CHAPTER 632

NEW TRIALS, APPEALS, AND WRITS OF ERROR

632.01 REMOVAL TO SUPREME COURT; APPEAL; WRIT OF ERROR.

HISTORY. R.S. 1851 c. 81 s. 22; 1852 Amend. p. 13; P.S. 1858 c. 71 s. 22; G.S. 1866 c. 117 s. 1; 1870 c. 76 s. 2; G.S. 1878 c. 117 s. 1; G.S. 1894 s. 7385; R.L. 1905 s. 5400; G.S. 1913 s. 9242; G.S. 1923 s. 10747; M.S. 1927 s. 10747.

The state cannot take an appeal or writ of error in a criminal case. State v McGrorty, 2 M 224 (187).

No appeal lies from a verdict. State v Ehrig, 21 M 462; State v Stevens, 184 M 286, 238 NW 673.

Intermediate orders cannot be reviewed on certiorari. State v Weston, 23 M 366;

Nor can an appeal be taken from intermediate orders. State v Noonan, 24 M 174; State v Abrisch, 42 M 202, 43 NW 1115.

Upon an appeal from a final judgment, no questions will be considered which might have been raised on a prior appeal from an order denying a new trial. Mims v State, 26 M 494, 5 NW 369.

An order overruling a demurrer is not appealable. State v Abrisch, 42 M 202, 43 NW 1115.

An appeal lies only from final judgments, such as determine the measure of punishment to be inflicted and are to be enforced without further judicial action. State v Abrisch, 42 M 202, 43 NW 1115.

Defendant was convicted and sentenced to death. His sentence was commuted to life imprisonment which the defendant accepted. Thereafter he appealed from the judgment of conviction. The state moved to dismiss the appeal, on the ground that by accepting commutation of sentence he waived his right to appeal. The supreme court, only four judges sitting, was equally divided, so the court was unable to grant the motion. State v Corrivau, 93 M 40, 100 NW 638.

In a criminal action, 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.

An ordinary motion for a new trial in a criminal case must be heard by the trial court before the expiration of the time to appeal from the judgment in the case, and an appeal from an order denying such motion cannot be taken more than a year after such judgment is rendered. State v Lund, 174 M 194, 218 NW 887.

A violation of a city ordinance was an offense against the city, and a right of appeal may be denied. State ex rel v City of Red Wing, 175 M 222, 220 NW 611.

An order in a criminal case made on defendant's failure to plead after disallowance of his demurrer to the information, found him guilty, but directed him to appear at a later date for sentence. This order was not appealable. State v Putzier, 183 M 423, 236 NW 765.

A motion to vacate a judgment entered in a criminal case upon a plea of guilty and to permit a defendant to enter a plea of guilty, is not a motion for a new trial, and the order denying it is not appealable. State v Newman, 188 M 461, 247 NW 576.

632.02 TRIAL OR SUPREME COURT JUDGE MAY STAY PROCEEDINGS; NOTICE.

HISTORY. G.S. 1866 c. 117 s. 2; G.S. 1878 c. 117 s. 2; G.S. 1894 s. 7386; R.L. 1905 s. 5401; G.S. 1913 s. 9243; G.S. 1923 s. 10748; M.S. 1927 s. 10748.

1. Stay

2. Notice of appeal

1. Stay

There is no stay, except as expressly ordered. State v Levy, 24 M 362.

A stay, even in a capital case, is a matter of discretion. State v Holong, 38 M 368, 37 NW 587; State v Hayward, 62 M 114, 474, 64 NW 90; State v Chounard, 93 M 176, 100 NW 1125.

2. Notice of appeal

In a prosecution for the violation of a city ordinance, the notice should be served on the city attorney rather than on the attorney general. State v Sexton, 42 M 154, 43 NW 845.

Immaterial defects in a notice will be disregarded. State v Jones, 55 M 329, 56 NW 1068.

Notice of appeal in criminal cases, to be effective, must be served on the attorney general. State v Newman, 188 M 461, 247 NW 576.

Youth correction act. 28 MLR 331.

