

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

COMPILED BY

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1918

ROBBERY

8635. Defined—

Cited (161+595).

Evidence held to support a conviction of robbery (128-40, 150+168). Robbery, Ⓢ24(1).

8636. In first degree, how punished—

Evidence held to support a conviction of defendant as principal in the crime of robbery (122-493, 142+822). Robbery, Ⓢ24(1).

LIBEL AND SLANDER

8645. Libel defined—A misdemeanor—

A publication stating that a candidate for office has the backing of certain corporations in the state that are not in sympathy with the masses is not per se libelous (130-138, 153+258). Libel and Slander, Ⓢ10(1).

[8654—]1. Slander—Every person who, in the presence and hearing of another, other than the person slandered, whether he be present or not, shall speak of or concerning any person, any false or defamatory words or language which shall injure or impair the reputation of such person for virtue or chastity or which shall expose him to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed malicious if no justification therefor be shown and shall be justified when the language charged as slanderous, false or defamatory was true and was spoken with good motives and for justifiable ends. ('15 c. 284 § 1)

CHAPTER 98

CRIMES AGAINST MORALITY, DECENCY, ETC.

RAPE—ABDUCTION—CARNAL ABUSE, ETC.

8655. Rape—

The intent is sufficiently alleged by the use of the words "ravish and carnally know" (135-425, 158+793). Rape, Ⓢ21.

Where the indictment alleged an attempt to ravish a female of the age of 14 years, and the evidence showed a violent assault against the will of prosecutrix, a verdict acquitting of attempt, but convicting of assault in the second degree, could not stand, since the verdict is inconsistent within itself, as the same intent is essential to both offenses (133-425, 158+793). Rape, Ⓢ60.

8656. Carnal knowledge of children—

Where the indictment charges an attempt to rape a female of 14, and the evidence shows a violent assault against the will of prosecutrix, a verdict acquitting of attempt, but convicting of assault in the second degree, cannot stand, since it is inconsistent within itself, as the same intent is essential to both offenses (133-425, 158+793). Rape, Ⓢ60.

A conviction may rest on the uncorroborated testimony of prosecutrix, unless such testimony is discredited by facts and circumstances casting doubt upon its truth. In such case defendant will be allowed much latitude in cross-examining prosecutrix, but it is not error to exclude a question as to her testimony before the grand jury, asked for the sole purpose of testing her memory. Requisites of cautionary instruction, as to weighing the testimony of prosecutrix, stated (127-485, 149+944). Rape, Ⓢ52(2), 54(3).

Evidence of acts of defendant tending to destroy the child's modesty and to prepare her physically for coition held admissible, and the evidence was sufficient to sustain conviction (125-315, 146+1115). Rape, Ⓢ46.

Evidence held sufficient to sustain a conviction of carnally knowing a female child of the age of 14 years (162+465). Rape, Ⓢ52(2).

Evidence of other offenses, and election between acts (see 128-187, 150+793, Ann. Cas. 1915D, 360). Criminal Law, Ⓢ369(8), 678(2).

Evidence (see 133-184, 158+48).

CRIMES AGAINST CHILDREN, ETC.

8666. Desertion of child or pregnant wife—Every parent or other person having legal responsibility for the care or support of a child who is under the age of sixteen years and unable to support himself by lawful employment, who deserts and fails to care for and support such child with intent wholly to abandon him; and every husband who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion of and failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon. (Amended '15 c. 336; '17 c. 213 § 1)

By 1917 c. 213 § 5 the act takes effect July 1, 1917.

8667. Failure to support wife or child—Every man who, without lawful excuse wilfully fails to furnish proper food, shelter, clothing, or medical attendance to his wife, such wife being in destitute circumstances; and every person having legal responsibility for the care or support of a child who is under sixteen years of age and unable to support himself by lawful employment, who wilfully fails to make proper provision for such child, is guilty of a misdemeanor. But if any person convicted under this section gives bond to the state, in such amount and with such sureties as the court prescribes and approves, conditioned to furnish the wife or child with proper food, shelter, clothing, and medical attendance for such a period, not exceeding five years, as the court may order, judgment shall be suspended until some condition of the bond is violated. The bond may, in the discretion of the court, be conditioned upon the payment of a specified sum of money at stated intervals. Upon the filing of an affidavit showing the violation of any of the conditions of the bond, the accused shall be heard upon an order to show cause, and, if the charge be sustained, the judgment shall be executed. The wife or child, and any person furnishing necessary food, shelter, clothing, or medical attendance to either, may sue upon the bond for a breach of any condition thereof. (Amended '17 c. 213 § 2)

Evidence held insufficient to sustain a conviction for failure to furnish food, shelter, or clothing to minor children (129-389, 152+762). Parent and Child, 6-17(6).

