THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

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CHAPTER 108.

INDICTMENTS.

§ 7238. Indictment—Contents.

The first pleading on the part of the state is the indictment, which shall contain:

First. The title of an action, specifying the name of the court to which the indictment is presented, and the name of the parties;

Second. A statement of the acts constituting the offence, in ordinary and concise language, without repetition.

(G. S. 1866, c. 108, § 1; G. S. 1878, c. 108, § 1.)

SUBD. 1. An indictment for a crime committed in an organized county, to which others are attached for judicial purposes, may be entitled as in all of the counties, and found by a grand jury drawn from all. State v. Stokely, 16 Minn. 282, (Gil. 249.)

SUBD. 2. "The grand jurors of the county of Rice, in the state of Minnesota, upon their oaths, present that," etc., instead of following the form given in the statute, "A. B. is accused by the grand jury of," etc., is good as an indictment, if it state facts constituting an offense. State v. Hinkley, 4 Minn. 345, (Gil. 261.)

An inaccurate designation of the offense charged in an indictment does not vitiate it if the act or omission specified shows the offense. State v. Munch, 22 Minn. 67. An indictment for a crime which has a name, and is divided into several classes or degrees, as murder, arson, etc., is sufficient, if it charge the defendant with having committed the offense by name in the accusing part, and bringing it within some one of the classes or degrees in the descriptive part or specification. State v. Eno, 8 Minn. 220, (Gil. 190.)

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 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.)

The allegation, in an indictment for larceny of money, "a more particular description of which," etc., "is to the said grand jury unknown," is not traversable. State v. Taunt, 16 Minn. 109, (Gil. 99.)

An indictment for extortion in taking illegal fees is bad if it do not state in what official capacity defendant exacted the fees, or if it do not state what fees, if any, were due, and what amount was collected. State v. Brown, 12 Minn. 490, (Gil. 393.)

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 State v. Ward, 35 Minn. 182, 28 N. W. Rep. 192.

§ 7239. Schedule of forms.

It may be substantially in the following form:

No. 1.

The district court for the county of ——— and state of Minnesota:

The State of Minnesota, }
vs. }
A. B. }

A. B. is accused by the grand-jury of the county of ———, by this indictment, of the crime of ———, (here insert the name of offence, if it has one, such as treason, murder, arson, manslaughter, or the like, or if it is a misdemeanor, having no general name, such as libel, assault and battery, or the like, insert a brief description of it, as it is given by law,) committed as follows:

The said A. B., on the ——— day of ———, A. D. 18—, at the town, (city, or village, as the case may be,) of ———, in this county, (here set forth the act charged as an offence according to the form adapted to the case, as afforded in the following forms, or similar ones.)

Dated at ———, in the county of ———, the ——— day of ———, A. D. 18—.

(Indorsed,) a true bill.

G. H., foreman of the grand jury.

No. 2.

In an Indictment for Murder.

(Commencement the same as No. 1.)
Without the authority of law, and with malice aforethought, killed C. D., by shooting him with a gun or pistol, (or by administering to him poison, or by pushing him into the water, whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand-jury, or as the case may be.)

No. 3.

In an Indictment for Arson.

Wilfully set fire to (or burned), in the night-time, a dwelling-house in which there was at the time a human being, namely, C. D., (or whose name is unknown to the grand-jury;) or,

No. 4.

Wilfully set fire to (or burned) an inhabited dwelling-house in the daytime, in which there was at the time a human being, namely, C. D., (or whose name is unknown to the grand-jury;) or

No. 5.

Wilfully set fire to (or burned) the steamboat named the ——, which was at the time insured by the Hartford insurance company, of the state of Connecticut, against loss or damage by fire, with intent to prejudice such insurer.

No. 6.

Manslaughter in the First Degree.

Was engaged in the perpetration of the following, (stating it as in an enactment therefor,) and the said A. B., while engaged in the perpetration of such misdemeanor, without a design to effect death by his act, (or procurement, or culpable negligence,) by his act killed C. D., by striking him with a club, (or by other means, to be stated as in No. 2;) or,

No. 7.

