

PENAL CODE

CHAPTER 1.

PRELIMINARY PROVISIONS.

§ 8530. **Title.** This act shall be known as the penal code of the state of North Dakota. [Pen. C. 1877, § 1; R. C. 1899, § 6800.]

§ 8531. **What acts criminal. Under what law punishable.** No act or omission begun after the beginning of the day on which this code takes effect as a law shall be deemed criminal or punishable except as prescribed or authorized by this code or other statutes of this state, or by some of the statutes which this code specifies as continuing in force and as not affected by its provisions, or by some ordinance or municipal, county or township regulation passed or adopted under any such statutes. Any act or omission begun prior to the beginning of the day on which this code takes effect as a law, may be inquired of, prosecuted and punished in the same manner as if this code had not been enacted. [Pen. C. 1877, § 2; R. C. 1895, § 6801.]

§ 8532. **Crime defined. Punishments enumerated.** A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office.
5. Disqualification to hold or enjoy any office of honor, trust or profit under this state.
6. Other penal discipline. [Pen. C. 1877, § 3; R. C. 1895, § 6802.]

What constitutes a crime. *State v. Hogan*, 8 N. D. 301, 78 N. W. 1051; *In re Kirby*, 10 S. D. 322, 73 N. W. 92.

§ 8533. **Crimes, how divided.** Crimes are divided into:

1. Felonies.
2. Misdemeanors. [Pen. C. 1877, § 4; R. C. 1899, § 6803.]

§ 8534. **Felony and misdemeanor defined.** A felony is a crime which is or may be punishable with death or imprisonment in the penitentiary; every other crime is a misdemeanor. When a crime punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in a county jail, in the discretion of the court or jury, it is, except when otherwise specially declared by law to be a felony, a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary. [Pen. C. 1877, §§ 5, 6; R. C. 1895, § 6804.]

§ 8535. **Scope of penal code.** This code specifies the classes of persons who are deemed capable of crimes and liable to punishment therefor; and defines the nature of the various crimes, and prescribes the kind and meas-

ure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the provisions of this code and the code of criminal procedure. [Pen. C. 1877, § 7; R. C. 1895, § 6805.]

§ 8536. **Conviction before punishment.** The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction. [Pen. C. 1877, § 8; R. C. 1899, § 6806.]

§ 8537. **Jury find degree of crime.** Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, shall find the degree of the crime of which he is guilty. [Pen. C. 1877, § 9; R. C. 1899, § 6807.]

§ 8538. **Rule of construction.** The rule of the common law that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice. [Pen. C. 1877, § 10; R. C. 1899, § 6808.]

§ 8539. **Duty of court to determine punishment. Exception.** Except as limited in cases where the jury is authorized to determine the punishment, the several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed. [Pen. C. 1877, § 11; R. C. 1895, § 6809.]

§ 8540. **Jury when authorized, otherwise court determines limit.** Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the jury, when so authorized, or by the court authorized to pass sentence, within such limits as may be prescribed by this code. [Pen. C. 1877, § 12; R. C. 1895, § 6810.]

§ 8541. **Punishments of felonies. Natural persons. Corporations.** Except in cases where a different punishment is prescribed by this code or by some existing provision of law, every offense declared to be a felony is punishable by a fine not exceeding one thousand dollars or by imprisonment in the penitentiary not less than one and not exceeding five years, or by both such fine and imprisonment. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a felony, and there is no other punishment prescribed by law, such corporation is punishable by a fine of not less than five hundred and not exceeding five thousand dollars. [Pen. C. 1877, § 13; R. C. 1895, § 6811.]

Punishment of felonies when not otherwise prescribed. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 8542. **Misdemeanors.** Except in cases where a different punishment is prescribed by this code or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 14; R. C. 1895, § 6812.]

CHAPTER 2.

PERSONS LIABLE TO PUNISHMENT FOR CRIME.

§ 8543. **Persons liable to punishment.** The following persons are liable to punishment under the laws of this state:

1. All persons who commit, in whole or in part, any crime within this state.
2. All persons who commit larceny or robbery as defined in this code, out of this state and bring to, or are found with the property stolen within this state.

3. All persons who, being out of this state, abduct or kidnap, by force or fraud, any person, contrary to the laws of the place where such act is committed, and bring, send or convey such person within the limits of this state, and are afterwards found therein.

4. All persons who, being out of this state, cause or aid, advise or encourage another person to commit a crime within this state, and are afterwards found therein.

5. All persons who, being out of this state and with intent to cause within it a result contrary to the laws of this state, do an act which, in its natural and usual course, results in an act or effect contrary to its laws. [Pen. C. 1877, § 15; R. C. 1895, § 6813.]

§ 8544. **Who capable of crime. Exception.** All persons are capable of committing crime, except those belonging to the following classes:

1. Children under the age of seven years.

2. Children over the age of seven years but under the age of fourteen years, in the absence of clear proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.

3. Idiots.

4. Lunatics, insane persons and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.

5. Persons who commit an act or make an omission, otherwise criminal or punishable, through misfortune or by accident or under an ignorance or mistake of fact, which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

6. Persons who commit an act or make an omission, otherwise criminal or punishable, without being conscious thereof.

7. Persons who commit an act or make an omission, otherwise criminal or punishable, while under involuntary subjection to the power of superiors. [Pen. C. 1877, § 16; R. C. 1895, § 6814.]

Insanity as a defense. *State v. Leehman*, 2 S. D. 171, 49 N. W. 3.

Paragraph 5 only applies where scienter material to constitute offense. *State v. Dorman*, 9 S. D. 528, 70 N. W. 848.

§ 8545. **Intoxication, how considered. Effect on intent.** No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent, is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent, with which he committed the act. [Pen. C. 1877, § 17; R. C. 1895, § 6815.]

Evidence of intoxication admissible as bearing upon existence of intent. *State v. Koerner*, 8 N. D. 292, 78 N. W. 981; *People v. Odell*, 1 Dak. 197, 46 N. W. 601.

Intoxication no defense if defendant has control of faculties. *State v. Ford*, 16 S. D. 228, 92 N. W. 18.

§ 8546. **Morbid propensity, no defense.** A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor. [Pen. C. 1877, § 18; R. C. 1899, § 6816.]

§ 8547. **Acquitted for insanity. Court may commit.** When a jury has returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public safety, order him to be committed to the state hospital for the insane, or to the care of such person or persons as the court may direct till he becomes sane. [Pen. C. 1877, § 19; R. C. 1899, § 6817.]

§ 8548. **Superior power exonerates. Duress. Coverture.** The involuntary subjection to the power of a superior which exonerates a person charged with a criminal act or omission from punishment therefor, arises either from:

1. Duress; or,
2. Coverture. [Pen. C. 1877, § 20; R. C. 1899, § 6818.]

§ 8549. **What superior power excuses.** The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force or fear. [Pen. C. 1877, § 21; R. C. 1899, § 6819.]

§ 8550. **Superior power inferred. Exceptions.** A subjection sufficient to excuse from punishment may be inferred in favor of a wife, from the fact of coverture, whenever she committed the act charged in the presence and with the assent of her husband, except when such act is a participation in:

1. Treason.
 2. Murder.
 3. Manslaughter.
 4. Maiming.
 5. An attempt to kill.
 6. Rape.
 7. Abduition.
 8. Abuse of children.
 9. Seduction.
 10. Abortion, either upon herself or another female.
 11. Concealing the death of an infant, whether her own or that of another.
 12. Fraudulently producing a false child, whether as her own or that of another.
 13. Bigamy.
 14. Incest.
 15. The crime against nature or sodomy.
 16. Indecent exposure.
 17. Obscene exhibitions of books and prints.
 18. Keeping a bawdy or other disorderly house.
 19. Misplacing a railway switch; or,
 20. Obstructing a railway track. [Pen. C. 1877, § 22; R. C. 1899, § 6820.]
- Subjection of wife inferred from coverture. *Neys v. Taylor*, 12 S. D. 488, 81 N. W. 901.

§ 8551. **Duress. When not inferred.** In case of the crimes enumerated in the last section, the wife is not excused from punishment by reason of her subjection to the power of her husband, unless the facts proved show a case of duress as defined in section 8549. [Pen. C. 1877, § 23; R. C. 1899, § 6821.]

§ 8552. **Inference from coverture, may be rebutted.** The inference of subjection arising from the fact of coverture may be rebutted by any facts showing that in committing the act charged the wife acted freely. [Pen. C. 1877, § 24; R. C. 1899, § 6822.]

§ 8553. **Public ministers exempt.** Ambassadors and other public ministers from foreign governments accredited to the president or the government of the United States, and recognized by it according to the laws of the United States, with their secretaries, messengers, families and servants are not liable to punishment in this state. [Pen. C. 1877, § 25; R. C. 1895, § 6823.]

CHAPTER 3.

PARTIES TO CRIME.

§ 8554. **Parties to crime classified.** The parties to crime are classified as:

1. Principals; and,

2. Accessories. [Pen. C. 1877, § 26; R. C. 1899, § 6824.]

§ 8555. **Principals, who are.** All persons concerned in the commission of a crime, whether it is a felony or a misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, and all persons counseling, advising or encouraging children under the age or fourteen years, lunatics or idiots, to commit any crime, or who by fraud, contrivance or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who by threats, menaces, command or coercion, compel another to commit any crime, are principals in any crime so committed. [Pen. C. 1877, § 27; R. C. 1895, § 6825.]

One who procures another to commit felony, though not present, must be indicted and tried as principal. *State v. Phelps*, 5 S. D. 480, 59 N. W. 471; *State v. Kent*, 5 N. D. 516, 67 N. W. 1052.

§ 8556. **Accessories, who are.** All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction or punishment, are accessories. [Pen. C. 1877, § 28; R. C. 1899, § 6826.]

§ 8557. **Misdemeanors. No accessories.** In misdemeanor there are no accessories. [Pen. C. 1877, § 29; R. C. 1899, § 6827.]

§ 8558. **Accessories, how punished.** Except in cases when a different punishment is prescribed by law, an accessory to a felony is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 30; R. C. 1895, § 6828.]

CHAPTER 4.

CRIMES AGAINST RELIGION AND CONSCIENCE.

§ 8559. **Blasphemy defined.** Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the holy scriptures, or the Christian religion. [Pen. C. 1877, § 31; R. C. 1899, § 6829.]

§ 8560. **Serious discussion not blasphemy.** If it appears beyond reasonable doubt that the words complained of were used in the course of a serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy. [Pen. C. 1877, § 32; R. C. 1899, § 6830.]

§ 8561. **Misdemeanor.** Blasphemy is a misdemeanor. Pen. C. 1877, § 33; R. C. 1899, § 6831.]

§ 8562. **Profane swearing defined.** Profane swearing consists in any use of the name of God, or Jesus Christ, or the Holy Ghost, either in imprecating divine vengeance upon the utterer or any other person, or in light, trifling or irreverent speech. [Pen. C. 1877, § 34; R. C. 1899, § 6832.]

§ 8563. **Punishment of.** Every person guilty of profane swearing is punishable by a fine of one dollar for each offense. [Pen. C. 1877, § 35; R. C. 1899, § 6833.]

§ 8564. **Summary conviction for.** Whenever any profane swearing is committed in the presence and hearing of any justice of the peace or other magistrate, while holding a court, or under any other circumstances such as in the opinion of the magistrate amount to a gross violation of public decency, such magistrate may, in his discretion, immediately convict the offender, without any other proof. [Pen. C. 1877, § 36; R. C. 1899, § 6834.]

§ 8565. **Penalties, how collected. Commitment for.** If the offender does not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the county jail for every offense, or for any number of offenses whereof he was convicted at one and the same time, for not less than one nor more than three days; there to be confined in a room separate from all other prisoners. [Pen. C. 1877, § 37; R. C. 1899, § 6835.]

§ 8566. **Obscene language. Public place.** Any person who shall utter or speak any obscene or lascivious language or words, in any public place, or in the presence of females, or of children under ten years of age, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of this state, or before a county court exercising increased jurisdiction, as provided in section 111 of the constitution of this state, shall be liable to a fine of not more than one hundred dollars, or imprisonment in the county jail not more than thirty days, or both, at the discretion of the court. [1883, ch. 87, § 1; R. C. 1895, § 6836.]

§ 8567. **First day of week. Acts prohibited.** The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified. [Pen. C. 1877, § 38; R. C. 1899, § 6837.]

§ 8568. **Sabbath breaking defined.** Any violation of the foregoing prohibition is Sabbath breaking. [Pen. C. 1877, § 39; R. C. 1899, § 6838.]

§ 8569. **Day defined.** Under the term "day," as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight. [Pen. C. 1877, § 40; R. C. 1899, § 6839.]

§ 8570. **Acts of Sabbath breaking enumerated.** The following are the acts forbidden to be done on the first day of the week, the doing of any of which is Sabbath breaking:

1. Servile labor.
2. Public sports.
3. Trades, manufactures and mechanical employments.
4. Public traffic.
5. Serving process. [Pen. C. 1877, § 41; R. C. 1895, § 6840.]

§ 8571. **Servile labor prohibited.** All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity. [Pen. C. 1877, § 42; R. C. 1899, § 6841.]

§ 8572. **Defense, other day observed.** It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time. [Pen. C. 1877, § 44; R. C. 1899, § 6842.]

§ 8573. **Prohibited sports enumerated.** All shooting, sporting, horse racing, gaming or other public sports, upon the first day of the week, are prohibited. [Pen. C. 1877, § 45; R. C. 1899, § 6843.]

§ 8574. **Trades and employments prohibited.** All trades, manufactures and mechanical employments, upon the first day of the week, are prohibited. Pen. C. 1877, § 46; R. C. 1899, § 6844.]

§ 8575. **Public traffic prohibited.** All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day. [Pen. C. 1877, § 47; R. C. 1899, § 6845.]

§ 8576. **Serving process prohibited.** All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except when such service shall be specially authorized by law. [Pen. C. 1877, § 48; R. C. 1899, § 6846.]

§ 8577. **Sabbath breaking, how punished.** Every person guilty of Sabbath breaking is punishable by a fine of not less than one dollar nor more than ten dollars, at the discretion of the court, for each offense. [1899, ch. 142; R. C. 1899, § 6847.]

§ 8578. **Fines, how collected. No exemption.** The fines prescribed in this chapter for profane swearing and for Sabbath breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs. [Pen. C. 1877, § 50; R. C. 1899, § 6848.]

§ 8579. **Maliciously serving process.** Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor. [Pen. C. 1877, § 51; R. C. 1899, § 6849.]

§ 8580. **Compelling form of belief.** Any willful attempt, by means of threats or violence, to compel any person to adopt, practice or profess any particular form of religious belief, is a misdemeanor. [Pen. C. 1877, § 52; R. C. 1899, § 6850.]

§ 8581. **Preventing religious act.** Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor. [Pen. C. 1877, § 53; R. C. 1899, § 6851.]

§ 8582. **Disturbing religious meeting.** Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor. [Pen. C. 1877, § 54; R. C. 1899, § 6852.]

§ 8583. **Acts deemed to be, enumerated.** The following are the acts deemed to constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting.

2. Exposing to sale or gift any ardent or distilled liquors, or keeping open any huckster shop within one mile of the place where any religious society or assembly shall be actually convened for religious worship, and in any other place than such as shall have been duly licensed and in which the person accused shall have actually resided or carried on business.

3. Exhibiting, within the like distance, any shows or plays without a license by the proper authority.

4. Engaging in, or aiding or promoting, within the like distance, any racing of animals or gaming of any description.

5. Obstructing in any manner, without authority of the law, within the like distance, the free passage along any highway to the place of such meeting. [Pen. C. 1877, § 55; R. C. 1899, § 6853.]

§ 8584. **Time for prosecution limited.** No prosecution for any of the offenses mentioned in this chapter shall be maintained unless commenced within thirty days next after the commission thereof. [R. C. 1895, § 6854.]

CHAPTER 5.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

§ 8585. **Elector. Giving or receiving bribe.** Every person, who, by force, threats, bribery or by offering to give or by giving a bribe to any elector, or by any corrupt means whatever, either directly or indirectly, attempts to influence or influences any such elector in giving his vote at any election; or who attempts to deter or deters him from giving his vote at such election, or attempts by any means whatever to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, or defrauds any elector at any such election by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for, or who being an inspector, member of the board of election, judge or poll clerk of any election, while acting as such or during the continuance of an election, induces or attempts to induce any elector, either by menaces, or reward or promises thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars and not less than one hundred dollars and by imprisonment in the county jail not exceeding one year and not less than three months. [Pen. C. 1877, § 56; R. C. 1895, § 6855.]

§ 8586. **Elector. Illegal influence.** Every person offering, giving or loaning to another any money or other thing of value, to induce him to influence any elector to vote in a particular way or for any person at any such election, shall be punished by a fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment. [Pen. C. 1877, § 57; R. C. 1899, § 6856.]

§ 8587. **Betting upon election, how punished.** Every person who makes, offers or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast either in the aggregate or for any particular candidate, or upon the vote to be cast by any particular person or persons, or upon the decision to be made by any inspector of election, board of election or any member thereof, or any canvasser, board of canvassers or other election officers, or any question arising in the course of an election, or upon any event whatever depending upon the conduct or result of an election or upon the conduct or decision of any officer of an election or board of such officers, is guilty of a misdemeanor. [Pen. C. 1877, § 58; R. C. 1895, § 6857.]

§ 8588. **Offers of office, how punished.** Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person or persons to office, as an inducement or consideration to any person to vote for, or to procure or aid in procuring the election of such candidate, is guilty of a misdemeanor. [Pen. C. 1877, § 59; R. C. 1899, § 6858.]

§ 8589. **Communicating same.** Every person who, not being a candidate, communicates any offer made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor. [Pen. C. 1877, § 60; R. C. 1899, § 6859.]

§ 8590. **Contributing money for elections, how punished. Exceptions.** Every person who, with intent to promote the election, either of himself or of any other person or candidate, either:

1. Furnishes, or engages to pay or deliver any money or property, for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick, poor or infirm; or,

2. Furnishes, or engages to pay or deliver any money or property, for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills and other papers, previous to such election, is guilty of a misdemeanor. [Pen. C. 1877, § 61; R. C. 1899, § 6860.]

§ 8591. **Defrauding elector in his vote.** Every person who fraudulently alters the ballot of any elector or substitutes one ballot for another, or furnishes any elector with a ballot otherwise than as provided and authorized by law, or with a ballot containing more than the proper number of names, or who intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote and to have the same thrown out and not counted, or otherwise to defraud him of his vote, is guilty of a misdemeanor. [Pen. C. 1877, § 62; R. C. 1895, § 6861.]

§ 8592. **Obstructing elector.** Every person who willfully and without lawful authority obstructs, hinders or delays any elector on his way to any poll where an election shall be held, is guilty of a misdemeanor. [Pen. C. 1877, § 63; R. C. 1899, § 6862.]

§ 8593. **Double voting or offer.** Every person who votes more than once at any election, or who offers to vote after having once voted, either in the same or in another election precinct or district, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year. [Pen. C. 1877, § 64; R. C. 1899, § 6863.]

§ 8594. **Unqualified voter.** Every person knowing himself not to be a qualified voter, who votes or offers to vote at any election, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months. [Pen. C. 1877, § 65; R. C. 1899, § 6864.]

§ 8595. **Procuring unqualified vote.** Every person who procures, aids, assists, counsels or advises another to give his vote, knowing that such person is disqualified, shall be punished by a fine not exceeding five hundred dollars, nor less than fifty dollars, and by imprisonment in the county jail not exceeding one year. [Pen. C. 1877, § 66; R. C. 1899, § 6865.]

§ 8596. **Advising unqualified voting.** Every person who procures or counsels another to enter any town, ward or election precinct or district for the purpose of giving his vote at an election, knowing that such person is not entitled so to vote, is guilty of a misdemeanor. [Pen. C. 1877, § 67; R. C. 1899, § 6866.]

§ 8597. **Voting in wrong precinct or district.** Every person who, at any election, knowingly votes or offers to vote in any election precinct or district in which he does not reside, or in which he is not authorized by law to vote, is guilty of a misdemeanor. [Pen. C. 1877, § 68; R. C. 1899, § 6867.]

§ 8598. **Voting unlawfully at town meeting.** Every person who votes at any annual township meeting, in a township in which he does not reside, or who offers to vote at any annual township meeting after having voted at an annual township meeting held in another township within the same year, is guilty of a misdemeanor. [Pen. C. 1877, § 741; R. C. 1899, § 6868.]

§ 8599. **Convicted felon. Denied vote.** Every person who, having been convicted of any bribery or felony, thereafter offers to vote at any election without having been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor. [Pen. C. 1877, § 69; R. C. 1899, § 6869.]

§ 8600. **Unauthorized registration, how punished.** Every person who causes his name to be registered as that of an elector, upon any registry of voters authorized by law to be kept in any town, city or election precinct or district of this state, knowing that he is not a qualified voter within the territorial limits covered by such registry, is punishable by imprisonment in the penitentiary not less than one year. [Pen. C. 1877, § 70; R. C. 1899, § 6870.]

§ 8601. **Personating registered voter.** Every person who, within any city, town or election precinct or district in this state in which a registry of qualified voters is by law authorized to be kept falsely personates a registered voter, and in such personating offers to vote at any election, is punishable by imprisonment in the penitentiary not less than one year. [Pen. C. 1877, § 71; R. C. 1899, § 6871.]

§ 8602. **False statement, preventing registration.** Every person who, at the time of requesting his name to be registered as that of a qualified voter, upon any registry of voters authorized by law to be kept in any city, town or election precinct or district of this state, or at the time of offering his vote at any election, knowingly makes any false statement or employs any false representation or false pretense or token, to procure his name to be registered or his vote to be received, is guilty of a misdemeanor. [Pen. C. 1877, § 72; R. C. 1899, § 6872.]

§ 8603. **Constructive false statements.** A false statement, representation or token, made or used in the presence and to the knowledge of a person requesting his name to be registered or offering his vote, is to be deemed made by himself, if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false and suffered it to pass uncontradicted. [Pen. C. 1877, § 73; R. C. 1899, § 6873.]

§ 8604. **Disturbance of public meeting.** Every person who willfully disturbs or breaks up any public meeting of electors and others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor. [Pen. C. 1877, § 74; R. C. 1899, § 6874.]

§ 8605. **Preventing public meeting of electors.** Every person who, by threats, intimidation or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor. [Pen. C. 1877, § 75; R. C. 1899, § 6875.]

§ 8606. **Preventing attendance at public meeting.** Every person who makes use of any force or violence or of any threat to do any unlawful act, as a means of preventing an elector from attending any public meeting lawfully held for the purpose of considering any public questions, is guilty of a misdemeanor. [Pen. C. 1877, § 76; R. C. 1899, § 6876.]

§ 8607. **Intimidating and bulldozing electors.** Every person who willfully, by unlawful arrest, by force and violence or by threats or intimidation, prevents or endeavors to prevent an elector from freely giving his vote at any election, or employs either of such means to hinder him from voting, or to cause him to vote for any person or candidate, shall be punished by a fine not exceeding one thousand dollars, and not less than fifty dollars. [Pen. C. 1877, § 77; R. C. 1899, § 6877.]

§ 8608. **Violence, threats, etc., of electors.** Every person who procures or endeavors to procure the vote of any elector, or the influence of any person or other electors, at any election, for himself or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealings in business or trade, or enforcing the payment of debts, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or by his means or procurement, shall be punished by a fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding six months. [Pen. C. 1877, § 78; R. C. 1899, § 6878.]

§ 8609. **Disobedience of election judges and officers.** Every person who willfully disobeys a lawful command of an inspector or judge of election or board of election, or board of judges of an election or election officers, given in the execution of his or their duty as such at any election, is guilty of a misdemeanor. [Pen. C. 1877, § 79; R. C. 1895, § 6879.]

§ 8610. **Violence disturbing election.** Every person who is guilty of any riotous conduct, or causes any disturbance or breach of the peace, or uses any disorderly violence or threats of violence, whereby any elector is impeded or hindered, or whereby the lawful proceedings of any inspector or judge of election or poll clerk or other officer of election or election officer, or board of election or canvasser at such election, in the discharge of his or their duty, are interfered with, is guilty of a misdemeanor. [Pen. C. 1877, § 80; R. C. 1895, § 6880.]

§ 8611. **Disobedience. Summary arrest therefor.** Whenever, at an election, any person refuses to obey the lawful command of an inspector or judge of election, or of a board of election or other officer of election or election officer or board of canvassers, or by any disorderly conduct in his or their presence interrupts or disturbs his or their proceeding, he or they may make an order directing the sheriff or any constable of the county, or one or more special constables to be appointed by him or them, to take the person so offending into custody and detain him until the final canvass of the votes shall be completed. But such order shall not prohibit the person taken into custody from voting at such election. [Pen. C. 1877, § 81; R. C. 1899, § 6881.]

§ 8612. **Such arrest not defense.** The fact that any person, offending against the provisions of the preceding section, was taken into custody and detained, as therein authorized, forms no defense to a prosecution for the offense committed, under any provisions of this code. [Pen. C. 1877, § 82; R. C. 1899, § 6882.]

§ 8613. **Destroying ballots or boxes.** Every person who willfully breaks or destroys, on the day of an election or before the canvass is completed, any ballot box used or intended to be used at such election, or defaces, injures, destroys or conceals any ballot which has been deposited in any ballot box at an election, and has not already been counted or canvassed, or any poll list used or intended to be used at such election, is guilty of a felony. [Pen. C. 1877, § 83; R. C. 1899, § 6883.]

§ 8614. **False certificates. Suppressing certificate.** Every person who falsely makes, or makes oath to or fraudulently destroys any certificate of nomination or any part thereof, or files or receives for filing any certificate of nomination, knowing the same or any part thereof to be falsely made, or suppresses any certificate of nomination which has been duly filed, or any part thereof, or forges or falsely makes the official indorsement on any ballot, or willfully neglects properly to indorse said ballot shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years. [1893, ch. 66, § 31; R. C. 1895, § 6884.]

§ 8615. **Destroying supplies, lists or cards.** Every person who, during an election, willfully removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to or on the day of an election willfully defaces or destroys any list of candidates posted in accordance with the provisions of law, or any copy of the printed ticket so posted, or who, during an election, tears down or defaces the cards printed for the instruction of voters, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars. [1893, ch. 66, § 32; R. C. 1895, § 6885.]

§ 8616. **False poll list.** Every poll clerk or clerk of the poll at any election, who willfully keeps a false poll list, or who knowingly inserts in his poll

list any false statement, is guilty of a misdemeanor. [Pen. C. 1877, § 84; R. C. 1895, § 6886.]

§ 8617. **Misconduct of judges. Challenges.** Every inspector or judge of an election, who willfully excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or who willfully receives a vote from any person who has been duly challenged in relation to his right to vote at such election, without exacting from such person such oath or other proof of qualification as may be required by law, or who willfully omits to challenge any person offering to vote, whom he knows or suspects not to be duly entitled to vote, and who has not been challenged by any other person, is guilty of a misdemeanor. [Pen. C. 1877, § 85; R. C. 1895, § 6887.]

§ 8618. **Falsely canvassing or certifying.** Every inspector or judge of election, member of any board of election or of canvassers, poll clerk, messenger or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of votes cast at any election, who willfully makes any false canvass of such votes, or makes, signs, publishes or delivers any false returns of such election, knowing the same to be false, or willfully defaces, destroys or conceals any statement or certificate intrusted to his care, is guilty of a misdemeanor. [Pen. C. 1877, § 86; R. C. 1895, § 6888.]

§ 8619. **Bribing election officers.** Every person who gives or offers a bribe to any inspector, judge, clerk, canvasser or other officer of any election, or of any board of election, as a consideration for some act done or omitted to be done, contrary to his official duty in relation to such election, shall be punished by a fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months. [Pen. C. 1877, § 87; R. C. 1895, § 6889.]

§ 8620. **Penalty, disfranchisement.** Any person guilty of either of the offenses mentioned in sections 8585 and 8586 shall thereafter be forever disfranchised and rendered ineligible to any office of trust or profit within the state, including that of representative to congress. [Pen. C. 1877, § 88; R. C. 1899, § 6890.]

§ 8621. **Witness not excused, not punished.** No person shall be excused from testifying upon a prosecution for an offense mentioned in section 8586 upon the ground that his statement might tend to criminate himself, but any person so testifying against the other party shall thereafter be exempt from punishment for such offense mentioned in said section. [Pen. C. 1877, § 89; R. C. 1899, § 6891.]

§ 8622. **Election defined.** The word "election," as used in this chapter, designates only elections had within this state for the purpose of enabling electors, as such, to choose some public officer or officers under the laws of this state, or of the United States. [Pen. C. 1877, § 90; R. C. 1899, § 6892.]

§ 8623. **Irregularities no defense.** Irregularities or defects in the mode of noticing, convening, holding or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter. [Pen. C. 1877, § 91; R. C. 1899, § 6893.]

§ 8624. **Rights. Lawful interference.** Nothing in this chapter shall be construed to authorize the punishment of any person who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being or is about to be unlawfully conducted. [Pen. C. 1877, § 92; R. C. 1899, § 6894.]

§ 8625. **Questions submitted. Criminal acts.** Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate, is equally criminal when committed with reference to the determination of a question submitted to electors to be decided by votes cast at an election. [Pen. C. 1877, § 93; R. C. 1899, § 6895.]

§ 8626. **Good faith. Given in evidence.** Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not. [Pen. C. 1877, § 94; R. C. 1899, § 6896.]

§ 8627. **Selling liquors on election day.** Every person who sells, gives away or disposes of any intoxicating liquors as a beverage, on the day of any general election or special or local election, in the town, city or county where held, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail not to exceed twenty days, and by fine not exceeding one hundred and not less than fifty dollars. [Pen. C. 1877, § 95; R. C. 1895, § 6897.]

§ 8628. **Unlawful voting at caucus. Penalty.** Every person who is not a qualified elector of the ward or election precinct in which any caucus or primary meeting is held and having for its object either immediately or ultimately, the nomination or selection of any delegate, or of any candidate for a public office to be voted for at any election in this state, who in any manner votes upon any question or issue pending before or submitted to such caucus or primary meeting, is guilty of a misdemeanor. It shall be the duty of the clerk of any caucus held under section 598 of the political code to carefully keep and preserve the record of the caucus, which shall include a list of the names of each person voting at the said caucus, for six months, and he shall at any time within said six months furnish a certified copy of the record of such caucus upon the request of the chairman of the county or state committee of the political party which said caucus represented. Any person who shall participate directly or indirectly in the election at caucus of more than one delegate or set of delegates for the nomination of each office to be filled shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty nor more than two hundred dollars. [1885, ch. 28, § 31; 1899, ch. 28, §§ 7, 8; R. C. 1899, § 6898.]

§ 8629. **Political convention, who may use proxy at.** Every person who, at a political convention or a convention of a political character, called, convened or held within this state, uses or attempts to use the proxy of a delegate sent or elected thereto from a political subdivision designated or recognized as the unit of representation therein, unless he is an actual resident of such political subdivision, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than twenty and not exceeding one hundred dollars, or by imprisonment in the county jail not less than ten days and not exceeding one year, or both, at the discretion of the court. [1890, ch. 112, § 1; R. C. 1895, § 6899.]

CHAPTER 6.

CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

§ 8630. **Exercising office without having qualified.** Every person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his rights to the office. [Pen. C. 1877, § 96; R. C. 1899, § 6900.]

§ 8631. **Acts of officer de facto.** The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a

public office in fact, when other persons than himself are interested in maintaining the validity of such acts. [Pen. C. 1877, § 97; R. C. 1899, § 6901.]

Acts of an officer de facto, legal. *Fylpaa v. Brown County*, 6 S. D. 634, 62 N. W. 962.

§ 8632. **Usurping or falsely assuming office.** Every person who shall falsely assume or pretend to be any state, county or township officer, or who shall knowingly take upon himself to act as such, or to require any person to act as such, or assist him in any matter pertaining to such office, shall be punished by imprisonment in the county jail, not more than two years nor less than three months, and by fine not exceeding five hundred nor less than fifty dollars. [Pen. C. 1877, § 98; R. C. 1899, § 6902.]

§ 8633. **Giving or offering bribes.** Every person who gives or offers any bribe to an executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion or other proceedings of such officer, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both. [Pen. C. 1877, § 99; R. C. 1899, § 6903.]

§ 8634. **Asking or receiving bribes.** Every executive officer or person elected or appointed to an executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto, forfeits his office and is forever disqualified from holding any public office under this state. [Pen. C. 1877, § 100; R. C. 1899, § 6904.]

§ 8635. **Preventing officer's duty.** Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor. [Pen. C. 1877, § 101; R. C. 1899, § 6905.]

§ 8636. **Resisting officer.** Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty, is guilty of a misdemeanor. [Pen. C. 1877, § 102; R. C. 1899, § 6906.]

§ 8637. **Taking unlawful fees.** Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. [Pen. C. 1877, § 103; R. C. 1899, § 6907.]

Charge for team, not charge for official services. *State v. Bauer*, 1 N. D. 273, 47 N. W. 378.

§ 8638. **Omitting or delaying official acts for reward.** Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor. [Pen. C. 1877, § 104; R. C. 1899, § 6908.]

§ 8639. **Fees for services not rendered. Advance fees.** Every executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor. [Pen. C. 1877, § 105; R. C. 1899, § 6909.]

§ 8640. **Taking unlawful reward. Fugitives from justice.** Every officer of this state who asks or receives any compensation, fee or reward of any kind, for any service rendered or expense incurred in procuring from the governor of this state a demand upon the executive authority of a state or territory of the United States, for the surrender of a fugitive from justice, or of any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this state or for detaining him therein, except

upon an employment by the governor of this state, and upon an account duly audited and paid out of the state treasury, is guilty of a misdemeanor. [Pen. C. 1877, § 106; R. C. 1899, § 6910.]

§ 8641. **Buying appointments to office.** Every person who gives or agrees or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any public office, or shall be permitted to, or to exercise, perform or discharge the prerogatives or duties of any office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars nor more than one thousand dollars, or both. [Pen. C. 1877, § 107; R. C. 1899, § 6911.]

Contract to secure public office and divide salary, void as against public policy. *Wishek v. Hammond*, 10 N. D. 72, 84 N. W. 587.

§ 8642. **Selling appointments to office.** Every person who, directly or indirectly, asks or receives or promises to receive any gratuity or reward, or any promise of a gratuity or reward, for appointing another person or procuring for another person an appointment to any public office, or any clerkship, deputation or other subordinate position in any public office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars nor more than one thousand dollars, or both. [Pen. C. 1877, § 108; R. C. 1899, § 6912.]

§ 8643. **Rewards for appointment or deputation.** Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise, perform or discharge any of the prerogatives or duties of his office, is punishable by imprisonment in the county jail not less than six months nor more than two years, and by a fine of not less than two hundred dollars nor more than one thousand dollars; and in addition thereto he forfeits his office. [Pen. C. 1877, § 109; R. C. 1899, § 6913.]

§ 8644. **Unlawful appointments void. Acts valid.** Every grant or deputation made contrary to the provisions of the two preceding sections is void; but official acts done before a conviction for any offense prohibited by those sections shall not be deemed invalid in consequence of the invalidity of such grant or deputation. [Pen. C. 1877, § 110; R. C. 1899, § 6914.]

§ 8645. **Clerk hire, appropriation of by state or county officer.** Any state or county officer who shall either directly or indirectly receive and appropriate to his own use and benefit any part of the allowance made for clerk hire in his said office shall be guilty of a misdemeanor. [1901, ch. 51.]

§ 8646. **Exercising functions after term.** Every person who having been an executive officer, willfully exercises any of the functions of his office after his term of office has expired and a successor has been duly elected or appointed, and has qualified in his place, and he has notice thereof, is guilty of a misdemeanor. [Pen. C. 1877, § 111; R. C. 1899, § 6915.]

§ 8647. **Refusal to surrender seal or books.** Every person who, having been an executive officer of this state, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor, who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office, is guilty of a misdemeanor. [Pen. C. 1877, § 112; R. C. 1899, § 6916.]

§ 8648. **Administrative officers included.** The various provisions of this chapter which relate to executive officers apply in relation to administrative officers in the same manner as if administrative and executive officers were both mentioned together. [Pen. C. 1877, § 113; R. C. 1899, § 6917.]

§ 8649. **Governor receiving bribes. Menacing. Appointing to or removing from office.** Every person being governor of this state, who asks, receives or agrees to receive any bribe, upon any understanding that his official opinion,

judgment or action shall be influenced thereby, or who gives or offers or promises his official influence, in consideration or upon condition that any member of the legislative assembly, or either house thereof, shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity; or who menaces any member of the legislative assembly or either house thereof, by the threatened use of his veto power; or who offers or promises any member of the legislative assembly or either house thereof, that he, the said governor, will nominate for appointment or appoint any particular person or persons to any office created, or thereafter to be created, in consideration or upon condition that any such member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly; or who threatens any member of the legislative assembly or either house thereof, that he, the said governor, will remove any person or persons from any office or position held by such person or persons under the laws of this state, with intent in any manner to influence the action of said member, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both, and upon conviction of any or either of the offenses mentioned in this section shall forfeit any and all right to hold any office of trust or honor in this state. [Const. § 81; R. C. 1899, § 6918.]

CHAPTER 7.

CRIMES AGAINST THE LEGISLATIVE POWER.

§ 8650. **Preventing meeting of legislative assembly.** Every person who willfully and by force or fraud prevents the legislative assembly of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in the penitentiary not less than five nor more than ten years, or by a fine of not less than five hundred dollars, nor more than two thousand dollars, or both. [Pen. C. 1877, § 114; R. C. 1895, § 6919.]

§ 8651. **Disturbing the legislative assembly.** Every person who willfully disturbs the legislative assembly of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislative assembly, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor. [Pen. C. 1877, § 115; R. C. 1895, § 6920.]

§ 8652. **Compelling adjournment.** Every person who willfully and by force or fraud compels or attempts to compel the legislative assembly of this state or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in the penitentiary not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both. [Pen. C. 1877, § 116; R. C. 1899, § 6921.]

§ 8653. **Intimidating members.** Every person who willfully by intimidation or otherwise, prevents any member of the legislative assembly of this state from attending any session of the house of which he is a member, or any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor. [Pen. C. 1877, § 117; R. C. 1899, § 6922.]

§ 8654. **Compelling either house to perform or omit act.** Every person who willfully compels or attempts to compel either of the houses composing the legislative assembly of this state to pass, amend or reject any bill or resolution, or to grant or refuse any petition, or to perform or omit to perform

any other official act, is punishable by imprisonment in the penitentiary not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both. [Pen. C. 1877, § 118; R. C. 1899, § 6923.]

§ 8656. **Altering draft of bill.** Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislative assembly, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of a felony. [Pen. C. 1877, § 119; R. C. 1899, § 6924.]

§ 8658. **Altering engrossed copy.** Every person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislative assembly of this state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislative assembly, is guilty of a felony. [Pen. C. 1877, § 120; R. C. 1899, § 6925.]

§ 8657. **Giving or offering bribes to members.** Every person who gives or offers to give a bribe to any member of the legislative assembly, or attempts directly or indirectly, by menace, deceit, suppression of truth or any other corrupt means, to influence a member in giving or withholding his vote, or in not attending the house of which he is a member, or any committee thereof, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both. [Pen. C. 1877, § 121; R. C. 1899, § 6926.]

§ 8658. **Members receiving bribes.** Every member of either of the houses composing the legislative assembly of this state, who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, influence, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or both. [Pen. C. 1877, § 122; R. C. 1895, § 6927.]

§ 8659. **Members. Solicitation of bribery defined. Punishment.** Every person elected to either house of the legislative assembly, who shall offer or promise to give his official vote or influence, in favor of or against any measure or proposition pending, or proposed to be introduced into the legislative assembly, or either house thereof, in consideration or upon condition that any other person elected to the same legislative assembly or either house thereof, will give or will promise or assent to give, his vote or influence in favor of, or against any other measure or proposition pending, or proposed to be introduced into such legislative assembly or house, shall be deemed guilty of solicitation of bribery and shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one and not exceeding five years, or by fine not exceeding five thousand dollars, or both, and shall not thereafter be eligible to the legislative assembly or either house thereof. [Const. § 40; R. C. 1899, § 6928.]

§ 8660. **Members. Vote in consideration of vote. Bribery.** Every member of the legislative assembly or either house thereof, who shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced into such legislative assembly or either house thereof, or offer or promise or assent so to do, upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition, pending or proposed to be introduced into such legislative assembly or house, or in consideration that any other member has given his vote or influence for or against any other measure or

proposition in such legislative assembly or house, shall be deemed guilty of bribery, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding five thousand dollars, or both, and shall not thereafter be eligible to the legislative assembly or either house thereof. [Const. § 40; R. C. 1899, § 6929.]

§ 8661. **Members. Governor. Acts by, deemed felony.** Every person elected to either house of the legislative assembly who gives, or offers or promises to give his official vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into, or that has already passed or been passed by either house of the legislative assembly, in consideration or upon condition that any person, being governor of this state, shall approve or disapprove, veto or sign or agree to approve or disapprove, veto or sign any such measure or proposition, or any measure, proposition, bill or act or proposed law that has already passed or been passed by said legislative assembly, or either house thereof, or in consideration or upon condition that any person, being or acting governor of this state, shall nominate for appointment or appoint or remove any person or persons to or from any office or position under the laws of this state, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both, and upon conviction of any or either of the offenses mentioned in this section, shall forfeit any and all right to hold or exercise any office of trust or honor in this state. [Const. § 81; R. C. 1899, § 6930.]

§ 8662. **Senators. Governor. Acts by, deemed felony.** Every person elected to the senate of this state who shall offer or agree to give his official vote or influence for or against the confirmation of any person or persons nominated or to be nominated for appointment or appointed or to be appointed to any office in this state, in consideration or upon condition that the person being governor of this state shall nominate for appointment or appoint or refuse to appoint or nominate for appointment any person or persons to or for any office or position in this state, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both, and upon conviction of any or either of the offenses mentioned in this section shall forfeit any and all right to hold or exercise any office of trust or honor in this state. [Const. § 81; R. C. 1899, § 6931.]

§ 8663. **Witness refusing to attend.** Every person who, being duly summoned to attend as a witness before either house of the legislative assembly, or any committee thereof authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor. [Pen. C. 1877, § 123; R. C. 1899, § 6932.]

§ 8664. **Refusing to testify.** Every person who, being present before either house of the legislative assembly, or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers or documents in his possession or under his control, is guilty of a misdemeanor. [Pen. C. 1877, § 124; R. C. 1899, § 6933.]

§ 8665. **Members. Conviction. Forfeiture of office.** The conviction of a member of the legislative assembly of either of the crimes defined in this chapter, involves as a consequence, in addition to the punishment prescribed

by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this state. [Pen. C. 1877, § 125; R. C. 1899, § 6934.]

CHAPTER 8.

CRIMES AGAINST PUBLIC JUSTICE, BRIBERY AND CORRUPTION.

§ 8666. **Bribes to judges, jurors, referees, etc.** Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both. [Pen. C. 1877, § 126; R. C. 1899, § 6935.]

§ 8667. **Judicial officers receiving bribes.** Every judicial officer of this state who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state. [Pen. C. 1877, § 127; R. C. 1899, § 6936.]

§ 8668. **Jurors, referees and others receiving bribes.** Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is guilty of a felony. [Pen. C. 1877, § 128; R. C. 1899, § 6937.]

§ 8669. **Misconduct by jurors and others.** Every juror or person drawn or summoned as a juror or chosen arbitrator or umpire, or appointed referee, who, either:

1. Makes any promise or agreement to give a verdict for or against any party; or,

2. Willfully permits any communication to be made to him, or receives any book, paper, instrument or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause,

Is guilty of a misdemeanor. [Pen. C. 1877, § 129; R. C. 1899, § 6938.]

§ 8670. **Judicial officers accepting gifts.** Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor. [Pen. C. 1877, § 130; R. C. 1899, § 6939.]

§ 8671. **Gift defined.** The word "gift" in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death. [Pen. C. 1877, § 131; R. C. 1899, § 6940.]

§ 8672. **Attempts to influence jurors and others.** Every person who attempts to influence a juror or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict or

decision of any cause or matter pending, or about to be brought before him, either:

1. By means of any communication, oral or written, had with him except in the regular course of proceedings upon the trial of the cause;
2. By means of any book, paper or instrument exhibited otherwise than in the regular course of proceedings upon the trial of the cause;
3. By means of any threat or intimidation;
4. By means of any assurance or promise of any pecuniary or other advantage; or,
5. By publishing any statement, argument or observation relating to the cause,

Is guilty of a misdemeanor. [Pen. C. 1877, § 132; R. C. 1899, § 6941.]

§ 8673. Drawing jurors fraudulently. Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn, any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law; or, who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a misdemeanor. [Pen. C. 1877, § 133; R. C. 1899, § 6942.]

§ 8674. Misconduct of officers in charge of jury. Every officer to whose charge any jury is committed by any court or magistrate, who negligently or willfully permits them or any of them, either:

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper or refreshment; or,
4. To leave the jury room without the leave of such court or magistrate first obtained.

Is guilty of a misdemeanor. [Pen. C. 1877, § 134; R. C. 1899, § 6943.]

CHAPTER 9.

RESCUES.

§ 8675. Rescuing persons from custody. Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a charge or conviction of felony, by imprisonment in the penitentiary not less than ten years.
2. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 135; R. C. 1899, § 6944.]

§ 8676. Injuring. Retaking goods from custody. Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor. [Pen. C. 1877, § 136; R. C. 1899, § 6945.]

That process under which officer claims to have property in charge is valid on its face is sufficient. *State v. Cassidy*, 4 S. D. 58, 54 N. W. 928.

CHAPTER 10.

ESCAPES AND AIDING THEREIN.