632.03 WRIT OF ERROR; BY WHOM ALLOWED; WHEN A STAY.

HISTORY. R.S. 1851 c. 81 ss. 27, 28; P.S. 1858 c. 71 ss. 27, 28; G.S. 1866 c. 117 ss. 3, 4; G.S. 1878 c. 117 ss. 3, 4; G.S. 1894 ss. 7387, 7388; R.L. 1905 s. 5402; G.S. 1913 s. 9244; G.S. 1923 s. 10749; M.S. 1927 s. 10749.

Regarding application for a second writ. Bilansky v State, 3 M 427 (313).

When appeal is taken, such appeal does not stay the execution of the judgment, unless an order to that effect is made. State v Noonan, 24 M 174.

After conviction on a criminal charge, the execution on the judgment having been stayed, and defendant having given a bond and having waived all objections to the judgment, he has no right thereafter in appellate proceedings to claim such judgment invalid. State v Sawyer, 43 M 202, 45 NW 155.

632.04 RETURN.

HISTORY. G.S. 1866 c. 117 s. 5; G.S. 1878 c. 117 s. 5; G.S. 1894 s. 7389; R.L. 1905 s. 5403; G.S. 1913 s. 9245; G.S. 1923 s. 10750; M.S. 1927 s. 10750.

Where the record in a criminal case shows that defendant was sworn as a witness, to show that it was error, it must affirmatively show that he was not sworn at his own request. State v Lessing, 16 M 75 (64).

The supreme court will order a return in a criminal case to be made without payment of clerk's fees by the appellant on a showing that he is unable to pay them. State v Fellows, 98 M 179, 107 NW 542, 108 NW 825.

632.05 BILL OF EXCEPTIONS.

HISTORY. R.S. 1851 c. 129 s. 219; P.S. 1858 c. 115 s. 7; G.S. 1866 c. 117 s. 6; 1870 c. 76 s. 3; G.S. 1878 c. 117 s. 6; G.S. 1894 s. 7390; R.L. 1905 s. 5404; G.S. 1913 s. 9246; G.S. 1923 s. 10751; M.S. 1927 s. 10751.

Where the record of the trial of a cause has been settled by the judge, he cannot upon his own motion, correct a mistake in the record so as to make it comply with the truth; but should call in both parties and allow them to be heard. State v Laliyer, 4 M 379 (286).

The sufficiency of the evidence will not be considered, unless the record on appeal contains all the evidence introduced on the trial. State v Owens, 22 M 238; State v Conway, 23 M 291; State v Graffmuller, 26 M 6, 46 NW 445.

When the record on appeal contains no bill of exceptions or case, the only question that can be considered is the sufficiency of the indictment to support the judgment. State v Miller, 23 M 352; State v Wyman, 42 M 182, 43 NW 1116.

The writ of certiorari will not lie to remove to the supreme court for review an intermediate decision of the district court in a criminal case. Such decisions must be embraced in a bill of exceptions, when the defendant may bring them before the supreme court for review only by a writ of error upon the judgment,

or appeal from the judgment, or order denying a new trial. State v Weston, 23 M 366.

Intermediate orders or rulings will not be considered on appeal, unless incorporated in a bill of exceptions or case. State v Noonan, 24 M 174; State v Johnson, 33 M 34, 21 NW 843; State v Sackett, 39 M 69, 38 NW 773.

A case or bill of exceptions is conclusive on appeal. State v Ronk, 91 M 419, 98 NW 334.

On an appeal in a criminal case, this court cannot consider matters not set forth in a settled case or bill of exceptions. State v Swan, 151 M 215, 186 NW 581.

In the instant case, a transcript of the testimony was unnecessary, as the assignments of error need not be specified in criminal actions. State v Hughes, 157 M 503, 195 NW 635.

To avail himself of errors in the reception of evidence, the defendant in a criminal case must object. State v Shansy, 164 M 10, 204 NW 467.

A motion for a new trial, based on newly discovered evidence because of the contents of an affidavit, upon the record in this case, rests in the discretion of the trial court. State v Wheat, 166 M 300, 207 NW 623.

Amendment, by the trial court, of proposed settled case to make it correspond with the facts which occurred at the trial was proper. State v Skogman, 171 M 515, 213 NW 923.

