

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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CHAPTER 111.

MODE OF TRIAL—ISSUES.

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- 1. Issues of fact defined.
- 2. Issues of fact how tried.

SECTION

- 3. When defendant be present on the trial.

[Chapter 125, Revised Statutes.]

(1.) SEC. CXLIII. An issue of fact arises:

- 1. Upon a plea of not guilty; or
- 2. Upon a plea of a former conviction or acquittal of the same offense.

Issues of fact defined.

(2.) SEC. CXLIV. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the court, as provided in the preceding chapter.

Issues of fact how tried.

(3.) SEC. CXLV. If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if for a felony he must be personally present.

When defendant be present on the trial.

CHAPTER 112.

PETIT OR TRIAL JURIES.

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- 1. Petit or trial jury defined.
- 2. Trial jury to be drawn for each term of the district court.
- 3. Qualifications of petit jurors.
- 4. Petit jury how elected and chosen.
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- 16. When court may order additional jurors summoned.

[Chapter 126, Revised Statutes.]

*see amended. Chap. 112  
L 73-1663*

(1.) SEC. CXLVI. A petit or trial jury, is a body of men not less than twenty-four, nor more than thirty-six in number, returned at stated periods from the citizens of the county, before the district court of each of the organized counties of this territory, chosen by the county commissioners in the several organized counties, as hereinbefore provided by law, to try all issues of fact, either civil or criminal before said court.

Petit or trial jury defined.

(2.) SEC. CXLVII. A petit or trial jury must be drawn for every term of the district court, in each of the organized counties of this territory.

Trial jury how drawn.

Qualifications of petit jurors.

(3.) SEC. CXLVIII. The qualifications and disabilities of petit or trial jurors are the same as those by law prescribed for grand-jurors.

Petit jury how elected and chosen.

(4.) SEC. CXLIX. The petit or trial jury, shall be chosen, elected, drawn and summoned at the same time, and in the same manner, as is by law provided for the choosing, election, drawing and summoning of the grand-jury.

When less than thirty-six may be summoned.

(5.) SEC. CL. It shall and may be lawful for the judge of the district court, in any of the organized counties of this territory to order a less number of petit or trial jurors, than thirty-six to be summoned to attend the sessions of said court, and such order made and filed in the clerk's office of the proper county, shall be deemed sufficient authority to the clerk to issue a venire for the number mentioned in such order: *provided*, that the number shall not be less than twenty-four; and *provided further*, that if no order shall have been made at least fifteen days before the sitting of such court, the clerk shall proceed to draw thirty-six in number.

THE FORMATION OF THE TRIAL JURY.

Ballots of jurors drawn to be put in a box.

(6.) SEC. CLII. At the opening of the court, the clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the name cannot be seen, and must deposit them in a sufficient box.

When names of all the jurors to be called, attachment may issue.

(7.) SEC. CLII. When the indictment is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court may, in its discretion, wait or not, for the return of the attachment.

Drawing the jury.

(8.) SEC. CLIII. Before the name of any juror is drawn, the box must be closed, and shaken, so as to intermingle the ballots therein, the clerk must then, without looking at the ballots, draw them from the box, through a hole in the lid, so large only as conveniently to admit the hand.

Ballots of jurors drawn how disposed of.

(9.) SEC. CLIV. When the jury is completed, the ballots containing the names of the jurors sworn, must be laid aside, and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

Ballots of jurors drawn how disposed of.

(10.) SEC. CLV. After the jury are so discharged, the ballots, containing their names, must be again folded, and returned to the box; and so on, as often as a trial is had.

Ballots of absent jurors how disposed of.

(11.) SEC. CLVI. If a juror be absent, when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded, and returned to the box, as soon as the jury is sworn.

When court may order by-standers to be summoned.

(12.) SEC. CLVII. When by reason of challenge, or otherwise, a sufficient number of jurors duly drawn and summoned, cannot be obtained for the trial of any cause, civil or criminal, the court shall cause jurors to be returned from the by-standers, or from the county at large, to complete the panel.

Jurors so summoned how returned.

(13.) SEC. CLVIII. The jurors so returned from the by-standers, shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person appointed therefor by the court.

Jurors so returned to be qualified jurors.

(14.) SEC. CLIX. The persons so returned shall be such as are qualified and liable to be drawn as jurors, according to the provisions of law.

Jury to consist of twelve men.

(15.) SEC. CLX. The jury consists of twelve men, chosen by lot, as prescribed in this chapter, and sworn to try and determine the issue by an unanimous verdict.

*Handwritten notes:*  
 12 jurors to be  
 returned to be  
 qualified jurors.  
 Jury to consist  
 of twelve men.

(16.) SEC. CLXI. If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon so many persons, qualified to serve as jurors, as it deems sufficient to form a jury, the jurors so summoned must be called from the list returned by the sheriff, and so many of them, not excused or discharged, as may be necessary to complete the jury, must be impaneled and sworn.

When court may order additional jurors summoned.

CHAPTER 113.

CRIMINAL CALENDAR.

SECTION

1. Clerk to prepare calendar.
2. Issues on the calendar how disposed of.
3. After plea, defendant entitled to four days for trial.

SECTION

4. Clerk to keep a register; register what to contain.
5. Register to be submitted to the court at the commencement of term.

[ Chapter 127, Revised Statutes.]

(1.) SEC. CLXII. The clerk must prepare a calendar of the indictments pending to be tried at the term, enumerating them according to the date of the filing of the indictment, and specifying opposite to the title of each section, whether it be for a felony, or a misdemeanor, and whether the defendant be in custody or on bail, and must in like manner enter therein all indictments found during the term, and on which issues of fact are joined.

Clerk to prepare calendar.

(2.) SEC. CLXIII. The issues on the calendar must be disposed of in the following order, unless upon the application of either party, for good cause, the court direct an indictment to be tried out of its order:

Issues on the calendar how disposed of.

1. Indictments for felony, where the defendant is in custody;
2. Indictments for misdemeanor, where the defendant is in custody;
3. Indictments for felony, where the defendant is on bail; and,
4. Indictments for misdemeanor, where the defendant is on bail.

(3.) SEC. CLXIV. After his plea, the defendant is entitled to at least four days to prepare for his trial, if he requires it.

After plea, defendant entitled to four days for trial.

(4.) SEC. CLXV. The clerk must keep a register of all the criminal actions in the court, in which he must enter:

Clerk to keep a register. Register what to contain.

1. All cases returned to the court by a magistrate, whether the defendant be discharged or held to answer;
2. All indictments found in the court, or sent or removed thereto for trial, with the time of finding the indictment, or when it was sent or removed; and,
3. The time of arraignment of the demurrer, or plea, and of the trial, conviction or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

(5.) SEC. CLXVI. The register must be submitted to court at its opening at every term.

Register to be submitted to the court at the commencement of term.