

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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10503. Indians located on reservations.

Tribal Indians are immune from arrest or prosecution under state laws for acts committed upon their reservations or allotments. Op. Atty. Gen., Dec. 2, 1931.

Though it may be unlawful for Indian to take wild animals on allotment, a tribal Indian is not personally amenable to state criminal laws. Op. Atty. Gen., Apr. 11, 1933.

Muskrats' skins taken by tribal Indian on allotment may be seized as contraband where not intended to be used on reservation by Indian or his tribe. Id.

10520. Fraudulently presenting claims, etc.

If one presents a claim against a town for bounties on gophers and crows which he did not kill within the town, he violates this section. Op. Atty. Gen., Mar. 18, 1931.

10522-1. Wild flowers protected.

Transplanting moccasin flowers from marshes to home flower garden is not violation of this section, but might afford cause of action for damages. Op. Atty. Gen., June 12, 1930.

There is no other legislation pertaining to picking of wild flowers. Op. Atty. Gen., May 9, 1933.

10530. Railway cars obstructing roads and streets.

Civil liability for placing car so as to obstruct view of main track. 174M404, 219NW554.

10534. Application of term "vagrancy" and extension of the same so as to include various persons.

(5).

Evidence showing solicitation of two men for purposes of sexual intercourse for hire is sufficient to sustain a conviction of prostitution. State v. Burke, 187M336, 245 NW153. See Dun. Dig. 7860c.

10536-1. Employers not to accept consideration for securing employment.—Any employer, or any manager, superintendent, foreman or other representa-

tive of any employer, who directly or indirectly demands or accepts from any employe any part of such employe's wages or other consideration, or any gratuity, in consideration of giving to or securing or assisting in securing for any employe any employment with such employer, shall be guilty of a misdemeanor. (Act Mar. 2, 1933, c. 47.)

10536-2. Circuses prohibited, when.—It shall be unlawful for any person or persons, firm or corporation to conduct any circus in any city or village, or within a radius of six miles of any city or village, within a period of eighteen days immediately preceding the dates of the annual Minnesota State Fair, or during the time of holding such fair. Provided, however, any such circus may be exhibited during this period of time, if and when said circus is engaged or contracted by an accredited Agricultural Society to form a part of the entertainment program of the annual fair of said accredited Agricultural Society. Provided that nothing herewith contained shall exempt said circus from obtaining proper license or permit as provided by law. (Act Apr. 21, 1933, c. 357, §1.)

10536-3. Violation a gross misdemeanor.—Any person or persons, firm or corporation violating the provisions of this Act shall be guilty of a gross misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment. (Act Apr. 21, 1933, c. 357, §2.)

10536-4. All Acts and parts of Acts inconsistent herewith are repealed. (Act Apr. 21, 1933, c. 357, §3.)

CHAPTER 104

Criminal Procedure

SEARCH WARRANTS

10537. When issued.

There was no error in condemning and destroying slot machines, though there was no search warrant. 176M 346, 223NW455.

10540. Property seized—How kept and disposed of.—Whenever, any officer, in the execution of a search warrant, shall find any stolen property, or seize any other things for which search is allowed by law, the same shall be safely kept by direction of the court or magistrate, so long as may be necessary for the purpose of being produced as evidence on any trial, and then the stolen property shall be returned to the owner thereof, and the other things seized destroyed under the direction of the court or magistrate. Any money found in gambling devices when seized shall be paid into the county treasury, or, if such gambling devices are seized by a police officer of a municipality, such money shall be paid into the treasury of such municipality. (R. L. '05, §5199; G. S. '13, §9036; Apr. 13, 1929, c. 177.)

Court erred in ordering that destroyed slot machines should be sold and proceeds of sale and money found in slot machines turned into county treasury. 176M346, 223NW455.

Gambling devices suitable only for use as such may be destroyed under Stillwater ordinance without first prosecuting the keepers thereof. Op. Atty. Gen., June 19, 1931.

Money found in slot machines may not be confiscated, under Stillwater ordinance, and paid into city treasury. Op. Atty. Gen., June 19, 1931.

This section contains no provision for procedure which would be applicable to the forfeiture of money found in gambling devices. Op. Atty. Gen., June 19, 1931.

Where sheriff seized slot machines containing money and proprietor died before trial after pleading not guilty, slot machines could be destroyed upon summary order of court and probably money could be paid into county treasury, but safest course would be to bring proceeding in rem and make personal representative of proprietor a party. Op. Atty. Gen., Sept. 15, 1932.

EXTRADITION

10542. Warrant of extradition, service, etc.**½. In general.**

Extradition is governed by the Constitution and laws of the United States, and chapter 19, Laws 1929, ante, §40, cannot interfere or delay its operation. State v. Moeller, 182M369, 234NW649. See Dun. Dig. 8835, 1721.

A prisoner who has been removed from demanding state by federal authorities is nevertheless a fugitive from justice in an asylum state and must be delivered to demanding state upon proper extradition process. State v. Wall, 187M246, 244NW811. See Dun. Dig. 3705.

County attorney is not required to appear for and on behalf of the sheriff in habeas corpus proceedings brought to discharge a person held by the sheriff for the purpose of being extradited to another state. Op. Atty. Gen., May 6, 1931.

Sheriff may charge officials of another state a fee of \$4.00 per day in transporting a prisoner demanded by another state to the boundary line of this state. Op. Atty. Gen., May 6, 1931.

6. Requisition papers.

Whether there was a compliance with Georgia statutes as regarded prerequisites for issuance of requisition warrant was a matter for the governor of that state, and a matter not reviewable by the courts of this state. 178M363, 227NW176.

It is enough that the indictment shows in general terms the commission of a crime; it need not be sufficient as a criminal pleading. 178M368, 227NW176.

11. Review by courts.

Neither the good faith of the prosecution nor the guilt or innocence of the fugitive is open to inquiry. 178M368, 227NW176.

Prerequisites required by foreign statute not for court to review. 178M368, 227NW176.

Discharge by writ of habeas corpus of a prisoner held upon an extradition warrant for reason that courts of one state hold that he is not a fugitive from justice is not res judicata in habeas corpus proceedings in another state. State v. Wall, 187M246, 244NW811. See Dun. Dig. 3713, 5207.

