CHAPTER 631

TRIAL; JUDGMENT, SENTENCE

631.01 ISSUES OF FACT; HOW TRIED; APPEARANCE IN PERSON.

HISTORY. R.S. 1851 c. 125 ss. 143 to 145; P.S. 1858 c. 111 ss. 1 to 3; G.S. 1866 c. 114 ss. 1 to 3; G.S. 1878 c. 114 ss. 1 to 3; G.S. 1894 ss. 7318 to 7320; R.L. 1905 s. 5358;G.S. 1913 s. 9200; G.S. 1923 s. 10705; M.S. 1927 s. 10705; 1935 c. 194 s. 2.

1. Appearance of accused in person
2. Right of trial by jury
3. Evidence held admissible
4. Evidence inadmissible
5. Generally

1. Appearance of accused in person

The statute is merely an affirmation of the common law. State v Reckards, 21 M 47.

The objection that defendant was not present cannot be raised by habeas corpus. State ex rel v Sheriff of Hennepin Co. 24 M 87.

In a prosecution for a felony the accused has a right to be present at every stage of the trial. In his absence a jury cannot properly be discharged for inability to agree. State ex rel v Sheriff of Hennepin Co. 24 M 87; State v Sommers, 60 M 90, 61 NW 907.

The mere fact that the record does not show that he was present is not fatal to a verdict or judgment. State v Brown, 41 M 319, 43 NW 69.

The right of presence may be waived by the accused, at least when the counsel of the accused is present for him. The defendant was present all of the time until the jury retired, and being on bail left the court room. The court 18 hours after the jury agreed on a verdict and after exhausting reasonable means to locate the accused, rightfully held that the defendant had waived his right to be present and received the verdict in his absence. State v Gorman, 113 M 401, 129 NW 589.

Neither the constitutional right of the defendant to be confronted by the witnesses against him nor his statutory right to be present at the trial, were violated by allowing the jury to view the premises in his absence. State v Rogers, 145 M 304, 177 NW 358.

A defendant on trial for felony has a right to be present in court at every step of the proceeding, including the rendition and recording of the verdict; but a defendant at liberty on bail may waive his right. State v Knutson, 175 M 573, 222 NW 277.

When the defendant requests the bailiff to notify him on the return of the jury, and remains near-by, there is no waiver of his right to be present. State v Dingman, 177 M 283, 225 NW 82.

The defendant must be present when sentence is to be imposed. In misdemeanor cases, cash bail may be regarded as security that defendant will abide the sentence, and at the trial or hearing he may appear by attorney. OAG Dec. 15, 1944 (605a-3).

Voluntary absence of defendant constitutes waiver of right to be present at rendition of verdict. 13 MLR 66.

As to 1935 legislation see Laws 1935, Chapters 194, 196. 20 MLR 70.

2. Right of trial by jury

The plea of former jeopardy is a fact issue for the jury. The issue cannot be raised by motion or tried by affidavits. State v Eaton, 180 M 439, 231 NW 6.

Unless the municipal ordinance or charter so provides, one being tried for an offense against the provisions of an ordinance may not demand a jury trial. OAG March 2, 1938 (477a).

3. Evidence held admissible

The defendant being charged with breach of the provisions of the "blue sky law," evidence of like sales, even three years prior to the date of the sale on which the prosecution is based, is admissible. State v Robbins, 185 M 202, 240 NW 456.

There was no substantial error relative to testimony of the existence of a dairy, nor of the finding of a gun in the possession of defendant. State v Stockton, 186 M 33, 242 NW 344.

Evidence of flight of accused after arrest, attempt to escape, resistance to arrest, or concealment under an assumed name is admissible, not as a presumption of guilt, but as a suggestion of a consciousness of guilt. State v McTague, 190 M 449, 252 NW 446.

Where defendant was charged with grand larceny, evidence of the commission by him of other similar crimes was, in the instant case, admissible. State v Voss, 192 M 127, 255 NW 843.

Defendant was convicted of assault. Although he was not present when the assault was committed, evidence of his connection with those who were parties to the physical assault, and of threats made by defendant, and other evidence of like character, is admissible. State v Barnett, 193 M 336, 258 NW 508.

It was not error to admit evidence tending to show a disposition by defendant, as a witness on his own behalf, to withhold truth or conceal facts. Such evidence did not become inadmissible because it may have suggested defendant's guilt of other crimes. State v Hankins, 193 M 375, 258 NW 578.

In an abortion prosecution, admission of testimony as to conversation had with deceased after performance of the operation, was not prejudicial error since defendant was in no way mentioned in the conversation. State v Zabrocki, 194 M 346, 260 NW 507.

Evidence that defendant, shortly prior to the offense charged in the instant case, had received other stolen property from the same parties is admissible to show guilty knowledge. State v Gifis, 195 M 276, 262 NW 637.

In a trial of defendant for shoplifting it was not error to admit in evidence a conversation between defendant and two of the store employees occurring immediately after the goods were found in her possession. State v Tremont, 196 M 36, 263 NW 906.

On trial for arson, circumstantial evidence of a previous alleged attempt to cause burning of the same property was admissible. State v Zemple, 196 M 159, 264 NW 587.

Evidence of other crimes is admissible if it tends directly or corroboratively to prove a guilty intent of the commission of the wrong charged in the indictment or information or some essential element thereof. State v Omodt, 198 M 165, 269 NW 360.

In the instant case where the trial judge in his discretion admitted the confession in evidence, there was no error. State v Nelson, 199 M 86, 271 NW 114.

In a proceeding to establish paternity of an illegitimate child, the defendant may offer evidence tending to prove good character as to chastity and morality. State v Oslund, 199 M 604, 273 NW 76.

Pamograph records obtained in wire-tapping operations which purported to record conversations between defendant and others is admissible. State v Raasch, 201 M 158, 275 NW 620.

Defendant, having himself introduced the subject of other fires, is not in a position to complain because prosecuting attorney on cross-examination brought out facts and circumstances discrediting his story. State v Tsiolis, 202 M 118, 277 NW 409.

A ruling sustaining an objection to questions calculated to bring out testimony that defendant's attorney offered to produce defendant within 24 hours in

case he was indicted, in order to rebut the state's evidence of flight, was without prejudice to the defendant. State v Rowe, 203 M 172, 280 NW 646.

Evidence of distinct and independent offenses is admissible to prove the accusation when it tends to establish motive, intent, absence of mistake or accident, identity of the accused, sex crimes, and a common scheme or plan embracing the commission of similar crimes so related to each other that proof of one or more tends to establish the accusation. State v Stuart, 203 M 301, 281 NW 299.

Defendant's identity as the one who committed the offense was one of fact for the jury. Reasonable latitude is allowed in the admission of evidence to prove such identity. State v Siebke, 216 M 182, 12 NW(2d) 186.

A new trial will not be granted for refusal to dismiss when the state rests if the evidence as finally in warrants a conviction. State v Golden, 216 M 97, 12 NW(2) 617.

In prosecution for keeping a disorderly resort, testimony concerning specific alleged occurrences showing character of defendant's hotel was not inadmissible as being too remote, the offense being continuing. State v Sauer, 217 M 591, 15 NW(2d) 17.

Everything said, written, or done by a conspirator in execution or furtherance of the common purpose to commit a crime is deemed to be the act of every party to the conspiracy, whether present or absent, and is admissible as evidence against each of them. State v Kahner, 217 M 574, 15 NW(2d) 105.

A statutory presumption or prima facie case cannot be sustained if there is 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.

Evidence obtained by the prosecution through questionable methods, is not admissible in the federal courts. State v Schabert, 218 M 1, 15 NW(2d) 585.

Where the prosecution has actual possession of intoxicating liquor, it may be used as evidence, even when possession was obtained irregularly. Duluth v Cerveny, 218 M 511, 16 NW(2d) 779.

4. Evidence inadmissible

Admission in evidence of a revolver found in defendant's desk six weeks after the commission of the crime of which he was accused, was error; as was also the admission of license plates found in his car; and evidence of association with persons of doubtful character. State v Stockton, 181 M 566, 233 NW 307.

Defendant was charged with perjury for evidence given at the trial of his son. It was error to admit evidence that the son was convicted, and error to give the names of the jury who found the son guilty. State v Olson, 186 M 45, 242 NW 348.

Letters written by defendant after he was in trouble were properly excluded. State v MacLean, 192 M 96, 255 NW 821.

Where defendant was convicted of the crime of rape, the fact that an exhibit, being a statement by an officer of a church organization relative to a charge against defendant for unbecoming conduct was admitted as evidence, was error. State v Wulff, 194 M 271, 260 NW 515.

Where goods are found in the possession of the defendant, but in a place not in defendant's exclusive possession, such possession does not raise a sufficient inference of guilt to warrant conviction. State v Zoff, 196 M 382, 265 NW 34.

Transcription of a statement made by a deceased person and offered as a dying declaration was, under the evidence, improperly admitted. State v Elias, 205 M 156, 285 NW 475.

5. Generally

A hypothetical question, the answer of which tends to refute or weaken the testimony of an expert witness, may be asked him on cross-examination. State v Eidsvold, 156 M 28, 194 NW 17.

When the jury came in for additional instructions the judge inquired as to their wishes, and at once required the presence of the defendant before giving the instructions. Defendant's rights were not violated. State v Staveneau, 158 M 329, 197 NW 667.

In a prosecution for violation of an ordinance, proof beyond a reasonable doubt is not required. City of St. Paul v Keeley, 194 M 386, 260 NW 357.

Where defendant's daughter gave birth to an illegitimate child, and the grandmother of the child was convicted of burning the child, there must be a reversal because of insufficiency of the evidence. State v Voges, 197 M 85, 266 NW 265.

The same degree of proof is not required in case of a violation of an ordinance, as in an indictment for violation of a statute. State v Mahmood, 198 M 229, 269 NW 408.

Proof of criminal intent is unnecessary where the statute makes commission of prohibited act a punishable offense. State v Sobelman, 199 M 232, 271 NW 484.

Indictment for second degree grand larceny found to contain such allegations as would permit the introduction of evidence showing that the crime was perpetrated by means of trickery. State v Nuser, 199 M 315, 271 NW 811.

