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1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STATUTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED BY THE SUBSEQUENT LEGISLATION OF 1925 AND 1927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 97.

CRIMES AGAINST THE PERSON

10061. Definitions—Suicide is the intentional taking of one's own life. Any word spoken or written and any sign uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand to fight a duel, or to meet for that purpose, or to engage in any prize fight, shall be deemed a challenge to such duel or prize fight. The word "torture" and the word "cruelty," when used in reference to the treatment of children, shall include every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted. (4869) [8597]

SUICIDE

10062. Aiding suicide—Every person who in any manner shall wilfully advise, encourage, abet, or assist another in taking the latter's life shall be guilty of manslaughter in the first degree. (4871) [8598]

10063. Abetting attempt at suicide—Every person who in any manner shall wilfully encourage, assist, or abet another person in attempting to take the latter's life shall be guilty of a felony. (4872) [8599]

10064. Incapacity of person aided, no defense—The fact that the person attempting to take his own life was incapable of committing crime shall not be a defense to prosecution under either of §§ 10062, 10063. (4873) [8600]

HOMICIDE

10065. Defined and classified—Homicide is the killing of a human being by the act, procurement, or omission of another, and is either (1) murder; (2) manslaughter; (3) excusable homicide; or (4) justifiable homicide. (4874) [8601]

123–276, 143+782; 133–125, 155+906; 193+43.

The evidence sustains the finding of the jury that the defendant was one of a party of three who had participated in a bank robbery and were in flight, some one of whom shot and killed an officer who intercepted them as they were fleeing. 153–516, 197+962.

10066. Proof of death, and of killing by defendant—No person shall be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of killing by the defendant, as alleged, are each established as independent facts—the former by direct proof, and the latter beyond a reasonable doubt. (4875) [8602]

Proof of death—4–368, 277; 29–221, 13+140; 111–138, 126+536; 123–487, 144+216.

10067. Murder in first degree—The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when perpetrated with a premeditated design to effect the death of the person killed or of another, and shall be punishable by imprisonment for life in the state prison. (R. L. § 4876, amended '11 c. 387 § 1) [8603]

1. Definition—In defining murder for the jury the court should give the statutory rather than the common law definition (2–123, 99).

2. Intention and premeditation distinguished—"Intentionally" and "with premeditated design" are not synonymous expressions; the latter involving a greater degree of deliberation and forethought than the former (12–538, 448; 13–132, 125). If the intention to kill is

formed before the "heat of passion, upon sudden provocation, or in sudden combat," or, though formed in the heat of passion, is executed after sufficient cooling time, or after the heat of passion has subsided, the case comes within the meaning of a killing with a premeditated design to effect the death of the person killed (13–132, 125). 148–285, 181+850.

3. Presumption as to intention, malice and premeditation—Every homicide is presumed unlawful and when the mere act of killing is proved, and nothing more, the presumption is that it was intentional, malicious, and murder (10–223, 178; 12–538, 448; 22–514; 98–461, 108+873). Murder in the first degree may be proved by the mere fact of an intentional killing (45–177, 47+720). It may be proved by the mere fact of the killing and the attendant circumstances; and, where there are no circumstances to prevent or rebut the presumption, the law will presume that the unlawful act was malicious as well as intentional and was prompted and determined on by the ordinary operations of the mind (41–319, 43+69). This presumption it is for the accused to rebut (10–223, 178). An instruction that "the law presumes a premeditated design from the naked fact of killing" held inaccurate but not prejudicial (22–514). A deliberate and intentional homicide is presumptively murder (34–430, 26+397). When it clearly appears that defendant deliberately and intentionally shot deceased, the presumption is that it was an act of murder. Premeditation means thought beforehand for any length of time, no matter how short. There need be no appreciable time between the conception of the intention and the act of killing (98–459, 108+873). When the undisputed evidence shows that the homicide was committed with a dangerous weapon with design to effect death, or under circumstances from which such design must conclusively be inferred, and after time sufficient for passion to subside, it is murder, and not manslaughter (106–105, 118+361).

4. Premeditation—The law does not attempt to define the length of time within which the determination to murder or commit the unlawful act resulting in death must be formed (41–319, 43+69). The character of the weapon used in sudden combat may be considered for the purpose of determining whether the party killing entered upon the combat with a premeditated design to kill; and such design may be inferred from a previous arming with a deadly weapon (13–132, 125). Where it appears that the accused intentionally committed the murder as a matter of revenge the premeditated design sufficiently appears (13–341, 315). Design held properly inferred from the expression of the accused that "dead men tell no tales" (14–105, 75).

5. By conspirators—A person may be guilty of a murder actually perpetrated by another, if he combines with such other party to commit a felony, engages in its commission, and death ensues in the execution of the felonious act. If two or more persons, having confederated to attack and rob another, actually engage in the felony, and in the prosecution of the common object the person assailed is killed, all are alike guilty of the homicide (40–77, 41+463).

6. What constitutes—If a person kills A when intending to kill B it is murder (2–123, 99). The designed killing of another without provocation and not in sudden combat is none the less murder because done in a state of passion (10–223, 178). The intentional killing of an officer acting in the proper discharge of his duty is ordinarily murder in the first degree (34–361, 25+793).

