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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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CHAPTER 104

Criminal Procedure

EXTRADITION

10542. Warrant of extradition, service, etc. [Repealed].

3. Who is a fugitive from justice.

Abandonment of a child is a continuing offense, and limitation does not run during time father is outside state, and he is a fugitive from justice if offense charged is a few days prior to date of leaving state, and same result is accomplished if father returns to state and again leaves. Op. Atty. Gen., (193B-1), Sept. 28, 1939.

UNIFORM CRIMINAL EXTRADITION ACT

10547-11. Definitions.

Adopted in Virginia.

This act has no relation to apprehension and return of parolees under compact entered into pursuant to § 10778-1. Op. Atty. Gen., (193a-4), March 4, 1940.

10547-12. Duties of Governor in extradition matters.

Extradition papers may be issued for a gross misdemeanor. Op. Atty. Gen. (193a-4), Dec. 27, 1940.

10547-13. Demand must be in writing.

A demand for criminal extradition which failed to allege that accused was within state at time crime was committed, or that he had fled to state upon which demand was made, was insufficient basis for an extradition warrant. *Kelley v. S., 200So(AlaApp)115.*

Recitals in extradition warrant are prima facie evidence of jurisdictional facts. Id.

10547-16. May extradite persons causing crime.

Man leaving wife and children and going to another state and sending wife money for a number of months before stopping, could not be prosecuted under §10135, but could be prosecuted under §10136 for non-support, and could probably be extradited under the uniform extradition act adopted by both states. Op. Atty. Gen. (193B-1), Aug. 14, 1940.

10547-23. Who may be apprehended.

A person who has violated his parole and is in another state may be extradited, provided original offense was extraditable and his probation has been revoked. Op. Atty. Gen., (193a), Jan. 8, 1941.

A commitment by Juvenile Court is not a conviction of a crime and is no basis for extradition. Op. Atty. Gen., (193B-15), Mar. 3, 1941.

ARRESTS

10570. Without warrant, when—Break door, etc.

Inmates of a National Youth Administration Camp while driving government trucks are not employees of the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

10575-1. Arrests any place in state—When allowed.

Chief of police receiving a warrant from municipal court for a felony against an accused in jail in another county may go to that county and be reimbursed from county funds. Op. Atty. Gen., (785*l*), March 26, 1940.

EXAMINATION OF OFFENDERS—COMMITMENT—BAIL

10588. Bail—Commitment.

1. Commitment.

Defendant may challenge sufficiency of evidence before committing magistrate in a timely proceeding by a writ of habeas corpus. State v. Gottwalt, 295NW67. See Dun. Dig. 2436.

GRAND JURIES

10623. Indictment found, when.

An accountant in finance division of highway department was an accomplice as a matter of law in false auditing and payment of claims on state where he assisted in having claims approved with full knowledge that they were irregular. State v. Elsberg, 295NW913. See Dun. Dig. 4060.

INDICTMENTS

10639. Contents.

14. Essential elements to be alleged.

Information charging obtaining of signatures to mortgages and notes by false pretenses held to sufficiently charge knowledge on part of defendant of falsity of documents used to obtain signatures and reliance of victims on false representations. State v. Gottwalt, 295NW 67. See Dun. Dig. 4390.

16. Ultimate facts.

In an information charging obtaining of signatures to mortgages and notes by false pretenses, it is not necessary to set out specific invoices and memoranda whereby signatures were obtained where false documents are described in general terms, defendant having right to demand a bill of particulars, unless documents are in his possession. State v. Gottwalt, 295NW67. See Dun. Dig. 4384.

18. Following language of statute or ordinance.

An indictment which alleges an offense generally in the language of the statute, and is certain as to party, offense and particular circumstances of offense charged is sufficient. State v. Yukiewicz, 292NW782. See Dun. Dig. 4379.

10641. To be direct and certain.

4. Bill of particulars.

In an information charging obtaining of signatures to mortgages and notes by false pretenses, it is not necessary to set out specific invoices and memoranda whereby signatures were obtained where false documents are described in general terms, defendant having right to demand a bill of particulars, unless documents are in his possession. State v. Gottwalt, 295NW67. See Dun. Dig. 4401.

10643. Different counts.

Two offenses cannot be joined in one information but means for committing same offense can be alleged in alternative. Op. Atty. Gen., (133B-7), April 29, 1940.