Where the information does not allege the true name of the purchaser of the liquor, the defendant cannot complain in the supreme court, having failed to raise the question in the trial court. State v Viering, 175 M 475, 221 NW 681.

Whether a new trial be granted upon the grounds of newly discovered evidence is largely within the discretion of the trial court. In the instant case, denial of a new trial was not abuse of discretion. State v Klass, 181 M 203, 232 NW 111, 787; State v Hankins, 193 M 375, 258 NW 578.

It is not necessary to sustain a conviction in the instant case that the complaining witness be shown to have believed the false representations made with intent to defraud him. State v Smith, 192 M 237, 255 NW 826.

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 objections thereto with an exception if needed. State v Hankins, 193 M 375, 258 NW 578.

Appellant claims the court erroneously qualified a requested instruction, but as no exception was taken at the time, the error, if any, must be disregarded. State v Winberg, 196 M 135, 264 NW 578.

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 the supreme court. State v Bram, 197 M 471, 267 NW 383.

Failure to object to testimony in reference to defendant's attempted intimacy with another woman precludes consideration of the admissibility at this time. State v Rowe, 203 M 172, 280 NW 646.

A party may not secure a new trial for some technical error or mistake in the charge which could have been corrected, had attention been called to it at the trial. State v Siebke, 216 M 182, 12 NW(2d) 186.

632.06 PROCEEDINGS IN SUPREME COURT.

HISTORY. R.S. 1851 c. 32 s. 280; P.S. 1858 c. 118 s. 46; G.S. 1866 c. 117 s. 7; G.S. 1878 c. 117 s. 7; G.S. 1894 s. 7391; R.L. 1905 s. 5405; G.S. 1913 s. 9247; G.S. 1923 s. 10752; M.S. 1927 s. 10752.

1. **New trial**
2. **Admissibility of evidence**
3. **Newly discovered evdience**
4. **Misconduct of counsel**
5. **Misconduct of jury or others**
6. **Generally**

1. New trial

Technical errors in rulings on evidence, which do not result in prejudice to the accused, and which can in no reasonable way affect the result of the trial, are not sufficient basis for granting a new trial in criminal prosecutions. State v Nelson, 91 M 143, 97 NW 652; State v Gardner, 96 M 318, 104 NW 971.

Refusing new trial. State v Weiss, 97 M 125, 105 NW 1127; State v Hjerpe, 109 M 270, 123 NW 474.

Grounds for granting new trial. State v Cowing, 99 M 123, 108 NW 851.

A new trial should not be granted for newly discovered evidence which is merely impeaching. State v Sheltrey, 100 M 107, 110 NW 353.

That the court refused a recess to permit the attorney for the defendant to confer at length with his client was not ground for a new trial. Substantial error is ground for new trial unless it appears that defendant could not have been prejudiced thereby; but if it affirmatively appears from the whole record that defendant could not have been prejudiced by error, it is not ground for new trial. State v Swan, 151 M 215, 186 NW 581.

The interjection of uncalled-for remarks by officers who testified for the state, and the remarks of the trial judge in granting defendant's motion to strike them out, were not so prejudicial as to require a new trial. State v Ahlfs, 164 M 110, 204 NW 564.

On appeal from an order denying a new trial, made before the defendant was sentenced, the point that the sentence was excessive cannot be raised. State v Kaufman, 172 M 139, 214 NW 785.

New trial not required because of incident in the court room, (demonstration by sister of prosecutrix). State v Tanley, 172 M 372, 215 NW 514.

There was no reversible error because evidence of another crime was received and then stricken out. State v Johnson, 173 M 543, 217 NW 683.

An ordinary motion for a new trial in a criminal case must be heard by the trial court before the expiration of the time to appeal from the judgment in the case, and an appeal from an order denying such motion cannot be taken more than a year after such judgment is rendered. State v Lund, 174 M 194, 218 NW 887.

That another attorney aided the county attorney is not a reason for a new trial. State v Blake, 176 M 305, 223 NW 141.

It is not error to ask defendant to write and to use such writing for comparison of handwriting. State v Barnard, 176 M 349, 223 NW 452.

Where the conviction for contempt is right but the penalty imposed exceeds that authorized, defendant should not be relieved from proper punishment, but be re-sentenced. Minneapolis v Bergen, 178 M 158, 226 NW 188.

