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Offenses against the City

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NOTE

OFFENSES AGAINST THE CITY

THE following statements are excerpts from three Minnesota cases:

> "It has repeatedly been decided by this court, as it has elsewhere, that municipal ordinances are not criminal statutes; that violations thereof are not crimes, nor are such violations governed by the rules of the criminal law, save in certain specified exceptional particulars."[1]
>
> "The violation of an ordinance is properly punishable under our Constitution by fine or by imprisonment, and is a crime."[2]
>
> "This being a quasi criminal prosecution under an ordinance, sections 8462 and 8463, G. S. 1913, are not applicable."[3]

Perhaps it is misleading to take these statements out of their con-

1. State v. Robitshek, 60 Minn. 123, 124, 61 N. W. 1023 (1895).
2. State v. McDonald, 121 Minn. 207, 212, 141 N. W. 110, 112 (1913).
3. State v. Nelson, 157 Minn. 506, 507, 196 N. W. 279 (1923). Similar statements recur throughout the reports. "Offenses against ordinances . . . are not generally construed to be criminal cases, in the proper sense of the term 'criminal,' and the prosecutions therefore are not 'criminal prosecutions' within the meaning of the constitution, which refers to prosecutions for offenses essentially criminal under the general laws of the state." City of Mankato v. Arnold, 36 Minn. 62, 64, 30 N. W. 305, 306 (1886). "Violations

text, but they do serve to illustrate the extremly fluid nature of prosecutions for violations of municipal ordinances. Rather than to rationalize this conflicting language, it will be far more profitable to go behind the language and attempt to answer why the conflict exists.

Each year in Minnesota as elsewhere in the country the relative population of our cities has been increasing,[4] resulting in an ever-increasing need for the regulation of crime. To cope with this situation the Minnesota legislature, rather than attempting to deal with the problem on a state level, has superimposed a local system of regulation, courts, and enforcement in our cities and villages, at least so far as minor offenses are concerned. This process has not been of a general revisory nature but rather a kind of patching and tacking technique. The power of the cities to regulate by the enactment of ordinances was gradually increased by successive amendments to the cities' charters leading eventually to a constitutional amendment permitting "home rule."[5] The municipal police forces, especially in the larger cities, grew from a small contingent to a large and efficient enforcement agency with a personnel of several hundred officers.[6] Municipal courts were early established

of municipal ordinances are criminal offenses and trial therefor criminal proceedings, within the meaning of the statutes now in question." Village of Crosby v. Stemich, 160 Minn. 261, 262, 199 N. W. 918, 919 (1924). "A prosecution for violation of a municipal ordinance such as this is not a criminal proceeding. It is only *quasi* criminal, and proof beyond a reasonable doubt is not required." St. Paul v. Keeley, 194 Minn. 386, 388, 260 N. W. 357, 358 (1935). Surprisingly, the Minnesota court has not adopted its recent practice resorted to in certain other areas, and designated such prosecutions *sui generis*. See Shypulski v. Waldorf Paper Products Co., 232 Minn. 394, 396, 45 N. W. 2d 549, 550 (1951), 35 Minn. L. Rev. 512 (status of a fireman upon entering the premises of another in response to a call of duty); *In re* E. C. Warner Co., 232 Minn. 207, 212, 45 N. W. 2d 388, 392 (1950), Note, 35 Minn. L. Rev. 564 (1951) (corporate director's relation to the corporation); *In re* Rerat, 224 Minn. 124, 28 N. W. 2d 168 (1947) (action for discipline of attorney); Reed v. Bjornson, 191 Minn. 254, 260, 253 N. W. 102, 105 (1934), Note, 18 Minn. L. Rev. 582 (tax on income derived from real property).

4. The following figures from 1 Sixteenth Census of the United States 535 (1940) indicates the relative urban growth in Minnesota:

Year	*% Urban*	*% Rural*
1860	9.4	90.6
1900	34.1	65.9
1940	49.8	50.2

5. Minn. Const. Art. IV, § 36. The amendment was adopted Nov. 3, 1896, and subsequently amended Nov. 8, 1898, and Nov. 3, 1942. For a discussion of the Minnesota "Home Rule" amendment, see Anderson, *Municipal Home Rule in Minnesota*, 7 Minn. L. Rev. 306 (1923); Dawley, *Special Legislation and Municipal Home Rule in Minnesota: Recent Developments*, 16 Minn. L. Rev. 659, 672 (1932).