10646. Words of statute need not be followed.

It is sufficient that charging words are equivalent in meaning to those of statute defining a crime. State v. Jansen, 290NW557. See Dun. Dig. 4377.

10648. Formal defects disregarded.

Denial of right to show bias or interest of a witness is prejudicial error. State v. Elijah, 289NW575. See Dun. Dig. 416.

Conduct of the prosecuting attorney on cross-examination of defendant was not so improper as to justify granting a new trial on the state of the record in the case. State v. Lemke, 290NW307. See Dun. Dig. 2489.

An amendment of an indictment which alleges that old age assistance was obtained "by means of a false representation" in language of statute, so as to amplify and state in detail nature of false representations and reliance thereon, does not allege a new offense, but merely restates with particularity original one. State v. Jansen, 290NW557. See Dun. Dig. 4430.

Date is not essential element of crime of embezzlement, and court did not err in permitting amendment of information by changing date on which charged theft took place, after admission of evidence at trial. State v. McGunn, 294NW208. See Dun. Dig. 4430.

10653. Indictment for perjury.

What happens to perjurers. 24MinnLawRev727.

10655. Limitations.

Abandonment of a child is a continuing offense, and limitation does not run during time father is outside state, and he is a fugitive from justice if offense charged is a few days prior to date of leaving state, and same result is accomplished if father returns to state and again leaves. Op. Atty. Gen., (193B-1), Sept. 28, 1939.

10662. Larceny by clerks, agents, etc.

Ownership of money embezzled was properly alleged in one designated in a contract as "agent", but who in fact was trustee of business of another. State v. McGunn, 294NW208. See Dun. Dig. 3001.

Date is not essential element of crime of embezzlement, and court did not err in permitting amendment of information by changing date on which charged theft took place, after admission of evidence at trial. Id. See Dun. Dig. 3002.

INFORMATION

10665. Information shall state, what—Etc.

State v. Gottwalt, 295NW67; note under §10685.

SETTING ASIDE INDICTMENT

10685. Grounds—Waiver of objections.

5. Held not grounds for setting aside.

Sufficiency of evidence before committing magistrate on preliminary hearing to justify a finding that a crime had been committed and that there was reasonable cause to charge defendant therewith, may not be raised upon a demurrer or a motion to quash information subsequently filed. State v. Gottwalt, 295NW67. See Dun. Dig. 4422.

10688. Proceedings if new indictment is not found—Setting aside no bar.
Double jeopardy. 24MinnLawRev522.

DEMURRERS

10690. Grounds of demurrer.
1. In general.
Sufficiency of evidence before committing magistrate on preliminary hearing to justify a finding that a crime had been committed and that there was reasonable cause to charge defendant therewith, may not be raised upon a demurrer or a motion to quash information subsequently filed. State v. Gottwalt, 295NW67. See Dun. Dig. 4416.
8. Indictments held not double.
An information charging that two mortgages and two notes were obtained by same false pretenses in one transaction, does not charge more than one offense though separate notes and mortgages bear different dates. State v. Gottwalt, 295NW67. See Dun. Dig. 4413.

PLEAS

10696. Plea of guilty.
Rule that a plea of guilty which has been withdrawn by leave of court is not admissible as an admission upon trial on substituted plea of not guilty does not apply to statements made to municipal judge on preliminary examination, which he waived. State v. McClain, 292NW 753. See Dun. Dig. 2444.