§ 8677. **Persons in custody escaping. Rearrest. Imprisonment.** Every person, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape. [Pen. C. 1877, § 137; R. C. 1895, § 6946.]

§ 8678. **Escaping from custody. Punishment.** Every person who, being confined in the penitentiary or other prison, or being in the lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of a felony if such custody is upon a charge, arrest, commitment or conviction for a felony; and of a misdemeanor, if such custody or confinement is upon a charge, arrest, commitment or conviction for a misdemeanor. [Pen. C. 1877, §§ 138, 140; R. C. 1895, § 6947.]

§ 8679. **Attempts to escape from penitentiary.** Every person confined in the penitentiary for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of a felony. [Pen. C. 1877, § 139; R. C. 1899, § 6948.]

§ 8680. **Attempts to escape from other prisons.** Every person confined in any prison other than the penitentiary, who attempts by force or fraud, although unsuccessfully, to escape therefrom, is punishable by imprisonment in the county jail not exceeding one year. [Pen. C. 1877, § 141; R. C. 1899, § 6949.]

§ 8681. **Assisting persons in prison to escape.** Every person who willfully, by any means whatever, assists any person confined in any prison to escape therefrom, is punishable as follows:

1. If the person assisted was held or confined upon a charge, arrest, commitment or conviction of felony, by imprisonment in the penitentiary not less than one and not exceeding ten years.

2. If the person assisted was held or confined otherwise than upon a charge, arrest, commitment or conviction of felony, by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both. [Pen. C. 1877, § 142; R. C. 1895, § 6950.]

§ 8682. **Aiding escape by information, disguise, weapon.** Every person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison, or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon or other thing, is punishable as follows:

1. If such prisoner is held or confined upon a charge, arrest, commitment or conviction for felony, by imprisonment in the penitentiary not less than one and not exceeding ten years.

2. If such prisoner is held or confined otherwise than upon a charge, arrest, commitment or conviction for felony, by imprisonment in the county jail not exceeding one year, or by a fine of five hundred dollars. [Pen. C. 1877, § 143; R. C. 1895, § 6951.]

§ 8683. **Assisting escape from officer.** Every person who aids or assists a prisoner in escaping or attempting to escape from the lawful custody of a sheriff or other officer or person, is guilty of a felony, if the prisoner is held under arrest, commitment or conviction for a felony, or upon a charge thereof; and of a misdemeanor, if the prisoner is held under arrest, commitment or conviction for a misdemeanor, or upon a charge thereof. [Pen. C. 1877, § 145; R. C. 1895, § 6952.]

§ 8684. **Officer permitting escape.** Every sheriff or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding,

civil or criminal, or in any prison under his charge or control, to escape or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned or contributed to or assisted, is:

1. If he corruptly and willfully allows, connives at or assists the escape, guilty of a felony.

2. In any other case, he is guilty of a misdemeanor. [R. C. 1895, § 6953.]

§ 8685. **Punishment for permitting escape.** Every officer who is convicted of the offense specified in the first subdivision of the last section, forfeits his office, and is forever disqualified to hold any office or place of trust, honor or profit under the laws of this state. [R. C. 1895, § 6954.]

§ 8686. **Concealing escaped prisoner.** Every person who knowingly or willfully conceals or harbors for the purpose of concealment a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor. [Pen. C. 1877, § 144; R. C. 1895, § 6955.]

§ 8687. **Prison defined.** The term "prison" in this chapter includes the penitentiary, county jails, and every place designated by law for the keeping of persons held in custody under process of law or under any lawful arrest. [Pen. C. 1877, § 146; R. C. 1899, § 6956.]

§ 8688. **Prisoner defined.** The term "prisoner" in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest. [Pen. C. 1877, § 147; R. C. 1899, § 6957.]

§ 8689. **Escaping from penitentiary. Prosecution. Expense, how paid.** Whenever a prosecution takes place, of any person for any crime or public offense committed by, or charged against him while such person was, or is under sentence to be or is confined in the penitentiary, the clerk of the district court, where such trial is had, shall make out a detailed statement of all the costs incurred by the county for the trial of such person, including his preliminary examination, and for keeping and guarding him, and the judge of said court shall certify that the same is correct. The said clerk shall thereupon transmit said certified statement to the state auditor, and said state auditor shall audit said expenses and statement and draw his warrant in favor of the treasurer of the county for the amount allowed, to be paid out of the state treasury. [R. C. 1895, § 6958.]

CHAPTER 11.

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS.

§ 8690. **Larceny. Destruction of public records by officer.** Every clerk, register or other officer having the custody of any record, map or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, or fraudulently removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, and in addition thereto forfeits his office. [Pen. C. 1877, § 148; R. C. 1899, § 6959.]

§ 8691. **Same by others.** Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the penitentiary not less than one and

not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 149; R. C. 1899, § 6960.]

§ 8692. **Offering forged or false instruments for record.** Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state, or of the United States, is guilty of felony. [Pen. C. 1877, § 150; R. C. 1899, § 6961.]

CHAPTER 12.

PERJURY AND SUBORNATION OF PERJURY.

§ 8693. **Perjury.** Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury. [Pen. C. 1877, § 151; R. C. 1899, § 6962.]

§ 8694. **Oath defined.** The term "oath" as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law. [Pen. C. 1877, § 152; R. C. 1899, § 6963.]

§ 8695. **Oath of office excepted.** So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the preceding sections of this chapter. [Pen. C. 1877, § 153; R. C. 1899, § 6964.]

§ 8696. **Irregularities no defense.** It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner. [Pen. C. 1877, § 154; R. C. 1899, § 6965.]

§ 8697. **Incompetency no defense.** It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony or made such deposition or certificate. [Pen. C. 1877, § 155; R. C. 1899, § 6966.]

§ 8698. **Knowledge of materiality not necessary.** It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding. [Pen. C. 1877, § 156; R. C. 1899, § 6967.]

§ 8699. **When deposition complete.** The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with intent that it be uttered or published as true. [Pen. C. 1877, § 157; R. C. 1899, § 6968.]

§ 8700. **False statement.** An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false. [Pen. C. 1877, § 158; R. C. 1899, § 6969.]

§ 8701. **False list under oath, perjury.** Every person who willfully makes or gives under oath or affirmation a false list of his taxable property, or a false list of the taxable property in his use or possession or under his control and required by law to be listed by him, is guilty of perjury. [R. C. 1895, § 6970.]

§ 8702. **Perjury, how punished.** Perjury is punishable by imprisonment in the penitentiary as follows:

1. When committed on the trial of an information or indictment for felony, by imprisonment not less than ten years.

2. When committed on any other trial or proceeding in a court of justice, by imprisonment for not less than one and not more than ten years.

3. In all other cases by imprisonment not less than one and not more than five years. [Pen. C. 1877, § 159; R. C. 1895, § 6971.]

§ 8703. **Summary committal of witness for perjury.** Whenever it appears probable to any court of record that any person who has testified in any action or proceeding in such court has committed perjury, such court may immediately commit such person, by an order or process for that purpose, to prison, or take an undertaking with sureties for his appearing and answering to an information or indictment for perjury. [Pen. C. 1877, § 160; R. C. 1895, § 6972.]

§ 8704. **Witness to perjury bound over to appear.** Such court shall thereupon bind over the witnesses to establish such perjury to appear at the proper court to testify upon the trial in case an information or an indictment is filed or found for such perjury, and shall also cause immediate notice of such commitment or undertaking, with the names of the witnesses so bound over, to be given to the state's attorney of the county. [Pen. C. 1877, § 161; R. C. 1895, § 6973.]

§ 8705. **Papers. Documents retained.** If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the court may by order detain such papers or documents from the party producing them, and direct them to be delivered to the state's attorney. [Pen. C. 1877, § 162; R. C. 1899, § 6974.]

§ 8706. **Subornation of perjury defined.** Every person who willfully procures another person to commit any perjury is guilty of subornation of perjury. [Pen. C. 1877, § 163; R. C. 1899, § 6975.]

§ 8707. **Subornation, punishment of.** Every person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured. [Pen. C. 1877, § 164; R. C. 1899, § 6976.]

§ 8708. **Same, conviction of, disqualifies.** No person who has been convicted of perjury or of subornation of perjury, shall thereafter be received as a witness in any action, proceeding or matter whatever upon his own behalf; nor in any action or proceeding between adverse parties, against any person who shall object thereto, until the judgment against him has been reversed. But when such person has been actually received as a witness contrary to the provisions of this section, his incompetency shall not prejudice the rights innocently acquired, of any other person claiming under the proceeding in which such person was so received. [Pen. C. 1877, § 165; R. C. 1899, § 6977.]

CHAPTER 13.

FALSIFYING EVIDENCE.

§ 8709. **Offering false evidence.** Every person who, upon any trial, proceeding, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, is punishable in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this code. [Pen. C. 1877, § 166; R. C. 1899, § 6978.]

§ 8710. **Deceiving a witness.** Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor. [Pen. C. 1877, § 167; R. C. 1899, § 6979.]

§ 8711. **Preparing false evidence.** Every person guilty of falsely preparing any book, paper, record, instrument in writing or other matter or thing, with intent to produce it or allow it to be produced as genuine, upon any trial, proceeding or inquiry whatever authorized by law, is guilty of a felony. [Pen. C. 1877, § 168; R. C. 1899, § 6980.]

§ 8712. **Destroying evidence.** Every person who, knowing that any book, paper, record, instrument in writing or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor. [Pen. C. 1877, § 169; R. C. 1899, § 6981.]

§ 8713. **Preventing witness attending.** Every person who willfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the command of the summons or subpoena, is guilty of a misdemeanor. [Pen. C. 1877, § 170; R. C. 1899, § 6982.]

§ 8714. **Same. Contemplated witness.** Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding or inquiry, authorized by law, is guilty of a misdemeanor. [R. C. 1895, § 6983.]

§ 8715. **Bribing witness.** Every person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a misdemeanor. [Pen. C. 1877, § 171; R. C. 1899, § 6984.]

CHAPTER 14.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§ 8716. **Injury to records and embezzlement.** Every sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or,
2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office,

Is guilty of a felony. [Pen. C. 1877, § 172; R. C. 1899, § 6985.]

§ 8717. **Permitting escapes by officer.** Every sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or,
2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,
3. Commits any unlawful act tending to hinder justice,

Is guilty of a misdemeanor. [Pen. C. 1877, § 173; R. C. 1899, § 6986.]

§ 8718. **Refusing to receive prisoner.** Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor. [Pen. C. 1877, § 174; R. C. 1899, § 6987.]

§ 8719. **Delaying to take prisoner before magistrate.** Every public officer or other person having arrested any person upon any criminal charge, who willfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor. [Pen. C. 1877, § 175; R. C. 1899, § 6988.]

§ 8720. **Arrest or seizure without lawful authority.** Every public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without due and legal process, is guilty of a misdemeanor. [Pen. C. 1877, § 176; R. C. 1899, § 6989.]

§ 8721. **Misconduct in executing search warrant.** Every peace officer who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor. [Pen. C. 1877, § 177; R. C. 1899, § 6990.]

§ 8722. **Refusing to aid officer.** Every person who, after having been lawfully commanded to aid any officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor. [Pen. C. 1877, § 178; R. C. 1899, § 6991.]

§ 8723. **Refusing to make arrest.** Every person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor. [Pen. C. 1877, § 179; R. C. 1899, § 6992.]

§ 8724. **Insurrection. Resisting execution of process.** Every person who, after proclamation issued by the governor declaring any county to be in a state of insurrection, resists or aids in resisting the execution of process in the county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the penitentiary not less than two years. [Pen. C. 1877, § 180; R. C. 1899, § 6993.]

§ 8725. **Obstructing officer in duty.** Every person who willfully delays or obstructs any public officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor. [Pen. C. 1877, § 181; R. C. 1899, § 6994.]

Obstructing officer. See *Richardson v. Dybedahl*, 14 S. D. 126, 84 N. W. 486.

§ 8726. **Extra judicial oaths.** Every person who takes an oath before an officer or person authorized to administer judicial oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact, in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor. [Pen. C. 1877, § 182; R. C. 1899, § 6995.]

§ 8727. **Administering same.** Every officer or other person who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required by the provisions of some contract as a basis of or proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor. [Pen. C. 1877, § 183; R. C. 1899, § 6996.]

§ 8728. **Compounding crimes.** Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:

1. By imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, when the crime compounded is one punishable either by death or by imprisonment in the penitentiary for life.

2. By imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding six months, when the crime compounded was punishable by imprisonment in the penitentiary for any other term than for life.

3. By imprisonment in the county jail not exceeding one year, or by a fine not exceeding two hundred dollars, or by both such fine and imprisonment, when the crime or violation of statute compounded is a crime punishable by imprisonment in the county jail or by a fine, or is a misdemeanor or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed. [Pen. C. 1877, § 184; R. C. 1899, § 6997.]

Where it is sought by parol to invalidate a written agreement on ground it had been made to compound a felony, such fact must be established with clearness and certainty. *School District No. 61, v. Alderson*, 6 Dak. 145, 41 N. W. 466.

§ 8729. **Compounding prosecution.** Every person who takes any money or property of another or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a misdemeanor. [Pen. C. 1877, § 185; R. C. 1899, § 6998.]

§ 8730. **Attempting to intimidate officers.** Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor. [Pen. C. 1877, § 186; R. C. 1899, § 6999.]

§ 8731. **Suppressing evidence.** Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor. [Pen. C. 1877, § 187; R. C. 1899, § 7000.]

§ 8732. **Buying lands in suit.** Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor. [Pen. C. 1877, § 188; R. C. 1899, § 7001.]

§ 8733. **Buying pretended titles.** Every person who buys or sells or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof or the person making such promise or covenant has been in possession,

or he and those by whom he claims have been in possession of the same, or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor. [Pen. C. 1877, § 189; R. C. 1899, § 7002.]

§ 8734. **Does not prohibit mortgaging.** The last two sections shall not be construed to prevent any person having a just title to lands, upon which there shall be an adverse possession, from executing a mortgage upon such lands. [Pen. C. 1877, § 190; R. C. 1899, § 7003.]

§ 8735. **Common barratry defined.** Common barratry is the practice of exciting groundless judicial proceedings. [Pen. C. 1877, § 191; R. C. 1899, § 7004.]

§ 8736. **Misdemeanor.** Common barratry is a misdemeanor. [Pen. C. 1877, § 192; R. C. 1899, § 7005.]

§ 8737. **Proof required.** No person can be convicted of common barratry, except upon proof that he has excited suits or proceedings at law, in at least three instances, and with a corrupt or malicious intent to vex and annoy. [Pen. C. 1877, § 193; R. C. 1899, § 7006.]

§ 8738. **Accused interested, not a defense.** Upon prosecution for common barratry, the fact that the accused was himself a party in interest or upon the record to any proceedings at law complained of, is not a defense. [Pen. C. 1877, § 194; R. C. 1899, § 7007.]

§ 8739. **Attorneys buying demands or suits.** Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor. [Pen. C. 1877, § 195; R. C. 1899, § 7008.]

§ 8740. **Justice or constable buying same.** Every justice of the peace and every constable, who, directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, for the purpose of commencing any suit thereon before a justice, is guilty of a misdemeanor. [Pen. C. 1877, § 196; R. C. 1899, § 7009.]

§ 8741. **Loans on claims for collection.** Every attorney, justice of the peace or constable, who, directly or indirectly, lends or advances any money or property, or agrees for or procures any loan or advance, to any person, as a consideration for or inducement toward committing any evidence of debt or thing in action to such attorney, justice, constable or any other person, for collection, is guilty of a misdemeanor. [Pen. C. 1877, § 197; R. C. 1899, § 7010.]

Champerty not available to defeat a just debt. When not available as defense. *Woods v. Walsh*, 7 N. D. 376, 75 N. W. 767.

§ 8742. **Forfeiture of office.** Every person convicted of a violation of either of the three preceding sections, in addition to the punishment by fine and imprisonment, prescribed therefor by this code, forfeits his office. [Pen. C. 1877, § 198; R. C. 1899, § 7011.]

§ 8743. **Receiving claims allowable.** Nothing in the four preceding sections shall be construed to prohibit the receiving in payment, of any evidence of debt or thing in action, for any estate, real or personal, or for any services of any attorney actually rendered, or for a debt antecedently contracted, or the buying or receiving of any evidence of debt or thing in action for the purpose of remittance, and without any intent to violate such sections. [Pen. C. 1877, § 199; R. C. 1899, § 7012.]

§ 8744. **Application of previous sections.** The provisions of sections 8739, 8741 and 8743 relative to the buying of claims by an attorney, with intent to prosecute them, or to the lending or advancing of money by an attorney in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money, by any

person prosecuting a suit or demand in person. [Pen. C. 1877, § 200; R. C. 1899, § 7013.]

§ 8745. **Witnesses' privilege.** No person shall be excused from testifying in any civil action, to any fact showing that an evidence of debt or thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution. [Pen. C. 1877, § 201; R. C. 1899, § 7014.]

§ 8746. **Criminal contempts.** Every person guilty of any contempt of court of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous or insolent behavior, committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character, committed in the presence of any referee or referees, while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law.

3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7. The publication of a false or grossly inaccurate report of the proceedings of any court. But no person can be punished, as for contempt, in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court. [Pen. C. 1877, § 202; R. C. 1899, § 7015.]

One who, knowing of order of court and its contents, intentionally does an act which violates order, is guilty of contempt. *Freeman v. City of Huron*, 8 S. D. 435, 66 N. W. 928; *State v. Knight*, 3 S. D. 509, 54 N. W. 412; *State ex rel Edwards v. Davis*, 2 N. D. 461, 51 N. W. 942; *State v. Markuson*, 5 N. D. 147, 64 N. W. 934.

§ 8747. **Grand juror acting after challenge allowed.** Every grand juror who, with knowledge that a challenge interposed against him by a defendant, has been allowed, is present at or takes part, or attempts to take part, in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor. [Pen. C. 1877, § 204; R. C. 1899, § 7016.]

§ 8748. **Magistrate. Clerk disclosing deposition.** Every magistrate or clerk of any magistrate, who willfully permits any deposition taken on a complaint against or examination of a defendant before such magistrate and remaining in the custody of such magistrate or clerk, to be inspected by any person except a judge of a court having jurisdiction of the offense, the United States attorney, attorney general, state's attorney of the county and his assistants, and the defendant and his counsel, is guilty of a misdemeanor. [Pen. C. 1877, § 205; R. C. 1899, § 7017.]

§ 8749. **Clerk of court. Disclosing same.** Every clerk of any court who willfully permits any deposition returned by any grand jury with a presentment made by them, and filed with such clerk, to be inspected by any person except the court, the deputies or assistants of such clerk, and the state's attorney and his assistants until after the arrest of the defendant, is guilty of a misdemeanor. [Pen. C. 1877, § 206; R. C. 1899, § 7018.]

§ 8750. **Fraudulent concealment. Disclosure.** Every person who, having been called upon by the lawful order of any court, to make a true exhibit of his real and personal effects, either:

1. Willfully conceals any of his estate or effects, or any books or writing relative thereto; or,

2. Willfully omits to disclose to the court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof,

Is guilty of a misdemeanor. [Pen. C. 1877, § 207; R. C. 1899, § 7019.]

§ 8751. **Racing near court.** Every person concerned in any racing, running or other trial of speed between any horses or other animals, within one-half mile of the place where any court is actually sitting, is guilty of a misdemeanor. [Pen. C. 1877, § 208; R. C. 1899, § 7020.]

§ 8752. **Selling liquor in court house or jail.** Every person who sells any spirituous or intoxicating liquor within, or brings with intent to sell or offer or expose for sale therein, any such liquor into, either:

1. Any building established as a court house for the holding of courts of record, while any session of such court is being held therein; or,

2. Any building established as a jail or prison; or,

3. Any building or shed, out-house, porch, yard or curtilage appertaining to any building which, or any part of which, is at the time occupied or used for holding the polls at an election of any public officer of this state, or for canvassing votes cast at such election,

Is guilty of a misdemeanor. [Pen. C. 1877, § 209; R. C. 1899, § 7021.]

§ 8753. **Misconduct of attorneys.** Every attorney who, whether as attorney or as counsel, either:

1. Is guilty of any deceit or collusion or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit, with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for,

Is guilty of a misdemeanor; and in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action. [Pen. C. 1877, § 210; R. C. 1899, § 7022.]

§ 8754. **Permitting name to be used.** If any attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney and every person who shall so use his name, is guilty of a misdemeanor. [Pen. C. 1877, § 211; R. C. 1899, § 7023.]

§ 8755. **Exception. In what case lawful.** Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the state or of any public officer, board of officers or municipal corporation, on behalf of another party, the attorney general or state's attorney or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest. [Pen. C. 1877, § 212; R. C. 1899, § 7024.]

§ 8756. **Pretense to birth of child.** Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 213; R. C. 1899, § 7025.]

§ 8757. **Substituting child.** Every person to whom an infant has been confided for nursing, education or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is

punishable by imprisonment in the penitentiary not less than one and not exceeding seven years. [Pen. C. 1877, § 214; R. C. 1899, § 7026.]

§ 8758. **Omission of duty by officer of vessel.** Every owner, master or commander of any vessel arriving from a port without this state, who knowingly lands, or permits to land, at any port, city or place within this state, any passenger or hand who is a foreign convict of any crime which, if committed in this state, would be punishable therein, without giving notice thereof to the mayor of such city or other principal municipal officer of such place or port, is guilty of a misdemeanor. [Pen. C. 1877, § 215; R. C. 1899, § 7027.]

§ 8759. **Public officer. Duty omitted. Punishment.** When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful omission to perform such duty when no special provisions shall have been made for the punishment of such delinquency, is punishable as a misdemeanor. [Pen. C. 1877, § 216; R. C. 1899, § 7028.]

§ 8760. **Doing prohibited act. Punishment.** When the performance of an act is prohibited by any statute and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor. [Pen. C. 1877, § 217; R. C. 1899, § 7029.]

§ 8761. **Disclosing presentment. Indictment.** Every grand juror, state's attorney, clerk, judge or other officer, who, excepting by the issuing or in the executing of a warrant to arrest the defendant, willfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor. [Pen. C. 1877, § 218; R. C. 1895, § 7030.]

§ 8762. **Disclosing jury's proceedings.** Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor. [Pen. C. 1877, § 219; R. C. 1899, § 7031.]

§ 8763. **Action in a false name.** Every person who maliciously institutes or prosecutes any action or legal proceeding, or makes or procures any arrest in the name of a person who does not exist or has not consented that it be instituted or made, is guilty of a misdemeanor. [Pen. C. 1877, § 220; R. C. 1899, § 7032.]

§ 8764. **Maliciously procuring search.** Every person who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor. [Pen. C. 1877, § 221; R. C. 1899, § 7033.]

§ 8765. **Communicating with inmate of penitentiary.** Every person who, not being authorized by law or by consent of the warden, deputy warden or other person in charge of the penitentiary, communicates with any inmate of the penitentiary or brings into, or conveys out of, the penitentiary any letter or printing, to or from any such inmate, is guilty of a misdemeanor. [Pen. C. 1877, § 222; R. C. 1895, § 7034.]

§ 8766. **County auditor. Neglect to canvass returns.** Every county auditor who willfully refuses or neglects to canvass the election returns of his county, or neglects to make proper abstracts thereof and forward the same to the proper officer, as is or may hereafter be provided by law, or fails to issue certificates of election to the persons lawfully entitled thereto, is punishable by a fine not exceeding one hundred dollars for each refusal or neglect. [Pen. C. 1877, § 223; R. C. 1899, § 7035.]

§ 8767. **False certificates.** Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor. [Pen. C. 1877, § 224; R. C. 1899, § 7036.]

CHAPTER 15.

CONSPIRACY.

§ 8768. **Criminal conspiracies defined.** If two or more persons conspire, either:

1. To commit a crime; or,
2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or,
3. Falsely to institute or maintain an action or special proceeding; or,
4. To cheat and defraud another out of property, by any means which are in themselves criminal or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or,
5. To prevent another from exercising a lawful trade or calling or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements or property belonging to or used by another, or with the use or employment thereof; or,
6. To commit any act injurious to the public health, to public morals or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws; each of them is guilty of a misdemeanor. [Pen. C. 1877, § 225; R. C. 1895, § 7037.]

§ 8769. **Out of state, against peace of state.** If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 226; R. C. 1899, § 7038.]

§ 8770. **Limitation. Peaceable assemblies.** No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy. [R. C. 1895, § 7039.]

§ 8771. **Overt act necessary. Exceptions.** No agreement except to commit a felony upon the person of another, or to commit arson or burglary amounts to a conspiracy, unless some act beside such agreement is done to effect the object thereof, by one or more of the parties to such agreement. [Pen. C. 1877, § 227; R. C. 1899, § 7040.]

§ 8772. **Hindering citizen to obtain employment.** Every person, corporation, or agent thereof, who maliciously interferes or hinders, in any way, any citizen of this state from obtaining employment or enjoying employment already obtained, from any other person or corporation, is guilty of a misdemeanor. [Const. § 23; R. C. 1899, § 7041.]

§ 8773. **Black list. Punishment.** Every corporation, officer, agent or employe thereof, and every person of any corporation on behalf of such corporation, who exchanges with or furnishes or delivers to any other corporation or any officer, agent, employe or person thereof, any "black list," is guilty of a misdemeanor. [Const. § 212; R. C. 1899, § 7042.]

CHAPTER 16.

TREASON AND MISPRISION OF TREASON.

§ 8774. **Treason defined. Witnesses. Punishment.** Every person owing allegiance to this state who levies war against it, or adheres to its enemies or gives them aid or comfort within this state or elsewhere, is guilty of treason.

No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or his confession thereof in open court. Every person guilty of treason shall, upon conviction thereof, be punished by death, or, at the discretion of the court, shall be imprisoned in the penitentiary not less than five years and be forever incapable of holding any office under this state. [Const. § 19; R. C. 1899, § 7043.]

§ 8775. **Misprision of treason.** Every person owing allegiance to this state and having knowledge of any treason against it, who conceals and does not, as soon as may be, disclose the same and make the same known to the governor or the attorney general, or to some judge of this state or of some district thereof, or to the state's attorney of some county, or a magistrate thereof, is guilty of misprision of treason and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years. [R. C. 1895, § 7044.]

CHAPTER 17.

SUICIDE.

§ 8776. **Suicide defined.** Suicide is the intentional taking of one's own life. [Pen. C. 1877, § 229; R. C. 1899, § 7045.]

§ 8777. **Attempting suicide.** Every person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide. [Pen. C. 1877, § 230; R. C. 1899, § 7046.]

§ 8778. **Advising and aiding suicide.** Every person who willfully, in any manner advises, encourages, abets or assists another person in taking his own life, is guilty of aiding suicide. [Pen. C. 1877, § 231; R. C. 1899, § 7047.]

§ 8779. **Furnishing weapon or drug.** Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life. [Pen. C. 1877, § 232; R. C. 1899, § 7048.]

§ 8780. **Aiding attempt.** Every person who willfully aids another in attempting to take his own life, in any manner which by the preceding section would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide. [Pen. C. 1877, § 233; R. C. 1899, § 7049.]

§ 8781. **Incapacity no defense.** It is no defense to a prosecution for aiding suicide or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime. [Pen. C. 1877, § 234; R. C. 1899, § 7050.]

§ 8782. **Aiding suicide. Punishment.** Every person guilty of aiding suicide is punishable by imprisonment in the penitentiary not less than seven years. [Pen. C. 1877, § 235; R. C. 1899, § 7051.]

§ 8783. **Attempting suicide. Punishment.** Every person guilty of attempting suicide or of aiding an attempt at suicide, is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 236; R. C. 1899, § 7052.]

CHAPTER 18.

HOMICIDE.

§ 8784. **Homicide defined.** Homicide is the destruction of the life of one human being by the act, agency, procurement or culpable omission of another. [Pen. C. 1877, § 237; R. C. 1895, § 7053.]

§ 8785. **Homicides classified.** Homicide is either:

1. Murder.
2. Manslaughter.
3. Excusable homicide; or,
4. Justifiable homicide. [Pen. C. 1877, § 238; R. C. 1899, § 7054.]

§ 8786. **Corpus delicti, how proved. Confession.** No person can be convicted of murder or manslaughter or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused as alleged, are each established as independent facts; the former by direct proof and the latter beyond a reasonable doubt; but in no case upon a plea of not guilty, shall the confession or admission of the accused, in writing or otherwise, be admissible to establish the death of the person alleged to have been killed. [Pen. C. 1877, § 239; R. C. 1895, § 7055.]

§ 8787. **Petit treason abolished.** The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are deemed homicides, punishable in the manner prescribed by this chapter. [Pen. C. 1877, § 240; R. C. 1899, § 7056.]

§ 8788. **Confidential or domestic relation.** Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved. [Pen. C. 1877, § 241; R. C. 1899, § 7057.]

§ 8789. **Murder defined.** Homicide is murder in the following cases:

1. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed or of any other human being.
2. When perpetrated by any act imminently 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.
3. When perpetrated without any design to effect death by a person engaged in the commission of any felony. [Pen. C. 1877, § 242; R. C. 1899, § 7058.]

Murder defined. *State v. Belyea*, 9 N. D. 353, 83 N. W. 1; *Territory v. Bannigan*, 1 Dak. 451, 46 N. W. 597; *State v. Reddington*, 7 S. D. 368, 64 N. W. 170.

§ 8790. **Felony used in last section defined.** The word "felony," in the last section imports any act or omission declared or defined to be a felony by any law of this state or by this code without regard to the effect thereon of the punishment actually imposed. [R. C. 1895, § 7059.]

§ 8791. **Design to effect death inferred.** A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed. [Pen. C. 1877, § 243; R. C. 1899, § 7060.]

§ 8792. **Premeditation.** A design to effect death sufficient to constitute murder, may be formed instantly before committing the act by which it is carried into execution. [Pen. C. 1877, § 244; R. C. 1899, § 7061.]

§ 8793. **Anger or intoxication no defense.** Homicide committed with a design to effect death is not the less murder because the perpetrator was in

a state of anger or voluntary intoxication at the time. [Pen. C. 1877, § 245; R. C. 1899, § 7062.]

§ 8794. **Act imminently dangerous to others.** Homicide perpetrated by an act imminently dangerous to others and evincing a depraved mind regardless of human life, is not the less murder because there was no actual intent to injure others. [Pen. C. 1877, § 246; R. C. 1895, § 7063.]

§ 8795. **Murder divided into two degrees.** According to the facts and circumstances attending the killing, or as specially declared by law, murder is deemed, either:

1. Murder in the first degree; or,
2. Murder in the second degree. [R. C. 1895, § 7064.]

§ 8796. **Degrees of murder defined.** Every murder perpetrated by means of poison, or by lying in wait, or by torture, or by other willfull, deliberate or premeditated killing, or in committing or attempting to commit any sodomy, rape, mayhem, arson, robbery or burglary, shall be deemed murder in the first degree; all other kinds of murder shall be deemed murder in the second degree. [R. C. 1895, § 7065.]

§ 8797. **Manslaughter defined.** Homicide, not excusable or justifiable, but perpetrated in a manner not constituting murder, is manslaughter. [R. C. 1895, § 7066.]

§ 8798. **Manslaughter divided into two degrees.** According to the facts and circumstances attending the killing, or as specially declared by law, manslaughter is, either:

1. Manslaughter in the first degree; or,
2. Manslaughter in the second degree. [R. C. 1895, § 7067.]

§ 8799. **Punishment for murder in first degree.** Every person convicted of murder in the first degree shall suffer death or be imprisoned in the penitentiary for life. [Pen. C. 1877, § 249; 1883, ch. 9, §§ 1, 2; R. C. 1895, § 7068.]

§ 8800. **Punishment for murder in second degree.** Every person convicted of murder in the second degree shall be imprisoned in the penitentiary not less than ten and not exceeding thirty years. [R. C. 1895, § 7069.]

§ 8801. **Punishment for manslaughter in first degree.** Every person convicted of manslaughter in the first degree shall be punished by imprisonment in the penitentiary not less than five and not exceeding fifteen years. [Pen. C. 1877, § 253; R. C. 1895, § 7070.]

§ 8802. **Punishment for manslaughter in second degree.** Every person convicted of manslaughter in the second degree shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 261; R. C. 1895, § 7071.]

§ 8803. **Jury determines degree of murder.** The jury before whom any person prosecuted for murder is tried, shall, if they find such person guilty thereof, determine by their verdict, whether it is of murder in the first degree or of murder in the second degree. [R. C. 1895, § 7072.]

§ 8804. **Jury must determine punishment.** The jury before whom any person prosecuted for murder is tried, shall, if they find such person guilty thereof, fix and determine by their verdict, the punishment to be inflicted, within the limits prescribed by law, as for example: if they find such person guilty of murder in the first degree, they must designate in their verdict whether he shall be punished by death or imprisonment in the penitentiary for life; or, if they find such person guilty of murder in the second degree, they must designate in their verdict the term of his imprisonment in the penitentiary not less than ten and not exceeding thirty years. [1883, ch. 9, §§ 1, 2; R. C. 1895, § 7073.]

§ 8805. **Court to enter judgment according to verdict. Exception.** Whenever any person is convicted of murder by the verdict of a jury, it shall be the duty of the court to enter judgment against such person, in accordance with such verdict, or otherwise as provided by section 10056 of the code of criminal procedure. [R. C. 1895, § 7074.]

§ 8806. **Manslaughter. Jury. Degree. Punishment. Court.** The jury before whom any person is prosecuted for murder, may, according to the facts and circumstances disclosed by the evidence, find such person guilty of manslaughter. Whenever the jury finds any person guilty of manslaughter, either upon a prosecution for murder or a prosecution for manslaughter, they shall determine by their verdict whether it is of manslaughter in the first degree or of manslaughter in the second degree, and shall also fix and determine by their verdict the punishment to be inflicted, within the limits prescribed by law, and it shall be the duty of the court to enter judgment against such person in accordance with such verdict, or otherwise as provided by section 10056 of the code of criminal procedure. [R. C. 1895, § 7075.]

§ 8807. **Murder. Manslaughter. Plea. Guilty. Court.** Whenever any person prosecuted for murder or manslaughter pleads guilty, he shall, in his plea, designate whether he is guilty of murder in the first degree or in the second degree, or of manslaughter in the first degree or in the second degree, and the court shall, if said plea is accepted, determine the punishment to be inflicted therefor within the limits prescribed by law, and enter judgment against such person in accordance with such determination. But the court may, in its discretion, examine witnesses to aid in the determination of the punishment to be inflicted or submit the same to a jury to determine the punishment, or, at its discretion, may refuse to receive a plea of guilty and submit the whole case to a jury. [R. C. 1895, § 7076.]

§ 8808. **Treason. Murder. Death. Time of execution.** Whenever the court or jury shall designate that a person convicted of treason or of murder in the first degree shall be punished by death, it shall be the duty of the court entering judgment to fix the day of the execution thereof, which day shall not be less than six months after the day on which the judgment and sentence are entered and not longer than nine months. [R. C. 1895, § 7077.]

§ 8809. **Duel. Killing in state. Murder. Second degree.** Every person who by previous appointment or engagement fights a duel within the jurisdiction of this state and in so doing inflicts a wound upon any person, whereof the person so injured dies, is guilty of murder in the second degree. [R. C. 1895, § 7078.]

§ 8810. **Second, surgeon, at duel. Manslaughter first degree.** Every person who acts as a second or surgeon at any such duel as is mentioned in the preceding section and is present when the wound is inflicted whereof death ensues, is guilty of manslaughter in the first degree. [R. C. 1895, § 7079.]

§ 8811. **Duel. Killing without state. Murder second degree.** Every person, being an inhabitant or resident of this state, who, by previous appointment or engagement made within the same, fights a duel without the jurisdiction of this state, and in so doing inflicts a mortal wound upon a person, whereof he afterwards dies within this state, shall be deemed guilty of murder in the second degree within this state, and may be tried, convicted and sentenced in the county where the death happens. [Pen. C. 1877, § 247; R. C. 1895, § 7080.]

§ 8812. **Second, surgeon, at duel. Manslaughter first degree.** Every person, being an inhabitant of this state, who acts as a second or surgeon at any such duel as is mentioned in the preceding section and is present when a wound is inflicted whereof death ensues, is guilty of manslaughter in the first degree. [R. C. 1895, § 7081.]

§ 8813. **Conviction. Acquittal in other state defense.** A person prosecuted under the last two preceding sections may plead a former conviction or acquittal of the same offense in any other state or country, and such plea, if admitted or established, shall be a bar to all further or other proceedings against him for the same offense within this state. [R. C. 1895, § 7082.]

§ 8814. **Homicide in forcibly taking mine. Murder.** If any person or persons shall associate and agree to enter or attempt to enter by force of numbers, and the terror such numbers is calculated to inspire, or by force and violence, or by threats of violence against any person or persons in the actual possession of any lode, gulch or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons and all and each of them so entering or attempting to enter, shall be deemed guilty of murder in the second degree, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry or attempted entry, who shall be present and aiding, assisting or in any wise encouraging such entry or attempted entry, shall be deemed a principal in the commission of said offense. [Pen. C. 1877, § 248; R. C. 1895, § 7083.]

§ 8815. **Homicide, when manslaughter in first degree.** Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor.

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon, unless it is committed under such circumstances as constitute excusable or justifiable homicide.

3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime or after such attempt shall have failed. [Pen. C. 1877, § 250; R. C. 1899, § 7084.]

§ 8816. **Abortion. Killing unborn quick child.** The willful killing of an unborn quick child by an injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree. [Pen. C. 1877, § 251; R. C. 1899, § 7085.]

§ 8817. **Abortion by administering drugs. Instruments.** Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug or substance whatever or who uses or employs 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, is guilty in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree. [Pen. C. 1877, § 252; R. C. 1899, § 7086.]

§ 8818. **Manslaughter in second degree defined.** Every killing of one human being by the act, agency, procurement or culpable negligence of another, which under the provisions of this chapter, is not murder or manslaughter in the first degree, or excusable or justifiable homicide, is manslaughter in the second degree. [Pen. C. 1877, § 254; R. C. 1899, § 7087.]

§ 8819. **Owner of mischievous animal.** If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree. [Pen. C. 1877, § 255; R. C. 1899, § 7088.]

§ 8820. **Negligently navigating vessel. Overloading.** Every person navigating any vessel for gain who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel that by means thereof such vessel sinks, or is upset or injured, and thereby any human being is drowned or otherwise killed, is guilty of manslaughter in the second degree. [Pen. C. 1877, § 256; R. C. 1899, § 7089.]

§ 8821. **Steamboat. Passengers. Negligence. Racing.** Every captain or other person having charge of any steamboat used for the conveyance of passengers or of the boilers or engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows 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 bursting or breaking any person is killed, is deemed guilty of manslaughter in the second degree. [Pen. C. 1877, § 257; R. C. 1899, § 7090.]

§ 8822. **Engineer. Negligence. Producing death.** Every engineer or other person having charge of any steam boiler, steam engine or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect creates or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree. [Pen. C. 1877, § 258; R. C. 1899, § 7091.]

§ 8823. **Physician. Intoxication. Producing death.** Every physician who, being in a state of intoxication, without a design to effect death, administers any poison, drug or medicine, or does any other act as such physician, to another person, which produces the death of such other person, is guilty of manslaughter in the second degree. [Pen. C. 1877, § 259; R. C. 1899, § 7092.]

§ 8824. **Keeping gunpowder. Other explosives.** Every person guilty of making or keeping gunpowder, saltpetre, guncotton, nitroglycerine or dynamite or any compound of the same, or any fulminate or substance which is intended to be used by exploding or igniting the same, in order to produce a force to propel missiles or to rend apart substances, within any city or village in any quantity or amount prohibited by law, or by any ordinance of said city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter in the second degree. [Pen. C. 1877, § 260; R. C. 1895, § 7093.]

§ 8825. **Setting spring gun, trap or device.** Every person who sets any spring or other gun or trap or device operating by the firing or exploding of gunpowder or any other explosive, and leaves or permits the same to be left, except in the immediate presence of some competent person, shall be deemed to have committed a misdemeanor; and the killing of any person by the firing of a gun or other device so set shall be deemed to be manslaughter in the first degree. [R. C. 1895, § 7094.]

§ 8826. **Arson. Night time. Destroying life.** Every person who willfully and maliciously burns, in the night time, the dwelling house of another or of which he is a lessee or tenant, whereby the life of any person is destroyed, or who, in the night time, willfully and maliciously sets fire to any other building, owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, whereby the life of any person is destroyed, shall be deemed guilty of murder in the second degree. [R. C. 1895, § 7095.]

§ 8827. **Killing. Death within one year. Aiding suicide.** To make the killing either murder or manslaughter in prosecutions for homicide, it is requisite that the party dies within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first. No prosecution for aiding suicide shall be maintained unless the death of the person aided ensues within one year, computed as above. [R. C. 1895, § 7096.]

§ 8828. **Homicide, when excusable.** Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant or in doing any other lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent.

2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation or upon a sudden combat; provided, that no undue advantage is taken, nor any dangerous weapon used and that the killing is not done in a cruel or unusual manner. [Pen. C. 1877, § 262; R. C. 1899, § 7097.]

§ 8829. **Homicide by officers, when justifiable.** Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice. [Pen. C. 1877, § 263; R. C. 1899, § 7098.]

§ 8830. **Homicide by others, when justifiable.** 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 is; 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 is a reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and 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 in lawfully suppressing any riot; or in lawfully keeping and preserving the peace. [Pen. C. 1877, § 264; R. C. 1899, § 7099.]

When killing is admitted, burden of proving it was justifiable is on accused. State v. Yokum, 11 S. D. 544, 79 N. W. 835.

§ 8831. **Homicide. Excusable. Justifiable. Defendant acquitted.** Whenever any person is prosecuted for a homicide, and upon his trial the killing shall be found to have been excusable or justifiable, the jury shall find such person not guilty and he shall be fully acquitted and discharged. [R. C. 1895, § 7100.]

CHAPTER 19.

MAIMING.

§ 8832. **Maiming defined.** Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance or disables any member or organ of his body or seriously diminishes his physical vigor, is guilty of maiming. [Pen. C. 1877, § 265; R. C. 1899, § 7101.]

§ 8833. **Maiming one's self.** Every person who, with design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled is guilty of maiming. [Pen. C. 1877, § 266; R. C. 1899, § 7102.]

§ 8834. **Maiming one's self. Exciting sympathy.** Every person who inflicts upon himself any injury such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, to excite

sympathy or to obtain alms or any charitable relief, is guilty of maiming. [Pen. C. 1877, § 267; R. C. 1899, § 7103.]

§ 8835. **Maiming. Instrument. Manner immaterial.** To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted. [Pen. C. 1877, § 268; R. C. 1899, § 7104.]

§ 8836. **Maiming by disfigurement described. Limited.** To constitute maiming by disfigurement the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming. [Pen. C. 1877, § 269; R. C. 1899, § 7105.]

§ 8837. **Design to maim inferred.** A design to injure, disfigure or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed. [Pen. C. 1877, § 270; R. C. 1899, § 7106.]

§ 8838. **Premeditated design sufficient.** A premeditated design to injure, disfigure or disable, sufficient to constitute maiming may be formed instantly before inflicting the wound. [Pen. C. 1877, § 271; R. C. 1899, § 7107.]

§ 8839. **Subsequent recovery. Conviction.** When it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to the proof. [Pen. C. 1877, § 272; R. C. 1899, § 7108.]

§ 8840. **Punishment for maiming.** Every person guilty of maiming is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 273; R. C. 1899, § 7109.]

CHAPTER 20.

KIDNAPPING.

§ 8841. **Kidnapping defined. Defense. Exception.** Every person who willfully:

1. Seizes, confines, inveigles or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of this state, or in any way held to service or kept or detained against his will; or,

2. Leads, takes, entices away or detains a child under the age of sixteen years, with intent to keep or conceal it from its parent, guardian or other person having lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article upon the person of the child; or,

3. Abducts, entices, or by force or fraud unlawfully takes or carries away another at or from a place without the state, or procures, advises, aids or abets such an abduction, enticing, taking or carrying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this state, is guilty of kidnapping, and is punishable by imprisonment in the penitentiary not less than five nor more than twenty years. [Pen. C. 1877, § 274; R. C. 1899, § 7110; 1901, ch. 115.]

§ 8842. **Selling services of other persons.** Every person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any black, mulatto or other person of color, who has been forcibly taken or inveigled or kidnapped from his state, is punishable by

imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 275; R. C. 1899, § 7111.]

§ 8843. **Removing from state persons held to service.** Every person claiming that he or another is entitled to the service of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by law, takes or removes or willfully does any act tending toward removing from this state any such person, is guilty of felony, and punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved. [Pen. C. 1877, § 276; R. C. 1899, § 7112.]

§ 8844. **Judge. Officer. Warrant. Exception. Penalty.** Every judge or other public officer of this state, who grants or issues any warrant, certificate or other process in any proceeding for the removal from this state of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of positive enactment, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action. [Pen. C. 1877, § 277; R. C. 1899, § 7113.]

CHAPTER 21.

ATTEMPTS TO KILL.

§ 8845. **Administering poison.** Every person who, with intent to kill, administers or causes or procures to be administered to another, any poison, which is actually taken by such other, but by which death is not caused, is punishable by imprisonment in the penitentiary not less than ten years. [Pen. C. 1877, § 278; R. C. 1899, § 7114.]

§ 8846. **Shooting. Assault. Deadly weapon.** Every person who shoots or attempts to shoot at another, with any kind of firearm, air gun or other means whatever with intent to kill any person, or who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as was likely to produce death, with intent to kill any other person, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 279; R. C. 1895, § 7115.]

On trial for assault with deadly weapon with intent to kill, accused may be convicted of assault and battery or assault "armed with a dangerous weapon with intent to do bodily harm." *State v. Johnson*, 3 N. D. 150, 54 N. W. 547; *State v. Finder*, 10 S. D. 103, 72 N. W. 97; *People v. Odell*, 1 Dak. 197, 46 N. W. 601; *State v. Maloney*, 7 N. D. 119, 72 N. W. 927; *Territory v. Conrad*, 1 Dak. 348, 46 N. W. 583.

