

PENAL CODE

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- 92A. SMOKING, § 10185b.
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- 108. GENERAL PROVISIONS, §§ 10334-10368.

CHAPTER 1.

PRELIMINARY PROVISIONS.

- § 9195. Comp. Laws, 1913.
Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 85.
- § 9201. Comp. Laws, 1913.
State v. Fargo Bottling Works Co. 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387; State v. McGillic, 25 N. D. 27, 141 N. W. 82.

CHAPTER 2.

PERSONS LIABLE TO PUNISHMENT FOR CRIME.

- § 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; R. C. 1899, § 6821; Pen. C. 1877, § 23.]

CHAPTER 3.

PARTIES TO CRIME.

§ 9218. Comp. Laws, 1913.

Verdict finding defendant guilty of assault with dangerous weapon, held proper where it appears that he aided and abetted accomplices who used dangerous weapon. *State v. Rosencranz*, 40 N. D. 93, 168 N. W. 650.

Evidence that defendant suggested plan or scheme contemplating the larceny of an automobile, is sufficient, and because he did not advise stealing of a particular one, does not exonerate him. *State v. Smith*, — N. D. —, 199 N. W. 187.

In prosecution for larceny, where defendant is held as principal on theory that he advised and encouraged commission of crime, instruction that possession of property recently stolen, unless explained is circumstance tending to show guilt, not erroneous. *State v. Smith*, — N. D. —, 199 N. W. 187.

See also *State v. Dahms*, 29 N. D. 51, 149 N. W. 965.

CHAPTER 4.

CRIMES AGAINST RELIGION AND CONSCIENCE.

§ 9222. Comp. Laws, 1913.

State ex rel. Temple v. Barnes, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215.

§ 9236. **Servile labor prohibited.** All manner of servile labor on the first day of the week is prohibited, excepting works of necessity and charity, provided however that the operation of steam railroads, street railways, telegraph and telephone systems, electric light, gas, heat and power systems, livery and feed barns, hacks, taxi cabs and busses, automobile garages and supply stations, bakeries, boot-black stands, pop-corn stands and newspaper plants shall be deemed and are construed to be works of necessity. [Laws 1917, ch. 222, § 1.]

Sunday, 37 Cyc. 544, 548-550, 552-556; Constitutional Law, 12 C. J. p. 945, § 457.

Barbering as a work of necessity. L.R.A.1917B, 97.

Barber shops, validity of Sunday closing statute. 20 A.L.R. 1114.

Sunday law as applicable to acts or proceedings of the legislature. 31 A.L.R. 676.

Application of Sunday laws to attorneys. 8 A.L.R. 1356.

Prohibition of labor on Sunday. 25 R. C. L. 1426 and Supps.

Prohibition of business on Sunday as abridgment of privileges of citizens of the United States. 6 R. C. L. 289 and Supps.

§ 9238. **Prohibited sports enumerated.** All shooting, sporting horse racing or other public sports, circuses and street carnivals on the first day of the week are prohibited; provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played between the hours of one p. m. and six p. m. on the Sabbath day. Provided, further, that no game of baseball shall be played on the first day of the week within five hundred feet of any church edifice. [Initiated measure, Laws 1921, page 253; Laws 1917, ch. 223, § 1.]

Shooting crows as private diversion, not witnessed by public generally, and in

such a way as not to attract a crowd or injure anyone, does not constitute crime of Sabbath breaking. State v. Davies, 38 N. D. 68, 164 N. W. 698.

Sunday, 37 Cyc. 550-552.

Free performance as a violation of the Sunday law. L.R.A.1916B, 1130.

Municipal corporation's power to legislate as to Sunday observance. 29 A.L.R. 405, 418.

Moving picture shows as work, labor, avocation, business, or the like, within Sunday laws. L.R.A.1918B, 361; 4 A.L.R. 385.

Municipal corporation's power to legislate as to Sunday observance. 37 A.L.R. 575.

Sports, games, or amusements as work, labor, avocation, business, or the like within Sunday laws. 4 A.L.R. 382.

Sunday closing by municipality of motion picture houses not closed on that day by state laws. 18 A.L.R. 738.

Theatrical performance as work, labor, avocation, business or the like, within Sunday laws. 4 A.L.R. 384.

Prohibition of sports on Sunday. 25 R. C. L. 1426 and Supps.

Prohibition of baseball on Sunday. 25 R. C. L. 1427 and Supps.

§ 9239a. Who permitted to operate bath houses, etc. It shall be lawful for Chautauqua associations, summer resorts, firms, corporations, and private persons to operate bath houses, bathing beaches, or pleasure boats of all kinds on Sundays. [Laws 1917, ch. 221, § 1.]

Sunday, 37 Cyc. 549-550.

§ 9240. Public traffic prohibited; what exceptions. All manner of public selling or offering or exposing for sale publicly, of any commodity upon the first day of the week is prohibited; excepting that meats and fish may be sold at any time before ten o'clock A. M., and excepting that foods may be sold to be eaten upon the premises where sold, and drugs, medicines, surgical appliances, milk, ice cream and soda fountain dispensations, fruits, candy and confectionery, tobacco and cigars, newspapers and magazines may be sold at any time of the day, provided that none of said articles or commodities shall be sold in any billiard hall, pool hall, bowling alley, temperance saloon or any other place where gaming of any kind is conducted unless said gaming is discontinued from twelve o'clock midnight on Saturday night until six A. M. on Monday. [Laws 1917, ch. 222, § 2.]

Sunday 37 Cyc. 545-548.

Slot machine as violating statute against Sunday trading 7 B. R. C. 294.

Running pool room as work, labor, avocation, business, or the like, within Sunday laws. 4 A.L.R. 384.

Soft drinks, ice cream, and the like, as food within Sunday law. 21 A.L.R. 754.

Insurance policy delivered on Sunday. 19 A.L.R. 623.

Sale and delivery of food and refreshments on Sunday. 18 L.R.A.(N.S.) 617; L.R.A.1917C, 381.

Municipal corporation's power to require closing of billiard and pool rooms on Sunday. 29 A.L.R. 406, 419.

Publication and sale of newspaper on Sunday. L.R.A.1916C, 1151.

Sale of commodities on Sunday. 25 R. C. L. 1422 and Supps.

§ 9241a. Sunday dances. It shall be unlawful to keep open or to run or to permit the running of any place or to permit the use of any place for public dancing between the hours of twelve midnight on Saturday and sunrise the following Monday morning. Any person, firm, association or corporation violating the provisions of this act shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$25.00 nor more than \$50.00 for each offense. [Laws 1925, ch. 129, § 1; Laws 1923, ch. 297, § 1.]

§ 9242. Punishment for Sabbath breaking. Every person guilty of Sabbath breaking is punishable by a fine of not less than one dollar, nor more than fifty dollars, or less than one day in the county jail, nor more than twenty

days in the county jail, or both such fine or imprisonment at the discretion of the court. [Laws 1917, ch. 222, § 3.]

Violation of Sunday law as ground for civil action for damages. 11 A.L.R. 1220.

§ 9242a. **Emergency.** Whereas this act is necessary for the immediate preservation of the health, safety and peace of the public; therefore, this act shall take effect and be in force from and after its passage and approval. [Laws 1917, ch. 222, § 4.]

CHAPTER 5.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

- § 9259. Comp. Laws, 1913.
Englund v. Townley, 43 N. D. 118, 174 N. W. 755.
- § 9294. Comp. Laws, 1913.
State ex rel. McArthur v. McLean, 35 N. D. 203, 159 N. W. 847.

CHAPTER 7.

CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

- § 9300. Comp. Laws, 1913.
State ex rel. Johnson v. Cahill, — N. D. —, 193 N. W. 938; State ex rel. Johnson v. Bloom, — N. D. —, 193 N. W. 940.
- § 9301. Comp. Laws, 1913.
State ex rel. Johnson v. Cahill, — N. D. —, 193 N. W. 938.
- § 9303. Comp. Laws, 1913.
State v. La Flame, 30 N. D. 489, 152 N. W. 810.
- § 9315. Comp. Laws, 1913.
State v. Stockwell, 23 N. D. 70, 134 N. W. 767.
- §§ 9316, 9318. Comp. Laws, 1913.
State ex rel. Johnson v. Cahill, — N. D. —, 193 N. W. 938.

CHAPTER 8.

CRIMES AGAINST THE LEGISLATIVE POWER.

- §§ 9333, 9334. Comp. Laws, 1913.
State v. Poindexter, 48 N. D. 135, 183 N. W. 852.

CHAPTER 10A.

PENALTY FOR WILFULLY FALSE STATEMENTS BY STATE OFFICIALS.

§ 9347a1. **Publication of false statements forbidden.** No state official shall wilfully publish any false statement in regard to any of the state departments, institutions or industries which said false statements shall tend to deceive the public and create a distrust of the state officials or employees in charge of such departments, institutions or industries, or which tends to obstruct, hinder and delay the various departments, institutions and industries of the state. [Laws 1919, Sp. Sess. ch. 36, § 1.]

States, 36 Cyc. 869; Libel and Slander, 37 C. J. p. 144, § 656.
Libel of public officials. 17 R. C. L. 353 et seq. and Supps.

§ 9347a2. **Jurisdiction of district court.** The district court in any county in the state where any such false statements shall have been uttered or otherwise published, shall have jurisdiction to try any case brought under the provisions of this act. [Laws 1919, Sp. Sess. ch. 36, § 2.]

Libel and Slander, 37 C. J. p. 145, § 665.

Jurisdiction of libel actions. 17 R. C. L. 370 and Supps.

§ 9347a3. **Trial by jury.** In all prosecutions under the provisions of this act and tried by a jury such jurors shall be selected from various parts of the county in which such case shall be tried. [Laws 1919, Sp. Sess. ch. 36, § 3.]

Libel and Slander, 37 C. J. p. 156, § 704.

§ 9347a4. **Penalty.** Any person violating the provisions of this act shall be deemed guilty of a felony and shall be punished by imprisonment in the state penitentiary for a term of one year or by a fine of five hundred dollars (\$500.00), or both. [Laws 1919, Sp. Sess. ch. 36, § 4.]

Libel and Slander, 37 C. J. p. 157, § 708.

CHAPTER 14.

PERJURY AND SUBORNATION OF PERJURY.

§ 9367. **Oath defined.** The term oath as used in section 9366 of the Compiled Laws of 1913, includes an affirmation and every other mode of attesting the truth of that which is stated, which is authorized by law, and the signing of any writing purporting to be made under oath, in the presence of an officer authorized to administer oaths, or the acknowledgment of the signing thereof, to or before any such officer, or the presentation thereof to such officer by the person signing or by his direction to be authenticated as an oath, shall be deemed to be the taking of an oath within the meaning of said section and the certificate of the officer purporting to take such oath shall be prima facie evidence of the taking thereof. [Laws 1923, ch. 265, § 1.]

Perjury, 30 Cyc. 1405-1417.

Oath or affirmation as basis of charge of perjury. 21 R. C. L. 257.

CHAPTER 16.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§§ 9401, 9402. Comp. Laws, 1913.

Grandin Invest. Co. v. Hartung, — N. D. —, 191 N. W. 783.

§ 9403. Comp. Laws, 1913.

Heerman v. Rolfe, 27 N. D. 45, 145 N. W. 601.

§ 9412. Comp. Laws, 1913.

Section does not render illegal the purchase by an attorney of a promissory note, unless he purchased same with intent to bring suit thereon. Starke v. Wannemacher, 32 N. D. 617, 4 A.L.R. 167, 156 N. W. 494.

See also Patterson Land Co. v. Lynn, 27 N. D. 391, 147 N. W. 256; Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.

§ 9413. Comp. Laws, 1913.

Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.

§ 9414. Comp. Laws, 1913.

Starke v. Wannemacher, 32 N. D. 617, 156 N. W. 494; Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.

§ 9415. Comp. Laws, 1913.

Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.

- § 9416. Comp. Laws, 1913.
Starke v. Wannemacher, 32 N. D. 617, 156 N. W. 494; Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.
- § 9417. Comp. Laws, 1913.
Starke v. Wannemacher, 32 N. D. 617, 156 N. W. 494; Patterson Land Co. v. Lynn, 27 N. D. 391, 147 N. W. 256; Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.
- § 9418. Comp. Laws, 1913.
Stark County v. Mischel, 42 N. D. 332, 6 A.L.R. 174, 173 N. W. 817.
- § 9419. Comp. Laws, 1913.
State v. Finlayson, 41 N. D. 494, 170 N. W. 910.
- § 9432. Comp. Laws, 1913.
McCue v. Equity Co-op. Pub. Co. 39 N. D. 190, 167 N. W. 225.
- § 9433. Comp. Laws, 1913.
Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 85.

CHAPTER 17.

CONSPIRACY.

- §§ 9441, 9444. Comp. Laws, 1913.
Carr v. Neva, 38 N. D. 158, 164 N. W. 729.

CHAPTER 20.

HOMICIDE.

- § 9459. Comp. Laws, 1913.
Words "direct proof" synonymous with "direct evidence." State v. Sogge, 36 N. D. 262, 161 N. W. 1022.
- § 9462. Comp. Laws, 1913.
Information charging unintentional killing of a human while engaged in procurement of miscarriage, which was not necessary to save life of deceased, held sufficient to state offense of murder in second degree. State v. Reilly, 25 N. D. 339, 141 N. W. 720.
See also State v. Mueller, 40 N. D. 35, 168 N. W. 66; State v. Carter, — N. D. —, 195 N. W. 567.
- § 9468. Comp. Laws, 1913.
State v. Carter, — N. D. —, 195 N. W. 567.
- § 9469. Comp. Laws, 1913.
Information charging unintentional killing of a human while engaged in procurement of a miscarriage, which was not necessary to save life of deceased, held sufficient to state offense of murder in second degree. State v. Reilly, 25 N. D. 339, 141 N. W. 720.
See also State v. Mueller, 40 N. D. 35, 168 N. W. 66; State v. Carter, — N. D. —, 195 N. W. 567.
- § 9472. Repealed by § 11110a3, post. See § 11110a1, post. Pardon of person convicted of murder in first degree, see post, §§ 11110a1-11110a3, post.
- § 9480. Comp. Laws, 1913.
State v. Barnes, 29 N. D. 164, 150 N. W. 557.
- § 9502. Comp. Laws, 1913.
State v. Reilly, 25 N. D. 339, 141 N. W. 720.
- § 9503. Comp. Laws, 1913.
State v. Lehman, 44 N. D. 572, 175 N. W. 736.

