

## CHAPTER 620

OFFENSES AGAINST PROPERTY BY FRAUD  
MISAPPROPRIATION AND OFFICIAL MISCONDUCT**620.01 MISAPPROPRIATION AND FALSIFICATION OF ACCOUNTS BY PUBLIC OFFICERS.**

HISTORY. Penal Code s. 369; G.S. 1894 s. 6663; R.L. 1905 s. 5029; G.S. 1913 s. 8814; G.S. 1923 s. 10302; M.S. 1927 s. 10302.

1. What constitutes embezzlement
2. Indictment
3. Applicability to municipality
4. Penalties

**1. What constitutes embezzlement**

Minnesota Constitution, Article 9, Section 12, makes the embezzlement of public funds by a state treasurer a felony without any further legislation; and the legislature may declare the refusal to pay over state funds, according to the provisions of the law, embezzlement. *State v Munch*, 22 M 67.

A county treasurer came into possession of an order which he knew had been paid by his predecessor, but it not having been marked paid, he marked it paid, paying the money to himself. The possession being lawful, the act of embezzlement consists in a mere act of the mind, and the act of fraudulent appropriation of money in the present case may be inferred by the conduct of the defendant. *State v Baumhager*, 28 M 226, 9 NW 704.

The improper neglect or refusal of a public officer to deliver to his successor in office all money remaining in his hands, upon demand therefor, is, under the statute, embezzlement per se of such moneys, although no particular sum was demanded. *State v Ring*, 29 M 78, 11 NW 233.

A city treasurer, who improperly neglects or refuses to pay over moneys of the city intrusted to him in his official capacity, according to the provisions of law, is guilty of embezzlement. In such case, if the default is clearly the result of negligence and mismanagement of his trust, it is immaterial that no actual or deliberate purpose to defraud the city is shown. *State v Czizek*, 38 M 192, 36 NW 457.

**2. Indictment**

Indictment otherwise sufficient deemed insufficient because it does not allege that any demand for the funds was made upon the outgoing state treasurer by the successor in office. *State v Munch*, 22 M 67.

Requisites for indictment of county treasurer. *State v Ring*, 29 M 78, 11 NW 233.

**3. Applicability to municipalities**

The officials of a municipal corporation, in violation of law, loaned city money to a private person, taking as security a mortgage upon certain property. The city may invoke the powers of the courts to enforce collection of the debt by foreclosure proceedings. Purchasers of the property subsequent to the execution of the mortgage, with notice, cannot take advantage of the fact that the act of the city officials was ultra vires. *City of Fergus Falls v Fergus Hotel*, 80 M 165, 83 NW 54.

A taxpayer may sue to compel a restoration of funds illegally taken from the treasury of a municipal corporation. *Burns v Essling*, 154 M 304, 191 NW 899.

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### 4. Penalties

Plaintiff in error was convicted of embezzlement of county funds in the amount of \$14,614.03, and sentenced to prison for three years and to pay a fine of \$29,228.06 and to stand committed until the fine was paid. The fine and imprisonment are sustained, but the sentence is modified to correct the error as to the commitment to prison until the fine is paid. *Mims v State*, 26 M 494, 5 NW 369.

Where a register of deeds embezzled \$62.50 a sentence of one year in prison and a fine of \$500.00 is sustained. *State v Borgstrom*, 69 M 508, 72 NW 799, 975. Right of taxpayer to sue. *Burns v Essling*, 154 M 304, 191 NW 897.

#### 620.02 OTHER VIOLATIONS BY OFFICERS.

HISTORY. Penal Code s. 370, G.S. 1894 s. 6664; R.L. 1905 s. 5030; G.S. 1913 s. 8815; G.S. 1923 s. 10303; M.S. 1927 s. 10303.

SEE: *City of Fergus Falls v Fergus Hotel*, 80 M 165, 83 NW 54; *Burns v Essling*, 154 M 304, 191 NW 879.

Where a city treasurer has made deposits in a duly designated depository bank in excess of securities deposited in lieu of a bond, and the bank becomes insolvent, the city cannot claim such over-deposit as a preferred claim, for the over-deposit was not forbidden or criminal, no other deposit bank having been designated. *City of Cloquet v Northwestern State Bank*, 172 M 324, 215 NW 174.

It is a gross misdemeanor for any public officer to wilfully neglect to perform the duties imposed on him by law. 1934 OAG 665, Aug. 7, 1934 (3390-5).

#### 620.03 MISAPPROPRIATION BY COUNTY TREASURER.

HISTORY. Penal Code s. 371; G.S. 1894 s. 6665; R.L. 1905 s. 5031; G.S. 1913 s. 8816; G.S. 1923 s. 10304; M.S. 1927 s. 10304.

SEE: Notes under 620.01.

#### 620.04 OFFICERS NOT TO BE INTERESTED IN CONTRACT.

HISTORY. Penal Code s. 372; G.S. 1894 s. 6666; R.L. 1905 s. 5032; G.S. 1913 s. 8817; G.S. 1923 s. 10305; M.S. 1927 s. 10305; 1931 c. 212; 1941 c. 228.

A member of the common council of a village cannot lawfully enter into a contract with the municipality for his own benefit depending upon authority derived from a vote of such council; and money so received may be recovered for the village in a suit by a taxpayer. *State v Bevans*, 88 M 127, 92 NW 520; *Bjelland v City of Mankato*, 112 M 24, 127 NW 397; *Village of Courtland v Courtland Electric Co.* 172 M 392, 215 NW 673.

A town or village board of health, one of whose members is a practicing physician and surgeon, may employ such physician to act for the board in all matters requiring such services. This case is distinguishable from *Stone v Bevans*. *Chairman of Board v Board*, 89 M 402, 95 NW 221.

The payment to a member of the board of supervisors on account of drains constructed on his private property is not included or legalized by Laws 1909, Chapter 44. *Town v Butler*, 112 M 1, 127 NW 420.

A fire chief as advisor to the city council advised purchase of a tract of land; secretly purchased same through an agent and re-sold to the city at a profit. The profit so derived was recoverable by the city. *City v Canterbury*, 122 M 301, 142 NW 812.

If the city had so far progressed with the building on the property that it could not restore the property it should not be required to do so, the way to affirmation would be clear; but in the instant case there is a void contract of purchase and a payment of \$600.00. The proof stopping there, the dismissal was improper and there should be a judgment for restitution. *Frisch v City of St. Charles*, 167 M 171, 208 NW 650.

A school treasurer is absolutely liable for funds coming into his hands, except when the funds are deposited in a legally designated depository; but if the

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deposit is made in a bank of which the treasurer is an officer, the exception does not apply. *School District v Aiton*, 173 M 428, 217 NW 496.

There being no over-deposits when the depository banks failed, prior over-deposits were not the proximate cause of any loss. *County of Marshall v Bakke*, 182 M 15, 234 NW 1.

A city treasurer is guilty of malfeasance by depositing city funds in a bank of which he is stockholder, director, and assistant cashier. A stipulation in a bond of such treasurer relieving him from loss caused by bank depository failure does not apply in the instant case. *City of Marshall v Gregoire*, 193 M 188, 259 NW 377.

Defendant, a member of the city council of the city of Montgomery, sold merchandise to the city at reasonable value. Such merchandise was used and cannot be returned. There was no fraud. In a taxpayer's suit to recover for the city, money paid, the defendant prevailed. *Mares v Janutka*, 196 M 88, 264 NW 222.

