1941 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.

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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 offence 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.

Under this section no proof of affirmative acts is necessary, but merely proof of omission, or failure to perform duty of supporting minor children or wife in destitute circumstances. Op. Atty. Gen., (133B-1), Nov. 16, 1939.

Charge may be brought in county where wife and children reside. Id.

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.

Parent is liable for support of neglected child where juvenile court has placed it temporarily in a local home. Op. Atty. Gen. (840a-9), May 7, 1943.

10137. Prosecution.—On complaint being made in writing and under oath by the wife, or by an official or member of the governing body of the town, village, city or county wherein such wife is a resident, or by any reputable person to a justice of the peace or judge of a municipal court, accusing any person of the offense defined in Section 10136, the justice or judge shall issue his warrant against the person accused, directed to the sheriff or constable of the county, commanding him forthwith, to bring such accused person before the justice or judge to answer such complaint. (As amended Act Apr. 23, 1941, c. 396, §1.)

10140. Keepers of public places to exclude minors.

Municipal liquor store may not sell intoxicating liquor to father of a minor child, such liquor to be consumed by such minor upon the premises. Op. Atty. Gen. (218J-12), Sept. 5, 1940.

A place licensed to sell intoxicating liquors may not permit amateur performances therein by minors, even without compensation, unless a permit has first been obtained from industrial commission, and it is probable that such performances would violate criminal law. Op. Atty. Gen., (270a-4), May 24, 1941.

Where primary business of off-sale licensees, such as drug stores and grocery stores, is other than liquor business, and dealing in so-called "off-sale liquors" is only incidental to and carried on in same store with main business, it was not intention of legislature to exclude minors from being employed by or being present in such drug or grocery stores, even though minor might not be eligible to sell the liquor. Op. Atty. Gen. (218J-12), Mar. 12, 1942; Mar. 19, 1942.

It is illegal for minors to be employed in places engaged in sale of intoxicating liquor, except where primary business of licensee is other than liquor business and where dealing in so-called off sale liquor is only incidental to and carried on in same store with the main business. Op. Atty. Gen. (218j-12), Mar. 2, 1943.

Beer parlor and pool room separated by a door and with common ownership. Op. Atty. Gen. (802b-6), Apr. 30, 1943.

Employment of minors in place where bowling alley, refreshment counter at which 3.2 beer is sold, and a restaurant are operated close together. Op. Atty. Gen. (270a-4), May 15, 1943.

City ordinance prohibiting employment of any person under age of 21 years in places licensed to sell non-intoxicating malt beverages is valid. Op. Atty. Gen. (217F-3), June 30, 1943.

10141. Minors—Gaming by prohibited, where, etc.

Beer parlor and poolroom separated by a door and with common ownership. Op. Atty. Gen. (802b-6), Apr. 30, 1943.

City ordinance prohibiting employment of any person under age of 21 years in places licensed to sell non-intoxicating malt beverages is valid. Op. Atty. Gen. (217F-3), June 30, 1943.

10142. Minors unaccompanied, etc.—Playing pool, billiards, or bowling prohibited, where—How punished.—Any person under the age of eighteen years or who is a minor pupil in any school, college or university is prohibited from playing pool, or billiards in any public pool or billiard room or in any public place of business, unless accompanied by his parent or guardian, and any person under the age of eighteen years or who is a minor pupil in any school, college or university who shall engage in any game of pool or billiards in any such place, or frequent or loiter within any pool or billiard room, or any public place of business where pool or billiards are played, unless accompanied by his parent or guardian, shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding ten dollars. (As amended Act Mar. 14, 1941, c. 65, §1.)

It is doubtful that an instructor in physical education in a school could be considered a "guardian". Op. Atty. Gen. (802B), Dec. 7, 1940.

It is doubtful that a duck pin alley is a "bowling alley". Op. Atty. Gen., (802B), Feb. 25, 1941.

10143. Keepers of public places to exclude—Penalty.—Every keeper or person in charge of any pool or billiard room, or public place of business where pool or billiards are played who shall permit or allow any person under the age of eighteen years or any minor pupil of any school, college or university to play any or said games, therein, or to gather in, loiter or frequent any such place unless accompanied by his parent or guardian, shall be guilty of a misdemeanor and be punished by a fine of not less than $25.00 or by imprisonment in the county jail not exceeding 30 days. (As amended Act Mar. 14, 1941, c. 65, §1.)

