

CHAPTER 633

IN JUSTICE COURT

633.01 JURISDICTION OF JUSTICES OF THE PEACE.

HISTORY. R.S. 1851 c. 69 s. 165; P.S. 1858 c. 59 s. 179; G.S. 1866 c. 65 s. 130; G.S. 1878 c. 65 s. 139; G.S. 1894 s. 5093; 1905 c. 104; R.L. 1905 s. 3999; 1907 c. 234; G.S. 1913 s. 7619; G.S. 1923 s. 9110; M.S. 1927 s. 9110.

A criminal prosecution pending before a justice of the peace at the time of his death terminates, and is not a bar to a further action on the same charge. *State ex rel v Miesen*, 96 M 466, 105 NW 555.

The municipal court of Minneapolis has jurisdiction to try to determine all offenses committed within the county of Hennepin which, under the general laws of the state, are within the jurisdiction of a justice court. *State ex rel v Dreger*, 97 M 221, 106 NW 904.

Where a criminal offense is committed within a city having a municipal court, the municipal court of another city has no jurisdiction of such offense, either for the purpose of trial or for the purpose of holding a preliminary examination. *State ex rel v Kelley*, 139 M 462, 167 NW 110.

A writ of prohibition granted against a justice in Golden Valley because he has no jurisdiction to try a criminal case for an offense committed in the city of Minneapolis. *State ex rel v Stanway*, 174 M 608, 219 NW 452.

Sections 488.09 and 633.01(4) should be construed "in pari materia". They are not inconsistent. *State ex rel v Weed*, 208 M 342, 294 NW 370.

In dealing with a game law violation, the warden selects the court in the county where the violation occurs; but see proviso in section 633.01. 1940 OAG 14, Aug. 28, 1939 (208g).

Where a municipality has a municipal court, and unless the city charter so provides, a justice of the peace has no jurisdiction over offenses committed within the limits of the municipality. OAG Feb. 18, 1944 (266b-24).

633.02 TRIAL POWERS; LIMITATION.

HISTORY. R.S. 1851 c. 69 s. 166; P.S. 1858 c. 59 s. 180; G.S. 1866 c. 65 s. 131; G.S. 1878 c. 65 s. 140; G.S. 1894 s. 5094; R.L. 1905 s. 4000; G.S. 1913 s. 7620; G.S. 1923 s. 9111; M.S. 1927 s. 9111.

It is not competent for the legislature to confer on justices of the peace jurisdiction over offenses punishable by imprisonment in the state prison. *State v Charles*, 16 M 474 (426).

General Statutes 1878, Chapter 65, Section 162, authorizes a justice of the peace to render judgment for costs against a defendant found guilty in criminal proceedings, besides a fine; and by General Statutes 1878, Chapter 65, Section 153, a like power is conferred on the district court, upon appeal from a justice. *State v Schmail*, 25 M 370.

The statute which makes it the duty of the board of town supervisors to make complaint of and prosecute persons obstructing public highways, is not exclusive. Such complaint may be made by any person. *State v Galvin*, 27 M 16, 6 NW 380.

Justices are not deprived of the power to hear and determine criminal cases arising out of liquor laws by the fact that a person convicted is unable to procure a new license for a period of 12 months after conviction. *State v Larson*, 40 M 63, 41 NW 363.

Where the punishment for the violation of a municipal ordinance exceeds three months' imprisonment, or \$100.00 fine, a person can be held to answer only on indictment or information. *State ex rel v West*, 42 M 147, 43 NW 845.

Under the statutes existing in 1891, a justice of the peace has no jurisdiction to hear and determine a criminal charge for selling intoxicating liquors without a license, or for an attempt to evade the statute prohibiting such sales. *State ex rel v Anderson*, 47 M 270, 50 NW 226.

It is not beyond the jurisdiction of justices of the peace to impose the punishment of imprisonment in a city workhouse. *State v Harris*, 50 M 128, 52 NW 387.

The city ordinance prescribed a penalty for not closing on Sunday. There is also a statute prescribing a penalty for the same offense. The conviction in municipal court, under the ordinance, is valid. *State v Marciniak*, 97 M 355, 105 NW 965.

