CHAPTER 629

EXTRADITION, ARREST, AND BAIL

NOTE. This is the uniform criminal extradition act and has been adopted by Alabama, Arizona, Arkansas, Idaho, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.

Extradition, prior to enactment of Laws 1939, Chapter 240, was controlled by Revised Statutes 1851, Chapter 111, Sections 2 to 6, as amended by Laws 1874, Chapter 15, Section 1, and Laws 1879, Chapter 44, Section 1, and codified as General Statutes 1923, Sections 10541 to 10547. These sections were repealed by Laws 1939, Chapter 240, Section 30. Two of the original sections, 10541, 10547, are reenacted as sections 28 and 29 (sections 629.18, 629.19) of the new act.

Following are annotations under the repealed sections:

GENERAL STATUTES 1923, SECTION 10541. EXTRADITION AGENTS, APPOINTMENT; REPORTS.

A person is not given immunity from prosecution for a criminal offense committed in this state merely because he has been brought into the state in violation of his legal rights. State v Chandler, 158 M 447, 197 NW 847.

Immunity from service. Non-resident officer engaged in extradition proceedings. 16 MLR 600.

Where an accused absconds from the state to evade proceedings to establish paternity he is subject to extradition. OAG Jan. 28, 1939 (193b-30).

GENERAL STATUTES 1923, SECTION 10542. WARRANT FOR EXTRADITION; SERVICE.

1. **Jurisdictional prerequisites**
2. **Duty and discretion of governor**
3. **Who is a fugitive from justice**
4. **Proof that party demanded is a fugitive**
5. **The crime charged**
6. **Requisition papers**
7. **The warrant**
8. **Revocation of warrant**
9. **Trial for other offense**
10. **Exemption from civil process**
11. **Review by courts**

1. Jurisdictional prerequisites

To justify the issuance of a warrant three things are necessary: (1) There must be a demand from the governor of the state where the crime was committed for the surrender of the fugitive who has fled from its jurisdiction; (2) the requisition must be accompanied by a copy of an indictment or affidavit charging the fugitive with the commission of the offense specified; (3) such copy must be authenticated by the certificate of the governor making the requisition. State v Stundahl, 34 M 115, 24 NW 354; State v O'Connor, 38 M 243, 36 NW 462.

Extradition is governed by the constitution and laws of the United States, and Laws 1929, Chapter 19, cannot interfere or delay its operation. State ex rel v Moeller, 182 M 369, 234 NW 649.

A prisoner who has been removed from the demanding state by federal authorities is nevertheless a fugitive from justice in an asylum state and must be delivered to the demanding state upon proper extradition process. State ex rel v Wall, 187 M 246, 244 NW 811.

"Complaint" sworn to on information and belief attached to requisition papers is sufficient "indictment" or "affidavit" to authorize the issuance of extradition papers. State ex rel v Moeller, 191 M 193, 253 NW 668.

2. Duty and discretion of governor

The governor acts in executive, not judicial capacity. State ex rel v Goss, 66 M 291, 68 NW 1089.

When a case is presented which is clearly one contemplated by the federal constitution the governor has no discretion but it is his imperative duty to issue the warrant. This duty, however, is one of imperfect obligation, for, if the governor refuses to perform it, there is no power, state or federal, to compel him to do so. In determining whether a case is one contemplated by the constitution the governor may exercise a discretion and if he is satisfied that the demand is made for some ulterior and improper purpose, as for example, the collection of a private debt, he may refuse to issue a warrant. State ex rel v Toole, 69 M 104, 72 NW 53.

3. Who is a fugitive from justice

To be a fugitive from justice it is not necessary that the party charged shall have left the state in which the crime is alleged to have been committed for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a state committed a crime against its laws, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction, and is found within the territory of another state. His motives for leaving are immaterial. The fact that he is not within the state to answer the charge when required, renders him, in legal intendment, a fugitive from justice, regardless of his purpose in leaving. State ex rel v Richter, 37 M 436, 35 NW 9.

See as to abandonment of wife and family. OAG April 13, 1934 (840a-1); OAG July 13, 1934 (339a); OAG Nov. 1, 1934 (494b-15).

4. Proof that party demanded is a fugitive

The governor must be furnished with proof that party demanded is a fugitive from justice but the law does not prescribe the nature of the evidence to be furnished. When the governor issues a warrant it is presumed that it was granted on competent proof that the prisoner was a fugitive from justice, charged with a crime, at a time when he was within the state from which he had fled. The question whether a person is a fugitive involves the question whether he was in the demanding state at the time the crime was committed, a prerequisite to the granting of requisition. State ex rel v Justus, 84 M 237, 87 NW 770; State ex rel v Moeller, 191 M 193, 253 NW 668.

5. The crime charged

The law permits extradition in misdemeanor cases in the discretion of the governor. OAG Nov. 1, 1934 (605a-6).

A fugitive charged with deserting his child or a pregnant wife, under section 617.55, may be extradicted. OAG March 26, 1936 (193b-1).

6. Requisition papers

Requirement that requisition papers contain copy of indictment or affidavit is imperative. State v Stundahl, 34 M 115, 24 NW 354; State ex rel v Justus, 84 M 237, 87 NW 770.

It will be implied from the authentication that the officer certifying to the jurat of the affidavit was a magistrate, as represented therein. State v Stundahl, 34 M 115, 24 NW 354; State ex rel v Bates, 101 M 303, 112 NW 260.

The indictment or affidavit is sufficient if it substantially charges commission of a crime against the state from whose justice the accused is alleged to have fled. With its sufficiency as a pleading in other respects courts of this state have no concern. State ex rel v O'Connor, 38 M 243, 36 NW 462; State ex rel v Goss, 66 M 291, 68 NW 1089.

An affidavit duly certified and authenticated by the governor of the state making demand is sufficient. The governor of the responding state must disregard mere defects in the papers. State ex rel v Goss, 66 M 291, 68 NW 1089.

A requisition signed by "acting governor" is sufficient; and where the requisition certifies that all papers returned are true and correct copies, and one of them contains a criminal accusation, endorsed "an indictment" signed by a foreman as "a true bill" the authentication is sufficient. State ex rel v Justus, 84 M 237, 87 NW 770.

It is enough that the indictment accompanying the requisition shows in general terms the commission of a crime in the demanding state by the fugitive; it need not be sufficient as a criminal pleading. The sufficiency of the prerequisites on which the demanding papers are issued are not subject to review in our courts. State ex rel v Wall, 178 M 368, 227 NW 176.

"Complaint" sworn to on information and belief attached to requisition papers is sufficient "indictment" or "affidavit" to authorize the issuance of extradition papers by the governor of asylum state. State ex rel v Moeller, 191 M 193, 253 NW 668.