7. Indictment—An indictment substantially in the form given in G. S. 1878 c. 108 is sufficient (3–427, 313; 4–438, 340; 13–370, 343; 16–75, 64; 22–514; 37–493, 35+373). It may charge the killing to have been done "with the premeditated design to effect the death" instead of "with malice aforethought" (38–368, 37+587). An indictment which charges the killing of a person on a day specified imports that he died on that day (13–370, 343). An indictment charging a stabbing in this state, followed by death in another, held sufficient (21–369. See 78–362, 81+17). The means employed to effect the death need not be stated precisely (22–514).

8. Evidence.

The evidence sustains the verdict of the jury finding the defendants guilty of murder in the first degree. 212+203.

10068. Murder in second degree—Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed or of another, but without deliberation and premeditation, and shall be punished by imprisonment in the state prison for the offender's natural life. (4877) [8604]

The words "wilfully killed" are not the equivalent of the words of the statute "with a design to effect death." A man may wilfully do an act which causes death and yet have no design to effect death (78–362, 81+17). Cited (98–459, 108+873).

10069. Duel fought out of state—Every person who, by previous appointment made within the state, fights a duel without the state, or by previous engagement made within or without the state, fights a duel within the state, and in so doing inflicts a wound upon his antagonist, whereof he dies, or who engages or participates in such a duel as a second or assistant to either party, shall be guilty of murder in the second degree. (4878) [8605]

10070. Murder in third degree—Such killing of a human being, when perpetrated by act eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual, or without a design to effect death, by a person engaged in the commission of, or in an attempt to commit, a felony either upon or affecting the person killed or otherwise, is murder in the third degree, and shall be punished by imprisonment in the state prison for not less than seven years, nor more than thirty years. (4879) [8606]

1. What constitutes—To warrant a conviction under this section the state need not prove affirmatively that the killing was without any design to effect death, nor that no circumstances of justification or extenuation existed (16–282, 249). This section was designed to cover cases where the reckless, mischievous or wanton acts of the accused were committed without special regard to their effect on any particular person or persons, but were committed with a reckless disregard of whether they injured one person or another. It is not necessary that more than one person was or might have been put in jeopardy by the reckless acts of the accused, but it is necessary that the act was committed without special design upon the particular person or persons with whose murder the accused is charged (66–296, 68+1094; 138–465, 163+984; 197+962).

The court properly submitted murder in the third degree upon the theory that the jury might find that there was an unintentional killing while engaged in the commission of a felony. 158–516, 197+962.

The evidence sustains the jury's finding that the defendant was one of four jointly concerned in the robbery of a bank, in the accomplishment of which an officer of the bank was killed, and that he was guilty of murder. 154–10, 204+467.

2. Indictment—An indictment held insufficient for failure to state the acts constituting the offense (19–93, 65). See 131–427, 155+399, 193+42.

10071. 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)

10072. 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. ('21 c. 393 § 2)

10072-1. Sale of intoxicating liquor causing permanent physical or mental injury when drunk—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)

10072-2. Same—Sell and sale defined—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.

10073. Manslaughter defined—In every case other than murder in the first, second, and third degrees, as hereinbefore in this chapter defined, homicide not ex-

cusable or justifiable is manslaughter. (4880) [8607]

10074. Manslaughter in first degree—Such homicide is manslaughter in the first degree when committed without a design to effect death—

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

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon. (4881) [8608]

See following section.

1. **Provocation**—Provocation, to reduce homicide from murder to manslaughter, must be something the natural tendency of which would be to disturb and obscure the reason of men of average mind and disposition so as to cause them to act rashly, without due deliberation or reflection, and from passion rather than judgment. To determine the sufficiency of the provocation the instrument or weapon with which the homicide was committed must be considered, for if it was effected with a deadly weapon the provocation must be great, indeed, to lower the grade of the crime from murder. In case of sudden combat the character of the weapon is not to be considered unless to determine whether the party entered into the combat with a premeditated design to kill. The existence of provocation is for the jury under proper instructions from the court (13–132, 125; 56–78, 57+325). A mere trespass on lands will not ordinarily constitute a provocation (10–223, 178; 56–78, 57+325, 58–478, 59+1101). The killing of a friend of the accused, but out of his presence is not a provocation (13–341, 315). Mere words do not constitute a provocation (see 34–430, 26+397; 56–78, 57+325). The designed killing of another without provocation and not in sudden combat is no less murder because done in a state of passion (10–223, 178). An attempt to make an arrest by an officer authorized to make it is of itself no provocation (34–361, 25+793). The facts constituting provocation must be proved by the accused if they do not appear from the evidence introduced by the state. They cannot be assumed by the jury without evidence (34–430, 26+397). Drunkenness may be taken into consideration in determining whether the accused acted under a provocation, but not in determining whether the provocation was adequate (13–341, 315). See 149–195, 183+143; 151–386, 186+808.

2. **Cooling time**—The sufficiency of cooling time is for the jury (13–132, 125).

3. **Indictment**—An indictment construed as one for manslaughter in the first degree and not for murder in the second degree (78–362, 81+17).

4. **Instructions**—Court should not instruct as to law of manslaughter, unless there is evidence to establish that crime (106–105, 118+361. See 117–80, 134+305).

10075. Same—Such homicide is manslaughter in the first degree when committed without a design to effect death, either

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

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

3. By shooting another with a gun, or other firearm, when resulting from carelessness in mistaking the person shot for a deer or other animal. (G. S. 1894 § 6445, amended '05 c. 125 § 1) [8609]

G. S. 1894 § 6445 was Pen. Code § 160, the provisions of which were incorporated in the preceding section. See 148–292, 181+851.

