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

COMPILED AND EDITED BY

HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY

FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL REPORTER SYSTEM

COMPLETE IN TWO VOLUMES

VOL. 2

CONTAINING

Sections 4822 to 8054 of the General Statutes, and the General Index

ST. PAUL, MINN.

WEST PUBLISHING CO.

1894

CHAPTER 114.

ISSUES AND MODE OF TRIAL.

§ 7318. Issue of fact arises, when.

An issue of fact arises:

First. Upon a plea of not guilty; or,

Second. Upon a plea of a former conviction or acquittal of the same offence.

(G. S. 1866, c. 114, § 1; G. S. 1878, c. 114, § 1.)

§ 7319. Same—To be tried by jury.

An issue of fact shall be tried by a jury of the county in which the indictment was found, unless the action is removed, by order of the court, as provided in the preceding chapter.

(G. S. 1866, c. 114, § 2; G. S. 1878, c. 114, § 2.)

Defendant cannot waive his right to a jury trial. State v. Carman, (Iowa,) 18 N. W. Rep. 691.

Where the defendant, the court, and the state consented to trial before eleven jurors, a conviction was sustained. State v. Kaufman, (Iowa,) 2 N. W. Rep. 275.

§ 7320. Defendant to appear in person, when.

If the indictment is for a misdemeanor, the trial may be had in the absence of the defendant, if he appears by counsel; but if for a felony, he shall be personally present.

(G. S. 1866, c. 114, § 3; G. S. 1878, c. 114, § 3.)

Defendant's presence at a motion preliminary to the trial is not necessary. Epps v. State, (Ind.) 1 N. E. Rep. 491.

See State v. Reckards, 21 Minn. 47, 50.

§ 7321. Continuance—Affidavits to be filed.

When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term, or to another term; the affidavits read upon the application shall at the same time be filed with the clerk.

(G. S. 1866, c. 114, § 4; G. S. 1878, c. 114, § 4.)

Continuance to obtain witnesses. Sutton v. People, (Ill.) 10 N. E. Rep. 376; Dacey v. People, (Ill.) 6 N. E. Rep. 165.

Sufficiency of the affidavits and of the showing. Dacey v. People, (Ill.) 6 N. E. Rep. 165; Sutherlin v. State, (Ind.) 9 N. E. Rep. 298; State v. Smith, (Iowa,) 15 N. W. Rep. 593; State v. Bennett, (Iowa,) 2 N. W. Rep. 1103; Dingman v. State, (Wis.) 4 N. W. Rep. 668; State v. Dakin, (Iowa,) 3 N. W. Rep. 411; People v. Anderson, (Mich.) 18 N. W. Rep. 561; People v. Mason, (Mich.) 30 N. W. Rep. 103; People v. Shufelt, (Mich.) 28 N. W. Rep. 79; State v. Stone, (Iowa,) 21 N. W. Rep. 681; State v. Falconer, (Iowa.) 30 N. W. Rep. 655.

Discretion of the court upon the application. Morris v. State, (Ind.) 4 N. E. Rep. 148.

Sufficiency of order of adjournment. State v. Holmes, (Iowa,) 9 N. W. Rep. 894; State v. McGuire, (Iowa,) 4 N. W. Rep. 886.

§ 7322. Defendant to be committed, when.

When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court.

(G. S. 1866, c. 114, § 5; G. S. 1878, c. 114, § 5.)

§ 7323. Separate trial of defendants jointly indicted.

When two or more defendants are jointly indicted for a felony, any defendant requiring it shall be tried separately; in other cases, defendants jointly indicted may be tried separately or jointly, in the discretion of the court.

(G. S. 1866, c. 114, § 6; G. S. 1878, c. 114, § 6.)

Failure to enter a formal order for separate trial held not ground for a new trial. State v. Thaden, 43 Minn. 325, 45 N. W. Rep. 614.

§ 7324. Discharge of a joint defendant—To become witness for state.

When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defence, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the state.

(G. S. 1866, c. 114, § 7; G. S. 1878, c. 114, § 7.)

Upon an indictment against two, neither can be sworn for the other, though they be tried separately. State v. Dumphey, 4 Minn. 438, (Gil. 340.)

By Laws 1868, c. 70, amending G. S. 1866, c. 73, § 7, (§ 5658,) this section and § 7325 became inoperative. The amendment established a new rule, and, on the trial of one defendant under a joint indictment against two, his codefendant may offer himself as a witness, and give testimony on behalf of the state against the defendant on trial. State v. Thaden, 43 Minn. 325, 45 N. W. Rep. 614.

§ 7325. Same—To become witness for his codefendants.

When two or more persons are included in the same indictment, and the court is of the opinion that, in regard to a particular defendant, there is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment, before the evidence is closed, that he may be a witness for his codefendant; the order is an acquittal of the defendant discharged, and a bar to another prosecution for the same offence.

(G. S. 1866, c. 114, § 8; G. S. 1878, c. 114, § 8.)

