THE PENAL CODE.

AN ACT TO ESTABLISH A PENAL CODE.*

Be it enacted by the Legislature of the State of Minnesota:

PRELIMINARY PROVISIONS.

§ 1. Title of code.

This act shall be known as the Penal Code of the State of Minnesota.

§ 2. When and how far code takes effect.

No act or omission begun after the beginning of the day on which this code takes effect as a law shall be deemed criminal or punishable, except as prescribed or authorized by this code, or by some statute of this state not repealed by it. Any act or omission begun prior to that day may be inquired of, prosecuted, and punished in the same manner as if this code had not been passed.

§ 3. Definition of "crime."

A crime is an act or omission forbidden by law, and punishable upon conviction by,

1. Death; or,
2. Imprisonment; or,
3. Fine; or,
4. Other penal discipline.

When the statute defines a crime, such statutory definition is to be adhered to. Benson v. State, 5 Minn. 19, (Gil. 6.)

Our statutes as to crimes were intended as a modification, and not as an entire repeal or abrogation of the common law. State v. Pulle, 12 Minn. 164, (Gil. 99.)

*Chapter 240, Gen. Laws 1885, entitled "An act to provide for the publication of the Penal Code," provides as follows:

§ 1. That the secretary of state be, and he hereby is, authorized and directed to publish or cause to be published the Penal Code of the state of Minnesota, passed at the present session of the legislature, in a volume by itself, and to omit said code from the volume of the General Laws of this session. Such publication shall be made under the supervision of the attorney general, and shall include such citation of authorities as the attorney general may direct and furnish.

§ 2. That the sum of one thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for the purpose of providing for any deficiency that such publication may cause in the general appropriation for the publication of the laws.

§ 4. Division of crimes.

A crime is either,

1. A felony; or,
2. A misdemeanor.

§ 5. Definition of felony.

A felony is a crime which is or may be punishable by either,

1. Death; or,
2. Imprisonment in the state prison.

A defendant may properly be convicted of a felony, although it appears from the indictment that he also committed a misdemeanor in voting more than once at an election. State v. Welch, 21 Minn. 22.

Prosecution for felony, when pending. State v. Grace, 18 Minn. 398, (Gil. 359.)

The word "feloniously" means "criminally;" and an indictment for petit larceny is not objectionable because it charges that the defendant "did feloniously steal," etc. State v. Hogard, 12 Minn. 293, (Gil. 191.)

§ 6. Definition of misdemeanor.

Any other crime is a misdemeanor.

State v. Hogard, 12 Minn. 293, (Gil. 191.)

§ 7. Conviction must precede punishment.

The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction.

Right of accused to be present at trial of minor offenses may be waived. State v. Reckards, 21 Minn. 47.

There is no review on behalf of the state. State v. McGrorty, 2 Minn. 224, (Gil. 187.)

§ 8. Jury to find degree of crime.

Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, must find the degree of the crime of which he is guilty.

Special verdict necessary where less degree or attempt found; otherwise verdict of guilty sufficient. State v Eno, 8 Minn. 220, (Gil. 190,) and cases cited.

Verdict of "guilty of the crime as charged in the indictment" good. Bilansky v. State, 3 Minn. 427, (Gil. 313,) and cases cited.

In case of reasonable doubt of degree, defendant can be convicted of lowest degree only. State v. Laliyer, 4 Minn. 368, (Gil. 277.)

Conviction may be had for less degree of offense charged. A verdict of murder in the second degree is sufficient, though it does not expressly acquit of murder in the first degree. State v. Lessing, 16 Minn. 75, (Gil. 64;) State v. Dumphey, 4 Minn. 438, (Gil. 340.)

Burden of proof as to degree. State v. Meyer, (Vt.) 3 Atl. Rep. 195.

§ 9. General rules of construction of this act.

The rule that a penal statute is to be strictly construed does not apply to this code or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law.

§ 10. Of sections declaring crimes punishable.

The several sections of this code, which declare certain crimes to be punishable as therein mentioned, devolve a duty upon a court authorized to pass sentence, to determine and impose the punishment prescribed.

§ 11. Punishments, how determined.

Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code.

§ 12. Punishment of felonies when not fixed by statute.

A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in the state prison or a county jail for not more than seven years, or by a fine of not more than one thousand dollars, or by both.

§ 13. Punishment of misdemeanors.

A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both.

See § 525, *post.*

TITLE 1.

PERSONS PUNISHABLE FOR CRIME.

§ 14. What persons are punishable criminally.

The following persons are liable to punishment within the state:

1. A person who commits within the state any crime, in whole or in part.

2. A person who commits without the state any offense which, if committed within the state, would be larceny under the laws of the state, and is afterwards found, with any of the property stolen or feloniously appropriated, within this state.

3. A person who, being without the state, causes, procures, aids, or abets another to commit crime within the state.

4. A person who, being out of the state, abducts or kidnaps by force or fraud any person contrary to the laws of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state.

5. A person who, being out of this state, and with intent to cause within it a result contrary to the laws of the state, does an act which, in its natural and usual course, results in an act or effect contrary to its laws.

State officer offering reward for killing of Indians is no justification. State v. Gut, 13 Minn. 341, (Gil. 315.)

The law conclusively presumes that all men intend their voluntary acts. State v. Welch, 21 Minn. 22; State v. Brown, 12 Minn. 538, (Gil. 448;) State v. Lautenschlager, 22 Minn. 514; State v. Shippey, 10 Minn. 223, (Gil. 178.)

§ 15. Presumption of responsibility for acts.

A person is presumed to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, except as otherwise prescribed in this code.

Sanity is presumed. The defense of insanity leaves the *onus* of proving it on the defendant. Bonfanti v. State, 2 Minn. 123, (Gil. 99;) State v. Grear, 29 Minn. 221, 13 N. W. Rep. 140.

§ 16. Child under seven years.

A child under the age of seven years is not capable of committing crime.

Carr v. State, (Tex.) 7 S. W. Rep. 328.

§ 17. Child of seven years or more.

A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him, and to know its wrongfulness. Whenever in any legal proceeding it becomes necessary to determine the age of a child, the child may be produced for personal inspection, to enable the magistrate, court, or jury to determine the age thereby; and the court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of age.

See § 237, *post.*

§ 18. Irresponsibility of idiot, lunatic, etc.

An act done by a person who is an idiot, imbecile, lunatic, or insane, is not a crime. A person cannot be tried, sentenced to any punishment, or punished for a crime, while he is in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceeding or making his defense.

Insanity is a defense to a prosecution for perjury. State v. Heenan, 8 Minn. 44, (Gil. 26.)

Insane delusion on other matters is no excuse for murder. State v. Gut, 13 Minn. 341, (Gil. 315.)

The burden of proof is upon defendant setting up insanity. Bonfanti v. State, 2 Minn. 123, (Gil. 99;) State v. Grear, 29 Minn. 221, 13 N. W. Rep. 140.

Insanity is a defense, and must be made out, from the evidence, to the satisfaction of the court, as any other defense. State v. Gut, 13 Minn. 341, (Gil. 315.)

§ 19. Idiots, lunatics, etc., when excused from criminal liability.

A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason, as either,

1. Not to know the nature and quality of the act he was doing; or,
2. Not to know that the act was wrong.

Insanity is no ground of acquittal if defendant had capacity sufficient to enable him to distinguish between right and wrong, and understood the nature and consequences of his act, and had mental power sufficient to apply that knowledge to his own case. State v. Shippey, 10 Minn. 223, (Gil. 178.)

Insanity, from intoxication or other cause, not voluntarily induced with a view to the commission of a crime while in that state, which renders the party incapable of forming any intention, is a good defense. State v. Garvey, 11 Minn. 154, (Gil. 95.)

Negative definition of insanity. State v. Shippey, *supra*, and State v. Gut, 13 Minn. 341, (Gil. 315.)

§ 20. Intoxicated persons, intent.

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intox-

icated at the time, in determining the purpose, motive, or intent with which he committed the act.

Evidence of intoxication to explain motive and conduct. State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Garvey, 11 Minn. 154, (Gil. 95.)

Where it does not appear that defendant became intoxicated with a view to commit the crime, or that he intended, before his intoxication, to commit it, if at the time of committing it he was so drunk as "not to know what he was doing," the jury cannot convict. State v. Garvey, 11 Minn. 154, (Gil. 95.) Intoxication will not lessen the grade of the offense, when it appears that the act (killing) was done intentionally. State v. Gut, 13 Minn. 341, (Gil. 315.) Intoxication is no defense for double voting, even if defendant was so drunk as not to know what he was doing. State v. Welch, 21 Minn. 22. Must be too drunk to reason or know right from wrong. State v. Herdina, 25 Minn. 161; State v. Grear, 29 Minn. 221, 13 N. W. Rep. 140.

Confession while intoxicated. State v. Grear, 28 Minn. 426, 10 N. W. Rep. 472.

See McClain v. Com., (Pa.) 1 Atl. Rep. 45.

§ 21. Morbid criminal propensity, no defense.

A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

§ 22. Defense of duress, by married woman.

It is no defense for a married woman, charged with crime, that the alleged criminal act was committed by her in the presence of her husband.

§ 23. Duress, how constituted.

Where any crime except murder is committed or participated in by two or more persons, and is committed, aided, or participated in by any one of them, only because, during the time of its commission, he is compelled to do, or to aid or participate in, the act, by threats of another person engaged in the act or omission, and reasonable apprehension on his part of instant death in case he refuses, the threats and apprehension constitute duress, and excuse him.

§ 24. An act done in defense of self or another.

An act, otherwise criminal, is justifiable when it is done to protect the person committing it, or another whom he is bound to protect, from imminent personal injury, the act appearing reasonably necessary to prevent the injury, nothing more being done than is reasonably necessary.

See *post*, §§ 174–176, 192.

To justify a killing as in self-defense it is not enough that defendant believed in a state of facts, which, if true, would have justified the act in self-defense, but he must have had reasonable grounds for such belief. State v. Shippey, 10 Minn. 223, (Gil. 178;) State v. Dineen, 10 Minn. 407, (Gil. 325.)

Defendant must use no more force than may be necessary to prevent the violence. Gallagher v. State, 3 Minn. 270, (Gil. 185.)

A parent has no right to protect his child in the commission of a crime. State v. Herdina, 25 Minn. 161.

TITLE 2.

OF PARTIES TO CRIME.

§ 25. Principal and accessory.

A party to a crime is either,

1. A principal; or,
2. An accessory.

§ 26. Definition of principal.

A person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces, or procures another to commit a crime, is a principal, and shall be indicted and punished as such.

State v. Beebe, 17 Minn. 241, (Gil. 218;) State v. Pugsley, (Iowa,) 38 N. W. Rep. 498; Territory v. Guthrie, (Idaho,) 17 Pac. Rep. 39; Blain v. State, (Tex.) 7 S. W. Rep. 239; Weston v. Com., (Pa.) 2 Atl. Rep. 191.

§ 27. Definition of accessory.

A person who, after the commission of a felony, harbors, conceals, or aids the offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender is liable to arrest, has been arrested, is indicted or convicted, or has committed a felony, is an accessory to the felony.

Blakeley v. State, (Tex.) 7 S. W. Rep. 233.

§ 28. All principals in misdemeanors.

A person who commits or participates in an act which would make him an accessory if the crime committed were a felony, is a principal, and may be indicted and punished as such, if the crime be a misdemeanor.

See § 511, *post*.

§ 29. Trial of accessories.

An accessory to a felony may be indicted, tried, and convicted, either in the county where he became an accessory, or in the county where the principal felony was committed, and whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and although the principal has been pardoned or otherwise discharged after conviction.

See § 113, *post*.
Common-law accessory to larceny indictable as principal under § 10, *c.* 91, Gen. St.; State v. Beebe, 17 Minn. 241, (Gil. 218.)

§ 30. Punishment of accessory.

Except in a case where a different punishment is specially prescribed by law, a person convicted as an accessory to a felony is punishable by imprisonment in the state prison or a county jail for not more than five years, or by a fine of not more than five hundred dollars, or by both.

TITLE 3.

DEGREES IN THE COMMISSION OF CRIMES, AND ATTEMPTS TO COMMIT CRIMES.

§ 31. Attempt to commit crime defined.

An act, done with intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime.

See § 514, *post.*

§ 32. Prisoner indicted may be convicted of lesser crime, or attempt.

Upon the trial of an indictment, the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime.

In case of reasonable doubt the jury can convict of lowest degree only. State v. Laliyer, 4 Minn. 368, (Gil. 277.)

Upon an indictment for rape, may convict of an assault with intent to commit rape. O'Connell v. State, 6 Minn. 279, (Gil. 190.)

Conviction of assault with intent to do great bodily harm, under an indictment for murder. State v. Parker, (Iowa,) 24 N. W. Rep. 225.

Conviction of simple larceny, upon indictment for larceny from the person. State v. Eno, 8 Minn. 220, (Gil. 190.) Upon indictment for burglary. State v. Boylson, 3 Minn. 438, (Gil. 325;) State v. Coon, 18 Minn. 518, (Gil. 464.)

Unless jury intend to convict of lesser degree, a general verdict of guilty is sufficient. State v. Eno, *supra;* Bilansky v. State, 3 Minn. 427, (Gil. 313;) State v. Lessing, 16 Minn. 75, (Gil. 64.)

Verdict of murder in second degree sufficient, although it does not expressly acquit of murder in first degree. State v. Lessing, 16 Minn. 75, (Gil. 64.)

§ 33. Acquittal or conviction bars indictment for another degree, or attempt.

When a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof.

Judgment allowing demurrer to indictment a bar to further prosecution, unless amendment is allowed or resubmission to grand jury ordered. State v. Comfort, 22 Minn. 271.

Conviction of simple larceny of hat bars indictment for same larceny from a shop. State v. Wiles, 26 Minn. 381, 4 N. W. Rep. 615.

Conviction under city ordinance for keeping bawdy house no bar to conviction for same under the statutes. State v. Oleson, 26 Minn. 507, 5 N. W. Rep. 959; State v. Charles, 16 Minn. 474, (Gil. 426;) State v. Lee, 29 Minn. 445, 13 N. W. Rep. 913.

Conviction of manslaughter, acquittal of murder. State v. Joseph, (La.) 3 South. Rep. 405.

Conviction of burglary not a bar to prosecution for conspiracy to commit. Whitford v. State, (Tex.) 6 S. W. Rep. 537.

Attempt to pass same forged instrument upon a different person, and at a different time. Burks v. State, (Tex.) 6 S. W. Rep. 300.

Nullity of former proceedings. Thompson v. Smith, (Me.) 8 Atl. Rep. 687.

Discharge on objections to jurisdiction. State v. Britton, (N. J.) 7 Atl. Rep. 679.

Reversal of conviction on defective indictment. Haskins v. Com., (Ky.) 1 S. W. Rep. 730; Wells v. Com., (Ky.) 6 S. W. Rep. 150.

Discharge of former jury. State v. Emery, (Vt.) 7 Atl. Rep. 129; Hilands v. Com., (Pa.) 2 Atl. Rep. 70.

See Hilands v. Com., (Pa.) 6 Atl. Rep. 267; State v. Locklin, (Vt.) 10 Atl. Rep. 464.

TITLE 4.

TREASON.

§ 34. "Treason" defined.

Treason against the state consists in—

1. Levying war against the state within the same; or

2. Adhering to the enemies of the state while separately engaged in war with a foreign enemy, in a case prescribed in the constitution of the United States, or giving to such enemies aid and comfort, within the state or elsewhere.

Petit treason does not exist in this state. State v. Bilansky, 3 Minn. 246, (Gil. 169.)

§ 35. Same—Punishment.

Whoever commits treason against this state shall be punished by imprisonment in the state prison for life.

§ 36. Misprision of treason, how punished.

Whoever, having knowledge of the commission of treason, conceals the same, and does not, as soon as may be, disclose and make known such treason to the governor or one of the judges of the supreme court, shall be adjudged guilty of the offense of misprision of treason, and be punished by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or in the common jail not exceeding two years.

§ 37. Two witnesses required to convict of treason.

No person shall be convicted of treason but by the testimony of two lawful witnesses to the same overt act of treason whereof he stands indicted, unless he confess the same in open court.

§ 38. "Levying war" defined.

To constitute levying war against the state, an actual act of war must be committed. To conspire to levy war is not enough.

§ 39. Resistance to a statute, when levying war.

Where persons rise in insurrection with intent to prevent in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they are guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war.

TITLE 5.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

§ 40. Crimes against elective franchise.

Crimes against the elective franchise are defined, and the punishment therefor prescribed, by the statutes regulating elections.

Intoxication no defense; criminal intent presumed. Conviction of felony when evidence shows also the commission of a statutory misdemeanor in double voting. State v. Welch, 21 Minn. 22; State v. Davis, 22 Minn. 423.

Example of good indictment for voting more than once at municipal election. State v. Welch, *supra*.

Indictment found at adjourned term valid. State v. Davis, *supra*.

TITLE 6.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

§ 41. Acting in a public office without having qualified.

A person who executes any of the functions of a public office without having executed and duly filed the required security, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits his right to the office.

§ 42. Giving or offering bribes to public officers.

A person who gives or offers a bribe to any executive or administrative officer of this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both.

Uncorroborated testimony of briber contradicted by that of defendant may sustain conviction. Cheek v. Com., (Ky.) 7 S. W. Rep. 403.

See People v. Sharp, (N. Y.) 14 N. E. Rep. 319; People v. Jachne, (N. Y.) 8 N. E. Rep. 374; People v. O'Neill, (N. Y.) 16 N. E. Rep. 68.

§ 43. Asking or receiving bribes.

An executive or administrative officer, or person elected or appointed to an executive or administrative office, who asks, receives, or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a [the] state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office, and is forever disqualified from holding any public office under this state.

Sufficiency of indictment. Glover v. State, (Ind.) 10 N. E. Rep. 282; State v. McDonald, (Ind.) 6 N. E. Rep. 607.

Upon a prosecution for bribery the validity of an official contract alleged to have been induced by it is immaterial. Glover v. State, (Ind.) 10 N. E. Rep. 282.

§ 44. Attempting to prevent officers from performing duty.

A person who attempts, by means of any threat or violence, to deter or prevent any executive or administrative officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

§ 45. Resisting officers.

A person who knowingly resists, by the use of force or violence, any executive or administrative officer, in the performance of his duty, is guilty of a misdemeanor.

See § 111, *post*.

Resisting levy upon exempt property. People v. Clements, (Mich.) 36 N. W. Rep. 792.

Resisting execution of writ of replevin. Braddy v. Hodges, (N. C.) 5 S. E. Rep. 17.

Resistance to the execution of a writ of replevin on Sunday, and recapture. Bryant v. State, (Neb.) 21 N. W. Rep. 406.

Sufficiency of indictment. People v. McLean, (Mich.) 36 N. W. Rep. 231.

§ 46. Taking unlawful fees.

An executive or administrative officer who asks or receives any emolument, gratuity, or reward, or any promise of emolument, gratuity, or reward, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Indictment bad that does not state in what official capacity defendant exacted the fees. State v. Brown, 12 Minn. 490, (Gil. 393.) It must allege positively the place where offense was committed. Id. Indictment set aside where defendant appeared and was sworn before the grand jury. State v. Froiseth, 16 Minn. 296, (Gil. 260.)

§ 47. Asking or receiving reward for omitting or delaying official acts.

An executive or administrative officer who asks or receives any emolument, gratuity, or reward, or any promise of emolument, gratuity, or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

§ 48. Taking fees for services not rendered.

An executive or administrative officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

§ 49. Offering reward for appointments, etc.

A person who gives, or offers to give, any gratuity or reward, in consideration that he or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or that he or such other person shall be permitted to exercise, perform, or discharge any prerogatives or duties, or to receive any emoluments of such an office, is guilty of a misdemeanor.

§ 50. Asking or receiving reward for appointments, etc.

A person who asks or receives, or agrees to receive, any gratuity or reward, or any promise thereof, for appointing another person, or procuring for another person an appointment to a public office, or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

§ 51. Selling right to official powers.

A public officer who, for any reward, consideration, or gratuity, paid or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments, or perform any of its duties, is guilty of a misdemeanor.

§ 52. Appointment avoided by conviction.

A grant, appointment, or deputation, made contrary to the provisions of either of the last two sections, is avoided and annulled by a conviction for the violation of either of those sections, in respect to such grant, appointment, or deputation.

§ 53. Intrusion into public office.

A person who willfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, willfully exercises any of the functions of his office, after his right so to do has ceased, is guilty of a misdemeanor.

§ 54. Officer refusing to surrender to successor.

A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

TITLE 7.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

§ 55. Disturbing legislature while in session.

A person who willfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 56. Intimidating a member of the legislature.

A person who willfully, by intimidation or otherwise, prevents any member of the legislature of this state from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote

upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

§ 57. Altering draft of bill.

A person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of a misdemeanor.

§ 58. Altering engrossed copy.

A person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

§ 59. Bribery of members of the legislature.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence a member to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, is punishable by imprisonment in the state prison for not more than ten years, or by a fine of not more than five thousand dollars, or both.

See People v. Sharp, (N. Y.) 14 N. E. Rep. 319; People v. Jaehne, (N. Y.) 8 N. E. Rep. 374; People v. O'Neill, (N. Y.) 16 N. E. 68.

§ 60. Receiving bribes by members of legislature.

A member of either of the houses composing the legislature of this state, who asks, receives, or agrees to receive, any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question, or matter upon which he may be required to act in his official capacity, or who gives, or offers or promises to give, any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

§ 61. Witnesses refusing to attend before the legislature or its committees.

A person who, being duly summoned to attend as a witness before either house of the legislature, or any committee thereof authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

§ 62. Id., refusing to testify.

A person who, being present before either house of the legislature or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

§ 63. Members of the legislature to forfeit office.

The conviction of a member of the legislature of either of the crimes defined in this chapter involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this state.

TITLE 8.

OF CRIMES AGAINST PUBLIC JUSTICE.

CHAPTER 1.

BRIBERY AND CORRUPTION.

§ 64. Bribery of a judicial officer.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a judicial officer, juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereupon, is punishable by imprisonment in the state prison for not more than ten years, or by a fine of not more than five thousand dollars, or both.

See People v. Sharp, (N. Y.) 14 N. E. Rep. 319; People v. Jaehne, (N. Y.) 8 N. E. Rep. 374; People v. O'Neill, (N. Y.) 16 N. E. Rep. 68.

§ 65. Officer accepting bribe.

A judicial officer, a person who executes any of the functions of a public office not designated in titles six and seven of this code, or a person employed by or acting for the state, or for any public officer in the business of the state, who asks, receives, or agrees to receive, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, judgment, action, decision, or other official proceeding shall be influenced thereby, or that he will do or omit any act or proceeding, or in any way neglect or violate any official duty, is punishable by imprisonment in the state prison for not more than ten years, or by fine of not more than five thousand dollars, or both. A conviction also forfeits any office held by the offender, and forever disqualifies him from holding any public office under the state.

§ 66. Juror, arbitrator, or referee, promising verdict, etc.

A juror, or a person drawn or summoned to attend as a juror, or a person chosen arbitrator, or appointed referee, who either,

1. Makes any promise or agreement to give a verdict, judgment, report, award, or decision for or against any party; or,

2. Willfully receives any communication, book, paper, instrument, or information relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of that cause or matter,—

Is guilty of a misdemeanor.

§ 67. Jurors, etc., accepting bribes.

A juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy, or proceeding, who asks, receives, or agrees to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision shall be influenced thereby, is punishable by imprisonment in the state prison for not more than ten years, or by fine of not more than five thousand dollars, or both.

§ 68. Embracery.

A person who influences or attempts to influence improperly a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as such juror, or one chosen an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award, or decision, in any cause or matter pending or about to be brought before him, in any case or in any manner not included in the last two sections, is guilty of a misdemeanor.

§ 69. Misconduct of officers at drawing of jurors.

A person authorized by law to assist at the drawing or impaneling of grand or trial jurors to attend a court or a term of court, or to try any cause or issue, who either,

1. Designedly puts, or consents to the putting, upon a list of jurors as having been drawn, any name which was not lawfully drawn for that purpose; or,

2. Designedly omits to place on such list any name which was lawfully drawn; or,

3. Designedly signs or certifies a list of such jurors as having been drawn which was not lawfully drawn; or,

4. Designedly withdraws from the box, or other receptacle for the ballots containing the names of such jurors, any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omits to place in such box or receptacle any name lawfully drawn or designated, or places in such box or receptacle a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or,

5. In the drawing or impaneling of such jurors does any act which is unfair, partial, or improper in any other respect,—

Is guilty of a misdemeanor.

Certificate of drawing may be contradicted by clerk. State v. Gut, 13 Minn. 341, (Gil. 315.)

Names of jurors drawn, who did not answer, may be replaced in box. State v. Brown, 12 Minn. 538, (Gil. 448.)

A special *venire* need not name the jurors to be summoned. State v. Stokely, 16 Minn. 282, (Gil. 249.)

§ 70. Misconduct of officers having charge of juries.

An officer to whose charge any juror or jurors are committed by a court or magistrate, who negligently or willfully permits them, or any of them, without leave of the court or magistrate,

1. To receive any communication from any person;

2. To make any communication to any person;

3. To obtain or receive any book or paper, or refreshment; or
4. To leave the jury-room;
—Is guilty of a misdemeanor.

Separation. Maher v. State, 3 Minn. 444, (Gil. 329;) State v. Parrant, 16 Minn. 178, (Gil. 157.) The jury may separate during progress of trial. Bilansky v. State, 3 Minn. 427, (Gil. 313;) State v. Ryan, 13 Minn. 370, (Gil. 343.)

§ 71. Bribing public officers.

A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a person executing any of the functions of a public office, other than one of the officers or persons designated in title six, title seven, and section sixty-four of title eight of this code, with intent to influence him in respect to any act, decision, vote, or other proceeding in the exercise of his powers or functions, is punishable by imprisonment in the state prison for not more than ten years, or by a fine of not more than five thousand dollars, or both.

§ 72. Offender a competent witness, and to escape prosecution.

A person offending against any provision of any foregoing sections of this code relating to bribery is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe, which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

See § 529, *post*.

§ 73. Definition of "jurors."

The word "juror," as used in this chapter, includes a talesman, and extends to jurors in all courts, whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

CHAPTER 2.

RESCUES.

§ 74. Rescue of prisoner.

A person who, by force or fraud, rescues a prisoner from lawful custody, or from an officer or other person having him in lawful custody, is guilty of a felony, if the prisoner was held upon a charge, commitment, arrest, conviction, or sentence of felony; and if the prisoner was held upon a charge, arrest, commitment, conviction, or sentence for misdemeanor, the rescuer is guilty of a misdemeanor.

See Hillian v. State, (Ark.) 8 S. W. Rep. 834.

§ 75. Taking, etc., property in officer's custody.

A person who takes from the custody of an officer or other person, personal property in charge of the latter, under any process of law, or who willfully injures or destroys such property, is guilty of a misdemeanor.

Sufficiency of indictment for attempt. U. S. v. Ford, 34 Fed. Rep. 26.
See U. S. v. Ford, 33 Fed. Rep. 861.

CHAPTER 3.

ESCAPES, AND AIDING THEREIN.

§ 76. Escaping prisoner may be recaptured.

A prisoner, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

§ 77. Prisoner escaping.

A prisoner who, being confined in a prison, or being in lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of felony if such custody or confinement is upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor if such custody or confinement is upon a charge, arrest, commitment, or conviction for a misdemeanor.

Indictment following language of statute. State v. Johnson, (Mo.) 6 S. W. Rep. 77.

§ 78. Attempt to escape from state prison.

A prisoner confined in a state prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

§ 79. Aiding prisoner to escape.

A person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon, or other thing, is guilty of felony, if the prisoner is held upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor if the prisoner is held upon a charge, arrest, commitment, or conviction for a misdemeanor.

§ 80. Aiding prisoner to escape.

A person who aids or assists a prisoner in escaping, or attempting to escape, from the lawful custody of a sheriff or other officer or person, is guilty of a misdemeanor, if the prisoner is held under arrest, commitment, or conviction for a misdemeanor, or upon a charge thereof; and of a felony, if the prisoner is held under an arrest, commitment, or conviction for a felony, or upon a charge thereof.

§ 81. Officer suffering escape.

A sheriff or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding, civil or criminal, or in any prison under his charge or control, to escape or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned, or contributed to, or assisted, is—

1. If he corruptly and willfully allows, connives at, or assists the escape, guilty of a felony;

2. In any other case is guilty of a misdemeanor.

See §§ 102, 103, *post.*

§ 82. Concealing escaped prisoner.

A person who knowingly or willfully conceals, or harbors for the purpose of concealment, a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor.

§ 83. Definition of "prison."

The term "prison," as used in this chapter, means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

§ 84. Definition of "prisoner."

The term "prisoner," as used in this chapter, means any person held in custody under process of law, or under lawful arrest.

CHAPTER 4.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

§ 85. Injury, etc., to public record.

A person who willfully and unlawfully removes, mutilates, destroys, conceals, or obliterates a record, map, book, paper, document, or other thing, filed or deposited in a public office or with any public officer by authority of law, is punishable by imprisonment in the state prison for not more than five years, or by a fine of not more than five hundred dollars, or by both.

