for the subject matter of the larceny in this case, there is no basis in policy for distinguishing between special and general property because such classification has little or no relation to the value of the right or necessity of protecting it, and the possibility of violence is equally great whether full ownership is involved or only a special interest. This court had ample authority for saying that a property interest less than full ownership could be the subject matter of larceny [5]—even when the offender is the general owner.[6] The only questionable point involved here is the suggestion that the value of the coat rather than the lien determined the degree of the crime. Since value is not involved in larceny except in connection with the degree of the crime, this must have been what the court meant when, after approving the exclusion of evidence as to the amount of the lien, it said, "We take it that in this prosecution the only value in issue was the value of the coat which defendant feloniously took and concealed." [7] Whatever may be the general policy behind the statutory classification of larceny into grand and petit larceny,[8] it is clear that the legislature is trying to relate the severity of punishment to the value of the right interfered with. It would seem clear that in this case the measure of that value would be the amount of the lien rather than the full value of the coat. So, unless the sentence quoted above is meaningless,[9] this decision is difficult to square with the legislative purpose in setting up the distinction between grand and petit larceny.

C. R. H.

[3] 2 Minn. Stat. (Mason 1927), § 10358.

[4] MILLER, CRIMINAL LAW, § 112 (1934); 26 A. L. R. 381 (1923).

[5] MILLER, CRIMINAL LAW, § 110(c) (1934).

[6] 58 A. L. R. 330 (1929).

[7] (Minn. 1935) 263 N. W. 922 at 924. This statement is unnecessary to the decision because the court had said that defendant could not object to failure to submit petit larceny because there had been no request in the court below.

[8] 2 Minn. Stat. (Mason 1927), §§ 10362, 10363, and 10364.

[9] See note 7, above.