6. For a brief discussion of the composition of law enforcement agencies in Minnesota in 1937, see Regent's Examining Committee on the Police Training Project, Survey of Police Training, Section IV (1937).

by special statutes for the larger cities,[7] and at the turn of the century general statutes were enacted to permit the establishment of municipal courts where desired in all cities and villages not then provided for.[8]

The court, of course, has not been unaware of this development and it has recognized the need for a procedure particularly adapted to the prosecution of violations of municipal ordinances. However, it has tended to base its decisions as to the nature of such prosecutions upon whether they are "civil" or "criminal."[9] These terms, it shall be seen, do not provide a proper basis for classification. Their use leads only to confusion and contradiction and requires either that the court oscillate from one view to the other depending upon the particular issue before it or resort to terms such as "quasi criminal" or "quasi civil."[10]

What then determines the nature of the prosecution of violators of municipal ordinances? While recognizing the danger of oversimplification, it appears that the two determining factors are (a) protection of the defendant, and (b) expediency. This is not the place for a discussion of the need or appropriateness of a revision in our concept of sanctions to be imposed for petty offenses under statute or ordinance.[11] It is sufficient to note that one who violates a municipal ordinance in Minnesota is generally subject to an imprisonment for a period up to 90 days or a fine of $100, or both.[12] It is hardly necessary to point out that this penalty should be in-

7. The Minneapolis Municipal Court was established by Minn. Sp. Laws 1874, c. 141; St. Paul Municipal Court, Minn. Sp. Laws 1875, c. 2; Stillwater Municipal Court, Minn. Sp. Laws 1876 c. 200.

8. See Minn. Laws 1895, c. 229 (set out, as amended, in a note following 27 M.S.A. § 488.26 (1947); Minn. Rev. Laws 1905, §§ 124-146 (as amended, now being Minn. Stat. c. 488 (1949).

9. Historically in England violators of ordinances were subject to fine, the proceedings being a civil action in debt or assumpsit, the former on the theory of what might be termed liquidated damages, the latter on the theory of an implied promise to perform a duty. 9 McQuillin, Municipal Corporations § 27.05 (3d ed. 1950). The text writers generally have divided the states in this country into two groups. It is said that the majority of the states follow the old English view and regard such prosecutions as civil, the minority view being that they are criminal actions. 9 McQuillin, *supra* § 27.06.

10. Speaking of the use of the terms "criminal" and "civil," one writer has pointed out that their use ". . . is doubly handy in that the court can stress either the civil or the criminal aspect, depending upon the desired conclusion." Grant, *Penal Ordinances in California,* 24 Calif. L. Rev. 123, 124 (1936). See 13 U. of Kan. City L. Rev. 160 (1944-45).

11. See Hall, *Interrelations of Criminal Law and Torts: II,* 43 Col. L. Rev. 967 (1943); Sayre, *Public Welfare Offenses,* 33 Col. L. Rev. 55 (1933); Notes, 35 Harv. L. Rev. 462 (1922), 12 Iowa L. Rev. 407 (1927); [1946] Wis. L. Rev. 172; 12 Wis. L. Rev. 365 (1937).

12. See, for example, Charter of Minneapolis, c. 4, § 6.

voked only with great caution. On the other hand regard must be had for the large number of petty offenses before the municipal courts. Unfortunately adequate figures of the number of such prosecutions in Minnesota are unavailable,[13] but little imagination is needed to envision the complete breakdown of the system which would result if the same procedure used in the prosecution of a felony were followed in such cases. Thus, it is primarily a balancing of these two factors which should determine the nature of the prosecution of a violator of a municipal ordinance. If read with these considerations in mind, the decisions of the Minnesota court on this subject become less incongruous.

