

PENAL CODE

CHAPTER 1.

PRELIMINARY PROVISIONS.

§ 9193. **Title.** This act shall be known as the penal code of the state of North Dakota. [R. C. 1905, § 8530; Pen. C. 1877, § 1; R. C. 1899, § 6800.]

§ 9194. **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. [R. C. 1905, § 8531; Pen. C. 1877, § 2; R. C. 1895, § 6801.]

Indictment which shows that accused killed another by feloniously and willfully beating him with club charges manslaughter in first degree. *State v. Edmunds*, 20 S. D. 135, 104 N. W. 1115.

As to similar provision in Cal. Pen. Code, § 6, see *People v. Mortimer*, 46 Cal. 114.

§ 9195. **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. [R. C. 1905, § 8532; Pen. C. 1877, § 3; R. C. 1895, § 6802.]

What constitutes a crime. *State v. Hogan*, 8 N. D. 301, 78 N. W. 1051, 73 Am. St. Rep. 759, 45 L.R.A. 166; *Re Kirby*, 10 S. D. 322, 73 N. W. 92, 39 L.R.A. 856.

Prescribing a punishment for an act forbids it, within the meaning of a statute providing that a crime is an act forbidden by law and to which is annexed upon conviction a punishment. *State v. Central Lumber Co.*, 24 S. D. 136, 42 L.R.A.(N.S.) 804, 123 N. W. 504.

Conviction for peddling without license is criminal action and reviewable by writ of error only. *State v. Cram*, 20 S. D. 159, 105 N. W. 99.

What acts may not be declared to be crimes. 78 Am. St. Rep. 235.

§ 9196. **Crimes, how divided.** Crimes are divided into:

1. Felonies.
2. Misdemeanors. [R. C. 1905, § 8533; Pen. C. 1877, § 4; R. C. 1899, § 6803.]

§ 9197. **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. [R. C. 1905, § 8534; Pen. C. 1877, §§ 5, 6; R. C. 1895, § 6804.]

As to similar provisions in Cal. Pen. Code, § 17, see *Ex parte Arras*, 78 Cal. 304, 20 Pac. 683; *In re Sullivan*, 3 Cal. App. 193, 84 Pac. 781.

§ 9198. 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 measure 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. [R. C. 1905, § 8535; Pen. C. 1877, § 7; R. C. 1895, § 6805.]

§ 9199. Conviction before punishment. The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction. [R. C. 1905, § 8536; Pen. C. 1877, § 8; R. C. 1899, § 6806.]

§ 9200. 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. [R. C. 1905, § 8537; Pen. C. 1877, § 9; R. C. 1899, § 6807.]

§ 9201. 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. [R. C. 1905, § 8538; Pen. C. 1877, § 10; R. C. 1899, § 6808.]

Penal statutes are to be construed according to legislative intent as expressed in enactment. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Rule of construction of ordinance regulating construction of wooden buildings relieves prosecution from necessity of showing that ordinance was violated. *Mayville v. Rosing*, 19 N. D. 98, 26 L.R.A.(N.S.) 120, 123 N. W. 393.

As to similar provision in Cal. Pen. Code, § 4, see *People v. Fowler*, 88 Cal. 136, 25 Pac. 1110; *Snell v. Bradbury*, 139 Cal. 379, 73 Pac. 150.

§ 9202. 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. [R. C. 1905, § 8539; Pen. C. 1877, § 11; R. C. 1895, § 6809.]

§ 9203. 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. [R. C. 1905, § 8540; Pen. C. 1877, § 12; R. C. 1895, § 6810.]

§ 9204. 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. [R. C. 1905, § 8541; 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.

§ 9205. 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. [R. C. 1905, § 8542; Pen. C. 1877, § 14; R. C. 1895, § 6812.]

One convicted of keeping saloon open on Sunday may have license forfeited in addition to fine or imprisonment for misdemeanor. *State v. Gilbert*, 21 S. D. 204, 111 N. W. 538.

As to excessiveness of fine on conviction for malicious mischief. *State v. Tarlton*, 22 S. D. 495, 118 N. W. 706.

Where neither amount of costs is specified in judgment, nor number of days of imprisonment therefor, such portion of judgment is void for indefiniteness. *State v. Johnson*, 24 S. D. 590, 124 N. W. 847.

As to similar provision in Cal. Pen. Code, § 19, see *People v. Tom Nop*, 124 Cal. 150, 56 Pac. 786; *People v. Haagen*, 139 Cal. 115, 72 Pac. 836.

CHAPTER 2.

PERSONS LIABLE TO PUNISHMENT FOR CRIME.

§ 9206. 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. [R. C. 1905, § 8543; Pen. C. 1877, § 15; R. C. 1895, § 6813.]

As to similar provision in Cal. Pen. Code, § 27, see *People v. Botkin*, 132 Cal. 231, 84 Am. St. Rep. 39, 64 Pac. 286.

Consent to crime by person injured. 72 Am. St. Rep. 700.

Crimes committed by aid or connivance of persons who are seeking to entrap or convict criminals. 81 Am. Dec. 365; 30 Am. Rep. 129.

§ 9207. 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. [R. C. 1905, § 8544; Pen. C. 1877, § 16; R. C. 1895, § 6814.]

As to similar provision in Cal. Pen. Code, § 26, see *People v. Methever*, 132 Cal. 326, 64 Pac. 481.

2. Proof required to overcome presumption that child between seven and fourteen years of age was incompetent to commit crime. *State v. Fisk*, 15 N. D. 589, 108 N. W. 485, 11 A. & E. Ann. Cas. 1061.

Female under eighteen years of age is not incapable of committing sexual crime and is not obliged to answer as to whether her father had sexual intercourse with her. *Ex parte Nesson*, 25 S. D. 49, 27 L.R.A.(N.S.) 872, 125 N. W. 124.

Infants' responsibility for crime. 36 L.R.A. 196; 70 Am. Dec. 496.

Does statute fixing age of consent render a girl below that age incapable of sexual crime. 27 L.R.A.(N.S.) 872.

Criminal liability of infant as accessory to theft. 36 L.R.A. 212.

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

Insanity as a defense to an indictment for crime. 36 Am. Dec. 402; 63 Am. St. Rep. 100; 76 Am. St. Rep. 83.

Burden of proving insanity as a defense to a crime. 97 Am. Dec. 176; 44 Am. Rep. 435.

Irresistible impulse as excuse for crime. 18 L.R.A. 224; 27 L.R.A.(N.S.) 461.

Responsibility for crime committed in fit of anger. 10 L.R.A.(N.S.) 1032.

Heat of passion which will mitigate or reduce the degree of a homicide. 5 L.R.A.(N.S.) 809.

Weakness of mind as affecting responsibility for criminal act. 10 L.R.A.(N.S.) 999.

Impairment of memory as defense to prosecution for perjury. 21 L.R.A.(N.S.) 993.

Effect of insanity on question of heat of passion to mitigate homicide. 5 L.R.A.(N.S.) 825.

Insanity induced by intoxication as excuse for crime. 36 L.R.A. 479.

Responsibility for crime committed in fit of anger. 10 L.R.A.(N.S.) 1032.

What are insane delusions. 37 L.R.A. 261.

Morphinism as affecting responsibility. 39 L.R.A. 262.

Right of prosecution to show feigned insanity. 31 L.R.A.(N.S.) 113.

Measure of proof of insanity in criminal case. 39 L.R.A. 737.

Proof of other crimes to rebut defense of insanity. 62 L.R.A. 300.

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

Ignorance of fact as a defense to a criminal prosecution. 30 Am. Rep. 617.

Ignorance of law as an excuse for crime. 10 Am. Dec. 323.

Larceny or embezzlement as affected by belief in right to property taken. 41 L.R.A.(N.S.) 549.

Belief in termination of former marriage as a defense to prosecution for bigamy. 27 L.R.A.(N.S.) 1097; 34 L.R.A.(N.S.) 613.

Ignorance of defendant in prosecution for adultery that other party was married as a defense. 18 L.R.A.(N.S.) 527.

Mistake as to identity of victim as affecting assault or homicide. 33 L.R.A.(N.S.) 1070.

Assault with intent to murder or kill by unlawful act under mistaken identity of person assaulted. 37 L.R.A.(N.S.) 172.

Proof of other crimes to rebut defense of mistake in criminal prosecution. 62 L.R.A. 300.

Religious belief an excuse for failure to furnish medical aid to child. 36 L.R.A.(N.S.) 633.

Good faith as defense to criminal responsibility for failure to provide child with medical attendance and remedies. 1 B. R. C. 750.

Good faith as affecting criminal responsibility for illegal registration or voting. 37 L.R.A.(N.S.) 1177.

Good faith of offer of marriage as affecting defense to prosecution for seduction. 29 L.R.A.(N.S.) 423.

Larceny or embezzlement as affected by belief in right to property taken. 41 L.R.A.(N.S.) 549.

Ignorance that article furnished as butter is oleomargarine as a defense. 32 L.R.A.(N.S.) 746.

Mistake as to beverage as defense to charge of illegal liquor sale. 6 L.R.A.(N.S.) 477; 21 L.R.A.(N.S.) 525.

Ignorance of contents of package as defense to carrier in prosecution for transporting intoxicating liquor into prohibition territory. 18 L.R.A.(N.S.) 1182.

Seller's ignorance of minority of purchaser as defense to prosecution for sale of liquor to minor. 25 L.R.A.(N.S.) 669.

Effect of defendant's mistake as to age of girl under statute denouncing sexual offenses against females below specified age. 25 L.R.A.(N.S.) 661.

Ignorance that parties to marriage are under age as defense to prosecution for officiating at the marriage. 29 L.R.A.(N.S.) 504.

Proof of other crimes to rebut defense of accident or mistake in criminal prosecution. 62 L.R.A. 300.

7. Duress as an excuse for crime. 19 L.R.A. 357.

Coercion as defense to crime. 106 Am. St. Rep. 721.

Effect of hypnotism in criminal cases. 40 L.R.A. 269.

§ 9208. 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. [R. C. 1905, § 8545; Pen. C. 1877, § 17; R. C. 1895, § 6815.]

Evidence of intoxication admissible as bearing upon existence of intent. *State v. Koerner*, 8 N. D. 232, 78 N. W. 981, 73 Am. St. Rep. 752; *People v. Odell*, 1 D. 189, 46 N. W. 601.

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

Evidence of intoxication may be considered on a prosecution for burglary. *State v. Ford*, 16 S. D. 228, 92 N. W. 18.

Drunkenness as an excuse for crime. 36 L.R.A. 465; 40 Am. Rep. 560.

—as a defense to homicide. 13 L.R.A.(N.S.) 1024; 25 L.R.A.(N.S.) 376.

Effect of intoxication on the question of heat of passion to mitigate homicide. 5 L.R.A.(N.S.) 825.

As to similar provision in Cal. Pen. Code, § 22, see *People v. Methever*, 132 Cal. 326, 64 Pac. 481.

§ 9209. 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. [R. C. 1905, § 8546; Pen. C. 1877, § 18; R. C. 1899, § 6816.]

Kleptomania as a defense to theft. 18 L.R.A. 229.

§ 9210. 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. [R. C. 1905, § 8547; Pen. C. 1877, § 19; R. C. 1899, § 6817.]

Confinement of one acquitted of crime by reason of insanity. 1 L.R.A.(N.S.) 540; 25 L.R.A.(N.S.) 946.

§ 9211. 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. [R. C. 1905, § 8548; Pen. C. 1877, § 20; R. C. 1899, § 6818.]

§ 9212. 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. [R. C. 1905, § 8549; Pen. C. 1877, § 21; R. C. 1899, § 6819.]

§ 9213. 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. Attempt to kill.

6. Rape.

7. Abduction.

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. [R. C. 1905, § 8550; 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.

§ 9214. 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 9212. [R. C. 1905, § 8551; Pen. C. 1877, § 23; R. C. 1899, § 6821.]

§ 9215. 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. [R. C. 1905, § 8552; Pen. C. 1877, § 24; R. C. 1899, § 6822.]

§ 9216. 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. [R. C. 1905, § 8553; Pen. C. 1877, § 25; R. C. 1895, § 6823.]

CHAPTER 3.

PARTIES TO CRIME.

§ 9217. Parties to crime classified. The parties to crime are classified as:

1. Principals; and,
2. Accessories. [R. C. 1905, § 8554; Pen. C. 1877, § 26; R. C. 1899, § 6824.]

§ 9218. 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 of 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. [R. C. 1905, § 8555; Pen. C. 1877, § 27; R. C. 1895, § 6825.]

One who procures another to commit felony, though not present, is principal. *State v. Phelps*, 5 S. D. 480, 59 N. W. 471; *State v. Kent*, 5 N. D. 516, 67 N. W. 1052, 35 L.R.A. 518.

One procuring another to commit perjury is not a principal with such other. *State v. Pratt*, 21 S. D. 305, 112 N. W. 152.

Aiding and abetting the commission of a crime. 51 Am. Rep. 373; 13 Am. Rep. 177.

Homicide by acting through innocent or irresponsible agent. 2 L.R.A.(N.S.) 897.

Principal's liability for homicide by assistant. 67 L.R.A. 312.

Liability of one assisting in burglary during which his companion commits murder.

6 L.R.A.(N.S.) 1154.

Is one assisting relative in peril bound by the latter's act in bringing on the difficulty. 15 L.R.A.(N.S.) 1013.

Criminal responsibility of one who aids another in assault in which the latter, without his knowledge or consent, uses a deadly weapon. 23 L.R.A.(N.S.) 273.

Liability for assisting in unlawful arrest or subsequent detention. 14 L.R.A.(N.S.) 1123.

- Criminal liability of one abetting suicide.** 66 L.R.A. 304; 22 L.R.A.(N.S.) 243.
Confederates in uttering or publishing forged instruments. 8 L.R.A.(N.S.) 1178.
Unlawfully issuing license for disorderly house as keeping the same. 29 L.R.A.(N.S.) 721.
Criminal responsibility for homicide in carrying out unlawful conspiracy. 68 L.R.A. 193.
Effect of participating in purchase and division of quantity of liquor to render one guilty of unlawful sale. 22 L.R.A.(N.S.) 560.
Is one who obtains liquor for, and delivers it to another, using the latter's money, guilty of selling the same. 24 L.R.A.(N.S.) 268; 28 L.R.A.(N.S.) 334.
Procuring liquor for another on physician's prescription for self as an illegal sale. 21 L.R.A.(N.S.) 1008.
Knowledge necessary to charge owner with conduct of tenants or others in selling intoxicating liquors on premises in violation of injunction. 25 L.R.A.(N.S.) 602.
Criminal or penal liability for act of copartner, servant or agent. 41 L.R.A. 650; 43 L.R.A.(N.S.) 2.
—violation of liquor laws. 41 L.R.A. 660; 16 L.R.A.(N.S.) 786; 20 L.R.A.(N.S.) 321.

As to similar provision in Cal. Pen. Code, § 31, see *People v. Gusti*, 113 Cal. 177, 45 Pac. 263; *People v. Dole*, 122 Cal. 486, 68 Am. St. Rep. 50, 55 Pac. 581; *People v. Morine*, 138 Cal. 626, 72 Pac. 166; *People v. Chin Yuen*, 144 Cal. 305, 77 Pac. 954.

§ 9219. 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. [R. C. 1905, § 8556; Pen. C. 1877, § 28; R. C. 1899, § 6826.]

Accessories after the fact. 80 Am. Dec. 95.

Child as accessory to theft. 36 L.R.A. 202.

Offense of accessory before the fact. 33 L.R.A.(N.S.) 334.

Abortionist as an accessory before the fact in case of death. 63 L.R.A. 909.

As to similar provision in Cal. Pen. Code, § 32, see *People v. Collun*, 122 Cal. 186, 54 Pac. 589; *People v. Garnett*, 129 Cal. 364, 61 Pac. 1114.

§ 9220. Misdemeanors. No accessories. In misdemeanor there are no accessories. [R. C. 1905, § 8557; Pen. C. 1877, § 29; R. C. 1899, § 6827.]

§ 9221. 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. [R. C. 1905, § 8558; Pen. C. 1877, § 30; R. C. 1895, § 6828.]

CHAPTER 4.

CRIMES AGAINST RELIGION AND CONSCIENCE.

§ 9222. 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. [R. C. 1905, § 8559; Pen. C. 1877, § 31; R. C. 1899, § 6829.]

Proof of corpus delicti in prosecution for blasphemy. 68 L.R.A. 56, 70-72.

Blasphemy and profanity as crimes. 22 L.R.A. 353.

Blasphemy as disturbance of the public peace. 32 L.R.A.(N.S.) 505.

Use of profane language while on one's own premises as an offense. 49 L.R.A.(N.S.) 919.

As to similar provision in Cal. Pen. Code, § 415, see *Ex parte Foley*, 62 Cal. 508.

§ 9223. 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. [R. C. 1905, § 8560; Pen. C. 1877, § 32; R. C. 1899, § 6830.]

§ 9224. Misdemeanor. Blasphemy is a misdemeanor. [R. C. 1905, § 8561; Pen. C. 1877, § 33; R. C. 1899, § 6831.]

§ 9225. 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. [R. C. 1905, § 8562; Pen. C. 1877, § 34; R. C. 1899, § 6832.]

Definition of blasphemy. 22 L.R.A. 353.

§ 9226. Punishment of. Every person guilty of profane swearing is punishable by a fine of one dollar for each offense. [R. C. 1905, § 8563; Pen. C. 1877, § 35; R. C. 1899, § 6833.]

§ 9227. 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. [R. C. 1905, § 8564; Pen. C. 1877, § 36; R. C. 1899, § 6834.]

§ 9228. 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. [R. C. 1905, § 8565; Pen. C. 1877, § 37; R. C. 1899, § 6835.]

As to similar provision in Cal. Pen. Code, §§ 1214, 1215, see *Ex parte Rosenheim*, 83 Cal. 388, 23 Pac. 372; *People v. Sutter St. R. Co.*, 129 Cal. 545, 79 Am. St. Rep. 137, 62 Pac. 104.

§ 9229. 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. [R. C. 1905, § 8566; 1883, ch. 87, § 1; R. C. 1895, § 6836.]

Disorderly language as disturbance of public peace. 32 L.R.A.(N.S.) 505.

Carrier's liability for obscene language by employes to passengers. 14 L.R.A. 739.

Necessity of use of words per se obscene to constitute offense under statute relating to obscenity. 22 L.R.A.(N.S.) 225.

Use of profane or offensive language while on one's own premises as an offense. 49 L.R.A.(N.S.) 919.

§ 9230. Unlawful to use obscene language over telephone. Penalty. Any person who shall utter or speak any obscene or lascivious language over any public telephone line in this state shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, or before any county court exercising increased jurisdiction, as provided by the constitution of this state, shall be liable to a fine of not more than one hundred dollars, or imprisonment in the county jail for a period not exceeding thirty days, at the discretion of the court or magistrate before whom a conviction shall be had. [1907, ch. 249.]

As this act of 1907 was not assigned by the legislature to any particular chapter of the codes, but is placed here by the compilers, evidently the limitation in section 9249 does not apply to it. For the general limitation of prosecutions for misdemeanors see section 10522.

§ 9231. Theaters open on Sunday, unlawful. Penalty. It shall be unlawful to keep open or to run or permit the running of any theater, show, moving picture show or theatrical performance, upon the first day of the week, commonly called the Sabbath. Any person, firm or corporation violating any of the provisions of this section shall upon conviction thereof, be deemed guilty

of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars. [1911, ch. 285.]

The note to section 9230 applies here.

Constitutional provisions against special legislation are not violated by this section. State ex rel. Temple v. Barnes, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215, Ann. Cas. 1913E, 930.

What amusements are prohibited by Sunday laws. 30 L.R.A.(N.S.) 465.

Keeping theater open on Sunday as violation of Sunday law. 17 L.R.A.(N.S.) 1157.

§ 9232. 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. [R. C. 1905, § 8567; Pen. C. 1877, § 38; R. C. 1899, § 6837.]

Constitutionality of Sunday laws. 22 L.R.A. 721; 49 Am. Dec. 616; 78 Am. St. Rep. 264.

Criminal liability for Sabbath breaking by agent or servant. 41 L.R.A. 658, 670.

Criminal liability of children for Sabbath desecration. 36 L.R.A. 208.

Municipal ordinance regulating observance of Sunday, which is also regulated by state law. 17 L.R.A.(N.S.) 51.

Right of both state and municipality to convict of violation of Sunday closing laws. 31 L.R.A.(N.S.) 708.

As to similar provision in Cal. Pen. Code, § 300, see Ex parte Burke, 59 Cal. 6, 43 Am. Rep. 231; Ex parte Koser, 60 Cal. 177.

§ 9233. Sabbath breaking defined. Any violation of the foregoing prohibition is Sabbath breaking. [R. C. 1905, § 8568; Pen. C. 1877, § 39; R. C. 1899, § 6838.]

Violation of Sunday law as a continuing offense. 20 L.R.A.(N.S.) 783.

§ 9234. 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. [R. C. 1905, § 8569; Pen. C. 1877, § 40; R. C. 1899, § 6839.]

§ 9235. 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. [R. C. 1905, § 8570; Pen. C. 1877, § 41; R. C. 1895, § 6840.]

Sunday transfer of property is effective so far as executed. Rosenmaum v. Hayes, 10 N. D. 311, 86 N. W. 973.

Several violations on the same day of the statute prohibiting business upon Sunday constitute but one offense. 57 Am. Rep. 467.

As to similar provision in Cal. Pen. Code, § 301, see Ex parte Burke, 59 Cal. 6, 43 Am. Rep. 231; Ex parte Koser, 60 Cal. 177.

§ 9236. Servile labor prohibited. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity. [R. C. 1905, § 8571; Pen. C. 1877, § 42; R. C. 1899, § 6841.]

Sunday labor. 14 L.R.A. 192.

Work which may be done on Sunday. 30 Am. St. Rep. 27.

Secular acts which are not unlawful on Sunday. 32 Am. Rep. 557.

Running of railways upon Sunday whether a work of necessity. 40 Am. Rep. 418.

Agricultural operations on Sunday as works of necessity. 5 L.R.A.(N.S.) 320.

Keeping barber shop open on Sunday. 14 L.R.A. 194; 55 Am. Rep. 556.

Right of servant to recover for extra work done on Sunday. 30 L.R.A.(N.S.) 659.

Servant's duty to obey master's orders as to working on Sunday. 24 L.R.A.(N.S.)

833.

§ 9237. 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. [R. C. 1905, § 8572; Pen. C. 1877, § 44; R. C. 1899, § 6842.]

§ 9238. Prohibited sports enumerated. All shooting, sporting, horse racing, gaming or other public sports, upon the first day of the week, are prohibited. [R. C. 1905, § 8573; Pen. C. 1877, § 45; R. C. 1899, § 6843.]

Prohibition of Sunday sports or games. 17 L.R.A. 830.

What amusements are prohibited by Sunday laws. 30 L.R.A.(N.S.) 465.

Keeping theater open on Sunday as violation of Sunday law. 17 L.R.A.(N.S.) 1157.

Playing baseball on Sunday as an offense. 21 L.R.A.(N.S.) 23; 32 L.R.A.(N.S.) 1186; 41 L.R.A.(N.S.) 407.

Validity of classification in Sunday law as to keeping open place of. 32 L.R.A.(N.S.) 1190.

Surf bathing as violation of Sunday laws. 30 L.R.A.(N.S.) 470.

§ 9239. Trades and employments prohibited. All trades, manufactures and mechanical employments, upon the first day of the week, are prohibited. [R. C. 1905, § 8574; Pen. C. 1877, § 46; R. C. 1899, § 6844.]

Validity of classification in Sunday law. 14 L.R.A.(N.S.) 1259; 32 L.R.A.(N.S.) 1190.

Special penalty for violation of Sunday closing act. 15 L.R.A.(N.S.) 646.

Keeping barber shop open on Sunday. 14 L.R.A. 194; 55 Am. Rep. 556.

§ 9240. 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. [R. C. 1905, § 8575; Pen. C. 1877, § 47; R. C. 1899, § 6845.]

Validity of classification in Sunday law. 14 L.R.A.(N.S.) 1259; 32 L.R.A.(N.S.) 1190.

Duty of innkeeper as to furnishing liquor to traveler on Sunday. 2 B. R. C. 687.

Criminal liability for sale of liquor on Sunday by copartner, servant or agent. 41 L.R.A. 670.

Sale and delivery of food stuffs on Sunday as work of necessity. 18 L.R.A.(N.S.) 617.

§ 9241. 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. [R. C. 1905, § 8576; Pen. C. 1877, § 48; R. C. 1899, § 6846.]

First publication of summons cannot be made on Sunday. *McLaughlin v. Wheeler*, 2 S. D. 379, 50 N. W. 834.

§ 9242. 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. [R. C. 1905, § 8577; 1899, ch. 142; R. C. 1899, § 6847.]

Special penalty for violation of Sunday closing act. 15 L.R.A.(N.S.) 646.

Violation of Sunday law as contributory negligence. 21 L.R.A.(N.S.) 669.

Violation of Sunday law as defense to action for personal injuries. 9 L.R.A. 321; 36 L.R.A.(N.S.) 547.

Liability for injury to person traveling on Sunday from defects in highway. 13 L.R.A.(N.S.) 1271.

§ 9243. 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. [R. C. 1905, § 8578; Pen. C. 1877, § 50; R. C. 1899, § 6848.]

§ 9244. 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. [R. C. 1905, § 8579; Pen. C. 1877, § 51; R. C. 1899, § 6849.]

§ 9245. 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. [R. C. 1905, § 8580; Pen. C. 1877, § 52; R. C. 1899, § 6850.]

§ 9246. **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. [R. C. 1905, § 8581; Pen. C. 1877, § 53; R. C. 1899, § 6851.]

§ 9247. **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. [R. C. 1905, § 8582; Pen. C. 1877, § 54; R. C. 1899, § 6852.]

Character of meeting essential to the offense of distributing a meeting. 30 L.R.A. (N.S.) 829.

§ 9248. **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. [R. C. 1905, § 8583; Pen. C. 1877, § 55; R. C. 1899, § 6853.]

§ 9249. **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. 1905, § 8584; R. C. 1895, § 6854.]

See notes to sections 9230, 9231.

CHAPTER 5.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

§ 9250. **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. [R. C. 1905, § 8585; Pen. C. 1877, § 56; R. C. 1895, § 6855.]

§ 9251. **Elector. Illegal influence.** Every person offering, giving or loan-

ing 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. [R. C. 1905, § 8586; Pen. C. 1877, § 57; R. C. 1899, § 6856.]

§ 9252. 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. [R. C. 1905, § 8587; Pen. C. 1877, § 58; R. C. 1895, § 6857.]

§ 9253. 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. [R. C. 1905, § 8588; Pen. C. 1877, § 59; R. C. 1899, § 6858.]

§ 9254. 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. [R. C. 1905, § 8589; Pen. C. 1877, § 60; R. C. 1899, § 6859.]

§ 9255. 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. [R. C. 1905, § 8590; Pen. C. 1877, § 61; R. C. 1899, § 6860.]

§ 9256. 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. [R. C. 1905, § 8591; Pen. C. 1877, § 62; R. C. 1895, § 6861.]

§ 9257. 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. [R. C. 1905, § 8592; Pen. C. 1877, § 63; R. C. 1899, § 6862.]

§ 9258. 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. [R. C. 1905, § 8593; Pen. C. 1877, § 64; R. C. 1899, § 6863.]

§ 9259. **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. [R. C. 1905, § 8594; Pen. C. 1877, § 65; R. C. 1899, § 6864.]

Good faith as affecting criminal responsibility for illegal registration or voting. 37
L.R.A.(N.S.) 1177.

§ 9260. **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. [R. C. 1905, § 8595; Pen. C. 1877, § 66; R. C. 1899, § 6865.]

§ 9261. **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. [R. C. 1905, § 8596; Pen. C. 1877, § 67; R. C. 1899, § 6866.]

§ 9262. **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. [R. C. 1905, § 8597; Pen. C. 1877, § 68; R. C. 1899, § 6867.]

Good faith as affecting criminal responsibility for illegal registration or voting. 37
L.R.A.(N.S.) 1177.

§ 9263. **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. [R. C. 1905, § 8598; Pen. C. 1877, § 741; R. C. 1899, § 6868.]

§ 9264. **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. [R. C. 1905, § 8599; Pen. C. 1877, § 69; R. C. 1899, § 6869.]

§ 9265. **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. [R. C. 1905, § 8600; Pen. C. 1877, § 70; R. C. 1899, § 6870.]

Good faith as affecting criminal responsibility for illegal registration or voting. 37
L.R.A.(N.S.) 1177.

§ 9266. **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. [R. C. 1905, § 8601; Pen. C. 1877, § 71; R. C. 1899, § 6871.]

§ 9267. **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. [R. C. 1905, § 8602; Pen. C. 1877, § 72; R. C. 1899, § 6872.]

§ 9268. 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. [R. C. 1905, § 8603; Pen. C. 1877, § 73; R. C. 1899, § 6873.]

§ 9269. 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. [R. C. 1905, § 8604; Pen. C. 1877, § 74; R. C. 1899, § 6874.]

§ 9270. 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. [R. C. 1905, § 8605; Pen. C. 1877, § 75; R. C. 1899, § 6875.]

§ 9271. 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. [R. C. 1905, § 8606; Pen. C. 1877, § 76; R. C. 1899, § 6876.]

§ 9272. 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. [R. C. 1905, § 8607; Pen. C. 1877, § 77; R. C. 1899, § 6877.]

§ 9273. 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. [R. C. 1905, § 8608; Pen. C. 1877, § 78; R. C. 1899, § 6878.]

§ 9274. 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. [R. C. 1905, § 8609; Pen. C. 1877, § 79; R. C. 1895, § 6879.]

§ 9275. 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. [R. C. 1905, § 8610; Pen. C. 1877, § 80; R. C. 1895, § 6880.]

§ 9276. 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. [R. C. 1905, § 8611; Pen. C. 1877, § 81; R. C. 1899, § 6881.]

§ 9277. **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. [R. C. 1905, § 8612; Pen. C. 1877, § 82; R. C. 1899, § 6882.]

§ 9278. **Destroying ballots or boxes.** Every person who willfully breaks or destroys, on the day of an election or before the canvass is computed, 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. [R. C. 1905, § 8613; Pen. C. 1877, § 83; R. C. 1899, § 6883.]

§ 9279. **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. [R. C. 1905, § 8614; 1893, ch. 66, § 31; R. C. 1895, § 6884.]

§ 9280. **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. [R. C. 1905, § 8615; 1893, ch. 66, § 32; R. C. 1895, § 6885.]

§ 9281. **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. [R. C. 1905, § 8616; Pen. C. 1877, § 84; R. C. 1895, § 6886.]

§ 9282. **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. [R. C. 1905, § 8617; Pen. C. 1877, § 85; R. C. 1895, § 6887.]

§ 9283. **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. [R. C. 1905, § 8618; Pen. C. 1877, § 86; R. C. 1895, § 6888.]

§ 9284. 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. [R. C. 1905, § 8619; Pen. C. 1877, § 87; R. C. 1895, § 6889.]

§ 9285. Penalty, disfranchisement. Any person guilty of either of the offenses mentioned in sections 9250 and 9251 shall thereafter be forever disfranchised and rendered ineligible to any office of trust or profit within the state, including that of representative to congress. [R. C. 1905, § 8620; Pen. C. 1877, § 88; R. C. 1899, § 6890.]

§ 9286. Witness not excused, not punished. No person shall be excused from testifying upon a prosecution for an offense mentioned in section 9251 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. [R. C. 1905, § 8621; Pen. C. 1877, § 89; R. C. 1899, § 6891.]

§ 9287. 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. [R. C. 1905, § 8622; Pen. C. 1877, § 90; R. C. 1899, § 6892.]

§ 9288. 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. [R. C. 1905, § 8623; Pen. C. 1877, § 91; R. C. 1899, § 6893.]

§ 9289. 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. [R. C. 1905, § 8624; Pen. C. 1877, § 92; R. C. 1899, § 6894.]

§ 9290. 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. [R. C. 1905, § 8625; Pen. C. 1877, § 93; R. C. 1899, § 6895.]

§ 9291. 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. [R. C. 1905, § 8626; Pen. C. 1877, § 94; R. C. 1899, § 6896.]

§ 9292. 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. [R. C. 1905, § 8627; Pen. C. 1877, § 95; R. C. 1895, § 6897.]

§ 9293. 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 899 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. [R. C. 1905, § 8628; 1885, ch. 28, § 31; 1899, ch. 28, §§ 7, 8; R. C. 1899, § 6898.]

§ 9294. 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. [R. C. 1905, § 8629; 1890, ch. 112, § 1; R. C. 1895, § 6899.]

CHAPTER 6.

CORRUPT PRACTICES ACT.

§ 9295. Contributions for political purposes prohibited. Penalty. No corporation doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use any money, property or anything of value for or in aid of any political party, committee or organization or for or in aid of any corporation or association organized or maintained for political purposes, or for or in aid of any candidate for political office, or for the nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used or for the purpose of influencing legislation of any kind. Any officer, director, stockholder, attorney, agent or representative of any corporation or association which violates any of the provisions of this chapter, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this chapter, shall upon conviction thereof be punished by imprisonment in the state penitentiary for not more than one year, or a fine of not less than two hundred dollars nor more than five thousand dollars or both such fine and imprisonment, and any officer aiding or abetting in any contribution made in violation of this chapter shall be liable to the company or association for the amount so contributed. [1907, ch. 58, § 1.]

§ 9296. No person excused from testifying. No person shall be excused from attending and testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding

or trial for a violation of any of the provisions of this chapter, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding. [1907, ch. 58, § 2.]

§ 9297. Corporation responsible for acts of officer or agent. The violation of this act by any officer, employe, agent, attorney or other representative of a corporation shall be prima facie evidence of said violation by such corporation. [1907, ch. 58, § 3.]

"This act" refers to ch. 58, Laws 1907, the whole of which comprises chapter 6 of this compilation.

§ 9298. Punishment for advising violation of chapter. Any person or persons who shall aid, abet or advise a violation of the provisions of this chapter shall, upon conviction thereof, be punished as provided for in section 9295. [1907, ch. 58, § 4.]

§ 9299. Prosecutions, where brought. Violations of this chapter may be prosecuted in the county where such payment or contribution is made, or in any county wherein such money or property has been paid or distributed. [1907, ch. 58, § 5.]

CHAPTER 7.

CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

§ 9300. 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. [R. C. 1905, § 8630; Pen. C. 1877, § 96; R. C. 1899, § 6900.]

§ 9301. 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. [R. C. 1905, § 8631; 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.

§ 9302. 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. [R. C. 1905, § 8632; Pen. C. 1877, § 98; R. C. 1899, § 6902.]

Sheriff whose residence is segregated from one county by formation of new county is guilty of misdemeanor if he falsely assumes to act in latter county. *Holtan v. Beck*, 20 N. D. 5, 125 N. W. 1048.

§ 9303. 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. [R. C. 1905, § 8633; Pen. C. 1877, § 99; R. C. 1899, § 6903.]

As to sufficiency of information charging offering of bribe. *State v. Johnson*, 17 N. D. 554, 118 N. W. 230.

As to similar provision in Cal. Pen. Code, § 67, see *People v. Ah Fook*, 62 Cal. 493; *People v. Markham*, 64 Cal. 157, 49 Am. St. Rep. 700, 30 Pac. 620.

§ 9304. 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. [R. C. 1905, § 8634; Pen. C. 1877, § 100; R. C. 1899, § 6904.]

As to similar provision in Cal. Pen. Code, § 68, see *People v. Markham*, 64 Cal. 157, 49 Am. St. Rep. 700, 30 Pac. 620; *People v. Seeley*, 137 Cal. 13, 69 Pac. 693.

§ 9305. 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. [R. C. 1905, § 8635; Pen. C. 1877, § 101; R. C. 1899, § 6905.]

§ 9306. 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. [R. C. 1905, § 8636; Pen. C. 1877, § 102; R. C. 1899, § 6906.]

As to similar provision in Cal. Pen. Code, § 70, see *People v. Kolloch*, 60 Cal. 116.

§ 9307. 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. [R. C. 1905, § 8637; Pen. C. 1877, § 103; R. C. 1899, § 6907.]

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

§ 9308. 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. [R. C. 1905, § 8638; Pen. C. 1877, § 104; R. C. 1899, § 6908.]

Criminal liability of officer for neglect of duty. 40 Am. St. Rep. 712.

§ 9309. 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. [R. C. 1905, § 8639; Pen. C. 1877, § 105; R. C. 1899, § 6909.]

§ 9310. 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. [R. C. 1905, § 8640; Pen. C. 1877, § 106; R. C. 1899, § 6910.]

§ 9311. 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. [R. C. 1905, § 8641; Pen. C. 1877, § 107; R. C. 1899, § 6911.]

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

§ 9312. 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. [R. C. 1905, § 8642; Pen. C. 1877, § 108; R. C. 1899, § 6912.]

§ 9313. 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. [R. C. 1905, § 8643; Pen. C. 1877, § 109; R. C. 1899, § 6913.]

§ 9314. 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. [R. C. 1905, § 8644; Pen. C. 1877, § 110; R. C. 1899, § 6914.]

§ 9315. 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. [R. C. 1905, § 8645; 1901, ch. 51.]

Superintendent of public instruction was bound to pay into state treasury unexpended balance of examining fees, at expiration of each term of office. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

§ 9316. 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. [R. C. 1905, § 8646; Pen. C. 1877, § 111; R. C. 1899, § 6915.]

Sheriff willfully exercising any of functions of office after qualification of successor is guilty of misdemeanor. *Holtan v. Beck*, 20 N. D. 5, 125 N. W. 1048.

§ 9317. 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. [R. C. 1905, § 8647; Pen. C. 1877, § 112; R. C. 1899, § 6916.]

Sheriff is guilty of misdemeanor if he refuses to surrender books and papers to successor in office in portion of office segregated from that of his place of residence. *Holtan v. Beck*, 20 N. D. 5, 125 N. W. 1048.

§ 9318. 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. [R. C. 1905, § 8648; Pen. C. 1877, § 113; R. C. 1899, § 6917.]

§ 9319. 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 orders 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. [R. C. 1905, § 8649; Const. § 81; R. C. 1899, § 6918.]

CHAPTER 8.

CRIMES AGAINST THE LEGISLATIVE POWER.

§ 9320. **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. [R. C. 1905, § 8650; Pen. C. 1877, § 114; R. C. 1895, § 6919.]

§ 9321. **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. [R. C. 1905, § 8651; Pen. C. 1877, § 115; R. C. 1895, § 6920.]

§ 9322. **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. [R. C. 1905, § 8652; Pen. C. 1877, § 116; R. C. 1899, § 6921.]

§ 9323. **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. [R. C. 1905, § 8653; Pen. C. 1877, § 117; R. C. 1899, § 6922.]

§ 9324. **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. [R. C. 1905, § 8654; Pen. C. 1877, § 118; R. C. 1899, § 6923.]

§ 9325. 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. [R. C. 1905, § 8655; Pen. C. 1877, § 119; R. C. 1899, § 6924.]

§ 9326. 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. [R. C. 1905, § 8656; Pen. C. 1877, § 120; R. C. 1899, § 6925.]

§ 9327. 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. [R. C. 1905, § 8657; Pen. C. 1877, § 121; R. C. 1899, § 6926.]

§ 9328. 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. [R. C. 1905, § 8658; Pen. C. 1877, § 122; R. C. 1895, § 6927.]

As to similar provision in Cal. Pen. Code, § 86, see *Ex parte Bunkers*, 1 Cal. App. 61, 81 Pac. 748.

§ 9329. 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. [R. C. 1905, § 8659; Const. § 40; R. C. 1899, § 6928.]

§ 9330. 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. [R. C. 1905, § 8660; Const. § 40; R. C. 1899, § 6929.]

§ 9331. 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. [R. C. 1905, § 8661; Const. § 81; R. C. 1899, § 6930.]

§ 9332. 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. [R. C. 1905, § 8662; Const. § 81; R. C. 1899, § 6931.]

§ 9333. 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. [R. C. 1905, § 8663; Pen. C. 1877, § 123; R. C. 1899, § 6932.]

§ 9334. 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. [R. C. 1905, § 8664; Pen. C. 1877, § 124; R. C. 1899, § 6933.]

§ 9335. 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. [R. C. 1905, § 8665; Pen. C. 1877, § 125; R. C. 1899, § 6934.]

CHAPTER 9.

PERSONAL LOBBYING PROHIBITED.

§ 9336. Personal lobbying prohibited. It shall be unlawful for any person to act as legislative counsel or legislative agent, to attempt personally and directly to influence any member of the legislature to vote for or against any measure pending therein, otherwise than by appearing before the regular committees thereof, when in session, or by newspaper publications, or by public addresses, or by written or printed statements, arguments or briefs, delivered to each member of the legislature. [1911, ch. 182, § 1.]

§ 9337. Lobbyists not to go upon the floor of either house. It shall be unlawful for any person to act as legislative counsel or legislative agent, as defined herein, to go upon the floor of either house of the legislature, reserved for the members thereof, except upon the invitation of such house; and it shall be unlawful for any person to solicit support of or opposition to any measure from any member individually anywhere within the capitol, except as otherwise provided herein. [1911, ch. 182, § 2.]

§ 9338. Penalty. Any person violating any provisions of this chapter shall for such offense be fined not less than fifty dollars nor more than five hundred dollars. It shall be the duty of the attorney-general, upon information, to bring prosecutions for the violating of the provisions of this chapter. [1911, ch. 182, § 3.]

CHAPTER 10.

CRIMES AGAINST PUBLIC JUSTICE, BRIBERY AND CORRUPTION.

§ 9339. 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. [R. C. 1905, § 8666; Pen. C. 1877, § 126; R. C. 1899, § 6935.]

Bribery by gift to public; for street improvements. 14 L.R.A. 62.

Bribery by bonus to secure location of county seat. 15 L.R.A. 501.

§ 9340. 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. [R. C. 1905, § 8667; Pen. C. 1877, § 127; R. C. 1899, § 6936.]

As to similar provision in Cal. Pen. Code, § 93, see *People v. Squires*, 99 Cal. 327, 33 Pac. 1092.

§ 9341. 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. [R. C. 1905, § 8668; Pen. C. 1877, § 128; R. C. 1899, § 6937.]

As to similar provision in Cal. Pen. Code, § 93, see *People v. Squires*, 99 Cal. 327, 33 Pac. 1092.

§ 9342. 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. [R. C. 1905, § 8669; Pen. C. 1877, § 129; R. C. 1899, § 6938.]

As to similar provision in Cal. Pen. Code, § 96, see *People v. Squires*, 99 Cal. 327, 33 Pac. 1092.

§ 9343. 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. [R. C. 1905, § 8670; Pen. C. 1877, § 130; R. C. 1899, § 6939.]

§ 9344. 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. [R. C. 1905, § 8671; Pen. C. 1877, § 131; R. C. 1899, § 6940.]

§ 9345. 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. [R. C. 1905, § 8672; Pen. C. 1877, § 132; R. C. 1899, § 6941.]

§ 9346. 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. [R. C. 1905, § 8673; Pen. C. 1877, § 133; R. C. 1899, § 6942.]

§ 9347. 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. [R. C. 1905, § 8674; Pen. C. 1877, § 134; R. C. 1899, § 6943.]

CHAPTER 11.

RESCUES.

§ 9348. 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. [R. C. 1905, § 8675; Pen. C. 1877, § 135; R. C. 1899, § 6944.]

§ 9349. 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. [R. C. 1905, § 8676; Pen. C. 1877, § 136; R. C. 1899, § 6945.]

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

CHAPTER 12.

ESCAPES AND AIDING THEREIN.

§ 9350. 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. [R. C. 1905, § 8677; Pen. C. 1877, § 137; R. C. 1895, § 6946.]

As to similar provision in Cal. Pen. Code, § 105, see *Ex parte Irwin*, 88 Cal. 169, 25 Pac. 1118; *Ex parte Morton*, 132 Cal. 346, 64 Pac. 469; *People v. Wood*, 145 Cal. 659, 79 Pac. 367.

§ 9351. 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. [R. C. 1905, § 8678; Pen. C. 1877, §§ 138, 140; R. C. 1895, § 6947.]

Conviction for escape from prison sustained. *State v. Wright*, 20 N. D. 216, 126 N. W. 1023, Ann. Cas. 1912C, 795.

§ 9352. 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. [R. C. 1905, § 8679; Pen. C. 1877, § 139; R. C. 1899, § 6948.]

§ 9353. 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. [R. C. 1905, § 8680; Pen. C. 1877, § 141; R. C. 1899, § 6949.]

§ 9354. 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. [R. C. 1905, § 8681; Pen. C. 1877, § 142; R. C. 1895, § 6950.]

§ 9355. 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. [R. C. 1905, § 8682; Pen. C. 1877, § 143; R. C. 1895, § 6951.]

§ 9356. 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. [R. C. 1905, § 8683; Pen. C. 1877, § 145; R. C. 1895, § 6952.]

§ 9357. 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. 1905, § 8684; R. C. 1895, § 6953.]

Officers' liability for escape. 95 Am. St. Rep. 115.

§ 9358. 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. 1905, § 8685; R. C. 1895, § 6954.]

§ 9359. 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. [R. C. 1905, § 8686; Pen. C. 1877, § 144; R. C. 1895, § 6955.]

§ 9360. 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. [R. C. 1905, § 8687; Pen. C. 1877, § 146; R. C. 1899, § 6956.]

§ 9361. Prisoner defined. The term "prisoner" in this chapter includes every person held in custody under process of law issued from a court of com-

petent jurisdiction, whether civil or criminal, or under any lawful arrest. [R. C. 1905, § 8688; Pen. C. 1877, § 147; R. C. 1899, § 6957.]

§ 9362. 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. 1905, § 8689; R. C. 1895, § 6958.]

See appropriation for expense of prosecutions under this section and regulation of payment of bills against the same in section 653g.

CHAPTER 13.

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

§ 9363. 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. [R. C. 1905, § 8690; Pen. C. 1877, § 148; R. C. 1899, § 6959.]

§ 9364. 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. [R. C. 1905, § 8691; Pen. C. 1877, § 149; R. C. 1899, § 6960.]

§ 9365. 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. [R. C. 1905, § 8692; Pen. C. 1877, § 150; R. C. 1899, § 6961.]

As to similar provision in Cal. Pen. Code, § 115, see *People v. Harrold*, 84 Cal. 567, 24 Pac. 106.

CHAPTER 14.

PERJURY AND SUBORNATION OF PERJURY.

§ 9366. 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. [R. C. 1905, § 8693; Pen. C. 1877, § 151; R. C. 1899, § 6962.]

What constitutes perjury. 85 Am. Dec. 485.

Indictments for perjury. 124 Am. St. Rep. 654.

Establishment of falsity of testimony by circumstantial evidence. 44 L.R.A.(N.S.) 513.

Perjury as affected by invalidity of proceedings in which testimony taken. 54 L.R.A. 513; 40 L.R.A.(N.S.) 249.

Criminal responsibility of corporation for perjury. 2 B. R. C. 253.

Criminal liability of children for perjury. 36 L.R.A. 203.

Impairment of memory as defense to prosecution for perjury. 21 L.R.A.(N.S.) 993.

Perjury and subornation of perjury as grounds for civil actions. 24 L.R.A.(N.S.) 265.

Acquittal of crime as bar to subsequent prosecution of defendant for perjury committed on the former trial. 39 L.R.A.(N.S.) 385.

Commitment or holding of witness for perjury during trial as ground for reversal. 43 L.R.A.(N.S.) 845.

As to similar provision in Cal. Pen. Code, § 118, see *People v. Ross*, 103 Cal. 425, 37 Pac. 379; *People v. Ennis*, 137 Cal. 263, 70 Pac. 84.

§ 9337. **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. [R. C. 1905, § 8694; Pen. C. 1877, § 152; R. C. 1899, § 6963.]

§ 9368. **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. [R. C. 1905, § 8695; Pen. C. 1877, § 153; R. C. 1899, § 6964.]

§ 9369. **Irregularities no defense.** It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner. [R. C. 1905, § 8696; Pen. C. 1877, § 154; R. C. 1899, § 6965.]

False swearing where no oath, or the particular one administered, was not required, as perjury. 39 L.R.A.(N.S.) 96.

As to similar provision in Cal. Pen. Code, § 121, see *People v. Cohen*, 118 Cal. 74, 50 Pac. 20.

§ 9370. **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. [R. C. 1905, § 8697; Pen. C. 1877, § 155; R. C. 1899, § 6966.]

§ 9371. **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. [R. C. 1905, § 8698; Pen. C. 1877, § 156; R. C. 1899, § 6967.]

May perjury be predicated of false testimony before the grand jury on matters immaterial to the issue. 22 L.R.A.(N.S.) 1192.

§ 9372. **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. [R. C. 1905, § 8699; Pen. C. 1877, § 157; R. C. 1899, § 6968.]

As to similar provision in Cal. Pen. Code, § 124, see *People v. Robles*, 117 Cal. 681, 49 Pac. 1042.

§ 9373. **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. [R. C. 1905, § 8700; Pen. C. 1877, § 158; R. C. 1899, § 6969.]

Perjury in statements involving matters of opinion or belief. 25 L.R.A.(N.S.) 654.

May perjury be predicated of testimony as to the effect of an understanding or agreement. 22 L.R.A.(N.S.) 1216.

As to similar provision in Cal. Pen. Code, § 125, see *People v. Von Tiedeman*, 120 Cal. 178, 52 Pac. 155.

§ 9374. **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. 1905, § 8701; R. C. 1895, § 6970.]

§ 9375. **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. [R. C. 1905, § 8702; Pen. C. 1877, § 159; R. C. 1895, § 6971.]

§ 9376. **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. [R. C. 1905, § 8703; Pen. C. 1877, § 160; R. C. 1895, § 6972.]

§ 9377. **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. [R. C. 1905, § 8704; Pen. C. 1877, § 161; R. C. 1895, § 6973.]

§ 9378. **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. [R. C. 1905, § 8705; Pen. C. 1877, § 162; R. C. 1899, § 6974.]

Judgment in civil action as evidence in a criminal prosecution for perjury. 26 L.R.A.(N.S.) 465.

§ 9379. **Subornation of perjury defined.** Every person who willfully procures another person to commit any perjury is guilty of subornation of perjury. [R. C. 1905, § 8706; Pen. C. 1877, § 163; R. C. 1899, § 6975.]

One procuring another to commit perjury is not a principal with such other. *State v. Pratt*, 21 S. D. 305, 112 N. W. 152.

Perjury and subornation of perjury as grounds for civil actions. 24 L.R.A.(N.S.) 265. May charge of subornation of perjury be based on false testimony which is immaterial. 25 L.R.A.(N.S.) 120.

Applicability of rule that conviction of perjury cannot rest upon uncorroborated evidence of a single witness, to prosecution for subornation of perjury. 44 L.R.A.(N.S.) 307.

