

89022

GENERAL STATUTES OF
MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

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CHAPTER 104

CRIMINAL PROCEDURE

SEARCH WARRANTS

9035. To whom directed—Contents—

A description of the place to be searched meets the requirements, where it furnishes data from which the officer is enabled to definitely locate the place. The description in this case held sufficient (132-260, 156+130). Searches and Seizures, [§ 3](#).

EXTRADITION

9038. Warrant of extradition, service, etc.—

To overcome the effect to be given the governor's warrant, the evidence must clearly and satisfactorily demonstrate that the person therein named was not in the demanding state at or about the time the crime was committed (135-320, 160+858). Extradition, [§ 39](#).

In habeas corpus proceedings, the burden of proving that he is not a fugitive from justice is upon the prisoner; the warrant being prima facie evidence against him (126-38, 147+708). Habeas Corpus, [§ 85\(2\)](#).

ARRESTS

9066. Without warrant, when—Break door, etc., when—

131-71, 154+662, L. R. A. 1916C, 228.

Cited (134-58, 158+721).

EXAMINATION OF OFFENDERS—COMMITMENT—BAIL

9072. Process, by whom issued—

The determination of a committing magistrate will not be disturbed on habeas corpus, where the record discloses evidence reasonably tending to support it (124-456, 145+167). Habeas Corpus, [§ 102](#).

9088. Certifying testimony—

Proceedings by an examining magistrate are required to be certified to and filed in the district court, and thereafter the prosecution is pending in that court (123-392, 143+971). Criminal Law, [§ 244](#).

GRAND JURIES

9100. Exemptions—Disqualifications—In addition to the persons otherwise exempted therefrom by law, the following persons shall be exempt from service as grand jurors: United States officers, judges of courts of record, commissioners of public buildings, the state auditor, treasurer, and librarian, all county and city officers, including members of school boards in cities of the first class, constables, attorneys at law, ministers of the gospel, preceptors and teachers of high and graded schools and academies, one teacher in each common school, practicing physicians and surgeons, duly licensed embalmers, one miller to each grist mill, one ferryman to each licensed ferry, all acting telegraph operators, all members of fire companies organized according to law, all engineers actively engaged as locomotive or stationary engineers, all persons more than sixty years of age, all persons not of sound mind or discretion, and all persons subject to any bodily infirmity amounting to disability. All persons unable to speak and understand the English language, all persons whose names have been placed on any jury list at the request or suggestion, direct or indirect, of any person other than the officer charged with preparing such list, and all persons who shall have been convicted of any infamous crime, shall be disqualified from serving as grand jurors. (Amended '15 c. 15 § 1)

INDICTMENTS

9134. Contents—

Technical form is not important (121-381, 141+526). Indictment and Information, ☞ 75(1).

Verbal inaccuracies not ground of demurrer (121-381, 141+526). Indictment and Information, ☞ 79.

Matters of description or inducement need not be stated with the same particularity in an indictment as the facts constituting the essential elements of the crime are required to be stated (124-34, 144+417, 50 L. R. A. [N. S.] 244). Indictment and Information, ☞ 90.

Repugnant allegations in an indictment, which negative each other, do not vitiate the indictment, if neither of the repugnant allegations is necessary (126-396, 148+283). Homicide, ☞ 128.

It is proper to charge acts constituting manslaughter in the second degree in the conjunctive (126-396, 148+283). Homicide, ☞ 309(1).

9135. Form—

Technical form not required (121-381, 141+526). Indictment and Information, ☞ 75(1).

9138. Different counts—

An allegation in an indictment for manslaughter in the second degree of acts which constitute a more grave degree of homicide do not vitiate the indictment under this section (126-396, 148+283). Homicide, ☞ 139.

9139. Time, how stated—

Time not being an essential element in the offense of keeping a disorderly house (§ 8712), it is not necessary to prove the commission of the offense within the time laid in the indictment (123-451, 143+1126, 49 L. R. A. [N. S.] 792). Disorderly House, ☞ 13.

9140. Erroneous allegation as to person injured—

Idem sonans (see 129-409, 152+775).

