

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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Where evidence of guilt is all circumstantial, proof beyond a reasonable doubt is not satisfied if the inference of innocence is as reasonable as that of guilt. *Id.* See Dun. Dig. 2451.

Same degree of proof is not required in prosecutions under a city ordinance as in prosecutions for violation of a statute under an indictment or information. *State v. Glenn*, 213M177, 6NW(2d)241. See Dun. Dig. 6806.

Proof beyond a reasonable doubt is not necessary in cases involving violations of ordinances. *State v. Siporen*, 215M438, 10NW(2d)353. See Dun. Dig. 6806.

9966. Acquittal—When a bar.
Double jeopardy. 24MinnLawRev522.

CHAPTER 95

Crimes Against the Sovereignty of the State

9970. Wilful neglect of official duty.

Wilful neglect of duty was not intended to apply to neglect to perform a duty of such character that as a matter of public interest a public officer must, in faithful discharge of his duties, scrutinize prior proceedings to determine their legality in order to conclude whether his duty has in fact arisen. *State v. Bratrud*, 210M214, 297NW713, 134ALR1248. See Dun. Dig. 8028.

In prosecution of police officer for wilful neglect of official duty with respect to enforcement of law against a house of ill fame, state must prove place concerned as one of ill fame, and character of place could be proved by showing how and in what manner it was conducted and what occupants did and said. *State v. Palmersten*, 210M476, 299NW669. See Dun. Dig. 8028.

Evidence held to sustain conviction of head of "morals squad" of wilful neglect of official duty in connection with disorderly houses. *Id.*

In prosecution of police officer for wilful neglect of official duty, it was not prejudicial error to refuse request to read statutes pertaining to an officer's power to arrest because those statutes covered situations other than that presented by evidence, and court in summarizing indictment made elements of crime clear to jury, though court should have instructed jury as to officer's power and authority in response to such request. *State v. Grunwald*, 211M74, 300NW206. See Dun. Dig. 8028.

Defendant's requested instructions that he as a police officer had no right to arrest proprietors of a house of ill fame without being in possession of competent evidence of commission of that felony were properly refused. *Id.*

Evidence held sufficient to sustain conviction of police officer for wilful neglect of official duty in failing to arrest keepers of a house of ill fame. *Id.*

Neglect of official duty may consist of careless or intentional failure to exercise reasonable diligence in its performance. Removal of Mesenbrink, 211M114, 300NW398. See Dun. Dig. 8028.

Removal of a village clerk from office for incompetency must be by conviction under Mason's Minnesota Statutes, 1927, §6953(5). *Op. Atty. Gen.*, (475H-2), July 2, 1941.

9978½.

WAR

2. Price control.

Federal District Court had no jurisdiction to pass on

the reasonableness or validity of price regulations issued by Office of Price Administration. *Henderson v. C. Thomas Stores*, (DC-Minn), 48FSupp295. See Dun. Dig. 3744.

The ceiling prices designated in the Federal Emergency Price Control Act as applied to retail stores which were members of a large chain meant that each store must base its ceiling price on the amount for which goods were sold by it in March 1942, and not upon the prices charged in another store of the chain during that month. *Id.* See Dun. Dig. 10136cc to 10136f.

Where goods were sold at a discount for quantity purchases during March 1942, the seller could not change the price differential on such purchases unless the charge resulted in a lower price. *Id.*

Retail chain stores could not raise prices above their selling prices for March 1942, on account of the fact that wholesale purchaser was forced to pay more for the goods, without obtaining permission upon application to the Office of Price Administration. *Id.*

Managers of a chain of retail stores could be enjoined from selling goods at prices in excess of ceiling and from selling without adequately posting ceiling price lists, even though such conduct was merely the result of carelessness and misunderstanding of price regulations. *Id.*

The Federal district court does not have jurisdiction to determine the validity of price regulations issued by the administrator under the Emergency Price Control Act. *U. S. v. C. Thomas Stores*, (DC-Minn), 49FSupp111. See Dun. Dig. 3744.

The Emergency Price Control Act is a valid exercise of the war powers of Congress. *Id.* See Dun. Dig. 10136cc to 10136f.

3. Requisition of property.

The right of the Federal government to requisition personal property under its war powers is superior to the rights of creditors of a corporation under reorganization or the trustee in whose possession the property is. *Inland Waterways*, (DC-Minn), 49FSupp675. See Dun. Dig. 10136cc to 10136f.