Governor's rendition warrant creates a presumption that accused is a fugitive from justice, and to entitle a prisoner held under such a warrant to discharge on habeas corpus evidence must be clear and satisfactory that he was not in demanding state at time alleged crime was committed. State v. Owens, 187M244, 244NW820. See Dun. Dig. 3713(30).

10543. Fugitive from another state arrested, when.

A demand for extradition complies with the federal statute when it clearly shows that a criminal charge is pending in the demanding state, even though the papers are insufficient as a criminal pleading under the laws of this state. State ex rel. King v. Wall, 181M456, 232 NW788. See Dun. Dig. 3706.

10544. May give recognizance, when.

Where a person is held as a fugitive from justice under a rendition warrant issued by the Governor of this state he ordinarily should not be released on bail pending a decision in a habeas corpus proceeding to test the legality of his arrest. State ex rel. Hildebrand v. Moeller, 182M369, 234NW649. See Dun. Dig. 3713.

Where bond to appear in municipal court is forfeited and amount paid into court, it should be turned over to county. Op. Atty. Gen., Oct. 5, 1929.

ARRESTS

10566. Defined—By whom made—Aiding officer.

Deputy sheriff residing outside of village may make arrest within village for violation of its ordinances, fees of sheriff being paid by village, but village has no authority to compensate deputy in addition to fees prescribed. Op. Atty. Gen., May 26, 1932.

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

Threat to shoot an officer if he takes property under replevin papers is a misdemeanor under §10431 and the officer may arrest the offender without a warrant. 177M307, 225NW148.

Whether officer failed to take prisoner before magistrate within a reasonable time held for jury. 177M307, 225NW148.

If restraint after receiving warrant was illegal, prisoner had a right of action for false imprisonment, irrespective of his release. 177M307, 225NW148.

Where an officer arrests a person without a warrant, the burden rests upon the officer to plead and prove justification. Otherwise the arrest is prima facie unlawful. Evans v. J., 182M282, 234NW292. See Dun. Dig. 512, 3729(91).

In action for false imprisonment, whether the plaintiff was drunk at the time of arrest held for jury. Evans v. J., 182M282, 234NW292. See Dun. Dig. 3732a(1).

Whether the sheriff detained the plaintiff in the county jail for unreasonable time before bringing her before magistrate or obtaining warrant held question for jury. Evans v. J., 182M282, 234NW292. See Dun. Dig. 517, 3732a(1).

Whether the sheriff of the county directed or authorized the constable to make the arrest was under the evidence, a question of fact for the jury. Evans v. J., 182M282, 234NW292. See Dun. Dig. 512, 3732a(1).

10575-1. Arrests any place in state.

Any peace officer, such as a constable, may make an arrest anywhere in the state for an offense committed in his local jurisdiction. Op. Atty. Gen., Nov. 22, 1929.

EXAMINATION OF OFFENDERS—COMMITMENT—BAIL

10577. Proceedings on complaint—Warrant.

1. Nature of proceeding.

The preliminary examination referred in §10666 is that provided for by §10577 to 10587. 175M508, 221NW900.

5. The complaint.

An objection that a criminal complaint is void for duplicity must be taken at or before trial, or it will be considered as waived. 175M222, 220NW611.

A justice has no authority to issue a subpoena requiring the appearance of a witness until the complaint has been signed and an action is pending before him. Op. Atty. Gen., Aug. 5, 1930.

10579. Offender may give recognizance, etc.

Defendant held to have broken his bond by failing to appear on the day that his case was called for trial, though he appeared at a later date and during the term and entered a plea of guilty. 26F(2d)104.

10585. Examination—Rights of accused.

An automobile belonging to the victim of an assault while in custody of the law is subject to the order of the magistrate before whom the proceeding is pending. Op. Atty. Gen., Feb. 3, 1932.

A photographer who takes photographs for the state in investigating a criminal case is an employee or agent of the state, and plates in his hands are no more subject to examination or production in behalf of the defendant than in the hands of the sheriff or county attorney. Op. Atty. Gen., Feb. 3, 1932.

10587. Prisoner discharged, when—Offenses not bailable.

Accused in a criminal case has no right to compel the production at preliminary examination of evidence obtained by the state in the course of its investigation. Op. Atty. Gen., Feb. 3, 1932.

Court commissioner has authority to fix bail of one charged with an assault in the first degree. Op. Atty. Gen., Feb. 3, 1932.

10588. Bail—Commitment.

This section has no application to bail money given to a United States court commissioner. Moerke. 184M314, 238NW690. See Dun. Dig. 724b.

2. Bail.

Applications for bail should be addressed to district court after return of magistrate is filed in district court, if not sooner. Op. Atty. Gen., Apr. 3, 1929.

10592. Certifying testimony.

The court, not the jury, has the benefit of knowledge disclosed by testimony certified by magistrate in the files of the case in the office of the clerk of the trial court. State v. Irish, 183M49, 235NW625. See Dun. Dig. 2438(8).

It is not necessary for a justice of the peace to make a return to the clerk of the district court of a preliminary hearing where the defendant is discharged and not bound over. Op. Atty. Gen., Dec. 19, 1931.

10593. Proceedings on default.

Defendant held to have broken his bond by failing to appear on the day that his case was called for trial, though he appeared at a later date and during the term and entered a plea of guilty. 26F(2d)104.

10595. Action on recognizance—Not barred, when.

26F(2d)104.

10598. Application for bail—Justification.

Op. Atty. Gen., Apr. 3, 1929; note under §10588.

10602-4. Corporate bonds authorized in criminal cases.—Any defendant required to give a bond, recognizance or undertaking to secure his appearance in any criminal case in any court of record, may, if he so elects, give a surety bond, recognizance or undertaking executed by a corporation authorized by law to execute such bonds, recognizances or undertakings, provided, that the amount of the bond, recognizance or undertaking as fixed by the court must be the same regardless of the kind of bond, recognizance or undertaking given. (Act Apr. 25, 1931, c. 386, §1.)

