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governing jury service, county employees cannot be paid their salaries when they are not performing the services for which they have been engaged. OAG Aug. 21, 1951 (120).

A village may require that the amount of fees and compensation received by an employee for services as juror or otherwise during the period of municipal employment shall be deducted from the salary of the employee. OAG Nov. 4, 1952 (260-A-5).

Members of a fire company organization are exempt from jury service. OAG June 2, 1952 (260-A-7).

628.49 GROUNDS OF EXCUSE, RECORD

HISTORY. Amended, 1951 c 433 s 1.

628.52 CHALLENGE

HISTORY. RS 1851 c 115 s 13; 1852 Amend p 27 s 125; PS 1858 c 104 s 13; GS 1866 c 107 s 13; GS 1878 c 107 s 13; 1889 c 98 s 3; 1889 c 110 s 3; 1891 c 32 s 3; GS 1894 s 7188; RL 1905 s 5271; GS 1913 s 9108.

628.59 EVIDENCE; FOR DEFENDANT

Evidence that a person committed a similar but distinct crime, or civil wrong, on a different occasion, is inadmissible for the purpose of proving that he is possessed of a propensity or a state of mind that would naturally dispose him to commit the particular crime or civil wrong with which he is charged. Luley v Luley, 234 M 324, 48 NW(2d) 328.

CHAPTER 629

EXTRADITION, ARREST, AND BAIL

EXTRADITION

NOTE: Sections 629.01 to 629.29 are the Uniform Criminal Extradition Act as revised in 1936 and adopted in Minnesota by Laws 1939, Chapter 240. The Act is in force in the following states: California, Delaware, Florida, Hawaii, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, West Virginia, Wisconsin.

629.01 DEFINITIONS

Extradition. 31 MLR 703.

Criminal jurisdiction of a state over a defendant based upon presence secured by force or fraud. 37 MLR 91.

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS

A convicted person whose parole has been revoked because of a violation of a condition that he is not to leave the state without permission of the parole officer, is subject to extradition as a fugitive from justice. State ex rel v Ryan, 235 M 161, 50 NW(2d) 259.

Where a Minnesota man and woman moved to another state and married there and the wife moved back to Minnesota where she gave birth to a child, to the support

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of which the husband did not contribute, if the state where the husband resides has adopted the Uniform Extradition Act; it would probably permit Minnesota to extradite him, but not otherwise if the state has not adopted the Uniform Act. OAG July 16, 1947 (193-B-1).

629.03 DEMAND IN WRITING

A convicted person whose parole has been revoked because of a violation of a condition that he not leave the state is a fugitive from justice and subject to extradition. State ex rel v Ryan, 235 M 161, 50 NW(2d) 259.

629.06 MAY EXTRADITE PERSONS CAUSING CRIME

A person cannot be extradited for child abandonment who was not in the demanding state at the time the crime was committed and who has not been in the demanding state since. OAG Sept. 22, 1947 (193-B-1).

ARRESTS

629.30 ARRESTS; BY WHOM MADE; ARRESTING OFFICER

The rule of immunity of courts and judges from liability in civil actions cannot be avoided by pleading that the acts complained of resulted from a conspiracy; but immunity is lost when the court acts wholly without jurisdiction. Hoppe v Klapperich, 224 M 224, 28 NW(2d) 781.

Where a woman was arrested for stealing a watch the judge in issuing the warrant acted wholly outside his jurisdiction in issuing a warrant without first having a complaint against her reduced to writing undersigned by the complainant as required by statute. By such proceedings the judge loses his judicial immunity in an action for malicious prosecution. Hoppe v Klapperich, 224 M 224, 28 NW(2d) 781.

An officer is not privileged to use his power to arrest a person and keep him in custody to force him to comply with a demand not related to the accomplishment of the purpose for which his custody is privileged and such officer's misuse of custody obtained of another by privileged arrest under warrant is an abuse of process. An officer or other persons who join in such abuse of process are liable in damages to the person so placed under arrest. Hoppe v Klapperich, 224 M 224, 28 NW(2d) 780.

629.34 ARREST WITHOUT WARRANT

Consent of an accused to a search of his premises operates as a waiver of the right to assert that the search was unreasonable, and, under such circumstances there is no need of a search warrant. City of St. Paul v Stovall, 225 M 309, 30 NW(2d) 638.

A gambling device is anything used as a means for playing for money or anything of value so that the result depends more largely upon chance than on skill; and in the instant case although the evidence was sufficient to sustain a finding that certain articles found in defendant's house were gambling devices, the evidence does not show that the defendant had actual possession of the articles, and the conviction is reversed. City of St. Paul v Stovall, 225 M 309, 30 NW(2d) 638.

The municipal court of St. Paul had jurisdiction to try the defendant taken into custody by police officers after gambling devices were discovered in the house occupied by him as a result of a search to which he consented, even though the arrest was made without a warrant. The consent of the accused to a search of his premises operates as a waiver of the right to assert that the search was unreasonable. City of St. Paul v Stovall, 225 M 309, 30 NW(2d) 639.

