PART V

CRIMES, CRIMINALS

Prior to the enactment of the Penal Code, effective Jan. 1, 1886, the common law as to crime was in force in this state except where abrogated or modified by statute. The Penal Code abolished all common law offenses and now no act or omission is criminal except as prescribed by statute. It would serve no useful purpose to trace the origin and legislative history of each section prior to the adoption of the code.

CHAPTER 610

CRIMES, GENERAL PROVISIONS

610.01 CRIMES, DEFINED AND CLASSIFIED

HISTORY. RS 1851 c 98 s 2; 1852 Amendment Par 22 s 100; PS 1858 c 87 s 2; GS 1866 c 91 s 1, 2; GS 1878 c 98 s 1, 2; Penal Code s 3-6; GS 1894 s 6287-6290; RL 1905 s 4747; GS 1913 s 8466.

Punishment for crime; the federal supreme court and the constitution. 35 MLR 109.

Cruel, unusual, and excessive punishment. 35 MLR 111.

Definition of reasonable doubt in criminal cases. 35 MLR 584.

Executive immunity from disclosure. 35 MLR 586.

Negroes; due process in criminal cases. 35 MLR 636.

Federal statutory crimes; necessity for intent when statute is silent. 37 MLR 486.

Evidence of defendants' other crimes; admissibility in Minnesota; the exclusion theory in practice. 37 MLR 608.

"Offense" in criminal law is not identical with the word "act" but in its legal sense imports an infraction of a law, the wilful doing of an act forbidden by law or omitting to do what the law commands is an offense. State v End, 222 M 226, 45 NW(2d) 378.

Where a statute defines a crime as a gross misdemeanor and prescribes imprisonment as punishment therefor, without fixing the place of such imprisonment, commitment must be to the county jail rather than to the state prison or reformatory. State v Masteller, 232 M 196, 45 NW(2d) 109; State v Brandvold, 232 M 202, 45 NW(2d) 111.

Grand larceny in the second degree is a felony and in case of an attorney is ground for disbarment. In re King, 232 M 327, 45 NW(2d) 562.

The regents of the University of Minnesota have no power to legislate or to define a crime. Police officers have authority to make arrests and issue tags for violations of the provisions of section 169.01 et seq. committed on the university campus. OAG Sept. 2, 1947 (618-A-2).

610.02 MEANING OF WORDS AND TERMS

Property right in an idea. 37 MLR 493.

The record before us does not bring defendant's conduct within the rule of Hanson v Hall, 202 M 381, 385, 279 NW 227, 229, that "Wilful negligence embraces conduct where the infringement of another's right is not only intended but also it is foreseen that the conduct pursued will result in such invasion." Plaintiff was driving on the wrong side of the road with lights which revealed the road for a distance of only 30 feet ahead of him. He was traveling at a rate of speed which required at least 50 feet within which to stop his car. The case comes squarely within the rule of Orrvar v Morgan, 189 M 306, 249 NW 42. Spartz v Kresbach, 226 M 46, 31 NW(2d) 917.

Whether a motorist was negligent was a question of fact, where he approached at night on a paved highway at a speed of 45 to 60 miles per hour an automobile with its headlights on bright facing him standing on the shoulder to his right practically parallel to the pavement, which he first saw as he came over a knoll about 700 feet away approaching him in its right lane and cutting across the pavement, where it stopped, and after it stopped it appeared to him to continue to approach him in its right lane, with the consequence that he was misled thereby to attempt to pass it by turning right onto the shoulder and then to his left to get back again on the pavement, but too late to avoid a collision. Rue v Wendland, 226 M 449, 33 NW(2d) 593.

Where a bridge on a township road was washed out and the road overseer placed a barrier across the road on one side of the washout but did nothing on the other side, failure to place a warning on the other side of the washout was an act of "nonfeasance" so that the town officers were not liable to a party injured in driving into the washout. Giefer v Dierckx, 230 M 34, 40 NW(2d) 425.

In a prosecution for manslaughter in the second degree arising out of death of the landlord's wife following an explosion after the tenant allegedly released gas in an attempt to commit suicide, contributory negligence of the victim is not a defense nor is concurrent negligence of third persons. State v Schaub, 231 M 512, 44 NW(2d) 61.