The term assault and battery with a deadly weapon, defined in section 8846, and the term assault or assault and battery with a sharp or dangerous weapon, defined in section 8876, do not include an assault or assault and battery with firearms for the purpose of shooting. *State v. Cruikshank*, 13 N. D. 337, and note, 100 N. W. 697; *State v. Mattison*, 13 N. D. 391, 100 N. W. 1091.

§ 8847. **Other assaults with intent to kill.** Every person who is guilty of an assault with intent to kill any person, the punishment for which is not prescribed by the foregoing section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 280; R. C. 1899, § 7116.]

CHAPTER 22.

ROBBERY.

§ 8848. **Robbery defined.** Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear. [Pen. C. 1877, § 281; R. C. 1899, § 7117.]

For variance between indictment and proof, see *State v. Fallon*, 2 N. D. 510, 52 N. W. 318.

Duty of court to charge that to constitute robbery the taking of property must have been with intent to steal, whether such charge is requested or not. *State v. Fordham*, 13 N. D. 494, 101 N. W. 888.

Acquittal for assault with deadly weapon with intent to rob not bar to prosecution for robbery. *State v. Caddy*, 15 S. D. 167, 87 N. W. 927.

§ 8849. **How force or fear employed.** To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery. [Pen. C. 1877, § 282; R. C. 1899, § 7118.]

§ 8850. **Degree of force immaterial.** When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial. [Pen. C. 1877, § 283; R. C. 1899, § 7119.]

§ 8851. **What fear necessary, described.** The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative of his or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed, at the time of the robbery. [Pen. C. 1877, § 284; R. C. 1899, § 7120.]

§ 8852. **Value of property taken immaterial.** When property is taken under the circumstances required to constitute robbery, the fact that the property was of trifling value does not qualify the offense. [Pen. C. 1877, § 285; R. C. 1899, § 7121.]

§ 8853. **Taking secretly not robbery.** The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge. [Pen. C. 1877, § 286; R. C. 1899, § 7122.]

§ 8854. **Two degrees of robbery, defined.** Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree. [Pen. C. 1877, § 287; R. C. 1899, § 7123.]

§ 8855. **Punishment, robbery, first degree.** Every person guilty of robbery in the first degree is punishable by imprisonment in the penitentiary not less than one year. [Pen. C. 1877, § 288; R. C. 1895, § 7124.]

§ 8856. **Punishment, robbery, second degree.** Every person guilty of robbery in the second degree is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 289; R. C. 1895, § 7125.]

§ 8857. **Robbery by two or more conjointly.** Whenever two or more persons conjointly commit a robbery, or when the whole number of persons conjointly committing a robbery and persons present and aiding such robbery, amount to two or more, each and either of such persons is punishable by imprisonment in the penitentiary not less than one year. [Pen. C. 1877, § 290; R. C. 1895, § 7126.]

CHAPTER 23.

ASSAULTS WITH INTENT TO COMMIT FELONY OTHER THAN
ASSAULTS WITH INTENT TO KILL.

§ 8858. **Shooting. Assault. Deadly weapon. Punishment.** Every person who shoots or attempts to shoot at another with any kind of firearm, air gun or other means whatever, or commits any assault or battery upon another by means of any deadly weapon, or by such other means or force as was likely to produce death, with intent to commit any felony other than assault with intent to kill, or in resisting the execution of any legal process, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 291; R. C. 1899, § 7127.]

Weapon with which assault was committed is an essential feature of the crime.

State v. Johnson, 3 N. D. 150, 54 N. W. 547.

Acquittal under this section no bar to prosecution upon charge of robbery.
State v. Caddy, 15 S. D. 167, 87 N. W. 927.

§ 8859. **Other assaults. Intent. Exception. Punishment.** Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 292; R. C. 1895, § 7128.]

For charge of assault with intent to commit felony, see State v. Shields, 13 S. D. 464, 83 N. W. 559; State v. Johnson, 3 N. D. 150, 54 N. W. 547.

§ 8860. **Administering drugs. Intent. Felony.** Every person guilty of administering to another any chloroform, ether, laudanum or other intoxicating, narcotic or other anesthetic agent, with intent thereby to enable or assist himself or any other person to commit any felony, is guilty of felony. [Pen. C. 1877, § 293; R. C. 1899, § 7129.]

CHAPTER 24.

DUELS AND CHALLENGES.

§ 8861. **Duel defined.** A duel is any combat with deadly weapons, fought between two persons by previous agreement or upon a previous quarrel. [Pen. C. 1877, § 294; R. C. 1899, § 7130.]

§ 8862. **Punishment for fighting.** Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 295; R. C. 1899, § 7131.]

§ 8863. **Incapacity to hold office.** Every person convicted of fighting a duel is thereafter incapable of holding or being elected or appointed to any office, place or post of trust or emolument, civil or military, under this state. [Pen. C. 1877, § 296; R. C. 1899, § 7132.]

§ 8864. **Seconds. Aids. Surgeons.** Every person who is present at the time when any duel is fought, either as second, aid or surgeon, or who advises or gives any countenance to any duel, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years. [Pen. C. 1877, § 297; R. C. 1899, § 7133.]

§ 8865. **Challenges. Punishment.** Every person who challenges another to fight a duel; every person who accepts any such challenge; and every person who knowingly forwards, carries or delivers any such challenge, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years. [Pen. C. 1877, § 298; R. C. 1899, § 7134.]

§ 8866. **Challenge defined.** Any words, spoken or written, or any signs uttered or made to any person, expressing or implying or intended to express or imply a desire, request, invitation or demand, to fight a duel, or to meet for the purpose of fighting a duel, are deemed a challenge. [Pen. C. 1877, § 299; R. C. 1899, § 7135.]

§ 8867. **Attempts to induce challenge.** Every person guilty of sending, uttering or making to another any words or signs whatever, with intent to provoke or induce such person to give or receive any challenge to fight a duel, is guilty of a misdemeanor. [Pen. C. 1877, § 300; R. C. 1899, § 7136.]

§ 8868. **Posting for not fighting.** Every person who posts or publishes another for not fighting a duel or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel or with intent to provoke a duel, is guilty of a misdemeanor. [Pen. C. 1877, § 301; R. C. 1899, § 7137.]

§ 8869. **Leaving state to evade laws.** Every person who leaves this state with intent to evade any of the provisions of this chapter and to commit any act out of this state such as is prohibited by this chapter, and who does any act, although out of this state which would be punishable by said provisions, if committed within this state, is punishable in the same manner as he would have been, in case such act had been committed within this state. [Pen. C. 1877, § 302; R. C. 1899, § 7138.]

§ 8870. **Where may be tried.** Such person may be prosecuted, informed against or indicted and tried in any county within this state. [Pen. C. 1877, § 303; R. C. 1899, § 7139.]

§ 8871. **No privilege against testifying.** No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding. [Pen. C. 1877, § 304; R. C. 1899, § 7140.]

CHAPTER 25.

ASSAULT AND BATTERY.

§ 8872. **Assault defined.** An assault is any willful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another. [Pen. C. 1877, § 305; R. C. 1899, § 7141.]

§ 8873. **Battery defined.** A battery is any willful and unlawful use of force or violence upon the person of another. [Pen. C. 1877, § 306; R. C. 1899, § 7142.]

§ 8874. **When force not unlawful.** To use or to attempt or to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.
2. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided, the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar; provided, restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from any carriage, railroad car, vessel or other vehicle, any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped, and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person preventing an idiot, lunatic, insane person or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. [Pen. C. 1877, § 307; R. C. 1895, § 7143.]

§ 8875. **How punished.** Assault or assault and battery shall be punished by imprisonment in a county jail not exceeding thirty days, or by a fine of not less than five dollars nor more than one hundred dollars or both at the discretion of the court. [Pen. C. 1877, § 308; R. C. 1899, § 7144.]

§ 8876. **Assault with dangerous weapon.** Every person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault or assault and battery upon the person of another, with any sharp or dangerous weapon, or who without such cause, shoots or attempts to shoot at another, with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without intent to kill such person or to commit any felony, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in a county jail not exceeding one year. [Pen. C. 1877, § 309; R. C. 1899, § 7145.]

Offense of aggravated assault with dangerous weapon committed with intent to do bodily harm, includes simple assault. *State v. Marcks*, 3 N. D. 532, 58 N. W. 25.

Conviction for assault and battery, under charge of assault and battery, with intent to kill. See *State v. Maloney*, 7 N. D. 119, 72 N. W. 927; *State v. Johnson*, 3 N. D. 150, 54 N. W. 547; *Territory v. Odell*, 1 Dak. 197, 46 N. W. 601; *Territory v. Conrad*, 1 Dak. 348, 46 N. W. 583.

CHAPTER 26.

LIBEL.

CRIMINAL LIBEL.

§ 8877. **Defined.** A libel is the malicious defamation of a person made public by any printing, writing, sign, picture, representation or effigy tending to expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse, or any malicious defamation made public as aforesaid, designed to blacken and vilify the memory

of one who is dead and tending to scandalize or provoke his surviving relatives and friends. [Pen. C. 1877, § 310; R. C. 1895, § 7146; 1905, ch. 128, § 1.]

§ 8878. **Maker, composer or circulator of libel guilty of felony.** Every person who makes or composes, dictates or procures the same to be done or who willfully publishes or circulates such libel or in any way knowingly or willfully aids or assists in making, publishing or circulating the same is guilty of a felony. [Pen. C. 1877, § 311; R. C. 1899, § 7147; 1905, ch. 128, § 2.]

§ 8879. **Defendant acquitted if on trial matter charged as libel be proven true.** In all prosecutions or indictments for libel the truth thereof may be given in evidence to the jury, and if it appears to them that the matter as charged as a libel was true and was published with good motives and for justifiable ends the defendant shall be acquitted. [Pen. C. 1877, § 312; R. C. 1895, § 7148; 1905, ch. 128, § 3.]

§ 8880. **Conspiracy of two or more persons, each guilty of felony.** If two or more persons conspire together to maliciously publish by writing, printing, picture, effigy, sign or otherwise than by mere speech, anything which exposes any living person or the memory of any deceased person to hatred, contempt, ridicule or obloquy or which causes or tends to cause any person to be shunned or avoided or which has a tendency to injure any person or association of persons in his or their business, each of them is guilty of a felony. [1905, ch. 128, § 4.]

§ 8881. **Publication defined.** The delivery, selling, reading or otherwise communicating a libel or causing the same to be delivered, sold, read or otherwise communicated to one or more persons, or to the party libeled, is a publication thereof. [1905, ch. 128, § 5.]

§ 8882. **Liability of editors and others.** Every editor or proprietor of a book, newspaper or serial publication, and every manager of a partnership or incorporated association, by which a book, newspaper or serial publication is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution for libel the accused may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication, and whose act was disavowed by him as soon as known. [Pen. C. 1877, § 315; R. C. 1895, § 7150.]

§ 8883. **Publishing true report of public official proceedings.** A prosecution for libel cannot be maintained against a reporter, editor, publisher or proprietor of a newspaper, for the publication therein, of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. [Pen. C. 1877, § 316; R. C. 1895, § 7151.]

§ 8884. **Qualification of last section.** The last section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication, or in the report of anything said or done at the time and place of the public and official proceeding, which was not a part thereof. [Pen. C. 1877, § 317; R. C. 1895, § 7152.]

§ 8885. **Other privileged communications.** A communication made to a person entitled to or interested in the communication, by one who was also entitled to or interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is called a privileged communication. [Pen. C. 1877, § 318; R. C. 1895, § 7153.]

§ 8886. **Threatening to publish libel.** Every person who threatens another with the publication of a libel, concerning the latter or concerning any parent, husband, wife, child or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon the condition of the payment of, or with intent to extort money or other

valuable consideration from any person, is guilty of a misdemeanor. [Pen. C. 1877, § 319; R. C. 1895, § 7154.]

§ 8887. **Furnishing libelous information.** Every person who willfully states, delivers or transmits by any means whatever to any manager, editor, publisher, reporter or other employe of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which if published therein would be a libel, is guilty of a misdemeanor. [R. C. 1895, § 7155.]

§ 8888. **Slander of females.** A person who, in the presence and hearing of another, other than the female slandered, whether such female be present or not, maliciously speaks of or concerning any female of the age of twelve years or upwards, not a public prostitute, any false or defamatory words or language, which injures or impairs the character of such female for virtue or chastity, and which exposes such female to hatred, contempt or ridicule, is guilty of a misdemeanor. [1901, ch. 175.]

CIVIL LIBEL.

§ 8889. **Retraction. Exemplary damages.** Before any suit for libel can be brought against a newspaper, other than a libel of, or concerning a female, the party aggrieved must, at least three days before filing his complaint, serve notice on the publisher of such newspaper at the principal office of its publication, specifying the statement alleged to be false and defamatory, and then if on the trial it appears that the article was published in good faith, and its falsity was due to a misapprehension in regard to the facts, and a full and fair retraction of the erroneous statement was published in the next issue of the paper, or in the case of a daily paper within three days after the mistake was brought to the attention of the publisher, in as conspicuous a place and type as the original article, the plaintiff will be entitled to recover only such damage as he can show he has sustained to his property, business, trade, profession or occupation. But if the libel is against a candidate for office, the retraction must also be made editorially, and in the case of a daily paper at least three days, and in the case of a weekly paper, at least ten days before the election. [1901, ch. 119.]

CHAPTER 27.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION.

§ 8890. **Rape defined.** Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. When the female is under the age of eighteen years.
2. When she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. When she resists, but her resistance is overcome by force or violence.
4. When she is prevented from resisting, by threats of immediate and great bodily harm, accompanied by apparent power of execution.
5. When she is prevented from resisting by an intoxicating, narcotic or anesthetic agent, administered by or with the privity of the accused.
6. When she is at the time unconscious of the nature of the act, and this is known to the accused.
7. When she submits under the belief that the person committing the act is her husband, and this belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief. [Pen. C. 1877, § 320; R. C. 1895, § 7156; 1903, ch. 149.]

Assault with intent to commit. Territory v. Keyes, 5 Dak. 244, 38 N. W. 440; Territory v. Godfrey, 6 Dak. 46, 50 N. W. 481.

§ 8891. **Accused under fourteen.** No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt. [Pen. C. 1877, § 321; R. C. 1899, § 7157.]

§ 8892. **When crime complete.** The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime. [Pen. C. 1877, § 322; R. C. 1899, § 7158.]

§ 8893. **Rape in first degree defined.** Rape committed upon a female under the age of eighteen years, or incapable, through lunacy or any other unsoundness of mind, of giving legal consent, or accomplished by means of force overcoming her resistance, is rape in the first degree. [Pen. C. 1877, § 323; R. C. 1899, § 7159; 1903, ch. 149.]

§ 8894. **Rape in second degree defined.** In all other cases rape is of the second degree; but no conviction can be had in case the female is over the age of eighteen years and the male under the age of twenty years at the time of the act of intercourse, and it appears to the satisfaction of the jury that the female was sufficiently matured and informed to understand the nature of the act and consented thereto. [Pen. C. 1877, § 324; R. C. 1895, § 7160; 1903, ch. 149.]

§ 8895. **Punishment for first degree.** Rape in the first degree is punishable by imprisonment in the penitentiary not less than ten years. [Pen. C. 1877, § 325; R. C. 1899, § 7161.]

§ 8896. **Punishment for second degree.** Rape in the second degree is punishable by imprisonment in the penitentiary not less than five years. [Pen. C. 1877, § 326; R. C. 1899, § 7162.]

§ 8897. **Compelling woman to marry.** Every person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, is punishable by imprisonment in the penitentiary not less than ten years. [Pen. C. 1877, § 327; R. C. 1899, § 7163.]

§ 8898. **Intent to compel marriage or defilement.** Every person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 328; R. C. 1899, § 7164.]

§ 8899. **Inveigling into house of prostitution.** Every person who inveigles or entices any unmarried female of previously chaste character under the age of twenty years, into any house of ill fame or of assignation or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 329; R. C. 1895, § 7165.]

§ 8900. **Abduction for prostitution.** Every person who takes away any female under the age of eighteen years, from her father, mother, guardian or other person having the legal charge of her person, without the consent of such father, mother, guardian or other person having the legal charge of her person, or any friendless female under the age of eighteen years, either for the purpose of concubinage or prostitution, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both. [Pen. C. 1877, § 330; R. C. 1895, § 7166; 1903, ch. 149.]

§ 8901. **Seduction under promise of marriage.** Every male person over twenty-one years of age who, under promise of marriage, seduces and has

illicit connection with any unmarried female under twenty years of age and of previously chaste character, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [Pen. C. 1877, § 331; R. C. 1895, § 7167.]

§ 8902. **Subsequent marriage or offer of.** If the parties marry each other at any time before the conviction of the defendant, no prosecution shall take place, or, if begun, it shall be dismissed, or if the defendant, at any time after the illicit connection and before the case is submitted to the jury, in good faith offers to marry the female seduced and the jury so finds from the evidence, the defendant must be acquitted. But the benefits of this section shall not apply to a defendant who was in fact married at the time of committing the offense; provided, that no person who was married at the time of committing the offense, and the fact of the marriage was known to the female, shall be held liable for the offense defined in section 8901. [Pen. C. 1877, § 332; R. C. 1895, § 7168.]

CHAPTER 28.

ADULTERY AND UNLAWFUL COHABITATION.

§ 8903. **Adultery defined. Limitation.** Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife; and when the intercourse is between a married woman and a man that is unmarried the man is also guilty of adultery. No prosecution for adultery shall be commenced except on the complaint of the husband or wife, and no such prosecution shall be commenced after one year from the time of the committing of the offense. [1897, ch. 2; R. C. 1899, § 7169.]

Section declared not invalid or inoperative on ground of uncertainty. *State ex rel Van Nice v. Whealey*, 5 S. D. 427, 59 N. W. 211.

§ 8904. **How punished.** Every person convicted of the crime of adultery is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both. [Pen. C. 1877, § 334; R. C. 1895, § 7170.]

§ 8905. **Unlawful cohabitation. Punishment.** Every person who lives openly and notoriously and cohabits as husband or wife with a person of the opposite sex without being married to such person, is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment in the county jail not less than thirty days and not exceeding one year, or by a fine of not less than one hundred and not exceeding five hundred dollars. [1890, ch. 91, § 16; R. C. 1895, § 7171.]

CHAPTER 29.

ABANDONMENT AND NEGLECT OF CHILD OR WIFE.

§ 8906. **Abandoning under six years.** Every parent of any child under six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years, or in a county jail not exceeding one year. [Pen. C. 1877, § 335; R. C. 1899, § 7172.]

§ 8907. **Parent omitting to provide for child.** Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter or medical attendance for such child, is guilty of a misdemeanor. [Pen. C. 1877, § 336; R. C. 1899, § 7173.]

§ 8908. **Abandoning or refusing to support minor child.** Every person who, either:

1. Willfully abandons and leaves his minor child in a destitute condition; or who,

2. Is of sufficient ability to provide such child's support; or,

3. Is able to earn the means of such child's support, unreasonably refuses or neglects to provide for such minor child,

Is guilty of a misdemeanor. [1890, ch. 168, § 1; R. C. 1895, § 7174.]

§ 8909. **Abandoning or refusing to support wife.** Every husband who, either:

1. Willfully abandons and leaves his wife in a destitute condition; or,

2. Is of sufficient ability to provide such wife's support; or,

3. Is able to earn the means of such wife's support, unreasonably refuses or neglects to provide for such wife,

Is guilty of a misdemeanor. [1890, ch. 168, § 1; R. C. 1895, § 7175.]

§ 8910. **Punishment.** Every person convicted of any of the offenses mentioned in the last two sections is punishable by imprisonment in the county jail not less than thirty days and not exceeding six months. [1890, ch. 168, § 1; R. C. 1895, § 7176.]

§ 8911. **Abandonment of wife or child. Penalty.** Any person who willfully omits without lawful excuse to furnish proper food, clothing, shelter or suitable care in case of sickness to his wife or minor child under fifteen years of age, shall upon conviction be deemed guilty of a felony and punished by imprisonment in the penitentiary for not more than three years, nor less than one year, in a county jail, or in a workhouse at hard labor for not more than one year, nor less than three months; provided, however, if after conviction and before sentence he shall appear before the court in which said conviction shall have taken place, and enter into bond to the state of North Dakota in such penal sum as the court may fix, to be approved by the court as to surety, conditioned that he will furnish said child or wife with necessary and proper home, food, care and clothing, then the court may suspend sentence therein; provided, that upon failure of such person to comply with said undertaking, he may be ordered to appear before the court and show cause why sentence should not be imposed, whereupon the court may pass sentence, or for good cause shown may modify the order and take a new undertaking and further suspend sentence as may be just and proper. [1905, ch. 1.]

CHAPTER 30.

ABORTION AND CONCEALING DEATH OF CHILDREN.

§ 8912. **Procuring an abortion.** Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year. [Pen. C. 1877, § 337; R. C. 1899, § 7177.]

Death resulting from abortion. Sufficiency of information. *State v. Belyea*, 9 N. D. 353, 83 N. W. 1.

§ 8913. **Soliciting or submitting to attempt at.** Every woman who solicits of any person any medicine, drug or substance whatever and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [Pen. C. 1877, § 338; R. C. 1899, § 7178.]

§ 8914. **Concealing still birth or death of bastard.** Every woman who endeavors either by herself or by the aid of others to conceal the still birth of an issue of her body, which if born alive would be a bastard, or the death of any such issue under the age of two years, is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 339; R. C. 1899, § 7179.]

CHAPTER 31.

CHILD STEALING.

§ 8915. **Defined. Punishment.** Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 340; R. C. 1899, § 7180.]

CHAPTER 32:

BIGAMY, INCEST AND SODOMY.

§ 8916. **Bigamy defined.** Every person who, having been married to another who remains living, marries any other person, except in the cases specified in the next section, is guilty of bigamy. [Pen. C. 1877, § 341; R. C. 1899, § 7181.]

§ 8917. **Exception to last section.** The last section does not extend:

1. To any person by reason of any former marriage, whose husband or wife has been absent for five successive years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage, whose husband or wife by such marriage has absented himself or herself from his wife or her husband and has been continually remaining without the United States for the space of five years together; nor,

3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor,

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life. [Pen. C. 1877, § 342; R. C. 1895, § 7182.]

§ 8918. **Punishment for bigamy.** Every person guilty of bigamy is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [Pen. C. 1877, § 343; R. C. 1899, § 7183.]

§ 8919. **Unlawful marriages defined.** Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 344; R. C. 1899, § 7184.]

§ 8920. **Incest defined.** Persons who, being within the degrees of consanguinity within which marriages are, by the laws of this state, declared incestuous and void, intermarry, cohabit or have sexual intercourse with such other so related person, knowing him or her to be within said degree of relationship, shall be deemed guilty of incest, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 345; R. C. 1899, § 7185.]

Conviction cannot be had upon the uncorroborated testimony of an accomplice. The female, when uninfluenced by any element of coercion, is an accomplice. Whether the female is an accomplice is a question for the jury. *State v. Kellar*, 8 N. D. 563, 80 N. W. 476.

§ 8921. **Sodomy defined.** Every person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body, is guilty of sodomy and is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years or in the county jail not more than one year. [Pen. C. 1877, § 346; R. C. 1895, § 7186.]

Attempt to commit punishable at one-half term, under section 9502, subdivision 1. *State v. King*, 9 N. D. 149, 82 N. W. 423.

§ 8922. **When crime complete.** Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section. [Pen. C. 1877, § 347; R. C. 1895, § 7187.]

CHAPTER 33.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

§ 8923. **Right to dispose of one's own body.** Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his lifetime shall be disposed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with these provisions. [Pen. C. 1877, § 348; R. C. 1899, § 7188.]

§ 8924. **Duty of burial.** Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being lying within this state must be decently buried within a reasonable time after the death. [Pen. C. 1877, § 349; R. C. 1899, § 7189.]

§ 8925. **Right to transport dead body.** The last section does not affect the right to carry the dead body of a human being through this state or to remove from this state the body of a person dying within it for the purpose of burying the same in another state or territory. [Pen. C. 1877, § 350; R. C. 1899, § 7190.]

§ 8926. **Dissection, when allowed.** The right to dissect the dead body of a human being exists in the following cases:

1. In the cases authorized by positive enactment of the legislative assembly of this state.

2. Whenever the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest.

3. Whenever any husband or next of kin of a deceased person, being charged by law with the duty of burial, authorizes such dissection for the purpose of ascertaining the cause of death. [Pen. C. 1877, § 351; R. C. 1899, § 7191.]

§ 8927. **Unlawful dissection, misdemeanor.** Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor. [Pen. C. 1877, § 352; R. C. 1899, § 7192.]

§ 8928. **Remains after dissection.** In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished. [Pen. C. 1877, § 353; R. C. 1899, § 7193.]

§ 8929. **Dead limb or member of body.** All provisions of this chapter requiring the burial of a dead body or punishing interference with or injuries to a dead body apply equally to any dead limb or member of a human body, separated therefrom during lifetime. [Pen. C. 1877, § 354; R. C. 1899, § 7194.]

§ 8930. **Whose duty to bury.** The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married woman, the duty of burial devolves upon her husband.

2. If the deceased was not a married woman but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age and within this state, and possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband nor kindred, answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or if there is no tenant, upon the owner of the premises; or master, or if there is no master, upon the owner of the vessel in which the death occurs or the body is found. [Pen. C. 1877, § 355; R. C. 1899, § 7195.]

§ 8931. **Neglect of burial, misdemeanor.** Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action. [Pen. C. 1877, § 356; R. C. 1899, § 7196.]

§ 8932. **Who entitled to custody of body.** The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed. [Pen. C. 1877, § 357; R. C. 1899, § 7197.]

§ 8933. **Unlawful removal of dead body.** Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is

deposited while awaiting burial, with intent to sell the same or to dissect it without the authority of law, or from malice or wantonness, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 358; R. C. 1899, § 7198.]

§ 8934. **Purchasing body forbidden.** Every person who purchases or who receives, except for the purpose of burial, any dead body of a human being, knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the penitentiary not less than one year and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 359; R. C. 1899, § 7199.]

§ 8935. **Unlawfully opening place of burial.** Every person who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either:

1. To remove any dead body of a human being for the purpose of selling the same or for the purpose of dissecting; or,
2. To steal the coffin, or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles buried with the same.

Is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or in a county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 360; R. C. 1899, § 7200.]

§ 8936. **When body removable from cemetery.** Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried, devolves upon the persons named in section 8930, in the order in which they are named, and if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial are made punishable by section 8931. [Pen. C. 1877, § 361; R. C. 1899, § 7201.]

§ 8937. **Arresting or attaching dead body.** Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand or upon any pretended lien or charge, is guilty of a misdemeanor. [Pen. C. 1877, § 362; R. C. 1899, § 7202.]

§ 8938. **Disturbing funerals.** Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor. [Pen. C. 1877, § 363; R. C. 1899, § 7203.]

§ 8939. **Injury to cemetery or tomb.** Every person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone or other structure placed in any cemetery or private burying ground, or any fence, railing or other work for the protection or ornament of such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial or other structure aforesaid, or of any lot within a cemetery, or shall willfully destroy, cut, break or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punishable by a fine of not less than five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. [Pen. C. 1877, § 364; R. C. 1899, § 7204.]

§ 8940. **Other laws against dissection.** Every person who violates any provision of any enactment of the legislative assembly of this state now in force or that hereafter may be enacted, not provided for in this code relative to dissection, is guilty of a misdemeanor. [Pen. C. 1877, § 365; R. C. 1899, § 7205.]

CHAPTER 34.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

§ 8941. **Indecent exposure. Exhibitions. Pictures.** Every person who willfully and lewdly, either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels or assists any person so to expose himself, or to take any part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes or composes, stereotypes, prints, publishes, sells, distributes or keeps for sale, or exhibits any obscene or indecent writing, paper or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture or print of any description, or molds, cuts, casts or otherwise makes any obscene or indecent figure or form,

Is guilty of a misdemeanor. [Pen. C. 1877, § 366; R. C. 1899, § 7206.]

§ 8942. **Seizure of indecent articles.** Every person who is authorized or enjoined to arrest any person for a violation of subdivision 3 of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. [Pen. C. 1877, § 367; R. C. 1899, § 7207.]

§ 8943. **Summary disposition of same.** The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent, he shall cause the same to be destroyed or to be delivered to the state's attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. But not more than two copies of any one writing, paper, book, picture, print or figure, shall be delivered to the state's attorney. [Pen. C. 1877, § 368; R. C. 1899, § 7208.]

§ 8944. **Articles to be destroyed.** Upon the conviction of the accused, such state's attorney shall cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such state's attorney, to be destroyed. [Pen. C. 1877, § 369; R. C. 1899, § 7209.]

§ 8945. **Keeping bawdy house.** Every person who keeps any bawdy house, house of ill fame, of assignation or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse or for any other lewd,

obscene or indecent purpose, is guilty of a misdemeanor. [Pen. C. 1877, § 370; R. C. 1899, § 7210.]

After proving that defendant kept bawdy house, its bad reputation may be shown by general repute. *Territory v. Chartrand*, 1 Dak. 363, 46 N. W. 605; *Territory v. Stone*, 2 Dak. 155, 4 N. W. 697.

§ 8946. **Disorderly house.** Every person who keeps any disorderly house or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor. [Pen. C. 1877, § 371; R. C. 1899, § 7211.]

§ 8947. **Letting building for unlawful purposes.** Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor. [Pen. C. 1877, § 372; R. C. 1899, § 7212.]

Owner knowing of unlawful use of his house, guilty of keeping. *Territory v. Stone*, 2 Dak. 155, 4 N. W. 697.

CHAPTER 35.

SALE OF OBSCENE LITERATURE TO MINORS.

§ 8948. **Delivery of obscene literature to children.** Every person who, either:

1. Sells, lends, gives away or shows to a child; or,
2. Has in his possession with intent to sell, lend, give away or show to a child; or,
3. Advertises or otherwise offers for loan, gift or distribution to a child; or,
4. Exhibits upon any street or highway or in any place within the view of a child; or,
5. Hires, uses or employs a child to sell, give away or in any manner to distribute; or,
6. Having the care, custody or control of a child, permits such child to sell, give away or in any manner to distribute:

Any work, pamphlet, magazine, newspaper, story paper or other print or publication devoted to the dissemination or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and accounts or stories of deeds of bloodshed, lust or crime, is guilty of a misdemeanor. [1890, ch. 103, §§ 1, 2, 3; R. C. 1895, § 7213.]

§ 8949. **Same. Punishment.** Every person convicted of any of the offenses mentioned in the last section is punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding five hundred dollars, or both. [1890, ch. 103, § 3; R. C. 1895, § 7214.]

§ 8950. **Bringing obscene literature into state.** Every person who shall bring or cause to be brought into the state, or shall buy, sell or cause to be sold, or shall advertise, lend, give away, offer, show or exhibit, or shall have in his possession with intent to sell, lend, give away, offer, show, exhibit, distribute or cause to be distributed, or shall design, copy, draw, photograph, print, etch or engrave, cut, carve, make, publish or otherwise prepare or assist in preparing, or shall receive subscriptions for any indecent or obscene book, pamphlet, paper, picture, print, drawing, figure, image or other engraved, printed or written matter, or any article or instrument of immoral use, or any book, pamphlet, magazine or other paper devoted principally or wholly to the publication of criminal news or pictures or stories of deeds of bloodshed or crime, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars and not more than one hundred dollars, or be imprisoned in a county jail not to exceed thirty days, or by both such fine and imprisonment. [1895, ch. 84, § 1; R. C. 1899, § 7215.]

§ 8951. **Child defined.** The term "child," employed in this chapter, imports any person not exceeding eighteen years of age. [R. C. 1895, § 7216.]

CHAPTER 36.

VAGRANCY.

§ 8952. **Vagrancy defined.** All persons who are idle and dissolute, and who go about begging; all persons who use any juggling or other unlawful games or plays; runaways; pilferers; confidence men; common drunkards; common night walkers; lewd, wanton and lascivious persons, in speech or behavior; common railers and brawlers; persons who are habitually neglectful of their employment or their calling, and do not lawfully provide for themselves, or for the support of their families; and all persons who are idle or dissolute, and who neglect all lawful business, and who habitually misspend their time by frequenting houses of ill-fame, gambling houses or tippling shops; all persons lodging in, or found in the night-time in outhouses, sheds, barns, or unoccupied buildings, or lodging in the open air, and not giving a good account of themselves, and all persons who are known to be thieves, burglars or pickpockets, either by their own confession or otherwise, or by having been convicted of larceny, burglary, or other crime against the laws of the state, punishable by imprisonment in the state prison, or in a house of correction of any city, and having no lawful means of support, are habitually found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop or crowded thoroughfare, car or omnibus, or at any public gathering or assembly, or lounging about any courtroom, private dwelling houses or outhouses, or are found in any house of ill-fame, gambling house, or tippling shop, shall be deemed to be and they are declared to be vagrants. [1903, ch. 206, § 1.]

§ 8953. **Penalties.** Every person convicted of vagrancy, under section 8952 shall be punished by a fine not to exceed fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by being compelled to work upon the streets or public highways not to exceed twenty days. [1903, ch. 206, § 2.]

CHAPTER 37.

LOTTERIES.

§ 8954. **Lottery defined.** A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised or agreed to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share of or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, a raffle or a gift enterprise, or by whatever name the same may be known. [Pen. C. 1877, § 373; R. C. 1899, § 7217.]

§ 8955. **Lottery a public nuisance.** Every lottery is unlawful and a common public nuisance. [Pen. C. 1877, § 374; R. C. 1899, § 7218.]

§ 8956. **Drawing lotteries. Punishment.** Every person who contrives, prepares, sets up, proposes or draws any lottery, is punishable by a fine equal to double the amount of the whole sum or value for which such lottery was made, and if such amount cannot be ascertained, then by imprisonment in the penitentiary not less than one and not exceeding two years, or by

imprisonment in a county jail not exceeding one year, or by a fine of two thousand five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 375; R. C. 1899, § 7219.]

§ 8957. **Selling lottery tickets.** Every person who sells, gives or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest, or any paper, certificate or instrument, purporting or represented or understood to be or to represent any ticket, chance, share or interest in or depending upon the event of any lottery, is guilty of a misdemeanor. [Pen. C. 1877, § 376; R. C. 1899, § 7220.]

§ 8958. **Buying lottery tickets.** Every person who buys, or in any manner whatever accepts or receives for himself or another any ticket, chance, share or interest, or any paper, certificate or instrument purporting or represented or understood to be or to represent any ticket, chance, share or interest in or depending upon the event of any lottery, forfeits ten dollars, to be recovered by the county superintendent of common schools of the county in which the offense was committed, for the use of common schools in said county. [Pen. C. 1877, § 377; R. C. 1899, § 7221.]

§ 8959. **Advertising lotteries.** Every person who, by writing or printing, by circulars or letters or in any other way, advertises or publishes any account of any lottery, stating when or where the same is to be or has been drawn, or what are the prizes or any of them therein, or the price of a ticket or of any share or interest, or where it may be obtained, or in any way aiding or assisting the same or adapted to induce persons to adventure therein, is guilty of a misdemeanor. [Pen. C. 1877, § 378; R. C. 1899, § 7222.]

§ 8960. **Offering property by means of lottery.** Every person who offers for sale, distribution or disposition in any way, any real or personal property or things in action, or any interest therein, to be determined by lot or chance, that shall be dependent upon the drawing of any lottery within or out of this state, and every person who sells, furnishes or procures or causes to be sold, furnished or procured in any manner whatsoever, any chance or share or any interest whatever in any property offered for sale, distribution or disposition in violation of this section, or any ticket or other evidence of any chance, share or interest in such property, is guilty of a misdemeanor. [Pen. C. 1877, § 379; R. C. 1899, § 7223.]

§ 8961. **Keeping lottery office.** Every person who opens, sets up or keeps, by himself or by any other person or persons, any office or other place for registering the numbers of any ticket in any lottery, or for making, receiving or registering any bets or wagers upon the drawing, determination or result of any lottery, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars. [Pen. C. 1877, § 380; R. C. 1899, § 7224.]

§ 8962. **Advertising lottery offices.** Every person who, by writing or printing, by circulars or letters or in any other way, advertises or publishes any account of the opening, setting up or keeping of any office or other place for either of the purposes prohibited by the last section, is guilty of a misdemeanor. [Pen. C. 1877, § 381; R. C. 1899, § 7225.]

§ 8963. **Insuring lottery tickets.** Every person who insures or receives any consideration for insuring for or against the drawing of any ticket, share or interest in any lottery or for or against the drawing of any number or ticket or number of any ticket in any lottery; and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action in the event that any ticket, share or interest in any lottery, or any number or ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day or in any particular order; and every person who promises, agrees or offers to pay any sum of money or to deliver any property or thing in action, or to do or forbear to do anything for

the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, is guilty of a misdemeanor. [Pen. C. 1877, § 382; R. C. 1899, § 7226.]

§ 8964. **Advertising same.** Every person who, by writing or printing, by circulars or letters or in any other way, advertises or publishes any offer, notice or proposal for any violation of the last section, is guilty of a misdemeanor. [Pen. C. 1877, § 383; R. C. 1899, § 7227.]

§ 8965. **Property offered forfeited.** All property offered for sale, distribution or disposition, in violation of the provisions of this chapter, is forfeited to the state, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective state's attorneys, to demand, sue for and recover, in behalf of this state, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury for the benefit of common schools. [Pen. C. 1877, § 384; R. C. 1899, § 7228.]

§ 8966. **Letting building for lottery.** Every person who lets or permits to be used any building or portion of any building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor. [Pen. C. 1877, § 385; R. C. 1899, § 7229.]

§ 8967. **Lotteries out of state.** The provisions of this chapter apply in respect to lotteries drawn or to be drawn out of this state whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state. [Pen. C. 1877, § 386; R. C. 1899, § 7230.]

§ 8968. **Advertisement.** The provisions of sections 8959 and 8962 are applicable wherever the advertisement was published, or the letter or circular sent or delivered through or in this state, notwithstanding the person causing or procuring the same to be published, sent or delivered, was out of this state at the time of so doing. [Pen. C. 1877, § 387; R. C. 1899, § 7231.]

CHAPTER 38.

GAMING.

§ 8969. **Keeping gambling apparatus.** It is unlawful to maintain or keep any table, cards, dice or any article or apparatus whatever, useful or intended to be used in playing any game of cards or faro or other game of chance, upon which money is usually wagered. [Pen. C. 1877, § 388; R. C. 1899, § 7232.]

One who keeps or exhibits any gambling table, device, or apparatus, is deemed a common gambler. *People v. Sponsler*, 1 Dak. 280, 46 N. W. 459.

§ 8970. **Misdemeanor. Punishment.** Every person who knowingly violates the last section is guilty of misdemeanor. [Pen. C. 1877, § 389; R. C. 1899, § 7233.]

§ 8971. **Apparatus a nuisance.** Every article or apparatus maintained or kept in violation of section 8969, is a common and public nuisance. [Pen. C. 1877, § 390; R. C. 1899, § 7234.]

§ 8972. **Exacting payment.** Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro or any other game at chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the county superintendent of common schools of the county in which the offense was committed, for the benefit of common schools in said county. [Pen. C. 1877, § 391; R. C. 1899, § 7235.]

§ 8973. **No witness' privilege.** No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime; but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding. [Pen. C. 1877, § 392; R. C. 1899, § 7236.]

§ 8974. **Keeping place for gambling.** Every person who keeps any building or part of any building, or any vessel or float, to be used or occupied for gambling, and every owner, agent or superintendent of any such place, who knowingly lets the same or allows it to be used or occupied for gambling, is guilty of a misdemeanor. [Pen. C. 1877, § 393; R. C. 1899, § 7237.]

§ 8975. **Keeping conveniences for gambling.** Every person who, for gambling purposes, keeps or exhibits any gambling table, establishment, device or apparatus, or is guilty of dealing faro, or banking for others to deal faro, or acting as lookout or gamekeeper for the game of faro, or any other banking game where money or property is dependent upon the result, or who sells or vends what are commonly called lottery policies, or any writing, card, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or indorses a book or any other document for the purpose of enabling others to sell or vend lottery policies, is deemed a common gambler, and is punishable as for a misdemeanor. [Pen. C. 1877, § 394; R. C. 1899, § 7238.]

§ 8976. **Seizure of implements authorized.** Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter, is equally authorized and enjoined to seize any table, cards, dice or other article or apparatus, suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. [Pen. C. 1877, § 395; R. C. 1899, § 7239.]

§ 8977. **Summary disposition of implements.** The magistrate to whom anything suitable to be used for gambling purposes is delivered, pursuant to the foregoing section, shall, upon the examination of the accused, or, if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him and whether it was actually employed by the accused in violation of the provisions of this chapter: and if he finds that it is of a character suitable to be used for gambling purposes and that it has been used by the accused in violation of this chapter, he shall cause it to be destroyed or to be delivered to the state's attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. [Pen. C. 1877, § 396; R. C. 1899, § 7240.]

§ 8978. **Destruction of implements.** Upon the conviction of the accused such state's attorney shall cause any such thing suitable to be used for gambling purposes, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such state's attorney, to be destroyed. [Pen. C. 1877, § 397; R. C. 1899, § 7241.]

§ 8979. **Persuading to visit gambling places.** Every person who persuades another to visit any building or part of a building or any vessel or float used or occupied for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property lost by him at play at such place, to be recovered in a civil action. [Pen. C. 1877, § 398; R. C. 1899, § 7242.]

§ 8980. **Duty of sheriff and officers.** It is the duty of all sheriffs, police officers, constables and prosecuting or state's attorneys, to inform against and prosecute all persons whom they have credible reason to believe are offenders against the provisions of this chapter, and any omission so to do is

punishable by a fine not exceeding five hundred dollars. [Pen. C. 1877, § 399; R. C. 1899, § 7243.]

A state's attorney who gambles for money in a public gambling house without informing against and prosecuting keeper, guilty of misdemeanor. In re Voss, 11 N. D. 540, 90 N. W. 15.

§ 8981. **Duty of master of vessel.** If any commander, owner or lessee of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, and does not upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars, and in addition thereto is liable to any party losing any money or property by means of any gambling permitted in violation of this section, in a sum equal to the money or property, to be recovered in a civil action. [Pen. C. 1877, § 400; R. C. 1899, § 7244.]

§ 8982. **Racing of animals for wager.** All racing or trial of speed between horses or animals for any bet, stake or reward, except such as is allowed by special laws, is a common nuisance, and every person acting or aiding therein, or making or being interested in any such bet, stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof. [Pen. C. 1877, § 401; R. C. 1899, § 7245.]

Bond indemnifying stakeholder against liability for surrender of stakes to party to bet on a horse race is void. Ferguson v. Yunt, 13 S. D. 120, 82 N. W. 509.

§ 8983. **Minors not allowed in certain public places. Penalty.** It shall be unlawful for any owner or keeper of any pool or billiard hall, or any bowling alley or any temperance saloon or any place under any name whatever, where the games of pool, billiards, bowling or cards are played, to allow any person under the age of eighteen years to either play any of the games mentioned or to be employed in said places, or be allowed to visit said places unless by written consent of one or both parents or guardian, or when accompanied by parent or guardian. Any person found guilty of violating this section shall be fined not less than five dollars nor more than fifty dollars, or not to exceed thirty days in the county jail, or both such fine and imprisonment. [1905, ch. 137.]

CHAPTER 39.

BUCKET SHOPS.

§ 8984. **Dealing in options prohibited. Bucket shops.** It shall be unlawful for any corporation, association or society, person or persons, to keep within this state any store, office or other place, wherein is conducted or permitted the pretended buying or selling of grain, pork, lard, or any mercantile or agricultural products on margins, without any intention of future delivery, whether such pretended contracts are to be performed within or without this state; and the keeping of all such places is hereby prohibited; and it shall be unlawful for any person, corporation, association or society, within this state, to make or enter into any contract, or pretended contract, such as is above stated and referred to, and all such contracts are hereby prohibited; the intention of this chapter being to prevent and prohibit within this state the business now engaged in and conducted in places commonly known and designated as bucket shops; provided, however, that this chapter shall not apply to or in any way affect any contract for the actual buying or selling of any commodity whatever for present or future delivery, where the actual delivery or receipt of the thing sold is contemplated, and in good faith intended by both of the parties to the contract. [1905, ch. 58, § 1.]

§ 8985. **Penalty.** Any person, whether acting independently, as agent of or as a member of any copartnership, corporation, association or society, guilty of violating any of the provisions of this chapter, shall, upon conviction thereof, be adjudged to pay a fine for each offense of not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or be both fined and imprisoned at the discretion of the court. [1905, ch. 58, § 2.]

CHAPTER 40.

PAWNBROKERS.

§ 8986. **Doing business without license.** Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above that allowed by law, except by authority of a license from a municipal corporation empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor. [Pen. C. 1877, § 402; R. C. 1899, § 7246.]

§ 8987. **Refusing to exhibit stolen goods.** Every pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who, having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor. [Pen. C. 1877, § 403; R. C. 1899, § 7247.]

§ 8988. **Selling before default.** Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, is guilty of a misdemeanor. [Pen. C. 1877, § 404; R. C. 1899, § 7248.]

§ 8989. **Peddling without license.** Any person who shall pursue the business of trading as a peddler or traveling merchant without license, or who refuses to produce his license for examination upon the request of any resident or officer of the county in which he is carrying on such business, is guilty of a misdemeanor, and upon conviction thereof is punishable in the discretion of the court, by a fine of not exceeding fifty dollars or by imprisonment in the jail of the county in which the offense is committed not exceeding thirty days. [1895, ch. 85, § 5; R. C. 1899, § 7249.]