10076. Killing of unborn child or mother—Every person who shall wilfully kill an unborn quick child by any injury inflicted upon the person of its mother, and every person who shall provide, supply, or administer to a woman, whether pregnant or not, or who shall prescribe for, advise, or procure a woman to take any medicine, drug, or substance, or who shall use or employ, or cause to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, and the death of the woman, or that of any quick child of which she is pregnant, is thereby produced, shall be guilty of manslaughter in the first degree. (4882) [8610]

19–93, 65; 122–91, 141+1113; 131–252, 154+1083; 138–317, 164+1017; 153–339, 190+481.

The evidence sustains the verdict finding the defendant guilty of manslaughter in the first degree. 167–164, 208+760.

It was not error to receive in evidence statements of a woman, upon whom it was charged that an abortion had been performed, to her husband, as to her treatment by the defendant, during its progress, following State v. Hunter, 154 N. W. 1083, 131 Minn. 252, L. R. A. 1916C, 566. 167–164, 208+760.

Proof of other abortions by the defendant prior to or about the time of the one charged held competent as showing willingness and readiness, or a guilty or criminal intent. 167–164, 208+760.

A statement of the deceased girl to her mother some time before the operation, indicating not who would perform the operation, but only that she had consulted some physician other than defendant, held properly excluded for lack of relevancy. 210+45.

10077. Manslaughter in first degree, how punished—Manslaughter in the first degree shall be punished by imprisonment in the state prison for not less than five nor more than twenty years. (4883) [8611]

10078. Manslaughter in second degree—Such homicide is manslaughter in the second degree when committed without a design to effect death—

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

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

3. By any act, procurement, or culpable negligence of any person, which, according to the provisions of this chapter, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree. (4884) [8612]

An indictment held sufficient under subd. 2 although not in the language of the statute (59–514, 61+677). An indictment under subd. 3 held insufficient (66–296, 68+1094). See 126–396, 148+283; 127–282, 149+297; 149–195, 183+143; 144–405, 175+892; 151–386, 186+803.

The evidence sustains a verdict finding the defendant guilty of manslaughter in the second degree. 160–408, 200+480.

The evidence supports a conviction of manslaughter in the second degree, in that defendant while drunk drove his automobile in a culpably negligent manner against a pedestrian causing death. 209+881.

It was not incumbent on the state to show that the one killed was not negligent or that death was not the result of an unavoidable accident. 209+881.

10079. Voluntary miscarriage — Death of child — Every woman quick with child, who shall take or use, or submit to the use of, any drug, medicine, or substance, or any instrument or other means, with intent to produce her own miscarriage, unless the same shall be necessary to preserve her own life or that of the child of which she is pregnant, if the death of such child shall be thereby produced, shall be guilty of manslaughter in the second degree. (4885) [8613]

10080. Negligent use of machinery—Every person who, by any act of negligence or misconduct in the business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind intrusted to his care or under his control, or by any unlawful, negligent, or reckless act not specified by or coming within the provisions of any other statute, occasions the death of a human being, shall be guilty of manslaughter in the second degree. (4886) [8614]

Indictment for criminal carelessness in operation of engine and train (105–251, 117+482).

10081. Death caused by mischievous animals—Every

owner of a mischievous animal, who, knowing its propensities, shall wilfully or negligently suffer it to go at large, or keep it without ordinary care, and the animal, while so at large or kept, shall kill a human being, not himself in fault, shall be guilty of manslaughter in the second degree. (4887) [8615]

10082. Overloading passenger vessel—Every person navigating a vessel for gain who shall wilfully or negligently receive so many passengers, or such quantity of other lading, on board, that by means thereof it shall sink, be overset or injured, and thereby a human being shall be drowned or otherwise killed, shall be guilty of manslaughter in the second degree. Whenever in such case human life shall only be endangered, he shall be guilty of a misdemeanor. (4888) [8616]

10083. Reckless operation of steamboats and engines—Every person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, shall create, or allow to be created, such an undue quantity of steam as to burst the boiler or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, and every engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam employed in a boat or railway, or in a manufactory or in any mechanical works, or otherwise, who wilfully or from ignorance or gross neglect shall create or allow to be created such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being shall be caused, shall be guilty of manslaughter in the second degree. (4889) [8617]

10084. Liability of intoxicated physician — Every physician or surgeon, or person practicing as such, who, being in a state of intoxication, shall administer any poison, drug, or medicine, or do any other act as a physician, to another person, which, though done without a design to effect death, shall cause the death of the latter, shall be guilty of manslaughter in the second degree. Whenever the life of the latter shall only be endangered or seriously affected thereby, he shall be guilty of a gross misdemeanor. (4890) [8618]

10085. Keeping gunpowder unlawfully—Death resulting—Every person who shall make or keep gunpowder or any other explosive substance in a city or village, in any quantity or manner prohibited by law or by ordinance of such municipality, if any explosion thereof shall occur, whereby the death of a human being is occasioned, shall be guilty of manslaughter in the second degree. (4891) [8619]

10086. Punishment of manslaughter in second degree—Manslaughter in the second degree shall be punished by imprisonment in the state prison for not less than one nor more than fifteen years, or by a fine of not more than one thousand dollars, or by both. (4892) [8620]

10087. Homicide, when excusable—Homicide is excusable when committed by accident or misfortune in doing any lawful act, by lawful means, with ordinary caution, and without any unlawful intent. (4893) [8621]

93–38, 100+638.