I. Relationship to Statutes

A. *Concurrent Jurisdiction*

City charters in Minnesota generally give the municipality power to pass ordinances and invoke penalties within their prescribed spheres so long as they are "not repugnant to the laws of Minnesota."[14] An ordinance does not suspend the operation within the city of a statute making precisely the same act a crime;[15] nor are the two necessarily repugnant.[16] The ordinance will be set aside only where the statute expressly pre-empts regulation[17] or the ordinance by implication "conflicts" with the statute. It is beyond the scope of this Note to discuss "conflicts" between substantive provisions of ordinances and statutes,[18] but generally it may be said that Minnesota stands among those states which take a

13. In 1948 and 1949 there were 8885 and 9475 cases, respectively, before the Municipal Court of Rochester, Minnesota. Annual Reports of the Municipal Courts and Conciliation Court of Rochester, Minnesota (1948, 1949). In 1946 the Municipal Court of Mankato, Minnesota, disposed of 1173 cases involving violations of municipal ordinances other than parking violations. Talbott, Intergovernmental Relations and the Courts, Research Monograph # 1, p. 60, Table 16 (1950). This is to be compared with 1179 criminal cases disposed of by all the district courts of Minnesota during the same year. *Id.* at 43.

14. See Minneapolis City Charter, c. 4, § 5.

15. State v. Oleson, 26 Minn. 507, 5 N. W. 959 (1880); State v. Charles, 16 Minn. 474 (426) (1871).

16. City of Alexandria v. Viering, 177 Minn. 617, 225 N. W. 286 (1929) (liquor ordinance making it a violation if there is a violation of the state or federal prohibition acts held valid); City of Virginia v. Erickson, 141 Minn. 21, 168 N. W. 821 (1918); State v. Lindquist, 77 Minn. 540, 80 N. W. 701 (1899); State v. Harris, 50 Minn. 128, 52 N. W. 387 (1892).

17. See Minn. Laws 1911, c. 365, § 18, State v. Mandehr, 168 Minn. 139, 209 N. W. 750 (1926); later repealed by Minn. Laws 1927, c. 412, § 32.

18. For a discussion of the problems which may arise, see Hitchcock, *Ohio Ordinances in Conflict with General Laws,* 16 U. of Cin. L. Rev. 1 (1942); Grant, *Municipal Ordinances Supplementing Criminal Laws,* 9 So. Calif. L. Rev. 95 (1936).

"liberal"[19] view and any ordinance will be held valid if it does not lower the standard set out by the statute.[20] The fact that the ordinance and the statute prescribe different penalties does not constitute such a "conflict" as to make the ordinance void.[21]

B. *Double Jeopardy*

Assuming that there is a valid ordinance, not in conflict with the statute, the question immediately posed is whether one may be convicted under both the statute and the ordinance. The constitution provides, ". . . no person for the same offense shall be put twice in jeopardy of punishment. . . ."[22] The issue was decided in Minnesota in two early decisions involving identical facts. In both, the defendant had previously been convicted of keeping a house of ill fame contrary to a St. Paul ordinance and was subsequently prosecuted in the district court for a statutory felony based upon the same act. In the first case, *State v. Oleson*,[23] the conviction under the statute was affirmed despite Chief Justice Gilfillan's opinion that since the ordinance existed only by virtue of the power granted by the state, it was not different from an attempted prosecution under two identical statutes, the second being barred by the first. Justice Berry agreed that prosecutions by both the city and the state would be unconstitutional, but affirmed the conviction on the ground that the ordinance was void and therefore the prior conviction under it could not be a bar to a subsequent prosecution by the state. Only Justice Cornell, whose view represents the law in Minnesota today,[24] took the position that a prior conviction under the ordinance was not a bar to a subsequent prosecution under a statute. He based his conclusion upon the theory that the term "offense" as used in the constitution has reference both to the act done and the law which it violated. He reasoned that since both

19. Note, 38 J. Crim. L. & Criminology 40 (1947).

20. Duluth v. Evans, 158 Minn. 450, 197 N. W. 737 (1924); State v. Duluth, 134 Minn. 355, 159 N. W. 792 (1916); Evans v. Redwood Falls, 103 Minn. 314, 115 N. W. 200 (1908). One writer strongly disapproves of "conflict" tests based upon whether "one law grants authority to do an act which the other law forbids" as not being reflective of the cases and suggests that the following rule would serve as a more accurate basis for prediction: "if the ordinance is the more efficient regulatory measure, no 'conflict' is found; whereas, if the statute is more likely to function effectively, a 'conflict' will be declared to exist." Comment, 40 Yale L. J. 647, 651 (1931).