Where the fraud alleged is based upon a representation that certain depositors of public funds were exempt from, and entitled to a preference over general creditors and depositors under a reorganization of a bank under Laws 1933, Chapter 55, and the concealment by certain stockholders and officers of such bank that they were liable as sureties on the bond of the treasurer of a public depositor for money deposited by him as such is not alleged as an element of the fraud or any other actionable wrong against such creditors and depositors, the concealment is not material to the fraud alleged. *Rien v Cooper*, 211 M 517, 1 NW(2d) 847.

Member of city council may enter into contract with water, light, power and building commission in village of Buhl. 1934 OAG 79, March 19, 1934 (707b).

Insurance contracts renewed prior to December 31, 1934 are legal when written by the mayor-elect who takes office Jan. 7, 1935. 1934 OAG 80, Dec. 26, 1934 (707b-6); 1934 OAG 81, Dec. 26, 1934 (707b-6).

Officers and city employees may deal with one another provided such dealings are not intended to influence action. 1934 OAG 115, Oct. 20, 1933 (90e).

This section applies to a county road foreman. 1934 OAG 195, June 6, 1933 (90b-7).

Compensation of a public officer is an incident of the office and not measured by services performed. 1934 OAG 289, March 16, 1934 (307i).

School board member who requires the seller of wood to the school to use the member's teams in hauling violates this act; and it is the duty of the treasurer to investigate warrants possibly illegal. 1934 OAG 360, June 30, 1933 (159c-4).

Employment of a member of the town board as timekeeper and foreman on an emergency relief project is forbidden by this section. 1934 OAG 872, July 23, 1934 (90d).

Statutes do not prohibit town treasurer from performing work on township roads and receiving compensation therefor from the township. 1934 OAG 436, March 13, 1936 (707b-6).

It is unlawful for a member of the light and water commission to be interested in a contract of insurance with the commission. 1938 OAG 39, April 7, 1937 (90a-2).

Assuming that the power to construct the village sewage system is vested in the village council and that the utilities commission has no voice in making the contracts or purchasing materials, members of the utilities commission may submit bids for furnishing materials for the sewage project. 1938 OAG 40, Oct. 22, 1938 (469a-2).

Each case must be determined on the specific facts. The single fact that the wife of a member of the welfare board is interested in a contract is not necessarily proof of illegality. Speaking generally, an officer should not accept a grant (such as an old age pension) out of county funds. 1938 OAG 137; July 29, 1937 (125a-64).

A village council may not designate a bank in which a member of the board is a stockholder, as a depository of village funds. 1938 OAG 196, May 12, 1937 (140b-5).

*Mares v Janutka*, 196 M 87, 264 NW 222, does not authorize a city officer to sell merchandise to the city. The provisions of the charter of the city of LeSueur, and section 620.04 forbid. 1940 OAG 113, May 18, 1939 (90e-5).

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Under the holding in county of Marshall v Bakke, 182 M 10, 234 NW 1, a county treasurer may be a director in a bank where county funds are designated to be deposited. 1940 OAG 114, July 21, 1939 (90b-2).

As the city treasurer shares in the commission on the insurance policy written for the municipality, there is a violation of the Northfield charter provision and also of section 620.04. 1940 OAG 115, March 19, 1940 (90e-3).

As the city council has no authority over the contracts made by the school board there is nothing to prevent an alderman from writing policies of insurance for the school board. 1940 OAG 116, Aug. 25, 1940 (90e-5).

The statute should not be construed too technically, but neither should it be limited to cases of only money profits. Each case requires its own determination. There is no hard and fast rule. 1940 OAG 117, Oct. 27, 1939 (90a); 1942 OAG 99, March 27, 1941 (90B-8).

Construction of law of compensation of regular salaried health officers, and of those temporarily employed in case of epidemic. Division between town and county. 1940 OAG 219, Dec. 6, 1939 (225i-2).

In Renville there is one bank, which has been designated as a depository for school funds. The owner of the bank has been elected a member of the board. The local bank may be designated as depository by a two-thirds vote. Expressly overruling attorney general's opinion rendered March 23, 1933, and since followed in subsequent opinions. 1942 OAG 31, July 9, 1942 (90c-2).

County officials or their deputies or employees may not lawfully purchase tax-forfeited land at a tax sale. 1942 OAG 197, Sept. 3, 1941 (90B).

The office of village president and a member of the school board are incompatible. The officer of a bank designated as a depository of school funds, may not be a member of the school board. 1942 OAG 223, Oct. 13, 1941 (358-F).

Where the publisher's wife is a paid welfare worker, the publisher may nevertheless contract for the county printing. OAG Jan. 17, 1944 (90b-6).

The city council may not appoint one of its own members milk inspector. OAG March 1, 1944 (358e-9).

Wife of an alderman may procure a liquor license provided the husband has no interest in the business. OAG May 19, 1944 (903-4).

Conservation department employees may not obtain leases to state lands in forest areas. Employees of other state departments are not prohibited. OAG Aug. 24, 1944 (90f).

Rule as to liability of municipal corporation under an invalid contract. 20 MLR 564.

Interest of officer in municipal contract. 23 MLR 239.

Constructive trusts as affected by section 620.04. 25 MLR 691.

Sales to public employees; Laws 1941, Chapter 58. 26 MLR 222.

### 620.05 FALSE STATEMENT REGARDING TAXES.

HISTORY. Penal Code s. 373; G.S. 1894 s. 6667; R.L. 1905 s. 5033; G.S. 1913 s. 8818; G.S. 1923 s. 10306; M.S. 1927 s. 10306.

## FORGERY

### 620.06 DEFINITIONS.

HISTORY. 1885 c. 178 ss. 6, 8; Penal Code ss. 399, 400, 407; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 ss. 45f, 45h; G.S. 1894 ss. 6693, 6694, 6701, 6913, 6915; R.L. 1905 s. 5047; G.S. 1913 s. 8833; G.S. 1923 s. 10321; M.S. 1927 s. 10321.

In an indictment for forgery the word "forge" is not a mere legal conclusion. The indictment is sufficient. State v Greenwood, 76 M 211, 78 NW 1042.

The foundation was ample for the introduction of samples, of the handwriting of the defendant, in a prosecution charging defendant with the forgery of the signature of a purported maker of a check. State v Mohrbacher, 173 M 567, 218 NW 112.

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Disbarment of attorney convicted of forgery. In re MacLean, 196 M 5, 263 NW 906.

The unauthorized signature in the instant case did not constitute the crime of forgery. The gist of the offense is the intent to defraud. Where there is no intent to defraud, signing another's name without authority is not forgery. Strader v Haley, 216 M 327, 12 NW(2d) 608.

The antedating of game licenses to game law violators, is with intent to defraud and is punishable. 1934 OAG 436, Sept. 26, 1933 (209).

### 620.07 FORGERY, FIRST DEGREE.

HISTORY. Penal Code s. 396; G.S. 1894 s. 6690; R.L. 1905 s. 5048; G.S. 1913 s. 8834; G.S. 1923 s. 10322; M.S. 1927 s. 10322.

1. What constitutes
2. Held to constitute forgery
3. Acts not forgery
4. Indictment
5. Practice

#### 1. What constitutes

Forgery at common law is defined as "the fraudulent making of a false writing, which if genuine, would be apparently of some legal efficacy." State v Mott, 16 M 472 (424); State v Rose, 70 M 403, 73 NW 177; State v Greenwood, 76 M 211, 78 NW 1042.

The instrument forged must be in fact or appear to be one which, if true, would possess some legal validity. State v Wheeler, 19 M 98 (70); State v Henn, 39 M 464, 40 NW 564.

An alteration, to be criminal, must be such as to alter the legal effect of the instrument. A mere verbal alteration, not affecting the obligation of the instrument, is not enough. State v Riebe, 27 M 315, 7 NW 262.

