

MINNESOTA STATUTES 1953 ANNOTATIONS

619.54 CRIMES AGAINST THE PERSON

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Libel and slander; publication; application of "single publications" rule to the distribution of books. 33 MLR 87.

619.54 LIABILITY OF EDITORS AND OTHERS

A newspaper which published a false obituary notice stating that plaintiff had died and was "lying in state" at an address at which was located a bar and grill, was not libelous although the plaintiff was alive at the time of the publication. *Cardiff v Brooklyn Eagle*, 75 NYS(2d) 222.

619.62 SLANDER

Law of defamation. 33 MLR 609.

Testamentary libel; right to recover damages for libel contained in will. 33 MLR 171.

619.63 BANKING AND SIMILAR INSTITUTIONS; MALICIOUS AND FALSE UTTERANCE CONCERNING INSOLVENCY

HISTORY. 1929 c 212 s 1, 2; 1953 c 369 s 1.

CHAPTER 620

OFFENSES AGAINST PROPERTY BY FRAUD

MISAPPROPRIATION, OFFICIAL MISCONDUCT

620.01 MISAPPROPRIATION AND FALSIFICATION OF ACCOUNTS BY PUBLIC OFFICIALS

HISTORY. RS 1851 c 101 s 22; 1852 Amend p 24 s 113, 114; PS 1858 c 90 s 22, 24-30; GS 1866 c 95 s 22, 24-30; 1877 c 175 s 1; GS 1878 c 95 s 32, 34-41; Penal Code s 369; GS 1894 s 6663; RL 1905 s.5029; GS 1913 s 8814; 1953 c 362 s 1.

In an action for an accounting for funds allegedly embezzled by defendant employee, the burden was on the employer to produce evidence showing what funds came into the employee's possession. The employee's admission made in the course of an investigation rather than in negotiations for settlement was admissible in evidence in an action for accounting for funds allegedly embezzled by the defendant in the amount of \$20,920.71 plus interest, but the evidence was insufficient to establish that \$80,995.42 additional, was misappropriated. *Physicians and Hospitals Supply Co. v Johnson*, 231 M 548, 44 NW(2d) 224.

An order of the district court granting the motion of a defendant charged with the commission of a felony to quash an indictment is not subject to review by the supreme court on a writ of certiorari. The state has no right to appeal in a criminal case, and questions of law may not be certified to the supreme court without the consent of the defendant. The state may review a judgment quashing an indictment for an information, or sustaining a demurrer thereto, only when such power is expressly conferred by a constitutional or statutory provision. *State v Ruegemer*, M, 57 NW(2d) 153.

620.02 OTHER VIOLATIONS BY OFFICIALS

A common school district which does not maintain a school within its boundaries but educates the pupils of the district at schools outside its boundary, must provide transportation for such pupils. The cost of transportation is paid in part by the school district and the balance from state public funds. The revenue from both sources is derived from taxation. A large percentage of the pupils are transported to parochial schools. Should it be determined that public funds are being wrong-

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fully disbursed the following laws may apply: (1) if officials disburse public funds without authority of law a forfeiture may be imposed (section 126.11); (2) should public officers wilfully disobey the law they would be guilty in some cases of a felony and in others of a gross misdemeanor (sections 620.01, 620.02); (3) as the duties of the county attorney are statutory and the statute has imposed no duties upon him applicable to present situation, the duty of prosecution is not imposed upon him but it is his duty to appear for the county in all cases in which the county is a party (section 388.05). State officers have no duty to perform (sections 128.087, 128.088). A taxpayer may bring a taxpayer's suit under section 126.11 in the manner outlined in *Regan v Babcock*, 196 M 243. OAG Dec. 13, 1949 (494-B-23, 121-B-20).

620.03 Repealed, 1953 c 368 s 2.

620.04 Repealed, 1951 c 379 s 7.

FORGERY

620.06 DEFINITIONS

Double forgery; drawee's right to recover proceeds paid to a good-faith purchaser. 32 MLR 817.

Drawer's negligence, precipitating forgery. 37 MLR 201.

Delay in notifying prior party. 37 MLR 201.

Forgery should be prosecuted in the county where the forgery took place or where the forged instrument was uttered. OAG Sept. 12, 1949 (133-B-31).

620.07 FORGERY, FIRST DEGREE

HISTORY. RS 1851 c 102 s 1, 3, 4, 12; PS 1858 c 91 s 1, 3, 4, 12; GS 1866 c 96 s 1, 3, 4, 10; GS 1878 c 96 s 1, 3, 4, 10; Penal Code s 396; GS 1894 s 6690; RL 1905 s 5048; GS 1913 s 8834.