The fact that the evidence of the state's witnesses differ in certain particulars does not preclude conviction. State v Poelaert, 200 M 30, 273 NW 641.

It is largely within the discretion of the trial judge as to whether the misconduct of counsel was sufficiently prejudicial as to warrant a new trial. State v Heffelfinger, 200 M 268, 274 NW 234.

A plea of former conviction or acquittal for the same offense raises an issue of fact of which the trial court has jurisdiction. State ex rel v Utecht, 206 M 44, 287 NW 229.

The rule limiting the application of presumptions in criminal cases cannot be invoked to destroy the force of legitimate and obvious inferences. Husten v United States, 95 F(2d) 168.

It is deemed unethical conduct for the county attorney to obtain a statement from a defendant who is in jail, and who is represented by counsel. OAG March 1, 1937 (121b-7).

Exceptions to the hearsay rule. 21 MLR 181.

631.02 CONTINUANCE; DEFENDANT COMMITTED, WHEN.

HISTORY. R.S. 1851 c. 128 s. 147; R.S. 1851 c. 132 s. 248; P.S. 1858 c. 114 s. 1; P.S. 1858 c. 118 s. 14; G.S. 1866 c. 114 ss. 4, 5; G.S. 1878 c. 114 ss. 4, 5; G.S. 1894 ss. 7321, 7322; R.L. 1905 s. 5359; G.S. 1913 s. 9201; G.S. 1923 s. 10706; M.S. 1927 s. 10706.

An application for a continuance is addressed to the discretion of the trial court and its action will rarely be reversed on appeal. A substantial reason for continuance must be properly shown. State v McCartey, 17 M 76 (54); State v Nerbovig, 33 M 480, 24 M 321; State v Fay, 88 M 269, 92 NW 978.

In a case triable without a jury, the court may properly impose a condition for a continuance asked by defendant that the testimony of a witness for the prosecution be taken immediately. State v LaDue, 164 M 499, 205 NW 450.

Where a continuance was asked because of absence of witnesses the trial court properly refused to grant it, there being no showing that the absent witnesses could be located or their presence secured in case the continuance was granted. State v Mohrbacher, 173 M 567, 218 NW 112.

Defendant and his attorneys were given more than a week to prepare for trial, and a further continuance was properly refused. City of Duluth v LaFleaur, 199 M 470, 272 NW 389.

Right to a "speedy trial." 7 MLR 577.

631.03 JOINT INDICTMENT, SEPARATE TRIAL.

HISTORY. R.S. 1851 c. 109 s. 15; R.S. 1851 c. 132 s. 237; P.S. 1858 c. 98 s. 15; P.S. 1858 c. 118 s. 3; G.S. 1866 c. 91 s. 8; G.S. 1866 c. 114 s. 6; G.S. 1878 c. 91 s. 8; G.S. 1878 c. 114 s. 6; G.S. 1894 ss. 6267, 7323; R.L. 1905 s. 5360; G.S. 1913 s. 9202; G.S. 1923 s. 10707; M.S. 1927 s. 10707.

Upon a joint indictment against several defendants, the court on application of the state may direct the trial to proceed against one and failure to enter a

formal order to that effect is not prejudicial error. State v Thaden, 43 M 325, 45 NW 614.

The granting of a separate trial to each of several defendants indicted jointly for a misdemeanor is discretionary with the trial court. State v Sederstrom, 99 M 234, 109 NW 113; State v Towsley, 149 M 6, 182 NW 773.

631.04 EXCLUDING MINORS; DUTY OF OFFICER; PENALTY.

HISTORY. 1891 c. 42 ss. 1 to 3; G.S. 1894 ss. 7326 to 7328; R.L. 1905 s. 5361; G.S. 1913 s. 9203; G.S. 1923 s. 10708; M.S. 1927 s. 10708.

631.05 JUROR MAY TESTIFY, WHEN; VIEW.

HISTORY. R.S. 1851 c. 128 s. 208; R.S. 1851 c. 132 s. 243; P.S. 1858 c. 114 s. 42; P.S. 1858 c. 118 s. 9; G.S. 1866 c. 114 ss. 9, 10; G.S. 1878 c. 114 ss. 9, 10; G.S. 1894 ss. 7329, 7330; R.L. 1905 s. 5362; G.S. 1913 s. 9204; G.S. 1923 s. 10709; M.S. 1927 s. 10709.

The propriety of ordering a view by a jury in a criminal case is committed to the discretion of the court by General Statutes 1866, Chapter 114, Section 10 (section 631.05). Chute v State, 19 M 271 (230).

A view of the premises by the jury in the absence of the defendant does not violate defendant's right to be confronted by all witnesses and to be present at the trial. State v Rogers, 145 M 309, 177 NW 358.

The jury on their way back from lunch without authority visited the place of the alleged trial. The trial judge properly held that the misconduct was not prejudicial. State v Simenson, 195 M 258, 262 NW 638.

631.06 QUESTIONS OF LAW AND FACT, HOW DECIDED.

HISTORY. R.S. 1851 c. 132 s. 245; P.S. 1858 c. 118 s. 11; G.S. 1866 c. 114 s. 11; G.S. 1878 c. 114 s. 11; G.S. 1894 s. 7331; R.L. 1905 s. 5363; G.S. 1913 s. 9205; G.S. 1923 s. 10710; M.S. 1927 s. 10710.

When an act becomes criminal only in case it is done with a certain intention, the existence of such intention is always for the jury, as, for example:

(1) Assault with intent to murder. Bonfanti v State, 2 M 123 (99);

(2) Assault with intent to do great bodily harm. State v Dineen, 10 M 407 (325); State v Garvey, 11 M 154 (95);

(3) Mayhem. State v Hair, 37 M 351, 34 NW 893;

(4) Embezzlement of public funds. State v Kortgaard, 62 M 7, 64 NW 51; State v Borgstrom, 69 M 508, 72 NW 799, 975; State v Rue, 72 M 296, 75 NW 235;

(5) Intent to defraud by uttering a forged instrument. State v Bjornaas, 88 M 301, 92 NW 980.

All questions of issuable fact are for the jury, as, for example:

(1) Whether the circumstances warranted the use of force in self-defense and the degree of force necessary. Gallagher v State, 3 M 270 (185); State v Shippey, 10 M 223 (178); State v Gut, 13 M 341 (315); State v Hanley, 34 M 430, 26 NW 397;

(2) Whether there was provocation; whether there was cooling time. State v Hoyt, 13 M 132 (125);

(3) Whether a peace officer had reasonable cause to believe that felony had been committed and the person arrested guilty of the offense. Cochran v Toher, 14 M 385 (293);

(4) Whether a witness was an accomplice in the commission of a crime for which the accused is on trial. State v Lawlor, 28 M 216, 9 NW 698;

(5) Whether an accused person charged with the murder of an officer knew that the deceased was an officer and as such was attempting to arrest the accused. State v Spaulding, 34 M 361, 25 NW 793;

(6) Whether the accused is insane. State v Hanley, 34 M 430, 26 M 397;

(7) Whether a crime was committed with premeditation. State v Brown, 41 M 319, 43 M 69;

(8) Whether the crime was committed in self-defense. State v O'Neil, 58 M 478, 59 NW 1101.

Intent in the sense of doing the act constituting the crime purposely and not accidentally or involuntarily is a question for the jury. In the absence of evidence tending to prove that the act was done accidentally or involuntarily the court may instruct the jury that it is their duty to draw the inference of intent in accordance with the presumption that men intend their voluntary acts. State v Welch, 21 M 22; State v Lautenschlager, 22 M 514; State v Brown, 41 M 319, 43 NW 69; State v Lentz, 45 M 177, 47 NW 720.

It is the duty of the court to declare the law in criminal as well as civil cases, and the jury has no right in either class of cases to present a verdict without regard to the law so declared, and by which their judgment should be controlled. Whether the evidence has a tendency to prove any fact in issue is a question for the court, but its weight is for the jury. State v Rheams, 34 M 18, 24 NW 302.

In prosecutions for libel the jury are judges both of the law and the facts. State v Ford, 82 M 452, 85 NW 217; State v Shippman, 83 M 441, 86 NW 431.

In the instant case, whether a sale of liquor was in a village was held to be a question of law. State v Johnson, 86 M 121, 90 NW 161, 1133.

The court cannot direct the jury to return a verdict of guilty. State v Nelson, 91 M 143, 97 NW 652.

When charged with a violation of a municipal ordinance, defendant is not entitled to a jury trial. State v Nelson, 157 M 506, 196 NW 279.

In a criminal case tried by the court without a jury, specific findings of fact are not necessary. State v Graves, 161 M 422, 201 NW 933.

To convict defendant of sale of intoxicating liquor to a minor, the state must establish by legal evidence each of the elemental facts constituting the crime. State v Stock, 163 M 271, 203 NW 964.

In criminal libel the court should instruct the jury as to law applicable to the issues, including rights under section 634.05. State v Jacobs, 166 M 280, 207 NW 648.

It was error to charge the jury that the only issue was whether defendant was guilty of robbery in the first degree or of an attempt to commit such robbery, for in any criminal prosecution the jury has the power to return a verdict of not guilty even though contrary to the law and the evidence. State v Corey, 182 M 48, 233 NW 590.

The credibility of the testimony of a paid detective in a prosecution for the unlawful sale of intoxicating liquor was for the jury, as was also its sufficiency to convict in connection with all the evidence in the case. State v Nickolay, 184 M 526, 239 NW 226.

The defendant's identity was a question for the jury, and in the absence of substantial error the court will not interfere. State v Chick, 192 M 539, 257 NW 280.

Where a motion to dismiss on the ground of insufficiency of the evidence is denied after plaintiff rests, and the defendant thereafter introduces evidence, the sufficiency of the evidence to sustain the verdict is determined by all the evidence in the case. State v Traver, 198 M 237, 269 NW 393.

Where a confession was made under such circumstances as to render it admissible is a question for the determination of the trial court, and its action will not be reversed on appeal unless manifestly contrary to the evidence. State v Nelson, 199 M 86, 271 NW 114.