The writing falsely made must purport to be the writing of another person than the one making it. A false assumption of authority in executing an instrument as the agent of a named principal does not constitute forgery. State v Willson, 28 M 52, 9 NW 28.

To constitute the offense of forging an instrument by which "any person may be bound, affected, or in any way injured," it is not necessary that the person be bound. The fraudulent alteration of a mortgage held forgery although the mortgage had been satisfied and although it had been recorded so that the act likewise constituted the offense of mutilating a public record. State v Adamson, 43 M 196, 45 NW 152.

The essential elements of the offense are a writing apparently valid, an intent to defraud and a forging of the writing. The gist of the offense is the intent to defraud. State v Greenwood, 76 M 211, 78 NW 1042; State v Bjornaas, 88 M 301, 92 NW 980.

The signing of another's name without authority is not necessarily forgery. State v Bjornaas, 88 M 301, 92 NW 980.

#### 2. Held to constitute forgery

The forging of a promissory note without a revenue stamp. State v Mott, 16 M 472 (424).

Inserting in a chattel mortgage a description of property not embraced in the mortgage as executed. State v Adamson, 43 M 196, 45 NW 152.

Changing the second initial of the name of a party to a contract. State v Higgins, 60 M 1, 61 NW 816.

Making raise entries in accounts on books which the party is employed to keep. State v Goodrich, 67 M 176, 69 NW 815.

Forging a real estate mortgage. State v Moore, 86 M 418, 90 NW 786.

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Forging a bank check. *State v Lucken*, 129 M 402, 152 NW 769.

### 3. Acts not forgery

The following were held not to constitute forgery: At common law (prior to Jan. 1, 1886) an endorsement of payment on a promissory note by the maker, no name being signed. *State v Monnier*, 8 M 212 (182).

An immaterial verbal alteration in a written instrument. *State v Riebe*, 27 M 315, 7 NW 262.

Signing an instrument as agent for a named principal without authority. *State v Willson*, 28 M 52, 9 NW 28.

### 4. Indictment

Where it does not appear on the face of the instrument forged, that some one might be defrauded by it, extrinsic facts must be alleged showing that some person might be defrauded by it. *State v Wheeler*, 19 M 98 (70); *State v Riebe*, 27 M 315, 7 NW 262; *State v Goodrich*, 67 M 176, 69 NW 815; *State v Rose*, 70 M 403, 73 NW 177; *State v Greenwood*, 76 M 211, 78 NW 1042; *State v Fay*, 80 M 251, 83 NW 158.

An indictment for forgery charged that it "consisted in endorsing the name of Fred W. Smith upon a check dated March 8, 1887, for the sum of \$50.00, signed and drawn by J. A. Gilfillan, and payable to the order of Rev. Fred W. Smith" the name of the drawee not being given, is sufficient. *State v Curtis*, 39 M 357, 40 NW 263.

It is unnecessary to allege the value of the property added by forgery to the description in a chattel mortgage. *State v Adamson*, 43 M 196, 45 NW 152.

A general allegation of intent to defraud is sufficient without naming the party defrauded. *State v Adamson*, 43 M 196, 45 NW 152; *State v Goodrich*, 67 M 176, 69 NW 815; *State v Greenwood*, 76 M 211, 78 NW 1042.

The uttering of a forged or false instrument, and the making of such instrument, are distinct offenses; and an indictment for the former need not set out who made the false instrument, or how it was made, or the intent of the maker. *State v Goodrich*, 67 M 177, 69 NW 815.

An indictment substantially in the language of the statute is sufficient. It is not necessary to allege the acts constituting the forgery if it is alleged that the accused "forged" the instrument set out. An indictment which charges that on a certain day and at a certain place the accused, with intent to defraud, did then and there feloniously forge a certain promissory note, of the tenor following, and then sets the note out in full, is sufficient. It is not necessary that the facts and circumstances showing the fraudulent intent should be alleged. It is enough that they are given in evidence on the trial. *State v Greenwood*, 76 M 211, 78 NW 1042.

Where the instrument forged purports to be signed it is unnecessary to allege the authority of the agent. *State v Fay*, 80 M 251, 83 NW 158.

### 5. Practice

The variance between an indictment and the proof, as to the middle initial of the injured party, Peter J. being used where it should have been Peter C. is immaterial. Proof was sufficient to convict defendant with others of disposing of a forged mortgage to Christianson. *State v Tall*, 43 M 273, 45 NW 449.

### 620.08 OFFICIAL FALSE CERTIFICATE.

HISTORY. Penal Code s. 397; G.S. 1894 s. 6691; R.L. 1905 s. 5049; G.S. 1913 s. 8835; G.S. 1923 s. 10323; M.S. 1927 s. 10323.

A notary public, who knowingly, wilfully and falsely certifies that the execution of a mortgage was acknowledged by the persons named therein as mortgagors, is guilty of forgery in the first degree, under section 620.08 although the mortgage was never recorded in the proper county. *State v Bauer*, 171 M 345, 214 NW 262.

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### 620.09 FIRST DEGREE, HOW PUNISHED.

HISTORY. Penal Code s. 410; 1889 c. 208 s. 1; G.S. 1894 s. 6704; R.L. 1905 s. 5050; G.S. 1913 s. 8836; G.S. 1923 s. 10324; M.S. 1927 s. 10324.

### 620.10 FORGERY, SECOND DEGREE.

HISTORY. Penal Code s. 398; G.S. 1894 s. 6692; R.L. 1905 s. 5051; G.S. 1913 s. 8837; G.S. 1923 s. 10325; M.S. 1927 s. 10325.

It is not necessary, in an indictment for forgery, to set out extrinsic matter concerning the execution of the forgery, and an allegation in the indictment that defendant did utter, dispose of, and put off as true, was adequate. A bill of lading is an "instrument in writing." *State v Bierbauer*, 111 M 129, 126 NW 406.

Defendant, a witness on his own behalf, denied that the checks alleged to be forged were in his handwriting and in defense presented evidence of his own handwriting. It was not error to require of the defendant that he write certain words as samples of his handwriting. *State v Barnard*, 176 M 349, 223 NW 452.

The testimony of an accomplice was adequately corroborated; the forgery of public relief orders was an indictable offense; and, proof as to similar offenses is admissible in the instant case to establish motive and modus operandi. *State v Stuart*, 203 M 301, 281 NW 299.

The issuance of antedated licenses to game law violators to cover the period said game law violators hunted without a license, is punishable under this section. It is also "making of a false certificate." 1934 OAG 436, Sept. 26, 1933 (209).

### 620.11 SECOND DEGREE, HOW PUNISHED.

HISTORY. Penal Code s. 411; 1889 c. 208 s. 2; G.S. 1894 s. 6705; R.L. 1905 s. 5052; G.S. 1913 s. 8838; G.S. 1923 s. 10326; M.S. 1927 s. 10326.

The fact that the judgment of conviction for forgery in the second degree, upon which the defendant was sentenced to the reformatory, fails to state the age of the defendant which, however, the trial court discovered through examination of the defendant at time of sentence, and the fact that thereafter defendant was transferred to the state prison, does not render it subject to attack on habeas corpus. *State ex rel v Wolfer*, 119 M 368, 138 NW 315.

### 620.12 FORGERY, THIRD DEGREE.

HISTORY. Penal Code s. 401; G.S. 1894 s. 6695; 1899 c. 23; 1901 c. 56; R.L. 1905 s. 5053; G.S. 1913 s. 8839; G.S. 1923 s. 10327; M.S. 1927 s. 10327.

While mere carelessness or negligence in the keeping of books and records would not constitute forgery, the instant case presents evidence of a long and systematic course of juggling the books and records of the creamery association and the defendant's conviction of forgery in the third degree is sustained. *State v Omodt*, 198 M 165, 269 NW 360.