A municipal court organized under the general law (sections 488.03 to 488.16) has no jurisdiction of gross misdemeanors where the fine is in excess of \$100.00 and imprisonment more than 90 days. *State ex rel v Morical*, 182 M 368, 234 NW 453.

Where the penalty exceeds a \$100.00 fine or three months' imprisonment, the justice is without jurisdiction. OAG July 15, 1937 (266b-21).

633.03 COMPLAINT; WARRANT.

HISTORY. R.S. 1851 c. 69 s. 167; P.S. 1858 c. 59 s. 181; G.S. 1866 c. 65 s. 132; G.S. 1878 c. 65 s. 141; G.S. 1894 s. 5095; R.L. 1905 s. 4001; G.S. 1913 s. 7621; G.S. 1923 s. 9112; M.S. 1927 s. 9112.

The plaintiff constable performed his duty faithfully and effectually in arresting and making a complaint against the defendant, but this does not in law entitle him to the general reward offered. *Day v Putnam*, 16 M 408 (365).

The warrant was directed to the sheriff or any constable of the county. Under the city charter it should have been directed to the marshal or any constable of the city. The objection is too late if raised for the first time in the supreme court. *City of Rochester v Upman*, 19 M 108 (78); *State v Reckards*, 21 M 47.

Jurisdiction is not lost by proof on the trial that the complainant had no knowledge of the commission of the offense except on information and belief. *State v Graffmuller*, 26 M 6, 46 NW 445.

Complaint against persons obstructing the highway may be made by any person. The duty is placed on the town supervisors. *State v Galvin*, 27 M 16, 6 NW 380.

When a written complaint showing an offense is presented to a justice and sworn to before him it is a sufficient examination of the complainant under the statute. *State v Nerbovig*, 43 M 480, 24 NW 321.

A 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 County of LeSueur*, 37 M 491, 35 NW 364.

In an action for malicious prosecution it is enough to excuse the prosecutor if he exercises such a degree of impartiality and freedom from prejudice as can be fairly expected from an ordinarily prudent man acting without malice. *Shafer v Hertzig*, 92 M 171, 99 NW 800.

Where the court had jurisdiction of the defendant and of the offense, the failure of the record to show that the complaint was sworn to did not render its judgment void. *State v Rudin*, 153 M 159, 189 NW 710.

Certain words and language held to be mere surplusage and the judgment is sustained. *City of Alexandria v Viering*, 177 M 617, 225 NW 286.

633.04 ENTRIES IN DOCKET.

HISTORY. R.S. 1851 c. 69 s. 168; P.S. 1858 c. 59 s. 182; G.S. 1866 c. 65 s. 133; G.S. 1878 c. 65 s. 142; G.S. 1894 s. 5096; R.L. 1905 s. 4002; G.S. 1913 s. 7622; G.S. 1923 s. 9113; M.S. 1927 s. 9113.

If a justice of the peace keeps a criminal docket and makes in it a record of the proceedings in a criminal case, the record is evidence. It is unnecessary that a justice should sign his docket. *Chapman v Dodd*, 10 M 350 (277); *Cole v Curtis*, 16 M 182 (161).

Entries in the docket are presumptively true. *State v Christensen*, 21 M 500.

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Error in the title of the action held immaterial. *State v Graffmuller*, 26 M 6, 46 NW 445; *Faribault v Wilson*, 34 M 254, 25 NW 449.

In the trial of a criminal action a justice of the peace is not required to keep a record of all the evidence, nor, upon appeal upon questions of law is he required to return all the evidence given upon the trial. *State v McGinnis*, 30 M 48, 14 NW 256.

633.05 ACTION, WHEN TRIED.

HISTORY. R.S. 1851 c. 69 s. 169; P.S. 1858 c. 59 s. 183; G.S. 1866 c. 65 s. 134; G.S. 1878 c. 65 s. 143; G.S. 1894 s. 5097; R.L. 1905 s. 4003; G.S. 1913 s. 7623; G.S. 1923 s. 9114; M.S. 1927 s. 9114.