An arresting officer is not required to take the prisoner before a certain justice. OAG Oct. 5, 1947 (266-B-24).

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629.39 PRIVATE PERSON MAKING ARREST, PROCEEDINGS

HISTORY. RS 1851 c 113 s 20-22; 1852 Amend p 26 s 1, 2, 3; PS 1858 c 102 s 20-22; GS 1866 c 105 s 20-22; GS 1878 c 105 s 20-22; GS 1894 s 7129-7131; RL 1905 s 5234; GS 1913 s 9071.

629.40 ARRESTS ANY PLACE IN STATE, WHEN ALLOWED

A police officer or an employee while engaged in service outside the municipal limits is covered by workmen's compensation. OAG July 10, 1953 (523-E-1).

A peace officer of a village may not make an arrest for a misdemeanor committed in his presence beyond the borders of the village. OAG Sept. 12, 1952 (785-B).

WARRANTS; BAIL BONDS

629.41 PROCESS, ISSUANCE

Cause of action for abuse of process as distinguished from a cause of action for malicious prosecution in a void warrant is no bar to an action for abuse of process. 32 MLR 805.

A court commissioner may engage in the private practice of law if such practice does not interfere with or conflict with his official duties. OAG March 6, 1950 (128-B).

The clerk of the municipal court of the city of Mankato may not issue a warrant without the order of the judge endorsed upon the complaint. OAG May 25, 1950 (306-B-10).

629.42 PROCEEDINGS UPON COMPLAINT, WARRANT

Abuse of process; elements of the cause of action; distinguished from malicious prosecution; void warrant no bar to abuse of process. 32 MLR 805.

The protection, afforded the sheriff, from liability for malicious prosecution, and abuse of powers in consequence of his faithful discharge of duty to execute process fair on its face and emanating from a court having jurisdiction of the subject matter cannot be avoided by pleading that his performance of such duty resulted from conspiracy previously entered into, but such rule affords him no protection when he is a party to or complainant in causing wrongful issuance of process solely for his own benefit. Hoppe v Klapperich, 224 M 224, 28 NW(2d) 782.

The rule of immunity of courts and judges from liability in civil actions cannot be avoided by pleading that the acts complained of resulted from conspiracy, but he loses his immunity when he acts wholly without jurisdiction. Hoppe v Klapperich, 224 M 224, 28 NW(2d) 781.

Where a woman was arrested for stealing a watch, the judge in issuing the warrant acted wholly outside his jurisdiction in issuing a warrant without first having a complaint against her reduced to writing undersigned by the complainant as required by statute. By such proceedings the judge loses his judicial immunity in an action for malicious prosecution. Hoppe v Klapperich, 224 M 224, 28 NW(2d) 781.

It is the duty of the magistrate when conducting a preliminary examination to ascertain promptly whether or not there is sufficient grounds to hold the prisoner for trial, and if so to fix the amount of bail. Survis v McDonald, 224 M 479, 28 NW(2d) 720.

Complaints charging two separate offenses in different counts may be amended by striking out one count of each complaint, and the supreme court, on reversing the convictions on complaints for such reason, will remand the cases to permit ap-

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plications for such amendments and new trials thereon. *State v Hedstrom*, 233 M 17, 45 NW(2d) 715.

A warrant in due form and containing proper recitals is prima facie evidence that the accused, sought to be extradited, is a fugitive from justice. *State ex rel v Ryan*, 235 M 161, 50 NW(2d) 259.

The determination of whether a warrant should be issued is a judicial function. It is the function of the court. A warrant should never be issued upon a complaint to the clerk without an order of the judge himself. OAG Jan. 20, 1950 (133-A-2).

629.43 WARRANT, EXECUTION OF

The municipal court of the city of Winona, established by Laws 1885, Chapter 115, does not have power in criminal cases to compel attendance of witnesses outside the county but within the state. OAG June 20, 1952 (306-B).

629.52 DISCHARGE OF PRISONER; OFFENSE NOT BAILABLE

HISTORY. RS 1851 c 114 s 16, 17; 1852 Amend p 26; PS 1858 c 103 s 16, 17; GS 1866 c 106 s 16, 17; GS 1878 c 106 s 16, 17; GS 1894 s 7147, 7148; RL 1905 s 5246; GS 1913 s 9083.

629.56 MAGISTRATES, POWERS

HISTORY. RS 1851 c 114 s 24; PS 1858 c 103 s 24; GS 1866 c 106 s 23; GS 1878 c 106 s 24; GS 1894 s 7155; RL 1905 s 5250; GS 1913 s 9087.

629.57 CERTIFYING TESTIMONY

HISTORY. RS 1851 c 114 s 25; PS 1858 c 103 s 25; GS 1866 c 106 s 24; GS 1878 c 106 s 25; GS 1894 s 7156; RL 1905 s 5251; 1905 c 179 s 1; GS 1913 s 9088.