10088. Justifiable homicide by public officer—Homicide is justifiable when committed by a public officer, or person acting under his command and in his aid, in the following cases:

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

2. When necessary to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

3. When necessary in retaking an escaped or rescued prisoner who has been committed, arrested, for, or convicted of a felony, or in arresting a person who has committed a felony and is fleeing from justice, or in attempting by lawful ways or means to apprehend a person for a felony actually committed, or in lawfully suppressing a riot or preserving the peace. (4894) [8622]

Killing of Indian held not justified by an official offer of reward (13–341, 315).

10089. Homicide by other person, justifiable when—Homicide is also justifiable when committed, either—

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

2. In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is. (4895) [8623]

1. **Self-defence**—The law concedes the right to kill in self-defence, but only in extremity, and when no other practicable means to avoid the threatened harm are apparent to the person resorting to the right. If it be practicable, and is so apparent to him, to repel the attempt by other means than by killing his assailant, he is bound to do so (10–223, 178; 32–118, 19+738; 34–1, 24+458; 58–478, 59+1101). But a party who is not an assailant and is where he has a right to be, is not bound to retreat (3–270, 185; 96–318, 104+971; 158 U. S. 550, 15 Sup. Ct. 962, 39 L. Ed. 1086; 164 U. S. 546, 17 Sup. Ct. 172, 41 L. Ed. 547). To justify a person in acting in self-defence it is not enough that he believes himself in imminent danger of great bodily harm. He must have reasonable grounds for his belief (10–223, 178; 34–361, 25+793; 56–78, 57+325; 58–478, 59+1101; 83–141, 85+946). The justification of self-defence cannot be invoked by a party who intentionally provokes an assault with the purpose of using a deadly weapon (41–365, 43+62). In resisting an attempted arrest by a peace officer, even though the arrest be unlawful, the killing of the officer is not justifiable, when there is neither danger of great bodily harm, or other felony being committed by the officer, nor a reasonable apprehension of such danger in the mind of the person whose arrest is attempted (34–1, 24+458; 34–361, 25+793). As bearing on the reasonableness of a belief in imminent danger the quarrelsome and violent character of the assailant may be proved by evidence of his reputation in that regard, but not by specific acts of violence (4–438, 340; 91–419, 98+334). Whether the circumstances warranted the use of force in self-defence and the degree of force necessary are ordinarily questions for the jury (3–270, 185; 58–478, 59+1101; 89–212, 94+723); but where the evidence is legally insufficient to show a justification it is the duty of the court to so instruct the jury (34–18, 24+302; 58–478, 59+1101; 93–38, 100+638). Charge that defendant was not bound to flee, but had no right to kill in self-defence, unless apparently necessary to repel assailant and prevent great personal injury to himself or forcible entry into his home, held not error (101–370, 112+422). Burden is on state to prove killing not justifiable (114–498, 131+645).

2. **Defence of child by parent**—A parent may protect a child from an assault, as a party assaulted may protect himself, but a parent has no right to protect a child in committing an assault (25–161).

MAIMING

10090. Defined—How punished—Every person who, with intent to commit a felony, or to injure, disfigure, or disable another, shall wilfully inflict upon him an injury which—

1. Seriously disfigures his person by any mutilation thereof;

2. Destroys or disables any member or organ of his body; or,

3. Seriously diminishes his physical vigor by the injury of any member or organ—

Shall be guilty of maiming, and be punished by imprisonment in the state prison for not less than one nor more than fifteen years, and the infliction of the injury shall be prima facie evidence of the intent. (4896) [8624]

37–351, 34+893.

10091. Maiming one's self to escape duty or obtain alms—Every person who, with design to disable himself from performing a legal duty, existing or anticipated, shall inflict upon himself an injury whereby he is so disabled, and every person who shall so injure himself with intent to avail himself of such injury to excite sympathy or to obtain alms or some charitable relief, shall be guilty of a felony. (4897) [8625]

10092. Instrument or manner of maiming—To constitute maiming, it is immaterial by what means or instrument or in what manner the injury was inflicted. (4898) [8626]

10093. Recovery from injury, when a defense—Whenever, upon a trial for maiming another person, it shall appear that the injured person has so far recovered that he is no longer disfigured in personal appearance, disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the defendant may be convicted of assault in any degree. (4899) [8627]

KIDNAPPING

10094. Defined—How punished—Every person who shall wilfully:

1st. Seize, confine or inveigle another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within the state, or sent out of it, to be sold as a slave, or in any way held to service, or kept or detained against his will;

2nd. Lead, take, entice or detain a child under the age of sixteen years, with intent to keep or conceal him from his parents, guardian, or other person having lawful care or control of him, or to extort or obtain money or reward for his return or disposition, or with intent to steal any article upon his person; or,

3rd. Abduct, entice, or, by force or fraud, unlawfully take or carry away another, at or from a place without the state, or procure, advise, aid, or abet such abduction, enticing, taking, or carrying away, and shall afterwards send, bring, or keep such person, or cause him to be kept or secreted, within this state—

Shall be guilty of kidnapping and punished by imprisonment in the state prison not more than forty years. (R. L. § 4900, amended '09 c. 325 § 1) [8628]

127–445, 149+945.