Public offenses relating to labor unions. *United Mine Workers v Coronado Co.* 259 US 389.

### 620.13 CONCEALING LARCENY, FORGERY.

HISTORY. Penal Code s. 402; G.S. 1894 s. 6696; R.L. 1905 s. 5054; G.S. 1913 s. 8840; G.S. 1923 s. 10328; M.S. 1927 s. 10328.

The indictments purporting to charge defendants with uttering as true certain false entries in an account of a survey of logs, state facts constituting a public offense. *State v Goodrich*, 67 N 176, 69 NW 815.

Indictments for forgery in the third degree against a partner for making false entries in the partnership books for the purpose of defrauding a partner by concealing a misappropriation of partnership funds state a public offense under this section. *State v MacGregor*, 202 M 580, 279 NW 372.

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### 620.14 FORGING PASSAGE TICKETS.

HISTORY. Penal Code s. 403; G.S. 1894 s. 6697; R.L. 1905 s. 5055; G.S. 1913 s. 8841; G.S. 1923 s. 10329; M.S. 1927 s. 10329.

### 620.15 FORGING POSTAGE OR REVENUE STAMPS.

HISTORY. Penal Code s. 404; G.S. 1894 s. 6698; R.L. 1905 s. 5056; G.S. 1913 s. 8842; G.S. 1923 s. 10330; M.S. 1927 s. 10330.

### 620.16 FORGERY IN THIRD DEGREE, HOW PUNISHED.

HISTORY. Penal Code s. 412; G.S. 1894 s. 6706; R.L. 1905 s. 5057; G.S. 1913 s. 8843; G.S. 1923 s. 10331; M.S. 1927 s. 10331.

### 620.17 OFFICER OF CORPORATION SELLING SHARES.

HISTORY. Penal Code s. 405; G.S. 1894 s. 6699; R.L. 1905 s. 5058; G.S. 1913 s. 8844; G.S. 1923 s. 10332; M.S. 1927 s. 10332.

### 620.18 FALSELY INDICATING PERSON AS CORPORATE OFFICER.

HISTORY. Penal Code s. 406; G.S. 1894 s. 6700; R.L. 1905 s. 5059; G.S. 1913 s. 8845; G.S. 1923 s. 10333; M.S. 1927 s. 10333.

### 620.19 UTTERING.

HISTORY. Penal Code s. 408; G.S. 1894 s. 6702; R.L. 1905 s. 5060; G.S. 1913 s. 8846; G.S. 1923 s. 10334; M.S. 1927 s. 10334.

1. What constitutes
2. Forging and uttering
3. Indictment
4. Practice

#### 1. What constitutes

The instrument uttered or published must be one, the false making of which would be forgery. Making and uttering a deed as an agent of a named principal under false assumption of authority is not criminal. *State v Willson*, 28 M 52, 9 NW 28; *State v Rose*, 70 M 403, 73 NW 177.

The intent to defraud and the uttering of the instrument "as true" are essential elements of the offense. *State v Cody*, 65 M 121, 67 NW 798.

The gist of the offense of uttering a forged instrument is that the accused, knowing it to be false, utters it as true, with intent to defraud. Uttering false entries in accounts or books which the utterer is employed to keep, knowing them to be false and intending to defraud, is criminal. *State v Goodrich*, 67 M 176, 69 NW 815.

Uttering several forged instruments at the same time and to the same party, as one act, constitutes but one offense. *State v Moore*, 86 M 422, 90 NW 787.

The intent to defraud must appear from facts reasonably calculated to show such guilty purpose. *State v Bjornaas*, 88 M 301, 92 NW 980.

The instrument in question was a county auditor's warrant. It was genuine and in payment of labor. On the payroll the worker drew three dollars a day. The laborer's name was endorsed in blank on the warrant by defendant or some member of his family, and he then settled with the laborer at \$1.50 or \$1.75 per day. The conviction for uttering a forged instrument is sustained. *State v Stearns*, 184 M 452, 238 NW 895.

#### 2. Forging and uttering

An indictment containing two counts, one for forging a promissory note, and a second for uttering and publishing a forged promissory note, is demurrable as



charging two offenses in a case in which it is not allowed by statute. As in this case, prior to the Penal Code, effective Jan. 1, 1886, the forging of an instrument and uttering it were separate offenses. That is still the law under the code where each act is committed by a different person or by the same person but at different times and as separate acts. *State v Wood*, 13 M 121 (112); *State v Goodrich*, 67 M 176, 69 NW 815; *State v Klugherz*, 91 M 406, 98 NW 99.

The uttering as true of a forged mortgage and a forged note, which the mortgage purports to secure, at one time and to the same party, is a single act, and constitutes only one offense. A conviction on an indictment for uttering the mortgage is a bar to a subsequent conviction for uttering the note. *State v Moore*, 86 M 422, 90 NW 787.

The forging of an instrument and the uttering of it by the same person, at the same time, as one transaction, constitutes but one offense. *State v Klugherz*, 91 M 406, 98 NW 99.

### 3. Indictment

The indictment must allege that the instrument was uttered "as true." *Benson v State*, 5 M 19 (6); *State v Cody*, 65 M 121, 67 NW 798.

An indictment for uttering counterfeit bills under Public Statutes 1858, Chapter 91, Section 6, held insufficient for not alleging that the bills purported to have been issued by a bank authorized by law to issue such bills. *Benson v State*, 5 M 19 (6).

The indictment need not allege who made the false instrument, or how it was done, or the intent in making it. *State v Goodrich*, 67 M 176, 69 NW 815.

If the indictment uttered does not import on its face a legal liability, it may be invested with apparent legal validity by allegations of intrinsic facts. *State v Rose*, 70 M 403, 73 NW 177.

All the acts enumerated in this section may be charged in a single count. *State v Greenwood*, 76 M 207, 78 NW 1044, 1117.

An indictment for uttering as true forged paper, purporting on its face to have been issued by an agent in the name of his principal, which sets out the instrument in haec verba, need not aver the authority of the agent. *State v Fay*, 80 M 251, 83 NW 158.

In an indictment for uttering a forged mortgage it is not necessary to allege that the accused had in his possession a note which the mortgage secured and that he passed it off with the mortgage. *State v Moore*, 86 M 418, 90 NW 786.

It is not necessary to set out extrinsic matter concerning execution. Allegation that defendant did utter, dispose of, or put off as true, was adequate. *State v Bierbauer*, 111 M 129, 126 NW 406.

### 4. Practice

Where two or more persons conspire together to commit any offense or actionable wrong, everything said, done, or written by any of them, in the execution or furtherance of their common purpose, is deemed as so said, done, or written by everyone. Where the common purpose embraced, not only the putting off as true the forged notes, but also the disposition of the fruits of the fraud, and statements made by one of them as to concealing the fraud are admissible as evidence against all. *State v Thaden*, 43 M 253, 45 NW 447.

On the trial of a person charged with uttering, publishing and putting off as true a false or forged instrument, other instruments found on his person or passed by him about the same time may be introduced in evidence upon proof that they are also false, forged and fraudulent. Without such proof they are not admissible. *State v Rose*, 70 M 403, 73 NW 177.

A conviction on an indictment for uttering the mortgage is a bar to a subsequent conviction for uttering the note. *State v Moore*, 86 M 422, 90 NW 787.

While the intent to defraud in uttering a forged endorsement to a bank check may be presumed from the fact of affixing the signature of the payee to the check by the accused, which gives it an apparent value it did not otherwise have,

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this is not a irrebuttable presumption but is open to explanation upon all the facts and circumstances. *State v Bjornaas*, 88 M 301, 92 NW 980.