GRAND JURIES

10622. Evidence—For defendant.

1. In general.

A witness before a grand jury may not refuse to answer questions because they have not been ruled upon by the court or because they seem to relate only to an offense, the prosecution of which is barred by a statute of limitation. 177M200, 224NW838.

Date of alleged larceny of money by employee withdrawing from bank account should be alleged as first act during six months' period, so that subsequent acts during period could be proved. Op. Atty. Gen., Feb. 2, 1933.

10625. Matters inquired into.

A witness before a grand jury may not refuse to answer questions because they have not been ruled upon by the court or because they seem to relate only to an offense, the prosecution of which is barred by a statute of limitation. 177M200, 224NW838.

10637. Indictment—How found and indorsed—Names of witnesses.

A county attorney has not the power to institute a prosecution where the grand jury has once passed upon the evidence and returned a no-bill without first obtaining a court order in advance. Op. Atty. Gen., Oct. 19, 1931.

Where the grand jury has actually considered a specific charge and returned no-bill, the matter may be submitted to another jury again only by direction of the district court. Op. Atty. Gen., Oct. 19, 1931.

4. Indorsing names of witnesses.

It was not fatal that names of some who appeared before grand jury were not endorsed on indictment, already containing names of 23 witnesses. State v. Waddell, 187M191, 245NW140. See Dun. Dig. 4353.

10638. Indictment presented, filed, and recorded.

It is not proper in district court to include in one file several charges against the same defendant, even though these charges arise out of the same transaction. Op. Atty. Gen., April 28, 1931.

INDICTMENTS

10639. Contents.

Pendency of a proceeding for preliminary examination in municipal and justice court does not prevent the finding of an indictment by the grand jury. 175M607, 222 NW280.

Indictment charging maintenance of a liquor nuisance, held sufficient. 177M278, 225NW20.

4. The charging part.

Putting a person in fear of injury should be expressly alleged in a robbery indictment if it is desired to introduce evidence thereon. Op. Atty. Gen., Dec. 15, 1931.

4½. Joinder of offenses.

Where partners in a store are robbed, and robber takes money from the persons of each and from the store till, three offenses are committed, and there should be three separate indictments. Op. Atty. Gen., Dec. 15, 1931.

Where two or more persons are robbed at the same time, a separate offense is committed as to each and separate indictments are necessary. Op. Atty. Gen., Dec. 15, 1931.

18. Following language of statute or ordinance.

Indictment charging that defendant did "ask, agree to receive, and receive" a bribe, was not duplicitous or repugnant. 178M437, 227NW497.

10641. To be direct and certain.

1. Allegations must be direct.

Indictment charging maintenance of a liquor nuisance, held sufficient. 177M278, 225NW20.

3. Certainty.

Indictment charging that defendant did "ask, agree to receive, and receive" a bribe, was not duplicitous or repugnant. 178M437, 227NW497.

10642. Fictitious name.

Misnomer of defendant in criminal complaint and warrant may be corrected by amendment, and is an irregularity which is waived by plea to indictment or information after waiver or examination in municipal court. 179M53, 228NW437.

10644. Time, how stated.

An information may be amended on trial, and such an amendment may consist of changing the date of the commission of the crime. State v. Irish, 183M49, 235NW 625. See Dun. Dig. 4374(01).

10645. Erroneous allegation as to person injured.

Alleged variances between the proofs and the facts alleged concerning ownership of the stolen goods and the place from which they were stolen were not material. 172M139, 214NW785.

10646. Words of statute need not be followed.

Where indictment charged extortion by threat to expose another to disgrace by accusing him of operating a gambling house, proof that money was extorted by threat to arrest him for operating such house, held not a material variance. 179M439, 229NW558.

10647. Tests of sufficiency.

Indictment charging maintenance of a liquor nuisance, held sufficient. 177M278, 225NW20.

(4).

Indictments charging that offense occurred in a given county, without going further, are upheld. State v. Putzier, 183M423, 236NW765. See Dun. Dig. 4373(43), (44), (45).

(5).

An information may be amended on trial, and such an amendment may consist of changing the date of the commission of the crime. State v. Irish, 183M49, 235NW 625. See Dun. Dig. 4374(01).

10648. Formal defects disregarded.

See also notes under §10752.

Information alleging the stealing of men's clothing in the nighttime without alleging that it was taken from a building, charged grand larceny in the second degree, and not grand larceny in the first degree. 172 M139, 214NW785.

There was no fatal variance where information charged carrying of a revolver and proof showed weapon to be an automatic pistol. 176M238, 222NW 925.

Indictment charging maintenance of a liquor nuisance, held sufficient. 177M278, 225NW20.

Rule of variance is not strictly applied. Proof of crediting amount not variance from allegation of receiving money as bribe. 178M437, 227NW497.

Reception of evidence. Id.

Testimony of a conspirator that he and his associates committed other offenses, held not prejudicial error where the commission of the offense for which the prosecution was had was undisputed. 179M439, 229NW558.

An information may be amended on trial, and such an amendment may consist of changing the date of the commission of the crime. State v. Irish, 183M49, 235NW 625. See Dun. Dig. 4430(01).

While a deputy public examiner should not have been interrogated as a witness for the state on direct examination concerning statements made by defendant in response to a subpoena, the examination did not go far enough along that line to prejudice defendant, both the statements in question and their truth having been established by other evidence. State v. Stearns, 184M 452, 238NW895. See Dun. Dig. 10337-10343.

There being no question of authenticity of indictment, and none as to its substance, misnomer of deceased in minutes of grand jury, held immaterial. State v. Waddell, 187M191, 245NW140. See Dun. Dig. 4355.

Assertion by the county attorney that "state tells you" defendant is guilty, disapproved; but held without prejudice. State v. Waddell, 187M191, 245NW140. See Dun. Dig. 2478.

In prosecution for unlawful possession of intoxicating liquor, failure to strike testimony of policeman that caramel coloring found on premises was used for coloring moonshine, held not reversible error. State v. Olson, 187M527, 246NW117. See Dun. Dig. 4945.

Clause in instruction that presumption of innocence is for benefit of innocent person and not intended as a shield for guilty, was improper but not prejudicial. State v. Bauer, 249NW40. See Dun. Dig. 4365.