10095. Selling services of person kidnapped—Every person who, within this state or elsewhere, shall sell or in any manner transfer for any term the services or labor of any person who has been forcibly taken, inveigled, or kidnapped in or from the state, shall be punished by imprisonment in the state prison for not more than ten years. (4901) [8629]

10096. Indictment—Where triable—Effect of consent of person injured—Every indictment for kidnapping may be found and tried either in the county where the offense was committed, or in any county through or in which the person kidnapped or confined was taken or kept while under confinement or restraint. Upon a trial for violation of §§ 10094, 10095, the consent thereto of the person kidnapped or confined shall not be a defense, unless it appears satisfactorily to the jury that such person was above the age of sixteen years, and that his consent was not extorted by threats or duress. (4902) [8630]

ASSAULT

10097. Assault in first degree defined—How punished—Every person who, with intent to kill a human being or to commit a felony upon the person or property of the one assaulted or of another—

1. Shall assault another with a loaded firearm or any other deadly weapon, or by any force or means likely to produce death; or

2. Shall administer or cause to be administered to, or taken by, another, poison or any other destructive or noxious thing, so as to endanger the life of such other person, shall be guilty of assault in the first degree, and be punished by imprisonment in the state prison for not less than five nor more than ten years. (4903) [8631]

Assault with intent to kill (2–124, 99; 3–438, 325; 4–321, 237; 14–35, 27). See 132–295, 156+127; 153–534, 193+683.

The evidence sustains the verdict finding the defendant guilty of assault in the first degree. 164–497, 205+449.

An "assault" is an inchoate battery. Actual physical contact is not, but violence, threatened or offered, is, an essential element. Mere words or threats are not enough to constitute an assault. 167–203, 208+814.

Action for damages.

165–233, 206+171, 209+624.

Under the circumstances of this case, it was a question for the jury whether, if plaintiff's bartender assaulted defendant, as the latter claimed, it was an act of a servant, in the course of his employment and in furtherance of his master's business, so that plaintiff would be liable. 160–114, 199+465.

10098. Assault in second degree defined—How punished—Every person who, under circumstances not amounting to assault in the first degree—

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

2. With intent thereby to enable or assist himself or any other person to commit any crime, shall administer or cause to be administered to, or taken by, another, chloroform, ether, laudanum, or any other intoxicating narcotic or anaesthetic;

3. Shall wilfully and wrongfully wound or inflict grievous bodily harm upon another, with or without a weapon;

4. Shall wilfully and wrongfully assault another with a weapon or other instrument or thing likely to produce grievous bodily harm; or

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

Shall be guilty of an assault in the second degree, and be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than one thousand dollars, or by both. (4904) [8632]

1. What constitutes in general—The forcible ejection of a passenger from a train in motion is an assault (34–311, 25+705).

2. What constitutes assault armed with dangerous weapon—A dangerous weapon is one likely to produce death or great bodily harm. A large stone may be a dangerous weapon. The place of arming is immaterial. The arming must have occurred prior to the encounter, but if a general disturbance exists it is not necessary that it should have taken place prior to the disturbance (10–407, 325). The accused pointed a loaded pistol at H. saying, "I want you to get right out of this yard, or

I'll kill you," and then shot and wounded him. There was no evidence of facts constituting a justification or legal excuse. Held an assault (34–25, 24+290). Premeditation, except as implied in the intent to do great bodily harm, is not an essential element (11–154, 95). Intent to do great bodily harm is essential (21–22). Since an actual intent to do great bodily harm is essential, drunkenness which deprives a person of the capacity to have such an intent is a defence if it was not voluntarily induced with a view to the commission of the offence (11–154, 95; 25–161; 28–426, 10+472). For assault without a weapon, See (135–76, 160+196).

3. **Indictment**—It is sufficient if it directly charges the accused with acts coming fully within the statutory description of the offence, substantially in the words of the statute, without any further expansion of the matter (11–154, 95; 22–311. See 10–407, 325; 39–476, 40+572). An indictment held not double (10–407, 325).

4. **Accessory**—To convict of an assault with a dangerous weapon, with intent to do great bodily harm, one who comes to the assistance of the person holding the weapon, it is not necessary that he should have aided in the previous arming of such person (25–161). See also 131–427, 155+399; 133–425, 158+793; 137–42, 162+683; 148–292, 181+850; 153–220, 191+52; 153–534, 193+165; 154–45, 191+50; 193+683.

10099. Assault in third degree—How punished—Every person who shall commit an assault, or an assault and battery, not amounting to an assault in either the first or second degree, shall be guilty of an assault in the third degree, and be punished by imprisonment in a county jail for not more than three months, or by a fine of not more than one hundred dollars. (4905) [8633]

A complaint for simple assault alleging that the defendant "did wilfully and unlawfully assault the complainant with a revolver" held sufficient (26–388, 5+970). See 131–430, 155+399.

10100. Force or violence, when lawful—The use, attempt, or offer to use force or violence upon or toward the person of another shall not be unlawful in the following cases:

1. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction.

2. Whenever necessarily used by a person arresting one who has committed a felony, and delivering him to a public officer competent to receive him into custody.

3. Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary.

