CHAPTER LV.

OF PROCEEDINGS IN CRIMINAL CASES.

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TITLE I.

PREVENTION OF CRIME.

(*This Title is Chapter CIV. of the Statutes of* 1866.)

SECTION 1. *Who are conservators of the peace.*—The judges of the several courts of record, in vacation within their respective districts, as well as in open court, and all justices of the peace, within their respective counties, shall have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

SEC. 2. *Proceedings on complaint made to magistrate.*—Whenever complaint is made to any such magistrate that any person has threatened to commit an offense against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

17 Wend. 181; 23 Wend. 639.

SEC. 3. *Warrant shall issue, when.*—If upon examination it appears that there is just cause to fear that any such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate, or court, having jurisdiction of the cause.

SEC. 4. *Proceedings on hearing.*—The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall as soon as may be examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which are deemed pertinent.

SEC. 5. *Examination, how conducted.*—After the testimony to support the prosecution is finished, the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examinatio also in the cross-examination of the witnesses in support of the prosecution.

SEC. 6. *Recognizance to keep the peace, may be required, whe* if upon examination it appears there is just cause to fear that any such offens will be committed by the party complained of, he shall be required to enter into a recognizance, and with sufficient sureties, in such sum as the magistrate directs, to keep the peace toward all the people of this state, and especially toward the persons requiring such security, for such term as the magistrate orders, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offense for which he ought to be held to answer at said court. Upon complying with the order of the magistrate, the party complained of shall be discharged.

SEC. 7. *If not given, party may be committed.*—If the person so ordered to recognize refuses or neglects to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he so recognizes, stating in the warrant the cause of commitment, with the sum and time for which security was required.

SEC. 8. *Party complained of discharged, when.*—If, upon examination, it shall not appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate deems the complaint malicious, or without probable cause, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

SEC. 9. *Costs, by whom paid.*—When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security to keep the peace or for his good behavior, the magistrate may further order the costs of prosecution or any part thereof to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

SEC. 10. *Party aggrieved, may appeal.*—Any person aggrieved by the order of any justice of the peace requiring him to recognize as aforesaid, may, on giving the security required, appeal to the district court next to be holden in the same county, or that county to which said county is attached for judicial purposes.

SEC. 11. *Witnesses required to recognize.*—The magistrate from whose order an appeal is so taken, shall require such witnesses, as he may think necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

SEC. 12. *Proceedings in district court on appeal.*—The court before which such appeal is prosecuted may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court thinks proper, and may also make such order in relation to the costs of prosecution as he deems just and reasonable.

SEC. 13. *Failure to prosecute appeal, effect of, on recognizance.*—If any party appealing fails to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment

or order of the magistrate, and shall also stand as a security for any costs which shall be ordered by the court appealed to, to be paid by the appellant.

SEC. 14. *Party committed, how discharged.*—Any person committed for not finding sureties or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

SEC. 15. *Recognizances to be transmitted to district court.*—Every recognizance taken in pursuance of the foregoing provision shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed or recorded by the clerk.

SEC. 16. *When person may be ordered to recognize, without process.*—Any person who shall in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who in the presence of such court or magistrate shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior, for a term not exceeding six months, and, in case of a refusal, may be committed as before directed.

SEC. 17. *Carrying dangerous weapons, how punished.*—Whoever goes armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family or property, may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

SEC. 18. *Judgment on recognizance remitted, when.*—Whenever upon an action brought on any such recognizances, the penalty thereof is adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case render just and reasonable.

SEC. 19. *Surety in recognizance may take and surrender principal—new recognizance may be given.*—Any surety in a recognizance to keep the peace, or for good behavior, or both, has authority and right to take and surrender his principal, and upon such surrender shall be discharged and exempted from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

TITLE II.

ARREST, EXAMINATION, COMMITMENT, AND BAIL.

ARTICLE I.

OF ARRESTS.

(*This Article is Chapter CV. of the Statutes of* 1866.)

SEC. 20 (1). *Arrest defined.*—Arrest is the taking of a person into custody that he may be held to answer for a public offense.

SEC. 21 (2). *By whom made.*—An arrest may be either:

First. By a peace officer under a warrant.

Second. By a peace officer without a warrant.

Third. By a private person.

SEC. 22 (3). *Who must aid officer.*—Every person must aid an officer in the execution of a warrant, if the officer requires his aid, and is present and acting in its execution.

SEC. 23 (4). *When arrest may be made.*—If the offense charged is a felony, the arrest may be made on any day and at any time of the day or night; if it is a misdemeanor, the arrest cannot be made on Sunday or at night, unless upon the direction of the magistrate indorsed upon the warrant.

SEC. 24 (5). *Arrest, how made.*—An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

SEC. 25 (6). *Unnecessary restraint forbidden.*—The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.

SEC. 26 (7). *Officer shall disclose his authority.*—The officer shall inform the defendant that he acts under the authority of the warrant, and show the warrant if required.

SEC. 27 (8). *May use necessary means to effect arrest.*—If, after notice of intention to arrest the defendant, he either flees, or forcibly resists, the officer may use all necessary means to effect the arrest.

SEC. 28 (9). *May break open door or window, when.*—The officer may break open an inner or outer door or window of a dwelling house to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

SEC. 29 (10). *May break open door or window to liberate himself or another.*—An officer may break open an inner or outer door or window of a dwelling house when necessary for his own liberation, or for the purpose of liberating a person who, having entered to make an arrest, is detained therein.

ARREST BY AN OFFICER WITHOUT A WARRANT.

SEC. 30 (11). *When arrest may be made without warrant.*—A peace officer may, without a warrant, arrest a person:

First. For a public offense committed or attempted in his presence.

Second. When a person arrested has committed a felony, although not in his presence.

Third. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Fourth. On a charge made upon reasonable cause of the commission of a felony by the party arrested.

Judson *v.* Reardon, 16 Minn. 431.

SEC. 31 (12). *Officer without warrant may break open door or window, when.*—To make an arrest as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he is refused admittance.

SEC. 32 (13). *May arrest at night on reasonable cause.*—He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appears that a felony has not been committed.

SEC. 33 (14). *Shall disclose authority and cause of arrest, when.*—When arresting a person without a warrant, the officer shall inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

SEC. 34 (15). *May take before a magistrate a party arrested by a private person.*—He may take before a magistrate, a person who being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

SEC. 35 (16). *Magistrate may command any person to make arrest, when.*—When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

ARREST BY A PRIVATE PERSON.

SEC. 36 (17). *Private person may make arrest, when.*—A private person may arrest another:

First. For a public offense committed or attempted in his presence.

Second. When a person arrested has committed a felony, although not in his presence.

Third. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Judson *v.* Reardon, 16 Minn. 431.

SEC. 37 (18). *Shall disclose cause of arrest and require submission.*—He shall, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

SEC. 38 (19). *May break open door or window, when.*—If the person to be arrested had committed a felony, and a private person, after notice of his intention to make the arrest, is refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the same.

SEC. 39 (20). *Shall take party arrested to magistrate or officer.*—A private person who has arrested another for the commission of a public offense, shall, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

SEC. 40 (21). *Person under arrest, escaping, may be retaken.*—If a person arrested escapes or is rescued, the person from whose custody he has escaped or was rescued may immediately pursue and retake him at any time and in any place in the state.

4 Wis. 163.

SEC. 41 (22). *Pursuer may break open door or window, when.*—To retake the person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open an outer or inner door or window of a dwelling house.

ARTICLE II.

EXAMINATION, COMMITMENT FOR TRIAL, AND OF TAKING BAIL.

(*This Article is Chapter CVI. of the Statutes of* 1866.)

SEC. 42 (1). *Officers authorized to issue process under provisions of this chapter.*—For the apprehension of persons charged with offenses, the judges of the several courts of record, in vacation as well as in term time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter.

State *v.* Grant, 10 Minn. 39.

SEC. 43 (2). *Proceedings upon complaint made.*—Upon complaint being made to any such magistrate that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it appears that any such offense has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it is directed forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as are therein named, to appear and give evidence on the examination.

4 Chand. 148; 3 Wis. 747, 795; 17 Wis. 20; 3 Hill, 300.

SEC. 44 (3). *Warrant executed in any county, when.*—If any person against whom a warrant is issued for an alleged offense committed in any county, either before or after the issuing of such warrant, escapes from or is out of the county, the sheriff or other officer to whom such warrant is directed may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid and exercise the same authority as in his own county.

SEC. 45 (4). *Party arrested may give recognizance, when.*—In all cases where the offense charged in the warrant is not punishable by death or imprisonment in the state prison, if the person arrested requests that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offense, and next holden in the county where it is alleged to have been committed; and the party arrested shall thereupon be liberated.

State *v.* Grant, 10 Minn. 39; 19 Wis. 676; 6 Hill, 344.

SEC. 46 (5). *Duty of magistrate taking bail.*—The magistrate who so lets the person arrested to bail, shall certify that fact upon the warrant, and deliver the same with the recognizances by him taken, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district attorney, shall cause such witnesses to be summoned to the same court as he thinks necessary.

SEC. 47 (6). *Proceedings when magistrate refuses to take bail.*—If the magistrate in the county where the arrest was made refuses to bail the person so arrested and brought before him, or if no sufficient bail is offered, the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereinafter directed.

SEC. 48 (7). *Officer how to proceed in case of felony.*—When the offense charged in any warrant is punishable with death or by imprisonment in the state prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following section.

SEC. 49 (8). *Party arrested, before whom taken.*—Every person arrested by warrant, for any offense where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he is absent or unable to attend, before some other magistrate of the same county, and the warrant with the proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

SEC. 50 (9). *Examination may be adjourned.*—Any magistrate may adjourn an examination or trial pending before himself from time to time as occasion requires, not exceeding ten days at one time, without the consent of the defendant or person charged, and at the same or a different place in the county as he thinks proper, and in such case, if the party is charged with an offense not bailable, he shall be committed in the meantime; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrates for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Cressy *v.* Gierman, 7 Minn. 398; State *v.* Grant, 10 Minn. 39.

SEC. 51 (10). *Proceedings, if party under recognizance is defaulted.*—If the person so recognized does not appear before the magistrate at the time appointed for such further examination, according to the conditions of such recognizance, the magistrate shall record the default, and certify the recognizance, with the record of such default, to the district court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

SEC. 52 (11). *Party, failing to recognize, shall be committed.*—When such person fails to recognize, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

SEC. 53 (12). *Examination, how conducted.*—The magistrate before whom any person is brought upon a charge of having committed an offense, shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on

oath, in the presence of the party charged, in relation to any matter connected with such charge, which may be deemed pertinent.

