

CHAPTER 617

OFFENSES AGAINST CHASTITY, MORALS, AND DECENCY

RAPE, ABDUCTION; CARNAL KNOWLEDGE, AND SIMILAR OFFENSES

617.01 RAPE; PENALTY.

Admissibility of deceased mother as to date of birth of prosecutrix in prosecution for statutory rape. 9 MLR 73.

617.02 CARNAL KNOWLEDGE OF CHILDREN.

There is no occasion for impeachment of a witness by the party who calls him unless to the caller's surprise he testifies adversely on some material point; and then the impeachment must be confined to the subject matter of the surprising adverse statement. In the instant case, the prosecuting attorney extended the examination too broadly and there must be a reversal. *State v Saporen*, 205 M 358, 285 NW 898.

Ordinarily evidence showing that the complaining witness had sexual intercourse with other men is not admissible in a prosecution for carnal knowledge; but illicit relations between a witness and the victim of a crime may be shown to show bias, prejudice, interest, and disposition of the witness to tell the truth. Denial of right to cross-examine such witness is an abuse of discretion and ground for reversal. *State v Elijah*, 206 M 619, 289 NW 515.

On prosecution attorney's claim of surprise, permission to cross-examine and impeach the prosecuting witness rests in the discretion of the trial judge. Statutory requirement of something more than defendant's confession to support conviction is satisfied when extra-judicial written confession is corroborated by judicial admission by word and conduct. *State v McClain*, 208 M 91, 292 NW 753.

While as a general rule evidence against the accused should be confined to the specific offense, as an exception to the rule evidence of a separate and independent crime is admissible if such crime is definitely the outgrowth of a plan or a system of similar crimes, and such evidence is admissible, not to establish such other crime, but as confirmatory of the evidence tending to show the commission of the crime charged. *State v Haney*, 219 M 518, 18 NW(2d) 315.

There must be no conduct on the part of the prosecuting counsel to inflame the prejudices or excite the passions of the jury against the accused. Where there is prejudice to defendant's rights as is manifest as appears in the instant case, it was the duty of the trial court sua sponte to intervene to protect defendant's rights. Failure to do so is prejudicial error. *State v Haney*, 222 M 124, 23 NW(2d) 369.

Right of seduced infant to maintain civil action for damages. 10 MLR 631.

Indictment by grand jury. 26 MLR 153, 170.

Conviction without definite proof of penetration. *State v Newman*, 93 M 393, 101 NW 108.

Evidence proved penetration. 152 M 306, 189 NW 452.

617.06 ENTICEMENT INTO STATE FOR PROSTITUTION; PENALTY.

The statutory offense of causing transportation of a woman in interstate commerce for immoral purposes, and the offense of inducing a woman to go in interstate commerce on a common carrier for immoral purposes are separate crimes. *Hill v United States*, 150 F(2d) 760.

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617.07 SEDUCTION UNDER PROMISE; EVIDENCE; BAR TO PROSECUTION.

Jury triers. 9 MLR 353.

617.08 INDECENT ASSAULT.

A girl under the age of consent as defined by section 617.02 is legally incapable of consenting to carnal knowledge of her person by acts constituting the crime of sodomy, and thus in a prosecution for sodomy she is not an accomplice, and corroboration of her testimony is not required. *State v Gordon*, 215 M 476, 10 NW (2d) 370.

Admissibility of evidence of substantive offenses other than the one in issue. 11 MLR 666.

Consent as defense in prosecution for indecent assault when obtained by misrepresentation. 23 MLR 521.

617.09 SOLICITING BOY UNDER 18 TO HOUSE OF ILL FAME.

Solicitations; a substantive crime. 17 MLR 499.

BIGAMY, ADULTERY, FORNICATION, INCEST, SODOMY

617.11 BIGAMY; PUNISHMENT; EXCEPTIONS.

Where a person residing and in business in North Carolina, temporarily removes to Nevada and establishes a domicile in that state, and procures a divorce, North Carolina is not required to yield her state policy, so that on his return to North Carolina, and contracting a marriage, on a prosecution for bigamy; a finding of the North Carolina court that he did not acquire a domicile in Nevada, and consequently the divorce granted there was of no effect, is not violative of the full faith and credit clause of the federal constitution. (This case distinguishes *Williams v North Carolina*, 317 US 287.) *Williams v North Carolina*, 224 NC 183, 29 SE (2d) 744; 65 SCR 1092.

