PART V

Crimes and Criminals

CHAPTER 610

GENERAL PROVISIONS RELATING TO CRIMES

610.01 CRIMES DEFINED AND CLASSIFIED.

HISTORY. Penal Code ss. 3 to 6; G.S. 1894 ss. 6287 to 6290; R.L. 1905 s. 4747; G.S. 1913 s. 8466; G.S. 1923 s. 9906; M.S. 1927 s. 9906.

Prior to the enactment of the Penal Code, effective January 1, 1886, the common law as to crime was in force in this state except where abrogated or modified by statute. The Penal Code abolished all common law offenses and now no act or omission is criminal except as prescribed by statute. It would serve no useful purpose to trace the origin and legislative history of each section prior to the adoption of the code.

1. Definitions

The term "offense" in criminal law, is not identical in meaning with the word "act". It imports, in its legal sense, an infraction or transgression of a law, the wilful doing of an act which is forbidden by a law or omitting to do what it commands. State v Oleson, 26 M 517, 5 NW 959.

"Offense" includes any punishable violation of law, a doing which a penal law forbids or omitting to do what it commands, and hence includes all violations of municipal ordinances punishable by fine or imprisonment. State v Cantieny, 34 M 1, 24 NW 458.

When an offense is not a felony it is necessarily a misdemeanor. State v Shaw, 39 M 153, 39 NW 305.

The term "crime", "offense", and "criminal offense" are all synonymous, and include any breach of law established for the protection of the public, distinguished from an infringement of mere private rights, for which a penalty is imposed or punishment inflicted in any judicial proceeding. State ex rel v West, 42 M 147, 43 NW 845.

It includes misdemeanors. State v Sauer, 42 M 258, 44 NW 115.

A violation of the rules and regulations of the military code does not constitute a "criminal offense" within the meaning of section 7 of the bill of rights. State ex rel v Wagener, 74 M 518, 77 NW 424.

Unlawful transportation of liquor is not a felony. State v Pluth, 157 M 151, 195 NW 789.

Where defendant was permitted but not induced to complete the offense charged, the defense of entrapment is not available. State v McKenzie, 182 M 514, 235 NW 274.

Laws which create crimes, ought to be so explicit in themselves, or by reference to some other standard that all men, subject to their penalties, may know what acts it is their duty to avoid. In the instant case the law in question is so uncertain that it denies due process of law. State v Northwest Co. 203 M 438, 281 NW 753.

The fact that patients have psychotic episodes superimposed upon certain pathological trends, and have an uncontrollable impulse to commit crime, but are conscious of the nature and quality of the act, is not allowed to relieve a person of criminal liability. State ex rel v Probate Court, 205 M 550, 287 NW 297.

The minimum punishment for a violation of section 340.36, defining offenses in prohibition territory, is a fine of not less than $50.00 and imprisonment in jail for not less than 30 days, notwithstanding the section names the offense a "misdemeanor". State v Kelly, 218 M 247, 15 NW(2d) 554.

As applied to the holding of an office or removal therefrom, we in this state have no definition from our supreme court as to what constitutes an "infamous crime". It has been defined in Michigan, (275 Mich. 504, 267 NW 550), as any crime punishable by imprisonment in the state prison. 1940 OAG 208, Dec. 21, 1940 (4759).

Youth correction division of the state board of control. 28 MLR 320.

2. Acts punishable under general law and ordinance

An act may be punishable under both the general law and a municipal ordinance and the punishment need not be the same. State v Charles, 16 M 474 (426); State v Ludwig, 21 M 202; State v Oleson, 26 M 507, 5 NW 959; City of Mankato v Arnold, 36 M 62, 30 NW 305; State ex rel v West, 42 M 147, 43 NW 845; State v Harris, 50 M 128, 52 NW 531; State v Lindquist, 77 M 540, 80 NW 701; City of Jordan v Nicolin, 84 M 367, 87 NW 916.

In such a case a conviction under the ordinance is not a bar to a prosecution under the general law. State v Lee, 29 M 445, 13 NW 913; State v Harris, 50 M 128, 52 NW 531.

3. Acts punishable by federal and state authority

An act may at the same time be an offense against the United States and against the state. State v Oleson, 26 M 507, 5 NW 959; State v Lee, 29 M 445, 13 NW 913.

A statutory presumption or prima facie case cannot be sustained if there be no rational connection, rooted in common experience, between the fact proved and the ultimate fact presumed. State v Kelly, 218 M 247, 15 NW(2d) 554.

4. Acts constituting different offenses

The same acts may constitute or be parts of different offenses, as a riot and an assault. State v Dineen, 10 M 407 (325).

Acts may be offenses under different statutes. State v Holt, 69 M 423, 72 NW 700.

Multiple consequences of a single criminal act. 21 MLR 805.

5. Merger

There is no such thing as a merger of different offenses. State v Dineen, 10 M 407 (325).

6. No common law offenses

Even before the adoption of the Penal Code, the legislature had endeavored to do away with the refinements and technicalities of the common law, and it was held to be the duty of the courts to further the reform. Bonfanti v State, 2 M 123 (99); Benson v State, 5 M 19 (6); State v Holong, 38 M 368, 37 NW 587.

The common law may be referred to in aid of the construction of common law terms used in statutes. Benson v State, 5 M 19 (6).

Prior to the Penal Code (effective Jan. 1, 1886), the common law as to crime was in force in this state except where abrogated or modified by statute. State v Pulle, 12 M 164 (99); State v Crummey, 17 M 72 (50).

The code abolished all common law offenses and now no act or omission is criminal except as prescribed by statute. State v Holong, 38 M 368, 37 NW 587; State v Shaw, 39 M 153, 39 NW 305; State ex rel v Sargent, 71 M 28, 73 NW 626.

At common law a court in an indictment which charged two distinct offenses, each distinctly punishable, was bad, but this rule had no application where the offenses were only misdemeanors. The charge in the instant case is not a felony but is a misdemeanor. The common law has been changed by the Penal Code. The indictment is not bad for duplicity. State v Gopher Tire and Rubber Co. 146 M 57, 177 NW 937.

610.02 MEANING OF WORDS AND TERMS.

HISTORY. Penal Code ss. 88, 532; G.S. 1894 ss. 6372, 6842; R.L. 1905 s. 4748; G.S. 1913 s. 8467; G.S. 1923 s. 9907; M.S. 1927 s. 9907.

(1) An indictment for second-degree manslaughter, alleging that defendant, employed to fumigate a house, left it unguarded, and an eight year old boy entered and was stricken with hydrocyanic gas, sufficiently met statutory requirements, and stated facts justifying conclusion of negligence. State v Cantrell, 220 M —, 18 NW(2d) 681.

(3) The indictment is not bad because it failed to charge that defendant acted "maliciously". State v Ward, 127 M 510, 150 NW 209.

(5) The intent mentioned in General Statutes 1878, Chapter 39, Section 14, is an intent to defraud the mortgagee, so that in an indictment under that section, alleging no intent to defraud except one to defraud a person other than the mortgagee is fatally defective. State v Ruhnke, 27 M 309, 7 NW 264.

Under an indictment for forgery in the second degree committed by inserting in a chattel mortgage a description of property not originally included, such forgery may be committed although the mortgage had in fact been paid; and it is not necessary, under the code, to allege the person intended to be defrauded, nor the value of the property added to the mortgage. State v Adamson, 43 M 196, 45 NW 152.

General Statutes 1894, Section 6696, makes it a forgery in the third degree for a person to make false entries, with intent to defraud, in accounts or books which he is employed to keep; and knowingly uttering such false entries with such intent is also made forgery in the same degree by General Statutes 1894, Section 6702; and the indictments herein, purporting to charge the defendants with uttering as true certain false entries in an account of a survey of logs states facts constituting an offense. State v Goodrich, 67 M 176, 69 NW 815.

(10) The indictment in this case (charging abortion) does not state a public offense because it does not sufficiently charge that death was caused by any of the acts or omissions of the accused. State v Lowe, 66 M 296, 68 NW 1094.

(11) Indictment charging grand larceny in the first degree, in obtaining money from a railway company by falsely representing that defendant had been injured while in company's employ states sufficient facts to constitute a crime. State v Hulder, 78 M 524, 81 NW 532.