3 Hill, 296; 5 *ib.* 33.

SEC. 54 (13). *Rights of accused on examination.*—After the testimony to support the prosecution is finished, the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

SEC. 55 (14). *Witnesses may be kept separate during examination.*—The magistrate while examining any witness may in his discretion exclude from the place of examination all the other witnesses; he may also, if requested, or if he sees cause, direct the witnesses for or against the prisoner to be kept separate, so that they cannot converse with each other, until they are examined.

SEC. 56 (15). *Testimony, how taken.*—The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses, if required by the magistrate.

Chapman *v.* Dodd, 10 Minn. 350.

SEC. 57 (16). *Prisoner discharged, when.*—If it appears to the magistrate upon the whole examination that no offense has been committed, or that there is not probable cause for charging the prisoner with the offense, he shall be discharged.

SEC. 58 (17). *What offenses are not bailable.*—Persons charged with an offense punishable with death shall not be admitted to bail when the proof is evident or the presumption great; nor any person, charged with an offense punishable with death or imprisonment in the state prison for a term exceeding seven years, be admitted to bail by a justice of the peace; in all other cases bail may be taken in such sum as in the opinion of the judge or magistrate will secure the appearance of the person charged with the offense at the court where such person is to be tried.

SEC. 59 (18). *Prisoner required to give bail, when.*—If it appears that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense is bailable by the magistrate, and the prisoner offers sufficient bail, or the amount of money in lieu thereof, it shall be taken and the prisoner discharged; but if no sufficient bail is offered or the offense is not bailable by the magistrate, the prisoner shall be committed for trial.

SEC. 60 (19). *Witnesses shall recognize.*—When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he deems material, to appear and testify at the next court having cognizance of the offense, and in which the prisoner is held to answer.

SEC. 61 (20). *Witness may be required to give other security, when.*—If the magistrate is satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security is given, such magistrate may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court.

SEC. 62 (21). *Married woman or minor may recognize as witness, how.*—When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not

exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 63 (22). *Witnesses, failing to recognize, shall be committed.*—All witnesses required to recognize either with or without sureties shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or are otherwise discharged according to law.

SEC. 64 (1, OF ACT OF MARCH 4, 1872). *Witnesses may be held on their own recognizances, when.*—It shall not be lawful, except in cases of murder in first degree, arson where human life is destroyed, and cruel abuse of children, to commit or imprison any witness who is willing and offers to enter into his or her own recognizance without sureties to appear and testify in the case or prosecution in which his or her testimony is required. All persons held as witnesses shall receive such compensation during confinement as the judge of the court in which the case is pending shall direct, not exceeding regular witness fees.

S. L. 1872, 142, repeals S. L. 1868, 111, and all inconsistent acts.
State *ex rel. v.* Grace, 18 Minn. 398.

SEC. 65 (23). *Magistrate may call another magistrate to act with himself.*—Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned, but no fees shall be taxed for such associates.

SEC. 66 (24). *Magistrate to certify testimony and papers to clerk of court.*—All examinations and recognizances taken by any magistrate in pursuance of the provisions of this chapter, shall be certified and returned by him to the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof, and shall be filed in said court; and if such magistrate neglects or refuses to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for contempt.

Chapman *v.* Dodd, 10 Minn. 350.

SEC. 67 (25). *Proceedings, when party under recognizance makes default.*—When any person under recognizance in any criminal prosecution either to appear and answer or to prosecute an appeal, or to testify in any court, fails to perform the condition of such recognizance, his default shall be recorded and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer directs.

State *v.* Grant, 10 Minn. 39.

SEC. 68 (26). *Surety in recognizance may make payment and be discharged.*—Any surety in such recognizance may, by leave of the court, after default, and either before or after the process is issued against him, pay to the county treasurer, or to the clerk of the court, the amount for which he was bound as surety, with such costs as the court directs, and be thereupon for ever discharged.

SEC. 69 (27). *Penalty of recognizance may be remitted, when.*—When any action is brought in the name of the state of Minnesota against a principal or surety in any recognizance entered into, either by a party or a witness in any criminal prosecution, and the penalty of such recognizance is adjudged forfeited, the court may, on application of any party defendant, remit any part or the whole

of such penalty and may render judgment thereon for the state, according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court seems just and reasonable.

State *v.* Grant, 10 Minn. 39.

SEC. 70 (28). *Action on recognizance not barred or defeated, when.*—No such action brought on a recognizance as mentioned in the preceding section shall be barred or defeated, nor shall judgment thereon be arrested, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default happens nor by reason of any defect in the form of the recognizance, if it sufficiently appears from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.

State *v.* Grant, 10 Minn. 39.

SEC. 71 (29). *Proceedings in action brought on recognizance.*—Whenever upon action brought upon any recognizance to prosecute an appeal, the penalty thereof is adjudged to be forfeited, or when, by leave of the court, such penalty has been paid to the county treasurer or to the clerk of the court, without a suit or before judgment has been given in a manner by law provided, if by law any forfeiture accrues to any person by reason of the offense of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

SEC. 72 (30). *Defendant defaulting on recognizance, may be arrested.*—If a defendant in any indictment has been let to bail, after verdict or trial, and neglects 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 is 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.

SEC. 73 (31). *Proceedings before district judge on application to give bail.*—When in any case a party in custody is desirous of giving bail, the offense being bailable, and the district court is not in session in the county, he may apply to the judge thereof, or a judge of the supreme court, upon his affidavit, showing the nature of the application and the names of the persons to be offered as bail, with a copy of the mittimus or papers upon which he is held in custody. The judge may thereupon by order direct the sheriff to bring up said party at a time and place named for the purpose of giving bail. Notice of such application shall be given to the county attorney, if he is within the county, and no matters can be inquired into except such as relate to the amount of bail and the sufficiency of the sureties.

SEC. 74 (32). *Bail to justify in all cases.*—Bail shall in all cases justify by affidavit or upon oral examination before the court, judge, or magistrate as the case may be.

SEC. 75 (ACT OF MARCH 1, 1872).

Vide sec. 189, p. 771, *ante*.

TITLE III.

OF GRAND JURIES, INDICTMENT, AND PROCEEDINGS BEFORE TRIAL.

ARTICLE I.

OF GRAND JURIES, THEIR POWERS AND DUTIES.

(*This Article is Chapter CVII. of the Statutes of* 1866.)

SEC. 76 (1). *Grand jury defined.*—A grand jury is a body of men not less than sixteen nor more than twenty-three in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, chosen by lot, and sworn to inquire of public offenses committed or triable in the county.

SEC. 77 (2). *How drawn.*—A grand jury shall be drawn for every term of the district court in each of the organized counties in this state.

SEC. 78 (3). *Who are liable to be drawn as grand jurors.*—All persons who are qualified electors of this state are liable to be drawn as grand jurors, except as hereinafter provided.

SEC. 79 (4, AS AMENDED BY ACT OF MARCH 10, 1873). *Persons exempt from serving as grand jurors.*—The following persons are exempt from serving as grand jurors: All United States officers, all judges of courts of record, commissioners of public buildings, auditor and treasurer of state, state librarian, clerks of courts, registers of deeds, sheriffs and their deputies, coroners, constables, attorneys and counsellors at law, ministers of the gospel, preceptors and teachers of incorporated academies, one teacher in each common school, practising physicians and surgeons, one miller to each grist mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of companies of firemen organized according to law, all persons of more than sixty years of age, all persons not of sound mind or discretion, persons subject to any bodily infirmity amounting to disability. All persons are disqualified from serving as grand jurors who have been convicted of any infamous crime.

S. L. 1873; *vide* also S. L. 1868, 125.
State *v.* Brown, 12 Minn. 538.

SEC. 80 (5). *Clerk shall prepare names for drawing, how.*—On receiving the list of grand jurors from the county auditor, as selected by the board of county commissioners, the clerk of the district court shall write the names of the persons contained therein on separate pieces of paper, and fold up such pieces of paper, each in the same manner as near as possible, so that the name written thereon shall not be visible, and shall deposit the same in a box, to be drawn as hereinafter provided.

SEC. 81 (6). *When names shall be drawn.*—At least fifteen days before the sitting of any district court the clerk thereof, in the presence of the sheriff or his deputy, and a justice of the peace, shall proceed to draw the names of twenty-three persons from the box to serve as grand jurors at such court.

SEC. 82 (7). *Clerk to issue venire.*—Said clerk shall, twelve days at least before the first day of the court, issue and deliver to the sheriff a venire under the seal of the court, commanding him to summon the persons so drawn to appear

before the said court at or before the hour of eleven o'clock A.M. on the first day of the term thereof to serve as grand jurors.

SEC. 83 (8). *Sheriff shall make service, when and how.*—The sheriff shall summon the persons so named in the venire to attend such court as grand jurors, at least six days before the sitting thereof, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. He shall return such venire to the court at the opening thereof, specifying those who were summoned, and the manner in which each person was notified.

SEC. 84 (9). *Penalty for neglecting to attend.*—If any person duly drawn and summoned to attend as a grand juror, neglects to attend, without sufficient excuse, he shall pay a fine not exceeding thirty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

SEC. 85 (10). *Deficiency of grand jurors, how supplied.*—In case of a deficiency of grand jurors in any court, writs of venire facias may be issued to the proper officer to return forthwith such further number of grand jurors as are required.

SEC. 86 (11). *Persons summoned to supply deficiency, bound to attend.*—The proper officer shall summon such persons accordingly, who shall be bound forthwith to attend and serve, unless excused by the court, in the same manner and subject to the same penalties for neglect, as persons duly drawn by the clerk of the district court, and summoned as herein provided.

SEC. 87 (12). *Number of persons necessary to form grand jury.*—Not more than twenty-three, nor less than sixteen persons, can be sworn on a grand jury, nor can a grand jury proceed to any business unless sixteen members at least are present.

SEC. 88 (13). *Who may challenge panel or individual juror.*—A person held to answer a charge for a public offense, may challenge the panel of the grand jury, or any individual grand juror, before they retire, after being sworn and charged by the court.

State *v.* Maher, 3 Minn. 444; State *v.* Hinckley, 4 Minn. 345; Same *v.* Gut, 13 Minn. 341; Same *v.* Hoyt, 13 Minn. 132.