A justice has no authority to adjourn a criminal case from time to time simply to delay imposing a sentence. The justice is presumed to know the law and it is not the duty of the defendant to remind him. 1938 OAG 165, Oct. 1, 1937 (266b-11).

633.06 BAIL; COMMITMENT.

HISTORY. R.S. 1851 c. 69 s. 170; P.S. 1858 c. 59 s. 184; G.S. 1866 c. 65 s. 135; G.S. 1878 c. 65 s. 144; G.S. 1894 s. 5098; R.L. 1905 s. 4004; G.S. 1913 s. 7624; G.S. 1923 s. 9115; M.S. 1927 s. 9115.

A justice cannot accept cash bail. 1934 OAG 274, Aug. 28, 1934 (266a-2).

633.07 FORM OF RECOGNIZANCE.

HISTORY. R.L. 1905 s. 4005; G.S. 1913 s. 7625; G.S. 1923 s. 9116; M.S. 1927 s. 9116.

633.08 ARRAIGNMENT; PLEA.

HISTORY. R.S. 1851 c. 69 s. 171; P.S. 1858 c. 59 s. 185; G.S. 1866 c. 65 s. 136; G.S. 1878 c. 65 s. 145; G.S. 1894 s. 5099; R.L. 1905 s. 4006; G.S. 1913 s. 7626; G.S. 1923 s. 9117; M.S. 1927 s. 9117.

633.09 ON PLEA OF GUILTY.

HISTORY. R.S. 1851 c. 69 s. 173; P.S. 1858 c. 59 s. 187; G.S. 1866 c. 65 s. 138; G.S. 1878 c. 65 s. 147; G.S. 1894 s. 5101; R.L. 1905 s. 4007; G.S. 1913 s. 7627; G.S. 1923 s. 9118; M.S. 1927 s. 9118.

An oral plea of guilty to a violation of the state highway traffic regulation act is not admissible as evidence in a civil action. *Warren v Marsh*, 215 M 615, 11 NW(2d) 528.

The word "conviction" includes a plea of guilty as well as a finding of guilty. *Warren v Marsh*, 215 M 622, 11 NW(2d) 528.

In district court on appeal the accused may change his plea from guilty, as pleaded in the justice court, to not guilty. *State v Prickett*, 217 M 629, 15 NW(2d) 95.

633.10 PLEA OF NOT GUILTY.

HISTORY. R.S. 1851 c. 69 s. 172; P.S. 1858 c. 59 s. 186; G.S. 1866 c. 65 s. 137; G.S. 1878 c. 65 s. 146; G.S. 1894 s. 5100; R.L. 1905 s. 4008; G.S. 1913 s. 7628; G.S. 1923 s. 9119; M.S. 1927 s. 9119.

Defendant in a criminal case in the municipal court of Minneapolis, which has criminal jurisdiction of offenses cognizable before a justice of the peace, may waive a jury and consent to trial by the court. *State v Woodling*, 53 M 142, 54 NW 1068; *City of St. Paul v G. N. Ry.* 145 M 355, 177 NW 492.

633.11 JURY; LIST OF NAMES.

HISTORY. R.S. 1851 c. 69 s. 174; P.S. 1858 c. 59 s. 188; G.S. 1866 c. 65 s. 139; 1867 c. 81 s. 1; 1870 c. 78 s. 1; G.S. 1878 c. 65 s. 148; G.S. 1894 s. 5102; R.L. 1905 s. 4009; G.S. 1913 s. 7629; G.S. 1923 s. 9120; M.S. 1927 s. 9120.

The justice may present to the county board his bill for fees and costs in criminal cases instituted before him (where costs are not paid by the defendant) and if the claim is not allowed may appeal to the district court from the disallowance. 1940 OAG 26, Dec. 28, 1939 (266b-8).

633.12 STRIKING NAMES; VENIRE.

HISTORY. R.S. 1851 c. 69 ss. 174, 175; P.S. 1858 c. 59 ss. 188, 189; G.S. 1866 c. 65 ss. 139, 140; 1867 c. 81 s. 1; 1870 c. 78 s. 1; G.S. 1878 c. 65 ss. 148, 149; G.S. 1894 ss. 5102, 5103; R.L. 1905 s. 4010; G.S. 1913 s. 7630; G.S. 1923 s. 9121; M.S. 1927 s. 9121.