See § 102, *post.*

§ 86. Offering false or forged instruments to be filed or recorded.

A person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of felony.

CHAPTER 5.

PERJURY AND SUBORNATION OF PERJURY.

§ 87. Perjury.

A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit,

or other writing by him subscribed, is true, in an action or a special proceeding, or upon any hearing or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry, or other occasion, willfully and knowingly testifies, declares, deposes, or certifies falsely in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate any material matter to be true which he knows to be false, is guilty of perjury.

See § 529, *post*.

Defendant must have been sworn. U. S. v. McConaughy, 33 Fed. Rep. 168.

Affidavit made before one not authorized to administer an oath. State v. Phippen, (Iowa,) 17 N. W. Rep. 146.

False swearing in a prosecution before an officer having no jurisdiction thereof. State v. Wimberly, (La.) 4 South. Rep. 161.

False swearing, in criminal proceedings, before a justice of the peace, in which the complaint is not sworn to. Anderson v. State, (Tex.) 7 S. W. Rep. 40.

Swearing to an affidavit, the contents of which are unknown to affiant. Byrnes v. Byrnes, (N. Y.) 5 N. E. Rep. 776.

Omissions from insolvents' schedule. People v. Platt, (Cal.) 7 Pac. Rep. 1; People v. Berman, Id. 3.

Perjury in affidavit for continuance which was denied. Sanders v. People, (Ill.) 16 N. E. Rep. 81.

Materiality of the perjured testimony. Henderson v. People, (Ill.) 7 N. E. Rep. 677; Beecher v. Anderson, (Mich.) 8 N. W. Rep. 539.

Insanity a defense. State v. Heehan, 8 Minn. 44, (Gil. 26.)

Sufficiency of the indictment. State v. Thomas, 19 Minn. 484, (Gil. 418;) State v. Anderson, (Ind.) 2 N. E. Rep. 332; State v. Reynolds, (Ind.) 9 N. E. Rep. 287; State v. Wood, (Ind.) 10 N. E. Rep. 639; State v. Byrd, (S. C.) 4 S. E. Rep. 793; Gandy v. State, (Neb.) 36 N. W. Rep. 817; State v. Green, (N. C.) 5 S. E. Rep. 422; State v. Fulason, (Me.) 8 Atl. Rep. 459; Cover v. Com., (Pa.) 8 Atl. Rep. 196. Averment of jurisdiction and authority of officer to administer oath. State v. Cunningham, (Iowa,) 23 N. W. Rep. 280. And see State v. McCone, (Vt.) 7 Atl. Rep. 406. Indictment for perjury in making a false return of taxable property not averring that the property alleged to have been omitted was assessable in the township of defendants' residence, or by the assessor of that township. State v. Cunningham, (Iowa,) 23 N. W. Rep. 280. Averment of materiality of testimony. State v. McCone, (Vt.) 7 Atl. Rep. 406.

Evidence—Admissibility—Variance. State v. Green, (N. C.) 6 S. E. Rep. 402. Evidence of other false statements. Anderson v. State, (Tex.) 7 S. W. Rep. 44. Parol testimony of authority to administer oath. Woodson v. State, (Tex.) 6 S. W. Rep. 184.

Materiality of perjured evidence question for court. Gordon v. State, (N. J.) 7 Atl. Rep. 476.

That a proposed juror was a member of the jury which tried the action in which the perjury was committed is no cause of challenge. State v. Thomas, *supra*. See State v. Lawlor, 28 Minn. 216, 9 N. W. Rep. 698.

Practice. Defendant may apply directly to supreme court for new trial at any time within a year under § 6, p. 777, Comp. St. State v. Heenan, *supra*.

§ 88. Irregularities in the mode of administering oaths.

It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner. The term "oath" includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

§ 89. Incompetency of witness no defense for perjury.

It is no defense to a prosecution for perjury that the defendant was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he actually was permitted to give such testimony, or make such deposition or certificate.

§ 90. Witness' knowledge of materiality of his testimony not necessary.

It is no defense to a prosecution for perjury that the defendant did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have affected such proceeding.

§ 91. Making of depositions, etc., when deemed complete.

The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is subscribed, sworn to, or affirmed by the defendant with intent that it be uttered or published as true.

§ 92. Statement of that which one does not know to be true.

An unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false.

§ 93. Summary committal of witnesses who have committed perjury.

Where it appears probable to a court of record having general jurisdiction that a person who has testified before it in an action or proceeding in that court has committed perjury in any testimony so given, the court may immediately commit him, by an order or process for that purpose, to prison, or take a recognizance, with sureties, for his appearing and answering to an indictment for perjury.

§ 94. Documents necessary to prove perjury may be detained.

In such a case, if any paper or document produced by either party is deemed by the court necessary to be used in the prosecution for the perjury, the court may detain the same, and direct it to be delivered to the county attorney.

§ 95. "Subornation of perjury" defined.

A person who willfully procures or induces another to commit perjury is guilty of subornation of perjury.

What constitutes. People v. Brown, (Cal.) 16 Pac. Rep. 1.
Suborned witness' knowledge of falsity of testimony. Coyne v. People, (Ill.) 14 N. E. Rep. 668.

§ 96. Punishment of perjury and subornation.

Perjury and subornation of perjury are each punishable as follows:

1. When the perjury is committed upon the trial of an indictment for felony, by imprisonment in the state prison for not less than two, nor more than ten, years.

2. In any other case, by imprisonment in the state prison for not less than one, nor more than five, years.

CHAPTER 6.

FALSIFYING EVIDENCE.

§ 96½. Offering false evidence.

A person who, upon any trial, hearing, inquiry, investigation, or other proceeding authorized by law, offers, or procures to be offered in evidence, as genuine, a book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered, is guilty of felony.

§ 97. Destroying evidence.

A person who, knowing that a book, paper, record, instrument, in writing, or other matter or thing, is or may be required in evidence upon any trial, hearing, inquiry, investigation, or other proceeding authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

§ 98. Preventing or dissuading witnesses from attending.

A person who willfully prevents or dissuades any person who has been duly summoned or subpœnaed as a witness from attending, pursuant to the summons or subpœna, is guilty of a misdemeanor.

§ 99. Inducing another to commit perjury.

A person who, without giving, offering, or promising a bribe, incites or attempts to procure another to commit perjury, or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor.

§ 100. Bribing witnesses.

A person who gives, or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony, or to withhold true testimony, is guilty of a felony.

§ 101. Bribery of witnesses.

A person who is, or is about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized to hear evidence or take testimony, who receives, or agrees or offers to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, is guilty of a felony.

CHAPTER 7.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§ 102. Injury to records and misappropriation by ministerial officers.

A sheriff, coroner, clerk of court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either,

1. Mutilates, destroys, conceals, erases, obliterates, or falsifies any record or paper appertaining to his office; or,

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use any money, evidence of debt or other property intrusted to him in virtue of his office,—

Is guilty of felony.

See § 85, *supra*, and §§ 369, 371, *post*.

§ 103. Permitting escapes, by ministerial officers.

A sheriff, coroner, clerk of court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either,

1. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at, or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

2. Commits any unlawful act tending to hinder justice,

—Is guilty of misdemeanor.

See § 81, *supra*.

§ 104. Neglecting or refusing to execute process.

An officer who, in violation of a duty imposed upon him by law to receive a person into his official custody, or into a prison under his charge, willfully neglects or refuses so to do, is guilty of a misdemeanor.

See § 127, *post*.

§ 105. Neglect of public officers.

A public officer, or person holding a public trust or employment upon whom any duty is enjoined by law, who willfully neglects to perform the duty, is guilty of a misdemeanor. This and the preceding section do not apply to cases of official acts or omissions the prevention or punishment of which is otherwise specially provided by statute.

See §§ 127, 370, 513, *post*.

Justice of the peace not liable for neglecting to pay over money received till a demand, nor for withholding information till it is asked. State v. Coon, 14 Minn. 456, (Gil. 340.)

Example of indictment charging two offenses. Id. and cases cited.

§ 106. Delaying to take person arrested before a magistrate.

A public officer, or other person having arrested any person upon a criminal charge, who willfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

See § 441, *post*.

§ 107. Making arrests, etc., without lawful authority.

A public officer, or person pretending to be a public officer, who knowingly, under the pretense or color of any process, arrests any person, or detains him

against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process therefor, is guilty of a misdemeanor.

See § 441, *post.*

§ 108. Misconduct in executing search-warrant.

An officer who, in executing a search-warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

See §§ 132, 441, *post.*

§ 109. Refusing to aid officer in making arrest.

A person who, after having been lawfully commanded to aid an officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor.

§ 110. Refusing to make an arrest.

A person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

§ 111. Resisting public officer.

A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor.

See § 45, *supra*, and note.

§ 112. Compounding crimes.

A person who takes money, or other property, gratuity, or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal a crime, or a violation of a statute, or to abstain from, discontinue, or delay, a prosecution therefor, or to withhold any evidence thereof, except in a case where a compromise is allowed by law, is guilty,

1. Of a felony, punishable by imprisonment in the state prison for not more than five years, where the agreement or understanding relates to a felony punishable by death, or by imprisonment in the state prison for life.

2. Of a felony, punishable by imprisonment in the state prison for not more than three years, where the agreement or understanding relates to another felony.

3. Of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or by fine of not more than two hundred and fifty dollars, or both, where the agreement or understanding relates to a misdemeanor, or to a violation of a statute, for which a pecuniary penalty or forfeiture is prescribed.

§ 113. Conviction of primary offender, etc.

Upon the trial of an indictment for compounding a crime, it is not necessary to prove that any person has been convicted of the crime or violation of statute, in relation to which an agreement or understanding herein prohibited was made.

See § 29, *supra.*

§ 114. Intimidating public officer.

A person who directly or indirectly addresses any threat or intimidation to a public officer, or to a juror, referee, arbitrator, appraiser, or assessor, or to any other person authorized by law to hear or determine any controversy, or

matter, with intent to induce him, contrary to his duty, to do or make, or to omit or delay, any act, decision, or determination, is guilty of a misdemeanor.

See §§ 44, 56, *supra*.

§ 115. Suppressing evidence.

A person who maliciously practices any deceit or fraud, or uses any threat, menace, or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper, or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

§ 116. "Common barratry" defined.

Common barratry is the practice of exciting groundless judicial proceedings.

§ 117. Id. a misdemeanor.

Common barratry is a misdemeanor.

§ 118. Proof of common barratry.

No person can be convicted of common barratry except upon proof that he has excited actions or legal proceedings in at least three instances, and with a corrupt or malicious intent to vex and annoy.

§ 119. Id.—Party in interest.

Upon a prosecution for common barratry, the fact that the defendant was himself a party in interest or upon the record to any action or legal proceeding complained of, is not a defense.

§ 120. Buying demands by a justice or constable.

A justice of the peace or a constable who, directly or indirectly, buys or is interested in buying, any thing in action, for the purpose of commencing a suit thereon before a justice, is guilty of a misdemeanor.

§ 121. Promising rewards for claims delivered for collection.

A justice of the peace or constable who, directly or indirectly, gives, or promises to give, any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, is guilty of a misdemeanor.

§ 122. Criminal contempts.

A person who commits a contempt of court of any one of the following kinds is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

2. Behavior of the like character, committed in the presence of a referee or referees, while actually engaged in a trial or hearing, pursuant to the order of the court or in the presence of a jury, while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law.

3. Breach of the peace, noise, or other disturbance, directly tending to interrupt the proceedings of a court, jury, or referee.

4. Willful disobedience to the lawful process or other mandate of a court.

5. Resistance willfully offered to its lawful process or other mandate.

6. Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory.

7. Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished, as provided in this section, for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court.

See §§ 216, 509, 510, *post.*
Legislative contempts. Papke v. Papke, 30 Minn. 260, 15 N. W. Rep. 117.
See Watson v. People, (Colo.) 16 Pac. Rep. 329; In re Griffin, 1 N. Y. Supp. 7.

§ 123. Grand juror acting after challenge has been allowed.

A grand juror who, with knowledge that a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

Challenge to panel only for causes allowed by statute. State v. Gut, 13 Minn. 341, (Gil. 315.) The right to challenge grand jury is only secured by statute to prisoners held to answer a charge for a public offense. State v. Davis, 22 Minn. 423. Challenges must be made at time of impaneling the jury. State v. Greenman, 23 Minn. 209.

§ 124. Misconduct by attorneys.

An attorney or counselor who,

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain;

—Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

See §§ 502, 503, *post.*

§ 125. Production of pretended heir.

A person who fraudulently produces an infant, falsely pretending it to have been born of a parent whose child is or would be entitled to inherit real property, or to receive a share of personal property, with intent to intercept the inheritance of such real property or the distribution of such personal property, or to defraud any person out of the same or any interest therein; or who, with intent fraudulently to obtain any property, falsely represents himself or another to be a person entitled to an interest or share in the estate of a deceased person, either as executor, administrator, husband, wife, heir, legatee, devisee, next of kin, or relative of such deceased person, is punishable by imprisonment in the state prison for not more than ten years.

§ 126. Substituting one child for another.

A person to whom a child has been confided for nursing, education, or any other purpose, who, with intent to deceive a parent, guardian, or relative of the child, substitutes or produces to such parent, guardian, or relative another child or person, in place of the child so confided, is punishable by imprisonment in the state prison for not more than seven years.

§ 127. Omission of duty by public officers.

Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding a public trust or employment, every willful omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

See §§ 104, 105, *supra;* § 513, *post;* State v. Coon, 14 Minn. 456, (Gil. 340.)

§ 128. Punishment for commission of prohibited acts.

Where the the performance of any act is prohibited by a statute, and no

penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

See § 370, *post.*

§ 129. Disclosing fact of indictment having been found.

A judge, grand juror, county attorney, clerk, or other officer, who except in the due discharge of his official duty, discloses, before an accused person is in custody, the fact of an indictment having been found or ordered against him, is guilty of a misdemeanor.

Indorsement of "True bill," signed by foreman, evidence that it was "found" by a grand jury. State v. McCartey, 17 Minn. 76, (Gil. 54;) State v. Beebe, 17 Minn. 241, (Gil. 218.) See State v. Shippey, 10 Minn. 223, (Gil. 178.)

§ 130. Grand juror discloses transactions of grand jury.

A grand juror who, except when lawfully required by a court or officer, willfully discloses, either

1. Any evidence adduced before the grand jury; or

2. Anything which he himself or any other member of the grand jury said, or in what manner he or any other grand juror voted, upon any matter before them,—

Is guilty of a misdemeanor.

Affidavit of juror not admissible to show misconduct of grand jury in finding an indictment. State v. Beebe, 17 Minn. 241, (Gil. 218,) and cases cited.

§ 131. Instituting suit in name of another.

A person who institutes or prosecutes an action or other proceeding in the name of another, without his consent and contrary to the statutes, is guilty of a misdemeanor punishable by imprisonment not exceeding six months.

§ 132. Maliciously procuring search-warrant.

A person who maliciously and without probable cause procures a search warrant to be issued and executed, is guilty of a misdemeanor.

See § 108, *supra.*

§ 133. Unauthorized communication with convict in state prison.

A person who, not being authorized by law, or by a written permission from an inspector, or by the consent of the warden, has any verbal communication with a convict in the state prison, or brings into or conveys out of any state prison any letter or writing to or from a convict, is guilty of a misdemeanor.

§ 134. Falsely certifying, etc., as to record deeds.

An officer authorized by law to record a conveyance of real property, or of any other instrument which by law may be recorded, who knowingly and falsely certifies that such a conveyance or instrument has been recorded, is guilty of a felony.

§ 135. Other false certificates.

A public officer who, being authorized by law to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not expressly provided by law, is guilty of a misdemeanor.

§ 136. False auditing and paying claims.

A public officer, or a person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city, or village, a part of whose duty is to audit, allow, or pay, or take part in auditing, allow-

ing, or paying claims or demands upon the state, or such county, town, city, or village, who knowingly audits, allows, or pays, or directly or indirectly consents to, or in any way connives at, the auditing, allowance, or payment of any claim or demand against the state, or such county, town, city, or village, which is false or fraudulent, or contains charges, items, or claims which are false or fraudulent, is guilty of felony, punishable by imprisonment in the state prison for not less than two nor more than five years, or a fine not exceeding five thousand dollars, or by both.

See § 504, *post*.
See Ochs v. People, (Ill.) 16 N. E. Rep. 662.

§ 137. Id.—[Conviction forfeits office.]

A person who, being or acting as a public officer or otherwise, by willfully auditing or paying, or consenting to, or conniving at the auditing or payment of a false or fraudulent claim or demand, or by any other means wrongfully obtains, receives, converts, disposes of, or pays out, or aids or abets another in obtaining, receiving, converting, disposing of, or paying out any money or property held, owned, or in the possession of the state, or of any city, county, or village, or other public corporation, or any board, department, agency, trustee, agent, or officer thereof, is guilty of a felony, punishable by imprisonment in the state prison for not less than three nor more than five years, or by a fine not exceeding five times the amount or value of the money or the property converted, paid out, lost, or disposed of by means of the act done or abetted by such person, or by both such imprisonment and fine. The amount of any such fine when paid or collected shall be paid to the treasury of the corporation or body injured.

See § 504, *post*.

CHAPTER 8.

CONSPIRACY.

§ 138. "Conspiracy" defined.

If two or more persons conspire, either

1. To commit a crime; or

2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or

3. Falsely to institute or maintain an action or special proceeding; or

4. To cheat and defraud another out of property, by any means which are in themselves criminal, or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or

5. To prevent another from exercising a lawful trade or calling, or doing any other lawful act by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use or employment thereof; or

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,—

Each of them is guilty of a misdemeanor.

See §§ 139, 490, *post*.
Combination must be corrupt. State v. State, (N. J.) 1 Atl. Rep. 509.
Unlawful confederation is the gist of the crime of conspiracy. State v. Pulle, 12 Minn. 164, (Gil. 99.)
Conspiracy by county commissioners fraudulently to obtain money from the county —admissibility and sufficiency of evidence—limitation. Ochs v. People, (Ill.) 16 N. E. Rep. 662.
Boycott, see Old Dominion Steam-Ship Co. v. McKenna, 30 Fed. Rep. 48; Crump v. Commonwealth, (Va.) 6 S. E. Rep. 620.

Combination to dictate employment. State v. Glidden, (Conn.) 8 Atl. Rep. 890; State v. Stewart, (Vt.) 9 Atl. Rep. 559.

Indictment. State v. Ormiston, (Iowa,) 23 N. W. Rep. 370. Indictment charging a conspiracy to defraud without setting out the means to be used. U. S. v. Gordon, 22 Fed. Rep. 250. An indictment charging a conspiracy, and afterwards independently charging the commission of the crime, is demurrable for duplicity. State v. Kennedy, (Iowa,) 18 N. W. Rep. 885.

See U. S. v. Wootten, 29 Fed. Rep. 702; U. S. v. Frisbie, 28 Fed. Rep. 808; U. S. v. Thompson, 29 Fed. Rep. 86; In re Wolf, 27 Fed. Rep. 606.

§ 139. No other conspiracies punishable.

No conspiracy is punishable criminally unless it is one of those enumerated in the last section, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade, or handicraft, for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

The common law as to crime is in force in this state, except where abrogated or modified by statute. State v. Pulle, 12 Minn. 164, (Gil. 99;) Benson v. State, 5 Minn. 19, (Gil. 6;) State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758.

§ 140. Overt act, when necessary.

No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act beside such agreement be done to effect the object thereof by one or more of the parties to such agreement.

See State v. Pulle, 12 Minn. 164, (Gil. 99.)

TITLE 9.

OF CRIMES AGAINST THE PERSON.

CHAPTER 1.

SUICIDE.

§ 141. "Suicide" defined.

Suicide is the intentional taking of one's own life.

§ 142. No forfeiture imposed for suicide.

Although suicide is deemed a grave public wrong, yet, from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

See § 528, *post*.

§ 143. Attempting suicide.

A person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which, if committed upon or towards another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

§ 144. Aiding suicide.

A person who willfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life, is guilty of manslaughter in the first degree.

§ 145. Abetting an attempt at suicide.

A person who willfully, in any manner, encourages, assists, or abets another person in attempting to take the latter's life, is guilty of a felony.

§ 146. Incapacity of person aided, no defense.

It is not a defense to a prosecution under either of the last two sections that the person who took, or attempted to take, his own life, was not a person deemed capable of committing crime.

§ 147. Punishment of attempting suicide.

Every person guilty of attempting suicide is guilty of felony, punishable by imprisonment in the state prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER 2.

HOMICIDE.

§ 148. "Homicide" defined.

Homicide is the killing of a human being by the act, procurement, or omission of another.

When the mere act of killing is proven, and nothing more, the presumption is that it was intentional and malicious. State v. Brown, 12 Minn. 538, (Gil. 448;) State v. Shippey, 10 Minn. 223, (Gil. 178;) State v. Welch, 21 Minn. 22; State v. Lautenschlager, 22 Minn. 514.

§ 149. Different kinds of homicide.

Homicide is either

1. Murder;
2. Manslaughter;
3. Excusable homicide; or,
4. Justifiable homicide.

§ 150. What proof of death is required.

No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant as alleged are each established as independent facts; the former by direct proof and the latter beyond a reasonable doubt.

The *corpus delicti* must be proven beyond a reasonable doubt by evidence other than confession. State v. Laliyer, 4 Minn. 368, (Gil. 277.) Absolute certainty is not required; moral certainty sufficient. What is proof beyond reasonable doubt. State v. Dineen, 10 Minn. 407, (Gil. 325;) State v. Hogard, 12 Minn. 293, (Gil. 191;) State v. Staley, 14 Minn. 105, (Gil. 75;) State v. Shettleworth, 18 Minn. 208, (Gil. 191.) No conviction in case of reasonable doubt. State v. Gut, 13 Minn. 341, (Gil. 315.)

Proof of identity of deceased. People v. Palmer, (N. Y.) 16 N. E. Rep. 529.

Indictment charging a killing on specified day imports that the person died on that day. State v. Ryan, 13 Minn. 370, (Gil. 343.)

§ 151. Common-law petit treason is homicide.

The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished; and those homicides are punishable, when not justifiable or excusable, as prescribed by this code.

The plea of benefit of clergy, and the crime of petit treason, do not exist in this state. State v. Bilansky, 3 Minn. 246, (Gil. 169.)

§ 152. "Murder in the first degree" defined.

The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when perpetrated with a premeditated design to effect the death of the person killed, or of another.

Murder defined. U. S. v. King, 34 Fed. Rep. 302. And see Lang v. State, (Ala.) 4 South. Rep. 193; State v. Langford, (Mo.) 8 S. W. Rep. 237.

Death caused in attempting to produce an abortion. State v. Thurman, (Iowa,) 24 N. W. Rep. 511.

Killing while resisting a mere civil trespass does not reduce degree of offense from murder. State v. Hoyt, 13 Minn. 132, (Gil. 125;) State v. Shippey, 10 Minn. 223, (Gil. 178.) That deceased killed defendant's friend, not such a provocation as will reduce the crime to manslaughter. State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Hoyt, *supra*, and citations. Mere words are not such a provocation as will reduce the crime to manslaughter. Boyle v. State, (Ind.) 5 N. E. Rep. 203. See, further, as to provocation, Henning v. State, (Ind.) 6 N. E. Rep. 803; Dacey v. People, (Ill.) 6 N. E. Rep. 165.

Killing presumed to be intentional and malicious from mere fact of killing. State v. Brown, 12 Minn. 538, (Gil. 448,) and cases cited § 148, *supra*. An instruction that a premeditated design is to be presumed from the naked fact of killing, held, in view of the facts appearing in the bill of exceptions, as stated in the opinion, not to be error for which a new trial should be granted. State v. Lautenschlager, 22 Minn. 514.

Intent inferred from nature of attack, weapon, and wound. McClain v. Com., (Pa.) 1 Atl. Rep. 45.

Inference of malice from the use of a deadly weapon. State v. Townsend, (Iowa,) 24 N. W. Rep. 535; State v. Hockett, (Iowa,) 30 N. W. Rep. 742. And see, as to evidence of malice, Williams v. State, (Md.) 1 Atl. Rep. 887; McMeen v. Com., (Pa.) 9 Atl. Rep. 878.

Indictment for murder may be found in the state where the blow was struck, though death occurred in another state. State v. Gessert, 21 Minn. 369.

Indictment in form given by statute sufficient. Bilansky v. State, 3 Minn. 427, (Gil. 313;) State v. Dumphey, 4 Minn. 438, (Gil. 340;) State v. Eno, 8 Minn. 220, (Gil. 190;) State v. Garvey, 11 Minn. 154, (Gil. 95;) State v. Ryan, 13 Minn. 370, (Gil. 343;) State v. Coon, 18 Minn. 518, (Gil. 464;) State v. Thomas, 19 Minn. 484, (Gil. 418;) State v. Comfort, 22 Minn. 271; State v. Shenton, Id. 311; State v. Lautenschlager, Id. 514; State v. Heck, 23 Minn. 549.

Sufficiency of indictment. State v. Thurman, (Iowa,) 24 N. W. Rep. 511; State v. Townsend, Id. 535; State v. Sloan, (Wis.) 27 N. W. Rep. 616; State v. Perigo, (Iowa,)

28 N. W. Rep. 452; State v. McDaniel, (Mo.) 7 S. W. Rep. 634; Jackson v. State, (Tex.) 7 S. W. Rep. 872. Sufficiency of indictment for murder with a club. Dennis v. State, (Ind.) 2 N. E. Rep. 349; Welch v. State, (Ind.) 3 N. E. Rep. 850. Sufficiency of indictment for murder while the accused was engaged in the commission of grand larceny. People v. Willett, (N. Y.) 6 N. E. Rep. 301. Allegations of design to produce death. Shaffer v. State, (Neb.) 35 N. W. Rep. 384. Omission of the word "murder" from indictment. Chase v. State, (Wis.) 7 N. W. Rep. 376; Henning v. State, (Ind.) 6 N. E. Rep. 803. Indictment charging an assault as part of the offense is not bad for duplicity. Warner v. State, (Ind.) 16 N. E. Rep. 189.

Sufficiency of evidence of premeditation. People v. Kiernan, (N. Y.) 4 N. E. Rep. 130; Boyle v. State, (Ind.) 5 N. E. Rep. 203; People v. Otto, (N. Y.) 5 N. E. Rep. 788; People v. Beckwith, (N. Y.) 8 N. E. Rep. 602.

Sufficiency of evidence. People v. Wilson, (N. Y.) 16 N. E. Rep. 540; State v. Byers, (N. C.) 6 S. E. Rep. 420; People v. Deacons, (N. Y.) 16 N. E. Rep. 676. And see People v. Cox, (Cal.) 18 Pac. Rep. 332.

Evidence corroborating an accomplice need not make out a *prima facie* case, standing alone. State v. Lawlor, 28 Minn. 216, 9 N. W. Rep. 698.

Verdict need not state the degree unless a lesser degree is found. Bilansky v. State, 3 Minn. 427, (Gil. 313;) State v. Lessing, 16 Minn. 75, (Gil. 64,) and cases cited.

An information for murder not alleging it to have been committed by an assault will not sustain a conviction for assault and battery. People v. Adams, (Mich.) 17 N. W. Rep. 226.

It is not imperative that the supreme court, on affirmance, should pass sentence. State v. Bilansky, 3 Minn. 246, (Gil. 169.)

Practice—particular facts, etc. Maher v. State, 3 Minn. 444, (Gil. 329;) State v. Dumphey, 4 Minn. 438, (Gil 340;) State v. Dineen, 10 Minn. 407, (Gil. 325;) State v. Brown, 12 Minn. 538, (Gil. 448;) State v. Shippey, 10 Minn. 223, (Gil. 178;) State v. Ryan, 13 Minn. 370, (Gil. 343;) State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Staley, 14 Minn. 105, (Gil. 75;) State v. Stokely, 16 Minn. 282, (Gil. 249;) State v. Lautenschlager, 22 Minn. 514; State v. Weston, 23 Minn. 366; State v. Noonan, 24 Minn. 87, 174; State v. Lawlor, 28 Minn. 216, 9 N. W. Rep. 698; McMeen v. Com. (Pa.) 9 Atl. Rep. 878; State v. McDaniel, (Mo.) 7 S. W. Rep. 634; Bonnard v. State, (Tex.) Id. 862; Humphries v. State, Id. 663; Alexander v. State, Id. 867; Territory v. Scott, (Mont.) 17 Pac. Rep. 627; Territory v. Hart, Id. 718; Minniard v. Com., (Ky.) 8 S. W. Rep. 269.

§ 153. Id.—Second degree.

Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation.

Presumption of design. State v. Brown, 12 Minn. 538, (Gil. 448.)

Upon indictment for highest degree defendant may be convicted of any lesser degree. State v. Lessing, 16 Minn. 75, (Gil. 64,) and citations.

Sufficiency of indictment. Giskie v. State, (Wis.) 38 N. W. Rep. 334.

To warrant a conviction for murder in the second degree, the state need not prove affirmatively that the killing was without any design to effect death, nor that no circumstances of justification or extenuation existed. State v. Stokely, 16 Minn. 282, (Gil. 250.)