SEC. 89 (14). *Causes of challenge to panel.*—A challenge to the panel may be interposed for one or more of the following causes only:

First. That the requisite number of ballots was not drawn from the grand jury box of the county.

Second. That the drawing was not had in the presence of the officer designated in section eighty-one (six) of this chapter.

Third. That the drawing was not had at least fifteen days before the court.

State *v.* Gut, 13 Minn. 341.

SEC. 90 (15). *Causes of challenge to individual juror.*—A challenge to an individual grand juror may be interposed for one or more of the following causes only:

First. That he is a minor.

Second. That he is an alien, and has not resided in the United States one year, and in this state four months, and has not declared his intention to become a citizen according to the laws of the United States.

Third. That he is insane.

Fourth. That he is a prosecutor upon a charge against the defendant.

Fifth. That he is a witness on the part of the prosecution, and has been served with process, or bound by a recognizance as such.

Sixth. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court in the exercise of a sound discretion that he cannot act impartially and without prejudice to the substantial rights of the party challenging.

SEC. 91 (16). *What challenges to be tried by the court.*—The challenges mentioned in the last three sections shall be entered upon the minutes, and tried by the court.

SEC. 92 (17). *Clerk to make entry of decision of court.*—The court shall allow or disallow the challenge, and the clerk shall enter its decision upon the minutes.

SEC. 93 (18). *Effect of challenge to panel being allowed.*—If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charges against the defendant by whom the challenge was interposed; if they should notwithstanding do so, and find an indictment against him, the court shall direct it to be set aside.

SEC. 94 (19). *Effect of challenge to individual juror being allowed.*—If a challenge to an individual grand juror is allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

SEC. 95 (20). *Jury to inform court of violation of last section.*—The grand jury shall inform the court of a violation of the provisions of the last section, and it is punishable by the court as a contempt.

SEC. 96 (21). *Court shall appoint foreman.*—From the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreman. The court shall also appoint a foreman, when a person already appointed is discharged or excused, before the grand jury are dismissed.

SEC. 97 (22). *Grand jury shall be sworn.*—The grand jury shall then be sworn according to law, and if, afterward, any grand juror appears and is admitted as such, the same oath shall be administered to him.

SEC. 98 (23). *Shall be charged by the court.*—The grand jury being impanneled and sworn, shall be charged by the court; in doing so, the court shall read to them the provisions of this chapter, from section one hundred and two (twenty-seven) to section one hundred and seventeen (forty-two), both inclusive, and give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand jury; the court need not, however, charge them respecting the violation of a particular statute, unless made expressly its duty to do so by the provisions of such statute.

State *v.* Froiseth, 16 Minn. 313.

SEC. 99 (24). *Shall retire and inquire into offenses.*—The grand jury shall then retire to a private room and inquire into the offenses cognizable by them.

SEC. 100 (25, AMENDED BY ACT OF FEBRUARY 17, 1871). *Shall appoint a clerk—duties of.*—They shall appoint one of their number clerk, who shall preserve the minutes of their proceedings, but shall not preserve a minute of the votes of the individual members, on a presentment or indictment, or of the evidence given before them.

S. L. 1871, 116.

SEC. 101 (26). *Shall be discharged, when.*—On the completion of the business before them, they shall be discharged by the court, but whether the business is completed or not, they are discharged by the final adjournment of the court.

SEC. 102 (27). *Power and duty of grand jury.*—The grand jury have power, and it is their duty to inquire into all public offenses committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next [two] section.

SEC. 103 (28). *Shall find indictment, when—presentment, when.*—Upon such inquiry, if, from the evidence, the grand jury believe any person charged with a public offense is guilty of the same, or any other public offense, they shall find an indictment against him, but if they only believe that he is probably guilty of such offense, they shall proceed by presentment.

SEC. 104 (29). *Indictment defined.*—An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

SEC. 105 (30). *Presentment defined.*—A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

SEC. 106 (31). *Foreman may administer oath.*—The foreman may administer an oath to any witness appearing before the grand jury.

SEC. 107 (32). *What evidence is receivable.*—In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than:

First. Such as is given by witnesses, produced and sworn before them; or,

Second. Legal, documentary, or written evidence.

SEC. 108 (33). *Hearsay or secondary evidence admissible, when.*—The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence, except when such evidence would be admissible on the trial of the accused, for the offense charged.

SEC. 109 (34). *May hear evidence for defendant, when.*—The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they shall order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

SEC. 110 (35). *Should find indictment, when.*—The grand jury ought to find an indictment, when all the evidence taken together is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

SEC. 111 (36). *Duty of each juror to become complainant, when.*—If a member of the grand jury knows, or has reason to believe, that a public offense has been committed which is triable in the county, he shall declare the same to his fellow-jurors, who shall thereupon investigate the same.

SEC. 112 (37). *What matters grand jury shall inquire into.*—The grand jury shall inquire:

First. Into the condition of every person imprisoned on a criminal charge triable in the county, and not indicted;

Second. Into the condition and management of the public prisons in the county; and,

Third. Into the willful and corrupt misconduct in office, of public officers of every description in the county.

SEC. 113 (38). *Grand jury are entitled to inspect public prisons and records.*

—They are entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records in the county.

SEC. 114 (39). *May ask advice of court or county attorney—duty of county attorney.*—The grand jury may at all reasonable times ask the advice of the court, or of the county attorney; and whenever required by the grand jury, the county attorney of the county shall attend them for the purpose of framing indictments, or examining witnesses in their presence, but no county attorney, sheriff, or other person, except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them.

SEC. 115 (40). *Each juror shall observe secrecy.*—Every grand juror shall keep secret whatever he himself, or any other grand juror said, or in what manner he or any other grand juror voted on a matter before them.

SEC. 116 (41). *May be required to make disclosure, when.*—Any grand juror may, however, be required by any court to disclose the testimony of any witnesses examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witnesses before the court, or to disclose the testimony given before them by any other person upon a charge against him for perjury, in giving his testimony, or upon his trial therefor.

SEC. 117 (42). *Not to be questioned concerning his action as grand juror.*—A grand juror cannot be questioned for anything he says or any vote he gives in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may be guilty in making an accusation, or giving testimony to his fellow jurors.

SEC. 118 (43). *Presentment found, when.*—No presentment can be found without the concurrence of at least twelve grand jurors. When so found it shall be signed by the foreman.

SEC. 119 (44). *How disposed of.*—The presentment when found, shall be presented by the foreman in the presence of the grand jury to the court, and be filed with the clerk.

SEC. 120 (45). *Depositions, etc., to be returned to court with presentment.*—When the grand jury make a presentment, they shall return to the court therewith, the depositions of the witnesses examined before them, or the minntes, or a copy thereof, of the testimony on which the presentment is made.

SEC. 121 (46). *Depositions to be filed—who may inspect them.*—When the depositions are returned as provided in the last section, they shall be filed with the clerk of the court, and cannot be inspected by any person except the court, the attorney general, the clerk and his deputies or assistants, and the county attorney, until after the arrest of the defendant.

SEC. 122 (47). *Violation of last section, how punished.*—A violation of the provisions of the last section is punishable as a contempt and as a misdemeanor.

SEC. 123 (48). *Defendant may have copy of depositions.*—After the arrest of the defendant the clerk shall, on payment of his fees, within two days after demand, furnish a copy of the depositions to the defendant or his counsel.

SEC. 124 (49). *Officers not to disclose that presentment or indictment has been found.*—No grand juror, county attorney, clerk, judge, or other officer, can disclose the fact that a presentment has been made, or an indictment found for a felony or other crime, until the defendant is arrested, but this prohibition does not extend

to a disclosure by the issuing or in the execution of a warrant to arrest the defendant.

SEC. 125 (50). *Violation of last section, how punished.*—A violation of the provisions of this last section is punishable as a contempt and as a misdemeanor.

SEC. 126 (51). *Court may order clerk to issue bench warrant, when.*—If the court thinks that the facts stated in the presentment constitute a public offense, triable in the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant.

SEC. 127 (52). *Bench warrant may issue accordingly.*—The clerk, on application of the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant under his signature, and the seal of the court, into one or more counties.

SEC. 128 (53). *Form of bench warrant.*—The bench warrant upon a presentment shall be substantially in the following form:—

State of Minnesota, } ss. The State of Minnesota.
County of }

To any sheriff or constable in the said state, greeting:

A presentment having been made on the day of , A.D. 18 , to the district court for the county of , in the state aforesaid, charging C. D. with the crime of (here designate the charge generally). Therefore, you are commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this county, or in case of his absence or inability to act, before the nearest and most accessible magistrate in this county, there to be dealt with according to law.

Witness the Honourable

At the day of A.D. 18 .

By order of the court. C. H., *clerk*.

SEC. 129 (54). *May be served, where and how.*—The bench warrant may be served in any county in the state, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on complaint.

SEC. 130 (55). *Proceedings on arrest of defendant.*—The magistrate, when the defendant is brought before him, shall proceed upon the charge contained in the presentment, in the same manner in all respects as upon a warrant of arrest on complaint.

SEC. 131 (56). *Clerk to furnish magistrate with presentment and depositions.*—Upon the arrest of the defendant, the clerk with whom the presentment and depositions are filed, shall, without delay, furnish to the magistrate before whom the defendant is taken a certified copy of the presentment and depositions.

SEC. 132 (57). *When indictment can be found.*—No indictment can be found without the concurrence of at least twelve grand jurors. When so found it shall be indorsed "a true bill," and the indorsement signed by the foreman of the grand jury.

State *v.* McCurling, 17 Minn. 76.

SEC. 133 (58). *Charge shall be dismissed, when.*—If twelve grand jurors do not concur in finding an indictment or presentment, the charge shall be dismissed. The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court directs.

SEC. 134 (59). *Names of witnesses to be noted on indictment.*—When an indictment is found, the names of the witnesses examined before the grand jury shall, in all cases, be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

SEC. 135 (60). *Indictment, how disposed of.*—When an indictment is found it shall be immediately presented by the foreman, in the presence of the grand jury, to the court, filed with the clerk, and remain in his office as a public record.

State *v.* Bebee, 17 Minn. 241.

ARTICLE II.

OF INDICTMENT.

(*This Article is Chapter CVIII. of the Statutes of* 1866.)

SEC. 136 (1). *Indictment is the first pleading, and shall contain, what.*—The first pleading on the part of the state is the indictment, which shall contain:

First. The title of an action, specifying the name of the court to which the indictment is presented, and the name of the parties.

Second. A statement of the acts constituting the offense, in ordinary and concise language without repetition.