A plea of former acquittal is sufficient whenever it shows on its face that the second indictment is based upon the same single criminal act which was the basis of the indictment upon which the defendant was acquitted. *State v Klugherz*, 91 M 406, 98 NW 99.

### 620.20 UTTERING WRITING SIGNED WITH WRONGDOER'S NAME.

HISTORY. Penal Code s. 409; G.S. 1894 s. 6703; R.L. 1905 s. 5061; G.S. 1913 s. 8847; G.S. 1923 s. 10335; M.S. 1927 s. 10335.

The unauthorized signature in the instant case did not constitute the crime of forgery. Intent to defraud is an essential element of forgery. The gist of the offense of forgery is the intent to defraud. *Strader v Haley*, 216 M 327, 12 NW(2d) 608.

## COUNTERFEITING; FALSE LABELING OR REGISTRATION

### 620.21 POSSESSION OF COUNTERFEIT COIN.

HISTORY. Penal Code s. 413; G.S. 1894 s. 6707; R.L. 1905 s. 5062; G.S. 1913 s. 8848; G.S. 1923 s. 10336; M.S. 1927 s. 10336.

### 620.22 ADVERTISING COUNTERFEIT MONEY.

HISTORY. Penal Code s. 414; G.S. 1894 s. 6708; R.L. 1905 s. 5063; G.S. 1913 s. 8849; G.S. 1923 s. 10337; M.S. 1927 s. 10337.

### 620.23 COUNTERFEITING TRADEMARK OR BRAND; PENALTY.

HISTORY. 1885 c. 178 s. 1; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 45a; G.S. 1894 s. 6908; R.L. 1905 s. 5066; G.S. 1913 s. 8852; G.S. 1923 s. 10340; M.S. 1927 s. 10340.

### 620.24 POSSESSION OF DIES OR PLATES; PENALTY.

HISTORY. 1885 c. 178 s. 2; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 45b; G.S. 1894 s. 6909; R.L. 1905 s. 5067; G.S. 1913 s. 8853; G.S. 1923 s. 10341; M.S. 1927 s. 10341.

### 620.243 MANUFACTURE AND DISTRIBUTION OF TOKENS, WHEN PROHIBITED.

HISTORY. 1941 c. 132 s. 1.

The making or uttering of circular metal tokens bearing inscription "good for amusement only" and "this token has no cash or trade value" did not constitute a violation of statutes prohibiting the making or uttering coins resembling money and the making or uttering devices of minor coins, since tokens were never intended for circulation as money. *United States v Gellman*, 44 F. Supp. 360.

### 620.244 RESTRICTIONS AS TO SIZE OF TOKENS.

HISTORY. 1941 c. 132 s. 2.

### 620.245 KNOWLEDGE OF ILLEGAL USE PRESUMED.

HISTORY. 1941 c. 132 s. 3.

### 620.246 VIOLATION A MISDEMEANOR.

HISTORY. 1941 c. 132 s. 4.

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### 620.25 SELLING GOODS HAVING FALSE STAMP; PENALTY.

HISTORY. 1885 c. 178 s. 3; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 45c; G.S. 1894 s. 6910; R.L. 1905 s. 5068; G.S. 1913 s. 8854; G.S. 1923 s. 10342; M.S. 1927 s. 10342.

### 620.26 AFFIXING FALSE STAMPS; PENALTY.

HISTORY. 1885 c. 178 s. 4; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 45d; G.S. 1894 s. 6911; R.L. 1905 s. 5069; G.S. 1913 s. 8855; G.S. 1923 s. 10343; M.S. 1927 s. 10343.

When a preparation has come to be popularly known by the name of a person (e.g. "Ward's Liniment"), another person engaging in the manufacture has no right to appropriate that name to his own exclusive use as a proprietary trade-mark or trade name. In an action to recover damages for the wrongful use of a trade label, resembling that of the plaintiff, the plaintiff is not entitled, in the absence of proof of the measure of damages, to recover the penalty prescribed by Laws 1885, Chapter 178 (section 620.26). *Watkins v Landon*, 52 M 389, 54 NW 193.

### 620.27 FALSE BRANDING BY MANUFACTURER.

HISTORY. 1885 c. 178 s. 5; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 45e; G.S. 1894 s. 6912; R.L. 1905 s. 5070; G.S. 1913 s. 8856; G.S. 1923 s. 10344; M.S. 1927 s. 10344.

### 620.28 TRADE-MARK; WHEN DEEMED AFFIXED.

HISTORY. 1885 c. 178 s. 7; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 45g; G.S. 1894 s. 6914; R.L. 1905 s. 5071; G.S. 1913 s. 8857; G.S. 1923 s. 10345; M.S. 1927 s. 10345.

### 620.29 TRADE-MARKS OF WORKMEN'S UNIONS.

HISTORY. 1895 c. 122 s. 1; R.L. 1905 s. 5072; G.S. 1913 s. 8858; G.S. 1923 s. 10346; M.S. 1927 s. 10346.

Growth and necessities of great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection which their members found necessary. *United Mine Workers v Coronado Co.* 259 US 386.

A foreign trust company is not entitled to register a trade-mark of its business. OAG March 30, 1933.

### 620.30 COUNTERFEITING OR DEALING IN COUNTERFEITS; HOW PUNISHED.

HISTORY. 1895 c. 122 s. 2; R.L. 1905 s. 5073; G.S. 1913 s. 8859; G.S. 1923 s. 10347; M.S. 1927 s. 10347.

### 620.31 REGISTRATION.

HISTORY. 1895 c. 122 s. 3; R.L. 1905 s. 5074; G.S. 1913 s. 8860; G.S. 1923 s. 10348; M.S. 1927 s. 10348.

### 620.32 FRAUDULENT REGISTRATION OR USE; PENALTY.

HISTORY. 1895 c. 122 ss. 3, 6; R.L. 1905 s. 5075; G.S. 1913 s. 8861; G.S. 1923 s. 10349; M.S. 1927 s. 10349.

### 620.33 CERTIFICATES; ILLEGAL USE; PENALTY.

HISTORY. 1895 s. 122 ss. 3, 6; R.L. 1905 s. 5076; G.S. 1913 s. 8862; G.S. 1923 s. 10350; M.S. 1927 s. 10350.

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## 620.34 INCRIMINATING EVIDENCE.

HISTORY. 1885 c. 178 s. 9; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 s. 451; G.S. 1894 s. 6916; R.L. 1905 s. 5077; G.S. 1913 s. 8863; G.S. 1923 s. 10351; M.S. 1927 s. 10351.

Federal cases relating to section 620.34. Pacific Express Co. v Seibert, 142 US 547; Brown v Walker, 161 US 591.

## 620.35 FALSE STAMPING OF ARTICLES OF GOLD OR SILVER.

HISTORY. 1907 c. 467 s. 1; G.S. 1913 s. 8864; G.S. 1923 s. 10352; M.S. 1927 s. 10352.

## 620.36 STANDARDS; IMPROPER STAMPING; PENALTIES.

HISTORY. 1907 c. 467 s. 2; G.S. 1913 s. 8865; G.S. 1923 s. 10353; M.S. 1927 s. 10353.

## 620.37 GOLD PLATE; FALSE STAMPING; PENALTY.

HISTORY. 1907 c. 467 s. 3; G.S. 1913 s. 8866; G.S. 1923 s. 10354; M.S. 1927 s. 10354.

## 620.38 SILVER PLATE; FALSE STAMPING; PENALTY.

HISTORY. 1907 c. 467 s. 4; G.S. 1913 s. 8867; G.S. 1923 s. 10355; M.S. 1927 s. 10355.