Deliberately assisted one C. D. in the commission of self-murder, which crime the said C. D. then and there committed, by hanging himself by the neck until he was dead; (or by shooting himself with a pistol, or as the case may be.)

No. 8.

Manslaughter in the Second Degree.

Killed C. D. in the heat of passion, but in a cruel and unusual manner, and not under such circumstances as to constitute excusable or justifiable homicide, by striking him with a club, (or stating the means according to the fact.)

No. 9.

Manslaughter in the Third Degree.

Was the owner of a bull (or other mischievous animal, describing it,) and, knowing its propensities, wilfully suffered such bull to run at large, (or kept it without ordinary care,) and the said bull, while so at large, (or not confined,) killed one C. D., who took all the precautions which the circumstances would permit to avoid such bull; or,

No. 10.

Was managing a steamboat called the ——, for gain, and wilfully (or negligently) received on board so many passengers (or such a quantity of lading,) that the said boat sunk (or was overset,) whereby C. D., who was on said boat, was drowned, (or otherwise killed, according to the fact.)

No. 11.

In an Indictment for Rape.

Forcibly ravished C. T., a woman of the age of ten years or upwards; or

No. 12.

Unlawfully and carnally knew and abused C. H., a female child under the age of ten years.

No. 13.

In an Indictment for Robbery.

Feloniously took a gold watch (or any other property, as the case may be,) the property of C. D., from his person, and against his will, by violence to his person, (or by putting him in fear of some immediate injury to his person;) or,

No. 14.

Feloniously took a gold watch, (or as the case may be,) the property of C. D., in his presence and against his will, by violence to his person.

No. 15.

In an Indictment for Larceny.

Feloniously took and carried away one gold watch and one silver chain, (or as the case may be,) the personal property of J. D., (or of a person whose name is unknown to the grand-jury,) of the value of more than twenty dollars; or,

No. 16.

Feloniously took and carried away, in the night-time, from the person of C. D., one silver watch, (or as the case may be,) the personal property of E. F., (or of a person whose name is unknown to the grand-jury,) of the value of more than twenty dollars.

No. 17.

In an Indictment for Burglary.

Broke into and entered, in the night-time, the dwelling-house of C. D., in which there was at the time a human being, namely, the said C. D., (or whose name is unknown to the grand-jury,) with intent to commit murder (or rape, robbery, or larceny, or other public offence, describing it generally,) therein, by forcibly bursting or breaking the wall, (or an outer door or a window of such house, or as the case may be,) or,

No. 18.

Broke into and entered, in the night-time, the dwelling house of C. D., in which there was at the time a human being, namely, the said C. D., (or whose name is unknown to the grand-jury,) with intent to commit a rape (or larceny or any other public offence, describing it generally,) therein, by unlocking an outer door, by means of false keys, (or by picking or forcing the lock of an outer door, or as the case may be.)

No. 19.

In an Indictment for Forgery and Counterfeiting.

Forged (or counterfeited, or falsely altered, by erasing a material part thereof, or as the case may be,) an instrument purporting to be (or being) the last will and testament of C. D., devising certain real and personal property, with intent to defraud; or,

No. 20.

Forged a certificate purporting to have been issued by J. C., an officer duly authorized to make such certificate, of the acknowledgment of C. D., of the

execution by him of a conveyance to E. F., of certain real property in the town of ——, with the intent to defraud the said C. D.; or,

No. 21.

Falsely made an impression, purporting to be the impression of the great seal of the state, on an instrument in writing, being (or purporting to be) a ——, (stating generally the purport of the instrument,) with the intent to defraud; or,

No. 22.

Counterfeited a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current, by custom or usage, within this state; or,

No. 23.

Had in his possession a counterfeit of a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current in this state, knowing the same to be counterfeited, with intent to defraud (or injure) by uttering the same as true (or false.)

