

REVISED LAWS

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1905

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MARK B. DUNNELL

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ized injury to his person is punishable in the same manner as if he were not convicted or sentenced. A conviction for any crime does not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in a case of suicide, or where a person flees from justice, are abolished. (6837, 6838)

4778. Incriminating testimony not to be used—In every case in the Revised Laws where it is provided that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate him or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter, or thing concerning which he shall so testify, except for perjury committed in such testimony. (6839)

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4779. Sentence of minor under sixteen—Whenever a person under the age of sixteen years shall be convicted of crime, he shall be sentenced to pay a fine or to be committed to the state training school for boys and girls, and subjected to the discipline and control thereof until his majority, or for such shorter time as the court may determine. (6840)

4780. Convict as witness—Every person convicted of crime shall be a competent witness in any civil or criminal proceeding, but his conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his cross-examination, upon which he shall answer any proper question relevant to that inquiry; and the party cross-examining shall not be concluded by his answer thereto. (6841)

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A witness may be asked if he has not been convicted of a crime, either a felony or a misdemeanor, and if he denies it he may be contradicted (42-258, 44+115; 39-357, 40+263; 43-196, 45+152; 77-417, 80+358; 85-19, 88+22). He cannot be asked if he has been indicted (91-419, 98+334), or arrested (85-19, 88+22; State v. Bryant, Filed Dec. 29, 1905), or as to the punishment (77-417, 80+358).

4781. Intent to defraud—Whenever, by any of the provisions of Part IV, an intent to defraud is required in order to constitute an offence, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate whatsoever. (6845)

27-309, 7+264; 43-196, 45+152; 67-176, 69+815.

4782. Crimes on railway trains, boats, etc.—The route traversed by any railway car, coach, train, or other public conveyance, and the water traversed by any boat, shall be criminal districts; and jurisdiction of all public offences which shall be committed on any such railway car, coach, train, boat, or other public conveyance, or at any station or depot upon such route, shall be in any county through which said car, coach, train, boat, or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. (6846)

Crime on boat (4-325, 241).

CHAPTER 94

RIGHTS OF ACCUSED

4783. To know ground of arrest—Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of his arrest; and every such officer who shall refuse to answer relative thereto, or shall answer untruly, or neglect on request to exhibit to him, or to any person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year. (6272)

See §§ 5227, 5230, 5233.

4784. Presumption of innocence—Conviction of lowest degree, when— Every defendant in a criminal action is presumed innocent until the contrary is proved, and in case of a reasonable doubt is entitled to acquittal; and when an offence has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. (6273, 6274)

1. Burden of proof on state—The state has the burden of proving beyond a reasonable doubt every essential element of the offence charged (10-407, 325; 22-514; 90-7, 95+578). The doubt entitling to acquittal must result from a consideration of all the evidence; each evidentiary fact need not be proved beyond a reasonable doubt (37-493, 35+493; 29-193, 12+524; 90-183, 96+330).

2. Definition of reasonable doubt—It is not desirable for the court to attempt an explanation of the term "reasonable doubt" unless requested by the jury. It is impossible to make the meaning of the expression more clear by any circumlocution (38-438, 38+355; 14-105, 75). The following definition, if any, should be given: "Proof beyond a reasonable doubt is such as would impress the judgment of ordinarily prudent men with a conviction upon which they would act without hesitation in their own most important affairs and concerns of life" (56-226, 239, 55+652, 57+1065). The court is not required to explain to the jury the reason for the rule (37-493, 35+373). Instructions defining reasonable doubt considered (10-407, 325; 12-293, 191; 14-105, 75; 18-208, 191; 37-493, 35+373; 38-438, 38+355; 37-493, 35+373; 72-296, 75+235; 90-183, 96+330; 93-393, 101+499).

3. Doubt as to degree of crime—If the jury have a reasonable doubt whether the accused is guilty of a higher or lower degree of crime they must find him guilty of the latter (4-368, 277).

4. To what applicable—The rule requiring proof beyond a reasonable doubt is applicable to all grades of crime (10-407, 325), and to proceedings for criminal contempt (65-146, 67+796). It is not applicable to bastardy proceedings (29-357, 13+153), or to civil actions, although the issues involve a charge of crime (22-206; 29-107, 12+154; 29-357, 13+153).