An indictment charging a violation of the state prohibition laws may be amended by including an allegation of a prior conviction. Op. Atty. Gen., Dec. 5, 1929.

10654. Compounding felony indictable.

Complaint held not bad for duplicity, and evidence held to support conviction. 181M106, 231NW804.

10655. Limitation.

Prosecution of guardian of incompetent for grand larceny in embezzling money, held not barred by limitations. State v. Thang, 246NW891. See Dun. Dig. 2419a.

Limitations begin to run in an embezzlement case from the time of the actual conversion of the money or property, even though the crime is not discovered, except in the case of guardians as to which limitations starts to run from the time when a demand and failure to pay occur. Op. Atty. Gen., Jan. 11, 1932.

Where an indictment for an offense other than murder was dismissed some 10 years after it was returned, a subsequent indictment is barred by limitations. Op. Atty. Gen., Mar. 23, 1933.

10663. Evidence of ownership.

Evidence held to sustain conviction. 175M607, 222NW 280.

INFORMATIONS

10664. Powers of district court.

175M508, 221NW900; note under §10666.

10665. Information shall state, what—Etc.

Information alleging the stealing of men's clothing in the nighttime, without alleging that it was taken from a building, charged second degree and not first degree larceny. 172M139, 214NW785.

An information may be amended on trial, and such an amendment may consist of changing the date of the commission of the crime. State v. Irish, 183M49, 235NW 625. See Dun. Dig. 4430.

10666. Preliminary examination.

Prosecution under §9931-2, permitting increased punishment of habitual criminals, may be initiated by information though a sentence of imprisonment for more than 10 years may result. 175M508, 221NW900.

This section has no application to the procedure under §4 of Laws 1927, c. 236 (§9931-3) and is not repealed by that act. 175M508, 221NW900.

The preliminary examination referred to in this section is that provided for by §§10577 to 10587. 175M508, 221NW900.

Pendency of a proceeding for preliminary examination in municipal or justice court does not prevent the finding of an indictment by the grand jury. 175M607, 222 NW 280.

The court, not the jury, has the benefit of knowledge disclosed by the files of the case in the office of the clerk of the trial court as to evidence on preliminary examination. State v. Irish, 183M49, 235NW625. See Dun. Dig. 2431.

10667. Court may direct filing of information.

175M508, 221NW900; note under §10666.

ARRAIGNMENT OF DEFENDANT

10678. Defendant informed of his right to counsel.

It is not the duty of a justice of the peace to advise the defendant that he is entitled to have assistance of counsel in a defense in a prosecution under a city ordinance. 175M222, 220NW611.

Right of defendant to appeal after plea of guilty in municipal court. Op. Atty. Gen., Dec. 9, 1930.

PLEAS

10695. Pleas to indictment—Oral, etc.

Plea of former jeopardy cannot be presented by motion on affidavits, but must be urged by formal plea, the issues of fact in which must be tried by jury. 180M439, 231NW6.

A plea of guilty does not preclude a defendant from raising, for the first time on appeal, the question of whether or not the complaint, information, or indictment charges a public offense. State v. Parker, 183M 588, 237NW409. See Dun. Dig. 2491.

10696. Plea of guilty.

A plea of guilty if withdrawn by leave of the court is not admissible upon the trial of the substituted plea

of not guilty. 173M293, 217NW351.

Where plea of guilty, sentence and judgment are set aside, it is error on trial to require defendant to state on cross-examination what he said before the presiding judge after his plea preliminary to sentence. 174M590, 219NW926.

CHANGE OF VENUE

10701. Place of trial—Change of venue.

1. Place of trial.

Threats of criminal prosecution and exposure to disgrace made in one county, which frightened the threatened person into the payment of money in another county, sustain a conviction of extortion in the latter county. *State v. McKenzie*, 182M513, 235NW274. See Dun. Dig. 2423, 3701.

Prosecution for embezzlement by one making collections in various counties should be had in county of his place of business. *Op. Atty. Gen.*, July 28, 1932.

3. Change of venue.

Mere fact that newspapers aroused the public against the perpetrator of the crime in question held not to require a change of venue. 171M414, 214NW280.

Court did not abuse discretion in denying change of venue in murder prosecution. *State v. Waddell*, 187M191, 245NW140. See Dun. Dig. 2422.

ISSUES AND MODE OF TRIAL

10705. Issue of fact—Appearance in person.

Plea of former jeopardy cannot be presented by motion on affidavits, but must be urged by formal plea, the issues of fact in which must be tried by jury. 180M439, 231NW6.

2. Presence of accused.

Accused at liberty on bail may waive right of being present when verdict is returned. 175M573, 222NW277.

Where court fails to require bailiff to notify defendant's attorney of the return of a verdict, the remedy for this nonobservance of the practice should be a motion for a new trial, and not a motion to set aside the verdict, which would mean an acquittal. 175M573, 222NW277.

Accused at liberty on bail did not waive right to be present when verdict was received. 177M283, 225NW82.

3. Evidence.

Admission in evidence of a revolver found in defendant's desk six weeks after the commission of the crime of robbery of which he was accused, held error. 181M566, 233NW307. See Dun. Dig. 2458, 3490.

Admission of license plates found in a car in defendant's possession held improper in prosecution for robbery. 181M566, 233NW307. See Dun. Dig. 2458, 3490.

Evidence of defendant's association with others who were criminals was improperly admitted. 181M566, 233NW307. See Dun. Dig. 2458.

Fact that evidence of sales introduced to show that sale in question was in courts of successive sales of like securities relates to sales made more than three years before indictment was immaterial. *State v. Robbins*, 185M202, 240NW456. See Dun. Dig. 2459.

Evidence of other sales is admissible to show that sale upon which conviction is sought was made in the course of repeated and successive sales of like securities. *State v. Robbins*, 185M202, 240NW456. See Dun. Dig. 2459.

There was no substantial error in robbery prosecution relative to production of dairy which, it was suggested, would corroborate claim of alibi, nor in respect of proof as to gun found in possession of defendant. *State v. Stockton*, 186M33, 242NW344.

In prosecution for perjury it was error to receive in evidence names of jurors in prosecution for grand larceny in second degree in which defendant in perjury case testified for defendant; and likewise to receive verdict finding him guilty. *State v. Olson*, 186M45, 242NW348. See Dun. Dig. 7475a.