21. State v. Weeks, 216 Minn. 279, 12 N. W. 2d 493 (1943); City of Jordan v. Nicolin, 84 Minn. 367, 87 N. W. 916 (1901); State v. Ludwig, 21 Minn. 202 (1875).

22. Minn. Const. Art. I, § 7.

23. 26 Minn. 507, 5 N. W. 959 (1880).

24. See State v. Cavett, 171 Minn. 505, 214 N. W. 479 (1927).

the city and the state had power to forbid such an act, the act was a violation of the law of each and constituted two separate and distinct "offenses." He likened it to the dual jurisdiction existing under state and federal laws, whereby the defendant may be punished by both for the same act. In the second case, *State v. Lee*,[25] the majority of the court accepted the position advanced by Justice Cornell in the *Oleson* case and that view has never subsequently been disputed by the Minnesota court.

Though widely accepted throughout the United States,[26] the logic used to reach such a result is both unsound and unjust. The analogy to successive state and federal prosecutions is very weak. These two governments are, in a sense, independent sovereigns, neither being the agent of the other, and it is generally agreed that the double jeopardy provisions of the state and federal constitutions do not apply.[27] The city, on the other hand, is clearly the creature of the state and exercises delegated powers.[28] It is clear that the state could not prosecute the defendant twice directly and it is difficult to perceive under what theory the state can do indirectly through its agent what it cannot do directly.[29] A much more accurate analogy than the one drawn by the Minnesota court is presented in the case of *Grafton v. United States*,[30] where it was held that a prosecution by general court-martial pursuant to the Articles

25. 29 Minn. 445, 13 N. W. 913 (1882). The case was a 3-2 decision. Justice Berry took the opposite view from the one he took in the *Oleson* case and joined with Justices Vanderburgh and Mitchell in affirming the conviction. Chief Justice Gilfillan and Justice Dickenson dissented.

26. See discussion and cases cited in Kneier, *Prosecution Under State Law and Municipal Ordinance as Double Jeopardy*, 16 Cornell L. Q. 201 (1931); 10 Minn. L. Rev. 621 (1926); for a collection of early cases, see Note, 92 Am. St. Rep. 89, 100 (1902).

27. United States v. Lanza, 260 U. S. 377 (1922); United States v. Ratagczak, 275 Fed. 558 (N.D. Ohio 1921); Hall v. Commonwealth, 197 Ky. 179, 246 S. W. 441 (1923); *see* Moore v. Illinois, 14 How. 13, 19-20 (U.S. 1852); Fox v. Ohio, 5 How. 410, 434 (U.S. 1847); Martin v. United States, 271 Fed. 685, 686 (8th Cir. 1921); People v. Superintendent of Women's Prison, 282 N. Y. 115, 118, 25 N. E. 2d 869, 871 (1940); State v. Frach, 162 Ore. 602, 605, 94 P. 2d 143, 145 (1939). Even the view that both the State and Federal Governments may punish the defendant for the same act has not gone without criticism. See Grant, *The Lanza Rule of Successive Prosecutions*, 32 Col. L. Rev. 1309 (1932).

28. City of Trenton v. New Jersey, 262 U. S. 182, 187 (1923); *see* Worcester v. Worcester Consolidated Street Ry., 196 U. S. 539, 548 (1905); Associated Schools v. School District, 122 Minn. 254, 257, 142 N. W. 325, 326 (1913); State v. Simmons, 32 Minn. 540, 542, 21 N. W. 750, 751 (1884); Crane, *Double Jeopardy and Courts-Martial*, 3 Minn. L. Rev. 181, 183 (1919); McBain, *The Doctrine of an Inherent Right of Local Self-Government*, 16 Col. L. Rev. 190, 299 (1916).

29. Notes, 24 Minn. L. Rev. 522, 541-543 (1940), 31 Col. L. Rev. 291, 296 (1931); see State v. West, 42 Minn. 147, 152, 43 N. W. 845, 847 (1889).

