

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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CHAPTER 114.

CHALLENGING JURORS.

SECTION

1. When cause may be postponed; affidavit must be filed.
2. When defendant discharged, unless cause be shown for postponement.
3. Order not a bar to another prosecution.
4. Challenge defined.
5. Where there are several defendants they must join in the challenge.
6. Challenge to the panel defined.
7. Challenge to the panel on what founded.
8. When and how taken.
9. If sufficiency of the facts be denied, adverse party may except.
10. On such challenge, court how to proceed.
11. Denial of challenge how made, and trial thereof.
12. Who may be examined on trial of challenge.
13. If challenge allowed, jury to be discharged.
14. Defendant to be informed of his right to challenge individual juror.
15. Kinds of challenge to individual juror.
16. Challenge when taken.
17. Peremptory challenge how taken.
18. Number of peremptory challenge to which defendant is entitled.
19. Challenge for cause, by whom taken.
20. Definition of challenge for cause.
21. General causes of challenge.
22. Particular causes of challenge.

SECTION

23. Grounds of challenge for implied bias.
24. Grounds of challenge for actual bias.
25. Exemption not a ground of challenge.
26. Causes of challenge how stated.
27. Exception to challenge and denial thereof.
28. Challenge how tried if denied.
29. Triers how appointed, majority may decide.
30. Triers must take an oath.
31. Juror challenged may be examined.
32. Rules of evidence on trial of challenge.
33. Challenge for implied bias how determined.
34. Trial of challenge for actual bias.
35. Verdict of triers, and its effect.
36. Challenges must be first by the defendant, then by the United States.
37. Order of challenges.
38. Peremptory when may be taken.
39. Form of oath to be administered to jurors.
40. Jurors may affirm.
41. Person on trial for felony must be present.
42. Court may order a view by the jury.
43. Proceedings when defendant is acquitted of a part of the offense charged.
44. When defendant charged with assault with intent to commit felony may be convicted of assault.
45. Verdict in case of insanity.
46. Defendant when not liable for costs.

[Chapter 128, Revised Statutes.]

When cause may be postponed.

(1.) SEC. CLXVII. When an indictment is called for trial, or at any time previous thereto the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term, or to another term; the affidavits read upon both sides upon the application must at the same time be filed with the clerk.

Affidavits must be filed.

When defendant discharged if prosecuting attorney not ready.

(2.) SEC. CLXVIII. [*As amended on page 28 of the amendments of 1852 to the revised statutes.*] If when the indictment is called for trial, the prosecuting attorney be not ready, and the defendant appear, and be ready for trial, the court must order the indictment to be discharged, unless being of opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

Order not a bar to another prosecution.

(3.) SEC. CLXIX. If the court order the indictment to be discharged, the order is not a bar to another prosecution for the same offense, unless the court so direct; if the court so direct, judgment of acquittal must be entered.

Challenge defined.

(4.) SEC. CLXX. A challenge is an objection made to the trial jury, and is of two kinds:

1. To the panel;
2. To an individual juror.

Defendants must join in challenge.

(5.) SEC. CLXXI. When several defendants are tried together, they cannot sever the challenges, but must join therein.

Challenge to the panel defined.

(6.) SEC. CLXXII. A challenge to the panel is an objection made to all the petit or trial jurors returned, and may be taken by either party.

Challenge to the

(7.) SEC. CLXXIII. A challenge to the panel can be founded only

on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury. panel on what founded.

(8.) SEC. CLXXXIV. A challenge to the panel must be taken before a jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge. When and how taken.

(9.) SEC. CLXXXV. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge; the exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. If sufficiency of the facts be denied, adverse party may except.

(10.) SEC. CLXXXVI. If on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting, to withdraw his exception, and to deny the facts alleged in the challenge; if the exception be allowed, the court may, in like manner, permit an amendment of the challenge. On such challenge, court how to proceed.

(11.) SEC. CLXXXVII. If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court, and the court must proceed to try the question of fact. Denial of challenge how made and trial thereof.

(12.) SEC. CLXXXVIII. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge. Who may be examined on trial of challenge.

(13.) SEC. CLXXXIX. If either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury so far as the trial of the indictment in question is concerned, and no other jury for the trial thereof can be summoned for the same term. If it be disallowed, the court must direct the jury to be impaneled. If challenge allowed, jury to be discharged.

(14.) SEC. CLXXX. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn. Defendant to be informed of his right to challenge individual juror.

(15.) SEC. CLXXXI. A challenge to an individual juror, is either: Kinds of challenge to individual juror.

1. Peremptory; or,
2. For cause.

(16.) SEC. CLXXXII. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed. Challenge when taken.

(17.) SEC. CLXXXIII. A peremptory challenge can be taken by the defendant only, and may be oral; it is an objection to a juror, for which no reason need be given, but upon which the court must exclude him. Peremptory challenge how taken.

(18.) SEC. CLXXXIV. If the offense charged, be punishable with death, or with imprisonment in the territorial prison for life, the defendant is entitled to twenty peremptory challenges; on a trial for any other offense, he is entitled to five peremptory challenges. Number of peremptory challenge to which defendant is entitled.

(19.) SEC. CLXXXV. A challenge for cause may be taken either by the United States, or by the defendant. Challenge for cause by whom taken.

(20.) SEC. CLXXXVI. It is an objection to a particular juror, and is either: Definition of challenge for cause.

1. General, that the juror is disqualified from serving in any case; or,
2. Particular, that he is disqualified from serving in the case on trial.