Upon requisition of personal property by the federal government pursuant to 50:App Mason's USCA 721, the government is not bound to tender compensation to the property owner before or at the time of taking. *Id.*

CHAPTER 96

Crimes Against Public Justice

BRIBERY AND CORRUPTION

9995. Interfering with public officers.

Where licensed fur dealer was arrested upon three complaints, two arising out of violation of fur law and third on charge of resisting a game warden, and was fined under each complaint, whether state was entitled to 50% of fine under last complaint depends upon which statute prosecution was based. *Op. Atty. Gen.* (199B-4), Mar. 20, 1942.

RESCUES AND ESCAPES

10007. Escaped prisoners.

Where man is bound over to district court in a county without a jail and is lodged in jail in another county and escapes, escape constitutes another felony and county where escape occurs is liable for cost of apprehending and returning prisoner, but sheriffs of both counties hold outstanding warrants and may enter into an agreement to share expense. *Op. Atty. Gen.*, (341a), April 24, 1940.

PUBLIC RECORDS

10013. Injury to public records.—Every person who shall wilfully and unlawfully remove, mutilate, de-

stroy, conceal, alter, deface, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office or with any public officer by authority of law or any public officer or employee who permits any other person to do so shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than \$500.00, or by both. (As amended Act Apr. 28, 1941, c. 553, §7.)

PERJURY AND OTHER CRIMES

10016. Perjury defined.

1. What constitutes.

Perjury means not only testifying under oath to what is untrue, but that the one so testifying knew and appreciated at moment of giving testimony that it was false and untrue. *Priebe*, 207M97, 290NW552. See Dun. Dig. 7474.

What happens to perjurers. 24MinnLawRev727.

5. Evidence.

Where evidence is conflicting, question of guilt in perjury, as well as in other cases, is one of fact for jury.

State v. Soltau, 212M20, 2NW(2d)155. See Dun. Dig. 2477, 7476.

10022. Perjury and subornation.

Sentence of one-year imprisonment was not unusually hard and severe for perjury. State v. Soltau, 212M20, 2NW(2d)155. See Dun. Dig. 2502.

10028. Neglect of duty by officers, trustees, etc.

State v. Bratrud, 210M214, 297NW713, 134ALR1248. Willful neglect of duty was not intended to apply to neglect to perform a duty of such character that as a matter of public interest a public officer must, in faithful discharge of his duties, scrutinize prior proceedings to determine their legality in order to conclude whether his duty has in fact arisen. State v. Bratrud, 210M214, 297NW713. See Dun. Dig. 8028.

10033. Resisting public officer.

Where licensed fur dealer was arrested upon three complaints, two arising out of violation of fur law and third on charge of resisting a game warden, and was fined under each complaint, whether state was entitled to 50% of fine under last complaint depends upon which statute prosecution was based. Op. Atty. Gen. (199B-4), Mar. 20, 1942.

10034. Compounding crimes.

One convicted of compounding a crime on plea of guilty cannot question the conviction in a disbarment proceeding. Wallace, 209M465, 296NW534. See Dun. Dig. 678.

10053. Falsely auditing and paying claims.

Evidence held to show false audit and payment of claims on state. State v. Elsberg, 209M167, 295NW913. See Dun. Dig. 8846c.

A county commissioner auditing and allowing a fraudulent claim is guilty of a felony and an infamous crime, and on conviction his office is automatically vacated. Op. Atty. Gen. (126G), Oct. 11, 1940.

10055. Conspiracy defined—How punished.

Evidence held to sustain conviction of conspiracy to possess and sell counterfeit notes. Firotto v. U. S., (CCA 8), 124F(2d)532. See Dun. Dig. 1563a.

Immunity of judicial officers to civil action for judicial acts cannot be avoided by pleading that acts complained of were results of a conspiracy previously entered into. Linder v. F., 209M43, 295NW299. See Dun. Dig. 4959.

In action for conspiracy in inducing wrongful breach of contract, not being an action for breach of contract or for an accounting, there could be no recovery if there was justification for action of defendant in terminating relations with plaintiff. Wolfson v. Northern States Management Co., 210M504, 299NW676. See Dun. Dig. 1562, 1564.

No action lies for a conspiracy unless it be shown either that end sought to be accomplished by conspirators was unlawful or, if lawful, that means resorted to for its accomplishment were harmful. Id.

Arson is a felony, while a conspiracy to commit arson is a misdemeanor. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a, 2406.

A conspiracy to commit a crime is a separate offense from the crime which is the object of the conspiracy. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 1563a.