Conviction of lesser degree is an acquittal of the other degrees. State v. Lessing, 16 Minn. 75, (Gil. 64.)

An affidavit of a juror cannot be received to impeach the verdict. State v. Stokely, 16 Minn. 282, (Gil. 249,) and cases cited.

§ 154. Id.—Duel fought out of this state.

A person who, by previous appointment made within the state, fights a duel without the state, or by previous engagement made within or without the state, fights a duel within the state, and in so doing inflicts a wound upon his antagonist, whereof the person injured dies; or who engages or participates in such a duel as a second or assistant to either party, is guilty of murder in the second degree.

See §§ 208, 209, *post*.

See People v. Bush, (Cal.) 3 Pac. Rep. 590.

§ 155. Id.—Third degree.

Such killing of a human being, when perpetrated by an act eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual, or without a design to effect death, by a person engaged in the commission

of, or in an attempt to commit, a felony either upon or affecting the person killed or otherwise, is murder in the third degree.

Engaged in felony, intent not necessary to constitute murder. State v. Brown, 12 Minn. 538, (Gil. 448.)

State need not prove affirmatively that the killing was without design or that no justification or extenuation existed. State v. Stokely, 16 Minn. 282, (Gil. 249)

The felony must have a close relation to the killing, and must not be separate, distinct, and independent. Pleimling v. State, (Wis.) 1 N. W. Rep. 278.

Evidence of size and general appearance admissible as to identity of slayer. State v. Stokely, *supra*.

Killing in commission of rape, evidence of rape. Titus v. State, (N. J.) 7 Atl. Rep. 621.

See as to willful violation of duty by railroad employes, *post*, § 344, note.

See People v. Keefer, (Cal.) 3 Pac. Rep. 818; Belk v. People, (Ill.) 17 N. E. Rep. 744.

§ 156. Punishment of murder in first degree.

Murder in the first degree is punishable by death: *provided*, that if in any such case the court shall certify of record its opinion that by reason of exceptional circumstances the case is not one in which the penalty of death should be imposed, the punishment shall be imprisonment for life in the state prison.

It is not imperative that the supreme court pronounce sentence upon appeal. It may remand the cause for sentence. State v. Bilansky, 3 Minn. 246, (Gil. 169.)

In a capital case, the time of execution is not an essential part of the judgment. State v. Gut, 13 Minn. 341, (Gil. 315.)

Under Laws 1868, c. 88, it was competent for the jury to fix death penalty. State v. Lautenschlager, 22 Minn. 514.

§ 157. Murder in second degree, how punished.

Murder in the second degree is punishable by imprisonment in the state prison for the offender's natural life.

§ 158. Murder in the third degree, how punished.

Murder in the third degree is punishable by imprisonment in the state prison for not less than seven years nor more than thirty years.

§ 159. "Manslaughter" defined.

In a case other than one of those specified in sections one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, and one hundred and fifty-five, homicide, not being justifiable or excusable, is manslaughter.

Indictment of husband and wife—sufficiency of evidence to convict wife. State v. Kelly, (Iowa,) 38 N. W. Rep. 503.

Burden of proof to reduce offense to manslaughter. State v. Thomas, (N. C.) 4 S. E. Rep. 518.

§ 160. Id.—In the first degree.

Such homicide is manslaughter in the first degree, when committed without a design to effect death, either

1. By a person engaged in committing, or attempting to commit, a misdemeanor, affecting the person or property, either of the person killed, or of another; or

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

See § 144, *supra*.

The word "murder" instead of "manslaughter" in c. 62, Gen. Laws 1881, did not invalidate the saving clause of that law. State v. Small, 29 Minn. 216, 12 N. W. Rep. 703.

Mere trespass upon land not sufficient provocation to reduce killing from murder to manslaughter. State v. Shippey, 10 Minn. 223, (Gil. 178;) State v. Hoyt, 13 Minn. 132; (Gil. 125;) State v. Stokely, 16 Minn. 282, (Gil. 249.)

The weapon employed must bear a reasonable proportion to the provocation to reduce the offense to manslaughter. State v. Shippey, 10 Minn. 223, (Gil. 178;) State v. Hoyt, 13 Minn. 132, (Gil. 125.)

Killing of defendant's friend not sufficient provocation, in law, to reduce crime from murder. State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Hoyt, *supra.*

Where, in a homicide, the intent to kill is formed and executed "in the heat of passion, upon sudden provocation, or in sudden combat," the killing is intentional, but without premeditation, within the meaning of section 12, *c.* 94, Gen. St.; but where it is formed before the "heat of passion, upon sudden provocation or in sudden combat," or though formed in the heat of passion is executed after sufficient cooling time, or after the heat of passion has subsided, the killing is with premeditated design. State v. Hoyt, 13 Minn. 132, (Gil. 125.)

Provocation. State v. Hockett, (Iowa,) 30 N. W. Rep. 742.

Death caused in an attempt to commit an assault and to frighten deceased. People v. Steubenvoll, (Mich.) 28 N. W. Rep. 883.

Evidence of design to effect death. State v. Watson, (Mo.) 8 S. W. Rep. 383.

Evidence of character. State v. Dumphey, 4 Minn. 438, (Gil. 340.)

See State v. Johnson, (N. Y.) 1 N. E. Rep. 377.

§ 161. Killing unborn quick child.

The willful killing of an unborn quick child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

§ 162. Id.—By administering drugs, etc.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employes, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

See §§ 251, 255, 278, *post.*

The indictment must negative the exceptions of the statute. State v. McIntyre, 19 Minn. 93, (Gil. 65.)

The woman is not regarded as an accomplice. State v. Owens, 22 Minn. 238.

See State v. Fitzporter, (Mo.) 6 S. W. Rep. 223.

§ 163. Manslaughter in first degree—How punished.

Manslaughter in the first degree is punishable by imprisonment in the state prison for not less than five, nor more than twenty, years.

§ 164. Manslaughter in second degree.

Such homicide is manslaughter in the second degree, when committed without a design to effect death; either

1. By a person committing, or attempting to commit, a trespass, or other invasion of a private right, either of the person killed, or of another, not amounting to a crime; or

2. In the heat of passion, but not by a deadly weapon or by the use of means either cruel or unusual; or

3. By any act, procurement, or culpable negligence of any person, which, according to the provisions of this chapter, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

Upon the trial of an indictment for murder, the evidence tending to show that defendant, in resisting what was claimed to be a civil trespass on the land or cattle of defendant, or both, struck deceased in the head and neck with an ax, thereby causing his death, there being no pretense that the weapon was used without a design to cause death, held, that such facts did not show a case within section 13, *c.* 94, Gen. St., providing that unnecessary killing, in resisting an unlawful act, is manslaughter in the second degree. State v. Hoyt, 13 Minn. 132, (Gil. 125.)

When one is held to answer in district court, prosecution is pending. State v. Grace, 18 Minn. 398, (Gil. 359;) State v. Hoyt, 13 Minn. 132, (Gil. 125.)

See § 166, *post.*

§ 165. Woman taking drugs, etc.

A woman quick with child, who takes or uses, or submits to the use of, any drug, medicine, or substance, or any instrument or other means, with in-

tent to produce her own miscarriage, unless the same is necessary to preserve her own life, or that of the child whereof she is pregnant, if the death of such child is thereby produced, is guilty of manslaughter in the second degree.

See § 252, *post.*

§ 166. Negligent use of machinery.

A person who, by any act of negligence, or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent, or reckless act, not specified by or coming within the foregoing provisions of this chapter, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

See § 164, sub. 3, *supra;* § 167, *post.*

§ 167. Owner of animals.

If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large or kept, kills a human being, not in fault, the owner is guilty of manslaughter in the second degree.

See § 166, *supra.*

§ 168. Killing by overloading passenger vessels.

A person navigating a vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading, on board the vessel, that by means thereof the vessel sinks or is overset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

See § 311, *post.*

§ 169. Liability of persons in charge of steam-boats.

A person having charge of a steam-boat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

See §§ 312–314, *post.*

§ 170. Liability of persons in charge of steam-engines.

An engineer or other person having charge of a steam-boiler, steam-engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, or otherwise, who willfully or from ignorance or gross neglect creates or allows to be created such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

See §§ 312–314, 344, *post.*

§ 171. Liability of physicians.

A physician or surgeon, or person practicing as such, who, being in a state of intoxication, without a design to effect death, administers any poison, drug, or medicine, or does any other act as a physician or surgeon, to another person, which produces the death of the latter, is guilty of manslaughter in the second degree.

See § 309, *post.*

§ 172. Liability of persons making or keeping gunpowder contrary to law.

A person who makes or keeps gunpowder, or any other explosive substance, within a city or village, in any quantity or manner prohibited by law or by ordinance of the city or village, if any explosion thereof occurs whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

See §§ 323, 477, 484, *post.*

§ 173. Punishment of manslaughter in second degree.

Manslaughter in the second degree is punishable by imprisonment in the state prison for not less than one year, nor more than fifteen years, or by a fine of not more than one thousand dollars, or by both.

§ 174. Homicide—When excusable.

Homicide is excusable when committed by accident or misfortune, in doing any lawful act, by lawful means, with ordinary caution, and without any unlawful intent.

§ 175. Justifiable homicide.

Homicide is justifiable when committed by a public officer, or person acting by his command, and in his aid and assistance, either

1. In obedience to the judgment of a competent court; or

2. Necessarily in overcoming actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or

3. Necessarily in retaking a prisoner who has committed, or has been arrested for, or convicted of, a felony, and who has escaped or has been rescued; or in arresting a person who has committed a felony, and is fleeing from justice; or in attempting by lawful ways and means to apprehend a person for a felony actually committed; or in lawfully suppressing a riot; or in lawfully preserving the peace.

Proclamation of state officer would not justify killing of alien enemy when unarmed and in prison. State v. Gut, 13 Minn. 341, (Gil. 315.)

§ 176. Justifiable homicide.

Homicide is also justifiable when committed, either

1. In the lawful defense of the slayer, or of his or her husband, wife, parent, child, brother, sister, master, or servant, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer, or to any such person, and there is imminent danger of such design being accomplished; or

2. In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is.

A parent has no right to protect his child in the commission of a crime. State v. Herdina, 25 Minn. 161.

The slayer must have reasonable grounds for believing himself in danger. State v. Shippey, 10 Minn. 223, (Gil. 178;) State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Dineen, 10 Minn. 407, (Gil. 325.)

He must use no more force than is necessary to prevent violence. Gallagher v. State, 3 Minn. 270, (Gil. 185.)

In resisting an attempted arrest by a peace-officer, even though the arrest be unlawful, the killing of the officer by shooting him is not justifiable, when there is neither danger of great bodily harm or other felony being committed by the officer, nor a reasonable apprehension of such danger in the mind of the person whose arrest is attempted. State v. Cantieny, 34 Minn. 1, 24 N. W. Rep. 458.

Apprehension of personal violence. Panton v. People, (Ill.) 2 N. E. Rep. 411; Bryant v. State, (Ind.) 7 N. E. Rep. 217; State v. Sterrett, (Iowa,) 25 N. W. Rep. 936; State v. Donnelly, (Iowa,) 27 N. W. Rep. 369; State v. Archer, (Iowa,) 29 N. W. Rep. 333; Duncan v. State, (Ark.) 6 S. W. Rep. 164; Allen v. State, (Tex.) 6 S. W. Rep. 187.

Reasonable fear. Stanley v. Com., (Ky.) 6 S. W. Rep. 155.
Killing by a trespasser while resisting an assault. State v. Perigo, (Iowa,) 28 N. W. Rep. 452; State v. Archer, (Iowa,) 29 N. W. Rep. 333.
Resistance to an assault induced by statements made by defendant. State v. Perigo, (Iowa,) 28 N. W. Rep. 452.
Killing an unarmed assailant—Possibility of escape. State v. Cross, (Iowa,) 26 N. W. Rep. 62.
And see, also, as to self-defense, People v. Kohler, (Mich.) 13 N. W. Rep. 608.
Defense of brother when both brothers are in fault. Snurr v. State, (Ind.) 4 N. E. Rep. 445.
See, generally, People v. Samuels, (Cal.) 4 Pac. Rep. 1061; People v. Biggins, Id. 570; People v. Bush, (Cal.) 3 Pac. Rep. 590; People v. De Witt, (Cal.) 10 Pac. Rep. 212; People v. Scott, Id. 188; People v. Robertson, (Cal.) 8 Pac. Rep. 600; People v. Lee, Id. 685; Alexander v. State, (Tex.) 7 S. W. Rep. 867; Humphries v. State, Id. 663; State v. McDaniel, (Mo.) Id. 634; Bean v. State, (Tex.) 8 S. W. Rep. 278; U. S. v. King, 34 Fed. Rep. 302; State v. Dillon, (Iowa,) 38 N. W. Rep. 525; Bledsoe v. Com., (Ky.) 7 S. W. Rep. 884; Bonnard v. State, (Tex.) Id. 862; Bush v. People, (Colo.) 16 Pac. Rep. 290; Allen v. Com., (Ky.) 6 S. W. Rep. 645.

CHAPTER 3.

MAIMING.

§ 177. "Maiming" defined—How punished.

A person who willfully, with intent to commit a felony, or to injure, disfigure, or disable, inflicts upon the person of another an injury, which

1. Seriously disfigures his person by any mutilation thereof; or
2. Destroys or disables any member or organ of his body; or
3. Seriously diminishes his physical vigor by the injury of any member or organ,—

Is guilty of maiming, and is punishable by imprisonment in the state prison for not less than one, nor more than fifteen, years.

The infliction of the injury is presumptive evidence of the intent.

The injury must be willfully inflicted, "with the intent to injure, disfigure, or disable;" but the intent is to be presumed from the act of maiming, unless the contrary appears. State v. Hair, (Minn.) 34 N. W. Rep. 893. "Intent" defined. Id. And see, as to intent, Terrell v. State, (Tenn.) 8 S. W. Rep. 212; U. S. v. Gunther, (Dak.) 38 N. W. Rep. 79.
Change of venue in behalf of state allowable. State v. Miller, 15 Minn. 344, (Gil. 277,) and cases cited.
Indictment. U. S. v. Gunther, *supra*.
Sufficiency of evidence. Terrell v. State, *supra*.
See State v. Jones, (Iowa,) 30 N. W. Rep. 750.

§ 178. Maiming one's self to escape the performance of a duty.

A person who, with design to disable himself from performing a legal duty, existing or anticipated, inflicts upon himself an injury whereby he is so disabled, is guilty of a felony.

§ 179. Maiming one's self to obtain alms.

A person who inflicts upon himself an injury, such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, in order to excite sympathy, or to obtain alms, or any charitable relief, is guilty of a felony.

§ 180. What injury may constitute maiming.

To constitute maiming, it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

§ 181. Subsequent recovery of injured person, when a defense.

Where it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound, that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming can be had; but the defendant may be convicted of assault in any degree.

CHAPTER 4.

KIDNAPING.

§ 182. "Kidnaping" defined.

A person who willfully

1. Seizes, confines, inveigles, or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of the state, or to be sold as a slave, or in any way held to service, or kept or detained against his will; or

2. Leads, takes, entices away, or detains a child under the age of twelve years, with intent to keep or conceal it from its parent, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child; or

3. Abducts, entices, or by force or fraud unlawfully takes or carries away, another at or from a place without the state, or procures, advises, aids, or abets such an abduction, enticing, taking, or carrying away, and afterwards sends, brings, has, or keeps such person, or causes him to be kept or secreted within this state,—

Is guilty of kidnaping, and is punishable by imprisonment in the state prison for not more than ten years.

Indictment. Smith v. State, (Wis.) 23 N. W. Rep. 879.
SUBD. 1. See People v. De Leon, (N. Y.) 16 N. E. Rep. 46.
SUBD. 2. See Mayo v. State, (Ohio,) 3 N. E. Rep. 712.

§ 183. Indictment, where triable.

An indictment for kidnaping may be found and tried either in the county in which the offense was committed, or in the county through or in which the person kidnaped or confined was taken or kept while under confinement or restraint.

§ 184. Effect of consent of injured person.

Upon a trial for a violation of this chapter, the consent thereto of the person kidnaped or confined shall not be a defense, unless it appear satisfactorily to the jury that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

§ 185. Selling services.

A person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnaped in or from this state, is punishable by imprisonment in the state prison not exceeding ten years.

CHAPTER 5.

ASSAULTS.

§ 186. "Assault in first degree" defined.

A person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another,

1. Assaults another with a loaded fire-arm, or any other deadly weapon, or by any other means or force likely to produce death; or

2. Administers to, or causes to be administered to or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other,—

Is guilty of assault in the first degree.

Intent, that would make murder in first degree if death had ensued, an essential ingredient of the offense. Bonfanti v. State, 2 Minn. 123, (Gil. 99;) State v. Dineen, 10 Minn. 407, (Gil. 325.)

A "large, heavy stone" is a "dangerous weapon," State v. Dineen, *supra;* sledge hammer, Philpot v. Com., (Ky.) 6 S. W Rep. 455.

Assault with a revolver upon a trespasser. State v. Montgomery, (Iowa,) 22 N. W. Rep. 639.

Administering drug supposed to be poisonous. State v. Glover, (S. C.) 4 S. E. Rep. 564.

Sufficiency of indictment. Cross v. State, (Wis.) 12 N. W. Rep. 425; State v. Havens, (Mo.) 8 S. W. Rep. 219; State v. Keasling, (Iowa,) 38 N. W. Rep. 397; State v. Schloss, (Mo.) 6 S. W. Rep. 244.

Indictment and evidence (under former statute) must be certain as to person intended to be killed. Bonfanti v. State, *supra;* State v. Boylson, 3 Minn. 438, (Gil. 325.)

The indictment being for an assault with intent to murder one C., held, proper to prove, without first asking C. about it when sworn, that he had threatened to kill defendant. State v. Dee, 14 Minn. 35, (Gil. 27.)

Sufficiency of evidence. People v. Comstock, (Mich.) 13 N. W. Rep. 617; State v. Brown, (Iowa,) 25 N. W. Rep. 248; State v. Mower, (Iowa,) 25 N. W. Rep. 929.

In a prosecution for maliciously shooting, with intent to kill, an instruction that the defendant should be found guilty if he might properly have been convicted of manslaughter, had death resulted, is error. Cline v. State, (Ohio,) 1 N. E. Rep. 22.

Upon an indictment for an assault with intent, etc., may be convicted of an assault only. Boyd v. State, 4 Minn. 321, (Gil. 237;) State v. Gummell, 22 Minn. 51.

See Conn v. People, (Ill.) 6 N. E. Rep. 463; State v. Hickam, (Mo.) 8 S. W. Rep. 252; Fogarty v. State, (Ga.) 5 S. E. Rep. 782; Williams v. State, (Tex.) 7 S. W. Rep. 666; Flournoy v. State, Id. 865.

§ 187. Id. in second degree.

A person who, under circumstances not amounting to the crime specified in the last section,

1. With intent to injure, unlawfully administers to, or causes to be administered to, or taken by, another, poison, or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to, or causes to be administered to or taken by, another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anæsthetic agent; or

3. Willfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or

4. Willfully and wrongfully assaults another with a a weapon, or other instrument or thing likely to produce grievous bodily harm; or

5. Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself or of any other person,—

Is guilty of assault in the second degree.

See §§ 235, 310, *post.*

Assault with intent to rape. O'Connell v. State, 6 Minn. 279, (Gil. 190.) And see Stephens v. State, (Ind.) 8 N. E. Rep. 94; State v. Ryan, (Or.) 16 Pac. Rep. 417.

Time of arming immaterial. State v. Dineen, 10 Minn. 407, (Gil. 325.)

To convict any one coming to the aid of the person holding the weapon, it is not necessary that he should have aided in arming such person. State v. Herdina, 25 Minn. 161.

To constitute an assault with intent to rob, the assault must not be subsequent to the attempt to take the property. Hanson v. State, (Ohio,) 1 N. E. Rep. 136.

One has no right to commit an assault with intent to do great bodily harm to another for a wrong which he has not reasonable ground to believe to be dangerous to himself. State v. Tripp, 34 Minn. 25, 24 N. W. Rep. 290.

An indictment under this section, for an assault with a dangerous weapon with intent to do great bodily harm, which directly charges the defendant with such offense in the substantial words of the statute, is sufficient. State v. Shenton, 22 Minn. 311.

An indictment which designates the offense only as "an assault with intent to do great bodily harm," but which, in specifying the acts done, alleges that the assault was with a dangerous weapon, with intent to do great bodily harm, is sufficient under the former statute as an indictment for "an assault with a dangerous weapon with intent to do great bodily harm." State v. Garvey, 11 Minn. 154, (Gil. 95.)

An indictment for assault with intent to commit rape need allege nothing as to defendant's age. State v. Ward, 35 Minn. 182, 28 N. W. Rep. 192.

Physician's testimony as to what might result from violence of a given character, it not being alleged that such was the result, is inadmissible. State v. Redfield, (Iowa,) 35 N. W. Rep. 673.

A charge, giving the common-law definition of murder, and instructing "that, to return a verdict of guilty, they must find that, had the assault resulted in death, the killing would have been murder within that definition," held, erroneous, as calculated to mislead the jury. Bonfanti v. State, 2 Minn. 123, (Gil. 99.)

A person charged with an assault with intent to do great bodily harm, being armed with a dangerous weapon, is charged with an assault with intent to commit a felony, within the provisions of Gen. St. c. 91, § 12. State v. Gummell, 22 Minn. 51.

Conviction of assault with intent to do great bodily harm, under an information charging for assault with intent to kill. State v. Yanta, (Wis.) 38 N. W. Rep. 333.

§ 188. Id. in third degree.

A person who commits an assault, or an assault and battery, not such as is specified in the foregoing sections of this chapter, is guilty of assault in the third degree.

Attempt to do bodily harm. Com. v. Hagenlock, (Mass.) 3 N. E. Rep. 36.

Arrest by police officer in good faith. Com. v. Cheney, (Mass.) 6 N. E. Rep. 724.

Sufficiency of information. State v. Boynton, (Iowa,) 38 N. W. Rep. 505.

Testimony of prosecutrix that defendant did not injure her, nor intend to injure her, and she made the complaint because she was angry with him. McConnell v. State, (Tex.) 8 S. W. Rep. 275.

Excessive punishment. State v. Boynton, (Iowa,) 38 N. W. Rep. 505.

The district court does not lose jurisdiction by verdict of simple assault upon indictment for higher degree. Boyd v. State, 4 Minn. 321, (Gil. 237;) State v. Gummell, 22 Minn. 51.

Former conviction fraudulently obtained no bar to second trial. State v. Simpson, 28 Minn. 66, 9 N. W. Rep. 78.

"In said county" (county being named in the caption) sufficiently states the place where offense committed. State v. Bell, 26 Minn. 388, 5 N. W. Rep. 970.

See Bishop v. Ranney, (Vt.) 7 Atl. Rep. 820.

§ 189. Assault in first degree—How punished.

Assault in the first degree is punishable by imprisonment in the state prison for not less than five nor more than ten years.

§ 190. Id. in second degree.

Assault in the second degree is punishable by imprisonment in the state prison for not less than two nor more than five years, or by a fine of not more than one thousand dollars, or both.

§ 191. Id. in third degree.

Assault in the third degree is punishable by imprisonment in a county jail for not more than three months, or by a fine of not more than one hundred dollars.

§ 192. Use of force or violence, declared not unlawful, etc.

To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty; or by any other person assisting him or acting by his direction.

2. When necessarily committed by any person in arresting one who has committed a felony, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured or by another person for whom it is lawful to come to his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent, or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice, or scholar, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped, and the force or violence used is not more than sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or in enforcing such restraint as is necessary for the protection of his person, or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

See §§ 24, 174, 176, *supra*; § 316, *post*.
See Carter v. Sutherland, (Mich.) 18 N. W. Rep. 375; Fostbinder v. Svitak, (Neb.) 20 N. W. Rep. 866; People v. Dann, (Mich.) 19 N. W. Rep. 159.

CHAPTER 6.

ROBBERY.

§ 193. "Robbery" defined.

Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person

or property of a relative or member of his family, or of any one in his company at the time of the robbery.

Indictment sufficient if it charge the offense by name in the accusing part, and then brings the offense within one of the degrees in the descriptive part. State v. Eno, 8 Minn. 220, (Gil. 190,) and cases cited. And see, as to sufficiency of the indictment, State v. Brewer, (Iowa,) 6 N. W. Rep. 62; State v. Kegan, (Iowa,) 17 N. W. Rep. 179; State v. Laighton, (Iowa,) 9 N. W. Rep. 896; People v. Calvin, (Mich.) 26 N. W. Rep. 851.

May be convicted of simple larceny under such indictment. State v. Eno, *supra*.

Declarations of injured party as to circumstances and description of robber, made immediately after the assault, admissible as part of the *res gestæ*. State v. Horan, 20 N. W. Rep. 905.

See State v. Rush, (Mo.) 8 S. W. Rep. 221; People v. Riley, (Cal.) 16 Pac. Rep. 544.

§ 194. How force or fear must be employed.

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

See Hanson v. State, (Ohio,) 1 N. E. Rep. 136.

§ 195. Degree of force immaterial.

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

§ 196. Taking property secretly.

The taking of property from the person of another is robbery when it appears that, although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear.

§ 197. Robbery in first degree.

An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this chapter, is robbery in the first degree, when committed by a person

1. Being armed with a dangerous weapon; or
2. Being aided by an accomplice actually present; or
3. When the offender inflicts grievous bodily harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon the wife, husband, servant, child, or inmate of the family of such person, or any one in his company at the time, in order to accomplish the robbery.

§ 198. Id. second degree.

Such unlawful taking or compulsion, when accomplished by force or fear, in a case specified in the foregoing sections of this chapter, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished either

1. By the use of violence; or
2. By putting the person robbed in fear of immediate injury to his person, or that of some one in his company.

§ 199. Id. third degree.

A person who robs another, under circumstances not amounting to robbery in the first or second degree, is guilty of robbery in the third degree.

§ 200. Punishment of robbery in first degree.

Robbery in the first degree is punishable by imprisonment in the state prison for not less than five years, nor more than twenty years.

§ 201. Id. in second degree.

Robbery in the second degree is punishable by imprisonment in the state prison for not less than two years, nor more than fifteen years.

§ 202. Id. in third degree.

Robbery in the third degree is punishable by imprisonment in the state prison for not more than ten years.

CHAPTER 7.

DUELS AND CHALLENGES.

§ 203. "Dueling" defined and punished.

A person who fights a duel, or engages in any combat with another, with deadly weapons, by previous agreement, or upon a previous quarrel, although no death or wound ensues, is punishable by imprisonment in the state prison for not less than two years nor more than ten years. A person convicted under this section is thereafter incapable of holding, or of being elected or appointed to, any office or place of trust or emolument, civil or military, within the state.

See § 358, *post.*

§ 204. Challenger, abettor, etc.

A person who challenges another to fight a duel, or who sends a written or verbal message, purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or who accepts such a challenge or message, or who knowingly carries or delivers such a challenge or message, or who is present at the time appointed for such a duel or combat, or when such a duel or combat is fought, either as second, aid, or surgeon, or who advises or abets, or gives any countenance or assistance to such a duel or combat upon previous agreement, is punishable by imprisonment in the state prison for not more than seven years.

§ 205. "Challenge" defined.

Any word, spoken or written, or any sign, uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand to fight a duel, or to meet for the purpose of fighting a duel, is deemed a challenge.

See § 359, *post.*

§ 206. Attempts to induce a challenge.

A person guilty of sending or using to another any word or sign whatever, with intent to provoke or induce such person to give or receive a challenge to fight a duel, is guilty of a misdemeanor.

§ 207. Posting for not fighting.

A person who posts or advertises another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, uses reproachful or contemptuous language to or concerning any one for not sending or accepting a challenge to fight a duel, or for not fighting a duel, is guilty of a misdemeanor.

§ 208. Duel outside of state.

A person who leaves this state with intent to elude any provision of this chapter, or to commit any act without this state which is prohibited by this

chapter, does any act without this state which would be punishable by the provisions of this chapter if committed within this state, is guilty of the same offense and subject to the same punishment as if the act had been committed, or was to have been consummated, within this state; and for the purposes of this section the state shall be deemed a criminal district.

See § 154.

§ 209. Id.—Where may be indicted and tried.

A person offending against any provision of the last section may be indicted and tried in any county within this state; but the person so offending may plead a former conviction or acquittal in another state or country for the same offense; and if such plea is admitted or established it shall be a bar to further proceedings against him for such offense.

See § 154, *supra*.

§ 210. Witnesses.

A person offending against any provision of this chapter is a competent witness against any other person offending in the same transaction, and must not be excused from testifying or answering any question, upon an investigation or trial for an offense under this chapter, upon the ground that his testimony might tend to convict him of a crime. But evidence given by a person so testifying cannot be received against him in any criminal action or proceeding.

See § 529, *post*.

CHAPTER 8.

LIBEL.

§ 211. "Libel" defined.

A malicious publication, by writing, printing, picture, effigy, sign, or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule, or obloquy, or which causes, or tends to cause, any person to be shunned, or avoided, or which has a tendency to injure any person, corporation, or association of persons in his or their business or occupation, is a libel.