10698. Acquittal—When a bar.
Double jeopardy. 24MinnLawRev522.

ISSUES AND MODE OF TRIAL

10705. Issue of fact—How tried—Appearance in person.
3. Evidence.
Photograph of burning truck taken after it had been stolen in Minnesota and moved into Iowa held admissible. Carpenter v. U. S., (CCA8), 113F(2d)692.
In prosecution for assault and battery, photograph taken by an amateur of the assaulted person shortly after the assault was admissible where testimony left no doubt that it was a true portrayal of condition of complaining witness. State v. Dimler, 287NW785. See Dun. Dig. 3260.
Photographs shown by extrinsic proof to be faithful representations of place or object as it existed at time involved in controversy, are admitted when they serve to explain, illustrate, or otherwise be of aid to trier of fact. Id.
Where defendant's witness testified to statement made by state witness contradictory to her testimony, it was proper on rebuttal to call witnesses to whom state witness had made statement contradictory to statement testified to by defendant's witness. State v. Palmer, 288 NW160. See Dun. Dig. 10319.
County attorney held not given too wide range in cross-examining defendant in respect to other offenses, brought into the case by his direct examination. Id. See Dun. Dig. 2459.
Illicit relations between a witness and victim of a crime may be shown to show bias, prejudice, interest and disposition of witness to tell truth. State v. Elijah, 289NW575. See Dun. Dig. 10350.
State cannot cross-examine its own witness unless: testimony is adverse rather than lack of favorable testimony; prosecution must be surprised; and cross-examination must be restricted so as only to neutralize adverse testimony to which it is directed. State v. Lemke, 290 NW307. See Dun. Dig. 10356.
In prosecution for manslaughter by abortion question to medical witness as to whether he was "able to determine from the examination of this body of this girl, and the different things that you saw, as to whether in your opinion that induced abortion was necessary to save the life of this woman?" was not accurately worded, but there was no prejudicial error where, read in its context, it clearly refers to observations made by witness in course of an autopsy which had been previously detailed. Id. See Dun. Dig. 3336.
Where state desires to cross-examine its own witness on ground of surprise, in deciding preliminary question of surprise court is entitled to use its discretion. Id. See Dun. Dig. 10356.
It was improper for county attorney on cross-examination of defendant to ask respecting statements made by defendant which he refused to agree to substantiate by proof, but defendant should have made a proper objection or move to strike out question and answer. Id. See Dun. Dig. 10307.
Rule that unexplained failure to call a witness or produce evidence within control of a party permits an inference that witness if called or evidence if produced would be unfavorable to party applies against a defendant in a criminal case, except only his own failure to testify. State v. Jansen, 290NW557. See Dun. Dig. 3444.
Proof of similar acts which tend to characterize the specific act charged are admissible, although they incidentally tend to show the commission of other crimes. Id. See Dun. Dig. 2459.
Undisputed previous good character and reputation do not require an acquittal. Id. See Dun. Dig. 2449.
Even in criminal cases, a statute may properly shift to accused burden of going on with evidence, in his own possession or of facts within his own knowledge, where result is but a reasonable aid to prosecution and does not subject accused to hardship or oppression. McElhone v. G., 292NW414. See Dun. Dig. 2449.
On prosecuting attorney's claim of surprise, permission to cross-examine and impeach prosecuting witness rests in discretion of trial judge. State v. McClain, 292NW 753. See Dun. Dig. 10356(8).
Where prosecuting attorney was surprised by testimony of prosecuting witness, an extra-judicial statement of prosecuting witness introduced in evidence was for purposes of impeachment and not affirmative evidence of corpus delicti or guilt of defendant. Id.
Evidence of a proposal to plead guilty to a charge of embezzlement on promise or recommendation of a suspended sentence is not admissible on trial on a subsequent plea of "not guilty" to same charge. State v. McGunn, 294NW208. See Dun. Dig. 2463.
Courts take notice of fact that whiskey is an intoxicating liquor. State v. Russell, 296NW575. See Dun. Dig. 3451.
A statement, either oral or written, which lacked necessary foundation for admissibility at time it was made, if admissible where it is subsequently reaffirmed or reiterated as part of a dying declaration having necessary predicate. State v. Brown, 296NW582. See Dun. Dig. 2461.
Fact that declarant was about to die and believed that death was imminent and there was no hope of recovery is essential as a predicate for admission of dying declaration. Id.
Existence of necessary predicate must be clearly shown and not left to conjecture to render a dying declaration admissible. Id.
State of mind of one making a dying declaration is susceptible of proof like any other fact, and no particular kind of proof is required. Id.
Existence of state of mind may be shown by declarations of declarant, which are generally regarded as most satisfactory evidence of fact, or by circumstantial evidence where facts shown support such an inference in the required degree, as affecting admissibility of dying declaration. Id.
Dying declarations were not inadmissible because there was conflicting evidence as to existence of a proper predicate upon which their admissibility depended. Id.
Dying declaration of victim of a homicide, including a case where death results from an illegal abortion, concerning facts and circumstances of infliction of fatal injury are admissible upon trial of person charged with having committed the abortion and homicide. Id.
Defendant's silence in face of accusation of policewoman which he provoked by asking a question and his evasive conduct under circumstances were admissible as admission. Id. See Dun. Dig. 2463.
Silence under accusation permits an inference that accused acquiesced in statement and admitted its truth. Id. See Dun. Dig. 3420.
Intoxicating liquor is admissible in evidence though it has been seized unlawfully. Op. Atty. Gen., (218f-3), Oct. 31, 1939.