The criminal syndicalism act of 1917 is not so indefinite as to violate the provision of our constitution that in any criminal prosecution the accused shall be entitled to know the nature of the accusation against him; and the indictment in this case, charging the corporation publishing a newspaper, together with its editor, is sufficiently specific as to the particulars of the crime. State v Workers' Publishing Co. 150 M 406, 185 NW 931.

(12) "Real property" defined. Hook v Northwest Thresher, 91 M 484, 98 NW 463.

When the holder of a note surrendered it to the maker in exchange for a check the payee surrendered "property". OAG Nov. 15, 1944 (133b-43).

(13) "Personal property" defined. State v Scanlan, 89 M 244, 94 NW 686.

The payee of the note accepted the maker's check in payment and surrendered the note. This was parting with "property". OAG Nov. 15, 1944 (133b-43).

610.03 RULES OF CONSTRUCTION.

HISTORY. Penal Code s. 9; G.S. 1894 s. 6293; R.L. 1905 s. 4749; G.S. 1913 s. 8468; G.S. 1923 s. 9908; M.S. 1927 s. 9908.

A criminal offense should not be created by an uncertain or doubtful construction. At common law penal statutes were construed strictly. United States v Gideon, 1 M 292 (226); State v Mims, 26 M 191, 2 NW 492; State v Small, 29 M 216, 12 NW 703.

The construction cannot be contrary to the language used. State v Cooke, 24 M 247.

A statute is ineffectual to make criminal an act otherwise innocent, unless it clearly appears that such act is within the prohibition of the statute, the statute being reasonably construed for the purpose of arriving at the expressed intention of the legislature. It is not enough that the case is within the apparent reason and policy of the statute. State v Small, 29 M 216, 12 NW 703; State v Finch, 37 M 433, 34 NW 904.

The construction cannot be contrary to the language used except in case of manifest mistake. State v Small, 29 M 216, 12 NW 703; Loper v State, 82 M 71, 84 NW 650.

A criminal statute is to have a reasonable construction and such as is best suited to accomplish the purposes to be arrived at, consistently with the meaning of the language used. State v Duesting, 33 M 102, 22 NW 442.

The fact that a statute has a common law origin may be useful in construing it, but the common law cannot affect a penal statute whose terms are definite and certain. State v Rollins, 80 M 217, 83 NW 141.

The "short change trick" as shown by the evidence in this case is swindling under the statute. State v Smith, 82 M 342, 85 NW 12.

"Wilful", as used in statutes such as involved in the instant case, embodies an element of maliciousness. Price v Denison, 95 M 109, 103 NW 728.

The intent of the legislature determines the interpretation of a statute, though it seems contrary to the letter of the statute. A construction should be avoided which would result in inconvenience or absurdity. Edberg v Johnson, 149 M 395, 184 NW 12.

The provisions of the game law are to be construed according to the fair import of their terms viewed in the light of the purpose of the law. State v Figge, 177 M 483, 225 NW 430.

Where the legislature declares an offense in terms so indefinite that they may embrace not only acts commonly recognized as reprehensible but also others which it is unreasonable to believe were intended to be made unlawful, the statute is bad for uncertainty. State v Parker, 183 M 588, 237 NW 409.

Courts are obliged to sustain legislative enactments as reasonably certain when possible and will resort to all acceptable rules of construction to discover a competent and efficient expression of legislative will, but are not free to substitute amendment for construction and thereby supply omissions of legislature. State v Northwest Poultry Co. 203 M 438, 281 NW 753.

Extreme caution should be exercised by the courts before declaring a statute void; but that part of section 221.02, subdivision 13, reading "The terms 'common carrier' and 'contract carrier' shall not apply to any person engaged in the business of operating motor vehicles in the transportation of property exclusively within the zone circumscribed by a line running parallel to the corporate limits of any city or village or contiguous cities and/or villages and 35 miles distant therefrom when such person resides within the zone" is unconstitutional and void. Anderson v Burnquist, 216 M 49, 11 NW(2d) 776.

The rules and regulations adopted for the testing of cattle for Bang's disease may be deemed to have been made under the general power of the board to protect the health of domestic animals, and such rules are subject to penal provisions. 1942 OAG 29, May 14, 1941.

Rule of Ejusdem Generis as applied to penal statutes. 23 MLR 545.

610.04 PERSONS PUNISHABLE.

HISTORY. Penal Code s. 14; G.S. 1894 s. 6298; R.L. 1905 s. 4750; G.S. 1913 s. 8469; G.S. 1923 s. 9909; M.S. 1927 s. 9909.

Persons other than Indians are subject to state prosecution for crimes committed on the Bois Fort Indian reservation. OAG May 31, 1935 (494b-19).

610.05 DEFENSE OF SELF OR ANOTHER, WHEN JUSTIFIABLE.

HISTORY. Penal code s. 24; G.S. 1894 s. 6308; R.L. 1905 s. 4751; G.S. 1913 s. 8470; G.S. 1923 s. 9910; M.S. 1927 s. 9910.

To justify the use of force on the ground of self-defense, it is not essential to show that in fact it was necessary to use such force in order to protect the defendant from imminent personal injury; for it is sufficient if it appears that the necessity was real or apparent. The facts as they appear to the defendant at the time must be such as reasonably to justify the belief of danger. Germolus v Sausser, 83 M 141, 85 NW 946.

The application of the doctrine of "retreat to the wall", originating, as it did, before the general introduction of firearms, has due reference to the difference in danger between a hand to hand encounter, and an encounter in an open space, involving the use of firearms. State v Gardner, 96 M 319, 104 NW 971.

610.06 DEFENSE OF DURESS BY MARRIED WOMAN.

HISTORY. Penal Code s. 22; G.S. 1894 s. 6306; R.L. 1905 s. 4752; G.S. 1913 s. 8471; G.S. 1923 s. 9911; M.S. 1927 s. 9911.

610.07 DURESS; HOW CONSTITUTED.

HISTORY. Penal Code s. 23; G.S. 1894 s. 6307; R.L. 1905 s. 4753; G.S. 1913 s. 8472; G.S. 1923 s. 9912; M.S. 1927 s. 9912.

The jury was told that in the absence of compulsion actually creating "a reasonable apprehension" in the mind of Wynn "that in the case of a refusal" he would be "liable to instant death". Wynn was an accomplice so that Taran could not be convicted unless Wynn's evidence was corroborated by other evidence tending to convict. State v Taran, 176 M 179, 222 NW 906.

610.08 PRESUMPTION OF RESPONSIBILITY.

HISTORY. Penal Code ss. 15 to 18; G.S. 1894 ss. 6299 to 6302; R.L. 1905 s. 4754; G.S. 1913 s. 8473; G.S. 1923 s. 9913; M.S. 1927 s. 9913.

1. **Insanity**
2. **Intoxication**
3. **Children**

1. Insanity

Insanity is a matter of defense which the accused must prove by a fair preponderance of evidence. It is not enough for him to raise a reasonable doubt of his sanity. Sanity is presumed. The defense of sanity leaves the onus of proving it on the defendant. Bonfanti v State, 2 M 123 (99); State v Brown, 12 M 539 (448); State v Gut, 13 M 344 (315); State v Hanley, 34 M 430, 26 NW 397.

Under our statutes, an uncontrollable impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act and knows that it is wrong, is not a defense. State v Simenson, 195 M 258, 262 NW 638.

Insanity as a defense in homicide cases; burden of proof; degree of proof required. 13 MLR 731.

2. Intoxication

Irresponsible intoxication is a matter of defense which the accused must prove by a fair preponderance of evidence. State v Grear, 29 M 221, 13 NW 140; State v Corrivau, 93 M 38, 100 NW 638.

3. Children

The testimony of a child over 12 years of age that he did not know that it was wrong to do the act constituting the crime will not, in the absence of any evidence as to his general mental capacity, tend to overcome the presumption of capacity to commit crime. State v Kluseman, 53 M 541, 55 NW 741.

A child over 12 years of age is criminally liable. Benedict v M. & St. L. 86 M 224, 90 NW 360, 1133.