7. The warrant

It is not necessary that copies of the indictment, affidavit, or other records, be annexed to the warrant. It is sufficient if they are produced when called in question or that jurisdictional facts are recited on the fact of the warrant. Probably sufficient if warrant recites generally that governor is satisfied that the demand is conformable to law and ought to be complied with, but if warrant attempts to set out all jurisdictional facts they must be fully set out. State v Stundahl, 34 M 115, 24 NW 354.

The governor's warrant need not set forth facts nor grounds upon which the same is issued with the certainty required in criminal pleadings. Under the federal constitution and the act of congress, it is presumed the preliminaries have been adopted and a demand for the fugitive is sufficient. State ex rel v Justus, 84 M 237, 87 NW 770.

Warrant and requisition papers on which it was based and which are part of the return, were sufficient though the warrant recited that relator was charged upon complaint with the crime of forgery. State ex rel v Bates, 101 M 303; 112 NW 260.

General Statutes 1923, Section 10542, providing that the governor shall "issue" extradition warrants, does not mean that he shall personally sign them. State ex rel v Moeller, 191 M 193, 253 NW 668.

8. Revocation of warrant

The governor may revoke his warrant at any time before the fugitive is taken out of the state. State ex rel v Toole, 69 M 104, 72 NW 53.

9. Trial for other offense

Person extradited may be tried for a crime other than the one for which he was extradited. Reid v Ham, 54 M 305, 56 NW 35.

10. Exemption from civil process

One who by interstate rendition proceedings is brought to this state from another state or territory as a fugitive from justice is not exempt from civil prosecution while detained here under such proceedings. Reid v Ham, 54 M 305, 56 NW 35.

11. Review by courts

Court on habeas corpus having before it copies on which the governor's warrant was issued will decide on their sufficiency. In passing on sufficiency of indictment or affidavit the court will only determine whether it states an offense under the laws of the demanding state and will not determine its sufficiency as a criminal pleading in other respects. State ex rel v O'Connor, 38 M 243, 36 NW 462; State ex rel v Goss, 66 M 291, 68 NW 1089.

In habeas corpus proceedings if it appears that the warrant has been revoked the prisoner must be discharged and grounds of such revocation cannot be inquired into by the court. State ex rel v Toole, 69 M 104, 72 NW 53.

Every presumption will be entertained by the courts in favor of the regularity of the governor's action. In the supreme court, on habeas corpus proceedings, the court will not extend its inquisition beyond the rendition warrant to ascertain whether the prisoner has been previously unlawfully arrested, or was in unlawful custody at the time such warrant was served upon him. State ex rel v Justus, 84 M 237, 87 NW 770.

In habeas corpus proceedings for discharge of one arrested on the warrant of the governor the burden of showing that he is not a fugitive from justice is upon the prisoner. A warrant in due form and containing the proper recitals is prima facie evidence that the accused is a fugitive from justice. State ex rel v Langum, 126 M 38, 147 NW 708.

The statute requires the sheriff not to surrender a fugitive until he has had an opportunity to apply for a writ of habeas corpus and it gives the right of appeal without bond. Such appeal stays all proceedings. State ex rel v Sheriff of Hennepin Co. 148 M 484, 181 NW 640.

The fact that, pending an appeal in habeas corpus proceedings, a sheriff, in violation of the statute, prematurely delivered a prisoner, whom he lawfully held in custody under an extradition warrant, to the agent of the demanding state named in the warrant and failed to accompany him to the state line, does not create a cause of action for damages where the wrongful act of the sheriff is not the proximate cause of the alleged damages. Nemec v Brown, 150 M 252, 184 NW 956.

On habeas corpus neither the good faith of the prosecution nor the guilt or innocence of the fugitive is open to inquiry. State ex rel v Wall, 178 M 368, 227 NW 176.

Whether there was compliance with the prerequisites of the demanding state is for the governor to determine and his determination is not subject to review by the courts of this state. State ex rel v Wall, 178 M 368, 227 NW 176.

The governor's rendition warrant creates a presumption that the accused is a fugitive from justice, and to entitle a prisoner held under such a warrant to discharge on habeas corpus, the evidence must be clear and satisfactory that he was not in the demanding state at the time the alleged crime was committed. State ex rel v Owens, 187 M 244, 244 NW 820.

A prisoner who has been removed from the demanding state by federal authorities is nevertheless a fugitive from justice in an asylum state. State ex rel v Wall, 187 M 246, 244 NW 811.

GENERAL STATUTES 1923, SECTION 10543. FUGITIVE FROM ANOTHER STATE ARRESTED, WHEN.

When a person is arrested by an officer without a warrant, on suspicion of having committed a felony, and is detained in the custody of such officer for five days and released without having been taken before a magistrate, there being nothing preventing the taking before the magistrate at any time, the question of whether the time is unreasonable is a matter of law, and in the instant case is found to be unreasonable. Cochran v Toher, 14 M 385 (293).

A demand for extradition complies with the federal statute when it clearly shows that a criminal charge is pending in the demanding state, even though the papers are insufficient as a criminal pleading under the laws of this state. State ex rel v Wall, 181 M 456, 232 NW 788.

GENERAL STATUTES 1923, SECTION 10544. MAY GIVE RECOGNIZANCE, WHEN.

Where a person is held as a fugitive from justice under a rendition warrant issued by the governor of this state, he ordinarily should not be released on bail pending a decision in a habeas corpus proceeding to test the legality of his arrest. State ex rel v Moeller, 182 M 369, 234 NW 649.

EXTRADITION

629.01 DEFINITIONS.

HISTORY. 1939 c. 240 s. 1; M. Supp. s. 10547-11.

629.02 DUTIES OF GOVERNOR IN EXTRADITION MATTERS.

HISTORY. 1939 c. 240 s. 2; M. Supp. s. 10547-12.

629.03 DEMAND IN WRITING.

HISTORY. 1939 c. 240 s. 3; M. Supp. s. 10547-13.

629.04 ATTORNEY GENERAL TO INVESTIGATE.

HISTORY. 1939 c. 240 s. 4; M. Supp. s. 10547-14.

629.05 EXTRADITION BY AGREEMENT.

HISTORY. 1939 c. 240 s. 5; M. Supp. s. 10547-15.

629.06 MAY EXTRADITE PERSONS CAUSING CRIME.

HISTORY. R.S. 1851 c. 111 s. 3; P.S. 1858 c. 100 s. 3; G.S. 1866 c. 103 s. 3; G.S. 1878 c. 103 s. 3; G.S. 1894 s. 7086; R.L. 1905 s. 5202; G.S. 1913 s. 9039; G.S. 1923 s. 10543; M.S. 1927 s.. 10543; 1939 c. 240 s. 6; M. Supp. s. 10547-16.