CHAPTER 41.

OTHER INJURIES TO PERSONS.

§ 8990. **Physician being intoxicated.** Every physician who, being in a state of intoxication, administers any poison, drug or medicine or does any other act as such physician, to another person, by which the life of such other is endangered, is guilty of a misdemeanor. [Pen. C. 1877, § 405; R. C. 1899, § 7250.]

§ 8991. **Willfully poisoning food.** Every person who willfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment

in the penitentiary not less than one and not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 406; R. C. 1899, § 7251.]

§ 8992. **Overloading passenger vessel.** Every person navigating any vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading on board such vessel, that by means thereof such vessel sinks or is upset or injured, and thereby the life of any human being is endangered, is guilty of a misdemeanor. [Pen. C. 1877, § 407; R. C. 1899, § 7252.]

§ 8993. **Management of steamboats.** Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows 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 bursting or breaking human life is endangered, is guilty of a misdemeanor. [Pen. C. 1877, § 408; R. C. 1899, § 7253.]

§ 8994. **Engineer. Steam boilers.** Every engineer or other person having charge of any steam boiler, steam engine or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler or engine or apparatus or cause any other accident whereby human life is endangered, is guilty of a misdemeanor. [Pen. C. 1877, § 409; R. C. 1899, § 7254.]

§ 8995. **Fictitious partnership name.** Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company," or "& Co." is used without representing an actual partner, except in the cases in which the continued use of a copartnership name is authorized by law, is guilty of a misdemeanor. [Pen. C. 1877, § 410; R. C. 1899, § 7255.]

§ 8996. **Counterfeiting trade-mark.** Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trade-mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor. [Pen. C. 1877, § 411; R. C. 1899, § 7256.]

§ 8997. **Keeping dies of trade-mark.** Every person who, with intent to defraud, has in his possession any die, plate or brand, or any imitation of the trade-mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade-mark, or of selling the same when made, or affixing the same to any goods, and selling or offering the same for sale or disposal as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trade-mark of another with intent to sell or offer for sale or disposal, any goods not the goods of the person to whom such trade-mark properly belongs as genuine and original, is guilty of a misdemeanor. [Pen. C. 1877, § 412; R. C. 1899, § 7257.]

§ 8998. **Appropriating brands to deceive.** Every person who, either:

1. Uses or causes to be used any brand, mark, name, print, designation or description, the same as or similar to any recorded to any other person, or on the place recorded to another; or,

2. Uses or causes to be used any second hand sack, box, barrel, can, package or other article on which has been placed any brand, mark, name, print, designation or description, the property of another, for purposes of deception or profit, is guilty of a misdemeanor, and upon conviction thereof is punishable

by fine of not less than one hundred and not exceeding one thousand dollars. [1891, ch. 40, §§ 11, 12; R. C. 1895, § 7258.]

§ 8999. **Selling goods bearing counterfeit.** Every person who sells or keeps for sale any goods upon which any counterfeit trade-mark has been affixed, and intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor. [Pen. C. 1877, § 413; R. C. 1899, § 7259.]

§ 9000. **Colorable imitations.** Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any description of label, stamp, brand, imprint, printed wrapper, label or mark, which designates such goods by any word or token which is wholly or in part the same to the eye or to the ear, as the word or any of the words or tokens used by any other person as his trade-mark, and every person who knowingly sells or keeps or offers for sale, any such bottle, case, box or other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling or exposing or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trade-mark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action. [Pen. C. 1877, § 414; R. C. 1899, § 7260.]

§ 9001. **Trade-mark defined.** The words "trade-mark," as used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to have been imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description. [Pen. C. 1877, § 415; R. C. 1899, § 7261.]

§ 9002. **Goods defined.** The word "goods," as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale. [Pen. C. 1877, § 416; R. C. 1899, § 7262.]

§ 9003. **Affixing defined. When crime complete.** The offense of affixing a false trade-mark to goods is equally complete within the meaning of sections 8996, 8999 and 9000, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper or other package or vessel, or any cover or stopper thereof, in which such goods are put up. [Pen. C. 1877, § 417; R. C. 1899, § 7263.]

§ 9004. **Refilling or selling bottles.** Whenever any person, firm or corporation engaged in the manufacturing, bottling, or sale of soda water, mineral water and other like beverages, in any county of this state, shall have recorded or filed with the register of deeds of the proper county, as is now provided, or shall hereafter be provided by law, the name, brand, label and trade-mark, or any of them, used by him, or which is for the purpose of the business of such person, firm or corporation, every other person who, without the written consent of such manufacturers or dealers, refills with any beverage, whether genuine or otherwise, with the intent to sell the same, any bottles, stamped with or bearing such name, brand, trade-mark or label, and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of, or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of or trafficked in for every subsequent offense. [Pen. C. 1877, § 418; R. C. 1899, § 7264; 1901, ch. 184.]

§ 9005. **Keeping bottles with intent to refill.** Every person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to refill or use or sell them in violation of the last section, is liable to the penalty therein prescribed. [Pen. C. 1877, § 419; R. C. 1899, § 7265.]

§ 9006. **Complaint. Search. Penalty.** Whenever any manufacturer or dealer designated by section 9004, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe and does believe, that any of his bottles stamped and registered as mentioned in said sections are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer or vendor of bottles, has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisions of law upon search warrants, which are hereby declared to relate fully to the purposes of this chapter; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination finds that such person has been guilty of a violation of section 9004, such magistrate shall proceed to impose the fine therein prescribed, and if the same is not paid, to commit such person to prison for a term not exceeding fifteen days. [Pen. C. 1877, § 420; R. C. 1899, § 7266.]

§ 9007. **Wrongfully obtaining registration of animal.** Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals, the registration of any animal in the herd register of any such club, association, society or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor. [1887, ch. 138, § 1; R. C. 1899, § 7267.]

§ 9008. **Defacing marks upon wrecked property.** Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a misdemeanor. [Pen. C. 1877, § 421; R. C. 1899, § 7268.]

§ 9009. **Same. Logs. Lumber.** Every person who cuts out or defaces any mark made upon any log or lumber, whether such mark is recorded or not, or puts a false mark upon any log or lumber, floating in any of the waters of this state or lying upon land, is guilty of a misdemeanor. [Pen. C. 1877, § 422; R. C. 1899, § 7269.]

§ 9010. **Unlawful detention of wrecked property.** Every officer who, without authority of law, detains any wrecked property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of his duties, or who violates any provisions of the statutes relating to salvage, is guilty of a misdemeanor. [Pen. C. 1877, § 423; R. C. 1899, § 7270.]

§ 9011. **Fraud in limited partnership.** Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor. [Pen. C. 1877, § 424; R. C. 1899, § 7271.]

§ 9012. **Marriage. County judge. Licenses. Certificates. Record.** Every person who, being judge of the county court or county judge, either:

1. Signs or issues a marriage license, except as prescribed by law; or,
2. Neglects to record as prescribed by law any marriage license or the certificate of the person performing the marriage ceremony, for thirty days after the return of the same, is guilty of a misdemeanor, and upon conviction

thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars. [1890, ch. 91, §§ 10, 11; R. C. 1895, § 7272.]

§ 9013. **Marrying without license. Certificates. Return.** Every person who being authorized by law to solemnize marriages within this state, either:

1. Joins any person in marriage before the license prescribed by law therefor is produced to him; or,

2. Fails to execute as prescribed by law the certificate of any marriage solemnized by him; or,

3. Neglects for thirty days after joining in marriage the persons named in such license, to return such license and certificate to the judge of the county court issuing the license, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars. [1890, ch. 91, § 10; R. C. 1895, § 7273.]

§ 9014. **Performing marriage ceremony without authority.** Every person who attempts to join others in marriage or to perform the marriage ceremony for another within this state without being authorized by law so to do, is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not less than ninety days and not exceeding one year, or by a fine of not less than one hundred and not exceeding five hundred dollars, or by both. [1890, ch. 91, § 12; R. C. 1895, § 7274.]

§ 9015. **When marriage without authority valid.** No marriage shall be void by reason of being performed without authority, if otherwise lawful and the parties thereto or one of them believed it lawful. [1890, ch. 91, § 12; R. C. 1895, § 7275.]

§ 9016. **Unlawful confinement of insane person.** Every overseer of the poor, constable, keeper of a jail, or other person who confines any idiot, lunatic or insane person, in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor. [Pen. C. 1877, § 426; R. C. 1899, § 7276.]

§ 9017. **Reconfining person discharged.** Every person who, either solely or as a member of a court in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty for the same cause, any person who has been discharged from imprisonment upon a writ of deliverance, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits to the party aggrieved one thousand dollars, to be recovered in a civil action. [Pen. C. 1877, § 428; R. C. 1899, § 7277.]

§ 9018. **Concealing person entitled to a writ of deliverance.** Every person having in his custody or power or under his restraint, a party who, by the provisions of the law relating to habeas corpus, would be entitled to a writ of habeas corpus, or for whose relief such writ has been issued, who, with intent to elude the service of such writ or to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who, without lawful excuse, refuses to produce him, is guilty of a misdemeanor. [Pen. C. 1877, § 429; R. C. 1899, § 7278.]

§ 9019. **Assisting such concealment.** Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor. [Pen. C. 1877, § 430; R. C. 1899, § 7279.]

§ 9020. **Unlawfully acting as pharmacist.** Every person who is not a registered pharmacist, or who has not a registered pharmacist in his employ and who, either:

1. Takes, uses or exhibits the title or certificate of a registered pharmacist; or,

2. Retail, compounds or dispenses medicine; or,

3. Permits the compounding or dispensing of prescriptions, or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist; or,

4. Violates, or fails, or neglects to comply with and observe any provisions of law relating to or regulating the practice of pharmacy; and every person who,

5. Willfully makes any false representation to procure registration as a pharmacist for himself or for any other person, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty dollars and not exceeding one hundred dollars, and all necessary costs, including the costs and expenses of procuring evidence necessary to secure conviction. [1890, ch. 108, §§ 1, 12; 1893, ch. 80, § 6; R. C. 1895, § 7280; 1905, ch. 147, § 1.]

§ 9021. Provisions of last section limited. The provisions of the last section shall not be construed to interfere in any manner with the business of a physician in regular practice; nor to prevent such physician from supplying his patients with whatever he may deem necessary; nor to prevent him from receiving a certificate as a registered pharmacist as provided by law; nor to interfere with the making or compounding of proprietary medicines or medicines placed in sealed packages with the name of the contents and of the person by whom prepared or compounded; nor to prevent shopkeepers from dealing in or selling the commonly used medicines and poisons, if such medicines or poisons are put up by a regular pharmacist; nor from dealing in or selling patent or proprietary medicines; nor to interfere with the exclusive wholesale business of any dealer. [1893, ch. 80, § 6; R. C. 1895, § 7281.]

§ 9022. Selling certain enumerated poisons. Every person who, at retail, sells, furnishes or delivers to another, either:

1. Arsenic or its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid: strychnia, and all other poisons, vegetable alkaloids and their salts, essential oil of bitter almonds, opium or its preparations, except paragoric and other preparations of opium with less than two grains to the ounce; or,

2. Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid, without affixing to the bottle, box, vessel or package containing the same, the name of the contents, the word "poison," and his name and place of business, is guilty of a misdemeanor and is punishable by a fine of not less than ten dollars, nor exceeding five hundred dollars, or by imprisonment in the county jail for not less than thirty days, nor more than six months. [1890, ch. 108, § 14; R. C. 1895, § 7282; 1903, ch. 137.]

§ 9023. Physicians' prescriptions excepted. The provisions of the last section shall not be construed to include or apply to the dispensing of physicians' prescriptions specifying or containing poison. [1890, ch. 108, § 14; R. C. 1895, § 7283.]

§ 9024. Record of poison sold. Every person who, at retail, sells, furnishes or delivers to another the articles or preparations mentioned in section 9022 or any drug, chemical or preparation which according to the standard works on medicines or *materia medica* is liable, in quantities of sixty grains or less, to destroy adult human life, and who, either:

1. Fails or neglects, before delivering the same, to enter or cause to be entered in a book kept for that purpose, the date of sale, the name and address of the person to whom delivered or sold, the name, quantity and quality of the article or preparation delivered or sold, and the name of the dispenser; or,

2. Fails, neglects or refuses during business hours to exhibit such book and every part thereof for inspection and to permit the same and every part thereof, upon demand, to be inspected by any physician, coroner, sheriff, constable or magistrate of the county,

Is guilty of a misdemeanor. [1890, ch. 108, § 14; R. C. 1895, § 7284.]

§ 9025. **How violations punished.** Every person convicted of any of the offenses mentioned in sections 9022 and 9024, is punishable by a fine of not less than fifty dollars and not exceeding one hundred dollars, and all necessary costs, including the costs and expenses of procuring evidence necessary to secure conviction. [1890, ch. 108, § 14; R. C. 1895, § 7285; 1905, ch. 147. § 2.]

§ 9026. **Adulterating medicines.** Every person who knowingly, willfully or fraudulently, either:

1. Falsifies or adulterates or causes or permits to be falsified or adulterated, any drug, medicinal preparation authorized or recognized by any standard work on pharmacy, or used or intended to be used medicinally; or,

2. Mixes or causes or permits to be mixed with any such drug or medicinal preparation any foreign or inert substance, for the purpose or with the intent of destroying or weakening its medicinal power or effect or of lessening its cost; or,

3. Sells, furnishes or delivers or causes or permits any such falsified or adulterated drug or medicinal preparation to be sold, furnished or delivered for medicinal purposes,

Is guilty of a misdemeanor. [1890, ch. 108, § 13; R. C. 1895, § 7286.]

CHAPTER 42.

CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

§ 9027. **Public nuisance defined.** A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing any act or omitting to perform any duty required by the public good, which act or omission, either:

1. Annoys or injures the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or

4. In any way renders life or the use of property uncomfortable. [Pen. C. 1877, § 431; R. C. 1899, § 7287.]

§ 9028. **Unequal damage.** Any act which affects a considerable number of persons in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal. [Pen. C. 1877, § 432; R. C. 1899, § 7288.]

§ 9029. **Maintaining nuisance. Misdemeanor.** Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor. [Pen. C. 1877, § 433; R. C. 1899, § 7289.]

§ 9030. **Keeping explosives.** Every person who makes or keeps gunpowder, saltpeter, gun cotton, nitroglycerine or dynamite or any compound of the same, or any fulminate or substance which is intended to be used by exploding or igniting the same, in order to produce a force to propel missiles or to rend apart substances, within any city, town or village, and any person who carries any of such explosives through the streets thereof, in any quantity or manner prohibited by law or by any ordinance, by-law or regulation of said city, town or village, is guilty of a misdemeanor. [Pen. C. 1877, § 434; R. C. 1895, § 7290.]

§ 9031. **Fouling waters with gas tar.** Every person who throws or deposits any gas tar or refuse of any gas house or factory, into any public waters.

river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor. [Pen. C. 1877, § 435; R. C. 1899, § 7291.]

§ 9032. Violation of quarantine laws. Every master of a vessel subject to quarantine or visitation of the health officer, by the provisions of any law of this state, now in force or that hereafter may be enacted, arriving in any port or at the boat landing of any city or town in this state, who refuses or omits, either:

1. To proceed with and anchor or land his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo and passengers to the examination of the health officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject; or,

3. To remain with his vessel at quarantine, during the period assigned for her quarantine and while at quarantine, to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both. [Pen. C. 1877, § 436; R. C. 1899, § 7292.]

§ 9033. Offenses by master of vessel. Every master of a vessel hailed by a pilot or such officer as may be specified by law, who either:

1. Gives false information to such pilot or other officer, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel, or permits any person, except a pilot or such officer specified by law, to come on board of his vessel, or unloads or tranships any portion of his cargo before his vessel has been visited and examined by the proper health officers; or,

3. Approaches with his vessel nearer any city or town within this state than the place of quarantine to which he may be directed, is punishable by imprisonment in the county jail of the county in which the offense was committed, not exceeding one year, or by a fine not exceeding two thousand dollars, or both such fine and imprisonment. [Pen. C. 1877, § 437; R. C. 1899, § 7293.]

§ 9034. Landing before visit of health officer. Every person who, being on board any vessel at the time of her arrival at any port within this state, under the provisions of section 9032, lands from such vessel, or unloads or tranships, or assists in unloading or transshipping any portion of her cargo, before such vessel has been visited and examined by the health officer, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both. [Pen. C. 1877, § 438; R. C. 1899, § 7294.]

§ 9035. Other visitations. Every person who goes on board or has any communication, intercourse or dealing with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be detained at quarantine so long as the health officer shall direct, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained for such further time and at such place as the health officer shall direct. [Pen. C. 1877, § 439; R. C. 1899, § 7295.]

§ 9036. **Violating quarantine orders.** Every person who, having been lawfully ordered by any health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor. [Pen. C. 1877, § 440; R. C. 1899, § 7296.]

§ 9037. **Obstructing health officer.** Every person who willfully opposes or obstructs any health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor. [Pen. C. 1877, § 441; R. C. 1899, § 7297.]

§ 9038. **Violation of health laws.** Every person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws or by this code, and every person who willfully violates or refuses or omits to comply with any lawful order, direction, prohibition or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both. [Pen. C. 1877, § 442; R. C. 1899, § 7298.]

§ 9039. **Unlicensed piloting.** Every person not holding a license as pilot under the laws of this state, or under the laws of either the states of Missouri, Kansas, Iowa or Nebraska, who pilots or offers to pilot any steamboat to or from any port within this state, is guilty of a misdemeanor. [Pen. C. 1877, § 443; R. C. 1899, § 7299.]

§ 9040. **Last section limited.** The last section applies only to vessels propelled by steam while engaged in conveying freight and passengers or either, on the Missouri river. [Pen. C. 1877, § 444; R. C. 1899, § 7300.]

§ 9041. **Assuming to act as port warden.** Every person who, not being a port warden, assumes or undertakes to act as such, under or by the provisions of any law of this state now in force or that may hereafter be enacted, and every person who issues any certificate of a survey on vessels, materials or goods damaged, with the intent to avoid the provisions of the law, is guilty of a misdemeanor. [Pen. C. 1877, § 445; R. C. 1899, § 7301.]

§ 9042. **Apothecary negligently endangering life.** Every apothecary or druggist, and every person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor. [Pen. C. 1877, § 446; R. C. 1899, § 7302.]

§ 9043. **Record of poison sold. Label.** No druggist, apothecary or other person dealing or trafficking in drugs or medicines, and no person employed as a clerk or salesman by any apothecary or druggist, shall sell or give away any poison or poisonous substances, except to practicing physicians, in their ordinary practice of medicine, without recording in a book, to be kept for that purpose, the names of the person or persons receiving such poison, and his, her or their residence, excepting upon the written order or prescription of some practicing physician whose name must be attached to such order or prescription. No person shall sell, give away or dispose of any poisonous substance without attaching to the phial, box or parcel containing such poisonous substance a label with the word "poison," printed or written upon it, in plain and legible characters. [Pen. C. 1877, § 447; R. C. 1895, § 7303.]

§ 9044. **Violation, misdemeanor.** Any person violating any of the provisions of section 9043, shall be deemed guilty of a misdemeanor. [Pen. C. 1877, § 448; R. C. 1899, § 7304.]

§ 9045. **Record subject to inspection.** Every person whose duty it is by section 9043 to keep any book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said book upon reasonable demand made during business hours, is punishable by fine not exceeding fifty dollars. [Pen. C. 1877, § 449; R. C. 1899, § 7305.]

§ 9046. **Laying out poison. Exception.** Every person who shall lay out strychnine or other poison, within the limits of any town, or within one mile of any dwelling house or any barn, stable or outbuilding, used at the time for the keeping or shelter of horses, cattle, sheep or swine, or within one-half mile of any traveled thoroughfare, on the ceded lands of this state, is guilty of a misdemeanor; provided, nothing in this section shall be construed to prohibit the putting out at any time of poisoned grain, for the purpose of killing gophers. [Pen. C. 1877, § 450; R. C. 1899, § 7306.]

§ 9047. **Omitting to mark baled hay.** Every person who, in putting up or pressing any bundle of hay for market, omits to put the number of pounds in each bundle or bale so put up, for which he sells or offers to sell it, is guilty of a misdemeanor. [Pen. C. 1877, § 451; R. C. 1899, § 7307.]

§ 9048. **Fraudulently increasing weight.** Every person who, in putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, barrels or packages, by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, is punishable by a fine of twenty-five dollars for each offense. [Pen. C. 1877, § 452; R. C. 1899, § 7308.]

§ 9049. **Adulterating food or medicines.** Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous or malt liquor or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells or keeps or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor. [Pen. C. 1877, § 453; R. C. 1899, § 7309.]

§ 9050. **Adulteration of candy.** No person shall by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale, or knowingly sell or offer to sell any candy adulterated by the mixture of terra alba, barytes, talc, or any other mineral substance, by poisonous colors or flavors or other ingredients deleterious or detrimental to health. Whoever violates any of the provisions of this section shall be punished by a fine of not exceeding one hundred dollars nor less than fifty dollars. The candy so adulterated shall be forfeited and destroyed under direction of the court. [1897, ch. 3; R. C. 1899, § 7309a.]

§ 9051. **Knowingly selling tainted food.** Every person who knowingly sells, or keeps or offers for sale or otherwise disposes of any article of food, drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor. [Pen. C. 1877, § 454; R. C. 1899, § 7310.]

§ 9052. **Manufacturing slung shot.** Every person who manufactures or causes to be manufactured, or sells or offers or keeps for sale or gives or disposes of any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a misdemeanor. [Pen. C. 1877, § 455; R. C. 1899, § 7311.]

§ 9053. **Carrying or using slung shot.** Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another,

any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony. [Pen. C. 1877, § 456; R. C. 1899, § 7312.]

§ 9054. **Carrying concealed weapons.** Every person who carries concealed about his person any description of firearms, being loaded or partly loaded, or any sharp or dangerous weapon, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor. [Pen. C. 1877, § 457; R. C. 1899, § 7313.]

§ 9055. **Willfully firing prairies and marshes.** Every person who shall willfully set on fire, or cause to be set on fire, any woods, marshes or prairies, with intention to injure the property of another shall be deemed guilty of a misdemeanor, and shall be liable for all damages done by such fire. [Pen. C. 1877, § 458; R. C. 1899, § 7314.]

§ 9056. **Negligently firing same.** Every person who negligently or carelessly sets on fire or causes to be set on fire, any woods, marshes or prairies, or who, having set the same on fire or caused it to be done, negligently or carelessly or without full precaution or efforts to prevent, permits it to spread beyond his control, shall, upon conviction, be fined not exceeding one hundred dollars and not less than ten dollars, and shall be liable to injured parties for all damages occasioned thereby. One-half of such fine shall, when collected, go to the informer. [Pen. C. 1877, § 459; R. C. 1899, § 7315.]

§ 9057. **Refusing to aid at fires.** Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor. [Pen. C. 1877, § 460; R. C. 1899, § 7316.]

§ 9058. **Unlicensed ferry.** Every person who maintains any ferry for profit or hire upon any waters within this state, without having first obtained a license as provided by law, is guilty of a misdemeanor. And any license or lease granted by the board of county commissioners of the proper county shall be exclusive to the lessee or licensee for a distance of two miles from the place where such ferry is located, up and down such stream either way; and any person who shall ferry, transport or carry or attempt to ferry, transport or carry any passengers, goods, chattels or merchandise, or who shall have, keep or maintain any scow, skiff or boat for the purpose of ferrying, transporting or carrying any passengers, goods, chattels or merchandise upon any water of this state within a distance of two miles of any licensed ferry, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding one hundred dollars, or thirty days imprisonment in the county jail, or by both fine and imprisonment; when such ferry is upon waters dividing two counties, the offenders may be prosecuted in either county. [Pen. C. 1877, § 461; 1879, ch. 21, § 1; R. C. 1899, § 7317.]

§ 9059. **Violating ferry bond.** Every person who, having entered into a bond or obligation, as provided by his ferry charter or any general law on the subject of ferries, to keep and attend a ferry, violates the condition of such bond or obligation, is guilty of a misdemeanor. [Pen. C. 1877, § 462; R. C. 1899, § 7318.]

§ 9060. **Failure to ring locomotive bell.** Every person in charge, as engineer of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding sixty days. [Pen. C. 1877, § 463; R. C. 1899, § 7319.]

§ 9061. **Intoxicated engineer or conductor.** Every person who, while in charge as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by

horses, is intoxicated, is guilty of a misdemeanor. [Pen. C. 1877, § 464; R. C. 1899, § 7320.]

§ 9062. **Railroad employe's neglect of duty.** Every engineer, conductor, brakeman, switchtender or other officer, agent or servant, of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, by which human life or safety is endangered, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor. [Pen. C. 1877, § 465; R. C. 1899, § 7321.]

§ 9063. **Guards at ice cutting.** All persons and incorporated companies cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing such ice for sale, shall surround the cuttings and openings made, with fences or bushes or other guards sufficient to warn all persons of such cuttings and openings. [Pen. C. 1877, § 466; R. C. 1899, § 7322.]

§ 9064. **How long maintained.** Such fences or guards must be erected at or before the time of commencing such cuttings or openings, and must be maintained until ice has again formed in such openings to the thickness of at least six inches. [Pen. C. 1877, § 467; R. C. 1899, § 7323.]

§ 9065. **Violations, misdemeanor.** Every person who violates the provisions of the last two sections is guilty of a misdemeanor. [Pen. C. 1877, § 468; R. C. 1899, § 7324.]

§ 9066. **Obstructing navigation.** Every person who in any manner obstructs the free navigation of any navigable water course within this state, is guilty of a misdemeanor. [Pen. C. 1877, § 469; R. C. 1899, § 7325.]

§ 9067. **Exposing person with contagious disease.** Every person who willfully exposes himself or another person, being affected with any contagious disease, in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor. [Pen. C. 1877, § 470; R. C. 1899, § 7326.]

§ 9068. **Frauds to affect market price.** Every person who willfully makes or publishes any false statement, spreads any false rumor or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor. [Pen. C. 1877, § 471; R. C. 1899, § 7327.]

§ 9069. **False statements to increase newspaper sales.** Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor. [Pen. C. 1877, § 472; R. C. 1899, § 7328.]

§ 9070. **Eavesdropping.** Every person guilty of secretly loitering about any building, with intent to overhear discourse therein and to repeat or publish the same to vex, annoy or injure others, is guilty of a misdemeanor. [Pen. C. 1877, § 473; R. C. 1899, § 7329.]

§ 9071. **Racing upon highways.** Every person driving any conveyance drawn by horses upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance or to prevent such other from passing his own, is guilty of a misdemeanor. [Pen. C. 1877, § 474; R. C. 1899, § 7330.]

CHAPTER 43.

IMPORTATION, SALE AND EXPOSURE OF INFECTED STOCK.

§ 9072. Importing, using or selling infected stock. Every person who, either:

1. Imports or brings into this state any horse, mule or ass; or,
2. Suffers the same to run at large upon any common, highway or uninclosed land; or,
3. Uses, ties or keeps the same in any public place, stable or barn; or,
4. Sells, trades or offers to sell or trade the same, knowing or having good reason to believe such horse, mule or ass to be infected with the disease known as glanders or button-farcy, is guilty of a misdemeanor, and upon conviction thereof, is punishable by imprisonment in a county jail, not exceeding one year, or by a fine of not less than fifty and not exceeding five hundred dollars, or by both. [1883, ch. 65, § 1; R. C. 1895, § 7331.]

§ 9073. Not restraining infected sheep. Every person who owns or has in charge any sheep infected with scab or other infectious or contagious disease and who, either:

1. Does not keep such sheep securely within some inclosure; or,
2. Does not herd them at a distance of not less than six miles from all farms, corrals, sheds or other established headquarters where sheep are kept or being herded; or,
3. Drives or permits any such sheep to be driven upon any public highway, or within the distance of one mile from any such highway, or within the distance of six miles from any farm, corral, shed or other established headquarters where sheep are kept or being herded,

Is guilty of a misdemeanor. [1887, ch. 33, §§ 1, 2; R. C. 1895, § 7332.]

§ 9074. Last section limited. Public domain. The provisions of the last section shall not be construed to prevent a person who has established headquarters prior to March 11, 1887, from allowing such sheep to range upon the public domain within a radius of six miles from such headquarters: provided, such radius does not reach nearer than three miles from the headquarters of any other such person. [1887, ch. 33, § 1; R. C. 1895, § 7333.]

§ 9075. Refusing to allow examination. Every person who is in charge of any band of sheep that is being driven or kept within six miles of the headquarters where sheep belonging to any other person are kept or corralled and who fails, neglects or refuses, upon demand by such other person or any one in his employ, to stop such band and allow them to be examined, or to aid and assist in catching and examining them, is guilty of a misdemeanor. [1887, ch. 33, § 3; R. C. 1895, § 7334.]

§ 9076. Willfully spreading infection, felony. Every person who willfully, either:

1. Carries or drives or causes to be carried or driven any sheep infected with scab or any infectious or contagious disease among sheep belonging to another; or,

2. Carries or places or causes to be carried or placed the parasite which causes such scab or disease where sheep not his own are being herded or corralled, with intent that such sheep shall become infected thereby, is guilty of a felony and upon conviction thereof is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine of not less than one thousand dollars, or by both. [1887, ch. 33, § 4; R. C. 1895, § 7335.]

§ 9077. Civil action for damages. Every person violating any of the provisions of this chapter, shall be liable in a civil action to any person

injured by such violation for all damages directly or indirectly suffered thereby. [1887, ch. 33, § 6; R. C. 1895, § 7336.]

CHAPTER 44.

SALE OF CIGARETTES AND TOBACCO TO MINORS.

§ 9078. **Adulterating cigarettes. Punishment.** Any person within this state who manufactures, sells, gives to any one or uses any cigarette containing any substance foreign to tobacco and deleterious to health, shall be punished by a fine of not more than fifty dollars or imprisonment in a county jail for not more than thirty days. [1895, ch. 31, § 1; R. C. 1899, § 7337.]

§ 9079. **Selling to minors prohibited.** Any person within this state who sells or gives to or in any way furnishes to any person under the age of seventeen years, any cigarettes, cigars or tobacco of any kind, shall be punished by a fine of not more than fifty dollars or imprisonment in a county jail for not more than thirty days. [1895, ch. 31, § 2; R. C. 1899, § 7338.]

CHAPTER 45.

CRIMES AGAINST THE PUBLIC PEACE.

§ 9080. **Disturbing lawful meeting.** Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as are mentioned in sections 8582, 8604 and 8938 of this code, is guilty of a misdemeanor. [Pen. C. 1877, § 475; R. C. 1899, § 7339.]

§ 9081. **Riot defined.** Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot. [Pen. C. 1877, § 476; R. C. 1899, § 7340.]

§ 9082. **Punishment of riot.** Every person guilty of participating in any riot is punishable as follows:

1. If any murder, maiming, robbery, rape or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.

2. If the purpose of the riotous assembly was to resist the execution of any statute of this state or of the United States, or to obstruct any public officer of this state or of the United States, in the performance of any legal duty or in serving or executing any legal process, such person is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

3. If any person carried, at the time of such riot, any species of firearms or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

4. If such person directed, advised, encouraged or solicited other persons, who participated in the riot, to acts of force or violence, he is punishable by imprisonment in the penitentiary for not less than three years.

5. In all other cases such person is punishable as for a misdemeanor. [Pen. C. 1877, § 477; R. C. 1899, § 7341.]

Driving whip is not deadly or dangerous weapon within the meaning of paragraph 3 of this section. *State v. Page*, 15 S. D. 613, 91 N. W. 313.

§ 9083. **Rout defined.** Whenever three or more persons acting together, make any attempt to do any act toward the commission of an act which

would be riot if actually committed, such assembly is a rout. [Pen. C. 1877, § 478; R. C. 1899, § 7342.]

§ 9084. **Unlawful assembly defined.** Whenever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace or excite public alarm, such assembly is an unlawful assembly. [Pen. C. 1877, § 479; R. C. 1899, § 7343.]

§ 9085. **Rout or unlawful assembly misdemeanor.** Every person who participates in any rout or unlawful assembly, is guilty of a misdemeanor, and every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor. [Pen. C. 1877, §§ 480, 481; R. C. 1899, § 7344.]

§ 9086. **Remaining after unlawful purpose disclosed.** When three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor. [Pen. C. 1877, § 482; R. C. 1899, § 7345.]

§ 9087. **Refusing to arrest rioter.** Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly. [Pen. C. 1877, § 483; R. C. 1899, § 7346.]

§ 9088. **Resisting execution of process.** Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 484; R. C. 1899, § 7347.]

§ 9089. **Engaging in prize fight.** Every person who engages in, instigates, encourages or promotes, any ring or prize fight or any other premeditated fight or contention, whether as principal, aid, second, umpire, surgeon or otherwise, although no death or personal injury ensues, is guilty of a misdemeanor. [Pen. C. 1877, § 485; R. C. 1899, § 7348.]

§ 9090. **Challenge to prize fight.** Every person who challenges another to engage in any such fight as is specified in the last section; every person who accepts any such challenge; every person who knowingly forwards, carries or delivers any such challenge; and every person who bets, stakes or wagers any money or property upon the result of any such fight, or who undertakes to hold any money or property so betted, staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor. [Pen. C. 1877, § 486; R. C. 1899, § 7349.]

§ 9091. **Acts constituting challenge.** Any words spoken or written or any signs uttered or made to any person, expressing or implying or intended to express or imply, a desire, request, invitation or demand to engage in any fight, such as is mentioned in section 9089, are deemed a challenge within the meaning of the last section. [Pen. C. 1877, § 487; R. C. 1899, § 7350.]

§ 9092. **Leaving state to engage in prize fight.** Every person who leaves this state with the intent to elude any of the provisions of the last three sections, and to commit any act out of this state such as is prohibited by them, and who does any act which would be punishable under such provisions, if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state. [Pen. C. 1877, § 488; R. C. 1899, § 7351.]

§ 9093. **Place of trial.** Such person may be prosecuted and tried in any county within this state. [Pen. C. 1877, § 489; R. C. 1899, § 7352.]

§ 9094. **Duty of peace officers regarding prize fights.** It is the duty of all sheriffs, constables, policemen and watchmen, who have reasonable grounds to believe that any offense specified in section 9089 is about to be committed within their jurisdiction, to make complaint under the provisions of this chapter to some magistrate within their jurisdiction. [Pen. C. 1877, § 490; R. C. 1899, § 7353.]

§ 9095. **Neglect a misdemeanor.** Every sheriff, constable, policeman or watchman, who willfully neglects the duty prescribed by the last section is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he forfeits his office. [Pen. C. 1877, § 491; R. C. 1899, § 7354.]

§ 9096. **Forcible entry or detainer of lands.** Every person guilty of using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and manner allowed by law, is guilty of a misdemeanor. [Pen. C. 1877, § 492; R. C. 1899, § 7355.]

§ 9097. **Returning to lands after removal.** Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward, without authority of law, returns to settle or reside upon such lands, is guilty of a misdemeanor. [Pen. C. 1877, § 493; R. C. 1899, § 7356.]

§ 9098. **Unlawful intrusions upon lots.** Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or village, without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty or other structure whatever, without such license or authority; and every person who places, erects or occupies within the bounds of any street or avenue of such city or village, any hut, hovel, shanty or other structure whatever, is guilty of a misdemeanor. [Pen. C. 1877, § 494; R. C. 1899, § 7357.]

§ 9099. **Unlawful discharge of firearms.** Every person who willfully discharges any species of firearm, air gun or other weapon, or throws any other missile in any public place or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor. [Pen. C. 1877, § 495; R. C. 1899, § 7358.]

§ 9100. **No privilege from testifying.** No person shall be excused from giving any evidence upon any investigation or prosecution for any of the offenses specified in this chapter, upon the ground that such testimony or evidence might tend to convict him of a crime. But such answer or evidence shall not be received against him upon any criminal proceeding or prosecution. [Pen. C. 1877, § 496; R. C. 1899, § 7359.]

CHAPTER 46.

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

§ 9101. **Embezzlement and false accounts by officers.** Every public officer, and every deputy or clerk of any such officer, and every other person receiving any moneys on behalf of or for account of this state, or of any department of the government of this state, or any bureau or fund created by law, and in which this state or the people thereof, are directly or indirectly interested, who either:

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money received by him as such officer,

clerk or deputy or otherwise, on behalf of this state or the people thereof, or in which they are interested; or,

2. Knowingly keeps any false account or makes any false entry or erasure in any account of or relating to any moneys so received by him, on behalf of the state or the said people, or in which they are interested; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or,

4. Willfully omits or refuses to pay over to this state or its officer or agent authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same is guilty of a felony. [Pen. C. 1877, § 497; R. C. 1899, § 7360.]

Information charging single offense substantially in language of subdivision 1 is sufficient. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 9102. **Other violations of law.** Every officer or other person mentioned in the last section, who willfully disobeys any provisions of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor. [Pen. C. 1877, § 498; R. C. 1899, § 7361.]

§ 9103. **Officer's fraud.** Every public officer, being authorized to sell or lease any property or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor. [Pen. C. 1877, § 499; R. C. 1899, § 7362.]

§ 9104. **Officer refusing to perform duty.** Every register of deeds, judge of the county court, state's attorney, county commissioner, sheriff, coroner or county superintendent of common schools, who willfully fails or refuses to perform the duties of his office according to law, is guilty of a misdemeanor. [Pen. C. 1877, § 500; R. C. 1899, § 7363.]

§ 9105. **Agreement for false assessment.** Every assessor, or county commissioner who enters into any contract, agreement or understanding with the owner of any personal property, or his agent, whereby and pursuant to which such property is to be assessed at less than its cash value, in consideration that the owner of such property or his agent, shall remove or cause to be removed, said property, for the purpose of taxation, into the county, district or township of such assessor or commissioner, is guilty of a misdemeanor. [1885, ch. 129, § 3; R. C. 1895, § 7364.]

§ 9106. **Same, by owner.** Every owner of personal property or his agent, who enters into any contract, agreement or understanding such as is mentioned in the last section and every person aiding or abetting the same, is guilty of a misdemeanor. [1885, ch. 129, § 3; R. C. 1895, § 7365.]

§ 9107. **Punishment.** Every person convicted of violating any of the provisions of the last two sections is punishable by imprisonment in the county jail not less than three and not exceeding six months, or by a fine not exceeding five hundred dollars, or by both. [1885, ch. 129, § 3; R. C. 1899, § 7366.]

§ 9108. **Obstructing collection of revenue.** Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes or other sums of money in which, or in any part of which, the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor. [Pen. C. 1877, § 501; R. C. 1899, § 7367.]

§ 9109. **Provisions of section 9104 extended to other officers.** The provisions of section 9104 shall also apply to county treasurers, justices of the peace and all other county and precinct officers. [Pen. C. 1877, § 502; R. C. 1899, § 7368.]

§ 9110. **Refusal of state officers to perform duty.** Every state auditor, state treasurer, superintendent of public instruction for this state or any other state officer who willfully neglects or refuses to perform the duties of

his office, as prescribed by law, is guilty of a misdemeanor. [Pen. C. 1877, § 503; R. C. 1899, § 7369.]

§ 9111. **Auctioneer to have but one place.** No auctioneer in any town or county of this state, shall at any time have more than one place for carrying on the general business of an auctioneer. [Pen. C. 1877, § 504; R. C. 1899, § 7370.]

§ 9112. **What not to sell at other place.** No such auctioneer shall expose to sale by public auction any articles liable to auction duties at any other place than that so designated, except goods sold in original packages, as imported pictures, household furniture, libraries, stationery and such bulky articles as have usually been sold in warehouses, or in the public streets or on the wharves. [Pen. C. 1877, § 505; R. C. 1899, § 7371.]

§ 9113. **Punishment.** A violation of either of the last two sections is punishable by a fine not exceeding two hundred and fifty dollars for each offense. [Pen. C. 1877, § 506; R. C. 1899, § 7372.]

§ 9114. **Fraud by selling damaged goods.** Every person carrying on, interested in or employed about the business of selling property or goods by auction, who sells any goods or property in a damaged condition, which he offers as sound or in a good condition, is guilty of a misdemeanor. [Pen. C. 1877, § 507; R. C. 1899, § 7373.]

§ 9115. **Must sell in daytime. Exceptions.** All sales of goods by public auction by a licensed auctioneer shall be made in the daytime between sunrise and sunset, unless otherwise authorized by the law under which he holds his license, excepting:

1. Books, prints, pictures or stationery.

2. Goods sold in the original packages as imported, according to a printed catalogue, of which samples shall have been opened and exposed to public view at least one day previous to the sale. Every person who violates the provisions of this section is guilty of a misdemeanor; and in addition to the punishment prescribed therefor by law, is forever disqualified after his conviction therefor, from being licensed to act as an auctioneer within this state. [Pen. C. 1877, § 508; R. C. 1899, § 7374.]

§ 9116. **Failure to render account.** Every auctioneer, and every partner or clerk of an auctioneer, and every person whatever in any way connected in business with an auctioneer, who willfully omits to render any semiannual or other account by law required to be rendered, at the time or in the manner prescribed by law, or who willfully omits to pay over any duties legally payable by him at the time and in the manner prescribed by law, is guilty of a misdemeanor. [Pen. C. 1877, § 509; R. C. 1899, § 7375.]

§ 9117. **Fraud committed by auctioneer.** Every auctioneer, and every partner or clerk of any auctioneer, and every person whatever in any way connected in business with an auctioneer, who commits any fraud or deceit, or by any fraudulent means whatever seeks to evade or defeat the provisions of the laws of this state relating to auctions, now in force or that may hereafter be enacted, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable in treble damages to any party injured thereby. [Pen. C. 1877, § 510; R. C. 1899, § 7376.]

§ 9118. **False bill of lading.** Every person whose duty it may be to deliver to any collector of tolls upon any canal that hereafter may be constructed and owned by this state, a bill of lading of any property transported upon any such canal, who knowingly delivers a false bill of lading as true, or makes or signs a false bill of lading intending to be delivered as true, is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five times the value of any property omitted in such bill, or both. [Pen. C. 1877, § 511; R. C. 1899, § 7377.]

§ 9119. **Weighmaster making false entry.** Every weighmaster upon any canal that may hereafter be constructed and owned by this state and every

clerk of such weighmaster, who knowingly makes a false entry of the weight of any boat or cargo of any boat navigating such canal, or who knowingly makes a false certificate of the light weight of any boat, is guilty of a misdemeanor. [Pen. C. 1877, § 512; R. C. 1899, § 7378.]

§ 9120. **Injuring public buildings.** Every person who willfully burns, destroys or injures any public building or improvement in this state, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [Pen. C. 1877, § 513; R. C. 1899, § 7379.]

§ 9121. **Seizing military stores.** Every person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the state, and every person who enters any such place with intent so to do, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 514; R. C. 1899, § 7380.]

§ 9122. **False statement regarding taxes.** Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty of a misdemeanor. [Pen. C. 1877, § 515; R. C. 1899, § 7381.]

CHAPTER 47.

ARSON.

§ 9123. **Arson defined.** Arson is the willful and malicious burning of a building, with intent to destroy it. [Pen. C. 1877, § 516; R. C. 1899, § 7382.]

Information charging arson and alleging facts constituting arson in third degree is sufficiently specific and does not accuse of one crime and state facts constituting a different crime. *State v. Young*, 9 N. D. 165, 82 N. W. 420; *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

§ 9124. **Building defined.** Any house, edifice, structure, vessel or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building" within the meaning of the last section. [Pen. C. 1877, § 517; R. C. 1899, § 7383.]

§ 9125. **Inhabitable building defined.** Any building is deemed an "inhabitable building," within the meaning of this chapter, any part of which has usually been occupied by any person lodging therein at night. [Pen. C. 1877, § 518; R. C. 1899, § 7384.]

§ 9126. **Nighttime defined.** The word "nighttime," in this chapter includes the period between sunset and sunrise. [Pen. C. 1877, § 519; R. C. 1899, § 7385.]

§ 9127. **Burning defined.** To constitute a burning within the meaning of section 9123 it is not necessary that the building set on fire should be destroyed. It is sufficient that the fire is applied so as to take effect upon the substance of the building. [Pen. C. 1877, § 520; R. C. 1899, § 7386.]

§ 9128. **Ownership defined.** To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in the possession of, or was actually occupying, such building or any part thereof. [Pen. C. 1877, § 521; R. C. 1899, § 7387.]

§ 9129. **Immaterial variance in proof.** An omission to designate, or error in designating in an information or indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the accused to prepare his defense. [Pen. C. 1877, § 522; R. C. 1899, § 7388.]

§ 9130. **Malice, when inferred.** Malice sufficient to constitute arson is inferred from proof that the accused committed an act of burning a building, and that some other person was rightfully in possession of or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupancy or should have intended to injure any person. [Pen. C. 1877, § 523; R. C. 1899, § 7389.]

§ 9131. **Burning without intent to destroy.** The burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson. [Pen. C. 1877, § 524; R. C. 1899, § 7390.]

§ 9132. **Contiguous buildings.** When any appurtenance to any building is so situated with reference to such building, or when any building is so situated with reference to another building that the burning of one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other. [Pen. C. 1877, § 525; R. C. 1899, § 7391.]

§ 9133. **Degrees of arson.** Arson is distinguished into four degrees. [Pen. C. 1877, § 526; R. C. 1899, § 7392.]

§ 9134. **In the first degree.** Maliciously burning in the nighttime an inhabited building, in which there is at the time some human being, is arson in the first degree. [Pen. C. 1877, § 527; R. C. 1899, § 7393.]

§ 9135. **Exception. Appurtenance to building.** No warehouse, barn, shed or other outhouse, is a subject of arson in the first degree, unless it is immediately connected with, and forms part of an inhabited building. [Pen. C. 1877, § 528; R. C. 1899, § 7394.]

§ 9136. **Arson in second degree.** Maliciously burning in the daytime an inhabited building, in which there is at the time some human being, is arson in the second degree. [Pen. C. 1877, § 529; R. C. 1899, § 7395.]

