CHAPTER 617

OFFENSES AGAINST CHASTITY, MORALS, AND DECENCY

RAPE; ABDUCTION; CARNAL KNOWLEDGE, AND SIMILAR OFFENSES

617.01 RAPE; PENALTY.

HISTORY. Penal Code s. 235; 1891 c. 88 s. 1; G.S. 1894 s. 6523; 1899 c. 72; R.L. 1905 s. 4926; G.S. 1913 s. 8655; G.S. 1923 s. 10124; M.S. 1927 s. 10124.

1. What constitutes
2. Resistance
3. Indictment
4. Evidence
5. Instructions
6. Assault with intent to commit rape

1. What constitutes

What constitutes rape. State v Reid, 39 M 277, 39 NW 497, 796; State v Bagan, 41 M 285, 43 NW 3.

Witness held competent who disclosed an intelligence, though simple, to justify the conclusion that she understood the nature of the act charged, though she did not appreciate nor understand the moral wrong. State v Dombroski, 145 M 278, 176 NW 985.

Law as to psychopathic personalities. Laws 1939, Chapter 369.

2. Resistance

See where prosecutrix was rendered unconscious. State v Reid, 39 M 277, 39 NW 497, 796.

The record does not sufficiently show specific acts of resistance upon the part of the prosecutrix within the requirements of law. State v Cowing, 99 M 123, 108 NW 851; State v Wulff, 194 M 271, 260 NW 515.

In prosecution for rape, question of whether victim resented to her utmost is relative, depending upon circumstances of each case, such as time, place, and character of assault, age, intelligence, courage, and temperament of victim, and is for the jury where facts are conflicting. State v Toth, 214 M 147, 7 NW(2d) 322.

3. Indictment

Under the old statute, and prior to the enactment of the Penal Code (effective Jan. 1, 1886), the indictment need not allege any particular place in the county, nor need it allege an assault in terms. The words "feloniously ravish" was sufficient. O'Connell v State, 6 M 279 (190).

The indictment should state the acts constituting the offense so as to advise the accused in which one of the different ways specified in that section he is charged with having committed the crime. State v Vorey, 41 M 134, 43 NW 324.

The indictment stated facts constituting the crime of rape as defined by statute, and did not charge more than one offense. State v Haun, 73 M 140, 76 NW 33.

Under an indictment charging attempt to rape, a conviction of assault in the third degree was sustained. State v Christofferson, 149 M 134, 182 NW 961.

One acquitted of rape under an indictment where no age of the female is averred may again be tried for the same act under an indictment charging carnal

knowledge and abuse of a female child under the age of consent. State v Winger, 204 M 164, 282 NW 819.

4. Evidence

Nothing is better settled than that, in a prosecution for rape, the fact that the prosecutrix made complaint soon after the injury, is competent in corroboration of her testimony. State v Reid, 39 M 277, 39 NW 497.

The testimony of the prosecutrix, somewhat inconsistent in itself, and in some respects impeached by her own former testimony upon preliminary examination, was corroborated largely by her sister, who, together with the prosecutrix, destroyed the natural and best corroborating evidence. For that and other reasons, a new trial must be granted. State v Cowing, 99 M 123, 108 NW 851.

Evidence held sufficient to sustain a verdict of guilty. State v Zempel, 103 M 428, 115 NW 275.

Corroborating testimony insufficient. State v Alton, 105 M 410, 117 NW 617.

Quantum of proof discussed. Testimony of prosecutrix and sufficiency of evidence. State v Newman, 127 M 445, 149 NW 945.

Distinction between rape and assault to commit felony as covered by section 617.02. State v Macbeth, 133 M 425, 158 NW 793.

Witness held competent who disclosed an intelligence, though simple, to justify the conclusion that she understood the nature of the act charged, though she did not understand or appreciate the moral wrong. State v Dombroski, 145 M 278, 176 NW 985.

The question of the identification of the defendant as the one committing an assault, and the effect of the testimony in support of an alibi, were for the jury, and the evidence sustains the verdict. State v Daly, 161 M 26, 200 NW 746.

The verdict that defendant was guilty of rape is sustained by the evidence. State v Greenstein, 162 M 346, 202 NW 892.

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

Evidence supports the verdict convicting the defendant of rape. State v Miller, 171 M 187, 213 NW 740; State v Cox, 172 M 226, 215 NW 189.

In prosecution for rape, court did not err in refusing to admit evidence that complainant on some occasions drank liquor, smoked cigarettes, and attended dances, and was somewhat indiscreet in her behavior. State v Brown, 185 M 446, 241 NW 591.

Defendant in a rape prosecution who undertakes to prove unchastity of a young girl should be required to offer definite proof. State v Brown, 185 M 446, 241 NW 591.

5. Instructions

Where no requests for instructions are made, it is not reversible error for the court to fail or neglect to instruct the jury upon any particular phase of the case. This rule applies in criminal cases. State v Zempel, 103 M 428, 115 NW 275.

The charge to the jury, "the defendant, as it is right and proper for him to do, in this case presents a number of defenses or theories of defense for your consideration," read in connection with other parts of the charge was not error. State v Hjerpe, 109 M 270, 123 NW 474.

The court's instruction in which he defines reasonable doubt was prejudicial, and a new trial must be granted. State v Whitman, 168 M 305, 210 NW 12.

A cautionary instruction rests in the discretion of the trial court. State v Jenkins, 171 M 173, 213 NW 923.

6. Assault with intent to commit rape

The indictment for intent to commit rape need allege nothing as to the age of the person accused. If he is beneath the age of competency to commit rape, that is a matter of defense. State v Ward, 35 M 182, 28 NW 192.

On an indictment for rape, it is not error to instruct the jury that if they are satisfied beyond a reasonable doubt that defendant committed an assault upon

the woman with intent to commit rape, they may convict of an assault in the second degree. There may be a conviction, although the woman finally consented. State v Bagan, 41 M 285, 43 NW 5.

If there is to be a distinction between an assault to commit the felony denounced in section 617.01 and one covered by section 617.02, so that the latter may be said to be one of lower degree embraced in the former, the distinction must be based upon whether or not the assault was against the will of the female. State v Macbeth, 133 M 425, 158 NW 793.

A defendant may be convicted of an assault in the third degree under an indictment charging him with an attempt to commit rape by forcibly overcoming the resistance of the female, as the commission of an assault is necessarily included in the offense charged. State v Christofferson, 149 M 134, 182 NW 961.

617.02 CARNAL KNOWLEDGE OF CHILDREN.

HISTORY. Penal Code s. 236; 1891 c. 90 s. 1; G.S. 1894 s. 6524; R.L. 1905 s. 4927; 1909 c. 92 s. 1; G.S. 1913 s. 8656; G.S. 1923 s. 10125; M.S. 1927 s. 10125.

1. Scope and validity
2. What constitutes carnal knowledge
3. Indictment
4. Assault with intent to commit
5. Prosecutrix not accomplice
6. Practice

1. Scope and validity

A wife is not a competent witness for the state in a prosecution against her husband for a crime against her committed before their marriage. State v Frey, 76 M 526, 79 NW 518.

The age of consent statute, General Statutes 1894, Section 6524 (section 617.02) is not void for uncertainty, but a valid penal enactment. Proof of any sexual connection between the parties will sustain a conviction. State v Rollins, 80 M 216, 83 NW 141.

An injunctional order made by the municipal court of the city of Minneapolis, forbidding the marriage of a girl of the age of 15 years, charged with delinquency, to which marriage to the man charged with criminal abuse of the delinquent, her parents had consented, is without jurisdiction, and disobedience thereof is not punishable as a contempt of court. State ex rel v District Court, 118 M 170, 136 NW 746.

There was no reversible error in charging that the character of the prosecutrix was not material, and in adding, in substance, that if the offense was committed, it should be determined, regardless of the reputation of the prosecutrix or of the defendant. State v Doliver, 154 M 298, 191 NW 594.

The evidence supports the verdict of guilty. State v Friend, 154 M 428, 191 NW 926.

Absence of evidence of a struggle is not a discrediting circumstance, unless the act is claimed to have been accomplished by force and violence. State v Coon, 170 M 343, 212 NW 588.

A girl under the age of consent is legally incapable of consenting to acts constituting sodomy, and thus in prosecution of the male, she is not an accomplice, and corroboration of her testimony is not required. State v Schwartz, 215 M 476, 10 NW(2d) 370.

2. What constitutes carnal knowledge

Defendant was properly convicted of the crime of carnally knowing a female child, more than ten but under fourteen years of age. Any sexual penetration, however slight, is sufficient to complete the crime, and it may be shown by direct or circumstantial evidence. State v Newman, 93 M 393, 101 NW 499.

