

MINNESOTA STATUTES 1953 ANNOTATIONS

1645

IN JUSTICE COURT 633.01

632.07 ADMISSION TO BAIL OR APPEARANCE BEFORE SUPREME COURT

HISTORY. RS 1851 c 129 s 221; 1852 Amend p 28 s 138; PS 1858 c 115 s 9; GS 1866 c 117 s 8; GS 1878 c 117 s 8; GS 1894 s 7392; RL 1905 s 5406; GS 1913 s 9248; 1919 c 95 s 1.

632.08 DEFENDANT COMMITTED, WHEN; COPY OF RECORD FILED

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

632.10 CERTIFYING PROCEEDINGS, STAY

The trial court having overruled a demurrer to the information and bill of particulars and certified the questions, the supreme court accepts the facts set forth in the information and bill as true. *State v Schaub*, 231 M 512, 44 NW(2d) 61.

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.

CHAPTER 633

IN JUSTICE COURT

633.01 JURISDICTION OF JUSTICES OF THE PEACE

HISTORY. RS 1851 c 69 s 165; PS 1858 c 59 s 179; GS 1866 c 65 s 130; GS 1878 c 65 s 139; GS 1894 s 5093; RL 1905 s 3999; 1905 c 104; 1907 c 234; GS 1913 s 7619.

St. Cloud justice of the peace has jurisdiction of a person for violation of an ordinance of any village located in Stearns county. OAG Feb. 28, 1950 (266-B-11).

In a village in Mower county having no municipal court the justices of the peace of the city of Austin and its municipal court have concurrent jurisdiction over all criminal cases within the county except in any municipality wherein there exists a municipal court. The city justices of the village in question have like jurisdiction and any justice of the peace in Mower county has jurisdiction to hear cases involving violation of any ordinance of the village in question for which violation and penalty is prescribed. OAG Sept. 24, 1952 (266-B-24).

Where a village does not have a municipal court, town justices of the peace have jurisdiction throughout the county to hear cases involving a violation of a village ordinance. OAG Dec. 8, 1952 (266-B-24).

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

There is no general statutory penal provision defining disorderly conduct. Standing alone, a complaint cannot be brought in municipal court for a breach of the peace without specific reference to the commission of some other statutory offense. OAG Aug. 31, 1951 (605-B-18).

MINNESOTA STATUTES 1953 ANNOTATIONS

633.02 TRIAL POWERS, LIMITATION

The jurisdiction of the municipal court of the city of St. Paul in criminal cases is limited to trials where the punishment prescribed does not exceed a fine of over \$100, or imprisonment for three months, and does not extend to offenses defined by statute as "gross misdemeanors." *City of St. Paul v Hall*, M, 58 NW(2d) 761.

Prosecution for violation of a village ordinance in Stearns county may be had before a justice of the peace in the city of St. Cloud. Prosecution for the breach of a village ordinance is a criminal proceeding. In civil proceedings the law establishing a municipal court in the city of St. Cloud denies jurisdiction in civil actions to the justice of the peace in St. Cloud. OAG Feb. 28, 1950 (266-B-11).

A justice of the peace having jurisdiction should dispose of a traffic violation under a village ordinance. Such judicial authority cannot be delegated to or exercised by a police officer. OAG July 21, 1952 (989-A-24).

633.03 COMPLAINT, WARRANT

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.

633.09 ON PLEA OF GUILTY

Any methods on the part of courts, whether justice, municipal, or otherwise, to bring about a plea of guilty merely to get the case disposed of and the file closed as a matter of expediency or convenience to the court, are condemned. *State v Boulton*, 229 M 576, 40 NW(2d) 417.

633.10 PLEA OF NOT GUILTY

A defendant who testifies in his own behalf assumes the position of an ordinary witness and may be discredited by cross-examination as to previous convictions. OAG Dec. 6, 1948 (494-A).

633.11 JURY, LIST OF NAMES

When the sheriff signed complaints where trial was to be had in justice court, and the defendants asked for a jury trial, the coroner should substitute for the sheriff in making a list of jurors, there being no constable available. OAG July 24, 1947 (260-A-9).

633.18 JUDGMENT ON CONVICTION

The power of a justice of the peace to suspend a sentence is conferred and governed by section 633.18. OAG March 24, 1949 (266-B-21).

A justice of the peace cannot grant a new trial to take in other proceedings after judgment except with respect to the perfection of an appeal. OAG July 9, 1949 (266-B-21).

Where defendant was convicted in justice court of illegal possession of muskrat hides was permitted to file an appeal bond by the district court, when such appeal bond was filed, cash bond which the defendant filed with the justice should have been returned to the defendant. Neither the justice nor the clerk of the district court could retain the cash deposit bond after appeal was filed. OAG March 15, 1950 (266-B-11).

633.20 APPEAL, REQUISITES

Where an appeal is taken from the municipal court to the district court from a judgment on conviction for the violation of a city ordinance, notice of appeal should be served upon the county attorney. It is unnecessary to serve on the city attorney. OAG June 14, 1949 (6-H).

Cash bail is not authorized upon an appeal from the justice to the district court. Cash bail if accepted by the justice should be returned upon the filing of a proper appeal bond. Where the cash bail has not been drawn down, the justice court is without power to apply any part of the cash bail to the payment of any fine imposed. The cash bail should be returned intact. OAG March 15, 1950 (266-B-11).