§ 9137. **When burning in nighttime is.** Maliciously burning in the nighttime a building, not an inhabited building, but adjoining to or within the curtilage of an inhabited building in which there is at the time some human being, so that such inhabited building is endangered, even though it is not in fact injured by such burning, is arson in the second degree. [Pen. C. 1877, § 530; R. C. 1899, § 7396.]

§ 9138. **Arson in third degree.** Maliciously burning in the daytime a building the burning of which in the nighttime would be arson in the second degree, is arson in the third degree. [Pen. C. 1877, § 531; R. C. 1899, § 7397.]

Sufficient pleading of arson in third degree. See *State v. Young*, 9 N. D. 165, 82 N. W. 420; *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

§ 9139. **When burning in nighttime is.** Maliciously burning in the nighttime any building, not the subject of arson in the first or second degree, including any house for public worship, school house or public building belonging to the state, or to any county, city, town or village, any building in which have usually been deposited the papers of any public officer, and any barn, mill or manufactory, is arson in the third degree. [Pen. C. 1877, § 532; R. C. 1899, § 7398.]

§ 9140. **Arson in fourth degree.** Maliciously burning in the daytime any building the burning of which in the nighttime would be arson in the third degree, is arson in the fourth degree. [Pen. C. 1877, § 533; R. C. 1899, § 7399.]

§ 9141. **Punishment for arson.** Arson is punishable by imprisonment in the penitentiary as follows:

1. Arson in the first degree, for any term not less than ten years.
2. Arson in the second degree, not exceeding ten years and not less than seven years.
3. Arson in the third degree, not exceeding seven years and not less than four years.

4. Arson in the fourth degree, not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year. [Pen. C. 1877, § 534; R. C. 1899, § 7400.]

CHAPTER 48.

BURGLARY AND HOUSE BREAKING.

§ 9142. **Burglary in first degree defined.** Every person who breaks into and enters in the nighttime, the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either:

1. By forcibly bursting or breaking the wall, or an outer door, window or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter; or,

2. By breaking in any other manner, being armed with a dangerous weapon, or being assisted or aided by one or more confederates, then actually present; or,

3. By unlocking an outer door by means of false keys, or by picking the lock thereof,

Is guilty of burglary in the first degree. [Pen. C. 1877, § 535; R. C. 1899, § 7401.]

Burglary and larceny cannot be charged as single offense. *State v. Smith*, 2 N. D. 515, 52 N. W. 320.

Evidence of burglar's tools having been found in building, proper. *State v. Campbell*, 7 N. D. 58, 72 N. W. 935.

§ 9143. **In second degree defined.** Every person who breaks into any dwelling house in the daytime under such circumstances as would have constituted the crime of burglary in the first degree if committed in the nighttime, is guilty of burglary in the second degree. [Pen. C. 1877, § 536; R. C. 1899, § 7402.]

§ 9144. **Same. Breaking inner door.** Every person who, having entered the dwelling house of another in the nighttime, through an open outer door or window or other aperture not made by such person, breaks any inner door, window, partition or other part of such house, with intent to commit any crime, is guilty of burglary in the second degree. [Pen. C. 1877, § 537; R. C. 1899, § 7403.]

§ 9145. **Same.** Every person who, being lawfully in any dwelling house, breaks in the nighttime any inner door of the same house with intent to commit any crime, is guilty of burglary in the second degree. [Pen. C. 1877, § 538; R. C. 1899, § 7404.]

§ 9146. **Burglary in third degree.** Every person who breaks into any dwelling house in the nighttime, with intent to commit a crime, but under such circumstances as do not constitute the offense of burglary in the first degree, is guilty of burglary in the third degree. [Pen. C. 1877, § 539; R. C. 1899, § 7405.]

§ 9147. **Same. Other buildings.** Every person who breaks and enters, in the day or in the nighttime, either:

1. Any building within the curtilage of a dwelling house, but not forming a part thereof; or,

2. Any building or any part of any building, booth, tent, railroad car, vessel or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony,

Is guilty of burglary in the third degree. [Pen. C. 1877, § 540; R. C. 1899, § 7406.]

Where some instrument is used for breaking and for ulterior purpose in committing crime within the building, it is not necessary to show entry of building by defendant in person. *State v. Crawford*, 8 N. D. 539, 80 N. W. 193.

Information charging that defendant in nighttime burglariously broke and entered with intent to steal, without stating degree, held sufficient. *State v. La Croix*, 8 S. D. 369, 66 N. W. 944.

§ 9148. **Burglary in fourth degree.** Every person who breaks and enters the dwelling house of another, by day or by night, in such manner as not to constitute any burglary specified in the preceding section, with intent to commit a crime, is guilty of burglary in the fourth degree. [Pen. C. 1877, § 541; R. C. 1899, § 7407.]

§ 9149. **Same. Breaking out.** Every person who, having committed any crime in the dwelling house of another, breaks in the nighttime, any outer door, window shutter or other part of such house, to get out of the same, is guilty of burglary in the fourth degree. [Pen. C. 1877, § 542; R. C. 1899, § 7408.]

§ 9150. **Punishment for burglary.** Burglary is punishable by imprisonment in the penitentiary as follows:

1. Burglary in the first degree, for any term not less than ten years.
2. Burglary in the second degree, not exceeding ten years and not less than five.
3. Burglary in the third degree, not less than one and not exceeding five years.
4. Burglary in the fourth degree, not less than one and not exceeding three years. [Pen. C. 1877, § 543; R. C. 1899, § 7409.]

§ 9151. **Having burglars' implements in possession.** Every person who, under circumstances not amounting to any felony, has in his possession in the nighttime any dangerous offensive weapon or instrument whatever, or any picklock, crow, key, bit, jack, jimmy, nippers, pick, betty or other implement of burglary, with intent to break and enter any building, booth, tent, railroad car, vessel or other structure or erection, and to commit any felony therein, is guilty of a misdemeanor. [Pen. C. 1877, § 544; R. C. 1899, § 7410.]

§ 9152. **Unlawfully entering building.** Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel or other structure or erection with intent to commit any felony, larceny or malicious mischief, is guilty of a misdemeanor. [Pen. C. 1877, § 545; R. C. 1899, § 7411.]

§ 9153. **Dwelling house defined.** The term "dwelling house," as used in this chapter, includes every house or edifice, any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice. [Pen. C. 1877, § 546; R. C. 1899, § 7412.]

§ 9154. **Nighttime defined.** The word "nighttime," in this chapter includes the period between sunset and sunrise. [Pen. C. 1877, § 547; R. C. 1899, § 7413.]

CHAPTER 49.

FORGERY AND COUNTERFEITING.

§ 9155. **Forgery in first degree.** Every person who, with intent to defraud, forges, counterfeits or falsely alters:

1. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is or purports to be, transferred, conveyed or in any way changed or affected; or,
2. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in

evidence, made or purporting to have been made by any officer duly authorized to make such certificate or indorsement; or,

3. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate,

Is guilty of forgery in the first degree. [Pen. C. 1877, § 548; R. C. 1899, § 7414.]

§ 9156. Same. Public securities. Every person who, with intent to defraud, forges, counterfeits or falsely alters:

1. Any certificate or other public security, issued or purporting to have been issued under the authority of this state by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or,

2. Any certificate of any share, right or interest in any public stock created by virtue of any law of this state issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability of this state, either absolute or contingent, issued or purporting to have been issued by any public officer; or,

3. Any indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest,

Is guilty of forgery in the first degree. [Pen. C. 1877, § 549; R. C. 1899, § 7415.]

§ 9157. Second degree. Public and corporate seals. Every person who, with intent to defraud, forges or counterfeits the great seal of this state, the seal of any public officer authorized by law, the seal of any court of record, including the seal of the judge of the county court, or the seal of any corporation created by the laws of this state, or of any state, government or country, or any public seal authorized or recognized by the laws of this state or of any other state, government or country, or who falsely makes, forges or counterfeits any impression, purporting to be the impression of any such seal, is guilty of forgery in the second degree. [Pen. C. 1877, § 550; R. C. 1895, § 7416.]

§ 9158. Same. Records and official returns. Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or,

2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or,

3. The return of any officer, court or tribunal to any process of any court.

Is guilty of forgery in the second degree. [Pen. C. 1877, § 551; R. C. 1899, § 7417.]

§ 9159. Same. Entry in record. Every person who, with intent to defraud, falsely makes, forges or alters, any entry in any book of records, or any instrument purporting to be any record or return specified in the last section, is guilty of forgery in the second degree. [Pen. C. 1877, § 552; R. C. 1899, § 7418.]

§ 9160. Same. False certificates. If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree. [Pen. C. 1877, § 553; R. C. 1899, § 7419.]

§ 9161. **Same. False plates.** Every person who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt, issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this state or of any other state, government or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with the intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree. [Pen. C. 1877, § 554; R. C. 1899, § 7420.]

§ 9162. **When plates deemed imitation.** Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases:

1. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved; or,

2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument. [Pen. C. 1877, § 555; R. C. 1899, § 7421.]

§ 9163. **Selling forged instruments.** Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft or other evidence of debt or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is guilty of forgery in the second degree. [Pen. C. 1877, § 556; R. C. 1899, § 7422.]

§ 9164. **Having same in possession.** Every person who, with intent to defraud, has in his possession any forged, altered or counterfeited negotiable note, bill, draft or other evidence of debt, issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this state or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree. [Pen. C. 1877, § 557; R. C. 1899, § 7423.]

§ 9165. **Forgery in fourth degree.** Every person who has in his possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered, with intent to injure or defraud by uttering the same as true or false, or by causing the same to be so uttered, is guilty of forgery in the fourth degree. [Pen. C. 1877, § 558; R. C. 1899, § 7424.]

§ 9166. **Second degree. Issuing false certificates.** Every officer, and every agent of any corporation or joint stock association, formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed, with intent to issue, sell or pledge or to cause to be issued, sold or pledged,

or who willfully issues, sells or pledges or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree. [Pen. C. 1877, § 559; R. C. 1899, § 7425.]

§ 9167. **Same. Reissuing canceled certificates.** Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or canceled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree. [Pen. C. 1877, § 560; R. C. 1899, § 7426.]

§ 9168. **Same. False evidence of debt.** Every officer, and every agent of any corporation, municipal or otherwise, of any joint stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association, or any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation having authority to issue the same, is guilty of forgery in the second degree. [Pen. C. 1877, § 561; R. C. 1899, § 7427.]

§ 9169. **Same. Counterfeiting coin.** Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this state, is guilty of forgery in the second degree. [Pen. C. 1877, § 562; R. C. 1899, § 7428.]

§ 9170. **Same. Counterfeiting coin for export.** Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported, to injure or defraud any foreign government or the subjects thereof, is guilty of forgery in the third degree. [Pen. C. 1877, § 563; R. C. 1899, § 7429.]

§ 9171. **Third degree. Forging process of court.** Every person who, with intent to defraud, falsely makes, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate or officer, or being or purporting to be, any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be, any certificate, order or allowance by any competent court or officer, or being or purporting to be, any license or authority authorized by any statute; or,

2. Any instrument in writing, being or purporting to be the act of another, by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are or purport to be transferred, conveyed, discharged, diminished or in any manner affected, the punishment of which is not hereinbefore pre-

scribed, by which false making, altering, forging or counterfeiting, any person may be affected, bound or in any way injured in his person or property,

Is guilty of forgery in the third degree. [Pen. C. 1877, § 564; R. C. 1899, § 7430.]

§ 9172. **Same. False entries in public books.** Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the auditor of this state, or in the office of the treasurer of this state, or of any county treasurer, by which any demand or obligation, claim, right or interest, either against or in favor of this state, or any county or town, or any individual, is or purports to be, discharged, diminished, created or in any manner affected, is guilty of forgery in the third degree. [Pen. C. 1877, § 565; R. C. 1899, § 7431.]

§ 9173. **Same. Forging passenger tickets.** Every person who, with intent to defraud, forges, counterfeits or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree. [Pen. C. 1877, § 566; R. C. 1899, § 7432.]

§ 9174. **Same. Forging United States stamps.** Every person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells or offers or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree. [Pen. C. 1877, § 567; R. C. 1899, § 7433.]

§ 9175. **Same. False entries in corporate books.** Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is or purports to be discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the third degree. [Pen. C. 1877, § 568; R. C. 1899, § 7434.]

§ 9176. **Fourth degree. False entries by corporate officers.** Every person who, being a member or officer, or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership or appertaining to their business, or makes any false entries in such account or book, or keeps any false account in such business, with intent to defraud his employers, or to conceal any embezzlement of their money or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the fourth degree. [Pen. C. 1877, § 569; R. C. 1899, § 7435.]

§ 9177. **Same. Counterfeit coin.** Every person who has in his possession any counterfeit of any gold or silver coin, whether of the United States, or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same, as true or as false, or by causing the same to be so uttered or passed, is guilty of forgery in the fourth degree. [Pen. C. 1877, § 570; R. C. 1899, § 7436.]

§ 9178. **Punishment of forgery.** Forgery is punishable by imprisonment in the penitentiary as follows:

1. Forgery in the first degree, by imprisonment not less than ten years.
2. Forgery in the second degree, not exceeding ten years and not less than five.
3. Forgery in the third degree, not less than one and not exceeding five years.

4. Forgery in the fourth degree, by imprisonment in the penitentiary **not** less than one and not exceeding two years, or by imprisonment in a county jail not exceeding one year. [Pen. C. 1877, § 571; R. C. 1899, § 7437.]

§ 9179. **Uttering forged instrument or coin.** Every person who, with intent to defraud, utters or publishes as true, any forged, altered or counterfeited instrument, or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which is hereinbefore declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is guilty of forgery in the same degree as if he had forged, altered or counterfeited the instrument or coin so uttered, except as in the next section specified. [Pen. C. 1877, § 572; R. C. 1899, § 7438.]

Instrument showing on its face that it neither creates nor purports to create any liability is not subject of forgery unless extrinsic facts exist making it so. State v. Ryan, 9 N. D. 419, 83 N. W. 865.

§ 9180. **Exception. Receipt in good faith.** If it appears on the trial of the information or indictment, that the accused received such forged or counterfeited instrument or coin from another, in good faith, and for a good and valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, the jury may find the defendant guilty of forgery in the fourth degree. [Pen. C. 1877, § 573; R. C. 1899, § 7439.]

§ 9181. **Signing own as name of another.** Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own. [Pen. C. 1877, § 574; R. C. 1899, § 7440.]

§ 9182. **Indorsing own as name of another.** Every person who, with intent to defraud, indorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is indorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the indorsement of a person bearing a different name from his own. [Pen. C. 1877, § 575; R. C. 1899, § 7441.]

§ 9183. **Erasures and obliterations.** The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing. [Pen. C. 1877, § 576; R. C. 1899, § 7442.]

§ 9184. **Writing and written defined.** Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter. [Pen. C. 1877, § 577; R. C. 1899, § 7443.]

§ 9185. **Fictitious name to instrument.** The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation: notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence. [Pen. C. 1877, § 578; R. C. 1899, § 7444.]

CHAPTER 50.

LARCENY.

§ 9186. **Larceny defined.** Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof. [Pen. C. 1877, § 580; R. C. 1899, § 7445.]

An information which charges offense in language of statute is sufficient. *State v. Hellekson*, 13 S. D. 242, 83 N. W. 254.

§ 9187. **Same. Appropriating lost property.** One who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny. [Pen. C. 1877, § 581; R. C. 1899, § 7446.]

§ 9188. **Degrees of larceny.** Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny. [Pen. C. 1877, § 582; R. C. 1899, § 7447.]

§ 9189. **Grand and petit larceny defined.** Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding twenty dollars.

2. When such property, although not of value exceeding twenty dollars in value, is taken from the person of another.

Larceny in other cases is petit larceny. [Pen. C. 1877, § 583; R. C. 1899, § 7448.]

§ 9190. **Punishment of grand larceny.** Grand larceny is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [Pen. C. 1877, § 584; R. C. 1899, § 7449.]

§ 9191. **Punishment of petit larceny.** Petit larceny shall be punishable by a fine of not less than ten dollars or more than one hundred dollars, or imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment, at the discretion of the court. [1879, ch. 25, § 2; R. C. 1899, § 7450.]

§ 9192. **Grand larceny in house or vessel.** When it appears upon the trial of an information or indictment for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender may be punished by imprisonment in the penitentiary not less than one and not exceeding eight years. [Pen. C. 1877, § 586; R. C. 1899, § 7451.]

§ 9193. **Larceny in nighttime from person.** When it appears from such trial, that such larceny was committed by stealing in the nighttime, from the person of another, the offender may be punished by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 587; R. C. 1899, § 7452.]

§ 9194. **Larceny of written instruments. Value.** If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen. [Pen. C. 1877, § 588; R. C. 1899, § 7453.]

§ 9195. **Value of passage tickets.** If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, the price at which the ticket entitling a person to take a like passage is

usually sold by the proprietors of such conveyance, shall be deemed the value of such ticket. [Pen. C. 1877, § 589; R. C. 1899, § 7454.]

§ 9196. **Value. Securities never issued.** All the provisions of this chapter shall apply when the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner. [Pen. C. 1877, § 590; R. C. 1899, § 7455.]

§ 9197. **Larceny of part of realty.** All the provisions of this chapter shall apply when the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if such thing had been severed by another person at some previous time. [Pen. C. 1877, § 591; R. C. 1899, § 7456.]

§ 9198. **Larceny of wrecked goods.** Every person who takes away any goods from any stranded or wrecked steamboat or other vessel, or any goods floating on the water, or goods cast by the water upon the shore, or goods lodged upon drifts, snags or other obstructions in a water course, or goods found in any creek, or who knowingly becomes possessed of any such, and does not deliver the same within forty-eight hours thereafter, to the sheriff or coroner of the county where the same is found, is guilty of a misdemeanor. [Pen. C. 1877, § 592; R. C. 1899, § 7457.]

§ 9199. **Buying or receiving stolen property.** Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever, that has been stolen from any other, knowing the same to have been stolen, and with the intent to deprive the owner thereof, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, if the value of the goods so bought or received equals or exceeds twenty dollars; if the value of said goods is less than twenty dollars, by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 593; R. C. 1899, § 7458; 1903, ch. 190.]

§ 9200. **Fraudulent consumption of gas.** Every person who, with intent to defraud, makes, or causes to be made, any pipe or other instrument or contrivance, and connects the same or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter provided for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor. [Pen. C. 1877, § 594; R. C. 1899, § 7459.]

§ 9201. **Stealing without, and bringing into state.** Every person who steals the property of another in any other state or country, and brings the same into this state, may be convicted and punished in the same manner as if such larceny had been committed in this state; and such larceny may be charged to have been committed in any county into or through which such stolen property has been brought. [Pen. C. 1877, § 595; R. C. 1899, § 7460.]

§ 9202. **Reward.** The sum of one hundred dollars shall be paid to any person or persons for the arrest and conviction of each and every person who steals any horses, cattle or mules from any person or persons in this state, which amount shall be paid to the person or persons entitled thereto, on the presentation of a certificate, issued as hereinafter provided, from the clerk of the court of the county where such conviction was had, setting forth the object for which the same was issued, to the treasurer of the proper county; and such county treasurer shall take a receipt for the same; setting forth the object for which it was paid, which certificate and receipt shall be forwarded to the state auditor, who shall, at the next settlement, place a warrant for such amount

in the hands of the state treasurer, to be credited on the settlement with said county treasurer. [1897, ch. 88, § 1; R. C. 1899, § 7460a.]

§ 9203. **How obtained.** Any person or persons claiming such bounty shall, within twenty days after the conviction of the criminal, apply to the judge of the district court of the county wherein such conviction was had, for an order on the clerk for such certificate. The judge of said court shall thereupon, after the expiration of said twenty days, appoint a time and place for the purpose of taking and hearing evidence of the person or persons claiming such bounty, establishing their right thereto, who shall be notified by the clerk of said court of the time and place for hearing of the same; and, if after hearing such evidence, it shall appear to the satisfaction of said judge that any person or persons applying therefor are entitled to such bounty, he shall apportion the same among the claimants, if more than one, and make an order directing the clerk to issue a certificate or certificates therefor. Each any every person applying for such bounty shall pay all costs and expenses made by him or them, and shall have no right to such bounty without they apply for the same within the time mentioned in this section. [1897, ch. 88, §§ 2, 3; R. C. 1899, § 7460b.]

CHAPTER 51.

EMBEZZLEMENT.

§ 9204. **Embezzlement defined.** Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted. [Pen. C. 1877, § 596; R. C. 1899, § 7461.]

Ownership of property embezzled must be alleged. *State v. Collins*, 4 N. D. 433, 61 N. W. 467.

Where embezzlement as agent is charged, agency must be shown. *State v. Wine*, 7 N. D. 18, 72 N. W. 905; *State v. Wright*, 15 S. D. 628, 91 N. W. 311.

§ 9205. **Fraudulent appropriation of public funds or securities.** If any county treasurer or other officer or person charged with the collection, receipt, safe-keeping, transfer or disbursement of public moneys or securities, or any part thereof belonging to the state or any county, precinct, district, city, town or school district shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever, such public moneys or securities, or any portion thereof, or shall use the same or any portion thereof by way of investment in any kind of securities, stocks, loans, property, land and merchandisē, or in any form whatever not authorized by law, or shall loan the same or any portion thereof with or without interest to any company or corporation, association or individual, or if any person shall advise, aid, or in any manner knowingly participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said moneys or securities as aforesaid as shall be thus converted, used, invested, loaned, or paid out as aforesaid, and upon conviction thereof, such county treasurer or other officer or person, shall be punished by imprisonment in the penitentiary for a term of not less than one year, nor more than twenty-one years, according to the magnitude of the embezzlement, and also pay a fine equal to double the amount of money or other property so embezzled as aforesaid; which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process for the use of the state, county, precinct, district, town, city or school district whose moneys or securities have been so embezzled. [Pol. C. ch. 28, § 104; R. C. 1899, § 1310.]

§ 9206. **Fraudulent appropriation by officer of corporation.** If any person, being an officer, director, trustee, clerk, servant or agent of any associa-

tion, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of its trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement. [Pen. C. 1877, § 597; R. C. 1899, § 7462.]

The state is a "body politic," and not an association, society or corporation, within meaning of this section. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 9207. When carrier guilty of. If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose inconsistent with the safe-keeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof or not. [Pen. C. 1877, § 598; R. C. 1899, § 7463.]

§ 9208. Fraudulent appropriation by trustee. If any person being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, receiver, executor, administrator or collector, or being otherwise entrusted with, or having in his control, property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement; provided, however, that it shall be no defense to a prosecution under this section that the accused was entitled to a commission out of the money or property appropriated as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the party accused; provided, further, that it shall not be embezzlement for any bailee, servant, attorney, agent, clerk, trustee, or any other person mentioned in this section to retain his collection fee or charges on the collection made by him. [Pen. C. 1877, § 599; R. C. 1899, § 7464; 1901, ch. 82.]

Evidence must show agency. *State v. Wine*, 7 N. D. 18, 72 N. W. 905.

Misappropriation of partnership funds by general partner not embezzlement. *State v. Reddick*, 2 S. D. 124, 48 N. W. 846.

State treasurer unlawfully appropriating state's money is not an offender under this section. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 9209. Fraudulent conversion by bailee. If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not. [Pen. C. 1877, § 600; R. C. 1899, § 7465.]

§ 9210. Fraudulent appropriation by clerk or servant. If any clerk or servant of any private person or partnership or corporation, except apprentices and persons within the age of eighteen years, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement. [Pen. C. 1877, § 601; R. C. 1899, § 7466.]

In prosecution under this section, it is necessary to allege ownership of property embezzled. *State v. Collins*, 4 N. D. 433, 61 N. W. 467.

§ 9211. Distinct taking not necessary. A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion or use of property, coming within the above prohibitions is sufficient. [Pen. C. 1877, § 602; R. C. 1899, § 7467.]

§ 9212. Evidence of debt. Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether

it has been delivered or issued as a valid instrument or not. [Pen. C. 1877, § 603; R. C. 1899, § 7468.]

§ 9213. **Claim of title. Good faith.** Upon any information or indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay a demand held against him. [Pen. C. 1877, § 604; R. C. 1899, § 7469.]

§ 9214. **Intent to restore no defense.** The fact that the accused intended to restore the property embezzled, is no ground of defense or of mitigation of punishment, if it has not been restored before a complaint has been laid before a magistrate, charging the commission of the offense. [Pen. C. 1877, § 605; R. C. 1899, § 7470.]

Intention to restore no defense. State v. Serenson, 7 S. D. 277, 64 N. W. 130.

§ 9215. **Mitigation of punishment.** Whenever it is made to appear that prior to any complaint laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled or any part thereof, such fact is not a ground of defense to the information or indictment, but it authorizes the court to mitigate punishment in its discretion. [Pen. C. 1877, § 606; R. C. 1899, § 7471.]

§ 9216. **Punishment for embezzlement.** Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled. And when the property embezzled is an evidence of debt or right in action, the sum due upon it or secured to be paid by it, shall be taken as its value. [Pen. C. 1877, § 607; R. C. 1899, § 7472.]

Punishment for embezzlement the same as for larceny. State v. Wright, 15 S. D. 628, 91 N. W. 311; State v. Taylor, 7 S. D. 533, 64 N. W. 548.

CHAPTER 52.

EXTORTION.

§ 9217. **Extortion defined.** Extortion is the obtaining of property from another with his consent induced by a wrongful use of force or fear, or under color of official right. [Pen. C. 1877, § 608; R. C. 1899, § 7473.]

§ 9218. **Threats constituting extortion.** Fear such as will constitute extortion, may be induced by threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,
2. To accuse him, or any relative of his or member of his family, of any crime; or,
3. To expose, or impute to him or them, any deformity or disgrace; or,
4. To expose any secret affecting him or them. [Pen. C. 1877, § 609; R. C. 1899, § 7474.]

§ 9219. **Punishment for extortion.** Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in the last section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [Pen. C. 1877, § 610; R. C. 1899, § 7475.]

§ 9220. **Same, under official right.** Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor. [Pen. C. 1877, § 611; R. C. 1899, § 7476.]

§ 9221. **Obtaining signature.** Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained. [Pen. C. 1877, § 612; R. C. 1899, § 7477.]

§ 9222. **Sending threatening letters.** Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying or adapted to imply, any threat such as is specified in section 9218, is punishable in the same manner as if such money or property were actually obtained by means of such threat. [Pen. C. 1877, § 613; R. C. 1899, § 7478.]

§ 9223. **Attempts to extort money.** Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section 9218, to extort money or other property from another, is guilty of a misdemeanor. [Pen. C. 1877, § 614; R. C. 1899, § 7479.]

CHAPTER 53.

TRUSTS, POOLS AND COMBINATIONS.

§ 9224. **Combinations among dealers in produce.** Every person who is a dealer in, or buyer of grain, hogs, cattle or stock of any kind, and who enters into any contract, agreement, understanding or combination with any other person, not his partner, who is a like dealer or buyer, either:

1. For the pooling of the price of grain, hogs, cattle or stock, of any kind, between himself and such other person, or others; or,
2. For the division between them of the aggregate or net proceeds of the earnings or profits of such dealers or buyers or any portion thereof; or,
3. For fixing or establishing the price which such dealers or buyers shall pay or offer for grain, hogs, cattle or stock of any kind,

Is guilty of a misdemeanor. [1890, ch. 173, § 1; R. C. 1895, § 7480.]

§ 9225. **Combination to fix prices.** Every person who creates, enters into or becomes a member of or party to any pool, trust, combination or confederation, or makes or enters into any contract, agreement or understanding therefor, with another person, either:

1. To limit or fix the price of any commodity, article or merchandise; or,
2. To limit or fix the amount or quantity of any commodity, article or merchandise to be manufactured, mined, produced or sold in this state,

Is guilty of a misdemeanor. [1890, ch. 174, § 1; R. C. 1895, § 7481.]

§ 9226. **Punishment.** Every corporation whether organized under the laws of this state or any other state or country, and doing business in this state, and every partnership or association of individuals so doing business, which shall violate any of the provisions of the last two sections, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than one and not exceeding twenty per centum of the capital stock of such corporation or of the amount invested in such company, firm or association. [1890, ch. 173, § 3; R. C. 1895, § 7482.]

§ 9227. **Violations by corporate officers.** Every person who, as president, manager, director, stockholder, receiver or agent or other person of any corporation, on behalf of such corporation as is mentioned in the last section, or as a member of any partnership or association of individuals, violates any of the provisions of this chapter, is guilty of a misdemeanor. [1890, ch. 174, § 3; R. C. 1895, § 7483.]

§ 9228. **No privilege from testifying.** No person not a defendant on trial shall be excused or claim any immunity from testifying, or producing his records, contracts, books or papers, or the records, contracts, books or papers in his possession or under his control belonging to any other person, partnership, corporation or association, upon the trial of a prosecution for the violation of any of the provisions of this chapter, but such testimony or evidence shall not be used against the person so testifying or producing records, contracts, books or papers upon a prosecution for violating any of the provisions of this chapter. [1890, ch. 173, § 2; R. C. 1895, § 7484.]

§ 9229. **Defining trusts.** A trust is a combination of capital, skill or acts by two or more persons, firms, corporations, or associations of persons, or two or more of them for either, any, or all of the following purposes:

1. To create or carry out restrictions in trade.
2. To limit or reduce the production, or increase or reduce the price of merchandise or commodities.
3. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such article or commodity shall be covered up or made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor or manufacturer to control the wholesale or retail price of any article or commodity after the title to such article or commodity shall have passed from such vendor or manufacturer.

4. To make or enter into, or examine or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card price list, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any article or commodity that its price might in any manner be affected. [1905, ch. 188, § 1.]

§ 9230. **Penalty for violation.** Any corporation incorporated under the laws of this state or authorized to do business therein which shall violate any of the provisions of this chapter, shall thereby forfeit its articles of incorporation and franchise and its corporate existence shall cease and determine. [1905, ch. 188, § 2.]

§ 9231. **Duty of attorney general upon violation.** For a violation of any of the provisions of this chapter by any corporation mentioned herein, it shall be the duty of the attorney general upon his own motion or upon the sworn complaint of any person aggrieved, to institute a suit or quo warranto proceedings in any county in this state in which such corporate existence does business or may have an office, for the forfeiture of its charter, rights, franchise, and a dissolution of its corporate existence. [1905, ch. 188, § 3.]

§ 9232. **Foreign corporations violating prohibited from doing business.** Every foreign corporation authorized to do business in the state of North Dakota, violating any of the provisions of this chapter, is hereby denied the right of and prohibited from doing any business within this state, and the authority granted by the filing of its articles of incorporation in this state authorizing it to do business therein, shall cease and become void, and it shall be the duty of the attorney general to enforce this provision by injunction

or other proper proceedings instituted in the county of Burleigh or in any county in which such foreign corporation does business, in the name of the state on his relation. [1905, ch. 188, § 4.]

§ 9233. Secretary of state to require affidavits annually from corporations.

Penalty for violation. It shall be the duty of the secretary of state on or before the first day of September of each year to address to the president, secretary or treasurer of each corporate company doing business in this state and the person designated by the articles of incorporation filed with the secretary of state by foreign corporations as the person on whom service of process may be had, whose post office address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of its business or interests in or with any trust, company, association of persons, or stockholders as named in section 9229, and to require answer under oath of the president, secretary or treasurer or any director of said company or any agent of any foreign corporation authorized to do business in this state, a form of affidavit which shall be inclosed in said letter of inquiry, as follows:

State of North Dakota. }
County of } ss.

I,, do solemnly swear that I am the..... (president, secretary, treasurer or director, or agent), of the corporation known and styled as.....duly incorporated under the laws of.....(name of state) on the.....day of..... 19... and now transacting or conducting business in the state of North Dakota, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the saidknown and styled as aforesaid, has not, since the first day of July, 1905, created, entered into or become a member or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state; and that it has not issued and does not own any trust certificates, and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sales of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

(Seal)

.....
(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a.....within and for the county of.....this.....day of....., 19...

.....
And on refusal to make such oath in answer to said inquiry or failure to do so within thirty days from the mailing thereof, the secretary of state shall certify that fact to the attorney general, whose duty it shall be at the earliest possible moment, in the name of the people of the state of North Dakota, at the relation of the attorney general, to proceed against such cor-

poration for the recovery of a penalty of fifty dollars for each day after such refusal to make oath or failure to make said oath within thirty days from the mailing of said notice, or the attorney general upon such failure or refusal may have proper proceedings instituted within any county in the state of North Dakota forfeiting such articles of incorporation or authority to do business within the state of North Dakota and revoke the right of foreign corporations located herein to do business in this state. [1905, ch. 188, § 5.]

§ 9234. **Violation declared a misdemeanor. Punishment.** Any violation of either or all of the provisions of this chapter shall be and is hereby declared to be a conspiracy against trade and a misdemeanor, and any person who may be or may become engaged in any such conspiracy or taking part therein, or aid or advise in its commission or who shall as principal, manager, director, agent, servant or employe, or in any other capacity knowingly carry out any of the stipulations, purposes, prices, rates, orders thereunder or in pursuance thereof, shall be punished by a fine of not less than two thousand dollars. [1905, ch. 188, § 6.]

§ 9235. **What necessary in information.** In any information or indictment for any offense named in this chapter it is sufficient to state the purposes of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how or where it was created. [1905, ch. 188, § 7.]

§ 9236. **What necessary to prove in prosecution.** In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. [1905, ch. 188, § 8.]

§ 9237. **Contracts in violation void.** Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforceable either in law or in equity. [1905, ch. 188, § 9.]

§ 9238. **What exempt.** The provisions of this chapter shall not apply to agricultural products or live stock while in the hands of the producer or raiser. [1905, ch. 188, § 10.]

§ 9239. **Purchasers of articles from violators not liable.** Any purchaser of any article or commodity from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this chapter, shall not be liable for the price or payment of such article or commodity and may plead this article as a defense to any suit for such price or payment. [1905, ch. 188, § 11.]

§ 9240. **How fines recovered.** The fines herein provided for may be recovered in an action of debt in the name of the people of the state of North Dakota, and a preponderance of evidence in favor of the state shall be sufficient to authorize a verdict and judgment for the state. [1905, ch. 188, § 12.]

§ 9241. **Who deemed guilty of violation.** All agreements between corporations, associations or individuals seeking to control or regulate the price of any article of merchandise or any material to be used for constructive purposes, and all combinations between persons, firms or corporations, bidding for the doing of work of any kind or description to be let by the state; any firm, co-partnership, corporation or individual within this state seeking to control or regulate the price at which said work shall be taken or the bids to be made therefor by different firms, co-partnerships, corporations or individuals, shall be considered as a violation of section 9229 and punished accordingly, and it shall be the duty of the attorney general to enforce the provisions of this section in the same manner as that hereinbefore provided for enforcing the provisions of this chapter. [1905, ch. 188, § 13.]

CHAPTER 54.

FALSE PERSONATIONS AND CHEATS.

§ 9242. **Falsely personating another.** Every person who falsely personates another, and in such assumed character, either:

1. Marries or pretends to marry or to sustain the marriage relation toward another, with or without the connivance of such other person; or,

2. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

4. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating or to any other person, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 615; R. C. 1899, § 7485.]

§ 9243. **Falsely personating and receiving.** Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received. [Pen. C. 1877, § 616; R. C. 1899, § 7486.]

§ 9244. **Personating officer and others.** Every person who falsely personates any public officer, civil or military, or any fireman or any private individual having special authority by law to perform any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed, is guilty of a misdemeanor. [Pen. C. 1877, § 617; R. C. 1899, § 7487.]

§ 9245. **Unlawfully wearing grand army badge.** Every person who is found wearing the badge of the Grand Army of the Republic, and who is not entitled so to do by being a member thereof, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than ten and not exceeding twenty-five dollars for each and every offense. One-fourth of any fine imposed under the provisions of this section, when collected, shall be paid to the complainant. Justices of the peace have jurisdiction to try and determine complaints hereunder, subject to the right of the defendant to appeal to the district court. [1887, ch. 187, §§ 1, 2; R. C. 1895, § 7488.]

§ 9246. **Obtaining signature or property by false pretenses.** Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment. [Pen. C. 1877, § 618; R. C. 1899, § 7489.]

Must be fraudulent representation of existing or past fact by one who knows that it is not true. *State v. Stewart*, 9 N. D. 409, 83 N. W. 869.

§ 9247. **For charitable purposes.** Every person who designedly, by color or aid of any false token or writing or other false pretenses, obtains the

signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment. [Pen. C. 1877, § 619; R. C. 1899, § 7490.]

§ 9248. **Punishment for certain false pretenses.** If the false token by which any money or property is obtained, in violation of sections 9246 and 9247, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years, instead of by the punishments prescribed by those sections. [Pen. C. 1877, § 620; R. C. 1899, § 7491.]

§ 9249. **When check is false token.** The use of a matured check or other order for the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto. [Pen. C. 1877, § 621; R. C. 1899, § 7492.]

§ 9250. **Mock auctions.** Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state. [Pen. C. 1877, § 622; R. C. 1899, § 7493.]

CHAPTER 55.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 9251. **Officer willfully destroying vessel.** Every captain or other officer or person in command or charge of any vessel, who, within this state, willfully wrecks, sinks or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the penitentiary for life. [Pen. C. 1877, § 623; R. C. 1899, § 7494.]

§ 9252. **Others, same.** Every person other than such as are embraced within the last section, who is guilty of an act therein prohibited, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three. [Pen. C. 1877, § 624; R. C. 1899, § 7495.]

§ 9253. **Fitting out vessel with intent to wreck.** Every person guilty of fitting out any vessel, or lading any cargo on board of any vessel, with intent to cause or permit the same to be wrecked, sunk or otherwise injured or destroyed, and thereby to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three. [Pen. C. 1877, § 625; R. C. 1899, § 7496.]

§ 9254. **Making false manifest.** Every person guilty of preparing, making or subscribing any false or fraudulent manifest, invoice, bill of lading, boat's register or protest, with intent to defraud another, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 626; R. C. 1899, § 7497.]

CHAPTER 56.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 9255. **Destroying property insured.** Every person who willfully burns or in any other manner injures or destroys any property whatever, which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same is the property of such person or of any other, is punishable by imprisonment in the penitentiary not exceeding seven years and not less than four. [Pen. C. 1877, § 627; R. C. 1899, § 7498.]

§ 9256. **Presenting false proof of loss.** Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey, affidavit, proof of loss or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 628; R. C. 1899, § 7499.]

CHAPTER 57.

FALSE WEIGHTS AND MEASURES.

§ 9257. **False weights and measures.** If any person with intent to defraud, uses a false balance, weight or measure, in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged or given in payment, he shall be punished by fine not exceeding one hundred dollars nor less than five dollars, or by imprisonment in a county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages. [Pen. C. 1877, § 629; R. C. 1899, § 7500.]

§ 9258. **Retaining same.** Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permits it to be used in violation of the last section, shall be punished as therein provided. [Pen. C. 1877, § 630; R. C. 1899, § 7501.]

§ 9259. **Officer may seize same.** Every person who is authorized or enjoined by law to arrest another person for a violation of sections 9257 and 9258, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. [Pen. C. 1877, § 631; R. C. 1899, § 7502.]

§ 9260. **May be tested and destroyed.** The magistrate to whom any weight or measure is delivered, pursuant to the last section, shall, upon the examination of the accused, or, if the examination is delayed or prevented, without

awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the state's attorney of the county in which the accused is liable to prosecution or trial, as the interests of justice in his judgment may require. [Pen. C. 1877, § 632; R. C. 1899, § 7503.]

§ 9261. **Duty of state's attorney.** Upon the conviction of the accused, such state's attorney shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such state's attorney, to be destroyed. [Pen. C. 1877, § 633; R. C. 1899, § 7504.]

§ 9262. **Stamping false weight or tare.** Every person who knowingly marks or stamps false or short weight or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor. [Pen. C. 1877, § 634; R. C. 1899, § 7505.]

CHAPTER 58.

ILLEGAL BRANDING OF STOCK.

§ 9263. **Unlawfully branding or stealing stock.** Every person who willfully and unlawfully marks, brands, kills or sells, or causes to be marked, branded, killed or sold, any horse, mule, cow, calf, or other neat cattle, or any sheep or swine, the property of another, is guilty of a felony, and upon conviction thereof, is punishable by imprisonment in the penitentiary for not less than one and not exceeding five years, or by fine of not less than five hundred dollars and not exceeding one thousand dollars, or by both. Every person who commits grand larceny of any animal above specified, the property of another, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine of not less than five hundred dollars and not exceeding one thousand dollars, or by both such fine and imprisonment. [1897, ch. 70; R. C. 1899, § 7506.]

§ 9264. **Willfully cutting off ears from stock.** Every person who willfully cuts off either or both ears of any horse, colt, mule, cow, calf, ox, sheep or swine, is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than twenty-five and not exceeding one hundred dollars for each and every animal so maimed. [1891, ch. 42, § 2; R. C. 1895, § 7507.]

§ 9265. **Willfully driving stock from range.** Every person who willfully drives or causes to be driven, any horses, mules, cattle, sheep or swine from the customary range of such animals, without the permission of the owner thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not less than thirty days and not exceeding six months, or by a fine of not less than fifty and not exceeding one hundred dollars, or by both. [1891, ch. 42, § 3; R. C. 1895, § 7508.]

§ 9266. **Unlawful branding of stock.** Every person who, at any time between the first day of November and the first day of May following, brands or marks any horse, colt, mule, ass, cow, calf, sheep, swine or other animal that is running at large, is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than twenty-five and not exceeding one hundred dollars, or by both. [1891, ch. 41, § 1; R. C. 1895, § 7509.]

§ 9267. **Exception.** The provisions of the last section shall not be construed to prevent the owner of any such animals as are mentioned therein, from branding them on his own premises at any time in the presence of two or more responsible citizens of this state as witnesses of such branding. [1897, ch. 41, § 1; R. C. 1895, § 7510.]

§ 9268. **Report to secretary of state. Penalty.** Any butcher in this state who shall kill within this state any head of neat cattle upon which there is a brand, shall keep a record thereof showing from whom such animal was purchased, when and where purchased, and the place of residence of the person from whom purchased, the sex and age of the animal to the best of his knowledge, and a description of any and all brands thereon, which record shall be open to inspection during business hours by the state's attorney, or person authorized by him, of the county in which such butcher or person killing said cattle shall reside. It shall be the duty of every butcher killing branded cattle within this state to make a verified report to the secretary of state on the first day of each and every month, the facts required to be made of record by this section, upon blank forms which shall be provided for that purpose by said secretary and furnished to butchers upon application therefor without cost. Any person engaged in the business of killing any of the animals mentioned in this section and selling the meat thereof, either at retail or wholesale, shall be deemed a butcher. Any person who violates any of the provisions of this section is guilty of a misdemeanor. [1899, ch. 37; R. C. 1899, § 7510a.]

§ 9269. **Must expose hide to purchaser. Penalty.** Every person who offers to sell or sells any beef and fails to expose to the purchaser on demand the hide of the animal to be sold or sold, and does not keep such hide for ten days after the sale, at his place of residence, or refuses to allow the same to be inspected by any other person, is punishable by imprisonment in the county jail not exceeding three months, or by fine not exceeding one hundred dollars, or both. [1901, ch. 31.]

CHAPTER 59.

FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

§ 9270. **Fraudulent conveyance.** Every person who, being a party to any conveyance or assignment of any real or personal property or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor. [Pen. C. 1877, § 635; R. C. 1899, § 7511.]

Conveyance to secure honest debt not fraudulent. *Paulson v. Ward*, 4 N. D. 100, 58 N. W. 792.

Fraud upon creditors cannot be predicated upon the disposition of a homestead. *Kvello v. Taylor*, 5 N. D. 76, 63 N. W. 889.

§ 9271. **Removing property to avoid execution.** Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor. [Pen. C. 1877, § 636; R. C. 1899, § 7512.]

§ 9272. **Unlawfully preferring creditors.** Every person who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor or creditors, upon any trust or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor. [Pen. C. 1877, § 637; R. C. 1899, § 7513.]

§ 9273. **Frauds in insolvencies.** Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provisions of any law now in force or that may hereafter be enacted, either:

1. Fraudulently presents, or authorizes to be presented on his behalf such application, in a case in which it is not authorized by law; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher or other paper or document, knowing the same to contain any false statement; or,

3. Fraudulently makes and exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher; or,

4. Practices any fraud upon any creditor, with intent to induce him to petition for or consent to such discharge; or,

5. Conspires with or induces any person fraudulently to unite as creditor in any petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor. [Pen. C. 1877, § 638; R. C. 1899, § 7514.]

CHAPTER 60.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

§ 9274. **Fictitious subscriptions for stock.** Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed, and every person who signs to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor. [Pen. C. 1877, § 639; R. C. 1899, § 7515.]

§ 9275. **Fraud in procuring organization.** Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. [Pen. C. 1877, § 640; R. C. 1899, § 7516.]

§ 9276. **Unlawful use of names.** Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor. [Pen. C. 1877, § 641; R. C. 1899, § 7517.]

§ 9277. **Unlawful loans by bank directors.** Every director of any corporation having banking powers, who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended to make any loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, for an amount greater than is allowed by law, is guilty of a misdemeanor. [1897, ch. 32; R. C. 1899, § 7518.]

§ 9278. **Unauthorized loans not invalid.** Nothing in the last section shall render any loan made by the directors of any such corporation in violation thereof, invalid. [Pen. C. 1877, § 644; R. C. 1899, § 7519.]

§ 9279. **Sale or pledge of bank notes.** Every officer or agent of any corporation having banking powers, who sells or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both. [Pen. C. 1877, § 645; R. C. 1899, § 7520.]

§ 9280. **Unlawful issue of bank notes.** Every officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation, to an amount which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both. [Pen. C. 1877, § 646; R. C. 1899, § 7521.]