633.13 JURY, HOW SUMMONED.

HISTORY. R.S. 1851 c. 69 s. 176; P.S. 1858 c. 59 s. 190; G.S. 1866 c. 65 s. 141; G.S. 1878 c. 65 s. 150; G.S. 1894 s. 5104; R.L. 1905 s. 4011; G.S. 1913 s. 7631; G.S. 1923 s. 9122; M.S. 1927 s. 9122.

633.14 DEFICIENCY, HOW SUPPLIED.

HISTORY. R.S. 1851 c. 69 ss. 177, 179; P.S. 1858 c. 59 ss. 191, 193; G.S. 1866 c. 65 ss. 142, 144; G.S. 1878 c. 65 ss. 151, 153; G.S. 1894 ss. 5105, 5107; R.L. 1905 s. 4012; G.S. 1913 s. 7632; G.S. 1923 s. 9123; M.S. 1927 s. 9123.

633.15 NEW JURY, WHEN.

HISTORY. R.S. 1851 c. 69 s. 178; P.S. 1858 c. 59 s. 192; G.S. 1866 c. 65 s. 143; G.S. 1878 c. 65 s. 152; G.S. 1894 s. 5106; R.L. 1905 s. 4013; G.S. 1913 s. 7633; G.S. 1923 s. 9124; M.S. 1927 s. 9124.

633.16 TRIAL BY JURY.

HISTORY. R.S. 1851 c. 69 s. 181; P.S. 1858 c. 59 s. 195; G.S. 1866 c. 65 s. 145; G.S. 1878 c. 65 s. 154; G.S. 1894 s. 5108; R.L. 1905 s. 4014; G.S. 1913 s. 7634; G.S. 1923 s. 9125; M.S. 1927 s. 9125.

The right of presence is that of the accused, and may be waived by him, at least when the counsel of the accused is present for him. *State v Reckards*, 21 M 47; *State v Schmail*, 25 M 370.

633.17 VERDICT.

HISTORY. R.S. 1851 c. 69 s. 182; P.S. 1858 c. 59 s. 196; G.S. 1866 c. 65 s. 146; G.S. 1878 c. 65 s. 155; G.S. 1894 s. 5109; R.L. 1905 s. 4015; G.S. 1913 s. 7635; G.S. 1923 s. 9126; M.S. 1927 s. 9126.

It is presumed that the verdict was rendered publicly. *State v Schmail*, 25 M 370. Recovery of costs by the justice. 1940 OAG 26, Dec. 28, 1939 (266b-8).

633.18 JUDGMENT ON CONVICTION.

HISTORY. R.S. 1851 c. 69 s. 183; P.S. 1858 c. 59 s. 197; G.S. 1866 c. 65 s. 147; G.S. 1878 c. 65 s. 156; G.S. 1894 s. 5110; R.L. 1905 s. 4016; G.S. 1913 s. 7636; G.S. 1923 s. 9127; M.S. 1927 s. 9127; 1937 c. 60 s. 1; 1943 c. 354 s. 1.

The term "conviction" includes a plea of guilty as well as a finding of guilty after trial. *Warren v Marsh*, 215 M 622, 11 NW(2d) 528.

The sentence was ineffective because of delay. 1938 OAG 165, Oct. 1, 1937 (266b-11).

The justice in his discretion may suspend sentence or place defendant on parole. 1938 OAG 167, Sept. 16, 1937 (266b-31).

Where the justice dismisses the case or suspends sentence, or imposes only a small fine, he is still entitled to his fees from the municipality. 1938 OAG 169, July 1, 1938 (266b-8).

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After a sentence has been imposed and a commitment issued, the justices' jurisdiction is terminated, and he cannot parole the prisoner or reduce the sentence. 1938 OAG 171, April 7, 1938 (266b-21).

The fact that the justice permitted the convicted person additional time within which to pay the fine, and part thereof was paid, does not deprive the justice of jurisdiction, and he may thereafter commit the defendant. OAG July 7, 1944 (266b-11).

