

CHAPTER 614

CRIMES AGAINST PUBLIC POLICY

LOTTERIES

614.01 LOTTERY, NUISANCE, DRAWING, HOW PUNISHED.

HISTORY. Penal Code ss. 282 to 284; G.S. 1894 ss. 6576 to 6578; R.L. 1905 s. 4959; G.S. 1913 s. 8727; G.S. 1923 s. 10209; M.S. 1927 s. 10209.

Under the statute, Penal Code, Section 282, any scheme for the distribution of property by chance among persons who have paid or agreed to pay a valuable consideration for the chance, is a lottery. The statute is intended to reach all devices in the nature of lotteries in whatever form, and the courts will tolerate no evasions. A so-called "club" organized to encourage the business of a merchant tailor held to be a lottery. *State v Moren*, 48 M 555, 51 NW 618.

A company which invests no funds, but distributes money collected from its patrons, less a percentage retained as a commission, in accordance with the priority in the number of certificate given each so-called investor, is engaged in the lottery business, the priority number being determined by chance, the redemption of the certificate depending on the solvency of the company, based upon writing of new and lapsation of old contracts. *State ex rel v U.S. Express*, 95 M 442, 104 NW 556.

A plan whereby the merchants of a city gave tickets to their customers upon the purchase of merchandise and afterwards a drawing was had on chance for cash or other prizes, was a lottery. *State v Powell*, 170 M 239, 212 NW 169.

Under the voting contest plan adopted, purchasers of merchandise had the right to cast votes, proportionate to the amount of their purchases, or payment of accounts, for a contestant. Prizes were to be given on the basis of votes received. The plan did not constitute a lottery under section 614.01, because it lacked the element of chance. *Amlie v Moose*, 176 M 598, 224 NW 158.

"Bank night" conducted according to the plan described in the instant case embraces the elements of chance, but the stipulated facts in the case do not warrant the inference of consideration for the chance. *State v Stern*, 201 M 139, 275 NW 626.

In a charge for violation of the lottery laws, where those who appear in the lobby and request a chance obtain it free, the jury may find that the free tickets are a mere device to evade or circumvent the law where the greater number of those who request a chance are purchasers of entry tickets or coupons. *State v Schubert*, 203 M 367, 281 NW 369.

Punch boards are an unlawful gambling device. OAG April 2, 1934. The attorney general cannot pass upon questions of fact in determining what is a lottery. OAG Sept. 25, 1936 (510c-6).

Three elements are essential to existence of a lottery: that is, a prize, a chance to get the prize, and a price paid for it. 1938 OAG 192, March 11, 1938 (510c-9); OAG Feb. 17, 1939 (510B); 21 MLR 216.

Lotteries; nature of consideration required; theater bank nights. 23 MLR 102.

614.02 SELLING TICKETS, ADVERTISING.

HISTORY. Penal Code ss. 285, 286; G.S. 1894 ss. 6579, 6580; R.L. 1905 s. 4960; G.S. 1913 s. 8728; G.S. 1923 s. 10210; M.S. 1927 s. 10210.

The sale of a ticket or instrument, evidently drawn so as to evade the effect of the decision in *State v Moren*, 48 M 555, 51 NW 618, but clearly intended to accomplish the same object therein condemned as a lottery scheme, constitutes a violation of the statute. *State v Wolford*, 151 M 59, 185 NW 1017.

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The "bank night" as operated embraces the elements of chance and prize, but proof of price according to the stipulated facts, is absent. *State v Stern*, 201 M 139, 275 NW 626.

If the elements to constitute a violation of the statute are present, the size of the prize, large or small, is immaterial. OAG Aug. 14, 1939 (510c-4).

614.03 DISPOSAL OF PROPERTY BY LOTTERY; KEEPING OFFICE; LETTING BUILDING.

HISTORY. Penal Code ss. 287, 288, 291; G.S. 1894 ss. 6581, 6582, 6585; R.L. 1905 s. 4961; G.S. 1913 s. 8729; G.S. 1923 s. 10211; M.S. 1927 s. 10211.

614.04 INSURING LOTTERY TICKETS; ADVERTISING OFFERS TO INSURE.

HISTORY. Penal Code ss. 289, 290; G.S. 1894 ss. 6583, 6584; R.L. 1905 s. 4962; G.S. 1913 s. 8730; G.S. 1923 s. 10212; M.S. 1927 s. 10212.

614.05 LOTTERIES OUT OF STATE; ADVERTISEMENTS BY NON-RESIDENTS.

HISTORY. Penal Code ss. 292, 293; G.S. 1894 ss. 6586, 6587; R.L. 1905 s. 4963; G.S. 1913 s. 8731; G.S. 1923 s. 10213; M.S. 1927 s. 10213.

GAMING

614.053 BINGO DEFINED.

HISTORY. 1945 c. 419 s. 1.

614.054 CERTAIN ASSOCIATIONS PERMITTED TO OPERATE.

HISTORY. 1945 c. 419 s. 2.

614.06 GAMBLING.

HISTORY. Penal Code ss. 294 to 296; G.S. 1894 ss. 6588 to 6590; R.L. 1905 s. 4964; G.S. 1913 s. 8732; G.S. 1923 s. 10214; M.S. 1927 s. 10214.

1. Devices

2. What constitutes

3. Indictment

1. Devices

The "boards and lists" described in the indictment, descriptive of horse races and the times and places of such races, are not "gambling devices" as no additional element of chance is introduced by them, and the determination of the alleged games is not affected by them. *State v Shaw*, 39 M 153, 39 NW 305.