629.58 PROCEEDINGS ON DEFAULT

HISTORY. RS 1851 c 114 s 28, 29; PS 1858 c 103 s 28, 29; GS 1866 c 106 s 25, 26; GS 1878 c 106 s 26, 27; GS 1894 s 7157, 7158; RL 1905 s 5252; GS 1913 s 9089.

629.59 RECOGNIZANCE WHEN PENALTY REMITTED

HISTORY. RS 1851 c 114 s 30; PS 1858 c 103 s 30; GS 1866 c 106 s 27; GS 1878 c 106 s 28; GS 1894 s 7159; RL 1905 s 5253; GS 1913 s 9090.

Where a petition for remission of bail money which had been paid to the county treasurer by the clerk of court was served only upon the county attorney and not upon the county or its officers authorized by statute to receive service, the court did not have jurisdiction in personam and the petition should have been dismissed. *Application of Shetsky*, 234 M 416, 48 NW(2d) 518.

A wilful default under a bail bond means the wilful default of the principal or defendant, and not that of the surety. The burden of proof to establish justification for a mitigation rests upon the applicant. The question of the sufficiency of the evidence as to the cause of defendant's flight from the jurisdiction and his failure to appear until apprehended is decided by the trial court and its decision will not be disturbed except for an abuse of discretion. Such abuse was not shown in the instant case. *Shetsky v Hennepin County*, M, 60 NW(2d) 40.

The power vested in the trial court in connection with the right of action given under section 629.59, is cumulative rather than exclusive of the inherent power of courts at common law to grant relief from bail forfeiture. The terms recognizance and surety bond are used interchangeably in our statutes without regard to the technical distinction between them. In the absence of statute, the trial court has inherent power to mitigate a forfeiture either before or after the final order of forfeiture. *Shetsky v Hennepin County*, M, 60 NW(2d) 40.

629.60 RECOGNIZANCE, WHEN ACTION NOT BARRED

HISTORY. RS 1851 c 114 s 31; RS 1851 c 129 s 217; PS 1858 c 103 s 31; PS 1858 c 115 s 5; GS 1866 c 106 s 28, 29; GS 1878 c 106 s 29, 30; GS 1894 s 7160, 7161; RL 1905 s 5254; GS 1913 s 9091.

629.61 ARREST OF DEFAULTER

HISTORY. 1852 Amend p 29 s 141; PS 1858 c 118 s 47; GS 1866 c 106 s 30; GS 1878 c 106 s 31; GS 1894 s 7162; RL 1905 s 5255; GS 1913 s 9092.

629.62 APPLICATION FOR BAIL; JUSTIFICATION

HISTORY. RS 1851 c 114 s 23; RS 1851 c 132 s 264; 1852 Amend p 29; PS 1858 c 103 s 23; PS 1858 c 118 s 30; GS 1866 c 106 s 31, 32; GS 1878 c 106 s 32, 33; GS 1894 s 7163, 7164; RL 1905 s 5256; GS 1913 s 9093.

CHAPTER 630

PRETRIAL PROCEDURE

ARRAIGNMENT

630.01 ARRAIGNMENT, PRESENCE OF DEFENDANT

On the petition, return, reply, and stipulation relative to evidence taken below in a habeas corpus proceeding, the question before us is whether the absence of relator as the accused from his trial for murder in the district court was voluntary or involuntary. In a prosecution for a felony, the accused has the right to be present in person at all stages of the trial, from arraignment to and including the pronouncement of sentence. If after arraignment, plea, and the commencement of the trial in his presence he voluntarily flees the court, he thereby waives his right to be present at the further proceedings up to and including the rendition of the verdict. The absence of the accused from the court, voluntarily or involuntarily, when sentence is pronounced in such a case, results in an illegal sentence without due process of law, requiring a resentence when his presence is secured. *State ex rel v Utecht*, 228 M 44, 36 NW(2d) 126.

The court before arraignment should inform the defendant in precise terms of his constitutional right to the assistance of counsel and such informative action to be made a matter of record. The denial of certain constitutional rights where the right to due process of the law is left unimpaired is not fatal to the jurisdiction of the court. The error resulting from such denial must be corrected through appeal, and not by resorting to the extraordinary remedy of habeas corpus. *State ex rel Schwanke v Utecht*, 233 M 434, 47 NW(2d) 99.

Where an accused is in the custody of one county a court may direct the officer having accused in custody to bring him before it for arraignment. OAG Oct. 30, 1951 (133-A-2).

When defendant in a criminal case testifies in his own behalf he thereby assumes the position of an ordinary witness and may be discredited on cross-examination by inquiries as to his previous prosecution or conviction of crime in the same manner and under the same rules as any other witness. OAG Dec. 6, 1948 (494-A).

630.10 DEFENDANT INFORMED OF HIS RIGHT TO COUNSEL

A "warrant" in a criminal case has the sole function of giving the court jurisdiction over the person of the accused by bringing him in person before the court