Under the present (1923) statutes a boy over 12 and under 16 years of age, convicted of the crime of murder in the third degree, may be sentenced to the state prison. State v Olson, 156 M 181, 194 NW 942.

610.09 INTOXICATION OR CRIMINAL PROPENSITY NO DEFENSE.

HISTORY. Penal Code ss. 20, 21; G.S. 1894 ss. 6304, 6305; R.L. 1905 s. 4755; G.S. 1913 s. 8474; G.S. 1923 s. 9914; M.S. 1927 s. 9914.

1. Intoxication
2. Criminal propensity

1. Intoxication

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. State v Garvey, 11 M 154 (95); State v Welch, 21 M 22; State v Grear, 29 M 221, 13 NW 140; State v Corrivau, 93 M 38, 100 NW 638.

But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act. Thus intoxication has been held admissible on a charge of assault with intent to do great bodily harm. State v Garvey, 11 M 154 (95); State v Welch, 21 M 22; State v Herdina, 25 M 161; State v Grear, 28 M 426, 10 NW 472; 29 M 221, 13 NW 140.

Intoxication cannot be considered by the jury, unless it was of such a degree that the accused did not know what he was doing or could not distinguish right from wrong. State v Garvey, 11 M 154 (95); State v Gut, 13 M 341 (315); State v Herdina, 25 M 161; State v Riggs, 74 M 460, 77 NW 302.

Where it appears the killing was intentional, or as a matter of revenge, it was held immaterial that the accused was intoxicated. State v Gut, 13 M 341 (315).

Evidence of intoxication has been held admissible on a charge of murder. State v Gut, 13 M 341 (315); State v Welch, 21 M 22; State v Grear, 29 M 221, 13 NW 140.

It has been held that intoxication is no defense on a charge of double voting. State v Welch, 21 M 22.

Evidence of intoxication has been held admissible on a charge of larceny. State v Welch, 21 M 22;

And on a charge of passing counterfeit money. State v Welch, 21 M 22.

In no case can a defendant by proof of intoxication, rebut the legal presumption that he knows and intends his voluntary acts. State v Welch, 21 M 22.

The jury might well conclude that defendant was very drunk and had voluntarily gotten into that condition, knowing that to reach home he must drive his car through crowded streets. His act was none the less criminal because he was drunk unless he was at the time being insane and incapable of knowing the nature of his act. State v Weltz, 155 M 149, 193 NW 42.

The jury did not accept defendant's claim as to intoxication and no intent to kill. State v Norton, 194 M 412, 260 NW 502.

Taking the evidence as a whole, and the court's charge as a whole, it was not error in the instant case for the judge to charge "intoxication or criminal propensity is no defense." State v Dimler, 206 M 84, 287 NW 785.

2. Criminal propensity

If the defendant has an insane delusion on any one subject, but commits crime upon some other matter not connected with that particular delusion, he is equally guilty as if he had no delusion. That the defendant at the time of inflicting the blows upon the deceased, knew that the natural and necessary consequences of his acts were to produce death of the deceased, might be taken into consideration by them in determining whether he knew or understood the nature and consequences of his acts. State v Gut, 13 M 343 (315).

Under sections 19 and 21 of the Penal Code, an uncontrollable and insane impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act, or that it was wrong, is not allowed as a defense. State v Scott, 41 M 365, 43 NW 62.

Under our statutes, an uncontrollable impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act and knows it is wrong, is not a defense. State v Simenson, 195 M 258, 262 NW 638.

Validity of statute relating to persons having "psychopathic personality." 24 MLR 688.

610.10 CRIMINAL RESPONSIBILITY OF INSANE PERSONS.

HISTORY. Penal Code ss. 18, 19; G.S. 1894 ss. 6302, 6303; R.L. 1905 s. 4756; G.S. 1913 s. 8475; G.S. 1923 s. 9915; M.S. 1927 s. 9915.

Sanity is presumed. The defense of sanity leaves the onus of proving it on the defendant. Bonfanti v State, 2 M 123 (99).

The evidence produced at the trial, clearly indicates defendant's insanity, and he must therefore be granted a new trial. State v Heenan, 8 M 44 (26).

A party indicted, is not entitled to be acquitted on the ground of insanity, if at the time of the alleged offense he had capacity sufficient to enable him to distinguish between right and wrong, and understood the nature and consequence of his act, and had mental power sufficient to apply that knowledge to his own case. State v Shippey, 10 M 223 (178).

It was not error for the court to charge: "That whether the defendant at the time of inflicting the blows upon the deceased, knew that the natural and necessary consequences of his acts were to produce the death of the deceased, might be taken into consideration by them in determining whether he knew or understood the nature and consequences of his acts." State v Gut, 13 M 341 (315).

Under sections 19 and 21 of the Penal Code, an uncontrollable and insane impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act, or that it was wrong, is not allowed as a defense. State v Scott, 41 M 365, 43 NW 62.

Where one charged with crime is above the age at which capacity to commit crime is presumed, his own testimony that he did know it was wrong to do the act constituting the crime will not, in the absence of any evidence as to his general mental capacity, tend to remove the presumption. State v Kluseman, 53 M 541, 55 NW 741.

The lack of memory and emotional condition of the defendant at the time the crime was committed is not in the instant case sufficient defense. State v Williams, 96 M 360, 105 NW 265.

Insanity is a defense to an action for divorce for cruel treatment, if acts were committed when defendant was laboring under such defect of reason as not to know the nature of his acts or that they were wrong. Longbotham v Longbotham, 119 M 139, 137 NW 387.

Defendant's act was none the less criminal because he was drunk unless he was for the time being insane and incapable of knowing the nature of his act or that it was wrong. A mind which may become inflamed by liquor and passion to such a degree that it ceases to care for human life and safety is a depraved mind. Defendant was guilty of more than culpable negligence. Defendant was guilty of murder in the third degree as charged. State v Weltz, 155 M 149, 193 NW 42.

Inasmuch as insanity, under present statute (1927), is not ground for divorce. Acts of cruelty and inhuman treatment which result from a diseased mind are no cause for divorce. Kunz v Kunz, 171 M 258, 213 NW 906.

An uncontrollable impulse to commit crime is not a defense when the defendant was conscious of the nature of the act and knew it was wrong. State v Simenson, 195 M 258, 262 NW 638.

This section, directing the district court not to try a person for a crime while he is in a state of insanity, imposes a duty on, but does not go to the jurisdiction of, the court. Hence failure to comply with the statute is no ground for collateral attack, as by habeas corpus, on the judgment of conviction. State ex rel v Utecht, 203 M 448, 281 NW 775.

The district court may, even without a finding that defendant has homicidal tendencies, commit him to a hospital for the insane. It has been held, State ex rel v Utecht, 203 M 448, 281 NW 775, that this power is directory only. 1940 OAG 24, March 18, 1940 (248b-3).

Insanity as a defense; irresistible impulse as a defense to homicide. 13 MLR 65.

Tests for determining criminal responsibility. 17 MLR 635.

Validity of statute relating to persons having "psychopathic personality." 24 MLR 687.

610.11 CONVICTION OF LESSER CRIME, WHEN.

HISTORY. R.S. 1851 c. 128 s. 210; P.S. 1858 c. 114 s. 44; G.S. 1866 c. 91 s. 12; G.S. 1878 c. 91 s. 12; Penal Code s. 32; G.S. 1894 ss. 6270, 6316; R.L. 1905 s. 4757; G.S. 1913 s. 8476; G.S. 1923 s. 9916; M.S. 1927 s. 9916.

On a prosecution for a crime, testimony tending to prove an attempt to commit such a crime is competent and material, and may, if false, constitute the predicate for a subsequent charge of perjury. State v Smith, 119 M 107, 137 NW 295.

A defendant indicted for grand larceny in the second degree cannot complain because the court permitted the jury to find him guilty of petit larceny, although the evidence strongly tended to show that, if guilty at all, he was guilty of the crime charged. State v Morris, 149 M 41, 182 NW 721.