The contrivance commonly known as a "stock clock" is a gambling device. *State v Grimes*, 49 M 443, 52 NW 42; 74 M 257, 77 NW 4.

A slot machine is a device which in the instant case was used for gambling. *State v Briggs*, 84 M 357, 87 NW 935.

A roulette wheel is a gambling device. *Nagle v Randall*, 115 M 235, 132 NW 266.

There was no error in condemning and destroying slot machines while they were kept for violation of law though there was no search warrant. *State v Falgren*, 176 M 347, 223 NW 455.

A slot machine where five cents is deposited and merchandise always returned to the purchaser, but not always of the same value, is a gambling device. OAG Oct. 15, 1934 (733i).

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Whether a pinball machine is one wherein there is an element of skill, or whether chance determines the outcome of the game, is a question of fact. 1936 OAG 19, Feb. 13, 1936 (733d); 1936 OAG 169, April 2, 1936 (733d); OAG June 17, 1936 (733d).

Where an Indian tribe maintains a store on a reservation and operate slot machine, the county attorney may prosecute one not an Indian. As to whether or not an Indian may be prosecuted depends on existing treaties. 1942 OAG 28, Sept. 17, 1941 (733-D).

Unless it can be proved that the owner intended to use them for gambling, the storage of pin-ball machines in a vacant building is not in violation of the law. OAG June 26, 1944 (733d).

2. What constitutes

The risking of money between two or more persons on a contest of any kind, where one must be the loser and the other the gainer, is gambling. Betting on a horse race is gambling. *State v Shaw*, 39 M 153, 39 NW 305; *State v Grimes*, 74 M 257, 77 NW 4.

Shaking dice for cigars is gambling within the meaning of the provision in the lease which authorizes the lessor to terminate the same in case gambling is allowed upon the premises. *Zotalis v Connellos*, 138 M 179, 164 NW 807.

A sheriff's official duty implies alertness and initiative to enforce laws enacted by the people for their protection and well-being; and relator, who failed to meet those requirements, and permitted open gambling and permitted slot machines to operate, was properly removed from office. *In re Messenbrink*, 211 M 114, 300 NW 398.

A contract in form for the future delivery of personal property not intended to represent an actual transaction but merely to pay and receive the difference between the agreed price and the market price at a future date, is in the nature of a wager and void. *Downy v Peterson*, 203 M 491, 281 NW, 877.

Statutes authorizing the loser to recover gambling losses from the winner, and those making gambling an offense should be taken together as designed to prohibit and suppress gambling as a public evil. Slot machines are gambling devices. *Foley v Whelan*, 219 M 209, 17 NW(2d) 368.

A place where cards are played for chips redeemable in trade by the establishment may not be legally licensed. OAG March 28, 1939 (733e).

It is doubtful if a silent partner can be held guilty of acts by the general partners in the placing of gambling machines. OAG April 21, 1944 (733d).

3. Indictment

Where a party does not personally commit the crime, (gambling with slot machines), but procures it to be committed, the indictment may charge him directly with its commission, as if he personally committed it, or he may be directly charged as a principal by alleging facts which at common law would make him an accessory before the fact. *State v Briggs*, 84 M 357, 87 NW 935.

614.07 GAMBLING DEVICES ON PREMISES.

HISTORY. Penal Code s. 297; G.S. 1894 s. 6591; R.L. 1905 s. 4965; G.S. 1913 s. 8733; G.S. 1923 s. 10215; M.S. 1927 s. 10215.

Prior to the enactment of the Penal Code effective Jan. 1, 1886, allegations in an indictment for the common law misdemeanor of keeping a gaming house, that the same was feloniously as well as unlawfully done, and against the statute, may be rejected as surplusage. Such indictment need not name the players or allege that they are unknown. The common law is not abrogated by the passage of an ordinance prohibiting gambling. *State v Crummev*, 17 M 72 (50).

Boards, lists and devices used in a poolroom and furnishing information as to time, place, and horses running on various race courses, are not gambling devices under the Penal Code. *State v Shaw*, 39 M 153, 39 NW 305.

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It is held that the complaint charges the appellants with the offense of keeping a gambling house, resorted to for the purpose of gambling, contrary to the ordinance of the city of Minneapolis, and that the evidence on the trial was sufficient to sustain their conviction. *State v Grimes*, 74 M 257, 77 NW 4; *State v LaDue*, 198 M 255, 269 NW 527.

An indictment which alleges that defendant is accused of having committed an offense, stating it, but which does not directly charge that the defendant committed the offense, is insufficient. *State v Nelson*, 79 M 388, 82 NW 650.

Defendant was properly indicted and convicted of keeping a gambling device. (A slot machine.) *State v Briggs*, 84 M 357, 87 NW 935.

Plaintiff recovered from defendant the amount lost on defendant's roulette wheel. *Nagle v Randall*, 115 M 235, 132 NW 266.

Shaking dice for cigars is gambling within the meaning of the provision in a lease which authorizes the lessor to terminate the lease in case gambling is allowed upon the premises. *Zotalis v Connellos*, 138 M 179, 164 NW 807.

There was no error in condemning and destroying slot machines. *State v Falgren*, 176 M 346, 223 NW 455.

The sheriff of Scott county was properly removed from office because of his failure to suppress gambling in the city of Shakopee. *In re Messenbrink*, 211 M 117, 300 NW 398.

Pinball machines may be a gambling device when used as a game of chance, but not when the facts show it is used as a game of skill. OAG July 3, 1934 (733); OAG May 26, 1939 (733o).