State *v.* Hinckley, 4 Minn. 345; O'Connell *v.* State, 6 Minn. 279; Same *v.* Eno, 8 Minn. 220; Same *v.* Brown, 12 Minn. 490; Same *v.* Robinson, 14 Minn. 447; Same *v.* Stokely, 16 Minn. 282.

SEC. 137. (2). *Form of indictment.*—It may be substantially in the following form:

No. 1.

The district court for the county of , and state of Minnesota:

The State of Minnesota,
vs.
A. B.

A. B. is accused by the grand jury of the county of , by this indictment, of the crime of (here insert the name of offense, if it has one), such as treason, murder, arson, manslaughter, or the like, or if it is a misdemeanor, having no general name, such as libel, assault, and battery, or the like, insert a brief description of it, as it is given by law, committed as follows:

The said A. B., on the day of , A.D. 18 , at the town (city, or village, as the case may be) of , in this county (here set forth the act charged as an offense according to the form adapted to the case, as afforded in the following forms, or similar ones).

Dated at , in the county of , the day of , A.D. 18 .

(Indorsed,) a true bill,

G. H., *foreman of the grand jury.*

Bilinsky *v.* State, 3 Minn. 427; State *v.* Timmes, 4 Minn. 325; Same *v.* Hinckley, 4 Minn. 345; Same *v.* Eno, 8 Minn. 220; Same *v.* Ryan, 13 Minn. 370.

No. 2.

In an Indictment for Murder.

Form of indictment for murder.—(Commencement the same as No. 1.)

Without the authority of law, and with malice aforethought, killed C. D., by shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water, whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand jury, or as the case may be.

State *v.* Bilinsky, 3 Minn. 427; Same *v.* Dumphey, 4 Minn. 438.

No. 3.

In an Indictment for Arson.

For Arson.—Willfully set fire to (or burned) in the night time, a dwelling house in which there was at the time a human being, namely, C. D. (or whose name is unknown to the grand jury), or,

No. 4.

Same.—Willfully set fire to (or burned) an inhabited dwelling house in the day time, in which there was at the time a human being, namely, C. D. (or whose name is unknown to the grand jury), or,

No. 5.

Same.—Willfully set fire to (or burned) the steamboat named the , which was at the time insured by the Hartford insurance company of the state of Connecticut, against loss or damage by fire, with intent to prejudice such insurer.

No. 6.

Manslaughter in the First Degree.

For manslaughter in first degree.—Was engaged in the perpetration of the following (stating it as in an enactment therefor) and the said A. B., while engaged in the perpetration of such misdemeanor, without a design to effect death by his act (or procurement or culpable negligence) by his act killed C. D. by striking him with a club, or by other means, to be stated as in No 2, or,

No. 7.

Same.—Deliberately assisted one C. D. in the commission of self-murder, which crime the said C. D. then and there committed by hanging himself by the neck until he was dead; (or by shooting himself with a pistol, or as the case may be.)

No. 8.

Manslaughter in the Second Degree.

For manslaughter in second degree.—Killed C. D. in the heat of passion, but in a cruel and unusual manner, and not under such circumstances as to constitute excusable or justifiable homicide, by striking him with a club (or stating the means according to the fact).

No. 9.

Manslaughter in the Third Degree.

For manslaughter in third degree.—Was the owner of a bull (or other mischievous animal, describing it), and knowing its propensities, willfully suffered such bull to run at large (or kept it without ordinary care), and the said bull while so at large (or not confined), killed one C. D., who took all the precautions which the circumstances would permit to avoid such bull; or,

No. 10.

Same.—Was managing a steamboat called the for gain, and willfully (or negligently) received on board so many passengers (or such a quantity of lading), that the said boat sunk (or was overset), whereby C. D., who was on said boat, was drowned (or otherwise killed, according to the fact).

No. 11.

In an Indictment for Rape.

For rape.—Forcibly ravished C. T., a woman of the age of ten years or upwards; or,

O'Connell *v.* State, 6 Minn. 279.

No. 12.

Same.—Unlawfully and carnally knew and abused C. H., a female child under the age of ten years.

No. 13.

In an Indictment for Robbery.

For robbery.—Feloniously took a gold watch (or any other property, as the case may be), the property of C. D., from his person, and against his will, by violence to his person (or by putting him in fear of some immediate injury to his person), or,

No. 14.

Same.—Feloniously took a gold watch (or as the case may be), the property of C. D., in his presence and against his will, by violence to his person.

No. 15.

In an Indictment for Larceny.

For larceny.—Feloniously took and carried away one gold watch and one silver chain (or as the case may be), the personal property of J. D. (or of a person whose name is unknown to the grand jury), of the value of more than twenty dollars, or,

No. 16.

Same.—Feloniously took and carried away in the night time, from the person of C. D., one silver watch (or as the case may be), the personal property of E. F. (or of a person whose name is unknown to the grand jury), of the value of more than twenty dollars.

State *v.* Hazard, 12 Minn. 293; State *v.* Coon, 18 Minn. 518.

No. 17.

In an Indictment for Burglary.

For burglary.—Broke into and entered in the night time, the dwelling house of C. D., in which there was at the time a human being, namely, the said C. D. (or whose name is unknown to the grand jury), with intent to commit murder (or rape, robbery, or larceny, or other public offense, describing it generally) therein, by forcibly bursting or breaking the wall, or an outer door, or a window of such house (or as the case may be; or,)

No. 18.

Same.—Broke into and entered in the night time, the dwelling house of C. D., in which there was at the time a human being, namely, the said C. D. (or whose name is unknown to the grand jury), with intent to commit a rape (or larceny, or any other public offense, describing it generally) therein, by unlocking an outer door, by means of false keys, or by picking or forcing the lock of an outer door (or as the case may be).

State *v.* Coon, 18 Minn. 518.

No. 19.

In an Indictment for Forgery and Counterfeiting.

For forgery and counterfeiting.—Forged, or counterfeited, or falsely altered, by erasing a material part thereof (or as the case may be), an instrument purporting to be (or being) the last will and testament of C. D., devising certain real and personal property, with intent to defraud; or,

No. 20.

Same.—Forged a certificate purporting to have been issued by J. C., an officer duly authorized to make such certificate of the acknowledgment of C. D., of the execution by him of a conveyance to E. F. of certain real property in the town of , with the intent to defraud the said C. D.; or,

No. 21.

Same.—Falsely made an impression, purporting to be the impression of the great seal of the state, on an instrument in writing, being (or purporting to be) a (stating generally the purport of the instrument), with the intent to defraud; or,

No. 22.

Same.—Counterfeited a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current, by custom or usage within this state; or,

No. 23.

For having counterfeit coin in possession.—Had in his possession a counterfeit of a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current in this state, knowing the same to be counterfeited, with intent to defraud (or injure) by uttering the same as true (or false).

No. 24.

In an Indictment for Perjury.

For perjury.—On his examination as a witness, duly sworn to testify the truth, on the trial of a civil action in the court of , between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, he testified falsely, that (stating the facts to be alleged to be false), the matters so testified being material, and the testimony being willfully and corruptly false.

No. 25.

In an Indictment for Bigamy.

For bigamy.—Having a wife then living, unlawfully married one G. A.

No. 26.

In an Indictment for Libel.

For libel.—Published in a newspaper called the , the following libel concerning C. D. (here insert the article charged as being a libel.)

SEC. 138 (3). *Stating offense as in foregoing forms, sufficient, when.*—The manner of stating the act constituting the offense as set forth in the preceding forms, is sufficient in all cases where the forms there given are applicable. In all other cases forms may be used as nearly similar as the nature of the case permits.

SEC. 139 (4). *Indictment shall be direct and certain.*—The indictment shall be direct and certain as it regards:

First. The party charged.

Second. The offense charged.

Third. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

SEC. 140 (5). *Defenaant may be indicted by fictitious name—true name to be inserted when discovered.*—When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

State *v.* Timmes, 4 Minn. 325.

SEC. 141 (6). *Indictment may contain different counts, when.*—When by law

an offense comprises different degrees, an indictment may contain counts for the different degrees, of the same offense, or for any of such degrees. The same indictment may contain counts for murder, and also for manslaughter, or different degrees of manslaughter. Where the offense may have been committed by the use of different means, the indictment may allege the means of committing the offense in the alternative. Where it is doubtful to what class an offense belongs, the indictment may contain several counts describing it as of different classes or kinds.

State *v.* Wood, 13 Minn. 121; Same *v.* Coon, 14 Minn. 456.

SEC. 142 (7). *Time, how stated.*—The precise time at which the offense was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

State *v.* Ryan, 13 Minn. 370.

SEC. 143 (8). *Erroneous allegation as to person injured not material, when.*—When the offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation, as to the person injured, or intended to be injured, is not material.

State *v.* Boylston, 3 Minn. 438.

SEC. 144 (9). *Construction of words.*—Words used in the statutes to define a public offense need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

State *v.* Hinckley, 4 Minn. 345.

SEC. 145 (10). *Indictment, when sufficient.*—The indictment is sufficient if it can be understood therefrom:

First. That it is entitled in a court having authority, to receive it, though the name of the court is not accurately stated.

Second. That it was found by a grand jury of the county in which the court was held.

Third. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name.

Fourth. That the offense was committed at some place within the jurisdiction of the court, except where, as provided by law, the act, though done without the local jurisdiction of the county, is triable therein.

Fifth. That the offense was committed at some time prior to the time of finding the indictment.

Sixth. That the act or omission, charged as the offense, is clearly and distinctly set forth in ordinary and concise language, without repetition.

Seventh. That the act or omission, charged as the offense, is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Vide cases cited in preceding sections.

SEC. 146 (11). *Formal defects not to be regarded.*—No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

SEC. 147 (12). *Judgment, how pleaded.*—In pleading a judgment or other determination of, or proceeding before, a court, or officer, of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction shall, however, be established on trial.

SEC. 148 (13). *Private statute, how pleaded.*—In pleading a private statute or right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 149 (14). *Indictment for libel need not set forth extrinsic facts, etc.*—An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published shall be established on the trial.

SEC. 150 (15). *Misdescription of forged instrument immaterial, when.*—When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

SEC. 151 (16). *Indictment for perjury is sufficient, when.*—In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected nor the commission or authority of the court or person before whom the perjury was committed.

SEC. 152 (17). *Person guilty of compounding offense, may be indicted.*—A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

SEC. 153 (18). *Time within which indictments may be found.*—Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court, within three years after the commission of the offense; but the time during which the defendant is not an inhabitant of, or usually resident within this state, shall not constitute any part of the said limitation of three years.