It is doubtful that a duck pin alley is a "bowling alley". Op. Atty. Gen., (802B), Feb. 25, 1941.

Beer parlor and poolroom separated by a door and with common ownership. Op. Atty. Gen. (802b-6), Apr. 30, 1943.

City ordinance prohibiting employment of any person under age of 21 years in places licensed to sell non-intoxicating malt beverages is valid. Op. Atty. Gen. (217F-3), June 30, 1943.

10149. Liquors in school grounds or houses.

This section has been superseded or modified by redefinition of non-intoxicating malt liquors, and does not apply to 3.2 beer. Op. Atty. Gen., (622a-13), Mar. 4, 1941.

"Malt Liquor" as defined prohibited in schoolhouses or on grounds, and if 3.2% beer is "malt liquor" it is prohibited. Op. Atty. Gen. (217f-3), Oct. 13, 1942.

HABITUAL OFFENDERS

10157. Habitual offenders defined—Penalties.

A woman pregnant with her fourth illegitimate child may be sentenced to reformatory at Shakopee under this section upon conviction of a third charge of fornication, though limitations has expired as to first birth. Op. Atty. Gen., (133B-32), Nov. 16, 1939.

DANCE HALLS

10161. Definition.

Fair association cannot conduct a dance in its own building on the fair grounds within limits of a city without obtaining a license from city. Op. Atty. Gen. (772c-4), July 15, 1940.

A club with a 3.2 beer license and dancing being one of main attractions, and public being invited to join club by paying a small membership fee, must have a dance-hall permit. Op. Atty. Gen. (802a-17), May 11, 1942.

Any incorporated club may hold dances for its members without a license, but a permit must be obtained if the public is invited. Op. Atty. Gen. (802a-2), Sept. 3, 1943.

10162. Proprietors must obtain permits.

Night clubs, filling stations which handle soft drinks and lunches under a hotel license and others, in which there is a jute box or nickelodian in which customers may drop coin and dance, may be required by county board to obtain a public dance license. Op. Atty. Gen. (802a-26), June 24, 1943.

10163. Issuance of permit.

Op. Atty. Gen. (772c-4), July 15, 1940; note under §10161.

Validity of provision in resolution for regulation by county board for automatic revocation is doubtful. Op. Atty. Gen. (802a-18), Apr. 17, 1942.

10165. Applications.

Section is still in force and effect as affecting direct or indirect communication with any room where intoxicating liquor is sold. Op. Atty. Gen. (802a-3), Nov. 29, 1940.

On sale liquor dealer may not have public dance hall license. Op. Atty. Gen. (802a-3), Oct. 6, 1943.

10170. Officer must attend all public dances.

Whether dancing by general public in a restaurant to music furnished by a mechanical music box operated by insertion of a coin constitutes a "public dance" is a question of fact. Op. Atty. Gen. (802A-7), Jan. 22, 1942.

Officer in attendance need not reside in village where dance is held. Op. Atty. Gen. (802A-16), Feb. 23, 1942.

Person appointed, whether or not previously an officer, is an "officer of the law," and is not an employee of any one and is not subject to nomination or control by dance hall proprietor. Op. Atty. Gen. (802a-16), Dec. 24, 1942.

Any person appointed for the purpose can act as public officer at a public dance, and he need not be bonded, and any person qualified to administer an oath has authority to administer an oath to such an officer. Op. Atty. Gen., (802a-16), Apr. 30, 1943.

Sheriff may not appoint deputy residing in another county. Op. Atty. Gen. (390b-1), Aug. 10, 1943.

10173. Revocation of permit.

Validity of provision in resolution for regulation by county board for automatic revocation is doubtful. Op. Atty. Gen. (802a-18), Apr. 17, 1942.

ABORTION, ETC.

10175. Abortion, how punished.

In prosecution for abortion, all conversations between all persons taking any part in arrangements for abortion were admissible as acts of co-conspirators, even though victim was not technically an accomplice and took part in such conversations. State v. Tennyson, 212M 158, 2NW(2d)833, 139ALR987. See Dun. Dig. 27, 2460.