CHAPTER 23.

ATTEMPTS TO KILL.

§ 9518. Comp. Laws, 1913.

State v. Gunderson, 42 N. D. 498, 173 N. W. 791.

§ 9519. Comp. Laws, 1913.

To constitute felony of shooting or attempting to shoot another with intent to injure that person, an attempt to carry out that intent must be shown. State v. Gunderson, 42 N. D. 498, 173 N. W. 791.

See also State v. Grassy, — N. D. —, 197 N. W. 881.

§ 9520. Comp. Laws, 1913.

State v. Gunderson, 42 N. D. 498, 173 N. W. 791.

CHAPTER 24.

ROBBERY.

§ 9529a. **Imprisonment for entry into banking room with intent to commit a robbery.** Every person who with intent to commit a robbery therein, shall enter in the day time, any room wherein a general banking business is carried on, in which room, there shall be at the time a human being, shall be guilty of a felony and punished by imprisonment in the state penitentiary for a term of not more than thirty years. [Laws 1921, ch. 24, § 1.]

Robbery, 34 Cyc. 1812.

CHAPTER 25.

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

§§ 9531, 9533. Comp. Laws, 1913.

State v. Gunderson, 42 N. D. 498, 173 N. W. 791.

CHAPTER 27.

ASSAULT AND BATTERY.

§ 9545. Comp. Laws, 1913.

State v. Gunderson, 42 N. D. 498, 173 N. W. 791; Leifermann v. Daniels, 44 N. D. 76, 176 N. W. 9.

§ 9546. Comp. Laws, 1913.

State v. Grassy, — N. D. —, 197 N. W. 881.

§ 9548. Comp. Laws, 1913.

State v. Fleming, 20 N. D. 105, 126 N. W. 565.

§ 9549. Comp. Laws, 1913.

Assault and battery with a dangerous weapon, with intent to do bodily harm, is included in offense of assault and deadly weapon with intent to kill, and a conviction of former offense, under information charging the latter, is valid. State v. Grassy, — N. D. —, 197 N. W. 881.

To constitute felony of shooting or attempting to shoot another with intent to injure that person, an attempt to carry out that intent must be shown. State v. Gunderson, 42 N. D. 498, 173 N. W. 791.

CHAPTER 28.

LIBEL.

§ 9562. Changed to § 4352a, ante.

CHAPTER 28A.

INDECENT LIBERTIES.

§ 9562a. **What are; punishment.** Every person who shall take any indecent liberty with or on the person of any child, which act under law does not amount to rape, or attempt to commit rape, or assault, with intent to commit rape, or sodomy, or other crime against nature, shall be guilty of a felony and shall be punished by imprisonment in the penitentiary not less than one year nor more than two years. [Laws 1923, ch. 167, § 1.]

Assault and Battery, 5 C. J. p. 730, § 197, pp. 731-732, §§ 200-201.

Indecent assault, reduction by appellate court of punishment imposed by trial court. 29 A.L.R. 335.

Sense of shame, or other disagreeable emotion on part of female, essential to an aggravated or indecent assault. 27 A.L.R. 859.

Indecent assaults. 2 R. C. L. 547 and Supps.

CHAPTER 29.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION.

§ 9563. **Liability of female for fornication,** see § 9578a, post.

State v. Riordan, 36 N. D. 119, 161 N. W. 606; Dwire v. Stearns, 44 N. D. 199, 172 N. W. 69; State v. Stepp, 45 N. D. 516, 178 N. W. 951.

§ 9566. **Rape in the first and second degrees defined; punishment.** Rape is rape in the first degree:

1. In all cases in which the person committing the offense is twenty-four years of age, or over, at the time of the commission of the offense, and,

2. In all cases in which the offense is committed under the conditions described in sub-divisions 2, 3, 4, 5, 6 and 7 of section 9563, or either of them, and in which the person committing the offense is twenty years of age, or over, at the time of the commission of the offense.

Rape is rape in the second degree:

1. In all cases in which the offense is committed under the conditions described in sub-divisions 2, 3, 4, 5, 6 and 7 of section 9563, or either of them, and in which the person committing the offense is seventeen years of age and under twenty years of age at the time of the commission of the offense; and,

2. In all other cases in which the person committing the offense is twenty years of age and under twenty-four years of age and the female is under eighteen years of age at the time of the commission of the offense.

Rape in the first degree shall be punished by imprisonment in the state penitentiary for not less than one year.

Rape in the second degree shall be punished by imprisonment in the state penitentiary for not less than one year, or, in case the defendant is a minor, either by imprisonment in the state penitentiary for not less than one year or by commitment to the state reform school for not less than one year in the discretion of the court. [Laws 1915, ch. 201, § 1.]

Rape, 33 Cyc. 1416-1428, 1518.

Impotency or senility as defense to prosecution for rape or assault with intent to commit rape. L.R.A.1915B, 131; 26 A.L.R. 772.

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.

Rape of female of unsound mind. L.R.A.1916F, 742.

Intercourse secured through sham marriage as rape. L.R.A.1916F, 796.

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.

Criminal responsibility of husband as for rape, or assault to commit rape, on wife. 18 A.L.R. 1063.

Intercourse under marriage with girl below the age of consent as statutory rape. 10 A.L.R. 409.

Definition of rape. 22 R. C. L. 1171, 1172 and Supps.

§ 9567. Rape in the third degree defined; punishment. Rape if committed by a person under twenty years of age at the time of the commission of the act and under the conditions described in sub-divisions 2, 3, 4, 5, 6 and 7 of section 9563, or either of them, or in other cases with the apparent consent of the female, and she is under the age of eighteen years, is rape in the third degree and any person found guilty thereof shall be punished by confinement in the reform school for a term of not less than one, nor more than three years, in the discretion of the court. [Laws 1917, ch. 193; Laws 1915, ch. 201, § 2.]

Verdict of rape in second degree or of assault with intent to commit rape may be returned, notwithstanding section 9563 where information charges rape in first degree. *State v. Bancroft*, 23 N. D. 442, 137 N. W. 37.

See also *State v. Riordan*, 36 N. D. 119, 161 N. W. 606; *Dwire v. Stearns*, 44 N. D. 199, 172 N. W. 69; *State v. Stepp*, 45 N. D. 516, 178 N. W. 951.

Definition of rape. 22 R. C. L. 1172.

§§ 9568, 9569. Repealed by Laws 1915, ch. 201, § 3.

CHAPTER 29A.

FORNICATION.

§ 9578a. Separate liability of both parties; effect of marriage. Every male and female person who are not married to each other who shall have voluntary sexual intercourse are separately guilty of the crime of fornication. A female under eighteen years of age and under age of consent fixed in section 9563 which defines the crime of rape, is nevertheless by her voluntary intercourse guilty of fornication as herein defined. Any person over eighteen years of age violating any of the provisions of this act shall be punished by a fine of not more than \$100.00 or by imprisonment in the county jail not to exceed thirty days or by both such fine and imprisonment. When any person under eighteen years of age is accused of said crime, such minor shall be proceeded against under the provisions of chapter 23 of the Code of Criminal Procedure of the Compiled Laws of North Dakota for 1913 and acts amendatory thereof.

Upon proof of the marriage of the guilty parties at any time before conviction, the prosecution under this section shall be dismissed. [Laws 1915, ch. 159, § 1.]

Dwire v. Stearns, 44 N. D. 199, 172 N. W. 69.

Fornication, 26 C. J. pp. 987-988 §§ 4-5, p. 997 § 37.

Acquittal of one of the parties, as bar to prosecution of the other. 49 L.R.A. (N.S.) 479.

Fornication. 1 R. C. L. 636 et seq. and Supps.

CHAPTER 30.

ADULTERY AND UNLAWFUL COHABITATION.

§ 9579. Comp. Laws, 1913.

State v. Hart, 30 N. D. 368, 152 N. W. 672; *Dwire v. Stearns*, 44 N. D. 199, 172 N. W. 69.

CHAPTER 32.

ABANDONMENT OR NONSUPPORT OF WIFE OR CHILD.

§§ 9589-9594. Repealed by § 9594a4, ante. See §§ 9594a1-9594a3, post.

§ 9594a1. Nonsupport of child; punishment; presumption of intent to abandon. Every parent or other person having legal responsibility for the care or support of a child who is under the age of sixteen years, and unable to support himself by lawful employment, who deserts and fails to care for and support such child with intent wholly to abandon him, and every husband, who, without lawful excuse, deserts and fails to support his wife, while pregnant, with intent wholly to abandon her, is guilty of a felony and upon conviction shall be punished therefor by imprisonment in the state prison for not more than five years. Desertion or a failure to support a child or pregnant wife for a period of three months shall be presumptive evidence of intention wholly to abandon. [Laws 1923, ch. 166, § 1.]

Husband and Wife, 30 C. J. pp. 1098-1102 §§ 920-924, pp. 1108-1110 §§ 946-948, p. 1116 § 963; Parent and Child, 29 Cyc. 1676-1677.

Criminal responsibility for aiding and abetting abandonment of child. 5 A.L.R. 786.

Criminal responsibility for abandonment or nonsupport of children who are being cared for by charitable institution. 24 A.L.R. 1075.

Criminal responsibility of father for nonsupport of child as affected by decree of divorce or separation, requiring support by him. 22 A.L.R. 795.

Failure to support children as "infamous offense," within constitutional or statutory provision in relation to indictment or presentment by grand jury. 24 A.L.R. 1014.

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

Effect of failure to provide medical attendance for, to render one guilty of manslaughter. 45 L.R.A.(N.S.) 559.

Criminal responsibility for failure to provide child with medical attendance and remedies. 6 B. R. C. 464.

Criminal responsibility of parent for failure to support child where support is furnished by others. 32 L.R.A.(N.S.) 841; L.R.A.1915A, 564.

Illegitimate child as within statute relating to duty to support child. 30 A.L.R. 1075.

Criminal liability of father for failure to support child who is living apart from him without his consent. 23 A.L.R. 864.

Extent or character of support contemplated by statute making nonsupport of child offense. 36 A.L.R. 866.

Abandonment of child as vagrancy. 14 A.L.R. 1485.

Liability of father for nonsupport of child. 20 R. C. L. 622 and Supps.

§ 9594a2. Failure to provide for wife or child; punishment; bond to provide, in lieu of punishment; who may sue. Every man, who without lawful excuse, wilfully fails to furnish proper food, shelter, clothing or medical attendance to his wife; and every person having legal responsibility for the care or support of a child who is under sixteen years of age, unable to support himself by lawful employment, who wilfully fails to make proper provision for such child is guilty of a felony, and upon conviction thereof shall be punished therefor by imprisonment in the state penitentiary for not more than five years, but, 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, may make an order accepting the bond of the defendant to the state, in such amount and with such sureties as the court prescribes and approves, conditioned to furnish the wife or child with proper

food, shelter, clothing and medical attention, for such a period, not exceeding five years, as the court may order, and in such a case, if there has been a plea of guilty or a conviction, judgment shall be suspended until some condition of the bond is violated. The bond may, in the discretion of the court, be conditioned upon the payment of a specified sum of money at stated intervals. Upon the filing of an affidavit showing the violation of any of the conditions of the bond, the accused shall be heard upon an order to show cause, and if the charge be sustained the court may proceed with the trial of the defendant under the original charge, or pronounce sentence under the original conviction, or enforce the suspended sentence, as the case may be. The wife or child, and any person furnishing necessary food, shelter, clothing and medical attendance to either, may sue upon the bond for a breach of any condition thereof. [Laws 1923, ch. 166, § 2.]

Husband and Wife, 30 C. J. pp. 1098-1104 §§ 920-928, pp. 1112-1116 §§ 953-963; Parent and Child, 29 Cyc. 1176-1179.

Nonsupport of wife as infamous crime within constitutional or statutory provision in relation to presentment or indictment by grand jury. 24 A.L.R. 1014.

Misconduct of wife as affecting criminal charge of abandonment against husband. 17 A.L.R. 999.

What amounts to nonsupport by husband within criminal statutes. 49 L.R.A. (N.S.) 588.

Offense of desertion or failure to provide for wife or family as affected by residence of parties. 47 L.R.A.(N.S.) 218.

Criminal liability of infant for failure to support wife. L.R.A.1916E, 762.

Extent or character of support contemplated by statute making nonsupport of wife offense. 36 A.L.R. 866.

Criminal liability of husband for neglect of wife, causing death. 61 L.R.A. 292.

Cruel and unusual punishment for abandonment or nonsupport. L.R.A.1915C, 570.

Refusal of wife to live with husband for abandonment or nonsupport. 2 A.L.R. 107; 8 A.L.R. 1314.

Abandonment of wife as vagrancy. 14 A.L.R. 1485.

Liability of father for nonsupport of child. 20 R. C. L. 622 and Supps.

Liability of husband for nonsupport of wife and family. 13 R. C. L. 1188 et seq. and Supps.

§ 9594a3. Proof required. In any prosecution for desertion or for failure to support a wife or child no other or greater evidence shall be required to prove the relationship of the defendant to such wife or child than is or shall be required to prove such relationship in a civil action. [Laws 1923, ch. 166, § 3.]

Husband and Wife, 30 C. J. p. 1110 § 948.

Wife as witness against husband in prosecution for failing to support children. L.R.A.1917E, 1133.

Wife as witness against husband in prosecution for abandonment. L.R.A. 1917E, 1134.

§ 9594a4. Repeal. Sections 9589, 9590, 9591, 9592, 9593, 9594, 9595, 9596, 9597, 9598, 9599, 9600, 9601, 9602 and 9603, Compiled Laws of 1913, and all acts or parts of acts inconsistent herewith are hereby repealed. [Laws 1923, ch. 166, § 4.]

CHAPTER 33.

DESERTION AND NONSUPPORT OF FAMILY.

§§ 9595-9603. Repealed by § 9594a4, ante. See §§ 9594a1-9594a3, ante. § 9601 had previously been repealed by Laws 1917, ch. 195.