If the proof of conspiracy to defraud is such as reasonably to show a completed structure of fraudulent result the frame of which has been furnished by several defendants, the parts if and when brought together showing adaptation to each other and to the end accomplished, it is reasonable to draw the inference of conspiracy and common intent to defraud. Jewell v. Jewell, 215M190, 9NW(2d)513. See Dun. Dig. 1566b.

Conspiracy to defraud is usually provable only by circumstantial evidence. Id. See Dun. Dig. 1566b.

A complaint in action by widow, by guardian ad litem, against administrator, surety, general guardian, surety,

and against administrator in his individual capacity, involving actions ex contractu and ex delicto, was the subject to demurrer for misjoinder of causes of action, though plaintiff attempted to weld them into a single claim for damages for conspiracy. Id. See Dun. Dig. 1567.

Where the evidence permits an inference of concert of action to accomplish a given unlawful result, as where several persons commit separate acts which form parts of a connected whole, an inference of conspiracy is permissible that there was concert in both planning and execution, but the parts or acts done by each must not only tend to show a prior unlawful combination, but negative the idea of lawful undertaking or purpose. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 1562.

Where parties combine and agree for innocent and lawful purposes, they are not liable for criminal conspiracy on account of acts done pursuant to the agreement or combination, unless such acts are criminal and they participate in or assent to the commission of the same. Id.

A conspiracy to commit a crime is a separate, substantive offense from the crime which is the object of the conspiracy. Id. See Dun. Dig. 1563a.

Persons may combine to commit lawful acts. Id. See Dun. Dig. 1564.

The labor injunction in Minnesota. 24MinnLawRev757. The state legislatures and unionism. 38MichLawRev 987.

(4). A defendant cannot be found guilty of conspiracy to cheat and defraud unless it be shown that he and the other alleged conspirators had a common purpose to cheat and defraud and each of them understood that the others had such purpose. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 1562.

Where the truth of representations is known to an employee, but not to his employer, the latter cannot be held criminally liable for conspiracy to cheat and defraud by means of the representation. Id. See Dun. Dig. 1562, 2416.

Criminal liability for conspiracy is predicated upon personal guilt. Id. See Dun. Dig. 1564.

A conscious and intentional purpose to break the law is an essential ingredient of the crime of conspiracy. Id.

To constitute a conspiracy to cheat and defraud, there must be not only a combination, but a common object to cheat and defraud, which each member of the combination intends shall be accomplished by the concerted action of all. Id.

Evidence held insufficient to sustain conviction of member of partnership operating a collection agency to defraud a debtor by false representations as to amounts due. Id. See Dun. Dig. 1566b.

A criminal conspiracy need not be established by direct evidence, but may be inferred from the circumstances, nor is it necessary to show a formal agreement to commit the crime charged. Id.

10056. Conspiracy, when punishable—Overt act.

Arson is a felony, while a conspiracy to commit arson is a misdemeanor. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a, 2406.

One who procured, conspired with, or commanded another to burn her house was not guilty of substantive crime of arson where she attempted to prevail upon the party who was to commit the crime not to go on with the plan. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a.

A conspiracy to commit a crime is a separate offense from the crime which is the object of the conspiracy. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 1563a.

10060-1. Printing and circulating certain documents prohibited.

A "notice before suit" signed by a justice of the peace would violate this section. Op. Atty. Gen., (161a-8), Mar. 19, 1941.

CHAPTER 97

Crimes Against the Person

HOMICIDE

10066. Proof of death and of killing by defendant.

In prosecution for murder of wife testimony by witnesses that they had seen deceased with bruises and black eyes was admissible where it was connected with acts of defendant by other evidence and the inferences permissible therefrom. State v. Rediker, 214M470, 8NW(2d)527. See Dun. Dig. 4246.

10067. Murder in first degree.

8. Evidence.

In prosecution for murder of wife, evidence that deceased had various times bore marks of assault would not alone be admissible, but where evidence to connect the fact of frequent bruises with noises and commotion, com-

mingled with defendant's threats and curses emanating from their apartment, the evidence is admissible to show a course of conduct and a mental attitude of defendant toward his wife, and to show malice. State v. Rediker, 214M470, 8NW(2d)527. See Dun. Dig. 4246.

In prosecution for murder of wife it was highly improper for prosecutor on cross-examination of defendant to ask whether his wife remained silent as to his acts of misconduct in order to save the family reputation and also whether or not he had beat his first wife, but such questions, to which objections were sustained, were not prejudicial where record contained an abundance of testimony of defendant's brutality toward deceased. Id.

10068. Murder in second degree.—Such killing of a human being, when committed with a design to ef-