9141. Words of statute need not be followed—

127-510, 150+209; 131-427, 155+399.

9142. Tests of sufficiency—

127-510, 150+209; 131-427, 155+399.

The indictment need not show that a prosecution was commenced on complaint of the husband or wife, nor that it was commenced within one year from the date of the offense (123-392, 143+971). Adultery, ☞ 7.

9143. Formal defects disregarded—

Technical form is not important (121-381, 141+526). Indictment and Information, ☞ 75(1).

Variance as to names; idem sonans (see 129-409, 152+775).

Repugnant allegations in an indictment, which negative each other, do not vitiate the indictment, if neither of the repugnant allegations is necessary (126-396, 148+283). Homicide, ☞ 128.

Error of the court in indulging in argument on the facts in its charge to the jury is not rendered harmless by this section (122-479, 142+801). Criminal Law, ☞ 922(5).

9150. Limitations—

The indictment may be returned at any time within three years from the commission of the offense (123-392, 143+971). Criminal Law, ☞ 147.

9157. Larceny by clerks, agents, etc.—Evidence—

Pleading and proof as to agency (see 130-10, 153+123).

DEMURRERS

9185. Grounds of demurrer—

Verbal inaccuracies not ground for demurrer (121-381, 141+526). Indictment and Information, ☞ 79.

CHANGE OF VENUE

9196. Place of trial—Change of venue—

Where evidence was conflicting as to whether alleged offense was committed within county named in indictment, it was not error for court to refuse to read to jury statute fixing boundary line of that county (162+465). Criminal Law, ☞ 772(4).

ISSUES AND MODE OF TRIAL

9200. Issue of fact—How tried—Appearance in person—

Defendant, who had not challenged either of two jurors, and who did not object on account of his absence to the judge's inquiry in chambers if they had been tampered with, could not complain of such action (162+465). Criminal Law, [↔](#)660.

9204. Juror may testify, when—View—

Admissibility of testimony of jurors as to information gained on a view in a former trial, the verdict in which was set aside for misconduct of the jury in conducting experiments without authority (127-510, 150+209). Witnesses, [↔](#)73.

9205. Questions of law and fact, how decided—

A request to charge that a witness was an accomplice as a matter of law held properly refused (135-159, 160+677). Criminal Law, [↔](#)780(1).

The construction of a writing, such as an advertisement alleged to violate § 8971, is for the court, when the intention of the writer is to be gathered wholly from the writing itself (123-227, 143+780). Attorney and Client, [↔](#)33.

Argumentative instructions condemned (122-479, 142+801). Criminal Law, [↔](#)807(1).

9207. Charge of court—

Necessity to request instructions—Necessity of requests for instructions (122-91, 141+1113). Criminal Law, [↔](#)824(1), 825(1).

Failure to request instructions, or to object to the charge as given, precludes review (122-493, 142+823). Criminal Law, [↔](#)1038(1, 3).

When the court reviews the evidence, defendant is entitled to a charge that the jury are the exclusive judges of all questions of fact; but a failure to so charge, no request being made, will not result in a reversal (130-84, 153+271). Criminal Law, [↔](#)782(3), 824(14).

In a joint trial, where evidence given voluntarily by one of the defendants is offered in evidence against such defendant, an instruction that such evidence was to be considered solely against the defendant who gave the testimony should have been given; but it was not error, to fail to so instruct, in absence of a request for such a charge (127-445, 149+945). Criminal Law, [↔](#)824(11).

Where the statutory definition of an offense is given to the jury, if defendant desires a more specific statement as to the elements of the offense he should make a request therefor (124-58, 144+410). Criminal Law, [↔](#)825(2).

In a prosecution for resisting an officer, under § 8538, it was not error to fail to charge on assault in the third degree, in absence of a request for an instruction thereon (135-211, 160+666). Criminal Law, [↔](#)824(3).

Argument in charge—It is not the province of the court to indulge in argument in its charge (122-479, 142+801). Criminal Law, [↔](#)807(1).