629.07 WARRANT OF ARREST.

HISTORY. R.S. 1851 c. 111 s. 2; P.S. 1858 c. 100 s. 2; G.S. 1866 c. 103 s. 2; 1874 c. 15 s. 1; G.S. 1878 c. 103 s. 2; 1879 c. 44 s. 1; G.S. 1894 s. 7085; R.L. 1905 s. 5201; G.S. 1913 s. 9038; G.S. 1923 s. 10542; M.S. 1927 s. 10542; 1939 c. 240 s. 7; M. Supp. s. 10547-17.

629.08 ACCUSED TURNED OVER TO DEMANDING STATE.

HISTORY. 1939 c. 240 s. 8; M. Supp. s. 10547-18.

629.09 POWERS OF OFFICER.

HISTORY. 1939 c. 240 s. 9; M. Supp. s. 10547-19.

629.10 ACCUSED TAKEN BEFORE COURT.

HISTORY. 1939 c. 240 s. 10; M. Supp. s. 10547-20.

629.11 VIOLATION A GROSS MISDEMEANOR.

HISTORY. 1939 c. 240 s. 11; M. Supp. s. 10547-21.

629.12 ACCUSED MAY BE CONFINED IN JAIL.

HISTORY. R.S. 1851 c. 111 s. 6; P.S. 1858 c. 100 s. 6; G.S. 1866 c. 103 s. 6; G.S. 1878 c. 103 s. 6; G.S. 1894 s. 7089; R.L. 1905 s. 5205; G.S. 1913 s. 9042; G.S. 1923 s. 10546; M.S. 1927 s. 10546; 1939 c. 240 s. 12; M. Supp. s. 10547-22.

629.13 WHO MAY BE APPREHENDED.

HISTORY. 1939 c. 240 s. 13; M. Supp. s. 10547-23.

Fugitive cannot be extradicted in order to force him to support his children, but may be extradicted to punish him for the crime of non-support. OAG Nov. 1, 1944 (840a-1).

629.14 ARREST WITHOUT WARRANT.

HISTORY. 1939 c. 240 s. 14; M. Supp. s. 10547-24.

On arrest the accused should be arraigned promptly. "Third degree" methods discussed. State v Schabert, 218 M 5, 15 NW(2d) 585.

629.15 COURT MAY COMMIT TO JAIL.

HISTORY. R.S. 1851 c. 111 s. 4; P.S. 1858 c. 100 s. 4; G.S. 1866 c. 103 s. 4; G.S. 1878 c. 103 s 4; G.S. 1894 s. 7087; R.L. 1905 s. 5203; G.S. 1913 s. 9040; G.S. 1923 s. 10544; M.S. 1927 s. 10544; 1939 c. 240 s. 15; M. Supp. s. 10547-25.

629.16 MAY BE ADMITTED TO BAIL.

HISTORY. R.S. 1851 c. 111 s. 4; P.S. 1858 c. 100 s. 4; G.S. 1866 c. 103 s. 4; G.S. 1878 c. 103 s. 4; G.S. 1894 s. 7087; R.L. 1905 s. 5203; G.S. 1913 s. 9040; G.S. 1923 s. 10544; M.S. 1927 s. 10544; 1939 c. 240 s. 16; M. Supp. s. 10547-26.

629.17 MAY BE DISCHARGED; WHEN.

HISTORY. R.S. 1851 c. 111 s. 5; P.S. 1858 c. 100 s. 5; G.S. 1866 c. 103 s. 5; G.S. 1878 c. 103 s 5; G.S. 1894 s. 7088; 1903 c. 140; R.L. 1905 ss. 5200, 5204; G.S. 1913 ss. 9037, 9041; G.S. 1923 ss. 10541, 10545; M.S. 1927 ss. 10541, 10545; 1939 c. 240 s. 17; M. Supp. s. 10547-27.

629.18 MAY DECLARE BOND FORFEITED.

HISTORY. 1939 c. 240 s. 18; M. Supp. s. 10547-28.

629.19 MAY EITHER HOLD OR SURRENDER PRISONER.

HISTORY. 1939 c. 240 s. 19; M. Supp. s. 10547-29.

629.20 GOVERNOR NOT TO INQUIRE INTO GUILT OR INNOCENCE.

HISTORY. 1939 c. 240 s. 20; M. Supp. s. 10547-30.

629.21 MAY RECALL WARRANT.

HISTORY. 1939 c. 240 s. 21; M. Supp. s. 10547-31.

629.22 WARRANT FOR PAROLEES OR PROBATIONERS.

HISTORY. 1939 c. 240 s. 22; M. Supp. s. 10547-32.

629.23 PROSECUTING ATTORNEY TO MAKE WRITTEN APPLICATION.

HISTORY. 1939 c. 240 s. 23; M. Supp. s. 10547-33.

629.24 MAY NOT BE SERVED WITH CIVIL PROCESS.

HISTORY. 1939 c. 240 s. 24; M. Supp. s. 10547-34.

629.25 MAY BE TRIED FOR OTHER CRIMES.

HISTORY. 1939 c. 240 s. 25; M. Supp. s. 10547-35.

629.26 UNIFORMITY.

HISTORY. 1939 c. 240 s. 26; M. Supp. s. 10547-36.

629.27 GOVERNOR MAY APPOINT AGENT.

HISTORY. G.S. 1923 s. 10541; M.S. 1927 s. 10541; 1939 c. 240 s. 28; M. Supp. s. 10547-38.

629.28 POWERS OF OFFICERS.

HISTORY. 1877 c. 104 s. 1; G.S. 1878 c. 103 s. 7; G.S. 1894 s. 7090; R.L. 1905 s. 5206; G.S. 1913 s. 9043; G.S. 1923 s. 10547; M.S. 1927 s. 10547; 1939 c. 240 s. 29; M. Supp. s. 10547-39.

629.29 CITATION.

HISTORY. 1939 c. 240 s. 31; M. Supp. s. 10547-41.

ARRESTS

629.30 ARRESTS; BY WHOM MADE; AIDING OFFICER.

HISTORY. R.S. 1851 c. 113 ss. 1 to 3; P.S. 1858 c. 102 ss. 1 to 3; G.S. 1866 c. 105 ss. 1 to 3; G.S. 1878 c. 105 ss. 1 to 3; G.S. 1894 ss. 7110 to 7112; R.L. 1905 s. 5225; G.S. 1913 s. 9062; G.S. 1923 s. 10566; M.S. 1927 s. 10566.

In an action by a sheriff to recover his fees from the county, the statutory definition of "arrest" is cited. Stennerson v Board, 68 M 509, 71 NW 687.

By pleading guilty to petit larceny in justice court defendant submitted to the jurisdiction of the court and there was no error in refusing his motion to withdraw his plea, so that he question the validity of his arrest. State v Henspeter, 199 M 359, 271 NW 700.