Constitutionality of statute giving the jury in a criminal case the right to determine the law as well as the facts. 15 MLR 831.

631.07 ORDER OF ARGUMENT.

HISTORY. 1875 c. 41 s. 1; G.S. 1878 c. 114 s. 12; G.S. 1894 s. 7332; R.L. 1905 s. 5364; G.S. 1913 s. 9206; G.S. 1923 s. 10711; M.S. 1927 s. 10711.

Prior to the enactment of Laws 1875, Chapter 41, the court held that it was not error for the trial court in its discretion, to allow one of the counsel for the prosecution to "first sum up the cause, notwithstanding the defendant claimed

the right to sum up first." This under General States, 1866 Chapter 66, Section 209, was a matter of discretion with the trial court. State v Beebe, 17 M 241 (218).

Laws 1875, Chapter 41, Section 1, does not apply to the municipal court of the city of Minneapolis, as the law applies only to indictments. State v Wagner, 23 M 544.

The rhetorical flights of the county attorney in his argument to the jury was not error, and possibly warranted by the evidence. State v Shepard, 171 M 421, 214 NW 280.

The name "mob" as applied to defendant's companions, and his theory regarding the possession of weapons, was not prejudicial error on the part of the prosecuting attorney. State v Barone, 173 M 233, 217 NW 104.

The attempt by the prosecutor to refer in his argument to the fact that the court had refused to permit him to ask certain questions of a witness, was not prejudicial. State v Gandel, 173 M 306, 217 NW 120.

Comments of the prosecuting attorney upon defendant's association with "murderers and thieves" upon the evidence improperly admitted was prejudicial. State v Stockton, 181 M 566, 233 NW 307.

The record does not support defendant's claim that a new trial should be granted because of misconduct of the jurors, not on account of alleged misconduct of the prosecuting attorney. State v Geary, 184 M 387, 239 NW 158.

There can be no reversal in a criminal case for alleged misconduct of the prosecuting attorney without a record of the conduct claimed to be prejudicial and objection thereto. State v Hankins, 193 M 375, 258 NW 578.

Violation by the county attorney of section 611.11 was not reversible error in view of the strong evidence of guilt of the defendant. State v Zemple, 196 M 164, 264 NW 587.

The prosecutor in his argument is not forbidden to theorize on the inferences or conclusions that may be reasonably drawn from the evidence. State v Heffelfinger, 200 M 268, 274 NW 234.

Conduct and expressions of the county attorney not sufficiently prejudicial to constitute reversible error. State v Golden, 216 M 97, 12 NW(2d) 617; State v Sucik, 217 M 566, 14 NW(2d) 857.

Statements in the argument of the county attorney to the jury are deemed prejudicial and a new trial must be granted. State v Schabert, 218 M 1, 15 NW(2d) 585.

631.08 CHARGE OF COURT.

HISTORY. R.S. 1851 c. 132 s. 246; P.S. 1858 c. 118 s. 12; G.S. 1866 c. 114 s. 12; G.S. 1878 c. 114 s. 13; G.S. 1894 s. 7333; R.L. 1905 s. 5365; G.S. 1913 s. 9207; G.S. 1923 s. 10712; M.S. 1927 s. 10712.

It will be presumed on appeal that the court charged the jury they were exclusive judges of all questions of fact. State v Taunt, 16 M 109 (99).

It is proper for the court to review and analyze the evidence. The court may state to the jury that certain evidence is material, or that it tends to prove certain facts, or may comment on the evidence when it is done fairly and the jury are fully advised of their duty and responsibility. State v Taunt, 16 M 109 (99); State v Rose, 47 M 47, 49 NW 404; State v Sailor, 130 M 84, 153 NW 271.

It is error for the court to express his opinion of the facts unless it informs the jury that they are the exclusive judges of all questions of fact. State v Kobe, 26 M 150, 1 NW 1051.

The court should not give undue prominence to particular items of evidence and instruct the jury that they might or might not create in their minds a reasonable doubt as to the guilt of the accused. State v Ames, 90 M 183, 96 NW 330.

Requirement that judge shall instruct that the jurors are the exclusive judges of questions of fact does not apply to civil cases. Bonness v Fellsing, 97 M 227, 106 NW 909.

It is error to review evidence in an argumentative manner, or to single out and give undue prominence to testimony of particular witnesses; and where the charge is argumentative, the error is not cured by instructions that the jury are

sole judges of the weight and effect of the evidence. State v Yates, 99 M 461, 109 NW 1070.

The fact that the trial judge failed to give directions as to the manner of ascertaining damages, was not reversible error, there having been no request by the defendants. Mulcahy v Dieudonne, 103 M 360, 115 NW 636.

Defendant must request such instructions as he wishes; otherwise error cannot be predicated on failure to give particular instructions. State v Zempel, 103 M 428, 115 NW 275; State v Beaudette, 168 M 444, 210 NW 286; State v Colcord, 170 M 504, 212 NW 894.

Accused cannot predicate error on failure to charge as to lesser offense when he has not requested such charge. State v McLeavey, 157 M 408, 196 NW 645.

The charge did not put the defendant to the proof beyond a reasonable doubt, or at all, of the alibi he claimed. State v Stiel, 157 M 461, 196 NW 490.

Testimony of the sale and character of the liquor being direct, positive and uncontradicted, the court did not err in charging that the jury should convict if they believed the testimony, but should acquit if they had a reasonable doubt of its truth. State v Ruddy, 160 M 435, 200 NW 631.

Request rightfully refused, because not applicable to the evidence. State v Warner, 165 M 79, 205 NW 692.

Charge not argumentative. State v Monson, 168 M 381, 210 NW 108; State v Ludman, 170 M 441, 213 NW 34.

Charge was as full and as favorable as was warranted by the evidence. State v Johnson, 169 M 298, 211 NW 334; State v Wood, 169 M 349, 211 NW 305.

It was error to instruct the jury that "a violation of this statute is evidence of negligence." The charge should have been "a violation of the statute is negligence." Sandhofner v Calmenson, 170 M 69, 212 NW 11.

Where the evidence shows that the defendant, if guilty of any crime, is guilty of the crime charged, the court may properly refuse to instruct the jury as to lesser crimes included therein. State v Coon, 170 M 343, 212 NW 588.

The charge was sufficiently explicit. There was no suggestion in the case that defendant was charged with any crime other than the one named in the indictment. State v Eaton, 171 M 158, 213 NW 735.

Error in charge cured by later explicit correct statement. State v Cavett, 171 M 222, 214 NW 920.

The court's charge contained no reversible error. Parker v Fryberger, 171 M 390, 214 NW 276.

The court charged as to murder in the third degree "when perpetrated by an act eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual." There was no error. State v Shepard, 171 M 414, 214 NW 280.

Instruction to jury that admission of defendant's previous conviction of crime was properly received for its bearing on his credibility as a witness. State v Skogman, 171 M 515, 213 NW 923.

The misstatement, inadvertently made by the court, not having been called to his attention, is not reversible error. State v Kaufman, 172 M 139, 214 NW 785.

If the defendant wished an explanation further than that contained in the judge's charge he should have requested it. State v Eidsvold, 172 M 208, 215 NW 206.

Certain defects in the charge not called to the court's attention at the time are not of a character to call for a new trial. State v Mohrbacher, 173 M 567, 218 NW 112.

Where two were tried together, the court erred in admitting the confession of one as evidence against both, and in refusing to instruct that it was not evidence against the appellant. State v Allison, 175 M 218, 220 NW 563.

The charge defining the crime in the words of the statute was sufficient, there being no exception or request by defendant. State v Graham, 176 M 164, 222 NW 909.

Where it is in fact present, it is not error to instruct that there is evidence tending to corroborate an accomplice where the jury is also told that the weight

and sufficiency of such evidence is for them. State v Taran, 176 M 175, 222 NW 906.

It is not error to refuse a request to charge where the general charge or other requests given fairly cover the same subject. The charge is to be considered in its entirety. State v Barnard, 176 M 349, 223 NW 452; State v Murphy, 181 M 303, 232 NW 335.

Though it may not be reversible error, it is bad practice for the court in giving a certain charge to state it was given at the request of one of the named parties. State v Gavle, 181 M 374, 232 NW 624.

While generally, in the absence of a request, not reversible error, it is bad practice to submit a case without defining the crime charged. State v Stockton, 181 M 569, 233 NW 307.

Where the general charge adequately covers every element of the crime, a defendant in a criminal case is not entitled to a complete, separate change as to each element of the crime charged as defined by the statute. State v Weis, 186 M 342, 243 NW 135.

The trial judge instructed the jury "the jury is instructed that every man accused of crime is presumed to be innocent until he is proved guilty, but this presumption is for the benefit of the innocent and not intended as a shield or protection for the guilty." This should have been omitted, but it is not sufficiently prejudicial as to warrant a reversal. State v Bauer, 189 M 284, 249 NW 40.

As the elements of the crime charged were set up in the indictment, and no request for a more particular charge was made by the defendant, the charge of the court that "in order to convict the state must have established beyond a reasonable doubt that the defendant was guilty of attempted grand larceny in the first degree as set forth in the statute and as charged in the indictment" was sufficient. State v Smith, 192 M 237, 255 NW 826.

A reference by the court that a certain statement "had not been denied, neither had it been proven" was without prejudice. State v Lynch, 192 M 534, 257 NW 278.

Failure of the court to instruct the jury that defendant might under the indictment be found guilty of a lesser degree of the crime charged, does not call for a new trial. State v Cohen, 196 M 39, 263 NW 922.

The court's charge, as a whole, was clear and complete; and the fact that the charge made at the suggestion of the defendant was modified, was not error. State v Winberg, 196 M 139, 264 NW 578.

Where there is no exception taken to a charge in a criminal case, no motion for a new trial, and no request for further instructions, alleged error in the charge cannot be assigned as error in the supreme court. State v Bram, 197 M 471, 267 NW 383.

Where there is no exception taken to the charge in a criminal case, no motion for a new trial, and no request for further instructions, alleged error in the charge cannot be assigned as error in this court. State v Bram, 197 M 471, 267 NW 383.