State *v.* Ryan, 13 Minn. 370.

SEC. 154 (19). *Indictment for offense committed on board vessel, may be found in what county.*—When any offense is committed within this state, on board of any vessel navigating any river or lake, an indictment for the same may be found in any county through which, or any part of which such vessel is navigated during, or in the course of the same voyage or trip, or in the county where such voyage or trip terminates; and such indictment may be tried, and a conviction thereon had, in

any such county, in the same manner and with the like effect as in the county where the offense was committed.

SEC. 155 (20). *Indictment for offenses committed on boundaries between counties, where found.*—Offenses committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

State *v.* Brown, 12 Minn. 490; State *v.* Robinson, 14 Minn. 447.

SEC. 156 (21). *Death ensuing in one county from injury inflicted in another, offense prosecuted where.*—If any mortal wound is given, or other violence or injury inflicted, or any poison administered in one county, by means whereof death ensues in another county, the offense may be prosecuted in either county.

SEC. 157 (22). *Death in any county from injury inflicted without the state, offense prosecuted, where.*—If any such mortal wound is inflicted, or other violence or injury done, or poison administered, either within or without the limits of this state, by means whereof death ensues in any county thereof, such offense may be prosecuted and punished in the county where such death happens.

SEC. 158 (23). *Indictment for embezzlement sufficient, when—evidence in such case.*—In any prosecution for the offense of embezzling the money, bank notes, checks, drafts, bills of exchange or other security for money, of any person, by a clerk, agent, or servant of such person, it shall be sufficient to allege generally in the indictment, an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed within six months next after the time stated in the indictment, and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance if it is proved that any money, bank note, check, draft, bill of exchange, or other security for money of such person, of whatever amount, was fraudulently embezzled by such clerk, agent, or servant, within the said period of six months.

SEC. 159 (24, AMENDED BY ACT OF MARCH 6, 1866). *Proof of ownership of property stolen.*—In the prosecution of any offense committed upon or in relation to, or in any way affecting real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient and shall not be deemed a variance, if it is proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation, to be the owner thereof.

S. L. 1869, 85.

ARTICLE III.

CHANGE OF VENUE.

(*This Article is Chapter CXIII. of the Statutes of* 1866.)

SEC. 160 (1, AS AMENDED BY ACT OF FEBRUARY 24, 1870). *Change of venue granted on affidavit, when.*—All criminal causes shall be tried in the county where the offense was committed, except where otherwise provided by law, unless it appears to

the satisfaction of the court by affidavit that a fair and impartial trial can not be had in such county, in which case the court before whom the cause is pending, if the offense charged in the indictment is punishable with death or imprisonment in the state prison, may direct the person accused to be tried in some other county in the same or any other judicial district in the state, where a fair and impartial trial can be had; but the party accused is entitled to a change of venue once and no more.

S. L. 1870, 142.

State *v.* Gut, 13 Minn. 341; Same *v.* Miller, 15 Minn. 344; Same *v.* Stokely, 16 *ib.* 282.

SEC. 161 (2, AS AMENDED BY ACT OF FEBRUARY 24, 1870). *When venue changed, how trial conducted.*—When the venue is changed to another county in a criminal case the trial shall be conducted in all respects as if the indictment had been found in the county to which the venue is changed, and the cost accruing from a change of venue shall be paid by the county in which the offense was committed.

S. L. 1870, 142.

SEC. 162 (3). *Recognizance required, when—warrant issued, when.*—When the court has ordered a change of venue, it shall require the accused, if the offense is bailable, to enter into a recognisance with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge may direct, and conditioned for his appearance in the court to which the venue is changed, at the first day of the next term thereof, and to abide the order of such court; and in default of such recognizance, or if the offense is not bailable, a warrant shall be issued, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

SEC. 163 (4). *Court shall cause witnesses to give recognizance to appear.*—When a change of venue is allowed, the court shall recognize the witnesses on the part of the state to appear before the court in which the prisoner is to be tried.

SEC. 164 (5). *State may have change of venue, when.*—The attorney on behalf of the state may also apply for a change of venue, and the court being satisfied that it will promote the ends of justice may award a change of venue upon the same terms and to the same extent that are provided in this chapter, and the proceedings on such change of venue shall be in all respects as above provided.

State *v.* Miller, 15 Minn. 344.

TITLE IV.

OF TRIAL AND ITS INCIDENTS.

ARTICLE I.

ARRAIGNMENT OF DEFENDANT.

(*This Article is Chapter CIX. of the Statutes of* 1866.)

SEC. 165 (1). *Arraignment of defendant.*—When the indictment is filed, the defendant shall be arraigned thereon, before the court in which it is found, if it is triable therein, or if not, before the court to which it is sent or removed.

SEC. 166 (2). *When defendant must be personally present.*—If the indictment is for a felony, the defendant shall be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

SEC. 167 (3). *May be brought into court to be arraigned.*—When his personal appearance is necessary, if he is in custody, the court may direct the officer in whose custody he is to bring him before it to be arraigned.

SEC. 168 (4). *Not appearing, bench warrant may issue.*—If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 169 (5). *Clerk shall issue bench warrant, when.*—The clerk, on the application of the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant into one or more counties.

SEC. 170 (6). *Form of bench warrant in case of felony.*—The bench warrant upon the indictment shall, if the offense is a felony, be substantially in the following form:

The district court for the county of , and state of Minnesota:

The state of Minnesota to any sheriff (or other proper officer).

An indictment having been found on the day of , A.D. 18 , in the district court for the county of , charging C. D. with the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named C. D. and bring him before this court (or if the venue has been changed, take him before that court, as the case may be) to answer the indictment, or if the court has adjourned for the term, that you deliver him into the custody of the jailor of the county (or city) of , the day of , A.D.

Witness the Honorable

By order of the court. E. F., *clerk.*

SEC. 171 (7). *Form of bench warrant in case of misdemeanor.*—If the offense is a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "or if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

SEC. 172 (8). *Court shall fix amount of bail.*—If the offense charged is bailable, the court, upon directing the bench warrant to issue, may fix the amount of bail, and in such case an indorsement shall be made upon the bench warrant, and signed by the clerk, to the following effect: "the defendant is to be admitted to bail in the sum of dollars."

SEC. 173 (9). *Bench warrant, how served.*—The bench warrant may be served in any county in the same manner as a warrant of arrest.

SEC. 174 (10). *Proceedings before magistrate.*—If the defendant is brought before a magistrate of another county, for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest.

SEC. 175 (11). *Magistrate shall proceed, how.*—On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and recognizance to

the officer having charge of the defendant; the officer shall then discharge the defendant from arrest, and without delay deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear.

SEC. 176 (12). *Court may order defendant to be committed.*—When the indictment is for felony, and the defendant before the finding thereof has given bail for his appearance to answer the charge, the court to which the indictment is presented or sent, or removed for trial, may order the defendant to be committed to actual custody, unless he give bail in the increased amount to be specified in the order.

SEC. 177 (13). *Bench warrant may issue to enforce order of commitment.*—If the defendant is present when the order is made, he shall be forthwith committed; if he is not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter.

SEC. 178 (14). *Court shall inform defendant of his right to counsel.*—If the defendant appears for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel.

SEC. 179 (15). *Arraignment of defendant, how conducted.*—The arraignment shall be made by the court, or by the clerk or county attorney, under his direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

SEC. 180 (16). *Defendant shall be asked to give his true name.*—When the defendant is arraigned he shall be informed that if the name by which he is indicted is not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name, the court may proceed accordingly.

SEC. 181 (17). *Proceedings when he gives another as his true name.*—If he alleges that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

SEC. 182 (18). *Time to plead allowed.*—If on the arraignment the defendant requires it, he shall be allowed until the next day, or such further time may be allowed him as the court deems reasonable, to answer the indictment.

SEC. 183 (19). *Defendant may move to set aside indictment, may demur or plead.*—If the defendant does not require time, as provided in the last section, or if he does, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

ARTICLE II.

SETTING ASIDE INDICTMENT.

(*This Article is Chapter CX. of the Statutes of* 1866.)

SEC. 184 (1). *Indictment shall be set aside, when.*—The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion in either of the following cases:

First. When it is not found, indorsed, and presented as prescribed in the chapter relating to grand juries.

Second. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon.

Third. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except as provided in section thirty-nine of said chapter.

Maher *v.* State, 3 Minn. 444; State *v.* Hinckley, 4 Minn. 345; State *v.* Hoyt, 13 Minn. 132; Same *v.* Gut, *ib.* 341; Same *v.* Froiseth, 16 Minn. 296.

SEC. 185 (2). *Objections to indictment waived, when.*—If the motion to set aside the indictment is not made, the defendant is precluded from afterward taking the objections mentioned in the last section.

State *v.* Shippey, 10 Minn. 223.

SEC. 186 (3). *Motion to set aside indictment heard, when.*—The motion shall be heard at the time of the arraignment, unless for good cause the court postpones the hearing to another time.

SEC. 187 (4). *If motion is denied, defendant shall demur or plead.*—If the motion is denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto.

SEC. 188 (5). *Proceedings if motion is granted.*—If the motion is granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the money be refunded to him; unless it directs that the case be re-submitted to the same, or another grand jury.

SEC. 189 (6). *Effect of re-submission of case.*—If the court directs that the case be re-submitted, the defendant, if already in custody, shall so remain, unless he is admitted to bail; or if already admitted to bail, or money deposited instead thereof, the bail or money is answerable for the appearance of the defendant, to answer a new indictment.

SEC. 190 (7). *Proceedings, if new indictment is not found.*—Unless a new indictment is found before the next grand jury of the county is discharged, the court shall, on the discharge of such grand jury, make the order prescribed by section one hundred and eighty-eight (five) aforesaid.

SEC. 191 (8). *Order setting aside indictment no bar to another prosecution.*—An order to set aside an indictment, as provided in the seven preceding sections, is no bar to a future prosecution for the same offense.

ARTICLE III.

DEMURRERS.

(*This Article is Chapter CXI. of the Statutes of* 1866.

SEC. 192 (1). *Pleading by defendant.*—The only pleading on the part of the defendant is a demurrer or a plea.

SEC. 193 (2). *When put in.*—Both the demurrer and the plea shall be put in in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

SEC. 194 (3). *Defendant may demur to indictment, for what causes.*—The defendant may demur to the indictment, when it appears from the face thereof, either:

First. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the county.

