CHAPTER 620

OFFENSES AGAINST PROPERTY BY FRAUD

MISAPPROPRIATION AND OFFICIAL MISCONDUCT

620.04 OFFICERS NOT TO BE INTERESTED IN CONTRACT.

The employment of minor son of member of town board by the town would be contrary to this section where son had not been emancipated and was living at home with his father. OAG March 15, 1935 (437-A-4).

Member of county welfare board may not be compensated for services as appraiser, but board may reimburse such member for actual mileage entailed in performance of duty as appraiser. OAG Dec. 6, 1945 (125-A-64).

The county board should not contract for culverts if one of the members of the board has an interest in the contract. OAG Dec. 10, 1945 (90-B-8).

There must be a real emergency as distinguished from a mere inconvenience before a village can contract with officers operating only places of business in village. OAG Dec. 24, 1945 (90-A-1).

The duties of a justice of the peace do not conflict with his selling insurance to the village wherein he holds court. OAG Jan. 31, 1946 (266-B-16).

With exception of employees of the department of administration, an officer or employee of one department not acting in his official capacity for the department with which he is connected, and not authorized to act for the state in the making of the contract, may in his personal capacity sell to another department property he may own. OAG Nov. 1, 1946 (90-F).

Member of village council may not be employed by the village to operate a business under the direction of the council when such member by virtue of his office is entitled to vote for such employment. OAG June 11, 1947 (90-a-1).

A member of the city council may not legally accept a grant to operate or be licensed to operate an off-sale hard liquor establishment. OAG June 16, 1947 (90-E-4).

Rule as to liability of municipal corporation under an invalid contract. 20 MLR 564.

Interest of officer in municipal contract. 23 MLR 239.

Constructive trusts as affected by section 620.04. 25 MLR 691.

Sales to public employees; Laws 1941, Chapter 58. 26 MLR 222.

FORGERY

620.06 DEFINITIONS.

The State Emergency Relief Administration is an agency created by L. 1935, c. 51, for the special and limited purpose provided by that act, and defendants were indicted for forgery of a relief order. The indictment states a public offense as against the objection that the instrument was not verified. Evidence of distinct and independent like offenses was in the instant case properly admitted to establish motif and intent. State v Stuart, 203 M 301, 281 NW 299.

The right to a trade-name is not one in gross or at large. The owner can use it only to protect his business. He cannot, like the owner of a patent, make a purely negative and merely prohibited use of it as a monopoly. A trade-name is a word or phrase by which a business or a specific merchandise is made known to the public. Direct Service Oil Co. v Honzay, 211 M 361, 2 NW(2d) 434; Houston v Berde, 211 M 528, 2 NW(2d) 9.

Receiving stolen goods; national stolen property act; interstate transportation of forged or falsely made checks. 31 MLR 376.

620.07 FORGERY, FIRST DEGREE.

In the trial upon a charge of forgery, when the identity of the accused and his guilty intent are necessary to be proven, it is proper for the state to prove that he passed other forged checks, similar in appearance, upon other persons near the same place and at about the same time, and the fact that he had been tried and acquitted upon some criminal charge in relation to these other checks would not render the facts in connection with passing or uttering them inadmissible. State v Lucken, 129 M 402, 152 NW 769.

The foundation was ample for the introduction of samples of the handwriting of defendant, in a prosecution charging defendant with the forgery of the signature of a purported maker of a check, so as to permit them as standards of comparison with such signature. Whether a witness has qualified to express an opinion, as to whose is a disputed signature, is largely within the discretion of the trial court. There was no abuse of discretion in the exclusion of an opinion of a witness who had seen the signature of a person only once. State v Mohrbacher, 173 M 567, 218 NW 112.

Attorney collected $650 giving the person paying the money a receipt apparently signed by his client but which was in fact signed by the attorney. He accounted to his client for $550. His misrepresentation aided by the forgery was for the purpose of appropriating $100. State v MacLean, 192 M 96, 255 NW 821.

620.10 FORGERY, SECOND DEGREE.

A plea of former acquittal is sufficient whenever it shows on its face that the second indictment is based on the same single criminal act which was the basis of the indictment upon which the defendant was acquitted. The making of a forged written instrument and the uttering of it by the same person, at the same time, as one transaction, constitute but one offense. State v Klugherz, 91 M 406, 98 NW 99.

