

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 16

INTOXICATING LIQUORS

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or liquid of any kind potable as a beverage whenever any of said liquors or liquids contain one-half of one per cent or more of alcohol by volume; and shall also include and mean any liquor or liquid of any kind potable as a beverage which is in fact intoxicating. In any action or proceeding under this act, civil or criminal, the fact that any such liquor or liquid which is potable as a beverage will, when drunk, produce an intoxicating effect, shall when established, be proof that such liquor or liquid contains one-half of one per cent or more of alcohol by volume and is intoxicating within the meaning of this act; the terms "sell" and "sale" shall include all barter, gifts and all means of furnishing liquor in violation or evasion of law; and the word "physician" shall include and mean any physician, surgeon, dentist or veterinarian, duly licensed to practice and practicing as such within this state, and no other person; the word "pharmacist" shall include and mean only any duly licensed and registered pharmacist or druggist actually carrying on business as such in good faith within this state; the word "person" shall include and mean natural persons and corporations whether acting by themselves or by servant, agent or employe; words of singular number shall include their plurals, and words of masculine gender shall include the feminine or neuter as the case may be.

Wherever an address or location is required to be given in this act, it shall be held and construed to require the giving of the state, county, town, village or city, street and street number of the residence, place or place of business as the case may be.

"Nuisance" shall include the premises and every place where liquor in any quantity is manufactured or sold or kept or had for sale, or where any order therefor is taken, received or solicited contrary to the constitution or law of the state or of the United States, or where there is any still, apparatus, implement, machine, device, contrivance, utensil or thing or any tablet, compound, substance or matter or material of any kind or nature whether liquid or solid, or any formula, receipt or direction, any of which is apparently designed or intended for use or used therein for or in or in connection with the manufacture or sale of intoxicating liquor or any violation of the constitution or law of this state or of the United States relating to intoxicating liquor, or where any of the things herein specified are kept, had or possessed or any act whatever done, in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, and all liquor in every such place and every bar, bar fixture, vessel, jug, container or receptacle of any kind, and every still or other thing of any kind herein before mentioned, any of which is apparently designed or intended for use or used therein for or in or in connection with the manufacture or sale of intoxicating liquor, or any violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor. Any person who in any way assists in creating, keeping or maintaining a nuisance, or who sells any liquor, liquid or any tablet, compound, substance or matter or material of any kind or any formula, recipe or direction, or any still,

3200. Definition of intoxicating liquors—Wherever used in this act the terms "intoxicating liquor" and "liquor" shall include and mean ethyl alcohol and any distilled, fermented, spirituous, vinous or malt liquor

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Et seq.
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apparatus, implement, machine, device, contrivance, utensil, or thing of any kind with knowledge or reason to believe that the same is to be used or intended for use for or in or in connection with a nuisance or the creation, keeping or maintenance thereof, or who knowingly permits any premises or place owned, managed or controlled by him to become or remain a nuisance, shall be held to be aiding in such nuisance.

The term "wholesale druggist" as used in this act is hereby declared to mean one who in good faith deals in drugs, chemicals and medicines in large quantities and who sells such drugs, chemicals and medicines chiefly to retailers thereof, who in turn retail the same in small quantities to the consumers. ('19 c. 455 § 1, amended '19 Ex. Sess. c. 65; '21 c. 391 § 1; '23 c. 416 § 1)

See 150-293, 184+1026; 151-341, 184+947.

In General.

164-287, 204+942; 165-150, 206+51; 213+56; 213+556, note under § 9739.

The statute forbidding the sale of intoxicating liquor is directed against the seller, not against the purchaser. One who buys for another at his solicitation and as his hired agent and with his money and for his use, in good faith and not as a subterfuge or by way of evasion, does not commit the offense of selling. 158-251, 197+276.

A conviction of a person charged with the illegal transportation of intoxicating liquor cannot be sustained, in the absence of evidence from which the jury may find beyond a reasonable doubt that the liquor was potable as a beverage. 211+475.

A chemical analysis of the liquor is not essential to determine its potability. The testimony of any witness competent to speak on the subject may be sufficient proof of the intoxicating quality of the liquor and of its potability as a beverage. 211+475.

Gift Or Sale To Minor.

Chapter 290, G. L. 1911, unqualifiedly prohibits the gift of intoxicating liquor to a minor for consumption as a beverage. The penalty of the statute cannot be escaped by a showing that the gift was made in a spirit of hospitality or goodfellowship. 211+219.

Any person who gives, procures, or purchases intoxicating liquor for a minor is guilty of a violation of chapter 290, G. L. 1911, and cannot escape a conviction on the plea that he acted as the agent of the minor in procuring the liquor for him. 211+956.

Federal Statutes.

For construction of federal laws, see Mason's Code, Title 27.

City Ordinances.

A city ordinance regulating liquor traffic is not inconsistent with general law merely because penalties in the former are less than in the latter. 158-450, 197+737.

An ordinance of the city of Minneapolis, prohibiting the manufacture of intoxicating liquor within the city, is not superseded or rendered inoperative. 159-189, 193+430.

Indictment.

The indictment charged the defendant with having sold and furnished intoxicating liquor to a girl of the age of 16 years. Read as a whole, it appeared with a sufficient degree of certainty that the gravamen of the offense was giving intoxicating liquor to the girl. 211+319.

Evidence.

Evidence held sufficient to show that "Moonshine" liquor was intoxicating and contained more alcohol than the law permits in such beverages. 160-314, 200+93.

There was no error in the reception of the testimony of a witness, who was experienced in raiding places containing intoxicating liquor unlawfully, to the effect that the liquid found was moonshine whisky. 160-428, 200+470.

Testimony that the liquor sold was alcohol and intoxicating was competent to prove that it was within the class of liquor the sale of which is forbidden. 160-435, 200+631.

Charging a sale of intoxicating liquor for beverage purposes sufficiently specifies the character of the liquor. 160-435, 200+631.

The evidence fails to show that the flavoring extracts and patent medicines sold by plaintiff to be peddled by one of the defendants, even though containing a high percentage of alcohol, were not manufactured and sold

lawfully; hence plaintiff was entitled to a directed verdict for the admitted balance due. 209+625.

Instruction as Law of Case.

An instruction not objected to or challenged on appeal that no person can give liquor to another, became the law of the case. Applying the law as defined in the instruction, it is held, that the evidence warranted the jury in finding the defendants guilty of an unlawful sale of intoxicating liquor. 159-49, 197+961.

3201. Manufacture, sale and transportation prohibited except under certain conditions—The manufacture, sale or transportation, or keeping or having in possession for sale or transportation of, or the taking, receiving or soliciting of any order for intoxicating liquor of any kind in any quantity whatever is prohibited within this state, and it shall be unlawful for any person not having a permit to manufacture liquor as provided by this act, to have or possess any still, except a still legally registered or the possession of which is expressly permitted under and by the terms and provisions of the law of this state or of the United States, or a rule or regulation made pursuant thereto, and authorized thereby, or any apparatus, implement, machine device, contrivance or utensil, or any tablet or compound of any kind or nature whether liquid or solid, or any formula, recipe or direction, any of which is designed for use or used for or in or in connection with the manufacture of intoxicating liquor; and it shall be unlawful to manufacture, sell, have or possess any of the things herein specified or any substance or material of any kind, any of which is designed or intended for use or used in committing a violation of any provision or part of the constitution or law of this state or of the United States, relating to intoxicating liquor; and no property right shall exist therein or in any thereof; provided, that nothing in this act shall prevent the manufacture, sale, transportation of methyl or denatured alcohol, and provided further, that nothing in this act shall prevent the manufacture, sale, transportation of ethyl alcohol for chemical, mechanical, medicinal, pharmaceutical, scientific or industrial purposes, or of liquor for medicinal purposes, or of wine for sacramental purposes, or the use of so much alcohol as is necessary for legitimate purposes of extraction, solution or preservation in the manufacture of anything other than a beverage, or the sale or transportation of liquor by pharmacists or wholesale druggists, all upon the conditions and under the restrictions herein prescribed and not otherwise; and provided further, that nothing in this act shall prevent the manufacture of United States Pharmacopoeia or National Formulary preparations, upon the conditions and under the restrictions herein prescribed, and not otherwise; provided further, that the provisions of this section shall not be deemed to prohibit the importation and introduction into the state by any regularly appointed and ordained priest, minister or pastor of any church or established religious organization, of wine for sacramental purposes purchased without the state. ('19 c. 455 § 2, amended '21 c. 391 § 2; '23 c. 416 § 2)

In General.

211+475, note under § 3200; 157-133, 195+778, notes under § 3230; 212+591, note under § 3230.