CHAPTER 34.

ABORTION AND CONCEALING DEATH OF CHILDREN.

§ 9604. Comp. Laws, 1913.

Information charging unintentional killing of a human while engaged in procurement of a miscarriage, which was not necessary to save life of deceased, held sufficient to state offense of murder in second degree. *State v. Reilly*, 25 N. D. 339, 141 N. W. 720.

CHAPTER 34A.

PLACING OF CHILDREN WITH DELINQUENTS.

§ 9606a1. **Unlawfulness of.** It shall be unlawful for any person, association, corporation, institution, or agency to place any child in any almshouse in this state, or in any other institution, charitable, penal or reformatory, in which delinquent children, or children charged with delinquency, are kept, without the consent of the state board of administration; provided, however, that a child may be permitted to remain in an almshouse with his or her parent, or parents, who may be confined therein, if the consent of the state board of administration be first obtained. [Laws 1923, ch. 157, § 1.]

Infants, 31 C. J. p. 1102 § 227.

Commitment of children to public institutions. 14 R. C. L. 373 and Supps.

§ 9606a2. **Violation a misdemeanor.** Any person, association, corporation, institution or agency violating the provisions of this act shall be deemed guilty of a misdemeanor. [Laws 1923, ch. 157, § 2.]

CHAPTER 35.

BABY FARMING.

§ 9607. **License required.** 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 other person or corporation caring for children, to place children in family homes for adoption, or otherwise, without a license so to do from the board of administration. [Laws 1923, ch. 163, § 1.]

Infants, 31 C. J. p. 994 § 15, p. 1001 § 24.

§ 9608. **Violation a misdemeanor.** Any person who violates the provisions of section 9607, Compiled Laws for 1913, shall upon conviction be guilty of a misdemeanor. [Laws 1923, ch. 163, § 2.]

CHAPTER 36A.

PUBLIC DANCES.

Explanatory note. Sunday dances, see § 9241a, ante.

§ 9609a1. **Prohibiting admission of unaccompanied person under eighteen.** No proprietor, lessee, or manager and no employee or agent of any proprietor, lessee, or manager of any hall, room, pavilion, bowery, platform or other structure in or on which dancing is practised and to which the public generally is invited to participate by paying an admission fee in money or other token of value, shall admit, while dancing is practiced in or on such place, any person under the age of eighteen years, unless such person is accompanied by a parent or guardian. [Laws 1923, ch. 169, § 1.]

Infants, 31 C. J. p. 994 § 15; Theaters and Shows, 38 Cyc. 255.

Validity of police regulations excluding children from dance halls. 6 R. C. L. 394 and Supps.

Exclusion from public dance halls of persons under certain age if unaccompanied by parent or guardian. 26 R. C. L. 701 and Supps.

§ 9609a2. Posting copy of act. A copy of this act shall be posted in a conspicuous place at the entrance of every hall, room, pavilion, bowery, platform or other structure where public dancing is practiced. [Laws 1923, ch. 169, § 2.]

§ 9609a3. Penalty. Whoever violates any of the provisions of this act shall be punished by a fine not exceeding one hundred dollars and not less than twenty-five dollars or by imprisonment in a county jail not to exceed thirty (30) days or by both such fine and imprisonment, in the discretion of the court. [Laws 1923, ch. 169, § 3.]

CHAPTER 37.

BIGAMY, INCEST AND SODOMY.

§ 9615. Comp. Laws, 1913.

Sodomy includes carnal knowledge by or with the mouth. *State v. Nelson*, 36 N. D. 564, 163 N. W. 278.

CHAPTER 40.

PROSTITUTION AND WHITE SLAVERY.

§ 9642. Comp. Laws, 1913.

Word "female" includes married as well as an unmarried woman. *State v. Phillips*, 26 N. D. 206, 49 L.R.A.(N.S.) 470, 144 N. W. 94.

CHAPTER 40A.

IMMORALITY.

§ 9643a1. What prohibited. From and after the passage of this act it shall be unlawful:

(a) To keep, set up, maintain or operate and [any] place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation;

(b) To occupy any place, structure, building, or conveyance for the purpose of prostitution, lewdness or assignation or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, lewdness or assignation, with knowledge or reasonable cause to know that the same is, or is to be, used for such purpose;

(c) To receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation or to permit any person to remain there for such purpose;

(d) To direct, take or transport, or to offer or agree to take or transport any person to any place, structure or building or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;

(e) To procure or to solicit or to offer to procure or solicit for the purpose of prostitution, lewdness or assignation;

(f) To reside in, enter or remain in any place, structure or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness or assignation;

(g) To engage in prostitution, lewdness or assignation or to aid or abet prostitution, lewdness or assignation by any means whatsoever. [Laws 1919, ch. 190, § 1.]

Prostitution, 32 Cyc. 731-732; Disorderly Houses, 18 C. J. pp. 1234-1235 §§ 4-5, p. 1239 § 16, pp. 1240-1241 §§ 20-24.

Indictment of woman transported in violation of white slave traffic act for conspiracy to violate the laws of the United States. L.R.A.1915D, 281.

Construction, applicability and effect of congressional White Slave Traffic Act. L.R.A. 1917E, 1137.

Effect of landlord's knowledge that tenant intends to use the premises for purposes of prostitution. 19 L.R.A.(N.S.) 662.

State legislation for prevention of immorality as interference with interstate commerce. 51 L.R.A.(N.S.) 157.

Criminal responsibility of lessor of disorderly house. 44 L.R.A.(N.S.) 859.

Conspiracy to induce young girl to become prostitute. 5 R. C. L. 1076.

Offense of keeping disorderly house. R. C. L. 218 et seq. and Supps.

Criminal responsibility of landlord of disorderly house. 16 R. C. L. 525.

Constitutionality of Federal White Slave Act. 8 R. C. L. 324 and Supps.

§ 9643a2. Meaning of terms. The term "prostitution" shall be construed to include the offer or receiving of the body for sexual intercourse for hire, and, shall also be construed to include the offer or receiving of the body for indiscriminate sexual intercourse without hire. That the term "lewdness" shall be construed to include any indecent or obscene act. That the term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement. [Laws 1919, ch. 190, § 2.]

Prostitution, 32 Cyc. 731-732; Lewdness, 36 C. J. p. 1035 §§ 1, 3; Disorderly Houses, 18 C. J. pp. 1240-1241 §§ 20-24.

Definition of prostitution. 8 R. C. L. 322 and Supps.

§ 9643a3. Evidence admissible. In the trial of any person charged with a violation of any of the provisions of section 1 of this act, testimony of a prior conviction or testimony concerning the reputation of any place, structure or building and of the person or persons who reside in or frequent the same and of the defendant shall be admissible in evidence in support of the charge. [Laws 1919, ch. 190, § 3.]

Disorderly Houses, 18 C. J. p. 1262 § 87, pp. 1265-1266 §§ 91-92, p. 1268 §§ 96-97; Prostitution, 32 Cyc. 735.

Validity of statute making repute of house prima facie proof of character. L.R.A.1915C, 734.

Necessity of corroborating evidence as to reputation of house to support a conviction for keeping disorderly house. 46 L.R.A.(N.S.) 593.

Wife as witness against husband in prosecution under White Slave Act. L.R.A. 1917E, 1133.

Proof of offense of keeping disorderly house. 9 R. C. L. 225 and Supps.

§ 9643a4. Degrees of crime. Any person who shall be found to have committed two or more violations of any of the provisions of section 1 of this act within a period of one year next preceding the date named in an indictment, information or charge of violating any of the provisions of section 1 of this act shall be deemed guilty in the first degree. Any person who shall be found to have committed a single violation of any of the provisions of this act shall be deemed guilty in the second degree. [Laws 1919, ch. 190, § 4.]

Criminal Law, 16 C. J. pp. 1339-1350 §§ 3150-3185.

§ 9643a5. Punishment; probation or parole. (a) Any person who shall be deemed guilty in the first degree, as set forth in section 4, shall be subject to imprisonment in, or commitment to, any penal or reformatory institution in this state for not less than one nor more than three years; provided, that in case of a commitment to a reformatory institution the commitment shall be made for an indeterminate period of time of not less than one nor more than

three years in duration, and the board of control shall have authority to discharge or to place on parole any person so committed after the service of the minimum term, or any part thereof, and to require the return to the said institution for the balance of the maximum term of any person who shall violate the terms or conditions of the parole.

(b) Any person who shall be deemed guilty in the second degree, as set forth in section 4, shall be subject to imprisonment for not more than one year; provided, that the sentence imposed, or any part thereof, may be suspended, and provided further that the defendant may be placed on probation in the care of a probation officer designated by law or theretofore appointed by the court upon the recommendation of five responsible citizens.

(c) Probation or parole shall be granted or ordered in the case of a person infected with a venereal disease on such terms and conditions only as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

(d) No girl or woman who shall be convicted under this act shall be placed on probation or on parole in the care or charge of any person except a woman probation officer. [Laws 1919, ch. 190, § 5.]

Disorderly Houses, 18 C. J. p. 1276 § 122; Prostitution, 32 Cyc. 736; Criminal Law, 16 C. J. p. 1334 § 2140.

Power to impose fines in relation to prostitution, for benefit of private individual or corporation. 13 A.L.R. 832.

Reduction by appellate court of punishment imposed by trial court for living on earnings of prostitute. 29 A.L.R. 339.

Cruel and unusual punishment for keeping disorderly house. 35 L.R.A. 571; L.R.A.1916C, 566.

Forfeiture of property found in bawdyhouse. 52 L.R.A.(N.S.) 932.

Parole. 20 R. C. L. 577 et seq. and Supps.

§ 9643a6. Remainder of act not invalidated by holding any of provisions unconstitutional. The declaration by the courts of any of the provisions of this act as being in violation of the constitution of the state shall not invalidate the remaining provisions. [Laws 1919, ch. 190, § 6.]

Partial unconstitutionality of statutes. 6 R. C. L. 121 et seq. and Supps.

§ 9643a7. Emergency. Whereas, it is necessary for the immediate preservation of the public peace, health and safety that this act shall become effective without delay, there being at present no law covering such acts and the lack of the same resulting in widespread vice and venereal disease; therefore, this act shall be in full force and effect from and after its passage and approval. [Laws 1919, ch. 190, § 8.]

CHAPTER 41.

BAWDY HOUSES COMMON NUISANCES.

§ 9644. Comp. Laws, 1913.

State v. McCray, 48 N. D. 625, 22 A.L.R. 530, 186 N. W. 280; State ex rel. McCurdy v. Bennett, 37 N. D. 465, L.R.A.1917F, 1076, 163 N. W. 1063.

§ 9645. Comp. Laws, 1913.

Section not unconstitutional as deprivation of life, liberty, or property without due process of law. State ex rel. Herigstad v. McCray, 48 N. D. 625, 22 A.L.R. 530, 186 N. W. 280.

§ 9646. Comp. Laws, 1913.

Section held unconstitutional as a taking of property without due process and as authorizing unreasonable seizures. State ex rel. Herigstad v. McCray, 48 N. D. 625, 22 A.L.R. 530, 186 N. W. 230.

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; all persons participating in any game of chance upon which money or property usually wagered in or upon premises not owned nor kept by them; 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 mispend their time by frequenting houses of ill fame, gambling houses or tipling shops; all persons not giving a good account of themselves, who are found lodging in, or found in the nighttime, in any out-houses, sheds, barns or unoccupied building, or found lodging in the open air; and all persons trespassing in or upon property, land or premises not owned nor kept by them, and all persons who are known to be thieves, burglars or pick-pockets, 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 any 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 house or out houses, or are found in any house of ill fame, gambling house or tipling shop, shall be deemed to be and they are declared vagrants. [Laws 1923, ch. 336, § 1.]

Vagrancy, 39 Cyc. 1109.

Constitutionality of statute requiring persons, regardless of financial condition, to engage in some business, profession, occupation, or employment. 9 A.L.R. 1366.

What amounts to vagrancy. 14 A.L.R. 1492.

Prohibition of fortune telling under English vagrancy act. 43 L.R.A.(N.S.) 204.

Definition of vagrancy. 8 R. C. L. 339 and Supps.

Constitutionality of vagrancy statutes. 8 R. C. L. 340 and Supps.

§ 9659. **Penalties.** Every person convicted of vagrancy, under section 9658, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail, not exceeding thirty days, or by both such fine and imprisonment, or by being compelled to work upon the streets or public highways not to exceed twenty days. [Laws 1923, ch. 336, § 2.]

Vagrancy, 39 Cyc. 1113.

§ 9659a. **Trespass defined.** Trespass as used in this act is the wilful intrusion by one person upon or into the property, land or premises of another. [Laws 1923, ch. 336, § 3.]

Vagrancy, 39 Cyc. 1109.

CHAPTER 46.

DEFINING CRIME OF GAMBLING.

§ 9674a1. **Gambling.** It shall be unlawful to participate in any manner whatever, or to solicit, persuade or entice any person to participate in any manner whatever in any game of cards or other game of chance upon which money or other property is wagered or in which money or other property constitutes a stake. [Laws 1919, ch. 133, § 1.]

Gaming, 27 C. J. pp. 998-1004 §§ 131-150, pp. 1015-1016 §§ 181-182.

Several offenses growing out of the same facts. 31 L.R.A.(N.S.) 706.

Offense of keeping a gaming house as affected by restrictions on admission. 33 L.R.A.(N.S.) 549.

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.

Married woman's criminal responsibility for keeping gaming house. 4 A.L.R. 282.

Oral betting as a violation of statute against bookmaking. 25 L.R.A.(N.S.) 479.

Horse racing as a game within gambling statutes. 33 L.R.A.(N.S.) 828.

Operation of slot machine as gambling. 42 L.R.A.(N.S.) 720; 38 A.L.R. 73.

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.

Shaking dice or playing game, for drinks, cigars, or other trivial stakes, as gambling or gaming. L.R.A.1918A, 1068.

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.

Criminal responsibility of lessor of gambling house. 44 L.R.A.(N.S.) 863.

Card-game paraphernalia as a gambling-device, within the statute against gaming. 17 L.R.A.(N.S.) 1210.

Gambling as a crime. 12 R. C. L. 708 et seq. and Supps.