Evidence of pregnancy, following the intercourse with defendant, and the subsequent birth of a child, properly received in corroboration of the charge of carnal knowledge. State v Johnson, 114 M 493, 131 NW 629.

An act done with intent to commit a crime, and tending, but failing to accomplish it, is an attempt to commit that crime and is punished as provided by section 610.27. State ex rel v Brown, 149 M 297, 183 NW 669.

An assault, whether it be 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.

Defendant properly convicted of the crime of carnal intercourse with female under the age of 18 years. State v Kloster, 159 M 122, 198 NW 296.

A new trial was granted to defendant because it was error to go into particulars of other misconduct to the extent permitted, and error to exclude a letter written by the prosecutrix containing statements tending to exculpate the defendant. State v Abdo, 165 M 440, 206 NW 933.

In the instant case, a motion for a new trial was based upon an affidavit by prosecuting witness subsequently repudiated. The granting of a new trial was within the discretion of the trial court. State v Wheat, 166 M 300, 207 NW 623.

Notwithstanding the many facts in defendant's favor, the evidence sustains a conviction. State v Beaudette, 168 M 444, 210 NW 286.

Under the carnal knowledge statute, consent of the victim is no defense to prosecution. State v Siebke, 216 M 181, 12 NW(2d) 186.

3. Indictment

An indictment charging defendant that he did "carnally know and abuse" a female child under sixteen years, without alleging the specific age, is sufficient to allege a public offense; but under the indictment can only be convicted of the lesser offense provided in the statute. State v Erickson, 81 M 134, 83 NW 512, State v Brown, 149 M 297, 183 NW 669.

Duplicity in an indictment must be taken advantage of by demurrer or motion to elect. State v Marshall, 155 M 248, 193 NW 165.

An indictment charging carnal knowledge necessarily includes as lesser offenses: (1) Attempt to carnally know; (2) Indecent assault or indecent liberties; and (3) Simple assault. State v McLeavey, 157 M 408, 196 NW 645.

Code provisions as to indictment. 26 MLR 170.

4. Assault with intent to commit

In the instant case, the indictment does not allege facts sufficient to constitute a public offense under General Statutes 1894, Section 6534 (section 617.08); but it does state facts constituting the crime of an assault on a female child under the age of consent, with intent to carnally know and abuse her. State v Kunz, 90 M 526, 97 NW 131.

5. Prosecutrix not accomplice

Unless a witness could be indicted, either as principal or accessory, for the offense with which defendant is charged, he is not an accomplice within the meaning of General Statutes 1913, Section 8463 (section 434.04). In a prosecution under General Statutes 1913, Section 8656 (section 617.02), the female is not an accomplice, and her testimony need not be corroborated. State v Dahl, 151 M 318, 186 NW 580.

6. Practice

A cautionary instruction rests in the discretion of the court. In the absence of a request, an accused cannot predicate error on failure to charge as to a lesser offense. The evidence sustains the conviction of attempt to commit rape. State v Jenkins, 171 M 173, 213 NW 923.

Demonstration by the father of prosecutrix was not prejudicial. The evidence supports the verdict. State v Tanley, 172 M 372, 215 NW 514.

Misconduct of counsel not reversible error. The evidence sustains the verdict. State v Gandel, 173 M 308, 217 NW 120.

In the instant case where the defendant was charged and convicted of carnally knowing a girl 17 years of age, the fact that defendant had been found not guilty in a paternity case was not admissible in evidence; but where prosecution in corroboration shows pregnancy of prosecutrix, defendant may introduce evidence of intercourse with others. State v Kraus, 175 M 174, 220 NW 547.

The verdict of guilty is sufficiently supported. State v Hook, 176 M 604, 224 NW 144; State v Nelson, 185 M 351, 241 NW 48; State v Kosek, 186 M 119, 242 NW 473; State v Marudas, 187 M 138, 244 NW 549.

Where the prosecutrix has by her answer taken the prosecuting attorney by surprise, there is no abuse of judicial discretion in permitting the state to cross-examine the witness, and impeach her answer. The corpus delicto was abundantly proved. State v Bauer, 189 M 280, 249 NW 40.

Where defendant was acquitted of rape under an indictment where no age of the female is averred, may again be tried for the same act under an indictment charging carnal knowledge and abuse of a female child under the age of consent. State v Winger, 204 M 164, 282 NW 819.

Right of seduced infant to maintain civil action for damages. 10 MLR 631.

617.03 PHYSICAL ABILITY OF OFFENDER.

HISTORY. Penal Code ss. 237, 238; G.S. 1894 ss. 6526, 6527; R.L. 1905 s. 4928; G.S. 1913 s. 8657; G.S. 1923 s. 10126; M.S. 1927 s. 10126.

The non-capacity statute does not apply to, and is in no way modified or affected by the marriage laws. State v Rollins, 80 M 219, 83 NW 141.

Degree of penetration required to convict. State v Rollins, 80 M 219, 83 NW 141; State v Newman, 93 M 394, 101 NW 499.

617.04 COMPELLING WOMAN TO MARRY.

HISTORY. Penal Code s. 239; G.S. 1894 s. 6528; R.L. 1905 s. 4929; G.S. 1913 s. 8658; G.S. 1923 s. 10127; M.S. 1927 s. 10127.

617.05 ABDUCTION; EVIDENCE; PENALTY.

HISTORY. Penal Code ss. 240, 241; 1887 c. 64; G.S. 1894 ss. 6529, 6530; R.L. 1905 s. 4930; 1909 c. 92 s. 2; G.S. 1913 s. 8659; G.S. 1923 s. 10128; M.S. 1927 s. 10128.

1. What constitutes
2. Indictment
3. Corroboration

1. What constitutes

In order to constitute a "taking," it is not necessary that it should appear that force or violence was used. It may be accomplished by persuasion, enticement, or device. It must also appear that it was done for an illicit purpose. State v Jamison, 38 M 21, 35 NW 712; State v Keith, 47 M 559, 50 NW 691.

To constitute abduction, within the meaning of Penal Code, Section 240, Subdivision 2 (section 617.05), the place into which the female is inveigled must be a house of ill-fame or of assignation or a place of similar character. State v McCrum, 38 M 154, 36 NW 102.

In General Statutes 1894, Section 6529 (section 617.05), the gist of the offense is the taking from the custody of the legal guardians, and not the marrying of the child. State v Sager, 99 M 54, 108 NW 812.

"Taking" may be proved by showing inducement of girl under 18 years to accompany defendant, by device or persuasion, without showing use of force. Prosecutrix must be corroborated both as to "taking" and immoral purpose. That the girl comes from one county and meets defendant in another, held sufficient

"taking" in latter county to give jurisdiction. State v Lauzer, 152 M 279, 188 NW 558.

Evidence that when prosecutrix was rescued, she complained that defendant had insulted her, is admissible. Immaterial whether prosecutrix is married. State v Eckelberry, 153 M 494, 191 NW 256.

"Prostitution," as used in the statute defining abduction, does not refer to sexual intercourse with defendant alone, but to an offering of the female person to an indiscriminate intercourse with men. The purpose of the taking of a female is the gravamen of the offense of abduction. State v Marsh, 158 M 111, 196 NW 930.

The evidence sustains the verdict that defendant was guilty of soliciting and persuading the prosecutrix to submit to another. State v Ellis, 199 M 306, 271 NW 594.

2. Indictment

In an indictment for abduction, under Penal Code, Section 240, Subdivision 1, Clause (1), (section 617.05), it is not necessary to allege that the taking was without the consent of the parent or guardian, but it is proper to state from whose custody the female was taken. State v Jamison, 38 M 21, 35 NW 712.

It is not necessary to specify the particular means by which the taking was effected, nor to state from what place or from whose custody the girl was taken. State v Keith, 47 M 559, 50 NW 691.

Notwithstanding the numerous objections considered, the indictment was valid. State v Sager, 99 M 54, 108 NW 812.

3. Corroboration

A conviction cannot be had on the unsupported testimony of the female. The corroboration must extend to every essential ingredient of the offense; but need not be sufficient in itself to establish the guilt of the defendant. State v Keith, 47 M 559, 50 NW 691.

It is claimed there was no corroboration as to the age of prosecutrix. No point was made of age at the trial. She testified as to her age, as did her girl companion as to her. With the two girls in court, their appearance might be sufficient corroboration. State v Ellis, 199 M 310, 271 NW 594.

617.06 ENTICEMENT INTO STATE FOR PROSTITUTION; PENALTY.

HISTORY. 1909 c. 404 ss. 1, 2; 1911 c. 202 s. 1; G.S. 1913 ss. 8660, 8661; G.S. 1923 ss. 10129, 10130; M.S. 1927 ss. 10129, 10130.

Offense is committed in this state, if in consequence of enticements here, the female enters a resort in another state. Indictment sufficient. State v Stickney, 118 M 64, 136 NW 419.