Gaming; recovery of losses from winner by loser. 27 MLR 95.

614.08 EVIDENCE; TESTIMONY OF PLAYER.

HISTORY. Penal Code s. 298; G.S. 1894 s. 6592; R.L. 1905 s. 4966; G.S. 1913 s. 8734; G.S. 1923 s. 10216; M.S. 1927 s. 10216.

614.09 RECOVERY OF MONEY LOST.

HISTORY. Penal Code s. 299; G.S. 1894 s. 6593; R.L. 1905 s. 4967; G.S. 1913 s. 8735; G.S. 1923 s. 10217; M.S. 1927 s. 10217.

Where a bet is made, and a stakeholder agreed upon, but the property staked not placed in his hands, the stakeholder cannot take the property from the loser and deliver it to the winner unless authorized by the loser otherwise than by the bet. The bet, and the bill of sale and note made to perfect were all void. *Franklin v Stoddard*, 34 M 247, 25 NW 400.

The complaint alleges that defendants were running and playing poker for money; that plaintiff played and lost and paid defendants \$665.50, which defendants took and have not repaid. The complaint states a cause of action. *Parsons v Wilson*, 94 M 416, 103 NW 163.

Plaintiff recovered from defendant the amount lost on the roulette wheel, but did not recover the money lost at cards, there being no proof that defendant shared in the winnings of the players. *Nagle v Randall*, 115 M 235, 132 NW 266.

Defendant won the bet and picked up the check from the table and cashed it. The parties built their own nest with which they must be content. The law will leave them where it found them. The loser cannot recover. *Gilbert v Berkheiser*, 157 M 491, 196 NW 653.

Complaint alleging that local brokerage association received orders to purchase and sell shares of stock, with no intention of executing them, and which were never executed, charges the brokerage association with bucketing within the meaning of section 623.21. *Kaiser v Butchart*, 200 M 545, 274 NW 680.

One playing a coin-operated slot machine is entitled to recover his losses from the keeper thereof as money lost at playing a "game". *Foley v Whelan*, 219 M 209, 17 NW(2d) 367.

Robbery; loser at cards forcibly retaking money from possession of winner. 8 MLR 443.

Gaming; recovery of losses. 27 MLR 95.

614.10 COMMITMENTS FOR GAMBLING DEBT VOID.

HISTORY. Penal Code s. 300; G.S. 1894 s. 6594; R.L. 1905 s. 4968; G.S. 1913 s. 8736; G.S. 1923 s. 10218; M.S. 1927 s. 10218.

In case of a check given for an unlawful consideration, the question of plaintiff's good or bad faith in cashing or purchasing the check was for the jury on the evidence. *Drew v Wheelihan*, 75 M 68, 77 NW 558.

Where in making a wager, each places his check on the table while the outcome of the wager is being determined, and the winner takes both checks, the loser cannot recover either the money or the check. *Gilbert v Berkheiser*, 157 M 491, 196 NW 653.

As the promissory note sued upon was given by defendant to plaintiff in consideration of a loan of money, it is immaterial whether there is support for the further finding that the dealings between the parties previous to the giving of the note were not gambling transactions. *Davies v Herseith*, 163 M 162, 203 NW 521.

614.11 SWINDLING BY CARDS.

HISTORY. Penal Code s. 301; G.S. 1894 s. 6595; R.L. 1905 s. 4969; G.S. 1913 s. 8737; G.S. 1923 s. 10219; M.S. 1927 s. 10219.

1. What constitutes
2. Indictment
3. Evidence admissible
4. Sufficiency of evidence

1. What constitutes

Swindling by three-card monte. *State v Gray*, 29 M 142, 12 NW 455.

The so-called "padlock" swindle. *State v Wilson*, 72 M 522, 75 NW 715.

Short-change trick. *State v Smith*, 82 M 342, 85 NW 12.

Fake investment and employment contract. *State v Yurkiewicz*, 208 M 72, 292 NW 782; 212 M 208, 3 NW(2d) 775.

2. Indictment

The rule that the indictment describe the crime with reasonable certainty must not be carried so far as to furnish a shield from punishment, where it is plain a crime has been committed, and therefore the indicting grand jurors are allowed to state that a particular fact, not vital to the accusation, is to them unknown. *State v Gray*, 29 M 142, 12 NW 455.

The indictment alleged that the defendant attempted to commit the crime of swindling by means of a trick and scheme commonly called the "fake race horse scheme", a "more particularly description of such trick or scheme being to the grand jury unknown". The indictment stated a public offense. *State v Brooks*, 151 M 502 187 NW 607.

3. Evidence admissible

Where as part of the swindle, a fake policeman took part, it was competent to show as part of the whole scheme the part that Furlly took; and also when Carlson was arrested, two months later, that he was wearing a star similar to the one worn by Furlly. *State v Wilson*, 72 M 522, 75 NW 715.

The words of one person engaged in the crime of swindling, although not in the presence of other participants, but leading up to and being part of the offense itself, are competent against all parties. *State v Evans*, 88 M 262, 92 NW 976.

In prosecution for swindling, where evidence of other similar crimes shows a common scheme or related crimes tending to prove the prosecution in the instant case, it is properly received. *State v York*, 212 M 209, 3 NW(2d) 776.

4. Sufficiency of evidence

The indictment is sufficient, and sets forth but one offense, and its allegation (as to the trick of three-card monte), is sustained by proof of the use of cards differing from common playing cards. *State v Gray*, 29 M 142, 12 NW 455.

The evidence showing the manner of operating the "short-change trick" was sufficient. *State v Smith*, 82 M 342, 85 NW 12.