Death from seven years absence. 1 MLR 522; 19 MLR 777.

Belief in divorce of former spouse as a defense. 15 MLR 470.

617.13 INCEST.

One accused of crime cannot be convicted upon the uncorroborated testimony of an accomplice nor upon his own confession, but the testimony of an accomplice is corroborated by the confession of the accused and upon such testimony and his confession he may be convicted. *State v Huebsch*, 146 M 34, 177 NW 779.

Admission of wife's testimony in prosecution of husband for incest with daughter. 27 MLR 205.

617.15 ADULTERY.

Who may institute prosecution for adultery. 5 MLR 389.

Admissibility of testimony of one spouse against the other in cases of a crime committed by one against the other. 27 MLR 206.

617.16 FORNICATION.

Illicit relations between witness and the victim of the crime for which defendant is being tried may be shown to show bias, prejudice, interest, and disposition of the witness to tell the truth, and denial of the right to cross-examine the witness is an abuse of judicial discretion and prejudicial. *State v Elijah*, 206 M 619, 289 NW 575.

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617.17 ABSCONDING BY FATHER TO EVADE PROCEEDINGS ESTABLISHING PATERNITY.

Father, a resident of Minnesota, went to Iowa, obtained a job, rented a house and made provision to make a home for the mother, but after six weeks residence in Iowa absconded. As he absconded from Iowa, and not from Minnesota, he cannot be prosecuted under section 617.17. OAG Oct. 10, 1946 (193-B-20).

ABORTION

617.18 ABORTION, HOW PUNISHED.

Consent of woman to illegal operation as defense to action for wrongful death. 13 MLR 382.

617.19 PREGNANT WOMAN ATTEMPTING ABORTION.

A woman upon whom an abortion is performed or attempted is not an accomplice in the commission of the offense, and in case of prosecution of the one performing the operation her evidence need not be corroborated. State v Tennyson, 212 M 158, 2 NW(2d) 833.

617.21 EVIDENCE.

In the instant case, a prosecution for performing an abortion, silence under accusation permits an inference that the accused acquiesced in the statement and admitted its truth. State v Brown, 209 M 478, 296 NW 582.

OBSCENITY

617.23 INDECENT EXPOSURE; PENALTIES.

Admission of a woman, not his wife, to his home and bed, is actionable under the ordinance prohibiting lewdness and indecency. State v Covitt, 171 M 505, 214 NW 479.

After the girls who witnessed the exposure, and the policeman who made the arrest, had testified, it was not reversible error to permit the mother of one of the girls to testify to what her daughter told her immediately after witnessing the exposure. State v Berg, 171 M 513, 213 NW 46.

There was ample evidence of the fact of the exposure, and sufficient evidence of the identity of the defendant. State v Mitchell, 207 M 55, 290 NW 222.

Upon conviction under this section a justice may impose a jail sentence without the option of a fine. OAG July 6, 1945 (266-b-11).

PROSTITUTION AND HOUSES OF ILL-FAME

617.30 KEEPER OF DISORDERLY RESORT.

To constitute the offense of keeping a disorderly house it must appear that disorderly acts are habitually permitted on the premises or that the house is kept as a place to which people may and do resort for the purpose of indulging in immoral practices. State v Nanick, 144 M 413, 175 NW 693.

Evidence examined and proof is not wanting to establish defendant's guilt. State v Turner, 210 M 11, 297 NW 108; State v Key, 210 M 259, 297 NW 718.

Evidence insufficient for conviction. State v Glenney, 213 M 177, 6 NW(2d) 241.

The character of the premises on the question of whether they are being conducted and maintained as a house of ill-fame or disorderly house, may be proved by showing how they are being conducted, since what occupants do or say and how they act characterize the place. State v Holmes, 222 M 405, 24 NW(2d) 710.