Though the charge asked by the defendant is in law proper, the court should deny the request where the evidence does not warrant the instruction. State v Puent, 198 M 175, 269 NW 372.

The entire record points to one crime and one crime only. There was no error in refusing to instruct the jury they might bring in a verdict for a lessor degree of crime. State v Nelson, 199 M 86, 271 NW 114.

In a prosecution for having contributed to the "delinquent condition of a minor child" the fact that the acts and omissions of defendant's servants contributed to the minor's delinquency, need not be found as a fact issue. State v Sobelman, 199 M 233, 271 NW 484.

When the jury returned to the court room to ask permission to report a disagreement, the court stated: "Things have got to be looked at in a practical way of life, is this young man guilty or isn't he, in your best judgment? There is no such thing as agreeing to disagree"; and sent them back. There was no error. State v Henspeter, 199 M 359, 271 NW 700.

The charge as a whole must be taken into consideration to determine whether the part assigned as error is prejudicial. State v Oslund, 199 M 604, 273 NW 76.

In prosecution for manslaughter in the second degree there was no error of the court in defining all of the different degrees of homicide. State v Warren, 201 M 369, 276 NW 655.

At the close of the court's charge it inquired of counsel if anything had been overlooked and the answer was in the negative. The defendant is not in a position to urge failure to charge on some specific theory of the defense. State v Rowe, 203 M 172, 280 NW 646.

The record discloses evidence tending to prove facts which would justify the jury in finding the defendant guilty of manslaughter in the first degree instead of murder. A new trial was ordered because the court refused to submit to the jury the question of the lesser degree. State v Klym, 204 M 57, 282 NW 655.

There was no error in refusing a special instruction the substance of which had been given in the general charge in ample particularity. State v Winkels, 204 M 466, 283 NW 763.

It is proper for the court in its instructions in a criminal case to caution the jury against taking into consideration the punishment to be imposed upon the defendant in the event of a conviction. State v Finley, 214 M 228, 8 NW(2d) 217.

Irregularities in the judges charge were not sufficiently prejudicial to warrant a new trial. State v Siebke, 216 M 181, 12 NW(2d) 186; State v Heidelberg, 216 M 283, 12 NW(2d) 781.

The court properly refused to give the requested instructions. The requested instructions did not apply to the issue being considered by the jury. State v Golden, 216 M 97, 12 NW(2d) 617.

The court may instruct the jury to disregard testimony he concludes has been obtained by "third degree" or other doubtful means. State v Schabert, 218 M 1, 15 NW(2d) 585.

Reasonable requests of council should be granted, but not to the extent of giving requested instructions to the jury which may, because of their number or verbosity, tend to confuse the jury. State v Schabert, 218 M 1, 15 NW(2d) 585.

The court's instruction that "it is also undisputed that the defendant had this liquor in his possession" was not inconsistent with the undisputed facts established in the case. State v Mueller, 218 M 450, 16 NW(2d) 477.

In prosecution for possessing property stolen while moving in interstate commerce, with knowledge that it was stolen, instruction that proof of possession of property recently stolen raised a presumption of guilty knowledge in the absence of explaination, and that the jury should determine whether accused's explanation overcame presumption, was erroneous, as shifting the burden of proof and requiring accused to establish his innocence. Balman v United States, 94 F(2d) 197.

Right of trial judge to comment on evidence in charge to jury; Minnesota rule. 18 MLR 451.

631.09 JURY; HOW AND WHERE KEPT WHILE DELIBERATING; SEPARATE ACCOMMODATIONS FOR WOMEN JURORS.

HISTORY. R.S. 1851 c. 132 s. 247; P.S. 1858 c. 118 s. 13; G.S. 1866 c. 114 s. 13; G.S. 1878 c. 114 s. 14; G.S. 1894 s. 7334; R.L. 1905 s. 5366; G.S. 1913 s. 9208; G.S. 1923 s. 10713; 1927 c. 210 ss. 1, 2; M.S. 1927 s. 10713; M.S. 1927 s. 10713-1.

It is discretionary with the court to allow the jury to separate during the course of the trial and before the case is finally submitted to them. Bilansky v State, 3 M 427 (313); State v Ryan, 13 M 370 (343); State v Salverson, 87 M 40, 91 NW 1; State v Nelson, 91 M 143, 97 NW 652; State v Williams, 96 M 351, 105 NW 265; State v Colcord, 170 M 504, 212 NW 894.

After submission the jury cannot be permitted to separate until their discharge. Maher v State, 3 M 444 (329); State v Parrant, 16 M 178 (157); State v Anderson, 41 M 104, 42 NW 786; State v Durnam, 73 M 150, 75 NW 1127.

Any separation before final submission is presumptively prejudicial and ground for a new trial. Maher v State, 3 M 444 (329).

Such a separation is no ground for a new trial where it clearly and affirmatively appears that no prejudice resulted, and that the facts and circumstances connected with the separation were such as to exclude all reasonable presumption or suspicion that the jury were tampered with, or that the verdict was or could have been in any way influenced or affected by the irregularity. State v Conway, 23 M 292; State v Matakovich, 59 M 514, 61 NW 677.

A sealed verdict cannot be directed against the objection of the accused. State v Anderson, 41 M 104, 42 NW 786.

Misconduct of the bailiff in informing the jury that unless they agreed by midnight they would be kept until morning, was not ground for reversal. State v Kraus, 175 M 174, 220 NW 547.

In the instant case failure to provide separate room for women jurors was not ground for a new trial. State v Hook, 176 M 607, 224 NW 144.

Where a jury composed of men and women fail to agree upon a verdict, the court may direct that the women members be taken to a hotel for the night in custody of the woman bailiff. State v Murphy, 181 M 305, 232 NW 335.

631.10 WHAT PAPERS MAY GO TO JURY ROOM.

HISTORY. R.S. 1851 c. 132 ss. 249, 250; P.S. 1858 c. 118 ss. 15, 16; G.S. 1866 c. 114 s. 14; G.S. 1878 c. 114 s. 15; G.S. 894 s. 7335; R.L. 1905 s. 5367; G.S. 1913 s. 9209; G.S. 1923 s. 10714; M.S. 1927 s. 10714.

631.11 JURY MAY RETURN INTO COURT FOR INFORMATION.

HISTORY. R.S. 1851 c. 132 s. 251; P.S. 1858 c. 118 s. 17; G.S. 1866 c. 114 s. 15; G.S. 1878 c. 114 s. 16; G.S. 1894 s. 7336; R.L. 1905 s. 5368; G.S. 1913 s. 9210; G.S. 1923 s. 10715; M.S. 1927 s. 10715.

After the jury has retired the court cannot communicate with them except in open court and in the presence of the parties. Hoberg v State, 3 M 262 (181).

The jury deliberated for ten hours. When the judge entered the court room where the jury was, the foreman asked him whether he told them that, if defendant furnished a certain person less than five gallons of liquor as claimed in the indictment, defendant was guilty? The judge answered, yes, and left the room. At the time defendant was out on bail and neither he nor his attorneys were in the court room. As the answer, "yes" was correct, no substantial right of the defendant was violated and he was not entitled to a new trial. State v Kruse, 137 M 468, 163 NW 125.

In the instant case, a criminal action, the charge given to the jury, is considered to have gone beyond the proper limit, in an effort to assist the jury in arriving at a verdict, and for that reason may have tended to coerce the minority of the jury. State v Olson, 159 M 415, 199 NW 1.

631.12 DISCHARGE OF JURY WITHOUT VERDICT.

HISTORY. R.S. 1851 c. 132 s. 252; P.S. 1858 c. 118 s. 18; G.S. 1866 c. 114 s. 16; G.S. 1878 c. 114 s. 17; G.S. 1894 s. 7337; R.L. 1905 s. 5369; G.S. 1913 s. 9211; G.S. 1923 s. 10716; M.S. 1927 s. 10716.

It is for the trial court to determine the existence of facts justifying a discharge this section. State ex rel v Sheriff, 24 M 87.

When a juror becomes sick during the course of the trial and before final submission the only course for the court to pursue in the absence of consent of the parties is to discharge the entire panel and summon a new jury at the same on a succeeding term. The defendant may consent to have the sick juror excused and a new juror substituted. State v Ronk, 91 M 419, 98 NW 334.

631.13 SECOND TRIAL.

HISTORY. R.S. 1851 c. 132 s. 253; P.S. 1858 c. 118 s. 19; G.S. 1866 c. 114 s. 17; G.S. 1878 c. 114 s. 18; G.S. 1894 s. 7338; R.L. 1905 s. 5370; G.S. 1913 s. 9212; G.S. 1923 s. 10717; M.S. 1927 s. 10717.

631.14 VERDICT FOR LESSER OFFENSE.

HISTORY. R.S. 1851 c. 132 ss. 254, 255; 1852 Amend. pp. 28, 29; P.S. 1858 c. 118 ss. 20, 21; G.S. 1866 c. 114 s. 18; G.S. 1878 c. 114 s. 19; G.S. 1894 s. 7339; R.L. 1905 s. 5371; G.S. 1913 s. 9213; G.S. 1923 s. 10718; M.S. 1927 s. 10718.

Upon an 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 find the accused guilty of a lesser degree than charged. Bilansky v State, 3 M 427 (313); Armstrong v Hinds, 8 M 220 (254).

The accused may be found guilty of an assault, on an indictment for assault to murder. Boyd v State, 4 M 321 (237).

If the jury have a reasonable doubt whether the accused is guilty of a higher or a lower degree of crime they must find him guilty of the latter. State v Laliyer, 4 M 368 (277).

Upon an indictment for rape, the jury may convict of an assault with intent to commit rape. O'Connell v State, 6 M 279 (190); State v Bagan, 41 M 285, 43 NW 5.

The jury must be instructed that if they find a lesser degree than charged they must specify in their verdict of what degree they find the accused guilty. In the instant case where the indictment specifies larceny from the person, the defendant may be guilty of simple larceny. State v Eno, 8 M 220 (190); State v Wiles, 26 M 381, 4 NW 615.