Defendant claims error in the exclusion of certain evidence. He asserts this alleged error in his assignment of errors, and his statement of questions involved, but does not set out this claimed error in his points and authorities, nor does he discuss it in his brief. Generally, the supreme court will not "consider any point not urged in appellant's points and authorities". But because the city has referred to this assignment in its brief, the court has given it consideration. Duluth v Cerveny, 218 M 524, 16 NW(2d) 779.

2. Admissibility of evidence

Erroneous exclusion of character evidence did not prejudice the defendant. State v Cavett, 171 M 222, 213 NW 920.

A technical error will not reverse, unless prejudice results. State v Youngquist, 176 M 562, 223 NW 917.

No reversible error can be predicated on the refusal to hear oral testimony on motion for a new trial. State v Hook, 176 M 604, 224 NW 144.

There was ample, admissible evidence that defendant solicited, agreed to accept, and did accept a bribe. State v Ekberg, 178 M 439, 227 NW 497.

Evidence of other similar crimes is admissible for a proper purpose and limited by the court's charge to that purpose. State v Nichols, 179 M 301, 229 NW 99; State v Omodt, 198 M 165, 269 NW 360.

The reception of evidence showing that the complaining witness drank intoxicating liquor furnished by his own agent, and with which defendant had no connection or knowledge was prejudicial error. State v Sack, 179 M 502, 229 NW 801.

Statements made by a fatally wounded person 30 minutes after he was shot is admissible as part of the res gestae, and admission of a statement to the same effect made three hours later was not error. State v Ming, 180 M 221, 230 NW 639.

Certain evidence admissible as limited by the judge's instructions; and other evidence while incompetent and immaterial was without prejudice. State v Irish, 183 M 49, 235 NW 625.

An instruction to the jury that all the evidence showed that the property taken was of the value of over $25.00, and that therefore the jury must either acquit or convict defendant of the offense of second degree grand larceny was not error, there being no evidence that the property stolen was of a value less than $25.00. State v Voss, 192 M 127, 255 NW 843.

Positive identification of defendant by two victims and corroborating testimony by two others for the state were sufficient to warrant a finding of guilty against the defendant's alleged alibi. State v Chick, 192 M 539, 257 NW 280.

The evidence sustains the verdict under the law governing the degree of evidence required in a criminal case. State v Winberg, 196 M 135, 264 NW 578; State v Nuser, 199 M 315, 271 NW 811.

In view of defendant's testimony and other evidence in the case including his written statement, there was no error in the court's refusal to require a deputy fire marshal to produce the original notes taken by him prior to the execution by the defendant of the statements referred to. State v Poelaert, 200 M 31, 273 NW 641.

Failure to object to testimony in reference to defendant's attempted intimacy with another woman precludes consideration of its admissibility at this time. State v Rowe, 203 M 172, 280 NW 646.

The prosecuting officer represents the state and must refrain from improper methods tending to produce improper conviction. In the instant case, there was no prejudice as the court gave the jury the needed cautionary instructions. State v Gorman, 219 M 162, 17 NW(2d) 43.

3. Newly discovered evidence

The defendant was apprized of the state's claim. Defendant made no effort to bring in for evidence the carburetors he now calls new evidence, nor were the carburetors produced on the motion, but stated to be in a safety deposit vault. The court's refusal to grant a new trial is sustained. State v Golden, 173 M 420, 217 NW 489.

Certain defects in the judge's 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.

Applications for a new trial based upon newly discovered evidence rest largely in the discretion of the trial court. The affidavits were conflicting, and the appellate court will not disturb the order of the trial court. State v Sweeney, 180 M 460, 231 NW 225; State v Hofmann, 181 M 28, 231 NW 411.

The exhibits attached were not put in such form as to constitute legal proof of the things which they purported to show. State v Stevens, 184 M 286, 238 NW 673.

The newly discovered evidence was merely cumulative, and there was no showing of diligence. State v Kosek, 186 M 119, 242 NW 473.

The alleged newly discovered evidence was such that it probably would not change the verdict. State v Weis, 186 M 343, 243 NW 135.