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Prosecution under state statute after acquittal under a municipal ordinance. 10 MLR 621.

617.325 TRANSPORTING FOR PURPOSES OF PROSTITUTION.

Several white slave traffic offenses arising from a single transaction. 30 MLR 124.

617.33 HOUSES OF PROSTITUTION; NUISANCES; ABATEMENT.

In the abatement proceeding the owner is charged with the knowledge of his agent in charge of the property. The holding that the owner must have notice before he can be subjected to the provisions of the act does not prevent its effective working. *State ex rel v Wheeler*, 131 M 308, 155 NW 90; *State ex rel v Schultz*, 131 M 488, 154 NW 659; *State v Goldstein*, 135 M 465, 160 NW 783.

The character of the premises on the question of whether they are being conducted and maintained as a house of ill-fame or disorderly house may be proved by showing how they are being conducted, since what occupants do or say and how they act characterize the place. *State v Holmes*, 222 M 405, 24 NW(2d) 710.

617.34 ACTION TO ENJOIN; RESTRAINING ORDER; ANSWER.

See cases noted under section 617.33.

617.35 TRIAL; LIMITATION OR DISMISSAL.

See cases noted under section 617.33.

617.37 ORDER OF ABATEMENT; PERSONAL PROPERTY; CONTEMPT; FEES.

See cases noted under section 617.33.

617.38 DUTY OF COUNTY ATTORNEY.

See cases noted under section 617.33.

DANCE HALLS

617.42 DANCE HALL.

Public dance halls or public dances, at which congregate an indiscriminate gathering of bystanders and participants, are subject to regulation and control by the state, or by a municipal subdivision thereof to which the right to control is delegated by legislation. In the instant case, a restraining order was properly granted, the dance hall not being licensed. *Town of Linden v Fischer*, 154 M 354, 191 NW 901.

A club may not hold a dance without a license if the public is invited. OAG May 1, 1942 (217-F-2); OAG Sept. 3, 1943 (218-G-15).

A place where intoxicating liquor is sold may not acquire a dance hall license. Beer of a 3.2 alcoholic content is not, under this section, classed as intoxicating. OAG Oct. 26, 1945 (802-a-15).

In club rooms, private but not public dancing is permitted even when intoxicating liquor is served. Minors must not be permitted to attend such dance. OAG Nov. 6, 1945 (218-G-15).

Question of fact as to what constitutes a public dance hall requiring a license. OAG July 13, 1946 (802-a-2).

617.44 ISSUANCE OF PERMIT.

If permit or license covers more than one dance, power to issue is vested in the county board, but the town board may issue a permit for a single dance. OAG July 13, 1946 (802-A-2).

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617.46 APPLICATIONS.

An on-sale liquor dealer may not have a public dance hall license. OAG Oct. 6, 1943 (218-J-10).

The prohibition on a direct or indirect communication between the dance hall and a place where liquor is sold is not offended against where the communication is a public street. OAG Jan. 25, 1946 (802-a-17).

No public dance hall license can be granted where there is direct or indirect communication between the hall and an exclusive liquor store. OAG March 29, 1946 (218-G-13).

617.49 NOT TO ADMIT CERTAIN PERSONS.

A minor is forbidden to frequent or remain in a room where 3.2 beer is sold; and unmarried persons under 18 years may not attend a public dance unless accompanied by parent or guardian. Written consent of parents or guardian is required when the minor is over 16 and under 18 years of age. OAG July 25, 1947 (802-a-15).

617.50 OFFICER MUST ATTEND ALL PUBLIC DANCES.

Qualification of officer. OAG Feb. 23, 1942 (802-A-10); OAG April 30, 1943 (802-A-16); OAG Aug. 10, 1943 (122-B-6).

617.51 HOURS.

Municipalities may not extend or enlarge the hours prescribed by the state. OAG Feb. 1, 1945 (218-G-15).

