

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
MOSES SHERBURNE and WILLIAM HOLLINSHEAD, Esqrs.,
COMMISSIONERS.

PUBLISHED BY STATE AUTHORITY.

SAINT PAUL:
THE PIONEER PRINTING COMPANY.

1859.

“a true bill,” and the indorsement must be signed by the foreman of the grand-jury.

(61.) SEC. LXI. If twelve grand-jurors do not concur in finding an indictment or presentment, the charge must be dismissed.

When charge must be dismissed.

(62.) SEC. LXII. The dismissal of the charge does not, however, prevent its being again submitted to a grand-jury as often as the court may direct.

After dismissed, charge may again be brought before grand-jury.

(63.) SEC. LXIII. When an indictment is found, the names of the witnesses examined before the grand-jury, must in all cases be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Names of witnesses must be inserted on indictment.

(64.) SEC. LXIV. When an indictment is found by the grand-jury, it must be immediately presented by their foreman in their presence to the court, and must be filed with the clerk and remain in his office as a public record.

Indictment must be presented by the foreman to the court.

CHAPTER 105.

INDICTMENTS.

SECTION.

1. Indictment.
2. Indictment what to contain.
3. Forms of indictments.
4. Above forms sufficient.
5. Indictment must be direct.
6. Proceedings when defendant is indicted by fictitious name.
7. Indictment must charge but one offense.
8. Time of offense how stated.
9. Certain allegation immaterial.
10. Words in an indictment how construed.
11. Words of statute need not be strictly pursued.
12. Indictment when sufficient.
13. Defects in matters of form how regarded.
14. Presumptions of law need not be stated.

SECTION.

15. Judgments how pleaded.
16. Private statute how pleaded.
17. Indictment for libel need not state extrinsic facts, &c.
18. Misdescription in forgery, when immaterial.
19. What sufficient in perjury.
20. Indictment against several, any or all may be convicted.
21. Distinction between principal and accessory abolished.
22. Accessory after the fact, how indicted.
23. Compounding offense how indicted.
24. Indictment for murder, when to be found.
25. Indictment when, for offense on board of vessel.

✓ [Chapter 119, Revised Statutes.]

(1.) SEC. LXV. The first pleading on the part of the United States is the indictment.

Indictment.

(2.) SEC. LXVI. The indictment must contain:

Indictment what to contain.

1. The title of an action specifying the name of the court to which the indictment is presented, and the name of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language without repetition, and in such manner as to enable a person of common understanding to know what is intended.

(3.) SEC. LXVII. It may be substantially in the following form:

Forms of indictments.

No. 1.

The district court for the county of _____, and territory of Minnesota:
The United States, }

vs.
A. B. }

A. B. is accused by the grand-jury of the county of _____, by this indictment, of the crime of _____ (here insert the name of the offense, if it have one,) such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault and battery, or the like, insert a brief description of it, as it is given by law, committed as follows: .

The said A. B., on the _____ day of _____, A. D. 18____, at the town, (city, or village, as the case may be,) of _____, in this county, (here set forth the act charged as an offense according to the form adapted to the case, as provided in the following forms, or similar ones.)

Dated at _____, in the county of _____, the _____ day of _____, A. D. 18____.

(Signed,) G. H., foreman of the grand-jury.

No. 2.

In an indictment for murder.

Indictment for murder.

(Commencement the same as No. 1.)

Without the authority of law, and with malice aforethought, killed C. D., by shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water, whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand-jury, or as the case may be.

No. 3.

In an indictment for arson.

Indictment for arson.

Willfully set fire to (or burned) in the night time, a dwelling house in which there was at the time a human being, namely C. D. (or whose name is unknown to the grand-jury,) or,

No. 4.

rb.

Willfully set fire to (or burned) an inhabited dwelling house in the day time, in which there was at the time a human being, namely C. D. (or whose name is unknown to the grand-jury,) or,

No. 5.

rb.

Willfully set fire to (or burned) the steamboat named the _____, which was at the time insured by the Hartford Insurance company of the state of Connecticut, against loss or damage by fire, with intent to prejudice such insurer.

No. 6.

MANSLAUGHTER IN THE FIRST DEGREE.

Indictment for manslaughter.

Was engaged in the perpetration of the following (stating it as in an enactment therefor) and the said A. B., while engaged in the perpetration of such misdemeanor, without a design to effect death by his act (or pro-

curement or culpable negligence) by his act killed C. D. by striking him with a club, or by other means, to be stated as in No. 2, or,

No. 7.