629.31 WHEN MADE.

HISTORY. R.S. 1851 c. 113 s. 4; P.S. 1858 c. 102 s. 4; G.S. 1866 c. 105 s. 4; G.S. 1878 c. 105 s. 4; G.S. 1894 s. 7113; R.L. 1905 s. 5226; G.S. 1913 s. 9063; G.S. 1923 s. 10567; M.S. 1927 s. 10567.

The defendant, a police officer, was convicted of the crime of wilful neglect of duty in failing to arrest keepers of a certain house of ill-fame. It was not prejudicial error for the court to refuse to read sections 629.31 and 629.34 because those sections covered situations other than those presented in evidence in the instant case. State v Grunewald, 211 M 74, 300 NW 206.

629.32 HOW MADE; RESTRAINT; SHOW WARRANT.

HISTORY. R.S. 1851 c. 113 ss. 5 to 7; P.S. 1858 c. 102 ss. 5 to 7; G.S. 1866 c. 105 ss. 5 to 7; G.S. 1878 c. 105 ss. 5 to 7; G.S. 1894 ss. 7114 to 7116; R.L. 1905 s. 5227; G.S. 1913 s. 9064; G.S. 1923 s. 10568; M.S. 1927 s. 10568.

Party whose arrest is attempted should first be notified of the purpose of the officer. No particular form of words is necessary. Enough that the officer and his business is known. Where an officer, in the first instance, used the words, "you are my prisoner" held proper notification. He need not exhibit his warrant before arrest. State v Spalding, 34 M 361, 25 NW 793.

Generally the official character of the officer is presumed to be known by the party arrested, but, whether known or unknown, the officer must disclose his authority, if required by the person arrested. Steenerson v Board, 68 M 509, 71 NW 687.

A person lawfully arrested may, as an incident thereto, be searched and incriminating articles found in his possession may be seized. State v Pluth, 157 M 145, 195 NW 789.

The use in evidence of intoxicating liquor taken without a search warrant from defendant's car is proper. State v McLean, 157 M 359, 196 NW 278.

629.33 MEANS USED.

HISTORY. R.S. 1851 c. 113 ss. 8 to 10; P.S. 1858 c. 102 ss. 8 to 10; G.S. 1866 c. 105 ss. 8 to 10; G.S. 1878 c. 105 ss. 8 to 10; G.S. 1894 ss. 7117 to 7119; R.L. 1905 s. 5228; G.S. 1913 s. 9065; G.S. 1923 s. 10569; M.S. 1927 s. 10569.

629.34 WITHOUT WARRANT, WHEN; BREAK DOOR, WHEN.

HISTORY. R.S. 1851 c. 113 ss. 11, 12; P.S. 1858 c. 102 ss. 11, 12; G.S. 1866 c. 105 ss. 11, 12; G.S. 1878 c. 105 ss. 11, 12; G.S. 1894 ss. 7120, 7121; R.L. 1905 s. 5229; G.S. 1913 s. 9066; G.S. 1923 s. 10570; M.S. 1927 s. 10570.

In making an arrest without a warrant the officer acts in his official capacity and for an illegal arrest his sureties are liable. Warner v Grace, 14 M 487 (364); Hall v Tierney, 89 M 407, 95 NW 219.

The term "public offense" in clause (1) includes all criminal offenses, whether felonies, misdemeanors, or infractions of municipal ordinances. Wahl v Walton, 30 M 506, 16 NW 397; State v Cantieny, 34 M 1, 24 NW 458; State ex rel v Leindecker, 91 M 277, 97 NW 972.

To authorize arrest under clause (1) without a warrant for an offense not a felony it must be made at the time, that is, the officer must at once set about the arrest and follow up the effort, until it is made. Where five hours intervened during which the officer made no attempt to effect an arrest it was held that authority to arrest ceased. Wahl v Walton, 30 M 506, 16 NW 397.

Power to arrest without a warrant is not to be enlarged. Wahl v Walton, 30 M 506, 16 NW 397; Witte v Haben, 131 M 71, 154 NW 662; Ehrhardt v Wells, 134 M 58, 158 NW 721; Hilla v Jensen, 149 M 58, 182 NW 902.

Where a party pleads to an indictment or complaint without objecting to his arrest without a warrant he waives any objection on that ground. State ex rel v Fitzgerald, 51 M 534, 53 NW 799.

Where a felony has been committed but not in the presence of an officer he may arrest without a warrant. Steenerson v Board, 68 M 509, 71 NW 687.

Mistaken belief of officer that he had warrant does not preclude defense that he had probable grounds for believing persons arrested guilty of felony. Nelson v Halvorson, 117 M 255, 135 NW 818.

Where the offense is not a felony, an officer cannot arrest without a warrant, unless the offense was committed or attempted in his presence. Where the officer does not know of the act constituting the offense, it is not committed in his presence. State v Pluth, 157 M 145, 195 NW 789.

Where an officer attempts to take property under a writ of replevin, resistance by the defendant may be sufficient to constitute a misdemeanor and permit arrest without a warrant. As to whether the officer failed to take the prisoner before the magistrate within a reasonable time is for the jury. The arrest being unlawful, the person arrested may have a cause of action irrespective of his release. Stromberg v Hansen, 177 M 307, 225 NW 148.

Where an officer arrests a person without a warrant the burden rests upon the officer to plead and prove justification; otherwise the arrest is prima facie unlawful. Whether the sheriff detained the person arrested an unreasonable time without taking her before a magistrate or obtaining a warrant was a question of fact for the jury. Evans v Jorgenson, 182 M 282, 234 NW 292.

Officer's perception by sense or smell of commission of crime as justifying arrest and search without a warrant. 15 MLR 360.

629.35 ARREST AT NIGHT, WHEN; DISCLOSE AUTHORITY; EXCEPTION.

HISTORY. R.S. 1851 c. 113 ss. 13, 14; P.S. 1858 c. 102 ss. 13, 14; G.S. 1866 c. 105 ss. 13, 14; G.S. 1878 c. 105 ss. 13, 14; G.S. 1894 ss. 7122, 7123; R.L. 1905 s. 5230; G.S. 1913 s. 9067; G.S. 1923 s. 10571; M.S. 1927 s. 10571.

Cases relating to disclosure of authority. State v Spalding, 34 M 361, 25 NW 793; Steenerson v Board, 68 M 509, 71 NW 687; Hilla v Jensen, 149 M 58, 182 NW 902.

There is no provision in our statute authorizing a justice of the peace to issue a bench warrant. OAG June 12, 1941 (266B-27).

629.36 ARREST BY BYSTANDER; MAGISTRATE MAY COMMAND ARREST, WHEN.

HISTORY. R.S. 1851 c. 113 ss. 15, 16; P.S. 1858 c. 102 ss. 15, 16; G.S. 1866 c. 105 ss. 15, 16; G.S. 1878 c. 105 ss. 15, 16; G.S. 1894 ss. 7124, 7125; R.L. 1905 s. 5231; G.S. 1913 s. 9068; G.S. 1923 s. 10572; M.S. 1927 s. 10572.

