

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

Edited by
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State v. Soltau, 212M20, 2NW(2d)155. See Dun. Dig. 2477, 7476.

10022. Perjury and subornation.

Sentence of one-year imprisonment was not unusually hard and severe for perjury. State v. Soltau, 212M20, 2NW(2d)155. See Dun. Dig. 2502.

10028. Neglect of duty by officers, trustees, etc.

State v. Bratrud, 210M214, 297NW713, 134ALR1248. Wilful neglect of duty was not intended to apply to neglect to perform a duty of such character that as a matter of public interest a public officer must, in faithful discharge of his duties, scrutinize prior proceedings to determine their legality in order to conclude whether his duty has in fact arisen. State v. Bratrud, 210M214, 297NW713. See Dun. Dig. 8028.

10033. Resisting public officer.

Where licensed fur dealer was arrested upon three complaints, two arising out of violation of fur law and third on charge of resisting a game warden, and was fined under each complaint, whether state was entitled to 50% of fine under last complaint depends upon which statute prosecution was based. Op. Atty. Gen. (199B-4), Mar. 20, 1942.

10034. Compounding crimes.

One convicted of compounding a crime on plea of guilty cannot question the conviction in a disbarment proceeding. Wallace, 209M465, 296NW534. See Dun. Dig. 678.

10053. Falsely auditing and paying claims.

Evidence held to show false audit and payment of claims on state. State v. Elsberg, 209M167, 295NW913. See Dun. Dig. 8846c.

A county commissioner auditing and allowing a fraudulent claim is guilty of a felony and an infamous crime, and on conviction his office is automatically vacated. Op. Atty. Gen. (126G), Oct. 11, 1940.

10055. Conspiracy defined—How punished.

Evidence held to sustain conviction of conspiracy to possess and sell counterfeit notes. Firoto v. U. S., (CCA 8), 124F(2d)532. See Dun. Dig. 1563a.

Immunity of judicial officers to civil action for judicial acts cannot be avoided by pleading that acts complained of were results of a conspiracy previously entered into. Linder v. F., 209M43, 295NW299. See Dun. Dig. 4959.

In action for conspiracy in inducing wrongful breach of contract, not being an action for breach of contract or for an accounting, there could be no recovery if there was justification for action of defendant in terminating relations with plaintiff. Wolfson v. Northern States Management Co., 210M504, 299NW676. See Dun. Dig. 1562, 1564.

No action lies for a conspiracy unless it be shown either that end sought to be accomplished by conspirators was unlawful or, if lawful, that means resorted to for its accomplishment were harmful. Id.

Arson is a felony, while a conspiracy to commit arson is a misdemeanor. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a, 2406.

A conspiracy to commit a crime is a separate offense from the crime which is the object of the conspiracy. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 1563a.

If the proof of conspiracy to defraud is such as reasonably to show a completed structure of fraudulent result the frame of which has been furnished by several defendants, the parts if and when brought together showing adaptation to each other and to the end accomplished, it is reasonable to draw the inference of conspiracy and common intent to defraud. Jewell v. Jewell, 215M190, 9NW(2d)513. See Dun. Dig. 1566b.

Conspiracy to defraud is usually provable only by circumstantial evidence. Id. See Dun. Dig. 1566b.

A complaint in action by widow, by guardian ad litem, against administrator, surety, general guardian, surety,

and against administrator in his individual capacity, involving actions ex contractu and ex delicto, was the subject to demurrer for misjoinder of causes of action, though plaintiff attempted to weld them into a single claim for damages for conspiracy. Id. See Dun. Dig. 1567.

Where the evidence permits an inference of concert of action to accomplish a given unlawful result, as where several persons commit separate acts which form parts of a connected whole, an inference of conspiracy is permissible that there was concert in both planning and execution, but the parts or acts done by each must not only tend to show a prior unlawful combination, but negative the idea of lawful undertaking or purpose. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 1562.

Where parties combine and agree for innocent and lawful purposes, they are not liable for criminal conspiracy on account of acts done pursuant to the agreement or combination, unless such acts are criminal and they participate in or assent to the commission of the same. Id.

A conspiracy to commit a crime is a separate, substantive offense from the crime which is the object of the conspiracy. Id. See Dun. Dig. 1563a.

Persons may combine to commit lawful acts. Id. See Dun. Dig. 1564.

The labor injunction in Minnesota. 24MinnLawRev757. The state legislatures and unionism. 38MichLawRev 987.

(4). A defendant cannot be found guilty of conspiracy to cheat and defraud unless it be shown that he and the other alleged conspirators had a common purpose to cheat and defraud and each of them understood that the others had such purpose. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 1562.