§ 9674a2. Penalty. Any person who violates any of the provisions of the preceding section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than \$10 nor to exceed \$100, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment. [Laws 1919, ch. 133, § 2.]

Gaming, 27 C. J. p. 1043 § 251.

Power of municipality as well as state to punish for gambling. 17 L.R.A. (N.S.) 52.

Cruel and unusual punishment of gambling. L.R.A.1915C, 570.

§ 9674a3. Evidence. Any person called as a witness by the state in any prosecution under this act, shall not be excused from testifying relative to any unlawful gambling done by himself or others; but when compelled to testify and disclose incriminating evidence against himself in any case he shall not be prosecuted in such case. [Laws 1919, ch. 133, § 2.]

Witnesses, 40 Cyc. 2534-2543.

Necessity of instruction as to law on circumstantial evidence from possession of stolen property. 69 L.R.A. 198.

Evidence of other crimes in prosecution for gambling. 62 L.R.A. 328.

Power of legislature to enact prima facie rule of evidence. L.R.A.1915C, 727.

Who is accomplice in gambling within rule requiring corroboration of testimony. 43 L.R.A.(N.S.) 546.

Immunity of witness from self-incrimination. 28 R. C. L. 440 et seq.

CHAPTER 47.

GAMBLING HOUSES COMMON NUISANCES.

§ 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 used 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, are kept, 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 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, police 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 a 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. [Laws 1917, ch. 120, § 1.]

Gaming, 27 C. J. pp. 1006-1013 §§ 155-174; Disorderly Houses, 18 C. J. pp. 1234-1247 §§ 4-40, pp. 1276-1277 §§ 122-123; Nuisances, 29 Cyc. 1214.

Pool selling as nuisance. 44 L.R.A.(N.S.) 161.

Reduction by appellate court of punishment imposed by trial court for using premises for gambling purposes. 29 A.L.R. 341.

What constitutes inn or hotel, within meaning of statute as to gambling. 19 A.L.R. 530.

What is "outhouse, where people resort," within meaning of statute as to gambling. 20 A.L.R. 243.

Pool room as nuisance. 21 L.R.A.(N.S.) 836.

Gambling house as public nuisance. 20 R. C. L. 404 and Supps.

Disorderly house as public nuisance. 20 R. C. L. 406 and Supps.

Gambling as nuisance. 12 R. C. L. 708 and Supps.

CHAPTER 50.

OTHER INJURIES TO PERSONS.

§ 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; R. C. 1895, § 7286; Laws 1890, ch. 108, § 14.]

CHAPTER 51.

CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

§ 9769. This section must be considered as affected if not repealed though not expressly referred to by §§ 9803b1-9803b5, post.

§ 9770. This section although not expressly referred to therein, must be considered as affected, if not repealed, by §§ 9803a6, 9803b1-9803b5, post.

State v. Brown, 38 N. D. 340, 165 N. W. 520.

§ 9777. Repealed by § 2063a5, ante. See § 2063a4, ante.

§ 9779. Comp. Laws, 1913.

State v. Brown, 38 N. D. 340, 165 N. W. 520.

CHAPTER 51A.

RED OR BLACK FLAGS.

Explanatory note. Laws 1921, page 253, constituting this chapter, was an initiated measure.

§ 9790a1. Carrying in parade, or the display of certain flags, ensigns, banners and standards, prohibited. No flag of any nation, state, county or territory other than the National flag or a state flag, or the flag of a friendly foreign nation, or the dependencies of such nations, shall be carried in parade on any public street or highway within the state of North Dakota or exhibited in any hall or public place, or displayed or exhibited on any vehicle, or on any building or premises, or in any other manner in public within the state. [Initiated measure, Laws 1921, page 253.]

Flags, 26 C. J. p. 739 § 3.

§ 9790a2. Red or black flags, etc., prohibited. No red or black flag, and no banner, ensign, or sign having upon it any inscription opposed or antagonistic to the existing government of the United States, or of the state of North Dakota, or the use or display of which would tend to occasion a breach of the public peace, shall be carried or displayed in any parade, on any public street or highway in the state of North Dakota, or exhibited in any hall or public place or upon any vehicle or any building or premises or in any other manner in public within the state. [Initiated measure, Laws 1921, page 254.]

Flags, 26 C. J. p. 739 §§ 3-4.

Validity of statutory or other regulation forbidding display of red flag or other symbol tending to incite disorder. L.R.A.1915B, 706.

§ 9790a3. Penalty. Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail, not exceeding thirty days or by a fine of not exceeding one hundred dollars or by both such fine and imprisonment. [Initiated measure, Laws 1921, page 254.]

CHAPTER 54A.

PISTOLS AND REVOLVERS.

§ 9803a1. Definition. "Pistol or revolver," as used in this act, shall be construed as meaning any firearm with barrel less than twelve inches in length. [Laws 1923, ch. 266, § 1.]

§ 9803a2. Committing crime when armed. If any person shall commit, or attempt to commit, a crime when armed with a pistol or revolver, and has no permit to carry the same, he may be punished by imprisonment for not more than ten years, in addition to the punishment provided for the crime. Such imprisonment, if not exceeding one year, to be in the county jail, and if exceeding one year to be in the state penitentiary. [Laws 1925, ch. 174; Laws 1923, ch. 266, § 2.]

Constitutional rights to bear arms. L.R.A.1917C, 63.

Homicide by accidental discharge of weapon carried in violation of law. 45 L.R.A.(N.S.) 221.

§ 9803a3. Punishment. The judge shall have the power to sentence any person who may be convicted for a second or third offense under section 2 of this act, to double and triple the penalty imposed thereby, and for a fourth offense the person so convicted may be sentenced to life imprisonment. [Laws 1923, ch. 266, § 3.]

Criminal Law, 16 C. J. pp. 1339-1350 §§ 3150-3185.

Cruel and unusual punishment for carrying weapons. 35 L.R.A. 571; L.R.A. 1915C, 570.

Increased punishment of habitual criminals. 8 R. C. L. 267 and Supps.

§ 9803a4. **Being armed prima facie evidence of intention.** In the trial of a person for the commission of a felony or of an attempt to commit a felony against the person of another, the fact that he was armed with a pistol or revolver and having no permit to carry the same shall be prima facie evidence of his intention to commit said felony. [Laws 1923, ch. 266, § 4.]

Criminal Law, 16 C. J. pp. 80-81 §§ 47-48, p. 539 § 1013.

Possession of arms as evidence of guilt. 8 R. C. L. 193 and Supps.

§ 9803a5. **Aliens and criminals must not possess arms.** No unnaturalized foreign-born person and no person who has been convicted of a felony against the person or property of another or against the government of the United States or of any state or subdivision thereof, shall own or have in his possession or under his control, a pistol or revolver. Violations of this section shall be punished by imprisonment for not to exceed five years. [Laws 1923, ch. 266, § 5.]

Weapons, 40 Cyc. 853.

Constitutionality of statutes restricting right of aliens to bear arms. 24 A.L.R. 1119; 34 A.L.R. 63.

§ 9803a6. **Carrying pistol concealed.** No person shall carry a pistol or revolver concealed in any vehicle or in any package, satchel, grip, suit case or carry in any way or upon his person, except in his dwelling house or place of business, without a license therefor as hereinafter provided. Violations of this section shall be punished by imprisonment for not less than one year, and upon conviction the pistol or revolver shall be confiscated and destroyed. [Laws 1923, ch. 266, § 6.]

Explanatory note. See also §§ 9803b1-9803b5, post.

Weapons, 40 Cyc. 853, 863.

Scope and effect of exception in statute forbidding carrying of weapons, as to person on his own premises. 31 A.L.R. 1128.

Conviction as condition of forfeiture of weapons. 4 L.R.A.(N.S.) 358.

Arrest without warrant of persons carrying concealed weapons. 2 R. C. L. 456.

Carrying concealed weapons. 8 R. C. L. 287 et seq. and Supps.

Constitutional right to bear arms. 6 R. C. L. 249 and Supps.

§ 9803a7. **Exceptions.** The provisions of the preceding section shall not apply to marshals, sheriffs, policemen, or other duly appointed peace officers, nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the Army, Navy or Marine Corps of the United States, or the National Guard, when on duty, or organizations by law authorized to purchase or receive such weapons from the United States, or this state, nor to duly authorized military or civil organizations when parading, nor to the members thereof when at or going to or from their customary places of assembly. [Laws 1923, ch. 266, § 7.]

Weapons, 40 Cyc. 857-863.

Right of peace officer to carry weapons outside his district. 38 L.R.A.(N.S.) 998.

§ 9803a8. **Issue of licenses to carry.** The justice of a court of record, the chief of police of a city or town and the sheriff of a county, or persons authorized by any of them shall upon the application of any persons having a bona fide residence or place of business within the jurisdiction of said licensing authority, or of any person having a bona fide residence or place of business within the United States and a license to carry a fire arm concealed upon his person issued by the authorities of any state or subdivision of the United States, issue a license to such person to carry a pistol or revolver within this

state for not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property or for any other proper purpose, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the Secretary of State, and shall bear the name, address, description, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the secretary of state, and the triplicate shall be preserved for six years by the authority issuing said license. [Laws 1923, ch. 266, § 8.]

Weapons, 40 Cyc. 857-858.

§ 9803a9. Selling to minors. Any person or persons who shall sell, barter, hire, lend or give to any minor under the age of eighteen years any pistol or revolver shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined not less than \$100, nor more than \$1,000, or be imprisoned not less than three months, nor more than one year, or both. [Laws 1923, ch. 266, § 9.]

Weapons, 40 Cyc. 872, 853.

§ 9803a10. Sales regulated. No person shall sell, deliver, or otherwise transfer a pistol or revolver to a person who he has reasonable cause to believe either is an unnaturalized foreign born person or has been convicted of a felony against the person or property of another, or against the government of the United States or any state or subdivision thereof, nor in any event shall he deliver a pistol or revolver on the day of the application for the purchase thereof, and when delivered, said pistol or revolver shall be securely wrapped and shall be unloaded. Before a delivery be made the purchaser shall sign in triplicate and deliver to the seller a statement containing his full name, address, occupation, and nationality, the date of sale, the caliber, make, model, and manufacturer's number of the weapon. The seller shall, within seven days, sign and forward by registered mail one copy thereof to the secretary of state, and one copy thereof to the chief of police of the city or town, or the sheriff of the county of which the seller is a resident, and shall retain the other copy for six years. This section shall not apply to sales at wholesale. Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer a pistol or revolver to any person not personally known to him. Violations of this section shall be punished by a fine of not less than \$100 or by imprisonment for not less than one year, or by both such fine and imprisonment. [Laws 1923, ch. 266, § 10.]

Weapons, 40 Cyc. 853, 872.

§ 9803a11. Dealers to be licensed. Whoever, without being licensed as hereinafter provided, sells, or otherwise transfers, advertises, or exposes for sale, or transfers or has in his possession with intent to sell, or otherwise transfer, pistols or revolvers, shall be punished by imprisonment for not less than two years. [Laws 1923, ch. 266, § 11.]

Weapons, 40 Cyc. 853.

§ 9803a12. Dealers' licenses: by whom granted, and conditions thereof. The duly constituted licensing authorities of any city, town or subdivision of this state, may grant licenses in form prescribed by the secretary of state, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the said city or town or political subdivision, pistols and revolvers, subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

1. The business shall be carried on only in the building designated in the license.
2. The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.
3. No pistol or revolver shall be delivered—

(a) On the day of the application for the purchase, and when delivered shall be unloaded and securely wrapped; nor

(b) Unless the purchaser either is personally known to the seller or shall present clear evidence of his identity; nor

(c) If the seller has reasonable cause to believe that the purchaser either is an unnaturalized foreign born person or has been convicted of a felony against the person or property of another, or against the government of the United States or any state or subdivision thereof.

4. A true record, in triplicate, shall be made of every pistol or revolver sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Secretary of State, and shall be personally signed by the purchaser and by the person affecting [effecting] the sale, each in the presence of the other, and shall include the date of sale, the caliber, make, model, and manufacturer's number of the weapon, the name, address, occupation, and nationality of the purchaser. One copy of said record shall, within seven days, be forwarded by registered mail to the Secretary of State and one copy thereof to the chief of police of the city or town or the sheriff of the county of which the seller is a resident, and the other copy retained for six years.

5. No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of said premises where it can readily be seen from the outside. [Laws 1923, ch. 266, § 12.]

Weapons, 40 Cyc. 853.

§ 9803a13. **Penalty for false information.** If any person in purchasing or otherwise securing delivery of a pistol or revolver or in applying for a permit to carry the same, shall give false information or offer false evidence of his identity he shall be punished by imprisonment for not less than five nor more than ten years. [Laws 1923, ch. 266, § 13.]

§ 9803a14. **Alteration of identifying marks prohibited.** No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver. Possession of any such firearm upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same. Violations of this section shall be punished by imprisonment for not less than one year nor more than five years. [Laws 1923, ch. 266, § 14.]

§ 9803a15. **Existing licenses revoked.** All licenses heretofore issued within this state permitting the carrying of pistols or revolvers concealed upon the person shall expire at midnight of June 30th, 1923. [Laws 1923, ch. 266, § 15.]

§ 9803a16. **Exceptions.** This act shall not apply to antique pistols or revolvers incapable of use as such. [Laws 1923, ch. 266, § 16.]

Weapons, 40 Cyc. 852.

§ 9803a17. **Certain acts repealed.** All laws or parts of laws inconsistent herewith are hereby repealed. [Laws 1923, ch. 266, § 17.]

CHAPTER 54B.

CONCEALED WEAPONS; CARRYING OF.

Validity upheld. *State v. Brown*, 38 N. D. 340, 165 N. W. 520.

See also *State v. Williams*, 48 N. D. 1259, 189 N. W. 625.

§ 9803b1. **Carrying forbidden.** Any person other than a public officer, who carries concealed in his clothes any instrument or weapon of the kind usually known as a black-jack, slung-shot, billy, sand club, sand bag, bludgeon, metal knuckles, or any sharp or dangerous weapon usually employed in attack or

defense of the person, or any gun, revolver, pistol, or other dangerous fire arm, loaded or unloaded, or any person who carries concealed nitro-glycerin, dynamite, or any other dangerous or violent explosive, or has the same in his custody, possession or control, shall be guilty of a felony, unless such instrument, weapon or explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. [Laws 1915, ch. 83, § 1.]