Defendant may be convicted of manslaughter in any degree, on an indictment for murder. State v Lessing, 16 M 75 (64); State v Cantieny, 34 M 1, 24 NW 458;

May be convicted for assault in the second degree, on an indictment for rape. State v Vadnais, 21 M 382; State v Bagan, 41 M 285, 43 NW 5;

May be convicted of assault on an indictment for assault with intent to do great bodily harm. State v Gummell, 22 M 51;

May be convicted of an offense specified in Laws 1873, Chapter 9, Section 2, on an indictment charging an offense (abortion) specified in section 1 of the same act. State v Owens, 22 M 238.

In an unequivocal case the court may instruct the jury that there is no evidence in the case justifying a verdict for a lesser degree than the one charged, or that it is their duty either to find the accused guilty as charged or acquit him. State v Cantieny, 34 M 1, 24 NW 458; State v Rheams, 34 M 18, 24 NW 302; State v Hanley, 34 M 430, 26 NW 397; State v Lentz, 45 M 177, 47 NW 720; State v Nelson, 91 M 143, 97 NW 652;

May be convicted for taking indecent liberties, on an assault with intent to carnally know and abuse a child. State v West, 39 M 321, 40 NW 249;

Convicted of an attempt to carnally know and abuse a child, on an indictment for unlawfully and carnally knowing a child. State v Masteller, 45 M 128, 47 NW 521;

If evidence is introduced reasonably tending to reduce the crime charged to one of a lower degree it is the duty of the court to instruct the jury as to the different degrees and the right to find the accused guilty of the lesser crime. State v Miller, 45 M 521, 48 NW 401; State v Smith, 56 M 78, 57 NW 325.

The court may refuse to instruct the jury as to lesser degrees if there is no evidence reasonably tending to justify a verdict for such lesser degrees. State v Smith, 56 M 78, 57 NW 325.

On an indictment for burglary, one cannot be convicted of the crime of larceny. State v Hackett, 47 M 425, 50 NW 472.

A conviction has been had of robbery in the second degree, on an indictment for robbery in the first degree. State v O'Neil, 71 M 399, 73 NW 1091.

Convicted of assault, on an indictment for maiming. State v Wondra, 114 M 457, 131 NW 496.

The allegations in an indictment for manslaughter in the second degree of acts which constitute a more grave degree of homicide, do not vitiate the indictment under our statute, which provides that the same indictment may charge murder and also the different degrees of manslaughter. It was proper to charge

acts and omissions constituting this offense in the conjunctive. State v Staples, 126 M 396, 148 NW 283.

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; State ex rel v Brown, 149 M 297, 183 NW 669; State v Glaum, 153 M 221, 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 408, 196 NW 645.

Where the evidence shows that the defendant, if guilty of any crime, is guilty of the crime charged, the court may properly refuse to instruct the jury as to lesser crimes included therein. State v Coon, 170 M 343, 212 NW 588.

A person cannot be convicted of reckless driving under a complaint charging drunken driving. OAG July 8, 1944 (494b-23).

631.15 VERDICT AS TO SOME DEFENDANTS, AND DISAGREEMENT AS TO OTHERS.

HISTORY. R.S. 1851 c. 132 s. 256; P.S. 1858 c. 118 s. 22; G.S. 1866 c. 114 s. 19; G.S. 1878 c. 114 s. 20; G.S. 1894 s. 7340; R.L. 1905 s. 5372; G.S. 1913 s. 9214; G.S. 1923 s. 10719; M.S. 1927 s. 10719.

631.16 POLLING JURY; FURTHER DELIBERATION, WHEN.

HISTORY. R.S. 1851 c. 132 s. 257; P.S. 1858 c. 118 s. 23; G.S. 1866 c. 114 s. 20; G.S. 1878 c. 114 s. 21; G.S. 1894 s. 7341; R.L. 1905 s. 5373; G.S. 1913 s. 9215; G.S. 1923 s. 10720; M.S. 1927 s. 10720.

The jury out 24 hours were called in and upon a question from the judge the foreman stated they stood 11 to one. The judge after stating it was an important case, sent them back and within 25 minutes they agreed. This was not deemed to be an interference with the verdict. McNulty v Stewart, 12 M 434 (319).

The defendant was on trial for a felony, and after the jury retired left the court room, being on bail. The court, 18 hours after the jury had agreed, during which time every effort was made to locate the defendant, received the verdict. Defendant was held to have waived his right to be present. State v Gorman, 113 M 401, 129 NW 589.

When the jury in a felony case fails to return a verdict while court is in session, and the court directs the bailiff in charge of the jury to notify the court, clerk, and county attorney, notice should also be given to defendant and his attorney. The remedy for nonobservance of this practice should be a motion for a new trial and not a motion to set aside the verdict, which would mean an acquittal. State v Knutson, 175 M 573, 222 NW 277.

The polling of the jury is for the purpose of ascertaining for a certainty that each juror agrees upon the verdict. It is not to determine whether the verdict presented was reached by the quotient process. Hoffman v City of St. Paul, 187 M 320, 245 NW 373.

631.17 RECEPTION OF VERDICT.

HISTORY. R.S. 1851 c. 132 s. 258; P.S. 1858 c. 118 s. 24; G.S. 1866 c. 114 s. 21; G.S. 1878 c. 114 s. 22; G.S. 1894 s. 7342; R.L. 1905 s. 5374; G.S. 1913 s. 9216; G.S. 1923 s. 10721; M.S. 1927 s. 10721.

It is error for the court in a criminal case to instruct the jury, against the objection of the defendant, that, in case they should agree upon a verdict after the adjournment of the court for the day, they might separate and bring in a sealed verdict at the opening of the court in the following day. State v Anderson, 41 M 104, 42 NW 786.

A verdict to which, on a poll, every member assented may not be impeached by the affidavit of a member of the jury, who claims coercion. State v Flaherty, 158 M 254, 197 NW 284.

Affidavit of jurors as to what took place in the jury room are inadmissible to impeach their verdict. The verdict is not vitiated by failure to read it to the jury as recorded. State v Talcott, 178 M 564, 227 NW 893.

One of the jurors by affidavit claimed he voted not guilty until the pain of his illness coerced him into voting with the others. There were counter affidavits. The trial court properly refused a new trial. State v Geary, 184 M 387, 239 NW 158.

631.18 INSANITY OF DEFENDANT.

HISTORY. 1893 c. 10 s. 1; G.S. 1894 s. 7343; R.L. 1905 s. 5375; 1907 c. 358 s. 1; G.S. 1913 s. 9217; G.S. 1923 s. 10722; M.S. 1927 s. 10722.

Laws 1907, Chapter 358, relating to the manner of liberation of one committed to the state hospital after a plea of insanity in a criminal trial, is not retroactive. Northfoss v Welch, 116 M 62, 133 NW 82.

If when a criminal prosecution is called for trial, the court may in some judicial method proceed to inquire into the mental state of the accused and determine the question without the intervention of a jury or the appointment of a commission. The method of procedure, the statutes being silent on the subject, is within the discretion of the trial judge. State v Hagerty, 152 M 502, 189 NW 411.

Failure of the trial court to comply with the provisions of section 610.10 does not go to the jurisdiction of the court, and failure to comply with the provisions of the statute is not ground for collateral attack by habeas corpus. State ex rel v Utecht, 203 M 448, 281 NW 775.

Sections 631.18 and 610.10 are directory only; should be considered together; and do not go to the jurisdiction of the court. 1940 OAG 24, March 18, 1940 (248b-3).

631.19 ACQUITTAL ON GROUND OF INSANITY; COMMITMENT; RELEASE.

HISTORY. R.S. 1851 c. 128 s. 211; P.S. 1858 c. 114 s. 45; G.S. 1866 c. 114 s. 22; 1869 c. 17 s. 1; G.S. 1878 c. 114 s. 23; G.S. 1894 s. 7344; R.L. 1905 s. 5376; 1907 c. 358 s. 1; G.S. 1913 s. 9218 G.S. 1923 s. 10723; M.S. 1927 s. 10723; 1931 c. 364.

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

Laws 1931, Chapter 364 (section 631.19), establishes the exclusive statutory procedure for the release of a patient who has been committed as the result of his acquittal of a criminal charge on the ground of insanity. It is for the benefit of those committed before as well as those committed after the enactment of the law. State ex rel v District Court, 185 M 396, 241 NW 39.

631.20 HEARING ON PUNISHMENT.

HISTORY. R.S. 1851 c. 132 ss. 260, 261; P.S. 1858 c. 118 ss. 26, 27; G.S. 1866 c. 114 s. 23; G.S. 1878 c. 114 s. 24; G.S. 1894 s. 7345; R.L. 1905 s. 5377; G.S. 1913 s. 9219; G.S. 1923 s. 10724; M.S. 1927 s. 10724.

The penalties imposed by the statute for a violation thereof do not come within the constitutional prohibition against excessive fines or cruel and unusual punishments. State v Moilen, 140 M 112, 167 NW 345.

A defendant who pleads guilty, and who is sworn and examined by the judge prior to sentence, cannot be convicted of perjury on account of false answers given on the examination. State v Larson, 171 M 246, 213 NW 900.

Power to suspend a criminal sentence. 6 MLR 375.

Sentence; allocution; effect of omission of. 22 MLR 733.

631.21 DISMISSAL OF CAUSE; RECORD OF REASONS FOR.

HISTORY. R.S. 1851 c. 132 s. 270; P.S. 1858 c. 118 s. 36; G.S. 1866 c. 114 s. 24; G.S. 1878 c. 114 s. 25; G.S. 1894 s. 7346; R.L. 1905 s. 5378; G.S. 1913 s. 9220; G.S. 1923 s. 10725; 1927 c. 296; M.S. 1927 s. 10725.

Irregularities in the continuance of a criminal cause pending trial do not release a surety on the bail bond. State v Cooper, 147 M 272, 180 NW 99.

The period in which a speedy trial may be had, begins to elapse from the time the accused person evinces a readiness to go to trial, and, whether a speedy trial is denied an accused person, is for the courts to determine. State v Artz, 154 M 292, 191 NW 605.