10706. Continuance—Defendant committed, when.

Refusal of continuance on account of absence of witness held not an error. 173M567, 218NW112.

10710. Questions of law and fact, how decided.

It was error to charge that the only issue was whether defendant was guilty of robbery in the first degree or of an attempt to commit such robbery, it being within province of jury to return not guilty verdict though contrary to law and evidence. *State v. Corey*, 182M48, 233NW590.

Credibility of testimony of a paid detective in a prosecution for unlawful sale of intoxicating liquor was for the jury. *State v. Nickolay*, 184M526, 239NW226. See Dun. Dig. 2477(80).

10711. Order of argument.

Some allowances must be made for rhetorical flights and vigorous arraignment of attempted defenses. 171M414, 214NW280.

Misconduct of county attorney could not be predicated on his reference to defendant's companions as "the mob" where no exception was taken. 173M232, 217NW104.

Where there was evidence of finding of weapon at time of defendant's arrest it was legitimate argument for county attorney to suggest the switching or chang-

ing of weapons between companions in crime. 173M232, 217NW104.

Conduct of prosecuting attorney in referring to court's failure to admit incompetent evidence held not reversible error. 173M305, 217NW120.

Comments of the prosecuting attorney upon defendant's association with "murderers and thieves" upon evidence improperly admitted held prejudicial. 181M566, 233NW307. See Dun. Dig. 2478.

Alleged misconduct of prosecuting attorney held not to call for a new trial where trial court was not asked to take any action. *State v. Geary*, 184M387, 239NW158. See Dun. Dig. 2478, 2490.

Prosecuting attorney held not guilty of misconduct as intimating that one charged with manslaughter in driving an automobile was intoxicated. *State v. Geary*, 184M387, 239NW158. See Dun. Dig. 2478.

Statement by prosecuting attorney in argument as to a matter not shown by evidence held not prejudicial. *State v. Geary*, 184M387, 239NW158. See Dun. Dig. 2478.

10712. Charge of court.

1. In general.

Charge in bank robbery prosecution held not objectionable as warranting a conviction for violation of liquor laws. 171M158, 213NW735.

Instruction failing to require absence of reasonable doubt as a prerequisite to the final inference of guilt is cured by context stating explicitly that all elements of the offense must be established beyond a reasonable doubt. 171M222, 213NW920.

In liquor prosecution, instruction that prior conviction of defendant's witness was received merely for the purpose of bearing on his credibility, was proper. 171M515, 213NW923.

In the absence of a request, error cannot be predicated on failure to charge as to a lesser offense. 171M515, 213NW923.

Giving of cautionary instruction regarding danger of convicting on the evidence of the prosecutrix alone rested in the discretion of the court, especially in absence of request for such an instruction. 171M515, 213NW923.

Where a proposition involving one of the defenses is once correctly stated, with its conditions and qualifications, it is not ordinarily necessary for each of the conditions and qualifications to be restated every time the defense itself is subsequently referred to in the instructions. 171M380, 214NW265.

In prosecution for murder in the third degree by killing one with an automobile, evidence held not to require an instruction that defendant should be acquitted if he was so drunk that he did not know what he was doing. 171M414, 214NW280.

Accused held not prejudiced by charge of court that information charged defendant with first degree grand larceny, when only second degree offense was properly alleged the jury finding defendant guilty "as charged." 172M139, 214NW785.

An inadvertent statement in the charge must be called to the court's attention. 172M139, 214NW785.

If defendant desired a further explanation of any matters, he should have made a request to that effect. 172M208, 215NW206.

Defects in charge not called to the court's attention at the time are not of a character to call for a new trial. 173M567, 218NW112.

In prosecution for adultery refusal of court to instruct that admission or confession by one paramour was not evidence against the other, the two being tried together, was error. 175M218, 220NW563.

Where it is in fact present, it is not error to instruct that there is evidence to corroborate an accomplice. 176M175, 222NW906.

The charge is to be considered in its entirety. 181M303, 232NW335. See Dun. Dig. 9781(26).

Failure to define the crime with which defendant was charged is disapproved. 181M566, 233NW307. See Dun. Dig. 2479.

Instruction, as to character testimony, held not reversible error. *State v. Weis*, 186M342, 243NW135. See Dun. Dig. 2479.

Where general charge adequately covers every element of crime, defendant in criminal case is not entitled to complete separate charge as to each element of crime charged as defined by statute. *State v. Weis*, 186M342, 243NW135. See Dun. Dig. 2479.

Instruction relative to testimony of prosecutrix given in preliminary examination, and received upon trial for purpose of impeachment, held not error. *State v. Weis*, 186M342, 243NW135.

4. Presumption of innocence.

Clause in instruction that presumption of innocence is for benefit of innocent person and not intended as a shield for guilty, was improper. *State v. Bauer*, 249NW40. See Dun. Dig. 2479n, 28.

5. Requests for instructions.

Charge of court defining crime of driving automobile while intoxicated in the words of the statute held sufficient. 176M164, 222NW909.

It is not error to refuse a request to charge, where the general charge, or other requests given, fairly cover the same subject. 176M349, 223NW452.

It is bad practice to allude to the fact that instructions given have been asked for by one of the parties. 181M374, 232NW624. See Dun. Dig. 9776(13).

10713. Jury—How and where kept.

Misconduct of bailiff in informing jury that unless they agreed before midnight they would be kept until morning, held not ground for reversal. 175M174, 220NW 547.

Failure to provide separate room for women held not ground for new trial on ground that woman was not well and verdict was coerced. 176M604, 224NW144.

That women jurors were, on failure of jury to agree, provided with separate sleeping accommodations at a hotel for the night in the custody of a woman bailiff, held not error. 181M303, 232NW335. See Dun. Dig. 7112.

10713-1. Same—Preceding section applicable only where jury fails to agree.

176M604, 224NW144; note under §10713.

10720. Polling jury—Further deliberation, when.

175M573, 222NW277; note under §10705.

Polling of jury is for purpose of ascertaining for a certainty that each juror agrees upon verdict, and not to determine whether verdict presented was reached by quotient process. *Hoffman v. C.*, 187M320, 245NW373. See Dun. Dig. 9822.