30. 206 U. S. 333 (1907).

of War of the United States was a bar to a subsequent prosecution by the Philippine Islands based upon the same acts because "the Government of the Philippines owes its existence wholly to the United States and its judicial tribunals exert all their powers by authority of the United States."[31]

The majority in the *Lee* case also pointed out that in England municipal ordinances were enforced by a civil action[32] and the mere fact that we have clothed such an action with a criminal procedure does not change its essential nature.[33] In a later action turning upon the question whether a prosecution for the violation of an ordinance was a civil or criminal action, the court said, however, that the *Lee* case did not decide that such an action was civil, but merely that the same act might be an offense against both the city and the state, and a prosecution for the one did not bar a prosecution for the other.[34] Consistently with this later case, the Minnesota court has held that an appeal by the city constitutes double jeopardy.[35] Had the court followed its earlier interpretation announced in the *Lee* case, the logical result would be that the city could appeal, for either party may appeal in a civil action.

It is certainly true, as pointed out by Justice Cornell in the *Oleson* case, that the municipality has a very substantial interest in the prosecution of those who would offend the peace and morals of the community.[36] It is equally true that unless such prosecutions

31. *Id.* at 354. Minn. Stat. § 610.23 (1949) makes a prior conviction or acquittal for the same act by another state or country a defense to a subsequent prosecution in Minnesota. It would seem that even if the same act violating both an ordinance and a statute is properly treated as an offense against two distinct sovereignties for purposes of double jeopardy, this expression of legislative policy should be applicable and the second prosecution barred. See Grant, *supra* note 10, at 133-134.

32. See note 9 *supra.*

33. State v. Lee, 29 Minn. 445, 452, 460, 13 N. W. 913, 915, 918 (1871). For cases in other jurisdictions where the court has advanced such an argument to avoid the prohibition against double jeopardy, see Kneier, *supra* note 26, at 204-206.

34. See State v. West, 42 Minn. 147, 150, 43 N. W. 845, 846 (1889). It has been suggested that ". . . the doctrine that the same set of facts may sustain both a civil and a criminal action tended to lend support to successive municipal and state prosecutions until the 'dual offense' theory was sufficiently well established to stand on its own feet." Grant, *Penal Ordinances and the Guarantee Against Double Jeopardy*, 25 Geo. L. J. 293, 296 (1937).

35. St. Paul v. Stamm, 106 Minn. 81, 118 N. W. 154 (1908); 12 N. Y. U. L. Q. Rev. 308 (1934). This is consistent with the very conservative view taken by the Minnesota court on the matter of appeals by the prosecution. See 34 Minn. L. Rev. 344 (1950). This is not to be interpreted as indicating a trend to regard prosecutions by the city as criminal in nature, since the court has repeatedly held that evidence beyond a reasonable doubt is not required for conviction. State v. Siporen, 215 Minn. 438, 10 N. W. 2d 353 (1943); State v. Jamieson, 211 Minn. 262, 300 N. W. 809 (1941); St. Paul v. Keeley, 194 Minn. 386, 260 N. W. 357 (1935).

36. State v. Oleson, 26 Minn. 507, 515, 5 N. W. 959, 967 (1880).

are carried out by the municipality, offenders will often escape punishment because the state lacks adequate machinery to deal with the large number of petty offenses committeed in the city. But it does not follow that the only alternative is to permit the defendant to be twice punished for the same act. A more just solution would be to hold that ". . . prosecutions may be insituted under either law, and the court that first acquires jurisdiction over the person of the accused has exclusive jurisdiction to hear, try, and determine the case; and a conviction for an offense which is the same in both laws will be a bar to a prosecution for the same offense under the other law."[37] To those who would argue that this view would enable the defendant to secure a lesser punishment by subjecting himself to the jurisdiction of the municipality where the penalty under the statute is greater than under the ordinance,[38] the answer is that any attempt by the municipality to provide a lesser penalty should be held repugnant to the laws of the state and therefore void. Since the maximum penalty permitted for violations of municipal ordinances is that allowed for mere misdemeanors, the net effect would be to remove from the jurisdiction of the municipality all acts also constituting gross misdemeanors or felonies under the statutes. The defendant would then be given the opportunity of having a jury trial and would not be convicted except by evidence establishing his guilt beyond a reasonable doubt, protections not accorded to a defendant prosecuted for the violation of an ordinance. Because of the seriousness of these offenses and since their number is relatively small, there is no reason to sacrifice these guaranties in order to secure expediency.