The district court has no power before trial and on motion of the county attorney to dismiss a criminal prosecution on the merits. State v Kiewel, 166 M 305, 207 NW 646.

Except as required by statute, an order of resubmission is not a condition precedent to the reconsideration of a criminal charge by a grand jury and the finding of a second indictment thereon, even though the first is still pending. State v Ginsberg, 167 M 29, 208 NW 177.

Where a motion to dismiss on the ground of insufficiency of the evidence is denied after plaintiff first rests, and defendant thereon proceeds to introduce evidence in his defense, the sufficiency of the evidence to sustain the verdict or decision is then to be determined by a consideration of all the evidence in the case. State v Traver, 198 M 237, 269 NW 393.

Examining magistrate, no warrant having been issued, may dismiss a prosecution for adultery at the request of the complainant. OAG Feb. 7, 1944 (605b-3).

Dismissal as a bar to further prosecution. 7 MLR 588.

Informations or indictments. 8 MLR 405.

CHALLENGING JURORS

631.22 CHALLENGES CLASSIFIED; DEFENDANTS MUST JOIN.

HISTORY. R.S. 1851 c. 128 ss. 170, 171; P.S. 1858 c. 114 ss. 4, 5; G.S. 1866 c. 116 ss. 1, 2; G.S. 1878 c. 116 ss. 1, 2; G.S. 1894 ss. 7351, 7352; R.L. 1905 s. 5382; G.S. 1913 s. 9224; G.S. 1923 s. 10729; M.S. 1927 s. 10729.

Under the city charter in force since 1914, the office of "president of the common council" of the city of St. Paul does not exist; and a list of jurors or a "supplementary list" selected to serve as jurors, made by the municipal judges alone, is valid. State v Weingarth, 134 M 309, 159 NW 789.

There is no error in the dismissal of an entire jury panel and the calling of a new one to try the defendant. He had no right to be tried by particular jurors. State v Waddell, 187 M 200, 245 NW 140.

631.23 CHALLENGE TO PANEL.

HISTORY. R.S. 1851 c. 128 ss. 172 to 174; P.S. 1858 c. 114 ss. 6 to 8; G.S. 1866 c. 116 ss. 3 to 5; G.S. 1878 c. 116 ss. 3 to 5; G.S. 1894 ss. 7353, 7354; R.L. 1905 s. 5383; G.S. 1913 s. 9225; G.S. 1923 s. 10730; M.S. 1927 s. 10730.

In the absence of fraud or collusion in the selection of a jury, objection to the panel is too late after verdict. Steele v Maloney, 1 M 347 (257).

The following objections have been held not good ground of challenge to the panel:

(1) That the jurors were taken from among jurors summoned on the previous special venires. Dayton v Warren, 10 M 233 (185);

(2) The failure to file forthwith in the office of the clerk of court the list of petit jurors selected by the county board. State v Gut, 13 M 341 (315);

(3) The fact that the sheriff while serving a special venire endeavored to ascertain the opinions of the jurors and selected them with reference thereto. State v McCartey, 17 M 76 (54);

(4) That the venire describes the action as a "civil" instead of a "criminal" action, the jurors all appearing pursuant to it. State v Nerbovig, 33 M 480, 24 NW 321.

This provision is exclusive. State v Gut, 13 M 341 (315).

Objections to a petit jury must be made by challenge to the panel and not by motion to quash or by plea in abatement. State v Thomas, 19 M 484 (418).

The law is watchful of the manner in which jurors are selected. State v Greenman, 23 M 209.

The failure of the chairman of the county board to sign or certify the petit jury list is a material departure within this provision. State v Greenman, 23 M 209; State v Schumm, 47 M 373, 50 NW 362.

Putting fewer names in the jury box than the law requires is a material departure. State v Brecht, 41 M 50, 42 NW 602.

Failure to comply with statutory requirements in summoning and drawing is not ground for a new trial, when the record shows that a fair and impartial jury was secured, and that defendant accepted the jury when he had numerous peremptory challenges unused. State v Quirk, 101 M 334, 112 NW 409.

The discharge of the whole or part of a jury panel, and the summoning of a new one, rests in the sound discretion of the trial court. The fact that special veniremen were summoned from only seven out of 36, municipalities in the county, and that eight were summoned from one village, is not ground for challenge to the panel. No bad faith, fraud or oppression being established, and it not appearing that the persons selected were not as a class fair-minded jurors. State v Lundgren, 124 M 162, 144 NW 752.

A challenge to the panel will not lie unless the objection affects the entire panel. State v Oswald, 168 M 329, 210 NW 65.

In the selection of jurors to pass upon the liberty and property of citizens, there must be no discrimination against any particular class because of race, sex, or occupation. The remedy would not be by writ of mandamus but by a challenge to the panel. State ex rel v Renville County Board, 171 M 177, 213 NW 545.

631.24 EXCEPTION TO CHALLENGE.

HISTORY. R.S. 1851 c. 128 ss. 175, 176; P.S. 1858 c. 114 ss. 9, 10; G.S. 1866 c. 116 ss. 6, 7; G.S. 1878 c. 116 ss. 6, 7; G.S. 894 ss. 7356, 7357; R.L. 1905 s. 5384; G.S. 1913 s. 9226; G.S. 1923 s. 10731; M.S. 1927 s. 10731.

The record, in connection with the trial judge's certificate, is construed as meaning the defendant's challenge to the panel of petit jurors, to be deemed denied by the state, and submitted on the same evidence as a similar challenge on the trial of a prior similar case. State v Durnam, 73 M 150, 75 NW 1127; State v Weingarth, 134 M 309, 159 NW 789.

631.25 DENIAL OF CHALLENGE; PROCEEDINGS.

HISTORY. R.S. 1851 c. 128 ss. 177, 178, 180; P.S. 1858 c. 114 ss. 11, 12, 14; G.S. 1866 c. 116 ss. 8 to 10; G.S. 1878 c. 116 ss. 8 to 10; G.S. 1894 ss. 7358 to 7360; R.L. 1905 s. 5385; G.S. 1913 s. 9227; G.S. 1923 s. 10732; M.S. 1927 s. 10732.

On challenge to the panel, the officers whose irregularity is complained of are competent witnesses to prove or disprove the facts alleged as ground of challenge, even though their testimony may contradict their official certificate. State v Gut, 13 M 341 (315); State v Brecht, 41 M 50, 42 NW 602.

The objection to the form of the challenges of the state to individual jurors on the ground of actual bias was waived by defendant's joining issue on it without objection, and submitting it upon evidence to the decision of the court acting as trier. State v Durnam, 73 M 150, 75 NW 1127.

The challenge of the whole or part of a jury panel, and the summoning of a new one, rests in the sound discretion of the trial court. State v Lundgren, 124 M 162, 144 M 752.

In St. Paul the judges of the municipal court make up the jury lists for that court. State v Weingarth, 134 M 309, 159 NW 789.

631.26 CHALLENGE TO INDIVIDUAL JUROR.

HISTORY. R.S. 1851 c. 128 ss. 181, 182; P.S. 1858 c. 114 ss. 15, 16; G.S. 1866 c. 116 ss. 11, 12; G.S. 1878 c. 116 ss. 11, 12; G.S. 1894 ss. 7361, 7362; R.L. 1905 s. 5386; G.S. 193 s. 9228; G.S. 1923 s. 10733; M.S. 1927 s. 10733.

1. Method of impaneling jury
2. Preliminary examination
3. When challenge may be made
4. Waiver
5. Withdrawing challenge

1. Method of impaneling jury

It is proper practice to swear each juror separately when accepted and not to wait until the jury box is filled. State v Brown, 12 M 538 (448).

In criminal actions a full panel is not called in the first instance. The jurors are called separately and challenged when called and the jury box is filled gradually as each juror is accepted. State v Armington, 25 M 29.

In a criminal case, the denial by the trial judge of the challenge of a juror cannot be reviewed on appeal. State v Johnson, 171 M 380, 214 NW 265.

2. Preliminary examination

It is discretionary with the court whether or not to allow either party to interrogate a juror as to his qualifications without first interposing a challenge. State v Lautenschlager, 22 M 514; State v Smith, 56 M 78, 57 NW 325.

It is customary to allow a general preliminary examination before challenge as to residence, occupation, relationship to the parties and the like. Spoonick v Backus, 80 M 354, 94 NW 1079.

In impaneling a jury the court rightly refused to permit the parties to instruct and examine each prosepective juror in the law of the case to be tried. State v Bauer, 189 M 280, 249 NW 40.

Examination of prospective jurors on voir dire. 17 MLR 300.

3. When challenge may be made

When a party challenges a juror for actual bias, but subsequently withdraws the challenge, it is discretionary with the court to allow him to renew it at any time before the jury is complete. State v Dumphey, 4 M 438 (340).

A party who waives his right to challenge a juror peremptorily when the juror is called has not the right to do so after the panel is completed although the jury has not been sworn. State v Armington, 25 M 29; State v Scott, 41 M 365, 42 NW 62.

The state, having come into possession of new evidence bearing upon the juror's suitability, moved for permission to re-examine a juror upon the question of actual bias. The cause shown was sufficient, and there was no error in the ruling. State v Ames, 91 M 365, 98 NW 190.

When juror on his voir dire examination stated the county attorney had not served as his attorney the fact that the attorney had served group of which he was one, seven years previously, was not sufficiently material on which to predicate error. State v Hook, 176 M 604, 224 NW 114.

No objection can be taken to any incompetency in a juror, existing at the time he was called, after he is accepted and sworn, if the fact was known to the party and he was silent. State v Olson, 195 M 493, 263 NW 437.

4. Waiver

An accused person may waive the right to challenge. State v Ronk, 91 M 419, 98 NW 334.

5. Withdrawing challenge

A challenge for actual bias which has been withdrawn may be renewed, with permission of the court, at any time before the jury is complete. State v Dumphey, 4 M 438 (340).

After a challenge is admitted it is purely discretionary with the court to allow it to be withdrawn. State v Dumphey, 4 M 438 (340); Morrison v Lovejoy, 6 M 319 (224); State v Lautenschlager, 22 M 514; State v Smith, 56 M 78, 57 NW 325.