Evidence that the woman made the trip by common carrier at the telephone request of the defendant, might support a conviction for "inducing," but does not support a conviction of the crime of causing the woman to be transported in interstate commerce for immoral purposes. LaPage v United States, 146 F(2d) 537.

617.07 SEDUCTION UNDER PROMISE; EVIDENCE; BAR TO PROSECUTION.

HISTORY. Penal Code ss. 242 to 244; G.S. 1894 ss. 6531 to 6533; R.L. 1905 s. 4931; G.S. 1913 s. 8662; G.S. 1923 s. 10131; M.S. 1927 s. 10131.

1. Indictment
2. Corroboration
3. Proof of chaste character
4. Proof of promise
5. Proof of intercourse
6. Want of chastity
7. Offer of marirage

1. Indictment

An indictment for seduction, under promise to marry, must show that the woman was of chaste character immediately previous to, and down to, the alleged seduction. State v Gates, 27 M 52, 6 NW 404.

An indictment may charge a statutory offense in the language of the statute without greater particularity, when, by that means, all that is essential to constitute the offense is stated fully and directly, without uncertainty or ambiguity. State v Abrisch, 41 M 41, 42 NW 543.

The allegation in an indictment for seduction that the woman "was then and there an unmarried female of previous chaste character," is a sufficient allegation of chaste character at the time of the alleged seduction. State v Wenz, 41 M 196, 42 NW 933, State v Sortviet, 100 M 12, 110 NW 100.

The indictment was sufficient, but the evidence did not sustain the verdict. State v Preuss, 112 M 108, 127 NW 438.

2. Corroboration

Conviction cannot be hade upon the testimony of the woman seduced, unless she is corroborated upon every material point; the promise to marry, seduction under the promise, and previous chaste character of the woman seduced. State v Timmens, 4 M 325 (241); State v Wenz, 41 M 196, 42 NW 933.

The statute does not require direct and positive corroborative evidence, but simply such facts and circumstances as fairly tend to support the evidence of the prosecutrix, and shall satisfy the jury that she is entitled to credit. State v Brinkhaus, 34 M 285, 25 NW 642.

Where there is some corroborative evidence, though circumstantial, tending to support the testimony of the prosecutrix, the case is for the jury. State v Lockerby, 50 M 363, 52 NW 958.

Corroboration may be by circumstantial, as well as direct, evidence. State v Preuss, 112 M 108, 127 NW 438.

3. Proof of chaste character

As to her character, in addition to her own statement of the facts, she is shown to have been a constant inmate of her parent's house, and was during the time sought in marriage by another man. State v Timmens, 4 M 325 (241).

Although the woman may have permitted indelicate acts, yet if she did not surrender her person, unless seduced to do so under promise of marriage, she cannot be said to be "unchaste." State v Brinkhaus, 34 M 285, 25 NW 642.

The usual presumption of chastity in a woman does not apply in cases such as this. State v Wenz, 41 M 196, 42 NW 933.

General reputation for chastity is admissible. State v Lockerby, 50 M 363, 52 NW 958.

The previous chaste character of the female must be established by corroborative evidence sufficient to convince the jury. State v Preuss, 112 M 110, 127 NW 438.

4. Proof of promise

In the matter of the promise she is supported by both her parents who testified to admisisons of the defendant, and their advice to the daughter to be faithful to defendant, though sought in marriage by another man. State v Timmens, 4 M 325 (241).

It is sufficient, if language was used which implied a promise to marry, and was intended to convey that meaning, and was in fact so understood by the prosecutrix. State v Brinkhaus, 34 M 285, 25 NW 642.

Includes any promise absolute or conditional effect of which is to induce female to consent to intercourse. State v Sortviet, 100 M 12, 110 NW 100.

Evidence not sufficient to sustain the verdict. State v Preuss, 112 M 108, 127 NW 438.

5. Proof of intercourse

The corroborative evidence was circumstantial, but sufficient. State v Timmens, 4 M 325 (241).

Conviction justified. State v Wenz, 41 M 196, 42 NW 933.

6. Want of chastity

The court properly refused to hold that because the prosecuting witness had previously had connection with the defendant, that she could not be of chaste character. State v Timmens, 4 M 334 (241).

In such a case, the usual presumption of chastity in a woman does not apply. State v Wenz, 41 M 196, 42 NW 933.

Permitting indelicate acts or familiarities does not predicate unchastity, providing she does not surrender her person unless seduced under promise of marriage. State v Brinkhaus, 34 M 285, 25 NW 642.

Evidence of her general reputation for chastity is admissible in corroboration. State v Lockerby, 50 M 363, 52 NW 958.

The indictment is sufficiently direct to comply with the rule that it must be direct and certain. The proof, however, was not sufficient. State v Preuss, 112 M 108, 127 NW 438.

7. Offer of marriage

There was no error in rejecting evidence of subsequent offers of marriage by defendant. It was immaterial, and did not purport to support any defense. State v Lockerby, 50 M 363, 52 NW 958.

617.08 INDECENT ASSAULT

HISTORY. Penal Code s. 245; 1891 c. 89 s. 1; G.S. 1894 s. 6534; R.L. 1905 s. 4932; G.S. 1913 s. 8663; G.S. 1923 s. 10132; M.S. 1927 s. 10132.

Under Penal Code, Section 245 (section 617.08), the taking of indecent liberties with or on the person of a female child under the age of ten years, without regard to whether she consents to the same or not, constitutes an assault. State v West, 39 M 321, 40 NW 249.

It is not necessary under this section to allege the particular acts; but it is necessary to allege that such acts did not amount to rape, or an assault to commit rape. State v Kunz, 90 M 526, 97 NW 131.

The acts did not constitute any public offense, and the conviction cannot be sustained. State v Rolfe, 151 M 261, 186 NW 574.

An accused may be convicted of indecent assault under an indictment charging an assault with intent to ravish and carnally know the prosecutrix. State v Glaum, 153 M 220, 190 NW 71.

Indictment charging carnal knowledge necessarily includes as lesser offenses: (1) Attempt to carnally know; (2) Indecent assault or indecent liberties; and (3) Simple assault. State v McLeavey, 157 M 410, 196 NW 645.

Laws 1927, Chapter 394, purporting to be an amendment to General Statutes 1923, Section 10132 (section 617.08), is invalid, as the subject of the act is not expressed in the title. State v Palmquist, 172 M 221, 217 NW 108; State v Phillips, 176 M 249, 223 NW 98.

The fact that the girl assaulted made complaint of outrage is admissible, but neither the particulars of the offense, nor the name of the person may be disclosed as part of the complaint, except where the complaint is made a part of the res gestae. State v Gandel, 173 M 305, 217 NW 120.

The conviction of defendant charged under this section is sustained. State v Weis, 186 M 342, 243 NW 135.

Defendant was acquitted under a charge of rape where no age was averred. He may be tried for the same act under section 617.02. State v Winger, 204 M 169, 282 NW 819.

Disbarment will follow where, as here, the accused attorney has been found guilty of a felony, namely, indecent assault. In re Van Wyck, 207 M 145, 290 NW 227.

617.09 SOLICITING BOY UNDER 18 TO HOUSE OF ILL-FAME.

HISTORY. 1907 c. 320 s. 1; G.S. 1913 s. 8664; G.S. 1923 s. 10133; M.S. 1927 s. 10133.

617.10 ADMITTNG OR COHABITING.

HISTORY. 1907 c. 320 s. 2; G.S. 1913 s. 8665; G.S. 1923 s. 10134; M.S. 1927 s. 10134.

BIGAMY, ADULTERY, FORNICATION, INCEST, SODOMY

617.11 BIGAMY; PUNISHMENT; EXCEPTIONS.

HISTORY. Penal Code ss. 256, 257; G.S. 1894 ss. 6550, 6551; R.L. 1905 s. 4947; G.S. 1913 s. 8698; G.S. 1923 s. 10180; M.S. 1927 s. 10180.

An indictment for bigamy, in the form prescribed by the statute, is sufficient. The indictment alleged that defendant "unlawfully married one, Susie E. Roe, whose true name was, and is, Susan E. Weller." An omission to prove the latter part of the averment, where the proofs showed a marriage with a person, known among her associates by the name of Susie E. Roe, and who assumed that name at the time of such her marriage, is insufficient as a ground for dismissing the action. State v Armington, 25 M 29.

The presumption that a person is still living, arising from the fact that he was alive at a former date, is one not of law, but of fact, of varying strength, according to circumstances. Its weight as evidence is a question for the jury, to be determined by the general presumption or probability of the continuance of the life, in view of all the circumstances of the case. State v Plym, 43 M 385, 45 NW 848.

