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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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[Chapter 100, Revised Statutes.]

The killing of a human being what to be.

(1.) SEC. I. The killing of a human being, without the authority of law, by poison, shooting, stabbing, or any other means, or in any other manner, is either murder, manslaughter, or excusable or justifiable homicide, according to the facts and circumstances of each case.

Murder in first degree.

(2.) SEC. II. [As amended on page 24 of the laws of 1853:] Such killing when perpetrated with a premeditated design to effect the death of a person killed, or any human being, shall be murder in the first degree; and the person who shall be convicted of the same shall suffer the penalty of death; but any person convicted of any capital crime, shall be kept in solitary confinement for a period of not less than one month, nor more than six months, in the discretion of the judge before whom the conviction is had; at the expiration of which time, it shall be the duty of the governor to issue his warrant of execution. When perpetrated by any act eminently dangerous to others, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, shall be murder in the second degree, and shall be punished by imprisonment in the territorial prison or penitentiary, for life; when perpetrated without any design to effect death by a person engaged in the commission of any felony, shall be murder in the third degree, and shall be punished by imprisonment in the territorial prison not more than fourteen years, nor less than seven years.

Warrant for execution.

Murder in second degree.

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Penalty.

What killing of human being in other cases to be.

(3.) SEC. III. The killing of one human being, by the act, procurement, or omission of another, in cases where such killing shall not be murder according to the provisions of this chapter, is either justifiable, or excusable homicide, or manslaughter.

Justifiable homicide.

(4.) SEC. IV. Such homicide is justifiable when committed by public

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Warrant for execution.

officers and those acting by their command, in their aid and assistance, either in obedience to any judgment of any competent court; or when necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or when necessarily committed in retaking felons who have been rescued, or who have escaped; or when necessarily committed in arresting felons fleeing from justice.

(5.) SEC. V. Such homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person shall be; or,

2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished; or,

3. When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed; or lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

(6.) SEC. VI. [*As amended on page 22 of the amendments of 1852 to the revised statutes:*] Such homicide is excusable when committed by accident or misfortune in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with ordinary caution, and without any unlawful intent.

(7.) SEC. VII. Whenever it shall appear to the jury, on the trial of any person for murder, or manslaughter, that the alleged homicide was committed under circumstances, or in cases where by law such homicide was justifiable or excusable, the jury shall render a verdict of not guilty.

(8.) SEC. VIII. The killing of a human being, without a design to effect death, by the act, procurement, or culpable negligence of any other, while such other is engaged in the perpetration of any crime or misdemeanor, not amounting to felony; or in an attempt to perpetrate any such crime or misdemeanor, in cases where such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

(9.) SEC. IX. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter in the first degree.

(10.) SEC. X. The willful killing of an unborn infant child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

(11.) SEC. XI. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

(12.) SEC. XII. [*As amended on page 22 of the amendments of 1852, to the revised statutes:*] The killing of a human being by another, in a heat of passion, upon sudden provocation, or in sudden combat, intentionally, but without premeditation, shall be deemed manslaughter in the second degree.

(13.) SEC. XIII. [*Ibid.*] Every person who shall unnecessarily kill

Justifiable homicide.

Homicide when excusable.

When jury to find not guilty on indictment for murder.

Manslaughter in the first degree.

Manslaughter in the first degree.

Manslaughter in the first degree.

Manslaughter in the second degree.

Manslaughter, how defined.

Manslaughter in

the second degree, how defined.

another, except by accident or misfortune, and except in cases mentioned in subdivision two of section five of this chapter, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

Manslaughter in the second degree defined.

(14.) SEC. XIV. [*Ibid.*] The killing of a human being by another in the heat of passion, without a design to effect death, but with a dangerous weapon, or in a cruel or unusual manner, shall be deemed manslaughter in the second degree.

Manslaughter in the third degree defined.

(15.) SEC. XV. [*Ibid.*] The involuntary killing of a human being, by the act, procurement, or culpable negligence of another, while such other person is engaged in the commission of a trespass, or other injury to private rights or property, or engaged in an attempt to commit such injury, or were engaged in an unlawful act, which killing would not be manslaughter in the first or second degree, according to the provisions of the preceding sections of this chapter, shall be deemed manslaughter in the third degree.

Manslaughter in the third degree.

(16.) SEC. XVI. If the owner of a mischievous animal, knowing its propensities, willfully suffer it to go at large, or shall keep it without ordinary care, and such animal while so at large or not confined, kill any human being who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

(17.) SEC. XVII. Any person navigating any boat or vessel for gain who shall willfully or negligently receive so many passengers, or such a quantity of other lading that by means thereof such boat or vessel shall sink or upset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

(18.) SEC. XVIII. If the captain, or any other person, having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person, having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which in bursting or breaking any person shall be killed, every such captain, engineer or other person, shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

(19.) SEC. XIX. If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person, which shall produce the death of such other, he shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the fourth degree defined.

(20.) SEC. XX. [*As amended on page 22 of the amendments of 1852 to the revised statutes.*] The involuntary killing of a human being by another, with any weapon not dangerous, or by any means neither cruel nor unusual, in the heat of passion, shall be deemed manslaughter in the fourth degree.

Manslaughter in the fourth degree.

(21.) SEC. XXI. Every other killing of a human being by the act, procurement or culpable negligence of another where such killing is not justifiable or excusable, or is not declared in this chapter murder, or manslaughter of some other degree, shall be deemed manslaughter in the fourth degree.

Punishment for manslaughter in the first, second and third degrees.

(22.) SEC. XXII. Persons convicted of manslaughter in the first, second, or third degrees, shall be punished by imprisonment in the territorial prison as follows:

Persons convicted of manslaughter in the first degree, for a term not less than seven years; if convicted of manslaughter in the second degree, for a term not more than seven nor less than four years.