On trial before a municipal judge without a jury, the court if he finds the accused guilty, must convict for the offense as charged, and may not convict for some lesser offense. OAG July 8, 1944 (494b-23).

633.19 ACQUITTAL; JUDGMENT FOR COSTS.

HISTORY. R.S. 1851 c. 69 s. 184; P.S. 1858 c. 59 s. 198; G.S. 1866 c. 65 s. 148; G.S. 1878 c. 65 s. 157; Ex. 1881 c. 32 s. 1; G.S. 1894 s. 5111; R.L. 1905 s. 4017; G.S. 1913 s. 7637; G.S. 1923 s. 9128; M.S. 1927 s. 9128.

The entry in the docket of a justice, before whom a criminal action was conducted certifying under General Statutes 1878, Chapter 65, Section 157 (section 633.19), that the complaint was malicious and without probable cause, is not admissible in evidence in a suit for the malicious prosecution of such action. *Casey v Sevaton*, 30 M 516, 16 NW 407.

Where a justice dismisses a criminal case and discharges the defendant, however erroneous his decision may be, he cannot reinstate the case, or bring the defendant before him for trial, without commencing anew. *State v Secret*, 33 M 381, 23 NW 545.

Judgment against the complainant does not defeat the officer's fees. *Dean v County Commrs.* 50 M 232, 52 NW 650; 1940 OAG 26, Dec. 28, 1939 (266b-8).

633.20 APPEAL; REQUISITES.

HISTORY. R.S. 1851 c. 69 s. 185; P.S. 1858 c. 59 s. 199; G.S. 1866 c. 65 s. 149; 1871 c. 72 s. 1; G.S. 1878 c. 65 s. 158; G.S. 1894 s. 5112; R.L. 1905 s. 4018; G.S. 1913 s. 7638; G.S. 1923 s. 9129; M.S. 1927 s. 9129.

A bond on appeal given under Revised Laws 1905, Section 4018, (section 633.20), conditioned that the defendant shall be and appear at the first general term of the district court, and shall not depart thence without leave duly granted, does not conform to statutory requirements, and is void. Revised Laws 1905, Section 3989 (section 532.45), applies to civil actions only. *State v Mattson*, 105 M 63, 117 NW 227.

For purposes of appellate procedure, prosecutions for the violation of municipal ordinances are criminal actions. In such proceedings in municipal courts established since the taking effect of Revised Laws 1905, appeals to the district court must be taken pursuant to General Statutes 1913, Section 7638, 7639 (ss. 633.20, 633.21). *Village of Crosby v Stemich*, 160 M 262, 199 NW 918.

The provisions of the general laws that any person convicted of a criminal offense before a justice may appeal, does not apply to convictions for violating a city ordinance where the charter expressly provides that no appeal shall be allowed. *City of Red Wing v Nibbe*, 160 M 274, 199 NW 918.

Appeal from justice court to district court in a criminal case properly dismissed for failure of appellant to procure the approval by the justice of the appeal bond. *State v Johanson*, 169 M 272, 211 NW 5.

Appellant in a criminal case is not required to advance a filing fee. 1934 OAG 273, May 29, 1934 (266b-1).

The right to appeal is purely statutory, and it was within the province of the legislative power that enacted a city charter to withhold that right from those convicted under its ordinances. 1938 OAG 174, June 11, 1937 (6h).

No right of appeal after plea of guilty in absence of collateral questions. 7 MLR 588.

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633.21 ALLOWANCE OF APPEAL.

HISTORY. 1865 c. 22 ss. 2, 3; G.S. 1866 c. 65 s. 150; 1871 c. 72 s. 2; G.S. 1878 c. 65 s. 159; G.S. 1894 s. 5113; 1901 c. 24; R.L. 1905 s. 4019; G.S. 1913 s. 7639; G.S. 1923 s. 9130; M.S. 1927 s. 9130.

Upon compliance with the provisions of the statute the justice shall allow the appeal. *State v McGinness*, 30 M 48, 14 NW 256.

See, *Village of Crosby v Sternich*, 160 M 261, 199 NW 918.

