REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS, AND OTHER LAWS OF A GENERAL AND PERMANENT NATURE, ENACTED BY THE LEGISLATURE IN 1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES AND FULL AND COMPLETE NOTES OF ALL APPLICABLE DECISIONS

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and addressing male persons for the purpose of soliciting the commission of any lewd, indecent or unlawful act, or for the purpose of enticing any male person into a house of prostitution or assignation, bedhouse, room, or other place for any unlawful purpose.

6. Fortune tellers, and such other like imposters.

7. A person known to be a pickpocket, thief, burglar, "yeggman" or "confidence man," and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, railroad yard, banking institution, broker's office, place of public amusement, hotel, auction room, store, shop, or crowded thoroughfare, car or omnibus, or at any public gathering or assembly. Provided, however, that this act shall not apply to any such person, unless he has been convicted of the offense which would make him known as such person, and shall not apply to any person who has been in prison for such offense, who, after being released from such imprisonment has been engaged in lawful employment, and shall not in any case apply to any such person until more than thirty days have elapsed since being released from such imprisonment.

8. A person engaged in practicing or attempting any trick or device to procure money or other thing of value, if such trick or device is made a public offense by any law of this state.

Every such person shall upon conviction thereof be punished by imprisonment not exceeding ninety days, or by a fine not exceeding one hundred dollars. ('09 c. 487 § 1)

Historical.—"An act defining who are vagrants and providing for their punishment." Approved April 24, 1909.

CHAPTER 104.

CRIMINAL PROCEDURE.

EXTRADITION.

5201. Warrant of extradition, service, etc.

Requisition papers.—It will be implied from the authentication by the Governor of the demanding state that the officer certifying to the jurat of the affidavit was a magistrate, as represented therein. The venue of the offense and of the affidavit were properly stated therein, and the affidavit charged the commission of a crime with sufficient definiteness. The warrant and requisition papers upon which it was based, and which were part of the return, were sufficient, although the warrant recited that relator was charged upon complaint with the crime of forgery. State ex rel. Grande v. Bates, 101 Minn. 303, 112 N. W. 260.

EXAMINATION OF OFFENDERS—COMMITMENT—BAIL.

5251. Certifying testimony.

See section [5251—] 1.

[5251—]1. Same.—All examinations and recognizances, taken by any magistrate in pursuance of the provisions of this chapter, shall be certified and returned by him to the clerk of the court, before which the party charged is bound to appear, within ten days after such examination has been had or said recognizance tak-

en, and shall be filed in said court; and if such magistrate neglects or refuses to return the same he may be compelled forthwith by rule of court, and, in case of disobedience, may be proceeded against by attachment as for contempt. (G. S. 1894, § 7156, as amended by Laws 1905, c. 179, § 1.)

Historical.—"An act to amend section seven thousand one hundred and fifty-six of the General Statutes of Minnesota for 1894, relating to examinations and recognizances." Approved April 15, 1905.

G. S. 1894, § 7156, was G. S. 1866, c. 106, § 24, repealed by R. L. § 5518. As to the construction of Laws 1905, c. 179, see R. L. § 5504.

GRAND JURIES.

5262. When to be drawn—Who liable.—A grand jury shall be drawn for every term of the district court in each county, provided, that, in counties containing not more than twenty-five thousand inhabitants, whenever it shall be made to appear to the judge of such court that there are no matters to be presented to such grand jury not properly cognizable before a justice of the peace, he may by order direct that no grand jury be summoned for such term, and in counties of less than fifteen thousand inhabitants no grand jury shall be summoned for any such term unless at least fifteen days before the first day thereof the judge shall file with the clerk an order directing the summoning of such grand jury; but nothing herein shall be so construed as to prevent the issue of a special venire for a grand jury as provided by law. Every qualified voter shall be liable to be drawn as a grand juror, except as hereinafter provided. Provided, further, that in all districts consisting of but one county, wherein but one term of court is held annually, a judge, or the judges of such court, may by order, require and prescribe that a grand jury shall be drawn and serve at any specified time, and for any designated period during such term of court. (R. L. § 5262, as amended by Laws 1909, c. 221, § 2.)