CRIMES RELATING TO CHILDREN

617.55 DESERTION OF CHILD OR PREGNANT WIFE.

Whether the father has abandoned his children is a question of fact. OAG Sept. 5, 1943 (193-B-1).

In order to be guilty of a felony there must, in addition to failure to care for the child, be a failure to support it. OAG Feb. 5, 1945 (133-B-1).

When the circumstances do not indicate an intent to wholly abandon his children the father cannot be prosecuted under this section. OAG Sept. 25, 1945 (133-b-1).

A former husband who deserted his pregnant wife, prior to divorce, may be guilty under this section. OAG Nov. 13, 1945 (193-B-1).

The offense of child desertion is a continuing one, and prosecution for the offense should be in the county where the child resides. OAG April 9, 1947 (133-B-1).

A man who removes to Florida and refuses to return or support his child is guilty of child desertion, a continuing offense. The desertion was committed in Florida and intentionally resulted in a crime in the state of Minnesota, and is an indictable offense from Florida. OAG April 14, 1947 (193-B-1).

Criminal responsibility of father for abandoning a child whose custody he has been deprived of by divorce decree. 14 MLR 578.

Care and support of child by parent. 16 MLR 90.

Abandonment of wife and child by father as affecting acquisition by child of separate domicile of mother. 19 MLR 337.

617.56 FAILURE TO SUPPORT WIFE OR CHILD.

Where the wife was granted a divorce and the care, custody, and education of three children from four to eleven years of age, and fixed the husband's contribution at ten dollars per month, the amount is clearly inadequate and the case

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was remanded for further consideration by the trial judge. *Krueger v Krueger*, 210 M 144, 297 NW 566.

Parent is liable for support of neglected children when placed by juvenile court in local homes. 1944 OAG 333, May 7, 1943 (840-A-9).

Where under the provisions of section 260.08 to 260.11 children were taken away from the father, and when the father obtained employment he offered to make a home for the children and he was denied the privilege until his finances were further improved, he could not be prosecuted under section 617.55, but could be prosecuted under section 617.56 unless he could prove that the proffered home was a proper one. OAG Sept. 25, 1945 (133-B-1).

Suit by minor child of divorced parents against father for support. 1 MLR 99.

Liability of father for support of child in absence of amendment of original divorce decree in which ample provision is made for the child. 6 MLR 523.

Common law marriages. 22 MLR 177, 185.

Payments in satisfaction of duty to support. 23 MLR 979.

Parent and child; emancipation; care and custody. 28 MLR 275, 279.

617.57 PROSECUTION.

Conviction in disputed cases of child abandonment. *State v Clark*, 148 M 389, 182 NW 452; *State v Wood*, 169 M 349, 211 NW 305.

617.60 KEEPERS OF PUBLIC PLACES TO EXCLUDE MINORS.

Whether a dance hall where patrons drink beer, but minors are allowed soft drinks, is injurious to the morals of minors is a question of fact. OAG June 25, 1945 (218-G-15).

Minors must not attend clubs where dancing is permitted and liquor is sold. OAG Nov. 6, 1945 (218-G-15).

In prosecution of the owner of a place where liquor is sold, the complaint should name each child separately, but under the complaint it may be shown that other minors were present at the time. OAG March 1, 1946 (218-J-12).

617.63 KEEPERS OF PUBLIC PLACES TO EXCLUDE; PENALTY.

Students and persons under 18 years of age may frequent places where bowling is the only activity. OAG Oct. 23, 1944 (802b-3).

617.66 USE OF TOBACCO IN PUBLIC PLACE; ARREST; PENALTY; EVIDENCE.

Specific legislative sanction is not required to authorize a municipality to make its own police regulations for preservation of health, safety, and welfare of its citizens. L. 1941, c. 405, s. 3, authorizing cities to license and regulate sale of cigarettes at retail, did not prohibit the city from also licensing sale at wholesale. *State v Crabtree*, 218 M 39, 15 NW(2d) 100.

617.75 HABITUAL OFFENDERS IN CERTAIN CASES.

Pardoned conviction as basis for increased penalty for a later conviction under habitual criminal statutes. 14 MLR 293.