4. Whenever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher, in the exercise of lawful authority, to restrain or correct his child, ward, apprentice, or scholar.

5. Whenever used by a carrier of passengers or his authorized agent or servant, or other person assisting them at their request, in expelling from a carriage, railway car, vessel, or other vehicle a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is no more than shall be necessary to expel the offender, with reasonable regard to his personal safety.

6. Whenever used by any person to prevent an idiot, lunatic, or insane person from committing any act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. (4906) [8634]

1. **Self-defence**—3–270, 185; 34–25, 24+290.

2. **Defence of child**—25–161.

3. 131–71, 154+662.

A defendant who, with a number of companions, wrongfully invades plaintiff's premises, and in doing so assaults the latter, and makes no attempt whatever to desist or withdraw from the fray until it is ended by plaintiff's resistance and the interference of others, cannot, on the ground of self-defense, justify the injury to plaintiff resulting from the fray. 160–114, 199+465.

ROBBERY

10101. Defined—Robbery is the unlawful taking of personal property from the person of another or in his presence, against his will, by means of force or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force used is immaterial. If used merely as a means of escape, it does not constitute robbery. Such taking from the person of another constitutes robbery whenever it appears that, although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear. (4907) [8635]

71–399, 73+1091; 136–299, 161+595; 141–56, 169+249; 196+674.

Upon an appeal from a conviction of attempted robbery, where the record does not contain all the evidence, this court cannot determine whether the testimony fails to disclose a conspiracy so as to warrant the reception of proof of other crimes. 156–186, 194+396.

An indictment for robbery, charging defendant with the felonious taking of the property of A., in the presence and against the will of B., by force and violence, is not fatally defective because it fails to aver that B. had any relationship to A., or the possession or control of the property or any duty with respect to it. 157–272, 196+674.

10102. In first degree, how punished—Every such unlawful taking, if accompanied by force or fear, in any case specified in § 10101, shall be robbery in the first degree—

1. When committed by a person armed with a dangerous weapon; or

2. By a person aided by an accomplice actually present; or

3. Whenever the offender, in order to accomplish the robbery, shall inflict grievous bodily harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon his spouse, parent, child, servant, or member of his family, or any one in his company at the time—

And shall be punished by imprisonment in the state prison for not less than five nor more than twenty years. (4908) [8636]

See following section.

In an indictment under this section it is probably sufficient to plead the ultimate fact, "aided by an accomplice actually present" (71–399, 73+1091). 141–56, 169+249.

10103. Same—Robbery in the first degree is punishable by imprisonment in the state prison for not less than five years, nor more than forty years; provided, that this act shall not apply to any act done or offense committed prior to the passage hereof, but the provisions of the law now in force prescribing the punishment of said offense shall continue in force as to all such offenses. (G. S. 1894 § 6485, amended '05 c. 114 § 1) [8637]

Historical—1905 c. 114 § 2 repeals inconsistent acts, etc. The provisions of G. S. 1894 § 6485 were incorporated in the preceding section.

10104. In second degree, how punished—Such unlawful taking when accomplished by force or fear, in

a case specified in §§ 10101, 10102, but not under circumstances amounting to robbery in the first degree, shall be robbery in the second degree when accomplished—

1. By the use of violence; or,

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

And shall be punished by imprisonment in the state prison for not less than two nor more than fifteen years. (4909) [8638]

An indictment held sufficient although it did not state how the force and violence were used or directed (71–399, 73+1091).

10105. In third degree, how punished—Every person who shall rob another, under circumstances not amounting to robbery in the first or second degree, shall be guilty of robbery in the third degree, and be punished by imprisonment in the state prison for not more than ten years. (4910) [8639]

71–399, 73+1091.

10106. Life imprisonment for bank robbers—Every person who with intent to commit a felony therein by means of threats, force or violence, shall enter at any time, any room wherein in whole or in part a general banking business is carried on, or any room wherein, in whole or in part, the business of receiving securities, evidence of debt or any other valuable papers for deposit or safe keeping is carried on, or wherein, in whole or in part, a business of general banking and receiving securities, evidence of debt or any other valuable papers, on deposit or for safe keeping, is carried on, in which room, there shall be at the time a human being, shall be guilty of a felony and punished by imprisonment for life in the state prison. (Ex. Sess. '19 c. 10, § 1)

Defendants, accused of bank robbery in Minnesota, were apprehended about two months later in Louisiana. When arrested they had three guns, ammunition, nitroglycerin, dynamite caps, fuse, and other articles. Evidence of the stuff so in their possession was properly admitted. 212+894.

A statute making bank robbery or any attempt thereat punishable by life imprisonment does not violate any constitutional guaranty. The punishment is not prohibited as cruel or unusual. 212+894.