5263. Exemptions—Disqualifications.

See sections [4777—]1, [4777—]2.

5268. Grounds of excuse—Record.—The court shall not excuse from service upon either grand or petit jury any person duly drawn and summoned, except upon the ground that he is either physically or mentally unable or unfit, in the opinion of the court, to attend or serve as a juror, or by reason of serious sickness of some immediate member of his family; provided, that in counties having more than two terms of court a year the court may, for other sufficient causes, excuse a juror from service at the term of court or period of service for which he was so drawn and summoned until a later term or period during the same year, and in such case such juror shall report for service and serve at such later term or period with the same force and effect as though he had been regularly drawn and summoned for such later term or period. The name of each person excused, with the ground thereof, shall be entered by the clerk among the proceedings of the court, preserved, and open to inspection by all parties. (R. L. § 5268, as amended by Laws 1909, c. 407, § 1.)

5295. Indictment—How found and indorsed—Names of witnesses.

Indorsing names of witnesses.—The state is not required to call all whose names are indorsed. If not called by the state, the witness may be called by defendant, and the failure of either party to call the witness may, in the discretion of the court, be commented upon by either counsel before the jury. State v. Sheltrey, 100 Minn. 107, 110 N. W. 353.

INDICTMENTS.

5297. Contents.

Cited in State v. MacDonald, 105 Minn. 251, 117 N. W. 482.

Better description unknown.—In an indictment under section 5118, the description of the property deposited, in connection with the allegation that a better description was unknown, was sufficient. State v. Quackenbush, 98 Minn. 515, 108 N. W. 953.

Surplusage.—"Good and lawful money and current as such under the laws of the state," meant good and lawful money such as is in common circulation in the community; the words "under the laws of the state" being surplusage. State v. Quackenbush, 98 Minn. 515, 108 N. W. 953.

5298. Form.

Cited in State v. MacDonald, 105 Minn. 251, 117 N. W. 482.

5299. To be direct and certain.

Certainty.—An indictment must set out with directness and certainty the particular facts necessary to constitute the complete offense charged. State v. MacDonald, 105 Minn. 251, 117 N. W. 482.

5300. Fictitious name.

Cited in State v. MacDonald, 105 Minn. 251, 117 N. W. 482.

5321. Evidence of ownership.

Proof of ownership—Variance.—There was no material variance between the proof and allegations as to the ownership of the sugar and building from which it was stolen. State v. Whitman, 103 Minn. 92, 114 N. W. 363.

INFORMATIONS.

[5321—]1. Powers of district court.—The district courts of this state shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for the crimes, misdemeanors and offenses, specified in section four [5321—4] of this act and to issue writs and process and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictment. ('05 c. 231 § 1)

Historical.—"An act relating to proceedings in criminal cases." Approved April 17, 1905.

[5321—]2. Information shall state, what—Provisions applicable.—The offense charged in any such information shall be stated in plain and concise language, without prolixity or unnecessary repetition, and all the provisions of law relating to indictments and for testing the validity thereof, shall apply to informations, and all provisions of law applying to prosecutions upon indictments, to writs and process thereon, and to the issuing and service thereof; to motions, pleadings, trials and punishments, or to the passing or execution of any sentence thereon, and to all other proceedings in cases of indictment, whether in the court of original or appellate jurisdiction, shall to the same extent and in the same manner, as near as may be, apply to informations and all prosecutions and proceedings thereon. ('05 c. 231 § 2)

[5321—]3. Preliminary examination.—No information shall be filed against any person for any offense, until such person shall have had a preliminary examination as provided by law, before a justice of the peace or other examining magistrate or officer, unless such person shall waive his right to such preliminary examination. ('05 c. 231 § 3)