In a prosecution for bigamy, the first marriage relied upon by the state was annulled by judgment after the offense charged against the defendant, but the annulment made the first marriage voidable only, and the subsequent annulment of the first marriage did not relieve the second marriage of its bigamous character. State v Richards, 175 M 498, 221 NW 867.

Honest and reasonable belief in divorce of former spouse as a defense for bigamy. 15 MLR 471.

617.12 PUNISHMENT OF CONSORT.

HISTORY. Penal Code s. 258; G.S. 1894 s. 6552; R.L. 1905 s. 4948; G.S. 1913 s. 8699; G.S. 1923 s. 10181; M.S. 1927 s. 10181.

The supreme court on examination of the record found evidence, direct as to the woman's prior marriage and circumstantial as to relator's knowledge, sufficient to uphold the justice's finding. State ex rel v Haugen, 124 M 458, 145 NW 167.

617.13 INCEST.

HISTORY. Penal Code s. 259; 1893 c. 90 s. 1; G.S. 1894 s. 6553; R.L. 1905 s. 4949; G.S. 1913 s. 8700; G.S. 1923 s. 10182; M.S. 1927, s. 10182; 1941 c. 346.

The crime of incest was punishable under the Penal Code, Section 259, prior to the passage of Laws 1893, Chapter 90. State v Herges, 55 M 464, 57 NW 205.

The evidence is sufficient to support the verdict of guilty of incest, and the record presents no reversible error. State v Wallen, 123 M 128, 143 NW 119.

617.14 SODOMY.

HISTORY. Penal Code ss. 260, 261; G.S. 1894 ss. 6554, 6555; R.L. 1905 s. 4950; 1909 c. 270 s. 1; G.S. 1913 s. 8701; 1921 c. 224 s. 1; G.S. 1923 s. 10183; M.S. 1927 s. 10183.

The entire course of the trial not only indicates but compels the conclusion that the only offense charged and involved at the trial was that of sodomy. The court did not err in refusing, under the circumstances related in the opinion, 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.

Defendant procured a 19-year-old boy to bring a 16-year-old boy to his apartment where in the presence of the former, defendant committed sodomy with the latter. Both boys were witnesses for the state. He was indicted for his act with the younger boy. The appellate court held that the younger boy was an accomplice, but as to the elder, it was a matter for the jury. State v Panetti, 203 M 150, 280 NW 181.

A girl under the age of consent as defined by section 617.02 is legally incapable of consenting to carnal knowledge of her person by acts constituting the crime of sodomy, and thus in a prosecution for sodomy, she is not an accomplice, and corroboration of her testimony is not required. State v Schwartz, 215 M 477, 10 NW(2d) 370.

617.15 ADULTERY.

History. Penal Code s. 262; G.S. 1894 s. 6556; R.L. 1905 s. 4951; G.S. 1913 s. 8702; G.S. 1923 s. 10184; M.S. 1927 s. 10184.

Our present law is based on Penal Code, Section 262, effective January 1, 1886, and differs from the common law, and also differs as to testimony of the wife from the prior statute, General Statutes 1858, Chapter 84, Section 53. See as to holding prior to enactment of the Penal Code. State v Armstrong, 4 M 335 (251).

Upon an indictment for adultery, it need not be alleged in the indictment, nor proved on the trial, that the prosecution was commenced on the complaint of the husband or wife. The proper way to raise the objection that it is not, is by motion to set aside the indictment. State v Brecht, 41 M 50, 42 NW 602.

Upon a charge of adultery, the testimony of the injured husband or wife is competent to prove the offense. State v Vollander, 57 M 225, 58 NW 878.

Proceedings before an examining magistrate by which the accused is held to answer in the district court for the crime of adultery, constitute the commencement of a prosecution therefor within the meaning of this section. If prosecution began within one year, an indictment for such offense may be returned at any time within three years from the commission thereof. Such indictment need not show that the prosecution was commenced on the complaint of the husband or wife, nor that it was commenced within one year from the date of the offense. State v Dlugi, 123 M 392, 143 NW 971.

A prosecution for the crime of adultery may be commenced by an indictment without a formal complaint being first made by the innocent spouse before a committing magistrate. State v Marshall, 140 M 363, 168 NW 174.

A prosecution for adultery can be commenced only on complaint of injured spouse; but after it has been commenced, it is within the control of the court and cannot be dismissed by the complainant. Confession of adultery by one paramour is not admissible against the other. State v Allison, 175 M 218, 220 NW 563.

Whether a feeble-minded man has sufficient mental capacity to make a complaint in adultery against his wife is a question of fact to be determined by the court, when the indictment or information is filed. OAG Oct. 3, 1923.

Cohabitation between first cousins is not incest. OAG Sept. 7, 1935 (133b-36).

Intercourse between a married man and an adult unmarried woman is not adultery. OAG July 21, 1944 (494b-20).

Who may institute prosecution for adultery. 5 MLR 389.

Admissibility of testimony of one spouse against the other in cases of a crime committed by one against the other. 27 MLR 206.

617.16 FORNICATION.

HISTORY. Penal Code s. 263; 1891 c. 91 s. 1; G.S. 1894 s. 6557; R.L. 1905 s. 4952; G.S. 1913 s. 8703; 1919 c. 193 s. 1; G.S. 1923 s. 10185; M.S. 1927 s. 10185.

Defendant and a woman entered into a contract, "union, civil, and conjugal," agreeing to live together, but without marriage ceremony, they not believing in same. His conviction was sustained. State v Miller, 23 M 352.

An indictment for seduction, under promise to marry, must show that the woman was of chaste character immediately previous to and down to, the alleged seduction. State v Gates, 27 M 52, 6 NW 404.

A single act of sexual intercourse between a man and an unmarried woman does not constitute the crime of fornication within the meaning of General Statutes 1894, Section 6557 (section 617.16). "Cohabit" as used in that statute, means live and dwell together. State v Williams, 94 M 319, 102 NW 722.

If the defendant does not request a specific instruction he desires to have given, error cannot be predicated upon the failure of the court to give any particular instruction. State v Zempel, 103 M 428, 115 NW 275.

If a man and an unmarried woman dwell together, and have carnal intercourse, they cohabit within the meaning of General Statutes 1913, Section 8703 (section 617.16), and are guilty of the offense therein defined, although they conceal or attempt to conceal, their immoral relations. State v Gieseke, 125 M 497, 147 NW 663.

In a prosecution for fornication, where it appears that the woman was not the wife of the defendant, it is not necessary for the state, in the first instance, to prove the single state of the woman. State v Cavett, 171 M 222, 213 NW 920.

The same acts may constitute an offense against a statute and also a violation of a city ordinace, in which case a conviction under one is no bar to a prosecution under the other. Acts showing fornication prove a violation of an ordinance of the city of Minneapolis prohibiting lewdness and indecency. State v Covett, 171 M 505, 214 NW 479; State v Turner, 196 M 176, 264 NW 681.

Conviction reversed for errors occurring during the trial. State v Hansen, 158 M 159, 217 NW 146.

Under our statutes, the crime of fornication is a misdemeanor. Generally speaking, extradition on misdemeanor is not favorably considered. The law, however, permits extradition in misdemeanor cases. 1934 OAG 301, November 1, 1934 (605a-6).

617.17 ABSCONDING BY FATHER TO EVADE PROCEEDINGS ESTABLISHING PATERNITY.

HISTORY. 1917 c. 211 s. 1; G.S. 1923 s. 10185A; M.S. 1927 s. 10185A.

A proceeding to determine paternity is a civil proceeding, not a criminal action, and defendant may be called by the prosecution for cross-examination under the statute. State v Jeffrey, 188 M 476, 247 NW 692.

Extradition may be secured for absconding from the state with intent to evade proceedings to establish paternity. OAG Jan. 28, 1939 (193b-20).

ABORTION

617.18 ABORTION, HOW PUNISHED.

HISTORY. Penal Code s. 251; G.S. 1894 s. 6545; R.L. 1905 s. 4942; G.S. 1913 s. 8693; G.S. 1923 s. 10175; M.S. 1927 s. 10175.

A woman upon whom the crime of abortion is committed is not regarded as an accomplice. An indictment for abortion is not insufficient because it alleges in the alternative the use of different means in the commission of the crime. State v Owens, 22 M 238.

Where the defendant has committed the crime of manslaughter upon a woman whose husband was an accomplice in the commission of such crime, her dying declarations may be admitted in evidence against such defendant (overruled by State v Tennyson, 212 M 158, 2 NW(2d) 833). State v Pearce, 56 M 226, 57 NW 652, 1065.

It was error to permit a witness to testify her opinion of the end to be accomplished by the medicine and instruments, the issue being as to whether they

were used to cause an abortion or as a cure for a venereal disease. State v Pierce, 85 M 101, 88 NW 417.

