1936 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1936)

(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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Admissibility of evidence, and variance between allegations and proof. 180M450, 231NW225.

RESCUES AND ESCAPES

10005. Taking property from office.
Owner of growing crops levied on by officer violates this section by feeding the crops to his live stock. Op. Atty. Gen., Mar. 9, 1929.

10012-1. Jumping bail a gross misdemeanor.—Any person charged with or convicted of a felony who has been admitted to bail or released on recognizance in connection with such felony, and who wilfully fails to appear as required and thereby incurs a forfeiture of his bond or recognizance is guilty of a gross misdemeanor, if he does not appear or surrender himself within thirty days thereafter. (Act Apr. 17, 1935, c. 196.)

PERJURY AND OTHER CRIMES

10016. Perjury defined.
1. What constitutes.
No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.
5. Evidence.
Evidence held to sustain verdict of guilty of perjury. State v. Olson, 186M45, 242NW348. See Dun. Dig. 7476.

10018. Knowledge of materiality not necessary.
No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

10028. Neglect of duty by officers, trustees, etc.
If a recorder of a village fails to perform his duties, he may be prosecuted under this section, and his conviction would create a vacancy in his office under section 6953(5). Op. Atty. Gen., Oct. 20, 1931.

10030. Arrest without authority.
Railroad held liable for unlawful arrest by special agent at depot. 176M203, 223NW94.
If an intoxicating liquor inspector is rightfully within a place where non-intoxicating liquors are sold, he may seize intoxicating liquor for purpose of using same for evidence in a prosecution, but he may not search premises for intoxicating liquors, and in such case a search warant is not necessary. Op. Atty. Gen. (218f), Feb. 5, 1935.

10033. Resisting public officer.
A sheriff cannot enter a home by force for purpose of levying an execution, but debtor is guilty of resisting an officer in refusing to give up the property. Op. Atty. Gen. (390a-6), Feb. 7, 1935.
State fire marshal may not use force to effect entry on premises for purpose of making inspection, but owner padlocking premises so that inspection may not be made is guilty of offense of resisting, delaying and obstructing a public officer in discharge of his duties. Op. Atty. Gen. (197c), May 9, 1935.

10034. Compounding crimes.
Complaint held not bad for duplicity, and evidence held to support conviction. 181M106, 231NW804.

10044. Misconduct by attorneys.
This section trebles damages in actions therein referred to, but does not create any new cause of action. 181M322, 232NW515. See Dun. Dig. 674.

10047. Punishment for prohibited acts.
This section provides penalties for those sections in Laws 1931, c. 70, for which no penalty is provided in section 9 of such act. Op. Atty. Gen., Oct. 19, 1931.

10052. Other false certificates.
Civil liability for false certificate as to tax liens. 181 M334, 232NW359. See Dun. Dig. 2314a.

CHAPTER 97
Crimes Against the Person

HOMICIDE

10065. Defined and classified.
Evidence that defendant was the possessor of a weapon of the kind with which a homicide was committed is not rendered incompetent by reason of the fact that it tends incidentally to prove the commission of other and unrelated offenses. 172M106, 214NW782.
State's rebuttal evidence was admissible. 172M106, 214 NW782.
A conviction for homicide cannot stand on evidence of motive with nothing more; there must be enough additional evidence so that whole shows guilt beyond reasonable doubt. State v. Waddell, 187M191, 245NW140. See Dun. Dig. 4247.

10067. Murder in first degree.
4. Premeditation.
Murder in the first degree requires a premeditated design to effect death of person killed or another. State v. Norton, 194M410, 260NW502. See Dun. Dig. 4232b.
8. Evidence.
No reversible error found in reception of evidence of conversation between killer and defendant after arrest. 176M562, 223NW917.
Finding that defendant, with knowledge of killer's intent to kill, encouraged and abetted him, held justified by the evidence. 176M562, 223NW917.
Dying declarations, res gestae, and sufficiency to support conviction. 180M221, 230NW639.
Circumstantial evidence held to support conviction for first degree murder of one upon whom accused carried life insurance. State v. Waddell, 187M191, 245NW 140. See Dun. Dig. 4247.