This section is no longer operative. State v. Thaden, cited in note to § 7324.

§ 7326. Minors excluded from criminal trials, when.

All persons under the age of seventeen years, not being parties to, witnesses in, or directly interested in any criminal prosecution or trial being heard before any district, municipal, police or justice court in this state, are hereby prohibited from attending or being present in such court at such trial.

(1891, c. 42, § 1.)

§ 7327. Same—Duty of court officers.

It is hereby made the duty of any and all police officers, constables, sheriffs, deputy sheriffs or other officers in charge of any such court and attending upon the trial of any such criminal case before either of said courts, to exclude from the room in which such trial is being had all persons mentioned in the first section of this act; Provided, That court before whom such trial is being heard may, by order, permit any such person to attend upon any such trial.

(Id. § 2.)

§ 7328. Same—Penalty.

Any police officer, constable, sheriff or deputy sheriff who, knowingly, shall neglect or refuse to carry out and enforce the provisions of this act shall, on conviction thereof before any court of competent jurisdiction, be fined not less than ten dollars or more than twenty-five dollars together with the costs of such prosecution.

(Id. § 3.)

§ 7329. Juror to testify as to facts within his knowledge.

If a juror has any personal knowledge respecting a fact in controversy in a cause, he shall declare it in open court, during the trial; if, during the retirement of a jury, a juror declares a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court; in either of these cases, the juror making the statement shall be sworn as a witness and examined in the presence of the parties.

(G. S. 1866, c. 114, § 9; G. S. 1878, c. 114, § 9.)

§ 7330. View.

The court may order a view by any jury impanelled to try a criminal case.

(G. S. 1866, c. 114, § 10; G. S. 1878, c. 114, § 10.)

The matter of ordering a view by the jury in a criminal case is, under this section, discretionary with the court. Chute v. State, 19 Minn. 271, (Gil. 230.)

See Shular v. State, (Ind.) 4 N. E. Rep. 870; People v. Bush, (Cal.) 10 Pac. Rep. 169.

§ 7331. Questions of law and fact, how decided.

On the trial of an indictment for any offence, questions of law are to be decided by the court, except in cases of libel, saving the right of the defendant to except. Questions of fact, by the jury; and although the jury have the power to find a general verdict which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

(G. S. 1866, c. 114, § 11; G. S. 1878, c. 114, § 11.)

It is the duty of the court to declare the law to the jury in criminal as well as in civil cases. Whether the evidence has a tendency to prove any fact in issue, in a criminal cause, is for the determination of the court; not so as to the weight of evidence. State v. Rheams, 34 Minn. 18, 24 N. W. Rep. 302.

§ 7332. Order of argument.

When the evidence is concluded upon the trial of any indictment in the district courts or courts of common pleas in this state, unless the cause is submitted on either or both sides without argument, the plaintiff shall commence, and the defendant shall conclude, the argument to the jury.

(1875, c. 41, § 1; G. S. 1878, c. 114, § 12.)

This section is not applicable to the municipal court of the city of Minneapolis. State v. Wagner, 23 Minn. 544.

§ 7333. Charge of court.

In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict; and, if it presents the facts of the case, shall, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

(G. S. 1866, c. 114, § 12; G. S. 1878, c. 114, § 13.)

§ 7334. Jury, how kept while deliberating.

After hearing the charge, the jury may either decide in court, or may retire for deliberation; if they do not agree without retiring, one or more officers shall be sworn to take charge of them; they shall be kept together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court, and no person shall be permitted to speak to or communicate with them, unless it is by order of the court, nor listen to their deliberations; and they shall be returned into court when they have so agreed, or when ordered by the court.

(G. S. 1866, c. 114, § 13; G. S. 1878, c. 114, § 14.)

It is error to allow a jury in a criminal case to separate without being in charge of an officer, after the case is finally submitted to them. State v. Parrant, 16 Minn. 178, (Gil. 157.)

Where, in a criminal case, after the jury have retired to deliberate, a juror separates himself from his fellows, without the attendance of the officer having the jury in charge, a new trial will be granted for that cause alone. Maher v. State, 3 Minn. 444, (Gil. 329.)

It is error to instruct the jury, against the defendant's objection, that, if they should agree after adjournment of the court for the day, they might separate, and bring in a sealed verdict the next day. State v. Anderson, 41 Minn. 104, 42 N. W. Rep. 786.

§ 7335. What papers may be taken to the jury room.

Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession; they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

(G. S. 1866, c. 114, § 14; G. S. 1878, c. 114, § 15.)

§ 7336. Jury may return into court for information.

After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they shall require the officer to con-

duct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the prosecuting officer, and the defendant or his counsel.

(G. S. 1866, c. 114, § 15; G. S. 1878, c. 114, § 16.)

After the jury has retired to consult, the judge cannot communicate with the jury, or give them the least information, except in open court, and in the presence of, or after due notice to, the parties. Hoberg v. State, 3 Minn. 262, (Gil. 181.)