In prosecution for abortion permitting physician called by state to testify that material used to produce an abortion was dangerous to life of woman could not have been prejudicial, since any juror of ordinary intelligence knows that an attempt to produce an abortion is dangerous. Id. See Dun. Dig. 27, 3451, 7187.

While statute has made what formerly in many cases constituted only an attempt the crime of abortion itself, it has not abolished attempt altogether, a party may, however, be guilty of an attempt to commit any of the acts constituting the crime, such as an attempt to prescribe or administer a drug or other substance mentioned or to use an instrument with intent to produce an abortion. Id. See Dun. Dig. 23, 2414.

Laws 1875, c. 49, which provided that no conviction could be had upon uncorroborated evidence of woman upon whom abortion was performed, was repealed by the state penal code of 1885, and State v. Fearce, 56 M226, 57NW652, 1065, is overruled insofar as it holds that such statute is in force and effect. Id. See Dun. Dig. 26.

Where evidence justified a finding of guilty or not guilty of abortion, but not of an attempt to commit an abortion, it was not error to refuse to submit to jury question whether defendant was guilty of an attempt. Id. See Dun. Dig. 30.

A woman upon whom an abortion is performed or attempted is not an accomplice in commission of offence, and her testimony need not be corroborated. Id. See Dun. Dig. 26.

Statutes make offense of the abortionist distinct and separate from that of the woman, and prescribe a separate penalty for each and impliedly exclude each from the penalty for the other. Id. See Dun. Dig. 23.

10176. Pregnant woman attempting abortion.

Statutes make offense of the abortionist distinct and separate from that of the woman, and prescribe a separate penalty for each and impliedly exclude each from the penalty for the other. State v. Tennyson, 212M158, 2 NW(2d)833, 139ALR987. See Dun. Dig. 23.

10178. Evidence.

Dying declaration of victim of a homicide including a case where death results from an illegal abortion, concerning facts and circumstances of infliction of fatal injury are admissible upon trial of person charged with having committed the abortion and homicide. State v. Brown, 209M478, 296NW582. See Dun. Dig. 2461.

BIGAMY—ADULTERY, ETC.

10180. Bigamy defined—How punished—Exceptions.

Bigamy prosecution was not sustainable in North Carolina on theory that defendant was still married to spouse from whom divorce was obtained in Nevada on ground that defendant had not obtained a bona fide residence in Nevada before obtaining the divorce there, since the Nevada court's decree including the jurisdictional finding of bona fide residence in Nevada was entitled to full faith and credit in North Carolina. Williams v. North Carolina, 317US287, 63SCR207, 143ALR 1273, rev'g 220NC445, 17SE(2d)769, and overruling Haddock v. Haddock, 201US562, 26SCR525, 50LEd867, 5Ann Casl. See Dun. Dig. 5207.

Prosecution for bigamy cannot be based upon a common law marriage, since such a marriage cannot be established where some impediment exists. Op. Atty. Gen., (133B-10), Sept. 21, 1939.

10182. Incest.—Whenever any male and female persons, nearer of kin to each other than first cousins, computing by the rules of the civil law, whether of the half or the whole blood, shall have sexual intercourse together, each shall be guilty of incest, and be punished by imprisonment in the state prison for not more than ten years.

No male or female person under the age of 18 years shall be excused from attending and testifying, or producing any evidence before any court, magistrate, referee or grand jury, upon any investigation, proceeding or trial, for or relating to or concerned with a violation of this section or attempt to commit such violation, upon the ground that the testimony or evidence required of such person by the state may tend to convict such person of a crime or to subject such person to a penalty or forfeiture; but no such person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such person may so testify or produce evidence, and no testimony so given or produced shall be received against such person upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court based upon the giving or producing of such testimony. (As amended Act Apr. 21, 1941, c. 346, §1.)

10183. Crime against nature.

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. 8770a.

A person upon whom the crime of sodomy is committed is not an accomplice of the perpetrator unless he consents to the act, and one who is incapable to consenting cannot be an accomplice. Id.

Statute has not withheld from boys the power to consent as it has from girls. Id.

10185A. Absconding by father to evade bastardy proceedings.