10068. Murder in second degree.
Evidence sustained finding of murder in second degree. State v. Quinn, 186M242, 243NW70. See Dun. Dig. 4233.
Murder in the second degree requires a design to effect death of person killed or another, but without deliberation or premeditation. State v. Norton, 194M410, 260NW502. See Dun. Dig. 4233.

10070. Murder in third degree.
1. What constitutes.
One killing another with an automobile while recklessly driving it in an intoxicated condition may be convicted of murder in the third degree. 171M414, 214NW 280.
Evidence held not to require an instruction that defendant should be acquitted if he was so drunk that he did not know what he was doing. 171M414, 214NW 280.
Murder in the third degree is killing of a human being, when perpetrated by acts eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect death of any individual, or without a design to effect death, by a person engaged in committing or attempting to commit a felony either upon or affecting the person killed or otherwise. State v. Norton, 194M410, 260 NW502. See Dun. Dig. 4234.

10072. [Repealed].
Repealed by Act Mar. 31, 1933, c. 130.

10072-2. [Repealed].
Repealed by Act Mar. 31, 1933, c. 130.

10073. Manslaughter defined.
State v. Quinn, 186M242, 243NW70.
In a case where a claim is made that crime of manslaughter should be submitted, instrument or weapon with which homicide is effected must be taken into consideration. State v. Norton, 194M410, 260NW502. See Dun. Dig. 4240a.
Where evidence showed that defendant deliberately pointed gun at wife and shot her, court did not err in refusing to submit manslaughter to jury. Id. See Dun. Dig. 4247a.

10074. Manslaughter in first degree.
Upon an indictment charging manslaughter in the first degree, trial court properly submitted to the jury question of manslaughter in the second degree. State v. Stevens, 184M286, 238NW673. See Dun. Dig. 4243.
5. Evidence.
Statement of deceased forty minutes after assault, "Oh, Mother, my head hurts me, one held me while the other hit me," held admissible. 173M410, 217NW373.
Defendant advancing good character to show improbability of his guilt is not limited to general repute but may show as a fact that he possesses a certain disposition or certain characteristics. 173M410, 217NW 373.

10075. Same.
Manslaughter in first degree is killing of a human being without a design to effect death, by a person committing or attempting to commit a misdemeanor, or in heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon. State v. Norton, 194 M410, 260NW502. See Dun. Dig. 4240a.

10076. Killing of unborn child or mother.—Every person who shall wilfully kill an unborn quick child by an 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, or that of the child with which she is pregnant, 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. (R. L. '05, 4882; G. S. '13, §8610; Apr. 5, 1935, c. 108.)

Admission of testimony as to conversation had with deceased after performance of illegal operation held not prejudicial error, since defendant was in no way mention in conversation testified to. State v. Zabrocki, 194M 346, 260NW507. See Dun. Dig. 4240a.

In prosecution for manslaughter because of death of a female on whom defendant had performed an illegal operation, evidence held sufficient to sustain verdict of guilty. Id. See Dun. Dig. 4240a.

10078. Manslaughter in second degree.

State v. Stevens, 184M286, 238NW673; note under § 10074.

Automobilist held properly convicted of manslaughter in the second degree. 175M537, 221NW899.

Conviction of manslaughter for culpable negligence in running down pedestrian on street, held sustained by evidence. 179M1, 228NW171.

Evidence, held to support conviction for death of person by culpable negligence. 181M68, 231NW721.

Evidence sustains a conviction of manslaughter in the second degree. State v. Stevens, 184M286, 238NW673. See Dun. Dig. 4241.

Evidence held to sustain conviction for manslaughter in second degree arising out of negligent operation of automobile. State v. Geary, 184M387, 239NW158. See Dun. Dig. 4241.

Indictment held sufficient to charge manslaughter in second degree as against one operating an automobile. State v. Geary, 184M387, 239NW158. See Dun. Dig. 4244.

10089. Homicide by other person, justifiable when.

State v. Quinn, 186M242, 243NW70.

1. Self-defense.

Burden of proving self-defense is not upon defendant. State v. Quinn, 186M242, 243NW70. See Dun. Dig. 4245.