10721. Reception of verdict.

Verdict is not vitiated by failure to read it to the jury as recorded. 178M564, 227NW893.

Jury held not guilty of misconduct in bringing in a verdict while one of jurors claimed to be sick. *State v. Geary*, 184M387, 239NW158. See Dun. Dig. 2476.

10723. Acquitted on ground of insanity—Release from state institutions.—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 grounds, 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.

The person so acquitted shall be liberated from such hospital or asylum upon the order of the court committing him thereto, whenever there is presented to said court the certificate in writing of the Superintendent of the hospital or asylum where such person is confined, certifying that in the opinion of such superintendent such person is wholly recovered and that no person will be endangered by his discharge.

Provided, that if the superintendent of the hospital or asylum fails or refuses to furnish such certificate at the request of the person committed, then said person may petition the said court for his release, and hearing on such petition shall be had before the court upon and after service of such notice as the court shall direct.

If, at such hearing, the evidence introduced convinces the court that the person so confined has wholly recovered and that no person will be endangered by his discharge, then the court shall order his discharge and release from said hospital or asylum, and he shall then be so discharged and released.

Provided, further, that if at such hearing the evidence introduced convinces the court that such person has not wholly recovered, but that no person will be endangered by his release on parole from such hospital or asylum, and a proper and suitable person is willing to take such committed person on parole, and to furnish a home for him and care for and support him, and furnishes a satisfactory bond in such amount and with such terms and conditions as the court may fix, then said court may order the release of such confined person from said hospital or asylum on parole and for such time and upon such terms and conditions as the court may determine and order, and thereupon such person shall be so released from said hospital or

asylum and placed on parole with the person named by the court in its order.

Provided, that nothing herein shall be construed as preventing the transfer of any person from one institution to another by the order of the board of control, as it may deem necessary. (R. L. '05, §5376; '07, c. 358, §1; G. S. '13, §9218; Apr. 25, 1931, c. 364.)

State v. District Court, 185M396, 241NW39; note under §9498, note 19.

This act is not invalid as imposing an administrative duty upon the court. *State v. District Court*, 185M396, 241NW39. See Dun. Dig. 1592.

The statute makes mandatory the discharge upon presentation of a certificate of the superintendent of the hospital that "in the opinion of such superintendent such person is wholly recovered and that no person will be endangered by his discharge." *State v. District Court*, 185M396, 241NW39. See Dun. Dig. 4523a.

Laws 1931, c. 364, establishes the exclusive statutory procedure for the release of a patient who has been committed as the result of his acquittal of a criminal charge on the ground of insanity. It is for the benefit of those committed before, as well as of those committed after, the enactment of the law. *State v. District Court*, 185M396, 241NW39.

10724. Hearing on punishment.

No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

CALENDAR

10727. Issues, how disposed of—Time for trial.

That attorney with consent of court and without objection by defendant, assisted county attorney, was no ground for new trial. 176M305, 223NW141.

CHALLENGING JURORS

10733. Challenge to individual juror.**2. Preliminary examination.**

Court rightly refused to permit parties to instruct and examine each prospective juror in law of case to be tried. *State v. Bauer*, 249NW40. See Dun. Dig. 5252.

3. When challenge may be made.

Answer of juror held not so untrue as to give accused right to new trial on ground that he was thereby prevented from peremptorily challenging juror. 176M604, 224NW144.

6. Review.

Denial of the challenge of a juror cannot be reviewed on appeal. 171M380, 214NW265.

APPEALS AND WRITS OF ERROR

10747. Removal to supreme court.

The denial by the trial judge of the challenge of a juror for cause cannot be reviewed on appeal. 171M 380, 214NW265.

Motion for a new trial in a criminal case must be heard by the trial court before the expiration of the time to appeal from the judgment, and an appeal from an order denying such motion cannot be taken more than a year after such judgment is rendered. 174M194, 218NW 887.

A violation of a city ordinance is an offense against the city and a right of appeal may be denied. 175M222, 220NW611.

Where defendant acquiesces in a judgment of conviction, or when he complies in whole or in part therewith, there is a waiver of the right of review. 175M222, 220 NW611.

An order in a criminal case, made on defendant's failure to plead after disallowance of his demurrer to the information, found him guilty, but directed him to appear at a later date for sentence. Held, not appealable, not being a final judgment imposing sentence and to be enforced without further judicial action. *State v. Putzier*, 183M423, 236NW765. See Dun. Dig. 2491(70), (71), (72), (74).

Appeals in criminal cases can be taken only from an order denying motion for a new trial or from the final judgment of conviction. *State v. Putzier*, 183M423, 236 NW765. See Dun. Dig. 2491(69).

An accused cannot appeal from the verdict of the jury. *State v. Stevens*, 184M286, 238NW673. See Dun. Dig. 2491(70).

A motion to vacate a judgment entered in a criminal case upon a plea of guilty and to permit a defendant to enter a plea of not guilty is not a motion for a new trial, and order denying it is not appealable. *State v. Newman*, 247NW576. See Dun. Dig. 2491.

10748. Stay of proceeding.**2. Notice of appeal.**

Notices of appeal in criminal cases to be effective must be served on the attorney general. *State v. Newman*, 247NW576. See Dun. Dig. 2494(99).

10751. Bill of exceptions.

Trial court properly amended the proposed settled case by making it comply with the facts as they occurred upon the trial. 171M515, 213NW923.

Where information does not allege true name of purchaser of alcoholic liquor, the defendant cannot complain thereof for the first time on appeal. State v. Viering, 175M475, 221NW681.

Denial of new trial on ground of newly discovered evidence consisting of affidavit of witness, who testified on the trial as to the identity of defendant, that he was not certain of such identity, held not abuse of discretion. 181M203, 232NW111. See Dun. Dig. 7131.

10752. Proceedings in Supreme Court.

1. In general.

See also notes under §10648.

Admission of incompetent evidence held not prejudicial in criminal prosecution. State v. Irish, 183M49, 235NW625. See Dun. Dig. 2490(47).

Misconduct of counsel in asking improper question held not to require new trial. 171M158, 213NW735.