No. 24.

In an Indictment for Perjury.

On his examination as a witness, duly sworn to testify the truth, on the trial of a civil action in the court of ——, between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, he testified falsely, that, (stating the facts to be alleged to be false,) the matters so testified being material, and the testimony being wilfully and corruptly false.

No. 25.

In an Indictment for Bigamy.

Having a wife then living, unlawfully married one G. A.

No. 26.

In an Indictment for Libel.

Published in a newspaper called the —— the following libel concerning C. D., (here insert the article charged as being a libel.)

(G. S. 1866, c. 108, § 2; G. S. 1878, c. 108, § 2.)

Indictment held good, though the name of the defendant was not repeated after the title. State v. Monson, 41 Minn. 140, 42 N. W. Rep. 790.

No. 2. An indictment for murder in the form given by this section is good under the Penal Code. State v. Johnson, 37 Minn. 493, 35 N. W. Rep. 373.

An indictment for murder in the first degree is good which charges the killing to have been done "with the premeditated design to effect the death" instead of "with malice aforethought." State v. Holong, 38 Minn. 368, 37 N. W. Rep. 587.

No. 16. A description of the money stolen, in an indictment for larceny, held sufficient. State v. Taunt, 16 Minn. 109, (Gil. 99.)

No. 24. An indictment for perjury, in the form prescribed by No. 24, is sufficient. State v. Thomas, 19 Minn. 484, (Gil. 418.)

An indictment alleged (following form No. 24) that the defendant's testimony, which was particularly specified, was willfully and corruptly false. Held, that this was equivalent to alleging that he willfully and knowingly testified falsely. State v. Stein, 48 Minn. 466, 51 N. W. Rep. 474.

No. 25. An indictment for bigamy, in the form prescribed by this section, is sufficient. State v. Armington, 25 Minn. 29.

§ 7240. Foregoing forms sufficient—Forms in other cases.

The manner of stating the act constituting the offence, as set forth in the preceding forms, is sufficient in all cases where the forms there given are applicable. In all other cases, forms may be used as nearly similar as the nature of the case permits.

(G. S. 1866, c. 108, § 3; G. S. 1878, c. 108, § 3.)

§ 7241. Indictment to be direct and certain.

The indictment shall be direct and certain as it regards:
First. The party charged;
Second. The offence charged;
Third. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

(G. S. 1866, c. 108, § 4; G. S. 1878, c. 108, § 4.)

An indictment for extortion in taking illegal fees is bad if it do not state in what official capacity defendant exacted the fees, or if it do not state what fees, if any, were due, and what amount was collected. State v. Brown, 12 Minn. 490, (Gil. 393.)

An averment in an indictment that the defendant did "then and there" do the acts alleged as an offense, when the only place mentioned in the indictment is in the description of the court as "district court for the county of Nicollet," and of the office held by defendant as "judge of probate of the county of Nicollet," does not show the county in which the offense was committed. State v. Brown, 12 Minn. 490, (Gil. 393.)

See State v. Gray, 29 Minn. 142, 12 N. W. Rep. 455.

§ 7242. Indictment by fictitious name.

When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

(G. S. 1866, c. 108, § 5; G. S. 1878, c. 108, § 5.)

§ 7243. May contain different counts.

When by law an offence comprises different degrees, an indictment may contain counts for the different degrees, of the same offence, or for any of such degrees. The same indictment may contain counts for murder, and also for manslaughter, or different degrees of manslaughter. Where the offence may have been committed by the use of different means, the indictment may allege the means of committing the offence in the alternative. Where it is doubtful to what class an offence belongs, the indictment may contain several counts, describing it as of different classes or kinds.

(G. S. 1866, c. 108, § 6; G. S. 1878, c. 108, § 6.)

A count for forging a note, and one for uttering and publishing the forged note, cannot, under the statute, be joined in the same indictment. They are not different degrees of the same offense, but distinct offenses. State v. Wood, 13 Minn. 121, (Gil. 112.)

