

REVISED LAWS

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1905

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exceeding ten dollars per day for each counsel, for the number of days he is actually employed in court upon the trial, shall be fixed by the court in each case. (6283)

90-348, 97+101.

4790. Depositions for accused—Upon cause shown to the court in which any criminal action is pending, a judge thereof may by order allow depositions of witnesses on behalf of the prisoner to be taken in the same manner and in like cases where they may be taken in civil actions; and the depositions so taken may be used upon the trial of the defendant, in his behalf, as depositions are now allowed and used in civil actions; but the expense attending the taking and return thereof shall be paid by the defendant, except when otherwise directed by the court, by order duly entered upon its minutes. (6284)

13-341, 315.

4791. Acquittal on part of charge—Whenever any person indicted for felony is acquitted by verdict of part of the offence charged and convicted on the residue, such verdict may be received and recorded by the court, and thereupon he shall be adjudged guilty of the offence, if any, which appears to be substantially charged by the residue of the indictment, and sentenced accordingly. (6269)

4792. Acquittal—When a bar—Whenever a defendant shall be 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. (6317)

See note to Const. art. 1 § 7.

CHAPTER 95

CRIMES AGAINST THE SOVEREIGNTY OF THE STATE

4793. Treason—Every person who shall commit treason against the state shall be punished by imprisonment in the state prison for life. (6319)

Petit treason does not exist in this state (3-246, 169).

4794. Misprision of treason—Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a judge of the supreme or a district court, shall be guilty of misprision of treason, and punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or in a common jail not exceeding two years. (6320)

4795. Levying war—To constitute levying war against the state, an actual act of war must be committed. To conspire to levy war is not enough. Where persons rise in insurrection, with intent to prevent, in general, by force and intimidation, the execution of a statute of the state, or to force its repeal, they shall be 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. (6322, 6323)

4796. Wilful neglect of official duty—Whenever any duty is enjoined by law upon any public officer or person holding public trust or employment, every wilful neglect to perform such duty, and every malfeasance in office, for the punishment of which no special provision has been made, shall be a gross misdemeanor, and punished by fine and imprisonment. (6266)

4797. Acting in public office without having qualified—Every person who performs any of the functions of a public office without having executed and duly filed the required security shall be guilty of a gross misdemeanor, and, in addition to the punishment prescribed therefor, he shall forfeit his right to the office. (6325)