Instigation to offense of subornation of perjury as a defense to prosecution. 30 L.R.A.(N.S.) 953.

§ 9380. **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. [R. C. 1905, § 8707; Pen. C. 1877, § 164; R. C. 1899, § 6976.]

§ 9381. **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. [R. C. 1905, § 8708; Pen. C. 1877, § 165; R. C. 1899, § 6977.]

Right to resist judgment of sister state on ground of false testimony. 32 L.R.A.(N.S.) 924.

CHAPTER 15.

FALSIFYING EVIDENCE.

§ 9382. **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. [R. C. 1905, § 8709; Pen. C. 1877, § 166; R. C. 1899, § 6978.]

§ 9383. **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. [R. C. 1905, § 8710; Pen. C. 1877, § 167; R. C. 1899, § 6979.]

§ 9384. **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. [R. C. 1905, § 8711; Pen. C. 1877, § 168; R. C. 1899, § 6980.]

§ 9385. **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. [R. C. 1905, § 8712; Pen. C. 1877, § 169; R. C. 1899, § 6981.]

§ 9386. **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. [R. C. 1905, § 8713; Pen. C. 1877, § 170; R. C. 1899, § 6982.]

§ 9387. **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. 1905, § 8714; R. C. 1895, § 6983.]

Procuring one having knowledge of offense to leave jurisdiction. 33 L.R.A.(N.S.) 976.

§ 9388. **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. [R. C. 1905, § 8715; Pen. C. 1877, § 171; R. C. 1899, § 6984.]

CHAPTER 16.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§ 9389. **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. [R. C. 1905, § 8716; Pen. C. 1877, § 172; R. C. 1899, § 6985.]

§ 9390. 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. [R. C. 1905, § 8717; Pen. C. 1877, § 173; R. C. 1899, § 6986.]

§ 9391. 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. [R. C. 1905, § 8718; Pen. C. 1877, § 174; R. C. 1899, § 6987.]

§ 9392. 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. [R. C. 1905, § 8719; Pen. C. 1877, § 175; R. C. 1899, § 6988.]

§ 9393. 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. [R. C. 1905, § 8720; Pen. C. 1877, § 176; R. C. 1899, § 6989.]

Liability of officer who uses criminal process to collect a debt. 24 L.R.A. (N.S.) 301.

§ 9394. 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. [R. C. 1905, § 8721; Pen. C. 1877, § 177; R. C. 1899, § 6990.]

§ 9395. 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. [R. C. 1905, § 8722; Pen. C. 1877, § 178; R. C. 1899, § 6991.]

§ 9396. 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. [R. C. 1905, § 8723; Pen. C. 1877, § 179; R. C. 1899, § 6992.]

§ 9397. 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. [R. C. 1905, § 8724; Pen. C. 1877, § 180; R. C. 1899, § 6993.]

§ 9398. 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. [R. C. 1905, § 8725; Pen. C. 1877, § 181; R. C. 1899, § 6994.]

Obstructing officer in performance of duty. *Richardson v. Dybedahl*, 14 S. D. 126, 84 N. W. 486.

Resisting service of civil process fair on its face but invalid in fact, as an offense. 21 L.R.A.(N.S.) 66.

§ 9399. 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. [R. C. 1905, § 8726; Pen. C. 1877, § 182; R. C. 1899, § 6995.]

§ 9400. 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. [R. C. 1905, § 8727; Pen. C. 1877, § 183; R. C. 1899, § 6996.]

§ 9401. 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. [R. C. 1905, § 8728; Pen. C. 1877, § 184; R. C. 1899, § 6997.]

Compounding crimes as affecting a contract; nature of proof. *School Dist. No. 61 v. Alderson*, 6 D. 145, 41 N. W. 466.

Person may be guilty of extortion if he obtains money from another by unlawful means, though he does not seek to obtain any benefit for himself. *Re Sherin*, 27 S. D. 232, 40 L.R.A.(N.S.) 801, 130 N. W. 761, Ann. Cas. 1913D, 446.

Actual commission of antecedent crime as an ingredient of the offense of compounding a felony. 7 L.R.A.(N.S.) 709.

As to similar provision in Cal. Pen. Code, § 153, see *People v. Bryan*, 103 Cal. 675, 37 Pac. 754.

§ 9402. 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. [R. C. 1905, § 8729; Pen. C. 1877, § 185; R. C. 1899, § 6998.]

§ 9403. 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. [R. C. 1905, § 8730; Pen. C. 1877, § 186; R. C. 1899, § 6999.]

§ 9404. 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. [R. C. 1905, § 8731; Pen. C. 1877, § 187; R. C. 1899, § 7000.]

§ 9405. 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. [R. C. 1905, § 8732; Pen. C. 1877, § 188; R. C. 1899, § 7001.]

Deeds executed in violation of this section are void as to persons in possession. *Burke v. Scharf*, 19 N. D. 227, 124 N. W. 79.

Deed executed in violation of statute is invalid only as to party in adverse possession claiming title. *Galbraith v. Payne*, 12 N. D. 164, 96 N. W. 258.

§ 9406. 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. [R. C. 1905, § 8733; Pen. C. 1877, § 189; R. C. 1899, § 7002.]

Inapplicable to conveyances made in pursuance of special proceedings at law. *Purcell v. Farm Land Co.*, 13 N. D. 327, 100 N. W. 700.

As to when deed is executed in violation of statute. *Brynjolfson v. Dagner*, 15 N. D. 332, 125 Am. St. Rep. 595, 109 N. W. 320.

On violation of provisions of section as subjecting offender to conviction for misdemeanor only, and not affecting validity of deed. *Burke v. Scharf*, 19 N. D. 227, 124 N. W. 79.

§ 9407. 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. [R. C. 1905, § 8734; Pen. C. 1877, § 190; R. C. 1899, § 7003.]

As to right to mortgage property adversely held. *Galbraith v. Payne*, 12 N. D. 164, 96 N. W. 258; *State Finance Co. v. Halstenson*, 17 N. D. 145, 114 N. W. 724.

§ 9408. Common barratry defined. Common barratry is the practice of exciting groundless judicial proceedings. [R. C. 1905, § 8735; Pen. C. 1877, § 191; R. C. 1899, § 7004.]

§ 9409. Misdemeanor. Common barratry is a misdemeanor. [R. C. 1905, § 8736; Pen. C. 1877, § 192; R. C. 1899, § 7005.]

§ 9410. 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. [R. C. 1905, § 8737; Pen. C. 1877, § 193; R. C. 1899, § 7006.]

§ 9411. 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. [R. C. 1905, § 8738; Pen. C. 1877, § 194; R. C. 1899, § 7007.]

§ 9412. 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. [R. C. 1905, § 8739; Pen. C. 1877, § 195; R. C. 1899, § 7008.]

As to similar provision in Cal. Pen. Code, § 161, see *Tuller v. Arnold*, 98 Cal. 522, 33 Pac. 445; In re Estate of Cummins, 143 Cal. 525, 77 Pac. 479.

§ 9413. 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. [R. C. 1905, § 8740; Pen. C. 1877, § 196; R. C. 1899, § 7009.]

§ 9414. 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. [R. C. 1905, § 8741; Pen. C. 1877, § 197; R. C. 1899, § 7010.]

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

When agreements of attorneys offend against the law of champerly and maintenance. 15 Am. Dec. 316; 27 Am. Rep. 319; 83 Am. St. Rep. 167.

§ 9415. 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. [R. C. 1905, § 8742; Pen. C. 1877, § 198; R. C. 1899, § 7011.]

§ 9416. 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. [R. C. 1905, § 8743; Pen. C. 1877, § 199; R. C. 1899, § 7012.]

§ 9417. Application of previous sections. The provisions of sections 9412, 9414 and 9416 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. [R. C. 1905, § 8744; Pen. C. 1877, § 200; R. C. 1899, § 7013.]

Champerly not available to defeat just debt. *Woods v. Walsh*, 7 N. D. 376, 75 N. W. 767

As to similar provision in Cal. Pen. Code, § 161, see *Tuller v. Arnold*, 98 Cal. 522, 33 Pac. 445; In re Estate of Cummins, 143 Cal. 525, 77 Pac. 479.

§ 9418. 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. [R. C. 1905, § 8745; Pen. C. 1877, § 201; R. C. 1899, § 7014.]

§ 9419. 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. [R. C. 1905, § 8746; Pen. C. 1877, § 202; R. C. 1899, § 7015.]

Failure to appear, or tardiness, of attorney, as contempt. 15 L.R.A.(N.S.) 389.
Disclosure by grand juror of evidence given before grand jury as contempt. 17 L.R.A.(N.S.) 1049.

Summoning biased or otherwise improper jurors or talesmen as a contempt. 20 L.R.A.(N.S.) 1013.

Procuring one having knowledge of offense to leave jurisdiction as contempt. 33 L.R.A.(N.S.) 976.

Conduct designed to annoy a litigant and induce him to abandon suit as contempt. 42 L.R.A.(N.S.) 722.

Reflection on judge as ministerial officer as contempt. 15 L.R.A.(N.S.) 621.
Assault or abuse of judge after he has retired from court room as contempt. 2 L.R.A.(N.S.) 603.

Statement with respect to ended cause as contempt of court. 68 L.R.A. 251.
Criticism of decision or opinion after case has been determined as contempt. 17 L.R.A.(N.S.) 572.

As to similar provision in Cal. Pen. Code, § 166, see *Ex parte Gould*, 99 Cal. 360, 37 Am. St. Rep. 57, 33 Pac. 1112, 21 L.R.A. 751.

1. Attorney's statement in court concerning decisions as contempt. 5 L.R.A.(N.S.) 916.

Intoxication in court room as contempt. 33 L.R.A.(N.S.) 138.

Evasive or false answer by witness as contempt. 41 L.R.A.(N.S.) 478.

4. One who, knowing of order of court and its contents, intentionally 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, 44 Am. St. Rep. 809; *State v. Davis*, 2 N. D. 461, 51 N. W. 942; *State v. Markuson*, 5 N. D. 147, 64 N. W. 934.

Disobedience of void order as contempt. 16 L.R.A.(N.S.) 1063.

Refusal to produce books or papers in response to subpoena upon ground that they contain private matter. 29 L.R.A.(N.S.) 716.

Refusal to restore money or property secured under judgment subsequently reversed or set aside, as contempt. 39 L.R.A.(N.S.) 1100.

Violation by private citizen of decree against a municipality as contempt. 25 L.R.A.(N.S.) 226.

Marrying out of state contrary to decree as contempt. 40 L.R.A.(N.S.) 765.

Necessity and sufficiency of notice of injunction to render one not a party guilty of contempt in disobeying it. 23 L.R.A.(N.S.) 1295.

Contempt in violation of preliminary injunction which would have effect of transferring possession of property from defendant to plaintiff. 39 L.R.A.(N.S.) 32.

Invitation or solicitation to violate injunction, or consent or acquiescence therein, as justification for so doing. 9 L.R.A.(N.S.) 304.

Effect of appeal from injunction on jurisdiction of trial court to punish for contempt for its violation. 14 L.R.A.(N.S.) 1150.

Contempt by board of health in disobeying injunction. 48 L.R.A. 708.

Knowledge necessary to charge owner with conduct of tenants or others in selling intoxicating liquor on premises in violation of injunction. 25 L.R.A.(N.S.) 602.

Failure or refusal of bankrupt or person having money or property belonging to a bankrupt to deliver it to a trustee as contempt. 23 L.R.A.(N.S.) 255.

Right to take judicial notice of decree in proceeding to punish violation of same as contempt. 24 L.R.A.(N.S.) 404.

Power to punish disobedience to order in case by striking pleadings. 4 L.R.A.(N.S.) 1185; 27 L.R.A.(N.S.) 1062.

Compelling payment of alimony by contempt proceedings. 24 L.R.A. 433.

7. Publishing inaccurate report of court decision as contempt. 17 L.R.A.(N.S.) 583.

Liability of newspaper proprietor in case of publication without his knowledge. 26 L.R.A. 781.

Publication of matters derogatory to parties to litigation as contempt of court. 2 B. R. C. 483.

§ 9420. 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. [R. C. 1905, § 8747; Pen. C. 1877, § 204; R. C. 1899, § 7016.]

§ 9421. 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. [R. C. 1905, § 8748; Pen. C. 1877, § 205; R. C. 1899, § 7017.]

§ 9422. 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. [R. C. 1905, § 8749; Pen. C. 1877, § 206; R. C. 1899, § 7018.]

§ 9423. 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. [R. C. 1905, § 8750; Pen. C. 1877, § 207; R. C. 1899, § 7019.]

§ 9424. 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. [R. C. 1905, § 8751; Pen. C. 1877, § 208; R. C. 1899, § 7020.]

§ 9425. 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, outhouse, 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. [R. C. 1905, § 8752; Pen. C. 1877, § 209; R. C. 1899, § 7021.]

§ 9426. 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. [R. C. 1905, § 8753; Pen. C. 1877, § 210; R. C. 1899, § 7022.]

§ 9427. **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. [R. C. 1905, § 8754; Pen. C. 1877, § 211; R. C. 1899, § 7023.]

§ 9428. **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. [R. C. 1905, § 8755; Pen. C. 1877, § 212; R. C. 1899, § 7024.]

§ 9429. **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. [R. C. 1905, § 8756; Pen. C. 1877, § 213; R. C. 1899, § 7025.]

§ 9430. **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. [R. C. 1905, § 8757; Pen. C. 1877, § 214; R. C. 1899, § 7026.]

§ 9431. **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. [R. C. 1905, § 8758; Pen. C. 1877, § 215; R. C. 1899, § 7027.]

§ 9432. **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. [R. C. 1905, § 8759; Pen. C. 1877, § 216; R. C. 1899, § 7028.]

§ 9433. **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. [R. C. 1905, § 8760; Pen. C. 1877, § 217; R. C. 1899, § 7029.]

It is not criminal offense to fail to do act which may be required by statute. *Langer v. Goode*, 21 N. D. 462, 131 N. W. 258, Ann. Cas. 1913D, 429, 1 N. C. C. A. 772.

§ 9434. **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. [R. C. 1905, § 8761; Pen. C. 1877, § 218; R. C. 1895, § 7030.]

§ 9435. **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. [R. C. 1905, § 8762; Pen. C. 1877, § 219; R. C. 1899, § 7031.]

§ 9436. **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. [R. C. 1905, § 8763; Pen. C. 1877, § 220; R. C. 1899, § 7032.]

§ 9437. **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. [R. C. 1905, § 8764; Pen. C. 1877, § 221; R. C. 1899, § 7033.]

§ 9438. **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. [R. C. 1905, § 8765; Pen. C. 1877, § 222; R. C. 1895, § 7034.]

§ 9439. **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. [R. C. 1905, § 8766; Pen. C. 1877, § 223; R. C. 1899, § 7035.]

§ 9440. **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. [R. C. 1905, § 8767; Pen. C. 1877, § 224; R. C. 1899, § 7036.]

CHAPTER 17.

CONSPIRACY.

§ 9441. **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. [R. C. 1905, § 8768; Pen. C. 1877, § 225; R. C. 1895, § 7037.]

Action will not generally lie for merely inducing another to break his contract, except where direct fraud or force or coercion has been used. *Sleeper v. Baker*, 22 N. D. 386, 39 L.R.A. (N.S.) 864, 134 N. W. 716.

What constitutes crime of conspiracy and evidence in prosecution therefor. 3 Am. St. Rep. 474.

Definition and nature of conspiracy and general principles relating thereto. 51 Am. Dec. 82.

Criminal responsibility of corporation for conspiracy. 2 B. R. C. 246.

As to similar provision in Cal. Pen. Code, § 182, see *People v. Hamberg*, 84 Cal. 468, 24 Pac. 298; *People v. Daniels*, 105 Cal. 262, 38 Pac. 720; *People v. Holmes*, 118 Cal. 444, 50 Pac. 675.

§ 9442. **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. [R. C. 1905, § 8769; Pen. C. 1877, § 226; R. C. 1899, § 7038.]

§ 9443. **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. 1905, § 8770; R. C. 1895, § 7039.]

Conspiracy to control wages of workmen. 28 Am. Dec. 507.

Right of labor union to notify persons not to deal with a certain individual. 16 L.R.A.(N.S.) 85; 18 L.R.A.(N.S.) 707; 32 L.R.A.(N.S.) 748.

— to forbid its members to handle one's product. 12 L.R.A.(N.S.) 642; 32 L.R.A.(N.S.) 792.

— to divert trade from one with whom it is in controversy. 1 B. R. C. 245.

Liability of members of trade combination for injury to boycotted dealer. 2 L.R.A.(N.S.) 824.

Recovery of money paid to labor organization in order to avoid boycott. 4 L.R.A.(N.S.) 1198.

Lawfulness of strike or threat to cause strike, or to so act as to induce strike, when there is no dispute between the strikers and their own employers. 6 L.R.A.(N.S.) 1067.

Right, in aid of strike, to employ peaceable persuasion to induce persons not under contract to quit, or not accept employment. 41 L.R.A.(N.S.) 445.

— to use money to induce persons not under contract, to quit or not accept employment. 41 L.R.A.(N.S.) 453.

Controversy over "open" or "closed" shop as justification for means employed to aid strike. 17 L.R.A.(N.S.) 162; 35 L.R.A.(N.S.) 787.

System of work as justification for strike. 37 L.R.A.(N.S.) 179.

Forcing discharge of foreman or coemployee as justification for strike. 42 L.R.A.(N.S.) 1048.

Injunction against strikes. 28 L.R.A. 464.

§ 9444. **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. [R. C. 1905, § 8771; Pen. C. 1877, § 227; R. C. 1899, § 7040.]

As to similar provision in Cal. Pen. Code, § 184, see *People v. Daniels*, 105 Cal. 262, 38 Pac. 720.

§ 9445. **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. [R. C. 1905, § 8772; Const. § 23; R. C. 1899, § 7041.]

§ 9446. **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. [R. C. 1905, § 8773; Const. § 212; R. C. 1899, § 7042.]

Blacklisting employes. 63 L.R.A. 289; 4 L.R.A.(N.S.) 1118.

Injunction against blacklisting. 20 L.R.A. 342; 4 L.R.A.(N.S.) 1121.

CHAPTER 18.

TREASON AND MISPRISION OF TREASON.

§ 9447. **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. [R. C. 1905, § 8774; Const. § 19; R. C. 1899, § 7043.]

Criminal responsibility of corporation for treason. 2 B. R. C. 253.

Criminal liability of children for. 36 L.R.A. 209.

Proof of corpus delicti in prosecution for. 68 L.R.A. 56.

§ 9448. **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. 1905, § 8775; R. C. 1895, § 7044.]

CHAPTER 19.

SUICIDE.

§ 9449. **Suicide defined.** Suicide is the intentional taking of one's own life. [R. C. 1905, § 8776; Pen. C. 1877, § 229; R. C. 1899, § 7045.]

§ 9450. **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. [R. C. 1905, § 8777; Pen. C. 1877, § 230; R. C. 1899, § 7046.]

Attempt of intoxicated person to commit suicide. 36 L.R.A. 479.

Attempt to commit suicide as a crime. 7 L.R.A.(N.S.) 236.

§ 9451. **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. [R. C. 1905, § 8778; Pen. C. 1877, § 231; R. C. 1899, § 7047.]

Inciting or abetting suicide. 66 L.R.A. 304; 22 L.R.A.(N.S.) 243.

§ 9452. **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. [R. C. 1905, § 8779; Pen. C. 1877, § 232; R. C. 1899, § 7048.]

§ 9453. **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. [R. C. 1905, § 8780; Pen. C. 1877, § 233; R. C. 1899, § 7049.]

§ 9454. **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. [R. C. 1905, § 8781; Pen. C. 1877, § 234; R. C. 1899, § 7050.]

§ 9455. **Aiding suicide. Punishment.** Every person guilty of aiding suicide is punishable by imprisonment in the penitentiary not less than seven years. [R. C. 1905, § 8782; Pen. C. 1877, § 235; R. C. 1899, § 7051.]

§ 9456. **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. [R. C. 1905, § 8783; Pen. C. 1877, § 236; R. C. 1899, § 7052.]

CHAPTER 20.

HOMICIDE.

§ 9457. **Homicide defined.** Homicide is the destruction of the life of one human being by the act, agency, procurement or culpable omission of another. [R. C. 1905, § 8784; Pen. C. 1877, § 237; R. C. 1895, § 7053.]

Indictment which shows that accused killed another by feloniously and willfully beating him with club charges manslaughter in first degree. *State v. Edmunds*, 20 S. D. 135, 104 N. W. 1115.

May a corporation be convicted of homicide. 21 L.R.A.(N.S.) 998.

Criminal responsibility of corporation for homicide. 2 B. R. C. 247.

§ 9458. **Homicides classified.** Homicide is either :

1. Murder.
2. Manslaughter.
3. Excusable homicide; or,
4. Justifiable homicide. [R. C. 1905, § 8785; Pen. C. 1877, § 238; R. C. 1899, § 7054.]

§ 9459. **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. [R. C. 1905, § 8786; Pen. C. 1877, § 239; R. C. 1895, § 7055.]

Proof of corpus delicti in homicide case. 68 L.R.A. 73, 75-78.

Sufficiency of circumstantial evidence to identify remains found as those of persons charged to have been killed. 7 L.R.A.(N.S.) 181.

§ 9460. **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. [R. C. 1905, § 8787; Pen. C. 1877, § 240; R. C. 1899, § 7056.]

§ 9461. **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. [R. C. 1905, § 8788; Pen. C. 1877, § 241; R. C. 1899, § 7057.]

§ 9462. **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. [R. C. 1905, § 8789; 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 D. 451, 46 N. W. 597; *State v. Redington*, 7 S. D. 368, 64 N. W. 170.

Murder defined. *State v. Redington*, 7 S. D. 368, 64 N. W. 170; *State v. Belyea*, 9 N. D. 353, 83 N. W. 1; *Territory v. Bannigan*, 1 D. 432, 46 N. W. 597.

Jury may find accused guilty of manslaughter in first degree under indictment charging murder. *State v. Stumbaugh*, 28 S. D. 50, 132 N. W. 666.

Elements of deliberation and premeditation as affected by the brevity of the period elapsing between the resolution to kill and the homicide. 7 L.R.A.(N.S.) 1056.

Homicide in resisting arrest, or officers of justice. 66 L.R.A. 353; 33 L.R.A.(N.S.) 133.

—in mutual combat voluntarily entered into. 45 L.R.A.(N.S.) 646.

—by accident or misadventure. 1 L.R.A.(N.S.) 931; 2 L.R.A.(N.S.) 719; 3 L.R.A.(N.S.) 1153.

Negligent homicide. 61 L.R.A. 277; 63 L.R.A. 392.

As to similar provision in Cal. Pen. Code, §§ 187-189, see *Ex parte Wolff*, 59 Cal. 94; *People v. Schmidt*, 63 Cal. 28; *People v. De La Cour Soto*, 63 Cal. 165; *People v. Munn*, 65 Cal. 211, 6 Am. Cr. Rep. 431, 3 Pac. 650; *People v. Keefer*, 65 Cal. 232, 5 Am. Cr. Rep. 6, 3 Pac. 818; *People v. Ah Toon*, 68 Cal. 362, 9 Pac. 311; *People v. Abbott*, 66 Cal. XVIII, 4 Pac. 769; *People v. Knapp*, 71 Cal. 1, 11 Pac. 793; *People v. Kernaghan*, 72 Cal. 609, 14 Pac. 566; *People v. Olsen*, 80 Cal. 122, 22 Pac. 125; *People v. Hyndman*, 99 Cal. 1, 33 Pac. 782; *People v. Wright*, 93 Cal. 564, 29 Pac. 240; *People v. Burtle*, 123 Cal. 303, 55 Pac. 938; *People v. Mendenhall*, 135 Cal. 344, 67 Pac. 325; *People v. Glaze*, 139 Cal. 154, 72 Pac. 965; *People v. Wardrip*, 141 Cal. 229, 74 Pac. 744; *People v. Ung Ting Bow*, 142 Cal. 341, 75 Pac. 899; *People v. Suesser*, 142 Cal. 354, 75 Pac. 1093; *People v. Woods*, 147 Cal. 265, 81 Pac. 652; *People v. McRoberts*, 1 Cal. App. 25, 81 Pac. 734; *People v. Waysman*, 1 Cal. App. 246, 81 Pac. 1087.

2. By excessive or improper chastisement. 60 L.R.A. 801.

3. Unintentional homicide in the commission of an unlawful act. 19 Am. Rep. 2; 90 Am. St. Rep. 571.

—in the commission of felonies. 63 L.R.A. 354.

—in carrying out unlawful conspiracy. 68 L.R.A. 193; 45 L.R.A.(N.S.) 55.

—in commission of, or attempt to commit abortion. 63 L.R.A. 902.

Responsibility of one assisting in burglary during which his companion commits murder. 6 L.R.A.(N.S.) 1154.

§ 9463. **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. 1905, § 8790; R. C. 1895, § 7059.]

§ 9464. **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. [R. C. 1905, § 8791; Pen. C. 1877, § 243; R. C. 1899, § 7060.]

Common intent in homicide in carrying out unlawful purpose. 68 L.R.A. 203.

Effect of absence of intent to do harm in homicide by misadventure. 3 L.R.A.(N.S.) 1155.

Right on trial for homicide to show immorality of deceased as bearing on defendant's intent or motive. 36 L.R.A.(N.S.) 397.

Right of one under trial for homicide to testify as to his intent. 23 L.R.A.(N.S.) 388; 34 L.R.A.(N.S.) 324.

§ 9465. **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. [R. C. 1905, § 8792; Pen. C. 1877, § 244; R. C. 1899, § 7061.]

Premeditation in case of homicide in mutual combat. 45 L.R.A.(N.S.) 648.

§ 9466. **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. [R. C. 1905, § 8793; Pen. C. 1877, § 245; R. C. 1899, § 7062.]

Heat of passion which will mitigate or reduce the degree of a homicide. 5 L.R.A.(N.S.) 809.

What intoxication will excuse. 36 L.R.A. 470.

Drunkenness as defense to homicide. 13 L.R.A.(N.S.) 1024; 25 L.R.A.(N.S.) 376.

Killing in self defense while intoxicated. 36 L.R.A. 476.

Intent in homicide by intoxicated person. 36 L.R.A. 470.

Effect of deliberation and premeditation in homicide by intoxicated person. 36 L.R.A. 473.

Existence of previous intent to kill as affecting degree of homicide in heat of passion. 5 L.R.A.(N.S.) 819.

§ 9467. 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. [R. C. 1905, § 8794; Pen. C. 1877, § 246; R. C. 1895, § 7063.]

Intention to wound only, as affecting degree of homicide in absence of excuse or justification. 35 L.R.A.(N.S.) 621.

Assault with intent to murder or kill by unlawful act aimed at another than the one injured. 37 L.R.A.(N.S.) 172.

§ 9468. 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. 1905, § 8795; R. C. 1895, § 7064.]

Degree of homicide in killing wife, as affected by her confession of, or declaration of intent to commit, adultery. 38 L.R.A.(N.S.) 99.

Presumption as to distinctive elements of murder in first degree from use of deadly weapon. 34 L.R.A.(N.S.) 74.

Killing or assaulting of a relative or friend of defendant as a sufficient provocation to reduce a homicide to manslaughter. 17 L.R.A.(N.S.) 795.

As to similar provision in Cal. Pen. Code. § 189. see *Ex parte Wolff*, 59 Cal. 94; *People v. Olsen*, 80 Cal. 122, 22 Pac. 125; *People v. Wardrip*, 141 Cal. 229, 74 Pac. 744; *People v. Woods*, 147 Cal. 265, 81 Pac. 652.

§ 9469. Degrees of murder defined. Every murder perpetrated by means of poison, or by lying in wait, or by torture, or by other willful, 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. 1905, § 8796; R. C. 1895, § 7065.]

Statutory division of degrees of homicide. 18 Am. Dec. 774.

Effect of statutory declaration that murder committed by certain means, or while engaged in commission of felony, shall be murder in the first degree, upon right of jury to pass upon degree. 12 L.R.A.(N.S.) 935.

When homicide by unlawful act aimed at another than the one killed is murder in the first degree. 63 L.R.A. 662.

—when murder in the second or a lower degree. 63 L.R.A. 663.

§ 9470. Manslaughter defined. Homicide, not excusable or justifiable, but perpetrated in a manner not constituting murder, is manslaughter. [R. C. 1905, § 8797; R. C. 1895, § 7066.]

Indictment which shows that accused killed another by feloniously and willfully beating him with club charges manslaughter in first degree. *State v. Edmunds*, 20 S. D. 135, 104 N. W. 1115.

Condition of mind of slayer which reduces murder to manslaughter. 134 Am. St. Rep. 726.

As to similar provision in Cal. Pen. Code, § 192, see *People v. Munn*, 65 Cal. 211, 6 Am. Cr. Rep. 431, 3 Pac. 650; *People v. Olsen*, 80 Cal. 122, 22 Pac. 125; *People v. Pearne*, 118 Cal. 154, 50 Pac. 376; *People v. Denomme*, 123 Cal. XVIII, 56 Pac. 98; *People v. Thomson*, 145 Cal. 717, 79 Pac. 435; *Huntington v. Superior Court*, 5 Cal. App. 288, 90 Pac. 141.

§ 9471. 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. 1905, § 8798; R. C. 1895,

§ 7067.]

§ 9472. 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. [R. C. 1905, § 8799; Pen. C. 1877, § 249; 1883, ch. 9, §§ 1, 2; R. C. 1895, § 7068.]

Juror cannot be challenged for holding opinions against capital punishment, but may be asked the question as basis for peremptory challenge. *State v. Garrington*, 11 S. D. 173, 76 N. W. 326.

Changing punishment of one convicted of murder. *State v. Rooney*, 12 N. D. 144, 95 N. W. 513; affirmed in *Rooney v. North Dakota*, 196 U. S. 319, 49 L.ed. 494, 25 S. Ct. R. 164, 3 Ann. Cas. 76.

As to similar provision in Cal. Pen. Code, § 190, see *People v. Welch*, 49 Cal. 174; *People v. Brown*, 59 Cal. 345; *People v. Jones*, 63 Cal. 168; *People v. French*, 69 Cal. 169, 10 Pac. 378; *People v. Bawben*, 90 Cal. 195, 27 Pac. 204; *People v. Melendrez*, 129 Cal. 549, 62 Pac. 109; *People v. Ross*, 134 Cal. 256, 66 Pac. 229.

§ 9473. **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. 1905, § 8800; R. C. 1895, § 7069.]

§ 9474. **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. [R. C. 1905, § 8801; Pen. C. 1877, § 253; R. C. 1895, § 7070.]

§ 9475. **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. [R. C. 1905, § 8802; Pen. C. 1877, § 261; R. C. 1895, § 7071.]

§ 9476. **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. 1905, § 8803; R. C. 1895, § 7072.]

Effect of statutory declaration that murder committed by certain means, or while engaged in commission of felony, shall be murder in the first degree, upon right of jury to pass upon degree. 12 L.R.A. (N.S.) 935.

§ 9477. **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. [R. C. 1905, § 8804; 1883, ch. 9, §§ 1, 2; R. C. 1895, § 7073.]

Court's duty is to inform jury as to two methods of punishment, leaving to jury to say which shall be inflicted. *State v. Peltier*, 21 N. D. 183, 129 N. W. 451.

§ 9478. **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 10893 of the code of criminal procedure. [R. C. 1905, § 8805; R. C. 1895, § 7074.]

§ 9479. **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 10893 of the code of criminal procedure. [R. C. 1905, § 8806; R. C. 1895, § 7075.]

§ 9480. **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. 1905, § 8807; R. C. 1895, § 7076.]

Plea of guilty must be positive and definite as to degree, and must not merely refer to information. *State v. Noah*, 20 N. D. 281, 124 N. W. 1121.

§ 9481. 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. 1905, § 8808; R. C. 1895, § 7077.]

§ 9482. 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. 1905, § 8809; R. C. 1895, § 7078.]

Homicide in the commission of dueling. 63 L.R.A. 377.

Degree of homicide in case of killing in duel. 5 L.R.A.(N.S.) 821.

§ 9483. 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. 1905, § 8810; R. C. 1895, § 7079.]

§ 9484. 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. [R. C. 1905, § 8811; Pen. C. 1877, § 247; R. C. 1895, § 7080.]

§ 9485. 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. 1905, § 8812; R. C. 1895, § 7081.]

§ 9486. 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. 1905, § 8813; R. C. 1895, § 7082.]

§ 9487. 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. [R. C. 1905, § 8814; Pen. C. 1877, § 248; R. C. 1895, § 7083.]

§ 9488. **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. [R. C. 1905, § 8815; Pen. C. 1877, § 250; R. C. 1899, § 7084.]

Jury may find defendant charged with murder, guilty of manslaughter in first degree. *State v. Sumbaugh*, 28 S. D. 50, 132 N. W. 666.

Selfdefense in resisting officer. 5 L.R.A.(N.S.) 1016.

Killing in selfdefense, officer using unnecessary force in making arrest. 66 L.R.A. 367.

When homicide by unlawful act aimed at another than the one killed is manslaughter. 63 L.R.A. 666.

Assault with intent to murder or kill by unlawful act aimed at another than the one injured. 37 L.R.A.(N.S.) 172.

Assault or homicide as affected by mistake as to identity of victim. 33 L.R.A.(N.S.) 1070.

1. Homicide in the commission of unlawful acts not felonies. 63 L.R.A. 379; 19 Am. Rep. 2; 90 Am. St. Rep. 571.

Homicide in carrying out unlawful conspiracy. 68 L.R.A. 193.

Criminal responsibility of one who aids another in assault in which the latter, without his knowledge or consent, uses a deadly weapon. 23 L.R.A.(N.S.) 273.

§ 9489. **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. [R. C. 1905, § 8816; Pen. C. 1877, § 251; R. C. 1899, § 7085.]

Homicide in commission of, or attempt to commit, abortion. 63 L.R.A. 902.

Justifiable homicide in commission of or attempt to commit an abortion. 63 L.R.A. 909.

§ 9490. **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. [R. C. 1905, § 8817; Pen. C. 1877, § 252; R. C. 1899, § 7086.]

§ 9491. **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. [R. C. 1905, § 8818; Pen. C. 1877, § 254; R. C. 1899, § 7087.]

Effect of failure to provide medical attendance to render one guilty of manslaughter. 6 L.R.A.(N.S.) 685.

Criminal responsibility for homicide committed by third person, growing out of an altercation between defendant and deceased. 12 L.R.A.(N.S.) 889.

Criminal responsibility of one who inflicts a wound on another resulting in the latter's death, as affected by negligence or lack of skill in treatment or care of wound. 22 L.R.A.(N.S.) 841; 28 L.R.A.(N.S.) 665.

Homicide caused by carelessness and negligence. 61 L.R.A. 277; 63 L.R.A. 392.

—unintentionally committed in perpetration of a practical joke 31 Am. Rep. 606; 40 Am. Rep. 591.

—by inattention or neglect of duty. 124 Am. St. Rep. 322.

—by accident while hunting. 1 L.R.A.(N.S.) 991.

Accidental killing of bystander by shooting in selfdefense. 2 L.R.A.(N.S.) 719.

Homicide by misadventure. 3 L.R.A.(N.S.) 1153.

§ 9492. 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. [R. C. 1905, § 8819; Pen. C. 1877, § 255; R. C. 1899, § 7088.]

§ 9493. 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. [R. C. 1905, § 8820; Pen. C. 1877, § 256; R. C. 1899, § 7089.]

§ 9494. 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. [R. C. 1905, § 8821; Pen. C. 1877, § 257; R. C. 1899, § 7090.]

§ 9495. 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. [R. C. 1905, § 8822; Pen. C. 1877, § 258; R. C. 1899, § 7091.]

§ 9496. 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. [R. C. 1905, § 8823; Pen. C. 1877, § 259; R. C. 1899, § 7092.]

§ 9497. 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, [R. C. 1905, § 8824; Pen. C. 1877, § 260; R. C. 1895, § 7093.]

§ 9498. 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. 1905, § 8825; R. C. 1895, § 7094.]

Liability for killing or injuring trespassers by means of spring gun, trap or other dangerous instrument. 29 L.R.A. 156.

Criminal responsibility for death caused by spring gun or other dangerous mantrap upon one's own property. 14 L.R.A.(N.S.) 346.

§ 9499. 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. 1905, § 8826; R. C. 1895, § 7095.]

As to similar provision in Cal. Pen. Code, §§ 447-449, see *People v. Giacamella*, 71 Cal. 48, 12 Pac. 302; *People v. Russell*, 81 Cal. 616, 23 Pac. 418; *Clugston v. Garretson*, 103 Cal. 441, 37 Pac. 469; *People v. Mooney*, 127 Cal. 339, 59 Pac. 761.

§ 9500. 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. 1905, § 8827; R. C. 1895, § 7096.]

§ 9501. 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. [R. C. 1905, § 8828; Pen. C. 1877, § 262; R. C. 1899, § 7097.]

To constitute "excusable homicide," killing must not only be committed by accident and misfortune, but no undue advantage must be taken, nor any dangerous weapon used. *State v. Stumbaugh*, 28 S. D. 50, 132 N. W. 666.

Unnecessary force in making arrest as provocation for homicide. 66 L.R.A. 370.

Homicide by misadventure. 3 L.R.A. (N.S.) 1153.

When homicide by unlawful act aimed at another than the one killed is justifiable or excusable. 63 L.R.A. 667.

As to similar provision in Cal. Pen. Code, § 195, see *People v. Purdue*, 49 Cal. 425; *People v. Bushton*, 80 Cal. 160, 22 Pac. 127.

1. Homicide by excessive or improper chastisement. 60 L.R.A. 801.

§ 9502. 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. [R. C. 1905, § 8829; Pen. C. 1877, § 263; R. C. 1899, § 7098.]

Homicide by official action or by officers of justice. 67 L.R.A. 293.

§ 9503. 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. [R. C. 1905, § 8830; 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.

As to similar provision in Cal. Pen. Code, § 197, see *People v. Simons*, 60 Cal. 72; *People v. Gray*, 61 Cal. 164, 44 Am. Rep. 549; *People v. Herbert*, 61 Cal. 544; *People v. Bush*, 65 Cal. 129, 5 Am. Cr. Rep. 459, 3 Pac. 590; *People v. Robertson*, 67 Cal. 646, 6 Am. Cr. Rep. 519, 8 Pac. 600; *People v. Daniels*, 70 Cal. 521, 11 Pac. 655; *People v. Giancoli*, 74 Cal. 642, 16 Pac. 510; *People v. Stone*, 82 Cal. 36, 22 Pac. 975; *People v. Wallace*, 89 Cal. 158, 26 Pac. 650; *People v. Button*, 106 Cal. 628, 46 Am. St. Rep. 259, 39 Pac. 1073, 28 L.R.A. 591; *People v. Hecker*, 109 Cal. 451, 42 Pac. 307, 30 L.R.A. 403; *People v. Conkling*, 111 Cal. 616, 44 Pac. 314; *People v. Lewis*, 117 Cal. 186, 59 Am. St. Rep. 167, 48 Pac. 1088; *People v. Newcomer*, 118 Cal. 263, 50 Pac. 405; *People v. Reed*, 120 Cal. XVII, 52 Pac. 835; *People v. Shears*, 133 Cal. 154, 65 Pac. 295; *People v. Glover*, 141 Cal. 233, 74 Pac. 745.

Killing adulterer or adulteress. 51 Am. Rep. 328; 92 Am. St. Rep. 214.

Homicide to prevent criminal or unlawful acts. 67 L.R.A. 529.

1. One may not provoke assault, in order that he may have apparent excuse for killing, and where killing may be avoided by party assaulted with safety to person, he must retreat. *State v. Stumbaugh*, 28 S. D. 50, 132 N. W. 666.

Homicide in selfdefense. 26 Am. Dec. 279.

Standpoint of determination as to danger and necessity to kill in selfdefense. 8 L.R.A.(N.S.) 535.

"Retreat to the wall" in homicide. 2 L.R.A.(N.S.) 49.

Selfdefense set up by accused who began the conflict. 45 L.R.A. 637.

Selfdefense by one who has made an attack or voluntarily entered into an encounter. 109 Am. St. Rep. 804.

Right of selfdefense against attack due to defendant's illicit relations with wife or other relative of assailant. 46 L.R.A.(N.S.) 13.

Right of selfdefense by one who is pursued and assaulted after leaving premises which he had entered for an unlawful purpose. 26 L.R.A.(N.S.) 621.

Right to set up selfdefense in case of homicide in mutual combat. 45 L.R.A.(N.S.) 646.

Killing in selfdefense while intoxicated. 36 L.R.A. 476.

Right of officer to kill in selfdefense. 67 L.R.A. 304.

Selfdefense in resisting officer. 5 L.R.A.(N.S.) 1016.

Selfdefense against unnecessary force in making arrest. 66 L.R.A. 367.

Proof of selfdefense necessary to warrant admission of evidence as to character and reputation of deceased. 3 L.R.A.(N.S.) 355.

Applicability of rule of reasonable doubt to selfdefense in homicide. 19 L.R.A.(N.S.) 483; 31 L.R.A.(N.S.) 1166.

Homicide to prevent entrance of dwelling. 45 L.R.A.(N.S.) 71.

2. Homicide in the defense of one's house, person or family. 12 Am. Rep. 212.

Homicide in defense of family and relations. 45 L.R.A.(N.S.) 145.

Is one assisting relative in peril bound by the latter's act in bringing on the difficulty. 15 L.R.A.(N.S.) 1013; 39 L.R.A.(N.S.) 671.

Assault or homicide to prevent adultery. 132 Am. St. Rep. 694.

§ 9504. 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. 1905, § 8831; R. C. 1895, § 7100.]

CHAPTER 21.

MAIMING.

§ 9505. 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. [R. C. 1905, § 8832; Pen. C. 1877, § 265; R. C. 1899, § 7101.]

Destroying person's leg with intention of killing as maiming. *State v. Mattison*, 13 N. D. 391, 100 N. W. 1091.

What constitutes mayhem. 65 Am. St. Rep. 771.

As to similar provision in Cal. Pen. Code, § 203, see *People v. Golden*, 62 Cal. 542; *People v. Wright*, 93 Cal. 564, 29 Pac. 240; *People v. Demasters*, 105 Cal. 669, 39 Pac. 35.

§ 9506. **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. [R. C. 1905, § 8833; Pen. C. 1877, § 266; R. C. 1899, § 7102.]

§ 9507. **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. [R. C. 1905, § 8834; Pen. C. 1877, § 267; R. C. 1899, § 7103.]

§ 9508. **Maiming. Instrument. Manner immaterial.** To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted. [R. C. 1905, § 8835; Pen. C. 1877, § 268; R. C. 1899, § 7104.]

§ 9509. **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. [R. C. 1905, § 8836; Pen. C. 1877, § 269; R. C. 1899, § 7105.]

§ 9510. **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. [R. C. 1905, § 8837; Pen. C. 1877, § 270; R. C. 1899, § 7106.]

§ 9511. **Premeditated design sufficient.** A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound. [R. C. 1905, § 8838; Pen. C. 1877, § 271; R. C. 1899, § 7107.]

§ 9512. **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. [R. C. 1905, § 8839; Pen. C. 1877, § 272; R. C. 1899, § 7108.]

§ 9513. **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. [R. C. 1905, § 8840; Pen. C. 1877, § 273; R. C. 1899, § 7109.]

CHAPTER 22.

KIDNAPPING.

§ 9514. **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. [R. C. 1905, § 8841; Pen. C. 1877, § 274; R. C. 1899, § 7110; 1901, ch. 115.]

What constitutes kidnapping. 4 Am. St. Rep. 690.

As to similar provision in Cal. Pen. Code, § 207, see *People v. Fick*, 26 Pac. 759.

2. Taking of a child by or at instance of one parent, from the custody of the other parent, as kidnapping. 32 L.R.A.(N.S.) 845.

Civil action for abduction of child. 45 L.R.A.(N.S.) 867.

§ 9515. **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. [R. C. 1905, § 8842; Pen. C. 1877, § 275; R. C. 1899, § 7111.]

§ 9516. **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. [R. C. 1905, § 8843; Pen. C. 1877, § 276; R. C. 1899, § 7112.]

§ 9517. **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. [R. C. 1905, § 8844; Pen. C. 1877, § 277; R. C. 1899, § 7113.]

CHAPTER 23.

ATTEMPTS TO KILL.

§ 9518. **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. [R. C. 1905, § 8845; Pen. C. 1877, § 278; R. C. 1899, § 7114.]

As to similar provision in Cal. Pen. Code, § 216, see *People v. Van Deleer*, 53 Cal. 147; *People v. Cuddihy*, 54 Cal. 53.

§ 9519. **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. [R. C. 1905, § 8846; Pen. C. 1877, § 279; R. C. 1895, § 7115.]

On trial for assault with deadly weapon with intent to kill; conviction of assault and battery. *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 D. 189, 46 N. W. 601; *State v. Maloney*, 7 N. D. 119, 72 N. W. 927; *Territory v. Conrad*, 1 D. 348, 46 N. W. 605.

Assault or assault and battery with firearms for purpose of shooting not included in statute. State v. Cruikshank, 13 N. D. 337, 100 N. W. 697.

Shooting at one with intent to kill another constitutes assault with intent to kill. State v. Shanley, 20 S. D. 18, 104 N. W. 522.

Verdict of shooting with intent to injure another sufficient on charge of shooting with intent to kill. State v. Horn, 21 S. D. 237, 111 N. W. 552.

What constitutes an attempt to commit homicide as distinguished from assault with intent to kill. 21 L.R.A.(N.S.) 898.

Procuring or providing instrumentalities adapted to commission of a crime with intent to commit the same as an attempt to commit the crime. 6 L.R.A.(N.S.) 804.

§ 9520. 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. [R. C. 1905, § 8847; Pen. C. 1877, § 280; R. C. 1899, § 7116.]

CHAPTER 24.

ROBBERY.

§ 9521. 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. [R. C. 1905, § 8848; 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.

In robbery there must always be not only force or fear, but there must be larcenous or wrongful taking. Re Sherin, 27 S. D. 232, 40 L.R.A.(N.S.) 801, 130 N. W. 761, Ann. Cas. 1913D, 446.

What constitutes robbery. 70 Am. Dec. 178.

Nature and elements of crime of robbery. 135 Am. St. Rep. 474.

Robbery by taking from person property belonging to another. 67 L.R.A. 344.

Proof of corpus delicti in prosecution for robbery. 68 L.R.A. 46, 65, 70.

What intoxication will excuse robbery. 36 L.R.A. 469.

Robbery as affected by right or belief in right to property sought to be secured. 40 L.R.A.(N.S.) 801.

Forcibly compelling payment of debt as robbery. 10 L.R.A.(N.S.) 744.

Robbery by officers after making an arrest. 1 L.R.A.(N.S.) 1024; 3 L.R.A.(N.S.) 508.

Several offenses growing out of same facts. 31 L.R.A.(N.S.) 725.

Robbery as affecting liability on official bond. 22 L.R.A. 450.

Instigation to commit robbery. 25 L.R.A. 343.

Instigation of offense as a defense to prosecution. 30 L.R.A.(N.S.) 952.

As to similar provision in Cal. Pen. Code, § 211, see People v. Clough, 59 Cal. 438; People v. Anderson, 80 Cal. 205, 22 Pac. 139; People v. Chuey Ying Git, 100 Cal. 437, 34 Pac. 1080; People v. McElroy, 116 Cal. 583, 48 Pac. 718; People v. Ammerman, 118 Cal. 23, 50 Pac. 15; People v. Stevens, 141 Cal. 488, 75 Pac. 62.

§ 9522. 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. [R. C. 1905, § 8849; Pen. C. 1877, § 282; R. C. 1899, § 7118.]

What force is sufficient to constitute robbery. 57 L.R.A. 432; 46 L.R.A.(N.S.) 1150.

§ 9523. 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. [R. C. 1905, § 8850; Pen. C. 1877, § 283; R. C. 1899, § 7119.]

§ 9524. 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. [R. C. 1905, § 8851; Pen. C. 1877, § 284; R. C. 1899, § 7120.]

§ 9525. **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. [R. C. 1905, § 8852; Pen. C. 1877, § 285; R. C. 1899, § 7121.]

§ 9526. **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. [R. C. 1905, § 8853; Pen. C. 1877, § 286; R. C. 1899, § 7122.]

§ 9527. **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. [R. C. 1905, § 8854; Pen. C. 1877, § 287; R. C. 1899, § 7123.]

§ 9528. **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. [R. C. 1905, § 8855; Pen. C. 1877, § 288; R. C. 1895, § 7124.]

As to similar provision in Cal. Pen. Code, § 213, see *People v. Clough*, 59 Cal. 438; *People v. Rodrigo*, 69 Cal. 601, 11 Pac. 481; *People v. Winthrop*, 118 Cal. 85, 50 Pac. 390.

§ 9529. **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. [R. C. 1905, § 8856; Pen. C. 1877, § 289; R. C. 1895, § 7125.]

§ 9530. **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. [R. C. 1905, § 8857; Pen. C. 1877, § 290; R. C. 1895, § 7126.]

CHAPTER 25.

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

§ 9531. **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. [R. C. 1905, § 8858; Pen. C. 1877, § 291; R. C. 1899, § 7127.]

Weapon 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.

Assault of married woman with intent to have unlawful voluntary sexual intercourse is not assault with intent to commit felony. *State v. Archer*, 22 S. D. 137, 113 N. W. 1075.

Criminal responsibility of one who aids another in assault in which the latter, without his knowledge or consent, uses a deadly weapon. 23 L.R.A.(N.S.) 273.

Burden of proving that weapon was not loaded in prosecution for assault with firearms. 42 L.R.A.(N.S.) 975.

As to similar provision in Cal. Pen. Code, § 220, see *People v. Mesa*, 93 Cal. 580, 29 Pac. 116; *People v. Gardner*, 98 Cal. 127, 32 Pac. 880; *People v. Verdegreen*, 106 Cal. 211; 46 Am. St. Rep. 234, 39 Pac. 607; *People v. Hickey*, 109 Cal. 275, 41 Pac. 1027; *People v. Ammerman*, 118 Cal. 23, 50 Pac. 15; *People v. Wilson*, 110 Cal. 384, 51 Pac. 639; *People v. Swist*, 136 Cal. 520, 69 Pac. 223.

§ 9532. 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. [R. C. 1905, § 8859; Pen. C. 1877, § 292; R. C. 1895, § 7128.]

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

Form of indictment for assault with intent to commit rape. *Territory v. Godfrey*, 6 D. 46, 50 N. W. 481.

Assault of married woman with intent to have unlawful voluntary sexual intercourse is not assault with intent to commit felony. *State v. Archer*, 22 S. D. 137, 115 N. W. 1075.

As to similar provision in Cal. Pen. Code, § 221, see *People v. Helbing*, 61 Cal. 620.