II. Pre-Trial Procedure

Municipal courts are organized in Minnesota pursuant to the authority given to the legislature by Art. 6, § 1 of the constitution to establish such inferior courts as they shall from time to time deem necessary.[39] Unfortunately, these courts lack uniformity of practice and jurisdiction, though generally it may be said that they have exclusive jurisdiction of violations of municipal ordinances.[40] The rules of practice are governed by the municipal court act under which they were organized. These courts may be classi-

37. People v. Hanrahan, 75 Mich. 611, 628, 42 N. W. 1124, 1130 (1889).
38. See State v. Oleson, 26 Minn. 507, 511, 5 N. W. 959, 963 (1880).
39. State v. Fleming, 112 Minn. 136, 127 N. W. 473 (1910).
40. See Minn. Stat. § 488.09 (1949).

fied into three groups:[41] (1) those organized and existing under the Revised Laws of 1905, as amended, now Minn. Stat. c. 488 (1949); (2) those organized and existing under Minn. Laws 1895, c. 229, as amended;[42] and (3) those organized and existing under special laws, as from time to time amended.[43] While any attempt to discuss all of the problems peculiar to each of these acts would prove impractical, there are some common to all or a majority of them which may be profitably discussed.

Where the defendant is in custody and brought before the court or clerk without process, several of the municipal court acts provide that a brief statement of the offense with which the defendant is charged entered upon the records of the court may serve as a substitute for a formal complaint.[44] The purpose of this abbreviated form is to ". . . simplify the prosecution of minor offenses in the municipal court, and to dispense with the necessity of technical accuracy . . ." required in felonies and indictable crimes.[45] Generally this may be said to reflect the attitude of the court even where a formal complaint is used.[46] Unless constitutional or substantive rights of the defendant are infringed, mere inaccuracies in the complaint will not be held reversible error.[47] However, whether the brief form or the formal complaint be used, the essential elements of the offense must be set out,[48] and inaccuracies resulting from mere laxity will be held jurisdictional.[49]

In *City of Winona v. Burke*[50] the court said that failure to plead and prove a city ordinance was reversible error, as the court does not take judicial notice of such ordinances.[51] Five years later

41. For a classification by cities of the operating authority and the practice of the various municipal courts, see 27 M. S. A. pp. 314-316 (1947).

42. This chapter, as amended, is set out in full in a note following 27 M. S. A. § 488.26 (1947).

43. For the Municipal Court Acts for Minneapolis, St. Paul, and Duluth, see 27 M. S. A. c. 488, App. 1, 3, and 5 (1947), respectively.

44. 27 M. S. A. c. 488, App. 1, § 17 (1947) (Minneapolis), App. 3, § 35 (St. Paul), App. 5, § 33 (Duluth); see State v. La Due, 164 Minn. 499, 205 N. W. 450 (1925); State v. Olson, 115 Minn. 153, 131 N. W. 1084 (1911); State v. Messolongitis, 74 Minn. 165, 77 N. W. 29 (1898).

45. State v. Olson, 115 Minn. 153, 155, 131 N.W. 1084, 1085 (1911). But see State v. Swanson, 106 Minn. 288, 119 N. W. 45 (1908).

46. See State v. Harder, 163 Minn. 47, 48, 203 N. W. 418 (1925).

47. State v. Siporen, 215 Minn. 438, 10 N. W. 2d 353 (1943); State v. Wilson, 212 Minn. 380, 3 N. W. 2d 677 (1942).

48. State v. Tremont, 185 Minn. 101, 240 N. W. 118 (1931); State v. Claire, 121 Minn. 521, 140 N. W. 747 (1913); State v. Bates, 96 Minn. 150, 104 N. W. 890 (1905).

49. State v. Covington, 171 Minn. 295, 213 N. W. 909 (1927); State v. Harder, 163 Minn. 47, 203 N. W. 418 (1925).

50. 23 Minn. 254 (1876).