4785. Conviction—When had—No person indicted for any offence shall be convicted thereof, unless by admitting the truth of the charge in his demurrer or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court. (6275)

4786. Dismissal, when—Whenever any person has been held to answer for a public offence, if an indictment is not found against him at the next term of the court to which he is held, said court shall order the prosecution to be dismissed, unless good cause to the contrary be shown. If indicted, and trial is not postponed upon his own application, unless tried at the next term of the court in which it is triable, the indictment shall be dismissed, unless good cause to the contrary be shown. (6278-6280)

Dismissal on failure to prosecute seasonably (66-294, 69+25). Cited as to when a prosecution is pending (18-398, 359).

4787. Continuance—Effect—Bail—Whenever the defendant is not indicted or tried as herein provided, and good reasons therefor are shown, the court may order the action continued from term to term, and in the meantime commit the defendant, or, in case the offence is bailable, admit him to bail, on his furnishing satisfactory sureties. Whenever the action is dismissed, the defendant shall be discharged from custody, or, if admitted to bail, his bail shall be exonerated, and, if money has been deposited for bail, that shall be refunded. (6280, 6281)

4788. Defendant entitled to blank subpoenas—The clerk of the court in which any indictment is to be tried shall at all times, upon application of defendant, and without charge, issue as many blank subpoenas, under the seal of the court, and subscribed by him as clerk, for witnesses in the state, as are required by such defendant. (6282)

4789. Counsel for defendant—Whenever a defendant shall be arraigned upon an indictment for any criminal offence punishable by death or imprisonment in the state prison, and shall request the court to appoint counsel to assist in his defence, and satisfy it by his own oath or other required proof that he is unable, by reason of poverty, to procure counsel, such court shall appoint counsel, not exceeding two, for such defendant, to be paid, upon its order, by the county in which the indictment was found. Compensation, not

exceeding ten dollars per day for each counsel, for the number of days he is actually employed in court upon the trial, shall be fixed by the court in each case. (6283)

90-348, 97+101.

4790. Depositions for accused—Upon cause shown to the court in which any criminal action is pending, a judge thereof may by order allow depositions of witnesses on behalf of the prisoner to be taken in the same manner and in like cases where they may be taken in civil actions; and the depositions so taken may be used upon the trial of the defendant, in his behalf, as depositions are now allowed and used in civil actions; but the expense attending the taking and return thereof shall be paid by the defendant, except when otherwise directed by the court, by order duly entered upon its minutes. (6284)

13-341, 315.

4791. Acquittal on part of charge—Whenever any person indicted for felony is acquitted by verdict of part of the offence charged and convicted on the residue, such verdict may be received and recorded by the court, and thereupon he shall be adjudged guilty of the offence, if any, which appears to be substantially charged by the residue of the indictment, and sentenced accordingly. (6269)

4792. Acquittal—When a bar—Whenever a defendant shall be acquitted or convicted upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof. (6317)

See note to Const. art. 1 § 7.

CHAPTER 95

CRIMES AGAINST THE SOVEREIGNTY OF THE STATE

4793. Treason—Every person who shall commit treason against the state shall be punished by imprisonment in the state prison for life. (6319)

Petit treason does not exist in this state (3-246, 169).

4794. Misprision of treason—Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a judge of the supreme or a district court, shall be guilty of misprision of treason, and punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or in a common jail not exceeding two years. (6320)

4795. Levying war—To constitute levying war against the state, an actual act of war must be committed. To conspire to levy war is not enough. Where persons rise in insurrection, with intent to prevent, in general, by force and intimidation, the execution of a statute of the state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance and for a private purpose, is not levying war. (6322, 6323)

4796. Wilful neglect of official duty—Whenever any duty is enjoined by law upon any public officer or person holding public trust or employment, every wilful neglect to perform such duty, and every malfeasance in office, for the punishment of which no special provision has been made, shall be a gross misdemeanor, and punished by fine and imprisonment. (6266)

4797. Acting in public office without having qualified—Every person who performs any of the functions of a public office without having executed and duly filed the required security shall be guilty of a gross misdemeanor, and, in addition to the punishment prescribed therefor, he shall forfeit his right to the office. (6325)