§ 9533. 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. [R. C. 1905, § 8860; Pen. C. 1877, § 293; R. C. 1899, § 7129.]

CHAPTER 26.

DUELS AND CHALLENGES.

§ 9534. Duel defined. A duel is any combat with deadly weapons, fought between two persons by previous agreement or upon a previous quarrel. [R. C. 1905, § 8861; Pen. C. 1877, § 294; R. C. 1899, § 7130.]

§ 9535. 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. [R. C. 1905, § 8862; Pen. C. 1877, § 295; R. C. 1899, § 7131.]

Cruel or unusual punishment for dueling. 35 L.R.A. 571.

§ 9536. 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. [R. C. 1905, § 8863; Pen. C. 1877, § 296; R. C. 1899, § 7132.]

§ 9537. 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. [R. C. 1905, § 8864; Pen. C. 1877, § 297; R. C. 1899, § 7133.]

§ 9538. 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. [R. C. 1905, § 8865; Pen. C. 1877, § 298; R. C. 1899, § 7134.]

§ 9539. 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. [R. C. 1905, § 8866; Pen. C. 1877, § 299; R. C. 1899, § 7135.]

§ 9540. 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. [R. C. 1905, § 8867; Pen. C. 1877, § 300; R. C. 1899, § 7136.]

§ 9541. **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. [R. C. 1905, § 8868; Pen. C. 1877, § 301; R. C. 1899, § 7137.]

§ 9542. **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. [R. C. 1905, § 8869; Pen. C. 1877, § 302; R. C. 1899, § 7138.]

§ 9543. **Where may be tried.** Such person may be prosecuted, informed against or indicted and tried in any county within this state. [R. C. 1905, § 8870; Pen. C. 1877, § 303; R. C. 1899, § 7139.]

§ 9544. **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. [R. C. 1905, § 8871; Pen. C. 1877, § 304; R. C. 1899, § 7140.]

CHAPTER 27.

ASSAULT AND BATTERY.

§ 9545. **Assault defined.** An assault is any willful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another. [R. C. 1905, § 8872; Pen. C. 1877, § 305; R. C. 1899, § 7141.]

As to definition of assault. *State v. Cruikshank*, 13 N. D. 337, 100 N. W. 697.

Assault of married woman with intent to have unlawful voluntary sexual intercourse is not assault with intent to commit felony. *State v. Archer*, 22 S. D. 137, 115 N. W. 1075.

As to information including another smaller constituent offense not being duplicitous. *State v. Climie*, 12 N. D. 33, 94 N. W. 574.

Assault by words only. 39 Am. Rep. 712.

Intent as an element of simple assault or assault and battery. 14 L.R.A. 226.

Proof of corpus delicti in prosecution for assault and battery. 68 L.R.A. 50, 70.

Assault on judge after retiring from court room as a contempt. 2 L.R.A.(N.S.) 603

Demonstration of force or violence outside of range of actual injury. 33 L.R.A.(N.S.) 982.

Consent as justification for assault. 15 L.R.A. 853.

Effect of fact that combat was by agreement or mutual consent of parties upon civil liability for assault. 20 L.R.A.(N.S.) 907.

Criminal responsibility of children for assault. 36 L.R.A. 201.

Conviction on charge of assault as bar to subsequent prosecution for homicide following death of victim. 14 L.R.A.(N.S.) 209.

Liability of servant or agent for assault when acting under orders. 50 L.R.A. 646.

As to similar provision in Cal. Pen. Code, § 240, see *People v. Devine*, 59 Cal. 630; *People v. Helbing*, 61 Cal. 620; *People v. Munn*, 65 Cal. 211, 6 Am. Cr. Rep. 431, 3 Pac. 651; *People v. Tate*, 66 Cal. 366, 5 Pac. 621; *People v. Rodrigo*, 69 Cal. 601, 8 Am. Cr. Rep. 53, 11 Pac. 481; *People v. Gordon*, 70 Cal. 467, 11 Pac. 762; *People v. Leong Yune Gun*, 77 Cal. 636, 20 Pac. 27; *People v. Lee Kong*, 95 Cal. 666, 29 Am. St. Rep. 165, 30 Pac. 800, 17 L.R.A. 626; *People v. Wells*, 145 Cal. 138, 78 Pac. 470.

§ 9546. **Battery defined.** A battery is any willful and unlawful use of force or violence upon the person of another. [R. C. 1905, § 8873; Pen. C. 1877, § 306; R. C. 1899, § 7142.]

As to definition of battery. *State v. Cruikshank*, 13 N. D. 337, 100 N. W. 697.

As to information including another smaller constituent offense not being duplicitous. *State v. Climie*, 12 N. D. 33, 94 N. W. 574.

Burden of showing that battery is "unlawful" is upon state. *State v. Schmidt*, 19 S. D. 585, 104 N. W. 259.

As to similar provision in Cal. Pen. Code, § 242, see *People v. Helbing*, 61 Cal. 620.

§ 9547. 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. [R. C. 1905, § 8874; Pen. C. 1877, § 307; R. C. 1895, § 7143.]

Burden of showing that battery is "unlawful" is upon the state. *State v. Schmidt*, 19 S. D. 585, 104 N. W. 259.

1. Liability of sureties on constable's bond for assault made in serving or executing civil writ or process. 8 L.R.A.(N.S.) 1223.

3. Assault to prevent adultery. 132 Am. St. Rep. 694.
—to prevent seduction of or commission of adultery with wife in the future. 18 L.R.A.(N.S.) 688.

—in resisting unlawful arrest. 33 L.R.A.(N.S.) 150.

—in recapture of property. 14 L.R.A. 317.

Criminal liability for assault committed in regaining possession of land by one entitled to possession. 22 L.R.A.(N.S.) 728.

Right to use force to recover possession of chattel. 3 L.R.A.(N.S.) 251; 19 L.R.A. 606.

Right to use deadly weapon in resisting trespass. 22 L.R.A.(N.S.) 724.

4. Assault in removing servant from premises after termination of service. 41 L.R.A.(N.S.) 761.

Liability of parent or custodian for assault by punishment of child. 21 L.R.A.(N.S.) 216.

Right of teacher to inflict corporal punishment on pupil. 1 B. R. C. 718.

5. Self-defense as defense to carrier in action for assault by employe on passenger. 32 L.R.A.(N.S.) 1203.

§ 9548. 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. [R. C. 1905, § 8875; Pen. C. 1877, § 308; R. C. 1899, § 7144.]

As to what constitutes assault under statute. *State v. Cruikshank*, 13 N. D. 337, 100 N. W. 697.

As to information including smaller constituent offense not being duplicitous. *State v. Climie*, 12 N. D. 33, 94 N. W. 574.

Fine of \$100 and imprisonment for ninety-five days for assault and battery is valid. *State v. Fleming*, 20 N. D. 105, 126 N. W. 565.

As to similar provision in Cal. Pen. Code, § 241, see *Ex parte Gilmore*, 71 Cal. 624, 12 Pac. 800; *Ex parte Erdmann*, 88 Cal. 579, 26 Pac. 372.

§ 9549. **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. [R. C. 1905, § 8876; Pen. C. 1877, § 309; R. C. 1899, § 7145.]

Conviction for assault and battery under charge of assault and battery with intent to kill. *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 D. 189, 46 N. W. 601; *Territory v. Conrad*, 1 D. 348, 46 N. W. 605.

As to sufficiency of verdict. *State v. Horn*, 21 S. D. 237, 111 N. W. 552.

Verdict of assault with intent to do great bodily harm finds offense of simple assault. *State v. Peterson*, 23 S. D. 629, 122 N. W. 667.

Aggravated assault and battery with dangerous weapon includes simple assault and battery. *State v. Climie*, 12 N. D. 33, 94 N. W. 574.

Assault or assault and battery with firearms for purpose of shooting not included in statute. *State v. Cruikshank*, 13 N. D. 337, 100 N. W. 697.

One convicted of shooting with intent to do bodily harm cannot be sentenced with fine and imprisonment. *State v. Hunsakor*, 16 N. D. 420, 114 N. W. 996.

Information charging that accused being armed with dangerous weapon, etc., did commit an assault on person of, etc., was insufficient to charge assault with dangerous weapon. *State v. Mead*, 27 S. D. 381, 131 N. W. 305.

What weapons may be considered deadly. 21 L.R.A.(N.S.) 497.

Right to use deadly weapon in resisting trespass. 22 L.R.A.(N.S.) 724.

Pointing unloaded firearm as assault. 15 L.R.A.(N.S.) 1272; 41 L.R.A.(N.S.) 181.

As to similar provision in Cal. Pen. Code, § 245, see *People v. Aubrey*, 53 Cal. 427; *People v. Helbing*, 61 Cal. 620; *People v. Munn*, 65 Cal. 211, 3 Pac. 650; *Ex parte Donahue*, 65 Cal. 474, 4 Pac. 449; *People v. Turner*, 65 Cal. 540, 4 Pac. 553; *Ex parte Mitchell*, 70 Cal. 1, 11 Pac. 488; *Ex parte Harris*, 78 Cal. 304, 20 Pac. 683; *People v. Forney*, 81 Cal. 118, 22 Pac. 481; *People v. Savercool*, 81 Cal. 650, 22 Pac. 856; *People v. Gordon*, 99 Cal. 227, 33 Pac. 901; *People v. Arnold*, 116 Cal. 682, 48 Pac. 803; *People v. McNeill*, 118 Cal. 388, 50 Pac. 538; *People v. Arnett*, 126 Cal. 680, 59 Pac. 204; *People v. Parales*, 141 Cal. 581, 75 Pac. 170.

CHAPTER 28.

LIBEL.

CRIMINAL LIBEL.

§ 9550. **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 villify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends. [R. C. 1905, § 8877; Pen. C. 1877, § 310; R. C. 1895, § 7146; 1905, ch. 128, § 1.]

Libel defined. *Territory v. Taylor*, 1 D. 451.

Gist of crime of criminal libel is malicious defamation of person made public in one or more of modes prescribed and tending to expose such person to public hatred, contempt or ridicule, etc. *State v. Tolley*, 23 N. D. 284, 136 N. W. 784.

Criminal responsibility of corporation for libel. 2 B. R. C. 249.

Criminal action for libel or slander of corporation. 52 L.R.A. 523.

Criminal liability for agent's libelous act. 41 L.R.A. 653.

— for servant's libel. 43 L.R.A.(N.S.) 37.

Instigation of criminal libel as defense to prosecution. 30 L.R.A.(N.S.) 953.

As to similar provision in Cal. Pen. Code, § 248, see *In re Kowalsky*, 73 Cal. 120, 14 Pac. 399; *People v. Seeley*, 139 Cal. 118, 72 Pac. 834.

Cruel and unusual punishment for libel or slander. 35 L.R.A. 573.

§ 9551. Maker, composer or circulator of libel guilty of misdemeanor.

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 misdemeanor. [1913, ch. 203; R. C. 1905, § 8878; Pen. C. 1877, § 311; R. C. 1899, § 7147; 1905, ch. 128, § 2.]

§ 9552. 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. [R. C. 1905, § 8879; Pen. C. 1877, § 312; R. C. 1895, § 7148; 1905, ch. 128, § 3.]

Truth as a defense in criminal prosecution for libel. 21 L.R.A. 509; 31 L.R.A.(N.S.) 132.

§ 9553. 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. [R. C. 1905, § 8880; 1905, ch. 128, § 4.]

§ 9554. 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. [R. C. 1905, § 8881; 1905, ch. 128, § 5.]

Transmission of libelous matter by post card or telegraph as publication. 1 B. R. C. 464.

Communication to stenographer or clerk as publication. 1 B. R. C. 455.

§ 9555. 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. [R. C. 1905, § 8882; Pen. C. 1877, § 315; R. C. 1895, § 7150.]

§ 9556. 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. [R. C. 1905, § 8883; Pen. C. 1877, § 316; R. C. 1895, § 7151.]

§ 9557. 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. [R. C. 1905, § 8884; Pen. C. 1877, § 317; R. C. 1895, § 7152.]

§ 9558. 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. [R. C. 1905, § 8885; Pen. C. 1877, § 318; R. C. 1895, § 7153.]

Qualified privilege of communication between members of an association or of a private corporation. 26 L.R.A.(N.S.) 1080.

Privilege of communications between principal and agent. 36 L.R.A.(N.S.) 449.

Reports of police officers as privileged communications. 30 L.R.A.(N.S.) 315.

Privilege of school superintendent or other officer in reporting to school authorities upon character of teacher. 30 L.R.A.(N.S.) 200.

Privileged character of complaints to public officer against subordinate. 27 L.R.A.(N.S.) 1041.

Official report by executive or administrative officer. 5 L.R.A.(N.S.) 163.

Privilege as to communications regarding character or reputation of servant. 4 L.R.A.(N.S.) 1104; 16 L.R.A.(N.S.) 1017.

—as to communications made in response to inquiries by person defamed. 46 L.R.A.(N.S.) 104.

—as to communications concerning one who had made statements derogatory to a public officer or a candidate for office. 43 L.R.A.(N.S.) 232.

§ 9559. 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. [R. C. 1905, § 8886; Pen. C. 1877, § 319; R. C. 1895, § 7154.]

§ 9560. 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. 1905, § 8887; R. C. 1895, § 7155.]

§ 9561. 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. [R. C. 1905, § 8888; 1901, ch. 175.]

Slander or libel in charging woman with unchastity. 24 L.R.A.(N.S.) 577; 48 L.R.A.(N.S.) 615.

Actionable character of epithets that impute immorality to a woman. 4 L.R.A.(N.S.) 560.

CIVIL LIBEL.

§ 9562. 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. [R. C. 1905, § 8889; 1901, ch. 119.]

Defendant cannot rely on retraction as defense to libel unless retraction is full and fair. *Goolsby v. Forum Printing Co.*, 23 N. D. 30, 135 N. W. 661.

CHAPTER 29.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION.

§ 9563. 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. [R. C. 1905, § 8890; Pen. C. 1877, § 320; R. C. 1895, § 7156; 1903, ch. 149.]

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

Sufficiency of information charging carnal knowledge. *State v. LaMont*, 23 S. D. 174, 120 N. W. 1104.

As to sufficiency of information for rape. *State v. Rhoades*, 17 N. D. 579, 118 N. W. 233.

Verdict of rape in second degree or of assault with intent to commit rape may be returned under information which charges rape in first degree. *State v. Bancroft*, 23 N. D. 442, 137 N. W. 37.

What constitutes rape. 80 Am. Dec. 361.

Consent obtained by fraud. 36 Am. Rep. 860.

Preparation to commit assault with intent to rape or ravish as distinguished from overt act in commission of offense itself. 42 L.R.A. 524.

What intoxication will excuse rape. 36 L.R.A. 479.

Proof of corpus delicti in prosecution for rape. 68 L.R.A. 56, 70, 71, 73.

Evidence of other crimes in prosecution for rape. 62 L.R.A. 314, 322, 329.

Admissibility of declarations by prosecutrix as res gestae. 19 L.R.A. 744.

May the corroboration of prosecutrix necessary to conviction of rape be supplied by her own complaints out of court. 26 L.R.A. (N.S.) 1149.

Admissibility of previous statements by a witness out of court consistent with his testimony. 41 L.R.A. (N.S.) 886.

Necessity of instructions as to law on circumstantial evidence on prosecution for rape. 69 L.R.A. 204.

As to similar provision in Cal. Pen. Code, § 261, see *People v. Vann*, 129 Cal. 118, 61 Pac. 776.

1. Complaint which charged that defendant, male over fourteen years, feloniously assaulted and ravished female, not his wife, who was under age of eighteen years, did not charge adultery, but only rape. *State v. Rash*, 27 S. D. 185, 130 N. W. 91, Ann. Cas. 1913D, 656.

Prior acts of intercourse were admissible, notwithstanding they occurred after prosecutrix had attained legal age after this act became effective. *State v. Sysinger*, 25 S. D. 110, 125 N. W. 879, Ann. Cas. 1912B, 997.

Female under eighteen years of age is not incapable of committing sexual crime and is not obliged to answer as to whether her father had sexual intercourse with her. *Ex parte Neeson*, 25 S. D. 49, 27 L.R.A. (N.S.) 872, 125 N. W. 124.

Does statute fixing age of consent render girl below that age incapable of sexual crime. 27 L.R.A. (N.S.) 872.

Effect of defendant's mistake as to age of girl under statute denouncing sexual offenses against females below specified age. 25 L.R.A. (N.S.) 661.

Right of accused to show unchastity of prosecutrix in statutory rape. 48 L.R.A.(N.S.) 269.

Presumption and burden of proof as to chastity where it is an ingredient of the offense or a condition of conviction. 43 L.R.A.(N.S.) 476.

Evidence of specific instances to prove character for chastity in prosecution for. 14 L.R.A.(N.S.) 714.

Admissibility of declarations of infant too young to be sworn as a witness at the trial. 65 L.R.A. 316.

5. Giving liquor or drugs to female with view to having sexual intercourse with her as constructive rape or assault with intent to commit rape. 46 L.R.A.(N.S.) 422.

6. Rape by physician submitted to in the belief that it is medical treatment. 12 Am. Rep. 390.

§ 9564. 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. [R. C. 1905, § 8891; Pen. C. 1877, § 321; R. C. 1899, § 7157.]

Necessity of proving physical ability of child under age of fourteen to commit rape by independent fact. *State v. Fisk*, 15 N. D. 589, 108 N. W. 485, 11 A. & E. Ann. Cas. 1061.

Liability of infant for rape. 36 L.R.A. 203, 208.

§ 9565. 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. [R. C. 1905, § 8892; Pen. C. 1877, § 322; R. C. 1899, § 7158.]

As to what constitutes penetration within meaning of statute. *State v. Werner*, 16 N. D. 83, 112 N. W. 60.

Verdict of guilty as charged without degree of crime is sufficient, where rape in first degree is not charged. *State v. Hayes*, 17 S. D. 128, 95 N. W. 296.

§ 9566. Rape in the first degree defined. Rape committed upon a female under the age of sixteen years, or incapable through lunacy or through unsoundness of mind of giving legal consent, or accomplished by means of force, overcoming her resistance, is rape in the first degree. [1909, ch. 84, § 1; R. C. 1905, § 8893; Pen. C. 1877, § 323; R. C. 1899, § 7159; 1903, ch. 149.]

§ 9567. Rape in the 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 sixteen years and the male is 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. [1909, ch. 84, § 2; R. C. 1905, § 8894; Pen. C. 1877, § 324; R. C. 1895, § 7160; 1903, ch. 149.]

Verdict of rape in second degree or of assault with intent to commit rape may be returned, notwithstanding section 8890 [9563 herein] where information charges rape in first degree. *State v. Bancroft*, 23 N. D. 442, 137 N. W. 37.

§ 9568. Punishment for the first degree. Rape in the first degree is punishable by imprisonment in the penitentiary not less than five years. [1909, ch. 84, § 3; R. C. 1905, § 8895; Pen. C. 1877, § 325; R. C. 1899, § 7161.]

Cruel and unusual punishment for rape. 35 L.R.A. 576.

As to similar provision in Cal. Pen. Code, § 264, see *People v. Gardner*, 98 Cal. 127 32 Pac. 880.

§ 9569. Punishment for second degree. Rape in the second degree is punishable by imprisonment in the penitentiary not less than one year and not more than fifteen years. [1909, ch. 84, § 4; R. C. 1905, § 8896; Pen. C. 1877, § 326; R. C. 1899, § 7162.]

§ 9570. 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. [R. C. 1905, § 8897; Pen. C. 1877, § 327; R. C. 1899, § 7163.]

§ 9571. 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. [R. C. 1905, § 8898; Pen. C. 1877, § 328; R. C. 1899, § 7164.]

§ 9572. Inveigling into house of prostitution. Punishment. Every person who inveigles or entices any unmarried female of previously chaste character, 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 for 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. [1909, ch. 88; R. C. 1905, § 8899; Pen. C. 1877, § 329; R. C. 1895, § 7165.]

§ 9573. Detention of woman in house of ill-fame against her will. Punishment. Any person who shall detain any woman against her will by force, threats, putting in bodily fear, or by any other means, at a house of ill-fame, or any other place of any other name or description, for the purpose of prostitution, or for unlawful sexual intercourse, or who shall aid, abet, advise, encourage or assist in such detention, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a period not to exceed three years, or by imprisonment in the county jail not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment. [1909, ch. 89.]

§ 9574. 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. [R. C. 1905, § 8900; Pen. C. 1877, § 330; R. C. 1895, § 7166; 1903, ch. 149.]

Effect of defendant's mistake as to age of girl. 25 L.R.A.(N.S.) 661.

As to similar provision in Cal. Pen. Code, § 267, see *Ex parte Estrado*, 88 Cal. 316, 26 Pac. 209.

§ 9575. 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. [R. C. 1905, § 8901; Pen. C. 1877, § 331; R. C. 1895, § 7167.]

Seduction as a criminal offense. 87 Am. Dec. 465.

Effect of defendant's mistake as to age of girl under statute denouncing sexual offenses against females below specified age. 25 L.R.A.(N.S.) 661.

Impeachment of character of prosecutrix for chastity by proof of prior acts of intercourse with defendant. 30 L.R.A.(N.S.) 173.

Competency of wife as witness in prosecution of husband for her seduction prior to marriage. 45 L.R.A.(N.S.) 396.

As to similar provision in Cal. Pen. Code, § 268, see *People v. Hough*, 120 Cal. 538, 65 Am. St. Rep. 201, 52 Pac. 846; *People v. Kehoe*, 123 Cal. 244, 69 Am. St. Rep. 52, 55 Pac. 911.

§ 9576. 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 sec-

tion 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 9575. [R. C. 1905, § 8902; Pen. C. 1877, § 332; R. C. 1895, § 7168.]

Offer of marriage as defense to prosecution for seduction. 29 L.R.A.(N.S.) 421.
As to similar provision in Cal. Pen. Code, § 269, see *People v. Hough*, 120 Cal. 538, 65 Am. St. Rep. 201, 52 Pac. 846; *People v. Kehoc*, 123 Cal. 244, 69 Am. St. Rep. 52, 55 Pac. 911.

§ 9577. Sexual intercourse with female dependent or ward, a felony. Every male person, who, when a guardian of a minor, or when a county commissioner, or when a warden, superintendent, supervising official, guard, attendant, watchman or other employe in any penal, correctional or eleemosynary institution in this state, induces a female, who is a ward, or pauper under his care, or who is an inmate in the institution in which he is employed, or who is in a position where she receives the necessities of life through or from him, or upon his recommendation, to have illicit sexual intercourse with him by threatening to withhold from her, or a member of her family, the necessities of life, or by threatening her, or a member of her family, with physical violence, is guilty of a felony. [1909, ch. 276, § 1.]

§ 9578. Penalty. Any person convicted of a felony under section 9577 shall be punished by imprisonment in the state penitentiary for a term of not less than one year, and not more than fifteen years. [1911, ch. 276, § 2.]

CHAPTER 30.

ADULTERY AND UNLAWFUL COHABITATION.

§ 9579. 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. [R. C. 1905, § 8903; 1897, ch. 2; R. C. 1899, § 7169.]

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

Assault of married woman with intent to have unlawful voluntary sexual intercourse is not assault with intent to commit felony. *State v. Archer*, 22 S. D. 137, 115 N. W. 1075.

Spouse of either of parties committing adultery is empowered to complain against either or both. *State v. Wesie*, 17 N. D. 567, 19 L.R.A.(N.S.) 786, 118 N. W. 20.

Complaint which charged that defendant, male over fourteen years, feloniously assaulted and ravished female, not his wife, who was under age of eighteen years, did not charge adultery, but only rape. *State v. Rash*, 27 S. D. 185, 130 N. W. 91, Ann. Cas. 1913D, 656.

What is adultery and when punishable. 32 Am. Dec. 289.

Effect of fact that but one of the parties is married upon the offense of "adultery." 18 L.R.A.(N.S.) 580.

Insanity as affecting adultery. 34 L.R.A. 162.

Ignorance of defendant, in prosecution for adultery, that other party was married, as a defense. 18 L.R.A.(N.S.) 527.

Necessity of proof of marriage in prosecution for adultery. 68 L.R.A. 44, 72.

Competency of one spouse to testify as to misconduct of other spouse on indictment of paramour for adultery. 39 L.R.A.(N.S.) 318.

Construction and effect of provisions requiring prosecution for adultery to be upon complaint of husband or wife. 19 L.R.A.(N.S.) 786.

§ 9580. 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. [R. C. 1905, § 8904; Pen. C. 1877, § 334; R. C. 1895, § 7170.]

§ 9581. **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. [R. C. 1905, § 8905; 1890, ch. 91, § 16; R. C. 1895, § 7171.]

What constitutes living in open and notorious adultery. 113 Am. St. Rep. 271.

CHAPTER 31.

MISCEGENATION.

§ 9582. **Marriages between white and negro persons.** It shall be unlawful for any white male person, residing or being in this state, to intermarry with any negro female person; and it shall be in like manner unlawful for any white female person, residing or being in this state, to intermarry with any negro male person, and every marriage hereafter formed and solemnized in contravention of the provisions of this section shall be utterly null and void, and either or both of the contracting parties to such surreptitious marriage shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years, or by a fine not exceeding two thousand dollars, or by both fine and imprisonment. [1909, ch. 164, § 1.]

Legislative power to forbid miscegenation. 2 L.R.A.(N.S.) 532.

Statute prohibiting intermarriage of white and colored persons as a denial of equal privileges and immunities. 14 L.R.A. 580.

Effect of repeal of statute prohibiting miscegenation after commencement of cohabitation between white person and negro. 3 L.R.A.(N.S.) 247.

Conflict of laws as to miscegenation. 57 L.R.A. 167; 43 L.R.A.(N.S.) 358.

§ 9583. **Definition of negro person.** Every person who shall have one-eighth or more of negro blood shall be deemed and held to be a colored person or negro. [1909, ch. 164, § 2.]

Who is negro, mulatto or person of color within statute not specifically defining the same. 81 L.R.A.(N.S.) 180.

§ 9584. **Issuing license of marriage between negroes and whites.** If any county judge shall knowingly issue a marriage license for a white person to marry a negro person, within the meaning of section 9583, he shall be punished by imprisonment in the state penitentiary for a term not exceeding two years or by a fine not exceeding two thousand dollars, or by both fine and imprisonment. [1909, ch. 164, § 3.]

§ 9585. **Performing marriage ceremony between negroes and whites.** If any judge, justice of the peace, priest or any person authorized to solemnize the rites of matrimony shall knowingly perform the ceremony of marriage for any white person with a negro person within the meaning of this chapter, he shall be punished by imprisonment in the state penitentiary for a term not exceeding two years or by a fine not exceeding two thousand dollars, or by both fine and imprisonment. [1909, ch. 164, § 4.]

§ 9586. **Certain marriages between whites and negroes declared valid.** In all cases where marriages have been contracted or solemnized between white persons and negroes in this state prior to the taking effect of this chapter and where the parties thereto have continued to live together as man and wife up to that date, such marriage shall be held valid to all intents and purposes. [1909, ch. 164, § 5.]

§ 9587. **Negro man and white woman or white man and negro woman occupying same room.** Any negro man and white woman or any white man

and negro woman who are not lawfully married to each other who shall live in and occupy the same room, shall each be punished by imprisonment in the state penitentiary for a term not exceeding twelve months or by a fine not exceeding five hundred dollars, or by both fine and imprisonment. [1909, ch. 164, § 6.]

§ 9588. **White persons and negroes living in adultery or fornication.** If any white person and negro shall live in adultery or fornication with each other, each shall be punished by imprisonment in the state penitentiary for a term not exceeding twelve months or by a fine not exceeding five hundred dollars, or by both fine and imprisonment. [1909, ch. 164, § 7.]

CHAPTER 32.

ABANDONMENT AND NEGLECT OF CHILD OR WIFE.

See section 9603.

§ 9589. **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. [R. C. 1905, § 8906; Pen. C. 1877, § 335; R. C. 1899, § 7172.]

§ 9590. **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. [R. C. 1905, § 8907; Pen. C. 1877, § 336; R. C. 1899, § 7173.]

Criminal liability for neglect of child causing death. 61 L.R.A. 290.

Criminal responsibility for failure to provide child with medical attendance and remedies. 1 B. R. C. 747.

Effect of failure to provide medical attendance for infant to render one guilty of manslaughter. 6 L.R.A.(N.S.) 685.

Religious belief as excuse for failure to furnish medical aid to child. 36 L.R.A.(N.S.) 663.

Criminal responsibility of parent for failure to support child where support is furnished by others. 32 L.R.A.(N.S.) 841.

§ 9591. **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. [R. C. 1905, § 8908; 1890, ch. 168, § 1; R. C. 1895, § 7174.]

§ 9592. **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. [R. C. 1905, § 8909; 1890, ch. 168, § 1; R. C. 1895, § 7175.]

Offense of desertion or failure to provide for wife or family as affected by residence of parties. 47 L.R.A.(N.S.) 218.

§ 9593. **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. [R. C. 1905, § 8910; 1890, ch. 168, § 1; R. C. 1895, § 7176.]

§ 9594. **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. [R. C. 1905, § 8911; 1905, ch. 1.]

Criminal liability of husband for neglect of wife, causing death. 61 L.R.A. 292.

Criminal liability of infant for failure to support wife. 36 L.R.A. 208.

CHAPTER 33.

DESERTION AND NONSUPPORT OF FAMILY.

§ 9595. **Desertion or refusal to support by husband or parent. Penalty.** That any husband who shall, without just cause, desert or willfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessary circumstances, or any parent who shall, without lawful excuse, desert or willfully neglect or refuse to provide for the support and maintenance of his or her child or children under the age of sixteen years in destitute or necessitous circumstances, shall be guilty of a crime and, on conviction thereof, shall be punished by imprisonment in the state penitentiary for a period not to exceed three years, by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year, or both, with or without hard labor, in the discretion of the court. [1911, ch. 123, § 1.]

Offense of desertion or failure to provide for wife or family as affected by residence of parties. 47 L.R.A.(N.S.) 218.

§ 9596. **Proceedings, how instituted.** Proceedings under this chapter may be instituted upon complaint made under oath or affirmation by the wife or child or children, or by any other person, against any person guilty of either of the above named offenses. [1911, ch. 123, § 2.]

§ 9597. **Temporary order for support.** At any time before the trial, upon petition of the complainant and upon notice to the defendant, the court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted wife or children, or both, pendente lite, and may punish for violation of such order as for contempt. [1911, ch. 123, § 3.]

§ 9598. **Order for periodical payments. Release on probation. Recognition.** Before the trial, with the consent of the defendant, or at the trial on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding two years, to the wife or to the guardian, curator or custodian of the said minor child or children, or to an organization or indi-

vidual approved by the court as trustee, and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court, or a judge thereof in vacation, may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise in full force and effect. [1911, ch. 123, § 4.]

§ 9599. How trial proceeded with, and how suspended sentence enforced. Forfeiture, to whom paid. If the court be satisfied by information and due proof under oath, that at any time during said period of two years the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife or to the guardian, curator, custodian or trustee of the said minor child or children. [1911, ch. 123, § 5.]

§ 9600. Evidence required. Confidential communications. Incriminating evidence. Proof of desertion or neglect. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such facts in civil action. In no prosecution under this chapter shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children; provided, that neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children, shall be prima facie evidence that such desertion, neglect or refusal is willful. [1911, ch. 123, § 6.]

§ 9601. Payment of earnings of persons incarcerated. It shall be the duty of the sheriff, warden or other official in charge of county jail, or of the custodian of the reformatory, workhouse or house of correction in which any person is confined on account of a sentence at hard labor, under this chapter, to pay over to the wife, or to the guardian, curator or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child or children, the net earnings in a sum equal to not less than fifty cents for each day's hard labor performed by said person so confined. [1911, ch. 123, § 7.]

§ 9602. Chapter, how interpreted. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1911, ch. 123, § 8.]

§ 9603. Remedies cumulative. The provisions of this chapter shall be construed as cumulative and not exclusive. [1911, ch. 123, § 9.]

CHAPTER 34.

ABORTION AND CONCEALING DEATH OF CHILDREN.

§ 9604. 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. [R. C. 1905, § 8912; 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.

Sufficiency of information for crime of procuring abortion as defined by this section. *State v. Longstreth*, 19 N. D. 268, 121 N. W. 1114, Ann. Cas. 1912D, 1317.

Crime of causing abortion. 66 Am. Dec. 82.

Death caused by abortion and indictment and prosecution therefor. 95 Am. Dec. 783.

Proof of corpus delicti in prosecution for abortion. 68 L.R.A. 42, 49, 70.

Admissibility of declarations of one upon whom an abortion is committed, against others charged with complicity therein. 35 L.R.A.(N.S.) 1084.

Instigating offense as defense to prosecution for abortion. 30 L.R.A.(N.S.) 954.

§ 9605. 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. [R. C. 1905, § 8913; Pen. C. 1877, § 338; R. C. 1899, § 7178.]

§ 9606. 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. [R. C. 1905, § 8914; Pen. C. 1877, § 339; R. C. 1899, § 7179.]

CHAPTER 35.

BABY FARMING.

The emergency section concluding the act constituting this chapter recites that "there is now no law providing for the punishment of cases of 'baby farming,' so-called."

§ 9607. Placing dependent children for pay, when unlawful. It shall be unlawful for any midwife or other person or corporation maintaining a maternity hospital or lying-in hospital, or for any private midwife or nurse, or any organization not authorized by the laws of the state of North Dakota to place dependent children in family homes for adoption or otherwise, to offer, bargain or contract to place any dependent child with any person or persons, for pay. And any person offering to so place any dependent child on payment of any sum of money or on payment of any note or other negotiable instrument except for the actual expenses incurred in taking such child to a foster home, shall be deemed guilty of felony. [1911, ch. 81, § 1.]

§ 9608. Penalty. Any person convicted of such felony by any court of competent jurisdiction within the state of North Dakota shall be punished by being confined in the state penitentiary for a term not exceeding three years, nor less than one year, at the discretion of the court. [1911, ch. 81, § 2.]

CHAPTER 36.

CHILD STEALING.

§ 9609. 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. [R. C. 1905, § 8915; Pen. C. 1877, § 340; R. C. 1899, § 7180.]

What constitutes kidnapping. 4 Am. St. Rep. 690.

Taking of a child by or at instance of one parent from the custody of the other parent, as kidnapping. 32 L.R.A.(N.S.) 845.

Civil action for abduction of child. 45 L.R.A.(N.S.) 867.

As to similar provision in Cal. Pen. Code, § 278, see *People v. Black*, 147 Cal. 426, 81 Pac. 1099.

CHAPTER 37.

BIGAMY, INCEST AND SODOMY.

§ 9610. 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. [R. C. 1905, § 8916; Pen. C. 1877, § 341; R. C. 1899, § 7181.]

What constitutes bigamy. 93 Am. Dec. 252.

Nature and elements of bigamy. 126 Am. St. Rep. 201.

Conflict of laws as to bigamy. 57 L.R.A. 159.

Criminal liability of children for bigamy. 36 L.R.A. 202.

§ 9611. 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. [R. C. 1905, § 8917; Pen. C. 1877, § 342; R. C. 1895, § 7182.]

Belief in termination of former marriage as a defense to a prosecution for bigamy. 27 L.R.A.(N.S.) 1097; 34 L.R.A.(N.S.) 613.

Proof of former marriage in prosecutions for bigamy. 47 Am. St. Rep. 228; 106 Am. St. Rep. 768.

Presumption as to validity of former marriage in prosecution for bigamy. 9 L.R.A.(N.S.) 1036.

Judgment in civil action as proof of former marriage on trial for bigamy. 26 L.R.A.(N.S.) 464.

Husband or wife as witness against the other in prosecution for bigamy. 2 L.R.A.(N.S.) 862.

§ 9612. Punishment for bigamy. Every person guilty of bigamy is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [R. C. 1905, § 8918; Pen. C. 1877, § 343; R. C. 1899, § 7183.]

§ 9613. 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 punish-

able 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. [R. C. 1905, § 8919; Pen. C. 1877, § 344; R. C. 1899, § 7184.]

§ 9614. 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. [R. C. 1905, § 8920; 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.

The crime of incest. 111 Am. St. Rep. 19.

Conflict of laws as to incestuous marriage. 57 L.R.A. 166.

May girl below the age of consent be guilty of incest. 27 L.R.A.(N.S.) 872.

Incest between persons related by marriage. 31 L.R.A.(N.S.) 772.

Proof of corpus delicti in prosecution for incest. 68 L.R.A. 45.

Husband or wife as witness against the other in prosecution for incest. 2 L.R.A.(N.S.) 862.

As to similar provision in Cal. Pen. Code, § 285, see *People v. Kaiser*, 119 Cal. 456, 51 Pac. 702; *People v. Stratton*, 141 Cal. 604, 75 Pac. 166; *People v. Koller*, 142 Cal. 621, 76 Pac. 500.

§ 9615. 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. [R. C. 1905, § 8921; Pen. C. 1877, § 346; R. C. 1895, § 7186.]

Attempt punished by imprisonment for five years. *State v. King*, 9 N. D. 143, 82 N. W. 423.

May sodomy be committed by penetration of mouth. 27 L.R.A.(N.S.) 478; 45 L.R.A.(N.S.) 473.

Evidence of other crimes in prosecution for sodomy. 46 L.R.A.(N.S.) 266.

§ 9616. When crime complete. Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section. [R. C. 1905, § 8922; Pen. C. 1877, § 347; R. C. 1895, § 7187.]

CHAPTER 38.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

§ 9617. 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. [R. C. 1905, § 8923; Pen. C. 1877, § 348; R. C. 1899, § 7188.]

§ 9618. 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. [R. C. 1905, § 8924; Pen. C. 1877, § 349; R. C. 1899, § 7189.]

§ 9619. 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. [R. C. 1905, § 8925; Pen. C. 1877, § 350; R. C. 1899, § 7190.]

§ 9620. 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. [R. C. 1905, § 8926; Pen. C. 1877, § 351; R. C. 1899, § 7191.]

§ 9621. 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. [R. C. 1905, § 8927; Pen. C. 1877, § 352; R. C. 1899, § 7192.]

§ 9622. 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. [R. C. 1905, § 8928; Pen. C. 1877, § 353; R. C. 1899, § 7193.]

§ 9623. 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. [R. C. 1905, § 8929; Pen. C. 1877, § 354; R. C. 1899, § 7194.]

§ 9624. 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. [R. C. 1905, § 8930; Pen. C. 1877, § 355; R. C. 1899, § 7195.]

Rights and duties of relatives and others respecting dead bodies. 82 Am. Dec. 509.

Rights in and to dead bodies and remedies for their enforcement. 75 Am. St. Rep. 424.

Improper burial or lack of proper funeral services as a criminal offense. 42 L.R.A.(N.S.) 211.

§ 9625. **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. [R. C. 1905, § 8931; Pen. C. 1877, § 356; R. C. 1899, § 7196.]

§ 9626. **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. [R. C. 1905, § 8932; Pen. C. 1877, § 357; R. C. 1899, § 7197.]

§ 9627. **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. [R. C. 1905, § 8933; Pen. C. 1877, § 358; R. C. 1899, § 7198.]

Criminal liability for disinterment of dead bodies. 42 L.R.A. 733.

As to similar provision in Cal. Pen. Code, § 290, see *People v. Dalton*, 58 Cal. 226; *People v. Baumgartner*, 135 Cal. 72, 66 Pac. 974.

§ 9628. **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. [R. C. 1905, § 8934; Pen. C. 1877, § 359; R. C. 1899, § 7199.]

§ 9629. **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. [R. C. 1905, § 8935; Pen. C. 1877, § 360; R. C. 1899, § 7200.]

§ 9630. **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 9624, 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 9625. [R. C. 1905, § 8936; Pen. C. 1877, § 361; R. C. 1899, § 7201.]

§ 9631. **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. [R. C. 1905, § 8937; Pen. C. 1877, § 362; R. C. 1899, § 7202.]

§ 9632. 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. [R. C. 1905, § 8938; Pen. C. 1877, § 363; R. C. 1899, § 7203.]

§ 9633. 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. [R. C. 1905, § 8939; Pen. C. 1877, § 364; R. C. 1899, § 7204.]

§ 9634. 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. [R. C. 1905, § 8940; Pen. C. 1877, § 365; R. C. 1899, § 7205.]

CHAPTER 39.

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

§ 9635. 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. [R. C. 1905, § 8941; Pen. C. 1877, § 366; R. C. 1899, § 7206.]

3. Instigation to offense as defense to prosecution. 25 L.R.A. 345.

Unlawfulness of obscene and indecent publications. 24 L.R.A. 110.

§ 9636. 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. [R. C. 1905, § 8942; Pen. C. 1877, § 367; R. C. 1899, § 7207.]

§ 9637. 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. [R. C. 1905, § 8943; Pen. C. 1877, § 368; R. C. 1899, § 7208.]

§ 9638. 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. [R. C. 1905, § 8944; Pen. C. 1877, § 369; R. C. 1899, § 7209.]

§ 9639. 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. [R. C. 1905, § 8945; Pen. C. 1877, § 370; R. C. 1899, § 7210.]

After proving that defendant kept, its bad reputation may be shown. *Territory v. Chartrand*, 1 D. 363, 46 N. W. 583; *Territory v. Stone*, 2 D. 155, 4 N. W. 697.

One convicted by jury of violating ordinance against keeping house of ill-fame may appeal. *Mannie v. Hatfield*, 22 S. D. 475, 118 N. W. 817.

Evidence of general reputation sufficient to show that house was bawdy house. *State v. Ballew*, 26 S. D. 494, 128 N. W. 716.

§ 9640. 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. [R. C. 1905, § 8946; Pen. C. 1877, § 371; R. C. 1899, § 7211.]

What is disorderly house. 134 Am. St. Rep. 819.

Several offenses growing out of the same facts. 31 L.R.A.(N.S.) 707..

Evidence of character of defendant and inmates in prosecution for keeping. 20 L.R.A. 610.

Evidence of reputation of house. 50 Am. Rep. 209.

Necessity of corroborating evidence as to reputation of house to support a conviction for keeping disorderly house. 46 L.R.A.(N.S.) 593.

Cruel and unusual punishment for keeping disorderly house. 35 L.R.A. 571.

As to similar provision in Cal. Pen. Code, § 316, see *Chateau v. Singla*, 114 Cal. 91, 55 Am. St. Rep. 63, 45 Pac. 1015, 33 L.R.A. 750; *Demartini v. Anderson*, 127 Cal. 33, 59 Pac. 207; *Ballerino v. Ballerino*, 147 Cal. 544, 82 Pac. 199.

§ 9641. 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. [R. C. 1905, § 8947; Pen. C. 1877, § 372; R. C. 1899, § 7212.]

Owner knowing of unlawful use of his house without objecting, guilty of keeping. *Territory v. Stone*, 2 D. 155, 4 N. W. 697.

Effect of landlord's knowledge that tenant intends to use premises for purposes of prostitution. 19 L.R.A.(N.S.) 662.

Criminal responsibility of lessor of disorderly house. 44 L.R.A.(N.S.) 859.

CHAPTER 40.

PROSTITUTION AND WHITE SLAVERY.

§ 9642. Prostitute defined. Punishment. Any female who frequents or lives in houses of ill-fame, or who commits fornication for hire, shall be deemed a prostitute, and shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed thirty days, or by a fine not to exceed one hundred dollars, or by both such fine and imprisonment. [1909, ch. 87.]

§ 9643. **Unlawful to receive proceeds.** Any person who shall knowingly accept or receive in whole or in part support or maintenance or revenue from the proceeds or earnings of any woman engaged in prostitution shall be deemed guilty of a felony and upon conviction thereof shall be confined in the penitentiary not less than one nor more than five years, or be fined not exceeding one thousand dollars, or both, in the discretion of the court. [1909, ch. 86.]

CHAPTER 41.

BAWDY HOUSES COMMON NUISANCES.

Similar provisions for the suppression of gambling houses as common nuisances, see sections 9691-9698.

§ 9644. **Bawdy houses declared to be public nuisances. Penalty for maintaining.** All bawdy houses, houses of ill-fame, of assignation or of prostitution, or any other house, room or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, or any disorderly house or place of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, 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 jury, court or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy 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, and close the same against its use by anyone, and keep the same closed for the period of one (1) year from the date of the judgment decreeing such place to be a common nuisance; and the owner or keeper thereof, or anyone aiding, abetting or assisting such owner or keeper, shall, if in a criminal action, upon conviction, be adjudged guilty of maintaining a common nuisance and be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one thousand (\$1,000.00) dollars, and by imprisonment in the county jail not to exceed one (1) year. [1911, ch. 59, § 1.]

§ 9645. **Injunction. Penalty for violation.** The attorney-general, his assistant, the state's attorney, or any citizen of the county where such nuisance exists or is maintained, may maintain an action in the name of the state to abate and to 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, the attorney-general, or his assistant upon information and belief; provided that the complainant shall give a bond in sufficient amount to cover the costs, or such amount as a court or a judge thereof may direct. Any person violating the terms of any injunction, either temporary or permanent, granted in such proceedings, shall be punished for contempt by a fine of not less than twenty-five (\$25.00) dollars, nor more than one thousand (\$1,000.00) dollars, and by imprisonment in the county jail not to exceed one (1) year. In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of this section, either civil or criminal, 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 for the plaintiff therein. Provided, if such attorney is the attorney-general, or state's attorney, such attorney's fee shall be paid into the county treasury and credited to the general fund of said county. [1911, ch. 59, § 2.]

§ 9646. **Officers to take possession. When.** If, at the time of granting the temporary injunction described in section 9645, an affidavit shall be presented

to the court or judge stating or showing that any of the offenses mentioned in section 9644 are transpiring or being carried on upon the premises mentioned in the affidavit, particularly describing the said premises where said nuisances are 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 take possession of said room, building or place and take the same into his custody and securely lock and hold the same to abide the final judgment in the action. The expenses for such holding to be taxed as a 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 the possession of such premises and keep the same closed until final judgment is entered, or until the possession of the same shall be disposed of by an order of the court or judge upon a hearing had before it for such purpose. [1911, ch. 59, § 3.]

§ 9647. Innocent persons may recover property. How. Where personal property is found in any house or room mentioned in section 9646, and it shall appear to the court or judge before whom said action is tried that the owner of such personal property or the person entitled to possession thereof is innocent and has not aided or abetted in carrying on the nuisance, the court shall, by order, direct the sheriff in possession of said property to deliver the same to such owner or person entitled to the possession thereof. [1911, ch. 59, § 4.]

§ 9648. Contempt proceedings. 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 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 issue 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 or her 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. [1911, ch. 59, § 5.]

§ 9649. Injunction. Violation. How punished. When an injunction, either temporary or permanent, has been granted under the provisions of this chapter, the same shall be binding on the defendant or defendants, and for the violation of such injunction the offending party shall be punished as for contempt in the amount according to the rules in this chapter prescribed. [1911, ch. 59, § 6.]

This section and section 9650 are here printed exactly as they appear in the volume of session laws of 1911, except that in the latter there is no heading for section 9650.

See the note to section 9696.

§ 9650. Injunction. Violation. How punished. When an injunction, either temporary or permanent, has been granted, under the provisions of this chapter, the same shall be binding on the defendant or defendants throughout the entire state, and for violation of such injunction any place in the state of North Dakota, the offending party shall be punished as for contempt in the amount and according to the rules in this chapter prescribed. [1911, ch. 59, § 7.]

See note to section 9649.

§ 9651. What evidence admissible. Immunity from prosecution. In prosecutions under this chapter, either by civil or criminal proceedings, 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 proof of the fact that anyone has pleaded guilty to having violated the pro-

visions of any city ordinance, or any other law of the land, enacted to prevent the evils mentioned in this chapter, if it can further be shown that such person, when so pleading guilty, was or had been, at the time and place mentioned in the information, indictment or complaint in the action then pending before the court, an inmate of such place, shall be deemed prima facie evidence of the guilt of such defendant. 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 incriminate himself (the witness), but the persons giving such testimony shall be forever exempt from prosecution for any offense under the provisions of this chapter, of which such evidence shall directly or indirectly tend to incriminate him. [1911, ch. 59, § 8.]

CHAPTER 42.

SALE OF OBSCENE LITERATURE TO MINORS.

§ 9652. **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. [R. C. 1905, § 8948; 1890, ch. 103, §§ 1, 2, 3; R. C. 1895, § 7213.]

§ 9653. **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. [R. C. 1905, § 8949; 1890, ch. 103, § 3; R. C. 1895, § 7214.]

§ 9654. **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. [R. C. 1905, § 8950; 1895, ch. 84, § 1; R. C. 1899, § 7215.]

Obscene literature in mails. 24 L.R.A. 110.

Proof of corpus delicti in prosecution for sending obscene matter through mail. 68 L.R.A. 55.

§ 9655. **Child defined.** The term "child," employed in this chapter, imports any person not exceeding eighteen years of age. [R. C. 1905, § 8951; R. C. 1895, § 7216.]

CHAPTER 43.

ADVERTISEMENTS FOR CURE OF CERTAIN AILMENTS PROHIBITED.

§ 9656. Certain advertising prohibited. Penalty. Any person who shall advertise, in his own name or the name of another person, firm or pretended firm, association, corporation or pretended corporation, or in any newspaper, pamphlet, circular or other written or printed paper or the owner, publisher or manager of any newspaper or periodical who shall permit to be inserted or published in any newspaper or periodical owned or controlled by him an advertisement of the treatment or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality," or shall advertise in any manner that he is a specialist in diseases of the sexual organs or diseases caused by sexual weakness, self-abuse or in any disease of like causes, or who shall advertise in any manner any medicine, drug compound, appliance or any means whatever whereby it is claimed that sexual diseases of men and women may be cured or relieved, or miscarriage or abortion produced, or who shall advertise any medicine or means whereby the monthly periods of women can be regulated, or the menses re-established if suppressed, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months. [1909, ch. 184, § 1.]

§ 9657. Distributing unlawful. Any person publishing, distributing or causing to be distributed or circulated, any of the advertising matter hereinbefore prohibited shall be guilty of a misdemeanor and punished as prescribed in section 9656. [1909, ch. 184, § 2.]

CHAPTER 44.

VAGRANCY.

§ 9658. 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 court room, 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. [R. C. 1905, § 8952; 1903, ch. 206, § 1.]

What punishable as vagrancy. 38 Am. St. Rep. 643.

What constitutes vagrancy and prosecutions therefor. 137 Am. St. Rep. 940.

Criminal liability of children for vagrancy. 36 L.R.A. 207.

Power of municipality to punish vagrancy, which is also an offense under state law. 17 L.R.A.(N.S.) 52.

As to similar provision in Cal. Pen. Code, § 647, see *Ex parte McCarthy*, 72 Cal. 334, 14 Pac. 96; *People v. Craig*, 152 Cal. 42, 91 Pac. 997.