51. Dean Wigmore has suggested that such decisions are based upon "technical quiddities." 9 Wigmore, Evidence § 2572 (3d ed. 1940).

the legislature modified this requirement[52] and it is now sufficient to plead an ordinance by reference, and the court of first instance must take judicial notice of its provisions without proof.[53] Whether the supreme court as well is bound by these stautes has not been decided. Certainly, to be required to take judicial notice, especially of the ordinances of the smaller communities, is an extreme burden on the supreme court.[54] However, whether required by statute to take notice or not, the court has indicated its intention to take notice where the court below is required to do so.[55]

III. The Right of Trial by Jury

The Constitution of Minnesota provides in Article I, § 4, "The right of trial by jury shall remain inviolate . . .,"[56] and again in § 6 of the same Article, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ."[57] However several of the municipal court acts provide that prosecutions for violations of municipal ordinances shall be disposed of in a summary manner without a jury.[58] In upholding the constitutionality of such provisions it was early established that these prosecutions do not come within the constitutional guaranties, but, as the court in one case pointed out, there is a real, or at least an apparent, discrepancy as to the basis upon which the decisions

52. Minn. Laws 1881, Ex. Sess., c. 59.

53. See Minn. Stat. § 544.20 (1949) ("In pleading any ordinance of a city or village . . . it shall be sufficient to refer to the ordinance . . . by its title and the date of its approval . . ."); Minn. Stat. § 412.861(2) (1949) ("It shall be a sufficient pleading of the ordinances or resolutions of the village to refer to them by section and number or chapter."); Village of Fairmont v. Meyer, 83 Minn. 456, 86 N. W. 457 (1901). In other cases, the same result is reached by a similar provision in the city charter. See State v. Overby, 116 Minn. 304, 133 N. W. 792 (1911); State v. Gill, 89 Minn. 502, 95 N. W. 449 (1903).

54. See 10 U. of Cin. L. Rev. 493 (1936).

55. See State v. Schoenig, 72 Minn. 528, 529, 75 N. W. 711, 712 (1898); Steenerson v. Great Northern Ry., 69 Minn. 353, 357, 72 N. W. 713, 717 (1897).

56. The court indicated in an early case that this section applies only to civil cases. *See* Whallon v. Bancroft, 4 Minn. 109 (70), 113 (74) (1860). However, subsequent cases have considered both sections 4 and 6 in deciding that there is no constitutional guaranty of trial by jury in prosecutions for violations of municipal ordinances. State v. Parks, 199 Minn. 622, 273 N. W. 233 (1937); City of Mankato v. Arnold, 36 Minn. 62, 30 N. W. 305 (1886).

57. The provision is similar to that found in Amendment VI of the Constitution of the United States.

58. Minn. Stat. § 488.09 (1949); 27 M. S. A. c. 488, App. 1, § 7 (1947) (Minneapolis), App. 3, § 7 (St. Paul), App. 5, § 9 (Duluth); St. Paul v. Robinson, 129 Minn. 383, 152 N. W. 777 (1915); State v. Marciniak, 97 Minn. 355, 105 N. W. 965 (1906); State v. Harris, 50 Minn. 128, 52 N. W. 387 (1892).

rest.[59] It is not an easy task to reconcile or even understand the reasoning used by the court in the early cases. However, a brief discussion of them in the light of the history of the guaranty of the right of trial by jury may be of some aid.

At the time the Federal Constitution was adopted there existed in England and in the Colonies a large class of "petty offenses" which were triable without a jury.[60] It is an accepted doctrine of constitutional law, both state and federal, that the constitutional guaranties of a jury trial merely preserve that right as it existed at the time of the adoption of the constitution.[61] Therefore, although Article III, § 2, and Amendment VI of the Federal Constitution are absolute in their terms, they exclude such "petty offenses."[62] Since these provisions of the Federal Constitution with their judicial exception applied to territories as well,[63] the defendant in the territorial court in Minnesota had precisely these same rights to a jury trial.[64] In addition to this federal guaranty, at the time of the adoption of the Minnesota Constitution there existed a territorial law guarantying the right of jury trial in all criminal prosecutions under the state laws, regardless of the grade of the offense.[65] These, then, were the rights of jury trial incorporated into sections 4 and 6 of Article I of the Minnesota Constitution.

In *City of Mankato v. Arnold*,[66] one of the first cases applying these provisions to the question of summary procedure in the municipal court, the court reasoned as follows: "Before the adoption of the constitution, and generally in this country and in England . . . the prevalent practice and rule was to dispense with jury trials in municipal prosecutions for the violation of ordinances."[67] That part of the constitutional guaranty existing by virtue of the incorpo-

59. See State v. Marciniak, *supra* note 57 at 360, 105 N. W. at 967.

60. 9 McQuillin, Municipal Corporations § 27.32 (3d ed. 1950). For a very comprehensive discussion, see Frankfurter and Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury*, 39 Harv. L. Rev. 917 (1926).