Exclusion of evidence held without prejudice. 171M222, 213NW920.

On appeal from an order denying a new trial, made before defendant was sentenced, the point that the sentence was excessive cannot be raised. 172M139, 214NW785.

Where sister of prosecutrix in a prosecution for carnally knowing a female child under the age of 18 was a witness and during cross-examination, the father of prosecutrix made a demonstration in the court room and the court admonished the jury to disregard it, there was nothing requiring a new trial. 172M372, 215NW514.

Court cannot interfere as to matters of fact. 173M391, 217NW343.

That attorney with consent of court and without objection by defendant, assisted county attorney, was no ground for new trial. 176M305, 223NW141.

Reception of evidence. 178M439, 227NW497.

A plea of guilty does not preclude a defendant from raising, for the first time on appeal, the question of whether or not the complaint, information, or indictment charges a public offense. State v. Parker, 183M588, 237NW409. See Dun. Dig. 2491.

3. New trial.

Exclusion of evidence by court held to cure error in its admission. 173M543, 217NW683.

Rulings upon offers to prove defendant's disposition and reputation held not to require reversal. 176M349, 223NW452.

Where conviction for contempt is right, but the penalty imposed exceeds that authorized, defendant should not be relieved from proper punishment, but be re-sentenced. 178M158, 226NW188.

Stating that the acts mentioned would constitute the crime instead of stating that they would constitute the offense of an attempt to commit the crime, with which defendant was charged, was a mere inadvertence and not prejudicial. 178M69, 225NW925.

Permitting jury to attend theatrical performance, held not to require new trial. 179M301, 229NW99.

A second motion for a new trial, based upon the same grounds stated in a prior denied motion, cannot be heard without first obtaining permission of the court. State v. Stevens, 184M286, 238NW673. See Dun. Dig. 2489a.

Inadvertent language used in the charge cannot be assigned as error for a new trial when it was not called to the attention of the court for correction upon the trial. State v. Stevens, 184M286, 238NW673. See Dun. Dig. 2479a.

Motion for a new trial on the ground of newly discovered evidence was insufficient, in that the exhibits attached were not put in such form as to constitute legal proof of the things which they purported to show. State v. Stevens, 184M286, 238NW673. See Dun. Dig. 2490.

4. Misconduct of counsel.

179M301, 229NW99.

179M502, 229NW801.

180M221, 230NW639.

Remarks of prosecuting attorney held not prejudicial. 175M607, 222NW280.

Misconduct of prosecuting attorney in cross-examining defendant with respect to other charges of crime, held to require new trial. 176M442, 223NW769.

Constant insinuation that accused was connected with other crimes, held to require new trial. State v. Klashorn, 177M363, 225NW278.

Defendant could not urge that county attorney was guilty of misconduct in pursuing a line of cross-examination to which defendant not only made no objection but in effect consented. 178M69, 225NW925.

Where defendant selects his own attorney, misconduct of such attorney is ground for new trial only in exceptional cases; and failure to call defendant as witness, and submission of case without argument, held not to require new trial. 180M435, 231NW12.

5. Newly discovered evidence.

180M450, 231NW225.

181M28, 231NW411.

Motion for new trial on grounds of newly discovered evidence held properly denied. 173M420, 217NW489.

Newly discovered evidence held not of nature likely to change the result. 173M567, 218NW112.

Alleged newly discovered evidence held not to require new trial. 176M305, 223NW141.

New trial was properly refused where alleged newly discovered evidence was cumulative and diligence was not shown. State v. Kosek, 186M119, 242NW473. See Dun. Dig. 7130.

Cumulative newly discovered evidence, not of character that would probably produce different result, did not require new trial. State v. Weis, 186M342, 243NW135. See Dun. Dig. 7130, 7131.

6. Reception of evidence.

There could be no prejudice from the fact that the jury learned that accused had claimed and been accorded a legal right against compulsory incrimination in trial of codefendant. 176M562, 223NW917.

No reversible error for failure to hear oral testimony on motion for new trial. 176M604, 224NW144.

7. Misconduct of or respecting jury.

Failure to provide separate room for women held not to require new trial. 176M604, 224NW144.

Answer of juror on voir dire as to relation to county attorney held not ground for new trial. 176M604, 224NW144.

10754. Defendant committed, when, etc.

174M194; 218NW887.

10756. Certifying proceedings.

174M66, 218NW234.

Constitutionality of statute properly certified to court. 173M221, 217NW108.

District court has no jurisdiction in civil cases to certify questions to the supreme court. Newton v. M., 185M189, 240NW470. See Dun. Dig. 282.

INDETERMINATE SENTENCES AND PAROLES

10765. Term of sentence.—Whenever any person is convicted of any felony or crime committed after the passage of this act, punishable by imprisonment in the state prison or state reformatory, except treason or murder in the first or second degree as defined by law, the court in imposing sentence shall not fix a definite term of imprisonment, but may fix in said sentence the maximum term of such imprisonment, and shall sentence every such person to the state reformatory or to the state prison, as the case may require, and the person sentenced shall be subject to release on parole and to final discharge by the board of parole as hereinafter provided, but imprisonment under such sentence shall not exceed the maximum term fixed by law or by the court, if the court has fixed the maximum term, provided that if a person be sentenced for two or more such separate offenses sentence shall be pronounced for each offense, and imprisonment thereunder may equal, but shall not exceed the total of the maximum terms, fixed by law or by the court, if the court has fixed the maximum term, for such separate offenses, which total shall, for the purpose of this act, be construed as one continuous term of imprisonment. And provided further that where one is convicted of a felony or crime that is punishable by imprisonment in the state prison or state reformatory or by fine or imprisonment in the county jail, or both, the court may impose the lighter sentence if it shall so elect. The power of the court to fix the maximum term of imprisonment shall extend to indeterminate sentences imposed under Laws 1927, Chapter 236 [§§9931 to 9931-4]. ('11, c. 298, §1; G. S. '13, §9267; '17, c. 319, §1; Apr. 20, 1931, c. 222, §1.)

Time runs on sentence while in hospital for insane. 176M572, 224NW156.