Second. That it does not substantially conform to the requirements of sections one, two, three, and four of chapter one hundred and eight, as the same are qualified by section ten of the same chapter, or was not found within the time prescribed by section eighteen.

Third. That more than one offense is charged in the indictment, except in cases where it is allowed by statute.

Fourth. That the facts stated do not constitute a public offense.

Fifth. That the indictment contains any matter, which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

State *v.* Hinckley, 4 Minn. 345.

SEC. 195 (4). *Demurrer shall specify, what.*—The demurrer shall be in writing, signed either by the defendant or his counsel; it shall distinctly specify the ground of objection to the indictment, or it may be disregarded.

SEC. 196 (5). *Shall be heard, when.*—Upon the demurrer being filed, the objection presented thereby shall be heard, either immediately, or at such time as the court may appoint.

SEC. 197 (6). *Judgment on demurrer.*—Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered upon the minutes.

SEC. 198 (7). *If demurrer is allowed, court may grant amendment or direct re-submission.*—If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be re-submitted to the same or another grand jury.

State *v.* Armstrong, 4 Minn. 335.

SEC. 199 (8). *If amendment is not allowed or case re-submitted, defendant shall be discharged.*—If the court does not allow an amendment or direct the case

to be re-submitted, the defendant if in custody shall be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail the money shall be refunded to him.

SEC. 200 (9). *Proceedings when case is submitted anew.*—If the court directs that the case be submitted anew, the same proceedings shall be had thereon as are prescribed in sections one hundred and eighty-nine and one hundred and ninety (six and seven of chapter one hundred and ten).

SEC. 201 (10). *If demurrer is disallowed, defendant may plead.*—If the demurrer is disallowed, or the indictment amended, the court shall permit the defendant at his election to plead, which he must do forthwith, or at such time as the court may allow. If he does not plead, judgment shall be pronounced against him.

SEC. 202 (11). *What objections can only be taken by demurrer.*—When the objections mentioned in section one hundred and eighty-six (three) appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, and in arrest of judgment.

ARTICLE IV.

PLEAS.

(*This Article is Chapter CXII. of the Statutes of* 1866.)

SEC. 203 (1). *Pleas to indictment are three.*—There are three pleas to an indictment:

First. Guilty.

Second. Not guilty.

Third. A former judgment of conviction, or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

SEC. 204 (2). *Every plea shall be oral.*—Every plea shall be oral, and be entered upon the minutes of the court.

SEC. 205 (3). *How entered.*—The plea shall be entered in substantially the following form:

First. If the defendant pleads guilty: "the defendant pleads that he is guilty of the offense charged in this indictment."

Second. If he pleads not guilty: "the defendant pleads that he is not guilty of the offense charged in this indictment."

Third. If he pleads a former conviction or acquittal: "the defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offense charged in this indictment by the judgment of the court of (naming it), rendered at (naming the place) on the day of ."

SEC. 206 (4). *Plea of guilty, how put in.*—A plea of guilty can in no case be put in except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

SEC. 207 (5). *Plea of guilty withdrawn, when.*—The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

SEC. 208 (6). *Effect of plea of not guilty.*—The plea of not guilty is a denial of every material allegation in the indictment.

SEC. 209 (7). *Evidence under plea of not guilty.*—All matters of fact tending to establish a defense other than that specified in the third subdivision of section two hundred and three (one), may be given in evidence under the plea of not guilty.

SEC. 210 (8). *Acquittal not a bar, when.*—If the defendant was formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, without a judgment of acquittal, it is not an acquittal of the same offense.

SEC. 211 (9). *When acquittal is a bar.*—When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in the form or substance in the indictment on which he was acquitted.

SEC. 212 (10). *Rule in case of indictment for offense consisting of different degrees.*—When the defendant is convicted or acquitted, upon an indictment for an offense consisting of different degrees, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for any inferior degree of that offense, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

SEC. 213 (11). *Refusal to plead, plea of not guilty shall be entered.*—If the defendant refuses to answer the indictment, by demurrer, or plea, a plea of not guilty shall be entered.

ARTICLE V.

CRIMINAL CALENDAR.

(*This Article is Chapter CXV. of the Statutes of* 1866.)

SEC. 214 (1). *Clerk shall prepare calendar of indictments.*—The clerk shall prepare a calendar of the indictments pending to be tried at the term, enumerating them according to the date of filing the indictment, and specifying opposite to the title of each section, whether it is for a felony, or a misdemeanor, and whether the defendant is in custody or on bail, and shall in like manner enter therein all indictments found during the term, and on which issues of fact or law are joined.

SEC. 215 (2). *Issues on calendar, how disposed of.*—The issues on the calendar shall be disposed of in the following order, unless upon the application of either party, for good cause, the court directs an indictment to be tried out of its order:

First. Indictments for felony, where the defendant is in custody;

Second. Indictments for misdemeanor, where the defendant is in custody;

Third. Indictments for felony, where the defendant is on bail; and,

Fourth. Indictments for misdemeanor, where the defendant is on bail.

SEC. 216 (3). *Time to prepare for trial allowed.*—After his plea, the defendant is entitled to at least four days to prepare for his trial, if he requires it.

SEC. 217 (4). *Clerk shall keep register of criminal actions.*—The clerk shall keep a register of all the criminal actions in the court, in which he shall enter:

First. All cases returned to the court by a magistrate, whether the defendant is discharged or held to answer;

Second. All indictments found in the court, or sent or removed thereto for trial, with the time of finding the indictment, or when it was sent or removed; and,

Third. The time of arraignment, of the demurrer, or plea, and of the trial, conviction, or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

ARTICLE VI.

CHALLENGING THE JURY.

(*This Article is Chapter CXVI. of the Statutes of* 1866.)

SEC. 218 (1). *Definition and kinds of challenge.*—A challenge is an objection made to a trial jury, and is of two kinds:

First. To the panel.

Second. To an individual juror.

SEC. 219 (2). *Defendants must join in challenge.*—When several defendants are tried together, they cannot separate the challenges, but shall join therein.

SEC. 220 (3). *Challenge to panel defined.*—A challenge to the panel is an objection made to all the petit or trial jurors returned, and may be taken by either party.

SEC. 221 (4). *Shall be founded on what.*—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.

SEC. 222 (5). *Shall be taken, when and how.*—A challenge to the panel shall be taken before a jury is sworn, and shall be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

State *v.* Maloney, 1 Minn. 350.

SEC. 223 (6). *Adverse party may except to challenge, when.*—If the sufficiency of the facts alleged as a ground of challenge is denied, the adverse party may except to the challenge; the exception need not be in writing, but shall be entered upon the minutes of the court, and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

SEC. 224 (7). *Exception may be withdrawn and facts alleged in challenge denied—challenge may be amended.*—If on the exception the court deems the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge; if the exception is allowed, the court may in like manner permit an amendment of the challenge.

SEC. 225 (8). *Denial of challenge may be oral—proceedings thereon.*—If the challenge is denied, the denial may in like manner be oral, and shall be entered upon the minutes of the court, and the court shall proceed to try the question of fact.

SEC. 226 (9). *On trial of challenge, testimony may be taken.*—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.

SEC. 227 (10). *Court to inform defendant when he must challenge individual juror.*—Before a juror is called the defendant shall be informed by the court, or under its direction, that if he intends to challenge an individual juror, he shall do so when the juror appears and before he is sworn.

SEC. 228 (11). *Kinds of challenge.*—A challenge to an individual juror is either:

First. Peremptory; or,

Second. For cause.

SEC. 229 (12). *When taken.*—It shall 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.

State *v.* Maloney, 1 Minn. 350; Same *v.* Dumphey, 4 Minn. 438.

SEC. 230 (13, AS AMENDED BY ACT OF MARCH 5, 1868). *Peremptory challenge defined.*—A peremptory challenge can be taken either by the state or by the defendant, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court shall exclude them.

S. L. 1868, 126.

SEC. 231 (14, AS AMENDED BY ACT OF MARCH 5, 1868). *How many each party entitled to.*—If the offense charged is punishable with death, or with imprisonment in the state prison for life, the state is entitled to seven peremptory challenges, and the defendant to twenty peremptory challenges. On a trial for any other offense the state is entitled to two peremptory challenges and the defendant to five peremptory challenges.

S. L. 1868, 126.

SEC. 232 (15). *Who may challenge for cause.*—A challenge for cause may be taken either by the state or by the defendant.

SEC. 233 (16). *Challenge for cause defined.*—It is an objection to a particular juror, and is either:

First. General, that the juror is disqualified from serving in any case; or,

Second. Particular, that he is disqualified from serving in the case on trial.

SEC. 234 (17). *General causes of challenge.*—General causes of challenge are:

First. A conviction for a felony.

Second. A want of any of the qualifications prescribed by the laws to render a person a competent juror.

Third. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as render him incapable of performing the duties of a juror.

SEC. 235 (18). *Particular causes of challenge.*—Particular causes of challenge are of two kinds:

First. 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 chapter as implied bias.

Second. 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.

State *v.* Stokely, 16 Minn. 282.

SEC. 236 (19). *Causes of challenge for implied bias.*—A challenge for implied bias, may be taken for all or any of the following causes, and for no other:

First. Consanguinity or affinity within the ninth degree, to the person

alleged to be injured by the offense charged, on whose complaint the prosecution was instituted, or to the defendant.

Second. 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.

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

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

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

Sixth. 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.

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

Eighth. If the offense charged is 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.

State *v.* Stokely, 16 Minn. 282.

SEC. 237 (20). *Cause of challenge for actual bias.*—A challenge for actual bias, may be taken for the cause mentioned in the second subdivision of section eighteen, and for no other cause.

SEC. 238 (21). *Exemption from service on jury not cause of challenge.*—An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

SEC. 239 (22). *Causes of challenge, how stated.*—In a challenge for implied bias, one or more of the causes stated in section nineteen shall be alleged; in a challenge for actual bias, the cause stated in the second subdivision of section eighteen shall be alleged; in either case the challenge may be oral, but shall be entered upon the minutes of the court.

SEC. 240 (23). *Challenge may be excepted to, or facts alleged, denied.*—The adverse party may except to the challenge, in the same manner as to a challenge to a panel, and the same proceedings shall be had thereon, as prescribed in sections five, six, and seven, except that if the exception is allowed, the juror shall be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

SEC. 241 (24). *Trial of challenge.*—If the facts are denied, the challenge shall be tried as follows:

First. For implied bias, by the court.