## 620.39 VIOLATIONS; PUNISHMENT.

HISTORY. 1907 c. 467 s. 5; G.S. 1913 s. 8868; G.S. 1923 s. 10356; M.S. 1927 s. 10356.

## 620.40 SELLING FALSELY STAMPED ARTICLES; PENALTY.

HISTORY. 1907 c. 467 s. 6; G.S. 1913 s. 8869; G.S. 1923 s. 10357; M.S. 1927 s. 10357.

## 620.41 ISSUE OF LABOR CHECK WITHOUT FUNDS A MISDEMEANOR.

HISTORY. 1931 c. 282; M. Supp. s. 10357-1.

There is no violation of section 620.41 when the check is post-dated. OAG Nov. 29, 1938 (133b-43).

## 620.42 FALSE CERTIFICATE OF REGISTRATION OF ANIMALS; FALSE REPRESENTATION AS TO BREED.

HISTORY. 1887 c. 198 ss. 1, 2; G.S. 1878, Vol. 2 (1888 Supp.) c. 95 ss. 66a, 66b; G.S. 1894 ss. 6905, 6906; R.L. 1905 s. 5064; G.S. 1913 s. 8850; G.S. 1923 s. 10338; M.S. 1927 s. 10338.

## 620.43 WILFUL FALSE BRANDING OF ANIMALS.

HISTORY. R.S. 1851 c. 27 s. 2; P.S. 1858 c. 22 s. 2; G.S. 1866 c. 95 s. 49; G.S. 1878 c. 95 s. 66; G.S. 1894 s. 6875; R.L. 1905 s. 5065; G.S. 1913 s. 8851; G.S. 1923 s. 10339; M.S. 1927 s. 10339.

## FALSE PERSONATIONS; FALSE STATEMENTS

## 620.44 FALSELY PERSONATING ANOTHER.

HISTORY. Penal Code ss. 447, 448; G.S. 1894 ss. 6743, 6744; R.L. 1905 s. 5102; G.S. 1913 s. 8895; G.S. 1923 s. 10383; M.S. 1927 s. 10383.

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## 620.45 OFFENSES AGAINST PROPERTY BY FRAUD

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### 620.45 RECEIVING PROPERTY IN FALSE CHARACTER.

HISTORY. Penal Code s. 449; G.S. 1894 s. 6745; R.L. 1905 s. 5103; G.S. 1913 s. 8896; G.S. 1923 s. 10384; M.S. 1927 s. 10384.

### 620.46 PERSONATING AN OFFICER.

HISTORY. Penal Code s. 450; G.S. 1894 s. 6746; R.L. 1905 s. 5104; G.S. 1913 s. 8897; G.S. 1923 s. 10385; M.S. 1927 s. 10385.

### 620.47 OBTAINING SIGNATURE BY FALSE PRETENSES.

HISTORY. Penal Code s. 451; G.S. 1894 s. 6747; R.L. 1905 s. 5105; G.S. 1913 s. 8898; G.S. 1923 s. 10386; M.S. 1927 s. 10386.

In an information under this section, it is not necessary to set out the specific documents whereby the signatures were obtained where such alleged false documents are described in general terms, the defendant having the right to demand a bill of particulars unless the documents are in his possession. Where an information charging a crime under this section alleges that two mortgages and notes were obtained by the same means in one transaction, it does not charge more than one offense. *State v Gottwalt*, 209 M 4, 295 NW 67.

False pretenses; fraud. 12 MLR 541.

### 620.48 FALSE REPRESENTATION AS TO OWNERSHIP OF LAND AND EXECUTION OF DEED THERETO.

HISTORY. R.S. 1851 c. 101 s. 20; 1852 Amend. pp. 23, 24; P.S. 1858 c. 90 s. 20; G.S. 1866 c. 95 s. 21; 1867 c. 86 s. 1; G.S. 1878 c. 95 s. 31; G.S. 1894 s. 6873; R.L. 1905 s. 5106; G.S. 1913 s. 8899; G.S. 1923 s. 10386a; M.S. 1927 s. 10386a.

### 620.49 OBTAINING EMPLOYMENT BY FALSE LETTER OR CERTIFICATE.

HISTORY. Penal Code s. 452; G.S. 1894 s. 6748; R.L. 1905 s. 5107; G.S. 1913 s. 8900; G.S. 1923 s. 10387; M.S. 1927 s. 10387.

### 620.50 FALSE STATEMENTS TO OBTAIN CREDIT.

HISTORY. 1909 c. 431 s. 1; G.S. 1913 s. 8901; G.S. 1923 s. 10388; M.S. 1927 s. 10388.

Laws 1909, Chapter 431, does not contravene Minnesota Constitution, Article 4, Section 33, nor the Fourteenth Amendment to the Federal Constitution, although the present act is aimed at those only who make or use false statements to obtain credit from banks, savings banks, and trust companies. *State v Elliott*, 135 M 89, 160 NW 204.

The verdict that defendant knowingly made a false statement for the purpose of obtaining credit is sustained. *State v Eidsvold*, 172 M 208, 215 NW 206.

It was error to exclude evidence that on advice of his physician defendant abstained from taking part in affairs of the corporation. The evidence is insufficient to convict one of the bank officers indicted, as having knowingly participated in making or presenting the statement. *State v Eidsvold*, 173 M 23, 216 NW 316.

The evidence sustains a finding that the defendants maliciously and without probable cause instituted a criminal action against plaintiff under section 620.50; and whether they fairly and fully disclosed the facts to the county attorney and were advised that prosecution would lie was for the jury. *Krienke v Citizens National*, 182 M 549, 235 NW 24.

### 620.51 FALSE STATEMENTS CONCERNING VALUE; EXCEPTION.

HISTORY. 1909 c. 479 s. 1; G.S. 1913 s. 8902; G.S. 1923 s. 10389; M.S. 1927 s. 10389.

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### 620.52 FALSE STATEMENT IN ADVERTISEMENT.

HISTORY. 1913 c. 51 s. 1; G.S. 1913 s. 8903; 1915 c. 309 ss. 1, 2; G.S. 1923 ss. 10390, 10391; M.S. 1927 ss. 10390, 10391.

The evidence fails to show any violation of Laws 1913, Chapter 51, as amended by Laws 1915, Chapter 309, Sections 1, 2 (section 620.52), the so-called false advertisement act. *State v Schoch*, 193 M 91, 257 NW 810.

There was no violation by mailing tickets to the roller derby stamped with the word "complimentary" followed by the words "subject to a service charge." OAG July 13, 1937 (641b).

Liability of manufacturer to subpurchaser for breach of express warranty. 25 MLR 99 (note 69).

### 620.53 FALSE STATEMENTS AS INDUCEMENT TO ENTERING EMPLOYMENT.

HISTORY. 1913 c. 544 s. 1; G.S. 1913 s. 8904; 1923 c. 272 s. 1; G.S. 1923 s. 10392; M.S. 1927 s. 10392.

### 620.54 PENALTIES.

HISTORY. 1913 c. 544 s. 2; G.S. 1913 s. 8905; 1923 c. 272 s. 2; G.S. 1923 s. 10393; M.S. 1927 s. 10393.

## FALSE WEIGHTS AND MEASURES

### 620.55 USING FALSE WEIGHTS AND MEASURES.

HISTORY. Penal Code ss. 462 to 464; G.S. 1894 ss. 6758 to 6760; R.L. 1905 s. 5115; G.S. 1913 s. 8913; G.S. 1923 s. 10401; M.S. 1927 s. 10401.

The defendant was properly convicted of criminal libel in writing a letter for publication charging the defendant of acts which, if true, would be criminal under this section. *State v Shippman*, 83 M 441, 86 NW 431.