An order denying a motion for a new trial on the ground of newly discovered evidence in a criminal case will not be reversed except for abuse of discretion. State v Quinn, 192 M 88, 255 NW 488; State v Hankins, 193 M 375, 258 NW 578.

4. Misconduct of counsel

The alleged misconduct of the county attorney was based upon introduction in evidence of proof concerning mortgages other than those alleged in the indictment.

This was for the purpose only of showing criminal intent, and not ground for new trial. State v Dahlstrom, 162 M 76, 202 NW 51.

The county attorney was within his rights in referring to the one defendant who took the stand as "a fine mouthpiece to put upon the stand, and the only mouthpiece of this distinguished coterie of scandal mongers" or at least his remark was not prejudicial. State v Minor, 162 M 109, 203 NW 596.

There was no misconduct of counsel for the state requiring a new trial in offering incompetent testimony to which no objection was made. State v Shanesy, 164 M 10, 204 NW 467.

In several instances the county attorney went beyond proper conduct. It might well have drawn reproof from the bench, but as the trial judge in his discretion did not permit a new trial, his judgment is sustained. State v Anderson, 166 M 453, 208 NW 415; State v Heffelfinger, 200 M 269, 274 NW 234.

Misconduct of county attorney was cured by attorney for defendant in going into the matter raised by the county attorney so that there remained no prejudice. State v Fredeen, 167 M 234, 208 NW 653.

No prejudice resulted from improper questions asked defendant, objections to which were sustained. State v Coon, 170 M 343, 212 NW 588; State v Bean, 199 M 16, 270 NW 918.

A claim of misconduct which should result in a new trial does not survive the adverse holding of the trial court. State v Eaton, 171 M 158, 213 NW 735.

The evidence was such as to permit a wide range of comment, and the casual remarks of the prosecuting attorney were not such as to warrant interference or instructions from the trial court. State v Uglum, 175 M 610, 222 NW 280.

The misconduct of the county attorney in continuing to ask improper questions against repeated rulings by the court, is ground for new trial. State v Glazer, 176 M 443, 223 NW 769.

New trial granted because of persistent insinuations of the state not pertinent to the case. State v Klashtorni, 177 M 363, 225 NW 278.

Defendant cannot urge that the county attorney was guilty of misconduct in pursuing a line of cross-examination to which defendant made no objection but in effect consented. State v Hecklin, 178 M 69, 225 NW 925.

The case was one where defendant's admitted actions and the circumstances shown justified a wide range of argument. State v Ming, 180 M 221, 230 NW 639.

The action of defendant's attorney in not calling defendant as a witness and in submitting the case to the jury without argument, is not ground for reversal. State v Lindstrom, 180 M 435, 231 NW 12.

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, with an exception if needed. State v Hankins, 193 M 375, 258 NW 578.

Allusion to the fact defendant did not take the witness stand was error but not prejudicial. State v Zemple, 196 M 159, 264 NW 587.

Improper argument by county attorney to jury is without prejudice where it was stopped by the court who stated that it should be disregarded. State v Puent, 198 M 175, 269 NW 372.

Language of prosecuting attorney criticized, but did not prejudice the jury and no new trial may be granted. State v Golden, 216 M 97, 12 NW(2d) 617.

5. Misconduct of jury or others

The fact that some of the jurors during the trial read certain newspaper articles in reference to the defendant and his trial, was not prejudicial error. State v Williams, 96 M 352, 105 NW 265.

No juror advised the court of the need or desire for rest and sleep before returning a verdict; so the impeachment of the verdict by a woman member of the jury by affidavit that she was coerced through lack of rest to consent to the judgment, is not ground for a new trial. State v Hook, 176 M 604, 224 NW 144.

A new trial will not be granted on the affidavit of a juror that he did not understand the judge's charge. State v Cater, 190 M 485, 252 NW 421.

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.

To justify a new trial for misconduct of the jury, there must be not only misconduct, but also prejudice to the defeated party. Where the jury merely drove by the scene of the alleged trial, there was no prejudice. State v Siebke, 216 M 181, 12 NW(2d) 186.

6. Generally

The record is so incomplete that it presents no question which this court can review. State v Ratner, 168 M 26, 209 NW 489.