Indictment charging carnal knowledge necessarily includes as lesser offenses: (1) attempt to carnally know; (2) indecent assault or indecent liberties; and, (3) simple assault. An assault, whether indecent or simple, is an essential and necessary element of the offense of attempting to commit the crime of carnal knowledge. State v McLeavey, 157 M 408, 196 NW 645.

Where defendant was under indictment for murder in the first degree, it was error in the trial court, not to submit manslaughter in the second degree. State v Abdo, 149 M 195, 183 NW 143.

Under an indictment charging carnal knowledge of a child, the accused may be convicted of an attempt to commit that crime. State ex rel v Brown, 149 M 297, 183 NW 669.

The course of the trial compels the conclusion that the only offense charged was that of sodomy. The court did not err in refusing to submit to the jury the lesser offenses of indecent assault and assault in the third degree. State v Nelson, 199 M 86, 271 NW 114.

Where the 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 the jury the question whether defendant was guilty of an attempt. State v Tennyson, 212 M 158, 2 NW(2d) 833.

610.12 PRINCIPAL, DEFINED.

HISTORY. Penal Code s. 26; G.S. 1894 s. 6310; R.L. 1905 s. 4758; G.S. 1913 s. 8477; G.S. 1923 s. 9917; M.S. 1927 s. 9917.

An accessory before the fact defined at common law: In treason and misdemeanors there is no distinction between principals and accessories; all concerned in the commission of the offense are deemed principals. Our statute abrogates as to felony also the distinction between principals and accessories before the fact. An accessory before the fact is "concerned in the commission of the offense" and is one "who aids and abets in its commission though not present." A proper definition is "one who, though absent at the time of the commission of the felony, doth yet procure, counsel, command or abet another to commit such felony." State v McCartey, 17 M 77 (54); State v Beebe, 17 M 247 (218).

This section (from the Penal Code effective Jan. 1, 1886) abolishes the common law distinction between principals and accessories before the fact in felonies and under it all persons concerned in the commission of the crime may be indicted and punished as principals. State v Johnson, 37 M 493, 35 NW 373; State v Floyd, 61 M 467, 63 NW 1096; State v Briggs, 84 M 357, 87 NW 935; State v Renswick, 85 M 19, 88 NW 22; State v Briggs, 122 M 493, 142 NW 823; State v Shea, 148 M 368, 182 NW 445.

Accomplice defined. State v Quinlan, 40 M 55, 41 NW 299.

One who gives a bribe is not a bribe-taker so that he can be convicted as a principal for bribery. State ex rel v Sargent, 71 M 28, 73 NW 626.

One who at common law would be accessory before the fact under the code may be charged directly as principal, and evidence may be received to show that he procured the crime to be committed. Admission of such evidence is neither variance nor violation of Minnesota Constitution, Article 1, Section 6. State v Whitman, 103 M 92, 114 NW 363.

Purchaser of intoxicating liquor sold contrary to law for the purpose of prosecuting the seller for an unlawful sale does not thereby become an accomplice. State v Gesell, 137 M 43, 162 NW 683.

Defendant Green was properly convicted as a principal. He was accused of driving a car to the place where his codefendant committed the robbery. State v Green, 153 M 127, 189 NW 711.

Defendant and others burglarized a bank. In escaping one of the robbers shot and killed an officer. There was no proof that McTague did the shooting. The evidence justified the submission of murder in the third degree and the conviction is sustained. State v McTague, 158 M 519, 197 NW 962.

Defendant and another were indicted of the crime of arson in the second degree. A conviction of arson in the third degree was sustained. State v Witt, 161 M 96, 200 NW 933.

Notwithstanding the ordinance provided that no one but a licensed sign-hanger could hang a sign, and that he must obtain a permit to hang a sign, the owner who had the sign installed is liable as principal and his conviction is sustained. State v Wong Hing, 176 M 151, 222 NW 639.

Defendant indicted for manslaughter in the first degree was properly convicted of manslaughter in the second degree. State v Stevens, 184 M 291, 238 NW 673.

An insured car was burned, and the insurer paid. Defendant was properly convicted of arson in the third degree. State v Lynch, 192 M 536, 257 NW 278.

All persons concerned in the commission of a crime may be indicted and punished as principals under section 610.12; so defendant was properly convicted even though he was not actually present when the crime was committed. State v Barnett, 193 M 343, 258 NW 508.

All persons concerned in the commission of a crime of arson may be indicted and punished as principals. State v Tsiolis, 202 M 118, 277 NW 409.

When Arthur procured Allen to visit the apartment of defendant where defendant committed sodomy with Allen in the presence of Arthur and with Arthur in the presence of Allen, when tried for his crime with Allen, both Allen and

Arthur were accomplices and it was error to convict on Arthur's testimony in corroboration. State v Panetti, 203 M 153, 280 NW 181.

A person may be convicted for riot even though not actively engaged therein when such person was present and ready to give support if necessary. State v Winkels, 204 M 473, 283 NW 763.

The evidence justified the jury in finding defendant guilty of aiding and abetting others in taking twine from a railroad car. State v Eggermont, 206 M 275, 288 NW 390.

The only direct evidence assuming to connect defendant with the crime committed was that of the witness Bennetts. The record is conclusive that he knowingly participated in the furtherance of the crime with which defendant was charged. The trial court should have charged the jury that he was an accomplice. State v Elsberg, 209 M 174, 295 NW 913.

A woman on whom an abortion is performed or attempted is not an accomplice in the commission of the offense. State v Tennyson, 212 M 161, 2 NW(2d) 833.

Where an unknown member of a high-jacking gang fired the shot anyone of them may be prosecuted for aiding and abetting John Doe. OAG Feb. 15, 1933.

Subornation of perjury; conviction upon evidence of the suborned. 10 MLR 167.

Accessory before the fact; conviction of the accessory of a higher degree of crime than the principal. 11 MLR 170.

610.13 ACCESSORY, DEFINED.

HISTORY. R.S. 1851 c. 109 s. 4; P.S. 1858 c. 98 s. 4; G.S. 1866 c. 91 s. 5; G.S. 1878 c. 91 s. 5; Penal Code s. 27; G.S. 1894 ss. 6263, 6311; R.L. 1905 s. 4759; G.S. 1913 s. 8478; G.S. 1923 s. 9918; M.S. 1927 s. 9918.

In treason and misdemeanor there is no distinction between principals and accessories; all concerned in the commission of the offense are deemed principals, and since the enactment of the Penal Code, 1886, the common law distinction between principals and accessories before the fact in felonies has been abolished. State v Beebe, 17 M 241 (218); State v Wellman, 34 M 221, 25 NW 395; State ex rel v United States Express Co. 95 M 446, 104 NW 556.

Defendant was convicted of putting fraudulent ballots in the ballot box at a city election. That Hammett was guilty of the distinct crime of entering fictitious names on the poll book does not make him an accomplice in the crime of which defendant was convicted. One connected with the crime as an accessory after the fact is not an accomplice. State v Smith, 144 M 348, 175 NW 689.

Defendant herein was accused of being an accessory after the fact, that of harboring an escaping murderer. After defendant's demurrer was overruled he excepted and pleaded guilty. Later raised the issue that his crime was outlawed. His plea of guilty did not waive his right to plead the statute of limitations. State v Tupa, 194 M 488, 260 NW 875.

Under indictment charging defendant with misprision of felony, the government must prove beyond reasonable doubt that the principal committed and completed the felony charged, and that defendant had full knowledge of the facts, failed to notify the authorities, and took affirmative steps to conceal the crime. Neal v United States, 102 F(2d) 642.

610.14 TRIAL AND PUNISHMENT OF ACCESSORIES.

HISTORY. Penal Code ss. 29, 30; G.S. 1894 ss. 6313, 6314; R.L. 1905 s. 4760; G.S. 1913 s. 8479; G.S. 1923 s. 9919; M.S. 1927 s. 9919.

Defendants were not entitled to an instruction that Stoppler, jointly indicted with them but a witness for the state, was an accomplice. And since there was no request for an instruction that, should Stoppler be found an accomplice, there must be an acquittal for lack of corroborating testimony, the question of the presence or absence of such testimony not being before the appellate court for review. State v Pennington, 149 M 109, 182 NW 962.