Where a statute, in the enacting clause, defines a crime, and then by proviso declares that the statute shall not apply in stated situations, the latter need not be negatived by the state. In a prosecution under the statute, either by averment in indictment or information, or by proof at the trial. 157-359, 196+278.

Evidence held sufficient. 156-100, 194+318. Record examined, and held, evidence sufficient to sustain the judgment. 158-450, 197+737.

A person may be convicted of keeping a place where intoxicating liquor is sold without any direct proof of

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a sale on the date alleged. 166-466, 208+189.
 Evidence that liquor purchased was moonshine, potable as a beverage, and was intoxicating, was sufficient to sustain the verdict. 166-466, 208+189.
 The verdict is sustained by the evidence. 210+65.

Manufacture.

Defendant and his family occupied the lower floor of a dwelling. He denied use or occupancy, as tenant or otherwise, of the second floor. Held, that the mere finding of an operating still and several barrels of mash in the second story rooms is insufficient to support defendant's conviction of the illicit manufacture of intoxicating liquor. 163-160, 203+595.

Evidence warranted conviction for manufacturing. 211+2.

Evidence of manufacture. 211+463.

Possession.

Evidence examined, and held to support a conviction of having in possession intoxicating liquor for purposes of sale. 158-250, 197+214.

In a prosecution for the unlawful possession of intoxicating liquor for the purpose of sale, evidence held insufficient to support conviction. 160-67, 199+749.

Transportation.

It is a crime to transport intoxicating liquor or to have it in possession for transportation, and no property right exists in such liquor. 157-145, 195+789.

Complaint charging transportation. 164-499, 205+450.
 Evidence considered, and held sufficient to support the charge of transporting intoxicating liquor in violation of an ordinance of the city of Minneapolis. 209+903.

The evidence sustains the conviction of the defendant of the unlawful transportation of intoxicating liquor. 211+310.

Sale.

The evidence sustains the verdict finding that the defendant Stiel sold intoxicating liquor at alleged in the indictment. 157-461, 196+490.

The evidence sustains the verdict finding the defendant guilty of selling intoxicating liquor. 158-263, 197+281.

In a prosecution for the unlawful sale of intoxicating liquor, the state may prove that defendant made other sales at about the same time as the one for which he was tried. 160-317, 200+295.

The place of sale may be proved by circumstantial evidence. State courts take judicial notice of the location of the political subdivisions of the state. The evidence was sufficient to establish a sale in the county named in the indictment. 160-317, 200+295.

The court's instructions removed any prejudice to defendant's rights which may have been caused by exhibiting to the jury a bottle containing an unidentified liquor shown to have been found on defendant's premises when searched. 160-317, 200+295.

Sale of nonintoxicant to dilute intoxicant. 163-271, 203+964.

Uncontradicted testimony of purchaser is sufficient to support conviction of selling intoxicating liquor. 167-520, 208+995.

Indictment.

Negating exceptions in indictment unnecessary. 166-116, 207+19.

Evidence.

Circumstantial evidence. 160-67, 199+749.

Evidence of other sales by a member of defendant's family, from the family home, not too remote in point of time, was properly admitted as showing the source of defendant's supply, and therefore directly corroborative of proof of a sale of liquor by defendant himself. 162-9, 201+913.

Proof of other offenses. 163-249, 203+769.

In a prosecution for the unlawful sale of intoxicating liquor, evidence of a search and the finding of liquor on the premises occupied by the accused, 20 days after the alleged unlawful sale, is not too remote. 163-431, 204+163.

Accomplices.

One who purchases intoxicating liquor from another unlawfully in possession of such liquor, with intent to sell the same, does not thereby become an accomplice. 160-314, 200+93.

Entrapment.

Entrapment. 158-263, 197+281.

Punishment.

Sentence authorized. 164-287, 204+942.

Federal Statutes.

For federal laws, see Mason's Code, Title 27.

3202. Permit to be secured from secretary of state —(a) Any manufacturer of liquor or any wholesale druggist having a permit therefor from the Secretary of State as herein provided, may sell such liquor to any pharmacist upon affidavit of the pharmacist making the purchase as herein provided and not otherwise. Such affidavits shall be in the form and substance substantially as follows:

State of Minnesota,
 County of.....ss.

I,, being first duly sworn on oath, depose and say that I am a duly licensed and registered pharmacist, actually carrying on business as such at (give location), that my address is (give location), that I desire to purchase (state precisely the amount and kind of liquor) for sale for medicinal (or sacramental or other permitted purposes, as the case may be) purposes, that I will not use, nor sell, not permit any other person to sell such liquor for any other purpose or except upon prescription or affidavit as required by law; that I now have in my possession and under my control (state precisely the amount and kind of liquor on hand) and no more.

(Signed)

Subscribed and sworn to before me this day of, 19....

(Signed)

(b) Any manufacturer of ethyl alcohol having a permit as herein provided may at the place of manufacture designated in such permit, or any pharmacist, or wholesale druggist having a permit as herein provided, may, at his place of business as such pharmacist or wholesale druggist, sell such alcohol for any chemical, mechanical, pharmaceutical, scientific or industrial purpose or for use for the purpose of extraction, solution or preservation in manufacture, as provided in this act, to any person having a permit to possess such alcohol upon the affidavit of the purchaser thereof as herein provided and not otherwise. Such affidavit shall be in form and substance substantially as follows:

State of Minnesota,
 County of.....ss.

I,, being first duly sworn upon oath, depose and say that I reside at (give address); that I am more than twenty-one years of age and not of intemperate habits; that I desire to purchase (state amount) of alcohol, to be used by (give name of user), located at (give location of business and residence of user); for (specify particular purposes) purposes in (state particularly the use to be made of such alcohol); that I have a permit to possess such alcohol from (name of officer issuing permit), a duplicate of which permit is on file in the office of (name officer); that I will not use any part of said alcohol for beverage purposes or sell or put the same to any unlawful use or allow any other person so to do; that I have not violated any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor.

(Signed)

Subscribed and sworn to before me this day of, 19....

(Signed)

No more than one sale shall in any case be made upon any one affidavit, and then only for the amount and kind of liquor specified therein, and no sale shall be made on any affidavit after two weeks from the

date of such affidavit. ('19 c. 455 § 3, amended Ex. Sess. '19 c. 65; '21 c. 391 § 3)

3203. Fee to be paid and permit issued—No manufacturer shall make or sell, nor shall any wholesale druggist sell alcohol or liquor without a permit therefor from the Secretary of State as herein provided. The Secretary of State may upon payment to him of the sum of twenty-five (\$25.00) dollars issue a permit to manufacture and sell alcohol or liquor in accordance with the provisions of this act, and not otherwise, to any manufacturer or wholesale druggist making written application therefor as herein provided. Such application shall be in the form prescribed by the Attorney General, and shall state the name and address and business of the applicant, the location of his said business; that the applicant, if an individual is a resident and citizen of the State of Minnesota, and shall be subscribed and sworn to by the applicant, or if a corporation, by an officer thereof, making the application. All such applications shall be filed and preserved by the Secretary of State. Each such permit shall be in the form prescribed by the Attorney General of this state, and shall state the name, address and business and business location of the person to whom the same is issued, and shall designate the location at which he is thereby authorized to manufacture and sell alcohol or liquor, and shall state that he is thereby authorized to manufacture or sell alcohol or liquor, as the case may be, at the location designated in such permit in accordance with the provisions of this act, and not otherwise. All such permits shall expire on July 1st of each year, unless sooner annulled. Conviction of the holder of any such permit of a second offense under the provisions of this act shall operate as an immediate annulment of any such permit, and thereafter for a period of two years, no such permit shall be issued to any holder so convicted. An exact duplicate of such permit so issued shall, by the Secretary of State, be kept on file in his office and at all times be open to public inspection. ('19 c. 455 § 4, amended '21 c. 391 § 4)