See also §§ 9803a6, 9803a7, ante.

Weapons, 40 Cyc. 852-853, 863-864; Explosives, 25 C. J. pp. 213-216 §§ 50-54.

What are weapons within offense of carrying concealed weapons. 34 L.R.A. (N.S.) 1174.

What manner of carrying of weapon violates statute against carrying concealed weapons. 23 L.R.A.(N.S.) 173.

Carrying concealed weapons. 8 R. C. L. 287 et seq. and Supps.

§ 9803b2. Presumption from possession. The possession, in the manner set forth in the preceding section, of any of the weapons or explosives mentioned therein, shall be presumptive evidence of intent to use the same in violation of this act. [Laws 1915, ch. 83, § 2.]

Weapons, 40 Cyc. 867; Explosives, 25 C. J. p. 215 § 54.

Admissibility of weapons taken from defendant charged with carrying concealed weapons. 34 L.R.A.(N.S.) 58; L.R.A.1915B, 837.

Possession of weapons, as evidence of guilt. 8 R. C. L. 193 and Supps.

§ 9803b3. Penalty. Any person upon conviction of violating the provisions of this act, shall, in the discretion of the court, be imprisoned in the state penitentiary not more than two years, or in the county jail not more than one year, or by a fine of not more than one hundred dollars, or by both such fine and imprisonment. Provided, however, that any citizen of good moral character may, upon application to any district court, municipal, or justice court, be granted the permission to carry a concealed weapon upon the showing of reasonable cause. [Laws 1915, ch. 83, § 3.]

Right to convict for several offenses of carrying concealed weapons growing out of same facts. 31 L.R.A.(N.S.) 693.

§ 9803b4. Repeal. All acts and parts of acts in conflict herewith are hereby repealed. [Laws 1915, ch. 83, § 4.]

§ 9803b5. Emergency. An emergency is hereby declared to exist in that professional criminals are frequently found to carry concealed about their persons, the dangerous weapons or explosives mentioned in section 1 of this act. And, whereas, the present law is inadequate to prevent such criminals from carrying concealed weapons or explosives; therefore, this act shall take effect and be in force from and after its passage and approval. [Laws 1915, ch. 83, § 5.]

CHAPTER 56.

CRIMES AGAINST THE PUBLIC PEACE.

§ 9815. Comp. Laws, 1913.

Information charging that defendants engaged in a fight with each other in a ring held to state one offense. State v. Butler, 26 N. D. 231, 144 N. W. 238.

CHAPTER 57.

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

§ 9830. Comp. Laws, 1913.

State ex rel Braatlien v. Drakeley, 26 N. D. 87, 143 N. W. 768.

CHAPTER 60.

FORGERY AND COUNTERFEITING.

- § 9890. Comp. Laws, 1913.
First State Bank v. Radke, — N. D. —, 35 A.L.R. 1355, 199 N. W. 930.
- § 9899. Comp. Laws, 1913.
State v. Davidson, 46 N. D. 564, 180 N. W. 31.

CHAPTER 60A.

CORPORATION NAMES.

- § 9912a. **Simulation of, as misdemeanor.** The officers, members and agents of any voluntary association, organization or corporation, which shall adopt and use as its own a name so similar to that of some existing association, organization, corporation or stock company as to confuse or tend to confuse the identities of such association, organization or corporation with intent to cause confusion of identity, shall be guilty of a misdemeanor. [Laws 1919, ch. 204, § 1.]
- Corporations, 14 C. J. pp. 310-316 §§ 374-375, p. 326 § 396.
Selection of corporate name similar to that of existing corporation. 7 R. C. L. 127 and Supps.
Unfair use of corporate name. 7 R. C. L. 132 et seq. and Supps.

CHAPTER 61.

LARCENY.

- § 9913. Comp. Laws, 1913.
State v. Uglund, 48 N. D. 841, 187 N. W. 237.
- § 9914. Comp. Laws, 1913.
Section relates to property lost and found and does not apply to prosecution for larceny under defense of ownership through purchase in good faith. State v. McCarty, 47 N. D. 523, 182 N. W. 754.
- § 9916. Comp. Laws, 1913.
Lee v. Dolan, 34 N. D. 449, 158 N. W. 1007; State v. Dodds, 41 N. D. 326, 169 N. W. 578.
- § 9917. **Punishment of grand larceny.** Grand larceny is punishable by imprisonment in the county jail not less than three months or in the penitentiary not exceeding ten years. [Laws 1925, ch. 157, § 1.]
- Larceny, 36 C. J. p. 947 § 581.
Cruel and unusual punishment for larceny. 35 L.R.A. 573, 577; L.R.A. 1915C, 567.
Punishment of grand larceny. 17 R. C. L. 82 and Supps.
- § 9918a. **Larceny of poultry and live stock; penalty.** When it appears upon the trial on an information or indictment, for either petit larceny or grand larceny, that the larceny alleged consists of the taking of either poultry or other live stock, the offender shall be punished by imprisonment for not less than 6 months in the county jail and not exceeding five years in the penitentiary. [Laws 1925, ch. 156, § 1.]
- Larceny, 36 C. J. p. 804 § 244.
Constitutionality of statute for prevention of larceny of live stock. 3 A.L.R. 81.
Killing animal and carrying away part of the carcass as larceny of the animal. L.R.A.1915E, 848.

Larceny of estrays. 30 L.R.A.(N.S.) 341; L.R.A.1916A, 468.
Cat as subject of larceny. 33 A.L.R. 796.

§ 9922a1. **Contractor or subcontractor improperly using proceeds of payments.** Any contractor or subcontractor on any improvement to real estate within the meaning of section 6814 of the Compiled Laws of 1913, with intent to defraud, shall use the proceeds of any payment to him on account of such improvement by the owner of such real estate, or person having any improvement made, for any other purpose than the payment of labor performed upon, or materials, machinery or fixtures furnished for such improvement, while any such labor performed, or materials, machinery or fixtures furnished for such improvement at the time of such payment, remains unpaid for, shall be guilty of larceny of the proceeds of such payment so used. [Laws 1917, ch. 152, § 1.]
Larceny, 36 C. J. p. 778 § 143.

§ 9922a2. **Penalty.** When payment so used in violation of the preceding section is of an amount exceeding twenty dollars (\$20.00), such person shall upon conviction be punished as provided by law for the crime of grand larceny, and when the amount of such payment so used in violation of the preceding section is of an amount to twenty dollars (\$20.00) or less, such person shall upon conviction be punished for petit larceny. [Laws 1917, ch. 152, § 2.]

§ 9923a. **Automobile or motorcycle; larceny of.** Any person convicted of larceny of an automobile or motorcycle shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for not less than one year nor more than seven years. The fact that such automobile or motorcycle was taken or removed without the owners' consent express or implied, or without the consent of the person lawfully in the possession of such automobile or motorcycle shall be presumptive evidence of intent to deprive the owner thereof. [Laws 1917, ch. 157, § 1.]

Larceny, 36 C. J. p. 805 § 245.

Constitutionality, construction and effect of Federal statute making it an offense to transport stolen motor vehicles in interstate or foreign commerce. 27 A.L.R. 956.

Federal statute making it an offense to transport stolen vehicles in interstate or foreign commerce. 37 A.L.R. 1412.

CHAPTER 62.

EMBEZZLEMENT.

§ 9929. **Comp. Laws, 1913.**

Taking of grain by party hired at monthly salary, to assist in harvesting, threshing, caring for, and transporting same to market, held larceny. *State v. Ugland*, 48 N. D. 841, 187 N. W. 237.

Evidence held sufficient to justify conviction of crime of embezzlement. *State v. Bickford*, 28 N. D. 36, 147 N. W. 407.

See also *Shong v. Stinchfield*, 47 N. D. 495, 183 N. W. 268; *State v. Hoff*, 29 N. D. 412, 150 N. W. 929.

§ 9930. **Comp. Laws, 1913.**

Fraudulent appropriation by county auditor of moneys collected for licenses, held embezzlement. Section held not impliedly repealed by game and fish law. *State v. Kopriva*, — N. D. —, 201 N. W. 167.

Evidence held sufficient to justify conviction of crime of embezzlement. *State v. Bickford*, 28 N. D. 36, 147 N. W. 407.

§ 9931. **Comp. Laws, 1913.**

Fidelity & D. Co. v. Nordmarken, 32 N. D. 19, 155 N. W. 669.

§ 9933. **Comp. Laws, 1913.**

State v. Hoff, 29 N. D. 412, 150 N. W. 929; *State v. Ugland*, 48 N. D. 841, 187 N. W. 237.

- § 9934. Comp. Laws, 1913.
State v. Hoff, 29 N. D. 412, 150 N. W. 929.
- § 9936. Comp. Laws, 1913.
State v. Hoff, 29 N. D. 412, 150 N. W. 929; Shong v. Stinchfield, 47 N. D. 495, 183 N. W. 268; State v. Bickford, 28 N. D. 36, 147 N. W. 407.
- § 9939. Comp. Laws, 1913.
Shong v. Stinchfield, 47 N. D. 495, 183 N. W. 268.
- § 9940. Comp. Laws, 1913.
State v. Bickford, 28 N. D. 36, 147 N. W. 407.

CHAPTER 65.

POOLS AND TRUSTS.

- §§ 9950, 9954. Comp. Laws, 1913.
State ex rel. Langer v. Gamble-Robinson Fruit Co. 44 N. D. 376, 9 A.L.R. 98, 176 N. W. 103.

CHAPTER 65A.

SWINDLING.

§ 9963a. **Swindling defined; punishment.** Every person who, by means of three card monte, so called, or of any other form or device, sleight-of-hand, or other means, by use of cards, or instruments of like character, or by any other instrument, trick, device or artifice, obtains from another person any money or other property of any description, shall be deemed guilty of the crime of swindling, and shall be fined not less than one hundred dollars nor more than five hundred dollars or punished by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment in the discretion of the trial court; and every person aiding, encouraging, advising or confederating with, or knowingly harboring or concealing any such person, or in any manner being accessory to the commission of the above described offense, and all persons who shall confederate together for the purpose of playing such games, or obtaining money by the means aforesaid, and any person who shall encourage, solicit or procure any other person to deliver to any third person any money or property, the person so encouraging, soliciting or procuring another as aforesaid, or aiding, assisting or abetting another in the use of such means, shall be deemed principals therein and guilty of the crime of swindling and punished as hereinbefore provided. [Laws 1917, ch. 226, § 1.]

False Pretenses, 25 C. J. p. 659 § 101.

False pretense or confidence game through means of worthless check or draft. 35 A.L.R. 344.

Statutes directed specifically against use of worthless, false, or bogus check or draft. 35 A.L.R. 375.

Reduction by appellate court of punishment imposed by trial court for obtaining or attempt to obtain money or goods by false pretenses. 29 A.L.R. 332, 339.

Larceny in obtaining money by gambling, game or device. 17 R. C. L. 19 and Supps.

CHAPTER 65B.

ADVERTISING BUILDING OR HOTEL AS FIREPROOF.

- § 9963b1. **When allowable.** It shall be unlawful for any person, firm or N. D. C. L.—90.

corporation to advertise a building or hotel as being fire proof unless constructed in the following manner:

All foundations, floors, roofs, walls, stairways, stairs, elevator shafts, and dumb waiter shafts, shall be constructed of concrete, brick, terra cotta blocks, steel or other fire proof materials. [Laws 1919, ch. 75, § 1.]

§ 9963b2. Penalties for violation. Any person, firm or corporation advertising a building or hotel as fireproof unless constructed in accordance with the provisions of the foregoing article shall be punished upon conviction by a fine of not to exceed \$500.00 or one year in jail. [Laws 1919, ch. 75, § 2.]

False Pretenses, 25 C. J. p. 659 § 101.

CHAPTER 66.

FALSE PERSONATION AND CHEATS.

§ 9968. Comp. Laws, 1913.

State v. Henderson, 45 N. D. 19, 176 N. W. 126.

§ 9971a1. Drawing check or draft without sufficient funds or credit; penalty. Every person, firm, company, copartnership or corporation who makes or draws or utters or delivers to any person any check or draft upon a bank, banker or depository for the payment of money, and at the time of such making, drawing, uttering or delivery, has not sufficient funds in or credit with such bank, banker or depository to meet such check or draft in full upon its presentation, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not to exceed \$100 or by imprisonment in the county jail for not to exceed 30 days, or by both such fine and imprisonment. [Laws 1915, ch. 52, § 1.]

False Pretenses, 25 C. J. p. 612 § 42.

Violation of, criminal statute against drawing checks without sufficient funds to meet them, as affected by deposit of money, or a statutory provision permitting payment within specified time. 5 A.L.R. 1254.

Constitutionality of "worthless check" acts. 23 A.L.R. 453.

False pretense or confidence game through means of worthless check or draft. 35 A.L.R. 344.

Statutes directed specifically against use of worthless, false, or bogus check or draft. 35 A.L.R. 375.

Mere drawing of check on a bank in which the drawer has no funds or credit, and passing the same. 17 L.R.A.(N.S.) 1032; 52 L.R.A.(N.S.) 919.

Obtaining goods by worthless checks. 11 R. C. L. 860.

§ 9971a2. Meaning of term "credit." The word "credit" as used herein shall be construed to be an arrangement or understanding with the bank, banker or depository for the payment of such check or draft. [Laws 1915, ch. 52, § 2.]

§ 9971a3. Emergency. Whereas, an emergency exists in the fact that there is no adequate provision under the laws of North Dakota for protection against those who issue checks without having funds or without having a reasonable expectation of having funds in the bank when the checks shall be presented for payment, this act shall take effect and be in force from and after its passage and approval. [Laws 1915, ch. 52, § 3.]

CHAPTER 66A.

FALSELY REPRESENTING ONESELF AS PHYSICALLY DEFECTIVE.

§ 9972a1. Securing aid by. It shall be unlawful for any person to represent himself, or herself, falsely, as blind, deaf, dumb, crippled, or otherwise physi-

cally defective and securing aid or assistance on account of such representations shall be deemed guilty of a misdemeanor. [Laws 1917, ch. 64, § 1.]