Second. For actual bias, by triers, unless, in cases not capital, the parties consent to a trial by the court.

Morrison *v.* Lovejoy, 6 Minn. 319.

SEC. 242 (25). *Triers shall be appointed.*—The triers shall be three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias shall be tried by the triers thus appointed, a majority of whom may decide.

SEC. 243 (26). *Shall be sworn.*—The triers shall be sworn generally to

inquire whether or not the several persons who may be challenged, and in respect to whom the challenges are given to them in charge, are true, and to decide the same according to evidence.

State *v.* Brown, 12 Minn. 538.

SEC. 244 (27). *Juror challenged may be examined.*—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.

SEC. 245 (28). *Rules of evidence on trial of challenge.*—Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge.

SEC. 246 (29). *Court shall determine challenge for implied bias.*—On the trial of a challenge for implied bias, the court shall determine the law and the fact, and either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

SEC. 247 (30). *Court shall instruct triers, how.*—On the trial of a challenge for actual bias, when the evidence is concluded, the court shall 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 shall find the challenge not true. The court can give them no other instruction.

SEC. 248 (31). *Decision of triers.*—The triers shall thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror shall be excluded.

State *v.* Dumphey, 4 Minn. 438.

SEC. 249 (32). *Challenge shall be taken first by defendant.*—All challenges to an individual juror shall be taken first by the defendant, and then by the state; and each party shall exhaust all his challenges before the other begins.

SEC. 250 (33). *Shall be taken, in what order.*—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:

First. To the panel:

Second. To an individual juror, for a general disqualification.

Third. To an individual juror for implied bias.

Fourth. To an individual juror for actual bias.

ARTICLE VII.

ISSUES AND MODES OF TRIAL.

(*This Article is Chapter CXIV. of the Statutes of* 1866.)

SEC. 251 (1). *Issue of fact arises, when.*—An issue of fact arises:

First. Upon a plea of not guilty; or,

Second. Upon a plea of a former conviction or acquittal of the same offense.

SEC. 252 (2). *Shall be tried by jury.*—An issue of fact shall be tried by a jury of the county in which the indictment was found, unless the action is removed, by order of the court, as provided in article three (the preceding chapter).

SEC. 253 (3). *Trial had in absence of defendant, when.*—If the indictment is for a misdemeanor, the trial may be had in the absence of the defendant, if he appears by counsel; but if for a felony, he shall be personally present.

SEC. 254 (4). *Continuance may be granted.*—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 the application shall at the same time be filed with the clerk.

SEC. 255 (5). *Court may order defendant to be committed.*—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.

SEC. 256 (6). *Separate trial in case of two or more defendants had, when.*—When two or more defendants are jointly indicted for a felony, any defendant requiring it shall be tried separately; in other cases defendants jointly indicted may be tried separately or jointly, in the discretion of the court.

SEC. 257 (7). *One joint defendant may be discharged to be witness for state.*—When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defence, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the state.

State *v.* Dumphey, 4 Minn. 438.

SEC. 258 (8). *Defendant may be discharged to be witness for co-defendant, when.*—When two or more persons are included in the same indictment, and the court is of the opinion, that in regard to a particular defendant there is not sufficient evidence to put him on his defence, it shall 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.

SEC. 259 (9). *Juror shall disclose facts respecting cause on trial and be examined as witness.*—If a juror has any personal knowledge respecting a fact in controversy in a cause, he shall declare it in open court, during the trial; if during the retirement of a jury, a juror declares 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 shall be sworn as a witness, and examined in the presence of the parties.

SEC. 260 (10). *Court may order a view.*—The court may order a view by any jury impanneled to try a criminal case.

SEC. 261 (11). *Court shall decide questions of law—jury questions of fact.*—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.

State *v.* Laliyer, 4 Minn. 368.

SEC. 262 (12). *Duty of court in charging jury.*—In charging the jury the court shall state to them all matters of law, which it thinks necessary for their information in giving their verdict; and if it presents the facts of the case, shall, 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.

Hoberg *v.* State, 3 Minn. 262; State *v.* Maher, *ib.* 444; Same *v.* Stokeley, 16 Minn. 282.

SEC. 263 (13). *Jury shall be kept in charge of sworn officer.*—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 shall be sworn to take charge of them; they shall be kept together in some private and convenient place without food or drink, except bread and water, unless otherwise ordered by the court, and no person shall be permitted to speak to or communicate with them, unless it is by order of the court, nor listen to their deliberations; and they shall be returned into court when they have so agreed, or when ordered by the court.

Maher *v.* State, 3 Minn. 444; Bilinsky *v.* State, *ib.* 427; State *v.* Ryan, 13 Minn. 370; Same *v.* Parrant, 16 Minn. 178.

SEC. 264 (14). *What papers jury may take on retiring for deliberation.*—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; they 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.

SEC. 265 (15). *Jury may return into court for information concerning law or testimony.*—After the jury have retired for deliberation, if there is 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 shall require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the prosecuting officer, and the defendant or his counsel.

Hoberg *v.* State, 3 Minn. 262; State *v.* Brown, 12 Minn. 538.

SEC. 266 (16). *Jury may be discharged if one falls sick.*—If, after the retirement of the jury, one of them becomes so sick as to prevent the continuance of his duty, or if they are unable to agree upon a verdict, or any other accident or cause occurs to prevent their being kept together for deliberation, the jury may be discharged by the court.

SEC. 267 (17). *Cause may be tried second time, when.*—In all cases where a jury are discharged or prevented from giving a verdict by reason of accident, disagreement, 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.

SEC. 268 (18). *What verdict jury may find in certain cases.*—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 defendant not guilty thereof,

they may upon the same indictment find the defendant guilty of manslaughter in any degree. 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.

Bilinsky *v.* State, 3 Minn. 427; Boyd *v.* Same, 4 Minn. 321; State *v.* Laliyer, *ib.* 468; O'Connell *v.* State, 6 Minn. 279; State *v.* Eno, 8 Minn. 220; Same *v.* Lessing, 16 Minn. 75.

SEC. 269 (19). *Jury may render verdict as to part of several defendants.*—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 shall be entered accordingly, and the case as to the rest may be tried by another jury.

SEC. 270 (20). *Jury may be polled.*—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 shall be severally asked whether it is their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

SEC. 271 (21). *Proceedings on reception of verdict.*—When a verdict is given, such as the court may receive, the clerk shall immediately record it in full on the minutes, and read it to the jury, and inquire of them whether it is their verdict; and if any juror disagrees, the fact shall be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury shall be discharged from the case.

SEC. 272 (22, AS AMENDED BY ACT OF MARCH 4, 1869). *Action of court when person acquitted of crime on the ground of insanity.*—When any person indicted for an offense is on trial 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 is considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to the hospital for the insane for safe keeping and treatment, or 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.

S. L. 1869, 21.
State *v.* Bonfanti, 2 Minn. 132.

SEC. 273 (23). *After plea or verdict, court may hear evidence in mitigation of punishment.*—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 its discretion hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct. Such circumstances shall be presented by the testimony of witnesses examined in open court.

SEC. 274 (24). *Indictment dismissed, when—reasons of dismissal to be entered.*—The court may, either of its own motion or upon the application of the prosecuting officer and in furtherance of justice, order an action after indictment to be dismissed; but in that case the reasons of the dismissal shall be set forth in the order, and entered upon the minutes.

TITLE V.

OF JUDGMENT AND EXECUTION.

(*This Title is Chapter CXVIII. of the Statutes of* 1866.)

SEC. 275 (1). *Judgment upon conviction, how entered—what papers constitute judgment roll.*—When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offense for which the conviction was had, and immediately annex together, and file the following papers, which constitute the judgment roll:

First. 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.

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

Third. A copy of the minutes of any challenge interposed to the panel of the trial jury, to an individual juror, and the proceedings and decision thereon.

Fourth. A copy of the minutes of the trial.

Fifth. A copy of the minutes of the judgment.

Sixth. The bill of exceptions, if there is one.

SEC. 276 (2). *Clerk to deliver transcript of conviction and sentence to sheriff.*—Whenever any person convicted of an offense is sentenced to pay a fine, or costs, or to be imprisoned in the county jail, or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court, of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly.

State *v.* Gut, 13 Minn. 341.

SEC. 277 (3). *In capital case certified copy of whole record shall be transmitted to the governor—sentence not to be executed till governor issues warrant.*—When any person is convicted of any crime, for which sentence of death is awarded against him, the clerk of the court, as soon as may be, shall make out and deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor, and the sentence of death shall not be executed upon such convict until a warrant is issued by the governor, under the seal of the state, with a copy of the record thereto annexed, commanding the sheriff to cause the execution to be done, and the sheriff shall thereupon cause to be executed the judgment and sentence of the law upon such convict.

SEC. 278 (4). *Judge shall send statement of testimony, etc., to governor.*—The judge of the court at which a conviction requiring judgment of death is had, shall, immediately after conviction, transmit to the governor, by mail, a statement of the conviction and judgment, and of the testimony given at the trial.

SEC. 279 (5). *Form of sentence.*—In every case in which punishment in the state prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor: *provided*, that whenever practicable,

the term of imprisonment shall be so fixed that it will expire between the first day of April and the first day of November.

SEC. 280 (6). *Court to award sentence, when.*—In any case of legal conviction where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offense, not cruel or unusual, nor repugnant to the constitutional rights of the party.

SEC. 281 (7). *May require party convicted to give recognisance, when.*—Every court before whom any person is convicted upon an indictment for any offense not punishable with death, or by imprisonment, in the state prison, or county jail, may, in addition to the punishment prescribed by law, require such person to recognize, with sufficient sureties, in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

SEC. 282 (8). *Proceedings in case of breach of recognizance.*—In case of the breach of the conditions of any such recognizance, the same proceeding shall be had that are by law prescribed in relation to recognizances to keep the peace.

SEC. 283 (9). *When there is no jail in any county, sentence shall be executed, how.*—Whenever it appears to the court, at the time of passing sentence upon any convict who is to be punished by confinement in the state prison or county jail, that there is no jail in the county in which the offense was committed suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this state in which there is a jail suited to that purpose; and the expenses of supporting such convict shall be borne, if such convict was sentenced to imprisonment in the county jail by the county in which the offense was committed.