Revocation of license is ineffective until conviction on appeal. 1930 OAG 264, Dec. 19, 1929.

633.22 HOW TRIED.

HISTORY. 1865 c. 22 ss. 2, 3; G.S. 1866 c. 65 s. 150; 1871 c. 72 s. 2; G.S. 1878 c. 65 s. 159; G.S. 1894 s. 5113; 1901 c. 24; R.S. 1905 s. 4020; G.S. 1913 s. 7640; G.S. 1923 s. 9131; M.S. 1927 s. 9131.

If the appeal is upon questions of law and facts the trial proceeds de novo as if commenced in the district court. *State v Tiner*, 13 M 520 (488).

The appeal supersedes the judgment of the justice and the district court may render such judgment as the law of the case requires. *State v Bliss*, 21 M 458; *Village of Elbow Lake v Holt*, 69 M 349, 72 NW 564; *State ex rel v District Court*, 77 M 405, 80 NW 355.

Docket entries are presumed to be true. *State v Christensen*, 21 M 450.

As the jury was about to retire the court delivered to the jury certain parts of the record. As no objection was made there was a waiver of irregularity. *State v Nichols*, 29 M 357, 13 NW 153.

Prior to Laws 1883, Chapter 61, there was no provision for returning the evidence. *State v McGinniss*, 30 M 48, 14 NW 256.

A justice of the peace is not required to reduce to writing the evidence offered or received on trial before him, unless requested to do so by one of the parties. *State v Clemmensen*, 92 M 191, 99 NW 640.

A mere irregularity that could have been corrected below on proper motion is not ground for reversal. *Roehrs v Thompson*, 185 M 156, 240 NW 111.

On appeal from a conviction in a justice court of the violation of a municipal ordinance, the district court has no jurisdiction to try and convict the defendant for a crime against a statute which is beyond the jurisdiction of the justice court, there having been no new and original proceeding against the defendant in the district court. *State ex rel v Kartak*, 195 M 188, 262 NW 221.

Defendant on appeal from the sentence of the justice on questions of law and fact had the right to withdraw his plea of guilty entered in justice court and enter a plea of not guilty in district court. *State v Prickett*, 217 M 629, 15 NW(2d) 95.

One found guilty in justice court and who has appealed to the district court may enter a plea of guilty in the district court and receive a sentence de novo. 1938 OAG 191, June 4, 1937 (341b).

633.23 CONVICTION ON APPEAL; COSTS.

HISTORY. R.S. 1851 c. 129 s. 215; P.S. 1858 c. 115 s. 3; G.S. 1866 c. 65 s. 151; G.S. 1878 c. 65 s. 160; G.S. 1894 s. 5114; R.L. 1905 s. 4021; G.S. 1913 s. 7641; G.S. 1923 s. 9132; M.S. 1927 s. 9132.

In a criminal case, an appeal properly perfected, from justice to district court, on questions of law alone, operates to supersede the judgment of the justice, and the district court may enter such judgment, on an affirmation as the law of the case requires, and may affirm the judgment below as to that part which is regular, and disaffirm it as to such part as is erroneous. *State v Bliss*, 21 M 458.

The docket entries of a justice, fixing the time and place for appearance before the justice to whom the cause is transferred, cannot be impeached by affidavit showing an oral agreement. *State v McKinley*, 114 M 434, 131 NW 369.

633.24 FAILURE TO PROSECUTE.

HISTORY. R.S. 1851 c. 129 s. 216; P.S. 1858 c. 115 s. 4; G.S. 1866 c. 65 s. 152; G.S. 1878 c. 65 s. 161; G.S. 1894 s. 5115; R.L. 1905 s. 4022; G.S. 1913 s. 7642; G.S. 1923 s. 9133; M.S. 1927 s. 9133.

633.25 JUDGMENT AGAINST DEFENDANT AND SURETIES.

HISTORY. R.S. 1851 c. 69 s. 198; P.S. 1858 c. 59 s. 212; G.S. 1866 c. 65 s. 153; G.S. 1878 c. 65 s. 162; G.S. 1894 s. 5116; R.L. 1905 s. 4023; G.S. 1913 s. 7643; G.S. 1923 s. 9134; M.S. 1927 s. 9134.