§ 9659. Penalties. Every person convicted of vagrancy, under section 9658, 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. [R. C. 1905, § 8953; 1903, ch. 206, § 2.]

Cruel and unusual punishment for vagrancy. 35 L.R.A. 578.

CHAPTER 45.

LOTTERIES.

§ 9660. 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. [R. C. 1905, § 8954; Pen. C. 1877, § 373; R. C. 1899, § 7217.]

Operation of slot machine as gambling under anti-lottery provision. 20 L.R.A.(N.S.) 241.

Applicable to game of "roulette." *Drinkall v. Movius State Bank*, 11 N. D. 10, 57 L.R.A. 341, 95 Am. St. Rep. 341, 88 N. W. 724.

What are lotteries. 16 Am. St. Rep. 42.

—guessing contest. 11 L.R.A.(N.S.) 609.

—distribution of suits by tailor among members of club. 21 L.R.A.(N.S.) 876.

—distribution of parcels of land by chance. 23 L.R.A.(N.S.) 626; 27 L.R.A.(N.S.)

287.

—scheme for accumulating money by payments of member, and distributing it in order of number of certificate. 13 L.R.A.(N.S.) 1096.

§ 9661. Lottery a public nuisance. Every lottery is unlawful and a common public nuisance. [R. C. 1905, § 8955; Pen. C. 1877, § 374; R. C. 1899, § 7218.]

§ 9662. 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. [R. C. 1905, § 8956; Pen. C. 1877, § 375; R. C. 1899, § 7219.]

§ 9663. 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. [R. C. 1905, § 8957; Pen. C. 1877, § 376; R. C. 1899, § 7220.]

Instigation to sale of lottery ticket for purpose of detecting criminal as a defense to prosecution. 25 L.R.A. 345.

§ 9664. 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. [R. C. 1905, § 8958; Pen. C. 1877, § 377; R. C. 1899, § 7221.]

§ 9665. 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. [R. C. 1905, § 8959; Pen. C. 1877, § 378; R. C. 1899, § 7222.]

§ 9666. **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. [R. C. 1905, § 8960; Pen. C. 1877, § 379; R. C. 1899, § 7223.]

§ 9667. **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. [R. C. 1905, § 8961; Pen. C. 1877, § 380; R. C. 1899, § 7224.]

§ 9668. **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. [R. C. 1905, § 8962; Pen. C. 1877, § 381; R. C. 1899, § 7225.]

§ 9669. **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. [R. C. 1905, § 8963; Pen. C. 1877, § 382; R. C. 1899, § 7226.]

§ 9670. **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. [R. C. 1905, § 8964; Pen. C. 1877, § 383; R. C. 1899, § 7227.]

§ 9671. **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. [R. C. 1905, § 8965; Pen. C. 1877, § 384; R. C. 1899, § 7228.]

§ 9672. **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. [R. C. 1905, § 8966; Pen. C. 1877, § 385; R. C. 1899, § 7229.]

As to similar provision in Cal. Pen. Code, § 326, see *Ex parte Solomon*, 91 Cal. 440, 27 Pac. 757.

§ 9673. **Lotteries out of state.** The provisions of this chapter apply in respect of 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. [R. C. 1905, § 8967; Pen. C. 1877, § 386; R. C. 1899, § 7230.]

§ 9674. **Advertisement.** The provisions of sections 9665 and 9668 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. [R. C. 1905, § 8968; Pen. C. 1877, § 387; R. C. 1899, § 7231.]

CHAPTER 46.

GAMING.

§ 9675. **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. [R. C. 1905, § 8969; Pen. C. 1877, § 388; R. C. 1899, § 7232.]

One keeping or exhibiting any gambling table, device or apparatus, deemed common gambler. *People v. Sponsler*, 1 D. 277, 46 N. W. 459.

Information for keeping and maintaining gambling apparatus need not designate town or building in which offense was committed. *State v. Johnson*, 24 S. D. 590, 124 N. W. 847.

Criminal liability of children for gambling. 36 L.R.A. 207.

Criminal liability for act of servant, agent or partner. 41 L.R.A. 659.

As to similar provision in Cal. Pen. Code, § 330, see *Ex parte Simpson*, 47 Cal. 127; *Ex parte Ah Yem*, 53 Cal. 246; *People v. Sam Lung*, 70 Cal. 515, 11 Pac. 673; *People v. Carroll*, 80 Cal. 153, 22 Pac. 129; *People v. Ah Own*, 85 Cal. 580, 24 Pac. 780; *Ex parte Boswell*, 86 Cal. 232, 24 Pac. 1060; *Ex parte Solomon*, 91 Cal. 440, 27 Pac. 757; *In re Murphy*, 128 Cal. 29, 60 Pac. 465; *Ex parte Williams*, — Cal. —, 87 Pac. 565.

§ 9676. **Misdemeanor. Punishment.** Every person who knowingly violates the last section is guilty of a misdemeanor. [R. C. 1905, § 8970; Pen. C. 1877, § 389; R. C. 1899, § 7233.]

Power of municipality as well as state to punish for gambling. 17 L.R.A.(N.S.) 52.

§ 9677. **Apparatus a nuisance.** Every article or apparatus maintained or kept in violation of section 9675 is a common and public nuisance. [R. C. 1905, § 8971; Pen. C. 1877, § 390; R. C. 1899, § 7234.]

Municipal regulation of gaming as a nuisance. 39 L.R.A. 523.

§ 9678. **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. [R. C. 1905, § 8972; Pen. C. 1877, § 391; R. C. 1899, § 7235.]

Liability of one party to an arrangement to share profits from gambling for money lost by a third person to the other party. 23 L.R.A.(N.S.) 522.

Effect of understanding that the loser is to pay for game to bring it within statutes against gambling. 19 L.R.A.(N.S.) 913.

§ 9679. **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. [R. C. 1905, § 8973; Pen. C. 1877, § 392; R. C. 1899, § 7236.]

§ 9680. 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. [R. C. 1905, § 8974; Pen. C. 1877, § 393; R. C. 1899, § 7237.]

Offense of keeping a gaming house as affected by restrictions on admission. 33 L.R.A.(N.S.) 549.

Bucket shop as "place for gaming." 20 L.R.A.(N.S.) 347.

§ 9681. 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. [R. C. 1905, § 8975; Pen. C. 1877, § 394; R. C. 1899, § 7238.]

Effect of understanding that the loser is to pay for game to bring it within statutes against gambling. 19 L.R.A.(N.S.) 913.

Applicability to bucket shops of penal statutes in relation to "games of hazard," "gambling devices," etc. 25 L.R.A.(N.S.) 158.

Operation of slot machine as gambling. 20 L.R.A.(N.S.) 239; 34 L.R.A.(N.S.) 573; 42 L.R.A.(N.S.) 720.

§ 9682. 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. [R. C. 1905, § 8976; Pen. C. 1877, § 395; R. C. 1899, § 7239.]

§ 9683. 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. [R. C. 1905, § 8977; Pen. C. 1877, § 396; R. C. 1899, § 7240.]

§ 9684. 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. [R. C. 1905, § 8978; Pen. C. 1877, § 397; R. C. 1899, § 7241.]

Right to compensation for destruction of gaming apparatus. 19 L.R.A. 197.

Gambling device as property within constitutional protection. 12 L.R.A.(N.S.) 394.

§ 9685. 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. [R. C. 1905, § 8979; Pen. C. 1877, § 398; R. C. 1899, § 7242.]

§ 9686. 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. [R. C. 1905, § 8980; Pen. C. 1877, § 399; R. C. 1899, § 7243.]

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

Act of state's attorney in gambling in public place on roulette wheel and not prosecuting keeper is misdemeanor authorizing disbarment. *Re Voss*, 11 N. D. 540, 90 N. W. 15.

§ 9687. 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. [R. C. 1905, § 8981; Pen. C. 1877, § 400; R. C. 1899, § 7244.]

§ 9688. 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. [R. C. 1905, § 8982; Pen. C. 1877, § 401; R. C. 1899, § 7245.]

Undertaking to indemnify stakeholder against liability for surrender of stakes to party to bet on a horse race cannot be enforced. *Ferguson v. Yunt*, 13 S. D. 120, 22 N. W. 509.

Power of state to prohibit or regulate horse racing. 25 L.R.A.(N.S.) 905.

§ 9689. 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 temperate [temperance] saloon, or any place under any name whatever where games of pool, billiards, bowling or cards are played, to allow any person under the age of eighteen years or any person attending a local high school to either play any of the games mentioned or to be employed in said places or be allowed to visit said places, unless accompanied by parent or guardian. Any person found guilty of violating this section shall be punished by a fine of not less than five dollars or more than fifty dollars, or imprisonment in the county jail not to exceed thirty days, or both such fine and imprisonment. [1909, ch. 130; 1907, ch. 128; R. C. 1905, § 8983; 1905, ch. 137.]

Restraint on freedom as impairment of child's constitutional rights. 18 L.R.A.(N.S.) 886.

§ 9690. Certain places of amusement not to be screened. 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 place under any name whatever, where games of pool, billiards, bowling or cards are played, to obstruct a clear view into the same by means of curtains, screens or any other similar device, whereby the free and unobstructed view of the interior of said room cannot be had from the outside. Any person found guilty of violating this section shall be punished by a fine of not less than five dollars nor more than fifty dollars, or imprisonment in the county jail not to exceed thirty days, or both such fine and imprisonment. [1911, ch. 206.]

CHAPTER 47.

GAMBLING HOUSES COMMON NUISANCES.

Similar provisions for the suppression of bawdy houses as common nuisances, see sections 9644-9651.

§ 9691. Gambling houses declared to be public nuisances. Penalty for maintaining. Any house, building, room or place where 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 property or money is usually wagered, or where persons resort or are permitted to resort for gambling, or any disorderly house, building, room or place of public resort, by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, are hereby declared to be a common nuisance; and if the existence of such nuisance is established, either in a criminal or equitable action, upon the judgment of a jury, court or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy, 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, and close the same against its use by anyone, and keep the same closed for the period of one (1) year from the date of the judgment decreeing such place to be a common nuisance; and the owner or keeper thereof, or anyone aiding, abetting or assisting such owner or keeper, shall, if in a criminal action, upon conviction, be adjudged guilty of maintaining a common nuisance and be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one thousand (\$1,000) dollars, and by imprisonment in the county jail not to exceed one (1) year. [1913, ch. 172, § 1.]

§ 9692. Injunction. Penalty for violation. The attorney-general, his assistant, or the state's attorney of the county where such nuisance exists or is maintained, may maintain an action in the name of the state to abate and to 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, the attorney-general, or his assistant, upon information and belief. Any person violating the terms of any injunction, either temporary or permanent, granted in such proceedings, shall be punished for contempt by a fine of not less than twenty-five (\$25) dollars, nor more than one thousand (\$1,000) dollars, and by imprisonment in the county jail not to exceed one (1) year. In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of this section, either civil or criminal, 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 for the plaintiff therein. Provided, if such attorney is the attorney-general or state's attorney, such attorney's fees shall be paid into the county treasury and credited to the general fund of said county. [1913, ch. 172, § 2.]

§ 9693. Officers to take possession, when. If, at the time of granting the temporary injunction described in section 9692, an affidavit shall be presented to the court or judge, stating or showing that any of the offenses mentioned in section 9691 are transpiring or being carried on upon the premises mentioned in the affidavit, particularly describing the said premises where said nuisances are 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 take possession of said house, building, room or place, and take the same into his custody and

securely lock and hold the same to abide the final judgment in the action. The expenses for such holding to be taxed as a 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 the possession of such premises and keep the same closed until final judgment is entered, or until the possession of the same shall be disposed of by an order of the court or judge upon a hearing had before it for such purpose. [1913, ch. 172, § 3.]

§ 9694. Innocent persons may recover property, how. Where personal property is found in any house or room mentioned in section 9693, and it shall appear to the court or judge before whom said action is tried that the owner of such personal property or the person entitled to possession thereof is innocent and has not aided or abetted in carrying on the nuisance, the court shall, by order, direct the sheriff in possession of said property to deliver the same to such owner or person entitled to the possession thereof.

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 cancelled so far as the same may relate to said property, and if the proceedings 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. [1913, ch. 172, § 4.]

§ 9695. Contempt proceedings. 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 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 or her 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. [1913, ch. 172, § 5.]

§ 9696. Injunction. Violation. How punished. When an injunction, either temporary or permanent, has been granted under the provisions of this chapter, the same shall be binding on the defendant or defendants, and for the violation of such injunction the offending party shall be punished as for contempt in the amount according to the rules in this chapter prescribed. [1913, ch. 172, § 6.]

Sections 9696 and 9697 are here given exactly as they appear in the bound volume of session laws of 1913 except that a section heading is here provided for section 9697. See the note to section 9649.

§ 9697. Injunction. Violation. How punished. When an injunction, either temporary or permanent, has been granted under the provisions of this chapter, the same shall be binding on the defendant or defendants throughout the entire state, and for violation of such injunction any place in the state of North Dakota, the offending party shall be punished as for contempt in the amount and according to the rules in this chapter prescribed. [1913, ch. 172, § 7.]

See note to section 9696.

§ 9698. What evidence admissible. Immunity from prosecution. In prosecutions under this chapter, either by civil or criminal proceedings, 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 proof of the fact that anyone has pleaded guilty to having violated the provisions of any city ordinance or any other law of the land enacted to prevent the evils mentioned in this chapter, if it can further be shown that such person, when so pleading guilty, was or had been at the time and place mentioned in the information, indictment or complaint in the action then pending before the court, a frequenter of such house, building, room or place, shall be deemed prima facie evidence of the guilt of such defendant. 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 incriminate himself (the witness), but the persons giving such testimony shall be forever exempt from prosecution for any offense under the provisions of this chapter, of which such evidence shall directly or indirectly tend to incriminate him. [1913, ch. 172, § 8.]

CHAPTER 48.

BUCKET SHOPS.

§ 9699. 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. [R. C. 1905, § 8984; 1905, ch. 58, § 1.]

Bucket shop as "place for gaming." 20 L.R.A.(N.S.) 347.

Applicability to bucket shops of penal statutes in relation to "games of hazard," "gambling devices," etc. 25 L.R.A.(N.S.) 158.

§ 9700. 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. [R. C. 1905, § 8985; 1905, ch. 58, § 2.]

CHAPTER 49.

PAWNBROKERS.

§ 9701. **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. [R. C. 1905, § 8986; Pen. C. 1877, § 402; R. C. 1899, § 7246.]

As to similar provision in Cal. Pen. Code, § 338, see *Levison v. Boas*, — Cal. —, 85 Pac. 825.

§ 9702. **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. [R. C. 1905, § 8987; Pen. C. 1877, § 403; R. C. 1899, § 7247.]

§ 9703. **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. [R. C. 1905, § 8988; Pen. C. 1877, § 404; R. C. 1899, § 7248.]

§ 9704. **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. [R. C. 1905, § 8989; 1895, ch. 85, § 5; R. C. 1899, § 7249.]

CHAPTER 50.

OTHER INJURIES TO PERSONS.

§ 9705. **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. [R. C. 1905, § 8990; Pen. C. 1877, § 405; R. C. 1899, § 7250.]

§ 9706. **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. [R. C. 1905, § 8991; Pen. C. 1877, § 406; R. C. 1899, § 7251.]

§ 9707. **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 overset or injured, and thereby the life of any human being is endangered, is guilty of a misdemeanor. [R. C. 1905, § 8992; Pen. C. 1877, § 407; R. C. 1899, § 7252.]

§ 9708. 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. [R. C. 1905, § 8993; Pen. C. 1877, § 408; R. C. 1899, § 7253.]

§ 9709. 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. [R. C. 1905, § 8994; Pen. C. 1877, § 409; R. C. 1899, § 7254.]

§ 9710. 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. [R. C. 1905, § 8995; Pen. C. 1877, § 410; R. C. 1899, § 7255.]

§ 9711. 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. [R. C. 1905, § 8996; Pen. C. 1877, § 411; R. C. 1899, § 7256.]

§ 9712. 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. [R. C. 1905, § 8997; Pen. C. 1877, § 412; R. C. 1899, § 7257.]

§ 9713. 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. [R. C. 1905, § 8998; 1891, ch. 40, §§ 11, 12; R. C. 1895, § 7258.]

§ 9714. 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. [R. C. 1905, § 8999; Pen. C. 1877, § 413; R. C. 1899, § 7259.]

§ 9715. 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. [R. C. 1905, § 9000; Pen. C. 1877, § 414; R. C. 1899, § 7260.]

§ 9716. Trade-mark defined. The word "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. [R. C. 1905, § 9001; Pen. C. 1877, § 415; R. C. 1899, § 7261.]

§ 9717. 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. [R. C. 1905, § 9002; Pen. C. 1877, § 416; R. C. 1899, § 7262.]

§ 9718. Affixing defined. When crime complete. The offense of affixing a false trade-mark to goods is equally complete within the meaning of sections 9711, 9714 and 9715, 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. [R. C. 1905, § 9003; Pen. C. 1877, § 417; R. C. 1899, § 7263.]

§ 9719. 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 thereafter 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 bottle, 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. [R. C. 1905, § 9004; Pen. C. 1877, § 418; R. C. 1899, § 7264; 1901, ch. 184.]

§ 9720. 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. [R. C. 1905, § 9005; Pen. C. 1877, § 419; R. C. 1899, § 7265.]

§ 9721. Complaint. Search. Penalty. Whenever any manufacturer or dealer designated by section 9719, 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 9719, 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. [R. C. 1905, § 9006; Pen. C. 1877, § 420; R. C. 1899, § 7266.]

§ 9722. Fraudulent representation, sale or registration of animal as pure bred. Any person who shall fraudulently represent any animal to be pure bred, or any person who shall post or publish, or cause to be posted or published, any false pedigree or certificate, or shall use any stallion for public service, or sell, exchange or transfer any stallion, representing such animal to be pure bred, without first having such animal registered in some association recognized by the North Dakota live stock association, and obtaining a certificate therefor, and any person who shall, by any fraud, false pretense or misrepresentation, procure the registration of any animal which is to be used for service, sale or exchange in this state, for the purpose of deception as to the pedigree thereof, and any person who shall sell or otherwise dispose of any animal as a pure bred when he knows or has reasons to believe, that the same is not the offspring of a regularly registered pure bred sire and dam, or who shall sell or otherwise dispose of any animal as a registered pure bred by the use of a false pedigree or certificate of registration shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than one thousand (\$1,000) dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or both such fine and imprisonment, in the discretion of the court. [1913, ch. 244; R. C. 1905, § 9007; 1887, ch. 138, § 1; R. C. 1899, § 7267.]

§ 9723. 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. [R. C. 1905, § 9008; Pen. C. 1877, § 421; R. C. 1899, § 7268.]

§ 9724. 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. [R. C. 1905, § 9009; Pen. C. 1877, § 422; R. C. 1899, § 7269.]

§ 9725. 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. [R. C. 1905, § 9010; Pen. C. 1877, § 423; R. C. 1899, § 7270.]

§ 9726. 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. [R. C. 1905, § 9011; Pen. C. 1877, § 424; R. C. 1899, § 7271.]

§ 9727. 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. [R. C. 1905, § 9012; 1890, ch. 91, §§ 10, 11; R. C. 1895, § 7272.]

§ 9728. 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. [R. C. 1905, § 9013; 1890, ch. 91, § 10; R. C. 1895, § 7273.]

§ 9729. 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. [R. C. 1905, § 9014; 1890, ch. 91, § 12; R. C. 1895, § 7274.]

§ 9730. When marriage without authority valid. No marriage shall be void by reason of being performed without authority, or on account of the marriage license being issued by a clerk of the county court, if otherwise lawful and the parties thereto, or one of them, believes it lawful. All marriages otherwise lawful heretofore solemnized where marriage licenses have been issued by a clerk of the county court are hereby declared valid. [1909, ch. 163; R. C. 1905, § 9015; 1890, ch. 91, § 12; R. C. 1895, § 7275.]

§ 9731. 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. [R. C. 1905, § 9016; Pen. C. 1877, § 426; R. C. 1899, § 7276.]

§ 9732. 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. [R. C. 1905, § 9017; Pen. C. 1877, § 428; R. C. 1899, § 7277.]

§ 9733. 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. [R. C. 1905, § 9018; Pen. C. 1877, § 429; R. C. 1899, § 7278.]

§ 9734. Assisting such concealment. Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor. [R. C. 1905, § 9019; Pen. C. 1877, § 430; R. C. 1899, § 7279.]

§ 9735. 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. [R. C. 1905, § 9020; 1890, ch. 108, §§ 1, 12; 1893, ch. 80, § 6; R. C. 1895, § 7280; 1905, ch. 147, § 1.]

In connection with sections 9735-9740, see sections 475-506.

§ 9736. 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. [R. C. 1905, § 9021; 1893, ch. 80, § 6; R. C. 1895, § 7281.]

See note to section 9735.

Sale of patent medicine, containing alcohol, as medicine by storekeeper in good faith, is not unlawful. *State v. Williams*, 14 N. D. 411, 104 N. W. 546.

Right of physician to sell drugs without a prescription. 46 L.R.A.(N.S.) 1.

§ 9737. 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 paregoric 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. [R. C. 1905, § 9022; 1890, ch. 108, § 14; R. C. 1895, § 7282; 1903, ch. 137.]

See sections 502, 503.

§ 9738. 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. [R. C. 1905, § 9023; 1890, ch. 108, § 14; R. C. 1895, § 7283.]

See note to section 9735.

§ 9739. Record of poison sold. Every person who, at retail, sells, furnishes or delivers to another the articles or preparations mentioned in section 9737 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. [R. C. 1905, § 9024; 1890, ch. 108, § 14; R. C. 1895, § 7284.]

See note to section 9735.

§ 9740. How violations punished. Every person convicted of any of the offenses mentioned in sections 9737 and 9739 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. [R. C. 1905, § 9025; 1890, ch. 108, § 14; R. C. 1895, § 7285; 1905, ch. 147, § 2.]

See note to section 9735.

§ 9741. 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. [R. C. 1905, § 9026; 1890, ch. 108, § 14; R. C. 1895, § 7286.]

CHAPTER 51.

CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

§ 9742. 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. [R. C. 1905, § 9027; Pen. C. 1877, § 431; R. C. 1899, § 7287.]

As to similar provision in Cal. Pen. Code, § 370, see *Ex parte Taylor*, 87 Cal. 91, 25 Pac. 258; *People v. Truckee Lumber Co.*, 116 Cal. 397, 48 Pac. 374, 39 L.R.A. 581.

1. Permitting noxious weeds to grow on one's land is not public nuisance. *Langer v. Goode*, 21 N. D. 462, 131 N. W. 258, Ann. Cas. 1913D, 429, 1 N. C. C. A. 772.

3. Criminal responsibility for maintenance of dam in nonnavigable stream which creates a nuisance injurious to public health. 22 L.R.A.(N.S.) 1259.

4. Noise with or without vibration incident to lawful industrial business as nuisance. 17 L.R.A.(N.S.) 287.

Keeping of barking dogs. 7 L.R.A.(N.S.) 349.

Bowling alley. 40 L.R.A.(N.S.) 75.

Noisy dancing. 18 L.R.A.(N.S.) 699.

Coal yards. 32 L.R.A.(N.S.) 522.

Use of soft coal. 13 L.R.A.(N.S.) 465.

Operation of brick kilns. 2 L.R.A.(N.S.) 92.

Gas plant. 20 L.R.A.(N.S.) 466.

Stable for horses. 17 L.R.A.(N.S.) 1025.

Driving foul air against neighbor's windows. 9 L.R.A.(N.S.) 695.

Cemetery. 31 L.R.A.(N.S.) 945; 34 L.R.A.(N.S.) 565.

Undertaker's establishment. 31 L.R.A.(N.S.) 608.

§ 9743. **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. [R. C. 1905, § 9028; Pen. C. 1877, § 432; R. C. 1899, § 7288.]

§ 9744. **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. [R. C. 1905, § 9029; Pen. C. 1877, § 433; R. C. 1899, § 7289.]

Criminal responsibility of corporation for nuisance. 2 B. R. C. 251.

Criminal or penal liability for maintenance of nuisance by servant, agent or partner. 41 L.R.A. 655.

Criminal responsibility of municipality for maintaining or permitting a nuisance. 39 L.R.A.(N.S.) 411.

As to similar provision in Cal. Pen. Code, § 372, see *Ex parte Taylor*, 87 Cal. 91, 25 Pac. 258; *Taylor v. Reynolds*, 92 Cal. 573, 28 Pac. 688.

§ 9745. **Keeping explosives.** Every person who makes or keeps gunpowder, saltpeter, 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, 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. [R. C. 1905, § 9030; Pen. C. 1877, § 434; R. C. 1895, § 7290.]

Storage of explosives as nuisance. 16 L.R.A.(N.S.) 691.

Nuisance by maintaining powder magazine. 38 L.R.A. 306.

Violation of statute or ordinance relative to explosives as ground of private action. 48 L.R.A.(N.S.) 876.

§ 9746. **Manufacture, use or sale of certain firearms and explosives.** Every person who shall manufacture, use, sell or keep for sale within the state any blank cartridges, pistols, blank cartridge revolver, or other blank cartridge firearms, blank cartridge caps, containing dynamite, and fire crackers, exceeding three inches in length, and exceeding one-half of an inch in diameter shall be guilty of a misdemeanor. [1911, ch. 136.]

§ 9747. **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. [R. C. 1905, § 9031; Pen. C. 1877, § 435; R. C. 1899, § 7291.]

§ 9748. **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. [R. C. 1905, § 9032; Pen. C. 1877, § 436; R. C. 1899, § 7292.]

§ 9749. 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. [R. C. 1905, § 9033; Pen. C. 1877, § 437; R. C. 1899, § 7293.]

§ 9750. 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 9748, 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. [R. C. 1905, § 9034; Pen. C. 1877, § 438; R. C. 1899, § 7294.]

§ 9751. 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. [R. C. 1905, § 9035; Pen. C. 1877, § 439; R. C. 1899, § 7295.]

§ 9752. 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. [R. C. 1905, § 9036; Pen. C. 1877, § 440; R. C. 1899, § 7296.]

§ 9753. 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. [R. C. 1905, § 9037; Pen. C. 1877, § 441; R. C. 1899, § 7297.]

§ 9754. **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. [R. C. 1905, § 9038; Pen. C. 1877, § 442; R. C. 1899, § 7298.]

§ 9755. **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. [R. C. 1905, § 9039; Pen. C. 1877, § 443; R. C. 1899, § 7299.]

§ 9756. **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. [R. C. 1905, § 9040; Pen. C. 1877, § 444; R. C. 1899, § 7300.]

§ 9757. **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. [R. C. 1905, § 9041; Pen. C. 1877, § 445; R. C. 1899, § 7301.]

§ 9758. **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. [R. C. 1905, § 9042; Pen. C. 1877, § 446; R. C. 1899, § 7302.]

§ 9759. **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. [R. C. 1905, § 9043; Pen. C. 1877, § 447; R. C. 1895, § 7303.]

May records of sales of liquor, which a druggist is required by law to keep, be used as evidence against him in a criminal prosecution. 25 L.R.A.(N.S.) 818.

§ 9760. **Violation, misdemeanor.** Any person violating any of the provisions of section 9759 shall be deemed guilty of a misdemeanor. [R. C. 1905, § 9044; Pen. C. 1877, § 448; R. C. 1899, § 7304.]

§ 9761. **Record subject to inspection.** Every person whose duty it is by section 9759 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. [R. C. 1905, § 9045; Pen. C. 1877, § 449; R. C. 1899, § 7305.]

§ 9762. 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. [R. C. 1905, § 9046; Pen. C. 1877, § 450; R. C. 1899, § 7306.]

§ 9763. 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. [R. C. 1905, § 9047; Pen. C. 1877, § 451; R. C. 1899, § 7307.]

§ 9764. 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. [R. C. 1905, § 9048; Pen. C. 1877, § 452; R. C. 1899, § 7308.]

§ 9765. 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. [R. C. 1905, § 9049; Pen. C. 1877, § 453; R. C. 1899, § 7309.]

State regulations as affected by federal pure food law. 47 L.R.A.(N.S.) 985.

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A.(N.S.) 149.

Criminal liability for adulteration of food by servant, agent or partner. 41 L.R.A. 656.

Use of coloring matter in food stuffs, oils, etc., as adulteration. 25 L.R.A.(N.S.) 1234.

§ 9766. 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, tale 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. [R. C. 1905, § 9050; 1897, ch. 3; R. C. 1899, § 7309a.]

§ 9767. 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. [R. C. 1905, § 9051; Pen. C. 1877, § 454; R. C. 1899, § 7310.]

As to similar provision in Cal. Pen. Code, § 383, see *People v. Hoffman*, 128 Cal. 366, 58 Pac. 856.

§ 9768. 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. [R. C. 1905, § 9052; Pen. C. 1877, § 455; R. C. 1899, § 7311.]

§ 9769. 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. [R. C. 1905, § 9053; Pen. C. 1877, § 456; R. C. 1899, § 7312.]

§ 9770. 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. [R. C. 1905, § 9054; Pen. C. 1877, § 457; R. C. 1899, § 7313.]

What are weapons within offense of carrying concealed weapons. 34 L.R.A.(N.S.) 1174.

Right to convict for several offenses of carrying concealed weapons growing out of same facts. 31 L.R.A.(N.S.) 693.

What manner of carrying of weapon violates statute against carrying concealed weapons. 23 L.R.A.(N.S.) 173.

Admissibility of weapons taken from defendant charged with carrying concealed weapons. 34 L.R.A.(N.S.) 58.

§ 9771. Use of silencer on firearms. The use of any device whatsoever for the purpose of silencing or deadening the sound or report of any firearm used in this state is hereby prohibited, provided, that the use of such device may be permitted the national guard or regular army on any rifle range in this state under the supervision of a commissioned officer. [1909, ch. 122, § 1.]

§ 9772. Sale of silencer for firearms. No person shall be permitted to sell or offer for sale any device or attachment to any firearm which will silence or deaden the sound or natural report of the same when discharged. [1909, ch. 122, § 2.]

§ 9773. Penalty for use or sale of silencer. Any person violating the provisions of sections 9771, 9772, shall be punished by a fine of not less than fifty dollars or more than one hundred dollars and costs of prosecution or imprisonment in the county jail for not less than ninety days or more than six months, or by both such fine and imprisonment. [1909, ch. 122, § 3.]

§ 9774. 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. [R. C. 1905, § 9055; Pen. C. 1877, § 458; R. C. 1899, § 7314.]

§ 9775. 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. [R. C. 1905, § 9056; Pen. C. 1877, § 459; R. C. 1899, § 7315.]

Liability for setting fires which spread to property of others. 21 L.R.A. 255; 36 L.R.A.(N.S.) 194.

As to similar provision in Cal. Pen. Code, § 384, see *Garnier v. Porter*, 30 Cal. 105, 27 Pac. 55; *Galvin v. Gualala Mill Co.*, 98 Cal. 268, 33 Pac. 93.

§ 9776. 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. [R. C. 1905, § 9057; Pen. C. 1877, § 460; R. C. 1899, § 7316.]

§ 9777. 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. [R. C. 1905, § 9058; Pen. C. 1877, § 461; 1879, ch. 21, § 1; R. C. 1899, § 7317.]

§ 9778. 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. [R. C. 1905, § 9059; Pen. C. 1877, § 462; R. C. 1899, § 7318.]

§ 9779. 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. [R. C. 1905, § 9060; Pen. C. 1877, § 463; R. C. 1899, § 7319.]

Admission that bell was not rung or whistle sounded at point eighty rods from crossing is sufficient to warrant finding of guilty and infliction of penalty. *Whaley v. Vidal*, 27 S. D. 627, 132 N. W. 242.

§ 9780. 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. [R. C. 1905, § 9061; Pen. C. 1877, § 464; R. C. 1899, § 7320.]

§ 9781. 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. [R. C. 1905, § 9062; Pen. C. 1877, § 465; R. C. 1899, § 7321.]

§ 9782. 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. [R. C. 1905, § 9063; Pen. C. 1877, § 466; R. C. 1899, § 7322.]

§ 9783. 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. [R. C. 1905, § 9064; Pen. C. 1877, § 467; R. C. 1899, § 7323.]

§ 9784. Violations, misdemeanor. Every person who violates the provisions of the last two sections is guilty of a misdemeanor. [R. C. 1905, § 9065; Pen. C. 1877, § 468; R. C. 1899, § 7324.]

§ 9785. 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. [R. C. 1905, § 9066; Pen. C. 1877, § 469; R. C. 1899, § 7325.]

§ 9786. **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. [R. C. 1905, § 9067; Pen. C. 1877, § 470; R. C. 1899, § 7326.]

§ 9787. **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. [R. C. 1905, § 9068; Pen. C. 1877, § 471; R. C. 1899, § 7327.]

§ 9788. **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. [R. C. 1905, § 9069; Pen. C. 1877, § 472; R. C. 1899, § 7328.]

§ 9789. **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. [R. C. 1905, § 9070; Pen. C. 1877, § 473; R. C. 1899, § 7329.]

§ 9790. **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. [R. C. 1905, § 9071; Pen. C. 1877, § 474; R. C. 1899, § 7330.]

CHAPTER 52.

IMPORTATION, SALE AND EXPOSURE OF INFECTED STOCK.

§ 9791. **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. [R. C. 1905, § 9072; 1883, ch. 65, § 1; R. C. 1895, § 7331.]

Validity and construction of statutory regulations as to infected animals. 26 L.R.A. 638; 43 L.R.A.(N.S.) 1066.

State legislation for protection of health of live stock as interference with inter-state commerce. 26 L.R.A.(N.S.) 279.

§ 9792. **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. [R. C. 1905, § 9073; 1887, ch. 33, §§ 1, 2; R. C. 1895, § 7332.]

§ 9793. 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. [R. C. 1905, § 9074; 1887, ch. 33, § 1; R. C. 1895, § 7333.]

§ 9794. 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. [R. C. 1905, § 9075; 1887, ch. 33, § 3; R. C. 1895, § 7334.]

§ 9795. 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. [R. C. 1905, § 9076; 1887, ch. 33, § 4; R. C. 1895, § 7335.]

§ 9796. 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. [R. C. 1905, § 9077; 1887, ch. 33, § 6; R. C. 1895, § 7336.]

Conviction for selling horse with "glanders," is not prerequisite to action for breach of warranty against it. *Larson v. Calder*, 16 N. D. 248, 113 N. W. 103.

Scienter as condition of liability for spreading contagious disease among animals. 6 L.R.A.(N.S.) 922.

Liability of vendor of diseased live stock in absence of special warranty. 29 L.R.A.(N.S.) 202.

Damages recoverable for selling diseased animals. 34 L.R.A.(N.S.) 697.

CHAPTER 53.

MARKING OF TUBERCULOUS CATTLE.

§ 9797. Tuberculous cattle to be branded. Hereafter all cattle that are proven tubercular by the so-called "tuberculin" test after having been tested by a legally qualified and duly authorized veterinary surgeon or the owner of such cattle or his agent, shall be immediately marked by punching the letter "T" in the left ear, said letter to be not less than one inch in height and breadth. [1909, ch. 160, § 1.]

§ 9798. Penalty. Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than ten nor more than fifty dollars, or by confinement in the county jail for not less than ten nor more than thirty days, or both. [1909, ch. 160, § 2.]

CHAPTER 54.

MANUFACTURE AND SALE OF ADULTERATED CIGARETTES; SALE OF TOBACCO TO MINORS; USE OF TOBACCO BY MINORS.

§ 9799. Adulteration prohibited. Any person within the state who manufactures, sells or gives to any one, or uses any cigarette containing any substance foreign to tobacco, shall be punished by a fine of not more than fifty dollars or imprisonment in a county jail for not more than thirty days. [1909, ch. 52, § 1; R. C. 1905, § 9078; 1895, ch. 31, § 1; R. C. 1899, § 7337.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A.(N.S.) 149.

§ 9800. Penalty. Any person within this state who sells, gives to or in any way furnishes any cigarette, cigars or tobacco, in any form, to any person under eighteen years of age, except upon written order of parent or guardian, or to any minor pupil in any school, college or university, shall be punished by a fine not to exceed fifty dollars or imprisonment in the county jail not to exceed thirty days for each offense. [1909, ch. 52, § 2; R. C. 1905, § 9079; 1895, ch. 31, § 2; R. C. 1899, § 7338.]

§ 9801. Use of, by minors prohibited. Any person under eighteen years of age, or any minor pupil, as described in section 9800, who shall smoke or use cigarettes, cigars or tobacco in any form on any public highway, street, alley, park or other lands used for public purposes, or in any public place of business, shall be arrested by any officer of the law, who may be cognizant of such offense and it shall be the duty of all such officers, upon complaint of any citizen, to arrest such offenders, without warrant, and take them before the proper court. The court shall impose a punishment at its discretion, in a sum of not to exceed ten dollars, or imprisonment in the county jail not to exceed five days for each offense; provided, if said minor person shall give information which may lead to the arrest of the person or persons violating the provisions of section 9800, in giving to, selling or in any way furnishing said minor person tobacco, and shall give evidence as a witness in such proceedings against said party or parties, the court shall have power to suspend sentence against such minor person. [1909, ch. 52, § 3.]

§ 9802. Unlawful to congregate to use. Penalty. Exception. Any person who harbors or grants to persons under eighteen years of age or to minor pupils as described in section 9800, privilege of gathering upon or frequenting any property or lands held by him, for the purpose of indulging in the use of cigarettes, cigars or tobacco in any form, shall be held in the same penalty as provided for in section 9800; provided, that no part of this chapter shall be so construed as to interfere with the rights of parents or lawful guardians in the rearing and management of their minor heirs or wards, within the bounds of their own private premises. [1909, ch. 52, § 4.]

§ 9803. Offenses, how investigated. Grand juries and state's attorneys shall have full inquisitorial powers over offenses committed under this chapter. [1909, ch. 52, § 5.]

CHAPTER 55.

USE OF FIREARMS BY CHILDREN AND MINORS.

§ 9804. Unlawful to permit public use. Exception. It shall be unlawful for any parent or guardian or other person having charge or custody of any minor child under fifteen years of age, to permit such child to carry or use, for target practice or any other purpose, any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of,

and under the direct control of such parent, guardian or other person authorized by such parent or guardian. [1911, ch. 134, § 1.]

Negligence of parent in permitting child to have firearms, or keeping them within his reach. 10 L.R.A.(N.S.) 942.

§ 9805. **Penalty.** Any person violating any provision of this chapter shall be guilty of a misdemeanor, and shall be fined ten dollars and costs, or in lieu thereof, be imprisoned in the county jail for a period of fifteen days. [1911, ch. 134, § 2.]

CHAPTER 56.

CRIMES AGAINST THE PUBLIC PEACE.

§ 9806. **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 9247, 9269 and 9632 of this code, is guilty of a misdemeanor. [R. C. 1905, § 9080; Pen. C. 1877, § 475; R. C. 1899, § 7339.]

Character of meeting essential to the offense of disturbing a meeting. 30 L.R.A.(N.S.) 829.

§ 9807. **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. [R. C. 1905, § 9081; Pen. C. 1877, § 476; R. C. 1899, § 7340.]

What constitutes riot and the liabilities of participants therein. 94 Am. Dec. 136.
Civil liability of member of a mob which makes a hostile demonstration against a person. 38 L.R.A.(N.S.) 404.

§ 9808. **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. [R. C. 1905, § 9082; Pen. C. 1877, § 477; R. C. 1899, § 7341.]

Cruel and unusual punishment for riot. 35 L.R.A. 577.

1. Criminal responsibility for homicide in carrying out unlawful conspiracy for riot. 58 L.R.A. 196.

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

§ 9809. **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. [R. C. 1905, § 9083; Pen. C. 1877, § 478; R. C. 1899, § 7342.]

§ 9810. **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. [R. C. 1905, § 9084; Pen. C. 1877, § 479; R. C. 1899, § 7343.]

§ 9811. **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. [R. C. 1905, § 9085; Pen. C. 1877, §§ 480, 481; R. C. 1899, § 7344.]

§ 9812. **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. [R. C. 1905, § 9086; Pen. C. 1877, § 482; R. C. 1899, § 7345.]

§ 9813. **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. [R. C. 1905, § 9087; Pen. C. 1877, § 483; R. C. 1899, § 7346.]

§ 9814. **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. [R. C. 1905, § 9088; Pen. C. 1877, § 484; R. C. 1899, § 7347.]

§ 9815. **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. [R. C. 1905, § 9089; Pen. C. 1877, § 485; R. C. 1899, § 7348.]

Prize fighting as a crime. 15 L.R.A. 516.

§ 9816. **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. [R. C. 1905, § 9090; Pen. C. 1877, § 486; R. C. 1899, § 7349.]

§ 9817. **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 9815, are deemed a challenge within the meaning of the last section. [R. C. 1905, § 9091; Pen. C. 1877, § 487; R. C. 1899, § 7350.]

§ 9818. **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. [R. C. 1905, § 9092; Pen. C. 1877, § 488; R. C. 1899, § 7351.]

§ 9819. **Place of trial.** Such person may be prosecuted and tried in any county within this state. [R. C. 1905, § 9093; Pen. C. 1877, § 489; R. C. 1899, § 7352.]

§ 9820. **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 9815 is about to be committed within their jurisdiction, to make complaint under the provisions of this chapter to some magistrate within their jurisdiction. [R. C. 1905, § 9094; Pen. C. 1877, § 490; R. C. 1899, § 7353.]

§ 9821. **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. [R. C. 1905, § 9095; Pen. C. 1877, § 491; R. C. 1899, § 7354.]

§ 9822. **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. [R. C. 1905, § 9096; Pen. C. 1877, § 492; R. C. 1899, § 7355.]

As to similar provision in Cal. Pen. Code, § 418, see *Voll v. Hollis*, 60 Cal. 569.

§ 9823. **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. [R. C. 1905, § 9097; Pen. C. 1877, § 493; R. C. 1899, § 7356.]

§ 9824. **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. [R. C. 1905, § 9098; Pen. C. 1877, § 494; R. C. 1899, § 7357.]

§ 9825. **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. [R. C. 1905, § 9099; Pen. C. 1877, § 495; R. C. 1899, § 7358.]

Civil liability for injury by negligent discharge of firearms. 4 L.R.A.(N.S.) 119; 26 L.R.A.(N.S.) 134.

§ 9826. **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. [R. C. 1905, § 9100; Pen. C. 1877, § 496; R. C. 1899, § 7359.]

CHAPTER 57.

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

§ 9827. **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. [R. C. 1905, § 9101; Pen. C. 1877, § 497; R. C. 1899, § 7360.]

Indictment charging single offense substantially in language of subdivision 1 is sufficient. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

As to similar provision in Cal. Pen. Code, § 424, see *People v. Otto*, 70 Cal. 523, 11 Pac. 675; *Yarnell v. Los Angeles*, 87 Cal. 603, 25 Pac. 767; *Ex parte Sam Wah*, 91 Cal. 510, 27 Pac. 766; *Los Angeles v. City Bank*, 100 Cal. 18, 34 Pac. 510; *Healdsburg v. Mulligan*, 113 Cal. 205, 45 Pac. 337, 33 L.R.A. 461; *People v. Wilson*, 117 Cal. 244, 49 Pac. 135; *People v. Westlake*, 124 Cal. 452, 57 Pac. 465; *Winchester v. Howard*, 136 Cal. 432, 89 Am. St. Rep. 153, 64 Pac. 692, sub nom. *Rice v. Howard*, 69 Pac. 77.

§ 9828. **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. [R. C. 1905, § 9102; Pen. C. 1877, § 498; R. C. 1899, § 7361.]

§ 9829. **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. [R. C. 1905, § 9103; Pen. C. 1877, § 499; R. C. 1899, § 7362.]

§ 9830. **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. [R. C. 1905, § 9104; Pen. C. 1877, § 500; R. C. 1899, § 7363.]

Willful refusal of state's attorney to prosecute case constitutes misdemeanor. *State ex rel. Clyde v. Lauder*, 11 N. D. 136, 90 N. W. 564.

§ 9831. **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. [R. C. 1905, § 9105; 1885, ch. 129, § 3; R. C. 1895, § 7364.]

§ 9832. **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. [R. C. 1905, § 9106; 1885, ch. 129, § 3; R. C. 1895, § 7365.]

§ 9833. **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. [R. C. 1905, § 9107; 1885, ch. 129, § 3; R. C. 1899, § 7366.]

§ 9834. **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. [R. C. 1905, § 9108; Pen. C. 1877, § 501; R. C. 1899, § 7367.]

§ 9835. **Provisions of section 9830 extended to other officers.** The provisions of section 9830 shall also apply to county treasurers, justices of the peace and all other county and precinct officers. [R. C. 1905, § 9109; Pen. C. 1877, § 502; R. C. 1899, § 7368.]

§ 9836. **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. [R. C. 1905, § 9110; Pen. C. 1877, § 503; R. C. 1899, § 7369.]

§ 9837. **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. [R. C. 1905, § 9111; Pen. C. 1877, § 504; R. C. 1899, § 7370.]

§ 9838. **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. [R. C. 1905, § 9112; Pen. C. 1877, § 505; R. C. 1899, § 7371.]

§ 9839. **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. [R. C. 1905, § 9113; Pen. C. 1877, § 506; R. C. 1899, § 7372.]

§ 9840. **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. [R. C. 1905, § 9114; Pen. C. 1877, § 507; R. C. 1899, § 7373.]

§ 9841. **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. [R. C. 1905, § 9115; Pen. C. 1877, § 508; R. C. 1899, § 7374.]

§ 9842. **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. [R. C. 1905, § 9116; Pen. C. 1877, § 509; R. C. 1899, § 7375.]

§ 9843. **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. [R. C. 1905, § 9117; Pen. C. 1877, § 510; R. C. 1899, § 7376.]

§ 9844. **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 exceed-

ing five times the value of any property omitted in such bill, or both. [R. C. 1905, § 9118; Pen. C. 1877, § 511; R. C. 1899, § 7377.]

§ 9845. **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. [R. C. 1905, § 9119; Pen. C. 1877, § 512; R. C. 1899, § 7378.]

§ 9846. **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. [R. C. 1905, § 9120; Pen. C. 1877, § 513; R. C. 1899, § 7379.]

§ 9847. **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. [R. C. 1905, § 9121; Pen. C. 1877, § 514; R. C. 1899, § 7380.]

§ 9848. **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. [R. C. 1905, § 9122; Pen. C. 1877, § 515; R. C. 1899, § 7381.]

CHAPTER 58.

ARSON.

§ 9849. **Arson defined.** Arson is the willful and malicious burning of a building, with intent to destroy it. [R. C. 1905, § 9123; Pen. C. 1877, § 516; R. C. 1899, § 7382.]

Information charging facts constituting arson in third degree as defined by statute is sufficient. *State v. Young*, 9 N. D. 165, 82 N. W. 420; *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

Crime of arson, and who may commit. 101 Am. St. Rep. 21.

What constitutes arson. 81 Am. Dec. 65.

Prisoner burning prison to escape. 21 Am. Rep. 257.

What constitutes attempt to commit arson. 4 L.R.A.(N.S.) 417; 41 L.R.A.(N.S.) 439.

Procuring or providing instrumentalities for commission of arson as an attempt to commit the same. 6 L.R.A.(N.S.) 804.

Corpus delicti in arson. 68 L.R.A. 41; 16 L.R.A.(N.S.) 285.

Criminal liability of children for arson. 36 L.R.A. 201.

Solicitation to arson. 25 L.R.A. 437.

§ 9850. **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. [R. C. 1905, § 9124; Pen. C. 1877, § 517; R. C. 1899, § 7383.]

Freight car as buildings. *State v. Lintner*, 19 S. D. 447, 104 N. W. 205.

What is a house within the meaning of the law of arson. 22 Am. Dec. 144; 71 Am. St. Rep. 266.

As to similar provision in Cal. Pen. Code, § 448, see *People v. Russell*, 81 Cal. 616, 23 Pac. 418; *Clugston v. Garretson*, 103 Cal. 441, 37 Pac. 469.

§ 9851. **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. [R. C. 1905, § 9125; Pen. C. 1877, § 518; R. C. 1899, § 7384.]

As to similar provision in Cal. Pen. Code, § 449, see *People v. Russell*, 81 Cal. 616, 23 Pac. 418.

§ 9852. **Nighttime defined.** The word "nighttime," in this chapter includes the period between sunset and sunrise. [R. C. 1905, § 9126; Pen. C. 1877, § 519; R. C. 1899, § 7385.]

§ 9853. **Burning defined.** To constitute a burning within the meaning of section 9849 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. [R. C. 1905, § 9127; Pen. C. 1877, § 520; R. C. 1899, § 7386.]

§ 9854. **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. [R. C. 1905, § 9128; Pen. C. 1877, § 521; R. C. 1899, § 7387.]

Arson in setting fire to one's own building. 32 L.R.A. 647.

Arson by one spouse burning property of the other. 21 L.R.A.(N.S.) 27.

As to similar provision in Cal. Pen. Code, § 452, see *People v. Russell*, 81 Cal. 616, 23 Pac. 418; *People v. Fong Hong*, 120 Cal. 685, 53 Pac. 265; *People v. Davis*, 135 Cal. 162, 67 Pac. 59.

§ 9855. **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. [R. C. 1905, § 9129; Pen. C. 1877, § 522; R. C. 1899, § 7388.]

§ 9856. **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. [R. C. 1905, § 9130; Pen. C. 1877, § 523; R. C. 1899, § 7389.]

§ 9857. **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. [R. C. 1905, § 9131; Pen. C. 1877, § 524; R. C. 1899, § 7390.]

§ 9858. **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. [R. C. 1905, § 9132; Pen. C. 1877, § 525; R. C. 1899, § 7391.]

§ 9859. **Degrees of arson.** Arson is distinguished in four degrees. [R. C. 1905, § 9133; Pen. C. 1877, § 526; R. C. 1899, § 7392.]

Verdict of "guilty as charged" is sufficient on information charging certain degree of arson. *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

§ 9860. **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. [R. C. 1905, § 9134; Pen. C. 1877, § 527; R. C. 1899, § 7393.]

As to similar provision in Cal. Pen. Code, § 454, see *People v. Fisher*, 51 Cal. 319.

§ 9861. **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. [R. C. 1905, § 9135; Pen. C. 1877, § 528; R. C. 1899, § 7394.]

§ 9862. **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. [R. C. 1905, § 9136; Pen. C. 1877, § 529; R. C. 1899, § 7395.]

§ 9863. **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. [R. C. 1905, § 9137; Pen. C. 1877, § 530; R. C. 1899, § 7396.]

§ 9864. **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. [R. C. 1905, § 9138; Pen. C. 1877, § 531; R. C. 1899, § 7397.]

Sufficient pleading of arson in third degree. *State v. Young*, 9 N. D. 165, 82 N. W. 420; *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

§ 9865. **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. [R. C. 1905, § 9139; Pen. C. 1877, § 532; R. C. 1899, § 7398.]