610.15 CERTAIN DUTIES OF COURTS AND JURIES.

HISTORY. Penal Code ss. 8, 10, 11; G.S. 1894 ss. 6292, 6294, 6295; R.L. 1905 s. 4761; G.S. 1913 s. 8480; G.S. 1923 s. 9920; M.S. 1927 s. 9920.

On indictment for a crime of which there are several degrees a general verdict of "guilty" is sufficient. It is necessary for the verdict to specify the degree only when the jury found a verdict for a lesser degree than the one charged. Bilausky v State, 3 M 427 (313); State v Eno, 8 M 220 (190).

Defendant entered a plea of guilty. Thereafter and before sentence he was sworn and questioned by the trial judge. His answers were untrue. He was not examined in accordance with section 631.20. His conviction for perjury committed in giving these untrue answers after pleading guilty to the liquor charge cannot be sustained. State v Larson, 171 M 246, 213 NW 900.

610.16 PUNISHMENT OF FELONY WHEN NOT FIXED BY STATUTE.

HISTORY. Penal Code s. 12; G.S. 1894 s. 6296; R.L. 1905 s. 4762; G.S. 1913 s. 8481; G.S. 1923 s. 9921; M.S. 1927 s. 9921.

A register of deeds, as such officer, intentionally misappropriated $62.50 fees received by him, which under the law, he should have paid over to the county treasurer, and, upon conviction he was sentenced to pay a fine of $500.00 and be confined at hard labor in the state prison for one year. Such punishment was not cruel and unusual nor within the inhibition of Minnesota Constitution, Article 1, Section 5. State v Bergstrom, 69 M 508, 522; 72 NW 799, 975.

The indictment stated facts constituting the crime charged, though it does not state a public offense under General Statutes 1894, Section 6534. State v Kunz, 90 M 526, 97 NW 131.

The accused admitted the sale of liquor when he pleaded guilty and the sentence was within the penalty prescribed. State ex rel v Sullivan, 171 M 36, 213 NW 56.

610.17 MINIMUM TERM OF IMPRISONMENT FOR FELONY.

HISTORY. 1927 c. 306; M.S. 1927 s. 9921-1.

610.18 FELONIES COMMITTED WHILE ARMED WITH FIREARMS; ADDITIONAL PUNISHMENT.

HISTORY. 1927 c. 294; M.S. 1927 s. 9921-2.

610.19 PUNISHMENT OF MISDEMEANORS WHEN NOT FIXED BY STATUTE.

HISTORY. Penal Code s. 13; 1889 c. 214 s. 1; G.S. 1894 s. 6297; R.L. 1905 s. 4763; G.S. 1913 s. 8482; G.S. 1923 s. 9922; M.S. 1927 s. 9922.

In a poolroom the betting is on the races exclusively, and the result is in no way determined by the use of the boards, lists and instrumentalities described in the indictment. The indictment in its present form cannot be sustained. State v Shaw, 39 M 153, 39 NW 305.

The offering of a bribe to a subpoenaed witness to get him to absent himself from the state is a misdemeanor and triable in the justice court, and the defendant was properly released on habeas corpus when he was sent to jail to await the grand jury. State v Sargent, 71 M 28, 73 NW 626.

Defendant was convicted of the crime of keeping a disorderly house as defined by Laws 1899, Chapter 158, and sentenced to the workhouse. The sentence was authorized by General Statutes 1894, Section 6297 (section 610.19). State v Grosofski, 89 M 343, 94 NW 1077.

Revised Laws 1905, Section 1519, declaring the sale of intoxicating liquor without a license a misdemeanor is not void because no maximum penalty is prescribed. Revised Laws 1905, Section 4763 (section 610.19) controls where the particular statute is silent on the subject. State v Kight, 106 M 371, 119 NW 56; State v Hanson, 114 M 137, 130 NW 136.

If neither the owner nor operator of a truck is party to a strike it is unlawful to interfere with truck or driver and violation is a misdemeanor punishable under the provisions of section 610.19. 1940 OAG 104, Aug. 11, 1939 (270d-7).

Effect of an "unlawful" act as set out in Minnesota labor relations act. 24 MLR 233.

610.20 PUNISHMENT OF GROSS MISDEMEANOR WHEN NOT FIXED BY STATUTE.

HISTORY. R.L. 1905 s. 4764; G.S. 1913 s. 8483; G.S. 1923 s. 9923; M.S. 1927 s. 9923.

This indictment under the blue sky law is not bad for duplicity though it charges more than one offense. State v Gopher Tire Co. 146 M 57, 177 NW 937.

Where a writ of habeas corpus cannot be permitted to perform the functions of an appeal or writ of error yet, if the judgment under which one is restrained of his liberty is void, habeas corpus is a proper remedy. As the defendant plead guilty he cannot now be heard to say he was not. State ex rel v Sullivan, 171 M 38, 213 NW 56.

We have no definition from Minnesota supreme court as to what constitutes an infamous crime. In Michigan any crime punishable in state prison is infamous. Gross misdemeanors are those punishable as defined in section 610.20. 1940 OAG 208, Dec. 2, 1940 (4759).

In case of a sentence, to the state reformatory for women, for a gross misdemeanor the sentence may be less than a year. OAG March 20, 1936 (341k-8).

610.21 CRIMES PUNISHABLE UNDER DIFFERENT PROVISIONS.

HISTORY. Penal Code s. 506; G.S. 1894 s. 6816; R.L. 1905 s. 4765; G.S. 1913 s. 8484; G.S. 1923 s. 9924; M.S. 1927 s. 9924.

Multiple consequences of a single criminal act. 21 MLR 805.

610.22 ACTS PUNISHABLE UNDER FOREIGN LAW.

HISTORY. Penal Code s. 507; G.S. 1894 s. 6817; R.L. 1905 s. 4766; G.S. 1913 s. 8485; G.S. 1923 s. 9925; M.S. 1927 s. 9925.

610.23 FOREIGN CONVICTION OR ACQUITTAL.

HISTORY. Penal Code s. 508; G.S. 1894 s. 6818; R.L. 1905 s. 4767; G.S. 1913 s. 8486; G.S. 1923 s. 9926; M.S. 1927 s. 9926.

Double jeopardy; prosecution by more than one jurisdiction. 24 MLR 541.

610.24 PUNISHMENT FOR CONTEMPT.

HISTORY. Penal Code ss. 509, 510; G.S. 1894 ss. 6819, 6820; R.L. 1905 s. 4768; G.S. 1913 s. 8487; G.S. 1923 s. 9927; M.S. 1927 s. 9927.

610.25 SENDING LETTER, WHEN COMPLETE.

HISTORY. Penal Code s. 512; G.S. 1894 s. 6822; R.L. 1905 s. 4769; G.S. 1913 s. 8488; G.S. 1923 s. 9928; M.S. 1927 s. 9928.

610.26 OMISSION, WHEN PUNISHABLE.

HISTORY. Penal Code s. 513; G.S. 1894 s. 6823; R.L. 1905 s. 4770; G.S. 1913 s. 8489; G.S. 1923 s. 9929; M.S. 1927 s. 9929.

610.27 ATTEMPTS; HOW PUNISHED.

HISTORY. Penal Code ss. 31, 515, 516; G.S. 1894 ss. 6315, 6825, 6826; R.L. 1905 s. 4771; G.S. 1913 s. 8490; G.S. 1923 s. 9930; M.S. 1927 s. 9930.

An attempt to commit a crime is an overt act or acts done with intent to commit the particular crime; and tending, but failing to accomplish it. State v Miller, 103 M 24, 114 NW 88; State v Dumas, 118 M 77, 136 NW 311; State v Smith, 119 M 110, 137 NW 295.

The mere act of soliciting another to commit a crime, or preparation therefor, is not, in the absence of some overt act looking to its actual commission, sufficient to justify a conviction. State v Lampe, 131 M 65, 154 NW 737.

Indicted and tried for grand larceny, and was properly found guilty of petit larceny. State v Morris, 149 M 41, 182 NW 721.

One charged with rape was properly convicted of assault. State v Christofferson, 149 M 135, 182 NW 961.

Charged with carnal knowledge, may be convicted of an attempt to commit the crime. State ex rel v Brown, 149 M 297, 183 NW 669.

