

# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA

36

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COMPLETE IN TWO VOLUMES.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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**§ 5. Application by state.**

In a criminal case, a change of place of trial, on the application of the state, may be made from a county in one judicial district to an adjoining county in another district. *State v. Miller*, 15 Minn. 344, (Gil. 277.)

## CHAPTER 114.

## ISSUES AND MODE OF TRIAL.

**§ 2. Trial by a jury of the county.**

Defendant cannot waive his right to a jury trial. *State v. Carman*, (Iowa,) 18 N. W. Rep. 691.

Where the defendant, the court, and the state consented to trial before eleven jurors, a conviction was sustained. *State v. Kaufman*, (Iowa,) 2 N. W. Rep. 275.

**§ 3. Presence of defendant at trial.**

Defendant's presence at a motion preliminary to the trial is not necessary. *Epps v. State*, (Ind.) 1 N. E. Rep. 491.

See *State v. Reckards*, 21 Minn. 47, 50.

**§ 4. Continuance.**

Continuance to obtain witnesses. *Sutton v. People*, (Ill.) 10 N. E. Rep. 376; *Dacey v. People*, (Ill.) 6 N. E. Rep. 165.

Sufficiency of the affidavits and of the showing. *Dacey v. People*, (Ill.) 6 N. E. Rep. 165; *Sutherland v. State*, (Ind.) 9 N. E. Rep. 298; *State v. Smith*, (Iowa,) 15 N. W. Rep. 593; *State v. Bennett*, (Iowa,) 2 N. W. Rep. 1103; *Dingman v. State*, (Wis.) 4 N. W. Rep. 668; *State v. Dakin*, (Iowa,) 3 N. W. Rep. 411; *People v. Anderson*, (Mich.) 18 N. W. Rep. 561; *People v. Mason*, (Mich.) 30 N. W. Rep. 103; *People v. Shufelt*, (Mich.) 28 N. W. Rep. 79; *State v. Stone*, (Iowa,) 21 N. W. Rep. 681; *State v. Falconer*, (Iowa,) 30 N. W. Rep. 655.

Discretion of the court upon the application. *Morris v. State*, (Ind.) 4 N. E. Rep. 148.

Sufficiency of order of adjournment. *State v. Holmes*, (Iowa,) 9 N. W. Rep. 894; *State v. McGuire*, (Iowa,) 4 N. W. Rep. 886.

**§ 7. Joint defendants—State's evidence.**

Upon an indictment against two, neither can be sworn for the other, though they be tried separately. *State v. Dumphey*, 4 Minn. 438, (Gil. 340.)

**§ 10. View.**

The matter of ordering a view by the jury in a criminal case is, under this section, discretionary with the court. *Chute v. State*, 19 Minn. 271, (Gil. 230.)

See *Shular v. State*, (Ind.) 4 N. E. Rep. 870; *People v. Bush*, (Cal.) 10 Pac. Rep. 169.

**§ 11. Questions for court and jury.**

It is the duty of the court to declare the law to the jury in criminal as well as in civil cases. Whether the evidence has a tendency to prove any fact in issue, in a criminal cause, is for the determination of the court; not so as to the weight of evidence. *State v. Rheams*, 34 Minn. 18, 24 N. W. Rep. 302.

**\*§ 12. Order of argument.**

This section is not applicable to the municipal court of the city of Minneapolis. *State v. Wagner*, 23 Minn. 544.

**§ 14. (Sec. 13.) Deliberation of jury.**

It is error to allow a jury in a criminal case to separate without being in charge of an officer, after the case is finally submitted to them. *State v. Parrant*, 16 Minn. 178, (Gil. 157.)

Where, in a criminal case, after the jury have retired to deliberate, a juror separates himself from his fellows, without the attendance of the officer having the jury in charge, a new trial will be granted for that cause alone. *Maher v. State*, 3 Minn. 444, (Gil. 339.)

### § 16. (Sec. 15.) Return of jury for information.

After the jury has retired to consult, the judge cannot communicate with the jury, or give them the least information, except in open court, and in the presence of, or after due notice to, the parties. *Hoberg v. State*, 3 Minn. 263, (Gil. 181.)

### § 19. (Sec. 18.) Verdict for lower degree, attempt, etc.

Upon an indictment for a crime, of which there are several degrees, a general verdict of guilty is sufficient. It is necessary for the verdict to specify the degree of the offense found only where, under the indictment, the jury may convict, and do convict, of a lesser degree than that charged in the indictment. *Bilansky v. State*, 3 Minn. 427, (Gil. 314.)

Upon an indictment for assault with intent to murder, the jury may convict of an assault only. *Boyd v. State*, 4 Minn. 321, (Gil. 237.)

Upon an indictment for rape, the jury may convict of an assault with intent to commit rape. *O'Connell v. State*, 6 Minn. 379, (Gil. 190.)

Where the specification in an indictment alleges a larceny from the person, the defendant may be convicted of a simple larceny. *State v. Eno*, 8 Minn. 220, (Gil. 190.)

See *State v. Wiles*, 26 Minn. 381, 382, 4 N. W. Rep. 615.

### § 23. Proceedings on acquittal for insanity.

See *Bonfanti v. State*, 2 Minn. 124, (Gil. 99.)

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## CHAPTER 116.

### CHALLENGING JURORS.

#### § 4. Challenge to panel—Grounds.

A challenge to the panel of a petit jury will, under this section, lie only for a material departure from the form prescribed by law in respect to the drawing and return of the jury. *State v. McCarty*, 17 Minn. 76, (Gil. 54.)

No challenge can be taken to the panel of grand jurors summoned on a special *venire*, except for the causes allowed by statute to the panel summoned on the general *venire*. *State v. Gut*, 13 Minn. 341, (Gil. 315.)

#### § 5. Same—Mode and time of taking.

In the absence of fraud or collusion in the selection of a jury, an objection to the array, or to a single juror, is too late after verdict, unless it is shown that the party objecting was prejudiced by the irregularity. *Steele v. Malony*, 1 Minn. 349, (Gil. 258.)

#### § 12. Challenge to individual juror—Time for taking.

A challenge to a juror for actual bias, which was made and withdrawn, may be renewed at any time before the jury is complete. *State v. Dumphrey*, 4 Minn. 438, (Gil. 340.)

See *State v. Armington*, 25 Minn. 29.

#### § 14. Peremptory challenges.

This section is not an *ex post facto* law, and is applicable on the trial of offenses committed prior to its passage. *State v. Ryan*, 13 Minn. 370, (Gil. 343.)

See *People v. Comstock*, (Mich.) 21 N. W. Rep. 384.

#### § 19. Causes of challenge for implied bias.

This section has no application to district judges. *Sjoberg v. Nordin*, 26 Minn. 501, 5 N. W. Rep. 677.