§ 9866. **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. [R. C. 1905, § 9140; Pen. C. 1877, § 533; R. C. 1899, § 7399.]

§ 9867. **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. [R. C. 1905, § 9141; Pen. C. 1877, § 534; R. C. 1899, § 7400.]

Cruel and unusual punishment for arson. 35 L.R.A. 569.

CHAPTER 59.

BURGLARY AND HOUSE BREAKING AND UNLAWFUL ENTERING.

§ 9868. **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. [R. C. 1905, § 9142; 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.

Breaking and entry. 139 Am. St. Rep. 1047.

Entry by consent of owner. 91 Am. Dec. 482.

Essential elements of crime of burglary and what "breaking" will support indictment for. 2 Am. St. Rep. 383.

Burglary by going upon piazza. 46 L.R.A.(N.S.) 999.

—by pushing open door already partly open. 47 L.R.A.(N.S.) 717.

—by raising window already partly open. 17 L.R.A.(N.S.) 1102.

Burglary by forcing screen door or window. 17 L.R.A.(N.S.) 1100; 38 L.R.A.(N.S.) 770.

Criminal liability for agent's act. 41 L.R.A. 652.

Criminal liability of children for burglary. 36 L.R.A. 201.

What intoxication will excuse burglary. 36 L.R.A. 470.

Instigation of offense as a defense to prosecution. 30 L.R.A.(N.S.) 951.

Proof of corpus delicti. 68 L.R.A. 41, 70, 71, 72, 73.

As to similar provision in Cal. Pen. Code, § 459, see *People v. St. Clair*, 55 Cal. 524; *People v. St. Clair*, 56 Cal. 406; *People v. Nelson*, 58 Cal. 104; *People v. Barnhart*, 59 Cal. 381; *People v. Smith*, 86 Cal. 238, 24 Pac. 988; *People v. Phelan*, 93 Cal. 111, 28 Pac. 855; *People v. Barry*, 94 Cal. 481, 29 Pac. 1026; *People v. Hall*, 94 Cal. 595, 30 Pac. 7; *People v. Miller*, 121 Cal. 343, 53 Pac. 816; *People v. Goldsworthy*, 130 Cal. 600, 62 Pac. 1074; *People v. Webber*, 138 Cal. 145, 70 Pac. 1098; *People v. McFarlane*, 138 Cal. 481, 71 Pac. 568, 72 Pac. 48, 61 L.R.A. 245; *People v. Devlin*, 143 Cal. 128, 76 Pac. 900.

§ 9869. 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. [R. C. 1905, § 9143; Pen. C. 1877, § 536; R. C. 1899, § 7402.]

As to similar provision in Cal. Pen. Code, § 460, see *People v. Barnhart*, 59 Cal. 381.

§ 9870. 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. [R. C. 1905, § 9144; Pen. C. 1877, § 537; R. C. 1899, § 7403.]

§ 9871. 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. [R. C. 1905, § 9145; Pen. C. 1877, § 538; R. C. 1899, § 7404.]

§ 9872. 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. [R. C. 1905, § 9146; Pen. C. 1877, § 539; R. C. 1899, § 7405.]

As to similar provision in Cal. Pen. Code, § 460, see *People v. Barnhart*, 59 Cal. 381.

§ 9873. 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. [R. C. 1905, § 9147; Pen. C. 1877, § 540; R. C. 1899, § 7406.]

Sufficient pleading of burglary in third degree. *State v. La Croix*, 8 S. D. 369, 66 N. W. 944.

"Entering" is sufficient without "breaking" to constitute crime of burglary. *State v. Vierck*, 23 S. D. 166, 120 N. W. 1093.

Conviction for entering car with intent to steal sustained under indictment for burglarizing railroad car. *State v. Tough*, 12 N. D. 425, 96 N. W. 1025.

§ 9874. 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. [R. C. 1905, § 9148; Pen. C. 1877, § 541; R. C. 1899, § 7407.]

As to similar provision in Cal. Pen. Code, § 460, see *People v. Barnhart*, 59 Cal. 381.

§ 9875. 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. [R. C. 1905, § 9149; Pen. C. 1877, § 542; R. C. 1899, § 7408.]

§ 9876. 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. [R. C. 1905, § 9150; Pen. C. 1877, § 543; R. C. 1899, § 7409.]

Cruel and unusual punishment for burglary. 35 L.R.A. 570.

As to similar provision in Cal. Pen. Code, § 461, see *People v. Smith*, 143 Cal. 597, 77 Pac. 449.

§ 9877. Having burglar's implements in possession. Every person who, under circumstances not amounting to any felony, has in his possession 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. [1909, ch. 91; R. C. 1905, § 9151; Pen. C. 1877, § 544; R. C. 1899, § 7410.]

Procuring or providing instrumentalities for commission of burglary as an attempt to commit. 6 L.R.A.(N.S.) 804.

Possession of recently stolen property as evidence of burglary. 12 L.R.A.(N.S.) 199.

§ 9878. 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. [R. C. 1905, § 9152; Pen. C. 1877, § 545; R. C. 1899, § 7411.]

Conviction for entering car with intent to steal sustained under indictment for burglarizing railroad car. *State v. Tough*, 12 N. D. 425, 96 N. W. 1025.

As to similar provision in N. Y. Pen. Code, § 505, see *People v. Meegan*, 104 N. Y. 529, 11 N. E. 48.

§ 9879. Use of high explosives to effect entry. Punishment. Any person who, with intent to commit any crime, breaks into or enters a building and commits or attempts to commit a crime by the use of nitro-glycerine, dynamite, gunpowder or any other high explosive, is guilty of a felony. Any violation of this act is punishable by imprisonment in the penitentiary of this state for not less than twenty years, and not more than forty years. [1907, ch. 124, § 1.]

§ 9880. 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. [R. C. 1905, § 9153; Pen. C. 1877, § 546; R. C. 1899, § 7412.]

What is a house within the meaning of the law of burglary. 22 Am. Dec. 150.

§ 9881. Nighttime defined. The word "nighttime," in this chapter includes the period between sunset and sunrise. [R. C. 1905, § 9154; Pen. C. 1877, § 547; R. C. 1899, § 7413.]

CHAPTER 60.

FORGERY AND COUNTERFEITING.

§ 9882. 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. [R. C. 1905, § 9155; Pen. C. 1877, § 548; R. C. 1899, § 7414.]

What is forgery. 22 Am. Dec. 306; 119 Am. St. Rep. 317.

—false assumption of authority in signing another's name as agent for him. 31 L.R.A. 831.

—fraudulently procuring genuine signature. 26 L.R.A.(N.S.) 138.

Deed signed under false impression induced by fraud as to its contents or character as a forgery. 36 L.R.A.(N.S.) 540.

Signing of writing, what sufficient to amount to forgery. 55 Am. Rep. 651.

What may be the subject of forgery. 8 Am. St. Rep. 466.

Forgery of worthless instruments. 24 L.R.A. 33.

—of order or request for goods. 32 L.R.A.(N.S.) 327.

—of recommendations or letters of introduction. 1 L.R.A.(N.S.) 730.

Several forgery offenses, growing out of same facts. 31 L.R.A.(N.S.) 725, 730.

Forgery of different instruments at one time as one or more crimes. 61 L.R.A. 819.

What intoxication will excuse forgery. 36 L.R.A. 470.

Proof of corpus delicti in prosecution for forgery. 68 L.R.A. 56, 70 71, 72.

As to similar provision in Cal. Pen. Code, § 470, see *Correio v. Lynch*, 65 Cal. 273, 3 Pac. 889; *Ex parte Finley*, 66 Cal. 262, 5 Pac. 222; *People v. Elliott*, 90 Cal. 586, 27 Pac. 433; *People v. Bibby*, 91 Cal. 470, 27 Pac. 781; *People v. Munroe*, 100 Cal. 664, 38 Am. St. Rep. 323, 35 Pac. 326, 24 L.R.A. 33; *People v. Smith*, 103 Cal. 563, 37 Pac. 516; *People v. Eppinger*, 105 Cal. 36, 38 Pac. 538; *People v. Bendit*, 111 Cal. 274, 52 Am. St. Rep. 186, 43 Pac. 901, 31 L.R.A. 831; *People v. Turner*, 113 Cal. 278, 45 Pac. 331; *People v. Dole*, 122 Cal. 486, 68 Am. St. Rep. 50, 55 Pac. 581; *People v. Compton*, 123 Cal. 403, 56 Pac. 44; *People v. Terrill*, 127 Cal. 99, 59 Pac. 836; *People v. Rushing*, 130 Cal. 449, 80 Am. St. Rep. 141, 62 Pac. 742; *People v. Terrill*, 133 Cal. 120, 65 Pac. 303; *People v. Chretien*, 137 Cal. 450, 70 Pac. 305; *People v. McGlade*, 139 Cal. 66, 73 Pac. 600; *People v. Thornburgh*, 4 Cal. App. 38, 87 Pac. 234; *People v. Harben*, 5 Cal. App. 29, 91 Pac. 398; *People v. McPherson*, 6 Cal. App. 266, 91 Pac. 1098.

§ 9883. 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. [R. C. 1905, § 9156; Pen. C. 1877, § 549; R. C. 1899, § 7415.]

§ 9884. 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. [R. C. 1905, § 9157; Pen. C. 1877, § 550; R. C. 1895, § 7416.]

§ 9885. 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. [R. C. 1905, § 9158; Pen. C. 1877, § 551; R. C. 1899, § 7417.]

§ 9886. 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. [R. C. 1905, § 9159; Pen. C. 1877, § 552; R. C. 1899, § 7418.]

§ 9887. 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. [R. C. 1905, § 9160; Pen. C. 1877, § 553; R. C. 1899, § 7419.]

Liability of notary or other officer certifying to acknowledgment or affidavit. "L.R.A. (N.S.) 45.

§ 9888. 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. [R. C. 1905, § 9161; Pen. C. 1877, § 554; R. C. 1899, § 7420.]

§ 9889. 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. [R. C. 1905, § 9162; Pen. C. 1877, § 555; R. C. 1899, § 7421.]

§ 9890. 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. [R. C. 1905, § 9163; Pen. C. 1877, § 556; R. C. 1899, § 7422.]

As to similar provision in Cal. Pen. Code, § 476, see *People v. Elliott*, 90 Cal. 586, 27 Pac. 433; *People v. Eppinger*, 105 Cal. 36, 38 Pac. 538; *People v. Eppinger*, 109 Cal. 294, 41 Pac. 1037; *People v. Eppinger*, 114 Cal. 350, 46 Pac. 97; *People v. Ellenwood*, 119 Cal. 166, 51 Pac. 553; *People v. Terrill*, 133 Cal. 120, 65 Pac. 303; *People v. Chretien*, 137 Cal. 450, 70 Pac. 305; *People v. Harben*, 5 Cal. App. 29, 91 Pac. 398.

§ 9891. 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. [R. C. 1905, § 9164; Pen. C. 1877, § 557; R. C. 1889, § 7423.]

§ 9892. 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. [R. C. 1905, § 9165; Pen. C. 1877, § 558; R. C. 1899, § 7424.]

§ 9893. 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. [R. C. 1905, § 9166; Pen. C. 1877, § 559; R. C. 1899, § 7425.]

§ 9894. Same. Reissuing cancelled 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 cancelled 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. [R. C. 1905, § 9167; Pen. C. 1877, § 560; R. C. 1899, § 7426.]

§ 9895. 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. [R. C. 1905, § 9168; Pen. C. 1877, § 561; K. C. 1899, § 7427.]

§ 9896. **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. [R. C. 1905, § 9169; Pen. C. 1877, § 562; R. C. 1899, § 7428.]

§ 9897. **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. [R. C. 1905, § 9170; Pen. C. 1877, § 563; R. C. 1899, § 7429.]

§ 9898. **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 prescribed, 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. [R. C. 1905, § 9171; Pen. C. 1877, § 564; R. C. 1899, § 7430.]

§ 9899. **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. [R. C. 1905, § 9172; Pen. C. 1877, § 565; R. C. 1899, § 7431.]

§ 9900. **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. [R. C. 1905, § 9173; Pen. C. 1877, § 566; R. C. 1899, § 7432.]

Order for goods in carrier's possession as subject of forgery. 32 L.R.A.(N.S.) 338.

§ 9901. **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. [R. C. 1905, § 9174; Pen. C. 1877, § 567; R. C. 1899, § 7433.]

§ 9902. **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. [R. C. 1905, § 9175; Pen. C. 1877, § 568; R. C. 1899, § 7434.]

§ 9903. **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. [R. C. 1905, § 9176; Pen. C. 1877, § 569; R. C. 1899, § 7435.]

§ 9904. **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. [R. C. 1905, § 9177; Pen. C. 1877, § 570; R. C. 1899, § 7436.]

§ 9905. **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. [R. C. 1905, § 9178; Pen. C. 1877, § 571; R. C. 1899, § 7437.]

§ 9906. **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. [R. C. 1905, § 9179; 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.

What constitutes uttering or publishing. 8 L.R.A.(N.S.) 1175.

Uttering sufficient to sustain conviction for forgery. 119 Am. St. Rep. 317.

§ 9907. **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. [R. C. 1905, § 9180; Pen. C. 1877, § 573; R. C. 1899, § 7439.]

§ 9908. **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. [R. C. 1905, § 9181; Pen. C. 1877, § 574; R. C. 1899, § 7440.]

§ 9909. **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. [R. C. 1905, § 9182; Pen. C. 1877, § 575; R. C. 1899, § 7441.]

§ 9910. **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. [R. C. 1905, § 9183; Pen. C. 1877, § 576; R. C. 1899, § 7442.]

Forgery by raising amount of negotiable paper. 22 L.R.A. 686.

§ 9911. **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. [R. C. 1905, § 9184; Pen. C. 1877, § 577; R. C. 1899, § 7443.]

§ 9912. **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. [R. C. 1905, § 9185; Pen. C. 1877, § 578; R. C. 1899, § 7444.]

CHAPTER 61.

LARCENY.

§ 9913. **Larceny defined.** Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof. [R. C. 1905, § 9186; Pen. C. 1877, § 580; R. C. 1899, § 7445.]

Information charging in language of statute sufficient. *State v. Hellekson*, 13 S. D. 242, 83 N. W. 254.

As to defining "steal" to jury. *State v. Tough*, 12 N. D. 425, 96 N. W. 1025.

Proof of larceny of gelding is sufficient to sustain information alleging larceny of horse. *State v. Matejousky*, 22 S. D. 30, 115 N. W. 96.

What constitutes larceny. 57 Am. Dec. 271; 88 Am. St. Rep. 559.

What constitutes asportation. 29 L.R.A.(N.S.) 38.

Definition of larceny. 30 Am. Rep. 159.

Intent essential to the crime of larceny. 51 Am. Rep. 312.

Larceny of moneys borrowed. 46 Am. Rep. 183.

—of money received to be changed. 40 Am. Rep. 533.

- Larceny of money paid by mistake. 34 Am. Rep. 591.
 —of money or property delivered by mistake. 52 L.R.A. 136.
 —of articles of value concealed in goods purchased or in waste matter. 22 L.R.A. (N.S.) 1133.
 —by obtaining money by trick. 1 L.R.A. (N.S.) 862.
 —by fraudulent race or game. 1 L.R.A. (N.S.) 862; 20 L.R.A. (N.S.) 1164; 42 L.R.A. (N.S.) 735.
 —by taking away greater quantity of purchased article than was paid for. 1 B. R. C. 1004.
 —by wrongful sale of pledged property or collateral. 31 L.R.A. (N.S.) 999.
 —by sale of another's property. 10 L.R.A. (N.S.) 816.
 —by making or procuring fraudulent orders on public funds. 32 L.R.A. (N.S.) 234.
 —by fraudulent conversion of property by one legally in charge or custody thereof. 2 L.R.A. (N.S.) 249.
 —by failure to account for fund to one jointly interested therein. 31 L.R.A. (N.S.) 822.
 —by abstracting money or other property from letter given one to mail. 47 L.R.A. (N.S.) 852.
 Taking of property by general owner for purpose of defeating a lien thereon as larceny. 12 L.R.A. (N.S.) 94.
 Purpose of applying property on debt as affecting larceny. 32 L.R.A. (N.S.) 420.
 Effect of consent of bailee, agent or servant to taking of property. 7 L.R.A. (N.S.) 1149.
 Larceny by one spouse of the other's property. 29 L.R.A. (N.S.) 830.
 Dogs as subjects of larceny. 15 Am. Rep. 356; 40 Am. Rep. 83.
 Check as subject of larceny. 42 L.R.A. (N.S.) 498.
 What intoxication will excuse larceny. 36 L.R.A. 469.
 Kleptomania as a defense. 18 L.R.A. 229; 43 L.R.A. (N.S.) 150.
 Criminal liability of children for larceny. 36 L.R.A. 201.
 —of corporation. 2 B. R. C. 249.
 Stealing property from different owners at the same time as distinct offenses. 43 L.R.A. (N.S.) 967.
 Proof of corpus delicti in prosecution for larceny. 68 L.R.A. 40; 28 L.R.A. (N.S.) 536; Evidence of other crimes in prosecution for. 62 L.R.A. 231; 43 L.R.A. (N.S.) 776.
 As to similar provision in Cal. Pen. Code, § 484, see *People v. De Coursey*, 61 Cal. 134; *People v. Meyer*, 75 Cal. 383, 17 Pac. 431; *People v. Smith*, 86 Cal. 238, 24 Pac. 988; *People v. Lopez*, 90 Cal. 569, 27 Pac. 427; *People v. Shaughnessy*, 110 Cal. 598, 42 Pac. 2; *People v. Lonnen*, 139 Cal. 634, 73 Pac. 586.
- § 9914. 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. [R. C. 1905, § 9187; Pen. C. 1877, § 581; R. C. 1899, § 7446.]
 Larceny of property found. 37 L.R.A. 121; 30 L.R.A. (N.S.) 339; 17 Am. Rep. 140; 21 Am. Rep. 187; 34 Am. Rep. 734.
 Appropriation of articles of value concealed in goods purchased or in waste matter. 22 L.R.A. (N.S.) 1133.
 As to similar provision in Cal. Pen. Code, § 485, see *People v. Devine*, 95 Cal. 227, 30 Pac. 378.

§ 9915. Degrees of larceny. Larceny is divided into two degrees; the first of which is termed grand larceny, the second petit larceny. [R. C. 1905, § 9188; Pen. C. 1877, § 582; R. C. 1899, § 7447.]

Proof of larceny of gelding is sufficient to sustain information alleging larceny of horse. *State v. Matejousky*, 22 S. D. 30, 115 N. W. 96.

§ 9916. 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. [R. C. 1905, § 9189; Pen. C. 1877, § 583; R. C. 1899, § 7448.]

Description of stolen property in information as one gold coin, current as money in this state of value of \$5, is sufficient. *State v. Faulk*, 22 S. D. 183, 116 N. W. 72.

Proof of larceny of gelding is sufficient to sustain information alleging larceny of horse. *State v. Matejousky*, 22 S. D. 30, 115 N. W. 96.

As to similar provision in Cal. Pen. Code, § 487, see *People v. Marshall*, 59 Cal. 391; *People v. Barnes*, 65 Cal. 16, 2 Pac. 493; *People v. Price*, 67 Cal. 350, 6 Am. Cr. Rep. 399, 7 Pac. 745; *People v. Smith*, 112 Cal. 333, 44 Pac. 663; *People v. Comyns*, 114 Cal. 107, 45 Pac. 1034; *People v. McElroy*, 116 Cal. 583, 48 Pac. 718; *People v. Lonnen*, 139 Cal. 634, 73 Pac. 586.

2. Defense that he had nothing to take to charge of attempt to commit larceny from the person. 41 Am. Rep. 492.

§ 9917. **Punishment of grand larceny.** Grand larceny is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. [R. C. 1905, § 9190; Pen. C. 1877, § 584; R. C. 1899, § 7449.]

Cruel and unusual punishment for larceny. 35 L.R.A. 573, 577.

As to similar provision in Cal. Pen. Code, § 489, see *People v. Wynn*, 140 Cal. 661, 74 Pac. 144.

§ 9918. **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. [R. C. 1905, § 9191; 1879, ch. 25, § 2; R. C. 1899, § 7450.]

As to similar provision in Cal. Pen. Code, § 490, see *People v. Righetti*, 66 Cal. 184, 4 Pac. 1163.

§ 9919. **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. [R. C. 1905, § 9192; Pen. C. 1877, § 586; R. C. 1899, § 7451.]

§ 9920. **Larceny in night time from person.** When it appears from such trial that such larceny was committed by stealing in the night time, from the person of another, the offender may be punished by imprisonment in the penitentiary not less than one and not exceeding ten years. [R. C. 1905, § 9193; Pen. C. 1877, § 587; R. C. 1899, § 7452.]

§ 9921. **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. [R. C. 1905, § 9194; Pen. C. 1877, § 588; R. C. 1899, § 7453.]

Valuation of commercial paper for purposes of graduating offense of larceny. 23 L.R.A.(N.S.) 1063.

§ 9922. **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. [R. C. 1905, § 9195; Pen. C. 1877, § 589; R. C. 1899, § 7454.]

§ 9923. **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. [R. C. 1905, § 9196; Pen. C. 1877, § 590; R. C. 1899, § 7455.]

§ 9924. **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. [R. C. 1905, § 9197; Pen. C. 1877, § 591; R. C. 1899, § 7456.]

§ 9925. **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. [R. C. 1905, § 9198; Pen. C. 1877, § 592; R. C. 1899, § 7457.]

§ 9926. 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 brought 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. [R. C. 1905, § 9199; Pen. C. 1877, § 593; R. C. 1899, § 7458; 1903, ch. 190.]

Information for receiving stolen property need not allege that it was received "upon any consideration." *State v. Pirkey*, 22 S. D. 550, 118 N. W. 1042, 18 A. & E. Ann. Cas. 192.

What constitutes crime of receiving stolen property. 26 Am. Dec. 261.

Statute making failure to inquire as to possessor's right equivalent to guilty knowledge. 46 L.R.A.(N.S.) 31.

Instigation to offense of receiving stolen property. 25 L.R.A. 345.

Knowledge necessary to convict one of receiving stolen goods. 22 L.R.A.(N.S.) 833.

Prosecution for receiving stolen property where property in question was stolen in foreign state or country. 28 L.R.A.(N.S.) 750.

Proof of corpus delicti in prosecution for receiving stolen property. 68 L.R.A. 55.

As to similar provision in Cal. Pen. Code, § 496, see *People v. Ribois*, 89 Cal. 492, 26 Pac. 1032; *People v. Perini*, 94 Cal. 573, 29 Pac. 1027; *People v. Tilley*, 135 Cal. 61, 67 Pac. 42.

§ 9927. 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. [R. C. 1905, § 9200; Pen. C. 1877, § 594; R. C. 1899, § 7459.]

§ 9928. 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. [R. C. 1905, § 9201; Pen. C. 1877, § 595; R. C. 1899, § 7460.]

What law defines larceny for purposes of a statute against bringing stolen property into the state. 15 L.R.A. 722; 14 L.R.A.(N.S.) 556.

Prosecution for larceny of one who receives or sells within the state property actually stolen with his connivance by another in another state. 42 L.R.A.(N.S.) 207.

CHAPTER 62.

EMBEZZLEMENT.

§ 9929. Embezzlement defined. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted. [R. C. 1905, § 9204; 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.

Embezzlement as agent; 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.

What is embezzlement? 98 Am. Dec. 126.

What constitutes embezzlement and who may commit. 87 Am. St. Rep. 19.

Does wrongful appropriation of money received through mistake constitute embezzlement. 19 L.R.A.(N.S.) 371.

Failure to account for fund to one jointly interested therein as embezzlement. 31 L.R.A.(N.S.) 822.

Effect of fact that one is entitled to commissions out of fund upon his prosecution for embezzlement in case he retains the whole fund. 13 L.R.A.(N.S.) 511.

Embezzlement by one spouse of other's property. 29 L.R.A.(N.S.) 830.

Embezzlement as affected by want of authority of defendant to receive the money or property in the first instance. 17 L.R.A.(N.S.) 531.

Illegality of transaction by which owner obtained money or other property as a defense to embezzlement. 27 L.R.A.(N.S.) 415.

As to similar provision in Cal. Pen. Code, § 503, see *People v. Johnson*, 91 Cal. 265, 27 Pac. 663; *People v. Montaral*, 120 Cal. 691, 53 Pac. 355.

§ 9930. 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 merchandise, 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. [R. C. 1905, § 9205; Pol. C. ch. 28, § 104; R. C. 1899, § 1310.]

General deposit by county treasurer of county funds subject to check is not a loan within statutory inhibition. *Allibone v. Ames*, 9 S. D. 74, 68 N. W. 165, 33 L.R.A. 585.

Misappropriation of state funds by state treasurer. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

Meaning of phrase "convert to his own use" in criminal statutes as to embezzlement. 42 L.R.A.(N.S.) 601.

May estoppel to deny authority to receive money alleged to have been embezzled be invoked against public officer charged with embezzlement. 23 L.R.A.(N.S.) 761.

§ 9931. Fraudulent appropriation by officer of corporation. If any person, being an officer, director, trustee, clerk, servant or agent of any association, 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 its 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. [R. C. 1905, § 9206; 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.

Sufficiency of information for embezzlement. *State v. Lonne*, 15 N. D. 275, 107 N. W. 524.

§ 9932. 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. [R. C. 1905, § 9207; Pen. C. 1877, § 598; R. C. 1899, § 7463.]

§ 9933. 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 intrusted 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. [R. C. 1905, § 9208; Pen. C. 1877, § 599; R. C. 1899, § 7464; 1901, ch. 82.]

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.

Misappropriation of partnership funds by general partner not embezzlement. *State v. Reddick*, 2 S. D. 124, 48 N. W. 846.

Transfer of fund or security from one estate to another by a common trustee as embezzlement. 16 L.R.A.(N.S.) 205.

§ 9934. Fraudulent conversion by bailee. If any person being intrusted 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. [R. C. 1905, § 9209; Pen. C. 1877, § 600; R. C. 1899, § 7465.]

Meaning of phrase "convert to his own use" in criminal statutes as to embezzlement. 42 L.R.A.(N.S.) 601.

Embezzlement of property while in possession of bailee, presumption and burden of proof as to negligence. 43 L.R.A.(N.S.) 1190.

Liability of bailee for wrongful appropriation of subject of bailment by servant. 29 L.R.A. 92.

As to similar provision in Cal. Pen. Code, § 507, see *People v. Klee*, 137 Cal. xix, 69 Pac. 696; *People v. Jackson*, 138 Cal. 462, 71 Pac. 566.

§ 9935. 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. [R. C. 1905, § 9210; Pen. C. 1877, § 601; R. C. 1899, § 7466.]

In prosecution necessary to allege ownership of property embezzled. *State v. Collins*, 4 N. D. 433, 61 N. W. 467.

In trial of farm manager for embezzling hogs of his employer state need not prove demand for property. *State v. Millard*, 30 S. D. 169, 138 N. W. 366.

§ 9936. 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. [R. C. 1905, § 9211; Pen. C. 1877, § 602; R. C. 1899, § 7467.]

§ 9937. 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. [R. C. 1905, § 9212; Pen. C. 1877, § 603; R. C. 1899, § 7468.]

Check as subject of embezzlement. 42 L.R.A.(N.S.) 498.

§ 9938. 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. [R. C. 1905, § 9213; Pen. C. 1877, § 604; R. C. 1899, § 7469.]

Embezzlement as affected by belief in right to property taken. 41 L.R.A.(N.S.) 556.

§ 9939. 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. [R. C. 1905, § 9214; Pen. C. 1877, § 605; R. C. 1899, § 7470.]

Intention to restore property is no ground of defense. *State v. Serenson*, 7 S. D. 277, 64 N. W. 130.

§ 9940. 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. [R. C. 1905, § 9215; Pen. C. 1877, § 606; R. C. 1899, § 7471.]

§ 9941. 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. [R. C. 1905, § 9216; 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.

Disbarment of attorney for withholding client's money. 19 L.R.A.(N.S.) 414.

As to similar provision in Cal. Pen. Code, § 514, see *People v. Wickham*, 116 Cal. 384, 48 Pac. 329.

CHAPTER 63.

FRAUDULENTLY USING ELECTRIC CURRENT.

§ 9942. Electric current, fraudulently using. Misdemeanor. Every person who, with intent to defraud, makes, or causes to be made, any wires or other instruments or contrivances or connection, and connects the same, or causes it to be connected, with any wire laid or strung for conducting electric current, so as to conduct or carry electric current to a point where the same may be consumed without its passing through the meter provided for registering the quantity consumed or in any manner to evade paying therefor, and every person who with like intent injures or alters any electric meter or any electrical appliance, instrument, wire or connection, or obstructs their action, is guilty of a misdemeanor. [1907, ch. 248.]

CHAPTER 64.

EXTORTION.

§ 9943. 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. [R. C. 1905, § 9217; Pen. C. 1877, § 608; R. C. 1899, § 7473.]

Use of word "wrongful" relates to method used, and person may be guilty of extortion, though he does not seek to obtain any benefit for himself. *Re Sherin*, 27 S. D. 232, 40 L.R.A.(N.S.) 801, 130 N. W. 761, Ann. Cas. 1913D, 446.

Person may be guilty of extortion if he obtains money from another by unlawful means, though he does not seek to obtain any benefit for himself. *Re Sherin*, 27 S. D. 232, 40 L.R.A.(N.S.) 801, 130 N. W. 761, Ann. Cas. 1913D, 446.

What is extortion? 96 Am. Dec. 193; 116 Am. St. Rep. 446.

Extortion as affected by right, or belief in right, to property sought to be secured. 40 L.R.A. (N.S.) 801.

As to similar provision in Cal. Pen. Code, § 518, see *People v. Williams*, 127 Cal. 212, 59 Pac. 581.

§ 9944. 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. [R. C. 1905, § 9218; Pen. C. 1877, § 609; R. C. 1899, § 7474.]

Threat to injure business unless money is paid as crime of extortion. 15 L.R.A. (N.S.) 718.

As to similar provision in Cal. Pen. Code, § 519, see *People v. Choynski*, 95 Cal. 640, 30 Pac. 791.

§ 9945. 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. [R. C. 1905, § 9219; Pen. C. 1877, § 610; R. C. 1899, § 7475.]

§ 9946. 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. [R. C. 1905, § 220; Pen. C. 1877, § 611; R. C. 1899, § 7476.]

§ 9947. 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. [R. C. 1905, § 9221; Pen. C. 1877, § 612; R. C. 1899, § 7477.]

§ 9948. 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 9944, is punishable in the same manner as if such money or property were actually obtained by means of such threat. [R. C. 1905, § 9222; Pen. C. 1877, § 613; R. C. 1899, § 7478.]

§ 9949. Attempts to extort money. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section 9944, to extort money or other property from another, is guilty of a misdemeanor. [R. C. 1905, § 9223; Pen. C. 1877, § 614; R. C. 1899, § 7479.]

CHAPTER 65.

POOLS AND TRUSTS.

§ 9950. Pools and trusts. Penalty. Any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of, or a party to any pool, trust, agreement, contract, combination, confederation or individual, to regulate or fix the price of any article of merchandise, commodity or property,

or to fix or limit the amount or quantity of any article, property, merchandise or commodity to be manufactured, mined, produced, exchanged or sold in this state, shall be guilty of a misdemeanor. [1907, ch. 259, § 1; R. C. 1905, § 9225; 1890, ch. 174, § 1; R. C. 1895, § 7481.]

Relation of contract or combination to interstate commerce which will bring it within federal anti-trust act. 10 L.R.A.(N.S.) 268.

§ 9951. Defining pools and trusts. A pool or 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 property, 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 property, 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 property, article or commodity shall be covered up or made to appear to be for the original vendor, for a like purpose or purposes.
4. To make or enter into 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 property, 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 property, 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. [1907, ch. 259, § 2; R. C. 1905, § 9229.]

Illegal trusts under modern anti-trust laws. 64 L.R.A. 689.

Combinations which constitute unlawful trusts. 74 Am. St. Rep. 235.

Contracts in restraint of trade. 7 Am. Dec. 743.

Contracts in partial restraint of trade as affected by modern anti-trust acts. 9 L.R.A.(N.S.) 446.

Combination among produce buyers as monopoly. 12 L.R.A.(N.S.) 150.

—among farmers or stock raisers. 44 L.R.A.(N.S.) 1104.

Corner as violation of anti-trust or monopoly act. 44 L.R.A.(N.S.) 325.

Who may raise objection that anti-trust laws involve unconstitutional discrimination. 32 L.R.A.(N.S.) 958.

Legality, under modern anti-trust acts, of combinations or agreements which restrict the class of persons to whom commodities shall be sold, or from whom they shall be bought. 5 L.R.A.(N.S.) 136.

—of combination among insurance underwriters. 24 L.R.A.(N.S.) 153; 33 L.R.A.(N.S.) 459.

—of sale to promote monopoly. 12 L.R.A.(N.S.) 600.

—of contract giving one an exclusive right to handle goods in a given locality. 9 L.R.A.(N.S.) 501.

—of contract provision for control of price on resale. 27 L.R.A.(N.S.) 396.

—of agreement among banks to prevent competition for deposits of public money. 14 L.R.A.(N.S.) 1052.

—of contracts between telephone companies for exclusive connections. 45 L.R.A.(N.S.) 465.

Is combination to control the price of labor or other personal service per se a violation of statute against trusts and monopolies. 23 L.R.A.(N.S.) 1260.

Forbidding the sale of a commodity in a particular locality at a lower rate than elsewhere for the purpose of stifling competition. 42 L.R.A.(N.S.) 804.

Forbidding the payment of a higher price for a commodity in a particular community than elsewhere for the purpose of stifling competition. 42 L.R.A.(N.S.) 821.

Combination of dealers as giving right of action, where no statutory provision there-

for exists, to merchant who cannot obtain goods because of such combination. 7 L.R.A.(N.S.) 976.

§ 9952. Punishment of corporations. Every corporation, whether organized under the laws of this state or any other state or country, doing business in this state, and every person, partnership or association of individuals so doing business, violating any of the provisions of this chapter, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars. [1907, ch. 259, § 3; R. C. 1905, § 9226; 1890, ch. 173, § 3; R. C. 1895, § 7482.]

§ 9953. Punishment of corporate officers. Every person who as president, manager, director, stockholder, receiver or agent or other employe of any corporation, on behalf of such corporation mentioned in the last section, or as a member of any partnership or association of individuals, violates any of the provisions of this chapter, upon conviction, shall be fined not to exceed two thousand dollars, or imprisoned in the county jail not to exceed one year, and, in the discretion of the court, a sentence of both fine and imprisonment may be imposed. [1907, ch. 259, § 4; R. C. 1905, § 9227; 1890, ch. 174, § 3; R. C. 1895, § 7483.]

§ 9954. Foreign or domestic corporations violating, prohibited from doing business in the state. Every domestic or foreign corporation authorized to do business in this state, which shall have been found guilty in any court of competent jurisdiction of violating any of the provisions of this chapter, is hereby denied the right of and prohibited from doing business in this state, and the charter, articles of incorporation or authority granted, authorizing such corporation to do business in this state, shall cease and become void, and it shall become the duty of the secretary of state, upon the filing in his office of a certified copy of such judgment, to immediately cancel the authorization or charter of such corporation and give such corporation written notice of such cancellation. [1907, ch. 259, § 5; R. C. 1905, § 9232.]

§ 9955. 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 is a member of, acted with or in pursuance to it, without giving its name or description, or how or where it was created. [1907, ch. 259, § 6; R. C. 1905, § 9235.]

§ 9956. 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, and proof that any person has been acting as agent of any defendant in transacting the business of such defendant in this state, or, while agent of such defendant and in the name, behalf or interest of such defendant, violated any of the provisions of this chapter, shall constitute prima facie proof that the same was the act of such defendant. [1907, ch. 259, § 7; R. C. 1905, § 9236.]

§ 9957. 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. [1907, ch. 259, § 8; R. C. 1905, § 9237.]

Agreements collateral to contracts forming illegal combinations. 11 L.R.A.(N.S.) 368; 30 L.R.A.(N.S.) 580; 41 L.R.A.(N.S.) 1034.

May a person not a party to an agreement, who is injured thereby in his business, assail the validity thereof, on the ground that it tends to create or promote a monopoly. 26 L.R.A.(N.S.) 148.

§ 9958. Purchaser not liable. No purchaser of any property, article or other commodity from any individual, company, association of individuals or corporation transacting business contrary to any provision of the preceding sections of this chapter, shall be liable for the price or payment of such property, article or commodity, and may plead this chapter as a defense in any suit for such price or payment. [1907, ch. 259, § 9; R. C. 1905, § 9239.]

§ 9959. Taking testimony. Whenever any proceeding shall have been commenced in any court of competent jurisdiction in this state by the attorney-general against any corporation or corporations, individual or individuals, or association of individuals, copartnership or joint stock company or other association, under any of the provisions of this chapter, and the attorney-general desires to take the testimony of any officer, director, agent or employe of any such corporation, individual, copartnership, joint stock company or association proceeded against, or any member or employe thereof in any court in which said action may be pending, or before any person duly authorized by any court to take testimony in any such action and such individual or individuals whose testimony is desired are without the jurisdiction of the courts of this state or reside without the state of North Dakota, or cannot be found within this state, then in such case, the attorney-general may file in the court in which said action is pending, in term time or in vacation, or with any judge thereof or with any person duly authorized to take the testimony in such action, an application in writing, stating therein the name or names of the persons or individuals whose testimony he desires to take, and the time when and place where he desires the said person to appear and testify, and thereupon the court in which said action is pending, or a judge thereof, or the person before whom testimony is being taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record, if any, in said cause appearing for any such defendant or defendants or to any defendant, agent, officer or employe of any such defendant or defendants who are parties to said action, notifying said defendant, attorney or attorneys of record for such defendant or other officer, agent or employe of any such party defendant that the testimony of the person or persons named in the application of the attorney-general is desired and requiring such persons named to appear at the time and place therein stated then and there to testify in said action, and requiring said defendant, attorney or attorneys of record for any such defendant or such officer, agent or employe of any such defendant to whom said notice is delivered, or upon whom the same is served, to have said officer, agent, employe or representative of such defendant or defendants named in such notice whose evidence it is desired to take, at the place named in said notice and at the time therein fixed, then and there to testify; provided, however, that such notice shall always allow the persons required to testify such reasonable time for travel to the designated point where such testimony is required to be given as will, in the judgment of the court, be sufficient to permit the person cited to appear, to be present at the time and place designated in such notice; provided, also, that such time shall in no case be less than ten days from the service of said notice. Such notice may be served by any person authorized by law to serve a subpoena. [1907, ch. 259, § 10.]

Attorney-general has right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 13 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 9960. Failing to testify. Whenever any defendant, attorney or attorneys of record, or any agent, officer or employe of any such party defendant shall have been notified as provided in the preceding section to require any officer, agent, director or other employe to attend before any court or other person authorized to take the testimony as therein provided, shall fail to appear and testify or fail to produce such books, papers or documents as he or they shall have been ordered to produce by the court or the person authorized to take said evidence, then it shall be the duty of the court before whom said action is pending, upon motion of the attorney-general, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by any such party defendant whose officer, agent, director or employe has neglected or failed to attend or testify or to produce any such book, papers or documents as he or they shall have been ordered

to produce in said action by the court or the person authorized to take such testimony, and said court, upon motion of the attorney-general, shall render judgment by default against any such defendant. In case any officer, agent, employe, director or other representative of any such defendant as herein-before mentioned, who shall reside in or be found within this state, shall be subpoenaed to appear and testify in any suit or proceeding brought under the provisions of this chapter, or to produce such papers, books and documents as shall have been ordered produced by the court, or other person authorized to take such testimony, then the answer, motion, demurrer or other pleading then or thereafter filed by any such defendant shall, on motion of the attorney-general, be stricken out and judgment in said cause rendered as on default. [1907, ch. 259, § 11.]

§ 9961. Injunction. The court in which any action or suit is brought under the provisions of this chapter shall, upon the relation of the attorney-general, made either at the time of the beginning of said suit or at any time thereafter during its pendency, issue an injunction enjoining any defendant, agents or other employes of any such defendant from selling or assigning or in any other manner disposing of or secreting any of the property or assets of such defendant then situated in this state during the pendency of such suit and enjoining the removal of any such assets or other property from the jurisdiction of this state or the courts thereof; provided, however, that such injunction shall, on motion of any such defendant, be dissolved, upon the filing of a bond in an amount to be approved by the court, conditioned that the defendant shall pay any judgment, fine and costs finally entered against the defendant in the action or proceeding in which such bond is filed. [1907, ch. 259, § 12.]

§ 9962. Judgment. Judgment for fine and costs shall be entered in the same manner as in civil cases, and shall be enforced in like manner. [1907, ch. 259, § 13.]

§ 9963. Attorney fees. In addition to the penalties and costs provided for in this chapter, the court shall allow in any action brought under the provisions of this chapter, a reasonable attorneys' fee, to be assessed as part of the costs of said action, which attorney's fee, so assessed, shall go to the attorney-general or state's attorney who conducted the prosecution, and shall be retained by such attorney-general or state's attorney as additional compensation to that otherwise allowed by the laws of this state as such attorney-general's or state's attorney's salary. [1907, ch. 259, § 14.]

CHAPTER 66.

FALSE PERSONATIONS AND CHEATS.

§ 9964. 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. [R. C. 1905, § 9242; Pen. C. 1877, § 615; R. C. 1899, § 7485.]

§ 9965. 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. [R. C. 1905, § 9243; Pen. C. 1877, § 616; R. C. 1899, § 7486.]

§ 9966. 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. [R. C. 1905, § 9244; Pen. C. 1877, § 617; R. C. 1899, § 7487.]

§ 9967. Wearing badges prohibited, when, penalty. Any person who willfully wears the badge or button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or the badge or button of Spanish War Veterans, or the Sons of Veterans, or of any society, order or organization of five years' standing in the state of North Dakota, or uses the same to obtain assistance within the state, or willfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, 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. [1907, ch. 39, § 1; R. C. 1905, § 9245; 1887, ch. 187, §§ 1, 2; R. C. 1895, § 7488.]

Right to prohibit wearing of badge of society by nonmember. 24 L.R.A.(N.S.) 795.

§ 9968. 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. [R. C. 1905, § 9246; 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.

Fraud is complete when person deceived by false pretenses parts with his property. *State v. Merry*, 20 N. D. 337, 127 N. W. 83.

As to similar provision in Cal. Pen. Code, § 532, see *Ex parte Neustadt*, 82 Cal. 273, 23 Pac. 124; *People v. Cummings*, 114 Cal. 437, 46 Pac. 284; *People v. Bryant*, 119 Cal. 595, 51 Pac. 960; *People v. Campbell*, 127 Cal. 278, 59 Pac. 593; *People v. Gordon*, 133 Cal. 328, 85 Am. St. Rep. 174, 65 Pac. 746; *People v. Howard*, 135 Cal. 266, 87 Pac. 148; *People v. Wynn*, 140 Cal. 661, 74 Pac. 144.

§ 9969. 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. [R. C. 1905, § 9247; Pen. C. 1877, § 619; R. C. 1899, § 7490.]

Obtaining money as a charity by false representations. 24 L.R.A.(N.S.) 575.

§ 9970. Punishment for certain false pretenses. If the false token by which any money or property is obtained, in violation of sections 9968 and 9969, 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. [R. C. 1905, § 9248; Pen. C. 1877, § 620; R. C. 1899, § 7491.]

§ 9971. 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. [R. C. 1905, § 9249; Pen. C. 1877, § 621; R. C. 1899, § 7492.]

Obtaining property by check with intent to stop payment as false pretense. 41 L.R.A.(N.S.) 170.

Giving post-dated check as false pretense. 41 L.R.A.(N.S.) 173.

§ 9972. 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. [R. C. 1905, § 9250; Pen. C. 1877, § 622; R. C. 1899, § 7493.]

CHAPTER 67.

SECURING TRANSPORTATION OR ADVANCEMENTS FRAUDULENTLY.

§ 9973. Fraud by employe in securing transportation or advancements. Every employe who, with intent to defraud, shall accept or receive transportation provided by or at the instance or expense of his employer, from any point in this state to or in the direction of the place where he has contracted to perform labor for or render services to such employer, or who shall knowingly or with intent to defraud accept or receive the benefit of any other pecuniary advancements made by or at the instance and cost of his employer under an agreement on the part of such employe to perform labor or render services in repayment of the cost of such transportation or of such other benefits shall be deemed and adjudged [guilty] of a misdemeanor if he shall neglect or refuse to render services or perform labor of an equal value to the full amount paid for such transportation or other benefits, or shall neglect or refuse to pay such employer in money the amount paid therefor. The value of the services to be rendered or labor to be performed shall be determined by the price agreed to be paid therefor by such employer under his contract with the employe. The failure or refusal of any such employe to perform such labor or to render such services in accordance with his contract or to pay in money the amount paid for such transportation or other benefits shall be prima facie evidence of his intent to defraud. [1907, ch. 208, § 1.]

§ 9974. Penalty. Every person found guilty of such misdemeanor shall be punished by a fine not exceeding twenty-five dollars and by imprisonment of not less than ten nor more than sixty days. [1907, ch. 208, § 2.]

CHAPTER 68.

SALE OF PNEUMATIC RUBBER TIRES UNMARKED.

§ 9975. **Rubber tires and casings to be marked.** No person shall sell, or offer for sale, any rubber tires or casings for use on motor vehicles unless the name of the manufacturer and the year in which the same was made are conspicuously and permanently marked thereon in raised type cast with the tire or casing. Provided, that this act shall not become operative until January first, 1914. [1913, ch. 284, § 1.]

§ 9976. **Violation a misdemeanor.** Any person who violates any of the provisions of this act shall be guilty of a misdemeanor. [1913, ch. 284, § 2.]

CHAPTER 69.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 9977. **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. [R. C. 1905, § 9251; Pen. C. 1877, § 623; R. C. 1899, § 7494.]

§ 9978. **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. [R. C. 1905, § 9252; Pen. C. 1877, § 624; R. C. 1899, § 7495.]

§ 9979. **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. [R. C. 1905, § 9253; Pen. C. 1877, § 625; R. C. 1899, § 7496.]

§ 9980. **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. [R. C. 1905, § 9254; Pen. C. 1877, § 626; R. C. 1899, § 7497.]

CHAPTER 70.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 9981. **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. [R. C. 1905 § 9255; Pen. C. 1877, § 627; R. C. 1899, § 7498.]

Arson in setting fire to one's own building to injure insurer. 32 L.R.A. 648.

As to similar provision in Cal. Pen. Code, § 548, see *People v. Fong Hong*, 120 Cal. 685, 53 Pac. 265.

§ 9982. 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. [R. C. 1905, § 9256; Pen. C. 1877, § 628; R. C. 1899, § 7499.]

CHAPTER 71.

FALSE WEIGHTS AND MEASURES.

§ 9983. 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. [R. C. 1905, § 9257; Pen. C. 1877, § 629; R. C. 1899, § 7500.]

Validity of sale by false weights and measures. 12 L.R.A.(N.S.) 599.

§ 9984. 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. [R. C. 1905, § 9258; Pen. C. 1877, § 630; R. C. 1899, § 7501.]

§ 9985. Officer may seize same. Every person who is authorized or enjoined by law to arrest another person for a violation of sections 9983 and 9984, 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. [R. C. 1905, § 9259; Pen. C. 1877, § 631; R. C. 1899, § 7502.]

§ 9986. 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. [R. C. 1905, § 9260; Pen. C. 1877, § 632; R. C. 1899, § 7503.]

§ 9987. 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. [R. C. 1905, § 9261; Pen. C. 1877, § 633; R. C. 1899, § 7504.]

§ 9988. 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. [R. C. 1905, § 9262; Pen. C. 1877, § 634; R. C. 1899, § 7505.]

CHAPTER 72.

FALSE AND MISLEADING ADVERTISING.

§ 9989. False and misleading advertising prohibited. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of foods, drugs, medicines, merchandise, securities, service, paints, varnishes, oils, clothing, wearing apparel, machinery or anything offered by such person, firm or corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof or to induce the public in any manner to enter into any obligation relating thereto or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tag, label or letter, or in any other way, an advertisement of any sort regarding foods, drugs, medicines, patent and proprietary products, merchandise, securities, service, medical treatment, paints, varnishes, oils, clothing, wearing apparel, machinery or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor. [1913, ch. 3, § 1.]

§ 9990. Powers and duties of officers as to enforcement of law prohibiting false and misleading advertising. It shall be the duty of the state's attorneys, sheriffs, police officers, health officers and the food commissioners to enforce the provisions of this statute, and for the purpose thereof they shall have ingress and egress to all places of business where it is believed that violations of this statute, hereinbefore defined, are being made. Grand juries and state's attorneys shall have full inquisitorial powers over offenses committed under this act, and state's attorneys shall make investigations and prosecutions when proper evidence is furnished to them. [1913, ch. 3, § 2.]

§ 9991. Penalty for false and misleading advertising. Any person, firm, corporation or association violating the provisions of this statute, or who aids another to violate the same, shall be guilty of a misdemeanor, and on conviction shall be fined not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars for the first offense and for each subsequent offense shall be fined not less than one hundred (\$100.00) dollars, or sixty (60) days in jail, or both, at the discretion of the court. [1913, ch. 3, § 3.]

CHAPTER 73.

ILLEGAL BRANDING OF STOCK.

§ 9992. 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. [R. C. 1905, § 9263; 1897, ch. 70; R. C. 1899, § 7506.]

§ 9993. 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. [R. C. 1905, § 9264; 1891, ch. 42, § 2; R. C. 1895, § 7507.]

§ 9994. 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. [R. C. 1905, § 9265; 1891, ch. 42, § 3; R. C. 1895, § 7508.]

§ 9995. Unlawfully 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. [R. C. 1905, § 9266; 1891, ch. 41, § 1; R. C. 1895, § 7509.]

§ 9996. 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. [R. C. 1905, § 9267; 1897, ch. 41, § 1; R. C. 1895, § 7510.]

§ 9997. 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. [R. C. 1905, § 9268; 1899, ch. 37; R. C. 1899, § 7510a.]

§ 9998. 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. [R. C. 1905, § 9269; 1901, ch. 31.]

CHAPTER 74.

FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

§ 9999. 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. [R. C. 1905, § 9270; 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.

§ 10000. 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. [R. C. 1905, § 9271; Pen. C. 1877, § 636; R. C. 1899, § 7512.]

§ 10001. 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. [R. C. 1905, § 9272; Pen. C. 1877, § 637; R. C. 1899, § 7513.]

§ 10002. 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. [R. C. 1905, § 9273; Pen. C. 1877, § 638; R. C. 1899, § 7514.]

CHAPTER 75.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

§ 10003. **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. [R. C. 1905, § 9274; Pen. C. 1877, § 639; R. C. 1899, § 7515.]