SEC. 284 (10). *Governor may delay issuing warrant, when—shall forbear to issue warrant, when.*—If it appears to the satisfaction of the governor that any convict who is under sentence of death has become insane, the warrant for his execution may be delayed; or if such warrant has been issued, the execution thereof may be respited from time to time, so long as the governor thinks proper; and if any female convict who is under sentence of death shall be quick with child, the governor shall forbear to issue a warrant for the execution; or if such warrant has been issued, the execution thereof shall be respited until it appears to the satisfaction of the governor that such female is no longer quick with child.

SEC. 285 (11). *Punishment of death, how inflicted.*—The punishment of death shall, in all cases, be inflicted by hanging the convict by the neck until he is dead; and the sentence shall at the time directed by the warrant be executed at such place within the county as the sheriff shall select.

SEC. 286 (12). *Duty of sheriff in executing warrant in capital case.*—Whenever the punishment of death is inflicted upon any convict in obedience to a warrant from the governor, the sheriff of the county shall be present at the execution, unless prevented by sickness or other casualty; and he may have such military guard as he may think proper. He shall return the warrant with a statement under his hand of his doings thereon, as soon as may be after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had an attested copy of the warrant and statement aforesaid, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

TITLE VI.

APPEALS AND WRITS OF ERROR.

(*This Title is Chapter CXVII. of the Statutes of* 1866.)

SEC. 287 (1, AMENDED BY ACT OF MARCH 8, 1870). *Criminal cases, how removed to supreme court.*—Criminal cases may be removed by the defendant to the supreme court by appeal or writ of error at any time within six months after judgment, or after the decision of a motion denying a new trial; but if the order denying a new trial is affirmed upon hearing upon the merits, no appeal shall be allowed from the judgment.

S. L. 1870, 143.

Bonfanti *v.* State, 2 Minn. 124; State *v.* McGrorty, *ib.* 224; Same *v.* Heenan, 8 Minn. 44.

SEC. 288 (2). *Appeal a stay, when.*—When an appeal is taken it shall not stay the execution of the judgment, unless an order to that effect is made by the judge who tried the cause, or a judge of the supreme court. Notice of the appeal and the order staying proceedings, if any, shall be filed with the clerk of the court where the judgment is entered and served on the attorney general.

SEC. 289 (3). *Writ of error, by whom allowed.*—No writ of error upon a judgment for any capital offense shall issue, unless allowed by one of the judges of the supreme court, after notice given to the attorney general.

SEC. 290 (4). *Writ of error a stay, when.*—Writs of error upon judgment in all other criminal cases shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless allowed by one of the judges of the supreme court, with an express order thereon, for a stay of proceedings on the judgment or sentence.

SEC. 291 (5). *Clerk to transmit copy of judgment roll, etc.*—Upon an appeal being perfected, or a writ of error filed with him, the clerk shall transmit to the supreme court a copy of the judgment roll and of the bill of exceptions, if any.

SEC. 292 (6, AS AMENDED BY ACT OF MARCH 8, 1870). *Bill of exceptions.*—Any person who is convicted of a crime before the district court or court of common pleas aforesaid, being aggrieved by any opinion, direction, or judgment of the court, in any matter of law, may allege exceptions to such opinion, direction, or judgment; which exceptions being reduced to writing in a summary manner, and presented to the court any time before the end of the term or at any special term thereafter which the court may designate for such purpose, and being found conformable to the truth of the case, shall be allowed and signed by the judge, and may be used on a motion for a new trial, and when judgment is rendered shall be attached to and become a part of the judgment roll.

S. L. 1870, 143.

State *v.* Laliyer, 4 Minn. 378; Same *v.* Brown, 12 Minn. 538.

SEC. 293 (7). *Proceedings in appellate court.*—No assignment of errors or joinder in error, is 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 affirms the judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If it reverses

the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require.

City of St Paul *v.* Marvin, 16 Minn. 102; State *v.* Stokeley, *ib.* 282.

SEC. 294 (8). *Recognizance, when and how given.*—If upon appeal or writ of error a party is admitted to bail, he may recognize to the state of Minnesota in such sum as the judge shall order, with sufficient sureties for his personal appearance at the supreme court of the then next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace, and be of good behaviour; and the judge may, in his discretion, allow any person so to recognize, charged with an offense not punishable with death.

SEC. 295 (9). *Party not giving recognizance shall be committed—duty of clerk.*—If any person, so appealing or taking a writ of error, does not so recognize, he shall be committed to prison to await the decision of the supreme court, and in that case, the clerk of the court in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof and consider and decide the questions of law, and shall render judgment, or make such order thereon as law and justice require; and if a new trial is ordered, the cause shall be remanded to the said district court for such new trial.

State *v.* Bilinsky, 3 Minn. 246.

SEC. 296 (10). *Appeal or writ of error, dismissed, when—dismissal not to preclude taking another appeal or writ of error within time limited.*—If any of the provisions herein made requisite to the taking of an appeal or a writ of error are not complied with, the supreme court may dismiss the same; but no discontinuance, or dismissal of an appeal or writ of error in the supreme court, shall preclude the party from suing out another writ of error or taking another appeal in the same cause within the time limited by law.

SEC. 297 (11, ADDED BY ACT OF MARCH 8, 1870). *When proceedings of trial may be stayed.*—If upon the trial of any person who shall be convicted in any district court, or in the court of common pleas of Ramsey county, or if upon any demurrer to an indictment, or to a special plea or pleas to an indictment, or upon any motion upon or relating to an indictment, any question of law shall arise which, in the opinion of the judge of such court, shall be so important, or so doubtful, as to require the decision of the supreme court, he shall, if the defendant desire it, or consent thereto, report the case, so far as may be necessary to present the question or questions of law arising therein, and certify the said report to the supreme court of the state, and thereupon all proceedings in said cause shall be stayed until the decision of said supreme court shall be made.

S. L. 1870, 143.

SEC. 298 (12, ADDED BY ACT OF MARCH 8, 1870). *Other causes may be stayed in like manner.*—Other criminal causes in said court involving or depending upon the same questions may, if the defendant desire or consent thereto, be stayed in like manner until the decision of the cause so certified.

S. L. 1870, 143.

SEC. 299 (13, ADDED BY ACT OF MARCH 8, 1870). *Applicable to cases now*

pending.—The two foregoing sections shall be construed to apply to any criminal causes now pending in the said courts.

S. L. 1870, 143.

In connection with this chapter *vide* State *v.* Miller, 10 Minn. 313; State *v.* Garvey, 11 Minn. 154; Same *v.* Gut, 13 Minn. 341; Same *v.* Ryan, *ib.* 370; Same *v.* Lessing, 16 Minn. 75.

TITLE VII.

GENERAL PROVISIONS.

ARTICLE I.

SEARCH WARRANTS.

(*This Article is Chapter CII. of the Statutes of* 1866.)

SEC. 300 (1). *Search warrant issued, when.*—When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he is satisfied that there is reasonable cause for such belief, shall issue his warrant to search for such property.

SEC. 301 (2). *May be issued by magistrate upon complaint, in what cases.*—Any such magistrate when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrants in the following cases, to wit:

First. To search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments, or tools, machines, or materials, prepared or provided for making either of them.

Second. To search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, distributed, or introduced into any family, school, or place of education.

Third. To search for and seize any gambling apparatus or implements used or kept, and to be used in gambling, in any gambling house, or in any building, apartment, or place, resorted to for the purpose of gambling.

SEC. 302 (3). *To whom directed and what to contain.*—All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search, are believed to be concealed, which place and property or things to be searched for shall be designated and described in the warrant, and to bring such stolen property, or other things, when found, and the person in whose possession the same are found, before the magistrate who issued the warrant, or before some other magistrate, or court, having cognizance of the case.

SEC. 303 (4). *Property seized under warrant, how kept and disposed of.*—When any officer, in the execution of a search warrant, finds any stolen or embezzled property, or seizes any other things for which search is allowed by this chapter, all the property and things so seized shall be safely kept by the direction of the court or magistrate so long as is necessary for the purpose of being produced as evidence on any trial, and as soon as may be afterward all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed, under the direction of the court or magistrate.

ARTICLE II.

DEMANDING FUGITIVES FROM JUSTICE.

(*This Article is Chapter CIII. of the Statutes of* 1866.)

SEC. 304 (1). *Governor may appoint agents to demand fugitives from justice.*—The governor may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any person charged with felony or any other crime, in this state, and whenever an application is made to the governor for that purpose, the attorney general, when required by the governor, shall forthwith investigate, or cause to be investigated by any county attorney, the grounds of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; and the accounts of the agents appointed for such purpose shall in all cases be audited by the governor and paid from the state treasury.

SEC. 305 (2.) *Proceedings when fugitives from justice are demanded by executive of another state.*—When a demand is made upon the governor by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason, felony, or any other crime, the attorney general, when required by the governor, shall forthwith investigate the ground of such demand, or cause the same to be investigated by any county attorney, and report to the governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, especially whether he is held in custody, or is under recognizance to answer for any offense against the laws of this state, or of the United States, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor is satisfied that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the state, authorizing the agents who make such demand, either forthwith or at the time designated by the warrant, to take and transport such person to the line of the state at the expense of such agents, and shall also, by such warrant, require the civil officers within this state to afford all needful assistance in the execution thereof.

SEC. 306 (3). *Fugitive from justice arrested on warrant of magistrate, when.*—Whenever any person is found within this state charged with any offense committed in any state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the executive of such state or

territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offense and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same, or some other court or magistrate within the county where such person is found.

SEC. 307 (4). *Party arrested shall give recognizance, when.*—If, upon examination of the person charged, it appears to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if the offense is bailable, be required to recognize with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and there detained until such day, in like manner as if the offense charged had been committed within this state; and if the person so recognizing fails to appear according to the condition of his recognizance, he shall be defaulted, and the like proceeding shall be had as in case of other recognizances entered into before such court or magistrate; but if the offense is not bailable he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

SEC. 308 (5). *Shall be discharged, when.*—If the person so recognized or committed appears before the court or magistrate upon the day ordered, he shall be discharged, unless he is demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate sees cause to commit him, or to require him to recognise anew, for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so discharged is recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same is a discharge of the recognizance, if any, and shall not be deemed an escape.

SEC. 309 (6). *Complainant liable for costs and charges, when.*—The complainant in such case shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails so to do, the jailor may forthwith discharge such person from custody.

ARTICLE III.

OF PARDONS.

(*This Article is Chapter CXIX. of the Statutes of* 1866.)

SEC. 310 (1). *Governor may grant pardons on such conditions and with such limitations as he thinks proper.*—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.

SEC. 311 (2). *Officer executing warrant to make return.*—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.