Where the truth of representations is known to an employee, but not to his employer, the latter cannot be held criminally liable for conspiracy to cheat and defraud by means of the representation. Id. See Dun. Dig. 1562, 2416.

Criminal liability for conspiracy is predicated upon personal guilt. Id. See Dun. Dig. 1564.

A conscious and intentional purpose to break the law is an essential ingredient of the crime of conspiracy. Id.

To constitute a conspiracy to cheat and defraud, there must be not only a combination, but a common object to cheat and defraud, which each member of the combination intends shall be accomplished by the concerted action of all. Id.

Evidence held insufficient to sustain conviction of member of partnership operating a collection agency to defraud a debtor by false representations as to amounts due. Id. See Dun. Dig. 1566b.

A criminal conspiracy need not be established by direct evidence, but may be inferred from the circumstances, nor is it necessary to show a formal agreement to commit the crime charged. Id.

10056. Conspiracy, when punishable—Overt act.

Arson is a felony, while a conspiracy to commit arson is a misdemeanor. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a, 2406.

One who procured, conspired with, or commanded another to burn her house was not guilty of substantive crime of arson where she attempted to prevail upon the party who was to commit the crime not to go on with the plan. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a.

A conspiracy to commit a crime is a separate offense from the crime which is the object of the conspiracy. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 1563a.

10060-1. Printing and circulating certain documents prohibited.

A "notice before suit" signed by a justice of the peace would violate this section. Op. Atty. Gen., (161a-8), Mar. 19, 1941.

CHAPTER 97

Crimes Against the Person

HOMICIDE

10066. Proof of death and of killing by defendant.

In prosecution for murder of wife testimony by witnesses that they had seen deceased with bruises and black eyes was admissible where it was connected with acts of defendant by other evidence and the inferences permissible therefrom. State v. Rediker, 214M470, 8NW(2d)527. See Dun. Dig. 4246.

10067. Murder in first degree.

8. Evidence.

In prosecution for murder of wife, evidence that deceased had various times bore marks of assault would not alone be admissible, but where evidence to connect the fact of frequent bruises with noises and commotion, com-

mingled with defendant's threats and curses emanating from their apartment, the evidence is admissible to show a course of conduct and a mental attitude of defendant toward his wife, and to show malice. State v. Rediker, 214M470, 8NW(2d)527. See Dun. Dig. 4246.

In prosecution for murder of wife it was highly improper for prosecutor on cross-examination of defendant to ask whether his wife remained silent as to his acts of misconduct in order to save the family reputation and also whether or not he had beat his first wife, but such questions, to which objections were sustained, were not prejudicial where record contained an abundance of testimony of defendant's brutality toward deceased. Id.

10068. Murder in second degree.—Such killing of a human being, when committed with a design to ef-

fect the death of the person killed or of another, but without deliberation and premeditation, or when such killing is committed without a design to effect the death of the person killed or of another and without deliberation or premeditation by a person attempting to commit or engaged in the commission of a rape, assault with an attempt to commit rape, indecent assault, or sodomy, or any thereof either upon or affecting the person killed or otherwise, is murder in the second degree and shall be punished by imprisonment in the state prison for the offender's natural life. (As amended Act Apr. 19, 1941, c. 314, §1.)

Evidence sustained verdict of murder in second degree. State v. Palmer, 288NW160. See Dun. Dig. 4233.

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, any felony, except rape, assault with an attempt to commit rape, indecent assault, or sodomy, 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. (As amended Act Apr. 19, 1941, c. 314, §2.)

Act Apr. 19, 1941, c. 314, §3, provides that all offenses committed, and all penalties and punishments incurred therefor, prior to the taking effect hereof, shall be prosecuted and punished in the same manner and with the same effect as if this amendment had not been passed. Also applicable to §10068.

10073. Manslaughter defined.

Because in manslaughter case evidence as strongly supported an inference of innocence as it did one of

guilt, a new trial was ordered. State v. Larson, 207M515, 292NW107. See Dun. Dig. 4247.

10076. Killing of unborn child or mother.

Evidence held sufficient to sustain a conviction of manslaughter in first degree incident to an abortion. State v. Lemke, 207M35, 290NW307. See Dun. Dig. 4240a.

ASSAULT

10097. Assault in first degree defined—How punished.

In prosecution for assault and battery upon a woman in her apartment, it was not prejudicial error to exclude evidence of a plumber that he had instructed defendant to return to the complaining witness's apartment to examine a radiator. State v. Bresky, 213M 323, 6NW(2d)464. See Dun. Dig. 541.