If convicted of manslaughter in the third degree, for a term not more than four years nor less than two years.

(23.) SEC. XXIII. Every person convicted of manslaughter in the fourth degree, shall be punished by imprisonment in the territorial prison for two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Punishment for manslaughter in the fourth degree.

(24.) SEC. XXIV. Every person who shall by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder in the second degree.

Murder in a duel.

(25.) SEC. XXV. Every person who shall be the second of either party in such duel as is mentioned in the preceding section, and shall be present when such wound shall be inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact to the crime of murder in the second degree.

Second in a duel.

(26.) SEC. XXVI. Every person who shall fight a duel, or act as a second or surgeon in the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office within this territory, forever thereafter.

Engaging in duel, challenging, &c.

(27.) SEC. XXVII. Every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge although no duel ensue, shall be punished by imprisonment in the territorial prison not more than ten years, nor less than three years, and shall be incapable of voting or holding any office of trust or profit under the laws of this territory.

Duel out of the territory.

(28.) SEC. XXVIII. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, or second, or surgeon, or who shall advise, or encourage, or promote such duel, shall be punished in the territorial prison not more than two years, nor less than one year.

Accepting or carrying challenge, &c.

(29.) SEC. XXIX. If any person shall post another, or in writing or print he shall use any reproachful and contemptuous language to, or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in the territorial prison not more than one year, nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Posting another, &c.

SEC. XXX. [*Repealed on page 22 of the amendments of 1852 to the revised statutes.*]

(30.) SEC. XXXI. If any person with malicious intent to maim or disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable a limb or member of any person, every such offender and every person privy to such intent, who shall be present aiding in the commission of such offense shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than two hundred dollars.

Maiming or disfiguring.

(31.) SEC. XXXII. If any person shall assault another, with intent to murder, or to maim, or to disfigure his person in any of the ways men-

Assault with intent to murder, &c.

tioned in the next preceding section, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than one hundred dollars.

Attempt to murder by poison, &c.

(32.) SEC. XXXIII. If any person shall attempt to commit the crime of murder, by poisoning, drowning, or strangling another person, or by any means not constituting an assault, with intent to murder, every such offender shall be punished by imprisonment in the territorial prison, not more than ten years, nor less than one year.

Robbing, being armed, &c.

(33.) SEC. XXXIV. If any person shall assault another, and shall feloniously rob, steal, and take from his person any money or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed, he shall wound or strike the person robbed, he shall be punished by imprisonment in the territorial prison not more than ten years, nor less than three years.

Assault with intent to rob, &c., being armed.

(34.) SEC. XXXV. If any person being armed with a dangerous weapon, shall assault another with intent to rob or to murder, he shall be punished by imprisonment in the territorial prison not more than five years, nor less than one year.

Robbing not being armed.

(35.) SEC. XXXVI. If any person shall by force and violence, or by assault and putting in fear, feloniously rob, steal, and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, he shall be punished by imprisonment in the territorial prison, not more [than] three years, nor less than one year.

Assault to rob, not being armed.

(36.) SEC. XXXVII. If any person not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or steal, he shall be punished by imprisonment in the territorial prison not more than two years, nor less than six months.

Attempt to extort money by threats, &c.

(37.) SEC. XXXVIII. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, he shall be punished by imprisonment not more than one year, nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars.

Rape.

(38.) SEC. XXXIX. If any person shall ravish, and carnally know any female of the age of ten years or more, by force and against her will, he shall be punished by imprisonment in the territorial prison, not more than thirty years, nor less than ten years; but if the female on trial shall be proven to have been at the time of the offense, a common prostitute, he may be imprisoned not more than one year.

Rape and abuse of a child.

(39.) SEC. XL. If any person shall unlawfully and carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the territorial prison for life.

Assault with intent to commit rape.

(40.) SEC. XLI. If any person shall assault any female, with intent to commit the crime of rape, he shall be punished by imprisonment in the territorial prison, not more than ten years, nor less than one year.

False imprisonment how punished.

(41.) SEC. XLII. [As amended on page 22 and 23 of the amendments of 1852 to the revised statutes:] Every person who, without lawful authority, and willfully or maliciously, and with a wrongful intent, shall forcibly or secretly confine or imprison any other person in this territory against his will, or shall forcibly carry or send such person out of the territory against his will, or forcibly seize and confine, or inveigle or kidnap any other person, with intent either to cause such person to be secretly confined

or imprisoned in this territory, against his will, or to cause such person to be sent out of this territory, against his will, or to be sold as a slave, or in any way held to service against his will; and every person who shall sell, or in any manner transfer for any term, the service or labor of any negro, mulatto or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this territory, to any state, place or country, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than five hundred dollars.

Kidnapping:
how punished.

(42.) SEC. XLIII. Every offense mentioned in the next preceding section, may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried, or brought, and upon the trial of any such offense, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defense, unless it shall be made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or by threats.

Kidnapping and
where to be prosecuted.

(43.) SEC. XLIV. If any person shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or shall willfully poison any spring, well, or reservoir of water, with such intent, he shall be punished by imprisonment in the territorial prison, not more than ten years, nor less than one year.

Poisoning food,
&c.

(44.) SEC. XLV. If any person shall assault another, with intent to commit any burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not herein prescribed, shall be punished by imprisonment in the territorial prison, not more than three years, nor less than six months, or by fine not exceeding one thousand dollars, nor less than one hundred dollars.

Assault with intent to commit
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or other felony.

CHAPTER 90.

OFFENSES AGAINST PROPERTY.

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