10706. Continuance—Defendant committed, when.
Denial of a continuance to give time for preparation for trial held not an abuse of discretion where defendants requesting such continuance were represented by same counsel who appeared for other defendants and defense of all was same alibi. Carpenter v. U. S., (CCA8), 113F(2d)692.

10710. Questions of law and fact, how decided.
1. Province of court and jury generally.
Conflicts in evidence, credibility of witnesses, plausibility of explanations offered by defendant, and weight of evidence are all questions for jury. Neal v. U. S., (CCA8), 114F(2d)1000, aff'g 102F(2d)643. Cert. den. 61S CR448.

10712. Charge of court.
1. In general.
Trial court erred in submitting to jury question whether witness was an accomplice whose testimony must be corroborated where evidence showed as matter of law that he was an accomplice, and such error was prejudicial because jury might have concluded that witness was not an accomplice and needed no corroboration. State v. Elsberg, 295NW913. See Dun. Dig. 2479.
4½. Presumption of innocence.
"Presumption of innocence" is but a phrase used to caution jurors that they are not to infer that defendant committed criminal act charged against him merely because he has been brought to trial. State v. Rivers, 287 NW790. See Dun. Dig. 2451.

10722. Insanity, etc., of defendant.
District court may commit a defendant to any state hospital, and may commit him to hospital for dangerous insane, even without a finding that he has homicidal tendencies. Op. Atty. Gen., (248B-3), March 18, 1940.

APPEALS AND WRITS OF ERROR

10751. Bill of exceptions.

Final argument of county attorney, not objected or excepted to when delivered does not justify a new trial, though it merits disapproval. State v. Palmer, 288NW 160. See Dun. Dig. 2496.

Where record discloses no adequate objection to cross-examination by state of its own witness with respect to a prior statement made by him, a new trial will not be ordered. State v. Lemke, 290NW307. See Dun. Dig. 2496.

Omission to give certain instructions where no instructions were offered by appellant or exceptions taken to those given at time of trial does not make a new trial necessary. Id. See Dun. Dig. 2496.

It was improper for county attorney on cross-examination of defendant to ask respecting statements made by defendant which he refused to agree to substantiate by proof, but defendant should have made a proper objection or move to strike out question and answer. Id. See Dun. Dig. 2496.

Objections to argument of counsel made for first time on motion for new trial are not timely and will not be reviewed on appeal. State v. Jansen, 290NW557. See Dun. Dig. 2496.

10752. Proceedings in Supreme Court.

1. In general.

It is duty of appellate court in criminal cases to examine evidence with care to end that it may be able to determine guilt or innocence of accused. State v. Dimler, 287NW785. See Dun. Dig. 2500.

3. New trial.

Where conviction and sentence under first count of indictment was free from error and sentence was such as might have been imposed under that count, it was unnecessary to discuss the other counts. Carpenter v. U. S., (CCA8), 113F(2d)692.

If there be no doubt of guilt, errors not affecting substantial or constitutional rights should be brushed aside. State v. Dimler, 287NW785. See Dun. Dig. 2490.

A new trial in a criminal case should be granted cautiously and only for substantial error. Id.

Because in manslaughter case evidence as strongly supported an inference of innocence as it did one of guilt, a new trial was ordered. State v. Larson, 292NW 167. See Dun. Dig. 2489.

4. Misconduct of counsel.

Great weight is to be given judgment of trial court that there was no fault with argument of county attorney. State v. Palmer, 288NW160. See Dun. Dig. 2500.

County attorney should not refer to defendant as a hoodlum, nor tell jury what witness he believes or does not believe. Id. See Dun. Dig. 7102(69).

There can be no reversal in a criminal case for alleged misconduct of prosecuting attorney in making his opening statement to jury without a record of statement claimed to be prejudicial. State v. Lemke, 290NW307. See Dun. Dig. 2496.

6. Reception of evidence.

Admission of testimony which was admissible against two defendants as an admission of their guilt but which was hearsay as to the other defendant, was not ground for reversal of conviction where the other defendant made no request for instruction excluding such testimony from consideration of jury upon question of his guilt. Carpenter v. U. S., (CCA8), 113F(2d)692.

No complaint can be made of county attorney's objection to a question which attorney for defendant withdrew. State v. Palmer, 288NW160. See Dun. Dig. 2479a.

Permitting expert to examine hospital records, but not their receipt in evidence was not error to defendant's prejudice. Id. See Dun. Dig. 2490.