3204. Permits for possession of ethyl alcohol—Permits to possess ethyl alcohol for any chemical, mechanical, pharmaceutical, scientific or industrial purpose, or for use for the purpose of extraction, solution or preservation in manufacture, as provided in this act, may be issued to any person residing in any municipality in this state by the clerk or recorder of such municipality, and to any person residing outside of any municipality in any county in this state by the county auditor of such county, upon application as herein provided, and not otherwise. Each such permit shall state the name and address of the person to whom the same is issued, and that such person is authorized thereby to possess ethyl alcohol for any chemical mechanical, pharmaceutical, scientific or industrial purpose, and not otherwise, and shall be in the form prescribed by the Attorney General of this state. Every such permit shall expire on July 1st of each year unless sooner annulled. Conviction of the holder of any such permit of an offense under the provisions of this act shall operate as an immediate annulment of any such permit, and thereafter, for a period of two years, no permit to possess ethyl alcohol shall be issued to any holder so convicted. An exact duplicate of every such permit shall be by the officer issuing the same kept on file in his office and at all times be open to public inspection. Any person desiring a permit to possess alcohol as herein provided shall file application therefor with the clerk or recorder of the municipality or with the auditor of the county authorized to

issue the same. Such application shall state the name, business and business and residence location of the applicant; that the applicant desires a permit to possess ethyl alcohol for a chemical, mechanical, scientific, pharmaceutical or industrial purpose, as the case may be, and that he will not use as a beverage or sell any such alcohol or put the same to any unlawful use. Such application shall be in the form prescribed by the Attorney General of this state and shall be subscribed and sworn to by the applicant if an individual, and if a corporation by an officer thereof making the application. A fee of two (\$2.00) dollars shall be paid by each applicant to the official issuing any such permit before the same shall be issued. Possession without a permit as herein provided, of any such ethyl alcohol after the expiration of sixty (60) days after the taking effect of this act is hereby declared to be unlawful. ('19 c. 455 § 5, amended '21 c. 391 § 5)

3205. Blanks to be furnished by secretary of state—The Secretary of State shall cause to be printed all necessary blank applications and permits in the form prescribed by the Attorney General and affidavits in the form prescribed by this chapter, and supply the same to the various officers hereby authorized to issue permits and to manufacturers, wholesalers and pharmacists hereby authorized to make sales on affidavit as their needs may from time to time appear. ('19 c. 455, § 5 added '21 c. 391 § 6)

3206. Sale for sacramental purposes—Any pharmacist may sell wine for sacramental purposes upon affidavit in writing of a priest, minister or officer of a duly organized church or established religious organization as herein provided, and not otherwise. Such affidavit shall be in form and substance substantially as follows:
State of Minnesota,
County ofss.

I,, being first duly sworn on oath, depose and say that I am an..... (officer, minister or priest, as the case may be) of (give name of church or religious organization) located at (state location of church or religious organization) and reside at (give address of affiant); that I desire to purchase (state amount) of wine for the use of such church (or religious organization) for sacramental purposes, and not otherwise; that I will not use any part of said wine for any other purpose or permit any other person so to do.

(Signed)
Subscribed and sworn to before me this day of, 19.... ('19 c. 455 § 6)

3207. Medicinal purposes—Any pharmacist may sell intoxicating liquor for medicinal purposes upon bona fide prescription of a physician, written in ink, or printed or typewritten, and not otherwise. Such prescription shall state the name and address of the person for whom the same is prescribed, the kind and quantity of liquor, directions for its use and that the illness for which said liquor is prescribed requires such prescription, and such prescription shall be signed in ink by the physician issuing the same, and shall bear the date of its issuance and delivery. No more than one pint of liquor may be sold upon any one prescription, and no prescription shall be filled more than once, nor after the expiration of one week from the date of its issuance and delivery. No physician shall prescribe for or issue or deliver to any person, nor

shall any person receive more than one prescription for liquor within any period of ten days. ('19 c. 455 § 7, amended '21 c. 391 § 7)

3208. Affidavit to be made—Every affidavit and every prescription upon which any sale of alcohol or liquor is made, as provided herein, shall at the time of any such sale be taken from the purchaser of the alcohol or liquor by the seller thereof and by such seller, cancelled by writing in ink across the face of such affidavit or prescription over his signature, the words: "Cancelled, the day of, 19....," stating the date, and such affidavits and prescriptions shall be kept by the seller until filed by him with the clerk of the district court as herein provided. All the affidavits and prescriptions so taken by any such seller shall be filed by him with the clerk of the district court of the county wherein his business is located within five days after the first day of each and every month; and it shall be the duty of such clerk to number serially each such affidavit and each such prescription with a separate number and file each thereof in a separate envelope of suitable size numbered to correspond with the number of the affidavit or prescription filed therein, and such envelope, with the affidavits and prescriptions therein, respectively, shall be filed in order as numbered. It shall be the duty of such clerk of the district court to prepare an index book of suitable size, every page of which shall be lined horizontally and vertically on columns. Such clerk of the district court shall enter in such book in alphabetical order the name and address of each person selling liquor on any affidavit or prescription filed in his office. The name, address and file number of such affidavit or prescription shall in each instance be placed on one and the same line. Such clerk of the district court shall also in like manner enter in said book the name and address of the person making such affidavit or named in any such prescription and opposite such name and address on the same line therewith, the file number of such affidavit or prescription. Such clerk of the district court shall keep and preserve in his office all such affidavits and prescriptions so filed for two years from the date of the filing thereof, and the same shall at all times be open to public inspection. The person filing such prescription or affidavit, as herein provided for, shall pay the clerk of court a fee of ten cents for each such prescription or affidavit so filed. ('19 c. 455 § 8)

3209. Prosecution—Whenever a nuisance exists in any county of this state, the county attorney thereof, or the attorney general or his assistants, or any citizen of this state may, or in case such nuisance is found in any criminal action to exist, in any such county, the county attorney thereof shall maintain an action in the district court in the name of the state upon complainant's relation to perpetually enjoin and abate the same, and to enjoin the owner or agent, or any other person, creating, keeping or maintaining the same, or aiding therein, from further so doing. ('19 c. 455 § 9) 164-287, 204+942; 166-98, 207+137.

3210. Service—Defendants shall be served as in other actions and shall be given ten days' written notice of the hearing on the application for temporary injunction. Each defendant shall serve upon the complainant, or his attorney, a verified answer on or before the date fixed for said hearing, and file the same with the clerk of the court wherein the cause is triable. The court may allow additional time for answering, which, however, shall not prevent the issuing of such temporary writ. The allegations of the answer shall

be deemed to be traversed without further pleading. ('19 c. 455 § 10)

3211. Proceedings in court—The court, or judge in vacation, upon the presentation of a verified complaint, specifically describing the premises, may issue an ex parte order restraining, until further order of the court, the defendant and all other persons from removing, disposing of, destroying, or in any way interfering with any liquor, or any bar, bar fixture, vessel, jug, container, or receptacle of any kind, or any still, apparatus, implement, machine, device, contrivance, utensil or thing, or any tablet, compound or substance or matter or material of any kind or nature, any of which constitutes, or is apparently designed or intended for use or used for or in connection with a nuisance or the manufacture or sale of liquor or any violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, therein, and requiring the officer serving the same to search the premises or place and make and file an inventory of everything herein mentioned found therein, constituting a nuisance or apparently used or designed or intended for use in connection therewith; provided, that the failure to make, file or serve any such inventory shall not invalidate or in any way affect the legality of any search or seizure or proceeding or prosecution made or had under the provisions of this act. The court or judge may, also, in such proceeding allow a temporary writ of injunction without bond if the existence of a nuisance appears to the satisfaction of the court, or judge, by evidence in the form of affidavits or depositions or oral testimony or otherwise, as the complainant may elect, or the judge by previous order shall have directed.

If the hearing is continued at defendant's instance, the temporary writ shall be granted as of course. ('19 c. 455 § 11, amended '21 c. 391 § 8; '23 c. 416 § 3)

3212. Restraining order—The restraining order, injunction, or any other order, provided for in this act may be served by handing to and leaving a copy with the defendant or any person in charge of, or any person of suitable age and discretion residing in or occupying the premises, place or apartment where such nuisance is alleged to be maintained, or by posting a copy thereof in a conspicuous place at or upon one or more principal doors or entrances to such premises or apartment, or by both such delivery and posting. ('19 c. 455 § 12)

3213. Trial—The action shall be tried by the court or a judge thereof, without a jury, at a general or special term within 40 days after the commencement of said action. If no such term occurs within such time, the court or judge shall appoint a term for the trial of such action; but the failure of the court so to do shall not deprive the court of jurisdiction to try such action. ('19 c. 455 § 13)

3214. Convictions—The conviction of any person of a nuisance shall, until reversed or set aside, be prima facie evidence against him in any abatement proceeding under this act.