DUELS

10107. Duel and challenge, how punished—Every person who shall fight a duel, or engage in any combat with another with a deadly weapon, by previous agreement or upon a previous quarrel, although no death or wound shall ensue, shall be punished by imprisonment in the state prison for not less than two nor more than ten years. And upon conviction he shall thereafter be incapable of holding, or of being elected or appointed to, any office or place of trust or emolument, civil or military. (4911) [8640]

10108. Challenger, abettor, etc.—Every person who shall challenge another to fight a duel, or who shall send a written or verbal message purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or who accepts such a challenge or message, or who knowingly carries or delivers such challenge or message, or is present at the time appointed for such duel or combat, or when the same is fought, either as second, aid, or surgeon, or who advises or abets, or gives any countenance or assistance to, such duel or combat upon previous agreement, shall be punished by imprisonment in the state prison for not more than seven years. (4912) [8641]

10109. Attempt to induce challenge — Posting — Every person who shall send or use to another any word or sign whatsoever with intent to provoke or induce such person to give or receive a challenge to fight a duel, or who shall post or advertise another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who in writing or in print shall use reproachful or contemptuous language to or concerning any one for not sending or accepting a challenge to fight a duel, or for not fighting a duel, shall be guilty of a gross misdemeanor. (4913) [8642]

10110. Duel outside state, where indictable—Every person who leaves the state with intent to elude any provision of law contained in §§ 10107-10109, or to commit any act outside of the state, punished by the provisions thereof if committed in the state, shall be guilty of the same offense and subject to the same punishment as if the act had been committed or was to have been consummated in the state, and may be indicted and tried in any county therein; but he may plead a former conviction or acquittal in another state or country for the same offense, which, if established, shall be a bar to further proceedings against him for such offense. (4914) [8643]

10111. Witnesses—Every person offending against any provision contained in §§ 10107-10110 shall be a competent witness against any other offender in the same transaction, and shall not be excused from testifying or answering any question upon any investigation or trial of any offense thereunder, upon the ground that his testimony might tend to convict him of a crime. (4915) [8644]

LIBEL AND SLANDER

10112. Libel defined—Gross misdemeanor—Punishment—Prosecutions by county attorneys or attorney general—Every malicious publication by writing, printing, picture, effigy, sign, or otherwise than by mere speech, which shall expose any living person, or the memory of one deceased, to hatred, contempt, ridicule, or obloquy or which shall cause or tend to cause any person to be shunned or avoided, or which shall have a tendency to injure any person, corporation, or association of persons in his or their business or occupation shall be a libel. Every person who publishes a libel shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not less than $100 and not more than $1,000 or by imprisonment in the county jail for not more than six months.

It shall be the duty of the county attorney of any county where any such offense was committed to prosecute the offender or offenders.

In any case wherein the county attorney shall fail or refuse to commence a prosecution upon the complaint of the person claiming to have been libeled, the attorney general may commence such prosecution and carry it to final conclusion, or on application the court may appoint an attorney to prosecute. (4916) [8645] (Amended '25, c. 364, § 1)

1. **What constitutes**—A libel on two or more persons, although not associated in business, contained in a single writing, and published by a single act, constitutes but one offence (60–168, 62+270). A letter for publication containing language that exposes one to obloquy, hatred, or contempt is libelous, even though the person against whom it is directed is not charged with a criminal act or conduct that would subject him to prosecution (83–441, 86+431). Charging malfeasance in office libelous per se (109–99, 123+59). Cited (99–246, 109+231; 109–341, 124+229; 111–159, 126+626.

2. **Indictment**—Office of innuendo (83–441, 86+431; 130–138, 153+258).

3. **Action for damages.** 158–408, 197+752.

10113. How justified or excused—Malice, when presumed—Every publication having the tendency or effect mentioned in § 10112 shall be deemed malicious if no justification or excuse therefor is shown. Such publication is justified whenever the matter charged as libelous is true and was published with good motives and for justifiable ends. It is excused when honestly made, in belief of its truth, and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of a person in respect of public affairs. (4917) [8646]

60–168, 171, 62+270. Cited (109–341, 124+229). 163–109, 203+596.

10114. Publication defined—To sustain the charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. *It is enough that the defendant knowingly displayed* it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by a person other than himself. (4918) [8647]

Whether applies to civil actions, quere (102–455, 113+1062).

10115. Liability of editors and others—Every editor or proprietor of a book, newspaper, or serial, and every manager of a copartnership or corporation by which any book, newspaper, or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper, or serial. But in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault, and against his wishes, by another who had no authority from him to make such publication, and whose act was disavowed by him as soon as known. (4919) [8648]

150–406, 185+931.

10116. Reports of proceedings privileged—No prosecution for libel shall be maintained against a reporter, editor, publisher, or proprietor of a newspaper for the publication therein of a fair and true report of any judicial, legislative, or other public and official proceeding, or of any statement, speech, argument, or debate in the course of the same, without proving actual malice in making the report. But the foregoing shall not apply to a libel contained in the heading of the report, or in any matter added by another person concerned in the publication, or in the report of anything said or done at the time and place of the public and official proceeding, which was not a part thereof. (4920) [8649]

Cited (101–309, 112+258.

10117. Where indicted — Punishment restricted — Every indictment for a libel contained in a newspaper published in the state may be found in any county where the paper was published or circulated, but a person shall not be indicted or tried for the publication of the same libel against the same person in more than one county. (4921) [8650]

10118. Privileged communications—Every communication made to a person entitled to or interested in such communication, by one also interested in or entitled to make it, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, shall be presumed not to be malicious, and shall be termed a privileged communication. (4922) [8651]

82–452, 85+217; 84–347, 87+937.