Impeachment of chastity. State v. Moody, (N. C.) 4 S. E. Rep. 119.
Libel of judge. Richardson v. State, (Md.) 7 Atl. Rep. 43. Of congressman. State v. Schmitt, (N. J.) 9 Atl. Rep. 774.
"Libel" defined. Smith v. Coe, 22 Minn. 276.
When the words are actionable *per se*, the malicious intent is an inference of law. Simmons v. Holster, 13 Minn. 249, (Gil. 232.)
Motive must be proven, if circumstances repel the legal inference. Simmons v. Holster, *supra*; Aldrich v. Press Printing Co., 9 Minn. 133, (Gil. 123;) Marks v. Baker, 28 Minn. 162, 9 N. W. Rep. 678.
Proof of publication. Simmons v. Holster, *supra*.
Indictment—Sufficiency. Richardson v. State, (Md.) 7 Atl. Rep. 43; State v. Schmitt, (N. J.) 9 Atl. Rep. 774.

§ 212. Libel a misdemeanor.

A person who publishes a libel is guilty of a misdemeanor.

§ 213. Malice presumed—How justified or excused.

A publication having the tendency or effect mentioned in section two hundred and eleven is to be deemed malicious, if no justification or excuse therefor is shown. The publication is justified when the matter charged as libelous is true, and was published for good motives, and for justifiable ends. The publication is excused when it is honestly made, in the belief of its truth, and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs.

See Simmons v. Holster, 13 Minn. 249, (Gil. 232.)

§ 214. Publication defined.

To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself.

§ 215. Liability of editors and others.

Every editor or proprietor of a book, newspaper, or serial, and every manager of a partnership or incorporated association, by which a book, newspaper, or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper, or serial. But in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault, and against his wishes, by another who had no authority from him to make the publication, and whose act was disavowed by him so soon as known.

Hewitt v. Pioneer Press Co., 23 Minn. 178; Stewart v. Wilson, Id. 449; Smith v. Coe, 22 Minn. 276; Simmons v. Holster, 13 Minn. 249, (Gil. 232;) Aldrich v. Press Printing Co., 9 Minn. 133, (Gil. 123;) Marks v. Baker, 28 Minn. 162, 9 N. W. Rep. 678.

§ 216. Publishing a true report of public official proceedings.

A prosecution for libel cannot be maintained against a reporter, editor, publisher, or proprietor of a newspaper for the publication therein of a fair and true report of any judicial, legislative, or other public and official proceeding, or of any statement, speech, argument, or debate in the course of the same, without proving actual malice in making the report.

See § 122, *supra*.

§ 217. Qualification of last section.

The last section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication, or in the report of anything said or done at the time and place of the public and official proceeding, which was not a part thereof.

§ 218. Indictment for libel in newspaper.

An indictment for a libel contained in a newspaper published within this state may be found in any county where the paper was published or circulated.

§ 219. Punishment restricted.

A person cannot be indicted or tried for the publication of the same libel, against the same person, in more than one county.

§ 220. Privileged communications.

A communication made to a person entitled to, or interested in, the communication, by one who was also interested in or entitled to make it, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is presumed not to be malicious, and is called a privileged communication.

§ 221. Threatening to publish libel.

A person who threatens another with the publication of a libel concerning the latter, or concerning any parent, husband, wife, child, or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort, money or other valuable consideration from any person, is guilty of a misdemeanor.

See §§ 438, 443, *post*.

Charge against candidate for public office, when privileged. Marks v. Baker, 28 Minn. 162, 9 N. W. Rep. 678. When not. Aldrich v. Press Printing Co., 9 Minn. 133, (Gil. 123.)

TITLE 10.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER 1.

OF CRIMES AGAINST RELIGIOUS LIBERTY AND CONSCIENCE.

§ 222. The Sabbath.

The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

§ 223. Sabbath-breaking.

A violation of the foregoing prohibition is Sabbath-breaking.

The court will take judicial notice that a designated day falls on Sunday. Webb v. Kennedy, 20 Minn. 419, (Gil. 374.)

A demand for personal property on Sunday is a nullity. The illegality of such a demand cannot be waived. Brackett v. Edgerton, 14 Minn. 174, (Gil. 134.)

Indictment dated on Sunday. State v. Nortan, (Or.) 17 Pac. Rep. 744.
A note executed on Sunday is void. Brimhall v. Van Campen, 8 Minn. 13, (Gil. 1.)
A bond is not "executed" until delivery; therefore, although signed and sealed on Sunday, yet, if not delivered until a succeeding secular day, it is valid. State v. Young, 23 Minn. 551.
Recovery from a carrier for personal injuries received while traveling on Sunday. Bucher v. Cheshire R. Co., 8 Sup. Ct. Rep. 974.

§ 224. "Day" defined.

Under the term "day," as employed in the phrase "first day of the week," when used in this chapter, is included all the time from midnight to midnight.

§ 225. Servile labor.

All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health, or comfort of the community: *provided, however*, that keeping open a barber-shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity. (*As amended* 1887, *c.* 54.)

Operating in ice factory held a work of necessity. Hennersdorf v. State, (Tex.) 8 S. W. Rep. 926. So, also, shoeing horses used by a stage company engaged in transporting United States mail. Nelson v. State, (Tex.) Id. 927.
See Friedeborn v. Com., (Pa.) 6 Atl. Rep. 160.

§ 226. Persons observing another day as a Sabbath.

It is a sufficient defense to a prosecution for servile labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

§ 227. Public sports.

All shooting, hunting, fishing, playing, horse-racing, gaming, or other public sports, exercises, or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited.

§ 228. Trades, manufactures, and mechanical employments.

All trades, manufactures, and mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

§ 229. Public traffic.

All manner of public selling, or offering for sale, of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day.

Selling soda-water on Sunday. Splane v. Com., (Pa.) 12 Atl. Rep. 431.
Beer may not be publicly sold on Sunday. State v. Baden, (Minn.) 34 N. W. Rep. 24. Purchaser not *particeps criminis*, and not an accomplice, though in pursuit of evidence against persons selling unlawfully. Id.
The sale of a horse consummated on Sunday is void, and an action on the warranty in such sale will not lie. Finley v. Quirk, 9 Minn. 194, (Gil. 180.)
See Friedeborn v. Com., (Pa.) 6 Atl. Rep. 160.

§ 230. Serving process on Sunday prohibited.

All service of legal process of any kind whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute.

§ 231. Punishment of Sabbath-breaking.

Sabbath-breaking is a misdemeanor, punishable by a fine not less than one dollar and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both.

§ 232. Preventing performance of religious act.

A person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

§ 233. Disturbing religious meetings.

A person who willfully disturbs, interrupts, or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

See §§ 350, 489, *post*.

§ 234. Id.—Definition of the offense.

The following acts, or any of them, constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting.

2. Engaging in, or promoting, within one mile of the place where a religious meeting is held, any racing of animals or gaming of any description.

3. Obstructing in any manner, without authority of law, within the like distance, free passage along a highway to the place of such meeting.

CHAPTER 2.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

§ 235. "Rape" defined.

Rape is an act of sexual intercourse with a female not the wife of the perpetrator, committed against her will or without her consent. A person perpetrating such an act of sexual intercourse with a female of the age of ten years or upwards not his wife,

1. When through idiocy, imbecility, or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent; or,

2. When her resistance is forcibly overcome; or,

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor or by weakness of mind, pro-

duced by an intoxicating, narcotic, or anæsthetic agent, administered by or with the privity of the defendant; or,

5. When she is, at the time, unconscious of the nature of the act, and this is known to the defendant;

—Is punishable by imprisonment in the state prison for not less than five nor more than thirty years.

See § 187, *supra*.

A husband who procures the commission of a rape upon his wife may be convicted of the crime. People v. Chapman, (Mich.) 28 N. W. Rep. 896.

Fear and coercion—Resistance. State v. Ward, (Iowa,) 35 N. W. Rep. 617.

Indictment charging that the crime was committed by force, violence, and against the will of the prosecutrix, sufficient without setting out the particular circumstances confining it to one of the subdivisions of the statute defining the crime. People v. Snyder, (Cal.) 17 Pac. Rep. 208.

Upon an indictment for rape the jury may convict of assault with intent to commit rape. O'Connell v. State, 6 Minn. 279, (Gil. 190.)

Rape is an offense at common law, and an indictment therefor, to be good, need not conclude "against the form of the statute." Id. Nor need it allege an assault. The words "feloniously ravish" are sufficient. Id.

Under the Compiled Statutes the punishment for the offense of assault with intent to commit rape is determined by § 40, *c.* 89, which authorizes imprisonment for ten years. Id.

Committed within one hundred rods of dividing line triable in either county. State v. Robinson, 14 Minn. 447, (Gil. 333,) and cases cited.

Right of defendant to challenge every juror. State v. Smith, 20 Minn. 376, (Gil. 328.)

Evidence that prosecutrix complained of the outrage soon after occurrence, admissible. State v. Shettleworth, 18 Minn. 208, (Gil. 191;) Gardner v. Kellogg, 23 Minn. 463. And see Parker v. State, (Md.) 10 Atl. Rep. 219; State v. Freeman, (N. C.) 5 S. E. Rep. 921; State v. Campbell, (Nev.) 17 Pac. Rep. 620.

Evidence of particular instances of unchastity on part of prosecutrix. State v. Campbell, (Nev.) 17 Pac. Rep. 620.

See Hardtke v. State, (Wis.) 30 N. W. Rep. 723; Osgood v. State, (Wis.) 25 N. W. Rep. 529; Anderson v. State, (Ind.) 4 N. E. Rep. 63; Matthews v. State, 27 N. W. Rep. 234; Stephens v. State, (Ind.) 8 N. E. Rep. 94; People v. Crego, (Mich.) 38 N. W. Rep. 281; Pugh v. Com., (Ky.) 8 S. W. Rep. 340; Territory v. Keyes, (Dak.) 38 N. W. Rep. 440; Bean v. People, (Ill.) 16 N. E. Rep. 656; Ackerson v. People, Id. 847; State v. Crawford, (Kan.) 18 Pac. Rep. 184; People v. Bates, (Mich.) 38 N. W. Rep. 231; State v. Johnson, (N. C.) 6 S. E. Rep. 61.

§ 236. Carnal knowledge of children.

Whoever carnally knows and abuses any female child under the age of ten years shall be imprisoned in the state prison for life.

§ 237. When physical ability must be proved.

No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt.

§ 238. Penetration sufficient.

Any sexual penetration, however slight, is sufficient to complete the crime.

§ 239. Compelling woman to marry.

A person who by force, menace, or duress, compels a woman, against her will, to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison for not less than three nor more than thirty years, or by a fine of not more than one thousand dollars, or by both.

See § 240, sub. 3, *post*.

§ 240. Abduction.

A person who,

1. Takes a female under the age of sixteen years for the purpose of prostitution or sexual intercourse, or without the consent of her father, mother, guardian, or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female under the age of twenty-five years, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or,

3. Takes or detains a woman unlawfully against her will, with intent to compel her, by force, menace, or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian, or other person having legal charge of the person of a female under the age of sixteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse;

—Is guilty of abduction, and punishable by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both.

See § 239, *supra*.

What amounts to enticing for the purpose of concubinage. Henderson v. People, (Ill.) 17 N. E. Rep. 68.

SUBD. 1. Force and violence are not essential to a "taking." It may be accomplished by persuasion, enticement, or device. But it must appear that the taking was for the purpose forbidden by the statute. Sufficiency of evidence. State v. Jameson, (Minn.) 35 N. W. Rep. 712.

A "taking" for the purpose of prostitution is an essential element of the offense. People v. Plath, (N. Y.) 3 N. E. Rep. 790. Receiving the female into a house of prostitution, she having come there voluntarily, is not within the statute. Id.

It is not necessary to allege in the indictment that the taking was without the consent of the parent or guardian, but it is proper to state from whose custody the female was taken. State v. Jameson, (Minn.) 35 N. W. Rep. 712.

Sufficiency of evidence. People v. Cummons, (Mich.) 23 N. W. Rep. 215.

SUBD. 2. To constitute abduction within the meaning of this subdivision the place into which the female is inveigled must be a house of ill-fame, or of assignation, or a place of similar character. State v. McCrum, (Minn.) 36 N. W. Rep. 102.

§ 241. No conviction on certain testimony.

No conviction can be had for abduction or compulsory marriage upon the testimony of the female abducted or compelled, unsupported by other evidence. (*As amended* 1887, *c.* 64.)

State v. Timmens, 4 Minn. 325, (Gil. 241.)

§ 242. Seduction under promise of marriage.

A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both.

In a prosecution for seduction under a promise of marriage, it is not necessary that the promise should have been expressed in any set form, or in any particular language. It is sufficient if language was used which implied such a promise, and was intended to convey that meaning, and was in fact so understood by the prosecutrix. State v. Brinkhaus, 34 Minn. 285, 25 N. W. Rep. 642.

If chaste from principle at time of the act charged, the female is of "previous chaste character." State v. Timmens, 4 Minn. 325, (Gil. 241.) And see State v. Bryan, (Kan.) 8 Pac. Rep. 260.

An indictment for seduction under a promise to marry must show that the woman was of chaste character immediately previous to, and down to, the alleged seduction. It is not enough to allege that she was of chaste character previous to the promise to marry, or previous to the day on which the seduction is alleged to have been committed. State v. Gates, 27 Minn. 52, 6 N. W. Rep. 404. See, also, as to the indictment, State v. Bryan, 8 Pac. Rep. 260. Misnomer of female. State v. Timmens, *supra*.

Evidence of birth of child thirteen months after alleged seduction, inadmissible. People v. Kearney, (N. Y.) 17 N. E. Rep. 736. Character of prosecutrix. State v. McClintic, (Iowa,) 35 N. W. Rep. 696. Reputation for chastity—Evidence of unchastity. State v. Wheeler, (Mo.) 7 S. W. Rep. 103. Evidence—Admissibility—Instructions. People v. Gibbs, (Mich.) 38 N. W. Rep. 257; State v. Horton, (N. C.) 6 S. E. Rep. 238.

See, also, Phillips v. State, (Ind.) 9 N. E. Rep. 345.

§ 243. Subsequent marriage.

The subsequent intermarriage of the parties, or the lapse of two years after

the commission of the offense before the finding of an indictment, is a bar to a prosecution for a violation of the last section.

Abandonment immediately after the marriage. People v. Gould, (Mich.) 38 N. W. Rep. 232.

§ 244. Complainant must be corroborated.

No conviction can be had for the offense specified in section two hundred and forty-two, upon the testimony of the female seduced, unsupported by other evidence.

This provision does not require proof of the facts sufficient in itself to establish them, independently of the testimony of the female, but only of those circumstances which usually form the concomitants of the main fact sought to be established, which circumstances should be sufficiently strong in themselves, and pertinent in their bearing upon the case, to satisfy the jury of the truthfulness of the witness in her testimony on the principal facts. State v. Timmens, 4 Minn. 325, (Gil. 241,) and State v. Shettleworth, 18 Minn. 208, (Gil. 191.)

Corroboration as to previous chaste character, and as to the female being unmarried, is unnecessary. People v. Kearney, (N. Y.) 17 N. E. Rep. 736.

Sufficiency of corroboration. State v. McClintic, (Iowa,) 35 N. W. Rep. 696.

§ 245. Indecent assault.

A person who takes any indecent liberties with or on the person of any female, not a public prostitute, without her consent expressly given, and which acts do not in law amount to a rape, an attempt to commit a rape, or an assault with intent to commit a rape, or any person who takes such indecent liberties with or on the person of any female child under the age of ten years, without regard to whether she consents to the same or not, is guilty of a felony.

CHAPTER 3.

ABANDONMENT AND OTHER ACTS OF CRUELTY TO CHILDREN.

§ 246. Abandonment of child under six years.

A parent or other person having the care or custody, for nurture or education, of a child under the age of six years, who deserts the child in any place, with the intent wholly to abandon it, is punishable by imprisonment in the state prison for not more than seven years, or in a county jail for not more than one year.

§ 247. Unlawfully omitting to provide for a child.

Any person who willfully omits, without lawful excuse, to perform a duty by law imposed upon him, to furnish food, clothing, shelter, or medical attendance to a minor, is guilty of a misdemeanor.

§ 248. Endangering life, health, or morals of child.

A person who, having the care or custody of a minor, either,

1. Willfully causes or permits the minor's life to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Willfully causes or permits the minor to be placed in such a situation, or to engage in such an occupation, that its life is endangered, or its health is likely to be injured, or its morals likely to be impaired;

—Is guilty of a misdemeanor.

§ 249. Keepers of concert saloons, etc.

A person who admits to, or allows to remain in, any dance-house, concert saloon, or in any place where wines or spirituous or malt liquors are sold or

given away, or in any place of entertainment injurious to morals, owned, kept, or managed by him in whole or in part, any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian, is guilty of a misdemeanor. Any person who shall suffer or permit any such child to play any game of skill or chance in any such place, or to be or remain therein, shall be guilty of a misdemeanor.

§ 250. Certain employments of child prohibited.

A person who employs, or causes to be employed, or who exhibits, uses, or has in his custody for the purpose of exhibiting or employing, any child apparently or actually under the age of sixteen years, or who, having the care, custody, or control of such child as parent, relative, guardian, employer, or otherwise, sells, lets out, gives away, or in any way procures, or consents to the employment or exhibition of such a child, either,

1. As a rope or wire walker, dancer, gymnast, contortionist, rider, or acrobat; or,
2. In begging or receiving alms, or in any mendicant occupation; or,
3. In any indecent or immoral exhibition or practice; or,
4. In any practice or exhibition dangerous or injurious to the life, limb, health, or morals of the child;

—Is guilty of a misdemeanor.

See *ante*, Supp. Gen. St. *c.* 99, *§ 34 *et seq.*

CHAPTER 4.

ABORTION AND CONCEALING DEATH OF INFANT.

§ 251. "Abortion" defined.

A person who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or
2. Uses, or causes to be used, any instrument or other means,—

Is guilty of abortion, and is punishable by imprisonment in the state prison for not more than four years, or in a county jail for not more than one year.

See § 162, *supra;* § 278, *post.*

Indictment held bad under § 11, *c.* 94, Gen. St. 1878. Exceptions of statute must be negatived. State v. McIntyre, 19 Minn. 93, (Gil. 65.)

Sufficiency of the allegations that the act was not necessary to preserve the woman's life. State v. Leeper, (Iowa,) 30 N. W. Rep. 501.

It is not necessary to allege that the woman swallowed the drugs. State v. Owens, 22 Minn. 238. See Lamb v. State, (Md.) 10 Atl. Rep. 208, 298.

In an indictment under § 1, *c.* 9, Laws 1873, for procuring an abortion, the court charged that, to convict defendant of the lesser offense specified in § 2 of that act, the absence of any necessity to preserve the life of the mother or child must be proved. Defendant was convicted of the offense specified in the second section. Held, that the instruction was not prejudicial to defendant. State v. Owens, *supra.*

Under an indictment for the offense specified in § 1, *c.* 9, Laws 1873, viz., that of advising or procuring an abortion when not necessary to save the life of the mother or child, and the death of mother or child resulting therefrom, defendant may be convicted of the offense specified in § 2 of such chapter, viz., that of simply administering or advising the use of means with intent to produce abortion, though abortion does not result. *Id.*

To convict of the offense of administering, advising, or suggesting to a pregnant woman the use of drugs, or other means, with the intent to procure an abortion, it is not

necessary that the jury find the character or quality of the drug or medicine, or if administered that it would be likely to produce an abortion. Id.

Intent—Subsequent attempt. Lamb v. State, (Md.) 7 Atl. Rep. 399. Belief of pregnancy. Powe v. State, (N. J.) 2 Atl. Rep. 662.

§ 252. Pregnant woman attempting abortion.

A pregnant woman who takes any medicine, drug, or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment in the state prison for not less than one year, nor more than four years.

See § 165, *supra;* § 278, *post.*

§ 253. Evidence.

No person shall, in any prosecution under either of the two foregoing sections, be protected from testifying as a witness for the reason that the testimony of such witness would tend to criminate or disgrace such witness: *provided, however*, that no testimony so given of a character tending to criminate or disgrace such witness shall ever be used in evidence in any action, prosecution, or proceeding, civil or criminal, against such witness, or against his or her personal representatives.

§ 254. Concealing birth.

A person who endeavors to conceal the birth of a child by any disposition of of the dead body of the child, whether the child died before or after its birth, is guilty of a misdemeanor.

§ 255. Selling drugs, etc.

A person who manufactures, gives, or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

See § 162, *supra;* §§ 278, 280, *post.*

CHAPTER 5.

BIGAMY, INCEST, SODOMY, ADULTERY, AND FORNICATION.

§ 256. "Bigamy" defined—How punished.

A person who, having a husband or wife living, marries another person, or in this state continues to cohabit with such second husband or wife, is guilty of bigamy, and is punishable by imprisonment in the state prison for not more than five years.

Second marriage contracted in another state. Johnson v. Com., (Ky.) 5 S. W. Rep. 365.

Under an indictment for polygamy, both a first and second marriage in fact must be proved by direct and positive evidence. To prove those marriages, or to corroborate direct evidence of them, indirect evidence, such as admissions, cohabitation, reputation, and birth of children, is incompetent. This was the rule at common law. State v. Johnson, 12 Minn. 476, (Gil. 378.) And see State v. Armstrong, 4 Minn. 335, (Gil. 251;) State v. Armington, 25 Minn. 29.

Foreign divorce, while parties reside in Minnesota, void. Second marriage upon faith of same will not protect from penal consequences. Proof of *alias* name alleged. State v. Armington, *supra.*

Error to amend indictment by inserting name of county where committed. State v. Armstrong, *supra*.

Requisites of indictment. *Ex post facto* law of evidence. State v. Johnson, 12 Minn. 476, (Gil. 378;) State v. Armington, *supra*. See, also, as to the indictment, Com. v. McGrath, (Mass.) 6 N. E. Rep. 515.

§ 257. Id.—Exceptions.

The last section does not extend,

1. To a person whose former husband or wife has been absent for five years successively then last past, without being known to him or her within that time to be living, and believed by him or her to be dead; or

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of competent jurisdiction.

§ 258. Punishment of consort.

A person who knowingly enters into a marriage with another, which is prohibited to the latter by the foregoing provisions of this chapter, is punishable by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or both.

§ 259. Incest.

When persons, within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment in the state prison for not more than ten years.

Sexual intercourse with illegitimate daughter, People v. Lake, (N. Y.) 17 N. E. Rep. 146; with half-brother, State v. Wyman, (Vt.) 8 Atl. Rep. 900.

Indictment—Knowledge of relationship. State v. Wyman, (Vt.) 8 Atl. Rep. 900; State v. Dana, (Vt.) 10 Atl. Rep. 727.

Sufficiency of evidence. State v. Lawrance, (Neb.) 27 N. W. Rep. 126; State v. Miller, (Iowa,) 21 N. W. Rep. 181.

§ 260. Crime against nature.

A person who commits the detestable and abominable crime against nature, with mankind or with a beast, or attempts sexual intercourse with a dead body, is punishable by imprisonment in the state prison for not less than five nor more than twenty years.

§ 261. Penetration sufficient.

Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section.

§ 262. Adultery.

If any married woman has sexual intercourse with a man other than her husband, whether married or not, they shall both be guilty of adultery, and shall be punished by imprisonment in the state prison not more than two years, or by fine not exceeding three hundred dollars; but no prosecution shall be commenced except on the complaint of the husband, or the wife, save when such husband, or wife, is insane; and no such prosecution shall be commenced after one year from the time of the commission of the offense.

Indictment. Davis v. Com., (Pa.) 7 Atl. Rep. 194.

In a criminal prosecution against a husband for adultery, the wife cannot testify on behalf of the prosecution without his consent. Such case is not one contemplated by Comp. St. 681, § 53; nor does Comp. St. § 1, c. 96, p. 728, providing that "no prosecution for adultery shall be commenced except on the complaint of the husband or wife," authorize either to be sworn as a witness against the other before the grand jury in making the complaint. State v. Armstrong, 4 Minn. 335, (Gil. 251.)

Evidence of acts anterior to the period of limitation—Competency of the husband of the female, where she pleads guilty. State v. Guest, (N. C.) 6 S. E. Rep. 253.

Proof of rape. State v. Summers, (N. C.) 4 S. E. Rep. 120.

Dismissal of the prosecution upon the application of the wife of the accused. People

v. Dalrymple, (Mich.) 22 N. W. Rep. 20. And see State v. Briggs, (Iowa,) 27 N. W. Rep. 358.

See Mitten v. State, (Tex.) 6 S. W. Rep. 196.

§ 263. Fornication.

If any man and a single woman cohabit together they shall be both guilty of fornication, and be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding thirty dollars.

State v. Timmens, 4 Minn. 325, (Gil. 241;) State v. Miller, 23 Minn. 352; Vaughn v. State, (Ala.) 3 South. Rep. 530.

Evidence. Burger v. State, (Ga.) 6 S. E. Rep. 282.

Evidence, admissibility and sufficiency, instructions. State v. Pugsley, (Iowa,) 38 N. W. Rep. 498.

Indictment for rape will not sustain a conviction for fornication. State v. Shear, (Wis.) 8 N. W. Rep. 287.

CHAPTER 6.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

§ 264. Right to direct disposal of one's own body after death.

A person has a right to direct the manner in which his body shall be disposed of after his death; and also to direct the manner in which any part of his body, which becomes separated therefrom during his life-time, shall be disposed of; and the provisions of this chapter do not apply to any case where a person has given directions for the disposal of his body or any part thereof inconsistent with these provisions.

See *ante*, Supp. Gen. St. c. 124, *§§ 36, 39.

§ 265. Duty of burial.

Except in the cases in which a right to dissect it is expressly conferred by law, every dead body of a human being, lying within this state, must be decently buried within a reasonable time after death.

§ 266. Removal for burial in other states.

The last section does not impair any right to carry the dead body of a human being through this state, or to remove from this state the body of a person dying within it, for the purpose of burying the same elsewhere.

§ 267. Dissection, when allowed.

The right to dissect the dead body of a human being exists in the following cases:

1. In the cases prescribed by special statutes.

2. Whenever a coroner is authorized by law to hold an inquest upon the body, so far as such coroner authorizes dissection for the purposes of the inquest, and no further.

3. Whenever and so far as the husband, wife, or next of kin of the deceased, being charged by law with the duty of burial, may authorize dissection for the purpose of ascertaining the cause of death, and no further.

§ 268. Unlawful dissection a misdemeanor.

A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

§ 269. Remains after dissection must be buried.

In all cases in which a dissection has been made, the provisions of this chapter, requiring the burial of a dead body, and punishing interference with or injuries to it, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

§ 270. Body-stealing.

A person who removes the dead body of a human being, or any part thereof, from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is punishable by imprisonment in the state prison for not more than five years, or by a fine not exceeding one thousand dollars, or both.

§ 271. Receiving stolen body.

A person who purchases, or receives, except for the purpose of burial, the dead body of a human being, or any part thereof, knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the state prison for not more than three years.

§ 272. Opening grave.

A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any part thereof, for the purpose of selling it, or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment or other article interred, or intended to be interred, with the dead body, is punishable by imprisonment in the state prison for not more than two years, or by a fine of not more than two hundred and fifty dollars, or by both.

§ 273. Arresting or attaching a dead body.

A person who arrests or attaches the dead body of a human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

§ 274. Disturbing funerals.

A person who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a misdemeanor.

CHAPTER 7.

INDECENT EXPOSURES, OBSCENE EXHIBITIONS, BOOKS, AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

§ 275. Exposure of person.

A person who willfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, is guilty of a misdemeanor.

See as to indecent exposure, and the use of obscene language, *ante*, c. 100, *§ 10*a*.
Sufficiency of indictment. Ex parte Hutchings, (Cal.) 16 Pac. Rep. 234.

§ 276. Public indecency.

Any person who is guilty of any open or gross lewdness or lascivious behavior, or any public indecency other than the one prohibited by the preceding section, is guilty of a misdemeanor.

§ 277. Possessing, etc., obscene prints.

A person who

1. Sells, lends, gives away, or offers to give away, or shows, or has in his possession with intent to sell or give away, or show or advertise, or otherwise offers for loan, gift, sale, or distribution, an obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, or photograph, or any article or instrument of indecent or immoral character, or who designs, copies, draws, photographs, prints, utters, publishes, or otherwise prepares such a book, picture, drawing, paper, or other article, or writes or prints, or causes to be written or printed, a circular, advertisement, or notice of any kind, or gives information orally, stating when, where, how, or of whom, or by what means, such an indecent or obscene article or thing can be purchased or obtained; or

2. Sells, lends, gives away, or shows, or has in his possession with intent to sell, or give away, or to show, or advertises or otherwise offers for loan, gift, sale, or distribution, to any minor child, any book, pamphlet, magazine, newspaper, or other printed paper, devoted to the publication, or principally made up, of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust, or crime; or

3. Exhibits upon any street or highway, or in any other place within the view of any minor child, any book, magazine, pamphlet, newspaper, writing, paper, picture, drawing, photograph, or other article or articles coming within the descriptions of articles mentioned in the first and second subdivisions of this section, or any of them; or

4. In any manner hires, uses, or employs any minor child to sell or give away, or in any manner to distribute, or who, having the care, custody, or control of any minor child, permits such child to sell, give away, or in any other manner distribute, any book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, or other article or matter coming within the descriptions of articles and matter mentioned in the first and second subdivisions of this section, or any of them,—

Is guilty of a misdemeanor.