The evidence of the frame-up, and the manner of drawing the particular card on which the word "cigars" was written, was sufficient to sustain the verdict of swindling. *State v Evans*, 88 M 262, 92 NW 976.

The evidence of the frame-up, and of the manner by which the person swindled was induced to venture his money on a wager, was sufficient to sustain the verdict. *State v Crawford*, 95 M 467, 104 NW 295.

614.12 ARRESTS.

HISTORY. Penal Code s. 302; G.S. 1894 s. 6596; R.L. 1905 s. 4970; G.S. 1913 s. 8738; G.S. 1923 s. 10220; M.S. 1927 s. 10220.

614.13 SWINDLERS EJECTED, WHEN; LAW TO BE POSTED.

HISTORY. Penal Code s. 303; G.S. 1894 s. 6597; R.L. 1905 s. 4971; G.S. 1913 s. 8739; G.S. 1923 s. 10221; M.S. 1927 s. 10221.

614.14 NEGLECT OF CONDUCTOR OR AGENT TO ARREST.

HISTORY. Penal Code s. 304; G.S. 1894 s. 6598; R.L. 1905 s. 4972; G.S. 1913 s. 8740; G.S. 1923 s. 10222; M.S. 1927 s. 10222.

614.15 EVIDENCE OF ACCOMPLICE.

HISTORY. Penal Code s. 305; G.S. 1894 s. 6599; R.L. 1905 s. 4973; G.S. 1913 s. 8741; G.S. 1923 s. 10223; M.S. 1927 s. 10223.

Comparison of section 614.15 with section 634.03. *State v McClain*, 208 M 91, 292 NW 753.

614.16 CONTRACTS FOR FUTURE DELIVERY OF FARM PRODUCE.

HISTORY. 1921 c. 98 ss. 1 to 4; M.S. 1927 ss. 10223-1 to 10223-4.

In this case relating to a purchase and sale of futures on grain, there being no contemplation of delivery, the facts sustain a finding of a gambling transaction. *Deterling v Geib*, 192 M 60, 255 NW 484.

The evidence compels a conclusion that the transaction out of which arose the alleged guaranty here sued upon was a gambling transaction, and not a contract by which the parties contemplated delivery. *Becher v Hilbert*, 197 M 541, 267 NW 727.

The burden of establishing the fact that the transaction is a wager is on the one who asserts it. Where there was no evidence to show that a contract is a wager, the court should not submit the issue to the jury. *Downey v Peterson*, 203 M 491, 281 NW 877.

Where neither purchaser of grain nor brokers expected that purchaser would take delivery of grain but speculation was purchaser's business, and brokers knew that fact, the purchases of grain were "gambling transactions". *Thomes v Atkins*, 52 F. Supp. 405.

Dealing in commodity futures. 18 MLR 544.

Particular types of dealing in commodity futures. 18 MLR 555.

PAWNBROKERS**614.17 LICENSE; REFUSAL TO EXHIBIT STOLEN GOODS; SELLING BEFORE TIME OF REDEMPTION.**

HISTORY. Penal Code ss. 306 to 308; G.S. 1894 ss. 6600 to 6602; R.L. 1905 s. 4974; G.S. 1913 s. 8742; G.S. 1923 s. 10224; M.S. 1927 s. 10224.

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614.18 PURCHASE OR PLEDGE FROM MINOR PROHIBITED.

HISTORY. 1907 c. 228 s. 1; G.S. 1913 s. 8743; G.S. 1923 s. 10225; M.S. 1927 s. 10225.

614.19 PENALTY.

HISTORY. 1907 c. 228 s. 2; G.S. 1913 s. 8744; G.S. 1923 s. 10226; M.S. 1927 s. 10226.

SEPULTURE

614.20 DISSECTION; WHEN PERMITTED.

HISTORY. Penal Code ss. 267, 268; G.S. 1894 ss. 6561, 6562; R.L. 1905 s. 4975; G.S. 1913 s. 8745; G.S. 1923 s. 10227; M.S. 1927 s. 10227.

It is no defense to an action to recover damages caused by an autopsy performed on the body of a daughter of plaintiff, without the consent of the next of kin, that defendant was the attending physician, was unable to ascertain the cause of death and performed the autopsy for that purpose, so as to be able to give a certificate as required by law stating the cause of death. *Woods v Graham*, 140 M 16, 167 NW 113.

Under an accident policy, the insurer is entitled to an autopsy if demand is reasonably and seasonably made. Refusal of the insured's widow and beneficiary to consent to autopsy reasonably and seasonably demanded is a breach of contract defeating right to recover on accident policy. *Clay v Aetna*, 53 F(2d) 689.

The coroner is the only officer to decide when an inquest and autopsy are to be had. In a proper case he can be compelled to hold an inquest. If derelict in his duties, he may be removed for non-feasance. He has, however, considerable discretion in the performance of his duties. 1936 OAG 117, Jan. 29, 1935 (103f).

614.21 BURIAL OR CREMATION.

HISTORY. Penal Code ss. 265, 266, 269; G.S. 1894 ss. 6559, 6560, 6563; R.L. 1905 s. 9476; G.S. 1913 s. 8746; G.S. 1923 s. 10228; M.S. 1927 s. 10228.

614.22 OPENING GRAVE; STEALING BODY; RECEIVING SAME.

HISTORY. Penal Code ss. 270 to 272; G.S. 1894 ss. 6564 to 6566; R.L. 1905 s. 4977; G.S. 1913 s. 8747; G.S. 1923 s. 10229; M.S. 1927 s. 10229.