631.27 PEREMPTORY CHALLENGE.

HISTORY. R.S. 1851 c. 128 ss. 183, 184; P.S. 1858 c. 114 ss. 17, 18; G.S. 1866 c. 116 ss. 13, 14; 868 c. 86 ss. 1, 2; G.S. 1878 c. 116 ss. 13, 14; G.S. 1894 ss. 7363, 7364; 1903 c. 196; R.L. 1905 s. 5387; G.S. 1913 s. 9229; G.S. 1923 s. 10734; M.S. 1927 s. 10734.

In a criminal action a party waives the right to challenge peremptorily by failing to exercise the right when the juror appears. State v Armington, 25 M 29; State v Scott, 41 M 365, 43 NW 62.

Either party may at any time indicate to the court that he is satisfied with the jury, and, when he does so, cannot thereafter, without leave of court, challenge peremptorily one of the jurors so accepted. Swanson v Mendenhall, 80 M 56, 82 NW 1093; State v Ronk, 91 M 419, 98 NW 334.

If the opposing party thereafter makes a further challenge, and a new juror is called, the right to challenge such juror remains and may be exercised unless the party has previously exhausted his peremptory challenges. Swanson v Mendenhall, 80 M 56, 82 NW 1093; Lerum v Geving, 97 M 269, 105 NW 967.

631.28 CHALLENGE FOR CAUSE.

HISTORY. R.S. 1851 c. 128 ss. 185, 186; P.S. 1858 c. 114 ss. 19, 20; G.S. 1866 c. 116 ss. 15, 16; G.S. 1878 c. 116 ss. 15, 16; G.S. 1894 ss. 7365, 7366; R.L. 1905 s. 5388; G.S. 1913 s. 9230; G.S. 1923 s. 10735; M.S. 1927 s. 10735.

631.29 GENERAL CAUSES OF CHALLENGE.

HISTORY. R.S. 1851 c. 128 s. 187; P.S. 1858 c. 114 s. 21; G.S. 1866 c. 116 s. 17; G.S. 1878 c. 116 s. 17; G.S. 1894 s. 7367; R.L. 1905 s. 5389; G.S. 1913 s. 9231; G.S. 1923 s. 10736; M.S. 1927 s. 10736.

631.30 PARTICULAR CAUSES OF CHALLENGE.

HISTORY. R.S. 1851 c. 128 s. 188; P.S. 1858 c. 114 s. 22; G.S. 1866 c. 116 s. 18; G.S. 1878 c. 116 s. 18; G.S. 1894 s. 7368; R.L. 1905 s. 5390; G.S. 1913 s. 9232; G.S. 1923 s. 10737; M.S. 1927 s. 10737.

Right of disqualification for relationship. State v Ledbetter, 111 M 110, 126 NW 477.

As to challenge for implied bias. Hannula v Dul. Company, 130 M 3, 153 NW 250.

631.31 CAUSES OF CHALLENGE FOR IMPLIED BIAS.

HISTORY. R.S. 1851 c. 128 s. 189; P.S. 1858 c. 114 s. 23; G.S. 1866 c. 116 s. 19; 1878 c. 24 s. 1; G.S. 1878 c. 116 s. 19; G.S. 1894 s. 7369; R.L. 1905 s. 5391; G.S. 1913 s. 9233; G.S. 1923 s. 10738 M.S. 1927 s. 10738.

After a trial there was a verdict for plaintiff. A new trial was granted and for a second time the plaintiff prevailed. Greenhagen sat as a juror on both juries. Defendants were not chargeable with negligence in not ascertaining the ground of objection from the record. The objection may be taken after verdict, and it is not necessary in order to get a new trial that the defendants show affirmatively that injury resulted from the service of such juror on the second trial. Williams v McGrade, 18 M 82 (65); State v Thomas, 19 M 484 (418).

The decisions are apparently not harmonious as to whether the statutory causes are exclusive. State v Thomas, 19 M 484 (418); State v Hanley, 34 M 430, 26 NW 397; Wells v Bowman, 59 M 364, 61 NW 135; Spoonick v Backus, 89 M 354, 94 NW 1079.

This section is not applicable to judges. Bryant v Livermore, 20 M 313 (271); Sjoberg v Nordin, 26 M 501, 5 NW 677.

Where, upon the trial of an action, a party discovers the existence of a relationship between one of the jurors and the other party, such as to disqualify him from sitting as a juror, he should present proper proof thereof to the court, and ask for the discharge of the jury, and impaneling of another jury. He must make the objection at the earliest practicable moment, and not be allowed to speculate on the verdict. Wells v Bowman, 59 M 364, 61 NW 135.

That a juror is a stockholder in an accident insurance company which has insured the defendant is probably a ground for challenge for implied bias. Spoonick v Backus, 89 M 354, 94 NW 1079.

The relation of attorney and client between a juror and the attorney of one of the parties to the action is not ground for challenging the juror for implied bias. Sorseleil v Red Lake Falls Co. 111 M 275, 126 NW 903.

Challenge for implied bias, under the master and servant clause, is not applicable in the instant case, as to a prospective juror employed by a corporation. Hannula v Dul. & Iron R. Co. 130 M 3, 153 NW 250.

Where the court on the challenge of the state, improperly rejects a juror, it will not prejudice the defendant if he was tried by an impartial jury, and the jury will be presumed to have been impartial if nothing appears to the contrary. State v Hurst, 153 M 525, 193 NW 680.

Examination of prospective jurors on voir dire. 17 MLR 300.

631.32 CHALLENGE FOR ACTUAL BIAS.

HISTORY. R.S. 1851 c. 128 s. 190; P.S. 1858 c. 114 s. 24; G.S. 1866 c. 116 s. 20; G.S. 1878 c. 116 s. 20; G.S. 1894 s. 7370; R.L. 1905 s. 5392; 1913 c. 53 s. 1; G.S. 1913 s. 9234; G.S. 1923 s. 10739; M.S. 1927 s. 10739.

Examination of prosepective jurors on voir dire. 17 MLR 300.

631.33 EXEMPTION FROM JURY DUTY A PRIVILEGE.

HISTORY. R.S. 1851 c. 128 s. 191; P.S. 1858 c. 114 s. 25; G.S. 1866 c. 116 s. 21; G.S. 1878 c. 116 s. 21; G.S. 1894 s. 7371; R.L. 1905 s. 5393; G.S. 1913 s. 9235; G.S. 1923 s. 10740; M.S. 1927 s. 10740.

Disqualification of governmental employees as jurors in criminal cases for implied bias. 21 MLR 609.

631.34 CHALLENGE STATEMENT OF CAUSE; EXCEPTION.

HISTORY. R.S. 1851 c. 128 ss. 192, 193; P.S. 1858 c. 114 ss. 26, 27; G.S. 1866 c. 116 ss. 22, 23; G.S. 1878 c. 116 ss. 22, 23; 1881 c. 9 s. 1; G.S. 1894 ss. 7372, 7373; R.L. 1905 s. 5394; G.S. 1913 s. 9236; G.S. 1923 s. 10741; M.S. 1927 s. 10741.

A challenge for "actual bias" is sufficient. State v Durnam, 73 M 150, 75 NW 1127.

631.35 TRIAL OF CHALLENGE; TRIERS; APPOINTMENTS; COMPENSATION.

HISTORY. R.S. 1851 c. 128 ss. 194 to 196; P.S. 1858 c. 114 ss. 28 to 30; G.S. 1866 c. 116 ss. 24 to 26; G.S. 1878 c. 116 ss. 24 to 26; G.S. 1894 ss. 7374 to 7376; 1899 c. 26; R.L. 1905 s. 5395; G.S. 1913 s. 9237; G.S. 1923 s. 10742; M.S. 1927 s. 10742.

When a challenge is interposed by one party and admitted by the other, there is nothing to try, and the juror must stand aside, unless the court, in its discretion allows the challenge to be withdrawn. The challenging party has no right to examine the juror. Morrison v Lovejoy, 6 M 319 (224); State v Lautenschlager, 22 M 514; State v Smith, 56 M 78, 57 NW 325.

Triers need not be re-sworn for every challenge. State v Brown, 12 M 538 (448).

The two modes of trial provided by this section are distinct. State v Hanley, 34 M 430, 26 NW 397.

The accused held to have consented to the trial by the court when challenging for actual bias. State v Smith, 78 M 362, 81 NW 17.

Jury triers. 9 MLR 353.

631.36 CHALLENGED JUROR EXAMINED; EVIDENCE.

HISTORY. R.S. 1851 c. 128 ss. 197, 198; P.S. 1858 c. 114 ss. 31, 32; G.S. 1866 c. 116 ss. 27, 28; G.S. 1878 c. 116 ss. 27, 28; 1891 c. 34 s. 1; G.S. 1894 ss. 7377 to 7379; R.L. 1905 s. 5396; G.S. 1913 s. 9238; G.S. 1923 s. 10743; M.S. 1927 s. 10743.

The questions propounded after a challenge must be pertinent to the particular ground of challenge specified. State v Hanley, 34 M 430, 26 NW 397.

Whether the court will delay the trial to bring in other witnesses is purely discretionary. State v Barrett, 40 M 65, 41 NW 459.

The court has discretionary power to prevent useless iteration of questions. State v Frelingshuysen, 43 M 265, 45 NW 432.

A party has a right, at least after challenge, to put any question to the juror properly tending to disclose his bias, prejudice leanings, or general qualifications. The range of such inquiry is almost wholly in the discretion of the trial court. A party has a right, in good faith, to challenge a juror for cause and upon the examination to elicit information to be used in determining whether to interpose a peremptory challenge. State v Bresland, 59 M 281, 61 NW 450; Spoonick v Backus, 89 M 354, 94 NW 1079; Antletz v Smith, 97 M 217, 106 NW 517.

Certain statements made by counsel for plaintiffs in oral examination of the jury panel, were not such as to require appellate court to reverse trial court's order denying defendaant a new trial. Eystad v Stambaugh, 203 M 392, 281 NW 526.