Reviewing evidence in charge—The trial judge in criminal cases may review the evidence in his instructions, and may state to the jury that it tends to prove certain facts. The only restriction upon the right is that the review should be fair and impersonal, and not in a manner naturally to confuse the jury, or to lead them to a particular result (124-34, 144+417, 51 L. R. A. [N. S.] 244). Criminal Law, [↔](#)763, 764(5).

9208. Jury—How kept while deliberating—

The separation of jurors is presumptively prejudicial, unless it clearly appears that no prejudice has resulted, and though the law cannot regard trifling and technical irregularities (124-515, 145+385). Criminal Law, [↔](#)927(2).

9213. Verdict for lesser offence—

Cited (126-396, 148+283).

CALENDAR

9223. Register—

Cited (123-392, 143+971).

CHALLENGING JURORS

9224. Challenge defined—Kinds—Defendants to join—

134-309, 159+789.

9225. Challenge to panel—

An objection that the two judges of the municipal court of St. Paul had no power, without the participation of the "president of the common council," an officer no longer existing, to select a jury list, was in the nature of a challenge to the panel (134-309, 159+789).

Prejudice of individual jurors is not ground for challenge to the panel (124-162, 144+752, Ann. Cas. 1915B, 377). Jury, [↔](#)116.

9226. Exception to challenge—

134-309, 159+789.

9227. Denial of challenge—Proceedings—

134-309, 159+789.

The action of the trial court on challenge to the panel, based on questions of fact, held sustained by the record on appeal (124-162, 144+752, Ann. Cas. 1915B, 377). Jury, ⇐ 70(1), 75(2).

9228. Challenge to individual juror—

Act of trial judge, during a recess and in the presence of counsel for defendant and state, though in defendant's absence, in calling two jurors, neither of whom had been challenged, into his chambers separately and inquiring if either had been tampered with, was not prejudicial to defendant's rights (162+465). Criminal Law, ⇐655(9).

9232. Particular causes of challenge—

In a civil case, the finding of the trial court that a proposed juror was not subject to challenge for actual bias held final (130-3, 153+250). Appeal and Error, ⇐968.

9233. Causes of challenge for implied bias—

It is not a good cause of challenge that a proposed juror is in the employ of a corporation, the majority of the stock of which is controlled by another corporation, and so on down to a final holding corporation, which holding corporation in the same way controls the majority of the stock of the defendant corporation; such holding corporation not owning stock in either, and neither owning stock in the other (130-3, 153+250). Jury, ⇐92.

APPEALS AND WRITS OF ERROR**9242. Removal to supreme court—**

Where a defendant, after a plea of not guilty, procured the court to hold a special term of court, and at such term entered a plea of guilty, and paid the fine imposed, without objection, defendant lost his right of appeal from the judgment so entered (127-252, 149+286, Ann. Cas. 1916C, 618). Criminal Law, ⇐1131(4).

Where the court refuses to grant a stay of proceedings, to enable defendant to appeal, until the fine imposed is paid, the payment of the fine is not a voluntary payment, precluding appeal (125-332, 147+109). Criminal Law, ⇐1026.

9245. Return—

The verity of a proper authenticated return cannot be attacked on appeal (124-58, 144+410). Criminal Law, ⇐1111(3).

9246. Bill of exceptions—

In general—Necessity of exception at trial (122-91, 141+1113). Criminal Law, ⇐1166½.

Necessity for objections, request for instructions, or presentation of questions in motion for new trial (see 133-184, 158+48). Criminal Law, ⇐841, 1064(7).

Newly discovered evidence—The granting of a new trial for newly discovered evidence rests in the sound discretion of the trial court (134-384, 159+829). Criminal Law, ⇐938(1).

No abuse of discretion in denying a new trial on the ground of newly discovered evidence is found, where such evidence is unsatisfactory, and merely corroborative and cumulative of positive and certain testimony of several witnesses on the same matter (126-402, 148+280). Criminal Law, ⇐938(1).

In a prosecution for robbery, held, that there was no abuse of discretion in denying a new trial on the ground of newly discovered evidence (128-40, 150+163). Criminal Law, ⇐938(2).