See § 255, *supra*, and act of March 5, 1885, *ante*, Supp. Gen. St. c. 100, *§§ 12*a*–12*c*.
Obscene publications and letters. U. S. v. Bebout, 28 Fed. Rep. 522; U. S. v. Wightman, 29 Fed. Rep. 636. Obscene letter. Thomas v. State, (Ind.) 2 N. E. Rep. 808.
Indictment—Description of publication. Com. v. Wright, (Mass.) 1 N. E. Rep. 411.

§ 278. Indecent articles, etc.

A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend, or give away, or has in his possession, with intent to sell, lend, or give away, or advertises or offers for sale, loan, or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, where, how, of whom, or by

what means, such an article or medicine can be purchased or obtained, or who manufactures any such article or medicine, is guilty of a misdemeanor.

See § 255, *supra*.

§ 279. Mailing, carrying obscene print, etc.

A person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or willfully receives the same, with intent to carry or convey, or knowingly or willfully carries or conveys, the same, by express, or in any other manner, except in the United States mail, is guilty of a misdemeanor.

Indictment—"Send and convey." Larison v. State, (N. J.) 9 Atl. Rep. 700.

§ 280. Physician's instruments.

An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this chapter. The supplying of such articles to such physicians, or by their direction or prescription, is not an offense under this chapter.

§ 281. Keeping disorderly houses, etc.

A person who keeps a house of ill fame or assignation of any description, or a house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, shall be guilty of felony. Any person who keeps a disorderly house, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building, or any portion of a building, knowing that it is intended to be used for any purpose specified in this section, or who permits a building, or a portion of a building, to be so used, is guilty of a misdemeanor.

See § 319, subd. 2, *post*.

Charge for keeping a single day, held not bad. Right of accused to be present at trial may be waived. State v. Reckards, 21 Minn. 47.

Evidence of general reputation admissible. Not necessary that intercourse be carried on for hire or gain. Proof of lewd conduct of defendant herself, competent. State v. Smith, 29 Minn. 193, 12 N. W. Rep. 524.

Prosecution and conviction under city ordinance is no bar to a prosecution for same act under the statute. State v. Lee, 29 Minn. 445, 13 N. W. Rep. 913; State v. Oleson, 26 Minn. 507, 5 N. W. Rep. 959; State v. Charles, 16 Minn. 474, (Gil. 426;) State v. Crummey, 17 Minn. 72, (Gil. 50.)

Scienter of landlord. State v. Frazier, (Me.) 8 Atl. Rep. 347.

Liability of agent. Troutman v. State, (N. J.) 6 Atl. Rep. 618; State v. Frazier, (Me.) 8 Atl. Rep. 347.

The city justice of St. Paul being a justice of the peace only, the legislature could not confer jurisdiction upon him over offenses against § 9, c. 100, Gen. St. 1878, and a motion to quash an indictment for such offense, based on the theory that such justice had exclusive jurisdiction in the premises, was properly denied. State v. Charles, 16 Minn. 474, (Gil. 426.) Followed, State v. Oleson, 26 Minn. 507, 5 N. W. Rep. 959.

See Brown v. State, (N. J.) 7 Atl. Rep. 340.

CHAPTER 8.

LOTTERIES.

§ 282. "Lottery" defined.

A lottery is a scheme for the distribution of property by chance, among persons who have paid, or agreed to pay, a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise, or by some other name.

See Smith v. State, (Md.) 11 Atl. Rep. 758; Clark v. State, (N. J.) 4 Atl. Rep. 327.

§ 283. Lottery declared a public nuisance.

A lottery is unlawful, and a public nuisance.

See art. 4, § 31, Const. Minn.

§ 284. Contriving, drawing, etc., lottery.

A person who contrives, proposes, or draws a lottery, or assists in contriving, proposing, or drawing the same, is punishable by imprisonment in the state prison for not more than two years, or by a fine of not more than one thousand dollars, or both.

Sufficiency of indictment and evidence. Com. v. Sullivan, (Mass.) 15 N. E. Rep. 491.

§ 285. Selling lottery tickets.

A person who sells, gives, or in any way whatever furnishes or transfers, to or for another, a ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, to be drawn within or without this state, is guilty of a misdemeanor.

§ 286. Advertising lotteries.

A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an account of a lottery, whether within or without the state, stating how, when, or where the same is to be, or has been, drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, is guilty of a misdemeanor.

In paper published out of the state. State v. Willis, (Me.) 2 Atl. Rep. 848.

§ 287. Offering property for disposal dependent upon the drawing of any lottery.

A person who offers for sale or distribution, in any way, real or personal property, or any interest therein, to be determined by lot or chance, dependent upon the drawing of a lottery within or without this state, or who sells, furnishes, or procures, or causes to be sold, furnished, or procured, in any manner, a chance or share, or any interest in property offered for sale or distribution, in violation of this chapter, or a ticket or other evidence of such a chance, share, or interest, is guilty of a misdemeanor.

§ 288. Keeping office, etc., for registry.

A person who opens, sets up, or keeps, by himself, or another person, an office or other place for registering the numbers of tickets in a lottery within or without this state, or for making, receiving, or registering any bets or stakes for the drawing or result of such a lottery, or who advertises or in any way publishes any account of an opening, setting up, or keeping of such an office or place, is guilty of a misdemeanor.

§ 289. Insuring lottery tickets, etc.

A person who insures, or receives any consideration for insuring, for or against the drawing of a ticket, share, or interest in a lottery, or of a number

of such a ticket, share, or interest, or who receives any valuable consideration upon an agreement to pay money, or deliver property, in the event that a ticket, share, or interest, or a number of such a ticket, share, or interest in a lottery, shall prove fortunate or unfortunate, or shall be drawn or not drawn in a particular way or in a particular order, or who promises or agrees or offers to pay money or to deliver property, or to do, or forbear to do, anything for the benefit of any person, with or without consideration, upon any accident or contingency dependent on the drawing thereof, or of any number or ticket therein, is guilty of a misdemeanor.

§ 290. Advertising offers to insure lottery tickets.

A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an offer, notice, or proposition in violation of the last section, is guilty of a misdemeanor.

§ 291. Letting building for lottery purposes.

A person who lets, or permits to be used, any building or portion of a building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.

§ 292. Lotteries out of this state.

The provisions of this chapter are applicable to lotteries drawn, or to be drawn, out of this state, whether authorized or not by the laws of the state where they are drawn, or to be drawn, in the same manner as to lotteries drawn, or to be drawn, within this state.

§ 293. Advertisements by persons out of this state.

The provisions of sections two hundred and eighty-six and two hundred and ninety are applicable, whenever the advertisement was published, or the letter or circular sent or delivered through or in this state, though the person causing or procuring the same to be published, sent, or delivered, was out of the state at the time of so doing.

CHAPTER 9.

GAMING.

§ 294. Gambling prohibited.

Gambling with cards, dice, gaming tables, or any other gambling devices whatever, is prohibited.

Playing cards for beer. Brown v. State, (N. J.) 7 Atl. Rep. 340.
See, as to sufficiency of indictment. Shook v. State, (Tex.) 8 S. W. Rep. 329.
See Johnson v. State, (Ala.) 3 South. Rep. 790.

§ 295. Id.—Penalty.

Whoever deals cards at the game called "Faro," "Pharo," or "Forty-Eight," whether the same is dealt with fifty-two or any other number of cards, and whoever keeps any gambling device whatever, designed to be used in gam-

bling, shall be punished by fine not exceeding two hundred dollars, or imprisonment in the county jail not exceeding six months, or both.

§ 296. Betting at gaming table, etc.—Penalty.

Whoever bets any money or other property at or upon any gaming table, game, or device, shall be punished by fine not exceeding twenty, nor less than five, dollars.

Sufficiency of indictment. Dryfus v. State, (Ala.) 3 South. Rep. 430.

§ 297. Suffering gaming tables, etc., on one's premises.

Whoever suffers any gaming table, faro bank, or gambling device to be set up or used for the purpose of gambling, in any house, building, steam-boat, raft, keel-boat or boom, lot, yard, or garden, to him belonging, or by him occupied, or of which he has the control, shall be punished by fine not exceeding two hundred dollars, or imprisonment in the county jail not exceeding six months, or both.

Indictment not bad for omitting "feloniously." State v. Crummey, 17 Minn. 72, (Gil. 50,) and cases cited. And see as to sufficiency of indictment, State v. Howe, (N. C.) 5 S. E. Rep. 671.

The common-law offense of keeping a common gaming house in the city of St. Paul is not within § 9, c. 99, Gen. St., nor exclusively within the jurisdiction of the city justice of St. Paul, though the offense be committed entirely within the city limits. His exclusive jurisdiction is confined to violations of city ordinances, not offenses at common law. State v. Crummey, 17 Minn. 72, (Gil. 50.)

Sufficiency of evidence, Barnaby v. State, (Ind.) 7 N. E. Rep. 231; Erwin v. State, (Tex.) 8 S. W Rep. 276; Bibb v. State, (Ala.) 3 South. Rep. 711.

Gambling room left temporarily in charge of defendant. State v. Marchant, (R. I.) 9 Atl. Rep. 902.

§ 298. Rule of evidence—Testimony of player.

No person shall be incapacitated or excused from testifying touching any offense committed by another against any of the provisions of this chapter relating to gambling, by reason of his having bet or played at the prohibited games or gambling devices; but the testimony which may be given by such person shall in no case be used against such witness.

See § 529, *post*.

§ 299. Recovery of money, etc., lost at play.

Whoever, by playing at cards, dice or other game, or by betting on the hands or sides of such as are gambling, loses to any person so playing or betting any sum of money or any goods whatever, and pays or delivers the same, or any part thereof, to the winner, the person so losing and paying or delivering the same may sue for and recover such money by a civil action before any court having competent jurisdiction.

Betting on game. McGrath v. Kennedy, (R. I.) 2 Atl. Rep. 438.

Liability of gambling-house keeper for money lost in game dealt by servant. Conden v. Reed, (Ind.) 14 N. E. Rep. 705.

See Myers v. Colson, (Ga.) 5 S. E. Rep. 504.

§ 300. Notes, etc., for gambling debt void.

All notes, bills, bonds, mortgages, or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by gambling or playing at cards, dice, or any other game whatever, or by betting on the sides or hands of any person gambling, or for reimbursing or repaying any money knowingly lent or advanced at the time and place of such gambling or betting, or lent and advanced for any gambling or betting to any person so gambling or betting, shall be void and of no effect as between the parties to the same and as to all persons except such as hold or claim under them in good faith without notice of the illegality of the consideration of such contract or conveyance.

See Roberts v. Blair, (Colo.) 16 Pac. Rep. 717.

§ 301. Swindling by cards, etc.—Penalty.

Whoever, by the means of three-card monte, so called, or of any other form or device, sleight of hand or other means whatever, by use of cards or instruments of like character, or by any other instrument, trick, or device, obtains from another person any money or other property of any description, shall be deemed guilty of the crime of swindling, and shall, on conviction thereof, be punished by a fine not less than two hundred dollars, nor more than two thousand dollars, or by imprisonment in the state prison not less than two years, nor more than five years, or by both such fine and imprisonment, in the discretion of the court. All persons aiding, encouraging, advising or confederating with, or knowingly harboring or concealing any such person or persons, or in any manner being accessory to the commission of the above described offense, or confederating together for the purpose of playing such games, shall be deemed principals therein, and punished accordingly.

An indictment under the General Statutes charged the manner of committing the offense as follows: "* * * Did, by means of three-card monte, so called, and other forms and devices and sleight of hand, (a more particular description of which is to the grand jury unknown,) feloniously * * * obtain * * * the sum of $20 lawful money of the United States, (a more particular description of which is to the grand jury unknown) of the lawful money," etc. Held sufficient, and that it set forth but one offense, and its allegations were sustained by proof of the use of cards different from common playing cards. State v. Gray, 29 Minn. 142, 12 N. W. Rep. 455.

§ 302. Id.—Conductors, etc., to make arrests—Powers—Procedure.

Every person shall possess the power and authority, and it shall be the duty of every conductor or any other employe on any railroad, car, or train, and of every captain, clerk, or other employe, on any boat, or station agent at any railway depot, or the officers of any fairs or fair grounds, and the proprietors of any places of public resort and their employes, with or without warrant, to arrest any person or persons whom they, or either of them, shall find in the act of committing any of the offenses mentioned in section three hundred and one of this chapter, or any person or persons whom he or they may have good reason to believe to have been guilty of the commission of the said offenses, and to take such person or persons before a magistrate, in any county where jurisdiction to try said offenses exists, and deliver such person or persons so arrested to the magistrate, and make written complaint, under oath, of the facts. And for executing the powers conferred by this section the person making the arrest shall possess the same powers in all respects as are possessed by officers with warrants, including the power to summon assistance. And it shall be the duty of the person making such arrest to also arrest the person injured or defrauded by reason of the commission of any of the offenses mentioned in section three hundred and one of this chapter, and take such person before the examining magistrate, who shall require such person to give security to appear and testify on the trial of the cause. And the persons performing the services required by this chapter shall receive the same compensation as sheriffs receive for like services.

§ 303. Id.—Swindlers to be ejected from cars, etc.—Laws to be posted.

It shall be the duty of any conductor, captain, hotel or saloon-keeper, proprietor or manager of any public conveyance or place of public resort, and the officer of any fair or fair grounds, to eject from his car, train, boat, hotel, saloon, public conveyance, fair grounds, or place of public resort, any person known to him, or whom he has good reason to believe to be a three-card monte man, or who offers to wager or bet money or other valuable things upon what is commonly known as "Three-Card Monte," or bet on any trick or game with cards or other gaming device, and for such ejection no action for dam-

age shall be maintained. And all parties operating any public conveyance by which passengers are carried shall keep posted up a copy of this chapter in such conveyance.

§ 304. Conductor, etc., neglecting to arrest, etc.—Penalty.

Any conductor of a railroad train, station agent, captain of any steam-boat, proprietor or manager of any public conveyance, officer of any fair or fair grounds, or place of public resort, any hotel or saloon-keeper, or any agent or employe, who shall fail, neglect, or refuse to perform the duties herein mentioned, or who shall knowingly suffer or permit a violation of this chapter, shall be deemed guilty of a misdemeanor.

§ 305. Evidence of accomplice.

Any person may be convicted for violations of this chapter on his own confession out of court, or upon the testimony of any accomplice.

CHAPTER 10.

PAWNBROKERS.

§ 306. Pawnbroking without a license.

A person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at a rate of interest above that allowed by law, except by virtue of a license from a municipal corporation or other authority empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

§ 307. Refusing to exhibit stolen goods to owner.

A pawnbroker, or person carrying on the business of a pawnbroker, or junk dealer, who, having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, or to any public officer, is guilty of a misdemeanor.

§ 308. Selling before time to redeem has expired, etc.

A pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, or who willfully refuses to disclose the name of the purchaser, or the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor.

See § 456, *post*.

TITLE 11.

OF OTHER OFFENSES.

§ 309. Acts of intoxicated physicians.

A physician or surgeon, or person practicing as such, who, being in a state of intoxication, administers any poison, drug, or medicine, or does any other act as a physician or surgeon, to another person, by which the life of the latter is endangered or seriously affected, is guilty of a misdemeanor.

See § 171, *supra*.

§ 310. Willfully poisoning food, etc.

A person who willfully mingles poison with any food, drink, or medicine intended or prepared for the use of human beings, and a person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the state prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

See § 186, subd. 2; 187, subd. 1, *supra*.

§ 311. Overloading passenger vessel.

A person navigating a vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading on board the vessel, that by means thereof it sinks, or is overset or injured, and thereby the life of a human being is endangered, is guilty of a misdemeanor.

See § 168, *supra*.

§ 312. Unauthorized pressure of steam.

A person who applies, or causes to be applied, to a steam-boiler a higher pressure of steam than is allowed by law, or by the inspector, officer, or person authorized to limit the pressure of steam to be applied to such boiler, is guilty of a misdemeanor.

See § 169, *supra*.

§ 313. Generation of unsafe amount of steam.

A captain or other person having charge of the machinery or boiler of a steam-boat, used for the conveyance of passengers, in the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, creates, or causes to be created, an undue and unsafe pressure of steam, is guilty of a misdemeanor.

See § 169, *supra*.

§ 314. Mismanagement of steam-boilers.

An engineer or other person having charge of a steam-boiler, steam-engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who willfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

See § 169, *supra*.

§ 315. Solemnizing unlawful marriages.

A minister or magistrate, who solemnizes a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or insane person, or a marriage to which, within his knowledge, a legal impediment exists, is guilty of a misdemeanor.

§ 316. Unlawful confinement of idiots, insane persons, etc.

A person who confines an idiot, lunatic, or insane person, in any other manner or in any other place than as authorized by law, and a person guilty of harsh, cruel, or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person under confinement, whether lawfully or unlawfully confined, is guilty of a misdemeanor.

See § 192, subd. 6, *supra*.

§ 317. Frauds on hotel keepers.

A person who obtains any food or accommodation at an inn without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn by use of any false pretense, or who, after obtaining credit or accommodation at an inn, absconds and surreptitiously removes his baggage therefrom without paying for his food and accommodation, is guilty of a misdemeanor.

As to constitutionality, see State v. Benson, 28 Minn. 424, 10 N. W. Rep. 471. The food or accommodations procured, or baggage removed, need not be alleged as of any value. Id.

§ 318. Acrobatic exhibitions.

The proprietor, occupant, or lessee of any place where acrobatic exhibitions are held, who permits any person to perform on any trapeze, rope, pole, or other acrobatic contrivance, without network or other sufficient means of protection from falling or other accident, is guilty of a misdemeanor, punishable for the first offense by a fine of two hundred and fifty dollars, and for each subsequent offense by a fine of two hundred and fifty dollars and imprisonment not less than three months nor more than one year.

TITLE 12.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.*

*See *ante*, Supp. Gen. St. *c.* 101, and *c.* 124, *§ 25*a*.

§ 319. "Public nuisance" defined.

A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission

1. Annoys, injures, or endangers the comfort, repose, health, or safety of any considerable number of persons; or

2. Offends public decency; or

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal, or basin, or a public park, square, street, alley, or highway; or

4. In any way renders a considerable number of persons insecure in life, or the use of property.

See §§ 227–229, 283, *supra*.

Betting establishment. McClean v. State, (N. J.) 9 Atl. Rep. 681.

License by board of health. Garrett v. State, (N. J.) 7 Atl. Rep. 29.

Pecuniary inability to abate. Baltimore & Y. T. R. Co. v. State, (Md.) 1 Atl. Rep. 285.

Indictment charging the maintaining of a dangerous building and of a filthy building bad for duplicity. Chute v. State, 19 Minn. 271, (Gil. 230;) State v. Wood, 13 Minn. 121, (Gil. 112;) State v. Coon, 14 Minn. 456, (Gil. 340.)

Building charged as on lots 1 and 2 and proof that it is also on lot 3, not a case of variance. Chute v. State, *supra*, and cases cited.

A jury in a criminal case is a body of twelve men. State v. Everett, 14 Minn. 439, (Gil. 330.)

View of premises in the discretion of the court. Chute v. State, 19 Minn. 271, (Gil. 230.)

The title to real estate may become involved, and a justice of the peace should thereupon proceed under § 169, ch. 65, Gen. St. 1878. State v. Sweeny, 21 N. W. Rep. 847. See State v. Cotton, 29 Minn. 187, 12 N. W. Rep. 529; State v. Leslie, 30 Minn. 533, 16 N. W. Rep. 408.

§ 320. Unequal damage.

An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

§ 321. Maintaining a nuisance a misdemeanor.

A person who commits or maintains a public nuisance, the punishment for which is not specially prescribed, or who willfully omits or refuses to perform any legal duty relating to the removal of such a public nuisance, is guilty of a misdemeanor.

§ 322. Permitting building to be used for nuisance.

A person who lets, or permits to be used, a building, or portion of a building, knowing that it is intended to be used for committing, or maintaining, a public nuisance, is guilty of a misdemeanor.

See §§ 291, 297, *supra*.

§ 323. Keeping gunpowder unlawfully.

A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law,

or by ordinance of the city or village, is guilty of a misdemeanor. And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substance injures, or occasions the injury of, the person or property of another, is punishable by imprisonment in the county jail for not more than one year.

See § 172, *supra*; §§ 477, 484, *post*.

§ 324. Obstructing health officer in performance of his duty.

A person who willfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 325. Willful violation of health laws.

A person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this code, and a person who willfully violates, or refuses, or omits to comply with, any lawful order or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or by both.

§ 326. Apothecary omitting to label drugs, or labeling them wrongly.

An apothecary or druggist, or a person employed as clerk, or salesman, by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts any untrue label, stamp, or other designation of contents upon any box, bottle, or other package containing a drug or medicine, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

§ 327. Apothecary selling poison without recording the sale.

An apothecary or druggist, or a person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who sells or gives any poison or poisonous substance, without first recording in a book, to be kept for that purpose, the name and residence of the person receiving such poison, together with the kind and quantity of such poison received, and the name and residence of some person known to such dealer as a witness to the transaction, except upon the written order or prescription of some practicing physician whose name is attached to the order, is guilty of a misdemeanor.

§ 328. Refusing to exhibit record.

A person whose duty it is by the last section to keep a book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said book upon reasonable demand made during ordinary business hours, is punishable by a fine not exceeding fifty dollars.

§ 329. Selling poison without label.

A person who sells, gives away, or disposes of, any poison, or poisonous substance, without attaching to the vial, box, or parcel containing such poi-

sonous substance, a label, with the name and residence of such person, the word "poison" and the name of such poison, all written or printed thereon, in plain and legible characters, is guilty of a misdemeanor.

§ 330. Medical prescriptions.

No person employed in a drug store or apothecary shop shall prepare a medical prescription unless he has served two years' apprenticeship in such store or shop, or is a graduate of a medical college or college of pharmacy, except under the direct supervision of some person possessing one of those qualifications; nor shall any proprietor or other person in charge of such store or shop permit any person not possessing such qualifications to prepare a medical prescription in his store or shop, except under such supervision. A person violating any provision of this section is guilty of a misdemeanor, punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months; and in case of death ensuing from such violation, the person offending is guilty of a felony, punishable by a fine not less than one thousand dollars, nor more than five thousand dollars, or by imprisonment in the state prison not less than two years, nor more than four years, or by both such fine and imprisonment.

§ 331. Adulterating food, drugs, liquors, etc.

A person who either

1. With intent that the same may be sold as unadulterated or undiluted, adulterates or dilutes wine, milk, distilled spirits, or malt liquor, or any drug, medicine, food, or drink, for man or beast; or

2. Knowing that the same has been adulterated or diluted, offers for sale or sells the same as unadulterated or undiluted, or without disclosing or informing the purchaser that the same has been adulterated or diluted, in a case where special provision has not been otherwise made by statute for the punishment of the offense;

—Is guilty of a misdemeanor.

§ 332. Disposing of tainted food.

A person who, with intent that the same may be used as food, drink, or medicine, sells, or offers, or exposes for sale, any article whatever which to his knowledge is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.

§ 333. Making, selling, etc., dangerous weapons.

A person who manufactures, or causes to be manufactured, or sells, or keeps for sale, or offers or gives or disposes of any instrument or weapon of the kind usually known as slung-shot, sand-club, or metal knuckles, or who, in any city of this state, without the written consent of a magistrate, sells or gives any pistol or fire-arm to any person under the age of eighteen years, is guilty of a misdemeanor.

§ 334. Carrying, using, etc., certain weapons.

A person who attempts to use against another, or who, with intent so to use, carries, conceals, or possesses any instrument or weapon of the kind commonly known as slung-shot, sand-club, or metal knuckles, or a dagger, dirk, knife, pistol or other fire-arm, or any dangerous weapon, is guilty of a misdemeanor.

United States soldier carrying pistol—Evidence of character. Lann v. State, (Tex.) 8 S. W. Rep. 650.

Searching defendant's person. Chastang v. State, (Ala.) 3 South. Rep. 304.

See State v. Williams, (Iowa,) 29 N. W. Rep. 801; Short v. State, (Tex.) 8 S. W. Rep. 281.

§ 335. Possession, presumptive evidence.

The possession by any person other than a public officer of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying or concealing or possessing with intent to use the same in violation of that section.

§ 336. Negligence in respect to fire.

Whoever negligently or carelessly sets on fire, or causes to be set on fire, any woods, prairies, or other combustible material, whether on his own lands or not, by means whereof the property of another is endangered, or whoever negligently suffers any fire upon his own lands to extend beyond the limits thereof, is guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a period not exceeding three months.

§ 337. Obstructing attempts to extinguish fires.

A person who, at any burning of a building, is guilty of any disobedience to lawful orders of a public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen, to extinguish the same, or of any disorderly conduct likely to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

§ 338. Maintaining ferry without authority of law.

A person who maintains a ferry for profit or hire, upon any waters within this state, without authority of law, is punishable by a fine not exceeding twenty-five dollars for each time of crossing or running such ferry. Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either.

§ 339. Violating conditions of bond to keep a ferry.

A person who, having entered into a bond to keep and attend a ferry, violates the condition of such bond, is guilty of a misdemeanor.

§ 340. Employment of engineer who cannot read.

A person who, as an officer of a corporation, or otherwise, knowingly employs as an engineer or engine-driver to run locomotives or trains on any railway in this state a person who cannot read the time-tables and ordinary handwriting, is guilty of a misdemeanor.

§ 341. Person acting as engineer who cannot read.

A person who, being unable to read the time-tables of the road and ordinary handwriting, acts as an engineer, or runs a locomotive or train on any of the railways in this state, is guilty of a misdemeanor.

§ 342. Intoxication of persons running trains and boats.

A person who, being employed upon any railway as engineer, conductor, baggage master, brakeman, switch-tender, fireman, bridge-tender, flag-man, signal-man, or having charge of stations, starting, regulating, or running trains upon a railway, or being employed as captain, engineer, or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties, is guilty of a misdemeanor.

§ 343. Failure to ring bell, etc.

A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level, (except

in cities,) or to continue the ringing such bell or sounding such whistle at intervals, until such locomotive, and the train to which such locomotive is attached, shall have completely crossed such road or street, is guilty of a misdemeanor.

§ 344. Other violations of duty by officers, agents, or servants of railroad companies.

An engineer, conductor, brakeman, switch-tender, train-dispatcher, or any other officer, agent, or servant of any railway company, who is guilty of any willful violation or omission of his duty, as such officer, agent, or servant, by which human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

[See Gen. Laws 1883, *c.* 121, enacting as follows: "Every engineer, conductor, brakeman, switch-tender, train-dispatcher, telegraph operator, or other officer, agent, or servant of any railroad company, or of any person, officer, trustee, or association operating any railroad in this state, who shall be guilty of any willful violation or omission of his duty, or of any gross negligence of his duty, as such engineer, conductor, brakeman, switch-tender, train-dispatcher, telegraph operator, officer, agent, or servant, by means of which human life or safety is endangered, shall, in case any human being shall thereby receive injuries resulting in death, be guilty of manslaughter in the third degree, and in every such other case not resulting in death shall be punished by imprisonment in the state prison for a term not exceeding two years, or in the county jail for a period not exceeding one year."]

See § 170, *supra*.

§ 345. Dangerous exhibitions.

A person who, being lessee or occupant of any place of amusement, or any plot of ground or building, uses it or allows it to be used for the exhibition of skill in throwing any sharp instrument at or towards any human being or aims or discharges any bow-gun, pistol, or fire-arm of any description whatever, or allows one to be aimed or discharged at or towards any human being, is guilty of a misdemeanor.

§ 346. Duty of guarding ice cuttings.

A person or corporation cutting ice in or upon any waters wholly or partly within the boundaries of this state, for the purpose of removing the ice for sale, must surround the cuttings and openings made with fences of bushes or other guards sufficient to warn all persons of such cuttings and openings; which fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed therein to the thickness of at least six inches. Whoever omits to comply with this section is guilty of a misdemeanor.

§ 347. Articles in imitation of food.

A person who sells, or manufactures, exposes, or offers for sale, as an article of feed, any substance in imitation thereof, without disclosing the imitation by a suitable and plainly visible mark or brand, is guilty of a misdemeanor.

§ 348. Noisome or unwholesome substances, etc., in highway.

A person who deposits, leaves, or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains, or carries on, upon, or near a public highway or route of public travel, either on the land or on the water, any business, trade, or manufacture which is noisome or detrimental to the public health, or who deposits or casts in any lake, creek, or river, wholly or partly

within this state, or deposits upon the ice of such lake, creek, or river the offal from, or the dead body of, any animal, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment in the county jail not less than three, nor more than six, months, or both.

§ 349. Exposing person affected with a contagious disease in a public place.

A person who willfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

TITLE 13.

OF CRIMES AGAINST THE PUBLIC PEACE.

§ 350. Disturbing lawful meetings.

A person who, without authority of law, willfully disturbs any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.

See § 233, *supra*.

§ 351. "Riot" defined.