§ 9281. **Unlawful guarantee or indorsement.** Every officer or agent of any banking corporation, who makes or delivers any guaranty or indorsement upon behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor. [Pen. C. 1877, § 647; R. C. 1899, § 7522.]

§ 9282. **Bank officer overdrawing account.** Every officer, agent, teller, clerk or servant of any bank, banking association or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains money, notes or funds of such bank, is guilty of a misdemeanor. [Pen. C. 1877, § 648; R. C. 1899, § 7523.]

§ 9283. **Insolvent bank or officer receiving deposit.** No bank, banking house, exchange broker or deposit office or firm, company, corporation or party engaged in the banking, brokerage or deposit business, shall accept or receive on deposit, with or without interest, any moneys, bank bills or notes, or United States notes or United States treasury notes or currency or other notes, bills or drafts circulating as money or currency, when such bank, banking house, exchange broker or deposit office, firm, company or corporation or party is insolvent: and if any such bank, banking house, exchange broker or deposit office, firm, company, corporation or party shall receive or accept on deposit any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby, any such deposit as aforesaid, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in the county jail not to exceed one year, or by both fine and imprisonment, the fine not to exceed ten thousand dollars. [1879, ch. 5, § 1; 1893, ch. 27, §§ 25, 26; R. C. 1895, § 7524.]

§ 9284. **Omitting to enter receipt of property.** Every director, officer or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association, is guilty of a misdemeanor. [Pen. C. 1877, § 649; R. C. 1899, § 7525.]

§ 9285. **Fraudulent destruction of books.** Every director, officer, agent or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in the making of any false entry, or omits or concurs in omitting

to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 650; R. C. 1899, § 7526.]

§ 9286. **Publishing false report.** Every director, officer or agent of any corporation or joint stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than as are mentioned in sections 9275 and 9276, or willfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor. [Pen. C. 1877, § 651; R. C. 1899, § 7527.]

§ 9287. **Refusing to permit inspection of books.** Every officer or agent of any corporation having or keeping an office within this state, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor. [Pen. C. 1877, § 652; R. C. 1899, § 7528.]

§ 9288. **Insolvencies deemed fraudulent.** Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe. [Pen. C. 1877, § 653; R. C. 1899, § 7529.]

§ 9289. **How fraudulent acts punishable.** In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor. [Pen. C. 1877, § 654; R. C. 1899, § 7530.]

§ 9290. **How violation of duty punishable.** Every director of any moneyed corporation who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor. [Pen. C. 1877, § 655; R. C. 1899, § 7531.]

§ 9291. **When director deemed to have knowledge.** Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this chapter. [Pen. C. 1877, § 658; R. C. 1899, § 7532.]

§ 9292. **When director presumed to have assented.** Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors. [Pen. C. 1877, § 659; R. C. 1899, § 7533.]

§ 9293. **Same, when director was absent from meeting.** Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause or

in writing require his dissent from such illegality to be entered, in the minutes of the directors. [Pen. C. 1877, § 660; R. C. 1899, § 7534.]

§ 9294. **Foreign corporation no defense.** It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business or keeping an officer thereof, within this state. [Pen. C. 1877, § 661; R. C. 1899, § 7535.]

§ 9295. **Director defined.** The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law. [Pen. C. 1877, § 662; R. C. 1899, § 7536.]

CHAPTER 61.

REQUISITES OF STEAMBOAT TICKETS.

§ 9296. **Delay in departure of vessels.** Whenever the departure of any vessel, for a passage on board of which, to a port without this state, any ticket or instrument has been sold, is delayed more than two days after the day of departure mentioned in such ticket, the person holding such ticket is entitled to his board and lodging in such vessel, without any additional charge, from the second day after the day named for departure, until the actual departure of such vessel, and is also entitled to receive from the owners or consignees of such vessel fifty cents per day for each day of such detention. And in case of refusal on the part of the owners, consignees or master of the vessel so detained to comply with this section, the person holding such ticket is entitled to recover back from the owners or consignees the amount of passage paid by him, together with his damages for such detention, not exceeding fifty dollars. [Pen. C. 1877, § 671; R. C. 1899, § 7537.]

§ 9297. **Passenger ticket. Missouri river. Requisites.** Every ticket or instrument issued as evidence of a right of passage upon the Missouri river, from any port in this state to any port of any other state or territory, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for any such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person or persons purchasing such ticket or instrument or receiving such order, certificate or receipt and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent. [Pen. C. 1877, § 672; R. C. 1899, § 7538.]

§ 9298. **Violation of last section. Punishment.** Every person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor. [Pen. C. 1877, § 673; R. C. 1899, § 7539.]

CHAPTER 62.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

§ 9299. **Bills of lading. Fraudulent. Punishment.** Every person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company or otherwise being or representing any

carrier, who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 677; R. C. 1899, § 7540.]

§ 9300. Warehouse receipts. Fraudulent. Punishment. Every person carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 678; R. C. 1899, § 7541.]

§ 9301. Same. Exceptions. No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue. [Pen. C. 1877, § 679; R. C. 1899, § 7542.]

§ 9302. Warehouse receipt. Duplicate. Every person mentioned in sections 9299 and 9300, who issues any second or duplicate receipt, or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 680; R. C. 1899, § 7543.]

§ 9303. Selling goods without consent of holder of bill of lading. Every person mentioned in sections 9299 and 9300, who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 681; R. C. 1899, § 7544.]

§ 9304. Bill of lading or receipt must be canceled. Every person, such as mentioned in section 9300, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. [Pen. C. 1877, § 682; R. C. 1899, § 7545.]

§ 9305. When last two sections do not apply. The last two sections do not apply when property is demanded by virtue of process of law. [Pen. C. 1877, § 683; R. C. 1899, § 7546.]

CHAPTER 63.

MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES,
TELEGRAPHS AND DITCHES.

§ 9306. **Injuries to railroads.** Every person who maliciously, either:

1. Removes, displaces, injures or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or any branch, branchway or turnout connected with any railroad,

Is punishable by imprisonment in the penitentiary not less than one and not exceeding four years, or in a county jail not less than six months. [Pen. C. 1877, § 684; R. C. 1899, § 7547.]

§ 9307. **When death results therefrom.** Whenever any offense specified in the last section results in the death of any human being, the offender is punishable by imprisonment in the penitentiary for not less than four years. [Pen. C. 1877, § 685; R. C. 1899, § 7548.]

§ 9308. **Injuries to highways.** Every person who maliciously digs up, removes, displaces, breaks or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of a felony. [Pen. C. 1877, § 686; R. C. 1899, § 7549.]

§ 9309. **Obstructing highway. Barbed wire fence.** Every person who shall knowingly and willfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, or shall build or place a barbed wire fence across any well traveled trail, which has been the usual and common route of travel for not less than one year prior to the commission of the offense: without placing on the outside of the top tier of barbed wire on said fence, a board, pole or other suitable protection, to be at least sixteen feet in length, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred dollars, and shall be liable for all damages to person or property by reason of the same. [Pen. C. 1877, § 687; 1895, ch. 92, § 1; R. C. 1899, § 7550.]

In action for negligent obstruction of trail there must be some evidence connecting defendant with the doing of the unlawful act, causing injury. Not liable for tort of subagent, when. *Kuhnert v. Angell*, 8 N. D. 198, 77 N. W. 1015; *Idem*, 10 N. D. 59, 84 N. W. 579.

§ 9310. **Injury to tollhouse or gate.** Every person who maliciously injures or destroys any tollhouse or turnpike gate is guilty of felony. [Pen. C. 1877, § 688; R. C. 1899, § 7551.]

§ 9311. **Injury to mileboards or guideposts.** Every person who removes or injures any mileboard, milestone or guidepost or any inscription on such, erected upon any highway, is guilty of a misdemeanor. [Pen. C. 1877, § 689; R. C. 1899, § 7552.]

§ 9312. **Injuring telegraph or telephone lines.** Every person who willfully or maliciously takes down, removes, injures or obstructs any line of telegraph or telephone or any part thereof, or appurtenance or apparatus therewith connected, or severs any wire thereof, is guilty of a misdemeanor. [Pen. C. 1877, § 690; R. C. 1899, § 7553; 1903, ch. 197.]

§ 9313. **Unauthorized diversion of water from irrigation ditch.** It shall be unlawful for any person to divert any of the waters from any irrigation ditch,

in this state, or to interfere in any manner whatever with any irrigation ditch, without first having obtained the permission of the owner of such ditch, or of the person or persons lawfully in charge thereof. [1887, ch. 74, § 1; R. C. 1895, § 7554.]

§ 9314. **Punishment. Justice's jurisdiction.** Every person violating any of the provisions of the preceding section, shall be deemed to be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than fifty, and any justice of the peace within the county where such offense may be committed shall have jurisdiction to try and determine all cases arising under the provisions of said section. [1887, ch. 74, § 2; R. C. 1895, § 7555.]

CHAPTER 64.

MALICIOUS MISCHIEF.

§ 9315. **Malicious mischief defined.** Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in the following sections, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof. [Pen. C. 1877, § 691; R. C. 1899, § 7556.]

§ 9316. **Following sections not restrictive.** The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the last section. [Pen. C. 1877, § 692; R. C. 1899, § 7557.]

§ 9317. **Poisoning domestic animals.** Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 693; R. C. 1899, § 7558.]

Case of exposing poison. See *State v. Isaacson*, 8 S. D. 69, 65 N. W. 430.

§ 9318. **Killing, maiming or torturing animals.** Every person who maliciously kills, maims or wounds any animal, the property of another, or who maliciously and cruelly beats, tortures or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor. [Pen. C. 1877, § 694; R. C. 1899, § 7559.]

§ 9319. **Abusing domestic animals. Punishment.** Every person who shall willfully overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary food or water, or cruelly beat any animal, and any person who causes or procures an animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, or deprived of necessary food or water or cruelly beaten, and any person who shall work any animal or cause the same to be worked when unfit for work, and any person who shall unnecessarily expose any animal to heat or cold, or leave the same hitched and uncovered in cold weather or storm, or in the nighttime, is guilty of a misdemeanor. Any officer finding any animal maltreated, abused or unsheltered in any of the manners hereinbefore specified, shall cause the same to be released and properly cared for and the charges therefor shall be a lien upon such animal to be collected as in case of pledge. And it shall be the duty of all incorporated municipalities that are supplied with water in whole or in part by a system of waterworks, to provide suitable and a suffi-

cient number of watering troughs wherein water for stock shall be kept at all times between May first and November first in each year. But nothing in this section contained shall be construed to mean herds of stock which do not properly belong in any such municipality; and if any person or persons shall knowingly water at any such watering trough any animal infected with any infectious disease, he shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, shall be punished by a fine not exceeding the sum of twenty-five dollars, or by imprisonment in the county jail not to exceed the term of fifteen days, or by both such fine and imprisonment. [1895, ch. 48, § 1; R. C. 1899, § 7560.]

Sufficient if there is an intention to injure cattle, property of another. *Territory v. Crozier*, 6 Dak. 8, 50 N. W. 124.

§ 9320. Keeping houses or pits for fighting animals. Every person who, either:

1. Keeps or maintains any house, pit or other place to be used in permitting any fight between birds, dogs or other animals; or,

2. Establishes, promotes or encourages any exhibition of the fighting of birds, dogs or other animals,

Is guilty of a misdemeanor. [1891, ch. 55, § 2; R. C. 1895, § 7561.]

§ 9321. Instigating fights between animals. Every person who maliciously, or for any bet, stake or reward, instigates, encourages or promotes any fight between animals, or instigates or encourages any animal to attack, bite, wound or worry another, is guilty of a misdemeanor. [Pen. C. 1877, § 696; R. C. 1899, § 7562.]

§ 9322. Officer's duty to arrest. It is hereby made the duty of every sheriff, deputy sheriff, constable, marshal or police officer within this state upon request of any citizen thereof to arrest, without a warrant, any person found violating any of the provisions of the last section, and any such officer failing, neglecting or refusing to perform such duty, is guilty of a misdemeanor. [1891, ch. 55, § 3; R. C. 1895, § 7563.]

§ 9323. Wounding or trapping birds in cemetery. Every person who, within any public cemetery or burying ground, wounds or traps any birds or destroys any bird's nest, or removes any eggs or young birds from any nest; and every person who buys or sells or offers or keeps for sale any bird which has been killed or trapped in violation of this section, is punishable by a fine of five dollars for each offense, recoverable in any justice's court within the county where the offense was committed. [Pen. C. 1877, § 698; 1885, ch. 111, § 2; R. C. 1895, § 7564.]

§ 9324. Burning buildings, grain and hay. Every person who willfully burns any building not the subject of arson, any stack of grain of any kind or of any hay, any growing or standing grain, grass, trees or fence, not the property of such person, is punishable by imprisonment in the penitentiary not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year. [Pen. C. 1877, § 699; R. C. 1899, § 7565.]

§ 9325. Injuring house of worship. Every person who willfully breaks, defaces or otherwise injures any house of worship, or any part thereof or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware or other chattel kept therein for use in connection with religious worship, is guilty of felony. [Pen. C. 1877, § 700; R. C. 1899, § 7566.]

§ 9326. Destroying building with explosive. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or injures the whole or any part of any building, by means of which the life or safety of any human being is endangered, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three. [Pen. C. 1877, § 701; R. C. 1899, § 7567.]

§ 9327. **Endangering human life with explosive.** Every person who places in, upon, under, against or near to any building any gunpowder or other explosive substance, with intent to destroy, throw down or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony. [Pen. C. 1877, § 702; R. C. 1899, § 7568.]

§ 9328. **Malicious injury to freehold.** Every person who willfully commits any trespass by either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another, or driving or riding through, into or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or,

2. Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or,

3. Maliciously severing from the freehold any produce thereof or anything attached thereto; or,

4. Digging, taking or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil or stone, being a part of the freehold or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property; or,

5. Digging, taking or carrying away from any land in any incorporated city or town of this state, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue without the license of the mayor and common council, or other governing body of such city or town or owner of the fee thereof, any earth, soil or stone, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property; or,

6. Hauling upon the real estate, lot or farm of another any dead horse, dog, cow, or other animal, or any manure, offal, putrid or unsound beef, pork, fish, hides or skins, or flesh of any kind or description, or any tin cans, filth, offal, vegetables, or other unsound or offensive matter or thing whatsoever, or any matter or thing which by putrefaction or decomposition will produce an offensive smell or effluvia, or any other substance of any kind, nature or description, without first obtaining the consent of the owner or occupant thereof in writing,

Is guilty of a misdemeanor. [Pen. C. 1877, § 703; 1879, ch. 42, § 1; R. C. 1895, § 7569; 1905, ch. 133.]

§ 9329. **Injuring timber and enumerated fixtures.** Every person who shall wantonly or maliciously cut, dig up or injure any timber set out, planted, cultivated or growing naturally, or who shall wantonly or maliciously open, let down, throw down or prostrate any fence, gate or bars, belonging to any inclosure of any description of cultivated and growing timber, or tear down or open any such fence, gate or bars, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment, and shall be liable in damages to the party injured. [Pen. C. 1877, § 704; R. C. 1899, § 7570.]

§ 9330. **Injuring standing crops.** Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor. [Pen. C. 1877, § 705; R. C. 1899, § 7571.]

§ 9331. **Injuring fruit or melons in daytime.** Every person who maliciously or mischievously enters in the daytime, the inclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy or carry away, or having lawfully entered or gone upon the premises of another, does afterward wrongfully knock off, pick, destroy or carry, any apples, peaches, pears, plums, grapes or other fruit, melons or flowers of any tree, shrub, bush or vine, shall be punished by a fine not exceeding one hundred dollars and not less than five dollars, or by imprisonment in the county jail not exceeding thirty days. [Pen. C. 1877, § 706; R. C. 1899, § 7572.]

§ 9332. **Same in nighttime.** Every person who shall, maliciously or mischievously enter the inclosure, or go upon the premises of another in the nighttime, and knock off, pick, destroy, or carry away, any apples, peaches, pears, plums, grapes or other fruit, melons or flowers, of any tree, shrub, bush or vine, or having entered the inclosure or gone upon the premises of another, in the nighttime, with the intent to knock off, pick, destroy or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days. [Pen. C. 1877, § 707; R. C. 1899, § 7573.]

§ 9333. **Injuring fruit trees.** Every person who shall, maliciously or mischievously, bruise, break or pull up, cut down, carry away, destroy or in anywise injure any fruit or ornamental tree, shrub, vine or material for hedge, being, growing or standing on the land of another, shall be punished by a fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days. [Pen. C. 1877, § 708; R. C. 1899, § 7574.]

§ 9334. **Removing landmarks.** Every person who, either:

1. Maliciously removes any monuments of stone, wood or other material, erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

2. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course or line in any such boundary; or

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks.

Is guilty of a misdemeanor. [Pen. C. 1877, § 709; R. C. 1899, § 7575.]

§ 9335. **Interfering with piers or booms.** Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this state, or hoists any gate in or about said dams, is guilty of a misdemeanor. [Pen. C. 1877, § 710; R. C. 1899, § 7576.]

§ 9336. **Destroying dam.** Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes or causes to be made, any aperture in such dam, or embankment, with intent to destroy the same, is guilty of a misdemeanor. [Pen. C. 1877, § 711; R. C. 1899, § 7577.]

§ 9337. **Removing or injuring piles.** Every person who maliciously draws up or removes, or cuts or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is punishable by imprisonment in the penitentiary not exceeding five years and not less than two, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. [Pen. C. 1877, § 712; R. C. 1899, § 7578.]

§ 9338. **Removing buoy from Missouri river.** Every person who willfully removes any buoy placed in the Missouri river by any lawful authority, is guilty of a misdemeanor. [Pen. C. 1877, § 713; R. C. 1899, § 7579.]

§ 9339. **Removing or making signal light.** Every person who unlawfully masks, alters or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three years. [Pen. C. 1877, § 714; R. C. 1899, § 7580.]

§ 9340. **Injuring written instrument.** Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable. [Pen. C. 1877, § 715; R. C. 1899, § 7581.]

§ 9341. **Mutilating election returns.** Every messenger appointed by authority of law to receive and carry any report, certificate or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law, and every person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act such as is above specified, is punishable by imprisonment in the penitentiary not exceeding five years and not less than two years. [Pen. C. 1877, § 716; R. C. 1899, § 7582.]

§ 9342. **Opening and reading sealed letter.** Every person who willfully opens and reads or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who without like authority, publishes any letter, knowing it to have been opened in violation of this section, or any part thereof, is guilty of a misdemeanor. [Pen. C. 1877, § 717; R. C. 1899, § 7583.]

§ 9343. **Disclosing telegraphic dispatch.** Every person who discloses the contents of any telegraphic dispatch or any part thereof, addressed to another person, without the permission of such person, except upon the lawful order of a court or the judge thereof, to his loss, injury or disgrace, is guilty of a misdemeanor. [Pen. C. 1877, § 718; 1883, ch. 109, § 1; R. C. 1899, § 7584.]

§ 9344. **Secreting telegraphic dispatch.** Every person who having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals or suppresses the same, is guilty of a misdemeanor. [Pen. C. 1877, § 719; R. C. 1899, § 7585.]

§ 9345. **Injuring works of art or improvement.** Every person who willfully injures, disfigures or destroys, not being the owner thereof, any monument, work of art or useful or ornamental improvement, within the limits of any village, town or city, or any shade tree or ornamental plant, growing therein, whether situated upon private ground, or on any street, sidewalk or public park or place, is guilty of a misdemeanor. [Pen. C. 1877, § 720; R. C. 1899, § 7586.]

§ 9346. **Destroying works of literature or art.** Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen or other work of literature or art, or object of curiosity deposited in any public library, gallery, museum, collection, fair or exhibition, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year. [Pen. C. 1877, § 721; R. C. 1899, § 7587.]

§ 9347. **Breaking gas or water pipe.** Every person who willfully breaks, digs up or obstructs, any pipe or main for conducting gas or water, any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is punishable by imprisonment in

the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year. [Pen. C. 1877, § 722; R. C. 1899, § 7588.]

§ 9348. **Destruction of farm buildings. Felony.** Any person who shall enter upon any farm lands situated in this state and not situated within the limits of any incorporated city, town or village, the land being the property of another, and shall tear down and remove from any unoccupied buildings standing on such premises any door, window, siding, shingles, ceiling, floor, sheathing, finish, rafters or scantling, or tear down any chimney, and shall burn such material on the premises or shall remove and take away any such materials from such premises, whether he uses or destroys the same, shall be deemed guilty of malicious trespass; and should the materials that have been taken away reduce the value of the buildings standing on said premises in the sum of more than twenty dollars, without regard to the value of the materials taken away, such person shall be deemed guilty of a felony, otherwise, of a misdemeanor. [1895, ch. 62, § 1; R. C. 1899, § 7589.]

§ 9349. **Misdemeanor, felony, how punished.** Every person violating any of the provisions of the last section shall be punishable, upon conviction of the misdemeanor, by a fine not exceeding one hundred dollars; and upon conviction of the felony, by imprisonment in the penitentiary not exceeding three years. [1895, ch. 62, § 2; R. C. 1899, § 7590.]

§ 9350. **Conjointly committed. Punishment.** Whenever two or more persons conjointly commit any such malicious trespass, the aggregate value of the materials taken away and removed by each shall be considered in determining the amount in which any such property may have been damaged, and each person shall be considered as having committed such malicious trespass to the extent of the aggregate damage done by all. [1895, ch. 62, § 3; R. C. 1899, § 7591.]

§ 9351. **How value determined.** Whenever one or more persons have committed any acts of malicious trespass, as provided in section 9348, and shall have entered upon the real estate several times and carried away such materials a little at a time, in determining the value that such improvements have been damaged, all the material carried away by any such person being tried, shall be taken into consideration, providing it shall have been taken, carried away and destroyed within one year from the date of his arrest under this chapter. [1895, ch. 62, § 4; R. C. 1899, § 7592.]

§ 9352. **May offer reward.** The board of county commissioners of any county of this state may offer a reward of not exceeding fifty dollars nor less than ten dollars for the apprehension and conviction of each person violating any of the provisions of section 9348, or who takes by fraud or stealth any wheat, oats, rye, barley, flax or other grain, or any other property, the property of another, with intent to deprive the owner thereof. [1899, ch. 61; R. C. 1899, § 7592a.]

CHAPTER 65.

PROHIBITION, UNLAWFUL DEALING IN INTOXICATING LIQUORS.

§ 9353. **Penalty for manufacturing or sale. Who may sell.** Any person, association or corporation, who shall, within this state, directly or indirectly manufacture any spirituous, malt, vinous, fermented or other intoxicating liquor, or shall import any of the same for sale or gift as a beverage, or shall keep for sale, or sell or offer for sale, or gift, barter or trade, any of such intoxicating liquors as a beverage, shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than two hundred, nor more than one thousand dollars, and be imprisoned in the county jail not less than ninety days nor more than one year; and for

the second and every successive offense, shall be deemed guilty of a felony, and be punished by imprisonment in the penitentiary not exceeding two years and not less than one year; provided, that registered pharmacists under the laws of this state may sell intoxicating liquors for medicinal, mechanical, scientific, and wine for sacramental purposes, as hereinafter provided. [1890, ch. 110, § 1; R. C. 1899, § 7593.]

§ 9354. **Druggists' permits, how obtained.** It shall be unlawful for any person or persons to sell or barter, for medicinal, scientific or mechanical purposes any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having secured a druggist's permit therefor from the county judge of the county wherein such druggist may be doing business at the time; and such county judge is hereby authorized in his discretion to grant a druggist permit for the period of one year, to any person of good moral character who is a registered pharmacist under the laws of this state, and lawfully and in good faith engaged, personally and individually, in the business of a druggist in his county, and who in his judgment can be entrusted with the responsibility of selling such liquors for the purposes aforesaid in the manner hereinafter provided. In order to obtain a druggist permit under this chapter, the applicant shall file in the office of the county judge of the county wherein he is doing business, not less than thirty days prior to the hearing thereof, a petition signed by the applicant and sixty per cent of the reputable freeholders, having the qualifications of electors of the town, village, township or ward of any city, and fifty per cent of the reputable women over twenty-one years of age, who are residents of the town, village, township or ward of any city wherein such business is located. All petitions shall set forth:

1. The town, village, city or township, and particular place therein wherein such business is located, and that the applicant is a person of good moral character and does not use intoxicating liquors as a beverage, and can be entrusted with the responsibility of selling the same.

2. That said applicant is a pharmacist as aforesaid, and is lawfully and in good faith engaged personally in the business of a druggist, as the proprietor thereof, at the place designated in the petition, and well versed in the profession.

3. That said applicant has, in his said business, exclusive of intoxicating liquors and fixures, a stock of drugs and druggists' sundries, if in any city, of the value of at least two thousand dollars, and if elsewhere, of the value of at least fifteen hundred dollars. [1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

Druggist maintaining nuisance may be enjoined. *State ex rel McClory v. McGruer*, 9 N. D. 566, 84 N. W. 363.

Druggist's permit can only be for particular place petitioned for. *State ex rel Sheeks v. Hilliard*, 10 N. D. 436, 87 N. W. 980.

§ 9355. **Application to be published.** Before any such petition shall be heard, or any permit issued to such applicant, he shall publish for at least thirty days, next prior thereto, a notice in some newspaper in the town, village, township or city where such business is located, or if none is published therein, then in some paper of general circulation in the county, stating the time and place set by said judge for the hearing of such petition. The applicant shall be required to prove the truthfulness of each and every statement contained in such petition, and the state's attorney of the county shall, and any other citizen of the county may, appear and cross-examine the witnesses of the applicant, and may introduce evidence in rebuttal of the evidence offered by the applicant. If satisfied that the signatures of such petition were signed by such persons, and that such petitioners are freeholders and citizens of such town, village, township, city or ward as above expressed, and that the statements in such petition are true, the county judge may, in his

discretion, grant a permit to the applicant to sell intoxicating liquors for medicinal, mechanical and scientific purposes only; and such permit shall be recorded upon the journal of the county court, and a certified copy thereof shall be posted in a conspicuous place in the store wherein said business is carried on before it shall be of any validity. [1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

§ 9356. **Bond of applicant.** Before such permit shall be of any validity, such druggist shall file with the county judge, to be approved by him, a good and sufficient bond to the state of North Dakota, in the sum of one thousand dollars, executed by five freeholders of the county, who shall justify in double the amount of such bond, conditioned that such applicant and any one in his employ will neither use, sell, barter or give away any intoxicating liquors in violation of law, and on violation of any of the provisions of said bond the same shall thereby become forfeited in the full amount thereof; and the conviction of said pharmacist or anyone in his employ shall be deemed prima facie evidence of such violation. Any applicant or any citizen feeling himself aggrieved by the decision of the county judge may, within ten days thereafter, upon filing a bond, made payable to the state of North Dakota, in the sum of fifty dollars, to be approved by the county judge, conditioned that he will prosecute the same to a speedy determination, and pay the costs occasioned by such appeal if the order of the county judge shall be sustained, prosecute the cause upon appeal to the district court. The procedure in any case taken on appeal to the district court from the order of the county judge shall be as prescribed by article 9, of chapter 3, of the probate code, so far as applicable, and a statement of the case with exceptions may be made, signed and certified by the county judge. If the district court shall find that the county judge has abused his discretion, or if it deems the permit to have been improperly granted or refused, it shall have power to reverse the judgment of the lower court and cause the county judge to comply with its judgment, otherwise the order of the county judge shall be by the district court affirmed. If the order of the county judge shall be reversed, the costs shall be paid by the county. If at any time there shall be filed with the county judge a petition stating that any druggist, naming him, who has a permit to sell intoxicating liquors, is not in good faith conforming to the provisions of this chapter, verified by the affidavit of at least one of the petitioners hereinafter named, and signed by the state's attorney or ten reputable men, all of whom reside in the town, village, township or city in which the business of said druggist is carried on, requesting that the permit of said druggist be canceled, the county judge shall immediately issue an order citing such druggist to appear before him on the day named, not more than ten days from the issuing of such order, at which time the question of cancellation of such permit shall be considered. Such examination shall be conducted in the same manner in all respects as herein provided for the hearing of the original petition for granting such permit, and such county judge shall, if there are reasonable grounds for believing that such druggist is not in good faith carrying out all the provisions of this chapter, cancel such permit. [1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

§ 9357. **Appeal. Penalties. Fees.** An appeal may be had from the decision of the county judge to the district court as herein provided for appeals from the application for a permit; provided, the permit of such druggist shall be inoperative till such appeal is finally decided. If any county judge shall issue a permit to any person not registered as a pharmacist, or shall knowingly grant the same to a person in the habit of becoming intoxicated, or not in good faith engaged in the business of druggist as a proprietor thereof, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars

nor more than one thousand dollars; and if any person shall sign a petition, as provided herein, of any applicant known by such person to be in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty nor more than one hundred dollars. Before the petition of a druggist for a permit to sell intoxicating liquors shall be heard by the county judge, the applicant shall pay a fee of five dollars to the county judge, who shall pay the same into the county treasury on or before the first day of the following month for the benefit of the general revenue fund. [1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

§ 9358. **Physician may prescribe, under what conditions.** Any physician who is lawfully and regularly engaged in the practice of his profession as a business, and who, in case of actual need, shall deem any intoxicating liquors necessary for the health of his patients, may give such patient a written or printed prescription therefor, stating in said prescription the particular disease for which it is given, or may administer the same himself; but no such prescription shall be given or liquors administered except in cases of actual need, and when, in his judgment, the use of intoxicating liquors is necessary. And every physician who shall give such prescription or administer such liquors in violation of this chapter, and every physician who shall give to or write for any person a prescription for intoxicating liquors for the purpose of enabling or assisting any person to evade any of the provisions of this chapter, or for the purpose of enabling or assisting any person to obtain any intoxicating liquors for use as a beverage, or to be sold or disposed of in any manner, in violation of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than three hundred nor more than eight hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months. [1890, ch. 110, § 3; R. C. 1899, § 7595.]

§ 9359. **Druggist sale regulated. Affidavit.** Any druggist having a permit to sell intoxicating liquors under the provisions of this chapter, may sell the same only by himself in person, or by a clerk who is a registered pharmacist or assistant pharmacist under the laws of this state, for medicinal purposes only, upon the printed or written affidavit of the applicant, setting forth the particular medical purposes for which such liquor is required, the kind and quantity desired; that it is necessary and actually needed for the particular purpose, by the patient to be named; and that it is not intended for a beverage, nor to sell or give away; that the applicant is over twenty-one years of age, which affidavit shall be in the following form and subscribed by the applicant in ink:

No..... Date.....
State of North Dakota, }
County of } ss.

I, the undersigned, do solemnly swear that my real name is.....; that I reside at.....(if in a city the street number must be given; if in a town or village, name of street must be given; if in the country the quarter section, township and range); county of..... state of.....; that.....of.....is necessary and actually needed by.....to be used as a medicine for the disease of.....; that it is not intended as a beverage, nor to sell nor to give away, and that I am over twenty-one years of age. I therefore make application to....., druggist, for said liquor.

....., Applicant.

Subscribed in my presence and sworn to before me this..... day of....., 19...

....., Pharmacist.

State of North Dakota, }
County of } ss.

On this.....day of.....in the year..... before me personally appeared....., known to me (or proved to me on oath of.....) to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

....., Pharmacist.
[1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 9360. Sales for mechanical and scientific purposes. Affidavit. Any such druggist may sell intoxicating liquors for mechanical, scientific, and wine for sacramental purposes only, upon the written or printed affidavit of the applicant, setting forth the particular purpose for which such liquor is required, the kind and quantity desired, that it is not intended to be used as a beverage, nor to sell nor to give away, and that it is intended only for his own use, and that the applicant is over twenty-one years of age. Such affidavit shall be in the following form and subscribed by the applicant in ink:
No..... Date.....

State of North Dakota, }
County of } ss.

I, the undersigned, do solemnly swear that my real name is.....: that I reside at.....(if in a city the street and number must be given, and if in a town or village the name of the street must be given; if in the country, the quarter section, township and range); county of..... state of.....: that.....of.....is required by myself to be used for.....purposes, to be used for.....; that it is not intended for a beverage, nor to sell nor to give away, and that I am over twenty-one years of age.

I therefore make application to..... druggist, for said liquor....., Applicant.

Subscribed in my presence and sworn to before me this.....day of.....190...

..... Pharmacist.

State of North Dakota, }
County of } ss.

On this.....day of.....in the year..... before me personally appeared....., known to me (or proved to me on the oath of.....) to be the person who executed the within instrument, and acknowledged to me that he executed the same.

....., Pharmacist.
[1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

The record of sales required to be kept is competent evidence in prosecutions against druggist. State ex rel McClory v. Donovan, 10 N. D. 203, 86 N. W. 709.

Druggist prohibited from selling to habitual drunkards; not material that he know of such habit. State v. Donovan, 10 N. D. 203, 86 N. W. 709; State v. Sasse, 6 S. D. 212, 60 N. W. 853.

§ 9361. Quantity limited. Blanks. There shall be but one sale, and one delivery, of not to exceed one pint of any intoxicating liquors. on any one affidavit, to any one person in each twenty-four hours, but no druggist shall permit the drinking on his premises, nor in any apartment connected therewith and under his control, of any intoxicating liquors purchased by affidavit or otherwise; provided, such druggist shall be permitted to sell any of the liquors mentioned herein, in quantities not less than one gallon, to any other druggist within the state holding a permit as provided in this chapter. The affidavits provided for in sections 9359 and 9360 shall be made before the pharmacist or assistant pharmacist making sale of such liquors, upon properly printed blanks, which it is hereby made the duty of the county auditor of

the county in which such sales are made, to furnish to such druggist at a cost equal to the actual and necessary outlay made therefor by him. Such blanks shall be in series of one hundred each, numbered from one to one hundred consecutively, and bound in book form, each series being of uniform style throughout, except that no two blanks of the same series shall be of the same number. It shall be the duty of the county auditor to indorse each such book with the date of delivery, and to whom made, to sign such indorsement and attest to the same with the official seal, and to keep two exact printed copies, except as to the numbers, of the blanks of each series, one of which shall be filed in his office, and one in the office of the county judge; he shall also keep a record of the series, and of the number of each series of such blanks furnished to each druggist, and shall, within ten days after the same are delivered to said druggist, file a copy thereof, together with a copy of the blank affidavits, in the office of the county judge of his county. For such services the county auditor shall be entitled to a fee of twenty-five cents for each series of blanks so furnished, to be paid by the druggist obtaining such blanks. [1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 9362. Oaths. Affidavits preserved. All pharmacists and assistant pharmacists are hereby empowered to administer oaths for the purpose of this chapter, and no such affidavit shall be received by any pharmacist or assistant pharmacist until it shows on its face that it has been properly subscribed and sworn to by the applicant. The affidavits provided for in this section, shall be retained by the druggist in the original book form, and on or before the first day of each month shall, together with the affidavit of such druggist that the liquors therein mentioned are all the intoxicating liquors sold by him during the month, except the liquors sold to other druggists, be returned intact and filed in the office of the county judge who issued the permit, where they shall be safely kept for the period of two years from the date of filing. Before said affidavit shall be received or filed by the said county judge, he shall make strict examination of the copies of the affidavits and record of numbers thereof furnished him by the county auditor, and ascertain whether such druggist has returned all affidavits furnished him in blank by the county auditor, and if any such affidavit or blank is missing said county judge shall require such druggist to file instead thereof his affidavit showing as near as he can what has become of such affidavit or blank. And any person having a permit to sell intoxicating liquors under the provisions of this chapter, shall each month, at the time he files the affidavit herein provided for, also file with the county judge an affidavit setting forth the amounts and kinds of liquors, as nearly as can be done, which such person or firm of which he is a member, has on hand on the day such affidavit is made, as well as the amounts and kinds of liquors he has purchased or procured during the preceding month, and the name or names of the persons, companies or corporations and their place of doing business from whom, and the dates on which such liquors were purchased or procured. [1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2]

§ 9363. Fees, disposition of. For each series of affidavits filed under the provisions of this chapter, the county judge shall collect one dollar and fifty cents from the druggist filing the same, or the proportionate part thereof for the number filed, which shall be paid by him on the first day of each month into the county treasury for the benefit of the general county fund. The county judge shall receive no fees for his services under this chapter, except a salary of fifteen dollars per annum for each one thousand inhabitants in such county, the number to be determined by the last census return of such county, but in no case shall such salary exceed in the aggregate the sum of one thousand dollars per annum, to be paid by the county commis-

sioners as other salaries. [1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 9364. **Penalty. Record of sales.** Every person whose affidavit so made for the purpose of obtaining intoxicating liquors shall be false in any material matter, shall be deemed guilty of perjury, and is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or in the county jail not less than six months. Any person who shall subscribe any name or character other than his own name to any affidavit for the purpose of obtaining intoxicating liquors as provided herein, shall be deemed guilty of forgery in the fourth degree, and punished therefor by imprisonment in the penitentiary not exceeding two years and not less than one year. Any person who shall sell or furnish any intoxicating liquors so obtained by him upon affidavit or certificate, to others as a beverage, or shall use the same as a beverage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty nor more than ninety days. Every such druggist shall keep a book wherein shall be recorded daily, all sales of intoxicating liquors made by him or his employes, showing the name and residence of the purchaser, the kind and quantity of liquor sold, the purpose for which it was sold, and the date of sale. Such record and affidavit shall be open for the inspection of the public at all reasonable times during business hours, and any person so desiring may take memoranda or copies thereof. [1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 9365. **False affidavit. Other violations. Penalties.** Any druggist or pharmacist, or assistant pharmacist in his employ, who shall fail or neglect to make and keep a record as herein provided of any intoxicating liquors by him sold before the same are delivered, or shall refuse any person an examination of such records or the taking of memoranda or copies therefrom at any time during business hours; or who shall sell, barter or give away any such liquors at any place not designated in his permit, or upon any affidavit other than those herein provided; or shall make any false affidavit as to any sales made by him or his employes, or shall fail to sign the certificate to the signature of any applicant for such liquor prior to the delivery thereof, or shall sign any false certificate to any such affidavit, or shall mutilate or remove any affidavits from the book to him issued as aforesaid; or shall fail to return the same as hereinbefore provided; or shall sell any intoxicating liquor to any person whom he has reason to believe desires the same to use as a beverage, or sell liquor when he has reason to believe the liquor sold is not a remedy for the ailment described in the affidavit therefor; or shall sell, barter or give away any intoxicating liquors to any minor, any person under the influence of liquor or who is in the habit of becoming intoxicated, or who shall allow such liquor sold as a medicine or otherwise, to be drunk on his premises, or premises under his control; or in any other manner omit any act required of him herein, or violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred nor more than one thousand dollars, and be imprisoned in the county jail not less than ninety days nor more than one year, and shall forfeit his permit issued under the provisions of this chapter, and his right to obtain a permit within five years next thereafter; and in all cases when forfeitures are provided under the provisions of this chapter, the court shall declare the same on rendering judgment in the action. [1890, ch. 110, § 5; R. C. 1899, § 7597.]

§ 9366. **Intoxicating liquors defined.** All spirituous, malt, vinous, fermented, or other intoxicating liquors or mixtures thereof, by whatever name called, that will produce intoxication, or any liquors or liquids which are

made, sold or offered for sale as a beverage and which shall contain coculus, indicus, copperas, opium, cayenne pepper, picric acid, Indian hemp, strychnine, tobacco, darnal seed, extract of logwood, salts of zinc, copper or lead, alum or any of its compounds, methyl alcohol or its derivations, amyl alcohol or any extract or compound of any of the above ingredients, shall be considered and held to be intoxicating liquors within the meaning of this chapter. [1897, ch. 96; R. C. 1899, § 7598.]

Proper for court to instruct beer is intoxicating liquor, unless shown otherwise. *State v. Currie*, 8 N. D. 545, 80 N. W. 475; *State v. Brewing Co.*, 5 S. D. 39, 58 N. W. 1; *State v. Church*, 6 S. D. 89, 60 N. W. 143.

§ 9367. Duty of all peace officers to apprehend and notify. It shall be the duty of every sheriff, deputy sheriff, constable, mayor, marshal, police judge and police officer of any city or town having notice or knowledge of any violations of the provisions of this chapter, to notify the state's attorney of the fact of such violation and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section, he shall upon conviction be fined in any sum not less than one hundred nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person; and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. For a failure or neglect of official duty in the enforcement of this chapter, any of the city or county officers herein referred to may be removed by civil action. [1890, ch. 110, § 8; R. C. 1899, § 7600.]

§ 9368. Duty of state's attorney. Seizure and arrest. Authority of justices of the peace. If the state's attorney of any county shall be notified by any officer of the peace or other person or be cognizant himself of any violation of any of the provisions of this chapter, it shall be his duty forthwith diligently to inquire into the facts of such violation and for such purpose he is hereby authorized and required to issue his subpoena for such person or persons as he may have reason to believe have any information or knowledge of such violation, to appear before him at a time and place designated in such subpoena, then and there to testify concerning any violation of this chapter; said subpoena shall be directed to the sheriff or any constable of the county, and shall be served and returned to such state's attorney in the same manner as subpoenas are served and returned in criminal cases. Each witness shall be sworn by the state's attorney to testify the truth, the whole truth and nothing but the truth, and true answer make to all questions which may be propounded to him by such state's attorney touching any violation of the provisions of this chapter. The testimony of every such witness shall be reduced to writing and signed by such witness, as in the taking of depositions in civil cases. For all purposes in this section the state's attorney is hereby authorized and empowered to administer oaths or affirmation to all witnesses, and shall have power to punish any witness for contempt for or on account of any disobedience of a subpoena, a refusal to be sworn or answer as a witness, or to sign his testimony, and may compel the attendance of witnesses by attachment in the same manner and with like effect as provided in the code of civil procedure. If the testimony so taken shall disclose the fact that an offense has been committed against any of the provisions of this chapter, the state's attorney shall forthwith file such statement, together with his information against the person having committed the offense, in some court of competent jurisdiction, and such statement or testimony, together with the information of such state's attorney when verified by him on information and belief, shall have the same effect as if such information had been verified positively. And thereupon a warrant shall issue for the arrest of the person or persons named in such information, as in other criminal actions, and in addition

thereto, shall command the officer to whom it may be directed to seize and take into his custody any and all intoxicating liquors, vessels and bottles containing the same, which he may find in such person's possession, and safely keep the same, subject to the order of the court; provided, the sworn statement of the witness or witnesses, as hereinbefore provided, and the information filed by the state's attorney shall particularly describe the property to be seized and the place where kept; and if upon the trial of such person he shall be convicted of the violation of any of the provisions of this chapter, the court shall order as a part of the judgment, in addition to the penalty herein provided, that the officer having the custody thereof shall publicly destroy all such property used and employed for such illegal purpose; provided, the court shall find and adjudge the property so seized was being used and employed by the defendant for such illegal purposes; provided, further, that when the state's attorney has been notified in writing under oath, giving the name of the person violating the law, the place where the unlawful business is carried on and the names of the witness or witnesses by whom the affiant believes that the facts can be proven, and the state's attorney shall fail, neglect or refuse to make an investigation, then the affiant may make affidavit before some justice of the peace of the township, city or county wherein the crime has been committed, giving the name of the violator of the law, the location of the place and the names of the witnesses by whom he believes the offense can be proved, and it shall be the duty of such justice of the peace, and he is hereby empowered with authority to issue his subpoena for the witnesses named or any other witnesses whose names shall be made known by the first witnesses subpoenaed. Such subpoena shall be directed to any sheriff or constable of the county, or marshal or policeman of any city or town in the county, for service and return according to law. Such justice of the peace shall have power to fine for contempt and may compel the attendance of witnesses by attachment, and shall have all the powers for securing and taking the testimony of witnesses heretofore in this section given to the state's attorney. When the evidence is taken by the justice of the peace and reduced to writing, if it should show that a crime has been committed, it shall be certified to the state's attorney by the justice of the peace taking the same, and it shall be the duty of the state's attorney on the receipt of such evidence to file forthwith his information in the same manner as if the evidence had been taken by himself. [1890, ch. 110, § 9; R. C. 1899, § 7601.]

Sufficiency of filing of deposition upon which complaint upon information and belief is made. *State v. Rozum*, 8 N. D. 548, 80 N. W. 477; *State v. Brennan*, 2 S. D. 384, 50 N. W. 625.

§ 9369. Information to be filed. Trial. Penalty if found guilty. If the statement of any witness so taken before the state's attorney or a justice of the peace, as in the last section provided, shall disclose the fact that intoxicating liquors are being kept for unlawful sale or purpose, or are being sold by an unknown person or persons, particularly describing such unknown person or persons, contrary to the provisions of this chapter, at any place, particularly describing the place to be searched and the property to be seized, as hereinafter provided, within such county, it shall be the duty of such state's attorney to file forthwith his information, together with such statements, with some magistrate of the county having jurisdiction, against such place and the unknown keepers thereof, which information, when verified by such state's attorney upon information and belief, together with such statements as aforesaid, shall have the same effect as if such information had been sworn to positively; and thereupon a warrant shall issue directed to the proper officer, commanding him to search the premises described in the information and to seize all intoxicating liquors and all vessels and bottles containing the same, and arrest the keeper or keepers

thereof, and the said person or persons so arrested shall be examined and tried in the manner prescribed by law for the examination and trial of persons charged with an indictable offense, and if upon trial are found guilty shall be fined for the first offense not less than two hundred nor more than one thousand dollars, and be imprisoned in the county jail not less than ninety days nor more than one year; and for the second and every successive offense be punished by imprisonment in the penitentiary not exceeding two years, and not less than one, and the court before whom such conviction may be had shall also order all the property seized by the officer as aforesaid to be publicly destroyed; provided, said court shall also find and adjudge such property was being used by the defendant at the time of such search and seizure for the purpose of unlawfully selling or bartering intoxicating liquors. [1890, ch. 110, § 10; R. C. 1899, § 7602.]

