

CHAPTER 611

RIGHTS OF ACCUSED

611.01 TO KNOW GROUND OF ARREST.

Tests for determining criminal responsibility. 17 MLR 630; 20 MLR 187.

611.02 PRESUMPTION OF INNOCENCE; CONVICTION OF LOWEST DEGREE, WHEN.

Flight of the accused after his arrest and when on bail is a circumstance which may be considered, not as a presumption of guilt, but as something for the jury, and as suggestive of consciousness of guilt; and the same is true of an attempt to escape or resistance to arrest or passing under an assumed name. *State v McTague*, 190 M 449, 252 NW 446.

Even in a criminal case, a statute, as the fair trade act, (L. 1937, c. 116), may properly shift to the accused the burden of going on with the evidence, in his own possession or of facts within his own knowledge, where the result is but a reasonable aid to the prosecution and does not subject the accused to hardship or oppression. *McElbone v Geror*, 207 M 580, 292 NW 414.

Where in a criminal case the evidence of defendant's guilt is all circumstantial, the requirement of proof beyond a reasonable doubt is not satisfied if the inference of innocence is as reasonable as that of guilt. *State v Kaster*, 211 M 119, 300 NW 897.

The trial court correctly stated the law. It is not necessary for the state to prove every allegation in the indictment or information. It is enough to prove the crime charged; see *State v Goldstone*, 144 M 405, 175 NW 892. *State v Bolsinger*, 221 M 154, 21 NW(2d) 492.

Rule of reasonable doubt. 7 MLR 6.

Instruction on presumption of innocence. 10 MLR 539.

Compelling defendant to wear prisoner clothing at trial. 31 MLR 374.

611.03 CONVICTION; WHEN HAD.

As set forth in *Commonwealth v Culver*, 126 Mass. 465, the proper practice upon a challenge to the voluntary character of a confession is for the trial court, in the absence of the jury, to hear the evidence of both parties relating to its voluntary character. If it concludes that the evidence is conclusive that the confession was involuntary, it should be excluded. On the other hand, if there is a question of fact presented by the evidence as to its voluntary character, the evidence of the state should be presented to the jury so that defendant may, when he puts in his case, present to the jury his evidence in opposition. If it is found to be involuntary, the court should instruct the jury to disregard it; but if voluntary, the jury should be the judges of its weight and credibility. *State v Schabert*, 218 M 8, 15 NW(2d) 585.

Voluntary absence of defendant is a waiver of right to be present at rendition of verdict. 13 MLR 65.

Admissibility of extra-judicial confessions affected by illegal delay in arraignment. 28 MLR 73.

611.05 CONTINUANCE; EFFECT; BAIL.

Right to a speedy trial; procedure; dismissal as a bar to further prosecution. 7 MLR 575.

611.06 DEFENDANT ENTITLED TO BLANK SUBPOENAS.

Power to summon witnesses. 15 MLR 350.

611.07 COUNSEL FOR DEFENSE.

Amended by L. 1947 c. 430 s. 1.

Denial of the constitutional right to a public trial, where the accused enjoys the benefit of competent counsel at every state of the proceeding, does not ipso facto violate the due process clause of the federal constitution so as to deprive the trial court of its jurisdiction to proceed. The purpose of guaranty of right of counsel is to protect the accused from a conviction resulting from his own ignorance of legal and constitutional rights, and a denial of counsel constitutes a violation of due process. The court, without infringing the right of the accused to a public trial, may temporarily exclude part of the public from the trial for the preservation of order in the court room or of public morals, but this power of temporary and partial exclusion of the public must be exercised with extreme caution to insure that accused is not thereby deprived of the presence, aid, or counsel of any person whose presence might be of advantage to him. *State ex rel v Utecht*, 221 M 145, 21 NW(2d) 328.

This section expressly applies to felonies and gross misdemeanors. It has no application to misdemeanors under the statutes or violations of municipal ordinances. *State v Martin*, 223 M 414, 27 NW(2d) 160.

In a criminal case, if satisfied that by reason of poverty the accused is unable to procure counsel, the district court may appoint counsel for defendant. OAG July 18, 1945 (346-A).

Section 611.07 is authority for the court to order payment, since the 1947 amendment, \$25 per day in each case to an attorney appointed by the court to defend an indigent defendant accused of a felony or gross misdemeanor. Section 611.13 applies only to Ramsey county. OAG July 30, 1947 (779-K).

Public defender. 1 MLR 539.

Social aspects of Minneapolis courts. 6 MLR 261.

Right to counsel in criminal prosecutions. 17 MLR 415.

611.09 ACQUITTAL ON PART OF CHARGE.

Defendant was tried for the crime of carnal knowledge of a female under the age of consent, committed on January 16, 1914, and acquitted. He was subsequently tried and convicted for a like offense committed on the same female on July 16, 1914. The acquittal in the first case was not a bar to prosecution for the July offense. *State v Healy*, 136 M 264, 161 NW 590.

611.10 ACQUITTAL; WHEN A BAR.

See, *State v Healy*, 136 M 264, 161 NW 590, noted under section 611.09.

A defendant's constitutional right to plead former jeopardy may be waived, and if such plea is not entered at the proper time, it is waived by the defendant. *State ex rel v Utecht*, 206 M 41, 287 NW 229.

Double jeopardy; court martial. 3 MLR 181.

Double jeopardy; identity of offenses arising from the same act. 7 MLR 348.

Double jeopardy; prosecution under state law after acquittal for same act of offense under a municipal ordinance. 10 MLR 621.

Double jeopardy; first degree murder trial as a bar to subsequent trial for second degree murder and manslaughter. 18 MLR 221.

Double jeopardy; crimes consisting of several degrees. 24 MLR 522, 543.

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611.11 NO PRESUMPTION FROM FAILURE TO TESTIFY.

Defendant was convicted of arson in the second degree for the burning of a dwelling house owned by his wife and occupied by them as their joint abode. The common law rule by which a husband cannot be guilty of arson for the burning of a dwelling house owned by his wife when it is their joint abode does not obtain in Minnesota. For reasons stated in the opinion, certain remarks of the county attorney, which alluded to the fact that the defendant did not take the witness stand, do not require a reversal. *State v Zemple*, 196 M 159, 264 NW 587.

Statement of the prosecuting attorney in his argument to the jury that nobody had denied portions of an extra-judicial confession of the defendant does not transgress the provisions of section 610.11. *State v McClain*, 208 M 91, 292 NW 753.

There was evidence by the defendant that he was not guilty, but the trial court was not bound to accept his testimony as true, not only because he was impeached, but also because of the surrounding circumstances, which were strongly indicative of guilt. *State v Ronnenberg*, 214 M 272, 7 NW(2d) 769.

Impeachment of verdict; consideration of defendant's failure to testify. 5 MLR 235; 12 MLR 555.

Compulsory bodily action as violating the privilege against self-incrimination. 17 MLR 187.

Silence of accused after incriminating remarks of another before trial. 17 MLR 665.

Compelling defendant to wear prisoner clothing at trial. 31 MLR 374.

611.13 PUBLIC DEFENDER, RAMSEY COUNTY.

Subd. 1. Amended by L. 1947 c. 478 s. 1.

Subd. 4. Amended by L. 1947 c. 478 s. 2.

Classification of counties for legislative purposes. 11 MLR 189, 208.