In an action for injuries arising out of an exploding bottle of a carbonated beverage the res ipsa loquitur doctrine may be applied in the court's charge to the jury upon the theory that defendant had control of the bottle at the time of the alleged negligent act although not at the time of the accident, provided, that plaintiff shall first prove that the condition of the bottle or container had not been changed after it left defendant's possession, that plaintiff had handled the bottle carefully and that the injury was not due to any voluntary action on her part. The Minnesota doctrine res ipsa loquitur originated through court decisions and was not based upon any specific statute. It is nothing more than one form of circumstantial evidence creating a permissive inference of negligence. It arises where (a) the accident is of a kind which ordinarily does not occur in the absence of someone's negligence, and (b) it is caused by an instrumentality within the exclusive control of the defendant, and (c) the possibility of contributing conduct which would make the plaintiff responsible is eliminated. It is generally presumed that an explanation of the accident is more readily accessible to the defendant than to the plaintiff. Johnson v Coca Cola Bottling Co., 235 M 471, 51 NW(2d) 573.

An action for injuries sustained by plaintiff when defendant playfully jerked plaintiff's right foot suddenly upward, throwing him backwards out of his chair, was an action for negligence and not "assault and battery." Newman v Christensen, 31 NW(2d) 417.

One of the tests of proximate cause is the defendant's duty to reasonably foresee the consequences of his negligence; and where the defendant violated a statute by leaving his automobile unattended on the street, with the key in the ignition, and the thief drove the automobile away and negligently collided with plaintiff's automobile, the defendant's violation of statute was negligence and constituted "proximate cause" of damage to plaintiff's automobile so as to render the defendant liable therefor. Ostergard v Frisch, 77 NE(2d) 537.

610.03 RULES OF CONSTRUCTION

Penal statutes are construed by the fair import of their terms to promote justice and effect the purpose of the law. 32 MLR 68.

Applicability of statutes making part ownership no defense in larceny by a partner. 32 MLR 68.

Information alleging defendant's commission of the crime of indecent exposure in violation of section 617.23 and his prior conviction under a municipal ordinance for a similar offense previously committed, does not charge a gross misdemeanor under the statute since a conviction under the municipal ordinance is not a conviction under the state law. State v End, 232 M 378, 45 NW(2d) 378.

610.04 PERSONS PUNISHABLE

Conviction of kidnapping where abduction is also applicable. 35 MLR 306.

610.06 DEFENSE OF DUREE BY MARRIED WOMAN

Extent to which the common law concept of the unity of husband and wife has been abrogated by the Minnesota Married Women's Act and related acts. 32 MLR 262.

610.07 DURESS, HOW CONSTITUTED

One repudiating a release for duress is not required in order to void it to tender to the party released money other than the consideration for the release which he received upon its execution. A threat to bring an action, not to recover upon a just claim, but for the purpose of inflicting hardship and oppression upon the person threatened, which overcomes his free will, constitutes duress. Wise v Midtown Motors, 231 M 46, 42 NW(2d) 404.

610.08 PRESUMPTION OF RESPONSIBILITY

Criminal law; presumption of incapacity of infants as applied to "mental infants." 31 MLR 375.

Rights of the insane offender. 36 MLR 933.

610.11 CONVICTION OF LESSER CRIME, WHEN

Assault and battery; provocation by words. 37 MLR 199.

610.12 PRINCIPAL, DEFINED

Accessory after the fact in cases of homicide; aid given before completion of felony. 32 MLR 502.

Principal to a larceny as being guilty of receiving the same stolen goods. 34 MLR 255.

Where a check was drawn on account by the agent of the owner in payment of a bill and additional merchandise was obtained from the payee after giving the check, the burden was upon the state of proving beyond reasonable doubt that the owner with intent to defraud the payee instructed his agent not only to deliver the check, knowing that he had no funds in the bank to meet it, but also for the purpose of obtaining credit for additional merchandise. State v Billington, 228 M 79, 36 NW(2d) 393.