In passing sentence upon a man convicted of the crime of attempting to have carnal knowledge of a female under 18, the district court may require the payment of certain state disbursements against the party in a civil action in addition to the penalty imposed for the crime. State v Moreheart, 149 M 433, 183 NW 960.

Evidence of an attempt at fake horse race swindle sufficient to convict. State v Brooks, 151 M 502, 187 NW 607.

An act done with intent to commit a crime, and tending, but failing, to accomplish it, is an attempt to commit that crime. State v McLeavey, 157 M 408, 196 NW 645.

Evidence sufficient to support a conviction of attempt to commit rape. State v Jenkins, 171 M 173, 213 NW 923.

Evidence sufficient to support a conviction of an attempt to commit arson. State v Hentschel, 173 M 368, 217 NW 378.

Solicitation a substantive crime. 17 MLR 512.

610.28 SECOND OFFENSES; PUNISHMENT.

HISTORY. Penal Code s. 517; G.S. 1894 s. 6827; R.L. 1905 s. 4772; G.S. 1913 s. 8491; G.S. 1923 s. 9931; 1927 c. 236 s. 1; M.S. 1927 s. 9931.

Penal Code, Section 517, Revised Laws 1905, Section 4772 (section 610.28), is not in violation of the twice-in-jeopardy clause of the state constitution. The fact of the prior conviction must be set forth in the indictment, established by proper evidence, and passed upon by the jury, unless the procedure is otherwise regulated by statute. State v Findling, 123 M 413, 144 NW 142.

In order to give the court jurisdiction to impose an excess sentence, the former conviction must be charged in the indictment. If such excess sentence is imposed without such charge it is void as to the excess, and upon serving the regular sentence the prisoner may be released on habeas corpus. State ex rel v Reed, 132 M 295, 156 NW 127.

NOTE. Laws 1927, Chapter 236, provides a procedure modifying the law as it existed when State v Findling and State v Reed, were handed down.

Note that the title of Laws 1927, Chapter 236, repeals General Statutes 1923, Section 9931, while the act itself amends section 9931.

Laws 1927, Chapter 236, is constitutional; and may consistently stand and operate with sections 628.29 to 628.33 without conflict. Sections 628.29 and 628.32 are not repealed by the act of 1927. State v Zywicki, 175 M 508, 221 NW 900.

Identity of defendant's name and that in certified copies of judgments of conviction of felonies from other courts in Minnesota was sufficient to sustain jury's finding that defendant was the person named in the records. State v West, 175 M 516, 221 NW 903.

Under the indeterminate sentence act (section 637.01) the trial court could fix the maximum term of imprisonment though the defendant was convicted of a second or subsequent offense. Under the 1927 amendment to section 9931 (section 610.28), the maximum was fixed at twice the statutory maximum. State ex rel v Sullivan, 179 M 532, 229 NW 787.

The prior convictions, in order to be available for increased punishment under Laws 1927, Chapter 236, must precede the commission of the offense for which sentence is being imposed. State v McKenzie, 182 M 513, 235 NW 274.

A pardon for a prior conviction is no bar to imposition of a double sentence under the habitual criminal act. Laws 1927, Chapter 236. State v Stern, 210 M 107, 297 NW 321.

A trial judge may fix a maximum of less than life, notwithstanding the habitual criminal act. 1934 OAG 677, Nov. 25, 1933 (341k-3).

The trial judge may fix a maximum sentence for robbery of a bank at less than life. 1934 OAG 677, Nov. 25, 1933 (341k-3).

Increased punishment for offense under habitual criminal act where first offense pardoned for innocence. 26 MLR 274.

Necessity that second offense be committed after first conviction. 26 MLR 403.

610.29 CONVICTION OF THREE OR MORE FELONIES; PUNISHMENT.

HISTORY. 1927 c. 236 s. 2; M.S. 1927 s. 9931-1.

NOTE: See, State v Zywicki, 175 M 508, 221 NW 900.

NOTE: Patterned after the Baumes habitual criminal act of the state of New York, Penal Code, Section 1943, as amended by Laws 1926, Chapter 457.

Concurrent sentences. 11 MLR 73.

Pardoned conviction as basis for increased penalty for a later conviction under habitual criminal statutes. 14 MLR 293.

610.30 PUNISHMENT NOT DEPENDENT UPON INDICTMENT AND CONVICTION AS PREVIOUS OFFENDER.

HISTORY. 1927 c. 236 s. 3; M.S. 1927 s. 9931-2.

610.31 INFORMATION AS TO PREVIOUS OFFENSE BY PROSECUTING OFFICER AND PROCEDURE THEREON.

HISTORY. 1927 c. 236 s. 4; M.S. 1927 s. 9931-3.

NOTE: See, State v Zywicki, 175 M 508, 221 NW 900; State v West, 175 M 516, 221 NW 903.

If the defendant under oath admits a prior conviction the court may impose the added penalty. OAG Sept. 29, 1944 (341i).

610.32 REPORT BY PRISON OFFICIALS AS TO PREVIOUS CONVICTIONS.

HISTORY. 1927 c. 236 s. 5; M.S. 1927 s. 9931-4.

610.33 IMPRISONMENT ON TWO OR MORE CONVICTIONS.

HISTORY. Penal Code ss. 519, 520; G.S. 1894 ss. 6829, 6830; R.L. 1905 s. 4773; G.S. 1913 s. 8492; G.S. 1923 s. 9932; M.S. 1927 s. 9932.

Where a person has been convicted, upon several indictments, for several similar but distinct offenses, the court may sentence him to the full extent allowed by law for such offenses upon each conviction, and it is not a case of cumulative sentences. The term of imprisonment imposed by the sentence upon one conviction may be made to commence at the expiration of the term imposed by a previous sentence. Mims v State, 26 M 498, 5 NW 374.

Relator was sentenced to the reformatory, but execution was stayed and he was placed on probation. Later he was sentenced for a subsequent crime. Thereupon the stay of the first sentence was revoked and commitment sent to the prison officials. Seventeen months later he was paroled on the second sentence. The first sentence remained in force. The statute abrogates the rule permitting two

or more sentences to be served concurrently and requires them to be served consecutively. State ex rel v Vasaly, 177 M 338, 225 NW 154.

Where a defendant is brought before the court having been convicted of two or more crimes and not having been sentenced on any of them, the statute applies and sentences imposed upon such convictions must be served consecutively. Where a defendant is convicted of one offense and is sentenced thereon and then is convicted of the commission of a second offense, the second sentence may be served concurrently with the first one; and, when a prisoner is under sentence for felony and commits another felony, the statute applies and the sentence imposed by reason of the commission of the second felony cannot be served concurrently with the first sentence, but such sentences must be served consecutively. 1934 OAG 676, Aug. 16, 1933 (341k-1).

"Commitment to state penal institutions of the state for an indeterminate period, sentence to run concurrently with prior sentence." The later sentence cannot be served concurrently with the prior sentence. Such sentences must be served consecutively. 1938 OAG 193, Aug. 23, 1938 (341k-1).

Where defendant pleads guilty to two carnal knowledge offenses, sections 610.33 and 637.01 are to be construed together, and being adjudged guilty and sentenced the terms running concurrently, the maximum punishment for both crimes is fixed at seven years. OAG June 12, 1944 (341k-1).

Where a criminal under sentence for one crime, commits another and is sentenced for same, unless the court specifically orders that the sentences be served concurrently, they must be served consecutivly. OAG Sept. 28, 1944 (341k-5).

When a person sentenced for a felony commits another felony, the court cannot in sentencing for the second offense, order the terms to run concurrently. They must run consecutively. OAG Nov. 28, 1944 (341k-1).

This section applies to sentences imposed by a justice of the peace. OAG Jan. 25, 1945 (218g-13); OAG Feb. 16, 1945 (341k).

Concurrent sentences. 11 MLR 73.

610.34 LIFE SENTENCE; EFFECT.

HISTORY. Penal Code ss. 521, 536; G.S. 1894 ss. 6831, 6836; R.L. 1905 s. 4774; G.S. 1913 s. 8493; G.S. 1923 s. 9933; M.S. 1927 s. 9933.