Whenever three or more persons, having assembled for any purpose, disturb the public peace, by using force or violence to any other person, or to property, or threaten or attempt to commit such disturbance, or to do an unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they are guilty of riot.

See State v. Dean, (Wis.) 38 N. W. Rep. 341.

§ 352. Punishment of riot.

A person guilty of riot, or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is punishable as follows:

1. If the purpose of the assembly, or of the acts done or threatened, or intended by the persons engaged, is to resist the enforcement of a statute of

this state, or of the United States, or to obstruct any public officer of this state, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty, or if the offender carries, at the time of the riot, fire-arms or any other dangerous weapon, or is disguised, by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

2. In any other case, if the offender directs, advises, encourages, or solicits other persons present or participating in the riot or assembly to acts of force or violence, by imprisonment in the state prison for not more than two years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

3. In any case not embraced within the foregoing subdivisions of this section, by imprisonment in the state prison for not more than one year, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

§ 353. Unlawful assemblies.

Whenever three or more persons

1. Assemble with intent to commit any unlawful act by force; or

2. Assemble, with intent to carry out any purpose, in such a manner as to disturb the public peace; or

3. Being assembled, attempt or threaten any act tending towards a breach of the peace, or an injury to person or property, or any unlawful act.

Such an assembly is unlawful, and every person participating therein, by his presence, aid, or instigation, is guilty of a misdemeanor. But this section shall not be so construed as to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

See People v. Bartz, (Mich.) 19 N. W. Rep. 161.

§ 354. Remaining present at place of riot after warning.

A person remaining present at the place of an unlawful assembly or riot, after the persons assembled have been warned to disperse by a magistrate or public officer, is guilty of a misdemeanor, unless as a public officer, or at the request or command of a public officer, he is endeavoring or assisting to disperse the same, or to protect persons or property, or to arrest the offenders.

§ 355. Remaining after meeting has adopted unlawful purpose.

Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to a riot, if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, or such act is committed, except public officers and persons assisting them in attempting to disperse the assembly, is guilty of a misdemeanor.

§ 356. Refusing to assist in arresting rioter.

A person present at the place of an unlawful assembly or riot, who, being commanded by a duly-authorized public officer to act or aid in suppressing the riot, or in protecting persons or property, or in arresting a person guilty of or charged with participating in the unlawful assembly or riot, neglects or refuses to obey such command, is guilty of a misdemeanor.

§ 357. Combinations to resist execution of process.

A person who enters into a combination with another to resist the execution of any legal process, or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, is guilty of a misdemeanor.

§ 358. Prize fighting—Aiding therein, etc.

A person who, within this state, engages in, instigates, aids, encourages, or does any act to further a contention or fight without weapons between two or more persons, or a fight commonly called a ring or prize fight, either within or without the state, or who sends or publishes a challenge or acceptance of a challenge for such a contention or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention or fight, is guilty of a misdemeanor.

See § 203, *supra*.

§ 359. What is a challenge.

Any words spoken or written, or any signs uttered or made, to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand to engage in any fight, such as is mentioned in section three hundred and fifty-eight, are to be deemed a challenge within the meaning of that section.

See § 205, *supra*.

§ 360. Betting or stakeholding on fight.

A person who bets, stakes, or wagers money or other property upon the result of such a fight or encounter, or holds or undertakes to hold money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

§ 361. Fight out of state.

A person who leaves the state, with intent to elude any provision of this title, or to commit any act without the state, which is prohibited by this title, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this title if committed within the state, is guilty of the same offense, and subject to the same punishment, as if the act had been committed within this state.

See §§ 154, 208, *supra*.

§ 362. Indictment.

An indictment for an offense specified in the last section may be tried in any county within the state.

See § 209, *supra*.

§ 363. Apprehension of persons about to fight.

A magistrate having power to issue warrants in criminal cases, to whom it is made to appear that there is reasonable ground to apprehend that an offense specified in sections three hundred and fifty-eight, three hundred and sixty, and three hundred and sixty-one is about to be committed within his jurisdiction, or by any person being within his jurisdiction, must issue his warrant to a sheriff or constable, or other proper officer, for the arrest of the person or persons so about to offend. Upon a person being arrested and brought before him by virtue of the warrant, he must inquire into the matter, and if it appears that there is reasonable ground to believe that the person arrested is about to commit any such offense, the magistrate must require him to give a bond to the state in such sum, not exceeding one thousand dollars, as the magistrate may fix, either with or without sureties, in his discretion, conditioned that such person will not for one year thereafter commit any such offense.

§ 364. Id.—Bail or commitment.

If the person arrested, as prescribed in the last section, does not furnish a bond as prescribed therein, within a time fixed by the magistrate, the latter

must commit him to the county jail, there to remain until discharged by a court of record having criminal jurisdiction. A person so committed may at any time be discharged upon a writ of *habeas corpus*, upon his executing the bond required by the committing magistrate. If the bond is required to be given with one or more sureties, the surety or sureties must be approved by the officer taking the same.

§ 365. Forcible entry and detainer.

A person guilty of using, or of procuring, encouraging, or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and the manner allowed by law, is guilty of a misdemeanor.

What constitutes. Thompson v. Com., (Pa.) 10 Atl. Rep. 138.

§ 366. Taking possession of lands after being legally removed.

A person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards, without authority of law, returns to settle or reside upon, or take possession of such lands, is guilty of a misdemeanor.

§ 367. Discharging firearms in public places.

A person who willfully discharges any species of firearms, air-gun, or other weapon, or throws any deadly missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

§ 368. Witnesses' privilege.

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this title, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

See § 528, *post*.

TITLE 14.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

§ 369. Misappropriation, etc., and falsification of accounts by public officers.

A public officer, or a deputy, or clerk of any such officer, or any other person receiving money on behalf of or for account of the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly

interested, or for or on account of any city, county, village, borough, school-district, or town, who,

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk, or deputy, or otherwise; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or,

3. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

4. Willfully omits or refuses to pay over to the state or its officer or agent authorized by law to receive the same, or to such city, village, borough, school-district, county, or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer, when it is his duty, imposed by law, to pay over or account for the same;

—Is guilty of a felony.

See § 102, sub. 2, *supra;* § 402, *post;* art. 9, § 12, Const. Minn.

Mere neglect to pay over insufficient. There must be a fraudulent conversion. Fitzgerald v. State, (N. J.) 14 Atl. Rep. 746.

The improper neglect or refusal of a public officer to deliver to his successor in office all *money remaining* in his hands, upon demand therefor, is, under Gen. St. 1878, c. 95, § 36, embezzlement *per se* of such moneys, although no particular sum was demanded. State v. Ring, 29 Minn. 78, 11 N. W. Rep. 233.

Indictment against state treasurer; official character and demand must be alleged. State v. Munch, 22 Minn. 67; State v. New, Id. 76; State v. Baumhager, 28 Minn. 226, 9 N. W. Rep. 704.

An indictment against a state treasurer for embezzlement of state funds need not state the character or amounts of the various funds embezzled, nor that the same is unknown to the grand jury. State v. Munch, 22 Minn. 67.

Number of judicial district is not a part of the title of the court. Id.

See, also, as to sufficiency of indictment, State v. Nicholson, (Md.) 8 Atl. Rep. 817.

Sufficiency of evidence. State v. Cowan, (Iowa,) 36 N. W. Rep. 886; State v. Strong, (La.) 3 South. Rep. 266.

Upon a conviction under §§ 36, 37, c. 95, Gen. St. 1878, for embezzling public moneys, the amount embezzled being $14,614.03, a fine of $29,228.06 is not excessive. Upon conviction under those sections, the court has no power to sentence the defendant to stand committed in prison until the fine imposed is paid. Mims v. State, 26 Minn. 494, 5 N. W. Rep. 369, 374.

See, also, State v. Czizek, (Minn.) 36 N. W. Rep. 457; Ochs v. People, (Ill.) 16 N. E. Rep. 662; Com. v. Este, (Mass.) 2 N. E. Rep. 769; State v. White, (Wis.) 28 N. W. Rep. 202.

§ 370. Other violations of law by public officers.

An officer or other person mentioned in the last section, who willfully disobeys any provision of law regulating his official conduct in cases other than those specified in that section, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding two years, or both.

See § 128, *supra.*

§ 371. Misappropriation, etc., by county treasurer.

A county treasurer, who willfully misappropriates any moneys, funds, or securities received by or deposited with him as such treasurer, or who is guilty of any other malfeasance or willful neglect of duty in his office, is punishable by a fine not less than five hundred dollars, nor more than ten thousand dollars, or by imprisonment in the state prison not less than one year, or more than five years, or by both such fine and imprisonment.

A failure to pay state auditor's draft, on demand, is *prima facie* evidence of embezzlement. State v. Mims, 26 Minn. 183, 2 N. W. Rep. 492, 494.

His indorsement on auditor's certificate of settlement, admissions, and failure to pay over to successor admissible. State v. Mims, *supra;* State v. Ring, 29 Minn. 78, 11 N. W. Rep. 233.

Fraudulently obtaining credit for order, previously paid by predecessor, evidence of conversion. State v. Baumhager, 28 Minn. 226, 9 N. W. Rep. 704.

Requisites of indictment. Proof of gross sum exceeding allegation proper. Money

paid and charged presumed to have been received. Tax receipt stubs evidence of. Failure to pay all money to successor on demand *per se* embezzlement, though no particular sum demanded. State v. Ring, 29 Minn. 78, 11 N. W. Rep. 233.

§ 372. Officer becoming interested in contract.

A public officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease, or contract, who voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor.

§ 373. Making false statement in reference to taxes.

A person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor.

TITLE 15.

OF CRIMES AGAINST PROPERTY.

CHAPTER 1.

ARSON.

§ 374. "Arson in the first degree" defined.

A person who willfully burns, or sets on fire, in the night-time, either,

1. A dwelling-house in which there is, at the time, a human being; or,

2. A car, vessel, or other vehicle, or a structure or a building other than a dwelling-house, wherein, to the knowledge of the offender, there is, at the time, a human being;

—Is guilty of arson in the first degree.

See § 478, *post*.

Indictment. Mulligan v. State, (Tex.) 7 S. W. Rep. 664; Baker v. State, 8 S. W. Rep. 23. Allegation of ownership. People v. Eaton, (Mich.) 26 N. W. Rep. 702.

§ 375. Arson—Second degree.

A person who,

1. Commits an act of burning in the day-time, which, if committed in the night-time, would be arson in the first degree; or,

2. Willfully burns, or sets on fire, in the night-time, a dwelling-house wherein, at the time, there is no human being; or,

3. Willfully burns, or sets on fire, in the night-time, a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there is, at the time, a human being, so that the inhabited building is endangered, even though it is not in fact injured by the burning; or,

4. Willfully burns, or sets on fire, in the night-time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time;

—Is guilty of arson in the second degree.

§ 376. Arson—Third degree.

A person who willfully burns, or sets on fire, either

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof; or,

2. A vessel, car, or other vehicle, or a building, structure, or other erection, under circumstances not amounting to arson in the first or second degree; or,

3. Any machinery, vehicle, pile or parcel of boards, timber, or other lumber, or any stack of hay, grain, or other vegetable product, severed from the soil, whether stacked or not, or any standing grain, grass, or other standing products of the soil;

—Is guilty of arson in the third degree.

§ 377. Arson, how punished.

Arson is punishable as follows:

1. In the first degree, by imprisonment in the state prison for not less than ten years.

2. In the second degree, by imprisonment in the state prison for not less than seven, nor more than fifteen, years.

3. In the third degree, by imprisonment in the state prison not more than seven years.

§ 378. Contiguous buildings.

Where an appurtenance to a building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing provisions, against any person actually participating in the original setting on fire, as of the moment when the fire from the one communicates to and sets on fire the other.

§ 379. "Night-time" and "dwelling-house" defined.

The words "night-time," as used in this chapter, include the period between sunset and sunrise, and every building or structure, which shall have been usually occupied by persons lodging therein at night, is a dwelling-house within the meaning of this chapter.

§ 380. "Building" defined.

Any house, vessel, or other structure, suitable for affording shelter for human beings, or appurtenant to, or connected with, a structure so adapted, is a "building" within the meaning of this chapter.

§ 381. "Inhabited building" defined.

A building is deemed an "inhabited building" within the meaning of this chapter, any part of which has usually been occupied by a person lodging therein at night.

§ 382. Ownership of building.

To constitute arson it is not necessary that another person than the defendant should have had ownership in the building set on fire.

See Mulligan v. State, (Tex.) 7 S. W. Rep. 664; Baker v. State, (Tex.) 8 S. W. Rep. 23.

CHAPTER 2.

BURGLARY.

§ 383. "Burglary in first degree" defined.

A person who, with intent to commit some crime therein, breaks and enters, in the night-time, the dwelling-house of another, in which there is at the time a human being,

1. Being armed with a dangerous weapon; or,
2. Arming himself therein with such a weapon; or,
3. Being assisted by a confederate actually present; or,
4. Who, while engaged in the night-time in effecting such entrance, or in committing any crime in such a building, or in escaping therefrom, assaults any person;

—Is guilty of burglary in the first degree.

Sufficiency of indictment. Com. v. Shedd, (Mass.) 5 N. E. Rep. 254; State v. Kane, (Wis.) 23 N. W. Rep. 488. Averment of ownership, etc., Smith v. People, (Ill.) 3 N. E. Rep. 733; State v. Rivers, (Iowa.) 27 N. W. Rep. 781; Jackson v. State, (Wis.) 13 N. W. Rep. 448; State v. Short, (Iowa,) 6 N. W. Rep. 584; State v. McIntyre, (Iowa,) 13 N. W. Rep. 286.

Averment of intent to steal, or to commit rape. Dismukes v. State, (Ala.) 3 South. Rep. 671. See, also, as to averment and proof of intent, People v. Stewart, (Mich.) 7 N. W. Rep. 71; Neubrandt v. State, (Wis.) 9 N. W. Rep. 824. Inference of intent from the fact of breaking and entering. State v. Teeter, (Iowa,) 27 N. W. Rep. 485.

Absence of evidence of the manner of the entry, or of the use of force. Jones v. State, (Tex.) 7 S. W. Rep. 669.

Sufficiency of evidence. People v. Bielfass, (Mich.) 26 N. W. Rep. 771; State v. Rivers, (Iowa,) 27 N. W. Rep. 781. Mere possession of the stolen articles is not sufficient to sustain a conviction for burglary. Stewart v. People, (Mich.) 3 N. W. Rep. 863; State v. Shaffer, (Iowa,) 13 N. W. Rep. 306; State v. Tilton, (Iowa,) 18 N. W. Rep. 716.

See People v. Carroll, (Mich.) 20 N. W. Rep. 66, 575; Harvick v. State, (Ark.) 6 S. W. Rep. 19; Milton v. State, (Tex.) Id. 303; Field v. State, Id. 200.

§ 384. Burglary—Second degree.

A person who, with intent to commit some crime therein, breaks and enters the dwelling-house of another, in which there is a human being, under circumstances not amounting to burglary in the first degree, is guilty of burglary in the second degree.

§ 385. Burglary—Third degree.

A person who either

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or,

2. Being in any building, commits a crime therein, and breaks out of the same;

—Is guilty of burglary in the third degree.

See *post*, § 391, and note.

Former conviction for larceny is a bar to an indictment for larceny of the same property from a shop. State v. Wiles, 26 Minn. 381, 4 N. W. Rep. 615. But see § 393, *post*.

Requisites of recognizance, record, acknowledgment, certificate, waiver, etc. State v. Perry, 28 Minn. 455, 10 N. W. Rep. 778.

Indictment charging burglary, but stating only facts constituting simple larceny, good for larceny. State v. Coon, 18 Minn. 518, (Gil. 464;) State v. Eno, 8 Minn. 220, (Gil. 190;) State v. Garvey, 11 Minn. 154, (Gil. 95;) State v. Munch, 22 Minn. 67. Absence of allegation of breaking. Winston v. Com., (Ky.) 7 S. W. Rep. 900; Webb v. Com., Id. 899. Variance. Johnson v. Com., (Ky.) 7 S. W. Rep. 927.

Sufficiency of evidence. Fiester v. People, (Ill.) 17 N. E. Rep. 748.

See State v. Cash, (Kan.) 16 Pac. Rep. 144.

§ 386. "Break" defined.

The word "break," as used in this chapter, means and includes

1. Breaking or violently detaching any part, internal or external, of a building; or,

2. Opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle, or other thing used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; or,

3. Obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; or,

4. Entering such a building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building, or the walls or foundation thereof.

Entry by collusion. State v. Rowe, (N. C.) 4 S. E. Rep. 506.

§ 387. "Night-time" defined.

The words "night-time," in this chapter, include the period between sunset and sunrise.

§ 388. "Enter" defined.

The word "enter," as used in this chapter, includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate the inmates, or to detach or remove property.

§ 389. "Dwelling-house" defined.

A building, any part of which is usually occupied by a person lodging therein at night, is, for the purposes of this chapter, deemed a dwelling-house.

See People v. Horrigan, (Mich.) 36 N. W. Rep. 236.

§ 390. Dwelling-houses, etc.—When deemed separate.

If a building is so constructed as to consist of two or more parts, intended to be occupied by different tenants usually lodging therein at night, each part is deemed the separate dwelling-house of a tenant occupying the same. If a building is so constructed as to consist of two or more parts occupied by different tenants separately for any purpose, each part or apartment is considered a separate building within the meaning of this chapter.

§ 391. "Building" defined.

The term "building," as used in this chapter, includes a railway car, vessel, booth, tent, shop, or other erection or inclosure.

A stone vault in a cemetery used for the interment of the dead, and built wholly above ground, is not a "building" within the meaning of this section and § 385, as construed by the courts of New York, and breaking into such vault is held not burglary. People v. Richards, (N. Y.) 15 N. E. Rep. 371.

§ 392. Unlawfully entering building.

A person who, under circumstances or in a manner not amounting to a burglary, enters a building, or any part thereof, with intent to commit a felony or a larceny, or any malicious mischief, is guilty of a misdemeanor.

§ 393. Burglar punishable separately for crime in building.

A person who, having entered a building under such circumstances as to constitute burglary in any degree, commits any crime therein, is punishable therefor, as well as for the burglary, and may be prosecuted for each crime separately.

§ 394. Burglary, how punished.

Burglary is punishable by imprisonment in the state prison, as follows:

1. Burglary in the first degree, for not less than ten years.

2. Burglary in the second degree, for not more than ten nor less than five years.

3. Burglary in the third degree, for not more than five years, nor less than one year.

§ 395. Possessing burglar's instrument, etc.

A person who makes or mends, or causes to be made or mended, or has in his possession in the day or night-time, any engine, machine, tool, false key, pick-lock, bit, nippers, or implements adapted, designed, or commonly used for the commission of burglary, larceny, or other crime, under circumstances evincing an intent to use, or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same are intended to be so used, shall be guilty of a misdemeanor.

CHAPTER 3.

FORGERY.

§ 396. "Forgery in first degree," defined.

A person is guilty of forgery in the first degree who, with intent to defraud, forges,

1. A will or codicil of real or personal property, or the attestation thereof, or a deed or other instrument, being or purporting to be, the act of another, by which any right or interest in property is or purports to be transferred, conveyed, or in any way charged or affected; or,

2. A certificate of the acknowledgment or proof of a will, codicil, deed, or other instrument, which by law may be recorded or given in evidence when duly proved or acknowledged, made or purporting to have been made by a court or officer duly authorized to make such a certificate; or,

3. A certificate, bond, paper, writing, or other public security, issued, or purporting to have been issued, by or under the authority of this state, or of the United States, or of any other state or territory of the United States, or of any foreign government, country, or state, or by any officer thereof in his official capacity, by which the payment of money is promised absolutely or upon any contingency, or the receipt of any money or property is acknowledged, or being, or purporting to be, evidence of any debt or liability, either absolute or contingent, issued, or purporting to have been issued, by lawful authority; or,

4. An indorsement or other instrument, transferring, or purporting to transfer, the right or interest of any holder of such a certificate, obligation, public security, evidence of debt, or liability, or of any person entitled to such right or interest; or,

5. A certificate of stock, bond, or other writing, bank-note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued, or purporting to be issued, by any bank, banking association, or body corporate existing under the laws of this state, or of the United States, or of any other state, government, or country, declaring, or purporting to declare, any right, title, or interest of any person in any portion of the capital stock or property of such a body corporate, or promising, or purporting to promise, or agree to, the payment of money, or the performance of any act, duty, or obligation; or,

6. An indorsement or other writing, transferring, or purporting to transfer, the right or interest of any holder of such a certificate, bond, or writing obligatory, or of any person entitled to such right or interest.

Signing deed as "attorney in fact" not forgery. State v. Willson, 28 Minn. 52, 9 N. W. Rep. 28.

Bank must be alleged to be authorized by law to issue the bills. Benson v. State, 5 Minn. 19, (Gil. 6;) State v. Mott, 16 Minn. 472, (Gil. 424;) State v. Wheeler, 19 Minn. 98, (Gil. 70.)

Forging and uttering two offenses—Misjoinder. State v. Wood, 13 Minn. 121, (Gil. 112;) State v. Coon, 14 Minn. 456, (Gil. 340;) Chute v. State, 19 Minn. 271, (Gil. 230.)

Forgery and uttering forged paper are distinct offenses, and cannot be united in the same indictment. State v. McCormack, (Iowa,) 9 N. W. Rep. 916. Under an indictment charging the latter, defendant cannot be convicted of the former. People v. McMillen, (Mich.) 18 N. W. Rep. 390.

An indictment for forging an accountable receipt of an elevator company, which is set out in the indictment, and appears to be signed "M. G., Inspector," unless it show that the person whose name was so signed was agent of the company, is bad. State v. Wheeler, 19 Minn. 98, (Gil. 70.) See, also, State v. Riebe, 27 Minn. 315, 7 N. W. Rep. 262. The indictment must show the instrument upon which the charge is based to be one having some legal effect. Garmire v. State, (Ind.) 4 N. E. Rep. 54. And see Shannon v. State, (Ind.) 10 N. E. Rep. 87.

See, also, § 398, *post*, and note.

§ 397. False certificate to certain instruments.

An officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who willfully certifies falsely that the execution of such an instrument was acknowledged by any party thereto, or that the execution of any such instrument was proved, is guilty of forgery in the first degree.

§ 398. Forgery, second degree.

A person is guilty of forgery in the second degree who, with intent to defraud,—

1. Forges the great or privy seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state, or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal or any gold or silver coin, whether of the United States, or of any foreign state, government, or country; or,

2. Forges a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, or of any judgment, order, or decree of any court or officer, or a certified or authenticated copy thereof; or,

A judgment roll, judgment, order, or decree of any court or officer, or an enrollment thereof, or a certified or authenticated copy thereof; or,

Any document or writing purporting to be such judgment, decree, enrollment, or copy; or,

An entry made in any book of record or accounts, kept by or in the office of any officer of this state, or of any village, city, town, borough, school-district, or county of the state, by which any demand, claim, obligation, or interest, in favor of or against the people of the state, or any city, village, town, borough, school-district, or county, or any officer thereof, is or purports to be created, increased, diminished, discharged, or in any manner affected; or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected; or,

An instrument, document, or writing being, or purporting to be, a process or mandate issued by a competent court, magistrate, or officer of the state, or the return of an officer, court, or tribunal, to such a process or mandate; or a bond, recognizance, undertaking, pleading, or proceeding, filed or entered in any court of the state; or a certificate, order, or allowance by a competent court, or officer, or a license or authority granted pursuant to any statute of the state, or a certificate, document, instrument, or writing made evidence by any law or statute; or,

An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or in any manner affected, or by which any rights or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting any person may be bound, affected, or in any way injured in his person or property; or,

3. Makes or engraves a plate in the form or similitude of a promissory note, bill of exchange, bank-note, draft, check, certificate of deposit, or by other evidence of debt, issued by a banker, or by any banking corporation or association, incorporated or carrying on business under the laws of the state, or of the United States, or of any other state or territory of the United States, or of any foreign government or country, without the authority of such banker, or banking corporation, or association; or,

Without like authority, has in his possession or custody such a plate, with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression to be uttered; or,

Without like authority, has in his possession or custody any impression

taken from such a plate, with intent to have the same filled up and completed for the purpose of being uttered; or,

Makes or engraves, or causes to be made or engraved, upon any plate, any figures or words, with intent that the same may be used for the purpose of falsely altering any evidence of debt hereinbefore mentioned.

Forgery of theater ticket. In re Benson, 34 Fed. Rep. 649. Of an order. Stewart v. State, (Ind.) 16 N. E. Rep. 186. And see, as to what may be the subject of forgery, Rollins v. State, (Tex.) 3 S. W. Rep. 759; Williams v. State, (Tex.) 6 S. W. Rep. 531.

Forgery of the name of a deceased person. Billings v. State, (Ind.) 6 N. E. Rep. 914.

Intent to defraud—Presumption. Rounds v. State, (Me.) 2 Atl. Rep. 673.

Indorsement on note of sum as paid not forgery. State v. Monnier, 8 Minn. 212, (Gil. 182.)

Forgery of a note without revenue stamp, indictable. State v. Mott, 16 Minn. 472, (Gil. 424.)

An alteration must be shown to be material and to change the legal effect. State v. Riebe, 27 Minn. 315, 7 N. W. Rep. 262.

False assumption of authority, as "attorney in fact," not forgery. State v. Willson, 28 Minn. 52, 9 N. W. Rep. 28.

Indictment must show that party whose name is forged as agent, etc., was agent. State v. Wheeler, 19 Minn. 98, (Gil. 70;) State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758. Allegation of value. Stewart v. State, (Ind.) 16 N. E. Rep. 186. Variance, Burks v. State, (Tex.) 6 S. W. Rep. 300; Id. 303. See, also, as to the indictment, State v. Blanchard, (Iowa,) 38 N. W. Rep. 519; State v. Bailey, (N. C.) 6 S. E. Rep. 372.

Signature written in the presence of the jury inadmissible to show an attempt by the forger to imitate part of the genuine signature. State v. Koontz, (W. Va.) 5 S. E. Rep. 328. See, also, as to evidence, State v. Blanchard, (Iowa,) 38 N. W. Rep. 519.

Instruction as to effect of instrument. Burks v. State, (Tex.) 6 S. W. Rep. 300; Id. 303.

See U. S. v. Hopkins, 26 Fed. Rep. 443; U. S. v. Russell, 22 Fed. Rep. 390; and note to § 396, *ante*.

§ 399. "Form and similitude" defined.

A plate, specified in the last section, is in the form and similitude of the genuine instrument imitated, if the finished parts of the engraving thereupon resemble and conform to similar parts of the genuine instruments.

§ 400.

An instrument partly written and partly printed, or wholly printed, with a written signature thereto, and any signature or writing purporting to be a signature of, or intended to bind an individual, a partnership, a corporation, or association, or an officer thereof, is a written instrument, or a writing, within the provisions of this chapter.

§ 401. Forgery, third degree.

A person who either,—

1. Being an officer, or in the employment of a corporation, association, partnership, or individual, falsifies, or unlawfully and corruptly alters, erases, obliterates, or destroys any accounts, book of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association, partnership, or individual; or,

2. Who, with intent to injure or defraud, shall falsely make, alter, forge, or counterfeit, or shall cause, aid, abet, assist, or otherwise connive at, or be a party to, the making, altering, forging, or counterfeiting of any letter, telegram, report, or other written communication, paper, or instrument, by which making, altering, forging, or counterfeiting any other person shall be in any manner injured in his good name, standing, position, or general reputation; or,

3. Who shall utter, or shall cause, aid, abet, or otherwise connive at, or be a party to, the uttering of any letter, telegram, report, or other written communication, paper, or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report, or other written communication, paper, or instrument, or paper purporting to be

a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged, or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests, or rights of such other person shall be misrepresented or otherwise injuriously affected;
—Is guilty of forgery in the third degree.

§ 402. Forgery, third degree.

A person who, with intent to defraud, or to conceal any larceny or misappropriation by any person of any money or property, either,

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or,

2. Makes a false entry in any such account, or book of accounts; or,

3. Willfully omits to make true entry of any material particular in any such account, or book of accounts, made, written, or kept by him, or under his direction;

—Is guilty of forgery in the third degree.

See § 102, *supra*.

§ 403. Forging passage tickets.

A person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check, or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway, or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges, or delivers, or keeps, or offers for sale, exchange, or delivery, or receives upon any purchase, exchange, or delivery, any such ticket, knowing the same to have been forged, counterfeited, or falsely altered,—is guilty of forgery in the third degree.

§ 404. Forging postage or revenue stamps.

A person who forges, counterfeits, or alters any postage or revenue stamp of the United States, or who sells, or offers or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited, or falsely altered, is guilty of forgery in the third degree.

See State v. Mott, 16 Minn. 472, (Gil. 424.)

§ 405. Officer of corporation selling, etc., shares.

An officer, agent, or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who willfully, and with a design to defraud, sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs, or procures to be signed, with intent to sell, pledge, or issue, or to be sold, pledged, or issued, a false, forged, or fraudulent paper, writing, or instrument, being or purporting to be a scrip, certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and, upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

§ 406. Falsely indicating person as corporate officer.