One who procures commission of a crime in one county through the agency of an innocent person is a principal and indictable in the county in which the crime was committed, even though he was not in such county at the time of the commission. Where the offense is that of giving a check without funds or credit with intent to defraud, the owner of the firm on the account of which the check was drawn was the principal although the agent delivered the check. State v Billington, 228 M 79, 36 NW(2d) 393.

An information or indictment in order to be good must aver every essential element of the crime positively and not inferentially. A defendant must know from an

information with what he is charged and against what he is required to defend himself. The information or indictment must be considered in its entirety and construed as such. It cannot be dissected and attacks should not be predicated upon any portion by itself. In the instant case the information states a public offense. State v Suess, 236 M 174, 52 NW(2d) 409.

610.13 ACCESSORY, DEFINED

Accessory after the fact in cases of homicide; aid given before completion of felony. 32 MLR 502.

610.14 TRIAL AND PUNISHMENT OF ACCESSORIES

Conviction as an accessory after the fact to voluntary manslaughter based on aid given before completion of felony. 32 MLR 502.

610.16 PUNISHMENT OF FELONY WHEN NOT FIXED BY STATUTE

A prisoner convicted of an attempt to escape from the state reformatory at St. Cloud while serving an indeterminate sentence should be imprisoned for a term of three and a half years. OAG Dec. 1, 1949 (341-K-5).

610.17 MINIMUM TERM OF IMPRISONMENT FOR FELONY

Procedural aspects of the Youth Conservation Act. 32 MLR 471, 34 MLR 532.

A person sentenced to five years in the penitentiary and whose sentence was stayed and the person sent to the workhouse for one year and thereafter placed on probation, was entitled to credit for the time spent in the workhouse, to be credited against his 5-year sentence. OAG Sept. 30, 1948 (341-K-10).

610.20 PUNISHMENT OF GROSS MISDEMEANOR WHEN NOT FIXED BY STATUTE

Where a statute defines a crime as a gross misdemeanor and prescribes imprisonment as punishment therefor, without fixing the place of such imprisonment, commitment must be to the county jail rather than to the state prison or reformatory. State v Masteller, 232 M 196, 45 NW(2d) 109; State v Brandvold, 232 M 202, 45 NW(2d) 111.

Where the legislature intended that the sale of intoxicating liquor without a license would constitute a gross misdemeanor, with a prescribed punishment of imprisonment for not more than one year or by a fine of not more than $1,000, the municipal court of the city of St. Paul was without jurisdiction to try such offense or render a judgment in connection therewith. City of St. Paul v Hall, ... M ....., 58 NW(2d) 761.

The warden of the state prison should not receive a convict unless he is a felon; and the fact that he is a felon must appear upon the face of the papers which constitute the commitment. Ordinarily, where a person writes a check on a bank and wilfully defrauds another, he is guilty of larceny and, consequently, is a felon. But the crime of giving a check without funds, as defined in section 622.04, is a misdemeanor and not a felony. OAG Aug. 2, 1949 (341-K-2).

610.23 FOREIGN CONVICTION OR ACQUITTAL

Prior conviction of guilt for the same act by another state or country as a defense to subsequent prosecution. 36 MLR 143.

610.27 ATTEMPTS, PUNISHMENT

HISTORY. RS 1851 c 109 s 16; PS 1858 c 98 s 16; GS 1866 c 91 s 7; GS 1878 c 91 s 7; Penal Code s 31, 515, 516; GS 1894 s 6315, 6825, 6826; RL 1905 s 4771; 1953 c 361 s 1.

An information charging unlawful attempt to take a beaver does not involve any element of the crime of illegal possession of a raw beaver skin, and where, by consent, a defendant is tried on two informations, one for an unlawful attempt to take a beaver and one for illegal possession of a raw beaver skin, the trial and acquittal on the charge of illegal possession does not involve jeopardy of any element of the charge of attempt to take. State v Ward, 225 M 208, 30 NW(2d) 349.