Plaintiff in March, 1910, conveyed to defendant, his niece, certain premises in consideration of her giving him care and support and a home during life and burial after death. This obligation was made an express lien on the premises. In October, 1910, plaintiff killed defendant's husband and was sentenced to prison for life and later pardoned. The instant action is brought after his pardon to cancel the deed. There is no cancelation of estate for conviction of crime, so he did not cancel his property rights, but by his act he made it impossible for defendant in spirit to carry out her part of the contract, and he forfeited his right and lien. His act did not forfeit his right to burial at the expense of plaintiff. Hall v Crook, 144 M 82, 174 NW 519.

610.35 SENTENCES OF CONVICTS.

HISTORY. Penal Code ss. 522 to 524; G.S. 1894 ss. 6832 to 6834; R.L. 1905 s. 4775; G.S. 1913 s. 8494; G.S. 1923 s. 9934; M.S. 1927 s. 9934; 1933 c. 329.

General Statutes 1878, Chapter 118, Section 5, providing "that whenever practicable, the term of imprisonment shall be so fixed that it will expire between the first day of April and the first day of November" is only directory. Mims v State, 26 M 494, 5 NW 369.

Contempt of court is not a crime within section 610.35. The one in contempt may be sentenced to the county jail, but not to the workhouse. Section 588.10 controls. Plankers v Plankers, 175 M 57, 220 NW 414.

Laws 1939, Chapter 71, repeals Laws 1935, Chapter 207, which created a receiving depot at St. Cloud reformatory. It did not affect sections 610.35, 640.30, or 640.35. The department of social security still has the power at any time to transfer prisoners from one place to another, but sections 610.35, 640.30 and 640.35 and rules apply to original sentence. 1940 OAG 43, April 4, 1939 (341k).

As amended by Laws 1933, Chapter 329, prisoners may be released at any time on the expiration of their term with credit for good conduct. OAG Aug. 25, 1933.

610.36 LIMIT OF FINE WHEN NOT SPECIFIED.

HISTORY. Penal Code s. 525; G.S. 1894 s. 6835; R.L. 1905 s. 4776; G.S. 1913 s. 8495; G.S. 1923 s. 9935; M.S. 1927 s. 9935.

In all cases where the defendant is sentenced and adjudged to pay a fine the court may in its discretion, as part of the judgment, order that he be committed to the county jail until the fine is paid, not exceeding a reasonable time to be graduated according to the amount of the fine. Mims v State, 26 M 494, 5 NW 369; State v Peterson, 38 M 143, 36 NW 443; State v Framness, 43 M 490, 45 NW 1098; City of Jordon v Nicolin, 84 M 367, 87 NW 816.

Without express statutory authority, the court cannot impose a fine and commit the convict to prison until the fine is paid so as to exceed the limit of imprisonment prescribed by statute for the offense. Mims v State, 26 M 494, 5 NW 369.

Where the measure of punishment intended to be inflicted is a fine only, the payment thereof cannot be enforced by imprisonment in the state's prison until paid, or not exceeding a period fixed by the court. Detention in the county jail is alone warranted. State v Framness, 43 M 490, 45 NW 1098; State ex rel v McDonough, 117 M 173, 134 NW 509.

Fines and costs in state cases, such as misdemeanors, to be paid to county treasurer. 1934 OAG 287, April 6, 1934 (306b-6).

610.37 SUSPENSION OF SENTENCE.

HISTORY. 1909 c. 391 s. 1; G.S. 1913 s. 8496; 1921 c. 298 s. 1; G.S. 1923 s. 9936; M.S. 1927 s. 9936; 1933 c. 133; 1935 c. 324; 1945 c. 261 s. 1.

The municipal court of St. Paul did not err in suspending sentence for a definite time for selling a certain poison. That was discretionary with the court and justified by the statute. State v Fjolander, 125 M 529, 147 NW 273.

Laws 1921, Chapter 298, amended the law so that section 610.37 now includes cases where the maximum penalty did not exceed ten years. State v Chandler, 158 M 448, 197 NW 847.

Except where otherwise provided by statute, it is settled that a court may not change or modify its valid sentence after the court term at which it was imposed. State v Carlson, 178 M 626, 228 NW 173.

Any court of criminal jurisdiction, including justice and municipal courts, may now suspend sentences. 1934 OAG 279, July 20, 1934 (266b-21).

Since the enactment of Laws 1935, Chapter 324, justices of the peace have no power to suspend a sentence. 1936 OAG 144, Nov. 5, 1935 (266b-21).

A suspension of sentence should be for a definite period of time. Where a sentence has been indefinitely suspended, the court cannot revoke the suspension. 1936 OAG 173, May 16, 1935 (341k-9).

Where the court orders an erroneous term for a second offense, the warden must nevertheless release the prisoner at the end of the term stated by the trial court. OAG July 17, 1944 (341k-1).

Time spent in women's detention home must be taken into consideration in reduction of the total term. OAG Aug. 23, 1944 (341k-1).

Youth correction act. 28 MLR 301.

Power to suspend a criminal sentence for an indefinite period or during good behavior. 6 MLR 363.

Necessity of due process to revoke. 12 MLR 413.

Youth correction act. 28 MLR 301.

610.38 SUSPENSION OF SENTENCES AND PROBATION.

HISTORY. 1909 c. 391 s. 2; G.S. 1913 s. 8497; G.S. 1923 s. 9937; M.S. 1927 s. 9937; 1933 c. 135; 1935 c. 167; 1945 c. 260 s. 1.

The district court is authorized to revoke, without notice, its order suspending a sentence in a criminal case. State v Chandler, 158 M 449, 197 NW 847.

The suspension of execution of a sentence imposed is a matter of grace. It is in the discretion of the trial court. In the exercise of his discretion the court may revoke such suspension at any time during the stay, without notice to the defendant. State ex rel v Municipal Court, 197 M 141, 266 NW 433.

The original suspension should be for a definite period. After such period has expired the court may grant an indefinite suspension. After a sentence has been indefinitely suspended the court cannot revoke the suspension. 1936 OAG 173, May 16, 1935 (341k-9).

When in imposing sentence the trial court suspends same, placing the convicted person in charge of the state board of parole, a parole agent has power to apprehend and detain the convicted person if he deems it advisable. OAG June 14, 1944 (328a-1).

Social aspects of Minneapolis Courts. 6 MLR 261.

610.39 REVOCATION.

HISTORY. 1909 c. 391 s. 3; G.S. 1913 s. 8498; G.S. 1923 s. 9938; M.S. 1927 s. 9938.

See notes under section 610.38.

An order of the district court vacating a stay of execution of sentence under which the accused had been on probation is a matter of discretion of the trial judge. State ex rel v Wall, 189 M 265, 249 NW 37.

The court may relieve the culprit from supervision of the probation officer. This does not suspend the sentence. OAG Feb. 5, 1945 (341k-9).

Necessity of due process to revoke. 12 MLR 414.

610.40 CONVICTS PROTECTED; CERTAIN FORFEITURES ABOLISHED.

HISTORY. Penal Code ss. 527, 528; G.S. 1894 ss. 6837, 6838; R.L. 1905 s. 4777; G.S. 1913 s. 8499; G.S. 1923 s. 9939; M.S. 1927 s. 9939.

Death of an insured while committing a felony is not ground of exemption from liability or for forfeiture of a life insurance policy issued for the benefit of a third person, in the absence of a provision in the policy excepting such risk, unless it appears that the policy was obtained in contemplation of the commission of a felony. Domico v Metropolitan Life, 191 M 215, 253 NW 538.

610.41 RESTORATION TO CIVIL RIGHTS.

HISTORY. 1919 c. 290 s. 1; G.S. 1923 s. 9940; M.S. 1927 s. 9940.

A person convicted of a felony in the federal court can be restored to civil rights in no way except by presidential pardon. OAG Feb. 1, 1937 (68h).

A public accountant may hold a certificate though convicted of a felony. OAG Oct. 6, 1937 (882e).

610.42 CERTIFICATION BY PROPER OFFICERS.

HISTORY. 1919 c. 290 s. 2; G.S. 1923 s. 9941; M.S. 1927 s. 9941.