Form of complaint in criminal proceedings under this section against a putative father for absconding with intent to evade paternity proceedings prescribed by attorney general. Op. Atty. Gen., (133B-9), Feb. 17, 1940.

HOUSES OF PROSTITUTION, ETC.

10194. Keeper of disorderly resort.

Evidence held to sustain conviction of being found in a disorderly house. State v. Turner, 210M11, 297NW108. See Dun. Dig. 2755.

Evidence held to sustain conviction of being a common prostitute. Id. See Dun. Dig. 7860c.

Evidence held to sustain conviction of keeping a disorderly and ill-governed house. State v. Key, 210M259, 297NW718. See Dun. Dig. 2756.

Commission of single or isolated disorderly of immoral act on premises does not constitute place a disorderly house. State v. Glenny, 213M177, 6NW(2d)241. See Dun. Dig. 2752.

"Tab charge" in municipal court that defendant "did wilfully, unlawfully and wrongfully keep a disorderly (tippling) house" at a designated place was sufficient to state a public offense under municipal ordinance. State v. Siporen, 215M438, 10NW(2d)353. See Dun. Dig. 2754.

In prosecution for keeping a "disorderly (tippling) house", evidence obtained in search of defendant's premises and reputation evidence was admissible. Id. See Dun. Dig. 2755.

On demurrer to a "tab charge" in municipal court that defendant did "operate a tippling house at 23 No. Wash.", court was justified in amending charge to read "keep a disorderly (tippling) house at 23 So. Wash,", not changing nature of offense or misleading defendant as to the address. Id. See Dun. Dig. 6804.

LOTTERIES

10209. Defined—A nuisance—Drawing, etc.

A filling station giving a ticket with every 50 cent purchase and awarding a prize of five gallons of gasoline each week by chance is conducting a lottery. Op. Atty. Gen., (510c-9), March 20, 1940.

A punch board constitutes a lottery notwithstanding fact that player always receives something for his money. Op. Atty. Gen. (510c-4), Dec. 11, 1940.

Bingo game is a lottery when consideration is paid and a prize given, and there is a question of fact where privilege of playing is granted through purchase of some article which has value itself. Op. Atty. Gen. (510c-9), Sept. 19, 1942.

GAMING

10214. Gambling.

Maintenance of gambling devices and slot machines on land to which United States holds title in trust for an Indian tribe cannot be prosecuted under state law if maintained by a tribal Indian (one under guardianship of United States government), but any other Indian or person is subject to prosecution. Op. Atty. Gen. (733D), Sept. 17, 1941.

1. What is gambling device.

An ordinance providing for the licensing of an amusement device, for the operation of which a charge is made, or any merchandising machine whose operation depends in whole or in part upon the skill of the operator, does not on its face violate the gambling laws. Op. Atty. Gen., (733j), July 16, 1941.

Whether any particular machine constitutes an amusement device or a gambling device is a question of fact

for determination in court after a presentation of all the evidence. Id.

4. Enforcement.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrink, 211M114, 300NW398. See Dun. Dig. 8740.

10215. Gambling devices on premises.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrink, 211M114, 300 NW398. See Dun. Dig. 8740.

"Suffer", as applied to operation of gambling machines, is synonymous with word "permit", and both imply knowledge of thing suffered or permitted. State v. Jamieson, 211M262, 300NW809. See Dun. Dig. 3946a.

"Magistrates" does not include district judges, but a district judge has inherent power to issue a search warrant for gambling devices, keeping of which is a gross misdemeanor, upon sworn warrant, and then have grand jury indict persons. Op. Atty. Gen. (141f), Dec. 5, 1941.

10217. Recovery of money, etc., lost.

Recovery of losses from winner by loser. 27 MinnLaw Rev. 94.

10219. Swindling by cards, etc.

Maximum sentence for attempted swindling is 2½ years and minimum sentence is nothing in view of indeterminate sentence law. Op. Atty. Gen. (341k-5), July 10, 1940.

1. What constitutes.

Crime of swindling may be committed by means of a trick or scheme consisting of mere words and actions without use of a mechanical device. State v. Yurkiewicz, 208M71, 292NW782. See Dun. Dig. 3740.

Fact that transaction took form of a legitimate contract and business deal does not prevent acts from constituting a swindle. Id.