There was no error, available to the defendant, in a ruling in his favor upon an objection; nor did the remark of the court in making the ruling indicate that an issue in the case had been proved. State v Ludman, 170 M 441, 213 NW 34.

Where in a criminal case the fact issue resolves itself into one of credibility between conceded criminals and the verdict has been confirmed by the denial of a new trial, it is useless, in the absence of other circumstances, to ask the supreme court to interfere. State v White, 173 M 391, 217 NW 343.

The statute was void for uncertainty. State v Parker, 183 M 588, 237 NW 409.

A second motion for a new trial, based on the same grounds stated in the prior denied motion, cannot be heard without first obtaining permission of the court. State v Stevens, 184 M 286, 238 NW 673.

The court after a remittitur has been sent down in a criminal case, has no power to recall the same for the purpose of entertaining an application for rehearing. State v Waddell, 191 M 475, 254 NW 627.

The common law rule by which a husband cannot be guilty of arson for burning a dwelling house owned by his wife when it is their joint abode, does not obtain in Minnesota. State v Zemple, 196 M 159, 264 NW 587.

Statements made by the court to the defendant after he had been tried and convicted, but before sentence was imposed, should not be considered on the question of prejudice and bias. State v Davis, 197 M 381, 267 NW 210.

When the verdict was of murder in the second degree but the evidence sustains conviction only in the third degree, the court has power to direct the entry of judgment accordingly. State v Jackson, 198 M 111, 268 NW 924.

After remittitur this court is without jurisdiction to amend its judgments; hence where a judgment in a criminal case is reversed and the case remanded without directions as to disposition as required by section 632.06, although the necessary legal effect is to remand the case for a new trial, the supreme court, following State v Ames, 93 M 187, 100 NW 889, cannot amend its judgment accordingly. State v Peterson, 214 M 204, 7 NW(2d) 408.

Under section 632.06 the supreme court is required in criminal cases to examine and render judgment on the record before it. State v Siebke, 216 M 181, 12 NW(2d) 186.

The state's motion for recall of the remittitur denied following State v Waddell, 191 M 475, 254 NW 627. The remittitur had already been sent down when the petition was filed. State v Schabert, 218 M 1, 15 NW(2d) 585.

Assignments of error; requirement of specification. 27 MLR 89.

632.07 ADMISSION TO BAIL OR APPEARANCE BEFORE SUPREME COURT.

HISTORY. R.S. 1851 c. 129 s. 221; P.S. 1858 c. 115 s. 9; G.S. 1866 c. 117 s. 8; G.S. 1878 c. 117 s. 8; G.S. 1894 s. 7392; R.L. 1905 s. 5406; G.S. 1913 s. 9248; 1919 c. 95 s. 1; G.S. 1923 s. 10753; M.S. 1927 s. 10753.

An appeal to the supreme court and a stay of proceedings from that court, after bail granted by the trial court, does not affect the recognizance beyond preventing the district court, temporarily, to forfeit it; and after the cause is remanded from the supreme court for further proceedings, the district court may call the defendant, and upon his default forfeit the recognizance. State v Levy, 24 M 362.

Upon writ of error or appeal from a judgment in a criminal case, the supreme court may, instead of reversing or affirming, modify the judgment so as to correct any errors of the trial court in ordering or entering it. Mims v State, 26 M 494, 5 NW 369.

632.08 DEFENDANT COMMITTED, WHEN; COPY OF RECORD FILED.

HISTORY. R.S. 1851 c. 129 s. 222; P.S. 1858 c. 115 s. 10; G.S. 1866 c. 117 s. 9; G.S. 1878 c. 117 s. 9; G.S. 1894 s. 7393; R.L. 1905 s. 5407; G.S. 1913 s. 9249; G.S. 1923 s. 10754; M.S. 1927 s. 10754.

Sections 632.06, 632.07 and 632.08, are construed together and held to authorize the supreme court to modify as well as reverse or affirm judgments. If the conviction is right and the judgment and sentence thereon wrong, the supreme court may correct the error by a proper judgment and sentence or order its correction by the trial court. Mims v State, 26 M 494, 5 NW 369; State v Framness, 43 M 490, 45 NW 1098; State v Hull, 68 M 465, 71 NW 681.