Defendant was indicted for "attempting bribery" of a county attorney. The agent kept the money given him by defendant and neither defendant nor the agent contacted the county attorney. To consummate an attempt to commit a crime something more than the mere solicitation of another to commit it is necessary. The mere act of preparation remote from the time and place of the intended crime, unaccompanied by overt acts performed pursuant to the attempt, are insufficient to constitute an attempt at bribery. State v Lowrie, 237 M 240, 54 NW(2d) 265.

A prisoner convicted of an attempt to escape from state reformatory at St. Cloud while serving an indeterminate sentence should be imprisoned for a term of three and a half years. OAG Dec. 1, 1949 (341-K-5).

610.28 SECOND OFFENSES, PUNISHMENT

The habitual criminal act is constitutional. State ex rel v Utecht, 230 M 582, 40 NW(2d) 441.

The alleged negligence of the accused's counsel, properly appointed by the court to represent him, in allowing inadmissible evidence to be received at the trial was not a ground for habeas corpus. The sufficiency of allegations of an information can not be challenged in habeas corpus proceedings after the judgment. If there are errors they should have been asserted at the trial, reviewed upon appeal or by writ of error. Shaw v Utecht, 232 M 82, 43 NW(2d) 781.

610.29 CONVICTION OF THREE OR MORE FELONIES, PUNISHMENT

Where record in original criminal proceedings disclosed that prior convictions were described in detail in information charging petitioner wth three prior convictions, and that petitioner had entered a plea of guilty to such convictions, judgment confining petitioner at hard labor in state prison for a term not to exceed ten years was valid. State ex rel v Utecht, 231 M 331, 43 NW(2d) 97.

Due process requires that penal legislation expressed in general and flexible terms furnish a test based upon knowable critera which men of common intelligence who come in contact with the statute may use with reasonable safety in determining its command. Section 100.29 is not so general, vague, indefinite, or uncertain as to deny due process of law. State v Suess, 236 M 174, 52 NW(2d) 409.

610.31 INFORMATION AS TO PREVIOUS OFFENSE BY PROSECUTING OFFICER AND PROCEDURE THEREON

This section imposes an absolute duty upon the county attorney to file an information where an attorney has knowledge which would subject a defendant to additional punishment under the law. OAG Aug. 21, 1951 (121-B-7).

610.34 LIFE SENTENCE, EFFECT

Effect of civil death statute on marital status. 33 MLR 319.

610.35 SENTENCES OF CONVICTS

The court may amend a sentence during the same term of court and before the prisoner is committed to the penitentiary, but may not amend such sentence after the term at which the original sentence was imposed. OAG Sept. 17, 1948 (341-K-9).

610.37 SUSPENSION OF SENTENCE

Validity of banishment as a provision or part of a sentence. 31 MLR 742.

Suspension of sentence. 33 MLR 40.

Courts have no inherent power, in the absence of statute, to suspend sentence. State v Meyer, 228 M 286, 37 NW(2d) 3.

Habeas corpus is a civil remedy, separate and apart from the criminal action, and, therefore, it may not be used as a substitute for a writ of error or appeal; as a motion to correct, amend, or vacate; or as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the person of the defendant. Ordinarily, the only function of habeas corpus after conviction for a crime is to ascertain (1) whether the court had jurisdiction of the crime and of the person of the defendant; (2) whether the sentence was authorized by law; and (3) whether the defendant was denied certain fundamental constitutional rights. Petitioner in a habeas corpus proceeding bears the burden of proof of showing the illegality of his detention. Breeding v Swenson, ... M ....., 60 NW(2d) 4.

In the exercise of its discretion a trial court may, at any time and without notice, constitutionally vacate a stay of execution and reinstate the original sentence, and the fact that a court does not state the reason for revoking the stay is a mere irregularity not going to the jurisdiction of the court. Breeding v Swenson, ... M ....., 60 NW(2d) 4.

Defendant's record is such that the court might very well conclude that he is not the type of person who would be influenced or who would profit by suspension of sentence or the supervision of a probation officer. United States v Banks, 108 F Supp 14.

Under the provisions of M.S.A., section 610.37, the court's authority to stay execution of sentence is limited to the time of imposing the sentence. Such stay shall be for the full period of the sentence. OAG Sept. 17, 1948 (341-K-9).