A justice of the peace cannot grant a new trial to take in other proceedings after judgment except with respect to the perfection of an appeal. OAG Aug. 9, 1949 (266-B-21).

633.21 ALLOWANCE OF APPEAL

HISTORY. 1865 c 22 s 2, 3; GS 1866 c 65 s 150; 1871 c 72 s 2; GS 1878 c 65 s 159; 1883 c 61 s 1; GS 1894 s 5113; 1901 c 24; RL 1905 s 4019; GS 1913 s 7639.

633.22 HOW TRIED

HISTORY. RS 1851 c 69 s 123, 127; PS 1858 c 59 s 138, 140; 1865 c 22 s 2, 3; GS 1866 c 65 s 150; 1871 c 72 s 2; GS 1878 c 65 s 159; 1883 c 61 s 1; GS 1894 s 5113; 1901 c 24; RS 1905 s 4020; GS 1913 s 7640.

Where a defendant voluntarily entered a plea of guilty to a charge of assault in the third degree in municipal court and paid a fine before any attempt was made to appeal to the district court, judgment was discharged and appeal could not be taken therefrom. State v Boulton, 229 M 576, 40 NW(2d) 417.

633.23 CONVICTION ON APPEAL, COSTS

There is no provision for taxation of statutory costs by a village upon appeal to the district court and an affirmance of a judgment and sentence in an action instituted for violation of a village ordinance. OAG July 23, 1948 (199-A-3).

633.25 JUDGMENT AGAINST DEFENDANT AND SURETIES

Cash bail is not authorized upon an appeal from the justice to the district court. Cash bail if accepted by the justice should be returned upon the filing of a proper appeal bond. Where the cash bail has not been drawn down, the justice court is without power to apply any part of the cash bail to the payment of any fine imposed. The cash bail should be returned intact. OAG March 15, 1950 (266-B-11).

633.27 CERTIFICATE OF CONVICTION, DUTY OF CLERK OF DISTRICT COURT, STATEMENT OF COSTS

Section 633.27 does not apply to reports by a justice of the peace on convictions for violating village or city ordinances. OAG July 26, 1951 (266-B-7).

633.32 WITNESSES, JUSTICE TO SUMMON

The municipal court of the city of Winona, established under Special Laws 1885, Chapter 115, is without power in criminal cases to compel the attendance of witness outside the county but within the state. OAG June 20, 1952 (306-B).

633.33 JUDGMENT ON CONVICTION; COMMITMENT, EXECUTION

The costs authorized to be assessed by a justice of the peace against the defendant in a criminal case does not include board of the defendant either before or after trial. OAG July 10, 1952 (266-B-7).

MINNESOTA STATUTES 1953 ANNOTATIONS

633.35 IN JUSTICE COURT

1648

633.35 SECURITY FOR COSTS

There is no provision for taxation of statutory costs by a village upon appeal to the district court and an affirmance of a judgment and sentence in an action instituted for violation of a village ordinance. OAG July 23, 1948 (199-A-3).

633.36 FINES, HOW COLLECTED AND PAID OVER

A fine collected in pursuance of the penalty imposed by section 232.02 should be paid by the justice of the peace to the county treasurer under the provisions of section 633.36. OAG Jan. 18, 1951 (199-B-4).

CHAPTER 634

SPECIAL RULES, EVIDENCE, PRIVILEGES, WITNESSES

634.02 BANK NOTES

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

Delay in notifying prior party. 37 MLR 201.

A complaint, 12 years after conviction, that the indictment charging defendant with unlawfully procuring to be made a certain plate in the likeness of a plate used for printing by the federal government, was defective because it failed to name the persons from whom the plate was procured, and that defendant might therefore be subject to a second conviction went to a matter of form and came too late, in the absence of a showing that defendant was prejudiced. *Michener v United States*, 170 F(2d) 973.

634.04 CONFESSION, INADMISSIBLE WHEN

Admissibility of confessions obtained by enforcement officers. 36 MLR 271, 274.

Evidence of a test made upon the defendant with a so-called "lie detector" whereupon emotional disturbances of the person questioned are recorded, is not admissible on behalf of a defendant in a criminal action in support of his claim of innocence. Neither is a test made upon the defendant by a hypnotist who placed the defendant in a hypnotic trance and questioned him. Subject to certain limitations, evidence of experiments made out of court is admissible, the matter resting largely in the discretion of the trial court. *State v Pusch*, 46 NW(2d) 508.

634.05 IN PROSECUTIONS FOR LIBEL, RIGHT OF JURY

Banks and banking; libel and slander; bank's negligent dishonor of a depositor's check. 33 MLR 528.

Printed words which tend to injure the reputation of a person, expose him to contempt, degrade him in society, or lessen him in the esteem and confidence of his neighbors are, if untrue, libelous per se, though they involve no imputation of crime. The word "deficit" is broad enough to cover shortages due to defalcations and misappropriations, although it also may relate to losses occasioned by mistakes or shrinkage. Until the claimed deficit in funds for which obligor on plaintiff's bond became responsible is established as a check, published article expressing such a conclusion cannot be said to be a publication of the truth so as to bar an action for libel based thereon. *Gadach v Benton County Assn.*, 236 M 507, 53 NW(2d) 230.

634.06 SUBPOENAS; NONRESIDENTS; WITNESSES TESTIFYING IN ANOTHER STATE, SUMMONS

HISTORY. 1935 c 140 s 1; 1953 c 34 s 1.