The finding of liquor, or any bar, bar fixture, or any vessel, jug, container or receptacle of any kind, or any still, apparatus, implement, machine, device, contrivance, utensil or thing, or any tablet, compound, or substance or matter or material of any kind or nature, whether liquid or solid, or any formula, recipe or direction, any of which is apparently designed or intended for use or used for or in or in connection with the manufacture or sale of intoxicating liquor, or for or in connection with such nuisance, or any viola-

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tion of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, on any such premises, or in any such place, or any sign or advertisement indicating the manufacture or sale of intoxicating liquor or the creation or existence of a nuisance on any such premises, or in any such place, shall, except in the case of a pharmacist or manufacturer or wholesale druggist having a permit to sell intoxicating liquor as provided herein, be prima facie evidence in any civil or criminal proceeding under this act, that such premises or place is a nuisance. ('19 c. 455 § 14, amended '21 c. 391 § 9)

3215. Dismissal of action—If the complaint is filed by a citizen, the action shall be dismissed only upon a sworn statement made by the complainant, or by him and his attorney, setting forth the reasons therefor, which statement shall be filed with the court. If the court is of the opinion that the action ought not to be dismissed, it may direct the county attorney to prosecute the action to judgment at the expense of the county. If the action is continued for more than one term of court, or an unreasonable length of time in the opinion of the court, any citizen of the county or the county attorney may be substituted for the complaining party by order of the court, and prosecute the action to judgment.

The court may, upon application of a citizen, appoint an attorney to assist the county attorney, and such attorney shall be recognized by the county attorney and be called his "associate counsel," and no prosecution may be dismissed over the objection of such attorney except by order of the court. ('19 c. 455 § 15')

3216. Abatement of nuisances—The court need not find that the premises are a nuisance at the time of the trial, but on finding that the material allegations of the complaint are true, the court shall make its injunctive order.

If the existence of a nuisance be admitted or proved, an order shall be made abating and permanently enjoining the same. Such order shall direct the removal from the premises or place of all liquor, and of every bar, bar fixture, vessel, jug, container or receptacle of any kind, and every still, apparatus, implement, machine, device, contrivance, utensil and thing, and every tablet compound or substance and all matter and material of any kind and every formula, recipe or direction, unlawfully kept, had or possessed therein or designed or intended for use or used for or in or in connection with such nuisance or the manufacture or sale of intoxicating liquor or any violation of any provision or part of the constitution or law of this state or of the United States, relating to intoxicating liquor therein, and the destruction of all such liquor, and every such tablet, compound and substance and all such matter and material of any kind and every such formula, recipe or direction, and of every such still, apparatus, implement, machine, device, contrivance and utensil.

All such other things shall be sold by the sheriff as upon execution.

The order shall perpetually, both as to the present and the future, forbid the creation, keeping or maintaining anywhere within the state of the same or of any nuisance within the provisions hereof, or the aiding therein, by any of the defendants; and if the owner had notice, or knowledge, or reason to believe the existence, of such nuisance prior to the commencement of the action and failed to abate the same, the order shall, and in any event, may, in the discretion of the court, direct the effectual closing of the premises or

place against its use for any purpose for a period of one year unless sooner released as herein provided. ('19 c. 455 § 16, amended '21 c. 391 § 10; '23 c. 416 § 4)

The finding of the court that the owner of a building, one room of which he leased as a place for selling soft drinks, had notice that it was used by his lessee as a place for selling intoxicating liquor, is sustained by the evidence; and a judgment properly followed closing the room against all use for a year. 166-98, 207+137.

3217. Taxation of costs—Costs and disbursements shall be taxed as in other civil actions. The court shall also allow as costs, a reasonable attorney's fee where a prosecution is conducted by an attorney other than the county attorney or attorney general or his deputy or assistant.

For the removal and sale of any property the officer shall be entitled to receive the same fees as for levying upon and selling like property on execution and for closing the premises and keeping them closed such reasonable sum as shall be allowed by the court.

If the action is brought by a citizen and the court finds that there was no reasonable ground or cause for the action the costs may be taxed to such citizen.

All moneys collected under this act shall be paid to the county treasurer. The proceeds of the sale of the personal property, or so much thereof as may be necessary, shall be used to pay the costs of this action and the abatement. The remainder thereof shall become a part of the school fund of the county. ('19 c. 455 § 17)

3218. Punishments—In case any order or injunction is disobeyed, the court or judge in vacation may summarily try and punish the offender. The proceedings shall be commenced by any citizen by filing with the clerk of the court a complaint under oath setting forth the facts constituting such violation upon which the court or judge shall cause a warrant to be issued under which the defendant shall be arrested and brought before the court. Trial shall be had as in other cases for contempt. A party found guilty of contempt under the provisions of this act shall be punished by a fine of not less than one hundred (\$100) dollars, nor more than one thousand (\$1,000) dollars, and by imprisonment in the county jail not less than one month, nor more than six months. ('19 c. 455 § 18)

3219. Bond to be given by owner of premises—If the owner of the premises in which a nuisance has been created, kept or maintained appears and files a bond running to the state with sureties to be approved by the court, in such sum as the court may direct, not less than three hundred (\$300) dollars and not more than 20 per cent of the value of the property over said sum, to be ascertained by the court, or judge in vacation, conditioned that he will immediately abate such nuisance and prevent the same or any nuisance under the provisions of this act from being created, established or kept or maintained on such premises within a period of one year thereafter, the court or judge, if satisfied of his good faith, may order the premises closed or sought to be closed under the order of abatement to be delivered to said owner and the said order of abatement cancelled so far as the same shall direct the closing of the place. Such release of the property shall not release the same from any judgment, lien or liability to which it may be subject by law. If the condition of said bond be broken, the entire amount thereof shall be recovered in a civil action brought in the name of the state. ('19 c. 455 § 19)

The surety on a saloon keeper's bond was liable in any and all cases of illegal sales in which his principal was liable. 162-497, 203+447.

Where illegal sales, made during the period covered by a particular bond, concurred with other illegal sales in causing damage, the surety in such bond was jointly and severally liable therefore to the extent of his bond. 162-497, 203-447.

3220. Search warrants—Upon complaint before any court having jurisdiction charging any person with manufacturing, selling or keeping or having in possession for sale, or taking, receiving or soliciting any order for or having in his possession in any place or on any premises any intoxicating liquor, or any still, apparatus, implement, machine, device, contrivance, utensil or any tablet, or compound of any kind or nature, whether liquid or solid, or any formula, recipe or direction, or any matter, material or thing of any kind, in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, or designed or intended for use or used in committing a violation thereof, or with the keeping of a nuisance, and particularly describing the premises or place, the court, in addition to issuing a warrant for the arrest of such person, shall also issue a search warrant commanding an officer to search such premises or place and seize and hold subject to the order of the court all liquor, and every bar, bar fixture, vessel, jug, container or receptacle of any kind, and every still, apparatus, implement, machine, device, contrivance, utensil or thing, and every tablet, compound or substance and all matter and material of any kind, whether liquid or solid, and every formula, recipe or direction found therein, any of which is apparently kept, had or possessed or manufactured or sold in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor or any of which is apparently designed or intended for use or used for or in or in connection with any violation thereof, and make an inventory of the same and serve a copy thereof forthwith on the defendant or person in charge of the premises; provided, however, that the failure to make, file or serve any such inventory shall not invalidate or in any way affect the legality of any search or seizure or proceeding or prosecution made or had under the provisions of this act.

The destruction, removal or concealment, or attempted destruction, removal or concealment of any vessel, jug, container or receptacle of any kind apparently containing intoxicating liquor in any such place or premises while a search thereof is being made under the provisions of this act, shall be prima facie evidence that such vessel, jug, container or receptacle contained and contains intoxicating liquor, and the removal, concealment, destruction, pouring out, or changing the character of any liquid in any such place or premises, or the attempt to do so while a search thereof is being made under the provisions of this act, shall be prima facie evidence that such liquid was and is intoxicating. The destruction, mutilation, removal or concealment of any still, apparatus, implement, machine, device, contrivance, utensil or thing or any tablet, compound or substance or material or matter of any kind, or any formula, recipe or direction apparently designed or intended for use or used for or in or in connection with any violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, in or upon any such place or premises while a search thereof is being made under the provisions of this act, shall be prima facie evidence that the same was kept, had and possessed therein in violation of the provisions of this act and designed and intended for use and used in

and in connection with such violation. ('19 c. 455 § 20, amended '21 c. 391 § 11; '23 c. 416 § 5)

It was not error to receive testimony of officers, as to what they found in the attic of the building in which the accused resided, without having a warrant to search the premises. 159-189, 198-430.

3221. Destruction of liquor—If the defendant in any criminal action be convicted, the liquor and every tablet, compound or substance and all matter and material of any kind, and every formula, recipe, or direction, and every still, apparatus, implement, machine, device, contrivance or utensil found on the premises, any of which constitutes, or is designed or intended for use or used for or in or in connection with the nuisance or with the commission of the offense charged and for which the defendant was convicted, shall be destroyed by the officer seizing the same, and all other articles seized constituting or designed or intended for use or used for or in or in connection with the nuisance or with the commission of the offense charged and for which the defendant was convicted, shall be forfeited to the school fund of the county and sold by the officer as upon execution. ('19 c. 455 § 21, amended '21 c. 391 § 12; '23 c. 416 § 6)

3222. Transportation and receiving prohibited—No person shall sell, or knowingly transport, receive or deliver any liquor within this state unless there appear on the outside of the container or package containing such liquor, a printed label in large letters, pasted on or attached to such package, or container, and visible and unconcealed, truly stating the amount and kind of liquor therein.