[5321—]4. Court may direct filing of information, when—Plea.—That in all cases where a person charged with a criminal offense shall have been held to the district court for trial by any court or magistrate, and in all cases where any person shall have been com-

mitted for trial and is in actual confinement or in jail by virtue of an indictment or information pending against him, the court having trial jurisdiction of such offense or of such indictment or information shall have the power at any time, whether in term or vacation, upon the application of the prisoner in writing, stating that he desires to plead guilty to the charge made against him by the complaint, indictment or information, or to a lesser degree of the same offense to direct the county attorney to file an information against him for such offense, if any indictment or information has not been filed, and upon the filing of such information and of such application, the court may receive and record a plea of guilty to the offense charged in such indictment or information, or to a lesser degree of the same offense and cause judgment to be entered thereon and pass sentence on such person pleading guilty, and such proceedings may be had either in term time or in vacation, at such place within the judicial district where the crime was committed as may be designated by the court. And whenever such plea is received at any other place than the county seat of the county wherein the crime charged in the indictment or information was committed, the sheriff or his deputy shall take the defendant to the place designated by the court, and the county attorney and clerk of district court, or his deputy, of the county wherein the crime charged in the indictment or information was committed, shall attend the hearing for the purpose of taking part in the proceedings and recording the plea of the defendant and entering judgment thereon. And the expense of the sheriff, clerk of district court or their deputies, and county attorney, necessarily incurred and paid by them in attending on such proceedings shall be a charge on the county wherein the crime charged in the indictment or information was committed, and shall be allowed and paid by the county commissioners of said county in the same manner as other claims against the county. This section shall not apply to cases where the punishment for the offense to which the prisoner desires to plead guilty may exceed seven years' imprisonment in the state's prison. Provided, that no plea of guilty shall be received or entered under the provisions of this section, unless the person charged in the indictment or information be represented by competent counsel, and in case he shall have no counsel the court shall appoint competent counsel to appear for such accused, and the fees of such attorney shall be paid in the manner provided in section 4789, and the court shall not accept such plea of guilty or pass sentence thereon unless it is fully satisfied that the accused has had his action properly considered and advised by competent counsel. (Laws 1905, c. 231, § 4, as amended by Laws 1909, c. 398, § 1.)

[5321—]5. Form of information.—Such information may be in the following form:

State of Minnesota, } District Court,
} ss.
County of ———, } ——— Judicial District.

The State of Minnesota,
against
(The name of the accused.)

I, ————, county attorney for said county, hereby inform the court that on the ——— day of ———, in the year ———, at said county, A. B. (name or alias of accused) did (state the offense) against the peace and dignity of the State of Minnesota.

Dated, ————

————,
County Attorney.

('05 c. 231 § 5)

ISSUES AND MODE OF TRIAL.

5360. Joint indictment, separate trial.

Misdemeanor.—Granting a separate trial to each of several defendants, indicted jointly for a misdemeanor is discretionary. State v. Sederstrom, 99 Minn. 234, 109 N. W. 113.

5365. Charge of court.

Charge—In general.—It is error for the court to review the evidence in an argumentative manner, or to single out and give undue prominence to the testimony of particular witnesses. State v. Yates, 99 Minn. 461, 109 N. W. 1070.

—— **Failure to request instructions.**—Defendant must request such instructions as he wishes; and, if this is not done, error cannot be predicated upon failure of the court to give particular instructions. State v. Zempel, 103 Minn. 428, 115 N. W. 275.

Cited in Mulcahy v. Dieudonne, 103 Minn. 352, 115 N. W. 636.

—— **Jury judges of facts.**—Where the charge is argumentative, the error is not cured by an instruction that the jury are the sole judges of the weight and effect of the evidence. State v. Yates, 99 Minn. 461, 109 N. W. 1070.

The requirement that the judge shall instruct the jury that they are exclusive judges of questions of fact does not apply to civil cases. Bonness v. Felsing, 97 Minn. 227, 106 N. W. 909, 114 Am. St. Rep. 707.

5366. Jury—How kept while deliberating.

Before final submission.—Whether the jury in a capital case should be permitted to separate during the trial and before the final submission of the case is a matter within the sound discretion of the court. State v. Williams, 96 Minn. 351, 105 N. W. 265.

5375. Insanity, etc., of defendant.—Whenever any person under indictment or information, and before or during the trial thereon and before verdict is rendered, shall be found to be insane, an idiot, or an imbecile, the court in which such indictment or information is filed, shall forthwith commit him to the proper state hospital or asylum for safe keeping and treatment; and whenever at such time any such person shall, in addition, be found to have homicidal tendencies, such court shall forthwith commit him to the asylum for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at the institution to which he is thus committed until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information. (R. L. § 5375, as amended by Laws 1907, c. 358, § 1.)