Where a prisoner is sentenced to prison and the sentence suspended while he is committed to the state hospital at St. Peter as a psychopathic, upon return to the sheriff who delivers him to the state prison, the time which the prisoner served as a psychopathic at St. Peter, may be deducted in computing the length of his term. OAG July 26, 1950 (341-K-10).

610.38 SUSPENSION OF SENTENCE AND PROBATION

The stay of execution of a sentence should be for the full period of the sentence. Court's authority to suspend or stay execution is limited to time of imposing the sentence. OAG Sept. 24, 1948 (341-K-9).

If a parolee from the state prison or reformatory is ordered by the board of parole to be retaken and placed in custody the expenses thereof must be paid out of the parole board fund and the sheriff must direct his bill for services and expenses to the board. OAG March 28, 1951 (390-C-9).

610.39 REVOCATION

Where a prisoner is sentenced to prison and the sentence suspended while he is committed to the state hospital at St. Peter as a psychopathic, upon return to the sheriff who delivers him to the state prison, the time which the prisoner served as a psychopathic at St. Peter, may be deducted in computing the length of his term. OAG July 26, 1950 (341-K-10).

610.41 RESTORATION TO CIVIL RIGHTS

Where a convict has been granted a commutation of his sentence, unless the commutation discloses that the conditions imposed shall extend beyond the expiration of the convict's sentence, the civil rights of the convict may be restored by the governor after the expiration of the sentence on receipt by the governor of the certifications required by law. If the commutation provides that the conditions imposed are to continue after the expiration of the original sentence, the governor should

not restore the civil rights of the convict until the board of pardons has eliminated the conditions. OAG June 30, 1948 (68-H).

Civil rights can be restored only by the governor of the state in accordance with the provisions of section 610.41. Military service and subsequent honorable discharge does not restore civil rights. OAG Feb. 25, 1952 (68-H).

One who has been convicted of a felony cannot, because of the provisions of section 340.13 and like provisions of a Minneapolis city ordinance, be granted a liquor license by the city of Minneapolis even though he has been paroled and restored to his civil rights. OAG Nov. 23, 1948 (218-G).

Person convicted of a felony and under the jurisdiction of the state board of parole and who has not been restored to civil rights was a citizen of the United States, but without the right to vote or hold public office, and the director of civil service in his discretion could permit such person to take a civil service examination if otherwise eligible therefor. OAG Feb. 9, 1950 (644-C).

610.47 INCRIMINATING TESTIMONY NOT TO BE USED

The privilege against self-incrimination is not applicable where there is a statutory immunity based on the disclosure. 34 MLR 696.

Where inference was strong that defendants were real objects of investigation being conducted by public examiner and that they objected for that reason to being required to testify, but they yielded to insistence of public examiner and gave testimony which was asserted to have been false, the constitutional privilege and statutory immunity, if any, was for past offenses, not for such offenses as might be committed while testifying under the immunity, and, hence, defendants could not successfully plead immunity from prosecution for testifying falsely before the public examiner. State v Nolan, 231 M 522, 44 NW(2d) 66.

This section does not apply to an examination conducted under section 215.16. State v Gensmer, 235 M 72, 51 NW(2d) 680.

610.49 CONVICT AS WITNESS

By statute a person convicted of a crime shall nevertheless be a competent witness, but the prior conviction may be shown to discredit his testimony. 36 MLR 735. State v Sauer, 42 M 258, 44 NW 115; Brase v Williams Sanatorium, 192 M 304, 256 NW 176.

610.52 ALIEN CONVICTS OR INSANE PERSONS, NOTICE TO UNITED STATES IMMIGRATION OFFICERS

Aliens; constitutional restraints on expulsion or exclusion. 37 MLR 440.

CHAPTER 611

RIGHTS OF ACCUSED

611.01 TO KNOW GROUND OF ARREST

Right to public trial; exclusion of public from the federal courtroom. 33 MLR 662.

Criminal jurisdiction of a state over defendant based upon presence secured by force or fraud. 37 MLR 91.

State jurisdiction not controlled by federal statute. 37 MLR 94.