Every common carrier shall keep a true record of all liquors received for shipment or shipped by such carrier, the amount and kind thereof, and the names and addresses of the consignor and consignee in each case. The books, records and waybills of any such common carrier handling such liquors may be examined at any time by any sheriff or police officer for the purpose of tracing such liquors. ('19 c. 455 § 22)

3223. Prosecution by county attorney—Every county attorney shall prosecute all cases under this act arising in his county; and it shall be his duty, upon the receipt of information of any violation of this act if he has reasonable ground to believe that any such violation has occurred, to make proper complaint thereof in any court having jurisdiction duly charging the offense committed against the person or persons committing the same. The president or mayor of every municipality shall make complaint of any known violation of the provisions of this act and the chief of police and all policemen shall make arrests and complaints as provided in this section, anything in the ordinance or by-laws of any such municipality to the contrary notwithstanding. Whenever any sheriff, deputy sheriff, constable, marshal, policeman or other peace officer shall discover any person in the act of manufacturing, selling or keeping or having in possession for sale, or taking, receiving or soliciting of any order for intoxicating liquor or in the act of manufacturing or selling, any still, apparatus, implement, machine, device, contrivance or utensil or any tablet or compound of any kind or nature, whether liquid or solid, or any formula, recipe or direction in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, or in possession of anything herein enumerated in violation thereof, such officer shall seize and hold the same and all thereof subject to the order of the court, and shall immediately arrest and as soon as possible make proper complaint in any court having

jurisdiction against any such person or persons duly charging the offense committed; and every such officer shall in any event summarily arrest any person found committing any act forbidden by this act, and make complaint against him and do all in his power to enforce the provisions of this act. Provided, that nothing in this act shall authorize any such officer to search any house actually occupied as a dwelling or seize any property therein contained without a regular process therefor. ('19 c. 455 § 23, amended '21 c. 391 § 13; '23 c. 416 § 7)

3224. Officers guilty of malfeasance—Any official who shall wilfully refuse or neglect to perform any official duty imposed by this act shall be guilty of a malfeasance in office and shall be removed therefrom and be disqualified from holding the same for and during the remainder of the term for which he was elected or appointed and shall forfeit to the state not less than one hundred (\$100) dollars, nor more than five hundred (\$500) dollars, which amount may be recovered in an action against him personally or on his official bond.

For the purpose of such removal and the recovery of such forfeiture, a verified petition in the name of the state on petitioner's relation, setting forth the facts constituting the cause for any such removal or forfeiture, may be filed, and an action maintained in the district court of the county wherein such officer resides by any executive or prosecuting or peace officer thereof, or of any governmental division therein, or by the attorney general of the state or any of his assistants. Within five (5) days after the filing of any such petition, the petitioner shall serve, or cause to be served on the defendant a copy thereof, together with a summons, as in civil actions. The defendant may, within twenty (20) days after such service, serve on the petitioner or his attorney a verified answer and file the same with the clerk of the court wherein the cause is triable. The allegations of the answer shall be deemed to be traversed without further pleading. Such action shall be tried by the court without a jury, and costs and disbursements therein taxed as in other civil actions and the trial shall be had within the time prescribed by Section 13 of Chapter 455, Laws of 1919.

If the court shall find the defendant guilty of wilful neglect or refusal to perform any duty imposed by this chapter, he shall cause judgment to be entered against the defendant removing him from office and for the forfeiture as herein provided, together with the costs and disbursements of the action. Provided, that nothing herein contained shall modify, repeal or in any way affect any provision of existing law relating to the suspension or removal of any officer but shall be construed as in addition thereto.

An appeal to the Supreme Court may be taken in any case arising hereunder as in other civil actions. ('19 c. 455 § 24, amended '21 c. 391 § 14)

3225. Penalties for violation—(a) Any person who shall manufacture or sell liquor or any pharmacist who shall sell liquor in violation of this act shall, except as herein provided in subdivision (f), upon conviction for a first offense be punished by imprisonment in the county jail for not less than thirty days, nor more than ninety days, and by a fine of not less than \$150, nor more than \$300, and for a second and each subsequent offense shall be punished by imprisonment in the county jail for not less than six months, nor more than one year and by a fine of not less than \$250, nor more than \$1,000.

(b) Any person who shall create, keep or maintain a nuisance shall be guilty of a misdemeanor, and

be punished by a fine of not less than \$50, nor more than \$100, or by imprisonment in the county jail not less than thirty days, nor more than ninety days.

(c) Any physician who shall knowingly give false prescription for intoxicating liquor or any prescription therefor containing a false statement, or who shall give a prescription for liquor for any other than medicinal purposes or to any person who is not in fact suffering from any illness requiring such prescription, shall, upon conviction thereof be punished by a fine of not less than \$50, nor more than \$300, and by imprisonment in the county jail for not less than thirty days, nor more than ninety days.

(d) Any person who shall knowingly present any false, fraudulent, forged or altered prescription or affidavit provided for or required by this act, or who shall forge or alter any such prescription or affidavit, upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$300 and by imprisonment in the county jail for not less than thirty nor more than ninety days.

(e) Any person who shall wilfully fail or neglect to perform any duty imposed by this Act or who shall violate any of the provisions thereof, for which no special penalty or forfeiture is prescribed herein shall upon conviction thereof for a first offense be punished by imprisonment in the county jail for not less than thirty days nor more than ninety days and by a fine of not less than \$50 nor more than \$300, and for a second and each subsequent offense shall be punished by imprisonment in the county jail for not less than sixty days nor more than six months, and by a fine of not less than \$100 nor more than \$500.

(f) Any person who shall sell liquor to anyone under 21 years of age in violation of this act shall be guilty of a felony.

It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead prior conviction in any complaint, information or indictment against him.

(g) Any sheriff, deputy sheriff, constable, marshal, policeman or other peace officer who shall maliciously and without probable cause procure a search warrant to be issued and executed, and every such sheriff, deputy sheriff, constable, marshal, policeman or other peace officer, who in executing a search warrant, shall wilfully exceed his authority, or exercise it with unnecessary severity, or fail to make, file and serve an inventory as required by law, shall be punished by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment in the county jail for not less than six months, or by both such fine and imprisonment. ('19 c. 455 § 25, amended '21 c. 391 § 15; '23 c. 416 § 8) 213+56.

Sentence.

It is held that the provision of subdivision (a) for punishment of a second offense applies only where there has been a prior conviction under that subdivision, and that subdivision (e) has no application to offenses under subdivision (a); a special penalty being prescribed therefor. 158-239, 197+273.

Chapter 290, G. L. 1911, provides that any one who violates its provisions is guilty of a gross misdemeanor. After his conviction, the defendant was sentenced to imprisonment in the state prison. He should have been sentenced pursuant to the provisions of chapter 290, G. L. 1911, for the commission of a gross misdemeanor. 211+319.

Sentence authorized. 164-287, 204+942.

Indictment and Information.

The prior conviction must be alleged in the information. 158-239, 197+273.

The information charged with sufficient certainty that defendant had previously been convicted of a similar violation of the same law. 210+65.

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The information must show that the previous conviction was had under chapter 456, Laws 1919, as amended. 165-220, 206+389.

3226. Distribution of fines—Section 25a. One-half of all moneys paid into the county treasury of any county in this state on account of fines imposed for violation of any law of this state relating to intoxicating liquor shall be placed in a separate fund to be designated and known as the Law Enforcement Fund of the county. Such fund may be used by the county sheriff for the purpose of conducting investigations and securing evidence of the violation of any such law for no other purpose. All disbursements from such fund shall be made upon written request of the county sheriff by auditor's warrant countersigned by a judge of the district court. ('19 c. 455 § 25, amended '23 c. 416 § 9)

3227. Statement of provisions—The provisions of this act, and each part thereof, and its sections and each part thereof are independent and severable and if any provisions or part thereof, or section of part thereof, be held unconstitutional, no other provision or part thereof or section or part thereof shall thereby be impaired or rendered unconstitutional. ('19 c. 455 § 26)

3228. For enforcement of amendment to constitution—This act is intended to provide for the enforcement of article XVIII of the constitution of the United States of America, under the concurrent power clause thereof, and the provisions of the act of congress of November 21, 1918, "commonly known as War Prohibition" and shall take effect from and after January 16, 1920, and in case the sale of intoxicating liquor shall, prior to January 16, 1920, become unlawful in this state by the terms and provisions of any act of congress, or pursuant to the proclamation of the president of the United States issued by virtue of any act of congress, then and in such case, this act shall thereupon take effect and be in force and continue in force during such time prior to January 16, 1920, as such sale of intoxicating liquor shall continue to be unlawful by reason of any such act of congress or proclamation of the president of the United States, but in any event shall be in full force and effect from and after January 16, 1920, and all laws and parts of laws, ordinances and charter provisions inconsistent herewith shall be thereafter suspended.