Deliberately assisted one C. D. in the commission of self-murder, which crime the said C. D. then and there committed by hanging himself by the neck until he was dead; (or by shooting himself with a pistol, or as the case may be.) Indictment for assisting to commit murder.

No. 8.

MANSLAUGHTER IN THE SECOND DEGREE.

Killed C. D. in the heat of passion, but in a cruel and unusual manner, and not under such circumstances as to constitute excusable or justifiable homicide, by striking him with a club (or stating the means according to the fact.) Indictment for manslaughter in second degree.

No. 9.

MANSLAUGHTER IN THE THIRD DEGREE.

Was the owner of a bull (or other mischievous animal describing it) and knowing its propensities, willfully suffered such bull to run at large (or kept it without ordinary care,) and the said bull while so at large, (or not confined) killed one C. D., who took all the precautions which the circumstances would permit, to avoid such bull; or Indictment for manslaughter in third degree.

No. 10.

Was managing a steam boat called the _____ for gain, and willfully (or negligently) received on board so many passengers (or such a quantity of lading) that the said boat sunk (or was upset) whereby C. D., who was on said boat, was drowned, (or otherwise killed, according to the fact.) ib.

In an indictment for rape.

No. 11.

Forcibly ravished C. T., a woman of the age of ten years or upwards; Indictment for rape.
or

No. 12.

Unlawfully and carnally knew and abused C. H., a female child under the age of ten years. ib.

No. 13.

In an indictment for robbery.

Feloniously took a gold watch (or any other property as the case may be) the property of C. D., from his person, and against his will, by violence to his person, (or by putting him in fear of some immediate injury to his person,) or, Indictment for robbery.

No. 14.

Feloniously took a gold watch, (or as the case may be,) the property of C. D., in his presence and against his will, by violence to his person. ib.

No. 15.

*In an indictment for larceny.*Indictment for
larceny.

Feloniously took and carried away, one gold watch and one silver chain, (or as the case may be,) the personal property of J. D., (or of a person whose name is unknown to the grand jury,) of the value of more than twenty dollars; or,

No. 16.

1b.

Feloniously took and carried away in the night time, from the person of C. D., one silver watch, (or as the case may be,) the personal property of E. F., (or of a person whose name is unknown to the grand jury,) of the value of more than twenty dollars.

No. 17.

*In an indictment for burglary.*Indictment for
burglary.

Broke into and entered in the night time, the dwelling house of C. D., in which there was at the time a human being, namely the said C. D., (or whose name is unknown to the grand jury,) with intent to commit murder (or rape, robbery, or larceny, or other public offense, describing it generally,) therein, by forcibly bursting or breaking the wall, or an outer door, or a window of such house, (or as the case may be;) or,

No. 18.

1b.

Broke into and entered in the night time, the dwelling house of C. D., in which there was at the time, a human being, namely the said C. D., (or whose name is unknown to the grand jury,) with intent to commit a rape (or larceny, or any other public offense, describing it generally,) therein, by unlocking an outer door, by means of false keys, or by picking or forcing the lock of an outer door, or as the case may be.

No. 19.

*In an indictment for forgery and counterfeiting.*Indictment for
forgery.

Forged, or counterfeited, or falsely altered, by erasing a material part thereof, (or as the case may be,) an instrument purporting to be (or being) the last will and testament of C. D., devising certain real and personal property, with intent to defraud; or,

No. 20.

Indictment for
forgery.

Forged a certificate purporting to have been issued by J. C., an officer duly authorized to make such certificate of the acknowledgment of C. D., of the execution by him, of a conveyance to E. F., of certain real property in the town of _____, with the intent to defraud the said C. D.; or,

No. 21.

Indictment for
counterfeiting.

Falsely made an impression, purporting to be the impression of the great seal of the territory, on an instrument in writing, being (or purporting to be) a _____, (stating generally the purport of the instrument), with the intent to defraud; or,

No. 22.

Counterfeited a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current, by custom or usage, within this territory ; or, Indictment for counterfeiting.

No. 23.

Had in his possession, a counterfeit of a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current in this territory, knowing the same to be counterfeited, with intent to defraud, (or injure) by uttering the same as true (or false.) Indictment for having counterfeit coin in his possession.

No. 24.

In an indictment for perjury.

On his examination as a witness, duly sworn to testify the truth, on the trial of a civil action in the court of _____, between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, he testified falsely, that (stating the facts to be alleged to be false,) the matters so testified being material, and the testimony being willfully and corruptly false. Indictment for perjury.

No. 25.