Misconduct of jury—The act of a juror in reading newspaper comments of the trial held not ground for new trial (122-493, 142+823). Criminal Law, ⇐925½(4).

A temporary separation of a juror from the others, after a case has been submitted to them, is not ground for a new trial, when the circumstances exclude the suspicion or presumption that the juror has been tampered with (124-515, 145+385). Criminal Law, ⇐927(2).

Misconduct of court or prosecuting attorney—Misconduct of county attorney and remarks of court at trial held not ground for new trial (128-187, 150+793, Ann. Cas. 1915D, 360). Criminal Law, ⇐655(3), 706.

Failure of the county attorney to call a witness present at the killing, and statement by such attorney that he had examined the witness and did not care to use him, held not such misconduct as to require a new trial (123-487, 144+216). Criminal Law, ⇐721½(1).

Conviction against the evidence and contrary to law—A conviction of assault in the second degree held not against the evidence nor contrary to law (126-402, 148+280). Criminal Law, ⇐938(1).

9247. Proceedings in supreme court—

130-53, 152+1103.

Where the record contains none of the evidence or proceedings at the trial, they are presumed to be sufficient to sustain the conviction (123-392, 143+971). Criminal Law, ⇐1144(16).

The rule that new trials in criminal cases should not be granted, unless the substantial rights of the accused have been violated, applied (135-159, 160+677). Criminal Law, ⇐913(1).

Misconduct of county attorney in argument does not require a new trial, where defendant was not prejudiced thereby (123-128, 143+119). Criminal Law, ⇐1037(1).

Where the appellate court entertains grave doubt of defendant's guilt, a new trial will be awarded, though the trial was free from technical error (130-347, 153+845). Criminal Law, [§1159\(1\)](#).

Error in instructions requires reversal, where evidence of guilt not conclusive (121-405, 141+483). Criminal Law, [§1163\(4\)](#).

Newly discovered evidence as ground for new trial (see 129-402, 152+769).

9251. Certifying proceedings—Stay—

This section does not authorize the certifying of questions which have arisen upon a trial in which the jury disagreed (124-532, 144+474). Criminal Law, [§1010](#).

INDETERMINATE SENTENCES AND PAROLES

9267. Indeterminate sentence in certain cases—Whenever any person is convicted of any felony or crime committed after the passage of this act, punishable by imprisonment in the state prison or state reformatory, except treason or murder in the first or second degree as defined by law, the court in imposing sentence shall not fix a definite term of imprisonment, but may fix in said sentence the maximum term of such imprisonment, and shall sentence every such person to the state reformatory or to the state prison, as the case may require, and the person sentenced shall be subject to release on parole and to final discharge by the board of parole as hereinafter provided, but imprisonment under such sentence shall not exceed the maximum term fixed by law or by the court, if the court has fixed the maximum term, provided that if a person be sentenced for two or more such separate offenses sentence shall be pronounced for each offense, and imprisonment thereunder may equal, but shall not exceed the total of the maximum terms, fixed by law or by the court if the court has fixed the maximum term for such separate offenses, which total shall, for the purpose of this act, be construed as one continuous term of imprisonment. And provided further that where one is convicted of a felony or crime that is punishable by imprisonment in the state prison or state reformatory or by fine or imprisonment in the county jail, or both, the court may impose the lighter sentence if it shall so elect. (Amended '17 c. 319 § 1)

Section 2 repeals § 9268.

9268. [Repealed.]

See note under § [9267—]1.

9276. Persons convicted for prior offenses subject to parole—All persons convicted and sentenced to imprisonment in the state prison or in the reformatory prior to the year 1912 shall have the same right of parole and discharge as those convicted since that year, and all the powers, duties and functions conferred by law upon and exercised by the board of parole with reference to the custody and control of any person convicted of a crime committed subsequent to April 20, 1911, and paroled under the provisions of chapter 298, Laws 1911 [9267-9280], and the acts amendatory thereof, shall extend to and be applicable to any such person when paroled. (Amended '17 c. 262 § 1)

BOARD OF PARDONS

9288. Issuance of process—Witnesses—Standing appropriation—
Cited (131-116, 154+750).