Duplicity. People v. Van Alstine, (Mich.) 23 N. W. Rep. 594; State v. Ormiston, (Iowa,) 23 N. W. Rep. 370; State v. Winebrenner, (Iowa,) 25 N. W. Rep. 146.

See People v. Sweeney, (Mich.) 22 N. W. Rep. 50; People v. McDowell, (Mich.) 30 N. W. Rep. 68; Glover v. State, (Ind.) 10 N. E. Rep. 282; State v. Gray, 29 Minn. 142, 145, 12 N. W. Rep. 455; State v. Owens, 22 Minn. 235, 242.

§ 7244. Time, how stated.

The precise time at which the offence was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offence.

(G. S. 1866, c. 108, § 7; G. S. 1878, c. 108, § 7.)

Under the common-law rule, adopted in this section, allegation of the time of committing a criminal offense need not in general be proved as laid. State v New, 22 Minn. 76.

See, also, State v. Masteller, 45 Minn. 128, 47 N. W. Rep. 541.

Impossible date. Murphy v. State, (Ind.) 8 N. E. Rep. 583.

An indictment, entitled "the district court for the counties of Lyon and Lincoln, and state of Minnesota," and charging that the defendant, "on or about the 15th day of November, A. D. 1879, at" a town named, "in said county of Lincoln, did sell and dispose of," to a person named, "one pint of brandy; of the value of 10 cents," sufficiently alleges a sale and disposal of a quantity of spirituous liquor, less than five gallons, in the county of Lincoln, in the state of Minnesota, and the time of such sale and disposal. State v. Lavake, 26 Minn. 526, 6 N. W. Rep. 339.

§ 7245. Erroneous allegation as to person injured.

When the offence involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to

identify the act, an erroneous allegation, as to the person injured, or intended to be injured, is not material.

(G. S. 1866, c. 108, § 8; G. S. 1878, c. 108, § 8.)

This provision does not apply to a case where the essence of the offense is an attempt, or an act done with intent, to commit an injury to the person. State v. Boylson, 3 Minn. 438, (Gil. 325.)

The intent to defraud, mentioned in G. S. 1878, c. 39, § 14, (§ 4142,) is an intent to defraud the mortgagee therein named. Such intent is an essential ingredient of the offense defined by that section, so that an indictment under it, alleging no intent to defraud except one to defraud some other person than the mortgagee, is fatally defective. Such defect is not reached by this section. State v. Ruhnke, 27 Minn. 309, 7 N. W. Rep. 264.

It being alleged, in an indictment for arson, that the property was owned by, and in the possession of, A., proof that it was owned by A., but that her husband had possession, is an immaterial variance. State v. Grimes, 50 Minn. 123, 52 N. W. Rep. 275.

See, also, State v. Butler, 26 Minn. 90, 1 N. W. Rep. 821. State v. Crawford, (Iowa,) 23 N. W. Rep. 684.

§ 7246. Words of statute need not be followed.

Words used in the statutes to define a public offence need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

(G. S. 1866, c. 108, § 9; G. S. 1878, c. 108, § 9.)

See State v. Holong and State v. Stein, cited in note to § 7239.

§ 7247. Tests of sufficiency of indictment.

The indictment is sufficient if it can be understood therefrom:

First. That it is entitled in a court having authority to receive it, though the name of the court is not accurately stated;

Second. That it was found by a grand-jury of the county in which the court was held;

Third. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name;

Fourth. That the offence was committed at some place within the jurisdiction of the court, except where, as provided by law, the act, though done without the local jurisdiction of the county, is triable therein;

Fifth. That the offence was committed at some time prior to the time of finding the indictment;

Sixth. That the act or omission charged as the offence is clearly and distinctly set forth, in ordinary and concise language, without repetition;

Seventh. That the act or omission charged as the offence is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

(G. S. 1866, c. 108, § 10; G. S. 1878, c. 108, § 10.)