In an indictment for bigamy.

Having a wife then living, unlawfully married one G. A. Indictment for bigamy.

No. 26.

In an indictment for libel.

Published in a newspaper called the _____ the following libel concerning C. D., (here insert the article charged as being a libel.) Indictment for libel.

(4.) SEC. LXVIII. The manner of stating the act constituting the offense as set forth in the preceding forms, is sufficient in all cases where the forms there given are applicable. In all other cases, forms may be used as nearly similar as the nature of the case may permit. Above forms sufficient.

(5.) SEC. LXIX. The indictment must be direct and certain as it regards: Indictment must be direct.

1. The party charged ;
2. The offense charged ;
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

(6.) SEC. LXX. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment. Proceedings when defendant is indicted by fictitious name.

(7.) SEC. LXXI. [*As amended on page 27 of the amendments of 1852 to the revised statutes .:*] When by law an offense comprises different degrees, an indictment may contain counts for the different degrees, of the same offense, or for any of such degrees. The same indictment may contain counts for murder, and also for manslaughter or different degrees of manslaughter. Where the offense may be committed by the use of different means, the indictment may allege the means of offense in the alternative. Where it is doubtful to what class an offense belongs, the indictment may contain several counts describing it as of different classes or kinds. Indictment may contain different counts.

Time of offense how stated.

(8.) SEC. LXXII. The precise time at which the offense was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

Certain allegation immaterial.

(9.) SEC. LXXIII. When the offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation, as to the person injured, or intended to be injured, is not material.

Words in an indictment how construed.

(10.) SEC. LXXIV. The words used in an indictment, must be construed in their usual acceptations, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Words of statute need not be strictly pursued.

(11.) SEC. LXXV. Words used in the statutes to define a public offense need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Indictment when sufficient.

(12.) SEC. LXXVI. The indictment is sufficient, if it can be understood therefrom :

1. That it is entitled in a court having authority, to receive it though the name of the court is not accurately stated ;

2. That it was found by a grand-jury of the county in which the court was held ;

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name ;

4. That the offense was committed at some place within the jurisdiction of the court, except where, as provided by law, the act, though done without the local jurisdiction of the county, is triable therein ;

5. That the offense was committed at some time prior to the time of finding the indictment ;

6. That the act or omission, charged as the offense, is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended ;

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Defects in matters of form how regarded.

(13.) SEC. LXXVII. No indictment is insufficient, nor can the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

Presumptions of law need not be stated.

(14.) SEC. LXXVIII. Neither presumptions of law nor matter of which judicial notice is taken need be stated in an indictment.

Judgments how pleaded.

(15.) SEC. LXXIX. In pleading a judgment or other determination of, or proceeding before a court, or officer, of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on trial.

Private statute how pleaded.

(16.) SEC. LXXX. In pleading a private statute or right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Indictment for libel need not state extrinsic facts, &c.

(17.) SEC. LXXXI. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him ; and the fact that it was so published must be established on the trial.

Misdescription

(18.) SEC. LXXXII. When an instrument which is the subject of an

indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

in forgery, when immaterial.

(19.) SEC. LXXXIII. In an indictment for perjury or subornation of perjury it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected nor the commission or authority of the court or person before whom the perjury was committed.

What sufficient in perjury.

(20.) SEC. LXXXIV. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Indictment against several, any or all may be convicted.

(21.) SEC. LXXXV. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished, as principals, as in the case of a misdemeanor.

Distinction between principal and accessory abolished.

(22.) SEC. LXXXVI. An accessory after the fact, to the commission of a felony, may be indicted, tried and punished, though the principal felon be neither indicted nor tried.

Accessory after the fact, how indicted.

(23.) SEC. LXXXVII. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried.

Compounding of offense how indicted.

(24.) SEC. LXXXVIII. (a) Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court, within three years after the commission of the offense; but the time during which the defendant shall not have been an inhabitant of, or usually resident within this territory, shall not constitute any part of the said limitation of three years.

Indictment for murder may be found after death, &c.

(25.) SEC. LXXXIX. When any offense shall have been committed within this territory, on board of any vessel navigating any river or lake, an indictment for the same may be found in any county through which or any part of which such vessel shall be navigated during, or in the course of the same voyage or trip, or in the county where such voyage or trip shall terminate; and such indictment may be tried, and a conviction thereon had, in any such county, in the same manner, and with the like effect, as in the county where the offense was committed.

Indictment may be found; when.

(a) Sections 88 and 89 are added on page 27 of the amendments of 1852 to the revised statutes.