ASSAULT

10097. Assault in first degree defined—How punished.

Sufficiency of identification of accused. 179M516, 229 NW789.

Evidence, held to support conviction. Expert testimony as to signature of person purchasing revolver, held properly received in evidence. 181M28, 231NW411.

Evidence held to warrant conviction of first degree assault though defendant was not present at time of assault, being a member of a racketeering gang. State v. Barnett, 193M336, 258NW508. See Dun. Dig. 534.

In prosecution for conspiracy to assault against one not present at time of assault, evidence that defendant was member of racketeering gang and had made threats against complaining witness was admissible. Id. See Dun. Dig. 541, 2468.

In prosecution for conspiracy to assault, evidence that associates of defendant have made threats against complaining witness was admissible. Id. See Dun. Dig. 2460.

Landlord shooting windows out of his own house for purpose of forcing tenants to move but without intending to injure anyone could be prosecuted for firing gun in public place but would not be guilty of assault. Op. Atty. Gen. (494b-4), Aug. 29, 1934.

10098. Assault in second degree defined—How punished.

1. What constitutes in general.

Assault upon a de facto officer to prevent a lawful arrest is an assault in the second degree under this section. 174M565, 219NW877.

It is sufficient if the intended "felony" is involved in the offender's conduct in his relation towards some person or persons other than the one actually assaulted. State v. Jankowitz, 175M409, 221NW533.

The word "willfully" means evil intent or bad purpose, but does not require a specific intent to inflict grievous bodily injury. 178M589, 228NW164.

Whether defendant inflicted grievous bodily harm, held for jury. 178M589, 228NW164.

2. What constitutes assault armed with dangerous weapon.

Landlord shooting windows out of his own house for purpose of forcing tenants to move but without intending to injure anyone could be prosecuted for firing gun in public place but would not be guilty of assault. Op. Atty. Gen. (494b-4), Aug. 29, 1934.

3. Indictment.

Where one of a number engaged in highjacking liquor shot prosecuting witness and it is unknown which one fired shot, anyone of them may be prosecuted under an information for aiding and abetting John Doe, but any of them may also be informed against as principals. Op. Atty. Gen., Feb. 15, 1933.

ROBBERY

10101. Defined.

Positive identification of defendant by two of holdup victims and corroborating testimony of two other witnesses for state was sufficient to warrant a finding of guilty, even though witnesses for defendant testified that on date of robbery defendant was in another state. State v. Chick, 192M539, 257NW280. See Dun. Dig. 8491.

There is a distinction between robbery and larceny, and the theft of several articles at the same time and place by the same act constitutes a single offense whether the articles belong to the same owner or to different owners. Op. Atty. Gen., Dec. 15, 1931.

Where partners in a store are robbed, and robber takes money from the persons of each and from the store till, three offenses are committed, and there should be three separate indictments. Op. Atty. Gen., Dec. 15, 1931.

Where two or more persons are robbed at the same time, a separate offense is committed as to each and separate indictments are necessary. Op. Atty. Gen., Dec. 15, 1931.

10102. In first degree, how punished.

Conviction for robbery in taking shotgun by force during attempt to rob held sustained by evidence. 173 M232, 217NW104.

Evidence in relation to weapons and shells found at the time of defendant's arrest was properly received in prosecution for taking shotgun. 173M232, 217NW 104.

Evidence held to support conviction and rulings on evidence approved. 179M301, 229NW99.

Evidence, held to present a question for the jury as to the identity of defendant. 181M203, 232NW111. See Dun. Dig. 2468d, 2477.

Evidence held to support verdict of robbery in first degree. State v. Stockton, 186M33, 242NW344. See Dun. Dig. 8491.

10103. Same.

179M532, 229NW787.

10104. In second degree, how punished.

A second degree conviction may be had under an indictment charging robbery in the first degree upon the customary allegation as to the use of force and violence. Op. Atty. Gen., Dec. 15, 1931.

10106. Life imprisonment for bank robbers.

Statute is constitutional. 171M158, 213NW735.

Charge held not objectionable as permitting conviction of crime other than that charged. 171M158, 213NW 735.

Admissibility and sufficiency of evidence. 171M158, 213NW735.