629.37 PRIVATE PERSON MAY ARREST, WHEN.

HISTORY. R.S. 1851 c. 113 s. 17; P.S. 1858 c. 102 s. 17; G.S. 1866 c. 105 s. 17; G.S. 1878 c. 105 s. 17; G.S. 1894 s. 7126; R.L. 1905 s. 5232; G.S. 1913 s. 9069; G.S. 1923 s. 10573; M.S. 1927 s. 10573.

For a violation, in his presence, of a city ordinance relating to fire hazard, a private person under General Statutes 1866, Chapter 105, Section 17 (section 629.37), may arrest the offending person and without unnecessary delay take him before a magistrate, or deliver him to a police officer. Judson v Reardon, 16 M 431 (387).

Judgment for damages against a private person who assisted in making a false arrest is sustained. Nelson v Ness, 117 M 255, 135 NW 818.

629.38 DISCLOSURE OF CAUSE; MEANS USED.

HISTORY. R.S. 1851 c. 113 ss. 18, 19; P.S. 1858 c. 102 ss. 18, 19; G.S. 1866 c. 105 ss. 18, 19; G.S. 1878 c. 105 ss. 18, 19; G.S. 1894 ss. 7127, 7128; R.L. 1905 s. 5233; G.S. 1913 s. 9070; G.S. 1923 s. 10574; M.S. 1927 s. 10574.

629.39 PROCEEDINGS BY PRIVATE PERSON MAKING ARREST.

HISTORY. R.S. 1851 c. 113 ss. 20 to 22; P.S. 1858 c. 102 ss. 20 to 22; G.S. 1866 c. 105 ss. 20 to 22; G.S. 1878 c. 105 ss. 20 to 22; G.S. 1894 ss. 7129 to 7131; R.L. 1905 s. 5234; G.S. 1913 s. 9071; G.S. 1923 s. 10575; M.S. 1927 s. 10575.

See, Judson v Reardon, 16 M 431 (387).

List of states requiring arrested persons to be promptly taken before a committing authority. McNabb v United States, 318 US 343.

629.40 ARRESTS ANY PLACE IN STATE; WHEN ALLOWED.

HISTORY. 1927 c. 256; M.S. 1927 s. 10575-1.

For an offense committed within the village limits any police officer of the village may make an arrest any place within the state. OAG Dec. 21, 1933.

WARRANTS; BAIL BONDS

629.41 PROCESS, BY WHOM ISSUED.

HISTORY. R.S. 1851 c. 114 s. 1; P.S. 1858 c. 103 s. 1; G.S. 1866 c. 106 s. 1; G.S. 1878 c. 106 s. 1; G.S. 1894 s. 7132; R.L. 1905 s. 5235; G.S. 1913 s. 9072; G.S. 1923 s. 10576; M.S. 1927 s. 10576.

County commissioners are committing magistrates under this section, and may admit to bail. If the recognizance is of record in the proper court at the time when the parties who entered into it are called upon to perform its conditions, it is in time as respects filing. State v Perry, 28 M 455, 10 NW 778; Hoskins v Baxter, 64 M 226, 66 NW 969; State ex rel v Haugen, 124 M 456, 145 NW 167.

The uncorroborated testimony of an accomplice is sufficient to sustain a finding of probable cause for holding a prisoner to the district court to answer for a felony. State ex rel v Tessmer, 211 M 55, 300 NW 7.

629.42 PROCEEDINGS ON COMPLAINT; WARRANT.

HISTORY. R.S. 1851 c. 114 s. 2; P.S. 1858 c. 103 s. 2; G.S. 1866 c. 106 s. 2; G.S. 1878 c. 106 s. 2; G.S. 1894 s. 7133; R.L. 1905 s. 5236; G.S. 1913 s. 9073; G.S. 1923 s. 10577; M.S. 1927 s. 10577.

1. Nature of proceeding
2. To what offense applicable
3. When necessary
4. Waiver
5. Complaint
6. Examination
7. Sheriff's fees

1. Nature of proceeding

Preliminary examination, a judicial proceeding, but not an action or trial. It is mere preliminary inquiry to ascertain if the evidence is such that the accused ought to be put on trial for the offense charged. If he is discharged, new proceedings may be at once commenced against him for the same offense; if he is held, that fact can have no influence on his guilt when he is put on his trial to have it determined. State v Bergman, 37 M 407, 34 NW 737; Wagener v Board, 76 M 368, 79 NW 166; State v Zywicki, 175 M 508, 221 NW 900; Raferty v Bligh, 55 F(2d) 198.

2. To what offense applicable

This section is applicable to all criminal offenses whether felonies or misdemeanors. State v Sweeney, 33 M 23, 21 NW 847; State ex rel v Sargent, 71 M 28, 73 NW 626.

3. When necessary

Although not necessary an examination may be had for offenses punishable by a justice of the peace. State ex rel v Sargent, 71 M 28, 73 NW 626.

4. Waiver

An accused person may waive preliminary examination. State v Grant, 10 M 39 (22).

Where the defendant, when arraigned in district court, stood mute and did not call the court's attention to the state's failure to file formal complaint against him and to hold a preliminary examination, objections to the district court's jurisdiction based on these defects in procedure were thereby waived. State v Puent, 198 M 177, 269 NW 372.

5. Complaint

The complaint is the initial proceeding in examination and must be on oath. State ex rel v Richardson, 34 M 115, 24 NW 354.

Complaint and warrant for arrest of a person who has been released from a commitment by habeas corpus need not be any different from what they would be if there had been no prior arrest and discharge. State ex rel v Holm, 37 M 405, 34 NW 748.

A complaint which contains a substantial statement of the offense in positive terms is sufficient. State v Messolongitis, 74 M 165, 77 NW 29.

A complaint charging a defendant with unlawfully transporting intoxicating liquor in violation of the city ordinance of the city of Minneapolis need not negative the provisos or exceptions in the ordinance. The city clerk may enter a complaint on the record against a person in custody, arrested without a warrant. State v LaDue, 164 M 499, 205 NW 450.

The criminal complaint is not void for duplicity. An objection on that ground must be taken at or before trial or it will be considered as waived. State ex rel v City of Red Wing, 175 M 222, 220 NW 611.

6. Examination

A criminal complaint subscribed and sworn to before a magistrate and purporting to have been made after complainant had been duly sworn is a sufficient "examination" of complainant under this section. State v Nerbovig, 33 M 480, 24 NW 321; State v Stundahl, 34 M 115, 24 NW 354.

Testimony preliminary to filing of complaint and issuance of warrant. State ex rel v District Court, 192 M 620, 257 NW 340.

7. Sheriff's fees

Sheriff or constable is entitled to mileage for traveling to serve a criminal warrant although if by no fault of his, he fails to serve it. Davis v Co. of LeSueur, 37 M 491, 35 NW 364.