8668. Same—Complaint—Warrant—On complaint being made in writing and under oath by the wife or any reputable person to a justice of the peace or judge of a municipal court, accusing any person of the offense defined in section 8667, the justice or judge shall issue his warrant against the person accused, directed to the sheriff or constable of the county, commanding him forthwith, to bring such accused person before the justice or judge to answer such complaint. (Amended '17 c. 213 § 3)

8668-A. Same—Proof of relationship—In any prosecution for desertion of or failure to support a wife or child no other or greater evidence shall be required to prove the relationship of the defendant to such wife or child than is or shall be required to prove such relationship in civil action. ('17 c. 213 § 4)

1917 c. 213 § 4 adds a section to this chapter to be known as section 8668-A.

8683. Cruelty toward children—Every person who shall torture, torment, or cruelly or unlawfully punish any child under the age of eighteen years, or who shall commit any act of cruelty toward such child, shall be guilty of a misdemeanor. (Amended '17 c. 240 § 1)

[8683—]1. **Distribution or employing minors for distribution of certain literature among minors prohibited**—No person shall sell, lend, give away, show, advertise or otherwise offer for loan, gift, sale or distribution to any minor under the age of eighteen years, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime; nor shall any person hire, use or em-

ploy a minor under the age of eighteen years to sell or give away, or in any manner distribute, or permit any such minor in his custody or control to sell, give away or in any manner distribute, any material herein described. ('17 c. 242 § 1)

[8683—]2. Same—Penalty—Any person who violates any provision of this act is guilty of a misdemeanor. ('17 c. 242 § 2)

8684. Unlawful confinement of lunatic, etc.—Every person who shall confine a lunatic, insane or feeble-minded person in any other manner or in any other place than is authorized by law, or who shall be guilty of harsh, cruel, or unkind treatment of, or neglect of duty toward, any feeble-minded person, lunatic or insane person under confinement, whether lawfully or unlawfully confined, shall be guilty of a misdemeanor. (Amended '17 c. 209 § 1)

ABORTION, ETC.

8697. Concealing birth—Second offense—Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a misdemeanor; and every woman who, having been convicted of endeavoring to conceal the still-birth of any issue of her body, which if born alive would be illegitimate, or the death of such issue under the age of two years, shall, subsequent to such conviction, endeavor to conceal any such birth or death, shall be punished by imprisonment in the state prison for not more than five years. (Amended '17 c. 231 § 1)

BIGAMY—ADULTERY, ETC.

8700. Incest—

Evidence held to support a conviction under this section (123-128, 143+119). Incest, [§14](#).

8701. Crime against nature—

Slandorous charge (see 122-525, 142+1134).

8702. Adultery—

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](#).

If no prosecution has been commenced by an examining magistrate, and the indictment shows that the offense was committed more than one year before a return thereof, such motion to quash will lie (123-392, 143+971). Indictment and Information, [§137\(1\)](#).

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

Proceedings by an examining magistrate, by which the accused is held to answer in the district court, constitute a commencement of the prosecution within this section (123-392, 143+971). Criminal Law, [§157](#).

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](#).

If defendant has been held to answer before an examining magistrate, and the offense proven at the trial was committed more than one year before the return of the indictment, whether such offense was the same offense for which he had been held to answer was a question for the jury (123-392, 143+971). Criminal Law, [§739\(4\)](#).

8703. Fornication—

A man and unmarried woman dwelling together and engaging in carnal intercourse are guilty under this section, though they may ostensibly dwell together for some lawful purpose or attempt to conceal their immoral relations (125-497, 147+663). Lewdness, [§1](#).

8703-A. Fornication, when felony—If issue is conceived of fornication, and within the period of gestation or within sixty days after the birth of a living child the father absconds from the state with intent to evade proceedings to establish his paternity of such child, he is guilty of a felony and shall be punished by imprisonment in the state prison for not more than two years. ('17 c. 211 § 1)

1917 c. 211 § 1 adds a section to this chapter, to be known as section 8703-A.

By § 2 the act takes effect January 1, 1918.

8704. Exposure of person—Public indecency—

Slandorous imputation (see 122-525, 142+1134).