A judgment may be affirmed in part and reversed in part. Mims v State, 26 M 498, 5 NW 374.

If a judgment is affirmed execution of the sentence of the district court is directed. State v Crawford, 96 M 95, 104 NW 768, 822.

An ordinary motion for a new trial in a criminal case must be heard by the trial court before the expiration of the time to appeal from the judgment in the case, and an appeal from an order denying such motion cannot be taken more than a year after such judgment is rendered. In the instant case, the trial court was without authority, and the instant appeal came too late. State v Lund, 174 M 194, 218 NW 887.

Where the verdict was murder in the second degree but evidence sustains conviction only in the third degree, the supreme court has power to direct entry of judgment accordingly. State v Jackson, 198 M 111, 268 NW 924.

632.09 DISMISSAL OF APPEAL; NOT TO PRECLUDE ANOTHER.

HISTORY. R.S. 1851 c. 81 s. 31; P.S. 1858 c. 71 s. 31; G.S. 1866 c. 117 s. 10; G.S. 1878 c. 117 s. 10; G.S. 1894 s. 7394; R.L. 1905 s. 5408; G.S. 1913 s. 9250; G.S. 1923 s. 10755; M.S. 1927 s. 10755.

An appeal will not be dismissed for immaterial defects in the notice of appeal. State v Jones, 55 M 329, 56 NW 1068.

An appeal will be dismissed if the return is insufficient to justify a consideration of any of the assignments of error. State v Anderson, 59 M 484, 61 NW 448.

632.10 CERTIFYING PROCEEDINGS; STAY.

HISTORY. 1870 c. 76 s. 1; G.S. 1878 c. 117 ss. 11, 12; G.S. 1894 ss. 7395, 7396; R.L. 1905 s. 5409; G.S. 1913 s. 9251; G.S. 1923 s. 10756; M.S. 1927 s. 10756.

Court has no power to certify questions arising in midst of trial. It must be either in the course of preliminary proceedings or on conviction. State v Billings, 96 M 533, 104 NW 1150.

Section 632.10 has no application to prosecutions commenced in, and which are within the jurisdiction of, municipal courts or courts of the justice of the peace. Duluth v Orr, 109 M 431, 124 NW 4.

In accordance with the decision, Sjoberg v Nordin, 26 M 501, 5 NW 677, section 542.13, construed not to disqualify a judge from sitting in a case if he be related within the ninth degree to the attorney of either party. State v Ledbetter, 111 M 110, 126 NW 477; State v Bridgeman, 117 M 186, 134 NW 496.

Section 632.10 does not apply to questions raised by objections to the sufficiency of an affidavit made the basis in district court of contempt proceedings, the affidavit not being an indictment. State v Smith, 116 M 228, 133 NW 614.

The statute authorizing the trial judge to certify important or doubtful questions of law to the supreme court is not a substitute for an appeal. The sole object of the certificate is to report to the supreme court one or more important questions of law. State v Dumas, 118 M 77, 136 NW 311.

When a case is certified under General Statutes 1913, Section 9251 (section 632.10), the proceeding is purely statutory, and the court has no jurisdiction unless it is within the statute. There is no warrant for certifying questions that have arisen upon a trial in which the jury disagreed. State v Toole, 124 M 532, 144 NW 474.•

In the absence of a certification under the statute, or a case or bill of exceptions, a ruling on a challenge to the grand jury cannot be reviewed. State v Atanosoff, 138 M 321, 164 NW 1011.

When a demurrer to an indictment is sustained the prosecution is at an end, unless submitted to another grand jury, and the trial court cannot thereafter certify to the supreme court the question involved in the demurrer. State v Johnson, 139 M 500, 166 NW 123.

There was no error in the refusal of the trial court to name a commission, as demanded by defendant, to determine the question of the sanity of defendant; nor in the refusal to certify to the supreme court the question as to the effect of the probate order. State v Hagerty, 152 M 502, 189 NW 411.

Where defendant's demurrer was overruled and the court submitted seven questions as doubtful, the supreme court upheld the law and affirmed the decision of the trial court. State v Oligney, 162 M 302, 202 NW 893.

