GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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Defendant was indicted and convicted of perjury, committed on the trial in the district court of an appeal from a justice of the peace. One of the jurors on the trial of the indictment had been a juror on the trial of the cause in the justice court, upon an appeal in which the perjury was subsequently committed, which was unknown to defendant or counsel on either side. Held, that such fact was not ground for challenge within sections 17, 18, or 19, and not available in arrest of judgment. State v. Thomas, 19 Minn. 484, (Gil. 418.)

See Williams v. McGrade, 18 Minn. 82, (Gil. 65, 67.)

§§ 20, 21. Challenge for actual bias—Exemption not cause for challenge.

Cited, McNulty v. Stewart, 12 Minn. 434, (Gil. 319, 325.)

§ 23. Exception to challenge.

The adverse party may except to the challenge in the same manner as to a challenge to a panel, and the same proceedings shall be had thereon as prescribed in sections five, six, and seven, except that if the challenge is sustained the juror shall be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge. (*As amended* 1881, c. 9, § 1.)

§ 24. Trial of challenge.

Where a challenge to a juror for actual bias is admitted by the opposite party, there is nothing to try on the challenge, and the challenging party has no right to examine the juror. Morrison v. Lovejoy, 6 Minn. 319, (Gil. 224.)

What questions may be put to jurors on the trial of challenges for implied bias, in a murder case, see State v. Hanley, 34 Minn. 430, 26 N. W. Rep. 397.

§ 26. Swearing triers.

Triers of challenges to jurors need not be resworn for every challenge submitted to them. State v. Brown, 12 Minn. 538, (Gil. 448.)

§ 31. Decision of challenge.

The decision of a court upon a question of actual bias of a juror, submitted to it for determination by consent, is final. State v. Mims, 26 Minn. 191, 2 N. W. Rep. 492.

§ 32. Order of challenges.

When a juror is called the defendant must exhaust all his challenges to that juror, and then the state must exhaust its challenges to him, and so on, successively, as each juror is called. State v. Smith, 20 Minn. 376, (Gil. 328.)

§ 33. Order of causes of challenge.

In impaneling a jury for the trial of an indictment, according to correct practice, under the provisions of this chapter, challenges by either party to an individual juror, whether for cause or peremptory, should be interposed and determined when he is called, and in the prescribed order, before proceeding further in the call. State v. Armington, 25 Minn. 29.

CHAPTER 117.

APPEALS AND WRITS OF ERROR IN CRIMINAL CASES.

§ 1. Removal to supreme court—Time and manner.

The state cannot take an appeal or writ of error in a criminal case. State v. McGrorty, 2 Minn. 225, (Gil. 187.)

A criminal case cannot be removed from a district court to the supreme court by an appeal taken from the verdict of a jury therein. State v. Ehrig, 21 Minn. 462.

A criminal cause may be brought to this court upon writ of error, or upon the report of the judge who tried the cause. Bonfanti v. State, 2 Minn. 124, (Gil. 99.)

See cases cited in note to c. 86, § 8, *supra*.

§§ 2–4. Stay—Writ of error.

Cited, State v. Noonan, 24 Minn. 174, 175.

§ 5. Return.

See State v. Lessing, 16 Minn. 75, (Gil. 64.)

§ 6. Bill of exceptions.

The statutes give the defendant an appeal in a criminal case only from a final judgment or an order denying a new trial; all other decisions, directions, or judgments must be incorporated in a bill of exceptions, and reviewed on such appeal or a writ of error. State v. Noonan, 24 Minn. 174.

After a bill of exceptions has been settled by the judge, he cannot correct mistakes in it without calling in the parties, and allowing them to be heard. State v. Laliver, 4 Minn. 379, (Gil. 286.)

Where the record contains no exceptions taken, settled, or allowed, as provided by this section, the only question that can be considered is the sufficiency of the indictment to support the judgment. State v. Miller, 23 Minn. 352.

§ 7. Proceedings in appellate court.

Where, in a criminal case, there has been heard in this court, on the merits, an appeal from an order denying a new trial, upon a subsequent writ of error upon the judgment, no error prior to the order denying a new trial can be considered. Mims v. State, 26 Minn. 494, 5 N. W. Rep. 369.

The record must show that defendant was arraigned on the indictment. Hanson v. State, (Ohio,) 1 N. E. Rep. 136.

§ 8. Recognizance on appeal.

The district court has authority in a criminal case, after verdict of conviction and before sentence, to take bail for the appearance of the defendant before it to receive sentence. State v. Levy, 24 Minn. 362.

§ 9. Judgment on appeal.

Upon writ of error or appeal from a judgment in a criminal case, this court may, instead of reversing or affirming, modify the judgment so as to correct any errors of the court below in ordering or entering it. Mims v. State, 26 Minn. 494, 5 N. W. Rep. 369.

Section 222, p. 564, Rev. St., providing that, in criminal cases, the supreme court "shall consider and decide the questions of law, and shall render judgment, and award such sentence or make such order thereon as the law and justice shall require," is not imperative upon the court to pronounce sentence; it may remand the cause for sentence. State v. Bilansky, 3 Minn. 246, (Gil. 169.)

*§ 11. Certifying proceedings to supreme court.

An order overruling a demurrer to an indictment cannot be brought before this court for review, under § 11, after a trial and verdict upon an issue of not guilty. State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758.

In certifying a question of law arising in a criminal cause to the supreme court, under this section, the record must affirmatively show that the defendant was convicted, or that the question arose upon demurrer to an indictment, or to a special plea or pleas to an indictment, or upon a motion upon, or relating to, the indictment, or the supreme court will acquire no jurisdiction. State v. Byrud, 23 Minn. 29; State v. Hoag, Id. 31. The supreme court has no jurisdiction to pass upon any question arising in a criminal case, and certified up, that has not been passed upon and determined by the court below. Id.; Id.

See State v. Sweeney, 33 Minn. 23, 25, 21 N. W. Rep. 847.