False Pretenses, 25 C. J. p. 659 § 101.

Obtaining money fraudulently by false representations as to distress. 11 R. C. L. 849.

§ 9972a2. Penalty. Every such person shall, upon conviction thereof be punished by imprisonment in the county jail not less than one (1) month nor more than six (6) months, or by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) or by both fine and imprisonment. [Laws 1917, ch. 64, § 2.]

CHAPTER 70A.

SABOTAGE.

§ 9982a1. First degree; what is; punishment. Any person who during the period the United States is engaged in the present war shall either wilfully or maliciously cause to be set on fire, either directly or through or by the assistance and act of another person, or through or by means of any chemical or mechanical apparatus or any sun glass, or the control of any electrical current, any building, car or boat, in which any food product for the use of man or beast is kept, stored or being transported, or in which any work or food producing animals shall be housed; or who shall wilfully and maliciously in any of the ways herein before mentioned cause any grain or food products for the use of man or beast to be set fire to in shock, stack or other form; or who shall wilfully and maliciously poison or otherwise kill any work or food producing animal, the property of another with intent to injure the owner or hinder him in any agricultural operations, or to lessen the country's food supply, shall be guilty of sabotage in the first degree, and upon conviction thereof, shall be imprisoned in the penitentiary from one year to life. [Laws 1918, Sp. Sess. ch. 12, § 1.]

Explanatory note. Duration of war, see §§ 3187e1, 3187e2, ante.

Insurrection and Sedition, 33 C. J. p. 164 § 23, p. 168 § 27.

Validity of legislation directed against social or industrial propaganda deemed to be of dangerous tendency. 1 A.L.R. 336.

§ 9982a2. Second degree; what is; punishment. Any person who shall during the period the United States is engaged in the present war attempt to commit any act, which attempt if successful would constitute sabotage in the first degree; or who with the purpose of hindering or delaying the harvesting or threshing of any crop, shall inflict inquiry [injury] upon any farm machinery either directly or by placing foreign substance in any grain to be harvested or threshed thereby; or who with intent to hinder or hamper the government of the United States in the prosecution of or preparation for such war shall in any other manner destroy any other property shall be guilty of sabotage in the second degree, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one year and not more than twenty years. [Laws 1918, Sp. Sess. ch. 12, § 2.]

Explanatory note. See note preceding this section.

Insurrection and Sedition, 33 C. J. p. 164 § 23, p. 168 § 27.

§ 9982a3. Punishment though period has terminated. Any crime as defined herein committed within the period prescribed by this act shall be punished under the terms hereof through [though] conviction or final judgment thereon or both may take place or be imposed after the termination of such period. [Laws 1918, Sp. Sess. ch. 12, § 3.]

§ 9982a4. Emergency. Whereas the country is engaged in war and great

danger exists that efforts will be made to destroy its food supply, it is necessary for the protection of public health, peace and safety that this act should take effect from and after its passage and approval, the same shall become effective immediately after its approval by the governor. [Laws 1918, Sp. Sess. ch. 12, § 4.]

CHAPTER 71.

FALSE WEIGHTS AND MEASURES.

- § 9987. Comp. Laws, 1913.
Yusko v. Studdt, 37 N. D. 221, 163 N. W. 1066.

CHAPTER 72.

FALSE AND MISLEADING ADVERTISING.

- § 9989. Comp. Laws, 1913.
Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 90.
- § 9990. Food commission and chemist to perform duties of food commissioner, see § 396c2, ante.
- § 9991. Comp. Laws, 1913.
Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 85; Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 90.

CHAPTER 72A.

UNION LABEL.

Explanatory note. Necessity of label of International Typographical Union on state printing, see § 57a1, ante.

§ 9991a1. **Union emblem; unlawfully wearing or using.** It shall be unlawful for any person or corporation to wear or use the emblem adopted by, or representing any labor union of this state unless such person or corporation is entitled to wear or use such emblem under the rules of the union which said emblem represents. [Laws 1921, ch. 137, § 1.]

False Personation, 25 C. J. p. 577 § 3.

Law as to union labels. 39 L.R.A.(N.S.) 1190

Protection of trade union labels. 29 L.R.A. 200.

§ 9991a2. **Meaning of term "emblem."** "Emblem" is herein defined in this act to mean, button, watch fob, design, devise, trademark, label, shop card, or form of advertisement indicating membership in any labor organization. [Laws 1921, ch. 137, § 2.]

§ 9991a3. **Penalties.** Any person or corporation violating the provisions of this act shall be punishable by imprisonment in the county jail for a term not to exceed thirty days, or by a fine not to exceed \$50.00 or by both such fine and imprisonment. [Laws 1921, ch. 137, § 3.]

CHAPTER 72B.

WEARING AMERICAN LEGION BADGE, BUTTON OR INSIGNIA.

§ 9991b. **Penalty.** Any person who wilfully wears the badge, button or the insignia of the American Legion, or uses the same to obtain assistance within

the state, or wilfully uses the name of the American Legion, the title of its officers, or its badge, button, insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulation of the American Legion, is guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not less than ten and not exceeding one hundred dollars for each and every offense. [Laws 1921, ch. 2, § 1.]

False Personation, 25 C. J. p. 577.

CHAPTER 73.

ILLEGAL BRANDING OF STOCK.

§ 9997. Report to commissioner of agriculture and labor; penalty. Any butcher in this state who shall kill, within this state any head of meat [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 commissioner of agriculture and labor 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 commissioner 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. [Laws 1921, ch. 28, § 1.]

Animals, 3 C. J. p. 188 § 660.

Statutory regulations as to branding of live stock. 1 R. C. L. 1083 and Supps.

CHAPTER 75.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

§ 10016. Comp. Laws, 1913.

Schmidt v. Anderson, 29 N. D. 262, 150 N. W. 871; Lien v. Savings, Loan & T. Co. 43 N. D. 260, 174 N. W. 621.

CHAPTER 77.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

§ 10028. Comp. Laws, 1913.

Knapp v. Minneapolis, St. P. & S. Ste. M. R. Co. 34 N. D. 466, 159 N. W. 81.

CHAPTER 78.

MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES, TELEGRAPHS AND DITCHES.

§ 10035. Comp. Laws, 1913.

State v. Kerns, — N. D. —, 198 N. W. 698.

CHAPTER 81.

MALICIOUS MISCHIEF.

§ 10050. Comp. Laws, 1913.

Jury may award treble damages in a general verdict, or court may require jury to return verdict on actual damages and a special finding on question of malices, and award treble damages thereon. *Wacker v. Mertz*, 41 N. D. 620, 171 N. W. 830. See also *Rykowsky v. Bentz*, 45 N. D. 499, 178 N. W. 284.

§ 10059. **Burning buildings, grain, hay, threshing machines and automobiles.** Every person who wilfully burns any buildings, not the subject of arson, any stack of grain of any kind or of any hay, any growing or standing grain, grass, trees or fences, and any threshing machine or automobile, 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 the county jail not exceeding one year. [Laws 1917, ch. 67, § 1.]

Malicious Mischief, 38 C. J. p. 363 § 10.

Definition of "malice" as a requisite of offense of malicious mischief. 19 L.R.A.(N.S.) 273.

Cruel and unusual punishment for malicious mischief. L.R.A.1915C, 570.

Acts amounting to malicious mischief. 8 R. C. L. 302.

CHAPTER 82.

CLOSING 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. [Laws 1915, ch. 158, § 1.]

§ 10089. Repealed by Laws 1915, ch. 158, § 2.

CHAPTER 83.

PROHIBITION, UNLAWFUL DEALING IN INTOXICATING LIQUORS.

Explanatory note. Laws 1921, ch. 97 (§§ 10145b1-10145b26, post), which is intended, as indicated in the emergency clause (§ 10145b26, post), to bring the prohibition law of the state into full accord with the eighteenth amendment and the Volstead Act, would seem to make it necessary to consider the provisions of the newer law in connection with any provision of this chapter.

§ 10092. See §§ 10145b4, 10145b24, post.

Information alleging that defendant committed crime of manufacturing liquor through, wilfully and unlawfully making, and distilling an intoxicating liquor for a beverage, held sufficient to state offense under this section. *State v. Pauley*, — N. D. —, 192 N. W. 91.

See also *State v. Webb*, 36 N. D. 235, 162 N. W. 358; *State v. McCrill*, 36 N. D. 466, 162 N. W. 404.

§ 10093. Comp. Laws, 1913.

Blumardt v. McDonald, 36 N. D. 518, 162 N. W. 409; *Kermott v. Bagley*, 19 N. D. 345, 124 N. W. 397.

§ 10094. Comp. Laws, 1913.

Kermott v. Bagley, 19 N. D. 345, 124 N. W. 397; *Blumardt v. McDonald*, 36 N. D. 518, 162 N. W. 409.

§§ 10095-10097. Comp. Laws, 1913.

Blumardt v. McDonald, 36 N. D. 518, 162 N. W. 409.

§ 10098. Comp. Laws, 1913.

State ex rel. Flaherty v. Hanson, 16 N. D. 347, 113 N. W. 371; Blumardt v. McDonald, 36 N. D. 518, 162 N. W. 409.

§§ 10099, 10100. Comp. Laws, 1913.

Blumardt v. McDonald, 36 N. D. 518, 162 N. W. 409.

§ 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, or any liquid or compound of any name or description whatever, containing no alcohol whether medicated or not, capable of being used as a beverage and having the appearance or flavor of beer or malt, unless such liquor is pasturized and contained in hermetically sealed bottles, shall be considered and held to be intoxicating liquors within the meaning of this chapter. [Laws 1917, ch. 135, § 1.]

Explanatory note. Corresponding section under new law, see § 10145b1, post.

State v. Fargo Bottling Works Co. 19 N. D. 396, 26 L.R.A.(N.S.) 872, 124 N. W. 387.

Intoxicating Liquors, 33 C. J. pp. 491-493 §§ 1-3, p. 577 § 194.

Test of intoxicating character of liquor. 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725.

§ 10105a. **Emergency.** Whereas it is necessary for the immediate preservation of the public peace, health and safety that this act shall become effective without delay for the following reasons, to-wit, namely: That a great quantity of liquor having the flavor and appearance of malt is being imported into this state and being sold for use as a beverage, which liquids are contained in wooden kegs and other receptacles not hermetically sealed, and which liquids ferment in such receptacles and by chemical reaction produce alcohol in such liquids and render them intoxicating.

Therefore, this act shall become and be in full force and effect immediately upon its passage and approval by the governor. [Laws 1917, ch. 135, § 2.]

§ 10107. Comp. Laws, 1913.

Deputy sheriff is an executive officer of the state, for purposes of enforcement of prohibition law. State v. La Flame, 30 N. D. 489, 152 N. W. 810.

§ 10108. Comp. Laws, 1913.

State v. Lesh, 27 N. D. 165, 145 N. W. 829.

§ 10112. Comp. Laws, 1913.

McCue v. Equity Co-op. Pub. Co. 39 N. D. 190, 167 N. W. 225; State v. District Ct. 19 N. D. 819, 124 N. W. 417.

§ 10114. Comp. Laws, 1913.

Blumardt v. McDonald, 36 N. D. 518, 162 N. W. 409.

§ 10117. **Place of sales a nuisance; to be abated; liquors to be destroyed; penalties; release of property; bond.** 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 a 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 under sheriff, 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 or any person who, in any manner, by using such place for the illegal purposes forbidden herein, or otherwise aids, abets, or assists in any violation of this section or chapter, shall, upon such conviction, be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than \$200 nor more than \$1000, 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 year; 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 closed under a temporary injunctive order or have been 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, if the said owner shall prove to the court that he was without fault, and neither knowingly, nor without knowledge negligently permitted the keeping or maintaining of the nuisance complained of, the premises shall be turned over to the owner upon the order of the court or judge as hereinafter set forth. But the release of the property shall be upon the 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 time 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 if the proceeding is an action either at law or in equity, and bond is given and costs therein paid, the action shall be dismissed at the end of one year from the date of the service of the temporary injunctive order, if in an equity case, or the closing of the premises if in a criminal case; in the meantime and in either form of action the premises where such nuisance was kept and maintained, shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt as hereinafter provided; 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 statute or law. Provided, further, that when an injunction, either temporary or permanent, has been granted, under the provisions of this Chapter, the same shall be binding personally on the defendant or defendants, throughout the entire state, and for the violation of such injunction in any place in the state of North Dakota,

the offending party shall be punished as for contempt according to the rules in this Chapter prescribed. [Laws 1915, ch. 195, § 1.]

Explanatory note. Corresponding section under new law, see § 10145b15, post.

Time not material ingredient of crime of keeping and maintaining common nuisance. *State v. Webb*, 36 N. D. 245, 162 N. W. 358.

No one except owner or keeper of a place where the prohibited acts are committed can be adjudged guilty of the offense defined by this section. *State v. Dahms*, 29 N. D. 51, 149 N. W. 965.

Single sale sufficient to warrant conviction under an information for keeping and maintaining a place where intoxicating liquors are sold as a beverage. *Scott v. State*, 37 N. D. 90, L.R.A.1917F, 1107, 163 N. W. 813.

Information describing place where common nuisance was maintained with such certainty as it can be identified, and alleges commission of crime within the county, sufficient allegation as to place of commission of crime. *State v. Wheeler*, 38 N. D. 456, 165 N. W. 574.

Information in prosecution against landlord for permitting tenant to use premises for purpose of violating prohibition law, alleging that he permitted premises controlled by him to be used as place where intoxicating liquor was sold as beverage, held sufficient. *State v. McGillic*, 25 N. D. 27, 141 N. W. 82.

See also *State v. Finlayson*, 41 N. D. 77, 169 N. W. 581; *State v. Finlayson*, 41 N. D. 494, 170 N. W. 910.

Intoxicating Liquors, 33 C. J. p. 518, § 62, pp. 588-589, §§ 202-203, pp. 591-593, §§ 209-215, pp. 691-692, §§ 399-401.

Validity of statutory provision for attorneys' fees as a penalty for illegal sale. 11 A.L.R. 886.

Validity of statutory provision for attorneys' fees in proceeding by statute to abate a liquor nuisance. L.R.A.1915E, 949.