Evidence justified in finding of participation in robbery of bank. 177M363, 225NW278.

Statute applies to bandits who enter bank when there is no human being there and commit robbery when employees arrive. Op. Atty. Gen., May 24, 1933.

Judge has power to fix a maximum sentence of less than life for robbery of a bank. Op. Atty. Gen., Nov. 25, 1933.

LIBEL AND SLANDER

10112. Libel defined—Gross misdemeanor, etc.

1. What constitutes.

Statements contained in letter held not to constitute criminal libel. Op. Atty. Gen., Sept. 1, 1933.

2. Indictment.

In a prosecution for criminal libel, where indictment charges that libelous matter was published of and concerning a person or persons named, it need not otherwise state the extrinsic facts to show that language used applied to person or persons named in indictment as being libeled. Such extrinsic facts are to be shown by evidence at trial. State v. Cramer, 193M344, 258NW525. See Dun. Dig. 4384.

Where a libelous article charges a named voluntary unincorporated association of persons with wrongdoing, the libel applies to the members of such association, although not specifically named in the article. Id. See Dun. Dig. 4360.

Where an indictment for libel sufficiently charges that libelous language tended to and did expose persons named therein as having been libeled, to hatred, contempt, ridicule, and obloquy, and caused them to be shunned and avoided, a further but insufficient charge as to injury to business and occupation of such persons may be disregarded as surplusage. Id. See Dun. Dig. 4364.

10114. Publication defined.

There is no liability for sending a libelous letter to the person defamed, though a third person reads the letter. 181M364, 232NW625. See Dun. Dig. 5507(67).

10120. Slander of women.
Op. Atty. Gen., Jan. 11, 1930.

10123. Slander.
Op. Atty. Gen., Jan. 11, 1930.

10123-1. Lewd, scandalous and defamatory newspaper.

This act [§§10123-1 to 10123-3] does not violate Const., art. 1, §§3, 4. 174M457, 219NW770.
This act is constitutional. State v. Guilford, 179M40, 228NW326. Reversed by U. S. Sup. Ct., 283US697, 51SCR 625.

10123-3. Same—Trial—Injunction—Contempt.
There is no right to a jury trial. 174M457, 219NW770.

10123-4. Certain statements to be unlawful.—It shall be unlawful for any person, firm or corporation to falsely and maliciously state, utter, publish or cause to be falsely and maliciously stated, uttered, or published, any report, rumor or statement directly or indirectly tending to disclose that any bank, public or savings institution is in an existing or probable insolvent financial condition. (Act Apr. 17, 1929, c. 212, §1.)

10123-5. Violation a gross misdemeanor.—Any person, firm or corporation violating any of the provisions of Section 1 hereof shall be deemed guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail of any county wherein such false, slanderous declarations are made or published, for a term of not less than 30 days nor more than 6 months or by a fine of not less than $100.00 or both. (Act Apr. 17, 1929, c. 212, §2.)
Each single statement or utterance would constitute a separate offense. Disclosure of truth concerning a bank would not be an offense. The rules of law with respect to malice in the law of libel and slander applies. Form of complaint suggested. Op. Atty. Gen., Jan. 11, 1930.

CHAPTER 98

Crimes Against Morality, Decency, Etc.

RAPE—ABDUCTION—CARNAL ABUSE, ETC.

10124. Rape.
A paper charging defendant with conduct unbecoming a member of the church, signed by an officer of the church, held inadmissible. State v. Wulff, 194M271, 260 NW515. See Dun. Dig. 8231.
Evidence of specific acts, as distinguished from reputation evidence, showing or tending to show want of chastity on part of prosecutrix may be introduced to bear on question of consent. Id. See Dun. Dig. 8231.
Evidence held to create such a grave doubt of defendant's guilt as to require a new trial, despite conviction by jury. Id. See Dun. Dig. 8244.
4. Evidence.
Guilt held for jury. 171M187, 213NW740.
Evidence held to warrant a conviction for attempt to rape 14 year old girl. 171M173, 213NW923.
Evidence held to sustain conviction. 172M226, 215NW 189.
Defendant in rape prosecution who undertakes to prove unchastity of a young girl should be required to offer rather definite proof thereof. State v. Brown, 185 M446, 241NW591. See Dun. Dig. 8243a.
In prosecution for rape, court did not err in refusing to admit evidence that complainant on some occasions drank liquor, smoked cigarettes and attended dances, and was somewhat indiscreet in her behavior. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8231.
Evidence held to sustain conviction of attempt to rape. State v. Brown, 185M446, 241NW591. See Dun. Dig. 8235.