614.23 INTERFERING WITH DEAD BODY OR FUNERAL.

HISTORY. Penal Code ss. 273, 274; G.S. 1894 ss. 6567, 6568; R.L. 1905 s. 4978; G.S. 1913 s. 8748; G.S. 1923 s. 10230; M.S. 1927 s. 10230.

In an action sounding in tort for violation of section 614.23, plaintiff does not make out a cause of action by proving merely that a mortuary or cemetery association refused to go forward with interment where there was no proof of detention of the body or claim thereof on account of some debt or demand. *Crawford v Larson*, 216 M 417, 13 NW(2d) 137.

614.24 OPENING ROAD THROUGH CEMETERY.

HISTORY. R.S. 1851 c. 108 s. 17; P.S. 1858 c. 96 s. 17; G.S. 1866 c. 100 s. 17; G.S. 1878 c. 100 s. 17; G.S. 1894 s. 6967 R.L. 1905 s. 4979; G.S. 1913 s. 8749; G.S. 1923 s. 10231; M.S. 1927 s. 10231.

614.25 CEMETERY PROHIBITED NEAR UNIVERSITY OR SOLDIERS' HOME.

HISTORY. 1911 c. 4 s. 1; G.S. 1913 s. 8750; G.S. 1923 s. 10232; M.S. 1927 s. 10232.

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614.26 PENALTY.

HISTORY. 1911 c. 4 s. 2; G.S. 1913 s. 8751; G.S. 1923 s. 10233; M.S. 1927 s. 10233.

RELIGION

614.27 PREVENTING RELIGIOUS ACT.

HISTORY. Penal Code s. 232; G.S. 1894 s. 6520; R.L. 1905 s. 4984; G.S. 1913 s. 8756; G.S. 1923 s. 10238; M.S. 1927 s. 10238.

614.28 SABBATH BREAKING; DAY.

HISTORY. Penal Code ss. 222 to 224; G.S. 1894 ss. 6510 to 6512; R.L. 1905 s. 4980; G.S. 1913 s. 8752; G.S. 1923 s. 10234; M.S. 1927 s. 10234.

The Sunday law is justified as a sanitary measure and as a legitimate exercise of the police power. The statute which in 1906 provided that "it is a sufficient defense to a prosecution for servile labor on the first day of the week that the defendant uniformly keeps another day of the week as a holy time and does not labor upon that day", has no application to a proprietor publicly selling groceries on Sunday. *State v Weiss*, 97 M 125, 105 NW 1127.

Under the rule of *ejusdem generis* the term "shows", in the statute which prohibits certain sports on the Sabbath day, refers to out of door amusements, so that a moving picture exhibition, designed to illustrate moral subjects, for the entertainment of the public, when conducted in an orderly manner within a building, is not within the provisions of the statute. *State v Chamberlain*, 112 M 52, 127 NW 444; *Hauck v Ingles*, 126 M 257, 148 NW 100.

The last day for posting notices of election in proceedings for the consolidation of school districts was Monday, February 10. The notices were tacked up on Sunday, February 9, but remained up on Monday, the tenth. The notices were valid. *Thoreson v Susens*, 127 M 84, 148 NW 891.

Carrying on the business of a photographer on Sunday is prohibited by the provisions of this section. *State v Dean*, 149 M 410, 184 NW 275.

Sunday sales of food; right of a person buying drink on Sunday to recover from manufacturer for breach of implied warranty. 10 MLR 446.

614.29 THINGS PROHIBITED; EXCEPTIONS.

HISTORY. Penal Code ss. 225, 227 to 229; 1887 c. 54; G.S. 1894 ss. 6513, 6515 to 6517; 1903 s. 362; R.L. 1905 s. 4981; 1909 c. 267 s. 1; G.S. 1913 s. 8753; G.S. 1923 s. 10235; M.S. 1927 s. 10235; 1929 c. 308 s. 1; 1935 c. 129; 1941 c. 336.

The Penal Code became effective Jan. 1, 1886. Prior to that date, except as modified by statute, the common law as to crimes controlled, and the law prohibiting business on Sunday was much more strict than under the Code. *Brimhall v Van Campen*, 8 M 13 (1); *Finney v Callender*, 8 M 41 (23); *Finley v Quirk*, 9 M 194 (179); *Brackett v Edgerton*, 14 M 174 (134); *Webb v Kennedy*, 20 M 419 (374); *State v Young*, 23 M 551; *Durant v Rheuer*, 26 M 362, 4 NW 610; *Schwab v Rigby*, 38 M 395, 38 NW 101; *Handy v St. P. Globe*, 41 M 188, 42 NW 872; *Hanchett v Jordan*, 43 M 149, 45 NW 617; *Woodbridge v Sellwood*, 65 M 135, 67 NW 799.

The legislature may authorize a municipal government to impose new and additional penalties for acts already penal by the laws of the state. The Sunday closing law is constitutional. *State v Ludwig*, 21 M 202.

Provisions as to barber shops and sale of uncooked meats are constitutional. *State v Petit*, 74 M 376, 77 NW 225; *State ex rel v Justus*, 91 M 447, 98 NW 325; *Petit v Minnesota*, 177 US 164.

The statute forbids public sales but not private contracts or sales. *Ward v Ward*, 75 M 269, 77 NW 965.

The Penal Code, Sections 222, 225 (sections 614.28, 614.29), does not prohibit the casual execution and delivery of promissory notes or contracts on the Sabbath. *Holden v O'Brien*, 86 M 297, 90 NW 531.