61. City of Mankato v. Arnold, 36 Minn. 62, 30 N. W. 305 (1885); *see* Callan v. Wilson, 127 U. S. 540, 549 (1888); State v. West, 42 Minn. 147, 150, 43 N. W. 845, 846 (1889); 9 McQuillin, Municipal Corporations § 27.34 (3d ed. 1950); Note, 24 Geo. L. J. 440 (1936).

62. Schick v. United States, 195 U. S. 65 (1904); Frankfurter and Corcoran, *supra* note 60.

63. Thompson v. Utah, 170 U. S. 343 (1898).

64. Thus, the court in State v. Marciniak, 97 Minn. 355, 360, 105 N. W. 965, 967 (1906) was not technically accurate in saying that Amendment VI of the Federal Constitution was not relevant. Though the provision cannot be asserted in a case before the state court, its substance is incorporated into the guaranties of the Minnesota Constitution.

65. *See* State v. West, 42 Minn, 147, 151, 43 N. W. 845, 847 (1889).

66. 36 Minn. 62, 30 N. W. 305 (1886).

67. *Id.* at 64, 30 N. W. at 306.

ration of the territorial law guarantying the right of jury trial in all *criminal* prosecutions under state laws does not afford the defendant any additional right because prosecutions for violations of municipal ordinances are not criminal prosecutions. In a subsequent case[68] involving the jurisdiction of the Minneapolis Municipal Court, the court stressed the criminal nature of such prosecutions and revised the reasoning used in the *Arnold* case, pointing out that the court did not actually mean that such prosecutions were not criminal, but that the territorial law incorporated into the constitution did not refer to prosecutions under ordinances but only to those cases where by statute the act is made an offense against the peace and dignity of the state. This, of course, brings forth the same question previously discussed in the problem of double jeopardy, *i.e.*, are ordinances any less state laws because they are enacted by municipal councils pursuant to authority granted by the state than are statutes enacted by the legislature? Whether the reasoning is basically sound or ficticious is almost academic. The result is firmly established[69] and not likely to be changed, for, as the court in the *Arnold* case pointed out, "Prosecutions for offenses against municipal by-laws . . . must necessarily be summary to be effective. . . ."[70] Assuming that the right to a trial by jury should be preserved wherever possible, that right must nonetheless yield to practicalities.

68. State v. West, 42 Minn. 147, 43 N. W. 845 (1889); see also City of Madison v. Martin, 109 Minn. 292, 123 N. W. 809 (1909).

69. State v. Hope, 212 Minn. 319, 3 N. W. 2d 499 (1942); State v. Broms, 139 Minn. 402, 166 N. W. 771 (1918); St. Paul v. Robinson, 129 Minn. 383, 152 N. W. 777 (1915); State v. Collins, 107 Minn. 500, 120 N. W. 1081 (1909); State v. Grimes, 83 Minn. 460, 86 N. W. 449 (1901); State v. Harris, 50 Minn. 128, 52 N. W. 387 (1892). It is immaterial that the same act might also constitute a misdemeanor under a statute under which the defendant would be entitled to a jury trial. State v. Parks, 199 Minn. 622, 273 N. W. 233 (1937). The court has even applied the rule where the same act is made an indictable offense under the statute. State v. Anderson, 165 Minn. 150, 206 N. W. 51 (1925). For a brief summary of the variety of results reached in other jurisdictions, see 2 Okla. L. Rev. 80 (1949).

70. City of Mankato v. Arnold, 36 Minn. 62, 65, 30 N. W. 305, 307 (1886). In Hill v. Dalton, 72 Ga. 314 (1884), after finding that there was no constitutional right to a jury trial, the court made the following observation: "It is well that such is the law, the constitutional law; for if no man could be fined or imprisoned for violation of city police ordinances, except by jury trial on indictment, away would go all power in our municipal authorities to preserve peace and good order within their corporate powers." *Id.* at 319. One writer noted, "They [the courts] are moved, on the one hand, by considerations of the expediency of summary procedure, and on the other by its dangers as a denial of a right inherent in our system of law." Note, 24 Geo. L. J. 440, 447 (1936).