COUNTERFEITING; FALSE LABELING OR REGISTRATION

620.23 COUNTERFEITING TRADEMARK OR BRAND; PENALTY.

In an action to recover damages for the wrongful use of a trade label resembling that of the plaintiff, the plaintiff is not entitled, in the absence of proof of the measure of damages, to recover the penalty prescribed in section 620.23. Watkins v Landon, 52 M 389, 54 NW 193.

620.24 POSSESSION OF DIES OR PLATES; PENALTY.

A defendant could be sentenced under the first count of an indictment charging him with making or procuring to be made a plate similar to a plate from which genuine $10 federal reserve notes had been printed, but a consecutive sentence under a second count charging him with having such plate in his possession was excessive and void, since the proof required to convict on the first count would likewise be proof of possession. Micheuer v United States, 157 F(2d) 616.

620.243 MANUFACTURE AND DISTRIBUTION OF TOKENS, WHEN PROHIBITED.

A "counterfeit coin" need not be an exact copy of a genuine coin to be within prohibition of statutes making counterfeiting of gold or silver coins or bars or of minor coins an offense, but it must be one as might deceive an ordinary observer. Circular metal token bearing inscription "good for amusement only" and "this token has no cash or trade value" did not bear any resemblance to genuine United States coins and were not "counterfeit coins," within statutes making counterfeiting of gold or silver coins or bars or of minor coins an offense, notwithstanding that

coins were capable of use in mechanical vending machines in place of genuine coins. United States v Gellman, 44 F. Supp. 360.

620.26 AFFIXING FALSE STAMPS; PENALTY.

One having the exclusive right to use a trade-name can transfer such right to another only when coupled with a transfer of some property or business with which the name has become identified. No one can acquire the exclusive right to use the name of the place where his business is located, nor the exclusive right to use words properly descriptive of the nature of the business, but where he establishes a trade-name containing such geographical name and such descriptive words, if a competitor subsequently desires to use the same name and the same or similar descriptive words in his own trade-name, he must put them in such form, or combine them with other words in such manner, that his trade-name will be fairly distinguishable from the trade-name first in use. Rodseth v Northwestern Marble Works, 129 M 472, 152 NW 885.

By prior adoption and use one does not acquire the exclusive right to use as a trade-name words properly descriptive of a business engaged in by him and by others; but if another, engaged in a like business, subsequently makes use of such descriptive words in his trade-name he must so combine them that the two trade-names will be fully distinguishable. Applying this rule, the defendant, engaged like the plaintiff in conducting a sulphur springs sanatorium, may use the words "sulphur springs" in its trade-name which is its corporate name, though prior thereto the plaintiff used the same words in its corporate and tradename, the two being fairly distinguishable. Jordan Sulphur Springs Co. v Mudbaden Sulphur Springs Co. 135 M 123, 160 NW 252.

The name of a copartnership is an essential element of the partnership enterprise, an asset thereof, and passes with a sale of the firm business and goodwill. In the instant case, plaintiff corporation entitled to use the name of the defendant corporation was entitled to restrain unfair competition by defendant, and its attempt by deceptive methods to appropriate the benefits of plaintiff's business by falsely presuming to be the founder and owner thereof. Twin City Brief Printing Co. v Review Publishing Co. 139 M 358, 166 NW 413.

Descriptive words, words of color, cannot be monopolized, and, unless used in imitative combination, one trader has no right to an injunction restraining their use by a rival; but a person may adopt a trade-name consisting of a combination of words none of which are capable of exclusive appropriation. Yellow Cab Co. v Cooks Taxicab Co. 142 M 120, 171 NW 269.

A person who has acquired a business reputation may, when he participates in organizing a corporation to take over that business, lawfully permit his name to become a part of the corporate name provided it is not so similar to that of an existing corporation that the necessary result is loss to the latter, or the selection of the name is with view to deceive; and in the instant case, the Thompson Lumber Company is denied the right to enjoin Thompson Yards Inc. from conducting a retail lumber business in Hennepin and Ramsey counties. Thompson Lumber Co. v Thompson Yards Inc. 144 M 298, 175 NW 550.

A simulation by defendant of plaintiff's taxicabs used in a public taxicab business will be enjoined pendente lite, where the imitation is obviously calculated to deceive the public into the belief that the defendant's taxicabs and service are those of the plaintiff and thereby injure and interfere with its business. Yellow Cab Co. v Becker, 145 M 152, 176 NW 345.