§ 10004. **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. [R. C. 1905, § 9275; Pen. C. 1877, § 640; R. C. 1899, § 7516.]

§ 10005. **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. [R. C. 1905, § 9276; Pen. C. 1877, § 641; R. C. 1899, § 7517.]

§ 10006. **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. [R. C. 1905, § 9277; 1897, ch. 32; R. C. 1899, § 7518.]

§ 10007. **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. [R. C. 1905, § 9278; Pen. C. 1877, § 644; R. C. 1899, § 7519.]

§ 10008. **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. [R. C. 1905, § 9279; Pen. C. 1877, § 645; R. C. 1899, § 7520.]

§ 10009. **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. [R. C. 1905, § 9280; Pen. C. 1877, § 646; R. C. 1899, § 7521.]

§ 10010. **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. [R. C. 1905, § 9281; Pen. C. 1877, § 647; R. C. 1899, § 7522.]

§ 10011. **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. [R. C. 1905, § 9282; Pen. C. 1877, § 648; R. C. 1899, § 7523.]

§ 10012. **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. [R. C. 1905, § 9283; 1879, ch. 5, § 1; 1893, ch. 27, §§ 25, 26; R. C. 1895, § 7524.]

The word "insolvent" means present inability to pay depositors as banks usually do, and meet all liabilities as they become due in ordinary course of business. *State v. Stevens*, 16 S. D. 309, 92 N. W. 420.

When is a bank insolvent within statute making it an offense to receive further deposits. 20 L.R.A. (N.S.) 444.

§ 10013. **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. [R. C. 1905, § 9284; Pen. C. 1877, § 649; R. C. 1899, § 7525.]

As to similar provision in Cal. Pen. Code, § 563, see *People v. Palmer*, 53 Cal. 615; *People v. Leonard*, 103 Cal. 200, 37 Pac. 222.

§ 10014. **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. [R. C. 1905, § 9285; Pen. C. 1877, § 650; R. C. 1899, § 7526.]

As to similar provision in Cal. Pen. Code, § 564, see *People v. Cooper*, 53 Cal. 647.

§ 10015. **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 10004 and 10005, or willfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor. [R. C. 1905, § 9286; Pen. C. 1877, § 651; R. C. 1899, § 7527.]

§ 10016. **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. [R. C. 1905, § 9287; Pen. C. 1877, § 652; R. C. 1899, § 7528.]

§ 10017. **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. [R. C. 1905, § 9288; Pen. C. 1877, § 653; R. C. 1899, § 7529.]

§ 10018. **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. [R. C. 1905, § 9289; Pen. C. 1877, § 654; R. C. 1899, § 7530.]

§ 10019. **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. [R. C. 1905, § 9290; Pen. C. 1877, § 655; R. C. 1899, § 7531.]

§ 10020. **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. [R. C. 1905, § 9291; Pen. C. 1877, § 658; R. C. 1899, § 7532.]

§ 10021. **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. [R. C. 1905, § 9292; Pen. C. 1877, § 659; R. C. 1899, § 7533.]

§ 10022. **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. [R. C. 1905, § 9293; Pen. C. 1877, § 660; R. C. 1899, § 7534.]

§ 10023. **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. [R. C. 1905, § 9294; Pen. C. 1877, § 661; R. C. 1899, § 7535.]

§ 10024. **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. [R. C. 1905, § 9295; Pen. C. 1877, § 662; R. C. 1899, § 7536.]

CHAPTER 76.

REQUISITES OF STEAMBOAT TICKETS.

§ 10025. **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. [R. C. 1905, § 9296; Pen. C. 1877, § 671; R. C. 1899, § 7537.]

§ 10026. **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. [R. C. 1905, § 9297; Pen. C. 1877, § 672; R. C. 1899, § 7538.]

§ 10027. **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. [R. C. 1905, § 9298; Pen. C. 1877, § 673; R. C. 1899, § 7539.]

CHAPTER 77.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

§ 10028. **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. [R. C. 1905, § 9299; Pen. C. 1877, § 677; R. C. 1899, § 7540.]

§ 10029. 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. [R. C. 1905, § 9300; Pen. C. 1877, § 678; R. C. 1899, § 7541.]

§ 10030. 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. [R. C. 1905, § 9301; Pen. C. 1877, § 679; R. C. 1899, § 7542.]

§ 10031. Warehouse receipt. Duplicate. Every person mentioned in sections 10028 and 10029, 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. [R. C. 1905, § 9302; Pen. C. 1877, § 680; R. C. 1899, § 7543.]

§ 10032. Selling goods without consent of holder of bill of lading. Every person mentioned in sections 10028 and 10029, 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. [R. C. 1905, § 9303; Pen. C. 1877, § 681; R. C. 1899, § 7544.]

§ 10033. Bill of lading or receipt must be cancelled. Every person, such as mentioned in section 10029, 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 cancelled 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. [R. C. 1905, § 9304; Pen. C. 1877, § 682; R. C. 1899, § 7545.]

§ 10034. When last two sections do not apply. The last two sections do not apply when property is demanded by virtue of process of law. [R. C. 1905, § 9305; Pen. C. 1877, § 683; R. C. 1899, § 7546.]

CHAPTER 78.

MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES, TELEGRAPHS AND DITCHES.

§ 10035. **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. [R. C. 1905, § 9306; Pen. C. 1877, § 684; R. C. 1899, § 7547.]

§ 10036. **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. [R. C. 1905, § 9307; Pen. C. 1877, § 685; R. C. 1899, § 7548.]

§ 10037. **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. [R. C. 1905, § 9308; Pen. C. 1877, § 686; R. C. 1899, § 7549.]

§ 10038. **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. [R. C. 1905, § 9309; Pen. C. 1877, § 687; 1895, ch. 92, § 1; R. C. 1899, § 7550.]

To support verdict for damages there must be some evidence connecting defendant with the unlawful act. *Kunbert v. Angell*, 8 N. D. 198, 77 N. W. 1015; *Kunbert v. Angell*, 10 N. D. 59, 84 N. W. 579.

§ 10039. **Depositing glass on streets unlawful.** Any person who shall leave, throw or deposit upon the streets of any village or city or upon any public highway, glassware of any kind shall be deemed guilty of a misdemeanor. [1909, ch. 54, § 1.]

§ 10040. **Penalty.** Whoever violates the provisions of section 10039 shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars, nor less than ten dollars. [1909, ch. 54, § 2.]

§ 10041. **Injury to tollhouse or gate.** Every person who maliciously injures or destroys any tollhouse or turnpike gate is guilty of felony. [R. C. 1905, § 9310; Pen. C. 1877, § 688; R. C. 1899, § 7551.]

§ 10042. **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. [R. C. 1905, § 9311; Pen. C. 1877, § 689; R. C. 1899, § 7552.]

§ 10043. **Injuring electric wires misdemeanor.** Every person who willfully or maliciously takes down, removes, injures or obstructs any line of telegraph, telephone or electric wires or any part thereof, or appurtenances or

apparatus therewith connected, or severs any wire thereof, is guilty of a misdemeanor. [1907, ch. 247; R. C. 1905, § 9312; Pen. C. 1877, § 690; R. C. 1899, § 7553; 1903, ch. 197.]

As to similar provision in Cal. Pen. Code, § 591, see *Davis v. Pacific T. & T. Co.*, 127 Cal. 312, 57 Pac. 764, 59 Pac. 698.

§ 10044. **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. [R. C. 1905, § 9313; 1887, ch. 74, § 1; R. C. 1895, § 7554.]

§ 10045. **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 dollars, 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. [R. C. 1905, § 9314; 1887, ch. 74, § 2; R. C. 1895, § 7555.]

CHAPTER 79.

USE OF RAILROAD TRACKS FOR HIGHWAY PURPOSES.

§ 10046. **Unlawful. Exception.** It is hereby made unlawful for any person when riding or driving or leading any animal or animals, and whether the same be or be not attached to any vehicle or sleigh, to drive upon or use any railroad track in this state as a highway; provided, however, this section shall not apply to highway crossings over any line of railway in the state, nor to depot grounds, station grounds, nor switches and sidetracks intended for the use of shippers or the consignees of freight. [1907, ch. 206, § 1.]

§ 10047. **Penalty.** Any person violating the provisions of section 10046 shall be guilty of a misdemeanor. [1907, ch. 206, § 2.]

CHAPTER 80.

BLOCKING RAILROAD CROSSINGS.

§ 10048. **Unlawful to block or obstruct crossings.** Any railroad company, conductor, brakeman, engineer, switchman or other employe of any railroad company, in charge of or in control of any railroad car, cars, engines or train of cars, who shall, for a period of more than fifteen minutes at any one time, obstruct or block any railroad crossing or any rural highway or on any village or city street by placing thereon or permitting any car, cars, engines or train of cars to stand or remain stationary on any such crossings, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than ten dollars or more than fifty dollars for each offense. [1909, ch. 193, § 1.]

§ 10049. **Exception.** The provisions of section 10048 do not apply to cities, towns or villages that have or may have ordinances covering the same. [1909, ch. 193, § 2.]

CHAPTER 81.

MALICIOUS MISCHIEF.

§ 10050. Malicious mischief defined. Every person who maliciously injures, delays 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. [R. C. 1905, § 9315; Pen. C. 1877, § 691; R. C. 1899, § 7556.]

Act must be done for purpose of avenging some wrong sustained by accused to constitute malicious mischief. *State v. Tarlton*, 22 S. D. 495, 118 N. W. 706.

Treble damages not recoverable by possessor who is not owner for malicious injury to property. *Scott v. Trebilcock*, 21 S. D. 333, 112 N. W. 847.

Misdemeanor in sowing mustard seed in complaining witness' crops cannot be shown as motive for independent offense of poisoning his horses. *State v. Hakon*, 21 N. D. 133, 129 N. W. 234.

What constitutes malicious mischief. 32 Am. Dec. 662; 128 Am. St. Rep. 163.

Definition of "malice" as a requisite of offense of malicious mischief. 19 L.R.A. (N.S.) 273.

§ 10051. 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. [R. C. 1905, § 9316; Pen. C. 1877, § 692; R. C. 1899, § 7557.]

§ 10052. 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. [R. C. 1905, § 9317; Pen. C. 1877, § 693; R. C. 1899, § 7558.]

Indictment for exposing poison. *State v. Isaacson*, 8 S. D. 63, 65 N. W. 430.

Where statute mentions several things disjunctively as constituting one and same offense, all punishable alike, whole may be charged conjunctively in single count as constituting single offense. *State v. Tolley*, 23 N. D. 284, 136 N. W. 784.

As to similar provision in Cal. Pen. Code, § 596, see *People v. Keeley*, 81 Cal. 210, 22 Pac. 593.

§ 10053. 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. [R. C. 1905, § 9318; Pen. C. 1877, § 694; R. C. 1899, § 7559.]

As to similar provision in Cal. Pen. Code, § 597, see *Ex parte Mauch*, 134 Cal. 500, 66 Pac. 734.

§ 10054. 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 is punishable by imprisonment in the county jail not less than ten days and not exceeding thirty days or by a fine of not less than five dollars and not exceeding one hundred dollars, or by both such fine and imprisonment. Any officer finding any animal maltreated, abused or unsheltered in any of the manners heretofore specified shall cause the same to be released and properly cared for and the charges therefor shall be a first lien upon such animal to be collected as

in case of pledge. Provided, in case there exists of record any lien against such animal so taken it shall be the duty of the person holding such animal to notify the record holder of such lien of the taking of such animal and the amount of charges against the same, and unless said record lien holder pays the same within three days from the date of the service of such notice, then, in that case, and in case of the sale of such animal to pay the charges for keeping the same, title to such animal shall pass by such sale in the same manner as though no record lien existed against such animal. And it shall be the duty of all incorporated municipalities that are supplied with water in whole or in part by a system of water works, to provide suitable and sufficient number of watering troughs wherein water for stock shall be kept at all times between May first and October fifteenth 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 water troughs 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. [1911, ch. 2; R. C. 1905, § 9319; 1895, ch. 48, § 1; R. C. 1899, § 7560.]

Sufficient if there is an intention to injure animals. *Territory v. Crozier*, 6 D. 8, 50 N. W. 124.

Malice or willfulness as ingredient of the offense of abusing animals. 41 L.R.A.(N.S.) 433.

§ 10055. 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. [R. C. 1905, § 9320; 1891, ch. 55, § 2; R. C. 1895, § 7561.]

§ 10056. 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. [R. C. 1905, § 9321; Pen. C. 1877, § 696; R. C. 1899, § 7562.]

§ 10057. 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. [R. C. 1905, § 9322; 1891, ch. 55, § 3; R. C. 1895, § 7563.]

§ 10058. 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. [R. C. 1905, § 9323; Pen. C. 1877, § 698; 1885, ch. 111, § 2; R. C. 1895, § 7564.]

§ 10059. 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. [R. C. 1905, § 9324; Pen. C. 1877, § 699; R. C. 1899, § 7565.]

§ 10060. **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. [R. C. 1905, § 9325; Pen. C. 1877, § 700; R. C. 1899, § 7566.]

§ 10061. **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. [R. C. 1905, § 9326; Pen. C. 1877, § 701; R. C. 1899, § 7567.]

As to similar provision in Cal. Pen. Code, § 601, see *In re Mitchell*, 1 Cal. App. 396, 82 Pac. 347.

§ 10062. **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. [R. C. 1905, § 9327; Pen. C. 1877, § 702; R. C. 1899, § 7568.]

§ 10063. **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. [R. C. 1905, § 9328; Pen. C. 1877, § 703; 1879. ch. 42, § 1; R. C. 1895, § 7569; 1905, ch. 133.]

As to similar provision in Cal. Pen. Code, § 602, see *Bernstein v. Downs*, 112 Cal. 197, 44 Pac. 557.

§ 10064. 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. [R. C. 1905, § 9329; Pen. C. 1877, § 704; R. C. 1899, § 7570.]

§ 10065. 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. [R. C. 1905, § 9330; Pen. C. 1877, § 705; R. C. 1899, § 7571.]

§ 10066. 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. [R. C. 1905, § 9331; Pen. C. 1877, § 706; R. C. 1899, § 7572.]

§ 10067. 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. [R. C. 1905, § 9332; Pen. C. 1877, § 707; R. C. 1899, § 7573.]

§ 10068. 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. [R. C. 1905, § 9333; Pen. C. 1877, § 708; R. C. 1899, § 7574.]

§ 10069. 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. [R. C. 1905, § 9334; Pen. C. 1877, § 709; R. C. 1899, § 7575.]

§ 10070. 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. [R. C. 1905, § 9335; Pen. C. 1877, § 710; R. C. 1899, § 7576.]

§ 10071. **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. [R. C. 1905, § 9336; Pen. C. 1877, § 711; R. C. 1899, § 7577.]

As to similar provision in Cal. Pen. Code, § 607, see *People v. Tisdale*, 57 Cal. 104.

§ 10072. **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. [R. C. 1905, § 9337; Pen. C. 1877, § 712; R. C. 1899, § 7578.]

§ 10073. **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. [R. C. 1905, § 9338; Pen. C. 1877, § 713; R. C. 1899, § 7579.]

§ 10074. **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. [R. C. 1905, § 9339; Pen. C. 1877, § 714; R. C. 1899, § 7580.]

§ 10075. **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. [R. C. 1905, § 9340; Pen. C. 1877, § 715; R. C. 1899, § 7581.]

§ 10076. **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. [R. C. 1905, § 9341; Pen. C. 1877, § 716; R. C. 1899, § 7582.]

§ 10077. **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. [R. C. 1905, § 9342; Pen. C. 1877, § 717; R. C. 1899, § 7583.]

As to similar provision in Cal. Pen. Code, § 618, see *Greene v. Murdock*, 1 Cal. App. 136, 51 Pac. 993.

§ 10078. **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. [R. C. 1905, § 9343; Pen. C. 1877, § 718; 1883, ch. 109, § 1; R. C. 1899, § 7584.]

§ 10079. **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. [R. C. 1905, § 9344; Pen. C. 1877, § 719; R. C. 1899, § 7585.]

§ 10080. 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. [R. C. 1905, § 9345; Pen. C. 1877, § 720; R. C. 1899, § 7586.]

§ 10081. 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. [R. C. 1905, § 9346; Pen. C. 1877, § 721; R. C. 1899, § 7587.]

§ 10082. 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. [R. C. 1905, § 9347; Pen. C. 1877, § 722; R. C. 1899, § 7588.]

§ 10083. 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. [R. C. 1905, § 9348; 1895, ch. 62, § 1; R. C. 1899, § 7589.]

§ 10084. 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. [R. C. 1905, § 9349; 1895, ch. 62, § 2; R. C. 1899, § 7590.]

Sufficiency of information for embezzlement. *State v. Laechelt*, 18 N. D. 88, 118 N. W. 240.

Information for rape sufficient without the word "ravish." *State v. Hayes*, 17 S. D. 128, 95 N. W. 296.

§ 10085. 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. [R. C. 1905, § 9350; 1895, ch. 62, § 3; R. C. 1899, § 7591.]

§ 10086. How value determined. Whenever one or more persons have committed any acts of malicious trespass, as provided in section 10083, 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. [R. C. 1905, § 9351; 1895, ch. 62, § 4; R. C. 1899, § 7592.]

§ 10087. 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 10083, 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. [R. C. 1905, § 9352; 1899, ch. 61; R. C. 1899, § 7592a.]

CHAPTER 82.

CLOSING OF FENCE GATES ON FARMS.

§ 10088. Gates to be closed. No person or persons opening a gate or bars in a fence inclosing farm premises shall leave such gate or bars open, unless such person or persons shall be in lawful possession of such premises; provided, that at such gate or bars there shall be posted a notice requesting such closure, and stating that a failure so to do is in violation of law. [1913, ch. 165, § 1.]

§ 10089. Posted notices. No one other than the person or persons in lawful possession of such premises shall remove, destroy or deface such posted notice. [1913, ch. 165, § 2.]

§ 10090. Private roads. Nothing contained in this act shall in any way at any time change a private road through inclosed farm premises to a public road; and no provision of this act shall take from the person or persons in lawful possession of such premises the right to close such private road through their premises. [1913, ch. 165, § 3.]

§ 10091. Penalty. Anyone violating the provisions of this chapter shall, upon conviction, be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), and shall, in addition to such fine, be liable for any damages that may result because of live stock entering or escaping through such open gate or bars. [1913, ch. 165, § 4.]

CHAPTER 83.

PROHIBITION, UNLAWFUL DEALING IN INTOXICATING LIQUORS.

§ 10092. 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. [R. C. 1905, § 9353; 1890, ch. 110, § 1; R. C. 1899, § 7593.]

As to what constitutes unlawful sale of beer. *State v. Nelson*, 14 N. D. 297, 103 N. W. 609.

If time and place of former conviction and court wherein it was had are definitely stated it will be held good allegation of former conviction. *State v. Bloomdale*, 21 N. D. 77, 123 N. W. 682.

Information charging that between certain dates, at place described, defendant sold intoxicating liquors to persons resorting to said described place is sufficient. *State v. Stevens*, 19 N. D. 249, 123 N. W. 888.

Information charging keeping of place where forbidden acts are committed is sufficient, where prosecution for maintaining nuisance is only against person. *State v. Ball*, 19 N. D. 782, 123 N. W. 826.

Information for violation of these sections is sufficient if it charges keeping of place where forbidden acts are committed if prosecution is only against the person. *State v. Kruse*, 19 N. D. 203, 124 N. W. 385.

Regulation or prohibition of sales of liquor by the state. 35 Am. Dec. 331.

Constitutional right to prohibit sale of intoxicating liquor. 15 L.R.A.(N.S.) 908.

Any liquor containing alcohol or the alcoholic principle or other intoxicating quality when declared by legislature to be intoxicating liquor will be so regarded by courts. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Criminal responsibility of lessor of place for illegal sale of intoxicating liquor. 44 L.R.A.(N.S.) 864.

§ 10093. Druggist's permit, how obtained. It shall be unlawful for any person or persons to sell or barter, for medical, scientific, sacramental or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having procured a druggist's permit therefor from the district judge of the judicial district wherein such druggist may be doing business at the time; and such district judge is hereby authorized in his discretion to grant a druggist permit for a 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 district, 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 act, the applicant shall file in the office of the clerk of the district court of the county wherein he is doing business, not less than thirty days prior to the hearing thereof, a petition signed by the applicant. 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 fixtures, a stock of drugs and druggist's 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; provided, that permits may be granted to any pharmacist possessing all the qualifications herein set forth who owns in his own right in any partnership, association or corporation, if in a city, an amount of interest or capital stock of at least two thousand dollars and if elsewhere of the value of at least fifteen hundred dollars and who is the manager and in actual personal charge of the business of such partnership or corporation at the place of its retail business, and who in addition to his responsibility as a partner or stockholder, shall become personally and individually responsible for all sales in the same manner and to the same extent that he would if he owned said business in person, and; provided, that such applicant must have been engaged in business as a druggist at the place designated in said petition for a period of at least six months next preceding the making of the application for such permit, and; provided, that only one permit shall be granted or issued to the same person. [1909, ch. 183, § 1;

R. C. 1905, § 9354; 1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

As to lawful possession of liquors by druggists. *State ex rel. Kelly v. McMaster*, 13 N. D. 58, 99 N. W. 58.

Druggist's permit must be for particular place petitioned for. *State v. Hilliard*, 10 N. D. 436, 87 N. W. 980.

Druggist maintaining nuisance may be enjoined. *State v. McGruer*, 9 N. D. 566, 84 N. W. 363.

§ 10094. Hearing. Application to be published. When said petition is filed, the judge of the district court shall fix a time and place for hearing the same, at the county seat, which shall be at a regular or special term of the district court in said county, unless for satisfactory reasons the judge shall order another time for such hearing. 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 the 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 statements in such petition are true, the district judge may in his discretion grant a permit to the applicant to sell intoxicating liquors for medical, mechanical, scientific, and wine for sacramental purposes only; and such permit shall be recorded upon the journal of the district court, and a certified copy thereof shall be posted in a conspicuous place in the store wherein such business is carried on before it shall be of any validity. The proofs offered to show the applicant entitled to a permit must be clear, specific, satisfactory and of such a character as to leave in the mind of the judge no hesitation or substantial doubts as to their truth, and the burden of producing such proof shall always be upon the applicant. [1909, ch. 183, § 2; R. C. 1905, § 9355; 1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

Statute is not unconstitutional merely because it imposes administrative duties upon district judges. *Kermott v. Bagley*, 19 N. D. 345, 124 N. W. 397.

§ 10095. Bond and oath of applicant. Revocation of permit. 1. Before such permit shall be of any validity such druggist shall file with the clerk of the district court an oath or affirmation to the effect that he will support and defend the constitution of the United States and of the state of North Dakota, and that he will fully obey all the provisions of this chapter. All certificates and returns made by him shall be deemed made under the sanctity of this oath or affirmation; and shall also file with said clerk, to be approved by the judge, 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 said bond on surety bond, conditioned that such applicant and any one in his employ will neither issue, sell, barter or give away any intoxicating liquors in violation of the law, and on violation of any provisions of said bond the same shall thereby become forfeited in the full amount thereof; and the conviction of said pharmacist or any one in his employ shall be deemed prima facie evidence of such violation. From the decision of such district judge there shall be no appeal.

2. If at any time there shall be filed with the district 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 either the attorney-general, his assistant, the state's attorney or three reputable men who reside in the town, village, township or city in

which the business of said druggist is carried on, requesting that the permit of such druggist be canceled, the district judge shall immediately issue an order citing such druggist to appear before him on a day named, not less than ten nor more than sixty days from the date of issuing such order, at which time the question of cancellation of such permit shall be considered. Such proceedings shall be entitled in the name of the state of North Dakota against the party whose permit it is sought to cancel; they shall be special and judicial in their nature and triable before the court as actions are now tried without a jury. Appeals to the supreme court shall be allowed, provided notice thereof in writing be given within ten days from the date of notice of the entry of judgment. Pending such appeal the judgment of the court shall not be stayed. [1909, ch. 183, § 3; R. C. 1905, § 9356; 1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

§ 10096. Penalties. Fees. If any district 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 a 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 nor more than one thousand dollars. Before the petition of a druggist for a permit to sell intoxicating liquors shall be heard by the district judge the applicant shall pay a fee of five dollars to the clerk of the district court, 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. All permits now in force shall expire July first, 1909; provided, that if any person, then having an unexpired permit, in good faith and at least thirty days prior to July first, 1909, has made application for another permit under the provisions of this chapter, his permit shall remain in full force until such time as the judge shall pass upon such application, at which time all rights under such former permit shall cease. [1909, ch. 103, § 4; R. C. 1905, § 9357; 1890, ch. 110, § 2; 1895, ch. 72, § 1; R. C. 1899, § 7594; 1903, ch. 82, § 1; 1905, ch. 98, § 1.]

§ 10097. Cases of emergency. Any physician who is lawfully and regularly engaged in the practice of his profession as a business, and who, in case of emergency and actual need, shall deem any intoxicating liquors necessary for the health of his patients, may give such patient a written or printed prescription therefor, not exceeding one pint in quantity, 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 emergency and actual need, and any physician giving such prescription shall insert therein the true date of its issue, and no such prescription shall be filled except on date given, or the following day, and shall not be refilled, and shall be retained on file for the period of two years by the druggist filling the same; provided, that such emergency shall not be construed to allow a pharmacist to fill such prescription unless he holds a druggist permit; nor does it allow the physician to sell such liquor to his patient unless he has a druggist permit so to do. 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 dollars nor more than eight hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months. [1909, ch. 183, § 5; R. C. 1905, § 9358; 1890, ch. 110, § 3; R. C. 1899, § 7595.]

§ 10098. Regulating druggist sales. Affidavits. 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 medical 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 name of street must be given; if in a town or village the name of street must be given; if in the country, the section, township and range;) county of, state of, that 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 foregoing application and acknowledged to me that he executed the same.

....., Pharmacist.

[1909, ch. 183, § 6; R. C. 1905, § 9359; 1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

The required record of sales competent evidence in prosecutions against druggist. State v. Donovan, 10 N. D. 203, 86 N. W. 709. Druggists 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, 55 Am. St. Rep. 834.

§ 10099. Sales for mechanical, scientific and sacramental purposes. 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 purposes 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 the city, name of the street must be given, and if in a town or village, the name of the street must be given; if in the country, the 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, a druggist, for said liquor.

....., Applicant.

Subscribed in my presence and sworn to before me, this day of, 19....

State of North Dakota, county of, ss.:

On this day of, in the year, before me personally appeared, known to me to be (or proved to me on oath of), to be the person who is described in and who executed the foregoing application and acknowledged to me that he executed the same. [1909, ch. 183, § 7; R. C. 1905, § 9360; 1890, ch. 110, § 4; R. C. 1899, § 7396; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 10100. Quantity limited. Blanks. There shall be but one sale and one delivery of not to exceed one-half 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, any of the intoxicating liquors purchased by affidavit or otherwise; provided, such druggist shall be permitted to sell any of the liquors mentioned herein, to any other druggist within the state holding a permit as provided in this chapter or to public or charity hospitals or to medical or pharmaceutical colleges. The affidavits provided for in sections 10098 and 10099 shall be made before the pharmacist or assistant pharmacist making sale of such liquors, upon proper 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 the same with his official seal, and to keep two exact printed copies, except as to numbers, of the blanks of each series, one of which shall be filed in his office and one in the office of the clerk of the district court; he shall also keep a record of the series, and of the number of each series, of such blanks furnished to each druggist, file a copy thereof, together with a copy of the blank affidavits, in the office of the clerk of the district court 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. [1909, ch. 183, § 8; R. C. 1905, § 9361; 1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 10101. 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 contained [mentioned] are all intoxicating liquors sold by him during the month, except liquors sold to other druggists, returned intact and filed in the office of the clerk of the district court of the county where the permit was issued, where they shall be safely kept for the period of two years from the date of filing. Before said affidavits shall be received or filed by said clerk of the district court he shall make strict examination of the copies of affidavits and records 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 clerk 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 clerk of the district court an affidavit setting forth the amounts and kinds of liquors, as near as can be done, which such person or firm of which he is a member has on hand 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 date on which such liquors were purchased or procured. [1909, ch. 183, § 9; R. C. 1905, § 9362; 1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 10102. Fees. Disposition of. For each series of affidavits filed under the provisions of this chapter, the clerk of the district court shall collect one dollar and fifty cents from the druggists 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 clerk of the district court shall receive no fees for his services under this chapter. [1911, ch. 98; 1909, ch. 183, § 10; R. C. 1905, § 9363; 1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 10103. 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 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, and kind and quantity of liquors 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. [1909, ch. 183, § 11; R. C. 1905, § 9364; 1890, ch. 110, § 4; R. C. 1899, § 7596; 1903, ch. 82, § 2; 1905, ch. 98, § 2.]

§ 10104. 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 copy 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 affidavit 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 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. [1909, ch. 183, § 12; R. C. 1905, § 9365; 1890, ch. 110, § 5; R. C. 1899, § 7597.]

§ 10105. Intoxicating liquors defined. The following liquors are hereby declared to be intoxicating and their intoxicating quality shall by all courts be presumed, viz.: All spirituous, malt, fermented and vinous liquors (except unfermented grape juice in hermetically sealed bottles), alcohol, whiskey, rum, brandy, beer, ale, porter, wine, hard cider and malt, or mixtures thereof, by whatsoever name called, or any liquor that will produce intoxication of any degree, or any liquor 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, dormal seed, extract of logwood, salts of zinc, copper or lead, alum or any of its compound, methyl alcohol or its derivatives, 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. [1911, ch. 231, § 1; 1909, ch. 187; 1907, ch. 191; R. C. 1905, § 9366; 1897, ch. 96; R. C. 1899, § 7598.]

Construction of section is governed by provisions of section 9201, Rev. Codes. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Chapter is not repugnant to section 61 of state constitution for the reason that subject of act is not expressed in title. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Judicial notice as to beer being an intoxicating liquor. *State v. Currie*, 8 N. D. 545, 80 N. W. 475; *State v. Brewing Co.*, 5 S. D. 39, 58 N. W. 1, 26 L.R.A. 138; *State v. Church*, 6 S. D. 89, 60 N. W. 143.

"Intoxicating liquors" includes only liquors or liquids "that will produce intoxication." *State v. Virgo*, 14 N. D. 293, 103 N. W. 610.

Whether sale of liquids is made as medicine or beverage under statute is question for jury. *State v. Williams*, 14 N. D. 411, 104 N. W. 546.

Is proof of sale of "beer" or "lager beer" sufficient to sustain a conviction for unlawful sale of vinous, malt, fermented or intoxicating liquors. 7 L.R.A.(N.S.) 195; 25 L.R.A.(N.S.) 446; 48 L.R.A.(N.S.) 308.

Judicial notice of intoxicating character of beverages. 20 L.R.A. 648.

—of intoxicating character of mixed drink. 19 L.R.A.(N.S.) 848.

Right of jurors to act on their own knowledge as to intoxicating liquors. 31 L.R.A. 496.

What liquors are within statutory restrictions as to sale of "spirituous," "vinous," "fermented" and other intoxicating liquors. 20 L.R.A. 645.

Do statutes forbidding the sale of a certain class of liquor include nonintoxicating liquor. 20 L.R.A.(N.S.) 1146; 26 L.R.A.(N.S.) 895; 46 L.R.A.(N.S.) 759.

§ 10106. Hard cider defined. Hard cider within the meaning of this chapter is any liquid sold under the name of cider, or the juice of any fruit or berry or mixture thereof, or liquor purporting to be the juice of any fruit or berry, which shall contain more than one per cent of alcohol or shall be proved to be intoxicating. [1911, ch. 231, § 2.]

§ 10107. 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. [R. C. 1905, § 9367; 1890, ch. 110, § 8; R. C. 1899, § 7600.]

§ 10108. 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 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. [R. C. 1905, § 9368; 1890, ch. 110, § 9; R. C. 1899, § 7601.]

Presumed that state's attorney had sufficient evidence when information filed. *State v. Brennan*, 2 S. D. 384, 50 N. W. 625.

Verification on information and belief; when sufficient. *State v. Rozum*, 8 N. D. 548, 80 N. W. 477.

On section as conferring judicial powers upon state's attorney. *State v. Stevens*, 19 N. D. 249, 123 N. W. 888.

§ 10109. 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. [R. C. 1905, § 9369; 1890, ch. 110, § 10; R. C. 1899, § 7602.]

§ 10110. 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. [R. C. 1905, § 9370; 1890, ch. 110, § 11; R. C. 1899, § 7603.]

§ 10111. 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. [R. C. 1905, § 9371; 1890, ch. 110, § 12; R. C. 1895, § 7604.]

County not required to pay warrants on liquor fund out of other fund. *Loomis v. Brown County*, 15 S. D. 606, 91 N. W. 309.

Failure of state's attorney to prosecute violations of this law a misdemeanor involving moral turpitude. *Re Simpson*, 9 N. D. 379, 83 N. W. 541.

§ 10112. 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. [R. C. 1905, § 9372; 1890, ch. 110, § 12; R. C. 1895, § 7604.]

Act of state's attorney in gambling in public place on roulette wheel and not prosecuting keeper is misdemeanor authorizing disbarment. *Re Voss*, 11 N. D. 540, 90 N. W. 15.

Attorney-general must enforce prohibition statute. *State v. Heiser*, 20 N. D. 357, 127 N. W. 72.

On right of attorney-general to appear before grand jury in matters relating to enforcement of prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, *Ann. Cas.* 1912D, 935.

§ 10113. Peace officers seize with or without warrant. Whenever any peace officer of the state of North Dakota has reasonable grounds to believe that intoxicating liquor has been imported into the state of North Dakota for the purpose of sale as a beverage in violation of law, and that such liquor so imported is then stored at or in any place in any city, town, village, township or county in the jurisdiction of such peace officer, it is hereby made his duty to seize such liquor with or without a warrant, and if seized without a warrant, to invoice and keep the same in his custody until finally disposed of as hereinafter provided. [1907, ch. 188, § 1.]

§ 10114. Procedure where seizure is made without warrant. Whenever any liquor has been seized without a warrant, as provided in section 10113, the officer so seizing shall immediately invoice the same, and file a copy of such invoice with some police magistrate or justice of the peace within the county in which the seizure was made, and at the same time file with such magistrate his information on oath setting out the fact of such seizure, a description of the place from which said property was taken, the name of the owner of the liquor seized, if known to him, if not, the name of the person in whose possession it was found, if known, and stating that to the best knowledge, information and belief of the informant, the liquor seized was unlawfully imported into this state with intent to be sold herein as a beverage, and praying judgment that the liquor so seized be destroyed as now provided by law in cases of seizure under section 10108. Thereupon, it shall be the duty of the magistrate or justice of the peace before whom such information is filed to cause notice to be served upon the owner of any such liquor seized, if known, or upon the person in whose possession it was found, if known, or upon the agent of any such owner, if known, informing such owner, agent or person in whose possession it was found of the seizure, and that such seizure was made on the grounds that the liquor so seized had been imported into this state in violation of the prohibitory law for the purpose of being sold as a beverage, and fixing a date for the hearing and trial not more than thirty days or less than ten days after the service of such notice. If at the trial it shall be found that the liquor so seized was imported into this state in violation of the law, the court shall order the destruction thereof in the

manner now provided by law in seizures under search warrants, and the officer making such seizure and carrying out the orders of such court shall be entitled to the same fee as for service of a search warrant under the provisions of chapter 65, revised codes of 1905. [1907, ch. 188, § 2.]

"Chapter 65, Revised Codes of 1905," to which this section refers, consists of R. C. 1905, §§ 9353-9395, and these sections, so far as they remain in force, some of them having also been amended, are comprised in sections 10092-10145 in this compilation.

§ 10115. Unusual quantity presumptive evidence. Proof of the finding of such intoxicating liquors stored in unusual quantities shall be presumptive evidence that such liquor was imported for such purpose in violation of law. [1907, ch. 188, § 3.]

§ 10116. Duty of magistrate and state's attorney. Any magistrate or justice of the peace with whom the information has been filed as herein provided, shall immediately notify the state's attorney of his county of the filing of such information, and thereupon it shall be the duty of said state's attorney to make careful investigation of the facts, and if it shall reasonably appear that such liquor was imported into this state in violation of law, and the person causing the same to be imported or importing the same is within the state, he shall cause the arrest and prosecution of such person under the provisions of chapter 65, revised codes of 1905. [1907, ch. 188, § 4.]

As to "chapter 65, Revised Codes of 1905," referred in this section, see the note to section 10114.

§ 10117. 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 cancelled 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. [R. C. 1905, § 9373; 1890, ch. 110, § 13; R. C. 1895, § 7605.]

Keeping of place where liquor is sold in violation of law constitutes the offense under this section. *State v. Kruse*, 19 N. D. 203, 124 N. W. 385.

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 v. Fraser*, 1 N. D. 425, 48 N. W. 343; *State v. Dellaire*, 4 N. D. 312, 60 N. W. 988; *State 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 v. Masscy*, 10 N. D. 154, 86 N. W. 225; *State v. Markuson*, 5 N. D. 147, 64 N. W. 934.

Conviction for maintaining nuisance. *State v. Thoenke*, 11 N. D. 386, 92 N. W. 480.

Sufficiency of indictment for maintaining common nuisance. *State v. Erickson*, 14 N. D. 139, 103 N. W. 389.

The offense is keeping of place where the forbidden acts are committed. *State v. Thoenke*, 11 N. D. 386, 92 N. W. 480.

Sale of patent medicine, containing alcohol, as medicine by storekeeper in good faith, is not unlawful. *State v. Williams*, 14 N. D. 411, 104 N. W. 546.

"Place" means particular building or apartment where liquor is unlawfully sold or kept. *State v. Poull*, 14 N. D. 557, 105 N. W. 717.

Proceeding in rem alone against liquors unlawfully kept is not authorized. *State ex rel. Kelly v. McMaster*, 13 N. D. 58, 99 N. W. 58.

As to right to injunction on complaint alone in action for abatement of liquor nuisance. *State ex rel. Register v. Patterson*, 13 N. D. 70, 99 N. W. 67.

Complaint for abatement of liquor nuisance must particularly describe nuisance. *State v. Hildeisen*, 20 N. D. 62, 126 N. W. 489.

It is discretionary with trial court whether building in which tenant maintained nuisance by selling liquors therein, of which owner had knowledge, shall be turned over to owner after it has been closed by proceedings under this section. *State ex rel. Heffron v. Bleth*, 21 N. D. 27, 127 N. W. 1043.

Lien for fines and costs is enforceable on premises on which nuisance is unlawfully maintained, where use is knowingly permitted by owner. *Larson v. Christianson*, 14 N. D. 476, 106 N. W. 51.

Habeas corpus to review judgment of state court in criminal case, on ground that right under federal constitution has been denied, refused, proper remedy being writ of error. *Markuson v. Boucher*, 175 U. S. 184, 44 L. ed. 124, 20 Sup. Ct. Rep. 76.

Right of private citizen to destroy liquor illegally kept for sale. 26 L.R.A.(N.S.) 996.

§ 10118. 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 10110 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. [R. C. 1905, § 9374; 1890, ch. 110, § 13; R. C. 1895, § 7605.]

As to necessity of affidavit upon which attachment for contempt issues making prima facie case for state. *State ex rel. Harvey v. Newton*, 16 N. D. 151, 112 N. W. 52, 14 A. & E. Ann. Cas. 1035.

Sufficiency of affidavit to authorize court to issue search warrant. *State ex rel. Register v. McGahey*, 12 N. D. 535, 97 N. W. 865, 1 A. & E. Ann. Cas. 650.

Court may impose costs in addition to fine in enforcement of prohibition law. *State v. Heiser*, 20 N. D. 357, 127 N. W. 72.

§ 10119. **Contents of affidavit. Search warrant.** If any person shall make an affidavit before any person entitled to administer an oath, setting forth the fact that to the personal knowledge of the person making the affidavit that intoxicating liquors of any kind are being kept or are present upon certain premises, particularly describing such premises, and further stating that affiant verily believes that such intoxicating liquors are in unusual

quantities, or are kept upon said premises for the purpose of barter and sale for use as a beverage contrary to law, and further stating the name of the person or persons keeping said intoxicating liquor or having such intoxicating liquor under their control, if known to affiant, and if unknown, stating the fact, and further stating the name of the person or persons who are in possession and control of the said premises, to the best knowledge, information and belief of affiant, and said affidavit setting forth the foregoing facts shall be filed with any justice of the peace, police magistrate or other magistrate having jurisdiction, together with the affidavit of the state's attorney that to the best of his knowledge, information and belief the facts set forth in such affidavit are true and which said affidavit of the state's attorney shall further request the said magistrate to issue a search warrant against said premises, said magistrate shall issue a search warrant directed to the proper officer, commanding him to search the premises described in the above affidavit, and to seize all intoxicating liquors, and all vessels or bottles containing the same or which shall have been used for the reception of intoxicating liquors of any kind, and take the same into his custody, to abide the further order of the court. [1907, ch. 190.]

§ 10120. 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. [R. C. 1905, § 9375; 1890, ch. 110, § 14; R. C. 1899, § 7606.]

§ 10121. 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. [R. C. 1905, § 9376; 1890, ch. 110, § 15; R. C. 1899, § 7607.]

Liability of sellers of liquor for acts of persons becoming intoxicated. 86 Am. St. Rep. 449.

Right of action in the absence of a civil damage act for injury or death following unlawful sale of liquor. 44 L.R.A.(N.S.) 299.

Civil remedies arising from sale or gift of intoxicating liquors. 25 Am. Rep. 362.

Actions for injuries to relatives under civil damage laws. 48 Am. Dec. 625.

Liability of sureties under civil damage act where sales causing injury were not confined to the period covered by their bonds. 25 L.R.A.(N.S.) 585.

Wife's right of action at common law against one selling liquor to husband. 40 L.R.A.(N.S.) 360.

Necessity to sustain a recovery under civil damage act that the intoxication be the proximate cause of the injury. 13 L.R.A.(N.S.) 1158.

Competency of wife to testify as to misconduct of husband in action under civil damage act. 39 L.R.A.(N.S.) 316.

As to similar provision in Cal. Pen. Code, § 307, see *In re Fic*, 73 Cal. 142, 14 Pac. 405.

§ 10122. 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 re-

ceived 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. [R. C. 1905, § 9377; 1890, ch. 110, § 16; R. C. 1899, § 7608.]

§ 10123. 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. [R. C. 1905, § 9378; 1890, ch. 110, § 17; R. C. 1899, § 7609.]

§ 10124. 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. [R. C. 1905, § 9379; 1890, ch. 110, § 18; R. C. 1899, § 7610.]

Sentence of imprisonment for two hundred days for nonpayment of fine is excessive. *State v. Wisnewski*, 13 N. D. 649, 102 N. W. 883, 3 A. & E. Ann. Cas. 907.

Judgment for maintaining liquor nuisance is presumptively lien upon property occupied by judgment debtor. *State v. Ildvedsen*, 20 N. D. 62, 126 N. W. 489.

Judgment, which, in addition to providing for imprisonment, imposes fine and costs, and adjudges that in default of payment additional imprisonment exceeding six months shall be inflicted, is erroneous. *State v. Stevens*, 19 N. D. 249, 123 N. W. 888.

§ 10125. 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. [R. C. 1905, § 9380; 1890, ch. 110, § 19; R. C. 1899, § 7611.]

§ 10126. 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. [R. C. 1905, § 9381; 1890, ch. 110, § 20; R. C. 1899, § 7612.]

§ 10127. 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. [R. C. 1905, § 9382; 1890, ch. 110, § 21; R. C. 1899, § 7613.]

§ 10128. 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 dependencies 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. [R. C. 1905, § 9383; 1890, ch. 110, § 22; R. C. 1899, § 7614.]

State's attorney may file information giving description of place where nuisance was maintained, where accused was held over from justice court. *State v. O'Neal*, 19 N. D. 426, 124 N. W. 68.

Instruction in words of statute declaring law is proper when applicable to the facts. *State v. Otrej*, 22 N. D. 128, 132 N. W. 367.

Presumption arising from finding of intoxicating liquor in possession of person

charged with illegal traffic is to be considered as circumstance or element of case. *State v. Kelly*, 22 N. D. 5, 132 N. W. 223, Ann. Cas. 1913E, 974.

Finding of liquor in defendant's possession is not presumptive evidence that same was to be unlawfully sold in action to abate nuisance. *State ex rel. Kelly v. Nelson*, 13 N. D. 122, 99 N. W. 1077.

"Prima facie evidence" as used in statute means competent and legally sufficient evidence. *State v. Momberg*, 14 N. D. 291, 103 N. W. 566.

Sufficiency of information description on which to base abatement proceedings after conviction under liquor law. *State v. Poull*, 14 N. D. 557, 105 N. W. 717.

As to sufficiency of information for nuisance. *State v. Wisniewski*, 13 N. D. 649, 102 N. W. 883, 3 A. & E. Ann. Cas. 907.

Immunity from prosecution is not granted. *Re Beer*, 17 N. D. 184, 115 N. W. 672, 17 A. & E. Ann. Cas. 126.

Judgment for maintaining liquor nuisance is presumptively lien upon property occupied by judgment debtor. *State v. Ildvedsen*, 20 N. D. 62, 126 N. W. 489.

§ 10129. 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. [R. C. 1905, § 9384; 1890, ch. 110, § 23; R. C. 1899, § 7615.]

§ 10130. 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. [R. C. 1905, § 9385; 1890, ch. 110, § 24; R. C. 1899, § 7616.]

§ 10131. 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. [R. C. 1905, § 9386; 1890, ch. 110, § 25; R. C. 1899, § 7617.]

§ 10132. Soliciting orders for liquors unlawful. It is hereby declared to be unlawful for any person to solicit or procure from, or to aid in soliciting or procuring from, any person within this state, not a person holding a permit authorizing the sale of intoxicating liquors, any order, direction or instruction providing for the delivery, purchase or sale, either within or without the state of North Dakota, to be used as a beverage therein, within the meaning of chapter 65 of the revised codes, any spirituous, malt, vinous, fermented or other intoxicating liquors. [1909, ch. 186, § 1.]

As to what constitutes "chapter 65 of the Revised Codes" to which this section refers, see note to section 10114.

§ 10132a. Penalty. Any person violating the provisions of section 10132 shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a 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 every succeeding offense shall be deemed guilty of a felony, and be punished by imprisonment in the penitentiary not exceeding two years. [1909, ch. 186, § 2.]

§ 10133. Unlawful to advertise. It is hereby declared to be unlawful for any person, firm or corporation, to publish or circulate advertising matter,

send out or have within this state, or by any means to advertise for the purchase or the sale of intoxicating liquors. [1909, ch. 185, § 1.]

§ 10134. Penalty. Any person, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than fifty dollars, or by imprisonment in the county jail for not less than ten days, nor more than thirty days. [1909, ch. 185, § 2.]

§ 10135. Owner of building liable. Penalty. If public officer, removed. Every owner, agent or other person, who, directly or indirectly, lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by the provisions of chapter 110 of the penal code of the revised codes of North Dakota of 1895, commonly known as the "prohibition law," or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor, and upon conviction thereof shall 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 in addition thereto, if such person be a public officer, he shall forfeit his right longer to hold such public office or offices, and the court before whom such conviction is had shall order and adjudge such forfeiture. [1907, ch. 193.]

There was no "chapter 110 of the penal code of the revised codes of North Dakota of 1895" to which this section refers. The reference is undoubtedly to Laws 1890, ch. 110, which constituted the greater part of chapter 63 of the penal code of R. C. 1895 and chapter 65 of the penal code of R. C. 1905, and as to the latter see the note to section 10114 herein.

§ 10136. 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. [R. C. 1905, § 9387; 1890, ch. 110, § 26; R. C. 1899, § 7618.]

Responsibility of carrier for transporting intoxicating liquors. 46 L.R.A. 417.

Ignorance of contents of package as defense to carrier in prosecution for transporting intoxicating liquor into prohibition territory. 18 L.R.A.(N.S.) 1182.

§ 10137. 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 10109. [R. C. 1905, § 9388; 1890, ch. 110, § 27; R. C. 1899, § 7619.]

§ 10138. 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. [R. C. 1905, § 9389; 1890, ch. 110, § 28; R. C. 1899, § 7620.]

§ 10139. 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. [R. C. 1905, § 9390; 1890, ch. 110, § 30; R. C. 1899, § 7621.]

Money is paid on illegal sales. *Oswald v. Moran*, 8 N. D. 111, 72 N. W. 281.

Statute cannot be invoked without pleading facts to bring case within provisions.

Frankel v. Hiller, 16 N. D. 387, 113 N. W. 1067, 15 A. & E. Ann. Cas. 265.

§ 10140. 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. [R. C. 1905, § 9391; Pen. C. 1877, § 724; R. C. 1899, § 7622.]

§ 10141. 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 such fine. [R. C. 1905, § 9392; Pen. C. 1877, § 725; 1895, ch. 75, § 1; R. C. 1895, § 7623.]

§ 10142. 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. [R. C. 1905, § 9393; Pen. C. 1877, § 727; R. C. 1899, § 7624.]

§ 10143. 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. [R. C. 1905, § 9394; Pen. C. 1877, § 729; R. C. 1899, § 7625.]

§ 10144. Bootlegging defined. Bootlegging is herewith made a crime. The person committing the crime of bootlegging may be designated a bootlegger. The crime of bootlegging within the meaning of this act [sections 10144 and 10145 herein] is committed by any person who sells or barter intoxicating liquors one or more times to one or more persons upon the public roads of this state, or upon the streets or alleys of any town, or incorporated village or city, or upon the right of way or in the buildings of any railroad or other common carrier, or upon the lands or in the buildings belonging to the state of North

Dakota or any of its political subdivisions, or upon the lands or in the buildings of any person, partnership or corporation without the permission of the owner of the person entitled to the possession of such lands or buildings. Any person who aids, assists or abets in the commission of said crime or receives any portion of the proceeds of such sales of intoxicating liquors shall be also held guilty of said crime. [1913, ch. 60 § 1.]

§ 10145. Penalty. Every person convicted of the crime of bootlegging shall for the first offense be punished by imprisonment in the penitentiary for not less than six months and not more than one year; and for the second and each successive offense shall be punished by imprisonment in the penitentiary for not less than one or more than two years. [1913, ch. 60, § 2.]

CHAPTER 84.

GOVERNMENT LIQUOR LICENSE.

This chapter consists of Laws 1907, ch. 189, section 1 thereof having been amended in 1909. Sections 2 and 3 of that chapter being sections 10148 and 10149 herein, were pronounced unconstitutional in *South Dakota ex rel. v. Hanson*, 215 U. S. 515, 30 S. Ct. 179, because they amount to the imposition of a direct burden upon the constitutional power of congress to tax. It is questionable whether any part of the chapter remains enforceable. However, as the court in *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460, expressly refrained from deciding whether or not section 8 of that chapter (section 10153 herein) is still in force, the entire chapter is here retained.

