GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
WEST PUBLISHING CO.
1888.

Where, in a criminal case, after the jury have retired to deliberate, a juror separates himself from his fellows, without the attendance of the officer having the jury in charge, a new trial will be granted for that cause alone. Maher v. State, 3 Minn. 444, (Gil. 329.)

§ 16. (Sec. 15.) Return of jury for information.

After the jury has retired to consult, the judge cannot communicate with the jury, or give them the least information, except in open court, and in the presence of, or after due notice to, the parties. Hoberg v. State, 3 Minn. 262, (Gil. 181.)

§ 19. (Sec. 18.) Verdict for lower degree, attempt, etc.

Upon an indictment for a crime, of which there are several degrees, a general verdict of guilty is sufficient. It is necessary for the verdict to specify the degree of the offense found only where, under the indictment, the jury may convict, and do convict, of a lesser degree than that charged in the indictment. Bilansky v. State, 3 Minn. 427, (Gil. 314.)

Upon an indictment for assault with intent to murder, the jury may convict of an assault only. Boyd v. State, 4 Minn. 321, (Gil. 237.)

Upon an indictment for rape, the jury may convict of an assault with intent to commit rape. O'Connell v. State, 6 Minn. 279, (Gil. 190.)

Where the specification in an indictment alleges a larceny from the person, the defendant may be convicted of a simple larceny. State v. Eno, 8 Minn. 220, (Gil. 190.)

See State v. Wiles, 26 Minn. 381, 382, 4 N. W. Rep. 615.

§ 23. Proceedings on acquittal for insanity.

See Bonfanti v. State, 2 Minn. 124, (Gil. 99.)

CHAPTER 116.

CHALLENGING JURORS.

§ 4. Challenge to panel—Grounds.

A challenge to the panel of a petit jury will, under this section, lie only for a material departure from the form prescribed by law in respect to the drawing and return of the jury. State v. McCartey, 17 Minn. 76, (Gil. 54.)

No challenge can be taken to the panel of grand jurors summoned on a special *venire*, except for the causes allowed by statute to the panel summoned on the general *venire*. State v. Gut, 13 Minn. 341, (Gil. 315.)

§ 5. Same—Mode and time of taking.

In the absence of fraud or collusion in the selection of a jury, an objection to the array, or to a single juror, is too late after verdict, unless it is shown that the party objecting was prejudiced by the irregularity. Steele v. Malony, 1 Minn. 349, (Gil. 258.)

§ 12. Challenge to individual juror—Time for taking.

A challenge to a juror for actual bias, which was made and withdrawn, may be renewed at any time before the jury is complete. State v. Dumphey, 4 Minn. 438, (Gil. 340.)

See State v. Armington, 25 Minn. 29.

§ 14. Peremptory challenges.

This section is not an *ex post facto* law, and is applicable on the trial of offenses committed prior to its passage. State v. Ryan, 13 Minn. 370, (Gil. 343.)

See People v. Comstock, (Mich.) 21 N. W. Rep. 384.

§ 19. Causes of challenge for implied bias.

This section has no application to district judges. Sjoberg v. Nordin, 26 Minn. 501, 5 N. W. Rep. 677.

Defendant was indicted and convicted of perjury, committed on the trial in the district court of an appeal from a justice of the peace. One of the jurors on the trial of the indictment had been a juror on the trial of the cause in the justice court, upon an appeal in which the perjury was subsequently committed, which was unknown to defendant or counsel on either side. Held, that such fact was not ground for challenge within sections 17, 18, or 19, and not available in arrest of judgment. State v. Thomas, 19 Minn. 484, (Gil. 418.)

See Williams v. McGrade, 18 Minn. 82, (Gil. 65, 67.)

§§ 20, 21. Challenge for actual bias—Exemption not cause for challenge.

Cited, McNulty v. Stewart, 12 Minn. 434, (Gil. 319, 325.)

§ 23. Exception to challenge.

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 challenge is sustained the juror shall be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge. (*As amended* 1881, c. 9, § 1.)

§ 24. Trial of challenge.

Where a challenge to a juror for actual bias is admitted by the opposite party, there is nothing to try on the challenge, and the challenging party has no right to examine the juror. Morrison v. Lovejoy, 6 Minn. 319, (Gil. 224.)

What questions may be put to jurors on the trial of challenges for implied bias, in a murder case, see State v. Hanley, 34 Minn. 430, 26 N. W. Rep. 397.

§ 26. Swearing triers.

Triers of challenges to jurors need not be resworn for every challenge submitted to them. State v. Brown, 12 Minn. 538, (Gil. 448.)

§ 31. Decision of challenge.

The decision of a court upon a question of actual bias of a juror, submitted to it for determination by consent, is final. State v. Mims, 26 Minn. 191, 2 N. W. Rep. 492.

§ 32. Order of challenges.

When a juror is called the defendant must exhaust all his challenges to that juror, and then the state must exhaust its challenges to him, and so on, successively, as each juror is called. State v. Smith, 20 Minn. 376, (Gil. 328.)

§ 33. Order of causes of challenge.

In impaneling a jury for the trial of an indictment, according to correct practice, under the provisions of this chapter, challenges by either party to an individual juror, whether for cause or peremptory, should be interposed and determined when he is called, and in the prescribed order, before proceeding further in the call. State v. Armington, 25 Minn. 29.

CHAPTER 117.

APPEALS AND WRITS OF ERROR IN CRIMINAL CASES.

§ 1. Removal to supreme court—Time and manner.

The state cannot take an appeal or writ of error in a criminal case. State v. McGrorty, 2 Minn. 225, (Gil. 187.)

A criminal case cannot be removed from a district court to the supreme court by an appeal taken from the verdict of a jury therein. State v. Ehrig, 21 Minn. 462.