§ 7337. Discharge of jury without verdict.

If, after the retirement of the jury one of them becomes so sick as to prevent the continuance of his duty, or if they are unable to agree upon a verdict, or any other accident or cause occurs to prevent their being kept together for deliberation, the jury may be discharged by the court.

(G. S. 1866, c. 114, § 16; G. S. 1878, c. 114, § 17.)

§ 7338. Same—Second trial.

In all cases where a jury are discharged or prevented from giving a verdict, by reason of accident, disagreement, or other cause, except when the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

(G. S. 1866, c. 114, § 17; G. S. 1878, c. 114, § 18.)

§ 7339. Verdict in certain cases.

Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offence, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the defendant not guilty thereof, they may, upon the same indictment, find the defendant guilty of manslaughter in any degree. In all other cases, the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment.

(G. S. 1866, c. 114, § 18; G. S. 1878, c. 114, § 19.)

Upon an indictment for a crime, of which there are several degrees, a general verdict of guilty is sufficient. It is necessary for the verdict to specify the degree of the offense found only where, under the indictment, the jury may convict, and do convict, of a lesser degree than that charged in the indictment. Bilansky v. State, 3 Minn. 427, (Gil. 314.)

Upon an indictment for assault with intent to murder, the jury may convict of an assault only. Boyd v. State, 4 Minn. 321, (Gil. 237.)

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

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.)

See State v. Wiles, 26 Minn. 381, 382, 4 N. W. Rep. 615.

Upon an indictment for assault, with intent to carnally know and abuse a child, the defendant may be convicted of taking indecent liberties, if within the indictment. State v. West, 39 Minn. 32, 40 N. W. Rep. 249.

Upon an indictment for rape, the defendant may be convicted of assault in the second degree. State v. Bogan, 41 Minn. 285, 43 N. W. Rep. 5.

See State v. Hackett, 47 Minn. 425, 427, 50 N. W. Rep. 472; State v. Masteller, 45 Minn. 128, 130, 47 N. W. Rep. 541.

See § 6316.

§ 7340. Verdict as to some joint defendants and disagreement as to others.

On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another jury.

(G. S. 1866, c. 114, § 19; G. S. 1878, c. 114, § 20.)

§ 7341. Polling jury—Further deliberation, when.

When a verdict is rendered and before it is recorded, the jury may be polled, on the requirement of either party, in which case they shall be sev-

erally asked whether it is their verdict; and if any one answer in the negative, the jury shall be sent out for further deliberation.

(G. S. 1866, c. 114, § 20; G. S. 1878, c. 114, § 21.)

§ 7342. Proceedings on reception of verdict.

When a verdict is given, such as the court may receive, the clerk shall immediately record it in full on the minutes, and read it to the jury, and inquire of them whether it is their verdict; and if any juror disagrees, the fact shall be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury shall be discharged from the case.

(G. S. 1866, c. 114, § 21; G. S. 1878, c. 114, § 22.)

See State v. Anderson, 41 Minn. 104, 42 N. W. Rep. 786.

§ 7343. Insanity, etc., of person subject to trial or sentence.

That when any person subject to trial, sentence or punishment for a crime shall be, or heretofore has been, found to be in such a state of idiocy, imbecility, lunacy, or insanity as to be incapable of understanding the proceedings or making his defense, the court in which such proceedings are or have been had may commit such person to the hospital for the insane, for safe keeping and treatment; and in such case it shall be the duty of the officers of such hospital to receive and care for such person as other patients are cared for, until he shall have recovered from such idiocy, imbecility, lunacy or insanity, and to then surrender such person to the court or officer from whom he was received.

(1893, c. 10, § 1.[1])

§ 7344. Proceedings on acquittal on ground of insanity.

When any person indicted for an offence is, on trial, acquitted by the jury, by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person is considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to the hospital for the insane, for safe-keeping and treatment, or may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety, to the satisfaction of the court, conditioned that he shall be well and securely kept; otherwise he shall be discharged.

(G. S. 1866, c. 114, § 22, as amended 1869, c. 17, § 1; G. S. 1878, c. 114, § 23.)

See Bonfanti v. State, 2 Minn. 124, (Gil. 99.)

§ 7345. Hearing on question as to punishment.

After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct. Such circumstances shall be presented by the testimony of witnesses examined in open court.

(G. S. 1866, c. 114, § 23; G. S. 1878, c. 114, § 24.)

§ 7346. Dismissal of indictment—Reasons to be entered.

The court may, either of its own motion or upon the application of the prosecuting officer, and in furtherance of justice, order an action, after indictment, to be dismissed; but in that case, the reasons of the dismissal shall be set forth in the order, and entered upon the minutes.

(G. S. 1866, c. 114, § 24; G. S. 1878, c. 114, § 25.)

---

[1] An act to provide for the care of idiots, imbeciles, lunatics and insane persons charged with crime. Approved March 11, 1893.