10119. Threatening to publish libel—Every person who shall threaten another with the publication of a libel concerning the latter or his spouse, parent, child, or other member of his family, and every person who offers to prevent the publication of a libel upon another person on condition of the payment of, or with intent to extort, money or other valuable consideration from any person, shall be guilty of a gross misdemeanor. (4923) [8652]

10120. Slander of women—Every person who, in the presence and hearing of another, other than the female slandered, whether she be present or not, shall maliciously speak of or concerning any female of the age of twelve years or upwards, not a public prostitute, any false or defamatory words or language which shall injure or impair the reputation of such female for virtue or chastity, or which shall expose her to hatred, contempt, or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed malicious if no justification therefor be *shown, and shall be justified when the language charged* as slanderous, false, or defamatory is true, and was spoken with good motives and for justifiable ends. (4924) [8653]

69–30, 71+826; 92–171, 99+800.

A false charge of unchastity made against a school girl 15 years of age, in her immediate presence, and in the presence of another, is a misdemeanor, if there was no justification for the accusation, and, if it was the direct cause of mental or bodily injury, there may be a recovery of damages in an action other than one for slander. 167–203, 208+814.

10121. Testimony necessary to convict—No conviction shall be had under the provisions of § 10120 upon the testimony of the woman slandered, unsupported by other evidence, but must be proved by the evidence of at least two persons other than such woman, who *heard and understood the language charged as slander*ous, or by the admission of the defendant. (4925) [8654]

10122. False statements—Any person who knowingly, wilfully and maliciously states, delivers or transmits by any means whatsoever to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any false and untrue statement concerning any person or corporation, with intent that the same shall be published, is guilty of misdemeanor. ('23 c. 7 § 1)

10123. Slander—Every person who, in the presence and hearing of another, other than the person slandered, whether he be present or not, shall speak of or concerning any person, any false or defamatory words or language which shall injure or impair the reputation of such person for virtue or chastity or which shall expose him to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed malicious if no justification therefor be shown and shall be justified when the language charged as slanderous, false or defamatory was true and was spoken with good motives and for justifiable ends. ('15 c. 284 § 1)

167–203, 208+814, note under § 10120.

10123-1. Producing, publishing or circulating obscene, lewd, lascivious, malicious, scandalous or defamatory newspaper, magazine or periodical a nuisance—Restraining — Participation in — Defenses — Any person who, as an individual, or as a member or employee of a firm, or association or organization, or as an officer, director, member or employee of a corporation, shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away.

(a) an obscene, lewd and lascivious newspaper, magazine, or other periodical, or

(b) a malicious, scandalous and defamatory newspaper, magazine or other periodical,

is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined, as hereinafter provided.

Participation in such business shall constitute a commission of such nuisance and render the participant liable and subject to the proceedings, orders and judgments provided for in this Act. Ownership, in whole or in part, directly or indirectly, of any such periodical, or of any stock or interest in any corporation or organization which owns the same in whole or in part, or which publishes the same, shall constitute such participation.

In actions brought under (b) above, there shall be available the defense that the truth was published with good motives and for justifiable ends and in such actions the plaintiff shall not have the right to report to issues or editions of periodicals taking place more than three months before the commencement of the action. ('25, c. 285, § 1)

10123-2. Same—Injunction—Persons required or entitled to institute proceeding — Process — Pleadings — Whenever any such nuisance is committed or is kept, maintained, or exists, as above provided for, the County Attorney of any county where any such periodical is published or circulated,—or (in the event of such County Attorney's failure or refusal to proceed upon written request in good faith of a reputable citizen of the State) the Attorney General,—or (in the event of such Attorney General's failure or refusal to proceed upon written request in good faith of a reputable citizen of the state), any citizen of such county,—may commence and maintain in the District Court of said county, an action in the name of the State of Minnesota, upon the relation of such County Attorney or Attorney General or citizen, as the case may be, to perpetually enjoin the person or persons committing, conducting or maintaining any such nuisance, from further committing, conducting, or maintaining any such nuisance. In any such action, the court, or a judge thereof in vacation, may, upon such evidence as the court shall deem sufficient, taken in such form as the court shall require, grant a Writ of Temporary Injunction.

The defendant or defendants shall be served therein as in other actions, and the statutory provisions as to service by publication shall be applicable as in other cases. In the case of unknown persons having or claiming any ownership, right, title or interest in any such periodical, or who may be participants in committing or maintaining such nuisance, such persons may be made parties to the action by designating them in the summons and complaint as "all other persons unknown claiming any ownership, right, title or interest in the periodical affected by this action or participating in the commission or maintenance of any nuisance affected by this action," and services on such persons may be made by publishing the summons in the manner prescribed in Section 7737 of the General Statutes for 1913.

The defendant or defendants shall have the right to plead by demurrer or answer, and the plaintiff shall have the right to demur or reply as in other cases. ('25, c. 285, § 2)

Explanatory note—For G. S. '13, § 7737 see § 9234, herein.

10123-3. Same—Trial of action—Issue of injunction —Violations of—Penalty—The action may be brought to trial and tried as in the case of other actions in such District Court, and shall be governed by the practice and procedure applicable to civil actions for injunctions.

After trial the court may make its order and judgment permanently enjoining any and all defendants found guilty of violating this act from further committing or continuing the acts prohibited hereby, and in and by such judgment, such nuisance may be wholly abated.

The court may, as in other cases of contempt, at any time punish, by fine of not more than $1,000, or by imprisonment in the county jail for not more than twelve months, any person or persons violating any injunction, temporary or permanent, made or issued pursuant to this act. ('25, c. 285, § 3)