THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
MOSES SHERBURNE and WILLIAM HOLLINSHEAD, Esqrs.,
COMMISSIONERS.

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[*Chapter* 131, *Revised Statutes.*]

(1.) SEC. CCXXXIII. In all cases in which the governor is authorized to grant pardons, he may upon the petition of the person convicted, grant a pardon, upon such conditions, and with such restrictions, and under such limitations, as he may think proper, and he may issue his warrant to all proper officers to carry into effect such constitutional pardon; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally awarded. Governor may grant pardons on petition.

(2.) SEC. CCXXXIV. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant for that purpose is issued, after executing the same, shall make return thereof, under his hand with his doings thereon, to the governor, as soon as may be, and he shall also file with the clerk of the court, in which the offender was convicted, an attested copy of the warrant and return, a brief abstract of which the clerk shall subjoin to the record of his conviction and sentence. In case of pardon or commutation, officer to make return of warrant to the governor, and also file copy of same with the clerk.

CHAPTER 118.

MISCELLANEOUS PROVISIONS RELATING TO CRIMES AND PUNISHMENTS.

[*Chapter* 132, *Revised Statutes.*]

Defendant presumed innocent until proved guilty.

(1.) SEC. CCXXXV. A defendant in a criminal action, is presumed to be innocent, until the contrary be proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.

In case of doubt as to the degree of guilt, may be convicted of the lowest degree.

(2.) SEC. CCXXXVI. When it appears that a defendant has committed a public offense, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only.

Joint defendants may have separate hearing in felonies, &c.

(3.) SEC. CCXXXVII. When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately; in other cases defendants jointly indicted, may be tried separately, or jointly in the discretion of the court.

When the court may discharge one of several defendants to be a witness for the United States.

(4.) SEC. CCXXXVIII. When two or more persons are included in the same indictment, the court may at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the United States.

When co-defendant is discharged may be witness for co-defendant.

(5.) SEC. CCXXXIX. When two or more persons are included in the same indictment, and the court is of opinion, that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment, before the evidence is closed, that he may be a witness for his co-defendant; the order is an acquittal of the defendant discharged, and a bar to another prosecution for the same offense.

Confession not to be evidence if extorted by threats.

(6.) SEC. CCXL. A confession of a defendant, whether made in the course of judicial proceedings, or to a private person, cannot be given in evidence against him, when made under the influence of fear, produced by threats, nor is it sufficient to warrant his conviction, without proof that the offense charged has been committed.

Penetration sufficient to sustain charge for rape.

(7.) SEC. CCXLI. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

Testimony of accomplice not sufficient without corroboration.

(8.) SEC. CCXLII. A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense, or the circumstances thereof.

When juror must be sworn as a witness.

(9.) SEC. CCXLIII. If a juror have any personal knowledge respecting a fact in controversy in a cause, he must declare it in open court, during the trial; if during the retirement of a jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court; in either of these cases the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Court must decide questions of law.

(10.) SEC. CCXLIV. The court must decide all questions of law, which arise in the course of the trial.

Defendant may

(11.) SEC. CCXLV. On the trial of an indictment for any offense,

questions of law are to be decided by the court, except in cases of libel, saving the right of the defendant to except. Questions of fact, by the jury; and although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless to receive as law what is laid down as such by the court. except questions of fact to be decided by jury.

(12.) SEC. CCXLVI. In charging the jury, the court must state to them all matters of law, which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, must, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact. Court must inform the jury that they are the exclusive judges of the facts.

(13.) SEC. CCXLVII. After hearing the charge, the jury may either decide in court, or may retire for deliberation; if they do not agree without retiring, one or more officers must be sworn to keep them together, in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court. Jury may retire or decide in court.

(14.) SEC. CCXLVIII. When a defendant, who has given bail, appears for trial, the court may in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly. When defendant appearing for trial may be committed.

(15.) SEC. CCXLIX. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records, or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession. Jury may take with them papers received in evidence.

(16.) SEC. CCL. The jury may also take with them notes of the testimony, or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person. Jury may take with them notes of the testimony.

(17.) SEC. CCLI. After the jury has retired for deliberation, if there be a disagreement between them, as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the district attorney and the defendant or his counsel. When jury disagree as to testimony, may inquire of the court.

(18.) SEC. CCLII. If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged by the court. If juror be taken sick, jury may be discharged by the court.

(19.) SEC. CCLIII. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident, or other cause, except when the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term. When jury thus discharged, defendant may be again tried.

(20.) SEC. CCLIV. [*As amended on pages* 28 *and* 29 *of amendments of* 1852 *to the revised statutes:*] Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offense, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the Jury may find guilty of degree lower than charged; or of attempt to commit.

defendant not guilty thereof, they may, upon the same indictment, find the defendant guilty of manslaughter in any degree.

Jury may find defendant guilty, &c.

(21.) SEC. CCLV. In all other cases, the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment.

On indictment against several, jury may convict those guilty.

(22.) SEC. CCLVI. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Jury may be polled.

(23.) SEC. CCLVII. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Clerk must record the verdict.

(24. SEC. CCLVIII. When a verdict is given, as is such as the court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury, and inquire of them whether it is their verdict; and if any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

If defendant be acquitted on grounds of insanity the jury must state that fact in the verdict.

(25.) SEC. CCLIX. If the defense to an indictment be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state that fact with their verdict.

Court may hear circumstances in aggravation or mitigation of sentence.