8705. Obscene literature—Sale, etc.—Every person who—

1. Shall sell, lend, give away, or offer to give away, show, have in his possession with intent to sell, give away, show, advertise, or otherwise offer for loan, gift, sale, or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish, or otherwise prepare such a book, picture, drawing, paper, or other article; or write or print, or cause to be written or printed a circular, advertisement, or notice of any kind, or give oral information stating when, where, how, or of whom or by what means such an indecent or obscene article or thing can be purchased or obtained; or

2. Shall exhibit upon any public road, street, or other place within view of any minor any of the books, papers, or other things hereinbefore enumerated; or

3. Shall hire, use, or employ any minor to sell or give away, or in any manner distribute, or shall permit any minor in his custody or control to sell, give away, or in any manner distribute, any of the articles hereinbefore mentioned—

Shall be guilty of a gross misdemeanor, and be punished by imprisonment in the county jail for not more than one year nor less than ninety days, or by a fine not less than one hundred dollars nor more than five hundred dollars, or by both. (Amended '17 c. 241 § 1)

Uttering obscene language at a public assemblage held a violation of a city ordinance denouncing obscenity, though the language was a quotation from a standard work on theology (130-532, 153+305). Obscenity, ☞8.

8712. Keeper of disorderly resort—

Cited (126-95, 147+953).

Acts not sufficient to constitute an offense under this section may render a saloon keeper liable on his bond for failing to keep a "quiet and orderly house" (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, ☞86, 87.

Time is not an essential element of the offense defined by this section, and 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.

Evidence held to support a conviction (127-505, 150+171). Criminal Law, ☞741(1).

8717. Houses of prostitution, etc., nuisances—

Nature of statute—This act was intended by the legislature to be a civil and not a penal statute, as the criminal aspects of the act against which the statute is directed were already covered by existing statutes (126-95, 147+953).

This act is not penal with reference to forfeiture and sale of personal property used in maintaining the nuisance or with reference to any of the other penalties imposed (126-95, 147+953).

Who are liable—Under this section owners of a leasehold estate, who sublet the premises to one who, with their knowledge, maintains a nuisance, are liable to the penalties imposed (135-465, 160+783). Nuisance, ☞82.

An owner of personal property covered by a contract of conditional sale executed prior to the enactment of this statute has no vested right to its use in violation of this act, though prior thereto such sale and use were not unlawful (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Constitutional Law, ☞92.

Constitutionality—This act does not violate the constitutional guaranty of a jury trial merely because the act denounced constituted a crime at the time of the adoption of the constitution (126-95, 147+953). Jury, ☞10, 12(2).

This statute is not invalid as an unreasonable exercise of the police power with respect to personal property used in a disorderly house (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, ☞60.

The act in its remedial details, as well as general purpose, is a proper exercise of the police power (126-95, 147+953). Nuisance, ☞60.

Other remedies—Aside from this act, equity has power to abate the nuisance therein described (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549; 126-95, 147+953). Nuisance, ☞75.

8718. Same—Action to enjoin—Restraining order—Answer, etc.—

126-95, 147+953; note under § 8717.

The act does not contemplate determination of the rights of defendants to personal property used in the house on application for a temporary injunction (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, ☞84.

8719. Same—Trial—Action by citizen, etc.—

126-95, 147+953; note under § 8717.

Constitutionality—Neither this section nor § 8721 authorize interference as to property rights without due process of law (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Constitutional Law, Ⓒ311.

Notice to owner—An owner of property is chargeable with the knowledge of her agent that the leased premises are being used as a disorderly house (131-308, 155+90). Nuisance, Ⓒ82.

Holding that the owner must have notice of the nuisance before he can be charged under the act does not render the statute inoperative (131-308, 155+90). Nuisance, Ⓒ85.

Evidence—Testimony of a detective as to general reputation, based on conversations with taxi drivers, and of an officer who had not been in the vicinity of the house at a time material to the controversy, was improperly received, and its admission prejudicial (131-308, 155+90). Witnesses, Ⓒ37(2).

The character of the premises may be shown by evidence as to how it is conducted. In an action to abate a nuisance denounced by this act, testimony of the general reputation of the premises is competent upon the question of their character and knowledge of it in defendants. Evidence that a hotel was openly and continuously used by streetwalkers for their purposes as occasion required was sufficient to show the maintenance of a nuisance under the statute (131-349, 154+1073). Nuisance, Ⓒ84.

8720. Same—Contempts—

126-95, 147+953; note under § 8717.

8721. Same—Order of abatement—Personal property—Contempt—Fees—

126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549; note under § 8719.

126-95, 147+953; note under § 8717.

A holding that the owner must have notice of the nuisance before he is chargeable under the act does not render the statute inoperative. The prohibition against the use of the building for a year affects only those owners who had knowledge of the maintenance of the nuisance (131-308, 155+90). Nuisance, Ⓒ85.