Where a broker tendered to the owner an earnest money contract together with a check signed by a buyer but failed to disclose to the owner that the drawer of the check had no account in the bank upon which the check was drawn, a check of which he was well aware, the broker, in failing to make a disclosure of such fact to his principals did not deal fairly with his principals and is guilty of such fraud and bad faith as to forfeit his right to compensation. *Wold v Patterson*, 229 M 361, 39 NW(2d) 162.

Where the accused drew a check payable to himself but bearing a forged signature of the payer, indictment should be laid under section 620.10 dealing with second degree forgery. The indictment should not be laid under section 620.07. OAG Sept. 9, 1949 (133-B-31).

620.10 FORGERY, SECOND DEGREE

HISTORY. RS 1851 c 102 s 1, 3, 4, 12; PS 1858 c 91 s 1, 3, 4, 12; GS 1866 c 96 s 1, 3, 4, 10; GS 1878 c 96 s 1, 3, 4, 10; Penal Code s 398; GS 1894 s 6692; RL 1905 s 5051; GS 1913 s 8837.

Generally, evidence of separate and independent crimes is inadmissible to prove guilt of a person charged with crime but evidence of separate and independent crimes closely connected in time, place, and manner is admissible to show a common scheme or plan or to identify the defendant as the person who committed the crime. Determination of whether the independent crimes are closely connected is a matter within the discretion of the trial court and will not be reversed unless discretion is clearly abused. *State v Bock*, 229 M 449, 39 NW(2d) 887.

Where the prosecution introduced evidence of other crimes in prosecution for forgery in the second degree and subsequent to conviction another person confessed

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that it was he and not the defendant who had committed the independent crime and that confession was controverted by the prosecution, defendant was entitled to a new trial. *State v Bock*, 229 M 449, 39 NW(2d) 887.

Where defendant cashed a check made out to himself and another as joint payees, which was delivered to defendant upon an assertion that he would deliver it to the other payee, but instead of doing so the defendant forged the other payee's signature and cashed the check, defendant could be prosecuted for forgery in the endorsement or could be charged for uttering a forged instrument. OAG Dec. 8, 1950 (133-B-31).

620.16 FORGERY IN THIRD DEGREE, HOW PUNISHED

HISTORY. RS 1851 c 102 s 1, 3, 4; PS 1858 c 91 s 1, 3, 4, 12; GS 1866 c 96 s 1, 3, 4; GS 1878 c 96 s 1, 3, 4; Penal Code s 412; GS 1894 s 6706; RL 1905 s 5057; GS 1913 s 8843.

620.19 UTTERING

HISTORY. RS 1851 c 102 s 2, 10; PS 1858 c 91 s 2, 10; GS 1866 c 96 s 2, 8; GS 1878 c 96 s 2, 8; Penal Code s 408; GS 1894 s 6702; RL 1905 s 5060; GS 1913 s 8846.

620.20 UTTERING WRITING SIGNED WITH WRONGDOER'S NAME

HISTORY. RS 1851 c 102 s 11; PS 1858 c 91 s 11; GS 1866 c 96 s 9; GS 1878 c 96 s 9; Penal Code s 409; GS 1894 s 6703; RL 1905 s 5061; GS 1913 s 8847.

COUNTERFEITING, FALSE LABELING OR REGISTRATION

620.21 POSSESSION OF COUNTERFEIT COIN

HISTORY. RS 1851 c 102 s 5, 6, 13, 14; PS 1858 c 91 s 5, 6, 13, 14; GS 1866 c 96 s 5, 6, 11, 12; GS 1878 c 96 s 5, 6, 11, 12; Penal Code s 413; GS 1894 s 6707; RL 1905 s 5062; GS 1913 s 8848.

620.24 POSSESSION OF DIES OR PLATES; PENALTY

HISTORY. RS 1851 c 102 s 7, 15; PS 1858 c 91 s 7, 15; GS 1866 s 96 s 7, 13; GS 1878 c 96 s 7, 13; 1885 c 178 s 2; GS 1878 Vol 2 (1888 Supp) c 95 s 45b; GS 1894 s 6909; RL 1905 s 5067; GS 1913 s 8853.

620.25 SELLING GOODS HAVING FALSE STAMP, PENALTY

Defendant's use of trade-mark "Quickettes" and head of girl in line and to left of such word, on packages of thin-walled, quick-cooking, elbow macaroni constituted unfair competition with and infringement of plaintiff's registered trade-mark "Creamettes" and head of girl in line and to left of such word on packages of thin-walled, quick-cooking, elbow macaroni, and would be enjoined where there was likelihood of confusion. *Creamette Co. v Minnesota Macaroni Co.*, 74 F Supp 224.