Under Laws 1911, Chapter 156, Section 6, selling, offering for sale, and exposing for sale less quantity than represented are mala prohibita, of which neither specific intent, fraud, nor deception is an element. *State v Armour*, 118 M 128, 136 NW 565.

Laws 1911, Chapter 156, is a police regulation and changes the prior law so that intent to defraud or commit wrong is not an element of the offense of selling or exposing for sale less than the quantity represented, and the exclusion of evidence tending to show absence of such intent was error. *State v People's Ice Co.* 124 M 307, 144 NW 962.

In a prosecution for the violation of an ordinance of the city of Minneapolis, by which ordinance it is declared that one who knowingly sells commodities at short weight shall be punished by fine. Knowledge is an essential element of the offense so defined, and since the complaint contained no charge that the sale in question was underweight to the knowledge of defendant, and no evidence of such knowledge was offered on the trial, no violation of the ordinance was shown. *State v Washed Sand Co.* 136 M 361, 162 NW 451.

### 620.56 CONTAINERS FOR SMALL FRUITS TO BE OF LEGAL SIZE.

HISTORY. 1913 c. 66 s. 1; G.S. 1913 s. 8914; G.S. 1923 s. 10402; M.S. 1927 s. 10402.

### 620.57 NOT TO BE REFILLED.

HISTORY. 1913 c. 66 s. 2; G.S. 1913 s. 8915; G.S. 1923 s. 10403; M.S. 1927 s. 10403.

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## 620.58 OFFENSES AGAINST PROPERTY BY FRAUD

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### 620.58 PENALTY FOR VIOLATION.

HISTORY. 1913 c. 66 s. 3; G.S. 1913 s. 8916; G.S. 1923 s. 10404; M.S. 1927 s. 10404.

FRAUDS RELATING TO BILLS OF LADING, MANIFESTS,  
TRANSPORTATION, AND BY BAILEES

### 620.59 FICTITIOUS BILLS OF LADING.

HISTORY. Penal Code s. 471; G.S. 1894 s. 6767; R.L. 1905 s. 5121; G.S. 1913 s. 8922; G.S. 1923 s. 10410; M.S. 1927 s. 10410.

Under the facts in the case Penal Code, Section 471, (section 620.59) does not apply. *Nat'l Bank v Chicago, Burlington*, 44 M 237, 46 NW 560.

In an action to recover the value of wheat lost in transit, the evidence supports the finding that the defendant received the quantity of wheat mentioned in the bill of lading and delivered only the quantity mentioned in the weighmaster's certificate, and the verdict for the plaintiff is sustained. *Greatwestern Grain v Chicago, Milwaukee Ry.* 163 M 371, 204 NW 47.

Uniform bills of lading. 1 MLR 285.

### 620.60 FICTITIOUS WAREHOUSE RECEIPTS.

HISTORY. Penal Code ss. 472, 473; G.S. 1894 ss. 6768, 6769; R.L. 1905 s. 5122; G.S. 1913 s. 8923; G.S. 1923 s. 10411; M.S. 1927 s. 10411.

### 620.61 DUPLICATE RECEIPTS; SELLING STORED PROPERTY.

HISTORY. Penal Code ss. 474, 475; G.S. 1894 ss. 6770, 6771; R.L. 1905 s. 5123; G.S. 1913 s. 8924; G.S. 1923 s. 10412; M.S. 1927 s. 10412.

### 620.62 MAKING FALSE MANIFEST, INVOICE.

HISTORY. Penal Code s. 460; G.S. 1894 s. 6756; R.L. 1905 s. 5113; G.S. 1913 s. 8911; G.S. 1923 s. 10399; M.S. 1927 s. 10399.

### 620.63 FRAUD BY BAILEE OF ANIMALS.

HISTORY. 1891 c. 29 ss. 1, 2; G.S. 1894 ss. 6813, 6814; R.L. 1905 s. 5183; G.S. 1913 s. 9017; G.S. 1923 s. 10521; M.S. 1927 s. 10521.

### 620.64 EMPLOYEE OBTAINING TRANSPORTATION WITH INTENT TO DEFRAUD.

HISTORY. 1901 c. 165; R.L. 1905 s. 5187; G.S. 1913 s. 9021; G.S. 1923 s. 10525; M.S. 1927 s. 10525.

Similar laws held constitutional. *State v Elliott*, 135 M 89, 160 NW 204.

A statute which makes guilty of a misdemeanor any person who, with intent to defraud, obtains an advance upon an agreement to render services, and which provides further that failure to perform the services for which an advance was obtained shall be prima facie evidence of intent to defraud is violative of the Thirteenth Amendment and the federal Antipeonage Act. *Pollock v Williams*, 322 US 20.

## VARIOUS FRAUDS

### 620.65 DIVULGING TELEGRAM OR TELEPHONE MESSAGE.

HISTORY. Penal Code s. 482; G.S. 1894 s. 6782; R.L. 1905 s. 5134; 1907 c. 212 s. 1; G.S. 1913 s. 8935; G.S. 1923 s. 10423; M.S. 1927 s. 10423.

Where the station agent of a telegraph company, acting within the scope of his employment, maliciously transmits a libelous message over the wires of said

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company to another of its station agents, addressed for delivery to a third person, which is done accordingly, the company is liable in punitive damages. Peterson v Western Union, 75 M 368, 375, 77 NW 985.

Comparative laws similar to this section. Olmstead v United States, 277 US 480.

## **620.66 PERFORMING UNPUBLISHED DRAMATIC OR MUSICAL COMPOSITION; SELLING COPY.**

HISTORY. 1905 c. 40 s. 1; G.S. 1913 s. 8941; G.S. 1923 s. 10429; M.S. 1927 s. 10429.

### FRAUD; CORPORATION MANAGEMENT

## **620.68 FRAUD IN STOCK SUBSCRIPTIONS.**

HISTORY. G.S. 1894 s. 6761; R.L. 1905 s. 5116; G.S. 1913 s. 8917; G.S. 1923 s. 10405; M.S. 1927 s. 10405.

## **620.69 FRAUDULENT ISSUE OF STOCK, SCRIP, OR CERTIFICATE.**

HISTORY. G.S. 1894 s. 6762; R.L. 1905 s. 5117; G.S. 1913 s. 8918; G.S. 1923 s. 10406; M.S. 1927 s. 10406.

Following *Dunn v State Bank*, 59 M 221, 61 NW 27: (1) Where the stockholders of a banking corporation voted to increase its stock, having authority to do so, one part of such stock was purchased by its president, who was also city treasurer, and paid for with funds unlawfully used by him for that purpose, and the stock then sold by him to third parties, the stock was not ultra vires and void, but at most only voidable; (2) in view of the lapse of time after the stock was issued before the bank failed, the lack of diligence on the part of the holders in not sooner discovering the insolvency of the bank, and the large amount of corporate indebtedness still outstanding which has been incurred since the stock was issued, the holders of the stock have no right to rescind, as against creditors whose rights have become vested by the insolvency of the bank. *Olson v State Bank*, 67 M 267, 69 NW 904.

## **620.70 DIRECTOR.**

HISTORY. Penal Code ss. 379 to 381, 386 to 391, 470; G.S. 1894 ss. 6673 to 6675, 6680 to 6685, 6766; R.L. 1905 s. 5035; G.S. 1913 s. 8820; G.S. 1923 s. 10308; M.S. 1927 s. 10308.

## **620.71 FALSE REPORTS OF CORPORATIONS.**

HISTORY. Penal Code s. 469; G.S. 1894 s. 6765; R.L. 1905 s. 5120; G.S. 1913 s. 8921; G.S. 1923 s. 10409; M.S. 1927 s. 10409.