§ 10146. Liquor license. Tax receipt registered. Exception. Every receipt, stamp or license showing payment of the special tax levied under the laws of the United States upon the business of selling distilled, malt or fermented liquor, issued to or held by any person, firm or corporation in this state, shall be registered and published as in this act required; provided, however, that nothing in this act contained shall be so construed as to apply to registered pharmacists who are conducting a regularly established pharmacy in this state. [1909, ch. 182, § 1; 1907, ch. 189, § 1.]

§ 10147. Notice to be published. Contains what. Immediately upon posting or displaying the special tax receipt or license mentioned in section one of this chapter as required under government regulations, it shall be the duty of the person in whose name such tax receipt or license is issued, to cause to be published for three successive weeks in the official newspapers of the county and for the same period in the official newspaper of the city, if within an incorporated city, a notice which shall contain the following information: Name of person to whom the government tax receipt or license is issued; date of special tax receipt or license; description of property where said tax receipt or license is posted, and if within an incorporated city, the number of the lot and block and street number and setting forth specifically the room, building or place where said tax receipt or license is posted; the name of the owner and the name of the lessor of the property in which said tax receipt or license is posted. Upon discontinuance of business or removal of the special tax receipt or license mentioned in section one of this act to another building or place, a similar notice containing the information prescribed in this section, shall be published in the same manner as prescribed herein, and setting forth further the fact of removal, giving date and description of place to which such removal is made as fully as in the original notice. [1907, ch. 189, § 2.]

See note under title of this chapter.

List of special taxpayers furnished by internal revenue collector and filed in county auditor's office is not admissible in evidence as there is no authority for filing of such list. *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460.

§ 10148. Copy of receipt filed with auditor. It shall be the further duty of any person to whom a tax receipt or license from the government of the United States is issued, as mentioned in section 10146, to file a duly authenti-

cated copy of the same before or immediately upon posting, if in an incorporated city with the city auditor, otherwise with the county auditor of the county and pay a fee for the filing thereof of ten dollars, which fee shall be turned into the general fund of the city or county as the case may be. [1907, ch. 188, § 3.]

See note under title of this chapter.

§ 10149. Auditor publishes list of licenses. The city auditor, if in an incorporated city, or county auditor, if not within an incorporated city, shall be required to publish in the official newspaper of the city and each of the official newspapers of the county the first week in each month a list of all such tax receipts or licenses filed during the previous month, such notice to be published one week in each newspaper. [1907, ch. 189, § 4.]

§ 10150. Fees for publication. Copy posted. The fee for publication of notices required under this chapter shall be the same as allowed by law for publication of other legal notices and the publisher may require the fee for such publication to be paid in advance. Upon the expiration of the publication required by this chapter the publisher or manager of the newspaper in which said notice is published shall make an affidavit of publication with a copy of the advertisement attached thereto, [which] together with the copy of notice or advertisement referred to herein shall be posted and remain posted at all times with the tax receipt or license referred to in section 10146. [1907, ch. 189, § 5.]

§ 10151. Owner of premises must publish, when. Penalty for failure. In case the person to whom the tax receipt or license referred to in section 10146 shall be issued, shall fail to cause to be published the notice required by this chapter, it shall be the duty of the owner or lessor of the premises whereon or wherein the tax receipt or license from the government of the United States referred to in section 10146 shall be posted, to cause such advertisement to be published as in this chapter required, and if such owner or lessor shall knowingly fail to do so he shall be guilty of a misdemeanor. [1907, ch. 189, § 6.]

§ 10152. Duty of officers. It shall be the duty of every sheriff, deputy sheriff, constable, mayor, marshal, police judge and police officer of any city or town having knowledge of any violation 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 be guilty of a misdemeanor and upon conviction, in addition to the punishment therefor prescribed by law, shall forfeit his office. For 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. [1907, ch. 189, § 7.]

§ 10153. Duty of county auditor. It shall be the duty of the county auditor of each county to apply to the internal revenue department of the government of the United States the first week in each month for a list of all special tax receipts or licenses mentioned in section 10146 issued to persons within his county, naming the persons, date and places, and the same shall be immediately published one week in each of the official newspapers of the county and city. The cost of procuring such information, upon filing of a duly verified voucher, shall be paid by the county as other county expenses are paid. [1907, ch. 189, § 8.]

§ 10154. Penalty. Failure on the part of any person to comply with the provisions of this chapter shall constitute a misdemeanor. [1907, ch. 189, § 9.]

CHAPTER 85.

PURE LIQUOR LAW.

§ 10155. **Experiment station to enforce law.** The North Dakota government agricultural experiment station at Fargo is hereby charged with the enforcement of the provisions of this chapter and is hereby authorized to inspect and collect samples of the various beverages included under the provisions of this chapter and on sale in North Dakota or being shipped into the state at such times and places and to such extent as it may determine; and said station may appoint for the enforcement of the terms of this chapter such agent or agents as it may seem [deem] necessary, and such agent or agents as are duly authorized for this purpose shall have access, ingress and egress to all places of business, factories, farms, buildings, carriages, cars, vessels and containers used in the sale or transportation of the beverages named herein or products sold in imitation thereof. They shall have power and authority to open any package, container, or vessel containing such article which may be manufactured, shipped, sold or exposed for sale, in violation of this chapter. They may inspect the contents therein and may take samples therefrom for analysis. They shall have authority to prevent the sale or manufacture of products not complying with the provisions of this chapter. All clerks, bookkeepers, express agents, railroad officials, employes or common carriers shall render to them every assistance in their power when so requested in tracing, finding or discovering the presence of any prohibited article named in this chapter. [1909, ch. 189, § 1.]

§ 10156. **What is included.** For the purposes of this chapter there shall be included all fermented and spirituous liquors, malt liquors, wines, ciders and all so-called fruit "ades," imitation ciders and beverages under whatever name or description to be manufactured, sold or offered for sale and to be used as a beverage or a substitute for intoxicating liquors, also all bitters, tonics or other alcoholic preparations, where a license for the sale of the same is required under the rulings of the internal revenue department of the United States. [1909, ch. 189, § 2.]

§ 10157. **Beverages defined.** For the purposes of this chapter the following definitions shall be deemed as correctly defining the products named:

1. Whiskey is the product derived by distillation from the properly prepared and fermented mash of malted sound cereals, or sound cereals the starch of which has been hydrolyzed by malt and which distillate has been stored in wood under normal conditions for not less than four years, and it shall be labeled true to name.

2. Rum is the spirits made by the proper distillation from the clean, sound juice of the sugar-cane, the clean, sound massecurite made therefrom, clean, sound molasses massecurite, or any sound, clean, intermediate product, save sugar, properly fermented and which has been stored for not less than four years in wood under normal conditions for aging.

3. Brandy is the properly distilled spirit made from wine and stored in wood for not less than four years and kept under normal conditions during the process of aging.

4. Malt liquor or malt is a beverage made by the alcoholic fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains, decorticated and degerminated grains.

5. Beer is a malt liquor produced by bottom fermentation and lager beer is a beer stored in casks for a period of at least three months.

6. Malt beer is beer made of an infusion, in potable water of barley, malt and hops.

7. Ale is a malt liquor produced by top fermentation.

8. Porter and stout are varieties of malt liquors made in part from highly roasted malt.

9. Wine is the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, and the usual cellar treatment, fortified or unfortified when properly labeled to show its true character.

10. Cider is the product made by the normal alcoholic fermentation of apple juice and the usual cellar treatment without fortification.

11. The terms "compound whiskey," "rum," or "brandy" shall apply to the products composed of, or prepared from, neutral spirits and whiskey, with or without color and flavor.

12. The terms "imitation whiskey," "brandy" or "rum" shall apply to that product prepared from neutral spirits, with or without color and flavor.

13. Artificial "ades" and beverages shall include all the so-called "soft" drinks, when made from sound and harmless ingredients intended to be put upon the market or sold as a beverage either in keg, bottle or other containers. [1909, ch. 189, § 3.]

§ 10158. **How labeled.** There shall be shown on the face or main label, to be attached to each container, a statement showing the amount by measure, the alcoholic strength and the true name and address of the manufacturers. [1909, ch. 189, § 4.]

§ 10159. **Violations in labeling.** It shall be unlawful to sell, offer for sale, to manufacture, or to ship into the state any so-called compound, or imitation whiskey, brandy, rum, wine, or other imitation spirituous liquor, and any party violating this provision of the chapter shall, on conviction, be fined not less than two hundred and fifty dollars nor more than one thousand dollars for each offense, or confined for not less than six months nor more than one year in jail, or both, at the discretion of the court, and all such illegal products shall be seized and destroyed by order of the court. [1909, ch. 189, § 5.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A. (N.S.) 149.

§ 10160. **Penalty for violation.** Any person selling or offering for sale or having in his possession for sale or having stored for sale or distribution within the state any spirituous liquor or other beverage, as herein defined, without having first secured a license for the sale of the particular product mentioned, shall constitute a misdemeanor, and on conviction the person shall be fined not less than one thousand dollars, or not less than six months in jail, or both, at the discretion of the court. [1909, ch. 189, § 6.]

§ 10161. **License required.** Before any fermented, spirituous or malt liquors, wines, ciders, fruit-ades, imitation ciders, pops and beverages, as described in section 10157, to be used as beverage or medicine, is offered or exposed for sale in this state, the manufacturer, importer, or person causing the same to be sold, offered or exposed for sale, shall file with the North Dakota government agricultural experiment station at Fargo, during the month of December of each year, a certified copy setting forth the name of each and every brand, the class of the beverage bearing a distinctive name, brand or trademark, which manufacturer, importer or person has to sell, offer or expose for sale in this state during the calendar year next succeeding said application, and shall deposit with said station a pint sample of said product labeled in the manner prescribed by this chapter. The fees for each beverage and brand shall be as follows:

For one brand each of whiskey, rum or brandy.....	\$150.00
For each additional brand.....	75.00
For each brand of malt liquor.....	10.00
For each brand or class of wine.....	25.00
For each brand or class of cider.....	10.00
For each brand or class of artificial ades and other beverages.....	50.00
For each brand or class of pops.....	10.00

Providing always, that the placing of any new brand on the market at any time during the calendar year shall be preceded by the filing of such statement

and the depositing of such brands with the said station before the issuance of a license. Each manufacturer, importer, jobber or person who has complied with the provisions of this chapter and has paid the fees, as prescribed relative to the filing of the aforesaid certified statement and the depositing of a sample, in accordance with the provisions of this chapter, shall be entitled to receive a certificate from the director of said station setting forth said facts. The said director shall pay all moneys received for fees, as provided for in this chapter, to the treasurer of the North Dakota government agricultural experiment station, which treasurer, when said money is appropriated by the board of trustees of said station, shall pay all money or so much as may be necessary, to meet the expenses of enforcing this chapter. Said board of trustees shall report in full the expenditures incurred for salaries, laboratory expenses, chemical apparatus and supplies, traveling expenses, office help, attorney fees and printing. Whenever a manufacturer, importer, or jobber shall have filed a statement, as required by the provisions of this chapter, and paid the license fee as prescribed in this section, no other agent, seller or manufacturer, importer or jobber, shall be required to file such statement or pay such fee for the same brands. [1909, ch. 189, § 7.]

§ 10162. **Standards adopted.** In all the foregoing definitions the standards of purity, as adopted jointly by the association of state and national food and dairy departments and the association of official agricultural chemists, and at the time in force shall be the official standards. [1909, ch. 189, § 8.]

§ 10163. **Facts, how transmitted.** Whenever said station shall find by its analysis that adulterated, misbranded, insufficiently labeled, compound, or imitation spirituous liquors or beverages have been on sale in this state, it shall forthwith transmit the facts so found to the attorney-general and to the state's attorney of the county in which the product was found. [1909, ch. 189, § 9.]

§ 10164. **Certificates as evidence.** Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any spirituous or malt liquors or beverage, shall be presumptive evidence of the facts therein stated. [1909, ch. 189, § 10.]

§ 10165. **Duty of state's attorney.** It shall be the duty of the attorney-general and the state's attorney to prosecute all persons violating any of the provisions of this chapter when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 10163 and 10164. [1909, ch. 189, § 11.]

§ 10166. **What constitutes violation.** The doing of anything prohibited by this chapter shall be evidence of the violation of the provisions of this chapter relating to the things so prohibited, and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this chapter relative to the things so directed to be done, and any person who shall sell any unbroken package of spirituous liquors or beverages or any part thereof which has not been labeled as herein provided, shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than five hundred dollars, together with the costs of the suit in an action caused to be brought by the director of the North Dakota government agricultural experiment station, or his agent, in the name of the people of the state of North Dakota. [1909, ch. 189, § 12.]

§ 10167. **Station to make annual report.** The said station shall make an annual report to the governor upon the work done under this chapter and said report may be included in the report which said station is already authorized by law to make to the governor. Said station is further authorized to publish and distribute bulletins giving the results of such analysis and investigations as have been made under authority of this chapter, and the said station shall in these bulletins give the names and addresses of the manufacturers or jobbers,

the name of the retailer, when known, or the consignee, and the facts as brought out by the analysis or by other investigations. [1909, ch. 189, § 13.]

§ 10168. **No action in court.** No action shall be maintained in any court in the state on account of any sale or other contract made in violation of this chapter. [1909, ch. 189, § 14.]

§ 10169. **Payment of moneys into treasury.** All moneys received by the North Dakota government agricultural experiment station for the registration of beverages or of other products, or for the inspection of the same or any other products, shall be paid into the state treasury at the end of each month. [1911, ch. 133.]

CHAPTER 86.

USE OF INTOXICATING LIQUORS ON PASSENGER TRAINS.

§ 10170. **Public drinking of intoxicating liquors. Intoxication. Penalty.** Any person who shall publicly drink, or offer to another any intoxicating beverage upon any train carrying passengers, except in a buffet or dining car, or who shall be intoxicated upon any train operated upon any railroad in the state of North Dakota, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding fifty dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, in the discretion of the court. [1911, ch. 228, § 1.]

Regulating sale of intoxicants on vessels engaged in interstate commerce. 1
L.R.A. (N.S.) 639.

§ 10171. **Power and duty of conductor.** Police power is conferred hereby upon every conductor of a railroad company engaged in operating passenger trains upon any line of railway in North Dakota. It shall be the duty of every conductor while upon duty upon any train or car used for the conveyance of passengers, to arrest any person who shall in their presence or to their knowledge violate the provisions of section 10170, and to deliver him or them to any policeman, constable or other peace officer at any station where such officer may be found, and it shall be the duty of such officer to make complaint against said person or persons, and an information made upon information and belief of said officer shall be sufficient. [1911, ch. 228, § 2.]

§ 10172. **Jurisdiction of justice of the peace.** Any justice of the peace in any county through which any train carrying passengers shall pass on any division of any railroad within this state, shall have jurisdiction of said offense, in the county in which said offense is committed. [1911, ch. 228, § 3.]

§ 10173. **Duty of railroad company to post placard.** It shall be the duty of every railroad company operating passenger trains in North Dakota to post conspicuously in every passenger coach a placard inscribed: "Drinking or offering others intoxicating liquors upon this train prohibited by law." [1911, ch. 228, § 4.]

CHAPTER 87.

PROHIBITION IN PENAL AND CHARITABLE INSTITUTIONS.

§ 10174. **Introduction of liquors or drugs into penal or charitable institutions forbidden.** Every person, who shall take, send, or introduce any intoxicating liquor, narcotic, or other habit-forming drug of any kind into any of the buildings, or upon any of the premises of the state hospital for the insane, feeble-minded institute, school for deaf and dumb, school for the blind, reform school, state penitentiary, or other penal or charitable institutions of the state, or any county, city or village jail, or any other penal or

charitable institution of any county, city, or village of the state, except upon the express authority of the physician or chief executive officer of such institution, given in writing, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. [1913, ch. 224; 1911, ch. 229.]

CHAPTER 88.

DISPOSING OF LIQUORS AT PUBLIC OR PRIVATE SALE OF PROPERTY.

§ 10175. Giving or selling liquors at sales of property forbidden. Penalty. Any person, association, or corporation, or any auctioneer, who shall, at any public or private sale of property, either real, personal, or mixed, directly or indirectly in any manner give, sell, barter, or furnish, or aid, assist, or abet others in giving, selling, bartering or furnishing, or by any means whatsoever distributing to or among the persons assembled at such sale intoxicating liquors as a beverage, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), and by imprisonment in the county jail not less than ninety days, nor more than one year. [1911, ch. 230.]

CHAPTER 89.

INSPECTION OF FREIGHT AND EXPRESS BOOKS IN AID OF PROHIBITION LAW.

§ 10176. Who may inspect freight and express books and records. That all freight and express books and records of any railroad or express company doing business within this state shall be open to the inspection by the state's attorney of the various counties, and the attorney-general, or his assistants, wherein such railroad or express company maintains agents or stations during regular business hours for the purpose of inspection by the state's attorney, to aid in the enforcement of article 20, section 217, of the constitution of the state of North Dakota, and the statutes passed in support of said section, commonly known as the prohibition law. [1913, ch. 225.]

CHAPTER 90.

SELLING AND SMOKING OPIUM.

§ 10177. 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. [R. C. 1905, § 9396; 1885, ch. 121, § 5; R. C. 1895, § 7626.]

§ 10178. 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. [R. C. 1905, § 9397; 1885, ch. 121, §§ 2, 3, 4; R. C. 1895, § 7627.]

§ 10179. **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. [R. C. 1905, § 9398; 1885, ch. 121, § 6; R. C. 1895, § 7628.]

CHAPTER 91.

MANUFACTURE AND SALE OF SNUFF.

§ 10180. **Sale of snuff prohibited.** It shall be unlawful for any person, firm or corporation to import, manufacture, distribute, transport, sell, offer for sale, or to have in possession for sale, or to give away any snuff or any substitute therefor, under whatever name called, and as defined in this chapter. [1913, ch. 271, § 1; 1911, ch. 277, § 1.]

Held constitutional. *State v. Olson*, 26 N. D. 304, — L.R.A.(N.S.) —, 144 N. W. 661.

§ 10181. **Snuff defined.** For the purpose of this chapter, snuff is defined as any tobacco that has been fermented, or dried, or flavored, or pulverized, or cut, or scented, or otherwise treated, or any substitute therefor or imitation thereof, intended to be taken by the mouth, or nose. Provided, however, that ordinary plug, fine cut, or long cut chewing tobacco as now commonly known to the trade of this state, shall not be included in such definition. [1913, ch. 271, § 2; 1911, ch. 277, §§ 2, 3.]

§ 10182. **Officers to enforce.** It shall be the duty of the state's attorneys, sheriffs, police officers, health officers and the food commissioner to enforce the provisions of this statute, and for the purpose thereof they shall have ingress and egress to all places of business where it is believed that snuff, as hereinbefore defined, is kept in violation of this chapter. Grand juries and state's attorneys shall have full inquisitorial powers over offenses committed under this chapter, and state's attorneys shall make investigation and conduct prosecutions when proper evidence is furnished to them. [1913, ch. 271, § 3; 1911, ch. 277, § 4.]

§ 10183. **Penalty.** Any person or persons violating the provisions of this statute or who aids another to violate the same shall be guilty of a misdemeanor and on conviction shall be fined not less than five hundred dollars nor more than one thousand dollars for the first offense, and for each subsequent conviction shall be confined in jail for not less than six months. [1913, ch. 271, § 4; 1911, ch. 277, § 5.]

CHAPTER 92.

MANUFACTURE OR SALE OF CIGARETTES OR CIGARETTE PAPERS.

§ 10184. **Manufacture, sale and giving away of cigarettes, cigarette paper, prohibited.** That it shall be unlawful for any person, by himself, clerk, servant, employe or agent, directly or indirectly, upon any pretense or by any device, to manufacture, sell, exchange, barter, dispose of or give away, or keep for sale any cigarettes, cigarette paper or cigarette wrappers, or any paper made or prepared for the purpose of being filled with tobacco for smoking. [1913, ch. 69, § 1.]

§ 10185. **Penalty.** Any person violating any of the provisions of this act shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for a period of not more than thirty days, or by both such fine and imprisonment. [1913, ch. 69, § 2.]

CHAPTER 93.

SPECULATION IN OFFICE.

§ 10186. **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. [R. C. 1905, § 9399; 1890, ch. 117, §§ 1, 2; R. C. 1895, § 7629.]

§ 10187. **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. [R. C. 1905, § 9400; 1890, ch. 117, §§ 1, 2; R. C. 1895, § 7630.]

§ 10188. **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. [R. C. 1905, § 9401; 1890, ch. 117, §§ 1, 2; R. C. 1895, § 7631.]

§ 10189. **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. [R. C. 1905, § 9402; 1890, ch. 117, §§ 1, 2; R. C. 1895, § 7632.]

§ 10190. **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. 1905, § 9403; R. C. 1895, § 7633.]

§ 10191. **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. [R. C. 1905, § 9104; 1885, ch. 43, § 6; R. C. 1895, § 7634.]

CHAPTER 94.

ALLOWING STALLION, BULL OR RAM TO RUN AT LARGE.

§ 10192. 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. [R. C. 1905, § 9405; 1890, ch. 67, §§ 1, 2; R. C. 1895, § 7635.]

Right of municipality to prohibit the keeping, standing or exhibiting of stallion. 11 L.R.A.(N.S.) 736.

§ 10193. Exceptions. The provisions of the last section shall not be construed to include any stallion, jack, bull or ram kept in any herd. [R. C. 1905, § 9406; 1890, ch. 67, § 1; R. C. 1895, § 7636.]

§ 10194. 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. [R. C. 1905, § 9407; 1890, ch. 67, § 2; R. C. 1895, § 7637.]

§ 10195. 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. [R. C. 1905, § 9408; 1890, ch. 67, § 2; R. C. 1895, § 7638.]

CHAPTER 95.

ADULTERATED DAIRY PRODUCTS.

§ 10196. 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. [R. C. 1905, § 9409; 1895, ch. 49, § 1; R. C. 1899, § 7639.]

See sections 2856, 2857.

Validity of police regulations requiring labeling of food. 1 L.R.A.(N.S.) 184; 40 L.R.A.(N.S.) 875.

Applicability of oleomargarine statutes where resemblance to butter results from choice of ingredients, and not from the introduction of foreign coloring matter. 14 L.R.A.(N.S.) 1062.

Constitutionality of discrimination in statutory regulations concerning oleomargarine. 34 L.R.A.(N.S.) 651.

Ignorance that article furnished as butter is oleomargarine as a defense. 32 L.R.A.(N.S.) 746.

§ 10197. 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. [R. C. 1905, § 9410; 1895, ch. 49, § 2; R. C. 1899, § 7640.]

See sections 2857 and 2858.

§ 10198. 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. [R. C. 1905, § 9411; 1895, ch. 49, § 3; R. C. 1899, § 7641.]

See sections 2859 and 2860.

§ 10199. 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. [R. C. 1905, § 9412; 1895, ch. 49, § 4; R. C. 1899, § 7642.]

§ 10200. 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 substance, 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. [R. C. 1905, § 9413; 1895, ch. 49, § 5; R. C. 1899, § 7643.]

Power of legislature to enact prima facie rules of evidence for criminal cases. 2
L.R.A.(N.S.) 1007.

§ 10201. 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. [R. C. 1905, § 9414; 1895, ch. 49, § 6; R. C. 1899, § 7644.]

§ 10202. 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. [R. C. 1905, § 9415; 1895, ch. 49, § 7; R. C. 1899, § 7645.]

§ 10203. 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. [R. C. 1905, § 9416; 1895, ch. 49, § 9; R. C. 1899, § 7646.]

§ 10204. 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. [R. C. 1905, § 9417; 1895, ch. 49, § 10; R. C. 1899, § 7647.]

§ 10205. 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. [R. C. 1905, § 9418; 1895, ch. 49, § 8; R. C. 1899, § 7648.]

CHAPTER 96.

SELLING ADULTERATED AND UNWHOLESOME FOOD OR MEDICINE.

§ 10206. 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. [R. C. 1905, § 9419; 1885, ch. 64, § 1; R. C. 1895, § 7649.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A. (N.S.) 149.

Criminal liability for adulteration of food by servant, agent or partner. 41 L.R.A. 656.

§ 10207. 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. [R. C. 1905, § 9420; 1885, ch. 64, § 1; R. C. 1895, § 7650.]

§ 10208. **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. [R. C. 1905, § 9421; 1885, ch. 64, § 1; R. C. 1895, § 7651.]

§ 10209. **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 10207, 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. [R. C. 1905, § 9422; 1885, ch. 64, § 2; R. C. 1895, § 7652.]

CHAPTER 97.

SALE OF ADULTERATED INSECTICIDES AND FUNGICIDES.

§ 10210. **Manufacture or misbranding prohibited.** It shall be unlawful for any person to manufacture within the state of North Dakota any insecticide, paris green, lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this chapter. [1913, ch. 171, § 1.]

§ 10211. **Dealing in adulterated or misbranded insecticides forbidden.** Any person who shall offer for shipment or deliver from any point in the state of North Dakota, to any other point in the state of North Dakota, any insecticide, or paris green or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this chapter; or, any person who shall receive, or offer to receive, any insecticide, or paris green, or lead arsenate, or fungicide which is adulterated or misbranded within the meaning of this chapter, and having received, shall sell or deliver, or shall offer for sale or delivery, such adulterated or misbranded insecticide, or paris green or lead arsenate, or fungicide, shall be guilty of a violation of this chapter. [1913, ch. 171, § 2.]

Police regulations as to labeling of articles of commerce. 1 L.R.A.(N.S.) 184; 17 L.R.A.(N.S.) 684; 40 L.R.A.(N.S.) 875.

§ 10212. **What constitutes adulteration.** For the purpose of this chapter, an article shall be deemed to be "adulterated:"

In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble

forms equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic, equivalent to less than twelve and one-half per centum of arsenic oxide ($A s_2 o_6$); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide ($A s_2 o_6$); fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled "lead arsenate and water," the percentage of water being plainly and correctly stated on the label.

In the case of insecticides and fungicides other than paris green and lead arsenate: First, if its strength or purity falls five per cent or more below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended to use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, shall be injurious to such vegetation when used. [1913, ch. 171, § 3.]

§ 10213. "Misbranding" defined. The term "misbranded" as used herein shall apply to insecticides, paris green, lead arsenate or fungicide, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients of the substances contained therein which shall be false or misleading in any particular. [1913, ch. 171, § 3.]

§ 10214. Further definition of "misbranding." For the purpose of this chapter, an article shall be deemed to be "misbranded:"

In case of insecticides, paris green, lead arsenate and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser; or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and if the contents are not stated in terms of weight or measure and they are not plainly and correctly stated on the outside of the package.

In the case of insecticides other than paris green and lead arsenates and fungicides: First, if they contain arsenic in any of its combinations or in the elemental form and the total amount of arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label; provided, however, that in lieu of naming and stating the percentage amount of each and every inert ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amount of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. [1913, ch. 171, § 5.]

§ 10215. Duty of food commissioner. It shall be the duty of the food commissioner to collect from time to time specimens of insecticides, paris greens, lead arsenates and fungicides in unbroken original packages, manufactured or

offered for sale in the state of North Dakota, for the purpose of determining whether or not such insecticides, paris greens, lead arsenates and fungicides are adulterated or misbranded within the meaning of this chapter. [1913, ch. 171, § 6.]

§ 10216. Citizen may send suspected article to food commissioner. Duty of latter. When any citizen of the state has any reason to believe that any particular brand or lot of insecticide or paris green, or lead arsenate, or a fungicide is adulterated or misbranded within the meaning of this chapter, he may send or deliver to the food commissioner at Fargo an original unbroken package of the article in question. Upon receipt of such a questionable article it shall be the duty of the commissioner to examine or cause an investigation to be made, and, at his discretion, may cause chemical examinations of such questioned articles as hereinafter provided. [1913, ch. 171, § 7.]

§ 10217. Chemical analysis at instance of food commissioner. Upon the receipt of specimens of insecticides, paris green, lead arsenates and fungicides in unbroken original packages, as hereinbefore provided, the food commissioner of the experiment station shall make or cause to be made a chemical analysis of such specimens for the purpose of determining whether or not they comply with the requirements of this act; provided, that when the commissioner has information showing samples delivered to him for examination are out of lots of insecticides, paris greens, lead arsenates or fungicides that have already been examined a sufficient number of times to indicate whether or not they comply with the requirements of this chapter, then the commissioner may refuse to examine such lots and so notify the citizens of the state. [1913, ch. 171, § 8.]

§ 10218. Insecticide, paris green, lead arsenic and fungicide defined. The term "insecticide" as used in this chapter shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects, mites or ticks which may infest vegetation, man or other animals, or household, or be present in any environment whatsoever. The term "paris green" as used in this chapter shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this chapter shall include the product or products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" as used in this chapter shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever. [1913, ch. 171, § 9.]

§ 10219. When dealer protected from prosecution. No dealer shall be prosecuted under the provisions of this chapter when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the state of North Dakota from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of this chapter, designating it; said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach to the dealer under the provisions of this chapter. [1913, ch. 171, § 10.]

§ 10220. Proceeding against contraband articles. Any insecticide, paris green, lead arsenate or fungicide that is adulterated or misbranded within the meaning of this chapter and is being transported from one point within the state of North Dakota to another point within the state of North Dakota to be sold, wholly or in part, or having been transported, remains unloaded, unsold or in original unbroken packages, or if it be sold or offered for sale in the state of North Dakota, shall be liable to be proceeded against in any district court of the state of North Dakota. If any such article is condemned

as being adulterated or misbranded within the meaning of this chapter, the same shall be disposed of by destruction or by sale, as said court may direct; but such goods shall not be sold in any jurisdiction contrary to the provisions of this chapter or the laws of the jurisdiction; provided, however, that upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this chapter or the laws of this state, the court may by order direct that such articles be delivered to the owner thereof. [1913, ch. 171, § 11.]

§ 10221. **Penalty for violation of this chapter.** Any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five (\$25) dollars nor more than two hundred (\$200) dollars for the first offense, and upon conviction for each subsequent offense, be fined not less than fifty (\$50) dollars nor more than three hundred (\$300) dollars, or sentenced to imprisonment for not more than thirty days, in the discretion of the court. [1913, ch. 171, § 12.]

§ 10222. **"Person" as used herein defined.** The word "person" as used in this chapter shall be construed to include both the plural and the singular, as the case may be, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be an act, omission or failure of such corporation, company, society or association, as well as that of the other person. [1913, ch. 171, § 13.]

§ 10223. **Evidence of violation of this chapter.** What constitutes violation of the law. The doing of anything prohibited by this chapter shall be evidence of the violation of the provisions of this chapter relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this chapter relative to the things so directed to be done. [1913, ch. 171, § 14.]

Power of legislature to enact prima facie rules of evidence for criminal cases. 2 L.R.A.(N.S.) 1007.

§ 10224. **Repeal.** All acts and parts of acts in conflict herewith are hereby repealed, except the formaldehyde law, the same being chapter 7 (now sections 2926-2932) of the laws of North Dakota for 1905. [1913, ch. 171, § 15.]

Chapter 7 of the Laws of 1905, excepted from repeal by this section, constitutes sections 2926-2932 herein.

CHAPTER 98.

FOULING THE PUBLIC WATERS OF THIS STATE.

§ 10225. **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. [R. C. 1905, § 9423; 1881, ch. 103, § 1; 1883, ch. 70, § 1; 1889, ch. 129, § 1; R. C. 1895, § 7653.]

Statutory prohibition of pollution of water to protect fishery. 1 L.R.A.(N.S.) 752; 34 L.R.A.(N.S.) 286.

§ 10226. **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. [R. C. 1905, § 9424; 1889, ch. 129, § 1; 1893, ch. 37, § 1; R. C. 1895, § 7654.]

§ 10227. **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 10206, 10207 and 10225, 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. 1905, § 9425; 1881, ch. 103, § 2; 1883, ch. 70, § 3; 1889, ch. 129, § 5; R. C. 1895, § 7655.]

CHAPTER 99.

OBSTRUCTING WATER COURSES.

§ 10228. **Obstruction of water courses. Penalty.** If any person, municipality or corporation, without authority of law, willfully obstructs any ditch, drain or water course, or diverts the water therein from its natural or artificial course, such person or corporation shall be liable to the party suffering injury from such obstruction or diversion for the full amount of the injury occasioned thereby, and in addition thereto shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars; or in lieu thereof, the offending party, if not a corporation, may be imprisoned in the county jail for a period not exceeding three months. [1911, ch. 327.]

CHAPTER 100.

NATURAL GAS TO BE CONFINED.

§ 10229. **Gas to be confined. Proviso.** Any person, copartnership or corporation in possession, either as owner, lessee, agent or manager of any well producing natural gas, in this state, in order to prevent gas wasting by escape, shall immediately after penetrating the gas-bearing rocks, in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for lights, fuel or power purposes; provided that this shall not apply to any well operated for oil; provided also, that when in the course of drilling, gas production is developed, ten days' free time shall be allowed to determine whether the well shall be shut and saved for a gas well or drilled in further for the purpose of producing oil. Provided, also, that this chapter shall not apply to any artesian or other well used for water supply purposes, which discharges natural gas with the water, where the discharge of gas does not exceed an average of five thousand cubic feet of gas in each twenty-four hours. [1911, ch. 194, § 1.]

§ 10230. **Misdemeanor. To leave gas wells open. Punishment.** Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall upon conviction be fined in a sum not exceeding two hundred dollars, and each day's continuance of such violation shall constitute a separate offense. [1911, ch. 194, § 2.]

CHAPTER 101.

UNLAWFUL INTERFERENCE WITH TELEGRAPH AND TELEPHONE LINES.

§ 10231. **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. [R. C. 1905, § 9426; 1893, ch. 128, § 1; R. C. 1895, § 7656.]

CHAPTER 102.

DESECRATION OF FLAG.

§ 10232. **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. [R. C. 1905, § 9427; 1901, ch. 88, § 1.]

Statutes against desecration of flag. 7 L.R.A.(N.S.) 1079.

§ 10233. **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. [R. C. 1905, § 9428; 1901, ch. 88, § 2.]

§ 10234. **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. [R. C. 1905, § 9429; 1901, ch. 88, § 3.]

§ 10235. **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. [R. C. 1905, § 9430; 1901, ch. 88, § 4.]

CHAPTER 103.

OBSERVANCE OF MEMORIAL DAY.

§ 10236. **Certain games and sports prohibited. Penalty.** It shall be unlawful to engage in ball games, horse racing or sports, or any entertainment that will interfere with the proper observance of the day which is set apart as Memorial Day, prior to the hour of two o'clock p. m. of said day.

Any violation of this chapter shall be punishable by a fine of not less than five dollars or more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days, in the discretion of the court. [1911, ch. 190.]

CHAPTER 104.

MISCELLANEOUS CRIMES.

§ 10237. **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. [R. C. 1905, § 9431; Pen. C. 1877, § 730; R. C. 1895, § 7657.]

§ 10238. **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. [R. C. 1905, § 9432; Pen. C. 1877, § 731; R. C. 1895, § 7658.]

§ 10239. **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. [R. C. 1905, § 9433; Pen. C. 1877, § 732; R. C. 1899, § 7659.]

§ 10240. **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. [R. C. 1905, § 9434; Pen. C. 1877, § 733; R. C. 1899, § 7660.]

§ 10241. **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. [R. C. 1905, § 9435; Pen. C. 1877, § 734; R. C. 1899, § 7661.]

§ 10242. **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 anyone committing such acts, although the parties may not be associated together at the time of committing the same. [R. C. 1905, § 9436; Pen. C. 1877, § 735; R. C. 1899, § 7662.]

§ 10243. **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. [R. C. 1905, § 9437; Pen. C. 1877, § 736; R. C. 1899, § 7663.]

§ 10244. **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. [R. C. 1905, § 9438; Pen. C. 1877, § 737; R. C. 1899, § 7664.]

§ 10245. **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. [R. C. 1905, § 9439; 1899, ch. 46; R. C. 1899, § 7665.]

§ 10246. **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. [R. C. 1905, § 9440; Pen. C. 1877, § 739; R. C. 1899, § 7666.]

Constitutionality of statute limiting hours of labor. 19 L.R.A. 141; 21 L.R.A. 796; 65 L.R.A. 38; 12 L.R.A.(N.S.) 1130; 26 L.R.A.(N.S.) 242; 35 L.R.A.(N.S.) 628; 40 L.R.A.(N.S.) 893.

—of children. 17 L.R.A.(N.S.) 603; 24 L.R.A.(N.S.) 1121.

—on public work. 8 L.R.A.(N.S.) 131; 24 L.R.A.(N.S.) 201; 34 L.R.A.(N.S.) 767.

Criminal liability for violation of statute limiting hours of labor. 65 L.R.A. 50.

§ 10247. **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. [R. C. 1905, § 9441; Pen. C. 1877, § 740; R. C. 1899, § 7667.]

§ 10248. **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. [R. C. 1905, § 9442; Pen. C. 1877, § 579; R. C. 1895, § 7668; 1903, ch. 132.]

Selling mortgaged property; intent: right of purchaser. *Sanford v. Elevator Co.*, 2 N. D. 6, 48 N. W. 434; *State v. Bronkol*, 5 N. D. 507, 76 N. W. 680.

§ 10249. **Wrongful use of seed grain.** Every person who, having procured upon credit under the provisions of chapter 96 of the civil code [sections 6851-6853], 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. 1905, § 9443; R. C. 1899, § 7669.]

It will be presumed that vendee of seed grain used such seed for purpose agreed upon at time he purchased it. *Fried v. Olsen*, 22 N. D. 381, 133 N. W. 1041.

§ 10250. **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. [R. C. 1905, § 9444; Pen. C. 1877, § 742; R. C. 1899, § 7670.]

§ 10251. **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. 1905, § 9445; R. C. 1895, § 7671; 1901, ch. 206; 1905, ch. 189.]

§ 10252. **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. [R. C. 1905, § 9446; Pol. C. ch. 33, §§ 37, 38; R. C. 1895, § 7672.]

§ 10253. **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. 1905, § 9447; R. C. 1895, § 7673.]

§ 10254. **Jumping hotel bills a misdemeanor. Penalty.** Any person who shall obtain food, lodging or other accommodation at any hotel, lodging house, inn, boarding or eating house, without paying therefor, with intent to defraud the owner or manager thereof, or who obtains credit at any hotel, lodging house, inn, boarding or eating house by or through any false pretense, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten (\$10) dollars, nor more than one hundred (\$100) dollars, or by imprisonment in the county jail for not more than ninety (90) days. [1913, ch. 183, § 8; R. C. 1905, § 9448; 1895, ch. 71, § 1; R. C. 1899, § 7674.]

Constitutionality of statute providing for imprisonment for beating board bill. 21 L.R.A.(N.S.) 259.

§ 10255. **Proof; what constitutes.** Proof that food, lodging or other accommodation was obtained by false pretense or by false or fictitious show or pretense of baggage or other property, or proof that the person refused or

neglected to pay for such food, lodging or other accommodation, on demand, or that he gave in payment for such food, lodging or other accommodation negotiable paper on which payment was refused, or that he absconded without offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his or her baggage, shall be prima facie proof of the fraudulent intent mentioned in section 10254; but this act [sections 10254-10256] shall not apply where there has been an agreement in writing for delay in payment for a period not to exceed ten (10) days. [1913, ch. 183, § 9.]

§ 10256. Damaging property a misdemeanor. That any guest or boarder who shall intentionally destroy or damage any property belonging to or in use in any hotel, lodging house, boarding house or eating house shall be guilty of a misdemeanor. [1913, ch. 183, § 10.]

§ 10257. 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. [R. C. 1905, § 9449; 1879, ch. 23, § 29; R. C. 1895, § 7675.]

§ 10258. 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. [R. C. 1905, § 9450; Pol. C. ch. 28, §§ 87, 88; R. C. 1899, § 1298.]

§ 10259. 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. [R. C. 1905, § 9451; 1901, ch. 122.]

§ 10260. Distribution of drug samples prohibited. 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 door step or premises or within dwellings or within barns or other buildings owned or occupied or used by any other person or any householder without a special personal request, as hereinafter specified, of such person or householder, any patent or proprietary medicine or any preparation, pill, tablet, powder, capsule, cosmetic, disinfectant or antiseptic or any drug or medicine or condiment that contains poison or any ingredient that is deleterious to health or that has to be printed under the laws of this state or of the United States, on the label thereof, or have its presence therein disclosed otherwise, a sample, or any quantity or size whatever for the purpose of advertising or inviting or suggesting its use

shall be deemed guilty of a misdemeanor and any health officer, peace officer, or other person may bring or have brought an action in the name of the state of North Dakota, and upon conviction thereof defendant shall be fined not exceeding one hundred dollars and not less than twenty-five dollars, or imprisoned in the county jail not exceeding one hundred or less than thirty days, or both, for each and every violation. And such samples of goods are, and are hereby declared to be a nuisance and a danger and a menace to the safety of the children, members or live stock and other living beings of such household and if not removed upon notice or request or order of the householder or any member of the household, or if left behind purposely and if not removed within twenty-four hours without notice or request they may be removed, destroyed or annihilated and disposed of, or done away with by such person or householder or any member of his household, and no accounting will have to be rendered therefor to anyone and no action demanding such accounting shall be maintained or be maintainable in any court of justice and no defense for any violation of this section shall be competent or valid or be sustained, unless a receipt or a request for such goods, dated and signed by such person or householder at that time, in person, is produced as evidence. The terms drug, medicine, patent or proprietary medicine, pill, tablet, powder, capsule, cosmetic, disinfectant or antiseptic or condiment, as used in this section shall include all remedies for internal or external or technical use, either in packages or bulk, simple mixed or compound. [1913, ch. 147; R. C. 1905, § 9452; 1903, ch. 81.]

§ 10261. 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. [R. C. 1905, § 9453; 1905, ch. 174.]

CHAPTER 105.

GAME AND FISH.

The act of 1909, which, with amendments thereto, constitutes nearly all of this chapter, provides in section 61 thereof that "all laws heretofore enacted by the legislative assembly of this state relating to the subject of this act are hereby repealed." The title of the act is as follows: "An act creating a state game and fish board of control and chief game wardens and state fish commissioner, deputies and wardens, and defining their duties and jurisdiction, and for the protection, propagation, preservation, taking, use and transportation of game, fish, wild birds, fur bearing animals and certain harmless birds and animals." It seems clear, therefore, that chapter 75 of the penal code, R. C. 1905 [§§ 9454-9491], entitled "Game and Fish," is superseded by the following provisions in this chapter.

§ 10262. Ownership in state. The ownership of and title to all wild birds, fish and fur bearing wild animals in the state of North Dakota is hereby

declared to be in the state, and no fish, wild birds, or wild animals which are protected by law shall be caught, taken or killed in any manner or at any time, or had in possession, except the person so catching, taking, killing or having in possession shall consent that the title of said fish, wild birds or wild animals shall be and remain in the state of North Dakota for the purpose of regulating and controlling the use and disposition of the same after such catching, taking or killing. Any person catching, taking or killing or having in possession any wild birds or wild animals at any time or in any manner shall be deemed to consent that the title to the same shall be and remain in the state for the purpose of regulating the use and disposition thereof, and such possession shall be deemed the consent of such person as aforesaid, whether such game or fish were taken within or without the state. [1909, ch. 128, § 1; R. C. 1905, § 9454; R. C. 1895, § 7576.]

Constitutionality of laws protecting game. 42 Am. St. Rep. 138.

Forbidding possession of game during closed season. 3 L.R.A.(N.S.) 163.

Power to prohibit sale, by person lawfully in possession, of game taken within the state. 21 L.R.A.(N.S.) 608.

Governmental control over right to fish. 39 L.R.A. 581; 60 L.R.A. 499.

§ 10263. Districts. The state of North Dakota shall be divided into two districts, to be known as "Game District No. 1," and "Game District No. 2." Game District No. 1 shall consist of the following counties: Pembina, Walsh, Grand Forks, Nelson, Ramsey, Cavalier, Benson, Eddy, Towner, Wells, Pierce, Rolette, McLean, McHenry, Bottineau, Ward, Mountrail, Williams and McKenzie. Game District No. 2 shall consist of the following counties: Traill, Steele, Griggs, Foster, Cass, Barnes, Stutsman, Richland, Ransom, Lamoure, Sargent, Dickey, McIntosh, Logan, Emmons, Kidder, Oliver, Burleigh, Morton, Hettinger, Bowman, Billings, Stark, Dunn, Mercer and Adams. [1909, ch. 128, § 2; R. C. 1905, § 9457; 1899, ch. 93, § 1; R. C. 1899, § 1642; 1903, ch. 103.]

§ 10264. Board of control. Appointment. Terms. Meetings. Compensation. Rules and regulations. A state board of control is hereby created, consisting of three members to be appointed by the governor. Two members of such commission shall be appointed for two years commencing on the first day of April of the year 1911 and one member of such commission shall be appointed for a term of four years, commencing on the first day of April, 1911. Thereafter such appointment shall be made for a term of four years, commencing at the expiration of such term. Vacancies arising from any cause shall be filled by the governor. Said commission shall hold its first meeting on the second Tuesday of the month succeeding its appointment and organize by electing one member of said board as president and one of said board as secretary, who shall receive as compensation for his services not to exceed the sum of one hundred dollars per month for keeping and maintaining the secretary's office. A quorum of said board shall consist of two members. The state game and fish board of control after its organization may hold its meetings at any point in the state at such time and place as the president may designate, but there shall not be to exceed four regular meetings each year; provided, that the president of the board shall have the power to call special meetings whenever in his judgment it becomes necessary.

The members of said board shall receive as compensation for their services the sum of five dollars per day for each day in attendance on such meetings, and all railway expenses actually and necessarily incurred in traveling to and from such meetings, which sum shall be paid by the state treasurer out of the game and fish fund upon vouchers of the board duly certified by the president and secretary thereof. The board shall establish rules and regulations and employ the most efficient and practical means to carry out the provisions of this chapter. They shall require of the chief warden a monthly report in full, a copy of which shall be mailed to each member of such board, stating the compensation paid, number of arrests, convictions and fines. [1911, ch. 141, § 1; 1909, ch. 128, § 3.]

§ 10264a. Claims against the game and fish fund verified. How. No bill, claim, account or demand against the game and fish fund shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the secretary of the board. And where charges are made for money expended in attending meetings of the board or for money expended in the performance of official duties, all items of one dollar or more shall be covered by a subvoucher signed by the party to whom the money was paid. The subvoucher shall show the date, at what price, and for what the money was paid. The subvoucher shall be forwarded with the statement and said statement shall be verified by the oath of the party making it. All statements, bills or claims filed with the secretary, when duly certified to by the president of said board, shall be mailed to the state auditor. The state auditing board shall audit such claims and draw warrants upon the state treasurer for the amounts so allowed, to be paid out of the game and fish fund. [1911, ch. 141, § 15.]

§ 10265. General powers. Duties. Said board shall enforce the laws of this state, involving the protection and propagation of all game animals, game birds, fish and harmless birds and animals.

1. The propagation and preservation of such variety of game and fish as it shall deem to be of public value.

2. The collection and diffusion of such statistics and information as shall be germane to the purpose of this chapter.

3. The construction, control and management of all state fish hatcheries, including the control of ground owned or leased for such purposes.

4. The receiving from the United States commissioner of fisheries or other persons and the gathering, purchase and distribution to the waters of this state of all fish spawn or fry.

5. The taking of fish from public waters of the state for the propagation and stocking of other waters therein.

6. The seizure and disposition of all wild birds, wild animals and fish, either taken, killed, transported or possessed contrary to law, of all dogs, guns, seines, nets, boats, lights or other instrumentalities unlawfully used or held with intent to use; in pursuing, taking or attempting to take, concealing or disposing of the same, and for these purposes it is hereby authorized and empowered to make all such rules and regulations for carrying out the provisions of this section as said board may deem most expedient. [1911, ch. 141, § 2; 1909, ch. 128, § 4.]

§ 10266. Reports and records. Said board shall, on or before December thirty-first of each even numbered year, submit to the governor a detailed report of its actions, including the amount of money received from all sources, and inventory of all birds, game, fish, dogs, guns, seines, nets and other property seized and sold, with the names of the purchasers, and the amount received, and an itemized statement of its disbursements. The books and vouchers of said board shall be subject to examination by the public examiner at all times. [1911, ch. 141, § 3; 1909, ch. 128, § 5.]

As to reports to the governor see in general sections 95, 97, 98, 633.

§ 10267. Chief game warden. The board shall appoint a chief game warden for each of the game districts mentioned in section 10263 who shall devote all his time to the discharge of his duties, and shall receive compensation therefor to be fixed by said board, not exceeding fifteen hundred dollars per year and actual expenses necessarily incurred in the discharge of his official duties. He shall act as such chief game warden during the pleasure of the board, and be subject to its direction. He shall not be engaged in or have any other business that will in any way interfere with his duties as such chief game warden. It shall be his duty to devote all his time to the practical and actual work of enforcing the provisions of this chapter in seasons requiring the actual work of deputy wardens in the field. Before entering upon the discharge of his duties he shall give a bond to the state of North

Dakota, with securities or security to be approved by the board, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duties and the accounting of all state property coming into his hands. [1911, ch. 141, § 4; 1909, ch. 128, § 6; R. C. 1905, § 9457; 1899, ch. 93, § 1; R. C. 1899, § 1642; 1903, ch. 103.]

§ 10268. Fish commissioner. How appointed. Power. Duties of. The governor shall on or before the first day of April, 1911, appoint a state fish commissioner, who shall serve for a term of two years or until his successor has been appointed who shall devote all his time to the discharge of his duties, and shall receive as compensation therefor the sum of fifteen hundred dollars per annum and actual expenses necessarily incurred in the discharge of his duties, which shall be paid from the state game and fish fund. He shall act as such fish commissioner, and when the board is not in session he is hereby authorized to exercise in its name all the rights, powers and authority vested in said board relating to and pertaining to the propagation and distribution of fish. [1911, ch. 141, § 5; 1909, ch. 128, § 7.]

§ 10269. Employes. The board may appoint and remove at pleasure, not to exceed one regular deputy game warden for each judicial district in this state. Such regular deputy wardens shall be appointed for the period not exceeding five months during each year, which months shall be designated by the game and fish board of control, providing however, the board of control may, and they are hereby authorized to appoint any of the above mentioned regular deputies in any county to serve for a period of one year, if in their judgment it is necessary for the better protection of game of the state. Provided, further, the chief game warden in each district may appoint one or more resident county game wardens in each county in their respective districts, who shall serve for such a time and in such manner as the chief game warden may direct. They shall serve as such resident county game wardens without compensation, except as provided in section 10286. Such regular deputy game wardens shall receive as full compensation for their services, not to exceed one hundred dollars per month and actual expenses incurred in the performance of their duties. Each deputy game warden shall devote his whole time to the work, under the direction of the chief game warden of the district for which he is appointed. At the close of each week he shall mail to the chief game warden an itemized statement of his expenses, and attach thereto vouchers for all moneys so expended by him, together with a statement showing his daily activities during said week. The salaries and expenses of all employes shall be paid from the state game and fish fund. That annually after January first, 1912, there shall be transferred from the game and fish fund by the game and fish board of control the sum of two thousand dollars to be known as the expenses and improvement fund, to defray the necessary expenses in and about the fish hatchery as directed by the fish commission, on vouchers duly audited by the president and secretary of the board of control, and paid by the treasurer, as provided by law. Each deputy game warden shall, without delay, report to the chief game warden of his district all violations known to him and convictions secured, and give a detailed statement of the same. [1913, ch. 173; 1911, ch. 141, § 6; 1909, ch. 128, § 8.]