Trial court may fix maximum term of imprisonment though defendant was convicted for a second offense for which penalty is prescribed by §9931 prior to 1927 amendment. 179M532, 229NW787.

Judge of district court has no power to commute sentence passed upon prisoner who has been committed to penal institution. Op. Atty. Gen., Aug. 28, 1933.

10766. Parole board.—A board having power to parole and discharge prisoners confined in the state prison, state reformatory or state reformatory for women is hereby created, to be known and designated as "State Board of Parole." Said board shall be composed of a chairman and two other members, who shall be appointed by the governor with the advice and consent of the senate and who, except as hereinafter provided, shall hold office for a term of six years from the first Monday in January next after such ap-

pointments are made and until their successors be appointed and qualified, provided that immediately or as soon as practicable after the passage of this act said board shall be appointed to hold office from July first next after such appointments are made, the chairman until the first Monday in January 1937, one member until the first Monday in January 1935, and one member until the first Monday in January 1933. Not more than two members of said board shall belong to the same political party. In case of a vacancy it shall be filled for the unexpired term in which such vacancy occurs as herein provided for original appointments. Said board shall keep a record of all its proceedings and to that end may designate one of its members to act as secretary, or may require the performance of the duties of that office by any parole agent or any other person in its employ. ('11, c. 298, §3; G. S. '13, §9269; '13, c. 280, §1; '21, c. 56, §1; Laws 1929, c. 23; Apr. 14, 1931, c. 161, §1.)

10767. Present law not changed.—The board of parole constituted under the provisions of this act shall be deemed a continuation of the board of parole constituted under the provisions of law in force at the time of the passage thereof, and all matters and proceedings pending before the board of parole as constituted before the passage of this act shall be carried on and completed by the board as constituted hereunder. (G. S. '13, §9270; '13, c. 280, §2; '21, c. 56, §2; Apr. 14, 1931, c. 161, §2.)

10769. Chairman of board—salary—compensation of members.—The salary of the chairman of said state board of parole shall be the sum of \$4500.00 per annum, payable as hereinafter provided. Each of the other members of said board shall receive as compensation the sum of \$15.00 per day for each day actually spent in the discharge of his official duties, including the duties of secretary. In addition to the compensation so provided, each of the members of said board shall be reimbursed for all expenses paid or incurred by him in the performance of his official duties. Said compensation and said expenses shall be paid out of the revenue fund in the same manner as the salaries and expenses of other state officers are paid. All of the other expenses of the state board of parole shall be audited and allowed by the state board of control and paid out of the funds appropriated for the maintenance of the penal institutions of the state in such proportions as the state board of control shall determine. Said board of parole shall furnish such estimates of anticipated expenses and requirements as the state board of control may from time to time require. ('11, c. 298, §5; G. S. '13, §9272; Apr. 14, 1931, c. 161, §3.)

A member of board of parole attending prison congress in another state under authority from board was entitled to compensation of \$15.00 per day and traveling expenses. Op. Atty. Gen., Oct. 20, 1932.

10770. Powers and duties of board.—The said state board of parole may parole any person sentenced to confinement in the state prison or state reformatory, provided that no convict serving a life sentence shall be paroled until he has served thirty-five years, less the diminution which would have been allowed for good conduct had his sentence been for thirty-five years, and then only by unanimous consent in writing of the members of the board of pardons. Such convicts while on parole shall remain in the legal custody and under the control of the state board of parole, subject at any time to be returned to the state prison or state reformatory, and the written order of said

board, certified by the warden or superintendent of the state reformatory, shall be a sufficient warrant to any officer to retake and return to actual custody any such convict. Geographical limits wholly within the state may be fixed in each case and the same enlarged or reduced according to the conduct of the prisoner.

In considering applications for parole or final release said board shall not be required to hear oral argument from any attorney or other person not connected with the prison or reformatory in favor of or against the parole or release of any prisoners, but it may institute inquiries by correspondence, taking testimony or otherwise, as to the previous history, physical or mental condition, and character of such prisoner, and to that end shall have authority to require the attendance of the warden of the state prison or the superintendent of the state reformatory or the state reformatory for women and the production of the records of said institutions and to compel the attendance of witnesses, and each member of said board is hereby authorized to administer oaths to witnesses for every such purpose. ('11, c. 298, §6; G. S. '13, §9273; Apr. 14, 1931, c. 161, §4.)

10770-1. Parole of prisoners.—The state board of parole is hereby authorized and empowered to grant to any prisoner in the state prison, state reformatory or state reformatory for women, a temporary parole under guard, not exceeding three days, to any point within the state, upon payment of the expenses of such prisoner and guard. (Act Mar. 9, 1929, c. 70.)

10772. Credits for prisoners.

A resident of Minnesota imprisoned in the reformatory for a felony continues to be a resident of Minnesota but is not a citizen until restored as provided in this section and sec. 10773. Op. Atty. Gen., Apr. 7, 1933.

10773. Duty of board—Final discharge.

Op. Atty. Gen., Apr. 7, 1933; note under §10772.

10775. Supervision by board—agents.—Said board of parole as far as possible, shall exercise supervision over paroled and discharged convicts and when deemed necessary for that purpose, may appoint state agents, fix their salaries and allow them traveling expenses. It may also appoint suitable persons in any part of the state for the same purpose. Every such agent or person shall perform such duties as said board may prescribe in behalf of or in the supervision of prisoners paroled or discharged from the state prison, state reformatory, or other public prison in the state, including assistance in obtaining employment and the return of paroled prisoners, and in addition thereto shall, when so directed by the state board of control, investigate the circumstances and conditions of the dependents of prisoners of the state penal institutions and report their findings and recommendations to the warden and superintendent of the respective institutions and to the state board of control. Such agents and such persons shall hold office at the will of the board of parole and the person so appointed shall be paid reasonable compensation for the services actually performed by them. Each shall be paid from the current expense fund of the institution or institutions for whose benefit he was appointed. ('11, c. 298, §10; G. S. '13, §9277; Apr. 14, 1931, c. 161, §5.)

10777. Rules governing paroles, etc.

A member of board of parole attending prison congress in another state under authority from the board was entitled to compensation of \$15.00 per day and traveling expenses. Op. Atty. Gen., Oct. 20, 1932.