2. Indictment.

An indictment for swindling may contain allegations that crime was committed by fraudulent representations of facts relating both to present or past and to future. State v. Yurkiewicz, 208M71, 292NW782. See Dun. Dig. 3741.

3. Evidence admissible.

Where evidence of other similar crimes shows a common scheme or related crimes tending to prove present accusation, it is properly received. State v. Yurkiewicz, 212M208, 3NW(2d)775. See Dun. Dig. 2459, 3742, 3947.

Where competent proof of defendant's guilt was convincing, any error in admitting self-serving letters written by complaining witness was not prejudicial and did not require a new trial. Id. See Dun. Dig. 2490.

RIGHTS OF SEPULTURE

10227. Dissection—When permitted.

Where widow of one involved in automobile accident consented to an autopsy upon condition that decedent's attending physician be present, an autopsy after an unsuccessful effort was made to obtain his presence was a trespass. Rian v. Hegnauer, 210M607, 299NW673. See Dun. Dig. 2599.

Interference with a corpse except by consent of person entitled to right of burial is a trespass, but widow has right to consent. Id.

SABBATH BREAKING, ETC.

10235. Things prohibited—Exceptions.—All horse racing, except horse racing at the annual fairs held by the various county agricultural societies of the state, gaming and shows; all noises disturbing the peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day:

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community, including the usual shoe shining service; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played on the Sabbath day. (As amended Apr. 21, 1941, c. 336, §1.)

Section is not violated by bowling on Sunday. Op. Atty. Gen., (384d), Jan. 15, 1940.

Word "gaming" does not apply to playing of pool and billiards. Op. Atty. Gen., (384), Feb. 2, 1940.

Section is not violated by playing pool or billiards or bowling on Sabbath day. Op. Atty. Gen. (384a), Nov. 16, 1940.

Statute does not render operation of pool or billiard tables on Sunday unlawful, unless accompanied by disorderly conduct or gambling. Op. Atty. Gen. (384A), Sept. 2, 1941.

Village assessor should not work on Sundays or holidays, and should not be compensated for work done on those days. Op. Atty. Gen. (12B-1), Feb. 13, 1942.

CHAPTER 99

Crimes Against Public Health and Safety

10241. Public nuisance defined.

Fee of an abutting property owner extends to center of street or highway subject only to public easement for public use, and he may use his property for a purpose compatible with free use by public, public authorities determining how much shall be reserved for such use. Kooreny v. D., 207M367, 291NW611. See Dun. Dig. 4182.

County attorney can bring an action in the name of the state to abate an unlicensed drinking place as a public nuisance under this section. Op. Atty. Gen., (133B-40), Sept. 6, 1939.

"Green River Ordinance", making it a nuisance for peddler or solicitor to call at private residences without an invitation, may or may not be valid. Op. Atty. Gen., (59a-32), Dec. 22, 1939.

Sale of 3.2 beer without a license may be restrained by injunction as a nuisance. Op. Atty. Gen. (218f-3), May 28, 1940.

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.

Where a club is selling liquor to its members without a license, injunction proceedings may be had against it as a nuisance. Op. Atty. Gen., (218g-15), Feb. 17, 1941.

Owner of land through which navigable stream flows has no right to put fences across so as to obstruct access to a lake. Op. Atty. Gen. (631j), May 1, 1942.

Where there has been continuous and persistent violations of liquor and gambling statutes and repeated convictions have failed to abate them an injunction is properly granted to abate a "public nuisance." State v. Sportsmen's Country Club, 214M151, 7NW(2d)495. See Dun. Dig. 7271.

It is doubtful whether a criminal action for violation of public nuisance statute could be sustained against a tavern guilty of continuous and persistent violations of liquor and gambling statutes, in the absence of evidence of disorderly conduct. Id. See Dun. Dig. 7292a.

At common law gaming houses and brothels were common nuisances, not because of the noise and disorder but on account of the evil tendency of the business, but it was otherwise as to sale of intoxicating liquor. Id. See Dun. Dig. 7292a.

A public alley is not a storeroom for dangerous equipment. Fjellman v. Weller, 213M457, 7NW(2d)521. See Dun. Dig. 4175, 6619.