The provision of this section, that claimants of personal property used in maintaining the house must prove innocence "to the satisfaction of the court," is not objectionable, in that it calls for more than a preponderance of the evidence (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Nuisance, Ⓒ84.

A motion to vacate a default judgment in proceedings under this act is addressed to the trial court's discretion (131-488, 154+659). Judgment, Ⓒ139.

8722. Same—Duty of county attorney, etc.—

126-95, 147+953; note under § 8717.

This section applies only to defendants convicted in inferior courts, and, if invalid, does not concern defendant property owners, appellants in a civil action alone; the word "now" being a misprint for "not" (126-78, 147+951, 52 L. R. A. [N. S.] 932, Ann. Cas. 1915D, 549). Statutes, Ⓒ64(6).

8723. Same—Intervention by owner—

The provision of this section as to giving bond is not violative of the bill of rights, providing for the obtaining of justice freely and without purchase, or of the provision of the state and federal constitution as to due process of law (131-308, 155+90). Constitutional Law, Ⓒ278(1), 324; Nuisance, Ⓒ60.

This provision is unnecessarily drastic, but the other sections are not affected thereby, even if it be held invalid (126-95, 147+953). Statutes, Ⓒ64(6).

Though a subtenant conducted an abatable nuisance, the tenant having acted in good faith, and the owner having had no knowledge of the improper use of the premises, injunction properly went against the tenant, with privilege of giving the bond provided for by this section (131-349, 154+1073), Novation, Ⓒ84.

8724. Same—Permanent injunction—Penalty and lien—

The penalty affixed is not a tax within the meaning of Const. art. 4 § 10, providing that all bills for raising revenue shall originate in the house (131-308, 155+90). Statutes, Ⓒ6.

Proceedings under this act, being equitable, do not require a jury trial, and the court, having properly assumed jurisdiction thereof, had power to grant full relief, incidental as well as primary (126-95, 147+953). Nuisance, Ⓒ85.

8725. Same—Owners and agents—Parties to action—

126-95, 147+953; note under § 8717.

SABBATH BREAKING, ETC.

8752. Definitions—

126-257, 148+100; note under § 8753.
Cited (127-84, 148+891).

8753. Things prohibited—Exceptions—

Cited (127-84, 148+891).

Conducting a picture and vaudeville show on Sunday in such a way as not to seriously interrupt the repose and religious liberty of a community is not a violation of this section, and hence a contract for advertising space on the curtain of a theater so conducted, the contract contemplating its use on Sunday, is not void (126-257, 148+100). Sunday, Ⓢ6 (1), 11.

The execution of a contract on Sunday for such advertising space is not void under the conditions stated (126-257, 148+100). Sunday, Ⓢ13.

Public policy of the state, as evinced by this section, as affecting the review of an order of the railroad commission directing a railroad company to resume the operation of a Sunday local passenger train (see 130-57, 153+247). Railroads, Ⓢ9(1); Sunday, Ⓢ4.

8754. Punishment—

126-257, 148+100; note under § 8753.

CHAPTER 99

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

8759. Public nuisance defined—

126-477, 148+466, 52 L. R. A. (N. S.) 999.
Cited (126-95, 147+953).

8760. Maintaining or permitting building as a nuisance—

Cited (126-95, 147+953).

8770. Dangerous weapons—Evidence—Every person who shall manufacture, or cause to be manufactured, sell, keep for sale, offer, or dispose of, any instrument or weapon of the kind usually known as a slung-shot, sand-club, or metal knuckles; or who shall attempt to use against another, or with intent so to use, shall carry, conceal, or possess, any of the weapons hereinbefore specified, or any dagger, dirk, knife, pistol, or other dangerous weapon, shall be guilty of a gross misdemeanor. The possession by any person, other than a public officer, of any such weapon concealed or furtively carried on the person shall be presumptive evidence of carrying, concealing, or possessing with intent to use the same. (Amended '17 c. 243 § 1)

[8770—]1. Selling firearms and ammunition to minors—No person, in any city in this state, shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer or magistrate of such city. ('17 c. 244 § 1)

[8770—]2. Same—Penalty—Any person who violates any provision of this act is guilty of a misdemeanor. ('17 c. 244 § 2)

8781. Guarding ice cutting—

Plaintiff, who owned a team and hired the team and driver to defendant to harvest ice at a fixed sum per day, was within this act, and was entitled to recover for loss of the horses by their stepping into an unguarded hole in the ice while plaintiff was driving them (125-168, 145+1073). Negligence, Ⓢ51.

SUPP.G.S.MINN.'17-51