629.43 WARRANT EXECUTED, WHERE.

HISTORY. R.S. 1851 c. 114 s. 3; P.S. 1858 c. 103 s. 3; G.S. 1866 c. 106 s. 3; G.S. 1878 c. 106 s. 3; G.S. 1894 s. 7134; R.L. 1905 s. 5237; G.S. 1913 s. 9074; G.S. 1923 s. 10578; M.S. 1927 s. 10578.

Uniform fresh pursuit act sections 626.65 to 626.70.

629.44 OFFENDER MAY GIVE RECOGNIZANCE, WHEN; DUTY OF MAGISTRATE.

HISTORY. R.S. 1851 c. 114 ss. 4, 5; P.S. 1858 c. 103 ss. 4, 5; G.S. 1866 c. 106 ss. 4, 5; G.S. 1878 c. 106 ss. 4, 5; G.S. 1894 ss. 7135, 7136; R.L. 1905 s. 5238; G.S. 1913 s. 9075; G.S. 1923 s. 10579; M.S. 1927 s. 10579.

A justice of the peace before whom a preliminary examination is in progress, has no authority to admit the accused to bail pending an adjournment of a hearing in cases where the accused is charged with an offense punishable with death or imprisonment in the state prison for a term exceeding seven years. State v Bartlett, 70 M 199, 72 NW 1067.

Proceedings for holding accused to answer before federal court and sufficiency of bail bond are determinable by state law. A recognizance taken by a United States commissioner satisfied all requirements and the bond was enforceable. U.S. v Pleason, 26 F(2d) 104.

629.45 BAIL REFUSED; PROCEEDINGS.

HISTORY. R.S. 1851 c. 114 s. 6; P.S. 1858 c. 103 s. 6; G.S. 1866 c. 106 s. 6; G.S. 1878 c. 106 s. 6; G.S. 1894 s. 7137; R.L. 1905 s. 5239; G.S. 1913 s. 9076; G.S. 1923 s. 10580; M.S. 1927 s. 10580.

Application to supreme court for admission to bail. Rule governing same. State v Russell, 159 M 290, 199 NW 750.

629.46 PROCEDURE IN CASE OF FELONY.

HISTORY. R.S. 1851 c. 114 ss. 7, 8; P.S. 1858 c. 103 ss. 7, 8; G.S. 1866 c. 106 ss. 7, 8; G.S. 1878 c. 106 ss. 7, 8; G.S. 1894 ss. 7138, 7139; R.L. 1905 s. 5240; G.S. 1913 s. 9077; G.S. 1923 s. 10581; M.S. 1927 s. 10581.

Lists of states, with citations of laws relating to procedure under this section. McNabb v U.S. 318 US 342.

Informations and indictments. 8 MLR 381.

629.47 EXAMINATION ADJOURNED; RECOGNIZANCE.

HISTORY. R.S. 1851 c. 114 s. 9; P.S. 1858 c. 103 s. 9; G.S. 1866 c. 106 s. 9; G.S. 1878 c. 106 s. 9; G.S. 1894 s. 7140; 1899 c. 301 s. 1; R.L. 1905 s. 5241; G.S. 1913 s. 9078; G.S. 1923 s. 10582; M.S. 1927 s. 10582.

A justice of the peace has no authority to accept a cash deposit in lieu of a recognizance, and if he does so, the depositor may sue and recover it from the justice. Cressey v Gierman, 7 M 398 (316).

See, State v Bartlett, 70 M 199, 72 NW 1067, section 629.44.

629.48 PROCEEDINGS ON FAILURE TO APPEAR.

HISTORY. R.S. 1851 c. 114 s. 10; P.S. 1858 c. 103 s. 10; G.S. 1866 c. 106 s. 10; G.S. 1878 c. 106 s. 10; G.S. 1894 s. 7141; R.L. 1905 s. 5242; G.S. 1913 s. 9079; G.S. 1923 s. 10583; M.S. 1927 s. 10583.

Where one under examination for an indictable offense gives a bond, with sureties, and fails to appear, the sureties may pay to the clerk the amount of the bond, and receive a discharge of their obligation on the bond. Flanigan v City of Minneapolis, 36 M 406, 31 NW 359.

The commitment of the defendant for contempt was not a jail sentence, but an order to hold him until the fine was paid, and was legal. State ex rel v McDonough, 117 M 173, 134 NW 509.

629.49 FAILURE TO RECOGNIZE, COMMITTED.

HISTORY. R.S. 1851 c. 114 s. 11; P.S. 1858 c. 103 s. 11; G.S. 1866 c. 106 s. 11; G.S. 1878 c. 106 s. 11; G.S. 1894 s. 7142; R.L. 1905 s. 5243; G.S. 1913 s. 9080; G.S. 1923 s. 10584; M.S. 1927 s. 10584.

629.50 EXAMINATION; RIGHTS OF ACCUSED.

HISTORY: R.S. 1851 c. 114 ss. 12, 13; P.S. 1858 c. 103 ss. 12, 13; G.S. 1866 c. 106 ss. 12, 13; G.S. 1878 c. 106 ss. 12, 13; G.S. 1894 ss. 7143, 7144; R.L. 1905 s. 5244; G.S. 1913 s. 9081; G.S. 1923 s. 10585; M.S. 1927 s. 10585.

Informations or indictments. 8 MLR 394.

629.51 WITNESSES KEPT SEPARATE; TESTIMONY, HOW TAKEN.

HISTORY. R.S. 1851 c. 114 ss. 14, 15; P.S. 1858 c. 103 ss. 14, 15; G.S. 1866 c. 106 ss. 14, 15; G.S. 1878 c. 106 ss. 14, 15; G.S. 1894 ss. 7145, 7146; R.L. 1905 s. 5245; G.S. 1913 s. 9082; G.S. 1923 s. 10586; M.S. 1927 s. 10586.

If the magistrate desires to retain a reporter to take testimony and reduce it to writing, payment for such services, in the absence of a statute permitting the county to make payment, should be paid by the magistrate. The county pays the magistrate 15 cents per folio only. 1938 OAG 178, April 20, 1937 (129).

629.52 PRISONER DISCHARGED, WHEN; OFFENSES NOT BAILABLE.

HISTORY. R.S. 1851 c. 114 ss. 14, 15; 1852 Amend. p. 26; P.S. 1858 c. 103 ss. 16, 17; G.S. 1866 c. 106 ss. 16, 17; G.S. 1878 c. 106 ss. 16, 17; G.S. 1894 ss. 7147, 7148; R.L. 1905 s. 5246; G.S. 1913 s. 9083; G.S. 1923 s. 10587; M.S. 1927 s. 10587.

A discharge upon habeas corpus for defect of proof merely terminates the proceeding so that the defendant cannot be prosecuted further except by a new proceeding instituted on sufficient evidence. State ex rel v Holm, 37 M 405, 34 NW 748.