An admission by the complaining witness in an assault and battery case that she had been bruised in an accident some 18 months before the alleged assault upon her was too remote to be relevant in the trial of the assault case. Id.

10098. Assault in second degree defined—How punished.

3. Indictment.

Two offenses cannot be joined in one information but means for committing same offense can be alleged in alternative. Op. Atty. Gen., (133B-7), April 29, 1940.

5. Assault with intent to commit a felony.

Jurisdiction of a juvenile court does not supersede that of magistrate where a minor is charged with assault with intent to commit rape. Op. Atty. Gen. (268f), Apr. 10, 1942.

LIBEL AND SLANDER

10120. Slander of women.

School board member convicted of misdemeanor of slander of women is not subject to removal. Op. Atty. Gen., (475E), May 2, 1940.

CHAPTER 98

Crimes Against Morality, Decency, Etc.

RAPE—ABDUCTION—CARNAL ABUSE, ETC.

10124. Rape.

2. Resistance.

Question whether complaining witness resisted to her utmost is a relative one, depending upon circumstances of each case, such as the time, place, and character of the assault, and the age, intelligence, courage, and the temperament of the female, and where facts are conflicting it is for jury. State v. Toth, 214M147, 7NW (2d)322. See Dun. Dig. 8229.

3. Indictment.

In rape cases statements of complaint made by victim are not generally part of res gestae, and it is not on that ground that they are received in evidence. State v. Toth, 214M147, 7NW(2d)322. See Dun. Dig. 8231.

Doctrine of admissibility in rape cases of statements of complaint made by victim, in strict law, appears to be that delays, especially if not great, only weaken effect of evidence of complainant on jury. Id.

In prosecution for rape mother's testimony concerning complainant "well, she told me that he attacked her * * * she said that she was attacked that night, what happened to her from E. T." was admissible so far as concerning complaint made to her by complainant. Id.

In a rape case fact that defendant's name was mentioned in mother's testimony as to complaint made to her by complainant was not important where question of identity was not involved. Id.

In prosecution for rape, evidence that soon after offense girl assaulted made complaint of outrage is admissible in corroboration of her testimony. Id.

Rape may be proved by uncorroborated testimony of a complaining witness. Id. See Dun. Dig. 8232.

Evidence sustained a conviction of rape by force. Id. See Dun. Dig. 8233.

10125. Carnal knowledge of children.

5. Prosecutrix not accomplice.

A girl under the age of consent under carnal knowledge statute is not an accomplice under the sodomy statute and corroboration of her testimony is not required. State v. Schwartz, 215M476, 10NW(2d)370. See Dun. Dig. 8232.

6. Evidence.

In a prosecution for carnal knowledge, evidence of prior acts of sexual intercourse of complaining witness

with defendant is admissible as disclosing inclination of parties to commit act complained of and as corroborative of specific charge. State v. Elijah, 206M619, 289NW 575. See Dun. Dig. 8243a.

Ordinarily evidence showing that the complaining witness had sexual intercourse with other men is not admissible in a prosecution for carnal knowledge. Id. See Dun. Dig. 8243a.

Evidence held to sustain a conviction of carnal knowledge of a girl under 14 years of age. State v. McClain, 208M91, 292NW753. See Dun. Dig. 8244.

10132. Indecent assault.

Disbarment will follow where accused attorney has been found guilty of felony of indecent assault. Van Wyck, 207M145, 290NW227.

CRIMES AGAINST CHILDREN, ETC.

10135. Desertion of child and pregnant wife.

Under this section there must be proof of some affirmative act or acts constituting desertion and intent to wholly abandon. Op. Atty. Gen., (133B-1), Nov. 16, 1939.

Man leaving wife and children and going to another state and sending wife money for a number of months before stopping, could not be prosecuted under §10135, but could be prosecuted under §10136 for non-support, and could probably be extradited under the uniform extradition act adopted by both states. Op. Atty. Gen. (193B-1), Aug. 14, 1940.

Whether a father has abandoned his children is a question of fact. Op. Atty. Gen. (840a-1), Sept. 5, 1943.

10136. Failure to support wife or child.

A divorced husband willfully failing to support minor children in custody of former wife would be guilty of a continuing offense under this section, but could successfully defend a prosecution by complying with order of court in divorce case fixing inadequate allowance for support of children. Krueger v. Krueger, 210M144, 297NW 566. See Dun. Dig. 7305b.

Abandonment of a child is a continuing offense, and limitation does not run during time father is outside state, and he is a fugitive from justice if offense charged is a few days prior to date of leaving state, and same result is accomplished if father returns to state and again leaves. Op. Atty. Gen., (193B-1), Sept. 28, 1939.