5376. Acquitted on ground of insanity.—Whenever during the trial of any person on an indictment, or information, such person shall be found to have been, at the date of the offense alleged in said indictment, insane, an idiot, or an imbecile and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict, or upon the minutes, and the court shall thereupon, forthwith, commit such person to the proper state hospital or asylum for safe keeping and treatment; and whenever in the opinion of such jury or court such person, at said date, had homicidal tendencies, the same shall also be stated in said verdict or upon said minutes, and said court shall thereupon forthwith commit such person to the hospital for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at said hospital or asylum to which he is thus committed. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the hospital or asylum where such person is confined shall certify in writing to such committing court that, in his opinion, such person is wholly recovered and that no person will be endangered by his discharge. Provided, that nothing herein shall be construed as preventing the transfer of any person from one in-

stitution to another by the order of the board of control, as it may deem necessary. (R. L. § 5376, as amended by Laws 1907, c. 358, § 1.)

CHALLENGING JURORS.

5383. Challenge to panel.

In general.—Failure to comply with statutory requirements in summoning and drawing a petit jury is not ground for new trial, when the record shows that a fair and impartial jury was secured, and that defendant accepted the jury when he had numerous peremptory challenges unused. State v. Quirk, 101 Minn. 334, 112 N. W. 409.

APPEALS AND WRITS OF ERROR.

5403. Return.

Payment of fees.—The Supreme Court will order a return to be made without payment of clerk's fees, if appellant is unable to pay them. State v. Fellows, 98 N. W. 179, 107 N. W. 542, 108 N. W. 825.

5405. Proceedings in supreme court.

G. S. 1894, § 7391, cited in State v. Weiss, 97 Minn. 125, 105 N. W. 1127; State v. Cowing, 99 Minn. 123, 108 N. W. 851.

New trial—Error without prejudice.—If substantial error is committed, it is ground for new trial, unless it appears that defendant could not have been prejudiced thereby; but, if it affirmatively appears from the whole record that defendant could not have been prejudiced by the error, it is not ground for new trial. The fact that some of the jurors during the trial read newspaper articles in reference to defendant and his trial was not prejudicial error. State v. Williams, 96 Minn. 351, 105 N. W. 265.

—— **Newly discovered evidence.**—A new trial should not be granted upon the ground of newly discovered evidence which is merely impeaching. State v. Sheltrey, 100 Minn. 107, 110 N. W. 353.

See note under section 4198.

5409. Certifying proceedings—Stay.

Operation in general.—The court has no power to certify any questions arising in the midst of a trial. It must be either in the course of preliminary proceedings or upon conviction. State v. Billings, 96 Minn. 533, 104 N. W. 1150.

JUDGMENTS AND EXECUTION THEREOF.

[5412—]1. Expenses of execution.—Whenever any person has been convicted of murder in the first degree and sentenced to death, and the warrant has been issued and delivered to the proper sheriff for the purpose of carrying such sentence into effect, such sheriff shall have authority to make the preparations provided by law for such execution, including the employment of necessary help, at the expense of the county, and upon rendering to the board of county commissioners an itemized and verified statement of such necessary and reasonable expense said board of county commissioners shall allow and pay the same with reasonable compensation to such sheriff out of the general revenue funds of said county, and in all cases where such duties have within three years heretofore been performed and the expenses herein provided for have been incurred but not paid, the board of county commissioners is hereby authorized and directed to allow and pay the same upon the presentation of such reasonable bill by the then sheriff. ('05 c. 290 § 1)

Historical.—"An act to provide for paying the expenses incurred by the sheriff of any county of this state in executing a death warrant." Approved April 19, 1905.

5422. Witnesses to execution—Newspaper publication.

Constitutionality.—Laws 1889, c. 20, which is the foundation of this section, complied with the requirements of Const. art. 4, § 27, with respect to the title, and was not in conflict with article 1, §§ 3, 6. State v. Pioneer Press Co., 100 Minn. 173, 110 N. W. 867, 9 L. R. A. (N. S.) 480, 117 Am. St. Rep. 684.