The provisions relating to transfer on demand from one justice to another, do not apply where the justice acts as an examining magistrate. State v Bergman, 37 M 407, 34 NW 737.

The discharge of a defendant by a justice of the peace, in proceedings to establish paternity of an illegitimate child is no bar to a subsequent examination before another justice, and the discharge will not be reviewed on certiorari. State v Linton, 42 M 32, 43 NW 571.

A justice, acting as an examining magistrate, has no authority to admit the defendant to bail. State v Bartlett, 70 M 199, 72 NW 1067.

If the evidence shows the accused probably not guilty of the offense charged but probably guilty of a different offense, the magistrate may hold him a reason-

able time until a new warrant may be issued. State v Sargent, 71 M 28, 73 NW 626.

In an action to recover damages for malicious criminal prosecution, proof of an acquittal upon a trial for the crime charged is not prima facie evidence of want of probable cause for the institution of the prosecution. Williams v Pullman Co. 129 M 97, 151 NW 895.

Abandonment of prosecution as evidence of want of probable cause. 3 MLR 55.

629.53 BAIL; COMMITMENT.

HISTORY. R.S. 1851 c. 114 s. 18; P.S. 1858 c. 103 s. 18; G.S. 1866 c. 106 s. 18; G.S. 1878 c. 106 s. 18; G.S. 1894 s. 7149; 1899 c. 301 ss. 2 to 4; R.L. 1905 s. 5247; G.S. 1913 s. 9084; G.S. 1923 s. 10588; M.S. 1927 s. 10588.

1. Commitment

When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed unless good cause to the contrary is shown. State ex rel v Grace, 18 M 398 (359).

When one is held by the examining magistrate to answer in the district court for a felony, a prosecution for felony is pending in said district court. State ex rel v Grace, 18 M 398 (359).

Sufficiency of evidence to justify commitment may be questioned on habeas corpus. In re Snell, 31 M 110, 16 NW 692; State v Hayden, 35 M 283, 28 NW 659; State ex rel v Holm, 37 M 405, 34 NW 748.

It is not necessary that the warrant of commitment under which one is confined in jail to await the action of the grand jury set forth, as in an indictment, all the facts essential to constitute a crime. It is sufficient if it clearly designates the offense of which the prisoner is accused and shows that, on examination before the committing magistrate it appeared that such offense had been committed and that there was probable cause to believe the accused to be guilty thereof. Collins v Brackett, 34 M 339, 25 NW 708.

If the magistrate is a justice of the peace and the offense is within his jurisdiction, he is not bound to turn the case over to the district court but may set it down for immediate trial in his own court. If he tries the case in his own court, the accused must be so advised, as he may wish to demand a jury. If the defense charged is not within the jurisdiction of the justice, the accused cannot be placed on trial without indictment and hence must be bound over or committed to await the action of the grand jury. If the grand jury is not in session, or is not to be impaneled within a short time, a person charged with an offense cognizable by a justice cannot be bound over to await action of the grand jury. State ex rel v Sargent, 71 M 28, 73 NW 626.

The uncorroborated testimony of an accomplice is sufficient to sustain a finding of probable cause for holding a prisoner to the district court to answer for a felony. State ex rel v Tessmer, 211 M 55, 300 NW 7.

Informations and indictments. 8 MLR 381, 394.

2. Bail

Admission to bail, application of the statute defined. State v Bartlett, 70 M 199, 72 NW 1067.

Money accepted by a magistrate in lieu of recognizance must be delivered to the clerk of the district court. Northern Pacific v Owens, 86 M 188, 90 NW 371; State v Carey, 151 M 517, 187 NW 710.

Refundment of bail money after forfeiture of bail. Edwards v County of Hennepin, 116 M 101, 133 NW 469.

An attorney who, while acting as such, receives the money or property of another to deposit as bail for an accused, may be summarily dealt with as an officer of the court if he attempts to deprive the true owner of his property. State v Carey, 151 M 517, 187 NW 710.

Attorney disciplined for attempting to appropriate money deposited by a mother of the prisoner in liens of a bond. The attorney's fees were due from the prisoner, and he had no liens on the bail money. In re Condon, 157 M 25, 195 NW 492; In re Moerke, 184 M 314, 238 NW 690.

Attempt to subject property of third persons to payment of attorney's fees. 8 MLR 158.

629.54 WITNESSES TO RECOGNIZE, WHEN; COMMITMENT.

HISTORY. R.S. 1851 c. 114 ss. 19, 20; P.S. 1858 c. 103 ss. 19, 20; G.S. 1866 c. 106 ss. 19, 20; 1872 c. 77 s. 1; G.S. 1878 c. 106 ss. 19, 20, 23; G.S. 1894 ss. 7150, 7151, 7154; R.L. 1905 s. 5248; G.S. 1913 s. 9085; G.S. 1923 s. 10589; M.S. 1927 s. 10589.

In the instant case the relators were improperly committed to jail. State ex rel v Grace, 18 M 398 (359).

629.55 REFUSAL; MARRIED WOMAN OR MINOR.

HISTORY. R.S. 1851 c. 114 ss. 21, 22; P.S. 1858 c. 103 ss. 21, 22; G.S. 1866 c. 106 ss. 21, 22; G.S. 1878 c. 106 ss. 21, 22; G.S. 1894 ss. 7152, 7153; R.L. 1905 s. 5249; G.S. 1913 s. 9086; G.S. 1923 s. 10590; M.S. 1927 s. 10590.

629.56 MAGISTRATE MAY ACT WITH ANOTHER.

HISTORY. R.S. 1851 c. 114 s. 23; P.S. 1858 c. 103 s. 23; G.S. 1866 c. 106 s. 23; G.S. 1878 c. 106 s. 24; G.S. 1894 s. 7155; R.L. 1905 s. 5250; G.S. 1913 s. 9087; G.S. 1923 s. 10591; M.S. 1927 s. 10591.

629.57 CERTIFYING TESTIMONY.

HISTORY. R.S. 1851 c. 114 s. 24; P.S. 1858 c. 103 s. 24; G.S. 1866 c. 106 s. 24; G.S. 1878 c. 106 s. 25; G.S. 1894 s. 7156; R.L. 1905 s. 5251; 1905 c. 179 s. 1; G.S. 1913 s. 9088; G.S. 1923 s. 10592; M.S. 1927 s. 10592.

Depositions of witnesses on an examination are not generally competent evidence in an action for malicious prosecution. Chapman v Dodd, 10 M 350 (277).

When one is held by an examining magistrate to answer in the district court for a felony, a prosecution for felony is pending in that court although the return has not been filed. State v Grace, 18 M 398 (359); State v Dlugi, 123 M 392, 143 NW 971.