610.43 CERTIFICATE BY GOVERNOR.

HISTORY. 1919 c. 290 s. 3; G.S. 1923 s. 9942; M.S. 1927 s. 9942.

Where the commission of a notary is vacated because of conviction of a crime, his right to take acknowledgment is not restored by a restoration of his civil rights. He must obtain a new commission. OAG March 29, 1935 (184j).

610.44 APPLICATION OF SECTIONS 610.41 TO 610.44.

HISTORY. 1919 c. 290 s. 4; G.S. 1923 s. 9943; M.S. 1927 s. 9943.

610.45 RESTORATION TO CIVIL RIGHTS; PERSONS HERETOFORE CONVICTED.

HISTORY. 1907 c. 34 s. 1; 1913 c. 187 s. 1; G.S. 1913 s. 8500; G.S. 1923 s. 9944; M.S. 1927 s. 9944.

610.46 PERSONS HEREAFTER CONVICTED.

HISTORY. 1907 c. 34 s. 2; 1913 c. 187 s. 2; G.S. 1913 s. 8501; G.S. 1923 s. 9945; M.S. 1927 s. 9945.

610.47 INCRIMINATING TESTIMONY NOT TO BE USED.

HISTORY. Penal Code s. 529; G.S. 1894 s. 6839; R.L. 1905 s. 4778; G.S. 1913 s. 8502; G.S. 1923 s. 9946; M.S. 1927 s. 9946.

An objection of incompetent, irrelevant and immaterial to introduction of sworn statement of defendant to state fire marshal does not present question whether or not statement was an involuntary one which defendant was required to give against himself. State v Rosenswieg, 168 M 459, 210 NW 403.

In liquor prosecution, defendant's petition to suppress evidence secured in search is not inadmissible as privileged. Kaiser v United States, 60 F(2d) 410.

610.48 COMMITMENT OF CHILD TO STATE TRAINING SCHOOL UPON CONVICTION OF CRIME.

HISTORY. 1917 c. 266 s. 1; G.S. 1923 s. 9947; M.S. 1927 s. 9947.

Under the present statutes (1923) a boy over 12 and under 16 years of age, convicted of the crime of murder in the third degree, may be sentenced to the state prison. State v Olson, 156 M 181, 194 NW 942.

The expenses of transporting persons to state prison or to reformatories is paid by the state under the provisions of section 640.52, but there is no such provision relating to the state training school so the burden of conveying boy to the training school falls on the county of commitment. 1938 OAG 363, April 16, 1937 (345d).

610.49 CONVICT AS WITNESS.

HISTORY. Penal Code s. 531; G.S. 1894 s. 6841; R.L. 1905 s. 4780; G.S. 1913 s. 8504; G.S. 1923 s. 9948; M.S. 1927 s. 9948.

A defendant in a criminal case, sworn as a witness in his own behalf, may, on cross-examination, be asked if he has been convicted of crime A witness may be asked if he has not been convicted of a crime, either a felony or a misdemeanor, and if he denies it he may be contradicted. The evidence is admissible under the Penal Code, Section 531. State v Curtis, 39 M 357, 40 NW 263; State v Sauer, 42 M 258, 44 NW 115; State v Adamson, 43 M 196, 45 NW 152; Harding v Great Northern, 77 M 417, 80 NW 358; Thompson v Bankers Mutual, 128 M 474, 151 NW 180; State v Gordon, 105 M 217, 117 NW 483; State v Dale, 159 M 457, 199 NW 99.

A witness cannot be asked if he has been arrested. State v Renswick, 85 M 19, 88 NW 22; State v Bryant, 97 M 8, 105 NW 974.

A witness cannot be asked as to the punishment. Harding v Great Northern, 77 M 417, 80 NW 358.

Cannot be asked if he has been indicted. State v Ronk, 91 M 419, 98 NW 334.

The credibility of a witness may be attacked by showing he has been convicted of a crime, but not by showing a mere indictment therefor. Brennan v Minnesota Railway, 130 M 314, 153 NW 611.

It was not error for the court to allow the prosecuting attorney searchingly to cross-examine the defendant as to the circumstances of an assault, which defendant on his direct examination had testified that he had been convicted of. State v Price, 135 M 159, 160 NW 677.

A violation of a city ordinance is not a crime within the meaning of section 610.49 and hence cannot be proved on trial to impeach a witness. Carter v Duluth Cab Co. 170 M 250, 212 NW 413.

New trial granted because of the misconduct of the assistant county attorney in cross-examination of defendant relative to numerous charges, notwithstanding the rulings by the court. State v Glazer, 176 M 442, 223 NW 769.

There was prejudicial misconduct in the state's presentation of its case in suggesting or insinuating that the defendant had been involved in like affairs before. State v Sanderson, 179 M 436, 229 NW 564.

Defendant had been convicted four times. He could have been cross-examined as to those. There was further questioning about his past life. The exact line cannot be drawn between what is permissible and what is forbidden, and the extent of cross-examination upon collateral matters is largely discretionary with the trial court, but there may be a reversal if the discretion is abused. State v McTague, 190 M 455, 252 NW 446.

A witness may be examined as to conviction of a gross misdemeanor as well as conviction of a felony. Brase v Williams, Inc. 192 M 304, 250 NW 176.

A defendant in a criminal case who is a witness in his own behalf may be cross-examined upon collateral matters to effect his credibility and to discredit him, and to some extent the state may inquire into his past life. The cross-examination is largely within the discretion of the trial court. State v Tsiolis, 202 M 126, 277 NW 409.

The problem of proof; disqualification of witnesses. 18 MLR 518.

610.50 INTENT TO DEFRAUD.

HISTORY. Penal Code s. 535; G.S. 1894 s. 6845; R.L. 1905 s. 4781; G.S. 1913 s. 8505; G.S. 1923 s. 9949; M.S. 1927 s. 9949.

The intent to defraud mentioned in General Statutes 1878, Chapter 39, Section 14, is an intent to defraud the mortgagee therein named. Such intent is an essential ingredient of the offense defined by that section, so that an indictment under it, alleging no intent to defraud except one to defraud some other person than the mortgagee, is fatally defective. State v Ruhnke, 27 M 309, 7 NW 264.

It is not necessary, under the code, to allege the person intended to be defrauded, nor the value of the property added to the mortgage by the alleged forgery. State v Adamson, 43 M 196, 45 NW 152.

The uttering of a false or forged instrument, and the making of such instrument, are distinct offenses; and an indictment of the former need not set out who made the false instrument, or how it was made, or the intent of the maker. State v Goodrich, 67 M 176, 69 NW 815.

610.51 CRIMES ON PUBLIC CONVEYANCES.

HISTORY. Penal Code s. 536; G.S. 1894 s. 6846; R.L. 1905 s. 4782; G.S. 1913 s. 8506; G.S. 1923 s. 9950; M.S. 1927 s. 9950.

An allegation in the indictment that the crime was committed in Hennepin county is sustained by proof of its having been committed on a vessel on the Minnesota river, which passed through Hennepin on a voyage during which the act took place. State v Timmens, 4 M 325 (241).

See in connection with Section 219.97, relative to abandonment of railroad stations. Minn. Transfer v Railroad & Warehouse Commission, 200 M 426, 274 NW 408.

610.52 ALIEN CONVICTS OR INSANE PERSONS; NOTICE TO UNITED STATES IMMIGRATION OFFICERS.

HISTORY. 1927 c. 301 s. 1; M.S. 1927 s. 9950-1.

610.53 CERTIFIED COPIES OF INDICTMENT FURNISHED TO IMMIGRATION OFFICERS.

HISTORY. 1927 c. 301 s. 2; M.S. 1927 s. 9950-2.

610.54 TRANSFER OF INMATES OF PENAL INSTITUTIONS TO FEDERAL DISTRICT COURT FOR TRIAL FOR VIOLATIONS OF FEDERAL CRIMINAL LAWS.

HISTORY. 1927 c. 141; M.S. 1927 s. 9950-3.

610.55 TRANSFER OF FEMALE PRISONERS; FEMALE TO ACCOMPANY.

HISTORY. 1927 c. 213 s. 1; M.S. 1927 s. 9950-4.