The instant case was an indictment of a bank official for incurring a liability in excess of ten per cent of the bank capital and surplus under Laws 1895, Chapter 145, Section 15, as amended by Laws 1907, Chapter 156, and Laws 1911, Chapter 160, Section 1, and Laws 1919, Chapter 103, Section 1. This law in a way resembles Penal Code, Section 469 (section 620.71). See comparison. *State v Voogd*, 170 M 257, 212 NW 528.

## **620.72 FRAUDS IN KEEPING ACCOUNTS.**

HISTORY. Penal Code s. 468; 1889 c. 208 s. 3; G.S. 1894 s. 6764; R.L. 1905 s. 5119; G.S. 1913 s. 8920; G.S. 1923 s. 10408; M.S. 1927 s. 10408.

## **620.73 RECEIVING DEPOSIT IN INSOLVENT BANKS.**

HISTORY. Penal Code s. 467; G.S. 1894 s. 6763; 1895 c. 219; R.L. 1905 s. 5118; G.S. 1913 s. 8919; G.S. 1923 s. 10407; M.S. 1927 s. 10407.



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The defendant was prosecuted under Penal Code, Section 467, which made the receiving of deposits in insolvent banks a misdemeanor. He was convicted in justice court, and appealed to the district court, but before his trial in that court this section was amended making the offense a felony (Laws 1895, Chapter 219). If found guilty he should be punished under the law as it was before the amendment. This overrules *State v McDonald*, 20 M 136 (119). *State v Smith*, 62 M 540, 64 NW 1022.

The complaint herein, under Laws 1895, Chapter 219, states a cause of action. *Baxter v Coughlin*, 70 M 1, 72 NW 797; 80 M 322, 83 NW 190.

Under the provisions of Laws 1895, Chapter 219 (section 620.73), it is immaterial in what capacity the accused party is connected with the bank, whether as an ostensible partner, or as a secret conspirator with the actual operator of the same, provided any substantial aid is given by him tending to violate the statute. *State v Clements*, 82 M 434, 85 NW 234; 82 M 448, 85 NW 229.

Laws 1895, Chapter 219, held constitutional. *State v Leland*, 91 M 321, 98 NW 92.

In a criminal prosecution against a private banker for receiving deposits when his bank was insolvent, and where such banker has made a petition in bankruptcy and his books turned over to the trustee, such books may be examined before the grand jury. *State v Strait*, 94 M 384, 102 NW 913.

An indictment under this section need not allege an intent to defraud the depositor. A fraudulent intent is not by the statute made an essential element of the crime. *State v Quackenbush*, 98 M 515, 108 NW 953.

Although defendant, a private banker, knew or had reason to know, the bank and himself were in an unsafe and insolvent condition, it is not sufficient to prove that he voluntarily, knowingly, or negligently received the money, or permitted it to be received as a deposit. *State v Strait*, 99 M 327, 109 NW 598.

Where a private banker was on trial under an indictment based upon this section his schedules or creditors, assets, liabilities, filed by him in involuntary bankruptcy proceedings are not admissible in evidence to prove insolvency, when objected to upon the ground that the effect would be to compel him to be a witness against himself. *State v Drew*, 110 M 247, 124 NW 1091.

Where a statute imposes a duty upon a party and that party disobeys the mandate of such statute, he thereby renders himself liable in damages to the party for whose protection the statute was enacted. *Frederick v McRae*, 157 M 366, 196 NW 270.

The bond in the instant case was not given merely to secure the collection of the notes described in the complaint, and the bank is under no duty to pursue the makers thereof before coming on the bond. *Harriet Bank v Samels*, 164 M 265, 204 NW 938.

In an action against directors of an insolvent bank to recover for a deposit made by plaintiff after insolvency, direct proof of director's knowledge of insolvency is not required. The evidence was sufficient to charge defendants with actual knowledge. *Johnson v Larson*, 177 M 60, 224 NW 466.

In the instant case, a civil action, it was a jury issue as to whether defendants, officers of a bank, falsely and fraudulently represented the bank to be safe. *Olson v Nelson*, 177 M 354, 225 NW 276.

Negligent or culpable ignorance may be the equivalent of actual knowledge on the part of the one sought to be estopped. The least of the knowledge with which a director may be charged is that of the identity of the corporation of which he is one of the managers. *Johnson v Christlieb*, 178 M 9, 225 NW 927.

Complaint against a bank officer for recovery of deposits made while it is alleged that he should have known his bank was insolvent was good against demurrer. *Lynnes v Frazee*, 181 M 261, 232 NW 324.

In this civil action to recover from the directors and officers of a bank for renewing a certificate of deposit within one hour before the bank closed, the complaint shows that no loss or damage resulted, even though there was a violation of this section. *Johnson v Floan*, 183 M 461, 237 NW 23; *Barsness v Tiegen*, 184 M 188, 238 NW 161.

# MINNESOTA STATUTES 1945 ANNOTATIONS

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## OFFENSES AGAINST PROPERTY BY FRAUD 620.74

A cause of action by creditors to recover of the directors of a bank because the bank received deposits when insolvent, they knowing or having good reason to know its condition is not barred by the three-year-limitation, nor under section 541.05(6), nor under section 541.06(2). The six-year-limitation applies to actions under section 620.73. *Oleson v Retzloff*, 184 M 624, 238 NW 12, 239 NW 672.

If a bank receives a deposit when its hopeless insolvency is known to the bank through its president, who accepts the deposit, the fraud avoids the implied contract and prevents the money deposited from becoming the property of the bank, and a trust is the equitable result. *Forsythe v First State Bank*, 185 M 255, 241 NW 66.

The commissioner of banks is endowed with discretion as to whether or not he will take possession of a bank, and his determination under that section is quasi judicial. He is not personally liable to a depositor who may have deposited money in a bank while it was insolvent. *Aichele v Skoglund*, 194 M 291, 260 NW 290.

When a statute imposes a duty on a person and that person violates the statute he renders himself liable in damages to the person for whose benefit the statute was enacted. *Kaiser v Butchart*, 200 M 551, 274 NW 680.

A contract in violation of a penal statute is illegal, and, without proving anything more, recovery may be had. *Vogel v Chase Securities*, 19 F. Supp. 566.

A sale of corporate stock that is not registered in accordance with blue sky law of Minnesota is illegal and consideration paid therefor can be recovered by the purchaser. *Shepard v City Co.* 24 F. Supp. 686.

A sale of unregistered securities in violation of Minnesota Statutes was, as between buyer and seller, void not merely voidable, in absence of intervening rights, and hence rescission of tender of return was not necessary before bringing action. *Stern v National City Co.* 25 F. Supp. 956.

Intent is a necessary ingredient of crime, and where one took a mortgaged automobile out of the state and engaged in work, there are grave questions to be considered before extradition is asked. 1942 OAG 30, Sept. 11, 1942 (133b-39).

Personal liability of bank's officers to depositors for banks acceptance of deposit after insolvency. 13 MLR 608.

Liability to depositor; renewal of a certificate of deposit as constituting a deposit. 16 MLR 96.

Fraudulent receipts of deposits. 16 MLR 432.

### 620.74 SELLING TICKETS TO THEATERS AT GREATER PRICE.

HISTORY. 1913 c. 521 ss. 1, 2; G.S. 1913 ss. 9031, 9032; G.S. 1923 ss. 10535, 10536; M.S. 1927 ss. 10535, 10536.

Constitutionality of statutes forbidding the scalping of theater tickets. 5 MLR 68.

Regulation of re-sale price charged by theater ticket brokers. 11 MLR 657.