§ 9370. Fees, how paid. Officers shall receive the same fees and mileage for serving subpoenas issued by the state's attorney and justices of the peace under the provisions of this chapter as provided in criminal cases, and witnesses shall receive the same fees for attendance as provided for witnesses in cases before justices of the peace. Such fees shall be certified to the board of county commissioners by the state's attorney or justice of the peace, and paid by the county as witness fees for attendance before a grand jury. All witnesses shall attend upon the state's attorney or justice of the peace in pursuance to his subpoena, without the payment of any fees in advance. For every conviction under this chapter there shall be allowed an attorney's fee of ten dollars upon each count upon which the defendant shall be convicted, and the same shall be taxed as costs in the case, to be paid into the county treasury as hereinafter provided. If any prosecution begun by the state's attorney, the attorney general or his assistants, or by a citizen with the written consent or approval of the state's attorney or attorney general, under the provisions of this chapter, shall fail, the costs of such prosecution, unless otherwise specified herein, shall be paid by the county in which such prosecution or action was begun. [1890, ch. 110, § 11; R. C. 1899, § 7603.]

§ 9371. State's attorney to prosecute. Fines a special fund. It shall be the duty of the state's attorneys, diligently to prosecute any and all persons violating any of the provisions of this chapter, in their respective counties, and to bring suit upon all bonds or undertakings forfeited, immediately after the happening of such forfeitures, to recover the penalty, and to pay all money so collected, as herein provided, into the treasury of said county, and take the receipt of the treasurer therefor; it shall be the duty of said treasurer to credit said money temporarily, to a special fund, to be designated as the liquor prosecution fund, to be disposed of as hereinafter provided. Said state's attorney is hereby empowered to draw his warrants, in each case separately, upon such fund to pay the expenses actually and necessarily incurred by him in securing testimony for and enforcing the provisions of this chapter; provided, however, that no treasurer shall pay any of said warrants so drawn by the state's attorney as aforesaid, until he files with such treasurer an itemized statement of such expenses in each and every case, duly verified by himself to the effect that the same were actually and necessarily incurred to promote the ends above expressed, and that the same have not been paid. Said treasurer shall by proper entries upon his books, specifically designate the action in which such money is received and paid out, and any net balance remaining in each action, after the payment of the necessary expenses incurred in said action, shall be by such treasurer passed to the credit of the school fund as provided by law. [1890, ch. 110, § 12; R. C. 1895, § 7604.]

Failure of state's attorney to prosecute violations of prohibition law is a misdemeanor involving moral turpitude. In re Simpson, 9 N. D. 379, 83 N. W. 541.

§ 9372. **Attorney general prosecutes, when.** If any state's attorney shall fail, neglect or refuse to perform faithfully any duty imposed upon him by this chapter, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office in addition to the fine imposed as herein provided. Whenever the state's attorney shall be unable, or shall neglect or refuse to enforce the provisions of this chapter in his county, or for any reason whatever the provisions of this chapter shall not be enforced in any county, it shall be the duty of the attorney general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify or file all such complaints, informations, petitions and papers as the state's attorney is authorized to sign, verify or file, and to do and to perform any act that the state's attorney might lawfully do or perform; and for such services he or his assistant shall receive a fee of ten dollars upon each count upon which the defendant shall be convicted, to be taxed and collected in the same manner, except that in all cases when there shall be a conviction, and the attorney's fees as provided for in this chapter shall not be paid by the defendant within one month after his release from jail, the county where such conviction is had shall then become liable to the attorney general or his assistant prosecuting such case for a fee of ten dollars upon each count upon which the defendant shall have been convicted. [1890. ch. 110, § 12; R. C. 1895, § 7604.]

§ 9373. **Place of sales a nuisance. To be abated. Liquors destroyed.** All places where intoxicating liquors are sold, bartered or given away, in violation of any of the provisions of this chapter, or where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage, or where intoxicating liquors are kept for sale, barter or delivery in violation of this chapter, are hereby declared to be common nuisances; and if the existence of such nuisance is established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy or undersheriff or any constable of the proper county or marshal of any city where the same is located, shall be directed to shut up and abate such place, by taking possession thereof, if he has not already done so under the provisions of this chapter, and by taking possession of all such intoxicating liquors found therein together with all signs, screens, bars, bottles, glasses and other property used in keeping and maintaining such nuisance, and such personal property so taken possession of shall, after judgment, be forthwith publicly destroyed by such officer, and the owner or keeper thereof shall, upon conviction, be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than two hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense be punished by imprisonment in the penitentiary not exceeding two years and not less than one; and said officer abating such nuisance shall securely close said building, erection or place where such nuisance was located, as against the use or occupation of the same for saloon purposes, and keep the same securely closed for the period of one year, unless sooner released as hereinafter provided, and any person breaking open said building, erection or place or using the premises so ordered to be closed, shall be punished for contempt, as hereinafter provided, in case of violation of injunctions; provided, however, that when leasehold premises are adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof,

in writing, to the tenant, and when this is done the premises shall be turned over to the owner upon the order of the court or judge. But the release of the property shall be upon condition that the nuisance shall not be continued. and the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within the period of one year thereafter, the court, or in vacation the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property, and if the proceeding is an action in equity and bond is given and costs therein paid before judgment and order of abatement, the action shall be thereby abated; provided, however, that the release of the property under the provisions of this section shall not release it from any judgment, lien or penalty or liability to which it may be subject under any other statute or law. [1890, ch. 110, § 13; R. C. 1895, § 7605.]

Conviction for maintaining nuisance. *State v. Thoemke*, 11 N. D. 386, 92 N. W. 480.

Places where liquor is sold may be abated as nuisances. *State v. Becker*, 3 S. D. 29, 51 N. W. 1018; *State v. Markuson*, 7 N. D. 155, 73 N. W. 82; *State v. Rozum*, 8 N. D. 548, 80 N. W. 477; *State ex rel Bartlett v. Fraser*, 1 N. D. 425, 48 N. W. 343; *State v. Dellaire*, 4 N. D. 312, 60 N. W. 988; *State ex rel McClory v. Donovan*, 10 N. D. 610, 88 N. W. 717; *State v. McGruer*, 9 N. D. 566, 84 N. W. 363.

Provision of statutes enforceable by contempt proceeding. *State v. Mitchell*, 3 S. D. 223, 52 N. W. 1052; *State ex rel Morrill v. Massey*, 10 N. D. 154, 86 N. W. 225; *State v. Markuson*, 5 N. D. 147, 64 N. W. 934.

§ 9374. Actions, how maintained. Procedure. Presumptions. Penalties.
The attorney general, his assistant, state's attorney, or any citizen of the county where such nuisance exists or is kept or is maintained, may maintain an action in the name of the state to abate and perpetually enjoin the same. The injunction shall be granted at the commencement of the action in the usual manner of granting injunctions, except that the affidavit or complaint or both, may be made by the state's attorney, attorney general or his assistant upon information and belief; and no bond shall be required; and if an affidavit shall be presented to the court or judge, stating or showing that intoxicating liquor, particularly describing the same, is kept for sale, or is sold, bartered or given away on the premises, particularly describing the same, where said nuisance is located contrary to law, the court or judge must at the time of granting the injunction issue his warrant commanding the officer serving said writ of injunction, at the time of such service to search diligently the premises and carefully invoice all the articles found therein, used in or about the carrying on of the unlawful business, for which search and invoicing said officer shall receive the sum of ten dollars in addition to the fees now allowed by law for serving an injunction. If such officer upon such search shall find upon such premises any intoxicating liquor or liquors of any kind, he shall take the same into his custody and securely hold the same to abide the final judgment in the action, the expenses for such holding to be taxed as part of the costs in the action; and such officer shall also take and hold possession of all personal property found on such premises. and shall take and hold possession of such premises and keep the same closed until such final judgment. The finding of such intoxicating liquor or liquors on such premises shall be prima facie evidence of the existence of the nuisance complained of. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt, for the first offense by a fine of not less than two hundred nor more than one thousand dollars,

and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense of contempt by imprisonment in the penitentiary not exceeding two years and not less than one in the discretion of the court or judge thereof. In case judgment is rendered in favor of the plaintiff in any action, brought under the provisions of this section, the court or judge rendering the same shall also render judgment for a reasonable attorney's fee in such action, in favor of the plaintiff and against the defendants therein: which attorney's fee shall be taxed and collected as other costs therein, and when collected paid to the attorney or attorneys of the plaintiff therein; provided, if such attorney is the state's attorney such attorney's fee shall be paid into the county treasury as in section 9370 provided. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this chapter the court, or in vacation the judge thereof, shall have the power to try summarily and punish the party or parties guilty as required by law. Process shall run in the name of the state of North Dakota. The affidavits upon which the attachment for contempt issues shall make a prima facie case for the state. The accused may plead in the same manner as to an information or indictment, in so far as the same is applicable. Evidence may be oral or in the form of affidavits, or both; the defendant may be required to make answer to interrogatories, either written or oral, as in the discretion of the court or judge may seem proper; the defendant shall not necessarily be discharged upon his denial of the facts stated in the moving papers; the clerk of the court shall upon the application of either party, issue subpoenas for witnesses, and except as above set forth, the practice in such contempt proceedings shall conform as nearly as may be to that adopted by the nineteenth rule of the supreme court of the United States for proceedings in equity in the circuit courts. [1890, ch. 110, § 13; R. C. 1895, § 7605.]

§ 9375. **Liability for causing intoxication.** Every person who shall by the sale, barter or gift of intoxicating liquors cause the intoxication of any other person or persons shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and five dollars a day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, to be recovered by civil action in any court having jurisdiction. [1890, ch. 110, § 14; R. C. 1899, § 7606.]

§ 9376. **Right of action. Injured party.** Every wife, child, parent, guardian or employer or other person who shall be injured in person or property or means of support, by any intoxicated person, or in consequence of intoxication, habitual or otherwise, of any person, such wife, child, parent or guardian or employer shall have a right of action, in his or her own name, against any person who shall by selling, bartering or giving away intoxicating liquors, have caused the intoxication of such person, for all damages actually sustained as well as for exemplary damages; and a married woman shall have the right to bring suits, prosecute and control the same and the amount recovered, the same as if unmarried; and all damages recovered by a minor under this chapter shall be paid either to such minor, or his or her parent, guardian or next friend, as the court shall direct; and all suits for damages under this chapter shall be by civil action in any of the courts of this state having jurisdiction thereof. [1890, ch. 110, § 15; R. C. 1899, § 7607.]

§ 9377. **Clubhouse prohibited. Penalty.** Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist or abet, in keeping or maintaining any clubroom or other place in which any intoxicating liquor is received or kept for the purpose of use, gift, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever; and every person who shall use, barter, sell or give away

or assist or abet another in bartering, selling or giving away, any intoxicating liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be punished by a fine of not less than three hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than ninety days nor more than one year, and for every successive offense be punished by imprisonment in the penitentiary not to exceed two years and not less than one. [1890, ch. 110, § 16; R. C. 1899, § 7608.]

§ 9378. **Evasions deemed unlawful.** The giving away of intoxicating liquor or any shifts or device to evade the provisions of this chapter, shall be deemed an unlawful selling within the provisions of this chapter. [1890, ch. 110, § 17; R. C. 1899, § 7609.]

§ 9379. **Fines and costs constitute liens. Proviso.** All fines and costs assessed against any person or persons for any violation of this chapter, shall be a lien upon the real estate of such person or persons until paid; and in case any person or persons shall let or lease any building or premises or shall permit the same to be used and occupied for the sale of intoxicating liquor, contrary to the provisions of this chapter, the premises so leased and occupied shall be subject to a lien for and may be sold to pay all fines and costs assessed against any such occupant for any violation of this chapter; and such lien may be enforced by civil action in any court having jurisdiction; provided, that the person against whom such fines and costs are assessed shall be committed to the county jail until such fines and costs are paid; provided, that no imprisonment for nonpayment of fines and costs shall exceed the period of six months. [1890, ch. 110, § 18; R. C. 1899, § 7610.]

§ 9380. **State's attorney advise county judge. Informer protected.** Whenever application is made to the county judge for a permit to sell intoxicating liquors under the provisions of this chapter, he shall notify the state's attorney thereof, and thereupon such state's attorney shall appear and advise with said county judge, with reference to the issuing of said permit and the approval of the bond. No person who shall inform of offenses under this chapter, or make complaint thereof, shall be liable for the costs incurred in such prosecution, unless the court or jury trying the case shall find and determine that such prosecution was malicious and without probable cause. [1890, ch. 110, § 19; R. C. 1899, § 7611.]

§ 9381. **Assistance for state's attorney.** Any citizen may employ an attorney to assist the state's attorney to perform his duties under this chapter, and such attorney shall be recognized by the state's attorney and the court as associate counsel in the proceedings, and no prosecution shall be dismissed over the objections of such associate counsel until the reasons of the state's attorney for such dismissal, together with the objections thereto of such associate counsel, shall have been filed in writing, argued by counsel and fully considered by the court. [1890, ch. 110, § 20; R. C. 1899, § 7612.]

§ 9382. **Speedy judgment to be rendered. Exception.** The court whose duty it shall be to render judgment in any action or proceeding growing out of a violation of the provisions of this chapter, shall immediately upon the conviction of the defendant render judgment; provided, that for prudential reasons and for the ordinary purposes of perfecting an appeal, judgment and sentence may be suspended for a period not exceeding thirty days, and then only upon the court or judge thereof entering in a public docket to be kept for that purpose, in his own handwriting, the cause of such suspension. [1890, ch. 110, § 21; R. C. 1899, § 7613.]

§ 9383. **Form of pleading. Presumptive evidence. Government receipt.** In prosecutions under this chapter by indictment or otherwise, it shall not be necessary to state the kind or quantity of liquor sold or kept for sale, and it shall not be necessary to describe the place where sold or kept for sale, except in prosecutions for keeping and maintaining a common nuisance, and

in proceedings for enjoining the same, or when a lien is sought to be established against the place where such liquors are illegally sold or kept for sale; and it shall not be necessary in the first instance for the state to prove that the party charged did not have a permit to sell intoxicating liquors for the excepted purposes; and in any prosecutions for the second or subsequent offense, it shall not be requisite to set forth in the information or affidavit or indictment the record of the former conviction, but it shall be sufficient briefly to allege such conviction; and in all cases the person or persons to whom such intoxicating liquors shall have been sold in violation of this chapter shall be competent witnesses to prove such fact or any other fact tending thereto; and the members, shareholders or associates in any club or association shall be competent witnesses to prove any violation of the provisions of this chapter or any fact tending thereto. In actions or proceedings for the abatement of nuisances under this chapter evidence of the general reputation of the place designated in the complaint shall be admissible for the purpose of proving the existence of such nuisance, and in all cases, other than these when intoxicating liquor is lawfully sold by virtue of the provisions of this chapter, the fact that any person engaged in any kind of business has or keeps posted in or about his place of business a receipt or stamp showing payment of the special tax levied under the laws of the United States upon the business of selling distilled, malt or fermented liquors, or the holding of a license from the government of the United States in the name of any person, persons or corporation to sell intoxicating liquor shall be held and deemed prima facie evidence against such person, persons or corporation, that he or they or it are keeping for sale and selling intoxicating liquors contrary to law. And upon trial of every indictment, information or contempt proceedings for a violation of the provisions of this chapter, proof of the finding of intoxicating liquor in the possession of the accused, in any place except his private dwelling house or its dependencies, or in such dwelling house if the same is a tavern, store, public eating house, grocery or other place of public resort, or in unusual quantities in the private dwelling house or its dependences of any person keeping a tavern, store, public eating house, grocery or other place of public resort, unless in the possession of one legally authorized to sell the same, shall be received and acted upon by the court or judge as presumptive evidence that such liquor was kept for sale contrary to the provisions hereof. No person shall be excused from testifying touching any offense committed by another against any of the provisions of this chapter by reason of his testimony tending to criminate himself (the witness), but the testimony given by such person shall in no case be used against him. [1890, ch. 110, § 22; R. C. 1899, § 7614.]

§ 9384. **Court's duty. Special charge to grand jury.** It shall be and is hereby made the duty of all courts of this state before whom a grand jury is summoned, to charge such grand jury especially concerning this chapter, and direct said jury to inquire particularly of all violations of any of its provisions. [1890, ch. 110, § 23; R. C. 1899, § 7615.]

§ 9385. **When druggist prohibited from selling liquor upon any terms.** Whenever the father, mother, brother, sister, wife, husband or guardian or any relative of any person shall notify any druggist that such person, naming him, is in the habit of becoming intoxicated, and shall forbid said druggist from selling, bartering or giving to such person any intoxicating liquors, it shall be unlawful for any such druggist, after such notice, to let such person have any intoxicating liquors upon any terms or conditions whatever. Any druggist who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars, and shall be imprisoned in the county jail not less than thirty days nor more than six months. [1890, ch. 110, § 24; R. C. 1899, § 7616.]

§ 9386. **Treating minor, penalty for.** The treating or giving of any intoxicating liquors to any minor by any person other than the father, mother or guardian of such minor or any physician for medical purposes, shall be unlawful, and any person violating the provisions of this section shall for the first offense be deemed guilty of a misdemeanor, and for the second and each succeeding offense be deemed guilty of a felony, and upon conviction thereof shall be punished therefor as provided for unlawfully selling intoxicating liquors. [1890, ch. 110, § 25; R. C. 1899, § 7617.]

§ 9387. **Liability of common carrier.** Any officer, agent or employe of a railroad company, express company or other common carrier who shall within this state knowingly receive, carry or deliver any intoxicating liquors to or for any person to be sold in violation of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred nor more than five hundred dollars and be imprisoned in the county jail not less than thirty nor more than sixty days. [1890, ch. 110, § 26; R. C. 1899, § 7618.]

§ 9388. **Bonds forfeited. Actions and liabilities thereon.** In case any person has been arrested for any violation of this chapter and given a bond and the bond has been forfeited, and before the determination of the action on the bond the defendant has been surrendered to the sheriff by his bondsmen, the defendant shall stand committed until all costs to that date accrued on the criminal action are paid; and if he fails to pay the same the bondsmen are required to pay such costs in addition to the costs of the action on the bond and a reasonable attorney's fee, to be fixed by the court, for the prosecution of both the criminal charge and the action on the bond; provided, that no defendant shall be imprisoned for a longer period by virtue of this section than is prescribed for the first offense in section 9369. [1890, ch. 110, § 27; R. C. 1899, § 7619.]

§ 9389. **Penalty for neglect of duty of attorney, judge or auditor.** Every state's attorney, county auditor or county judge who shall neglect or refuse to perform any duty required of him under this chapter, the punishment for which is not hereinbefore provided by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and in addition thereto shall forfeit his right longer to hold his office, and the court before whom such conviction is had shall order and adjudge such forfeiture. [1890, ch. 110, § 28; R. C. 1899, § 7620.]

§ 9390. **Payments for liquor void. Exception.** All payments and compensation for intoxicating liquors sold in violation of this chapter, whether such payments or compensation is in money, goods, land, labor or anything else whatsoever, shall be held to have been received in violation of law and against equity and good conscience, and to have been received upon a valid promise and agreement of the receiver in consideration of the receipt thereof, to pay on demand to the person furnishing such consideration the amount of said money, or the just value of such goods and labor or other thing. All sales, transfers, conveyances, mortgages, liens, attachments, pledges and securities of every kind, which either in whole or in part shall have been made for or on account of intoxicating liquors sold in violation of this chapter, shall be utterly null and void against all persons in all cases, and no rights of any kind shall be acquired thereby, and no action of any kind shall be maintained in any court in this state for intoxicating liquors or the value thereof, sold in any other state or country, contrary to the law of said state or country, or with intent to enable any person to violate any provision of this chapter; nor shall any action be maintained for the recovery or possession of any intoxicating liquors or the value thereof, except in cases when persons owning or possessing such liquor, with lawful intent, may have

been illegally deprived of the same. Nothing, however, in this section shall affect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration without notice of any illegality in its inception or transfer, or the holder of land or other property, who may have taken the same in good faith without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this chapter, and all evidence given in actions brought by or against such holders, shall be in no way affected by the provisions of this chapter. [1890, ch. 110, § 30; R. C. 1899, § 7621.]

Before suit to recover money paid on illegal sales, demand necessary. *Oswald v. Moran*, 8 N. D. 111, 77 N. W. 281.

§ 9391. **Giving liquor to Indian.** Every person who shall give, barter, sell or in any manner dispose of any intoxicating liquor to any Indian, shall be guilty of a misdemeanor. [Pen. C. 1877, § 724; R. C. 1899, § 7622.]

§ 9392. **Being intoxicated in public place.** Every person being found intoxicated in any public place is punishable upon conviction before a justice of the peace by a fine of not more than twenty-five dollars nor less than five dollars, and be committed to the county jail until such fine is paid, but such imprisonment shall not exceed one day for every dollar of the fine. [Pen. C. 1877, § 725; 1895, ch. 75, § 1; R. C. 1895, § 7623.]

§ 9393. **Selling liquor to pauper.** Every person who sells or gives to any person, knowing him to be a pauper or inmate of any poorhouse or almshouse, any strong or spirituous liquor or wine, without authority from the superintendent or physician of such poorhouse or almshouse, is punishable by a fine of twenty-five dollars. [Pen. C. 1877, § 727; R. C. 1899, § 7624.]

§ 9394. **Selling liquors on boat, Sunday.** Every master or other person engaged in navigating any steamboat, who allows any liquors mentioned in the last section to be sold on his boat on Sunday, while stopping at any wharf, landing, city or town in this state, is guilty of a misdemeanor. [Pen. C. 1877, § 729; R. C. 1899, § 7625.]

§ 9395. **Reward for arrest and conviction of violators.** The sum of fifty dollars shall be paid to any person or persons for the arrest and conviction of each and every person who violates any of the provisions of this chapter, which amount shall be paid to the person or persons entitled thereto, on the presentation of a certificate issued as hereinafter provided, from the state's attorney of the county where such conviction was had, setting forth the object for which the same was issued, to the treasurer of the proper county; and said treasurer shall take a receipt for the same, setting forth the object for which it was paid, which certificate and receipt shall be forwarded to the state auditor, who shall, at the next settlement, place a warrant for such amount in the hands of the state treasurer to be credited on the settlement with said county treasurer. Any person or persons claiming such reward shall, within twenty days after the conviction of the criminal, apply to the state's attorney of the county wherein such conviction was had, who shall thereupon issue to such claimant the certificate provided for in this section. [1903, ch. 139.]

CHAPTER 66.

SELLING AND SMOKING OPIUM.

§ 9396. **Place for smoking opium deemed a nuisance.** Every room, building, cellar or other place or premises used or permitted to be used, for the smoking of opium or any of its preparations, is deemed and hereby declared to be a public nuisance. [1885, ch. 121, § 5; R. C. 1895, § 7626.]

§ 9397. **Unlawfully keeping place for, and smoking opium.** Every person who, either:

1. Lets or permits to be used, any building or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; or,

2. Owns or maintains a place where opium or any of its preparations is smoked by other persons; or,

3. At any place sells or gives away any opium or its preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its preparations,

Is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days or by a fine not exceeding one hundred dollars, or by both. [1885, ch. 121, §§ 2, 3, 4; R. C. 1895, § 7627.]

§ 9398. **Jurisdiction of justice of the peace.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of this chapter, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law. [1885, ch. 121, § 6; R. C. 1895, § 7628.]

CHAPTER 67.

SPECULATION IN OFFICE.

§ 9399. **Unlawful purchases by state treasurer.** Every person who while treasurer of this state, or the deputy or clerk of such treasurer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any state warrant, order or scrip, or any bill, account, claim or evidence of indebtedness against the state, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars. [1890, ch. 117, §§ 1, 2; R. C. 1895, § 7629.]

§ 9400. **Unlawful purchases by city treasurer.** Every person who while treasurer of any city of this state, or the deputy or clerk of such treasurer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any city warrant, order or scrip, or any bill, account, claim or evidence of indebtedness against his city, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars. [1890, ch. 117, §§ 1, 2; R. C. 1895, § 7630.]

§ 9401. **Unlawful purchases by county officers.** Every person who while an officer of any county of this state, or the deputy or clerk of such officer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any county warrant, order or scrip, or any bill, account, claim or evidence of indebtedness of his county, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars. [1890, ch. 117, §§ 1, 2; R. C. 1895, § 7631.]

§ 9402. **Unlawful purchases by school district officers.** Every person who while an officer of any school district or corporation, or deputy or clerk of such officer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any school warrant, order or scrip, or any bill, account, claim or evidence of indebtedness against his school district or

corporation, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars. [1890, ch. 117, §§ 1, 2; R. C. 1895, § 7632.]

§ 9403. **Jurisdiction of justice of the peace.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of the last four sections, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law. [R. C. 1895, § 7633.]

§ 9404. **State's attorney acting contrary to official duty.** Every state's attorney who shall receive any fee or reward from or on behalf of any prosecutor or other individual for services or on account of any prosecution or business to which it shall be his official duty to attend, or who shall be concerned as attorney or counsel for either party other than the state or county, in any civil action depending on the same state of facts, or arising out of said facts or any of them, upon which a criminal prosecution commenced but undetermined shall depend, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred and not exceeding five hundred dollars and may be removed from his office. [1883, ch. 43, § 6; R. C. 1895, § 7634.]

CHAPTER 68.

ALLOWING STALLION, BULL OR RAM TO RUN AT LARGE.

§ 9405. **Unlawfully permitting stallion, bull or ram to run at large** Every person who permits or allows, either:

1. A stallion or jack over the age of one year; or,
2. Any bull over the age of eight months; or,
3. Any ram during the months of September, October and November of each year,

To run at large is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than ten, and not exceeding fifty dollars. [1890, ch. 67, §§ 1, 2; R. C. 1895, § 7635.]

§ 9406. **Exceptions.** The provisions of the last section shall not be construed to include any stallion, jack, bull or ram kept in any herd. [1890, ch. 67, § 1; R. C. 1895, § 7636.]

§ 9407. **Justice's court. Jurisdiction. Appeals.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of this chapter, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law. [1890, ch. 67, § 2; R. C. 1895, § 7637.]

§ 9408. **Liable in civil action for damages.** Any person violating any of the provisions of this chapter shall be liable in a civil action to any person, directly or indirectly, injured thereby for all damages resulting therefrom. [1890, ch. 67, § 2; R. C. 1895, § 7638.]

CHAPTER 69.

ADULTERATED DAIRY PRODUCTS.

§ 9409. **Selling imitation of butter without brand.** Any person who shall knowingly sell or offer for sale or procure the sale of, or make or manufacture,

any article or substance in semblance of butter, not the legitimate product of the dairy and made exclusively of milk or cream, but into the composition of which the oil or fat of animals, or melted butter or any oil thereof, enters as a substitute for cream, in tubs, firkins or other original packages and not distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the word "oleomargarine," or "butterine," or "patent butter," as the case may be, in letters not less than one-fourth of an inch in width and one-half of an inch in length, or in retail packages not plainly and conspicuously labeled with the said words "oleomargarine," or "butterine," or "patent butter," as the case may be, shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. [1895, ch. 49, § 1; R. C. 1899, § 7639.]

§ 9410. **Imitation butter. "Quinness' patent."** Any person or firm who shall sell or offer for sale, or make or manufacture, imitation butter or butter made of part cream and part caseine or other ingredients under what is known as "Quinness' patent," or process or any other similar process, whereby the caseine of milk and other ingredients are made to imitate and resemble genuine butter made from cream, shall stamp upon each package of the same on the top and side with lampblack and oil, the words "patent butter," in letters at least one-fourth of an inch wide and one-half of an inch long. Whoever violates the provisions of this section is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. [1895, ch. 49, § 2; R. C. 1899, § 7640.]

§ 9411. **Character of product must be designated.** Any person or firm who shall sell or offer for sale, or make or manufacture out of any oleaginous substance or substances, or any compound of the same or compound other than that produced from unadulterated milk, any article designed to take the place of cheese, or any imitation of cheese produced from pure milk, or any article termed "filled cheese," shall stamp upon each package of the same on the top and side with lampblack and oil, the words "filled cheese," or words that shall designate the exact character and quality of the product, in letters at least one-fourth of an inch wide and one-half of an inch long. Whoever violates the provisions of this section is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. [1895, ch. 49, § 3; R. C. 1899, § 7641.]

§ 9412. **Patent butter and cheese. Card stating ingredients.** Whoever sells or offers for sale any imitation or patent butter or cheese, as described in the foregoing sections of this chapter, shall give to each purchaser of said goods a printed card stating correctly the different ingredients contained in the said compound. Whoever violates the provisions of this section is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. [1895, ch. 49, § 4; R. C. 1899, § 7642.]

§ 9413. **Possession prima facie evidence of guilt.** The having in possession by any person or firm, of any article or substance prohibited by this chapter, shall be considered prima facie evidence that the same is kept by such person or firm in violation of its provisions, and the state dairy commissioner shall be authorized to seize upon and take possession of any such article or sub-

stance, and upon the order of any court which has jurisdiction, he shall sell the same for any purpose other than to be used for food; the proceeds derived from the sale of imitation butter shall be paid one-half to the informer and one-half into the state treasury, to be placed to the credit of the state dairy commissioner's fund. [1895, ch. 49, § 5; R. C. 1899, § 7643.]

§ 9414. **Specimens analyzed. Certificate. Evidence.** Samples or specimens of any article in imitation of butter or suspected of being of a spurious character, shall be analyzed or otherwise satisfactorily tested as to compounds by the chemist of the agricultural college at Fargo, free of expense; and a certificate of the analysis, sworn to by the analyzer, shall be admissible as evidence in all prosecutions under this chapter. [1895, ch. 49, § 6; R. C. 1899, § 7644.]

§ 9415. **Packages not branded or labeled.** The sale or offer for sale of the substance mentioned in the foregoing section in packages not branded, stamped, marked or labeled as in this chapter required, shall be prima facie evidence of knowledge of the character of such substance on the part of the person so selling or offering the same for sale, and his employer. [1895, ch. 49, § 7; R. C. 1899, § 7645.]

§ 9416. **Stencils. Names. Reports.** Every cheese factory, creamery, or combined cheese factory and creamery, engaged in the manufacture of butter and cheese, shall procure a stencil or brand bearing a suitable device and words which shall clearly designate the quality of the product manufactured and the number and location of the factory, and may contain a special or private brand or name of said factory; every brand shall be used upon the outside of the cheese and also upon the package containing the same, but in the case of butter, on the package only; and shall report annually to the state commissioner of agriculture and labor, who by virtue of his office is state dairy commissioner, the name, location and number of each factory using the said brand, and the name or names of the persons at each manufactory authorized to use the same, together with a copy of each stencil or brand, and the state dairy commissioner shall keep a book in which shall be registered the same. Whoever violates the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than fifty dollars, for each and every offense. [1895, ch. 49, § 9; R. C. 1899, § 7646.]

§ 9417. **Provisions construed.** Nothing in this chapter shall be so construed as to prohibit the shipment of butter and cheese without unloading through the state of North Dakota. [1895, ch. 49, § 10; R. C. 1899, § 7647.]

§ 9418. **Butter and cheese defined.** For the purposes of this chapter the term "butter," or "cheese," shall be understood to mean the product usually known by that name, and which is manufactured exclusively from milk or cream or both. [1895, ch. 49, § 8; R. C. 1899, § 7648.]

CHAPTER 70.

SELLING ADULTERATED AND UNWHOLESOME FOOD OR MEDICINE.

§ 9419. **Adulterating and selling adulterated food or medicine.** Every person who, either:

1. With intent that the same may be used as food, drink or medicine for man, sells or offers or exposes for sale, any article whatever, which to his knowledge is tainted or spoiled, or for any cause unfit to be used as food, drink or medicine; or,

2. Knowingly sells any article intended as food or drink for man which contains a sufficient quantity of any drug or other substance to render such article injurious to health, or compounds the same; or

3. Adulterates or dilutes so as to render it injurious to health, for the purpose of sale as unadulterated or undiluted, any substance intended as food, drink or medicine for man,

Is guilty of a misdemeanor. [1885, ch. 64, § 1; R. C. 1895, § 7649.]

§ 9420. **Calf less than four weeks old.** Every person who knowingly, either:

1. Kills or causes to be killed, for the purpose of sale as food for man, a calf less than four weeks old; or,

2. Sells or has in his possession with intent to sell as food for man, the meat of any calf killed when less than four weeks old,

Is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days or by fine not exceeding fifty dollars, or by both. [1885, ch. 64, § 1; R. C. 1895, § 7650.]

§ 9421. **Meat may be seized.** The meat of any calf killed when less than four weeks old and exposed for sale or kept with intent to sell for food, may be seized without warrant and destroyed by any health officer, sheriff, deputy sheriff or peace officer. [1885, ch. 64, § 1; R. C. 1895, § 7651.]

§ 9422. **Magistrate may issue warrant. Procedure.** Any magistrate having reasonable cause to believe by complaint on oath made to him, that the meat of any calf killed when less than four weeks old, is kept or concealed within his county by any person, contrary to the provisions of section 9420, may issue his warrant to any peace officer of such county commanding him, in the daytime only, to search for and, if found, to seize such meat and to notify such owner or keeper of such seizure and that he appear forthwith before the magistrate issuing such warrant to show cause why such meat should not be destroyed. If such owner or keeper does not appear, or if upon investigation before such magistrate it is determined that such meat is kept in violation of such section, the magistrate shall issue his warrant to such officer commanding him forthwith to destroy such meat and such officer shall proceed accordingly, or if it is determined that such meat is not kept contrary to the provisions of such section the same shall be returned to the place where seized. The costs of the proceedings, if contested, shall be taxed against the person claiming such meat if defeated, and collected upon execution issued against him, as in a civil action, but if such proceedings are not contested the costs shall be taxed and paid by the county wherein such proceedings are had. [1885, ch. 64, § 2; R. C. 1895, § 7652.]

CHAPTER 71.

FOULING THE PUBLIC WATERS OF THIS STATE.

§ 9423. **Fouling public waters.** Every person who deposits or places or causes to be deposited or placed any dead animal, offal or other refuse matter offensive to the sight or smell or deleterious to health, upon the banks or in the waters of any lake or stream so far as the same is within the jurisdiction of this state, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than twenty and not exceeding one hundred dollars. [1881, ch. 103, § 1; 1883, ch. 70, § 1; 1889, ch. 129, § 1; R. C. 1895, § 7653.]

§ 9424. **Extent of last section.** The provisions of the last section shall be construed to include privies and privy vaults and any stable, shed, pen, yard or corral wherein is kept any horse, cattle, sheep or swine and located nearer than sixty feet from the top of the bank of such lake or stream, and also any slaughterhouse, grave, graveyard or cemetery located nearer than eighty

feet therefrom. But the provisions of said section shall not be construed to prevent any incorporated city within this state from running its sewers into any river; provided, that where there is a dam across said river within the corporate limits of any such city, any such sewer shall connect with such river below such dam. [1889, ch. 129, § 1; 1893, ch. 37, § 1; R. C. 1895, § 7654.]

§ 9425. **Jurisdiction of justice's court.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of sections 9419, 9420 and 9423, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law [1881, ch. 103, § 2; 1883, ch. 70, § 3; 1889, ch. 129, § 5; R. C. 1895, § 7655.]

CHAPTER 72.

UNLAWFUL INTERFERENCE WITH TELEGRAPH AND TELEPHONE LINES.

§ 9426. **Unlawful use of telegraph or telephone lines.** Every person who, willfully or fraudulently, either:

1. Makes any connection with or cuts, breaks or taps in any unauthorized manner any telegraph or telephone line, wire or cable under the control of any other person or company; or,

2. Reads or copies by the use of telegraph or telephone instruments, or otherwise in an unauthorized manner, any authorized communication or message being sent, transmitted, conveyed or delivered by telegraph or telephone under the control of any other person or company; or,

3. Prevents, obstructs or delays by any unauthorized means or contrivance whatever, the sending, conveyance, transmission or delivery in this state of any such communication or message by telegraph or telephone; or,

4. Aids, employs, agrees or conspires with any other person to do any of such acts or things,

Is guilty of a felony, and upon conviction thereof is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine of not less than two hundred and not exceeding five hundred dollars, or by both. [1893, ch. 128, § 1; R. C. 1895, § 7656.]

CHAPTER 73.

DESECRATION OF FLAG.

§ 9427. **Flag, punishment for desecration of.** Any person who in any manner, for exhibition or display, shall place, or cause to be placed, any words or figures, or number, or marks, or inscription, or picture, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color, or ensign, of the United States, or shall expose, or cause to be exposed, to public view any such flag, standard, color or ensign of the United States, upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words, or figures, or numbers, or marks, inscriptions, or pictures, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale, or for use, any article or thing or substance, being an article of merchandise, or a receptacle of merchandise, upon which

shall have been printed, painted or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish, the article or thing on which so placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be guilty of a misdemeanor. [1901, ch. 88, § 1.]

§ 9428. **Flag, etc., meaning of.** The words flag, standard, color or ensign of the United States, as used in this chapter, shall include any flag, any standard, any color, any ensign, or any representation of, a flag, standard, color or ensign, or a picture of a flag, standard, color or ensign, made of any substance whatever, and of any size whatever, evidently purporting to be either of said flag, standard, color or ensign of the United States, or a picture, or a representation of either thereof, upon which shall be shown the colors, the stars and stripes, in any number of either thereof, or by which the person seeing the same, without deliberation, may believe the same to represent the flag, or the colors, or the standard, or the ensign of the United States of America. [1901, ch. 88, § 2.]

§ 9429. **Exceptions.** This chapter shall not apply to any act permitted by the statutes of the United States or by the United States army and naval regulations, nor shall this chapter be construed to apply to the regular issue of a newspaper or other periodical, on which shall be printed said flag, disconnected from any advertisement. [1901, ch. 88, § 3.]

§ 9430. **Penalty.** Any person offending against the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction, shall be punishable by a fine of not less than five, or to exceed twenty-five dollars, or by thirty days' imprisonment in the county jail, or by both such fine and imprisonment, in the discretion of the court. [1901, ch. 88, § 4.]

CHAPTER 74.

MISCELLANEOUS CRIMES.

§ 9431. **State's attorney and his partners.** Every attorney who, directly or indirectly, advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by any person as state's attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits his license to practice. [Pen. C. 1877, § 730; R. C. 1895, § 7657.]

§ 9432. **Prosecutors advising defense.** Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as state's attorney or other public prosecutor, afterward, directly or indirectly, advises in relation to or takes any part in, the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his license to practice. [Pen. C. 1877, § 731; R. C. 1895, § 7658.]

§ 9433. **Attorneys may defend themselves.** The last two sections do not prohibit an attorney from defending himself in person, as attorney or as

counsel, when prosecuted either civilly or criminally. [Pen. C. 1877, § 732; R. C. 1899, § 7659.]

§ 9434. **Intimidating laborers.** Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or to induce such hired person to relinquish his work or employment, or to return any work he has in hand before it is finished, is guilty of a misdemeanor. [Pen. C. 1877, § 733; R. C. 1899, § 7660.]

§ 9435. **Intimidating employers.** Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or other persons employed by him, or their rate of wages or time of service, is guilty of a misdemeanor. [Pen. C. 1877, § 734; R. C. 1899, § 7661.]

§ 9436. **Conspiracies and mobs against mines.** In all cases when two or more persons shall associate themselves together for the purpose of obtaining possession of any lode, gulch or placer claim, then in the actual possession of another, by force and violence or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim or quartz mill or other mining property, or, not being upon such property but within hearing of the same, shall make any threats or make use of any language, sign or gesture calculated to intimidate any person or persons at work on said property from continuing work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months and not less than thirty days, and by fine not exceeding two hundred and fifty dollars, such fine to be discharged either by payment or by confinement in such jail until such fine is discharged at the rate of two dollars and fifty cents per day. On trials under this section, proof of a common purpose of two or more persons to obtain possession of property as aforesaid, or to intimidate laborers as above set forth, accompanied or followed by any of the acts above specified, by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same. [Pen. C. 1877, § 735; R. C. 1899, § 7662.]

§ 9437. **Taking saw logs.** Any person who shall willfully and without authority take any saw logs that may be on any river or on the land adjoining or near a river, which may have floated down said river or onto said land, and shall remove or attempt to remove the same, or who shall cut or split said logs or otherwise destroy or injure them, shall be deemed guilty of a misdemeanor, and upon conviction, when the value of the logs exceeds one hundred dollars, be punished by imprisonment in the county jail not more than one year nor less than three months, and by fine not to exceed one hundred and not less than ten dollars; and when the value of the logs is one hundred dollars or less, the punishment shall be by fine not exceeding eighty and not less than twenty dollars. [Pen. C. 1877, § 736; R. C. 1899, § 7663.]

§ 9438. **Receiving stolen logs.** Any person who shall purchase, receive or secrete saw logs so taken or removed, or who shall cut or otherwise injure logs so taken or removed, knowing them to have been so taken or removed, shall be punished as prescribed in the preceding section. [Pen. C. 1877, § 737; R. C. 1899, § 7664.]

§ 9439. **Concealing estrays or lost goods.** Any person who shall attempt to conceal any estray, or any lost goods found or taken up by him, or alter or deface, or attempt to alter or deface, the mark or brand on any horse, mule, cow, calf, or other neat cattle, or any sheep or swine, the property of another, with the intent thereby to steal the same or to prevent identification thereof by the true owner, or carry said estray or lost goods, or any such animal, beyond the limits of the state, or knowingly permit the same to be done, or shall willfully fail to cause said estray, or lost goods, so found, to be advertised, sold or otherwise dealt with as provided by law, shall be deemed guilty of a felony, and upon conviction thereof is punishable by imprisonment in the penitentiary not exceeding five years, or by a fine of not exceeding five hundred dollars, or by both. [1899, ch. 46; R. C. 1899, § 7665.]

§ 9440. **Hours for labor for woman or child.** Every owner, stockholder, overseer, employer, clerk or foreman, of any manufactory, workshop or other place used for mechanical or manufacturing purposes, who, having control, shall compel any woman or any child under eighteen years of age, or permit any child under fourteen years of age, to labor in any day exceeding ten hours, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred and not less than ten dollars. [Pen. C. 1877, § 739; R. C. 1899, § 7666.]

§ 9441. **Harboring Indians.** Every person who shall harbor or keep on or about his premises or place of abode, within any organized county in this state, any Indian or Indians who have not adopted the manners and habits of civilized life, or who induces or encourages any such Indian or Indians to camp, remain or hunt for any time or for any purpose within any village or settlement of white people, or in the vicinity of such village or settlement within any organized county in this state, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine not less than twenty-five dollars for each Indian so kept, harbored or induced to remain, and shall stand committed until such fine and costs are paid; provided, the aggregate of such fine upon each conviction shall not exceed one hundred dollars. [Pen. C. 1877, § 740; R. C. 1899, § 7667.]

§ 9442. **Removing, concealing, selling or disposing of chattels subject to lien.** Every person having in his possession, or under his control, any personal property upon which there is known to him to be a subsisting lien, either by operation of law or by contract, who willfully destroys, removes from the county, conceals, sells or in any manner disposes of, otherwise than as prescribed by law, or materially injures such property or any part thereof, without the written consent of the then holder of such lien, is guilty of:

1. A misdemeanor, if the value of the property does not exceed one hundred dollars; or,
2. A felony, if the value of the property exceeds such sum. [Pen. C. 1877, § 579; R. C. 1895, § 7668; 1903, ch. 132.]

Selling mortgaged property; intent; right of purchase. *Sanford v. Elevator Co.*, 2 N. D. 6, 48 N. W. 434; *State v. Bronkol*, 5 N. D. 507, 76 N. W. 680.

§ 9443. **Wrongful use of seed grain.** Every person who, having procured upon credit under the provisions of chapter 84 of the civil code, any seed to be sown or planted upon any designated tract or piece of land, either:

1. Uses the same or any part thereof for any other purpose; or,
2. Sows or plants the same or any part thereof upon any tract or piece of land other than that designated, without the written consent of the party who furnished such seed, is guilty of a misdemeanor. [R. C. 1899, § 7669.]

§ 9444. **Injurious acts not expressly forbidden.** Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals,

although no punishment is expressly prescribed therefor by this code, is guilty of a misdemeanor. [Pen. C. 1877, § 742; R. C. 1899, § 7670.]

§ 9445. **Unlawful obligations in writing.** Every person who takes any obligation in writing for any lightning rod, or any of its attachments, or for any patent right or claimed to be a patent right, or for which any stallion or jackass shall form the whole or any part of the consideration, or for any patent medicine, or for which the whole or any part of the consideration shall be the future cure of any disease or ailment, shall, before it is signed by the maker, stamp or write in red ink across the face of such written obligation in plain, legible writing, or print, the words "given for a lightning rod," or, "given for a patent right," or, "given for a stallion," or, "given for a jackass," or, "given for patent medicine," or, "given for the cure of disease," as the case may require. Such obligation so stamped shall not be negotiable and shall be subject to defenses in the hands of every holder or owner thereof. Any person who shall violate the provisions of this section is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than two hundred and fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment, and shall be liable in a civil action to the party injured for all damages sustained by him. [R. C. 1895, § 7671; 1901, ch. 206; 1905, ch. 189.]

§ 9446. **Unauthorized sending pauper out of county.** Every person who sends or causes to be sent any pauper or person who is or is likely to become an object of public charity, into any county of this state other than the county where such pauper or person properly belongs, with intent to relieve the county from which such pauper or person is sent from his support, or to cause the county to which he is sent to support him, is guilty of a misdemeanor. [Pol. C. ch. 33, §§ 37, 38; R. C. 1895, § 7672.]

§ 9447. **Where prosecuted.** Prosecutions for any violation of the last section may be commenced and prosecuted either in the county from which such pauper or person is sent or in the county to which he is sent. [R. C. 1895, § 7673.]