The indictment and evidence is sufficient, even though it does not appear what particular instrument was used or in what manner operated. State v Bly, 99 M 74, 108 NW 833.

Under the statute making the administering of drugs or the use of instruments with intent to produce a miscarriage, the crime of abortion, it is not essential to the commission of the crime that a miscarriage result. State v Madden, 161 M 132, 201 NW 297.

In a prosecution for abortion, the woman upon whom the abortion was performed or attempted need not be corroborated. Laws 1875, Chapter 49, was repealed by the Penal Code of 1885, and the holding in State v Pearce, 56 M 226, 57 NW 652, 1065 is overruled. State v Tennyson, 212 M 158, 2 NW(2d) 833.

Consent of woman to illegal operation as defense to action for wrongful death. 13 MLR 382.

617.19 PREGNANT WOMAN ATTEMPTING ABORTION.

HISTORY. Penal Code s. 252; G.S. 1894 s. 6546; R.L. 1905 s. 4943; G.S. 1913 s. 8694; G.S. 1923 s. 10176; M.S. 1927 s. 10176.

617.20 DRUGS TO PRODUCE MISCARRIAGE.

HISTORY. Penal Code s. 255; G.S. 1894 s. 6549; R.L. 1905 s. 4944; G.S. 1913 s. 8695; G.S. 1923 s. 10177; M.S. 1927 s. 10177.

617.21 EVIDENCE.

HISTORY. Penal Code s. 253; G.S. 1894 s. 6547; R.L. 1905 s. 4945; G.S. 1913 s. 8696; G.S. 1923 s. 10178; M.S. 1927 s. 10178

617.22 CONCEALING BIRTH; SECOND OFFENSE.

HISTORY. Penal Code ss. 254, 518; 1889 c. 208 s. 4; G.S. 1894 ss. 6548, 6828; R.L. 1905 s. 4946; G.S. 1913 s. 8697; 1917 c. 231 s. 1; G.S. 1923 s. 10179; M.S. 1927 s. 10179.

OBSCENITY

617.23 INDECENT EXPOSURE; PENALTIES.

HISTORY. Penal Code ss. 275, 276; G.S. 1894 ss. 6569, 6570; R.L. 1905 s. 4953; G.S. 1913 s. 8704; G.S. 1923 s. 10186; M.S. 1927 s. 10186; 1931 c. 321.

The same act may constitute an offense against a statute and also a violation of the city ordinance, in which case a conviction as under one is no bar to a conviction under the other. State v Lee, 29 M 445, 13 NW 913; City of Virginia v Erickson, 141 M 21, 168 NW 821; State v Cavett, 171 M 505, 214 NW 479; State v Berg, 171 M 513, 213 NW 46.

617.24 OBSCENE LITERATURE; PENALTY.

HISTORY. Penal Code ss. 277, 279; 1893 c. 91 s. 1; G.S. 1894 ss. 6571, 6973; R.L. 1905 s. 4954; G.S. 1913 s. 8705; 1917 c. 241 s. 1; G.S. 1923 s. 10187; M.S. 1927 s. 10187.

Certain magazines held to be obscene literature. OAG May 29, 1934 (494b-37).

617.25 INDECENT ARTICLES AND INFORMATION.

HISTORY. Penal Code s. 278; 1893 c. 92 s. 1; G.S. 1894 s. 6572; R.L. 1905 s. 4955; G.S. 1913 s. 8706; G.S. 1923 s. 10188; M.S. 1927 s. 10188.

A sentence imposing imprisonment as a punishment (for crime defined in this section), and imprisoned to coerce the payment of costs, the two exceeding

three months, is not void altogether; and the one imprisoned is not entitled to his liberty until he has served the valid portion of his sentence. State ex rel v Maher, 164 M 289, 204 NW 955.

Legislative crimes. 23 MLR 143.

617.26 MAILING AND CARRYING OBSCENE MATTER.

HISTORY. Penal Code ss. 279, 280; G.S. 1894 ss. 6573, 6574; R.L. 1905 s. 4956; G.S. 1913 s. 8707; G.S. 1923 s. 10189; M.S. 1927 s. 10189.

617.27 SEARCH WARRANT; DESTRUCTION OF PROPERTY.

HISTORY. Penal Code s. 280; G.S. 1894 s. 6574; R.L. 1905 s. 4957; G.S. 1913 s. 8708; G.S. 1923 s. 10190; M.S. 1927 s. 10190.

617.28 CERTAIN MEDICAL ADVERTISEMENTS.

HISTORY. 1909 c. 162 ss. 1, 2; G.S. 1913 ss. 8709, 8710; G.S. 1923 ss. 10191, 10192; M.S. 1927 ss. 10191, 10192.

617.29 EVIDENCE

HISTORY. 1909 c. 162 s. 3; G.S. 1913 s. 8711; G.S. 1923 s. 10193; M.S. 1927 s. 10193.

PROSTITUTION AND HOUSES OF ILL-FAME

617.30 KEEPER OF DISORDERLY RESORT.

HISTORY. Penal Code s. 281; G.S. 1894 s. 6575; 1899 c. 158; R.L. 1905 s. 4958; G.S. 1913 s. 8712; G.S. 1923 s. 10194; M.S. 1927 s. 10194.

The warrant was not bad for charging the keeping of the place for a single day. Accused may waive his right to be present, anyhow when represented by counsel. State v Reckards, 21 M 47.

It is not necessary that illicit intercourse be carried on for hire or gain. The offense consists in the public nuisance, and the form of the corrupt motive is immaterial. State v Smith, 29 M 193, 12 NW 524.

On trial evidence of the reputation of the house as a house of assignation is competent, at least in aid of corroboration of other evidence. State v Bresland, 59 M 281, 61 NW 450.

The decency of a neighborhood is habitually disturbed and disgraced when unfit and unbecoming acts are of common occurrence at a house therein, and it may be a common nuisance and chargeable under this section, even if they do not disturb the peace and quiet of the vicinity. State v Ireton, 89 M 340, 94 NW 1078.

Laws 1897, Chapter 108, does not fix the punishment for the crime of keeping a disorderly house; but sentence was authorized by General Statutes 1894, Section 6297. State v Grosofski, 89 M 343, 94 NW 1077.

Time is not an essential element of the offense of keeping a disorderly house, and it is not necessary to prove the commission of the offense within the time laid in the indictment. State v Dufour, 123 M 451, 143 NW 1126.

Laws 1913, Chapter 562, the abatement act, intended by the legislature to be a civil, as distinguished from a penal, act, especially that when it was enacted, the criminal aspect of maintenance of bawdy houses was already fully covered by existing statutes which had not resulted in suppression of the evil aimed at. The act is an extension of existing remedies, and not in any way a limitation. State ex rel v Ryder, 126 M 95, 147 NW 953.

"Prostitution" as used in the statute defining abduction, does not refer to sexual intercourse with a defendant alone, but to an offering of the female person to an indiscriminate intercourse with men. State v Marsh, 158 M 111, 196 NW 930.

Conviction of violation of ordinance sustained by the evidence; evidence would justify finding that acts of disorder had been permitted for a considerable time;

testimony of police officer was admissible that he knew the reputation of the house, and within six months residents of the district had talked to him about it. State v Riebe, 174 M 603, 218 NW 557.

"An ordinance relating to disorderly houses, and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. State v McDow, 183 M 115, 235 NW 637.

The evidence sustains the finding of the court that the defendant, Fay, maintained a nuisance in Minneapolis at the time charged. State ex rel v Minneapolis Brewing, 189 M 147, 248 NW 715.

Evidence abundantly justifies the trial court in finding that defendant was guilty of keeping a disorderly house. State v Johnson, 189 M 546, 250 NW 366; City of St. Paul v Mahmood, 198 M 229, 269 NW 408.

An information stating that defendant "did keep and maintain a certain building as a hotel and did keep and maintain said premises for persons to visit for unlawful sexual intercourse, and did then and there permit divers persons of both sexes in said building to commit acts of fornication and adultery" charges a felony under the first sentence of section 617.30. State v Sauer, 217 M 592, 15 NW(2d) 17.

Prosecution under state statute after acquittal for offense arising out of the same act under municipal ordinance. 10 MLR 621.

617.31 DETENTION FOR DEBT IN HOUSE OF ILL-FAME.

HISTORY. 1909 c. 461 ss. 1, 2; G.S. 1913 ss. 8713, 8714; G.S. 1923 ss. 10195, 10196; M.S. 1927 ss. 10195, 10196.

617.32 RECEIVING EARNINGS OF PROSTITUTE.

HISTORY. 1909 c. 475 ss. 1, 2; G.S. 1913 ss. 8715, 8716; G.S. 1923 ss. 10197, 10198; M.S. 1927 ss. 10197, 10198.

Defendants were charged with receiving part of their support from a woman engaged in prostitution. The verdict of guilty is sustained by the evidence. State v Splett, 155 M 278, 193 NW 303.