In a criminal case, coming by certiorari from a justice to a district court, the latter court may affirm the judgment, and enter judgment for the fine and costs of both courts, against the defendant, and the sureties in his recognizance. *Baker v United States*, 1 M 207 (181).

The provisions of General Statutes 1866, Chapter 65, as to the manner of taking appeals from convictions before a justice do not apply to appeals from the recorder of a borough. *Borough v Bauer*, 19 M 327 (282).

See, *State v Bliss*, 21 M 458.

See, *State v Schmail*, 25 M 370, Section 633.02.

The municipal court was authorized to fine or imprison, in its discretion, under and within the limits of the provisions of the ordinance. *State v Grimes*, 83 M 460, 86 NW 449.

The justice may apply, in criminal cases, to the county board, for his fees, and if his claim is disallowed appeal to the district court. 1940 OAG 26, Dec. 28, 1939 (266b-8).

633.26 JUROR OR WITNESS IN CONTEMPT.

HISTORY. R.S. 1851 c. 69 s. 188; P.S. 1858 c. 59 s. 202; G.S. 1866 c. 65 s. 154; G.S. 1878 c. 65 s. 163; G.S. 1894 s. 5117; R.L. 1905 s. 4024; G.S. 1913 s. 7644; G.S. 1923 s. 9135; M.S. 1927 s. 9135.

633.27 CERTIFICATE OF CONVICTION; DUTY OF CLERK OF DISTRICT COURT; STATEMENT OF COSTS.

HISTORY. R.S. 1851 c. 69 s. 189; P.S. 1858 c. 59 s. 203; G.S. 1866 c. 65 s. 155, 156; G.S. 1878 c. 65 ss. 164, 165; G.S. 1894 ss. 5118, 5119; 1903 c. 263; R.L. 1905 s. 4025; 1907 c. 317; G.S. 1913 s. 7645; G.S. 1923 s. 9136; M.S. 1927 s. 9136.

Sections 633.27 and 633.28 are mandatory. 1938 OAG 168, Dec. 3, 1937 (266b-17). As to jurors' fees. 1940 OAG 26, Dec. 28, 1939 (266b-8).

633.28 REPORT TO COUNTY ATTORNEY.

HISTORY. 1885 c. 191 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 212 c; G.S. 1894 s. 806; R.L. 1905 s. 4026; G.S. 1913 s. 7646; G.S. 1923 s. 9137; M.S. 1927 s. 9137.

633.29 BREACH OF PEACE.

HISTORY. R.S. 1851 c. 69 s. 193; P.S. 1858 c. 59 s. 207; G.S. 1866 c. 65 s. 158; G.S. 1878 c. 65 s. 167; G.S. 1894 s. 5121; R.L. 1905 s. 4027; G.S. 1913 s. 7647; G.S. 1923 s. 9138; M.S. 1927 s. 9138.

633.30 BREACH OF RECOGNIZANCE.

HISTORY. R.S. 1851 c. 69 s. 194; P.S. 1858 c. 59 s. 208; G.S. 1866 c. 65 s. 159; G.S. 1878 c. 65 s. 168; G.S. 1894 s. 5122; R.L. 1905 s. 4028; G.S. 1913 s. 7648; G.S. 1923 s. 9139; M.S. 1927 s. 9139.

633.31 WANT OF FINAL JURISDICTION; PROCEEDINGS.

HISTORY. R.S. 1851 c. 69 s. 195; P.S. 1858 c. 59 s. 209; G.S. 1866 c. 65 s. 160; G.S. 1878 c. 65 s. 169; G.S. 1894 s. 5123; R.L. 1905 s. 4029; G.S. 1913 s. 7649; G.S. 1923 s. 9140; M.S. 1927 s. 9140.

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In a prosecution for obstructing a public highway the justice has jurisdiction to try and determine it, unless the title to real estate is involved. *State v Cotton*, 29 M 187, 12 NW 529; *State v Sweeney*, 33 M 23, 21 NW 847.