The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree

as if that person were in truth such officer or agent of the corporation or association, state or government.

§ 407. Terms "forge," "forged," and "forging" defined.

The expressions "forge," "forged," and "forging," as used in this chapter, include false making, counterfeiting, and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature of a party or witness, and the placing or connecting together, with intent to defraud, different parts of several genuine instruments.

§ 408. Uttering, etc., forged instruments, coins, etc., is forgery.

A person who, knowing the same to be forged or altered, and with intent to defraud, utters, offers, or disposes of, or puts off, as true, or has in his possession, with intent so to utter, offer, dispose of, or put off, either

1. A forged seal or plate, or any impression of either; or,

2. A forged coin; or,

3. A forged will, deed, certificate, indorsement, record, instrument, or writing, or other thing, the false making, forging, or altering of which is punishable as forgery,—

Is guilty of forgery in the same degree as if he had forged the same.

The terms "false," "forged," and "altered," as used in § 2, c. 96, Gen. St., are used in the same sense in which these terms are used in § 1 of that chapter, and refer to the same kinds or classes of instruments. Therefore the instrument, the uttering and publishing of which would be an offense under § 2, must be one the making of which would be an offense under § 1. That statute enumerates the instruments which may be the subjects of forgery, but does not assume to change the existing rules of law as to what constitutes a false or forged instrument. State v. Willson, 28 Minn. 52, 9 N. W. Rep. 28.

An actual transfer of the forged instrument is not essential to the crime of uttering it. Smith v. State, (Neb.) 29 N. W. Rep. 923; Folden v. State, (Neb.) 14 N. W. Rep. 412.

Uttering is a distinct offense from forging. Misjoinder of counts. State v. Wood, 13 Minn. 121, (Gil. 112,) and citations.

In an indictment for uttering counterfeit bank-bills, it is necessary to allege that such bills purport to have been issued by a bank authorized to issue such bills, and were passed as genuine. Benson v. State, 5 Minn. 19, (Gil. 6;) State v. Mott, 16 Minn. 472, (Gil. 424;) State v. Wheeler, 19 Minn. 98, (Gil. 70.)

See, also, as to the indictment, Lockard v. Com., (Ky.) 8 S. W. Rep. 266.

Evidence of intent. Com. v. White, (Mass.) 14 N. E. Rep. 611; McDonald v. State, (Ala.) 3 South. Rep. 305; Timmons v. State, (Ga.) 4 S. E. Rep. 766. Evidence of other attempts. Burks v. State, (Tex.) 6 S. W. Rep. 300, 303. See, also, as to evidence, Burks v. State, (Tex.) 6 S. W. Rep. 300.

§ 409. Uttering writing signed with wrong-doer's name.

Whenever the false making or uttering of any instrument or writing is forgery in any degree, a person is guilty of forgery in the same degree who, with intent to defraud, offers, disposes of, or puts off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or indorsement is the act of another person of the same name, or of a person not in existence.

§ 410. Forgery in first degree—How punished.

Forgery in the first degree is punishable by imprisonment in the state prison for not less than ten years.

§ 411. Id., in second degree.

Forgery in the second degree is punishable by imprisonment in the state prison for not more than ten, nor less than five, years.

§ 412. Id., in third degree.

Forgery in the third degree is punishable by imprisonment in the state prison for not more than five years.

§ 413. Possession of counterfeit coin.

A person who has in his possession a counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate, or export the same, as true or as false, or to cause the same to be so uttered or passed, is punishable by imprisonment in the state prison not more than five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 414. Advertising counterfeit money.

A person who, with intent to defraud, prints, circulates, or distributes a letter, circular, card, pamphlet, hand-bill, or any other written or printed matter, offering or purporting to offer for sale, exchange, or as a gift, counterfeit coin or paper money, or giving, or purporting to give, information where counterfeit coin or paper money can be procured, is punishable by imprisonment not more than five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER 4.

LARCENY, INCLUDING EMBEZZLEMENT, OBTAINING PROPERTY BY FALSE PRETENSES, AND FELONIOUS BREACH OF TRUST.

§ 415. "Larceny" defined.

A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, either

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as a public officer, or as a person authorized by agreement or by competent authority to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing

in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof,—

Steals such property, and is guilty of larceny.

See, as to larceny of dogs, *ante*, Supp. Gen. St. c. 95, *§ 100. See, also, *post*, § 449.

IN GENERAL. Accessory indictable as principal. Declarations of co-conspirators admissible. State v. Beebe, 17 Minn. 241, (Gil. 218.) And see Gentry v. State, (Tex.) 6 S. W. Rep. 321.

Committed within one hundred rods of county line, triable in either county. State v. Anderson, 25 Minn. 66; State v. Robinson, 14 Minn. 447, (Gil. 333.)

Evidence of commission before time laid, competent. State v. New, 22 Minn. 76.

Moral certainty, not absolute certainty, required. State v. Hogard, 12 Minn. 293, (Gil. 191,) and citations.

Verdict should specify the value of property. State v. Coon, 18 Minn. 518, (Gil. 464.)

Indictment, evidence, witnesses, practice, challenge, verdict, appeal, etc. State v. Hinckley, 4 Minn. 345, (Gil. 261;) State v. Taunt, 16 Minn. 109, (Gil. 99;) State v. Eno, 8 Minn. 220, (Gil. 190;) State v. Miller, 10 Minn. 313, (Gil. 246;) State v. Hogard, 12 Minn. 293, (Gil. 191;) State v. McCartey, 17 Minn. 76, (Gil. 55;) State v. Beebe, 17 Minn. 241, (Gil. 218;) State v. Ehrig, 21 Minn. 462; State v. Munch, 22 Minn. 67; State v. New, Id. 76; State v. Byrud, 23 Minn. 29; State v. Levy, Id. 104; State v. Johnson, Id. 569; State v. Butler, 26 Minn. 90, 1 N. W. Rep. 821; State v. Mims, 26 Minn. 191, 2 N. W. Rep. 683; Mims v. State, 26 Minn. 494, 5 N. W. Rep. 369; State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758; State v. Thompson, 19 N. W. Rep. 730.

LARCENY. *A person may be guilty of simple larceny by obtaining the property through* one whose relations to the owner are such as to make him guilty of embezzling. State v. McCartey, 17 Minn. 76, (Gil. 55.)

Consent of owner. Stokeley v. State, (Tex.) 6 S. W. Rep. 538; Connor v. State, Id. 138.

Conditional delivery, carrying off *animo furandi*, larceny. State v. Anderson, 25 Minn. 66; State v. Mims, 26 Minn. 191, 2 N. W. Rep. 683.

The conversion of hired property, the intent being conceived subsequent to the delivery, is not larceny. Hill v. State, (Wis.) 15 N. W. Rep. 445.

Obtaining money by fraud. People v. Shaw, (Mich.) 24 N. W. Rep. 121.

Defendant, being indebted to a bank on a note for $1,600, paid the discount thereon for an extension, and obtained the note in exchange for a renewal note for $16, which he gave with intent to defraud the bank, and which was believed by the cashier to have been for $1,600. Held, larceny. Com. v. Eichelberger, (Pa.) 13 Atl. Rep. 422.

Finder of lost property—Intent—Belief that owner can be found. State v. Levy, 23 Minn. 104; State v. Green, 21 N. W. Rep. 547.

Stealing horse from one having taken it up as an estray. Quinn v. People, (Ill.) 15 N. E. Rep. 46.

Asportation. People v. Myer, (Cal.) 17 Pac. Rep. 431.

Manual possession not necessary. Connor v. State, (Tex.) 6 S. W. Rep. 138.

Absence of intent to steal. Pence v. State, (Ind.) 10 N. E. Rep. 919. And see Robinson v. State, (Ind.) 16 N. E. Rep. 184.

Larceny of warehouse receipts. State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758. Larceny of phonographic report, having no market value. Territory v. McGrath, (Utah,) 17 Pac. Rep. 116.

Venue. Com. v. Hayes, (Mass.) 5 N. E. Rep. 264.

Indictment—Sufficiency of the description of the property stolen. Turner v. State, (Ind.) 1 N. E. Rep. 869. Description of property must be certain, or allegation of "more particular description unknown." State v. Hinckley, 4 Minn. 345, (Gil. 261;) State v. Taunt, 16 Minn. 109, (Gil. 99;) State v. Munch, 22 Minn. 67; State v. Anderson, 25 Minn. 66; State v. Butler, 26 Minn. 90, 1 N. W. Rep. 821; State v. Brin, 30 Minn. 522, 16 N. W. Rep. 406. And see State v. Tilney, (Kan.) 17 Pac. Rep. 606.

Averment of ownership. People v. Stewart, (Mich.) 7 N. W. Rep. 71; People v. McCarty, (Utah,) 17 Pac. Rep. 734.

Allegation of intent to "appriate" the property to defendant's use fatally defective. Jones v. State, (Tex.) 8 S. W. Rep. 801. Indictment for simple larceny need not conclude "against the form of the statute." State v. Coon, 18 Minn. 518, (Gil. 464,) and citations. An indictment charging the defendants with burglary, but stating only facts which constitute simple larceny, is good for the latter offense. State v. Coon, 18 Minn. 518, (Gil. 464.) See, also, as to sufficiency of the indictment, State v. Graham, (Iowa,) 22 N. W. Rep. 897.

Allegation that a more particular description is unknown, is not traversable. State v. Taunt, 16 Minn. 109, (Gil. 99;) State v. Brin, 30 Minn. 522, 16 N. W. Rep. 406.

Testimony as to identity of stolen property which bears no marked characteristics. Roberts v. People, (Colo.) 17 Pac. Rep. 637.

Recent possession of stolen property, presumption of guilt. State v. Hogard, 12 Minn. 293, (Gil. 191;) State v. Miller, 10 Minn. 313, (Gil. 246;) State v. Johnson, 21 N. W. Rep. 843. And see Young v. State, (Fla.) 3 South. Rep. 881; Matlock v. State, (Tex.) 8 S. W. Rep. 818; Boyd v. State, (Tex.) 6 S. W. Rep. 853; Willis v. State, Id. 857; State v. Manley, (Iowa,) 38 N. W. Rep. 415; State v. Warden, (Mo.) 8 S. W. Rep. 233.

Larceny of railroad tickets—Accomplice—Corroboration. State v. Brin, 30 Minn. 522, 16 N. W. Rep. 406.

Secondary evidence of notes and bills admissible. State v. Brin, *supra.*

Admissibility of evidence. People v. Shepard, (Mich.) 37 N. W. Rep. 925; Andrews v. State, (Tex.) 8 S. W. Rep. 328; State v. Williams, (Mo.) Id. 217.

Sufficiency of evidence. State v. Hopkins, (Iowa,) 21 N. W. Rep. 585; State v. Peterson, (Iowa,) 25 N. W. Rep. 780; McLain v. State, (Neb.) 24 N. W. Rep. 720; Roberts v. People, (Colo.) 17 Pac. Rep. 637; Burke v. State, (Tex.) 7 S. W. Rep. 873; Thompson v. State, Id. 589; Williams v. State, (Tex.) 8 S. W. Rep. 935.

Under an indictment for larceny from the person, the defendant may be convicted of that offense, although the evidence shows that the taking was accompanied by violence. State v. Graff, (Iowa,) 24 N. W. Rep. 6.

Where the specification in an indictment alleges a larceny from the person, the defendant may be convicted of a simple larceny. State v. Eno, 8 Minn. 220, (Gil. 190;) State v. New, 22 Minn. 76; State v. Butler, 26 Minn. 90, 1 N. W. Rep. 821.

Sufficiency of indictment for attempt to commit larceny. Clark v. State, (Tenn.) 8 S. W. Rep. 145.

See Spoonemore v. State, (Tex.) 8 S. W. Rep. 280; State v. Leedy, (Mo.) Id. 245; Clark v. State, (Tenn.) Id. 145.

FALSE PRETENSES. There can be no conviction unless the party knows or has reason to believe that his representations are relied on as the grounds of credit. People v. McAllister, (Mich.) 12 N. W. Rep. 891.

Giving worthless check after delivery of the goods. Com. v. Devlin, (Mass.) 6 N. E. Rep. 64.

Representation as to solvency of bank. Com. v. Wallace, (Pa.) 6 Atl. Rep. 685. That property unincumbered—Invalidity of incumbrance. State v. Garris, (N. C.) 4 S. E. Rep. 633.

A false representation, made at the instigation of a first mortgagee, that a subsequent mortgage is first, will not sustain an indictment, as the first mortgagee thereby waived his prior lien. State v. Asher, (Ark.) 8 S. W. Rep. 177.

Venue. Com. v. Wood, (Mass.) 8 N. E. Rep. 432.

An indictment failing to aver the falsity of the pretenses is bad, even after judgment. Pattee v. State, (Ind.) 10 N. E. Rep. 421.

Variance in name of person defrauded. State v. Horn, (Mo.) 6 S. W. Rep. 96.

See, also, as to sufficiency of indictment, State v. Williams, (Ind.) 2 N. E. Rep. 585; Com. v. Wood, (Mass.) 8 N. E. Rep. 432: Hardin v. State, (Tex.) 7 S. W. Rep. 534.

Sufficiency of evidence. Com. v. Wood, (Mass.) 8 N. E. Rep. 432; Com. v. Blood, (Mass.) 6 N. E. Rep. 769; People v. Morse, (N. Y.) 2 N. E. Rep. 45.

EMBEZZLEMENT. To constitute the offense it is essential that the owner should be deprived of his property. Com. v. Este, (Mass.) 2 N. E. Rep. 769; Chaplin v. Lee, (Neb.) 25 N. W. Rep. 609.

Mere neglect to pay over, insufficient. There must be a fraudulent conversion. Fitzgerald v. State, (N. J.) 14 Atl. Rep. 746.

Defendant was a collector of pew rents for a church corporation, receiving by special agreement, as compensation for his services, 5 per cent. of all pew rents, no matter who collected them. Held, that the rents collected were joint property of defendant and the corporation, and defendant was not indictable under § 23, *c.* 95, Gen. St., as it stood before the amendment of 1876, for the embezzlement of the whole or any part thereof. State v. Kent, 22 Minn. 41.

To sustain an indictment under that section for embezzlement, the money or property embezzled or fraudulently converted must be that of another than the person indicted. Id.

United States mail rider who steals the money in a letter is not the agent of the writer. Brewer v. State, (Ala.) 3 South. Rep. 816.

Embezzlement by cashier of unincorporated banking association, whose capital is divided into shares, he being a shareholder. State v. Kusnick, (Ohio,) 15 N. E. Rep. 481.

Embezzlement of money collected on a lottery ticket. Woodward v. State, (Ind.) 2 N. E. Rep. 321.

Felonious intent. People v. Hurst, (Mich.) 28 N. W. Rep. 838; People v. Galland, (Mich.) 22 N. W. Rep. 81.

Demand necessary in embezzlement. State v. New, 22 Minn. 76; State v. Munch, Id. 67.

Sufficiency of indictment. State v. Jamison, (Iowa,) 38 N. W. Rep. 508. Variance. Crofton v. State, (Ga.) 4 S. E. Rep. 333.

An indictment accusing the defendant therein of larceny, and then stating facts showing an embezzlement and fraudulent conversion of money, under § 23, *c.* 95, Gen. St., is proper. State v. New, 22 Minn. 76.

An indictment accused defendant of larceny, setting forth facts showing an embezzlement, under § 23, *c.* 95, Gen. St., (Gen. St. 1878, *c.* 95, § 33.) The verdict found the defendant guilty, and the value of the property embezzled to be forty dollars. Held proper and consistent. Id.

Evidence that an embezzlement charged was committed before the time laid in the indictment is competent, and is not affected by § 23, *c.* 108, Gen. St., which allows proof of embezzlement within six months after the time laid. Id.

State v. New, 22 Minn. 76, followed, as to the point that an indictment for such embezzlement and fraudulent conversion properly accuses the person indicted of the crime of larceny. State v. Butler, 26 Minn. 90, 1 N. W. Rep. 821.

On an indictment for embezzlement of a railroad ticket, proof of its value is unnecessary. McDaniels v. People, (Ill.) 8 N. E. Rep. 687.

Sufficiency of evidence. State v. Baldwin, (Iowa,) 30 N. W. Rep. 476; New York & B. F. Co. v. Moore, (N. Y.) 6 N. E. Rep. 293.

See State v. Goode, (Iowa,) 27 N. W. Rep. 772; Thornell v. People, (Colo.) 17 Pac. Rep. 904.

§ 415½. Commission no defense.

It shall be no defense to a prosecution, under the second subdivision of the foregoing section, that the accused was entitled to a commission out of the money or property appropriated, as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the party accused: *provided*, that it shall not be larceny for any bailee, servant, attorney, agent, clerk, trustee, or any other person mentioned in the second subdivision of the foregoing section, to retain his reasonable collection fee or charges on the collection made by him.

Section 23, c. 95, Gen. St., as to an embezzlement where the defense that the defendant was entitled to a commission or collection fee out of the money appropriated could not be set up, is not repealed or abrogated by c. 55, Laws 1876, (Gen. St. 1878, c. 95, § 33.) State v. Herzog, 25 Minn. 490.

§ 416. Obtaining money or property by fraudulent draft.

A person who willfully, with intent to defraud, by color or aid of a check or draft, or order for the payment of money or the delivery of property, when such person knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount, or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of stealing the same, and punishable accordingly.

Indictment—Description of offense. Wills v. State, (Tex.) 6 S. W. Rep. 316

§ 417. Grand larceny in first degee.

A person is guilty of grand larceny in the first degree, who steals, or unlawfully obtains or appropriates in any manner specified in this chapter—

1. Property of any value, by taking the same from the person of another in the night-time; or,

2. Property of the value of more than twenty-five dollars, by taking the same in the night-time from any dwelling-house, office, bank, shop, warehouse, vessel, railway car, or any building of any kind or description;

3. Property of the value of more than five hundred dollars, in any manner whatever.

Conviction for a lower degree under an indictment for larceny in the first degree. People v. McCallam, (N. Y,) 9 N. E. Rep. 502.

§ 418. Id. in second degree.

A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this chapter, steals or unlawfully obtains or appropriates—

1. Property of the value of more than twenty-five dollars, but not exceeding five hundred dollars, in any manner whatever; or,

2. Property of any value, by taking the same from the person of another; or,

3. Property of any value, by taking the same in the day-time from any dwelling-house, office, bank, shop, warehouse, vessel, or railway car, or any building of any kind or description; property of less value than twenty-five dollars, by taking the same in the night-time from any dwelling-house, office,

bank, shop, warehouse, vessel, or railway car, or any building of any kind or description; or,

4. A record of a court or officer, or a writing, instrument, or record kept, filed, or deposited according to law, with, or in keeping of, any public office or officer.

Sufficiency of evidence. State v. Summers, 37 N. W. Rep. 451.

§ 419. Petit larceny.

Every other larceny is petit larceny.

§ 420. Grand larceny in first degree—How punished.

Grand larceny in the first degree is punishable by imprisonment in the state prison for not less than five nor more than ten years.

§ 421. Id. in the second degree.

Grand larceny in the second degree is punishable by imprisonment in the state prison for not more than five years, or by imprisonment in the county jail for not exceeding one year, or by fine not exceeding five hundred dollars: *provided*, that this act shall not extend to any act done or offense committed prior to the passage hereof, but the provisions of law now in force prescribing the punishment for said offense shall continue in force as to all such offenses committed prior to the passage hereof. (*As amended* 1887, c. 194.)

[By the original section the offense was "punishable by imprisonment in the state prison for not less than two nor more than five years, or by imprisonment in a county jail," etc., as above. The act of 1887 also adds the proviso.]

§ 422. Petit larceny a misdemeanor.

Petit larceny is a misdemeanor punishable by a fine not exceeding one hundred dollars, or by imprisonment in a county jail for a period not exceeding three months.

§ 423. Completed and unissued instruments property.

All the provisions of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the maker thereof to any person as a purchaser or owner.

§ 424. Severance of fixture, etc., larceny.

All the provisions of this chapter apply to cases where the thing taken is a fixture or part of the realty, or any growing tree, plant, or produce, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at a previous time.

§ 425. Lost property.

A person who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to find the owner and restore the property to him, is guilty of larceny.

Not necessary that he should know who owner is. Must believe owner will be found, and entertain felonious intention. State v. Levy, 23 Minn. 104.

§ 426. Bringing stolen goods into state, larceny.

A person who, having, at any place without the state, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this state, may be convicted and punished in the same manner

as if such larceny or receiving had been committed within the state. Complaint may be made, and the indictment found and tried, and the offense may be charged to have been committed, in any county into or through which the stolen property is brought.

§ 427. Bringing stolen goods into another county.

A person who, having, at any place within the state, stolen the property of another, or received such property knowing it to have been stolen, brings the same into another county, is guilty of larceny of the same in every county into or through which such stolen property is brought, and is indictable and triable in any one of said counties.

§ 428. Conversion by trustee, larceny—How punished.

A person acting as executor, administrator, committee, guardian, receiver, collector, or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who secretes, withholds, or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his office, employment, or appointment, is guilty of grand or petit larceny in such degree as is herein prescribed with reference to the amount of such property.

See note to § 415, *ante*.
Evidence. Moody v. State, (Tex.) 6 S. W. Rep. 321.

§ 429. Verbal false pretense not larceny.

A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged.

§ 430. Value of evidence of debt, how ascertained.

If the thing stolen consists of a written instrument, being an evidence of debt, other than a public or corporate certificate, scrip, bond, or security having a market value, or being the transfer of or evidence of title to any property, or of the creating, releasing, or discharging of any demand, right, or obligation, the amount of money due thereupon or secured to be paid thereby, and remaining unsatisfied, or which, in any contingency, might be collected thereupon or thereby, or the value of the property transferred or affected, or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be, is deemed the value of the thing stolen.

§ 431. Id.—Passenger ticket.

If the thing stolen is a ticket, paper, or other writing, entitling, or purporting to entitle, the holder or proprietor thereof to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket, entitling a person to a like passage, is usually sold, is deemed the value thereof.

State v. Brin, 30 Minn. 522, 16 N. W. Rep. 406.

§ 432. Id.—Of other articles.

In every case not otherwise regulated by statute the market value of the thing stolen is deemed its value.

Larceny of phonographic reports having no market value. Territory v. McGrath, (Utah,) 17 Pac. Rep. 116.

§ 433. Claim of title ground of defense.

Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even though such claim is untenable. But this section shall not

excuse the retention of the property of another to offset or pay demands held against him.

§ 434. Intent to restore property.

The fact that the defendant intended to restore the property stolen or embezzled, is no ground of defense, nor shall such fact be received in mitigation of punishment, if the property has not been restored before complaint to a magistrate, charging the commission of the crime.

§ 435. Receiving stolen property.

A person who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this chapter, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding, any property, knowing the same to have been stolen or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this chapter, if such misappropriation had been committed within the state, whether such property were so stolen or misappropriated within or without the state, is guilty of criminally receiving such property, and is punishable by imprisonment in the state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

State v. McCartey, 17 Minn. 76, (Gil. 54.)

The fact that defendant assisted in the theft will not prevent his conviction for receiving stolen goods. Jenkins v. State, (Wis.) 21 N. W. Rep. 232.

Knowledge. Foster v. State, (Ind.) 6 N. E. Rep. 641; Com. v. Leonard, (Mass.) 4 N. E. Rep. 96.

Indictment. State v. Lane, (Iowa,) 27 N. W. Rep. 266.

Sufficiency of evidence. Isaacs v. People, (Ill.) 8 N. E. Rep. 821.

See State v. Whitton, (Wis.) 38 N. W. Rep. 331; Edwards v. State, (Ga.) 4 S. E. Rep. 268; State v. Gerrish, (Me.) 2 Atl. Rep. 129.

§ 436. Id.—Averment and proof.

It is not necessary to aver, in an indictment for an offense specified in the last section, nor to prove upon the trial thereof, that the principal who stole the property has been convicted, or is amenable to justice.

CHAPTER 5.

EXTORTION AND OPPRESSION.

§ 437. Extortion defined.

Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

Where the intent with which an act is done is an essential ingredient to constitute it a crime, an indictment for such offense must allege the necessary intent. Thus, where an indictment charged that the malicious threat complained of was made "to compel" the party to do the act, instead of charging that it was made "with intent to compel" him to do the act, held, that it was insufficient. State v. Ullman, 5 Minn. 13, (Gil. 1.)

An indictment charging defendant with using threats to compel another to execute a conveyance of property against his will, without also averring that the threatened party had an interest in such property, is insufficient. Id.

§ 438. What threats may constitute extortion.

Fear, such as will constitute extortion, may be induced by a threat,—

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or to any member of his family; or,

2. To accuse him, or any relative of his, or any member of his family, of any crime; or,

3. To expose, or impute to him, or any of them, any deformity or disgrace; or,

4. To expose any secret affecting him or any of them.

See § 221, *supra*.

§ 439. Punishment of extortion.

A person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or a threat mentioned in the last two sections, is punishable by imprisonment in the state prison not exceeding five years.

§ 440. Compulsion to execute instrument.

The compelling or inducing of another, by such force or threat, to make, subscribe, seal, execute, alter, or destroy any valuable security, or instrument, or writing affecting, or intended to affect, any cause of action or defense, or any property, is an extortion of property, within the last two sections.

See State v. Ullman, *supra*, § 437.

§ 441. Oppression committed under color of office.

A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense of color or official authority,

1. Arrests another, or detains him against his will; or,

2. Seizes or levies upon another's property; or,

3. Dispossesses another of any lands or tenements; or,

4. Does any other act whereby another person is injured in his person, property, or rights;

—Commits oppression, and is guilty of a misdemeanor.

See §§ 106, 107, 108, *supra*.

§ 442. Extortion by public officers.

A public officer who asks or receives, or agrees to receive, a fee or other compensation for his official service, either,

1. In excess of the fee or compensation allowed to him by statute therefor; or,

2. Where no fee or compensation is allowed to him by statute therefor;

—Commits extortion, and is guilty of a misdemeanor.

See §§ 46, 47, 48, *supra*.

Refusal to perform duties unless fees are paid. Lane v. State, (N. J.) 10 Atl. Rep. 360.

Indictment must state official capacity, what fees due, and what collected. State v. Brown, 12 Minn. 490, (Gil. 393;) State v. Coon, 14 Minn. 456, (Gil. 340.)

§ 443. Blackmail.

A person who, knowing the contents thereof, and with intent, by means thereof, to extort or gain any money or other property, or to do, abet, or procure any illegal or wrongful act, sends, delivers, or in any manner causes to be forwarded or received, or makes and parts with for the purpose that there may be sent or delivered, any letter or writing threatening,

1. To accuse any person of a crime; or,

2. To do any injury to any person or to any property; or,

3. To publish, or connive at publishing, any libel; or,

4. To expose or impute to any person, any deformity or disgrace;

—Is punishable by imprisonment in the state prison for not more than five years.

See § 221, *supra*.

§ 444. Written threat.

A person who, knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received, any letter or other writing, threatening to do any unlawful injury to the person or property of another, is guilty of a misdemeanor.

Indictment. People v. Jones, (Mich.) 28 N. W. Rep. 839.

§ 445. Attempts to extort by verbal threats.

A person who, under circumstances not amounting to robbery, or an attempt at robbery, with intent to extort or gain any money or other property, verbally makes such a threat as would be criminal under either of the foregoing sections of this chapter, if made or communicated in writing, is guilty of a misdemeanor.

§ 446. Unlawful threat referring to act of third person.

It is immaterial whether a threat, made as specified in this chapter, is of things to be done or omitted by the offender, or by any other person.

CHAPTER 6.

FALSE PERSONATION, AND CHEATS.*

§ 447. Falsely personating another.

A person who falsely personates another, and, in such assumed character,

1. Marries or pretends to marry, or to sustain the marriage relation towards another; or,

2. Becomes bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or,

3. Confesses a judgment; or,

4. Subscribes, verifies, publishes, acknowledges, or proves a written instrument which by law may be recorded with intent that the same may be delivered or used as true; or,

5. Does any other act, in the course of any action or proceeding, whereby, if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender, or to any other person;

—Is punishable by imprisonment in the state prison for not more than five years.

§ 448. Id.—Limitations as to indictments.

An indictment cannot be found, for the crime specified in subdivision first of the last section, except upon the complaint of the person injured, if there be any such person living, and within one year after the perpetration of the crime.

*See, as to counterfeiting trade-marks, brands, etc., *ante*, Supp. Gen. St. c. 95, *§ 45*a et seq.* As to false certificates of registration of animals, false representations as to breed, etc., see Id. § 66*a et seq.*

§ 449. Receiving property in false character.

A person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 450. Personating officers.

A person who falsely personates a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character does an act, purporting to be official, whereby another is injured or defrauded, is guilty of a misdemeanor.

§ 451. Obtaining signature by false pretenses.

A person who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in the state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.

See § 416, *supra*.

Indictment. State v. Dowd, (Mo.) 8 S. W. Rep. 7. Indictment—Evidence—Instructions. State v. Jamison, (Iowa,) 38 N. W. Rep. 509.

§ 452. Obtaining employment by forged letter.

A person who obtains employment, or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, is guilty of a misdemeanor.

§ 453. Concealing mortgaged property.