Putting the date and place of finding at the end after the words, "against the peace and dignity of the state of Minnesota," does not vitiate it. Such date and place are no part of the indictment. State v. Johnson, 37 Minn. 493, 35 N. W. Rep. 573.

An indictment against several may charge the act to have been done by them collectively. Id.

SUBD. 1. Where several counties are attached for judicial purposes, entitling an indictment in the name only of the county to which the others are attached, is a defect of form merely. State v. McCartey, 17 Minn. 76, (Gil. 54.)

The number of the judicial district is no part of the title of the district court, and, if erroneously given, may be rejected. State v. Munch, 22 Minn. 67.

SUBD. 4. See State v. Robinson, 14 Minn. 447, (Gil. 333, 337.)

SUBD. 6. If the indictment is in the words of the statute it is sufficient. The words "deliberately," "premeditatedly," and "with malice aforethought" are unnecessary. State v. Garvey, 11 Minn. 154, (Gil. 95.)

An indictment for larceny described a part of the property stolen as "divers bank bills, amounting in the whole to the sum of five hundred dollars, and of the value of five hundred dollars," without stating that a more particular description of the bills was unknown to the grand jury. *Held*, the description is bad for want of certainty, but, other property being sufficiently described in it, a demurrer will not lie to the indictment; but, also, to admit evidence as to the bills was error. State v. Hinkley, 4 Minn. 345, (Gil. 261.)

See State v. Lavake, 26 Minn. 526, 528, 6 N. W. Rep. 330, and note to § 7239.

§ 7248. Formal defects disregarded.

No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

(G. S. 1866, c. 108, § 11; G. S. 1878, c. 108, § 11.)

An indictment which charges the killing of a person on a day specified, imports that he died on that day. State v. Ryan, 13 Minn. 370, (Gil. 343.)

See State v. Munch, 22 Minn. 67, 74; State v. Gut, 13 Minn. 341, (Gil. 315, 335;) State v. Holong, 38 Minn. 368, 370, 37 N. W. Rep. 587; State v. Harris, 50 Minn. 128, 52 N. W. Rep. 387.

§ 7249. Judgment, how pleaded.

In pleading a judgment, or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction shall, however, be established on trial.

(G. S. 1866, c. 108, § 12; G. S. 1878, c. 108, § 12.)

§ 7250. Private statute, how pleaded.

In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

(G. S. 1866, c. 108, § 13; G. S. 1878, c. 108, § 13.)

The statutory rule in respect to pleading a private statute, in an indictment, by a reference to its title, and the day of its passage, has no application to a case where, at common law, such statute need not have been pleaded. State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758.

§ 7251. Indictment for libel.

An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application, to the party libelled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published shall be established on the trial.

(G. S. 1866, c. 108, § 14; G. S. 1878, c. 108, § 14.)

§ 7252. Misdescription of forged instrument.

When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

(G. S. 1866, c. 108, § 15; G. S. 1878, c. 108, § 15.)

§ 7253. Indictment for perjury.

In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

(G. S. 1866, c. 108, § 16; G. S. 1878, c. 108, § 16.)

An indictment for perjury in the form No. 24 is good. State v. Thomas, 19 Minn. 484, (Gil. 418.)

See State v. Stein, cited in note to § 7239.

§ 7254. Compounding felony indictable.

A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offence, or to abstain

from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence has not been indicted or tried.

(G. S. 1866, c. 108, § 17; G. S. 1878, c. 108, § 17.)

§ 7255. Time within which indictments may be found.

Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court, within three years after the commission of the offence; but the time during which the defendant is not an inhabitant of, or usually resident within this state, shall not constitute any part of the said limitation of three years.

(G. S. 1866, c. 108, § 18; G. S. 1878, c. 108, § 18.)

§ 7256. Offence committed on vessel, where indictable and triable.