All laws and parts of laws, ordinances and charter provisions inconsistent herewith are hereby suspended and made inoperative during such period prior to January 16, 1920, as this act may become and remain in force by reason of the sale of intoxicating liquor being unlawful by and under the terms and provisions of any act of congress, or, pursuant to the proclamation of the president made by virtue of any act of congress, but, if prior to January 16, 1920, the sale of intoxicating liquors shall cease to be unlawful under any such act of congress or any such proclamation, then and in such case all laws or parts of laws of this state, ordinances and charter provisions suspended during such period, shall again become operative and be in force and shall so continue until January 16, 1920, and provided further, that in case the said article 18 to the constitution of the United States shall at any time become void by final decision of the supreme court of the United States, or be repealed by amendment to the constitution of the United States, then this act shall become and be suspended and inoperative, and all laws and parts of laws, ordinances and charter provisions inconsistent herewith and hereby suspended, shall

again become operative and be in full force and effect. ('19 c. 455 § 27)

City ordinance. 165-150, 206+51.

3229. Definitions—Wherever used in this Act the terms "intoxicating liquor" and "liquor" shall be given the same meaning as is prescribed therefor by Section 1 of Chapter 455, Laws of Minnesota for 1919, and acts amendatory thereof. ('21 c. 335 § 1)

Explanatory note—For Laws 1919, c. 455, § 1, see § 3200, herein.

3230. Duties of officers—Seizure of liquor, etc.—
Hearing—Whenever any sheriff, deputy sheriff, constable, marshal, policeman or other peace officer shall discover any person in the act of transporting liquor within this State, in violation of the constitution or law of this State or of the United States, such officer shall seize any wagon, buggy, automobile, or any car or boat, vessel or water or air craft, or vehicle or conveyance or means of conveyance of any kind, wherein or whereby any such liquor is being so unlawfully transported, and if such officer shall find any intoxicating liquor being so transported in violation of the constitution or law of this State or of the United States, it shall be his duty to seize and hold the same and all thereof, subject to the Order of the Court wherein the cause is triable, and to seize and hold, subject to the Order of said Court, any such wagon, buggy, automobile, car, boat, vessel, water or air craft, vehicle or conveyance or means of conveyance of any kind, together with any animal or animals used for or in or in connection with any such unlawful transportation, and to immediately arrest and as soon as possible make proper complaint in any court having jurisdiction against any person or persons in charge of the liquor or property seized or any thereof, duly charging such unlawful transportation; and such officer shall also make and file with said Court a separate complaint against such property other than liquor, describing the same and charging the use thereof in the unlawful transportation of intoxicating liquor, specifying substantially the time and place of such unlawful use. Such officer shall also make an inventory of such property and forthwith file the same with said Court and serve a copy thereof on the defendant or person in charge of such property at the time of the seizure, if any. If the person so arrested shall be acquitted, the Court shall dismiss complaint against such property and order the same returned to the person or persons legally entitled thereto. Upon conviction of any person so arrested the Court shall order all liquor so seized and the containers thereof destroyed and shall forthwith issue an order directed to any person known or believed to have any right or title or interest in or lien upon any such property other than liquor, and to persons unknown claiming any such right, title, interest or lien, describing such property and stating that the same was seized and that a complaint against the same, charging the use thereof in the unlawful transportation of intoxicating liquor has been filed with the Court, and requiring such persons to file with the Clerk of said Court their answer to said complaint setting forth any claim they may have to any right or title or interest in or lien upon any such property, within ten (10) days after the service of such order as herein provided, and notifying them in substance that if they fail to so file their answer within said time such property will be ordered sold as upon execution and proceeds of such sale paid into the treasury of the county; and said Court shall cause said order to be served upon any such person known or believed to have any such right, title, interest or lien as in case of a summons

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in a civil action, and upon unknown persons by publication as provided by Sections 7737 and 7738 of the General Statutes of Minnesota for 1913 for a summons in a civil action. If no answer is filed as and within the time herein prescribed, the Court shall, upon affidavit by the Clerk of said Court being filed in his office, setting forth such fact, order such property sold as upon execution and proceeds of such sale, after deducting the expense of keeping the property and fees and costs of sale, paid into the county treasury of the county where such seizure occurred; provided that the Court may for cause extend the time to answer for not to exceed ten (10) days. If answer is filed as and within the time herein provided, the Court shall fix a time for hearing, which shall be not less than ten (10) nor more than thirty (30) days after such time for filing answer expires. At the time so fixed for hearing, unless continued for cause, the matter shall be heard and determined by the court without a jury as other civil actions. It shall be the duty of the County Attorney of the county wherein the cause is triable, to appear at such hearing in support of the complaint against said property and prosecute said action in behalf of the State. If the Court shall find that said property or any part thereof was used for or in or in connection with the transportation of intoxicating liquor in violation of the constitution or law of this State or of the United States, he shall order the property so unlawfully used sold as upon execution unless the owner shall show to the satisfaction of the Court that he had no notice or knowledge or reason to believe that such property was used or intended to be used in the unlawful transportation of intoxicating liquor. The officer making any such sale, after deducting the expense of keeping the property, the fee for seizure and the costs of the sale, shall pay all liens according to their priority which are established at said hearing as being bona fide and as having been created without the lienor having any notice or knowledge that any such property was being used or was to be used for or in or in connection with the unlawful transportation of liquor, and shall pay the balance of the proceeds into the county treasury of the county where such sale is made. All liens against property sold under the provisions of this Section shall be transferred from the property to the proceeds of the sale of the property. Provided that before any seizure is made hereunder the officer making the same shall disclose his authority as such officer. ('21 c. 335 § 2)

Explanatory note—For G. L. 1913, §§ 7737, 7738, see §§ 9234, 9235, herein.

An officer who found an automobile loaded with whiskey overturned on a public highway had authority to seize the liquor and the automobile. It was not necessary that the automobile be found in motion, nor that the person in charge be found with it. 157-138, 195+778.

Where two persons are engaged in unlawfully transporting liquor by means of an automobile, one as principal and the other as his employe, and the principal is killed in an accident which wrecked the automobile, and the employe is thereafter convicted of the offense, such conviction is a sufficient basis for proceedings to enforce a forfeiture of the automobile 157-138, 195+778.

The proceeding against the automobile is a proceeding in rem and did not abate on the death of the owner. 157-138, 195+778.

The statute did not violate the Constitution in providing that the proceeding against the property should be tried by the court without a jury. 157-138, 195+778.

Bringing the proceeding against the property in the court in which the person in charge of it had been convicted was a compliance with the statute. 157-138, 195+778.

The statute authorizing officers to seize liquor whenever they find it being transported does not give authority to search, but only authority to seize what they may discover without an unlawful search. 157-145, 195+789.

An unlawful search cannot be justified by the fact that it discloses the commission of a crime which is not a felony. 157-145, 195+789.

The defendant had no legal right to the liquor or to the possession of it, and was not entitled to have it returned to him. The state having obtained possession of it had the right to retain it as property forfeited to the state, and to use it as evidence. 157-145, 195+789.

A person lawfully arrested may, as an incident thereto, be searched, and incriminating articles found in his possession may be seized. 157-145, 195+789.

The use in evidence of intoxicating liquor, taken without a search warrant from defendant's automobile, held, following *State v. Pluth* (Minn.) 195 N. W. 789, to be proper. 157-359, 196+278.

Automobile may be condemned, though the owner was carrying the liquor in his pockets, for the use of himself and his companion, and not for sale, and was using his auto as a conveyance. 212+591.

Not unconstitutional as denying due process. 212+591. Nor is it unconstitutional as prescribing cruel or unusual punishment. 212+591.

Conditional sales of vehicles. 164-520, 204+637.