633.32 WITNESSES; JUSTICE TO SUMMON.

HISTORY. R.S. 1851 c. 69 s. 196; P.S. 1858 c. 59 s. 210; G.S. 1866 c. 65 s. 161; G.S. 1878 c. 65 s. 170; G.S. 1894 s. 5124; R.L. 1905 s. 4030; G.S. 1913 s. 7650; G.S. 1923 s. 9141; M.S. 1927 s. 9141.

633.33 JUDGMENT ON CONVICTION; COMMITMENT; EXECUTION.

HISTORY. R.S. 1851 c. 69 s. 197; P.S. 1858 c. 59 s. 211; G.S. 1866 c. 65 s. 162; G.S. 1878 c. 65 s. 171; G.S. 1894 s. 5125; R.L. 1905 s. 4031; G.S. 1913 s. 7651; G.S. 1923 s. 9142; M.S. 1927 s. 9142.

Both justice and district courts may enter judgment for costs against one found guilty of a criminal offense, besides a fine. *State v Schmail*, 25 M 370.

Commitment may be issued at any time while the judgment stands unexecuted, except during the pendency of an appeal. *In re Shaw*, 31 M 44, 16 NW 461.

For the contempt, the justice had authority to impose the fine, and in default of payment commit the offender to the county jail until the fine was paid, not exceeding ten days. This was a fine, not a jail sentence. *State ex rel v McDonough*, 117 M 174, 134 NW 509.

One sentenced to pay a fine in justice court cannot be imprisoned to enforce payment, unless the justice so determines when the sentence is pronounced and therein specifies the duration of the confinement for non-payment. *State ex rel v Rice*, 145 M 359, 177 NW 348.

A justice may imprison for the offense and also commit to coerce payment of costs but the total must not exceed three months' imprisonment. *State ex rel v Maher*, 164 M 291, 204 NW 955.

A condition precedent to the assessment of costs is a finding of guilty. 1936 OAG 282, Aug. 1, 1935 (291e).

633.34 ATTENDANCE OF WITNESSES ON CONTINUANCE.

HISTORY. R.S. 1851 c. 69 s. 199; P.S. 1858 c. 59 s. 213; G.S. 1866 c. 65 s. 163; G.S. 1878 c. 65 s. 172; G.S. 1894 s. 5126; R.L. 1905 s. 4032; G.S. 1913 s. 7652; G.S. 1923 s. 9143; M.S. 1927 s. 9143.

633.35 SECURITY FOR COSTS.

HISTORY. R.S. 1851 c. 69 s. 200; P.S. 1858 c. 59 s. 214; G.S. 1866 c. 65 s. 164; G.S. 1878 c. 65 s. 173; G.S. 1894 s. 5127; R.L. 1905 s. 4033; G.S. 1913 s. 7653; G.S. 1923 s. 9144; M.S. 1927 s. 9144.

633.36 FINES; HOW COLLECTED AND PAID OVER.

HISTORY. R.S. 1851 c. 69 ss. 201, 202; P.S. 1858 c. 59 ss. 215, 216; G.S. 1866 c. 65 ss. 165, 166; G.S. 1878 c. 65 ss. 174, 175; G.S. 1894 ss. 5128, 5129; 1903 c. 263; R.L. 1905 s. 4034; G.S. 1913 s. 7654; G.S. 1923 s. 9145; M.S. 1927 s. 9145.

A justice of the peace must remit in full from fines collected even though he may have money due him on other cases. For those other cases he should send in his bill to the county board. OAG Jan. 13, 1938 (199b-5).

Fines collected for violation of town ordinances, on town roads, must be remitted to the county treasurer. OAG June 20, 1939 (989B-4).

Fines levied by a justice of the peace or by a municipal judge, for the violation of a city ordinance, are payable to the city. OAG Feb. 29, 1944 (199b-5).

633.37 SCHEDULE OF FORMS.

HISTORY. R.S. 1851 c. 69 s. 204; P.S. 1858 c. 59 s. 218; G.S. 1866 c. 65 s. 167; G.S. 1878 c. 65 s. 176; G.S. 1894 s. 5130; R.L. 1905 s. 4035; G.S. 1913 s. 7655; G.S. 1923 s. 9146; M.S. 1927 s. 9146.