When any offence is committed, within this state, on board of any vessel navigating any river or lake, an indictment for the same may be found in any county through which, or any part of which, such vessel is navigated, during or in the course of the same voyage or trip, or in the county where such voyage or trip terminates; and such indictment may be tried, and a conviction thereon had, in any such county, in the same manner and with the like effect as in the county where the offence was committed.

(G. S. 1866, c. 108, § 19; G. S. 1878, c. 108, § 19.)

Under an indictment charging the offense to have been committed in a certain county, the defendant may be convicted if the offense was committed on a vessel which passed through the county, on the voyage in the course of which the act took place. State v. Timmens, 4 Minn. 325, (Gil. 241.)

§ 7257. Offenses on public conveyances—Jurisdiction.

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.

(1885, c. 189;[1] G. S. 1878, v. 2, c. 108, § 19a.)

See §§ 6846, 6852.

§ 7258. Offence committed on county lines, where prosecuted.

Offences committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

(G. S. 1866, c. 108, § 20; G. S. 1878, c. 108, § 20.)

This section is not in conflict with § 6, art. 1, Const. State v. Robinson, 14 Minn. 447, (Gil. 333.)

It is sufficient, in an indictment under this section, to charge that the offense was committed in the county in which the indictment is found, or to charge that it was committed in the adjoining county, within one hundred rods of the dividing line. Id.

See, also, State v. Masteller, 45 Minn. 128, 47 N. W. Rep. 541.

See State v. Anderson, 25 Minn. 66.

§ 7259. Death ensuing in another county—Prosecution.

If any mortal wound is given, or other violence or injury inflicted, or any poison administered, in one county, by means whereof death ensues in another county, the offence may be prosecuted in either county.

(G. S. 1866, c. 108, § 21; G. S. 1878, c. 108, § 21.)

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[1] An act to punish offenses committed on railway cars, coaches, trains, or public conveyances, and upon lakes or streams. Approved February 26, 1885.

§ 7260. Prosecution in county where death ensues in all cases.

If any such mortal wound is inflicted, or other violence or injury done, or poison administered, either within or without the limits of this state, by means whereof death ensues in any county thereof, such offence may be prosecuted and punished in the county where such death happens.

(G. S. 1866, c. 108, § 22; G. S. 1878, c. 108, § 22.)

§ 7261. Death out of state—Prosecution.

That in all cases of felonious homicide, where the assault shall have been committed in this state, and the person assaulted shall die without the limits thereof, the offender shall and may be indicted, tried and punished for the crime so committed, in the county where the assault was made, in the same manner, to all intents and purposes, as if the person assaulted had died within the limits of this state.

(1875, c. 42, § 1; G. S. 1878, c. 108, § 23.)

An indictment charging defendant with committing the crime of murder, by feloniously, etc., inflicting upon David Savazyo, etc., on August 28, 1874, in Washington county, in this state, a stab or wound of which, upon the same day, said Savazyo died in the county of Pierce, and state of Wisconsin, held to charge the commission of the offense in the county of Washington. State v. Gessert, 21 Minn. 369.

§ 7262. Indictment for embezzlement—Evidence.

In any prosecution for the offence of embezzling the money, bank-notes, checks, drafts, bills of exchange, or other security for money, of any person, by a clerk, agent or servant of such person, it shall be sufficient to allege generally, in the indictment, an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it is proved that any money, bank-note, check, draft, bill of exchange, or other security for money, of such person, of whatever amount, was fraudulently embezzled by such clerk, agent or servant, within the said period of six months.

(G. S. 1866, c. 108, § 23; G. S. 1878, c. 108, § 24.)

Evidence that the offense charged was committed before the time laid in the indictment is competent, and is not excluded by this section. State v. New, 22 Minn. 76.

§ 7263. Evidence of ownership.

In the prosecution of any offence committed upon, or in relation to, or in any way affecting real estate, or any offence committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it is proved on trial that, at the time when such offence was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

(G. S. 1866, c. 108, § 24, as amended 1869, c. 71, § 1; G. S. 1878, c. 108, § 25.)

See State v. Grimes, cited in note to § 7245.