3231. Appeal—An appeal to the Supreme Court may be taken in any civil case arising under this act as in other civil actions. ('21 c. 335 § 3)

3232. Bonds—At any time after seizure thereof and before the hearing herein provided for, such property shall be returned to the owner or person having the legal right to possession thereof upon execution by him of a good and valid bond to the State of Minnesota with sufficient sureties in a sum not less than one hundred (\$100) dollars and not less than double the value of the property seized, to be approved by the Court in which the case is triable or a judge thereof, conditioned to produce said property in Court on the day of the trial and abide any order and the judgment of the Court in the premises. ('21 c. 335 § 4)

3233. Neglect of officer—Penalty—Any officer who shall wilfully, refuse or neglect to perform any duty imposed by this Act shall be subject to penalties and forfeitures and removal from office as prescribed and provided by Chapter 455 General Laws of Minnesota for 1919 and acts amendatory thereof. ('21 c. 335 § 5)

Explanatory note—For Laws 1919, c. 455, see §§ 3200 to 3228, herein.

3234. Act supplemental—This act is supplemental to Chapter 455 General Laws of Minnesota for 1919 and shall not be construed so as to in any way modify, repeal or affect any part or provision thereof. ('21 c. 335 § 6)

Explanatory note—For Laws 1919, c. 455, see §§ 3200 to 3228, herein.

3235. Municipalities to prohibit disposal of intoxicating liquors in any form—The council or the principal governing body by whatever name designated or known, of any city, village or borough, whether operating under a home rule charter or not, within this State, shall have the power, in addition to powers already possessed, to prohibit within such city, village or borough the manufacture, sale, giving away, disposition, furnishing or possession or transportation of or keeping or having in possession for sale, giving away, disposition, furnishing or transportation of, or soliciting, receiving or taking any order for intoxicating liquor except for chemical, mechanical, medicinal, pharmaceutical, scientific, industrial or sacramental purposes and to regulate the manufacture, sale, giving away, disposition, furnishing or possession or transportation of or the keeping or having in possession for sale, giving away, disposition, furnishing or transportation of or the soliciting, receiving or taking any order for intoxicating liquor for such purposes; and to define intoxicating liquor; and to provide for the enforcement of such prohibition; and to adopt, amend or repeal all such ordinances, rules, regulations and by-laws and prescribe such penalties as it shall deem ex-

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pedient or proper for any purpose hereinbefore specified; provided that nothing in this act shall authorize or empower any such council or principal governing body of any such city, village or borough to adopt or amend any ordinance, rule, regulation or by-law, or do any other act, which is inconsistent or in conflict with any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor. ('21 c. 338)

165-150, 206+51.

In a complaint it is not necessary to negative the exceptions in the ordinance or allege that the liquor was potable. 210+394.

Evidence held sufficient to warrant an inference that the accused had the liquor in his possession with intent to sell. 210+394.

33 3236 116 3236. License regulation for non-intoxicating beverages given to councils—There is hereby conferred upon each city, borough and village in the state the authority by ordinance to license and regulate the business of vendors at retail of non-intoxicating beverages, to impose such reasonable license fee therefor as may be prescribed by such ordinance, and to provide for the punishment of any violation of any such ordinance according to the provisions of law. ('19 c. 432 § 1)

3237. Certain acts declared to be murder—Any person who shall unlawfully sell intoxicating liquor which, when drunk, causes the death of the person drinking the same, shall be guilty of murder in the third degree. ('23 c. 393 § 1)

3238. Definition—The term "sell" and "sale" and the term "intoxicating liquor," as used herein, shall have the same meaning as is prescribed therefor by Section 1 of Chapter 455 of the General Laws of Minnesota for 1919, and acts amendatory thereto. ('23 c. 393 § 2)

Explanatory note—For Laws 1919, c. 455, § 1, see § 3200, herein.

20 3238¹ 249 3238-1. Sale of intoxicating liquors liable to cause permanent physical or mental injury a felony—Any person who shall unlawfully sell intoxicating liquor which when drunk causes permanent physical or mental injury to the person drinking the same shall be guilty of a felony. ('25, c. 221, § 1)

3238-2. Same—Definitions—The term "sell" and "Sale" and the term "intoxicating liquor," as used herein, shall have the same meaning as is prescribed therefor by Section 1 of Chapter 455 of the General Laws of Minnesota for 1919, and acts amendatory thereto. ('25, c. 221, § 2)

Explanatory note—For Laws 1919, c. 455, § 1, see § 3200, herein.

PRIOR LAWS.

The provisions included in this subheading are from Gen. St. 1913, as to which there may be a question as to their implied repeal by the act of 1919.

3238-3. Places where sale forbidden—The sale of such liquor in any quantity whatever is also forbidden in the following places:

1. In any town or municipality in which a majority of votes at the last election at which the question of license was voted upon shall not have been in favor of license, or within one-half mile of any such municipality, except that any intoxicating liquor, manufactured within any such district, may be sold to be consumed outside of such district.

2. Within the capitol, or upon the grounds thereof.

3. Upon the state fair grounds, or within one-half mile thereof.

4. At any place on the east side of the Mississippi river within one mile from the main building of the university of Minnesota.

5. Within fifteen hundred feet of any state normal school, or any public school outside of a municipality.

6. At more than five places on any one side of a block within and fronting upon the patrol limits of cities of the first class. (1533) [3142]

3238-4. Persons to whom sales, etc., illegal—a. It shall be unlawful for any person, except a licensed pharmacist as aforesaid, to sell, give, barter, furnish or dispose of, in any manner, either directly or indirectly, any spirituous, vinous, malt or fermented liquors in any quantity, for any purpose, whatever, to any minor person, or to any pupil or student of any school or other educational institution in this state, or to any intoxicated person, or to any person of Indian blood, or to any public prostitute.

b. It shall be unlawful for any person except a licensed pharmacist as aforesaid to sell, give, barter, furnish or dispose of in any manner either directly or indirectly any spirituous, vinous, malt or fermented liquors in any quantity for any purpose whatever, to any spendthrift, habitual drunkard, or improvident person within one year after written notice by any peace officer, parent, guardian, master, employer, relative, or by any person annoyed or injured by the intoxication of such spendthrift, habitual drunkard, or improvident person, forbidding the sale of liquor to any such spendthrift, habitual drunkard, or improvident person.

Whoever shall in any way procure liquor for the use of any person named in this section shall be deemed to have sold it to such person. Any person violating any of the provisions of this section shall be deemed guilty of a gross misdemeanor. (R. L. '05, § 1534; amended '11, c. 83; '13, c. 538, § 1) [3148]

3238-5. Fraudulent shipments—Every person who shall knowingly deliver or cause to be delivered to any common carrier for shipment any liquor under a false or misleading title, name, or mark, and every common carrier, or agent of such carrier, who shall knowingly receive the same for shipment, and every person knowingly shipping or receiving any liquor so marked, shall be guilty of a misdemeanor; and any liquor so shipped with the knowledge of the owner, and the casks or packages containing the same, shall be forfeited to the school fund of the county. The books and waybills of any common carrier handling such liquors may be examined by any police officer for the purpose of tracing such liquors to the shipper or receiver. (1555) [3174]

3238-6. Sales, etc., near state fair grounds—Any person who shall sell any liquor or maintain a drinking place within one mile of the state fair grounds, while the state fair is being held, or shall aid or abet another in either of such acts, shall be guilty of a gross misdemeanor, and shall be punished for the first offense by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, or imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment; for each subsequent offence, by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three nor more than six months, or by both. (1556) [3175]

3238-7. Pharmacists—Illegal acts—Any pharmacist or druggist who shall sell any liquor except as allowed by this chapter, or who shall allow his place of business to be used as an unlicensed drinking place, shall

be subject to all the penalties provided in this chapter for such acts. (1557) [3176]

3238-8. Physicians—Illegal acts—Every physician who shall give a prescription of liquor for other than medicinal purposes, or with intent to aid in the evasion of the liquor laws of this state, shall be guilty of a misdemeanor, and shall be subject to the penalties prescribed for the illegal sale of liquor, and shall also forfeit his license as a physician. (1558) [3177]

3238-9. Sales, etc., to minors, habitual drunkards, or persons under guardianship after notice—Every person selling liquor to a minor, habitual drunkard, or person under guardianship, after written notice by a parent, husband, wife, child, guardian, master or employer, of such minority, habitual drunkenness, or guardianship, or in the case of an habitual drunkard after written notice by the mayor, chief of police or any member of the council of the municipality in which such habitual drunkard resides, or member of the county board of the county in which such habitual drunkard resides, and within one year after such notice in case of an habitual drunkard, and in other cases during the continuance of the minority, or guardianship, shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, or imprisonment in the county jail for not less than 30 days nor more than 90 days. (R. L. '05, § 1559; amended '07, c. 247, § 1) [3178]

3238-10. Giving to, or procuring or purchasing for, minors, etc.—Any person who shall give to, procure or purchase intoxicating liquors for any minor person or other person to whom the sale of intoxicating liquors is by law forbidden, shall be guilty of a gross misdemeanor and upon conviction, shall be punished in accordance with the laws of the state. ('11, c. 290, § 1) [3179]