Cruel and unusual punishment for illegal sale. 35 L.R.A. 574; L.R.A.1915C, 567.

Conviction of keeping a common liquor nuisance upon proof of a single sale. L.R.A.1917F, 1110.

What constitutes, hotel or inn, within meaning of liquor statute. 19 A.L.R. 531.

Violation of liquor laws as, "Infamous offense," within constitutional or statutory provision in relation to presentment or indictment by grand jury. 24 A.L.R. 1014.

Right of one charged with unlawful sale of intoxicating liquor to be informed of name or identity of purchaser before trial. 5 A.L.R. 409.

Jury trial in case of seizure of liquors. 17 A.L.R. 569.

Possession of intoxicating liquor as evidence of violation under statute. 31 A.L.R. 1222.

Constitutionality of statute conferring on chancery courts power to prevent sale of liquors as a nuisance. 5 A.L.R. 1474.

Criminal responsibility of purchaser of liquor sold in violation of law. 5 A.L.R. 786.

Taking intoxicating liquor from person of defendant as a sale. 3 A.L.R. 1096.

Constitutionality of statute making certificate of result of chemical analysis of liquor, evidence. 29 A.L.R. 289.

Place for illegal sale of intoxicating liquors as nuisance. 15 R. C. L. 405 and Supps.

Abatement of liquor nuisance. 15 R. C. L. 406 and Supps.

Injunction to restrain maintenance of liquor nuisance. 15 R. C. L. 407 et seq. and Supps.

Destruction of intoxicating liquors. 15 R. C. L. 412 and Supps.

§ 10117a. Emergency. An emergency having arisen in the fact that the law is insufficient to afford adequate relief when agents violate law and in case of persons owning leasehold premises, and also in cases where parties under injunctive order continue their violation of the law elsewhere than as in the place specifically mentioned in the injunctive proceedings, therefore this act shall take effect and be in force from and after its passage and approval. [Laws 1915, ch. 195, § 3.]

§ 10118. Corresponding section under new law, see § 10145b16, post.

Party charged with contempt under this section, not entitled to trial by jury. *State v. Finlayson*, 41 N. D. 494, 170 N. W. 910.

Dismissal of original action for injunction to abate a liquor nuisance, does not of itself operate to dismiss action for contempt, committed by unlawful sale in premises affected, during life of injunction. *State ex rel. Heffron v. District Ct.* 26 N. D. 32, 143 N. W. 143.

§ 10119. See § 10145b18, post.

§ 10128. Comp. Laws, 1913.

Former conviction of offense of keeping and maintaining a common nuisance, need not be set forth at length in information charging second offense, but a brief allegation thereof is sufficient. *State v. Webb*, 36 N. D. 235, 162 N. W. 358.

See also *State v. Kilmer*, 31 N. D. 442, 153 N. W. 1089.

§ 10135. Comp. Laws, 1913.

Information in prosecution against landlord for permitting tenant to use premises for purpose of violating prohibition laws, charging that premises were "controlled by him," held sufficient to characterize proprietary interest of defendant. *State v. McGillic*, 25 N. D. 27, 141 N. W. 82.

See also *State v. Dahms*, 29 N. D. 51, 149 N. W. 965.

§ 10136. **Liability for bringing into state.** Any officer, agent, or employee of a railroad company, express company or other common carrier or other person engaged in the dray business, livery business or any private person who shall knowingly receive, carry or deliver, directly or indirectly, any intoxicating liquors to or for any person within this state or into this state to be used in violation of any law of this state or to be used for sale, gift or barter as a beverage, or to be kept for sale, gift or barter as a beverage, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and be imprisoned in the county jail not less than sixty days nor more than one hundred twenty days. [Laws 1917, ch. 134, § 1.]

Intoxicating Liquors, 33 C. J. p. 589, § 197.

Prohibition of transportation of intoxicating liquors. 15 R. C. L. 333, 339 and Supps.

§ 10136a1. **Injunction against transporting.** It shall be and constitute a common nuisance for any officer, agent or employe of any railroad company, express company or other common carrier or for any person engaged in the dray business, livery business or for any private person to knowingly receive, carry or deliver directly or indirectly, any intoxicating liquors to or for any person within this state, or into this state, to be used in violation of any law of this state, or to be used for sale, gift or barter as a beverage; and if, in a criminal or equitable action, it is established and found by a court or jury that any of the acts prohibited by section one of this act (§ 10136, ante) have been committed, then upon the application of the attorney general, his assistants, or of the state's attorney of the proper county, the district court shall issue its injunctional order enjoining and restraining the person found guilty of having committed any of such prohibited acts from receiving, carrying or delivering directly or indirectly, any intoxicating liquors to or for any person within this state or into this state to be used for any of the purposes above mentioned and in the event that such person is the officer, agent or employe of any railroad company, express company or other common carrier, then it shall be the duty of the district court to issue its injunctional order against such railroad company, express company or other common carrier restraining and enjoining it and all of its officers, agents or employes within this state from receiving, carrying or delivering, directly or indirectly, any intoxicating liquors to or for any person within this state or into this state for any of the purposes above specified for a period of one year from the date of the service of such injunctional order. [Laws 1917, ch. 134, § 2.]

Explanatory note. Sections in new law covering same and additional matter, see §§ 10145b15, 10145b16, post.

Intoxicating Liquors, 33 C. J. p. 518, § 62, p. 692, § 401, pp. 695-696, §§ 404-405.

Injunction against bringing intoxicating liquor into prohibition district. 35 L.R.A.(N.S.) 879; L.R.A.1917D, 1027.

Power of municipality to prohibit transportation of liquor into its territory. L.R.A.1916E, 926.

State's right to interfere with shipment of liquor through its territory. 27 A.L.R. 108.

Injunction against transportation of intoxicating liquors. 15 R. C. L. 407 and Supps.

§ 10136a2. Nature of action; complaint. The application to the district court mentioned in the preceding section shall be made in the form of a civil action in the district court in the name of the state of North Dakota and the injunction may be granted at the commencement of action in the usual manner of granting injunctions except that the complaint may be verified by the attorney general, his assistants, or the state's attorney as the case may be upon information and belief and no bond shall be required and such complaint shall contain a concise statement of the facts established in either a criminal or civil action and proofs that such acts were so established shall be prima facie evidence thereof, provided, that it shall be sufficient to maintain such action that the complaint states facts sufficient to constitute a common nuisance as defined in the foregoing section, although not previously established in a criminal or civil action. [Laws 1917, ch. 134, § 3.]

Explanatory note. Corresponding section in new law, see § 10145b16, post.

Intoxicating Liquors, 33 C. J. p. 692, § 400.

§ 10136a3. How long injunction to continue in force. If in such action it shall be established that any person has committed any one or more of the acts prohibited in section one of this act, the court shall issue its injunctive order as provided in section two of this act to continue in force for a period of one year from the date of the service thereof and in cases where an injunctive order was issued at the commencement of the action such order shall be ordered continued in force for a period of one year from the date of its service. [Laws 1917, ch. 134, § 4.]

Explanatory note. Similar matter in new law, see § 10145b15, post.

§ 10136a4. Violation of injunction a contempt; penalty; affidavits; evidence. 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 one hundred dollars nor more than one thousand dollars and by imprisonment in the county jail for not less than sixty days nor more than one year, and for the second and each successive offense of contempt by imprisonment in the penitentiary not exceeding two years and not less than one year in the discretion of the court or judge thereof. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this act, 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 on 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 district 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 nine-

teenth rule of the supreme court of the United States for proceedings in equity in the circuit courts. [Laws 1917, ch. 134, § 5.]

Explanatory note. Similar matter in new law, see § 10145b16, post.

Intoxicating Liquors, 33 C. J. p. 701, § 416.

Evidence of other offenses in prosecution for violation of liquor law to prove identity of defendant. 3 A.L.R. 1555; 22 A.L.R. 1020; 27 A.L.R. 358.

Entrapment to commit offense against liquor laws. 18 A.L.R. 162.

Punishment for contempt in violating injunction. 15 R. C. L. 411.

§ 10139. Comp. Laws, 1913.

Action to recover payments made for purchase of intoxicating liquor, is an action upon an implied contract, and not to recover a statutory penalty. *Naderhoff v. George Benz & Sons*, 25 N. D. 165, 47 L.R.A.(N.S.) 853, 141 N. W. 501.

§ 10140a. **Regulation of receiving or receipting for liquor; prohibiting use of fictitious name or appellation.** Any person who shall receive or receipt for any intoxicating liquor not consigned to himself, or a member of his family of the age of majority, or who shall use any fictitious name or appellation and receive or receipt for intoxicating liquor thereunder shall be guilty of a misdemeanor. [Laws 1915, ch. 196, § 1.]

Intoxicating Liquors, 33 C. J. p. 606, § 234.

§ 10141. **Being intoxicated in public place.** Every person being or found intoxicated in any public place is punishable upon conviction before a justice of the peace by a fine of not more than fifty dollars (\$50.00) nor less than five dollars (\$5.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment in the discretion of the court. [Laws 1925, ch. 176, § 1.]

Drunkards, 19 C. J. p. 797, § 7, § 798, § 10.

Public intoxication as breach of the peace. 8 R. C. L. 285 and Supps.

Intoxication on street as offense. 13 R. C. L. 263 and Supps.

§ 10143a1. **Peace officers to report law violations.** It shall be the duty of the state's attorney, assistant state's attorney, sheriff, deputy sheriff, constable, marshal, or police officer of any county, township, city, village, or town in the state of North Dakota, having any evidence, knowledge or notice of any violation of the prohibition, pure liquor, gambling, cigarette, snuff, pool hall, bawdy house, prostitution, white slave or habit forming drug laws of North Dakota to diligently investigate the same and seek evidence of such violation and the names of witnesses by whom such violation may be proved, and in the case of said peace officers to report the same to the state's attorney of the county in which such violation occurs and give him every assistance in the prosecution of the violators of said laws. [Laws 1915, ch. 197, § 1.]

§ 10143a2. **Emergency.** Whereas, there is no adequate statement of the duties herein defined, now therefore an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval. [Laws 1915, ch. 197, § 2.]

§ 10144. **Bootlegging defined.** Any person who shall sell or barter any intoxicating liquor upon any premises or place, public or private, within the state of North Dakota, not owned, kept, maintained, or controlled by him; or, who shall act, directly or indirectly, with or without compensation, as the agent of another in connection with the purchase, or sale of intoxicating liquors; or, who shall solicit, procure or receive from any person, any order, providing for the purchase, sale or furnishing of intoxicating liquors, either for delivery from within or from without this state, except from those authorized by law to sell or barter the same within this state; or, who shall aid, assist or abet in the commission of such crime, shall be guilty of the crime of bootlegging. [Laws 1915, ch. 194, § 1.]

Explanatory note. Laws 1915, ch. 194, constituting §§ 10144, ante, and 10145, post,

was approved on referendum. See Laws 1917, page 410. By § 3 of this act the original §§ 10144, 10145 were repealed, but as there is an evident intent that the new sections shall take the place of the old ones the numbers are left unchanged.

One keeping a horse in livery-stable under agreement with keeper, that he retain half the proceeds from the hire of the horse, in lieu of all charges, has not such ownership or possession as defined, but is a mere licensee. *State v. Stanley*, 38 N. D. 311, 164 N. W. 702.

Information, in prosecution for bootlegging, charging that crime was committed in a barn on a certain block in a certain city and county, sufficiently definite, without naming owner of barn. *State v. Stanley*, 38 N. D. 311, 164 N. W. 702.

Does not abridge any privilege or immunity guaranteed to citizens of United States by 14th amendment, nor does it violate section 1, of 217 of state constitution. *State ex rel. Germain v. Ross*, 39 N. D. 630, 170 N. W. 121.

Instruction, requiring exercise of caution in consideration of alibi defense and requiring it to cover entire time stated in information, prejudicial error. *State v. Gates*, — N. D. —, 200 N. W. 778.

Sale of intoxicating liquor in public street in front of residence of accused, constitutes bootlegging. *State v. Ehr*, — N. D. —, 204 N. W. 867.

Intoxicating Liquors, 33 C. J. p. 606, § 234.

§ 10145. Penalty. Every person convicted of the crime of bootlegging shall be punished by imprisonment, shall be punished by a fine of not less than \$200.00 or more than \$1000.00, and by imprisonment in the county jail for not less than ninety days or more than one year, or by imprisonment in the state penitentiary under an indeterminate sentence of from one year to three years; and for the second and each succeeding offense shall be punished by imprisonment in the state penitentiary under an indeterminate sentence of not less than two or more than five years. [Laws 1915, ch. 194, § 2.]

Intoxicating Liquors, 33 C. J. p. 606, § 234, p. 796, § 553.

CHAPTER 83A.

REGULATIONS FOR DELIVERY OF INTOXICATING LIQUORS.

Not constitutionally enacted. *State v. Schultz*, 44 N. D. 269, 174 N. W. 81.

§ 10145a1. Receiving or having possession for delivery unlawful. It shall be unlawful for any person, firm or corporation to deliver, or receive or have in its possession for delivery within this state any intoxicating liquor for any purpose whatsoever, except that such liquors may be delivered, or received or possessed for delivery by common carriers to registered pharmacists to be disposed of by them as provided by law; and unless the package or container of such liquor shall be labeled on the outside in large clear letters showing the consignor, consignee, kind and quantity, percentage of alcohol, and place of delivery; and unless those items on the label shall immediately upon receipt of such liquor be clearly and legibly entered in ink in a record book as provided by Sections 2 and 3 of this act, with date of receipt; and unless before delivering such liquor the signature and oath of the consignee be secured and date of delivery entered; and unless such record be kept on file in his, or their local place of business for two years after delivery and kept open to inspection by any officer whose duty it is to enforce the laws, or any person authorized in writing by such officer. [Laws 1917, ch. 136, § 1.]

State v. Schultz, 44 N. D. 269, 174 N. W. 81.

Intoxicating Liquors, 33 C. J. p. 580, § 197.

Power to prohibit the possession of liquor irrespective of any intention to traffic therein. 2 A.L.R. 1085.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained, or providing for its confiscation. 37 A.L.R. 1386.