Whosoever, with intent to place mortgaged personal property beyond the reach of the mortgagee or his assigns, removes or conceals, or aids or abets in removing or concealing, any such mortgaged personal property, and any mortgagor of such personal property who assents to, or knowingly suffers such removal or concealment, shall be punished by imprisonment in the state prison for a term not exceeding one year, or by imprisonment in the common jail of the county for a period not exceeding one year, or by a fine not exceeding five hundred dollars.

§ 454. Selling mortgaged property.

Any mortgagor of personal property who, at any time before the debt secured by the chattel mortgage has been fully paid, sells, conveys, or in any manner disposes of the personal property so mortgaged, or any part thereof, without the written consent of the mortgagee or his assigns, or, without informing the person to whom he sells, conveys, or disposes of the same that the same is mortgaged, and the true amount then due on the debt secured by said mortgage, shall be punished by imprisonment in the state prison for a term not exceeding one year, or by imprisonment in the common jail of the county for a period not exceeding one year, or by a fine not exceeding five hundred dollars.

§ 455. Id.—Requirements of indictment.

In all prosecutions under either of the two foregoing sections, it shall be a sufficient allegation and description of the mortgage and the mortgaging of said personal property, to state that the said personal property was duly mort-

gaged by a certain instrument of chattel mortgage, giving the names of the mortgagor and mortgagee, and the date of the instrument, without any further description of the instrument.

Intent to defraud the mortgagee an essential ingredient of offense, under § 14, *c.* 39, Gen. St. 1878. State v. Ruhnke, 27 Minn. 309, 7 N. W. Rep. 264.

Growing crop personal property. Not necessary to allege that defendant was owner of property. Having executed a mortgage sufficient. Attaching "exhibit" condemned, but held upon demurrer to be part of indictment. State v. Williams, 21 N. W. Rep. 746.

§ 456. Selling, pawning, etc., borrowed property.

A person who, without the consent of the owner thereof, sells, pledges, pawns, or otherwise disposes of any property which he has borrowed or hired from the owner, is guilty of a misdemeanor.

See § 308, *supra*.

§ 457. Last section qualified.

The last section does not apply to a person leasing or lending property for a time not exceeding that for which the same was leased or lent to himself.

CHAPTER 7.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 458. Person willfully destroying vessel, etc.

A person who wrecks, burns, sinks, scuttles, or otherwise injures or destroys a vessel, or the cargo of a vessel, or willfully permits the same to be wrecked, burned, sunk, scuttled, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the state prison for not more than five years.

§ 459. Fitting out vessel with intent to wreck.

A person who fits out any vessel, or who lades any cargo on board of a vessel, with intent to permit or cause the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby to defraud or prejudice an insurer or another person, is punishable by imprisonment in the state prison not exceeding five years.

§ 460. Making false manifest, and invoice, etc.

A person guilty of preparing, making, or subscribing a false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER 8.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 461. Destroying property insured.

A person who, with intent to defraud or prejudice the insurer thereof, willfully burns or in any manner injures or destroys property not included or described in section four hundred and fifty-eight, which is insured at the time against loss or damage by fire or by any other casualty, under such circumstances that the offense is not arson in any of its degrees, is punishable by

imprisonment in the state prison for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

CHAPTER 9.

FALSE WEIGHTS AND MEASURES.

§ 462. Using false weights and measures.

A person who injures or defrauds another by using, with knowledge that the same is false, a false weight, measure, or other apparatus for determining the quantity of any commodity, or article of merchandise, or by knowingly delivering less than the quantity he represents, is guilty of a misdemeanor.

See State v. Kellner, (Neb.) 35 N. W. Rep. 891.

§ 463. Keeping false weights.

A person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used, in violation of the last section, is guilty of a misdemeanor.

§ 464. Stamping false weight or tare.

A person who knowingly marks or stamps false or short weights, or false tare, on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

CHAPTER 10.

FRAUDS IN THE MANAGEMENT OF CORPORATIONS.

§ 465. Frauds in subscriptions for stock of corporations.

A person who signs the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation, existing or proposed, and a person who signs to any subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with, or enforced, is guilty of a misdemeanor.

See § 405, *supra*.

§ 466. Fraudulent issue of stock, scrip, etc.

An officer, agent, or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either,

1. Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledge, or issue, or to cause, to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or

writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit imposed by law, or otherwise, upon its power to create or issue stock or evidence of debt; or,

2. Reissues, sells, pledges, or disposes of or causes to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares;

—Is punishable by imprisonment in the state prison for not less than three years nor more than seven years, or by a fine not exceeding three thousand dollars, or by both.

§ 467. Receiving deposits in insolvent bank.

An officer, agent, teller, or clerk of any bank, banking association, or savings bank, and every individual banker, or agent, and any teller or clerk of an individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

§ 468. Frauds in keeping accounts, etc.

A director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association; and a director, officer, agent, or member of any corporation or joint-stock association, who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes, or concurs in making, any false entry, or omits, or concurs in omitting, to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not exceeding ten years, and not less than three years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 469. Officer of corporation publishing false reports of its condition.

A director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are elsewhere, by this code, specially made punishable, is guilty of a misdemeanor.

§ 470. "Director" defined.

The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or are known in law.

CHAPTER 11.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

§ 471. Issuing fictitious bills of lading, etc.

A person being the master, owner, or agent of any vessel, or officer or agent of any railway, express, or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express, or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 472. Issuing fictitious warehouse receipts.

A person carrying on the business of a warehouseman, wharfinger, or other depositary of property, who issues any receipt, bill of lading, or other voucher for grain or merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such grain or merchandise, or as security for any indebtedness, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 473. Id.—Issued in good faith, excepted.

No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels, or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels, or brands were untrue.

§ 474. Duplicate receipt must be marked.

A person mentioned in sections four hundred and seventy-one and four hundred and seventy-two, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the grain or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 475. Selling, etc., property received for transportation or storage.

A person mentioned in sections four hundred and seventy-one and four hundred and seventy-two, who sells or pledges any merchandise for which a bill of lading, receipt, or voucher, has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

CHAPTER 12.

MALICIOUS MISCHIEFS AND OTHER INJURIES TO PROPERTY.

§ 476. Injury to railroads, tracks, etc., how punished.

A person who

1. Displaces, removes, injures, or destroys a rail, sleeper, switch, bridge, viaduct, culvert, embankment, or structure, or any part thereof, attached or appertaining to or connected with a railway, whether operated by steam or by horses; or,

2. Places any obstruction upon the track of such a railway; or,

3. Willfully discharges a loaded firearm, or projects or throws a stone, or any other missile, at a railway train, or at a locomotive, car, or vehicle standing or moving upon a railway;

—Is punishable as follows:

1. If thereby the safety of any person is endangered, by imprisonment in the state prison for not more than ten years;

2. In every other case, by imprisonment for not more than three years in the state prison, or by a fine of not more than two hundred and fifty dollars, or both.

Guilty, though no engine or carriage be actually stopped or impeded. State v. Kilty, 28 Minn. 421, 10 N. W. Rep. 475.

Throwing stones at railway car—Proof of ownership. Com. v. Carroll, (Mass.) 14 N. E. Rep. 618.

§ 477. Damaging building, etc., by explosion.

A person who unlawfully and maliciously, by the explosion of gunpowder, or any other explosive substance, destroys or damages any building or vessel, is punishable as follows:

1. If thereby the life or safety of a human being is endangered, by imprisonment in the state prison for not more than ten years;

2. In every other case, by imprisonment in the state prison for not more than five years.

See § 172, *supra;* § 484, *post.*

§ 478. Burning growing crops, etc., how punished.

A person who willfully burns or sets fire to any grain, grass, or growing crop, or standing timber, or to any building, fixtures or appurtenances to real property of another, under circumstances not amounting to arson in any of its degrees, is punishable by imprisonment in a county jail for not more than one year.

See § 374, *supra.*

§ 479. Altering, etc., signal or light for vessel, etc.

A person who, with intent to bring a vessel, railway engine, or railway train into danger, either

1. Unlawfully or wrongfully shows, masks, extinguishes, alters, or removes a light or signal; or,

2. Exhibits any false light or signal;

—Is punishable by imprisonment in the state prison for not more than ten years.

§ 480. Injuring highway, etc.

A person who willfully or maliciously displaces, removes, injures, or destroys—

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way; or,

2. A pier, boom or dam lawfully erected or maintained upon any water within the state, or hoists any gate in or about such dam; or,

3. A pile or other material, fixed in the ground and used for securing any bank or dam of any river or other water, or any dock, quay, jetty, or lock; or,

4. A buoy or beacon lawfully placed in any waters within the state; or,

5. A tree, rock, post, or other monument, which has been either erected or marked for the purpose of designating a point in the boundary of the state, or of a county, city, town, or village, or of a farm, tract, or lot of land, or any mark or inscription thereon; or,

6. A mile-board, mile-stone or guide-post, erected upon a highway, or any inscription upon the same; or,

7. A line of telegraph, or any part thereof, or any appurtenance or apparatus connected with the working of any magnetic or electric telegraph, or the sending or conveyance of messages by any such telegraph; or,

8. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith; or,

9. A sewer or drain, or a pipe or main connected therewith, or forming part thereof; or who

10. Destroys or damages with intent to destroy or render useless any engine, machine, tool, or implement intended for use in trade or husbandry, is guilty of a misdemeanor.

See *ante*, Supp. Gen. St. *c.* 95, § 58.

Constitutional jury is twelve men. State v. Everett, 14 Minn. 439, (Gil. 330.)

When title to real estate is involved the justice should proceed under § 169, *c.* 65, Gen. St. 1878. State v. Sweeney, 21 N. W. Rep. 847. See State v. Cotton, 29 Minn. 187, 12 N. W. Rep. 529; State v. Leslie, 30 Minn. 533, 16 N. W. Rep. 408.

When road open for public use. State v. Leslie, 30 Minn. 533, 16 N. W. Rep. 408; State v. Galvin, 27 Minn. 16, 6 N. W. Rep. 380.

§ 481. Malicious injury and destruction of property.

A person who, willfully—

1. Cuts down, destroys, or injures any wood or timber standing or growing, or which has been cut down and is lying on lands of another, or of the state; or,

2. Cuts down, girdles or otherwise injures a fruit, shade, or ornamental tree standing on the lands of another, or of the state; or

3. Severs from the freehold of another, or of the state, any produce thereof, or anything attached thereto; or,

4. Digs, takes, or carries away without lawful authority or consent, from any lot of land, in any incorporated city or village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil, or stone; or,

5. Enters, without the consent of the owner or occupant, any orchard, fruit garden, vineyard, or ground whereon is cultivated any fruit, with intent to take, injure, or destroy anything there growing or grown; or,

6. Cuts down, destroys, or in any way injures any shrub, tree, or vine being or growing within any such orchard, garden, vineyard, or upon any such ground, or any building, frame-work, or erection thereon;

—Is punishable by imprisonment in a county jail not exceeding six months, or a fine not exceeding two hundred and fifty dollars, or both.

See § 424, *supra;* § 485, *post;* Supp. Gen. St. *c.* 95, § 58, *supra.*

Averment of ownership. Ex parte Eads, (Neb.) 22 N. W. Rep. 352.

Averment that the trees were carried away, held surplusage. State v. Priebnow, (Neb.) 16 N. W. Rep. 907.

§ 482. Divulging, etc., telegram a misdemeanor.

A person who either

1. Wrongfully obtains, or attempts to obtain, any knowledge of a telegraphic message by connivance with a clerk, operator, messenger, or other employe of a telegraph company; or,

2. Being such clerk, operator, messenger, or other employe, willfully divulges, to any but the persons for whom it was intended, the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or willfully refuses or neglects duly to transmit or deliver the same;

—Is punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

§ 483. Opening and publishing a sealed letter, etc.

A person who willfully and without authority either

1. Opens or reads, or causes to be opened or read, a sealed letter or telegram; or,

2. Publishes the whole or any portion of such a letter or telegram, knowing it to have been opened or read without authority;

—Is guilty of a misdemeanor.

§ 484. Endangering life by placing explosive near building.

A person who places in, upon, under, against, or near to, any building, car, vessel, or structure, gunpowder, or any other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstances that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

See §§ 172, 477, *supra*.

§ 485. Malicious injury to standing crops.

A person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which punishment is not otherwise prescribed, by this code or by some other statute, is guilty of a misdemeanor.

See § 481, *supra*.

Sufficiency of complaint, State v. Armell, 8 Kan. 288; State v. Blakesley, (Kan.) 18 Pac. Rep. 170.

See Terry v. State, (Tex.) 8 S. W. Rep. 934.

§ 486. Willful injury to works of art, etc.

A person who, not being the owner thereof, and without lawful authority, willfully injures, disfigures, removes, or destroys a grave-stone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private ground or upon a street, road or sidewalk, cemetery, or public park or place, or removes from any grave in a cemetery any flowers, memorials, or other tokens of affection, or other thing connected with them, is guilty of a misdemeanor.

§ 487. Malicious injury to articles in museum, etc.

A person who maliciously cuts, tears, defaces, disfigures, soils, obliterates, breaks, or destroys, a book, map, chart, picture, engraving, statute, coin, model, apparatus, specimen, or other work of literature or object of art, or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, is punishable by imprisonment in the state prison for not more than three years, or in a county jail for not more than one year, or by a fine

of not more than five hundred dollars, or by both such fine and imprisonment.

§ 488. Destroying or delay of election returns.

A messenger appointed by authority of law to receive and carry a report, certificate, or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates, or destroys the same, or does any other act which prevents the delivery of it as required by law; and a person who takes away from such messenger any such report, certificate, or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act in this section specified, is punishable by imprisonment in the state prison not exceeding five years, and not less than two years.

§ 489. Injury to property in house of worship, felony.

A person who, willfully and without authority, breaks, defaces, or otherwise injures any house of religious worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

§ 490. Coercion.

A person who, with a view to compel another person to do or abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully

1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property, or threatens such violence or injury; or,

2. Deprives any such person of any tool, implement, or clothing, or hinders him in the use thereof; or,

3. Uses or attempts the intimidation of such person by threats or force;

—Is guilty of a misdemeanor.

See §§ 138, 139, *supra*.

§ 491. Injury to real or personal property, how punished.

A person who unlawfully and willfully destroys or injures any real or personal property of another, in a case where the punishment thereof is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury, is more than one hundred dollars, by imprisonment in a county jail for not more than one year;

2. In any other case, by imprisonment in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment;

3. And, in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof.

See Sample v. State, (Ind.) 4 N. E. Rep. 40.

TITLE 16.

CRUELTY TO ANIMALS.

§ 492. Overdriving animal—Failing to provide proper sustenance.

A person who overdrives, overloads, tortures, or cruelly beats, or unjustifiably injures, maims, mutilates, or kills any animal, whether belonging to himself or to another, or deprives any animal of which he has the charge or control, of necessary sustenance, food or drink, or neglects or refuses it such sustenance or drink, or causes, procures, or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated, or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

Killing trespassing animals to protect crops. Stephens v. State, (Miss.) 3 South. Rep. 458.

An indictment charging that at a certain time and place defendant cruelly, willfully, and with force and arms, overdrove two horses, by reason of which overdriving the said horses were tortured and tormented, is sufficient. State v. Comfort, 22 Minn. 271.

When demurrer is sustained without order to amend or to resubmit to grand jury, it is a bar to further prosecution. Id.

See, also, as to the indictment, State v. Woodward, (Mo.) 8 S. W. Rep. 220.

§ 493. Abandonment of disabled animal.

A person being the owner or possessor, or having charge or custody, of a maimed, diseased, disabled, or infirm animal, who abandons such animal, or leaves it to die in a street, road, or public place, or who allows it to lie in a public street, road, or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor.

§ 494. Failure to provide proper food and drink to impounded animal.

A person who, having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter, and water, is guilty of a misdemeanor.

§ 495. Carrying animal in a cruel manner, a misdemeanor.

A person who carries, or causes to be carried, in or upon any vessel, or vehicle, or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

See § 498, *post.*

§ 496. Animal wantonly poisoned, or attempted to be poisoned, a misdemeanor.

A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, is guilty of a misdemeanor.

Killing dog, under former law. State v. Gideon, 1 Minn. 292, (Gil. 226.)

§ 497. Keeping milch cows in unhealthy places, and feeding them with food producing unwholesome milk, a misdemeanor.

A person who keeps a cow, or any animal for the production of milk, in a crowded or unhealthy place, or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by a fine not less than fifty dollars, or imprisonment not exceeding one year, or by both.

See *ante*, Supp. Gen. St. c. 101.

§ 498. Transporting animals for more than twenty-four consecutive hours, a misdemeanor.

A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours, without unloading for rest, water, and feeding, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee, and shall have a lien thereon for such expense.

§ 499. Setting on foot fights between birds and animals, a misdemeanor.

A person who sets on foot, instigates, promotes, or carries on, or does any act as assistant, umpire, or principal, or is a witness of, or in any way aids in or engages in the furtherance of, any fight between cocks or other birds, or dogs, bulls, bears, or other animals, premeditated by any person owning or having custody of such birds or animals, is guilty of a misdemeanor, punishable by fine not less than ten dollars, nor more than one thousand dollars, or by imprisonment not less than ten days, nor more than one year, or both.

§ 500. Keeping, etc., a place where animals are fought.

A person who keeps or uses, or is in any way connected with or interested in the management of, or receives money for the admission of any person to a house, apartment, pit, or place kept or used for baiting or fighting any bird or animal, and any owner or occupant of a house, apartment, pit, or place, who willfully procures or permits the same to be used or occupied for such baiting or fighting, is guilty of a misdemeanor.

§ 501. Definitions.

1. The word "animal," as used in this title, does not include the human race, but includes every other living creature.

2. The word "torture" or "cruelty" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

3. The words "impure and unwholesome milk" include all milk obtained from animals in a diseased or unhealthy condition, or who are fed on distillery waste, usually called "swill," or upon any substance in a state of putrefaction or fermentation

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TITLE 17.

OF MISCELLANEOUS CRIMES.

§ 502. Attorneys forbidden to defend certain prosecutions.

An attorney who directly or indirectly advises in relation to, or aids or promotes the defense of, any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by a person as county attorney or other public prosecutor, with whom such attorney is directly or indirectly connected as a partner, or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court, as county attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor.

See § 124, *supra*.

§ 503. Attorneys may defend themselves.

The last section does not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 504. Fraudulently presenting bills or claims to public officers for payment.

A person who knowingly, with intent to defraud, presents for audit or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city, borough, school-district, or village authorized to audit, or allow, or to pay bills, claims, or charges, any false or fraudulent claim, bill, account, writing, or voucher, or any bill, account, or demand, containing false or fraudulent charges, items, or claims, is guilty of a felony.

See §§ 136, 137, *supra*.

§ 505. Acts not expressly forbidden.

A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor; but nothing in this code contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.

TITLE 18.

GENERAL PROVISIONS

§ 506. When crimes punishable in different ways.

An act or omission which is made criminal and punishable in different ways, by different provisions of law, may be punished under any one of those provisions, but not under more than one; and a conviction or acquittal under one bars a prosecution for the same act or omission under any other provision.

§ 507. Acts punishable under foreign law.

An act or omission declared punishable by this code is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared in this code.

§ 508. Foreign conviction or acquittal.

Whenever it appears upon the trial of an indictment that the offense was committed in another state or country, or under such circumstances that the courts of this state or government had jurisdiction thereof, and that the defendant has already been acquitted or convicted on the merits upon a criminal prosecution under the laws of such state or country, founded upon the act or omission in respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

§ 509. Contempt, how punishable.

A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt of court.

See § 122, *supra*.

§ 510. Mitigation of punishment.

Where it appears, at the time of passing sentence on a person convicted, that he has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court, passing sentence, may mitigate the punishment to be imposed, in its discretion.

See § 122, *supra*.

§ 511. Punishment of accessory to misdemeanor.

When an act or omission is declared by statute to be a misdemeanor, and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who aids or abets another in such act or omission is also guilty of a misdemeanor.

See § 28, *supra*.

§ 512. Sending letter, when deemed complete.

In the various cases in which the sending of a letter is made criminal by this code, the offense is deemed complete from the time when such letter is deposited in any post-office or other place, or delivered to any person, with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it is received by the person to whom it is addressed.

See §§ 279, 443, 444, *supra*.

§ 513. Omission to perform duty, when punishable.

No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

See §§ 105, 127, *supra*.

§ 514. Conviction for attempt when crime is consummated.

A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated.

See §§ 31, 32, *supra*.

§ 515. Attempts, how punishable.

A person who unsuccessfully attempts to commit a crime is indictable and punishable, unless otherwise specially prescribed by statute, as follows:

1. If the crime attempted is punishable by the death of the offender, or by imprisonment for life, the person convicted of the attempt is punishable by imprisonment in the state prison for not more than ten years.

2. In any other case, he is punishable by imprisonment in the state prison for not more than half of the longest term, or by a fine not more than one-half of the largest sum, prescribed upon a conviction for the commission of the offense attempted, or by both such fine and imprisonment.

§ 516. Restrictions upon preceding sections.

The last section does not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 517. Second offense, how punishable.

A person who, after having been convicted within this state of a felony, or an attempt to commit a felony, or of petit larceny, or, under the laws of

any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any crime within this state, is punishable upon conviction of such second offense as follows:

1. If the subsequent crime is such that, upon a first conviction, the offender might be punished, in the discretion of the court, by imprisonment for life, he must be sentenced to imprisonment in the state prison for life.

2. If the subsequent crime is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than than the longest term, nor more than twice the longest term prescribed upon a first conviction.

§ 518. Women concealing birth of issue—Second offense.

A woman who, having been convicted of endeavoring to conceal the still birth of any issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death, is punishable by imprisonment in the state prison not exceeding five years, and not less than two years.

See § 254, *supra*.

§ 519. Imprisonment on two or more convictions.

Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first or other prior term or terms of imprisonment to which he is sentenced.

Sentence to successive terms. Mims v. State, 26 Minn. 498, 5 N. W. Rep. 374.

§ 520. Conviction after sentence.

Where a person, under sentence for a felony, afterwards commits any other felony, and is thereof convicted and sentenced to another term of imprisonment, the latter term shall not begin until the expiration of all the terms of imprisonment to which he is already sentenced.

§ 521. Convict, when sentenced for life.

When a crime is declared by statute to be punishable by imprisonment for not less than a specified number of years, and no limit of the duration of the imprisonment is declared, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment during his natural life, or for any number of years not less than the number prescribed.

§ 522. Sentence, how limited.

Where a convict is sentenced to be imprisoned in the state prison for a longer period than one year, it is the duty of the court, before which the conviction is had, to limit the term of the sentence so that it will expire between the month of March and the month of November, unless the exact period of the sentence is fixed by law.

Law only directory. Sentence until fine is paid, illegal. Mims v. State, 26 Minn. 494, 5 N. W. Rep. 369.

§ 523. Id.—In county jail.

Where a person is convicted of a crime for which the punishment inflicted is or may be imprisonment in a county jail, he may be sentenced to, and the imprisonment may be inflicted by, confinement in a workhouse, if there be one in the county in which the offense is tried or committed.

§ 524. Place to be specified in sentence and judgment—Removal.

The place of the imprisonment must be specified in the judgment and sentence of the court. But convicts may be removed from one place of confinement to another, in a case, and by the authority, designated by statute.

§ 525. Limit of fine.

Where, in this code, or in any other statute making any crime punishable by a fine, the amount of the fine is not specified, a fine of not more than five hundred dollars may be imposed, and in all cases where the defendant is sentenced and adjudged to pay a fine the court may, in its discretion, as part of the judgment, order that defendant shall be committed to the common jail of the county until such fine is paid, not exceeding a reasonable time, to be graduated according to the amount of such fine.

See § 13, *supra*.

§ 526. Consequence of sentence to imprisonment for life.

A person sentenced to imprisonment for life is thereafter deemed civilly dead.

§ 527. Convict protected by law.

A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted.

§ 528. Certain forfeitures abolished—Deodands.

A conviction of a person for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures to the people of the state, in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished.

See § 142, *supra*.

§ 529. Witnesses' testimony on charge of perjury.

The sections of this code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding, do not forbid such evidence being proved against such person upon any charge of perjury committed in such examination.

See §§ 72, 87, 210, 298, 368, *supra*.

§ 530. Sentence of minor under sixteen.

When a person under the age of sixteen is convicted of a crime, he shall, instead of being sentenced to fine or imprisonment, be placed in charge of the board of managers of the state reform school, and be thereafter, until majority or for a shorter term, to be fixed by the court, subjected to the discipline and control of the said board of managers.

§ 531. Convict as witness.

A person heretofore or hereafter convicted of any crime is, notwithstanding, a competent witness, in any case or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his cross-examination, upon which he must answer any proper question relevant to that inquiry; and the party cross-examining is not concluded by the answer to such question.

§ 532. Construction of terms.

In construing this code, or an indictment or other pleading in a case provided for by this code, the following rules must be observed, except when a contrary intent is plainly declared in the provision to be construed, or plainly apparent from the context thereof:

1. Each of the terms, "neglect," "negligence," "negligent," and "negligently," imports a want of such attention to the nature or probable consequences of the act or admission as a prudent man ordinarily bestows in acting in his own concerns.

2. Each of the terms "corrupt" and "corruptly" imports a wrongful desire to acquire or cause some pecuniary or other advantage to or by the person guilty of the act or admission referred to, or some other person.

3. Each of the terms "malice" and "maliciously" imports an evil intent, or wish, or design to vex, annoy, or injure another person, or to maltreat or injure an animal.

4. The term "knowingly" imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfulness of the act or omission.

5. Where an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person.

6. The term "vessel" includes ships, steamers, and every boat or structure adapted to navigation, or movement from place to place by water, either upon the lakes, rivers, or artificial water-ways.

7. The term "signature" includes any memorandum, mark, or sign, written with intent to authenticate any instrument or writing, or the subscription of any person thereto.

8. The term "writing" includes both printing and writing.

9. The term "property" includes both real and personal property, things in action, money, bank-bills, and all articles of value.

10. The singular number includes the plural, and the plural the singular.

11. A word used in the masculine gender comprehends as well the feminine and neuter.

12. A word used in the present tense includes the future.

13. The term "person" includes a corporation or joint association as well as a natural person. When it is used to designate a party whose property may be the subject of any offense, it also includes the state, or any other state, government, or country which may lawfully own property within the state.

14. The term "real property" includes every estate, interest, and right in lands, tenements, hereditaments.

15. The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property, real or personal, is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right and interest therein.

§ 533. Application of this code to prior offenses.

Nothing contained in any provision of this code applies to an offense committed, or other act done, at any time before the day when this code takes effect. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed, in the same manner as if this code had not been passed; and as to such offenses, the statutes by this code repealed are to be deemed to be in full force and effect, except that whenever the punishment or penalty for an offense is mitigated by any provision of this code, such provision may be applied to any sentence or judgment imposed for the offense after this code takes effect. An offense specified in this code, committed after the beginning of the day when this code takes effect, must be punished according to the provisions of this code, and not otherwise.

§ 534. Existing civil rights preserved.

The provisions of this code are not to be deemed to affect any civil rights or remedies existing at the time when this code takes effect, by virtue of the common law or of any provision of statute.

§ 535. Intent to defraud.

Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate whatever.

§ 536. Same — Jurisdiction of offense committed on railroad trains.

The route traversed by every railway car, coach, train, or public conveyance, and the lake or stream traversed by any boat, shall be deemed, and are hereby declared to be, criminal districts; and jurisdiction of all public offenses which shall be committed on any such railroad car, coach, train, boat, or other public conveyance, or at any station or depot upon such route, shall be in any county through which said car, coach, train, boat, or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate.

See *ante*, Supp. Gen. St. c. 108, *§ 19*a*. State v. Timmens, 4 Minn. 325, (Gil. 241;) State v. Robinson, 14 Minn. 447, (Gil. 333;) State v. Gut, 13 Minn. 341, (Gil. 315;) State v. Anderson, 25 Minn. 66.

§ 537. Civil remedies preserved.

The omission to specify or affirm in this code any liability to any damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 538. Proceedings to impeach, etc., preserved.

The omission to specify or affirm in this code any ground or forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law, to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

§ 539. Military punishments, etc., preserved.

This code does not affect any power conferred by law upon any court-martial or other military authority or officer to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officers to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians, and vagrants, except so far as any provisions therein are inconsistent with this code.

§ 540. Certain statutes continued in force.

Nothing in this code affects any of the provisions of the following statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws:

1. All statutes regulating the sale or disposition of intoxicating or spirituous liquors.

2. All statutes defining and providing for the punishment of offenses not defined and made punishable by this code.

§ 541. Acts repealed.

Chapters ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, and one hundred and one of the General Statutes of one thousand eight hundred and seventy-eight, and all acts and parts of acts which are inconsistent with the provisions of this act, are

repealed, so far as they define any crime, or impose any punishment for crime, except as herein provided.

§ 542. When act to take effect.

This act shall take effect on the first day of January, one thousand eight hundred and eighty-six. When construed in connection with other statutes, it must be deemed to have been enacted on the sixth day of January, one thousand eight hundred and eighty-five, so that any statute enacted after that day is to have the same effect as if it had been enacted after this code.

Approved March 9, A. D. 1885.