Laws 1903, Chapter 362, prohibiting the public traffic in certain items of merchandise on Sunday, is constitutional. *State v Weiss*, 97 M 125, 105 NW 1127.

The term "shows", relating to prohibited sports on Sunday refers to outdoor amusements and is not designed to include moving picture exhibitions conducted within a building. *State v Chamberlain*, 112 M 52, 157 NW 444; *Houck v Ingles*, 126 M 257, 148 NW 100.

Notice of election to consolidate two school districts were tacked up on Sunday, February 9. The last day for posting was February 10. The notices were valid. *Thoreson v Susens*, 127 M 84, 148 NW 891.

Operation of a photographic studio on Sunday was properly prohibited. *State v Dean*, 149 M 410, 184 NW 275.

In the exercise of its discretion delegates to village councils may ordain that there shall be no public exhibitions of motion pictures within the village on the Sabbath. Such an ordinance is considered a regulation of business and not a Sabbath observance act. *Power v Nordstrom*, 150 M 228, 184 NW 967.

Farmers may sell their products from their premises and near roadway on the Sabbath. OAG Aug. 8, 1933.

The statute does not prohibit the playing of pool or billiards on Sunday, but the council of a village may do so by ordinance. 1942 OAG 96, Sept. 2, 1941.

It is doubtful if the legislature in fixing the compensation of assessors intended to include per diem for Sunday work, such work not being a labor of necessity. 1942 OAG 185, Feb. 13, 1942.

Right of person buying drink on Sunday to recover from manufacturer for breach of implied warranty. 10 MLR 446.

Affirmative defenses. 19 MLR 683.

Proximate cause; causation. 21 MLR 22.

614.30 PUNISHMENT.

HISTORY. Penal Code, ss. 226, 231; 1891 c. 87 s. 1; G.S. 1894 ss. 6514, 6519; R.L. 1905 s. 4982; G.S. 1913 s. 8754; G.S. 1923 s. 10236; M.S. 1927 s. 10236.

General Statutes 1894, Section 6514 (section 614.30), had no application to a proprietor publicly selling groceries on Sunday. *State v Weiss*, 97 M 125, 105 NW 1127.

Nor does it apply to moving picture show if properly conducted. *Houck v Ingles*, 126 M 257, 148 NW 100.

614.31 SERVICE OF PROCESS ON THE SABBATH PROHIBITED.

HISTORY. Penal Code s. 230; G.S. 1894 s. 6518; R.L. 1905 s. 4983; G.S. 1913 s. 8755; G.S. 1923 s. 10238; M.S. 1927 s. 10238.

614.32 DISTURBING RELIGIOUS MEETINGS.

HISTORY. Penal Code s. 232; G.S. 1894 s. 6520; R.L. 1905 s. 4984; G.S. 1913 s. 8757; G.S. 1923 s. 10239; M.S. 1927 s. 10239.

The word "wilfully" as used in General Statutes 1894, Section 6521 (section 614.32), under which defendant was convicted, embodies an element of maliciousness, and the evidence is short of showing an intention on the part of the defendant to so act, and there must be a reversal. *State v Dahlstrom*, 90 M 72, 95 NW 580.

614.33 TRADING NEAR CAMP MEETING; PROHIBITION; EXCEPTION.

HISTORY. Penal Code ss. 233, 234; G.S. 1894 ss. 6521, 6522; R.L. 1905 s. 4985; G.S. 1913 s. 8758; G.S. 1923 s. 10240; M.S. 1927 s. 10240.

FLAGS; INSIGNIA

614.34 RED OR BLACK FLAGS.

HISTORY. 1919 c. 46 ss. 1 to 4; G.S. 1923 ss. 10510 to 10513; M.S. 1927 ss. 10510 to 10513.

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War legislation. 3 MLR 442.

614.35 IMPROPER USE OF INSIGNIA.

HISTORY. 1889 c. 15 s. 1; 1889 c. 18 s. 1; G.S. 1894 ss. 6953, 6954; 1901 c. 55; R.L. 1905 s. 5167; G.S. 1913 s. 8972; 1921 c. 235 s. 1; G.S. 1923 s. 10462; 1927 c. 397; M.S. 1927 s. 10462.

614.36 UNLAWFUL USE OF RED CROSS.

HISTORY. 1899 c. 163; R.L. 1905 s. 5180; G.S. 1913 s. 9012; 1919 c. 431 s. 1; G.S. 1923 s. 10509; M.S. 1927 s. 10509.

PATRIOTISM

614.37 DESECRATION OF MEMORIAL DAY; SALOONS TO BE CLOSED.

HISTORY. 1907 c. 25 s. 1; G.S. 1913 s. 9013; G.S. 1923 s. 10514; M.S. 1927 s. 10514.

614.38 PENALTY.

HISTORY. 1907 c. 25 s. 2; G.S. 1913 s. 9014; G.S. 1923 s. 10515; M.S. 1927 s. 10515.

614.39 NATIONAL ANTHEM.

HISTORY. 1917 c. 247 ss. 1 to 3; G.S. 1923 ss. 10516 to 10518; M.S. 1927 ss. 10516 to 10518.

614.40 REQUIRING WAIVING OF RIGHT OF CITIZENSHIP FORBIDDEN.

HISTORY. 1893 c. 25 ss. 1 to 3; G.S. 1894 ss. 6962 to 6964; R.L. 1905 s. 5173; G.S. 1913 s. 9005; G.S. 1923 s. 10502; M.S. 1927 s. 10502.