617.325 TRANSPORTATION FOR PURPOSES OF PROSTITUTION.

HISTORY. 1945 c. 578 ss. 1 to 5.

617.33 HOUSES OF PROSTITUTION; NUISANCES; ABATEMENT.

HISTORY. 1913 c. 562 s. 1; G.S. 1913 s. 8717; G.S. 1923 s. 10199; M.S. 1927 s. 10199.

Although, prior to Laws 1913, Chapter 562, there was no statute authorizing seizure or forfeiture of personal property used in connection with the maintenance of a bawdy house, equity had power to deal with such property in any way reasonably necessary to the abatement of the nuisance in which it was employed. The law is civil, and not criminal, and is, in addition, not in limitation of previous law. State ex rel v New England, 126 M 78, 147 NW 951; State ex rel v Ryder, 126 M 95, 147 NW 953.

In an action to abate a nuisance under Laws 1913, Chapter 562, testimony of the general reputation of the premises is competent; and the character of the premises involved is properly proved by showing how they are conducted. State ex rel v Terrett, 131 M 349, 154 NW 1073.

A newspaper business conducted in violation of Laws 1925, Chapter 285, is a public nuisance. State ex rel v Guilford, 174 M 457, 219 NW 770.

617.34 ACTION TO ENJOIN; RESTRAINING ORDER; ANSWER.

HISTORY. 1913 c. 562 s. 2; G.S. 1913 s. 8718; G.S. 1923 s. 10200; M.S. 1927 s. 10200.

SEE: State ex rel v New England, 126 M 78, 147 NW 951; State ex rel Ryder, 126 M 95, 147 NW 953; State ex rel v Wheeler, 131 M 308, 155 NW 90; State ex rel v Terrett, 131 M 349, 154 NW 1073.

617.35 TRIAL; LIMITATION OR DISMISSAL.

HISTORY. 1913 c. 562 s. 3; G.S. 1913 s. 8719; G.S. 1923 s. 10201; M.S. 1927 s. 10201.

See annotations under section 617.33. SEE: State ex rel v Fay, 189 M 148, 248 NW 715.

617.36 CONTEMPTS.

HISTORY. 1913 c. 562 s. 4; G.S. 1913 s. 8720; G.S. 1923 s. 10202; M.S. 1927 s. 10202.

SEE: Notes under section 617.33.

617.37 ORDER OF ABATEMENT; PERSONAL PROPERTY; CONTEMPT; FEES.

HISTORY. 1913 c. 562 s. 5; G.S. 1913 s. 8721; G.S. 1923 s. 10203; M.S. 1927 s. 10203.

SEE: Notes under section 617.33.

617.38 DUTY OF COUNTY ATTORNEY.

HISTORY. 1913 c. 562 s. 6; G.S. 1913 s. 8722; G.S. 1923 s. 10204; M.S. 1927 s. 10204.

SEE: Notes under section 617.33.

617.39 INTERVENTION BY OWNER.

HISTORY. 1913 c. 562 s. 7; G.S. 1913 s. 8723; G.S. 1923 s. 10205; M.S. 1927 s. 10205.

SEE: Notes under section 617.33.

617.40 PERMANENT INJUNCTION; PENALTY AND LIEN.

HISTORY. 1913 c. 562 s. 8; G.S. 1913 s. 8724; G.S. 1923 s. 10206; M.S. 1927 s. 10206.

SEE: Notes under section 617.33.

617.41 OWNERS AND AGENTS; PARTIES TO ACTION.

HISTORY. 1913 c. 562 s. 9; G.S. 1913 s. 8725; G.S. 1923 s. 10207; M.S. 1927 s. 10207.

SEE: Notes under section 617.33.

DANCE HALLS

617.42 DANCE HALL.

HISTORY. 1923 c. 139 s. 1; G.S. 1923 s. 10161; M.S. 1927 s. 10161.

One charging only for checkroom and lunches held guilty of maintaining a dance hall without a permit. State v Kasal, 176 M 87, 222 NW 575.

Defendant held to have violated this section by permitting dancing with the aid of a piano and phonograph operated by placing a nickel in a slot. State v Bennett, 179 M 308, 229 NW 88.

As to whether a cafe which permits his patrons to engage in dancing is operating a public dance hall under this section, is a question of fact. 1934 OAG 82, July 10, 1933 (802a-10).

A club, charging admission to a dance but using the proceeds thereof solely for the payment of a debt on a hall, without pecuniary gain to anyone, comes within the definition stated in section 617.42, and is controlled by the provisions of section 617.43. 1934 OAG 231, Feb. 28, 1933 (802a-10).

Whether the proprietor of a beer parlor, night club, roadhouse, or dining room with cover charge, where dancing is allowed as an incident to purchase of provisions or service, is conducting a dance hall which requires a license, is a question of fact for the jury. OAG July 31, 1933; OAG Aug. 19, 1933; OAG Dec. 22, 1933; OAG Aug. 1, 1934 (802a-7); OAG Sept. 7, 1935 (802a-10).

A county fair association must acquire a license or permit in order to conduct a skating rink or dancing in county fair buildings. 1940 OAG 106, July 15, 1940 (772c-4).

Dancing to the music of a juke box is public dancing. OAG Aug. 4, 1944 (802a-3).

617.43 PROPRIETORS MUST OBTAIN PERMITS.

HISTORY. 1923 c. 139 s. 2; G.S. 1923 s. 10162; M.S. 1927 s. 10162.

617.44 ISSUANCE OF PERMIT.

HISTORY. 1923 c. 139 s. 3; G.S. 1923 s. 10163; M.S. 1927 s. 10163; 1929 c. 264 s. 1.

A freeholder and resident of a town cannot complain because it discriminates against non-residents. A town by-law regulating public dances and dance halls is not invalid, because it imposes a license fee of $30.00 for each dance. State v Hoffman, 159 M 401, 199 NW 175.

The town board can grant a permit for a single dance where county board has refused a permit. OAG May 21, 1929.

"Governing body of the municipality" has reference to dances in city, village, or borough. OAG May 21, 1929.

Town board may prohibit dances, though the county board has given permit to give dances for a year. The licensee cannot recover fee paid. OAG July 19, 1929.

Village council need not pass an ordinance regulating dancing in order to place a village under the operation of the law. OAG June 4, 1930.

Under this section, the owner of a dance pavilion licensed by the county board may lease premises to a third party who may conduct a single dance therein under a permit from a town board. OAG Aug. 14, 1930.

Under this section, the town board may grant a permit for a single dance, and the county board cannot restrain or interfere with this permit. OAG Aug. 14, 1930.

Town board may grant a permit to a third person not connected with dancing pavilion in question to conduct a single dance at the pavilion on a date other than that licensed by the county board to the pavilion owners. OAG July 7, 1931.

The fact that the county board issued only one permit from several applications is not necessarily an abuse of discretion. The board is not required to state its reasons for refusal to grant a permit. OAG Aug. 16, 1944 (802a-17).

SEE: Opinion of attorney general in secton 617.42.

617.45 PERMIT TO BE POSTED.

HISTORY. 1923 c. 139 s. 4; G.S. 1923 s. 10164; M.S. 1927 s. 10164; 1929 c. 264 s. 2.

617.46 APPLICATIONS.

HISTORY. 1923 c. 139 s. 5; G.S. 1923 s. 10165; M.S. 1927 s. 10165; 1929 c. 264 s. 3.

See as to prohibition or dance hall license in an on-sale liquor store, located in a city of the second class. OAG Aug. 14, 1939.

617.47 IMMODEST DANCES PROHIBITED.

HISTORY. 1923 c. 139 s. 7; G.S. 1923 s. 10167; M.S. 1927 s. 10167.

617.48 LIGHTS.

HISTORY. 1923 c. 139 s. 8; G.S. 1923 s. 10168; M.S. 1927 s. 10168.

617.49 NOT TO ADMIT CERTAIN PERSONS.

HISTORY. 1923 c. 139 s. 9; G.S. 1923 s. 10169; M.S. 1927 s. 10169.

County boards may prohibit persons under 21 years from entering taverns and penalize the keepers for permitting them to enter. OAG April 15, 1944 (217f-3).

617.50 OFFICER MUST ATTEND ALL PUBLIC DANCES.

HISTORY. 1923 c. 139 s. 10; G.S. 1923 s. 10170; 1927 s. 321; M.S. 1927 s. 10170.

The defendants were properly convicted of assaulting an officer informally appointed, but authorized to police a dance hall. State v Bryant, 174 M 566, 219 NW 877.

Marshal is not chief police officer, and the council has powers to appoint peace officers for dances. Council may appoint several for a dance, if necessary. OAG April 3, 1929.