The right to a trade-mark or trade-name is determined by priority of adoption and use. Once acquired as appertaining to a certain class of goods, the right of priority extends to all goods of the same general class. A merchant operating a department store may use its trade-mark and name in the sale of all merchandise reasonably incident to the conduct of a department store. If a line of groceries is taken on, the mark and name may be used in connection with that department. Citizens Wholesale Supply Co. v The Golden Rule, 147 M 248, 180 NW 95.

The sale or transfer of the property and goodwill of an established and going business includes trade-names and trade-marks used in that business unless the

contrary is shown. A trade-name is not strictly a trade-mark but is generally governed as to its use and transfer by the same rules as a trade-mark. The evidence sustains the finding of the court that the trade-name here in question was included in the transfer of the business, but the evidence fails to show any unfair competition, and injunction is denied. Jarvaise Academy v St. Paul Institute of Cosmetology, 183 M 507, 237 NW 183.

Although the courts will protect the use of a name that is so identified with the product that it has become well known and respected in the trade, the protection so afforded need not be any greater than is reasonably necessary to accomplish the desired purpose; but there can be no exclusive appropriation of a family surname so as to constitute it a valid technical trade-mark, and in the instant case the court followed the usual practice and properly refused to enjoin the use of the name used by defendant. Brown Sheet Iron & Steel Co. v Brown Steel Tank Co. 198 M 276, 269 NW 663.

Complainants for several years made a beverage which they put up in bottles, and sold under the name of "Limetta," using a label on which the name, in red and gilt letters, was the prominent feature, together with a colored design, descriptive matter, and the name of the makers. Defendant commenced the manufacture and sale of a similar article, having the same color, and put up in similar bottles, sealed with similar capsules, and with a label differing in shape, but in which the name "Limette" was printed, also in red and gilt, in the same position as the name on complainants' labels. The descriptive matter was also similar, and the label did not bear the name of the manufacturer. The general similarity in appearance of packages and labels was such as to indicate a purpose to deceive, and to constitute unfair competition, against which complainants were entitled to a preliminary injunction. Drewry & Son v Wood, 127 F. 887.

Mere fact that well-known trading concern may not have established place of business in particular place will not justify another in knowingly and in bad faith adopting its name, and thereby seeking to profit by inducing public to purchase his wares. Deliberate attempt to deceive on part of defendant is not necessary to restrain use by him of name or symbol by which plaintiff's goods and wares are known to general public. Governor v Hudson Bay Fur Co. 33 F(2d) 801.

Trade-mark "Hecolite," which was merely a translation of the registered German trade-mark "Hekolith," could not be registered by domestic corporation until after the trade-mark "Hekolith" was assigned to the domestic corporation. Where ownership of registered trade-mark for foreign made goods was not shown, alleged owner of the trade-mark was not entitled to an injunction and an accounting for damages for importation of such goods by another. In any unfair competition suit the plaintiff must show that the defendant passed off or palmed off his goods as those of plaintiff. Perry v American Hecolite Denture Corp. 78 F(2d) 556.

The trade-mark law is a statutory branch of the broader law of unfair competition. Whether a trade-mark is infringed depends on whether an ordinarily prudent purchaser is liable to purchase one of two articles under the belief that he is purchasing the other. The trade-mark "Kickaway" as applied to women's and children's undergarments, such as bloomers and drawers, does not infringe the trade-mark "Kickernick." Kresge v Winget, 96 F(2d) 978.

620.27 FALSE BRANDING BY MANUFACTURER.

Words merely descriptive of the character, quality, or composition of an article cannot be monopolized as a trade-mark. Watkins v Sands, 83 M 326, 86 NW 340.

Plaintiff, which functioned under the name "Jordan Sulphur Springs & Mud Bath Sanitarium Company," cannot enjoin the defendant, who engaged in business under the name of "Mudbaden Sulphur Springs Company." Jordan Co. v Mudbaden Co. 135 M 123, 160 NW 252.

620.31 REGISTRATION.

See, Perry v American Hecolite Denture Corp. 78 F(2d) 556, noted under section 620.26.

620.32 FRAUDULENT REGISTRATION OR USE; PENALTY.

Territorial extent of right to a trade-name. 26 MLR 568.

620.41 ISSUE OF LABOR CHECK WITHOUT FUNDS A MISDEMEANOR.

Section 620.41 does not apply to post-dated checks. The giving of post-dated checks does not violate this section. OAG Nov. 29, 1938 (133-B-4).