10125. Carnal knowledge of children.
Op. Atty. Gen., May 25, 1932; note under §10132.
2. What constitutes.
Verdict of guilty sustained by evidence. 175M174, 220 NW547.
6. Evidence.
Evidence held to warrant a conviction for attempt to rape. 171M173, 213NW923.
Evidence held to sustain a verdict of guilty. 172M372, 215NW514.
Verdict of not guilty in a proceeding to charge defendant with paternity is not admissible. 175M174, 220 NW547.
Evidence of illicit relations with others is not admissible in defense or in mitigation of punishment, but is only admissible in case of pregnancy to rebut the pregnancy as corroborative evidence. 175M174, 220NW 547.
Verdict held sufficiently supported. 176M604, 224NW 144.
Evidence in a carnal knowledge case held so consistent with the hypothesis of guilt as to sustain conviction. State v. Nelson, 185M351, 241NW48. See Dun. Dig. 8233.
Evidence held to support conviction for carnal knowledge of female less than fifteen years old. State v. Kosek, 186M119, 242NW473. See Dun. Dig. 8244.
Evidence held to support conviction for carnal knowledge of girl. State v. Marudas, 187M138, 244NW549. See Dun. Dig. 8244.
Evidence held sufficient to establish corpus delicti in prosecution for carnal knowledge of girl. State v. Bauer, 189M280, 249NW40. See Dun. Dig. 8244(13).
7. Trial.
Demonstration in court room by father of prosecutrix in prosecution for rape on girl under 18, held not ground for new trial in view of the admonition of the court to the jury. 172M372, 215NW514.

10132. Indecent assault.—Every person who shall take any indecent liberties with or on the person of any female, not a public prostitute, without her consent expressly given, and which acts do not in law amount to rape, an attempt to commit a rape, or an assault with intent to commit a rape, and every person who shall take such indecent liberties with or on the person of any female under the age of sixteen years, and every person who shall take any indecent liberties with or on the person of any male under the age of sixteen years, without regard to whether he or she shall consent to the same or not, or who shall persuade or induce any male or female under the age of sixteen years to perform any indecent act upon his or her own body or the body of another, shall be guilty of a felony. (R. L. '05, §4392; G. S. '13, §8663; '27, c. 394; Feb. 20, 1929, c. 27.)
Title of laws 1927, c. 394, does not express the subject of the act in so far as it refers to change of age of consent, and act is ineffective to that extent. 173M 221, 217NW108.
Fact that girl assaulted made complaint of outrage is admissible, but neither the particulars of the offense nor the name of the person may be disclosed as a part of the complaint, except where the complaint is made as a part of the res gestae. 173M305, 217NW120.
This section applies only to conduct toward male and female persons under 14 years of age, as the amending statute of 1927 was invalid in that respect because having insufficient title. State v. Phillips, 176M234, 223NW 98.
Evidence held to sustain conviction for taking indecent liberties with sixteen year old girl. State v. Weis, 186M342, 243NW135. See Dun. Dig. 552a.
Offense of indecent assault or taking indecent liberties is lesser offense included within charge of carnal knowledge. Op. Atty. Gen., May 25, 1932.
Construed and distinguished from §10153. Op. Atty. Gen. (494b-4), May 25, 1934.

CRIMES AGAINST CHILDREN, ETC.

10135. Desertion of child and pregnant wife.—Every parent, including the duly adjudged father of an illegitimate child and a father who in an action for divorce or separate maintenance has been judicially deprived of the actual custody of his child, or other person having legal responsibility for the care or support of a child who is under the age of sixteen years and unable to support himself by lawful employment, who fails to care for and support such child with intent wholly to abandon and avoid such legal responsibility for the care and support of such child; and every husband who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion of and failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon and/or to avoid legal