§ 9448. **Fraudulently obtaining food or accommodation at inns.** A person who obtains any food or accommodation at any inn, hotel or boarding house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at any inn, hotel or boarding house by use of any false pretense, or who, after obtaining food or accommodation at an inn, hotel or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food and accommodation, is guilty of a misdemeanor and on conviction thereof shall be fined not more than one hundred dollars, nor less than five dollars, or imprisoned in the county jail for not more than thirty nor less than ten days, or both such fine and imprisonment at the discretion of the judge or justice of the peace before whom the trial is held. [1895, ch. 71, § 1; R. C. 1899, § 7674.]

§ 9449. **Abusing insane person.** Every person who has the care of an insane person, or is restraining such person either with or without authority, and treats such person with wanton severity, harshness or cruelty or in any way abuses such person, is guilty of a misdemeanor. [1879, ch. 23, § 29; R. C. 1895, § 7675.]

§ 9450. **Fraudulent tax receipts.** If any treasurer or his deputy or any other person shall knowingly or willfully make, issue and deliver any tax receipt or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in road warrants or orders, when the same was or were paid in cash, such treasurer or deputy treasurer or other person shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one

year nor more than five years. If any treasurer or his deputy or any person shall knowingly or willfully make, issue and deliver any tax receipt or duplicate tax receipt, required by this chapter to be issued, by fraudulently making the tax receipt and its duplicate, or the paper purporting to be its duplicate, differ from each other, with intent to defraud the state of North Dakota, or any county in said state, or any person whomsoever, such treasurer or deputy treasurer or other person shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than five years. [Pol. C. ch. 28, §§ 87, 88; R. C. 1899, § 1298.]

§ 9451. Interference with shipment and feeding of live stock. Penalty. It is hereby made unlawful for any corporation, association, person or persons, to in any manner interfere with or hinder any person who may be in charge of live stock which is being, or about to be, transported in this state upon any railway, in feeding or furnishing feed or bedding for said stock in cars or at any feeding station in this state; provided, that the said person or persons in charge of said stock shall feed or furnish such feed or bedding within a reasonable time. Any corporation, association, person or persons violating any of the provisions of this section shall be guilty of a misdemeanor. [1901, ch. 122.]

§ 9452. Distribution of drug samples prohibited. Penalty. Any person who shall, by himself, his servant or agent, or as the servant or agent of any other person, leave, throw or deposit upon the doorstep or premises owned or occupied by another, or who shall deliver to any child under fourteen years of age, any patent or proprietary medicine or any preparation, pill, tablet, powder, cosmetic, disinfectant or antiseptic or any drug or medicine that contains poison, or any ingredient that is deleterious to health, as a sample, or in any quantity whatever for the purpose of advertising, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars, nor less than twenty-five dollars, or imprisoned not exceeding one hundred nor less than thirty days, or both, for each and every violation. The terms drug, medicine, patent or proprietary medicine, pill, tablet, powder, cosmetic, disinfectant or antiseptic as used in this section, shall include all remedies for internal or external use, either in packages or bulk, simple, mixed or compounded. [1903, ch. 81.]

§ 9453. Protection of threshers. Malicious mischief. Penalty. Every person who shall wantonly, maliciously or mischievously, put, place or conceal in any sheaf, shock, pile, load or stack of wheat, oats or other grain, any stone, wood, iron or other substance, which if fed into a threshing machine would or could injure such machine or any part thereof, or that could or might cause the death, maiming or injury of any person employed about said machine, shall on conviction thereof be deemed guilty as follows: If the injury caused by the violation of this section results in the death of any person, of manslaughter in the first degree; if the injury caused as aforesaid results in maiming or injury to any person or breaking of the machine, of a felony. In all other cases he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars or imprisonment in the county jail not more than one year, or by both such fine and imprisonment. Every person violating the provisions of this section shall be liable to the owner of the machine injured for all the damages arising from such violation including the actual damage caused and all damage and loss such owner may sustain by reason of stoppage caused by such breakage, to be recovered in the same manner that civil damages for an injury are now recoverable. [1905, ch. 174.]

CHAPTER 75.

GAME AND FISH.

ARTICLE 1.—RELATING TO GAME.

§ 9454. **Birds, animals and fish property of state.** All birds and animals wild by nature, and all fish in the public waters within the jurisdiction of this state, are, except as prescribed in section 4704 of the civil code, the property of the state. [R. C. 1895, § 7676.]

§ 9455. **Shooting or killing restricted. Penalty.** Every person who, either:

1. Shoots or kills any prairie chicken, pinnated grouse, sharp tailed grouse, ruffled grouse, or woodcock, between the fifteenth day of October and the first day of September following, or any song bird or insect-eating bird, except snipe or plover, at any time; or,

2. Shoots, kills or takes any quail, English or Chinese pheasant or wild swan, between the fifteenth day of October and the first day of September following; or,

3. Shoots or kills any wild duck between the first day of May and the first day of September following; or,

4. Shoots or kills any wild goose, crane or brant between the first day of May and the first day of September following; or,

5. Shall at any time catch or kill any of the birds permitted to be killed by this article at any time in any other manner than by shooting them with a gun held to the shoulder by a person discharging the same; or,

6. Shall at any time set, lay or prepare any traps, snare, net, bird lime, medicated, drugged or poisoned food or grain, or swivel gun, or any contrivance or device whatever with intent to catch, take or kill any of the birds in this article mentioned, whether the same are caught or not, or make use of any artificial light, battery or any other deception, contrivance or device whatever, with intent to attract or deceive any of the birds in this article mentioned, except decoys and blinds may be used in hunting wild geese, ducks and brants. No person shall at any time hunt or shoot from any boat, canoe or contrivance or device whatever on any waters in this state, between the hours of five p. m. and eight a. m., and no person shall at any time make use of, hunt or shoot from any floating battery, sink boat or sunken tub or any similar device on any of the waters of this state.

7. Wantonly destroys any nest or eggs of any of the birds mentioned in subdivisions 1, 2, 3 or 4 of this section; or,

8. Shoots or kills any buffalo, moose, elk, caribou, or mountain sheep, at any time, or any deer between the first day of December and the tenth day of November following; or,

9. Shoots, kills, traps or takes any otter between the tenth day of December and the tenth day of November following; or,

10. At any time uses or employs any hound or dog in running or driving any of the animals mentioned in subdivision 8 of this section; or,

11. Sets any spring or other gun, trap, snare or other device to kill, wound or destroy any of the animals mentioned in subdivision 8 of this section; or,

12. Shoots or kills in any one day more than twenty-five of the game birds mentioned in subdivisions 1, 2, 3 or 4 of this section, or in any one season more than five of the animals mentioned in subdivision 8 of this section,

Is guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county, is punishable by a fine of not exceeding ten dollars for each of the birds mentioned in subdivisions 1, 2, 3 or 4 of this

section, so shot or killed, or nest, or eggs, so destroyed, and for each violation of subdivisions 5 or 6 of this section; and not exceeding one hundred dollars for each animal mentioned in subdivisions 8 and 9 of this section, so shot, killed, trapped or taken; and not exceeding one hundred dollars for each violation of subdivisions 10, 11 or 12 of this section. [1899, ch. 93, § 7; R. C. 1899, § 7677; 1901, ch. 106.]

§ 9456. **Possession of game illegal, when.** Every person who has in his or her possession any of the birds or animals mentioned in the last section, at any time prior to the opening of the respective seasons during which it shall be lawful to hunt or kill the same, shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county in which such offense is committed, is punishable in the manner and to the extent provided in the last section for the killing of the same; provided, that any person may retain possession of such birds or game five days from the close of their respective seasons; and further provided, if any person having the possession of any such birds or game, lawfully killed, desires to retain same for a longer period than five days from the close of their respective seasons, he may apply to the state game warden, or his deputy, for a tag, properly stamped, and describing such game, which tag shall be attached to each bird or separate part of game, and shall remain securely fastened thereto until the same is used for food. [1899, ch. 93, § 8; R. C. 1899, § 7678; 1903, ch. 103.]

§ 9457. **District game wardens, how appointed. Bond. Duties. Deputies.** The state shall be divided into two game districts:

District number one shall consist of the following counties: Pembina, Walsh, Grand Forks, Nelson, Ramsey, Cavalier, Benson, Towner, Wells, Pierce, Rolette, McLean, McHenry, Bottineau, Ward, Williams, Allred, Wallace and all unorganized adjacent territory.

District number two shall consist of the following counties: Traill, Steele, Griggs, Eddy, Foster, Cass, Barnes, Stutsman, Richland, Ransom, LaMoure, Sargent, Dickey, McIntosh, Logan, Emmons, Kidder, Oliver, Burleigh, Morton, Hettinger, Bowman, Billings, Stark, Mercer, Dunn, McKenzie and all unorganized adjacent territory.

There shall be appointed by the governor in each of said game districts a game warden, who shall be known as the district game warden, and whose term of office shall be two years, commencing on the first Tuesday in April next succeeding his appointment and until his successor is appointed and qualified. He shall give a bond, to be approved by the governor, in the sum of one thousand dollars, conditioned for the faithful performance of his duties. It is the duty of the district game wardens to superintend and aid in the enforcement of all laws of this state for the preservation of game therein. The district game wardens shall appoint deputy game wardens in the counties of their respective districts as follows: In each county having less than three thousand inhabitants, one deputy; in each county having more than three thousand inhabitants and not less than seven thousand inhabitants, two deputies; in every other county three deputies, and special deputies wherever and whenever they deem it advisable. Every deputy shall be an elector of the county for which he is appointed, and shall hold office at the pleasure of the district game warden, or until disqualified for any reason. [1899, ch. 93, § 1; R. C. 1899, § 1642; 1903, ch. 103.]

§ 9458. **Unlawful to hunt without permit.** It shall be unlawful for any person to hunt, kill or wound in this state any of the wild animals or birds, herein mentioned without having first obtained a permit as herein provided, which permit shall be subject to inspection of any person upon demand, and any person violating any of the provisions of this section is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty dollars nor more than fifty dollars, or may be imprisoned in the county jail

not more than thirty days, or may be subjected to both such fine and imprisonment; provided, however, that nothing in this section shall prevent any resident of this state or member of his family living at home from hunting on lands owned or controlled by him during the open season as provided by law; provided nothing in this section shall be construed to prevent the children of this state under the age of sixteen years from hunting, they having the written consent of their parents or guardians so to do, during the open season without a permit. [1899, ch. 93, § 2; R. C. 1899, § 1643.]

§ 9459. **Permits, form of.** The district game wardens shall cause forms of such permits to be printed, and across the face of such permits, in large, red figures, shall appear the year for which they are issued, such permits to be substantially as follows:

State of North Dakota, }
County of } ss.

....., a.....resident of North Dakota, is hereby licensed to hunt in North Dakota, under the provisions and conditions of the game laws thereof, during the open season of the year..... This permit is not transferable.

Dated at.....this.....day of.....19...

County Auditor.

Such permits shall be indorsed by the district game wardens, and issued by them to the county auditors of the several counties in their respective districts. [1899, ch. 93, § 3; R. C. 1899, § 1644; 1903, ch. 103.]

§ 9460. **County auditors to issue permits. Fees.** The county auditor shall fill out and issue one of such permits to any person applying therefor on payment of twenty-five dollars, if the applicant is a non-resident of the state, and on payment of seventy-five cents if applicant is known to the auditor, or satisfactorily proven to him, to be a resident of this state; provided, that any non-resident who may own cultivated lands, or be carrying on the cultivation of any lands in this state, not less than one quarter section, for a period of not less than one year prior to the time of making application for such license, shall be entitled to take out a resident's permit, whether such non-resident is the owner of land so cultivated in whole or in part; provided, that such non-resident shall take out such permit in the county where such cultivation is carried on. No permit shall be valid unless indorsed by the district game warden of the district in which said permit is issued, signed by the county auditor, and sealed with the county seal. Such permit shall authorize the holder to hunt throughout the state either with or without dogs. All permits shall expire on the thirty-first day of December next after their issuance. It shall be unlawful for the district game wardens or any of their deputies, or any county auditor, to issue to any person any complimentary or special permit, or in any way, directly or indirectly, to grant permission to, or authorize any person to violate any of the provisions of the game laws of this state, and any such officer so doing shall for each offense forfeit and pay the sum of not less than fifty dollars, nor more than two hundred dollars, with costs, to be recovered in a civil action, for the payment of which sum such officer shall be liable upon his official bond. Any person informing against such officer shall be entitled to one-half of the amount so recovered, the balance to be disposed of as provided in section 9544. [1899, ch. 93, § 4; R. C. 1899, § 1645; 1903, ch. 103.]

§ 9461. **Disposition of fees.** Twenty per cent of all moneys received from the sale of permits shall be paid over to the state treasurer by the county auditor of each county on the first day of December of each year, and shall be placed in the state general fund. Thirty per cent shall at the same time be paid over to the district game warden by the county auditor of each county within his district, and shall be in full payment for his services. Forty

per cent shall at the same time be paid over to the deputy game warden of the county, or when there is more than one, be divided equally between them, and shall be in full payment for their services, and the remaining ten per cent shall be retained by the county auditor for his personal services. And the county auditor of every county shall at the same time file with the state auditor a full report of all resident and non-resident permits issued by him during that year. [1899, ch. 93, § 5; R. C. 1899, § 1646; 1903, ch. 103.]

§ 9462. **Powers and duties of district game wardens and deputies.** For the purpose of enforcing the laws of this state for the protection of game, the district game wardens and their deputies shall have all the powers conferred by law upon constables. It shall be the duty of each deputy game warden diligently to inform himself of all violation of such laws, and to prosecute the same, and to arrest the party so violating them with a warrant sworn out before any justice of the peace of the county in which the offense is committed, said warrant to be issued as provided in section 9699. If caught in the violation thereof at the time of his arrest, a party may be arrested therefor without a warrant, when he shall be at once taken before a court having jurisdiction of the offense, and a warrant issued, when the same proceedings shall thereafter be had as if a warrant had been issued before his arrest, but no person shall be arrested without a warrant for any such violation when not engaged in such violation at the time of his arrest. Upon any conviction had for any violation of the provisions of this article there shall be paid to the deputy making the arrest such fees as are allowed constables for services in like cases, to be taxed and collected as a part of the costs in the case. [1899, ch. 93, § 6; R. C. 1899, § 1647; 1903, ch. 103.]

§ 9463. **Game birds and animals. To prohibit sale of certain.** Every person who sells or exposes for sale, or has in his possession, with intent to sell or ship, for the purpose of selling to any person within the state, by common or private carrier, at any time, any prairie chickens, pinnated grouse, sharp tailed grouse, ruffled grouse, woodcock, or deer, is guilty of a misdemeanor, and upon conviction therefor before any justice of the peace of the county, is punishable by a fine of not exceeding ten dollars for each of the game birds or deer herein mentioned, sold, exposed for sale, or shipped, or had in his possession with the intent to sell or ship as aforesaid. [1901, ch. 104.]

§ 9464. **Antelope, unlawful to kill. Penalty.** It shall not be lawful to hunt, shoot at, kill, or capture any antelope within the limits of the state of North Dakota at any time prior to January 1, 1911. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, the same to be prosecuted as are the other violations of the game laws of this state; and upon conviction thereof the offender shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for a term not exceeding three months for each offense, in the county jail in and for the county wherein the act was committed. [1901, ch. 105.]

§ 9465. **Beaver, unlawful to kill. Penalty.** It shall be unlawful for any person to trap, catch or kill or otherwise destroy any beaver in the state of North Dakota before January 1, 1920. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars and by imprisonment in the county jail not less than thirty days nor more than six months. [1905, ch. 51.]

§ 9466. **Shipping out of state.** Every person who within this state ships or receives for shipment beyond the limits of this state any of the game birds or animals mentioned in section 9455 or any of the fish mentioned in section 9473, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of ten dollars for each game bird or fish so shipped or received

and one hundred dollars for each animal so shipped or received. [1887, ch. 59, § 1; 1887, ch. 58, § 5; R. C. 1895, § 7683.]

§ 9467. **Construction of game laws.** All provisions of the laws of this state relating to the having in possession or under control any game bird or animal, or to the shipment of the same out of the state, shall be construed to include any and all parts of the meat thereof. [1899, ch. 93, § 13; R. C. 1899, § 7683d.]

§ 9468. **Duties of district game wardens, deputies and peace officers to seize game.** It shall be the duty of district game wardens and their deputies, and all peace officers of this state, at any and all times to seize and take possession of any and all animals or birds which have been caught, taken, killed, shipped or received for shipment, had in possession or under control contrary to the provisions of the laws of this state. Such seizure may be made without a warrant. Any court having jurisdiction of the offense upon receiving by oath or affirmation proof of probable cause for belief in concealment of any birds or animals caught, taken, killed, shipped or received for shipment, had in possession or under control contrary to the provisions of the laws of this state, shall issue a search warrant and cause a search to be made therefor in any place particularly described in said warrant, and to that end may cause any building, inclosure or car to be entered, and any apartment, chest, box, locker, crate, basket or package to be broken open and the contents thereof examined. Deputy game wardens and all peace officers taking or seizing any such animals or birds shall at once report the facts attending the same to the district game warden, and shall at his request turn the same over to him. After such taking such animals or birds shall be subject to the direction and control of the district game warden and shall be considered in his possession. [1889, ch. 93, § 10; R. C. 1899, § 7683a; 1903, ch. 103.]

§ 9469. **Game seized and sold, how proceeds disposed of.** Any animals or birds caught, taken, killed, shipped or received for shipment, had in possession or under control contrary to the provisions of the laws of this state, which may come into the possession of the district game warden, either directly or through any deputy or peace officer, shall be sold or disposed of within this state, and the district game warden may issue a certificate to the person purchasing, certifying that the same were legally obtained and possessed, and anyone so acquiring same within this state shall have the right to deal therewith as if the same had been killed or possessed in accordance with the laws of this state. The deputy game warden or peace officer making such seizure shall be entitled to two-thirds of the proceeds of the sale of any of the animals or birds sold or disposed of as herein provided, and the district game warden shall be entitled to one-third of the proceeds of such sale. [1899, ch. 93, § 11; R. C. 1899, § 7683b; 1903, ch. 103.]

§ 9470. **Resisting officer. Penalty.** Whoever shall resist or obstruct any of said officers by threat or otherwise, in the discharge of their duties under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than fifty dollars and the costs of prosecution, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment. [1899, ch. 93, § 12; R. C. 1899, § 7683c.]

§ 9471. **Indians subject to game laws.** It shall be unlawful for any Indian who is a ward of the United States government to hunt on any lands within the state at any time, except upon such lands as are known to be Indian reservation lands. It shall be the duty of the district game wardens, their deputies and all peace officers of this state, to arrest any Indian found hunting in violation of this article. It shall be the duty of the state's attorney in any county within the state to prosecute any Indian so arrested under the provisions of this article, and upon conviction such Indian shall be deemed guilty

of a misdemeanor and be punishable by a fine of not less than twenty dollars nor more than fifty dollars, or may be imprisoned in the county jail not less than ten days nor more than thirty days, or may be subjected to both such fine and imprisonment; provided, that the provision of this section shall not apply to any Indian who takes out a permit to hunt, as provided for other persons. [1899, ch. 93, § 15; R. C. 1899, § 7683f; 1903, ch. 103.]

§ 9472. **Propagation of game and fish.** The commissioners of any county may expend not to exceed the sum of one hundred dollars per annum for the purpose of propagating game or fish when it shall appear to them that such an expenditure would be beneficial to the county. [1899, ch. 93, § 14; R. C. 1899, § 7683e.]

ARTICLE 2.—RELATING TO FISH.

§ 9473. **Catching fish restricted.** Every person who, either:

1. Takes, catches, kills or destroys any fish of any kind in any of the lakes, streams or other public waters of this state in any manner other than by angling with hook and line; or,

2. Between the first day of January and the following first day of May in each year, takes, catches, kills or destroys in any manner by any device in any of the public waters of this state, any pike, pickerel, perch, croppie, trout, buffalo, bass, or muskalonge for any purpose other than for propagating or breeding the same,

Is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than five and not exceeding twenty-five dollars, and for every subsequent offense by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than ten dollars, and not exceeding one hundred dollars, or by both; provided, that it shall be unlawful between the first day of October and the following first day of May, for any person to fish in any manner in any of the waters of this state wherein any fish have been placed for propagating or breeding, by either the state or the national government, and the same penalty shall apply as provided elsewhere in this article. [1899, ch. 93, § 9; R. C. 1899, § 7679; 1901, ch. 103.]

§ 9474. **State fish commissioner, duties of.** The state superintendent of irrigation and forestry is hereby constituted the state fish commissioner of North Dakota, whose duty it shall be to act in conjunction with the United States commissioner of fish and fisheries, and otherwise as his judgment may dictate, by stocking the waters of this state with fish, by distributing in suitable parts thereof such fish as he may deem best adapted to furnish cheap and nutritious food for the people; to establish and maintain state fish hatcheries and such fish breeding ponds as he may deem necessary, and to equip and stock the same with fish; to employ suitable agents to take charge of and propagate such young fish and fish eggs as he may require or obtain; to have the entire charge of the fish culture and a general supervision of all the fish of the waters throughout this state and to take such legal steps as shall secure proper protection of the same; provided, that nothing in this article shall be so construed as to make the state liable for the lands, springs or waters secured for state fish hatcheries or fish breeding ponds or for any service rendered by any fish agents or any other person engaged in such work as named in this section. [1895, ch. 64, §§ 1, 2; R. C. 1899, § 1648.]

NOTE:—By chapter 176, laws of 1901, the act creating the office of "superintendent of irrigation and forestry" was repealed, but the law relating to fish and constituting the superintendent of irrigation and forestry "state fish commissioner,"—chapter 91, laws of 1899—was not repealed and it is, therefore, compiled herewith.

§ 9475. **Deputy fish wardens, how appointed.** The state fish commissioner is hereby authorized to appoint, and shall appoint two deputy fish wardens in each and all counties in this state, and additional deputy fish wardens wherever and whenever he may deem it advisable. Each deputy fish warden

shall be an elector of the county for which he is appointed, and before entering upon the duties of his office shall take and subscribe to an oath to support the constitution of the United States and that of the state of North Dakota, and that he will faithfully discharge the duties of his office, according to the best of his ability, which oath shall be placed in the hands of the state fish commissioner of North Dakota for filing. Each deputy fish warden shall hold his office at the pleasure of the state fish commissioner or until disqualified for any reason. [1899, ch. 91, § 1; R. C. 1899, § 1648a.]

§ 9476. Powers and duties of the state fish commissioner and deputies. For the purpose of enforcing the laws of this state for the protection of fish, the state fish commissioner and his deputies shall have the powers conferred by law on constables. It shall be the duty of each deputy fish warden diligently to inform himself of all violations of such laws, and to prosecute the same, and to arrest the party or parties so violating them with a warrant sworn out before any justice of the peace of the county in which the offense is committed. If caught in the violation thereof, at the time of his arrest, said party or parties may be arrested therefor without a warrant, and he or they shall be at once taken before a court having jurisdiction of the offense and a warrant issued, when the same proceedings shall thereafter be had as if a warrant had been issued before his or their arrest; but no person shall be arrested without a warrant for any violation when not engaged in such violation at the time of arrest. Upon conviction had for violation of any of the provisions of this article, or any other law of this state governing or pertaining to the matter of fish, there shall be paid to the state fish commissioner, or the deputy fish warden, for his own use and benefit, who shall make the arrest, a fee of ten dollars to be taxed and collected as a part of the costs of the suit. [1899, ch. 91, § 2; R. C. 1899, § 1648b.]

§ 9477. State fish commissioner and deputies shall seize fish, when. How disposed of. It shall be the duty of the state fish commissioner and his deputies, at any and all times to seize and take possession of any and all fish which have been caught, taken, killed, shipped or received for shipment, and in possession or under control, contrary to the provisions of the laws of this state. Such seizures may be made without a warrant. Any court having jurisdiction of the offense, upon receiving by oath or affirmation, proof of probable cause for belief in the concealment of any fish caught, taken, killed, shipped or received for shipment, had in possession or under control, contrary to the provisions of the laws of this state, shall issue a search warrant and cause a search to be made therefor, in any place particularly described in said warrant, and to that end, may cause any building, inclosure or car to be entered, and any apartment, chest, box, trunk, locker, crate, basket or package to be broken open and the contents examined. The state fish commissioner or the deputy fish warden taking or seizing such fish shall, as soon as possible thereafter, sell the same to any person residing in this state except to himself, desiring or willing to buy such fish. The state fish commissioner or the deputy fish warden making such seizure and sale, shall give a written certificate, officially signed, to the purchaser that from him such fish were legally obtained and possessed. The purchaser shall show said certificate of the legal purchase and possession of such fish to the state fish commissioner, or to any deputy fish warden, upon a written request from such officer so to do. Any person within this state thus acquiring such fish from such officer, shall have the right to deal therewith as if the same had been killed or possessed in accordance with the law of this state. The state fish commissioner or the deputy fish warden making such seizure and sale shall be entitled to two-thirds of the proceeds thereof, and the other one-third shall be paid to the treasurer of the county where such fish were seized, and such treasurer's receipt therefor, filed in the office of the state fish commissioner. [1899, ch. 91, § 3; R. C. 1899, § 1648c.]

§ 9478. **Resisting officer. Penalty.** Whoever shall resist or obstruct any of the fish officers of this state, by threat or otherwise, in the discharge of their duties under this article shall be guilty of a misdemeanor; and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than fifty dollars, and the costs of the prosecution, or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. Upon conviction had for any violation of the provisions of this section, there shall be paid to the state fish commissioner, or the deputy fish warden, for his own use and benefit, who shall make the arrest, a fee of ten dollars, to be taxed and collected as a part of the cost of the suit. [1899, ch. 91, § 4; R. C. 1899, § 1648d.]

§ 9479. **Fishing within five hundred feet of dam prohibited.** It shall be unlawful for any person to take, catch, kill or destroy with hook and line or in any other manner whatever, any fish at any time at any of the mill dams, mill races or any of the fishways, sluices or aprons in any of the waters of this state, or within five hundred feet measured from the same up stream, or to cut open the ice and remove any fish from the waters through the opening thus made, or remove fish from any of the waters of this state at any time by means of spearing, seines, nets or any other device or by any other manner, except with hook and line, and in no event shall the number of fish taken, caught or killed by any one person exceed twenty-five fish in any one day. [1895, ch. 64, § 3; R. C. 1899, § 7680.]

§ 9480. **Punishment for illegal fishing, misdemeanor.** Whoever shall offend against any of the provisions of the last section shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than ten and not more than twenty-five dollars, and costs of prosecution, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or both such fine and imprisonment, in the discretion of the court, for each and every fish thus taken, caught, killed or destroyed contrary to the provisions of such section. [1895, ch. 64, § 3; R. C. 1899, § 7681.]

§ 9481. **Seines and nets to be destroyed.** Every seine, net or other unlawful device used, or intended to be used, to take, catch, kill or destroy any fish in this state, contrary to the laws thereof, is forfeited to the state; and it is the duty of the state fish commissioner, and every deputy fish warden of this state, to seize and destroy, with a warrant duly issued, such seines, nets, or other unlawful device whenever the same are being used in defiance of the laws of this state; and the deputy fish warden who shall seize and destroy such seines, nets or other unlawful devices, shall immediately thereafter report the facts to the state fish commissioner. [1899, ch. 91, § 6; R. C. 1899, § 7682.]

§ 9482. **Protected for five years.** All planted fish or fish eggs placed in the public waters of this state for the purpose of propagation, breeding or growth, shall be and are hereby protected for a period of five years from the time of such planting. [1897, ch. 84, § 1; R. C. 1899, § 7683g.]

§ 9483. **Penalty for destruction or injury.** Whoever shall remove any planted fish or fish eggs from the public waters of this state, before the end of five years from the time of said planting, either with a hook and line, or by any other device or way, or shall destroy or injure the same in any manner, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than twenty dollars nor more than fifty dollars for every fish, or fish egg, thus caught, removed, destroyed or injured, or be confined in the county jail not less than thirty nor more than ninety days, or be subject to both fine and imprisonment in the discretion of the court having jurisdiction in such cases. [1897, ch. 84, § 2; R. C. 1899, § 7683h.]

§ 9484. **Peace officers empowered to arrest.** All sheriffs and other peace officers of this state are hereby empowered and required to arrest and bring to punishment all persons found guilty of the offense named in section 9483. [1897, ch. 84, § 3; R. C. 1899, § 7683i.]

§ 9485. **Indians subject to fish laws.** It shall be unlawful for any Indian who is a ward of the United States government to fish in any waters within this state at any time, except in such waters as are known to be within Indian reservations. It shall be the duty of the state fish commissioner or any of his deputies to arrest any Indian found fishing in violation of this article. It shall be the duty of the state's attorney of any county within this state to prosecute any Indian so arrested under the provisions of this article, and upon conviction such Indian shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or may be imprisoned in the county jail not less than ten days nor more than thirty days, or may be subject to both such fine and imprisonment. Upon conviction had for any violation of the provisions of this section there shall be paid to the state fish commissioner, or the deputy fish warden, for his own use and benefit, who shall make the arrest a fee of ten dollars, to be taxed and collected as a part of the costs of the suit. [1899, ch. 91, § 5; R. C. 1899, § 1648e.]

§ 9486. **Deputy fish wardens shall make reports of their doings.** Each and all deputy fish wardens shall report to the state fish commissioner all proceedings had under this article in way of arrests and convictions, their fees in each case, seizures and sale of fish illegally held or possessed, of whom seized, to whom sold, and the amount of proceeds derived by them therefrom, and also give such additional information and recommendations as will, in their opinion, prove of value to the service. All such reports may be made at any time, but not later than October first of each year. [1899, ch. 91, § 7; R. C. 1899, § 1648f.]

§ 9487. **Right and duty of peace officers.** Nothing in this article shall be so construed as to deprive any peace officer of this state of the right and duty to arrest and bring to punishment, under the laws of this state, any person violating the provisions of this article. [1899, ch. 91, § 8; R. C. 1899, § 1649.]

§ 9488. **Duty of peace officer.** Every seine, net or other unlawful device used or intended to be used to catch, take, kill or destroy any fish in this state contrary to the laws thereof is forfeited to the state, and it is the duty of every peace officer of this state to seize and destroy any such device whenever the same is being used in violation of this article. [1895, ch. 64, § 4; R. C. 1899, § 1650.]

§ 9489. **Report of commissioner, when.** Two months previous to the meeting of the legislative assembly, the state fish commissioner shall make a report to the governor of this state giving an account of the doings of his office, together with such recommendations as in his judgment may best promote fish culture in this state. [1895, ch. 64, § 5; R. C. 1899, § 1651.]

ARTICLE 3.—FISHWAYS.

§ 9490. **Passageway for fish in all dams.** There shall be erected and maintained by the owner of any dam across any stream in this state a fishway at least one foot in depth at the edge of such dam of proper width to allow all fish endeavoring to migrate to the waters of such stream above the dam to pass over the same. Such fishway shall be placed at an angle of not more than thirty degrees, and extend entirely to the running water below the dam, and it shall be protected on each side by an apron at least one foot in height to confine the waters therein. Such fishway shall be constructed under the supervision of the county commissioners of the county where such dams are located, and be located at such place in such dam and built in such manner

and of such material as they may direct. [1885, ch. 60, § 1; 1887, ch. 55, § 1; R. C. 1899, § 1652.]

§ 9491. **County commissioners shall build fishways.** Whenever the owner or occupant of any such dam neglects or refuses to construct such fishway or chute over the same, the commissioners of the county in which such dam is maintained shall proceed within thirty days, on notice to them in writing, made by five freeholders of any county through which the waterways so dammed shall pass, to let the work of erecting such fishway or chute, and providing material therefor, to the lowest responsible bidder, and all expenses attendant upon the erection or maintenance of the same shall be paid by the owner or occupant of the dam, and shall be recovered in the name of the person building such fishway or chute upon the acceptance of the same by the county commissioners; and if not paid by such dam owners or occupants, the same shall become a lien upon such property and shall be collected as is provided for enforcing mechanics' liens. If said board of county commissioners shall refuse or neglect to erect and maintain such fishway or chute, after the notice to them required by this section, they shall upon conviction therefor be adjudged guilty of a misdemeanor and shall be punished by removal from office and payment of the costs of prosecution. [1885, ch. 60, § 2; R. C. 1899, § 1653; 1903, ch. 102.]

CHAPTER 76.

GENERAL PROVISIONS.

§ 9492. **Acts punishable in different ways.** An act or omission which is made punishable in different ways by different provisions of this code or other penal statute may be punished under either of such provisions except that in the cases specified in sections 9504 to 9507 inclusive, when the previous conviction is charged in the information or indictment and found from the evidence by the jury, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one; and an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. [Pen. C. 1877, § 743; R. C. 1899, § 7684.]

§ 9493. **Acts punishable in another state.** An act or omission declared punishable by this code, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this code. [Pen. C. 1877, § 744; R. C. 1899, § 7685.]

§ 9494. **Conviction or acquittal in another state.** Whenever it appears upon the trial of an information or indictment that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of another state, government or country founded upon the act or omission in respect to which he is upon trial, it shall be a sufficient defense. [Pen. C. 1877, § 745; R. C. 1899, § 7686.]

§ 9495. **Contempts punishable as crimes.** A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt. [Pen. C. 1877, § 746; R. C. 1899, § 7687.]

§ 9496. **Mitigation of punishment.** When it is made to appear at the time of passing sentence upon a person convicted upon information or indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion. [Pen. C. 1877, § 747; R. C. 1899, § 7688.]

§ 9497. **Aiding in misdemeanor.** Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor. [Pen. C. 1877, § 748; R. C. 1899, § 7689.]

§ 9498. **Neglect of official duty. Removal from office.** In addition to the penalty affixed by express terms to every neglect or violation of official duty on the part of public officers, county, city, town or township, or state officers not liable to impeachment, when it is not so expressly provided, they may, in the discretion of the court, be removed from office. [R. C. 1895, § 7690.]

§ 9499. **When sending letter complete.** In the various cases in which the sending of a letter is made criminal by this code, or by any statute of this state, the offense is deemed complete from the time when such letter is deposited in any post office, or in any other place, or delivered to any person with intent that it shall be forwarded; and the party may be prosecuted and tried in any county or judicial district in which said letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed. [Pen. C. 1877, § 749; R. C. 1899, § 7691.]

§ 9500. **Failure to perform duty.** No person is punishable for an omission to perform an act when such act has been performed by another person acting in his behalf and competent by law to perform it. [Pen. C. 1877, § 750; R. C. 1899, § 7692.]

§ 9501. **Attempts to commit crime.** An act done with intent to commit a crime and tending but failing to effect its commission, is an attempt to commit that crime. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be prosecuted for such crime. [Pen. C. 1877, § 751; R. C. 1895, § 7693.]

§ 9502. **Attempts. Failures to commit crimes. Punishment.** Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime but fails, or is prevented or intercepted in the perpetration thereof, is punishable, when no provision is made by law for the punishment of such attempt, as follows:

1. If the offense so attempted is punishable by imprisonment in the penitentiary for four years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the penitentiary or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction for the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the penitentiary for any time less than four years, the person guilty of such attempt is punishable by imprisonment in a county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted. [Pen. C. 1877, § 752; R. C. 1899, § 7694.]

Sub. 1, construed. *State v. King*, 9 N. D. 149, 82 N. W. 423.

Attempt to commit sodomy may be punished by imprisonment for not exceeding five years. *State v. King*, 9 N. D. 149, 82 N. W. 423.

§ 9503. **Restrictions.** The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission

of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed. [Pen. C. 1877, § 753; R. C. 1899, § 7695.]

§ 9504. Second offense, first five years or less. Every person who, having been convicted of any offense punishable by imprisonment in the penitentiary, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such, that upon a first conviction an offender would be punishable by imprisonment in the penitentiary for any term exceeding five years, such person is punishable by imprisonment in the penitentiary for a term not less than ten years.

2. If such subsequent offense is such that, upon a first conviction the offender would be punishable by imprisonment in the penitentiary for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the penitentiary not exceeding ten years.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if committed, would be punishable by imprisonment in the penitentiary, then the person convicted of such subsequent offense is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [Pen. C. 1877, § 754; R. C. 1899, § 7696.]

§ 9505. Attempts to conceal death of child. Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, is punishable by imprisonment in the penitentiary not exceeding five years and not less than two. [Pen. C. 1877, § 755; R. C. 1899, § 7697.]

§ 9506. Second offense, first five years or more. Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary, commits any crime after such conviction, is punishable as follows:

1. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the penitentiary for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the penitentiary for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed upon a conviction for such first offense.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary, then such person is punishable by imprisonment in such prison for a term not exceeding five years. [Pen. C. 1877, § 756; R. C. 1899, § 7698.]

§ 9507. First conviction not in this state. Every person who has been convicted in any other state, government or country of an offense which, if committed within this state, would be punishable by the laws of this state by imprisonment in the penitentiary, is punishable for any subsequent crime committed within this state, in the manner prescribed in the last three sections, and to the same extent as if such first conviction had taken place in a court of this state. [Pen. C. 1877, § 757; R. C. 1899, § 7699.]

§ 9508. Two or more convictions. Sentences. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be. [Pen. C. 1877, § 758; R. C. 1899, § 7700.]

§ 9509. **Imprisonment for life.** Whenever any person is declared punishable for a crime by imprisonment in the penitentiary for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than such as are prescribed. [Pen. C. 1877, § 759; 1885, ch. 67, § 1; R. C. 1895, § 7701.]

§ 9510. **Time sentence limited to expire.** Whenever a person is sentenced to be imprisoned in the penitentiary, for a longer period than one year, it is the duty of the court before which the conviction is had, to limit the time of the sentence so that it will expire, as near as may be, between the month of March and the month of November, unless the exact period of the sentence is fixed by law. [Pen. C. 1877, § 760; R. C. 1899, § 7702.]

§ 9511. **Juvenile offenders.** Whenever any person under the age of sixteen years is convicted of an offense punishable by imprisonment in the penitentiary, the court before whom such conviction was had may, in its discretion, sentence the person so convicted to imprisonment in the county jail of the county in which such conviction was had. [Pen. C. 1877, § 761; R. C. 1899, § 7703.]

§ 9512. **Fine may be added to imprisonment.** Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars in addition to the imprisonment prescribed. [Pen. C. 1877, § 762; R. C. 1899, § 7704.]

§ 9513. **When term of imprisonment commences to run.** The term of imprisonment fixed by the judgment in a criminal action commences to run only from the time of the sentence of the defendant; but if thereafter, during such term, the defendant escapes or by any legal means is temporarily released from such imprisonment and subsequently returned thereto the time during which he was at large must not be computed as part of such term. [R. C. 1895, § 7705.]

§ 9514. **Civil rights suspended.** A sentence of imprisonment in the penitentiary for any term less than for life, suspends all the civil rights of the person so sentenced, and forfeits all public offices, and all private trusts, authority or power, during the term of such imprisonment. [Pen. C. 1877, § 763; R. C. 1899, § 7706.]

§ 9515. **Civil death.** A person sentenced to imprisonment in the penitentiary for life, is thereafter deemed civilly dead. [Pen. C. 1877, § 764; R. C. 1899, § 7707.]

§ 9516. **Last two sections limited.** The provisions of the last two sections must not be construed to render the person therein mentioned incapable of making and acknowledging a sale or conveyance of property. [R. C. 1895, § 7708.]

§ 9517. **Person convicted under protection of law.** The person of a convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced. [Pen. C. 1877, § 765; R. C. 1899, § 7709.]

§ 9518. **Conviction does not work forfeiture.** No conviction of any person for crime works any forfeiture of any property, except in cases where a forfeiture is expressly imposed by law. [Pen. C. 1877, § 766; R. C. 1899, § 7710.]

§ 9519. **Testimony. Perjury. Privilege.** The various sections of this code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding,

do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination. [Pen. C. 1877, § 767; R. C. 1899, § 7711.]

§ 9520. **Definitions of terms.** Whenever the terms mentioned in the following sections are employed in this code, they are deemed to be employed in the senses hereafter affixed to them, except when a different sense plainly appears. [Pen. C. 1877, § 768; R. C. 1899, § 7712.]

§ 9521. **Willfully defined.** The term "willfully," when applied to the intent with which an act is done or omitted implies simply a purpose or willingness to commit the act or omission referred to. [Pen. C. 1877, § 769; R. C. 1895, § 7713.]

"Willful" implies simply purpose of willingness to commit forbidden act. *Freeman v. City of Huron*, 8 S. D. 435, 66 N. W. 928.

§ 9522. **Negligent. Negligence.** The terms "neglect," "negligence," "negligent," and "negligently," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns. [Pen. C. 1877, § 770; R. C. 1899, § 7714.]

§ 9523. **Corruptly.** The term "corruptly," when so employed, imports a wrongful design to acquire, or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person. [Pen. C. 1877, § 771; R. C. 1895, § 7715.]

§ 9524. **Malice. Maliciously.** The terms "malice," and "maliciously," when so employed, import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law. [Pen. C. 1877, § 772; R. C. 1899, § 7716.]

Meaning of malice. *Territory v. Egan*, 3 Dak. 119, 13 N. W. 568; *Wuest v. American Tobacco Co.*, 10 S. D. 394, 73 N. W. 903.

§ 9525. **Knowingly.** The term "knowingly," when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission. [Pen. C. 1877, § 773; R. C. 1899, § 7717.]

§ 9526. **Bribe.** The term "bribe," signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity. [Pen. C. 1877, § 774; R. C. 1899, § 7718.]

§ 9527. **Vessel.** The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place. [Pen. C. 1877, § 775; R. C. 1899, § 7719.]

§ 9528. **Peace officer.** The term "peace officer," signifies any sheriff, coroner, constable, policeman, watchman of an incorporation, city or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace. [Pen. C. 1877, § 776; R. C. 1899, § 7720.]

§ 9529. **Magistrate.** The term "magistrate," signifies any judge of the supreme court or of the district court, justice of the peace, police magistrate and such other officer or officers as are authorized and empowered to issue warrants for the arrest of persons accused of crime. [Pen. C. 1877, § 777; R. C. 1895, § 7721.]

§ 9530. **Signature.** The term "signature," includes any name, mark or sign, written with intent to authenticate any instrument or writing. [Pen. C. 1877, § 778; R. C. 1899, § 7722.]

§ 9531. **Writing.** The term "writing," includes printing and typewriting [Pen. C. 1877, § 779; R. C. 1895, § 7723.]

§ 9532. **Real property.** The term "real property," includes every estate, interest and right in lands, tenements and hereditaments. [Pen. C. 1877, § 780; R. C. 1899, § 7724.]

§ 9533. **Personal property.** The term "personal property," includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged or diminished. [Pen. C. 1877, § 781; R. C. 1899, § 7725.]

§ 9534. **Property.** The term "property," includes both real and personal property. [Pen. C. 1877, § 782; R. C. 1899, § 7726.]

§ 9535. **Person defined.** The word "person," includes corporations as well as natural persons. [Pen. C. 1877, § 783; R. C. 1899, § 7727.]

§ 9536. **Person further defined.** When the term "person," is used in this code to designate the party whose property may be the subject of any offense, it includes this state, any other state, government or country which may lawfully own any property within this state, and all public and private corporations or joint associations, as well as individuals. [Pen. C. 1877, § 784; R. C. 1899, § 7728.]

§ 9537. **Singular includes plural.** The singular number includes the plural, and the plural the singular. [Pen. C. 1877, § 785; R. C. 1899, § 7729.]

§ 9538. **Genders.** Words used in the masculine gender, comprehend as well the feminine and neuter. [Pen. C. 1877, § 786; R. C. 1899, § 7730.]

§ 9539. **Present tense.** Words used in the present tense include the future, but exclude the past. [Pen. C. 1877, § 787; R. C. 1899, § 7731.]

§ 9540. **Intent to defraud.** Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever. [Pen. C. 1877, § 788; R. C. 1899, § 7732.]

§ 9541. **Civil remedies not affected.** The omission to specify or affirm in this code, any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same. [Pen. C. 1877, § 789; R. C. 1899, § 7733.]

§ 9542. **Proceedings to impeach or remove.** The omission to specify or affirm in this code any ground of forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority, conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension. [Pen. C. 1877, § 790; R. C. 1899, § 7734.]

§ 9543. **Military or other authorized punishment.** This code does not affect any power conferred by law upon any court martial or other military authority or officer to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt, nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants. [Pen. C. 1877, § 791; R. C. 1899, § 7735.]

§ 9544. **Fines go to state school fund.** All fines, forfeitures and pecuniary penalties, prescribed as a punishment, by any of the provisions of this code, when collected, shall be paid into the treasury of the proper county, to be added to the state school fund. [Pen. C. 1877, § 792; 1885, ch. 111, § 2; Const. § 154; R. C. 1895, § 7736.]

§ 9545. Costs taxed and collected. In all cases of conviction, the costs of the prosecution shall be taxed against the defendant, and enforced as other judgments in criminal causes. [Pen. C. 1877, § 793; R. C. 1899, § 7737.]

The law does not authorize a justice to commit a defendant for nonpayment of costs which are no part of the fine imposed as a penalty for the defense. In re Lackey, 6 S. D. 528, 62 N. W. 184.

Prosecutions under city ordinances are criminal cases so far as relates to costs. City of Yankton v. Douglass, 8 S. D. 590, 67 N. W. 630.

§ 9546. Code construed. Continuation of existing statutes. The provisions of this code so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments. [R. C. 1895, § 7738.]

§ 9547. This code not retroactive. Exceptions. The provisions of this code shall not apply nor extend to any act done or offense committed prior to the taking effect hereof, except as specially provided herein; but the provisions of law now in force, and applicable to the crime to which this code relates, as well in respect to the penalty affixed as in all other respects (except matters of procedure, and any provisions alleviating the punishment to be imposed upon conviction in any case), shall hereafter be and remain in full force and effect as to any offense committed before the taking effect of this code. [R. C. 1895, § 7739.]