FALSE PERSONATIONS; FALSE STATEMENTS

620.45 RECEIVING PROPERTY IN FALSE CHARACTER.

Receiving stolen goods; national stolen property act; interstate transportation of forged or falsely made checks. 31 MLR 376.

620.46 PERSONATING AN OFFICER.

Where a North Dakota notary certified to an acknowledgment in Minnesota which he authenticated by use of his North Dakota seal, he is not guilty of impersonating an officer under the provisions of section 620.46. OAG June 7, 1944 (320-D).

620.47 OBTAINING SIGNATURE BY FALSE PRETENSES.

Where the indictment is for obtaining, by false representations, a party's signature to a deed the averment that it was a warranty deed, which means that it was a deed with, at least, covenants of warranty, shows sufficiently that the deed may prejudice the party signing it. An indictment will not lie upon a mere false warranty nor upon representations to be implied from mere promises or contract obligations; but, although there may be a warranty or contract on the part of the defendant, if there is also false representations of fact, an indictment will lie, provided the representation, and not the warranty or contract, induced the act of the other party. State v Butler, 47 M 483, 50 NW 532.

False pretenses; fraud; obtaining signature by false pretenses to effect the exchange of realty. 12 MLR 541.

620.49 OBTAINING EMPLOYMENT BY FALSE LETTER OR CERTIFICATE.

Misrepresentations to secure employment. 14 MLR 646.

620.50 FALSE STATEMENTS TO OBTAIN CREDIT.

In an information under section 620.47 charging the obtaining of signatures by false pretenses it is not necessary to set out in the information the specific documents whereby the signatures were obtained where such alleged false documents are described in general terms, the defendant having a right to demand a bill of particulars unless the documents are in his possession. State v Gottwalt, 209 M 4, 295 NW 67.

620.51 FALSE STATEMENTS CONCERNING VALUE; EXCEPTION.

Misrepresentation of a matter of law as insufficient to constitute a public offense. 14 MLR 291.

Corporate trustees' liabilities for negligence in certifying bonds. 15 MLR 477.

620.52 FALSE STATEMENT IN ADVERTISEMENT.

Plaintiff, conducting a wholesale millinery establishment, also makes contracts with department stores in Minnesota and other states whereby it carries on a retail millinery business as a department in such stores and ostensibly in their names. This is not a violation of section 620.52 relating to the disclosure of the true owner or seller of merchandise. Stronge & Warner v Choate, 149 M 30, 182 NW 712.

In a criminal action under section 620.52, for false advertising, evidence which showed that defendant advertised by a placard in his shop window "genuine wool army sox" when they were 50 per cent wool and "rejects" sustains a finding of the trial court that defendant was guilty under the statute. State v Gitelman, 221 M 122, 21 NW(2d) 198.

Suit against a state officer as a suit against the state. 13 MLR 135.

Unfair competition; misrepresentations; applied to federal trade commission. 22 MLR 522.

Manufacturer's liability for false representations or warranties made to induce purchases from independent dealers. 25 MLR 83.

620.53 FALSE STATEMENTS AS INDUCEMENT TO ENTERING EMPLOYMENT.

Receiving stolen goods; national stolen property act; interstate transportation of forged or falsely made checks. 31 MLR 376.

620.54 PENALTIES.

Newspaper libel. 13 MLR 21.

FRAUDS RELATING TO BILLS OF LADING, MANIFESTS, TRANSPORTATION, AND BY BAILEES

620.59 FICTITIOUS BILLS OF LADING.

Uniform bills of lading act. 1 MLR 285.

FRAUD; CORPORATION MANAGEMENT

620.71 FALSE REPORTS OF CORPORATIONS.

This section is violated by one who prepares a false report for a creamery association. OAG Sept. 24, 1945 (133-b-51).

620.72 FRAUDS IN KEEPING ACCOUNTS.

See notes under section 620.71.

620.73 RECEIVING DEPOSIT IN INSOLVENT BANKS.

Extension of state penal statutes to national banks and other officers. 13 MLR 57.

Personal liability of director to depositor for bank's acceptance of deposits after insolvency. 13 MLR 607.

Renewal of certificate of deposit as constituting a deposit. 16 MLR 96.

Fraudulent receipt of deposits. 16 MLR 432.

620.74 SELLING TICKETS TO THEATERS AT GREATER PRICE.

Constitutionality of statutes against scalping of theater tickets. 5 MLR 68; 11 MLR 656.