Where dance is given by an organization, such as the American Legion, one of its members may be appointed peace officer if he is not personally interested in the profits. OAG Dec. 13, 1929.

Applicant for permit may be required to patrol within a radius of 1,000 feet to prevent sale of liquor. OAG June 4, 1930.

Duties of "officer of the law" at dance halls defined. 1942 OAG 200, Dec. 24, 1942 (802a-16).

There can be no conviction unless the failure to support is wilful and without excuse. The duty rests on each parent. The duty consists not only of supplying housing, food, and clothing. Care is also required. OAG April 3, 1944 (133b-1).

A parent cannot be extradited for the purpose of compelling him to support the child, but may be extradited for the purpose of punishing him for the crime of non-support. OAG Nov. 1, 1944 (840a-1).

617.51 HOURS.

HISTORY. 1923 c. 139 s. 11; G.S. 1923 s. 10171; M.S. 1927 s. 10171.

A place permitting dancing with aid of piano and a phonograph operated by a nickel-in-the-slot device violates the law, unless duly licensed. State v Bennett, 179 M 308, 229 NW 88.

While the act of congress remains in force, daylight saving time supersedes solar time in Minnesota. OAG Oct. 17, 1944 (802a-14).

617.52 DISPOSITION OF FEES.

HISTORY. 1923 c. 139 s. 12; G.S. 1923 s. 10172; M.S. 1927 s. 10172.

617.53 REVOCATION OF PERMIT.

HISTORY. 1923 c. 139 s. 13; G.S. 1923 s. 10173; M.S. 1927 s. 10173.

617.54 VIOLATION A MISDEMEANOR.

HISTORY. 1923 c. 139 s. 14; G.S. 1923 s. 10174; M.S. 1927 s. 10174.

The lessee of a barn was denied a permit to conduct a dance hall. Thereafter a dance was put on at which the owner was present, but the lessee was not. The owner was held liable, the lessee was not. State v Kasal, 176 M 88, 225 NW 575.

CRIMES RELATING TO CHILDREN

617.55 DESERTION OF CHILD OR PREGNANT WIFE.

HISTORY. Penal Code s. 246; 1889 c. 212 s. 1; G.S. 1894 s. 6535; R.L. 1905 s. 4933; 1911 c. 144 s. 1; G.S. 1913 s. 8666; 1915 c. 336 s. 1; 1917 c. 213 s. 1; G.S. 1923 s. 10135; M.S. 1927 s. 10135; 1931 c. 94.

The elements of the offense of abandoning a child are: the desertion of a child, the failure to support it, and an intent wholly to abandon it. There is a desertion where a parent quits the society of his child and renounces the duty he owes it. There is a failure to support, though some contributions are made, if they are wholly inadequate. There is an abandonment if the desertion is accompanied by an intention entirely to forsake the child.

The words "desert" and "abandon" are not generally understood to be synonymous. As used in the state they do not mean the same thing. There is an abandonment when the desertion is accompanied by an intention to entirely forsake the child.

The precise time at which the offense was committed was not a material ingredient of the offense itself. It was unnecessary to state it exactly in the indictment or to prove a commission of the offense at the time alleged, for the reason that it was a continuing one. State v Clark, 148 M 389, 182 NW 452.

Desertion is a continuing offense and may be a repeated offense. Jurisdiction might be in different counties, possibly as man may have deserted in one county to again desert in another county. State v Ford, 151 M 382, 186 NW 812.

If the self-imposed duties of his second marriage made it difficult for defendant to perform those of fatherhood, he has only himself to blame. The law is too solicitous of the welfare of children to excuse, on such grounds, a father's complete default in their support.' State v Lewis, 157 M 252, 195 NW 901.

Wilful and inexcusable failure of father to provide for support of his minor children is a continuing offense; acquittal, in prosecution for desertion of minor children, is not a bar to another prosecution subsequent to the date of the alleged desertion. Jackson v Jackson, 168 M 196, 209 NW 901.

Plaintiff cannot use this section merely to coerce the payment of money. It is a criminal statute. A felony cannot be compounded. In the instant case, the testimony does not sustain the findings, but defendant is in a fight, not with his ex-wife, but with the law, and in the end he will be the loser. Moulton v Moulton, 178 M 571, 227 NW 896.

Sections 617.55 and 617.56 treat of continuing offenses so that a former conviction does not preclude a prosecution for a violation committed subsequent to such conviction. State v Sweet, 179 M 32, 228 NW 337.

At common law, an illegitimate child has no right of inheritance from its father; but by statute such child shall inherit from his mother, and also from the person who, in writing and before a competent attesting witness, shall have declared himself to be his father. Reilly v Shapiro, 196 M 376, 265 NW 284.

It is improper to join in one indictment or in one complaint a charge of desertion of wife and children. There is a separate offense as to each, and two or more separate offenses may not be joined in the same indictment.

Removal of a family to another county does not relieve the deserting father, who remains in another county, from providing the necessary support. 1920 OAG 327, Dec. 4, 1919; 1920 OAG 338.

On October 24, 1922, by treaty between Great Britain and the United States, "Wilful desertion, or non-support of minor or dependent child" was made extraditable between the United States and Canada. OAG Nov. 20, 1924.

One charged under this section may be extradited from another state. 1936 OAG 167, March 26, 1936 (193b-1).

This statute in State v Sweet, 179 M 32, 228 NW 337, was interpreted to mean that where the father did not have custody of the child, he could not abandon it. He could not desert or wholly abandon one of whom he had no right to have the care and keeping. 1938 OAG 13, May 6, 1937 (840a-1).

Section 617.55 as amended by Laws 1931, Chapter 94, includes the duly adjudged father of an illegitimate child, but there must be action so adjudging. 1938 OAG 13, May 6, 1937 (840a-1).

Under this section the fugitive can be extradited so as to bring him back and punish him for the crime of desertion and non-support, and for that purpose only. OAG Nov. 1, 1944 (840a-1).

Where support is provided for a child, abandonment is a misdemeanor only. OAG Feb. 5, 1945 (133b-1).

Criminal responsibility of father for abandoning child of whose custody he has been deprived by divorce decree. 14 MLR 578.

Effect of Laws 1931, Chapter 94. 16 MLR 90.

617.56 FAILURE TO SUPPORT WIFE OR CHILD.

HISTORY. Penal Code ss. 246, 247; 1889 c. 212 s. 2; G.S. 1894 ss. 6535, 6536; 1899 c. 74; 1903 c. 222; R.L. 1905 s. 4934; G.S. 1913 s. 8667; 1917 c. 213 s. 2; G.S. 1923 s. 10136; M.S. 1927 s. 10136.

A wife who is living apart from her husband for a cause legally justifying her may maintain, independent of an action for a divorce, an equitable action against him for her separate support. Baier v Baier, 91 M 165, 97 NW 671.

Evidence does not support the conviction of the defendant on a charge of wilfully and without legal excuse failing to furnish food, shelter, or clothing to his minor children. State v Garrison, 129 M 389, 152 NW 762.

Bond runs to the state and is filed in the court making the order. Drake v Drake, 149 M 62, 182 NW 717.

The wilful and inexcusable failure of a father to provide for the support of his minor children is a continuing offense. An acquittal in a prosecution for deserting them is not a bar to another prosecution for non-support subsequent to the date of the alleged desertion. State v Wood, 168 M 34, 209 NW 529.

Obligation of father to support child exists as a continuing obligation after divorce even if the decree does not require him to support the child. Person violating an order requiring him to contribute to the support of his child has the burden of proof in contempt proceedings to show inability to comply with the order. Jackson v Jackson, 168 M 196, 209 NW 901.

A justice of the peace in Golden Valley has no jurisdiction to try a criminal case for an offense committed in the city of Minneapolis. State ex rel v Stanway, 174 M 608, 219 NW 452.

This section refers only to legitimate children. State v Lindskog, 175 M 533, 221 NW 911.

In an action by a wife wherein a judgment of separate maintenance had been obtained, section 617.56 being a criminal statute, cannot be used to coerce payment. A felony cannot be compounded. Moulton v Moulton, 178 M 571, 227 NW 896.

Offenses under sections 617.55 and 617.56 are continuing offenses, so that a former conviction does not preclude a prosecution for a violation committed subsequent to such conviction. State v Sweet, 179 M 32, 228 NW 337.

The duty of providing for the child is cast upon the father, although the child is in the custody of the mother and the mother refuses to live with her husband. State v Washnesky, 187 M 643, 246 NW 366.

Neither wife nor minor child may recover damages for personal injuries inflicted upon the husband and father by the negligent act of another. The remedy for such wrong is to be redressed solely by an action by the husband and father to recover his damages against such wrongdoer. Eschenbach v Benjamin, 195 M 380, 263 NW 154.