620.273 MANUFACTURERS' SERIAL NUMBERS; ALTERATIONS

HISTORY. 1951 c 95 s 1-3; 1953 c 79 s 1, 2.

A dealer who bought from a bona fide farmer machinery used by the farmer for six months in his farming operations, which does not have serial numbers or from which serial numbers have been removed, may resell such machinery. OAG July 10, 1951 (605-B).

620.29 TRADE-MARKS OF WORKMEN'S UNIONS

Section 386.35 provides for the recording in the office of the register of deeds of the markings or brands for the marking of cattle, horses, sheep or hogs. Filing

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of trade-marks with the secretary of state applies only to the products of labor as distinguished from the products of the farm. OAG April 15, 1952 (293-B-3).

620.31 REGISTRATION

The secretary of state does not have the right to cancel a previously registered trade-mark upon the application of another party who contends that the first registration was fraudulently obtained. If any one believes that the original applicant secured its registration by fraudulent means, actions may be taken under the provisions of section 620.32. OAG April 2, 1953 (920-C).

FALSE PERSONATIONS; FALSE STATEMENTS

620.44 FALSELY PERSONATING ANOTHER

HISTORY. RS 1851 c 101 s 34; RS 1859 c 90 s 34; GS 1866 c 95 s 34; GS 1878 c 95 s 45; Penal Code s 447, 448; GS 1894 s 6743, 6744; RL 1905 s 5102; GS 1913 s 8895.

620.45 RECEIVING PROPERTY IN FALSE CHARACTER

HISTORY. RS 1851 c 101 s 32; PS 1858 c 90 s 32; GS 1866 c 95 s 32; GS 1878 c 95 s 43; Penal Code s 449; GS 1894 s 6745; RL 1905 s 5103; GS 1913 s 8896.

620.47 OBTAINING SIGNATURE BY FALSE PRETENSES

HISTORY. RS 1851 c 101 s 33; PS 1858 c 90 s 33; GS 1866 c 95 s 33; GS 1878 c 95 s 44; Penal Code s 451; GS 1894 s 6747; RL 1905 s 5104; GS 1913 s 8898.

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

HISTORY. RS 1851 c 101 s 40; 1852 Amend p 23, 24; PS 1858 c 90 s 40; GS 1866 c 95 s 40; 1867 c 86 s 1; GS 1878 c 95 s 51; GS 1894 s 6873; RL 1905 s 5106; GS 1913 s 8899.

620.52 FALSE STATEMENT IN ADVERTISEMENT

HISTORY. 1913 c 51 s 1; 1915 c 309 s 1, 2; 1953 c 438 s 1.

No crime is committed where the operator sends letters to various persons stating that such person has been selected to receive an allotment of a lot or lots and asking the recipient to call at the advertiser's place of business to obtain full information. OAG Sept. 8, 1948 (417-E).

Section 620.52 does not prevent the use of extravagant or high-sounding language, but the offense is committed if by intention the publication contains false and misleading statements. OAG Sept. 24, 1948 (417-E).

Signs at filling stations such as: "Save 3c," "Gas for Less," "Free Gifts," and the like, while possibly misleading do not in themselves contain any evidence of fraud. It is the duty of the county attorney in the county where offenses are committed to prosecute as best he can to get evidence of a breach of the provisions of section 620.52, but the advertisements above listed do not in themselves indicate an offense. OAG Aug. 22, 1951 (417-E).

Two competitive manufacturers offering for sale products similar in nature, enclosed the product in different sized containers although the weight of the contents is identical. The fact that the larger container may deceive a purchaser into supposing that the contents are greater than those contained in the competitor's container does not constitute a violation of section 620.42. OAG Oct. 3, 1951 (417-E).

The duty of investigation and enforcement of persons offending by deceptive and misleading advertising is imposed upon the commissioner of business research

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and development. It is his duty to investigate and determine the facts. OAG Oct. 9, 1951 (417-E).

BILLS OF LADING, MANIFESTS, TRANSPORTATION, BAILEES

620.59 FICTITIOUS BILLS OF LADING

HISTORY. RS 1851 c 101 s 38; PS 1858 c 90 s 38; GS 1866 c 95 s 38; GS 1878 c 95 s 49; Penal Code s 471; GS 1894 s 6767; RL 1905 s 5121; GS 1913 s 8922.

620.60 FICTITIOUS WAREHOUSE RECEIPTS

HISTORY. RS 1851 c 101 s 31; PS 1858 c 90 s 31; GS 1866 c 95 s 31; GS 1878 c 95 s 42; Penal Code s 472, 473; GS 1894 s 6768, 6769; RL 1905 s 5122; GS 1913 s 8923.