CRUELTY TO ANIMALS

614.41 DEFINITIONS.

HISTORY. Penal Code s. 501; 1889 c. 209 s. 18; G.S. 1894 s. 6809; R.L. 1905 s. 5151; G.S. 1913 s. 8954; G.S. 1923 s. 10442; M.S. 1927 s. 10442.

614.42 OVERWORKING OR MISTREATING ANIMALS.

HISTORY. Penal Code s. 492; 1889 c. 209 s. 2; 1893 c. 55 s. 1; 1893 c. 93 s. 1; G.S. 1894 ss. 6792, 6793; R.L. 1905 s. 5152; G.S. 1913 s. 8955; G.S. 1923 s. 10443; M.S. 1927 s. 10443.

An indictment under Laws 1871, Chapter 34, Section 1 (prior to the enactment of the Penal Code) for the prevention of cruelty to animals, in the instant case sufficiently describes the act constituting the offense. *State v Comfort*, 22 M 271.

Defendant was properly convicted of unlawfully depriving a horse of necessary food by reason of which the horse died. *State v Maguire*, 188 M 627, 248 NW 216.

The St. Paul Society for the Prevention of Cruelty is an institution of "purely public charity" and its real estate, under Minnesota Constitution, Article 9, Section 1, is exempt from taxation. 1936 OAG 415, April 28, 1936 (414d-17).

614.43 CRUELTY IN TRANSPORTATION.

HISTORY. Penal Code s. 492; 1889 c. 209 s. 2; 1893 c. 55 s. 1; 1893 c. 93 s. 1; G.S. 1894 ss. 6792, 6793; R.L. 1905 s. 5153; G.S. 1913 s. 8956; 1921 c. 186 s. 1; G.S. 1923 s. 10444; M.S. 1927 s. 10444.

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In prosecution under this section the accusation must be under the statute, and not under the "regulations" issued under authority of the statute. OAG July 8, 1937 (293b-19).

614.44 DOCKING HORSES.

HISTORY. 1899 c. 68; R.L. 1905 s. 5154; G.S. 1913 s. 8957; G.S. 1923 s. 10445; M.S. 1927 s. 10445.

614.45 CLIPPED HORSES.

HISTORY. 1903 c. 283; R.L. 1905 s. 5155; G.S. 1913 s. 8958; G.S. 1923 s. 10446; M.S. 1927 s. 10446.

614.46 POISONING ANIMALS.

HISTORY. Penal Code s. 496, 1889 c. 209 s. 5; 1894 s. 6796; 1905 c. 53; R.L. 1905 s. 5157; G.S. 1913 s. 8960; G.S. 1923 s. 10448; M.S. 1927 s. 10448.

Section 614.46 does not offend United States Constitution, Amendment 14, Section 1, nor Minnesota Constitution, Article 1, Sections 5 to 7, State v Eich, 204 M 134, 282 NW 810.

Intent must be shown. One placing poisoned meat in his garage to poison rats, is not guilty under this section if a dog eats the meat and is poisoned. OAG July 29, 1938 (494a-2).

614.47 ANIMAL WITH INFECTIOUS DISEASE.

HISTORY. Penal Code s. 493; 1889 c. 209 s. 14; G.S. 1894 s. 6805; R.L. 1905 s. 5159; G.S. 1913 s. 8962; G.S. 1923 s. 10450; M.S. 1927 s. 10450.

Under the common law the rule of caveat emptor applies, and upon sale of a domestic animal to a retail butcher, there is no implied warranty that the animal is fit for food, although the vendor knows the purpose of the butcher. General Statutes 1894, Section 6805 (section 614.47), does not apply. Hanson v Hartse, 70 M 282, 73 NW 163.

Plaintiff, in the business of marketing hogs for farmers on commission, handled hogs for defendant. Certain of the purchasers refused payment because the hogs had cholera. In the meantime plaintiff had remitted to defendant, less his commission. Plaintiff sued defendant for money had and received. Plaintiff was not entitled to a directed verdict. Geist v Schultz, 180 M 78, 230 NW 259.

In an action in damages for alleged malpractice of defendant, a veterinarian, the proper measure of damages was the difference between the value of the pigs as they were on the date of defendant's call, if they were to receive proper treatment, and the value of those which survived. Hohenstein v Dodds, 215 M 348, 10 NW(2d) 236.

614.48 EXPOSURE OF ANIMALS; DUTY OF OFFICERS.

HISTORY. 1903 c. 297; R.L. 1905 s. 5160; 1907 c. 398 s. 1; G.S. 1913 s. 8963; G.S. 1923 s. 10451; M.S. 1927 s. 10451.

614.49 INJURY TO BIRDS.

HISTORY. 1889 c. 209 s. 4; G.S. 1894 s. 6795; R.L. 1905 s. 5156; G.S. 1913 s. 8959; G.S. 1923 s. 10447; M.S. 1927 s. 10447.

614.50 COCK-FIGHTS AND DOG-FIGHTS PROHIBITED.

HISTORY. Penal Code s. 499; 1889 c. 209 s. 6; G.S. 1894 s. 6797; R.L. 1905 s. 5158; G.S. 1913 s. 8961; G.S. 1923 s. 10449; M.S. 1927 s. 10449.

VAGRANCY AND VARIOUS

614.51 MAXIMUM TOLL OF CUSTOM MILL.

HISTORY. 1885 c. 212 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 s. 20; G.S. 1894 ss. 7643, 7644; R.L. 1905 s. 5190; G.S. 1913 s. 9024; G.S. 1923 s. 10528; M.S. 1927 s. 10528.

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614.52 PICKING CRANBERRIES OUT OF SEASON.