A judgment obtained in a competent court of this state for payments due under a judgment entered by a competent court of a sister state under the illegitimacy statutes of the latter may be enforced, when so ordered by our court, by the the same means as if the judgment had been originally obtained in this state and under our laws. Ladd v Martineau, 205 M 129, 285 NW 281.

Where wife was granted a divorce under a cross bill, and the care of three young children, and the husband was required to pay only $10.00 per month sup-

port money, the award was clearly inadequate, and on appeal the case was remanded for further consideration by the trial judge. Krueger v Krueger, 210 M 144, 297 NW 566.

A decree of a state court fixing the obligation of a divorced father for support and education of a minor daughter is binding on the courts of another state to which the daughter and the divorced mother had removed and in which they sought to force additional contributions from the father by attachment of his local property. Yarborough v Yarborough, 290 US 221.

Dependents defined; necessary to support. 1934 OAG 651, Dec. 16, 1933 (268g).

A resident of another state whose wife and children came into Minnesota and who does not follow or support them is chargeable under this section. Not having been a resident here, he is not a fugitive, and cannot be extradited. OAG Nov. 1, 1934 (494b-15).

Under certain circumstances a person not liable under section 617.55 may be held liable under section 617.56. OAG Sept. 17, 1935 (605b-16).

Parents cannot be prosecuted for non-support of their children who are inmates of state school. OAG April 29, 1936 (840a-9).

An agreement between husband and wife as to division of property cannot relieve the father of his legal obligation to his children. OAG Feb. 23, 1938 (840a-1).

The husband owes the duty to support his family at the place where they reside, and that if he fails to support them, the offense is committed at that place, his constructive presence being presumed for the purpose of establishing the venue. 1940 OAG 38, Nov. 16, 1939 (133b-1).

Liability of father for support of child in absence of amendment of original divorce decree in which ample provision is made for child. 6 MLR 523.

Common law marriages. 22 MLR 185.

See 28 MLR 279.

617.57 PROSECUTION.

HISTORY. 1903 c. 222 s. 1; 1905 c. 217 s. 1; G.S. 1913 s. 8668; 1917 c. 213 s. 3; G.S. 1923 s. 10137; M.S. 1927 s. 10137.

617.58 PROOF OF RELATIONSHIP.

HISTORY. 1903 c. 222 s. 1; 1905 c. 222 s. 1; G.S. 1913 s. 8668A; 1917 c. 213 s. 4; G.S. 1923 s. 10138; M.S. 1927 s. 10138.

617.59 ENDANGERING LIFE, HEALTH, OR MORALS OF MINORS.

HISTORY. Penal Code s. 248; G.S. 1894 s. 6537; R.L. 1905 s. 4935; G.S. 1913 s. 8669; G.S. 1923 s. 10139; M.S. 1927 s. 10139.

The defendants were convicted under this section. The indictment was sufficient, but the record leaves it doubtful whether the full measure of proof was presented at the trial so there must be a reversal. State v Kaspar, 140 M 259, 167 NW 1035.

617.60 KEEPERS OF PUBLIC PLACES TO EXCLUDE MINORS.

HISTORY. Penal Code s. 249; G.S. 1894 s. 6538; 1897 c. 115; R.L. 1905 s. 4936; G.S. 1913 s. 8670; G.S. 1923 s. 10140; M.S. 1927 s. 10140.

The defendant was properly convicted of permitting a person under 21 years to be and remain in a dance house. The statute is a proper exercise of police power, and is not class legislation. Dance hall defined. State v Rosenfield, 111 M 301, 126 NW 1068.

Proof of criminal intent unnecessary. As a matter of law, the acts shown contributed to the minor's delinquency, and the court did not err in refusing to submit the question to the jury as a fact issue. State v Sobelmen, 199 M 232, 271 NW 484.

617.61 MINORS; GAMING BY PROHIBITED, WHERE; HOW PUNISHED.

HISTORY. 1901 c. 313 ss. 1, 2; R.L. 1905 s. 4937; G.S. 1913 s. 8671; G.S. 1923 s. 10141; M.S. 1927 s. 10141.

617.62 RESTRICTIONS ON MINORS IN PLACES OF AMUSEMENT.

HISTORY. 1913 c. 572 s. 1; G.S. 1913 s. 8672; G.S. 1923 s. 10142; M.S. 1927 s. 10142; 1941 c. 65 s. 1.

Students and persons under 18 years of age may frequent places where bowling is the only activity. OAG Oct. 23, 1944 (802b-3).

617.63 KEEPERS OF PUBLIC PLACES TO EXCLUDE; PENALTY.

HISTORY. 1913 c. 572 s. 2; G.S. 1913 s. 8673; G.S. 1923 s. 10143; M.S. 1927 s. 10143; 1941 c. 65 s. 2.

617.64 USE OF TOBACCO BY MINORS.

HISTORY. 1895 c. 192; 1897 c. 116; R.L. 1905 s. 4938; G.S. 1913 s. 8674; G.S. 1923 s. 10144; M.S. 1927 s. 10144.

Specific legislative sanction is not required to authorize municipality to make its own police regulations for preservations of health, safety, and welfare of its citizens. Laws 1941, Chapter 405, Section 3, authorizing cities to license and regulate sale of cigarettes at retail, did not prohibit city from also licensing sale at wholesale. State v Crabtree, 218 M 36, 15 NW(2d) 99.

617.65 MINORS; SALE OF TOBACCO TO.

HISTORY. 1907 c. 386 s. 2; G.S. 1913 s. 8675; G.S. 1923 s. 10145; M.S. 1927 s. 10145.

617.66 USE OF TOBACCO IN PUBLIC PLACE; ARREST; PENALTY; EVIDENCE.

HISTORY. 1907 c. 386 s. 3; G.S. 1913 s. 8676; G.S. 1923 s. 10146; M.S. 1927 s. 10146.

617.67 HARBORING.

HISTORY. 1907 c. 386 s. 4; G.S. 1913 s. 8677; G.S. 1923 s. 10147; M.S. 1927 s. 10147.

Consent of parents is effective only in the home. Such consent cannot be pleaded as a defense by other than parents. OAG Mar. 14, 1939 (829f-2).

617.68 POWERS OF GRAND JURY.

HISTORY. 1907 c. 386 s. 5; G.S. 1913 s. 8678; G.S. 1923 s. 10148; M.S. 1927 s. 10148.

617.69 LIQUORS IN SCHOOLHOUSES OR GROUNDS.

HISTORY. 1913 c. 415 s. 1; G.S. 1913 s. 8679; G.S. 1923 s. 10149; M.S. 1927 s. 10149.

617.70 SALE OF LIQUOR WITHIN ONE MILE OF CERTAIN INSTITUTIONS.

HISTORY. 1907 c. 378 s. 1; G.S. 1913 s. 8680; G.S. 1923 s. 10150; M.S. 1927 s. 10150; 1933 c. 27 s. 1.

617.71 SALE OF LIQUOR OR CIGARETTES WITHIN 1,000 FEET OF CERTAIN INSTITUTIONS.

HISTORY. 1913 c. 507 s. 1; G.S. 1913 s. 8681; G.S. 1923 s. 10151; M.S. 1927 s. 10151.

617.715 PEDDLING AND CANVASSING PROHIBITED ON SCHOOL GROUNDS; PENALTY.

HISTORY. 1929 c. 181 ss. 1, 2; M. Supp. ss. 10151-1, 10151-2; 1939 c. 155 s. 1.

617.72 DISTRIBUTION OF CRIME LITERATURE AMONG MINORS.

HISTORY. 1917 c. 242 ss. 1, 2; G.S. 1923 ss. 10154, 10155; M.S. 1927 ss. 10154, 10155.

617.73 CRUELTY TO CHILDREN.

HISTORY. 1893 c. 96 s. 1; G.S. 1894 ss. 6540, 6541, 6542; R.L. 1905 s. 4940; G.S. 1913 s. 8683; 1917 c. 240 s. 1; G.S. 1923 s. 10153; M.S. 1927 s. 10153.

617.74 UNLAWFUL CONFINEMENT OF FEEBLE-MINDED PERSONS; PENALTY.

HISTORY. Penal Code s. 316; G.S. 1894 s. 6610; R.L. 1905 s. 4941; G.S. 1913 s. 8684; 1917 c. 209 s. 1; G.S. 1923 s. 10156; M.S. 1927 s. 10156.

617.75 HABITUAL OFFENDERS IN CERTAIN CASES.

HISTORY. 1921 c. 455 ss. 1 to 4; G.S. 1923 ss. 10157 to 10160; M.S. 1927 ss. 10157 to 10160.

In a case of vagrancy to be defined as an habitual offender, the person must suffer repeated sentences under the state laws. Conviction under municipal ordinance is not sufficient. OAG Dec. 19, 1936 (605b-44).