(26.) SEC. CCLX. After a plea or verdict of guilty, in a case where a discretion is conferred upon the court, as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in his discretion hear the same summarily at a specified time, and upon such notice to the adverse party, as it may direct.

Such circumstance how introduced.

(27.) SEC. CCLXI. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition must be taken by a magistrate of the county, out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

No other testimony can be received.

(28.) SEC. CCLXII. No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the court, or a member thereof, in aggravation or mitigation of the punishment, except as provided in the last two sections.

On conviction requiring sentence of death judge to send statement thereof to governor.

(29.) SEC. CCLXIII. The judge of the court, at which a conviction requiring judgment of death is had, must, immediately after conviction, transmit to the governor, by mail, a statement of the conviction and judgment and of the testimony given at the trial.

Bail when requested by either party must justify.

(30.) SEC. CCLXIV. [*As amended on page 29 of the amendments of* 1852 *to the revised statutes:*] Bail must, when requested by either party, or ordered by the court, judge, or magistrate, justify by affidavit before the court, judge, or magistrate, as the case may be.

Clerk must issue blank subpœnas for defendant.

(31.) SEC. CCLXV. The clerk of the court at which any indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas under the seal of the court, and subscribed by him as clerk, for witnesses within the territory, as may be required by the defendant.

(32.) SEC. CCLXVI. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown. When person held to answer if indictment be not found at next term prosecution to be dismissed.

(33.) SEC. CCLXVII. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found, the court must order the indictment to be dismissed, unless good cause to the contrary be shown. If defendant on indictment be not tried, when prosecution to be dismissed.

(34.) SEC. CCLXVIII. If the defendant be not indicted, or tried, as provided in the last sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the mean time may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued. When court may order the action to be continued.

(35.) SEC. CCLXIX. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail, must be refunded to him. If the court dismiss the action defendant must be discharged.

(36.) SEC. CCLXX. The court may, either of his own motion, or upon the application of the district attorney, and in furtherance of justice, order an action after indictment, to be dismissed; but in that case, the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes. When court may dismiss action after indictment.

(37.) SEC. CCLXXI. The entry of a nolle prosequi is abolished, and neither the attorney general, nor the district attorney can discontinue, or abandon a prosecution for a public offense, except as provided in the last section. Nolle prosequi is abolished.

(38.) SEC. CCLXXII. An order for the dismissal of the action, as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar, if the offense charged be a felony. When order for dismissal is a bar to another action.

(39.) SEC. CCLXXIII. When property alleged to have been stolen, or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof. Property stolen or embezzled how disposed of.

(40.) SEC. CCLXXIV. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing, or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property. Such property when to be returned to the owner.

(41.) SEC. CCLXXV. If property stolen, or embezzled, come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. Owner entitled to possession of property on payment of costs.

(42.) SEC. CCLXXVI. If property stolen or embezzled, have not been delivered to the owner, the court before which trial is had for stealing, or embezzling it, may, on proof of his title, order it to be restored to the owner. Owner entitled to possession of property on payment of costs.

THE JUDGMENT ROLL.

(43.) SEC. CCLXXVII. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the Judgment roll how made and what to contain.

offense for which the conviction has been had, and must immediately annex together, and file the following papers which constitute the judgment roll:

1. A copy of the minutes of challenge interposed by the defendant to the panel of the grand-jury, or to an individual grand-juror, and the proceedings and decisions thereon;

2. The indictment, and a copy of the minutes of the plea, or demurrer:

3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury to an individual juror, and the proceedings and decision thereon;

4. A copy of the minutes of the trial;

5. A copy of the minutes of the judgment;

6. The bill of exceptions, if there be one.

Copy of minutes when duly certified, to be evidence.

(44.) SEC. CCLXXVIII. (*a*) A copy of the minutes of any conviction and judgment, duly certified by the clerk in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence in all courts and places of such conviction and judgment, without the production of the judgment roll.

Writ of error to stay execution; when.

(45.) SEC. CCLXXIX. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the district court of the district in which the trial was had or indictment found, with an express direction therein, that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And upon such direction being given, during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail as in cases of appeal.

Assignment of errors, &c., proceedings instead of.

(46.) SEC. CCLXXX. No assignment of errors or joinder in error, shall be necessary upon any writ of error issued in a criminal case; but the court shall proceed on the return thereto and render judgment upon the record before them. If the court shall affirm the judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If it shall reverse the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require. If a new trial be ordered, the same shall be had in the court, in which the indictment was first tried.

Defendant may be arrested after indictment, &c.

(47.) SEC. CCLXXXI. If a defendant in any indictment shall have been let to bail, after verdict or trial, and shall neglect to appear before any court or officer, at any time or place at which he is bound to appear, and submit to the jurisdiction of the proper court, or officer, the court or officer before which he shall have been bound to appear, may cause such defendant to be arrested in the same manner as upon the finding of an indictment, and may forfeit his recognizance and direct the same to be prosecuted.

Effect of above sections.

(48.) SEC. CXLII. (*b*) Nothing in this act contained, shall invalidate any action, suit, prosecution, process, pleading or proceeding commenced, issued, had or taken before, or pending when it goes into effect.

Take effect when.

(49.) SEC. CXLIII. This act shall take effect on the first day of May next after its passage.

(*a*) Sections 278, 279, 280, and 281 are added on page 29 of the amendments of 1852 to the revised statutes.

(*b*) Sections 142 and 143 last above, are the last two sections of the act of March 6th, 1852, cited as the "amendments of 1852 to the revised statutes," and apply to all such portions of the revised statutes as are effected by the act.