631.37 COURT TO DETERMINE IMPLIED BIAS.

HISTORY. R.S. 1851 c. 128 s. 199; P.S. 1858 c. 114 s. 33; G.S. 1866 c. 116 s. 29; G.S. 1878 c. 116 s. 29; G.S. 1894 s. 7380; R.L. 1905 s. 5397; G.S. 1913 s. 9239; G.S. 1923 s. 10744; M.S. 1927 s. 10744.

631.38 ACTUAL BIAS; INSTRUCTION TO TRIERS; DECISION; EFFECT.

HISTORY. R.S. 1851 c. 128 ss. 200, 201; P.S. 1858 c. 114 ss. 34, 35; G.S. 1866 c. 116 ss. 30, 31; G.S. 1878 c. 116 ss. 30, 31; G.S. 1894 ss. 7381, 7382; R.L. 1905 s. 5398; G.S. 1913 s. 9240; G.S. 1923 s. 10745; M.S. 1927 s. 10745.

The decision of the court upon a question of actual bias of a juror submitted to it for determination by consent is final. Morrison v Lovejoy, 6 M 319 (224); State v Mims, 2 M 494 (683); Hawkins v Manston, 57 M 323, 59 NW 309; Perry v Miller, 61 M 412, 63 NW 1040; State v Durnam, 73 M 150, 75 NW 1127; Bennett v Backus, 77 M 198, 79 NW 682; State v Feldman, 80 M 314, 83 NW 182; State v Evans, 88 M 262, 92 NW 976.

631.39 CHALLENGES; IN WHAT ORDER TAKEN.

HISTORY. R.S. 1851 c. 128 ss. 202, 203; P.S. 1858 c. 114 ss. 36, 37; G.S. 1866 c. 116 ss. 32, 33; G.S. 1878 c. 116 ss. 32, 33; G.S. 1894 ss. 7383, 7384; R.L. 1905 s. 5399; G.S. 1913 s. 9241; G.S. 1923 s. 10746; M.S. 1927 s. 10746.

As to the order of challenging as between the parties, when a juror is called the defendant must exhaust all his challenges (both peremptory and for cause) to that juror and then the state must exhaust all its challenges to him, and so on, successively, as to each juror called. State v Smith, 20 M 376 (328); State v Armington, 25 M 29.

Order of challenge as to kind. Questions that are proper on a challenge for actual bias may be entirely improper on a challenge for implied bias, or general disqualification. For that reason the proper practice is to dispose of each challenge in the order named in the statute and to restrict the questions asked to the particular ground of the challenge. The nature of the challenge, as actually made on the trial, cannot be regarded as merely formal, so that any misstatement of the ground of the challenge intended may be deemed immaterial and the examination on the trial of the challenge be referred to a different ground than the one announced. State v Hanley, 34 M 430, 26 NW 397.

JUDGMENTS AND EXECUTIONS THEREOF

631.40 JUDGMENT ON CONVICTION; JUDGMENT ROLL.

HISTORY. R.S. 1851 c. 132 s. 177; P.S. 1858 c. 118 s. 43; G.S. 1866 c. 118 s. 1; G.S. 1878 c. 118 s. 1; G.S. 1894 s. 7398; R.L. 1905 s. 5410; G.S. 1913 s. 9252; G.S. 1923 s. 10757; M.S. 1927 s. 10757.

The minutes of the trial are a part of the judgment roll. State v Lessing, 16 M 75 (64).

Minutes of the evidence are no part of the judgment roll unless incorporated in a bill of exceptions. State v Wyman, 42 M 182, 43 NW 1116.

Minutes of the conviction and sentence held sufficient. State v Grimes, 83 M 460, 86 NW 449.

Section 610.10 prohibiting the trial of a person for crime while he is in a state of insanity, imposes a duty on, but does not go to the jurisdiction of, the court. 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.

631.41 CLERK TO DELIVER TRANSCRIPT TO SHERIFF.

HISTORY. R.S. 1851 c. 130 s. 226; P.S. 1858 c. 116 s. 4; G.S. 1866 c. 118 s. 2; G.S. 1878 c. 118 s. 2; G.S. 1894 s. 7399; R.L. 1905 s. 5411; G.S. 1913 s. 9253; G.S. 1923 s. 10758; M.S. 1927 s. 10758.

NOTE: Since the Revised Laws 1905, Section 4876, was amended by Laws 1911, Chapter 387, abolishing the death penalty and substituting life imprisonment in capital cases, the sections dealing with capital executions have been omitted. In this case, prior to the enactment of Laws 1911, Chapter 387, it was held that the sentence of death should not be executed until the issuance of a warrant by the governor directing the sheriff to execute the sentence. State v Holong, 38 M 368, 37 NW 587.

When an appeal involves human life, a stay of execution should be granted until the appeal can be heard and determined. (Prior to abolishment of death penalty.) State v Hayward, 62 M 114, 64 NW 90; State v Chounard, 93 M 176, 100 NW 1125; State v Waterman, 112 M 157, 127 NW 473.

631.42 FORM OF SENTENCE TO STATE PRISON.

HISTORY. R.S. 1851 c. 130 s. 227; P.S. 1858 c. 116 s. 5; G.S. 1866 c. 118 s. 5; G.S. 1878 c. 118 s. 5; G.S. 1894 s. 7402; R.L. 1905 s. 5413; G.S. 1913 s. 9254; G.S. 1923 s. 10759; M.S. 1927 s. 10759.

The last sentence is directory. Mims v State, 26 M 494, 5 NW 369.

A judgment omitting the direction as to hard labor is not subject to impeachment on habeas corpus. Falconer v Cochrane, 68 M 405, 71 NW 386.

631.43 SENTENCE WHEN PUNISHMENT NOT PRESCRIBED.

HISTORY. R.S. 1851 c. 130 s. 223; P.S. 1858 c. 116 s. 1; G.S. 1866 c. 118 s. 6; G.S. 1878 c. 118 s. 6; G.S. 1894 s. 7403; R.L. 1905 s. 5414; G.S. 1913 s. 9255; M.S. 1923 s. 10760; M.S. 1927 s. 10760.

631.44 RECOGNIZANCE TO KEEP PEACE.

HISTORY. R.S. 1851 c. 130 s. 224; P.S. 1858 c. 116 s. 2; G.S. 1866 c. 118 s. 7; G.S. 1878 c. 118 s. 7; G.S. 1894 s. 7404; R.L. 1905 s. 5415; G.S. 1913 s. 9256; G.S. 1923 s. 10761; M.S. 1927 s. 10761.

631.45 RECOGNIZANCE TO KEEP PEACE; BREACH.

HISTORY. R.S. 1851 c. 130 s. 225; P.S. 1858 c. 116 s. 3; G.S. 1866 c. 118 s. 8; G.S. 1878 c. 118 s. 8; G.S. 1894 s. 7405; R.L. 1905 s. 5416; G.S. 1913 s. 9257; G.S. 1923 s. 10762; M.S. 1927 s. 10762.

631.46 JAIL SENTENCE; WHEN NO JAIL IN COUNTY.

HISTORY. R.S. 1851 c. 130 s. 228; P.S. 1858 c. 116 s. 6; G.S. 1866 c. 118 s. 9; G.S. 1878 c. 118 s. 9; G.S. 1894 s. 7406; R.L. 1905 s. 5417; G.S. 1913 s. 9258; G.S. 1923 s. 10763; M.S. 1927 s. 10763.

631.47 BALL AND CHAIN PROHIBITED.

HISTORY. 1874 c. 45 s. 1; G.S. 1878 c. 118 s. 13; G.S. 1894 s. 7414; R.L. 1905 s. 5423; G.S. 1913 s. 9266; G.S. 1923 s. 10764; M.S. 1927 s. 10764.

631.48 PENALTY MAY INCLUDE COSTS OF PROSECUTION.

HISTORY. 1881 c. 122 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 67 ss. 15a, 15b; G.S. 1894 ss. 5513, 5514; R.L. 1905 s. 4352; G.S. 1913 s. 7988; G.S. 1923 s. 9485; M.S. 1927 s. 9485.

Where a sheriff has in his hands for service several writs against different persons, for different causes, and makes service of two or more writs in the course of one trip, he is entitled to charge full mileage on each writ so served. Steenerson v Board, 68 M 509, 71 NW 687.

Cost accruing on the change of venue chargeable to the county wherein the offense is committed include those costs and disbursements for which judgment may be entered against defendant, under General Statutes 1894, Section 5513 (section 631.48), but do not include the overhead expenses incident to running the court, such as jurors' and court officers' fees. Bd. of Henn. Co. v. Bd. of Wright Co. 84 M 269, 87 NW 846.

Where it is determined that a county attorney is disqualified and the trial judge appoints a substitute, such appointee is entitled to receive compensation for the services he performs, from the county where it is alleged the crime was committed. Matthews v Board, 90 M 348, 97 NW 101.

Neither costs nor disbursements can be taxed either for or against the state in the supreme court on appeal in a criminal case. State v Tetu, 98 M 351, 107 NW 953, 108 NW 470.

In passing sentence the district court may require the payment of such items of the state's disbursements as would be properly taxable against a defeated party in a civil action, in addition to the penalty imposed for the crime. Such costs must be properly ascertained and taxed before their payment can be adjudged as part of the sentence. State v Moreheart, 149 M 432, 183 NW 960.

A justice of the peace who punishes an offense by imprisonment, and imposes costs, may not coerce the payment of costs by imprisonment until paid, when the penalty of imprisonment imposed for the offense, and the punishment for failure to pay costs, together exceed three months' imprisonment. State ex rel v Maher, 164 M 289, 204 NW 955.

Costs may not be assessed against a person charged with driving without a license, the facts being that the license had been issued, or applied for. 1936 OAG 282, Aug. 1, 1935 (291e).

The state is not required to pay costs in a criminal appeal from justice court to the district court and verdict for defendant on appeal. OAG May 20, 1939 (199a-3).

A justice may present to the county board his bill for fees and costs in criminal cases instituted before him (costs not having been paid), and if the claim is not allowed, may appeal to the district court as provided by section 373.09. 1940 OAG 26, Dec. 28, 1939 (266b-8).