If a recognizance is of record in the proper court at the time when the parties who entered into it are called on to perform its conditions it is in time as respects filing. The statute is merely directory as to time of filing. State v Perry, 28 M 455, 10 NW 778.

Money accepted by a magistrate in lieu of a recognizance must be delivered to the clerk of the district court. Northern Pacific v Owens, 86 M 188, 90 NW 371.

The court, not the jury, has the benefit of knowledge disclosed by the files of the case in the office of the clerk of the court. State v Irish, 183 M 49, 235 NW 625.

The testimony taken under section 629.42 need not be in writing or certified to the clerk under the provisions of section 629.57. State ex rel v District Court, 192 M 620, 257 NW 340.

629.58 PROCEEDINGS ON DEFAULT.

HISTORY. R.S. 1851 c. 114 ss. 25, 26; P.S. 1858 c. 103 ss. 25, 26; G.S. 1866 c. 106 ss. 25, 26; G.S. 1878 c. 106 ss. 26, 27; G.S. 1894 ss. 7157, 7158; R.L. 1905 s. 5252; G.S. 1913 s. 9089; G.S. 1923 s. 10593; M.S. 1927 s. 10593.

Where the accused defaults the sureties on his bond he may pay the amount of the bond to the clerk and the clerk's receipt discharges the sureties. Flanigan

v City of Minneapolis, 36 M 406, 31 NW 359; Northern Pacific v Owens, 86 M 188, 90 NW 371.

Proceedings for holding accused to answer before a federal court and sufficiency of bail bond are determinable by state law. In the instant case the bond approved by the court commissioner satisfied all requirements. U.S. v Pleason, 26 F(2d) 104.

629.59 PENALTY OF RECOGNIZANCE REMITTED, WHEN.

HISTORY. R.S. 1851 c. 114 s. 27; P.S. 1858 c. 103 s. 27; G.S. 1866 c. 106 s. 27; G.S. 1878 c. 106 s. 28; G.S. 1894 s. 7159; R.L. 1905 s. 5253; G.S. 1913 s. 9090; G.S. 1923 s. 10594; M.S. 1927 s. 10594.

Four persons were sureties on a $5,000 bond. The accused did not perform, and the recognizance was forfeited. The four sureties applied for relief but one of the four withdrew from the petition. The other three were assessed $842.47, the expense of the sheriff in bringing the prisoner into court. As to the fourth man who withdrew from the petition, he was held liable for his part of the obligation or $1,250. State v Bongard, 89 M 426, 94 NW 1093.

Remission of bail; life imprisonment of defendant in a foreign state as an excuse. 7 MLR 54.

629.60 ACTION ON RECOGNIZANCE; NOT BARRED, WHEN.

HISTORY. R.S. 1851 c. 114 ss. 28, 29; P.S. 1858 c. 103 ss. 28, 29; G.S. 1866 c. 106 ss. 28, 29; G.S. 1878 c. 106 ss. 29, 30; G.S. 1894 ss. 7160, 7161; R.L. 1905 s. 5254; G.S. 1913 s. 9091; G.S. 1923 s. 10595; M.S. 1927 s. 10595.

629.61 DEFAULTER ARRESTED, WHEN.

HISTORY. R.S. 1851 c. 114 s. 30; P.S. 1858 c. 103 s. 30; G.S. 1866 c. 106 s. 30; G.S. 1878 c. 106 s. 31; G.S. 1894 s. 7162; R.L. 1905 s. 5255; G.S. 1913 s. 9092; G.S. 1923 s. 10597; M.S. 1927 s. 10597.

The oral agreement, by the county attorney and the attorney for the accused, that accused need not appear in court for trial until after his discharge from the army, entered into without knowledge of the surety or the court, does not discharge the surety from the obligation to produce the accused for trial when notified to do so. State v Cooper, 147 M 272, 180 NW 99.

629.62 APPLICATION FOR BAIL; JUSTIFICATION.

HISTORY. R.S. 1851 c. 114 s. 31; R.S. 1851 c. 132 s. 264; 1852 Amend. p. 29; P.S. 1858 c. 103 s. 31; P.S. 1858 c. 118 s. 30; G.S. 1866 s. 106 ss. 31, 32; G.S. 1878 c. 106 ss. 32, 33; G.S. 1894 ss. 7163, 7164; R.L. 1905 s. 5256; G.S. 1913 s. 9093; G.S. 1923 s. 10598; M.S. 1927 s. 10598.

629.63 SURRENDER OF PRINCIPAL; NOTICE TO SHERIFF.

HISTORY. 1881 c. 105 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 106 ss. 34, 35; G.S. 1894 ss. 7165, 7166; R.L. 1905 s. 5257; G.S. 1913 s. 9094; G.S. 1923 s. 10599; M.S. 1927 s. 10599.

SEE: State v Cooper, 147 M 272, 180 NW 99.

Right of surety to recapture principal in another state. 16 MLR 197.

629.64 COMMITMENT OF PRINCIPAL.

HISTORY. 1881 c. 105 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 106 s. 36; G.S. 1894 s. 7167; R.L. 1905 s. 5258; G.S. 1913 s. 9095; G.S. 1923 s. 10600; M.S. 1927 s. 10600.

629.65 FEES OF SHERIFF.

HISTORY. 1881 c. 105 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 105 s. 37; G.S. 1894 s. 7168; R.L. 1905 s. 5259; G.S. 1913 s. 9096; G.S. 1923 s. 10601; M.S. 1927 s. 10601.

629.66 EXAMINATION BEFORE JUSTICE; REMOVAL.

HISTORY. 1889 c. 92 s. 1; G.S. 1894 s. 7169; 1899 c. 159; R.L. 1905 s. 5260; G.S. 1913 s. 9097; G.S. 1923 s. 10602; M.S. 1927 s. 10602.

The provisions for a transfer of an action or proceeding by one justice to another, do not apply to an examination for an offense charged under General Statutes 1878, Chapter 106. State v Bergman, 37 M 407, 34 NW 737.

In a habeas corpus proceeding, a municipal judge conducting a hearing of a preliminary examination of a prisoner, has jurisdiction to punish for contempt of court committed in open court. State ex rel v McDonough, 117 M 174, 134 NW 509.

629.67 SURETIES ON BOND, RECOGNIZANCE, OR UNDERTAKING; AFFIDAVITS.

HISTORY. 1927 c. 233 s. 1; M.S. 1927 s. 10602-1.

629.68 SURETIES; FALSE STATEMENTS IN AFFIDAVITS; PUNISHMENT.

HISTORY. 1927 c. 233 s. 2; M.S. 1927 c. 10602-2.

629.69 SURETIES; RECORD KEPT.

HISTORY. 1927 c. 233 s. 3; M.S. 1927 c. 10602-3.

629.70 CORPORATE BONDS AUTHORIZED IN CRIMINAL CASES.

HISTORY. 1931 c. 386 s. 1; M. Supp. s. 10602-4.