HISTORY. 1891 c. 20 s. 1; G.S. 1894 s. 7902; R.L. 1905 s. 5184; G.S. 1913 s. 9018; G.S. 1923 s. 10522; M.S. 1927 s. 10522.

614.53 MISCONDUCT BY HOTEL RUNNERS.

HISTORY. 1889 c. 48 s. 1; G.S. 1894 s. 8004; R.L. 1905 s. 5188; G.S. 1913 s. 9022; G.S. 1923 s. 10526; M.S. 1927 s. 10526.

614.54 FRAUDULENTLY PRESENTING CLAIMS TO PUBLIC OFFICERS.

HISTORY. Penal Code s. 504; G.S. 1894 s. 6812; R.L. 1905 s. 5182; G.S. 1913 s. 9016; G.S. 1923 s. 10520; M.S. 1927 s. 10520.

The chairman of the town board was guilty under this section as he issued and negotiated a false town order in a matter growing out of a contract defendant had with the county, and in a matter not in any way chargeable to the town. *State v Peebles*, 93 M 311, 101 NW 306.

It was a violation of this section to present a claim for bounties to a town where in fact the gophers and crows were not killed within the town boundaries. OAG March 18, 1931.

614.55 PEACE OFFICERS SHALL BE VOTERS; MAY BE WOMEN; PENALTY.

HISTORY. 1891 c. 16 ss. 1, 2; G.S. 1894 ss. 6958, 6959; R.L. 1905 s. 5171; 1913 c. 236 s. 1; G.S. 1913 s. 9003; G.S. 1923 s. 10500; M.S. 1927 s. 10500.

A village marshal must not be an alien; but so long as he holds the office he is a defacto officer, and may make a legal arrest. OAG March 24, 1939 (3f).

614.56 PROTECTION TO MOTORMEN.

HISTORY. 1893 c. 63 ss. 1 to 4; G.S. 1894 ss. 2767 to 2770; R.L. 1905 s. 5185; G.S. 1913 s. 9019; G.S. 1923 s. 10523; M.S. 1927 s. 10523.

Laws 1893, Chapter 63, entitled "an act to compel street railway companies to protect certain of their employees from the inclemency of the weather" is constitutional. *State v Smith*, 58 M 35, 59 NW 545.

614.57 APPLICATION OF TERM "VAGRANCY" AND EXTENSION OF THE SAME TO INCLUDE VARIOUS PERSONS.

HISTORY. 1897 c. 335; 1909 c. 487; 1911 c. 257 s. 1; G.S. 1913 s. 9030; 1917 c. 292 s. 1; G.S. 1923 s. 10534; M.S. 1927 s. 10534.

Evidence showing solicitation of two men for purposes of sexual intercourse for hire is sufficient under Clause (5) of this section, to sustain a conviction of prostitution. *State v Burke*, 187 M 336, 245 NW 153.

The conviction must be reversed because proof of the offense under the vagrancy statute was insufficient to support the verdict, there being no showing that the circulation of a "chain letter" is made a public offense by statute. *State v Hellen*, 200 M 126, 273 NW 363.

Where it is shown that defendant, in operating a radio repair shop, has pursued a course of conduct characterized by overcharging and charging for unnecessary repairs, the evidence is sufficient to sustain a conviction of vagrancy under Clause (8) of this section. *State v Suman*, 216 M 293, 12 NW(2d) 620.

614.58 EMPLOYERS NOT TO ACCEPT CONSIDERATION FOR SECURING EMPLOYMENT.

HISTORY. 1933 c. 47; M. Supp. s. 10536-1.

614.59 ARMED ASSOCIATION.

HISTORY. 1897 c. 118 s. 107; R.L. 1905 s. 5195; G.S. 1913 s. 9029; G.S. 1923 s. 10533; M.S. 1927 s. 10533.

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614.60 RUNNING TOLL.

HISTORY. G.S. 1894 ss. 1869, 1874; R.L. 1905 s. 5194; G.S. 1913 s. 9028; G.S. 1923 s. 10532; M.S. 1927 s. 10532.

614.61 CIRCUSES.

HISTORY. 1933 c. 357 ss. 1, 2; M. Supp. ss. 10536-2, 10536-3.

614.62 CIGARETTES, WHAT SALES PROHIBITED.

HISTORY. 1919 c. 348 s. 1; G.S. 1923 s. 3240; M.S. 1927 s. 3240.

Minneapolis ordinance prohibiting sale of cigarettes without a license is a valid exercise of the police power and applicable to wholesalers as well as retailers of cigarettes. *State v Crabtree*, 218 M 36, 15 NW(2d) 99.

614.63 PENALTY FOR SMOKING CIGARETTES.

HISTORY. 1919 c. 348 s. 2; G.S. 1923 s. 3241; M.S. 1927 s. 3241.

614.64 ADULTERATED CIGARETTES.

HISTORY. 1893 c. 22 s. 1; G.S. 1894 s. 6951; R.L. 1905 s. 5163; G.S. 1913 s. 8966; G.S. 1923 s. 10456; M.S. 1927 s. 10456.

See *State v Crabtree*, 218 M 36, 15 NW(2d) 100.

614.65 PENALTY FOR USE OF ADULTERATED CIGARETTES.

HISTORY. 1907 c. 386 s. 1; G.S. 1913 ss. 8967, 8968; G.S. 1923 s. 10457; M.S. 1927 s. 10457.

614.66 BLIND PERSONS CARRYING WHITE CANES.

HISTORY. 1945 c. 369 ss. 1 to 3.