Answer of accused to question on cross-examination as to whether he had made a certain statement being in the negative was not prejudicial. State v. Lemke, 290NW 307. See Dun. Dig. 2489.

Defendant cannot complain of answer of witness not called for by question where he made no motion to strike it from the record. Id. See Dun. Dig. 2500.

In prosecution for manslaughter, opinion of coroner that the "woman died from a criminal abortion", while based on an ultimate issue, did not so affect jury as to make a new trial necessary. Id. See Dun. Dig. 2489.

JUDGMENTS AND EXECUTION THEREOF

10757. Judgment on conviction—Judgment roll.

Court cannot usurp powers of pardon board or board of parole by suspending a sentence after commitment, but always has right to grant a new trial or to correct a judgment or sentence entered by mistake. Op. Atty. Gen., (341k-9), Jan. 17, 1940.

A person is "convicted" within meaning of Selective Service Regulations when there has been a determination of guilt and an imposition of sentence, even though sentence is subsequently suspended or stayed. Op. Atty. Gen. (310), Feb. 18, 1941.

INDETERMINATE SENTENCES AND PAROLES

10765. Term of sentence.

Maximum sentence for attempted swindling is 2½ years and minimum sentence is nothing in view of indeterminate sentence law. Op. Atty. Gen. (341k-5), July 10, 1940.

10769. Chairman of board—Salary—Compensation of members.

Provisions authorizing board of parole to charge expenses of parole of prisoners from state penal institutions to funds of respective institutions are still in force, but are temporarily suspended. Op. Atty. Gen., (640), Dec. 5, 1939.

10773. Duty of board—Final discharge.

A commutation of sentence to a term of 4½ months, with reservation of right to revoke commutation for misconduct, does not restore civil rights. Op. Atty. Gen. (68h), Sept. 13, 1940.

10775. Supervision by board—Agents.

Provisions authorizing board of parole to charge expenses of parole of prisoners from state penal institutions to funds of respective institutions are still in force, but are temporarily suspended. Op. Atty. Gen., (640), Dec. 5, 1939.

10778-1. Governor may enter into reciprocal agreement.

Under reciprocal compact no formal requisition, governor's warrant in extradition, hearing to accuse or take him before a judge to obtain waiver of his right to habeas corpus, is necessary. Op. Atty. Gen., (193a-4), March 4, 1940.

Opinion of March 4, 1940, that under reciprocal compact no formal requisition, governor's warrant in extradition, hearing to accuse or take him before judge to obtain waiver of his right to habeas corpus, is necessary, is limited to cases covered by interstate compact, where a parolee is allowed to go into another state by consent of both, and does not cover case of a person, paroled within a state, who thereafter flees to another state. Op. Atty. Gen. (193a-4), Nov. 14, 1940.

BOARD OF PARDONS

10780. Pardons—Reprieves—Unanimous vote—Pardon extraordinary.—Such board may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. A reprieve in a case where capital punishment has been imposed may be granted by any member of the board, but for such time only as may be reasonably necessary to secure a meeting for the consideration of an application for pardon or commutation of sentence. Every pardon or commutation of sentence shall be in writing, and shall have no force or effect unless granted by a unanimous vote of the board duly convened.

Any person, convicted of crime in any Court of this State, who was under the age of 21 years at the time when said criminal act was committed, and which person has served the sentence imposed by the said Court and complied with all the orders of said Court with respect thereto, including probation or parole, and has been discharged of said sentence either by order of Court or by operation of law, may petition the board of pardons for the granting of a pardon extraordinary. If the board of pardons shall determine that such person has been convicted of no criminal acts other than the act upon which such conviction was founded and is of good character and reputation, the board may, in its discretion, grant to such person a pardon extraordinary. Such pardon extraordinary, when granted, shall have the effect of restoring such person to all civil rights, and shall have the effect of setting aside said conviction and nullifying the same and of purging such person thereof and such person shall never thereafter be required to disclose the said conviction at any time or place other than in a judicial proceeding thereafter instituted.

The application for such pardon extraordinary and the proceedings thereunder and notice thereof shall be governed by the statutes and the rules of the board in respect to other proceedings before the board and shall contain such further information as the board may require. (As amended Act Apr. 22, 1941, c. 377, §§1-4.)

A commutation of sentence to a term of 4½ months, with reservation of right to revoke commutation for misconduct, does not restore civil rights. Op. Atty. Gen. (68h), Sept. 13, 1940.