(21.) SEC. CLXXXVII. General causes of challenge are:

1. A conviction for a felony;
  2. A want of any of the qualifications prescribed by the laws to render a person a competent juror;
  3. Unsoundness of mind, or such defect in the faculties of the mind, or
- General causes of challenge.

organs of the body, as render him incapable of performing the duties of a juror.

Particular causes  
of challenge.

(22.) SEC. CLXXXVIII. Particular causes of challenge are of two kinds:

1. For such a bias, as when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this statute as implied bias;

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the triers, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this statute, as actual bias.

Grounds of chal-  
lenge for im-  
plied bias.

(23.) SEC. CLXXXIX. A challenge for implied bias, may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand-jury which found the indictment, or on a coroner's jury which inquired into the death of a person, whose death is the subject of the indictment;

5. Having served on a trial jury, which has tried another person for the offense charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror, in a civil action, brought against the defendant, for the act charged as an offense;

8. If the offense charged, be punishable with death, the entertaining of such conscientious opinions, as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror.

Grounds of chal-  
lenge for actual  
bias.

(24.) SEC. CXC. A challenge for actual bias, may be taken for the cause mentioned in the second subdivision of section one hundred and eighty-eight, and for no other cause.

Exemption not a  
ground of chal-  
lenge.

(25.) SEC. CXCI. An exemption from service on a jury, is not a cause of challenge, but the privilege of the person exempted.

Causes of chal-  
lenge how stated.

(26.) SEC. CXCH. In a challenge for implied bias, one or more of the causes stated in section one hundred and eighty-nine, must be alleged; in a challenge for actual bias, the cause stated in the second subdivision of section one hundred and eighty-eight, must be alleged; in either case the challenge may be oral, but must be entered upon the minutes of the court.

Exception to  
challenge and  
denial thereof.

(27.) SEC. CXCH. The adverse party may except to the challenge, in the same manner as to a challenge to a panel, and the same proceedings must be had thereon, as prescribed in section one hundred and seventy-four, one hundred and seventy-five, and one hundred and seventy-six, except that if the exception be allowed, the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

(28.) SEC. CXCIV. If the facts be denied, the challenge must be tried as follows: Challenge how tried if denied.

1. If it be for implied bias, by the court; .
2. If it be for actual bias, by triers.

(29.) SEC. CXCV. The triers must be three impartial persons not on the jury panel, appointed by the court. All challenges for actual bias must be tried by the triers thus appointed, a majority of whom may decide. Triers how appointed majority may decide.

(30.) SEC. CXCVI. The triers must be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are true, and to decide the same according to evidence. Triers must take an oath.

(31.) SEC. CXCVII. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness, to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein. Juror challenged may be examined.

(32.) SEC. CXCVIII. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues must govern the admission or exclusion of testimony on the trial of the challenge. Rules of evidence on trial of challenge.

(33.) SEC. CXCIX. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes. Challenge for implied bias how determined.

(34.) SEC. CC. On the trial of a challenge for an actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if the evidence establishes the existence of a state of mind on the part of the juror in reference to the case, or to either party, which satisfies them, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging; and that, if otherwise, they must find the challenge not true. The court can give them no other instruction. Trial of challenge for actual bias

(35.) SEC. CCI. The triers must thereupon find the challenge either true or not true; and their decision is final. If they find it true, the juror must be excluded. Verdict of triers, and its effect.

(36.) SEC. CCII. All challenges to an individual juror, except peremptory, must be taken first by the defendant, and then by the United States; and either party, must exhaust all their challenges before the other begins. Challenges must be first by the defendant, then by the U. States.

(37.) SEC. CCIII. The challenges of either party need not all be taken at once; but they may be taken separately, in the following order, including in each challenge, all the causes of challenge belonging to the same class: Order of challenges.

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror, for actual bias.

(38.) SEC. CCIV. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted. Peremptory when may be taken.

(39.) SEC. CCV. The following oath shall be administered to all jurors for the trial of all criminal cases not capital, "You shall well and truly try the issue between the United States and the defendant (or defendants, as the case may be) according to evidence; so help you God." In capital cases the following oath shall be administered to the jurors, "You shall well and truly try, and true deliverance make, between the

Form of oath to be administered to jurors.

United States and the prisoner at the bar, whom you shall have in charge, according to evidence; so help you God."

Jurors may affirm.

(40.) SEC. CCVI. Any juror who is conscientiously scrupulous of taking either of the oaths above described, shall be allowed to make affirmation, substituting the words, "This you do under the pains and penalties of perjury," instead of the words, "so help you God."

Person on trial for felony must be present.

(41.) SEC. CCVII. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted for smaller offenses, may, at their own request, by leave of the court, be put on trial in their absence and may appear by an attorney duly authorized for that purpose.

Court may order a view by the jury.

(42.) SEC. CCVIII. The court may order a view by any jury impaneled to try a criminal case.

Proceedings when defendant is acquitted of a part of the offense charged.

(43.) SEC. CCIX. Whenever any person indicted for a felony, shall on trial be acquitted, by verdict, of part of the offense charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged, shall be adjudged guilty of the offense, if any, which shall appear to the court to be substantially charged by the residue, of such indictment, and shall be sentenced and punished accordingly.

When defendant charged with assault with intent to commit felony may be convicted of assault.

(44.) SEC. CCX. In all cases of indictment in the district court, for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the assault; and the court shall have power to sentence the person so convicted, to be punished by imprisonment in the jail of the county, for a term not exceeding one year, or by fine not exceeding five hundred dollars.

Verdict in case of insanity.

(45.) SEC. CCXI. When any person, indicted for an offense, shall on trial be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge, or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Defendant when not liable to costs.

(46.) SEC. CCXII. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution shall be liable for any cost or fees of officers, or for any charge for subsistence while he was in custody.