§§ 10270-10271. Other officials. Attorney. The attorney-general, state's attorneys, sheriffs, constables and other peace officers, are hereby required, and it is made their duty, to enforce the provisions of this chapter. Such attorneys shall appear for said board in all civil actions in which it or its wardens may be interested officially, and shall appear in the prosecution of criminal actions arising under this chapter. [1909, ch. 128, § 9.]

Attorney-general has right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 10272. **Execution of writ.** All members of the board of control and all wardens and deputies appointed by such board shall have full power and authority to serve and execute all warrants and processes of law issued by the court in enforcing the provisions of this chapter, or any other law of this state relating to the preservation and propagation of game and fish, in the same manner as any constable or sheriff may serve and execute the same, and for the purpose of enforcing the provisions of this chapter they may call to their aid any sheriff, deputy sheriff, constable or police officer or any other person and it shall be the duty of all sheriffs, deputy sheriffs, constables or police officers and other persons, when called upon, to enforce and aid in enforcing the provisions of this chapter. The chief warden, any member of the board of control and any deputy shall have power to arrest without warrant any person or persons found in the act of violating any law enacted for the purpose of protecting or propagating game and fish. [1909, ch. 128, § 10.]

§ 10273. **Bonds.** Each district game warden shall give bonds to be approved by the board and filed with the secretary of state, conditioned for the faithful discharge of their respective duties, to the amount of five hundred dollars. Special deputy game wardens and other persons employed by the board, shall give bonds when required. [1909, ch. 128, § 11; R. C. 1905, § 9457; 1899, ch. 93, § 1; R. C. 1899, § 1642; 1903, ch. 103.]

§ 10274. **Duties.** It shall be the duty of the chief game wardens and fish commissioner to keep a complete and correct record of all his transactions, in a record book for that purpose, showing dates of appointment of deputies, names of persons violating the game and fish laws, date of arrest, amount of fines, and costs (separately) imposed, and the names of the justice or magistrate before whom the persons appeared. All such records shall be open to the public when requested and the state chief game warden and fish commissioner shall make a full report of all matters of record to the game and fish board of control, showing the number of hunting permits issued in his district, resident and nonresident, and showing the amount of fees for such permits and for the distribution of same; such report to be made annually on the fifteenth day of December of each year, and in said report to make such recommendations as in his judgment are necessary for the better protection, preservation and propagation of wild birds and wild animals, and fish, and the enforcement of laws governing the same. [1911, ch. 141, § 7; 1909, ch. 128, § 12.]

§ 10275. **Terms defined. Agency no excuse.** The words "sell" and "sale" as used in this chapter shall be construed as meaning any sale or offer to sell, or having in possession with intent to sell, use or dispose of the same contrary to law. The word "person" shall be deemed to include partnerships, associations and corporations, and no violation of any provision of this chapter shall be excused for the reason that the prohibited act was done as the agent or employe of another, nor that it was committed by or through an agent or employe of the person so charged. The word "possession" shall be deemed to include both actual and constructive possession, as well as the control of the article referred to. The terms "waters of this state" shall be held to include the boundary waters of this state, and the provisions of this chapter shall be deemed to extend and be in force and effect over, upon and in all thereof. The terms "any part thereof" or "the parts thereof" whenever used in this chapter shall be deemed to include the hides, horns and hoofs of any animal so referred to and the plumage and skin and every other part of any bird so referred. [1909, ch. 128, § 13.]

§ 10276. **Inspection of hotels, etc.** The members of the board of control and all game wardens, shall inspect from time to time hotels, restaurants, cold storage houses or plants and ice houses commonly used in storing meats, game or fish for private parties, including all buildings used for like purpose, for the purpose of determining whether game or fish are kept therein in violation

of the provisions of this chapter. Any person in possession or control, or in charge of any hotel, restaurant, storage plant or building referred to, or any part thereof, who refuses or fails to permit any member of the game and fish board of control or any warden or deputy to enter such building, or any part thereof, or any receptacle therein, for the purpose of making such inspection, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or over fifty dollars and costs of prosecution, or imprisonment in the county jail for a term of not less than ten or over twenty days for the first offense, and upon conviction for a second offense, shall be punished by imprisonment in the county jail for a period of not less than twenty or over thirty days. [1909, ch. 128, § 14.]

§ 10277. Contraband game. Seizure and search. Any bird, animal, fish or any part thereof, caught, killed, shipped or had in possession or under control contrary to any of the provisions of this chapter is hereby declared to be contraband. The board of control, all game wardens, sheriffs and their deputies, constables and police officers, shall seize and take possession of any and all birds, animals or fish, or any part thereof which have been caught, taken, killed or had in possession or under control, or shipped contrary to any provision of this chapter. Any court having jurisdiction may upon complaint showing probable cause for believing that any bird, animal, fish or any part thereof, caught, taken, killed or had in possession or under control by any person, or shipped or transported contrary to the provisions of this chapter, is concealed or illegally kept in any building, car or receptacle, shall issue a search warrant and cause a search to be made in any such place for any such birds, animals, fish or any parts thereof, and may cause any building, inclosure or car to be entered, and any apartment, chest, box, locker, crate, basket, package or any other receptacle whatever to be broken open and the contents thereof examined. All such officers taking or seizing such birds, animals or fish, or any part thereof shall at once report all the facts attending the same to the commission. The same penalty shall attach as to section 10265. [1911, ch. 141, § 8; 1909, ch. 128, § 15; R. C. 1905, § 9468; 1889, ch. 93, § 10; R. C. 1899, § 7683a; 1903, ch. 103.]

Search and seizure to compel one to furnish evidence against himself. 29 L.R.A. 818.

Admissibility in evidence against accused of articles obtained by search and seizure. 59 L.R.A. 466.

§ 10278. Contraband devices. All nets, seines, lanterns, snares, devices, contrivances and materials while in use, kept or had or maintained for the purpose of catching, taking or selling, or attracting or deceiving any bird, animal or fish contrary to any provision of this chapter within this state, or upon or in the boundary waters thereof, including fish houses, inclosures or other shelter structures or appliances erected or maintained upon the ice or in any waters, or on the shore of any lake, pond or stream, is hereby declared to be and is a public nuisance. The chief game wardens and all members of the board [of control], all district and special wardens, sheriffs and their deputies, constables and police officers shall, without warrant or process, take, seize, abate and destroy any and all of the same while being used, had or maintained for such purpose, and no liability shall be incurred thereby to any person. [1909, ch. 128, § 16; R. C. 1905, § 9481; 1899, ch. 91, § 6; R. C. 1899, § 7682.]

Right to compensation for destruction of fish nets. 19 L.R.A. 197.

Confiscation of nets found in illegal use. 39 L.R.A. 590; 3 L.R.A.(N.S.) 997.

§ 10279. Witnesses. In any prosecution under the provisions of this chapter, the participant in the violation thereof may testify as a witness against any other person violating the same, without incriminating himself in so doing. The evidence so given shall not be used in any criminal proceedings for such violation. [1909, ch. 128, § 17.]

§ 10280. Limitations. All prosecutions under this chapter shall be commenced within two years from the time the offense is committed. [1909, ch. 128, § 18.]

§ 10281. **Exchange specimens.** The board may secure, by purchase or otherwise, and exchange specimens of game birds, game animals or fish with the game commission or state game warden of other states for breeding purposes, and not otherwise, and may also grant permission under the seal of said board, to any accredited representative of any incorporated society of natural history, to collect for scientific purposes only, under such restrictions as the board may impose, nests, eggs, birds, animals or fish protected by this chapter. Such specimens shall not be sold or transferred nor removed from the state until inspected by the board. [1909, ch. 128, § 19.]

§ 10282. **Fishways.** Any person owning, erecting, managing or controlling any dam or other obstruction across any river, creek or stream, within or forming the boundary line of this state, shall construct in connection with such dam, a durable and efficient fishway in such manner and of such shape and size as the board may direct. Such fishway shall be kept in good repair by the person so owning, controlling, managing, operating or using such dam or obstruction. If any person fails to construct or keep in good repair durable and efficient fishways as herein provided, for the space of ten days after notice, the board may construct or repair the same, and the cost thereof may be recovered from the owner or any person managing or being in control thereof, in a civil action brought in the name of the state of North Dakota. Any money so recovered shall be credited to the game and fish commission fund. All fishways heretofore or hereafter erected in any dam or obstruction across any of the streams in this state, shall at all times be under the supervision and control of the board. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [1909, ch. 128, § 20; R. C. 1905, § 9490; 1885, ch. 60, § 1; 1887, ch. 55, § 1; R. C. 1899, § 1652.]

§ 10283. **Sawdust deposits.** Any person who deposits any sawdust or other refuse in any streams or water wherein the commission has deposited fish fry, or may deposit any such fry, or where any brook trout naturally abound, shall be deemed guilty of a misdemeanor. [1909, ch. 128, § 21.]

Statutory prohibition of pollution of water to protect fishery. 1 L.R.A.(N.S.) 752; 34 L.R.A.(N.S.) 286.

§ 10284. **Disposition of fines.** All fines collected under any of the provisions of this chapter shall be paid into the county treasury of the proper county to be added to the state school fund. [1909, ch. 128, § 22.]

§ 10285. **Disposition of other moneys.** All moneys collected by the board upon licenses issued by it, by the sale of game seized and sold, and from all other sources except fines, shall be paid into the general fund of the state of North Dakota, to be credited to the game and fish commission fund, to be used for the purpose of enforcing the provisions of this chapter; provided, that any surplus money accumulating to the credit of the game and fish commission fund may be used for the propagation of fish and game birds. [1909, ch. 128, § 23.]

§ 10286. **Rewards.** The following rewards may be paid by the board out of any fund subject to its order, to any person or persons making complaint thereof upon the arrest and conviction of any person violating any of the provisions of this chapter, or other enactments involving deer or antelope, the sum of twenty-five dollars; any game bird or fish, ten dollars; provided, however, that this section shall not apply to any game warden regularly employed and receiving salary from the said board. [1909, ch. 128, § 24.]

§ 10287. **Domesticated game.** The board may issue permits to breed or domesticate any of the game birds or animals mentioned in this chapter. Applications for such permits shall be made in writing to the board and shall contain the name and address of the applicant, description of the premises on which such birds or animals will be kept, number and kind of such birds and animals in possession at the time of making such application. The board thereupon may issue permits to the applicant to keep such birds or animals.

Any person holding such permit shall before the fifteenth day of December of each year report the increase or decrease to the board from the number at the time of making application for the permit. Any such animals or birds may be sold or shipped within or without the state upon receipt of written permission to do so from the board. [1909, ch. 128, § 25.]

Regulation of sale or transportation of game raised in captivity. 10 L.R.A.(N.S.) 1155.

§ 10288. Nests and eggs. No person shall at any time take or have in possession or under control, or needlessly break up or destroy, or in any manner interfere with any nests, or the eggs of any of the kinds of birds, the killing of which is at any or all times prohibited. [1909, ch. 128, § 26.]

§ 10289. Manner of taking. No person shall at any time catch, take or kill any of the birds or animals mentioned in this chapter in any other manner than by shooting them with a gun held to the shoulder of the person discharging the same, except as herein otherwise specially provided. [1909, ch. 128, § 27.]

§ 10290. Traps, snares, lights, etc. No person shall at any time set, lay, prepare or have in possession any trap, snare, artificial light, net, bird lime, swivel gun or set gun or contrivance whatever for the purpose of catching, taking or killing any of the birds or game animals in this chapter mentioned except that decoys and stationary natural blinds may be used in hunting wild geese, brant and ducks, excepting that a boat may be used to shoot from in a blind, and no persons shall use or cause to be used any floating battery, electric, steam, gasoline or other boat or floating vessel for the purpose of raising or driving any game birds from their resting or feeding places in any waters of this state, or to use rifles in pursuing or hunting ducks or geese or to use any vehicles or automobile for the purpose of disturbing geese while feeding or resting and shooting from such vehicle or automobile. [1911, ch. 141, § 9; 1909, ch. 128, § 28.]

§ 10291. Shooting after dark. No person shall hunt, pursue, catch, shoot at or in any way molest any of the game birds or animals mentioned in this chapter within the borders of the state, during the time elapsing between one-half hour after sunset and one-half hour before sunrise. For the purpose of enforcing this provision, it shall be understood that the time of sunrise and sunset shall be designated by the calendar. [1909, ch. 128, § 29.]

§ 10292. Use of dogs. No person shall hunt, pursue, catch, take or kill deer or antelope with any dog or dogs. No person shall train or run any dog or dogs, owned or controlled by them, known as "bird dogs," including pointers, setters, droppers or spaniels, or allow game to run loose in fields, or upon lands in which game birds may be found, or apt to be frequented by game birds, between the first day of April and the fifteenth day of August (both inclusive) following of each year. [1909, ch. 128, § 30.]

§ 10293. Entering growing grain. No person shall at any time enter into any growing, standing shocked grain or bunched flax not his own, with intent to take or kill any bird or animal, nor permit any dog with which he shall be hunting to do so for such purpose, without permission from the owner or person in charge thereof. [1909, ch. 128, § 31.]

§ 10294. Game killed in another state. No person shall at any time have in his possession or under his control within this state, any bird, animal or fish, or any part thereof, which has been caught, taken or killed outside of this state at a time when it is unlawful to have in possession or under control such bird, animals or fish, or parts thereof, if caught, taken or killed in this state, or which have been unlawfully taken or killed outside this (state) or unlawfully shipped therefrom into this state. [1909, ch. 128, § 32.]

§ 10295. Possession of game and fish presumption. The possession or having under control by any person of any bird, animal or fish or any part thereof, the killing of which is at any time herein prohibited, shall be prima facie evidence that it was the property of this state at the time it was caught, taken

or killed, in this state; also that such possession or having under control at any time, when the killing, taking or possession thereof is by this chapter declared to be unlawful, shall be prima facie evidence that such taking and killing occurred during the closed season, to disprove which it shall be necessary for the party in possession thereof to show that at the time it was caught, taken or killed outside, or within this state, that it was lawfully caught, taken or killed outside, or within this state, and that he was lawfully in possession thereof. [1909, ch. 128, § 33.]

§ 10296. **Skins.** Nothing in this chapter shall be construed as prohibiting the buying, shipping or having in possession at any time the skins of fur-bearing animals killed within or without the state, or hides of moose, deer, caribou or antelope killed within or without the state upon proof that the hide was taken at a time when such taking and killing was lawful. [1909, ch. 128, § 34.]

§ 10297. **Game birds, seasons for killing.** No person shall hunt, take, kill, ship, convey or cause to be shipped or transported by common or private carrier, to any person either within or without the state, expose for sale, sell to anyone, have in possession with intent to sell, or have in possession, or under control at any time, any turtle dove snipe, prairie chicken, pinnated, white-breasted or sharp-tailed grouse, quail, partridge, Chinese ring-neck or English pheasant, Hungarian partridge, wild duck of any variety, wild goose of any variety, brant of any variety, or aquatic fowl whatever, or any part thereof, except: First, that any snipe, crane of any variety, prairie chicken, pinnated grouse, white-breasted or sharp-tailed grouse, wood cock, upland plover or golden plover, may be killed and had in possession between the seventh day of September and the first day of November, (both inclusive) following. Second, that wild duck of any variety, or wild goose of any variety may be killed and had in possession between the seventh day of September and the fifteenth day of December (both inclusive) following. Any person violating the provisions of this section shall be punished by a fine of not less than ten dollars for each bird or more than twenty-five dollars, and costs of prosecution, or by imprisonment in the county jail for not less than twenty days nor more than thirty days, or by both fine and imprisonment in the discretion of the court, for each and every bird killed or destroyed contrary to the provisions of this section. [1913, ch. 173, § 2; 1911, ch. 141, § 10; 1909, ch. 128, § 35.]

Forbidding possession of game during closed season. 3 L.R.A.(N.S.) 163.

§ 10298. **Deer. Season for killing.** No person shall hunt, shoot, catch, kill, trap or in any way destroy any deer within the boundary limits of the state of North Dakota before November tenth, 1916, and after November tenth, 1916, it shall be unlawful to kill any doe or female deer, and it shall be unlawful to hunt, shoot, catch, kill, trap or in any way destroy any male deer, except from November tenth until November thirtieth, both inclusive. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction therefor shall be fined one hundred dollars for each deer, and costs of prosecution, or by imprisonment in the county jail for not less than thirty days nor more than sixty days, or by both such fine and imprisonment, in the discretion of the court, for each and every deer killed contrary to the provisions of this section. [1913, ch. 173, § 3; 1909, ch. 128, § 36.]

§ 10299. **Residents' hunting license. Shipment of game.** Every resident of this state is prohibited from hunting, taking or killing any game bird or game animal unless he shall have first procured and have on his person a license therefor from the county auditor in the county in which he resides, which said license shall not be transferable; provided, however, that this does not apply to any resident of this state from hunting on lands owned or cultivated by him, or any member of his family, residing permanently with him, during the open season as provided for in this chapter. County auditors shall issue such

hunting license upon payment of a license fee of one dollar, and the application for such license shall be made in writing upon application blanks furnished by the game and fish board of control. Said application must state full name and address of applicant, age, weight, height, color of hair and eyes, and the following statement be signed by applicant and witnessed by a resident freeholder of the county in which license is to be issued:

I am a bona fide resident of County, North Dakota, and have been during the past six months.

Witness Signed

All applications received shall be kept on file by the county auditor, subject to inspection by the board and its deputies, at any time prior to December fifteenth of each year, at which time they shall be forwarded to the board, together with all unused licenses. Said license, when issued, shall describe the licensee, designate his place of residence, and have printed on it in large black figures the year for which issued and the words "not transferable." Such license shall expire on the fifteenth day of December following its issuance. Ten cents of the amount received for the issuance of said license shall be retained by the county auditor as his fee, and the balance remitted to the state treasurer who shall credit the same to the game and fish commission fund, to be used in enforcing the provisions of this chapter. Any resident having procured a resident hunting license as required, and being lawfully in possession of any of the game birds or game animals mentioned in this chapter, may ship by common carrier to his address in the county where he resides not to exceed two days' bag limit of any of the game birds as herein provided for in this chapter, nor more than two deer or parts thereof, and any common carrier is hereby permitted to receive for shipment any game birds or deer, when same is plainly marked with a suitable tag bearing name and address of licensee, and number of his hunting license, and when the same is not inclosed in any box, trunk, can, bag or any receptacle that prevents easy inspection of contents. [1909, ch. 128, § 37.]

§ 10300. Nonresident license. Shipment of game. Every person not a resident of this state is prohibited from hunting, taking or killing any game bird or game animal, unless he shall have first procured a license therefor from the game and fish board of control, which said license shall not be transferable. Said board shall issue to any nonresident a license to hunt game birds and game animals during the open season, subject to the limitations provided for in this chapter, upon the payment of twenty-five dollars, which license shall expire on the fifteenth day of December following its issuance. Said license shall describe the licensee, designate his place of residence, and have printed on it in large black letters the year for which issued, and the words "nonresident license," "not transferable." Any nonresident having procured such license may carry with him on leaving this state not to exceed twenty either prairie chicken, turtle dove, crane, swan, grouse of any variety, or twenty of the same combined, and fifty either snipe, plover, wild duck, goose or brant, or fifty of the same combined, nor more than two deer or parts thereof, and any common carrier is hereby permitted to carry any such game birds or deer, or parts thereof, when same is accompanied or carried on same train or conveyance by the person who is legally in possession of the same; provided that the same is plainly marked with a suitable tag, bearing name and address of licensee and number of his nonresident license, and that it is not concealed in any box, trunk, bag, can or any receptacle that prevents easy inspection of contents. [1909, ch. 128, § 38.]

Discrimination against nonresidents in fish and game laws imposing license tax. 40 L.R.A. (N.S.) 285.

§ 10301. Hunting without license. Any person, either a resident or nonresident of this state, who shall hunt, take or kill any of the game birds or animals in this state, without having first procured a license therefor as provided in this chapter, shall be guilty of a misdemeanor, and upon conviction

thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars and costs of prosecution, or by imprisonment in the county jail for not less than ten days nor more than thirty days for each and every offense. [1909, ch. 128, § 39.]

§ 10302. Retaining game. Permission. Any resident of this state who is lawfully in possession of any of the game birds or deer which have been killed at a time and in a manner permitted by the provisions of this chapter, and who is desirous of retaining possession of the same for his own use for a longer period than five days after the close of the open season shall before the end of the first five days after the close of the open season, apply to the game and fish board of control, for permission to do so. Such application shall state number of such birds or deer and designate the place in which they are to be kept. The board shall grant such permission, if satisfied that applicant is retaining same for his own use and not for any purpose contrary to the provisions of this chapter. [1909, ch. 128, § 40.]

§ 10303. Mink. Muskrat. No person shall take, catch or kill any mink or muskrat between the fifteenth day of April and the fifteenth day of November (both inclusive) following; provided, that when any of the animals mentioned in this section are doing damage to, or destroying property, the person whose property is being damaged or destroyed may kill them at any time. [1909, ch. 128, § 41.]

§ 10304. Harmless birds. Game birds defined. No person shall kill, catch, take, ship or cause to be shipped to any person within or without the state, purchase, offer or expose for sale, sell to any one, have in possession with intent to sell, or have in possession or under control at any time, living or dead, any wild birds other than a game bird, nor any part thereof, irrespective of whether said wild bird was captured or killed within or without the state, and for the purposes of this chapter the following only shall be considered game birds: The anatidae, commonly known as swan, geese, brant, river and sea ducks; the limecolae, commonly known as plover, snipe, woodcock; the gallinae, commonly known as grouse, prairie chicken, pheasants, partridges and quail; provided, that black birds, crows, English sparrows, sharp-shinned hawks, Cooper hawks and great horned owls may be killed and had in possession at any time, but nothing herein contained shall be construed to prevent the keeping and sale of imported song birds as domestic pets. [1911, ch. 141, § 11; 1909, ch. 128, § 42.]

§ 10305. Attempted violation. Any person traveling in any manner in any part of this state off the public highway, outside of the immediate bounds of the inhabited parts of any village, town or city in possession of any kind of a shot gun, with a dog or dogs commonly used or kept for the purpose of use in hunting any game birds mentioned in this chapter, from the first day of July to the sixth day of September (both inclusive) each year, shall be presumed to have violated or attempted to so violate the provisions of this chapter as to unlawful hunting, shooting or taking of game birds as mentioned in this chapter, the hunting, taking or shooting of which is prohibited during said time. The use of traps, snares and all other devices used to take game birds as defined in this chapter is hereby prohibited and subjects the persons using the same to all penalties prescribed in this section for hunting, shooting, snaring, trapping or taking any of the game birds and the fact that any traps, snares or other devices used for the purpose of trapping, snaring or taking game birds, are found in the possession of, or upon the premises of any person, shall be prima facie evidence of the guilt, violation or attempted violation by such person of the provisions of this chapter, any person convicted of violation or attempted violation of any provision of this section shall be punished by the fine herein prescribed. Any person convicted of the violation of any of the provisions of this section shall be fined not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than

ten days nor more than thirty days, or both fine and imprisonment at the discretion of the court. [1911, ch. 141, § 12; 1909, ch. 128, § 43.]

Power of legislature to enact prima facie rules of evidence for criminal cases. 2 L.R.A.(N.S.) 1007.

§ 10306. Fish may be taken, when. No person shall catch, take, kill or have in possession or under control for any purpose whatever any of the fish hereinafter mentioned, within the periods herein limited, to wit: Any variety of trout or land-locked salmon between the first day of October and the first day of May (both inclusive) following. Any black, grey or Oswego bass between the fifteenth day of October and the first day of June (both inclusive) following. Any variety of pike, crappies or perch between the fifteenth day of October and the fifteenth day of May (both inclusive) following. [1911, ch. 141, § 13; 1909, ch. 128, § 44.]

Closed season for fish. 39 L.R.A. 585.

§ 10307. Powers and duties. The state fish commissioner shall have charge of all state fish hatcheries and appurtenances, he shall examine all state waters, and whenever suitable waters are found, arrange to plant, stock or deposit such fish as are available. He shall co-operate with the United States commissioners of fisheries, make application, receive, apportion and deposit such fish spawn or fry received, throughout the public waters of this state. He shall co-operate with and assist clubs and individuals in the stocking of the lakes and streams of this state with fish. He shall, with the consent of the game and fish board of control, remove or take by any means from any of the public waters of this state containing a surplus of fish any reasonable quantity for the stocking of other public waters of this state, or to be used for hatching or propagating purposes, or for exchange with other states for equal numbers of other species, but in no case shall the number so taken be so great as to perceptibly deplete such lake or streams. The state game and fish board of control shall have no power to authorize any individual, club, society or person to remove or take from any of the public waters of this state, for exchange, propagation or scientific purposes, any fish excepting only under the personal supervision of the state fish commissioner or some one appointed by him. The state fish commissioner may take or cause to be taken at any time by any means from any of the lakes in this state any suckers, carp or pickerel. The fish hatchery heretofore established at Fish Lake, Birchwood Park, Rquette County, North Dakota, shall be maintained and the expenses thereof paid out of the game and fish fund, and it is hereby made the duty of the board of control to appropriate from said fund such moneys as are necessary for the proper maintenance and support thereof, and for the distribution of said fish hatchery. [1911, ch. 141, § 14; 1909, ch. 128, § 45.]

§ 10308. Manner of taking fish. No person shall catch, kill or destroy in any manner than by angling for them with a hook and line held in the hand or attached to a rod so held, nor with more than one line, nor with more than one hook, or artificial line attached thereto, and no person shall have in his possession any of the above mentioned fish caught, taken or killed in any waters of this state except as provided in this chapter; provided, that pickerel, suckers, red horse, carp and bull heads may be taken with a spear without limit at any time, but no artificial light shall be used in the taking of said fish at any time, and that the use of set lines is permitted in the Des Lacs lakes, Missouri, Mouse, Sheyenne and Red Rivers; provided, further, that in the Des Lacs lakes, Missouri and Mouse rivers pound nets, seines or dip nets may be used, but if any other fish than pickerel, suckers, red horse, carp and bull heads are caught in any pound nets, seines or dip nets, they shall immediately be thrown back into the water and it shall be unlawful to use any such net within a distance of one thousand feet from the mouth of any stream emptying into the Missouri river. [1911, ch. 142; 1909, ch. 128, § 46; R. C. 1905, § 9473; 1899, ch. 93, § 9; R. C. 1899, § 7679; 1901, ch. 103.]

Governmental control of method of taking fish. 39 L.R.A. 585.

§ 10309. **Fishing near fishways.** No person shall catch, take or kill any fish in any lake or stream within four hundred feet of any fishway, or have in his possession or under his control any fish so caught, taken or killed. [1909, ch. 128, § 47; R. C. 1905, § 9479; 1895, ch. 64, § 3; R. C. 1899, § 7680.]

§ 10310. **Use of drugs, dynamite, traps, etc.** No person shall have in possession, lay, set, use or prepare any drug, poison, lime, medicated bait, fish berries, dynamite or other explosive or any other deleterious substance whatever, or lay, stretch or place a tip-up snare, fish trap, set or trot line or any net, wire, string rope, or cable of any sort in any of the waters of this state with intent thereby or therewith to catch, take or kill any fish; provided, that a minnow seine not exceeding twenty feet in length may be used for taking minnows for bait from the first day of May to the fifteenth of October, following, and that a net may be used in the Missouri and Mouse rivers as provided for in section 10304. [1909, ch. 128, § 48.]

§ 10311. **Fish houses.** No person shall erect, have or maintain on the ice in any waters of this state, except Missouri, Mouse and Red rivers, any fish house, structure, inclosure or shelter whatever to protect the person of the occupant while engaged in fishing through the ice. [1909, ch. 128, § 49.]

§ 10312. **Sale of fish.** No person shall have in possession for sale or with intent to sell, expose or offer for sale, or sell to any person, at any time, any variety of trout or black, grey or Oswego bass, or any variety of pike, crappies, perch or land-locked salmon which have been caught within the borders of the state. [1909, ch. 128, § 50.]

§ 10313. **Size of fish to be taken.** No person shall at any time catch, take or kill, or have in possession, or under control any black, grey or Oswego bass, trout of any variety, land-locked salmon or pike that are less than eight inches in length, measurement in each case to be made from the tip of the snout to the fork of the tail. Any person catching such fish shall at once return the same to the water from which they are taken with as little injury as possible. [1909, ch. 128, § 51.]

§ 10314. **Number of fish to be taken.** No person shall in any one day catch, take, kill or destroy to exceed fifteen each black, grey or Oswego bass, trout of any variety, land-locked salmon, pike, perch or crappies, or fifteen of the same combined, or have in possession at any time to exceed fifty each or all of the same combined. Any person violating any provision of this section shall upon conviction be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each and every offense and cost of prosecution, or by imprisonment in the county jail for not less than ten or more than thirty days, or by both such fine and imprisonment, in the discretion of the court, for each and every fish so killed or destroyed, contrary to the provisions of this section. [1909, ch. 128, § 52.]

§ 10315. **Planted fish protected.** All planted fish or fish eggs placed in the public waters of this state for the purpose of propagating, breeding or growth shall be, and are hereby protected for a period of five years from the time of such planting. [1909, ch. 128, § 53.]

§ 10315a. **Fish screens.** The board may cause to be placed in lakes having an outlet into the waters outside the borders of this state a fish screen of such size and construction as to prevent the escape of fish into the waters outside the borders of this state; provided, that such screen shall in no way obstruct or interfere with the natural flow of water in such outlet. [1909, ch. 128, § 54.]

§ 10316. **Bag limit of game birds.** No person shall in any one day take, catch, kill or destroy to exceed ten each prairie chicken or grouse of any variety, turtle dove, crane or swan, or ten of the same combined, or have in possession at any time to exceed twenty each or all of the same combined; nor more than twenty-five each wild duck of any variety, wild goose or brant of any variety, woodcock, snipe or plover of any variety, or twenty-five

of the same combined; or have in possession at any time to exceed fifty each, or all of the same combined. Any person violating any provision of this section shall, upon conviction, be punished by a fine of not less than ten dollars, nor more than twenty-five dollars for each and every bird, and cost of prosecution, or by imprisonment in the county jail for not less than twenty days nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court, for each and every bird so killed or destroyed, or had in possession contrary to the provisions of this section. [1909, ch. 128, § 55.]

§ 10317. **Antelope, beaver and otter protected.** No person shall hunt, shoot at, catch, kill, trap or in any way destroy any antelope, beaver or otter within the boundary limits of the state of North Dakota before January first, 1920. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars and cost of prosecution, or by imprisonment in the county jail for not less than three months nor more than six months, or by both fine and imprisonment in the discretion of the court. [1909, ch. 128, § 56; R. C. 1905, §§ 9464, 9465; 1901, ch. 105; 1905, ch. 51.]

§ 10318. **Power of game warden to remove beavers that are causing damage to property.** Whenever a colony of beavers is causing damage to property, the state district game warden of the game district where said beavers are causing such damage may employ an expert of the federal government, or any other suitable person, to remove such beavers to another place where such damage cannot be caused. [1913, ch. 173, § 4.]

§ 10319. **Sale of game by commission.** The game and fish commission is hereby authorized to sell to residents of this state, at the highest market price obtainable therefor, all furs, fish, game animals or game birds now or which may hereafter come into its possession. The proceeds thereof shall be turned into the state treasury and credited to the game and fish commission fund. A record of such sales, including the name of the purchaser and the price paid, shall be kept by the board. Said board shall before selling tag the same in a manner to be determined by it. [1909, ch. 128, § 57.]

§ 10320. **Resisting board of control or its wardens.** Whoever shall resist or obstruct the board of control or any member thereof, or any warden or other officer of this state in the discharge of his duties under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not less than fifty nor more than one hundred dollars and cost of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days for each and every offense. [1909, ch. 128, § 58; R. C. 1905, §§ 9470, 9478; 1899, ch. 93, § 12; R. C. 1899, § 7683e; 1899, ch. 91, § 4; R. C. 1899, § 1648d.]

§ 10321. **General penalty.** Any person who violates any provisions of this chapter for which penalty has not been heretofore specifically provided, shall be guilty of a misdemeanor, and upon conviction be punished by a fine of not less than ten dollars nor more than fifty dollars and cost of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days. [1909, ch. 128, § 59.]

§ 10322. **Professional dog trainers.** Professional dog trainers are prohibited from running and training dogs within this state between the first day of May and the fifteenth day of August. [1909, ch. 128, § 60.]

CHAPTER 106.

PROTECTION OF BIRDS AT DEVILS LAKE.

§ 10323. **Islands in Devils Lake constituted a bird reserve, and birds therein protected.** That all islands that have appeared or may appear in the waters of Devils Lake, North Dakota, are hereby reserved, appropriated and set aside as a bird reserve and it shall be unlawful for any person to hunt, shoot, kill, wound or injure any bird, or to rob or destroy any bird nest or eggs on said reserve at any season of the year. [1911, ch. 139, § 1.]

§ 10324. **Penalty.** Every violation of this chapter shall be declared a misdemeanor, and shall be punishable by a fine of not less than ten or more than fifty dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court. [1911, ch. 139, § 2.]

CHAPTER 107.

TRESPASSING WHILE HUNTING GAME.

§ 10325. **Trespassing by hunters forbidden, when.** It shall be unlawful for any person or persons to enter upon the premises of another for the purpose of hunting or pursuing game or to hunt or to pursue game upon the premises of another without having first obtained permission of the person legally entitled to grant the same; provided that the owner of said land or premises shall have placed at a conspicuous point alongside of the public highway a sign giving notice that no hunting will be permitted on said land or premises. [1911, ch. 140, § 1.]

Pursuit of game as justification for entry on land of another. 20 L.R.A.(N.S.) 152.

§ 10326. **Presumption against trespasser, when.** Any person or persons entering upon the premises of another without permission as provided for in section 10325, who shall at the time of so entering have in his (or her) possession any gun or fire-arm shall prima facie be presumed to have entered said premises for the purpose of hunting game within the meaning of this chapter. [1911, ch. 140, § 2.]

Power of legislature to enact prima facie rules of evidence for criminal cases. 2 L.R.A.(N.S.) 1007.

§ 10327. **Penalty for trespassing while hunting game.** Any person violating the provisions of this chapter shall upon conviction thereof be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail for not less than one and not more than ten days, or both such fine and imprisonment. [1911, ch. 140, § 3.]

CHAPTER 108.

GENERAL PROVISIONS.

§ 10328. **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 10340 to 10343 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. [R. C. 1905, § 9492; Pen. C. 1877, § 743; R. C. 1899, § 7684.]

§ 10329. **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. [R. C. 1905, § 9493; Pen. C. 1877, § 744; R. C. 1899, § 7685.]

§ 10330. **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 county founded upon the act or omission in respect to which he is upon trial, it shall be a sufficient defense. [R. C. 1905, § 9494; Pen. C. 1877, § 745; R. C. 1899, § 7686.]

§ 10331. **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. [R. C. 1905, § 9495; Pen. C. 1877, § 746; R. C. 1899, § 7687.]

§ 10332. **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. [R. C. 1905, § 9496; Pen. C. 1877, § 747; R. C. 1899, § 7688.]

§ 10333. **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. [R. C. 1905, § 9497; Pen. C. 1877, § 748; R. C. 1899, § 7689.]

§ 10334. **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. 1905, § 9498; R. C. 1895, § 7690.]

§ 10335. **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. [R. C. 1905, § 9499; Pen. C. 1877, § 749; R. C. 1899, § 7691.]

§ 10336. **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. [R. C. 1905, § 9500; Pen. C. 1877, § 750; R. C. 1899, § 7692.]

§ 10337. **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. [R. C. 1905, § 9501; Pen. C. 1877, § 751; R. C. 1895, § 7693.]

Inflicting dangerous wound with deadly weapon without death resulting as felony. *State v. Mattison*, 13 N. D. 391, 100 N. W. 1091.

Mere preparation is insufficient as attempt to commit crime. *State v. Wood*, 19 S. D. 260, 103 N. W. 25.

Attempt to commit sodomy punished by imprisonment for five years. *State v. King*, 9 N. D. 149, 82 N. W. 423.

Verdict of rape in second degree or of assault, with intent to commit rape, may be returned, under information which charges rape in first degree. *State v. Bancroft*, 23 N. D. 442, 137 N. W. 37.

Solicitation as attempt to commit crime. 25 L.R.A. 434; 40 Am. Rep. 656; 20 Am. St. Rep. 741.

What constitutes an attempt to commit arson. 4 L.R.A.(N.S.) 417; 41 L.R.A.(N.S.) 439.

—attempt to influence officers of court. 21 L.R.A.(N.S.) 905.

—attempt to commit homicide as distinguished from assault with intent to kill. 21 L.R.A.(N.S.) 898.

Procuring or providing instrumentalities adapted to commission of a crime with intent to commit the same, as an attempt to commit the crime. 6 L.R.A.(N.S.) 804.

As to similar provision in Cal. Pen. Code, § 663, see *People v. Oates*, 142 Cal. 12, 75 Pac. 337.

§ 10338. 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. [R. C. 1905, § 9502; Pen. C. 1877, § 752; R. C. 1899, § 7694.]

As to similar provision in Cal. Pen. Code, § 664, see *People v. Miline*, 60 Cal. 71; *People v. Howard*, 135 Cal. 266, 67 Pac. 148; *People v. Oates*, 142 Cal. 12, 75 Pac. 337.

§ 10339. 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. [R. C. 1905, § 9503; Pen. C. 1877, § 753; R. C. 1899, § 7695.]

§ 10340. 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. [R. C. 1905, § 9504; Pen. C. 1877, § 754; R. C. 1899, § 7696.]

Enhancing penalty when crime committed by habitual criminals or prior offenders. 34 L.R.A. 398; 24 L.R.A.(N.S.) 432; 46 L.R.A.(N.S.) 53.

Constitutionality of statute imposing a heavier penalty for second offense. 64 Am. St. Rep. 378.

Increased punishment for second offense as cruel and unusual punishment. 35 L.R.A. 579.

As to similar provision in Cal. Pen. Code, § 666, see *People v. Thomas*, 110 Cal. 41, 42 Pac. 456; *People v. Smith*, 143 Cal. 597, 77 Pac. 449; *In re O'Neill*, 143 Cal. 634, 77 Pac. 660; *People v. Coleman*, 145 Cal. 609, 79 Pac. 283.

§ 10341. 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. [R. C. 1905, § 9505; Pen. C. 1877, § 755; R. C. 1899, § 7697.]

§ 10342. 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. [R. C. 1905, § 9506; Pen. C. 1877, § 756; R. C. 1899, § 7698.]

Enhancing penalty when crime committed by habitual criminals or prior offenders. 34 L.R.A. 398; 24 L.R.A.(N.S.) 432; 46 L.R.A.(N.S.) 53.

Constitutionality of statute imposing a heavier penalty for second offense. 64 Am. St. Rep. 378.

Increased punishment for second offense as cruel and unusual punishment. 35 L.R.A. 579.

As to similar provision in Cal. Pen. Code, § 667, see *Ex parte Gutierrez*, 45 Cal. 429; *People v. Stanely*, 47 Cal. 113, 17 Am. Rep. 401; *People v. Thomas*, 110 Cal. 41, 42 Pac. 456; *People v. Burns*, 138 Cal. 159, 69 Pac. 16, 70 Pac. 1087.

§ 10343. 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. [R. C. 1905, § 9507; Pen. C. 1877, § 757; R. C. 1899, § 7699.]

§ 10344. 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. [R. C. 1905, § 9508; Pen. C. 1877, § 758; R. C. 1899, § 7700.]

Power to impose cumulative sentences. 7 L.R.A.(N.S.) 124.

Cumulative penalties for offense under both municipal ordinance and state statute. 17 L.R.A.(N.S.) 65.

As to similar provision in Cal. Pen. Code, § 669, see *Ex parte Kirby*, 76 Cal. 514, 18 Pac. 655; *Ex parte Green*, 86 Cal. 427, 25 Pac. 21; *Ex parte Clifton*, 145 Cal. 186, 78 Pac. 755.

§ 10345. 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. [R. C. 1905, § 9509; Pen. C. 1877, § 759; 1885, ch. 67, § 1; R. C. 1895, § 7701.]

§ 10346. 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. [R. C. 1905, § 9510; Pen. C. 1877, § 760; R. C. 1899, § 7702.]

Sentence is not objectionable because without giving credit for good time it would terminate between November and March, since if accused conducted himself properly sentence would not expire in winter time. *State v. Whitmarsh*, 26 S. D. 426, 128 N. W. 580.

§ 10347. 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. [R. C. 1905, § 9511; Pen. C. 1877, § 761; R. C. 1899, § 7703.]

§ 10348. 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. [R. C. 1905, § 9512; Pen. C. 1877, § 762; R. C. 1899, § 7704.]

§ 10349. 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. 1905, § 9513; R. C. 1895, § 7705.]

§ 10350. 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. [R. C. 1905, § 9514; Pen. C. 1877, § 763; R. C. 1899, § 7706.]

As to similar provision in Cal. Pen. Code, § 673, see *Coffee v. Haynes*, 124 Cal. 561, 71 Am. St. Rep. 99, 57 Pac. 482.

§ 10351. Civil death. A person sentenced to imprisonment in the penitentiary for life is thereafter deemed civilly dead. [R. C. 1905, § 9515; Pen. C. 1877, § 764; R. C. 1899, § 7707.]

Law as to civil death by conviction of crime, in United States. 18 L.R.A. 82.

At what time does suspension of civil or political rights of one under sentence commence. 17 L.R.A.(N.S.) 502.

Effect of suspension of sentence upon right to vote. 18 L.R.A.(N.S.) 684.

Restoration of right to vote by service of sentence upon conviction of crime. 32 L.R.A.(N.S.) 418.

Effect of civil death on gift conditioned upon contingency of death of devisee or legatee without child or issue. 25 L.R.A.(N.S.) 1045.

As to similar provision in Cal. Pen. Code, § 674, see *Coffee v. Haynes*, 124 Cal. 561, 71 Am. St. Rep. 99, 57 Pac. 482; *Estate of Donnelly*, 125 Cal. 417, 73 Am. St. Rep. 62, 58 Pac. 61.

§ 10352. 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. 1905, § 9516; R. C. 1895, § 7708.]

As to similar provision in Cal. Pen. Code, § 675, see *Coffee v. Haynes*, 124 Cal. 561, 71 Am. St. Rep. 99, 57 Pac. 482; *Estate of Donnelly*, 125 Cal. 417, 73 Am. St. Rep. 62, 58 Pac. 61.

§ 10353. 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. [R. C. 1905, § 9517; Pen. C. 1877, § 765; R. C. 1899, § 7709.]

§ 10354. 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. [R. C. 1905, § 9518; Pen. C. 1877, § 766; R. C. 1899, § 7710.]

§ 10355. 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. [R. C. 1905, § 9519; Pen. C. 1877, § 767; R. C. 1899, § 7711.]

Establishment of falsity of testimony by circumstantial evidence. 44 L.R.A.(N.S.) 513.

Applicability of rule that conviction of perjury cannot rest upon uncorroborated evidence of a single witness, to prosecution for subornation of perjury. 44 L.R.A.(N.S.) 307.

§ 10356. 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. [R. C. 1905, § 9520; Pen. C. 1877, § 768; R. C. 1899, § 7712.]

As to similar provision in Cal. Pen. Code, § 7, see *People v. Burns*, 75 Cal. 627, 17 Pac. 924.

§ 10357. 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. [R. C. 1905, § 9521; Pen. C. 1877, § 769; R. C. 1895, § 7713.]

"Willful" implies simply purpose or willingness to commit forbidden act. *Freeman v. City of Huron*, 8 S. D. 435, 66 N. W. 928.

"Willing" implies purpose or willingness to commit act, when applied to intent with which act is done. *State ex rel. Register v. McGahey*, 12 N. D. 535, 97 N. W. 865, 1 A. & E. Ann. Cas. 650.

§ 10358. 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. [R. C. 1905, § 9522; Pen. C. 1877, § 770; R. C. 1899, § 7714.]

Instruction defining terms "negligence" and "negligently" in exact language of code is sufficient where no more specific instruction was asked. *Zilke v. Johnson*, 22 N. D. 75, 132 N. W. 640, Ann. Cas. 1913E, 1005.

§ 10359. 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. [R. C. 1905, § 9523; Pen. C. 1877, § 771; R. C. 1895, § 7715.]

§ 10360. 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. [R. C. 1905, § 9524; Pen. C. 1877, § 772; R. C. 1899, § 7716.]

Meaning of malice. *Territory v. Egan*, 3 D. 119, 13 N. W. 568; *Wuest v. American Tobacco Co.*, 10 S. D. 394, 73 N. W. 303.

Charge in assault action that plaintiff was not entitled to exemplary damages, unless it was shown that defendant was prompted by "a wish to vex, annoy and injure"

plaintiff and that assault was malicious, was proper. *Bogue v. Gunderson*, 30 S. D. 1, 137 N. W. 595.

What is "malice." 19 L.R.A.(N.S.) 273.

Meaning of "malice aforethought." 38 L.R.A.(N.S.) 1054.

§ 10361. 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. [R. C. 1905, § 9525; Pen. C. 1877, § 773; R. C. 1899, § 7717.]

§ 10362. 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. [R. C. 1905, § 9526; Pen. C. 1877, § 774; R. C. 1899, § 7718.]

As to meaning of "bribe." *State v. Johnson*, 17 N. D. 554, 118 N. W. 230.

§ 10363. 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. [R. C. 1905, § 9527; Pen. C. 1877, § 775; R. C. 1899, § 7719.]

§ 10364. 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. [R. C. 1905, § 9528; Pen. C. 1877, § 776; R. C. 1899, § 7720.]

§ 10365. 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. [R. C. 1905, § 9529; Pen. C. 1877, § 777; R. C. 1895, § 7721.]

§ 10366. Signature. The term "signature," includes any name, mark or sign, written with intent to authenticate any instrument or writing. [R. C. 1905, § 9530; Pen. C. 1877, § 778; R. C. 1899, § 7722.]

§ 10367. Writing. The term "writing," includes printing and typewriting. [R. C. 1905, § 9531; Pen. C. 1877, § 779; R. C. 1895, § 7723.]

§ 10368. Real property. The term "real property," includes every estate, interest and right in lands, tenements and hereditaments. [R. C. 1905, § 9532; Pen. C. 1877, § 780; R. C. 1899, § 7724.]

Classification of growing fruit as real property. 16 L.R.A. 103.

Oil and gas lease as real property. 42 L.R.A.(N.S.) 472.

Question whether railroad is real estate or personalty. 66 L.R.A. 33.

Nature of interest of vendor or vendee in a land contract as real or personal property. 57 L.R.A. 643.

What constitutes real estate for purposes of taxation. 15 L.R.A. 297.

§ 10369. 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. [R. C. 1905, § 9533; Pen. C. 1877, § 781; R. C. 1899, § 7725.]

Injury from abandonment of highway as personal property. 26 L.R.A. 665.

Classification of growing fruit as personal property. 16 L.R.A. 103.

Oil and gas lease as personal property. 42 L.R.A.(N.S.) 472.

Railroad as personal property. 66 L.R.A. 33.

§ 10370. Property. The term "property," includes both real and personal property. [R. C. 1905, § 9534; Pen. C. 1877, § 782; R. C. 1899, § 7726.]

Definition of "property." 29 L.R.A.(N.S.) 60.

§ 10371. Person defined. The word "person," includes corporations as well as natural persons. [R. C. 1905, § 9535; Pen. C. 1877, § 783; R. C. 1899, § 7727.]

Corporation exchanging liquor with its members for checks bought of club, is chargeable with selling liquor without license. *State v. Mudie*, 22 S. D. 41, 115 N. W. 107.

Corporation is liable in action at law for deceit to same extent as is natural person. *Gunderson v. Havana-Clyde Min. Co.*, 22 N. D. 329, 133 N. W. 554.

§ 10372. 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. [R. C. 1905, § 9536; Pen. C. 1877, § 784; R. C. 1899, § 7728.]

Definition of "persons." 19 L.R.A. 222; 2 B. R. C. 243.

§ 10373. Singular includes plural. The singular number includes the plural, and the plural the singular. [R. C. 1905, § 9537; Pen. C. 1877, § 785; R. C. 1899, § 7729.]

§ 10374. Genders. Words used in the masculine gender, comprehend as well the feminine and neuter. [R. C. 1905, § 9538; Pen. C. 1877, § 786; R. C. 1899, § 7730.]

§ 10375. Present tense. Words used in the present tense include the future, but exclude the past. [R. C. 1905, § 9539; Pen. C. 1877, § 787; R. C. 1899, § 7731.]

§ 10376. 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. [R. C. 1905, § 9540; Pen. C. 1877, § 788; R. C. 1899, § 7732.]

§ 10377. 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. [R. C. 1905, § 9541; Pen. C. 1877, § 789; R. C. 1899, § 7733.]

§ 10378. 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. [R. C. 1905, § 9542; Pen. C. 1877, § 790; R. C. 1899, § 7734.]

§ 10379. 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. [R. C. 1905, § 9543; Pen. C. 1877, § 791; R. C. 1899, § 7735.]

§ 10380. 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. [R. C. 1905, § 9544; Pen. C. 1877, § 792; 1885, ch. 111, § 2; Const. § 154; R. C. 1895, § 7736.]

§ 10381. 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. [R. C. 1905, § 9545; Pen. C. 1877, § 793; R. C. 1899, § 7737.]

A defendant cannot be imprisoned for costs. *Re Lackey*, 6 S. D. 526, 62 N. W. 134.
Prosecution, under a city ordinance, by city for keeping tippling shop a criminal case as to costs. *City of Yankton v. Douglass*, 8 S. D. 590, 67 N. W. 630.
Costs upon conviction in criminal action should be taxed by clerk as in civil cases. *State v. Kruse*, 19 N. D. 203, 124 N. W. 385.

§ 10382. **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. 1905, § 9546; R. C. 1895, § 7738.]

On whether or not continuation of section 189 of penal code as section 9406 of compiled statutes have effect of nullifying express abrogation of other sections. *Burke v. Scharf*, 19 N. D. 227, 124 N. W. 79.

§ 10383. **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. 1905, § 9547; R. C. 1895, § 7739.]