620.62 MAKING FALSE MANIFEST, INVOICE

HISTORY. RS 1851 c 101 s 37; PS 1858 c 90 s 37; GS 1866 c 95 s 37; GS 1878 c 95 s 48; Penal Code s 460; GS 1894 s 6756; RL 1905 s 5113; GS 1913 s 8911.

620.63 FRAUD BY BAILEE OF ANIMALS

Where the owner retains constructive possession, the party to whom the bare physical control of the property has been entrusted for the owner's purpose does not have "possession" but only "custody." *Jacobson v Aetna Casualty & Surety Co.*, 233 M 383, 46 NW(2d) 868.

MISCELLANEOUS

620.65 DIVULGING TELEGRAM OR TELEPHONE MESSAGE

HISTORY. 1867 c 22 s 2; GS 1878 c 95 s 83; Penal Code s 482; GS 1894 s 6782; RL 1905 s 5134; 1907 c 212 s 1; GS 1913 s 8935.

When a felony has been committed and the authorities have the contents of a pertinent telephone message and believe the person who telephoned was the culprit, in order to obtain the identity of the sender of the message the manager of the telephone company should be produced by and sworn by the grand jury, bringing with him the material records of the telephone company. OAG Nov. 10, 1953 (98-A-24).

620.66 PERFORMING UNPUBLISHED DRAMATIC OR MUSICAL COMPOSITION; SELLING COPY

Use of copyrighted music in cinema unsympathetic to foreign composers' political ideology. 33 MLR 327.

There having been no decision relative to the use of copyrighted material broadcasted by radio and subsequently reproduced for classroom instruction only and not for profit, it is impossible to render a definite decision thereon but attention is called to the use of copyrighted books, copyrighted music, and similar, by teachers in classroom instructions. OAG April 7, 1949 (315).

CORPORATION MANAGEMENT

620.68 FRAUD IN STOCK SUBSCRIPTION

HISTORY. Penal Code s 465; GS 1894 s 6761; RL 1905 s 5116; GS 1913 s 8917.

620.69 FRAUDULENT ISSUE OF STOCK, SCRIP OR CERTIFICATE

HISTORY. Penal Code s 466; GS 1894 s 6762; RL 1905 s 5117; GS 1913 s 8918.

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620.75 FRAUD IN THE SALE OF WEARING APPAREL

HISTORY. 1949 c 203 s 1-4.

620.76 TICKET SCALPING

HISTORY. 1949 c 522 s 1-6.

CHAPTER 621

OFFENSES AGAINST PROPERTY BY FORCE

ARSON

621.02-621.04 Repealed, 1953 c 602 s 6.

621.021 ARSON, FIRST DEGREE

HISTORY. 1953 c 602 s 1.

In a prosecution for arson, both the corpus delicti and the criminal agency of defendant may be established by circumstantial evidence. Where sufficient foundation is laid showing that deputy fire marshal had made a great many investigations of incendiary fires, it was not error to permit him to testify that in his opinion the fire was "torched." Results of lie-detector tests being inadmissible, it was prejudicial error to admit evidence showing that defendant had refused to submit to such tests. Statements of prosecuting attorney in summation of case to the jury held to be prejudicial. The sufficiency of foundation showing qualifications of handwriting expert rests largely in the discretion of the trial court. Evidence showed no abuse of discretion. *State v Kolander*, 236 M 209, 52 NW(2d) 458.

621.025 ARSON, SECOND DEGREE

HISTORY. 1953 c 602 s 2.

621.031 ARSON, THIRD DEGREE

HISTORY. 1953 c 602 s 3.

621.035 ARSON, FOURTH DEGREE

HISTORY. 1953 c 602 s 4.

621.041 INSURED PROPERTY

HISTORY. 1953 c 602 s 5.

A deputy fire marshal, having had considerable experience in investigating fires of an incendiary origin over a period of 19 years, was sufficiently qualified to testify, in a trial for arson by the setting fire to an automobile, that the fire, based on things not affected by the lapse of time, was "torched." Although he examined the automobile three years after it was burned, he testified that the fire was aided by the use of a foreign substance such as gasoline. *State v Kolander*, 236 M 209, 52 NW(2d) 458.

621.05 CONTIGUOUS BUILDINGS; APPURTENANCES

HISTORY. Penal Code s 378; GS 1894 s 6672; RL 1905 s 5039; 1953 c 602 s 7.

621.06 OWNERSHIP OF BUILDING

HISTORY. Penal Code s 382; GS 1894 s 6676; RL 1905 s 5040.