3238-11. Inducing minors, etc., to enter saloons, etc.—Any person who shall assist, procure or induce any minor or other person to whom the sale of liquor is by law forbidden, to enter or visit any saloon, bar, buffet or public drinking place for the purpose of obtaining intoxicating liquors, shall be guilty of a gross misdemeanor and upon conviction shall be punished therefor according to the laws of the state. ('11, c. 369, § 1) [3180]

3238-12. Exclusion from places where liquor is sold of minors, etc., after notice—Penalty—No minor, intemperate drinker, habitual drunkard, inmate of a poor or almshouse, or person under guardianship, shall be allowed in any room where intoxicating liquor is sold in less quantities than five gallons as a beverage, after written notice upon the licensee or his agent, by parent, husband, wife, child, guardian, master or employer of such minority, intemperate drinking, habitual drunkenness or guardianship, or in the case of an intemperate drinker, inmate of a poor or almshouse, or habitual drunkard, after written notice by the mayor, chief of police, judge of the municipal court, or any member of the council of the municipality in which such intemperate drinker or habitual drunkard resides, or member of the county board of the county in which such inmate of a poor or almshouse, intemperate drinker or habitual drunkard resides, and within one year after such notice, in case of an inmate of a poor or almshouse, intemperate drinker or habitual drunkard, and in other cases during the continuance of the minority or guardianship. Any violation of this act shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty

days nor more than ninety days. ('09, c. 198, § 1) [3181]

3238-13. Sale, etc., to Indians—Whoever sells or in any way furnishes liquor to any person of Indian blood, whether a member of any tribal organization or not, except as hereinbefore provided in case of licensed pharmacists, shall be guilty of a felony, and shall be punished by imprisonment in the state prison for not more than two years, and a fine of not more than three hundred dollars. (1560) [3182]

3238-14. Sales, etc., to persons paroled from state institutions—It shall be unlawful for any person to sell, give, barter, furnish, or dispose of, in any manner, either directly or indirectly, or by agent, employe or otherwise, any spirituous, vinous, malt, or fermented liquors in any quantity or for any purpose whatever to any person on parole from any state institution of this state during the term of his parole; and any person violating the foregoing provision of this section shall be guilty of a misdemeanor, and on conviction thereof by any court having jurisdiction shall be punished by fine of not less than twenty-five dollars nor more than one hundred dollars, and costs of prosecution, or by imprisonment in the county jail not less than thirty nor more than ninety days, or until such fine and costs are paid, not exceeding ninety days. ('05, c. 72, § 1) [3183]

3238-15. Same—Knowledge—This act shall not apply to persons who have no knowledge that the person procuring such liquors is such paroled person. ('05, c. 72, § 2) [3184]

3238-16. Duties of officers—Every sheriff, constable, marshal, and policeman shall summarily arrest any person found committing any act forbidden by this chapter, and make complaint against him. Every county attorney shall prosecute all cases under this chapter arising in his county. The president or mayor of every municipality shall make complaint of any known violation of the provisions of this chapter, and the chief of police and all policemen shall make arrests and complaints as in this section provided, anything in the ordinances or by-laws of such municipality to the contrary notwithstanding. (1561) [3185]

3238-17. Neglect of duties by officers—Any county commissioner, member of a municipal council, sheriff, or other officer, who wilfully refuses or neglects to perform any official duty imposed by this chapter, shall be guilty of malfeasance in office, and shall be removed therefrom, and be disqualified from holding the same for and during the remainder of the term for which he was elected or appointed, and shall forfeit not less than one hundred dollars nor more than five hundred dollars, which amount may be recovered in an action against him personally or on his official bond. (1562) [3186]

3238-18. Definitions—The terms "intoxicating liquor" and "liquor," wherever used in this chapter, shall include distilled, fermented, spirituous, vinous, and malt liquor. The terms "sell" and "sale" shall include all barter, gifts, and all means of furnishing liquor in violation or evasion of law. (1564) [3188]

3238-19. Intoxicated persons on street cars or railway trains—No person shall while intoxicated enter or be or remain upon a railway train or street car as a passenger. ('11, c. 28, amended '13, c. 417, § 1) [3192]

3238-20. Drinking, etc., on trains, street cars, etc.—No person shall publicly drink any intoxicating liquor as a beverage in any railway train, coach, or street car, or give, or cause to be given to any other person

therein, intoxicating liquor as a beverage, except in a compartment or place where such liquor is sold or served under the authority of a license lawfully issued. ('11, c. 28; amended '13, c. 417, § 2) [3193]

3238-21. Permitting drinking, etc., on trains, street cars, etc.—Penalty—Persons and corporations engaged wholly or in part, in the business of carrying passengers for hire, their agents, servants or employees who shall knowingly permit any person to drink any intoxicating liquor as a beverage in any railway train, coach, or street car, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued and any person violating any provision of this act, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than ten dollars (\$10.00) or more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not less than twenty (20) days, nor more than ninety (90) days. ('11, c. 28; amended '13, c. 417, § 3) [3194]

3238-22. Same—Powers of conductors—Arrests—The conductor of any railway train or street car shall summarily arrest, with or without a warrant, any person violating any of the foregoing provisions and for such purpose shall have the same power and authority as any peace officer, including the power to summon assistance and such conductor shall further have power to deliver any such person to any policeman, constable, or other public officer of the county in which such offense was committed, and it shall be the duty of such officer to bring the person charged with such offense before the nearest justice of the peace or municipal court of the county where said offense was committed and to make a complaint against such person, and such complaint made upon information and belief of said officer, shall be sufficient. ('11, c. 28; amended '13, c. 417, § 4) [3195]

3238-23. Same—Intoxicated persons leaving trains, etc.—Duties of conductor and employees—No conductor or employe of any railroad company shall expel or allow any intoxicated person who is not in charge of a person that is not intoxicated, to depart from his train at a station where there is no police protection, jail or lockup, but shall carry such intoxicated person to the nearest station having police and jail protection. ('11, c. 28; amended '13, c. 417, § 5) [3196]

3238-24. Same—Seizure of liquors—The conductor of any railway train or street car may take from any person found violating any of the foregoing provisions, any intoxicating liquor then in the possession of such person and deliver the same to the nearest station agent, giving the person from whom it is taken

a receipt therefor. Upon the presentation and surrender of such receipt within ten (10) days thereafter such liquor shall be delivered to the person presenting same and if not so delivered within such time shall be destroyed by such station agent. ('11, c. 28; amended '13, c. 417, § 6) [3197]

3238-25. Prosecutions and evidence—In prosecutions under this chapter, it shall not be necessary to allege or prove the name or kind of intoxicating liquor sold, and proof of the sale of what appeared to be intoxicating liquor shall be prima facie proof of the sale of such liquor. In all prosecutions for keeping an unlicensed drinking place, the finding of intoxicating liquor on the premises, or of any bar, bar fixtures, or other things apparently used for or in connection with the sale of intoxicating liquor, or any sign or advertisement indicating the sale of liquor on such premises, or a receipt for the United States tax for the sale of spirituous or vinous, malt, or fermented liquor posted therein, and covering the time alleged in the complaint or indictment, or proof of the payment of such tax for such period, shall, except in case of a licensed pharmacist engaged at such place in the business of druggist or pharmacist, be prima facie evidence that such place is a public drinking place. In any prosecution under this chapter, it shall not be necessary to prove the want of license, but such license shall be a matter of defence. (1566) [3198]

CIVIL ACTIONS.

3239. Action for injuries caused by intoxication—Every husband, wife, child, parent, guardian, employer, or other person, who shall be injured in person or property, or means of support, by any intoxicated person, or by the intoxication of any person, shall have a right of action, in his or her own name, against any person, who shall by illegally selling, bartering, or giving intoxicating liquors, have caused the intoxication of such person, for all damages sustained; and all damages recovered by a minor under this act shall be paid either to such minor or to his or her parent, guardian, or next friend, as the court shall direct; and all suits for damages under this act shall be by civil action in any of the courts of this state having jurisdiction thereof. ('11 c. 175 § 1) [3200]

121-452, 141+793; 121-455, 141+803; 131-137, 154+795; 138-31, 163+798; 149-187, 182+996; 150-425, 185+653.
The surety on a saloon keeper's bond was liable in any and all cases of illegal sales in which his principal was liable. 162-497, 203+447.

Where illegal sales, made during the period covered by a particular bond, concurred with other illegal sales in causing damage, the surety on such bond was jointly and severally liable therefor to the extent of his bond. 162-497, 203+447.