Upon denial of motion to quash an indictment, the supreme court held that the trial court cannot compel a witness who testified before the grand jury to submit to an examination concerning the testimony he gave or the proceedings had before the grand jury. State v Fruen, 162 M 352, 202 NW 737.

Defendant was convicted of the crime of being wrongfully interested in a payment voted by the town board of which he was a supervisor. Certain questions were certified and answered. State v Danculovic, 168 M 360, 209 NW 941; State v Sandberg, 168 M 363, 209 NW 943.

Upon certification the supreme court found Laws 1927, Chapter 394, was not in accord with the constitution as it relates to a change in the age of consent. State v Palmquist, 173 M 221, 217 NW 108.

The court overruled the demurrer and certified the question of error in so doing. There was no appeal. Appeal is the only method of review and the supreme court is without jurisdiction. Oehler v City of St. Paul, 174 M 66, 218 NW 234.

Demurrer was overruled and upon certification of the supreme court it should have been sustained. State v Edwards, 178 M 446, 227 NW 495.

Upon certification the supreme court held the demurrer was properly overruled. State v Code, 178 M 492, 227 NW 652.

A Chippewa Indian, residing on his allotment, was convicted in the municipal court of violation of the game laws. Upon appeal to the district court, the judge certified the question as to whether the game laws of the state applied to defendant. The answer was in the negative. State v Cloud, 179 M 180, 228 NW 611.

Upon certification the supreme court held that in a criminal case an issue of fact arises: (1) upon a plea of not guilty; or (2) upon a plea of a former conviction or acquittal of the same offense. State v Eaton, 180 M 439, 231 NW 6.

Upon certification, the supreme court held that when the fire marshal by subpoena compelled defendants to appear before him and under oath answer questions directly accusing them of arson, and caused a transcript of such questions and answers turned over to the grand jury, such procedure was equivalent to compelling defendants to be witnesses against themselves. State v Rixon, 180 M 573, 231 NW 217.

The trial court has no jurisdiction in civil cases to certify questions to the supreme court. Newton v Minneapolis, 186 M 437, 240 NW 470.

Upon certification the supreme court held that defendant had no right to demand that the grand jury call a certain witness on his behalf, though the same witness had been called before a previous grand jury which had failed to indict defendant. State v Lane, 195 M 587, 263 NW 608.

Upon certification, the supreme court held that the information was filed in the proper court within the three years' limit after commission of the offense. State v Chisholm, 198 M 241, 269 NW 463.

Upon certification it is held that a plea of former jeopardy will not be sustained where it appears that in one transaction two distinct crimes were committed. State v Fredlund, 200 M 44, 273 NW 353.

After conviction and upon certification it was held, overruling State v Howard, 66 M 309, 68 NW 1096, that an information for bribery averring the official character of the offeree and that the bribe was offered to him "as such officer", is good. State v Lopes, 201 M 21, 275 NW 374.

Defendant, a theater owner, was indicted for violating the lottery laws. A demurrer was overruled, and the case certified. Affirmed. State v Schubert, 203 M 367, 281 NW 369.

Upon certification, the supreme court held the indictment of defendant charged with poisoning an animal did not violate the Minnesota or United States constitutions. State v Eich, 204 M 136, 282 NW 810.

Upon certification, the supreme court upheld the holding of the trial court, to the effect that the life insurance policies had not lapsed. Stark v Equitable, 205 M 138, 285 NW 466.

Defendant was convicted of the crime of selling mortgaged personal property, and the case was certified. It is held the mortgage was a Wisconsin contract. State v Rivers, 206 M 90, 287 NW 790.

Upon certification it is held that the contract is in fact a "security" requiring registration and the approval of the securities' commission. State v Hofacre, 206 M 168, 288 NW 13.

Upon certification of the question raised by demurrer, the supreme court held sections 612.04 and 613.51 did not apply to the neglect to perform a duty of such character that as a matter of public interest the public officer must scrutinize prior proceedings to determine their legality. State v Brattrud, 210 M 214, 297 NW 713.

"The certified questions having been answered, the court remands the case to the trial court for such further proceedings as are by law required." State v Cantrell, 220 M —, 18 NW(2d) 686.

Choice of law as to usurious character of contract. (State v Rivers, 206 M 90, 287 NW 790). 24 MLR 410.