Power to prohibit possession of intoxicating liquors. 15 R. C. L. 265 and Supps.

§ 10145a2. Record of delivery; affidavit. Any person, firm, or corporation

delivering, or receiving or having in possession for delivery any intoxicating liquors are hereby empowered to administer the oath as required by this Act.

RECORD

Consignor
Consignee
Kind
Quantity Lbs.
Percent of Alcohol
Date Received 19.....
Date Delivered 19.....
Place. St. & No.
Number Expense bill or Bill of Lading

AFFIDAVIT

State of North Dakota, } ss:
County of }

I,being first duly sworn, say: That I am over twenty-one years old; that my full name is that I am the person who ordered and am the rightful consignee of the intoxicating liquor recorded on this page; that I am a registered pharmacist and conduct a drug store at Lot.....Block..... and Plat..... of the town, village or city of.....North Dakota; that this liquor is intended for sale by me as prescribed by law and will not be received, used, given away, or sold in violation of this Act or any law of this state.

Signed.....
Consignee and Registered Pharmacist.

IDENTIFICATION.

State of North Dakota, } ss:
County of }

I,.....of lawful age, being first duly sworn say; that I know this person and know him to be the identical consignee whose name is recorded on this page as consignee.

Signed.....
Identifier.

Subscribed and sworn to before me this.....day of
.....19.....

.....
Person making delivery.

[Laws 1917, ch. 136, § 2.]
Intoxicating Liquors, 33 C. J. p. 580, § 197.

§ 10145a3. Record affidavit blanks. It is further provided that the attorney general shall have published record affidavit blanks identical with section 2 of this Act, bound in books of 100 affidavits and page each numbered from 1 to 100 consecutively and each book shall bear his endorsement and official seal on the outside cover and such books shall be furnished at a cost equal to the actual and necessary outlay made therefor by him including clerk hire and postage. [Laws 1917, ch. 136, § 3.]

§ 10145a4. Receipt or having in possession for delivery; penalty. It is further provided that any person, firm, or corporation who shall deliver, or receive or have in possession for delivery any intoxicating liquor to other than a registered pharmacist, or who shall fail to comply with any of the provisions of this Act, or shall make or keep any false record, or deliver any intoxicating liquor without proper identification or any person who shall make or sign any affidavit containing any false statement, or falsely identify

any person, or in any manner, deliver, or aid, abet, or secure the delivery of any intoxicating liquor to himself or any person in violation of this Act or the laws of this state shall be held to be violating this Act and shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$200 nor more than \$1,000 and be imprisoned in county jail not less than 90 days and not 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. [Laws 1917, ch. 136, § 4.]

Intoxicating Liquors, 33 C. J. p. 580, § 197.

CHAPTER 83B.

BRINGING PROHIBITION LAWS INTO ACCORD WITH EIGHTEENTH AMENDMENT
AND THE VOLSTEAD ACT.

§ 10145b1. Defining intoxicating liquors. The following liquors are hereby declared to be intoxicating and their intoxicating quality shall, by the courts, be presumed, viz: alcohol, brandy, whisky, rum, gin, beer, ale, porter and wine and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit or intended for use for beverage purposes; Provided, that the foregoing definition shall not extend to sweet fruit juices or dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced if it contains less than one-half of 1 per centum of alcohol by volume and is otherwise denominated than as beer, ale, or porter. [Laws 1925, ch. 175, § 1; Laws 1923, ch. 268, § 1; Laws 1921, ch. 97, § 1.]

Intoxicating Liquors, 33 C. J. pp. 491-493, §§ 1-3, p. 577, § 194.

Federal definition of intoxicants as affecting state legislation. 26 A.L.R. 673.

§ 10145b2. Defining person. The word person shall mean and include natural persons, associations, copartnerships, corporations and their clerks, agents and abettors. [Laws 1923, ch. 268, § 1; Laws 1921, ch. 97, § 7.]

Intoxicating Liquors, 33 C. J. pp. 606-616, §§ 235-247.

§ 10145b3. Crime of engaging in liquor traffic, defined. Any person who shall within this state, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor, shall be guilty of the crime of engaging in the liquor traffic. [Laws 1923, ch. 268, § 1.]

Intoxicating Liquors, 33 C. J. pp. 580, §§ 195, 197, pp. 586-587, §§ 199-200, pp. 591-605, §§ 209-231, p. 605, § 232, p. 606, § 234.

§ 10145b4. Prohibiting intoxicating beverages. No person shall within this state manufacture, sell, barter, transport, import, export, deliver furnish or possess any intoxicating liquor, except as provided in this chapter. All provisions of this chapter shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Provided that pure grain or ethyl alcohol for nonbeverage purposes and wine for sacramental purposes may in good faith only be used, transported, purchased and possessed as provided in this chapter. It is further provided, that denatured alcohol or denatured rum; medical preparations that are unfit for beverage purposes; patented, patent and proprietary medicines that are unfit for beverage purposes; toilet, medical and antiseptic preparations and solutions that are unfit for beverage purposes; vinegar; flavoring extracts and syrups that are unfit for use as a beverage, or for intoxicating beverage purposes; together with those United States Pharmacopeia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes, which can only

be used by physicians and druggists for compounding purposes as hereinafter provided, may be manufactured, sold, purchased, transported, imported, exported, delivered, furnished and possessed only to be used for any legitimate nonbeverage purposes and such preparations and other alcoholic compounds and solutions shall not be sold or used for beverage purposes or sold under circumstances from which the seller may reasonably deduce an intention on the part of the purchaser to use the same for beverage purposes. [Laws 1923, ch. 268, § 2; Laws 1921, ch. 97, § 2.]

Not necessary to negative, exceptions "as permitted by Federal statute," in information for violation of state prohibition law. *State v. Posey*, — N. D. —, 202 N. W. 131.

Intoxicating Liquors, 33 C. J. p. 492, § 2.

Construction and effect of provisions of the Volstead Act as to transportation. 10 A.L.R. 1553.

Construction and effect of provisions of the Volstead Act as to possession. 10 A.L.R. 1553.

Loan as sale. L.R.A.1915C, 648.

Is one who obtains liquor for, and delivers it to another, using the latter's money, guilty of selling same. L.R.A.1917D, 1020.

Is serving liquor by a club to its members a "sale." L.R.A.1915C, 878.

What amounts to retail sale as distinguished from wholesale. 32 L.R.A.(N.S.) 622; L.R.A.1915B, 389.

Obtaining liquor for and delivering it to another with latter's money as a sale. L.R.A.1917D, 1020.

Alcoholic liquids not ostensibly intended for beverages. L.R.A.1917F, 244.

Power to prohibit the manufacture or production of liquor for one's own use. L.R.A.1918A, 419.

Power to prohibit the keeping of intoxicating liquor, irrespective of any intention to sell it in violation of law. L.R.A.1915D, 172; L.R.A.1917D, 438.

Manufacturing under contract as a sale. L.R.A.1917B, 606.

Right to prohibit manufacture of liquors. 3 A.L.R. 285.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state legislation. 10 A.L.R. 1587; 11 A.L.R. 1320; 26 A.L.R. 661.

Power to prohibit manufacture of intoxicating liquors. 15 R. C. L. 264 and Supps.

Power to prohibit possession of intoxicating liquors. 15 R. C. L. 265 and Supps.

§ 10145b5. Sacramental wine. Wine for sacramental purposes may be purchased, transported, delivered and possessed by the heads of ecclesiastical jurisdictions, or by some minister, priest or other officer holding a federal permit to transport such wine and the same may be used in good faith only for sacramental purposes. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 573, § 183.

Wines intended for sacramental purposes. L.R.A.1918F, 266.

§ 10145b6. Use of intoxicating liquors by physicians. No physician shall issue any prescription for intoxicating liquors as such, but a physician holding a federal permit therefor, may personally or under his supervision administer intoxicating liquors to his patients, where the immediate use of such intoxicating liquors is believed necessary to afford relief from some disease. Provided, that not more than one pint of such intoxicating liquors may be administered to any one patient by a physician, during any period of ten days, and provided that no physician shall obtain for such purposes more than five gallons of intoxicating liquors during any calendar year. Provided, further, that physicians may procure and use those United States Pharmacopeia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes in such amount and for such purposes as may be in good faith necessary in compounding medical preparations. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 573, § 183, p. 575, § 190.

§ 10145b7. Use of alcohol by dentists, veterinarians. Dentists and veter-

inarians may use pure grain or ethyl alcohol for any legitimate, nonbeverage purpose in the course of their professional practice, provided they hold federal permits therefor, and not more than two gallons of alcohol shall be obtained for that purpose during any calendar year. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 575, § 190.

§ 10145b8. **Use of alcohol by druggists.** Retail druggists holding Federal permits therefor, may use such quantities of pure grain or ethyl alcohol and those United States Pharmacopeia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes in such amounts and for such purposes as may be in good faith necessary in compounding medical and other preparations. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 575, § 190.

§ 10145b9. **Evidence, burden of proof.** Any person prosecuted for violation of the provisions of this chapter shall be presumed to be acting without a Federal permit, and the possession of a Federal permit may be proved by the defendant as defensive material and the burden of proof shall be upon the defendant to establish such defense. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 517, § 57 pp. 747-748, §§ 484-485.

Burden of proof as to existence of permit. 15 R. C. L. 394 and Supps.

§ 10145b10. **Cumulative.** All portions of this act shall be construed as cumulative in their effect to all former statutes enacted upon the subject of intoxicating liquors, and shall not be considered as repealing any former statute, unless that statute is clearly in conflict with this act. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 576, § 193.

Cumulative statutes, 25 R. C. L. 924 and Supps.

§ 10145b11. **Sweet fruit ciders.** Sweet fruit ciders may be manufactured, procured, sold and possessed only when put up in sterile, closed containers and treated by the addition of benzoate of soda, or other substance which will prevent fermentation, in such proportion as to insure the alcoholic content remaining below one-half of one per centum by volume. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 577, § 194.

§ 10145b12. **Possession in home, when lawful.** It shall not be unlawful to possess liquor acquired prior to February 1st, 1920, in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed and used. [Laws 1923, ch. 268, § 2.]

Intoxicating Liquors, 33 C. J. p. 584, § 198, p. 743, § 479.

Possession of intoxicating liquors for one's own use. 15 R. C. L. 265, 340 and Supps.

§ 10145b13. **Prohibiting unlawful advertisements, etc.** It shall be unlawful to advertise, manufacture, sell or possess any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe, advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. [Laws 1921, ch. 97, § 3.]

Intoxicating Liquors, 33 C. J. pp. 578-589, §§ 195-196.

Statute or ordinance forbidding or restricting advertisements of intoxicating liquor. L.R.A.1916B, 895.

Power to prohibit advertising sale of intoxicating liquors. 15 R. C. L. 342 and Supps.

§ 10145b14. **Soliciting and receiving prohibited.** No person shall solicit or

receive, nor knowingly permit his employe to solicit or receive for him from any person any order for liquor or property designed, or intended for use in the unlawful manufacture of intoxicating liquor, or give any information of how such liquor or property may be obtained in violation of this act. [Laws 1921, ch. 97, § 4.]

Intoxicating Liquors, 33 C. J. p. 605, § 233.

Soliciting violation of prohibition laws as substantive common-law offense. 35 A.L.R. 968.

Soliciting orders for intoxicating liquors. 15 R. C. L. 342.

§ 10145b15. Common nuisance; to be abated; liquors and property destroyed; presumptions; process; procedure. Any room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place where intoxicating liquors, or property designed, or intended for use in the manufacture of such liquors is manufactured, sold, bartered, furnished, kept, possessed, or transported in violation of any of the provisions of this act, or where persons are permitted to resort for the purpose of drinking intoxicating liquor, is hereby declared to be a common nuisance; and if the existence of such a nuisance is established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place to be a nuisance, the sheriff, his deputy, or under sheriff, 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 room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or 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 and property designed or intended for use in the unlawful manufacture of 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 or any person who, in any manner, by using such room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place for the illegal purposes forbidden herein, or otherwise, aids, abets or assists in any violation of this section or act, shall, upon such conviction, be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than \$200, nor more than \$1,000, 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 year; and said officer abating such nuisance shall securely close said room, house, building, boat, railway car, structure, or place and keep securely in his possession such vehicle, aircraft, automobile, or conveyance where such nuisance was located, as against the use or occupation of the same for saloon purposes, and keep the same securely closed and in his custody for the period of one year (unless sooner released as hereinafter provided), and any person breaking open said room, house, building, boat, railway car, structure, or place, or using the premises, or said vehicle, aircraft, automobile, or conveyance so ordered to be closed, or taken possession of shall be punished for contempt, as hereinafter provided, in case of violation of injunctions; provided, however, that when leasehold premises or property so taken possession of are closed under a temporary injunctive order or have been 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, if the said owner shall prove to the court that he was without fault, and neither knowingly, nor without knowledge negligently permitted the keeping or maintaining of the nuisance complained of, the premises or property shall be turned over to the owner upon

the order of the court or judge as hereinafter set forth. But the release of the premises and property shall be upon the 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 time 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 if the proceeding is an action either at law or in equity and bond is given and costs therein paid, the action shall be dismissed at the end of one year from the date of the service of the temporary injunctive order, if in an equity case, or the closing of the premises and taking the property, if in a criminal case; in the meantime and in either form of action the premises and property where such nuisance is kept and maintained, shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt as hereinafter provided; 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 statute or law. Provided, further, that when an injunction, either temporary or permanent, has been granted, under the provisions of this chapter, the same shall be binding personally on the defendant or defendants, throughout the entire state, and for the violation of such injunction in any place in the state of North Dakota, the offending party shall be punished as for contempt according to the rules in this chapter prescribed. [Laws 1921, ch. 97, § 5.]

Intoxicating Liquors, 33 C. J. p. 518, § 62, pp. 588-589, §§ 202-203, pp. 591-593, §§ 209-215, pp. 691-692, §§ 399-401, p. 802, § 562.

Applicability of liquor laws to vessels. L.R.A.1915F, 1140.

Automobile conditionally sold and used by vendee for illegal transportation of liquor. 2 A.L.R. 1596.

Form of prosecution for violation of Volstead Act. 10 A.L.R. 1556.

Constitutionality of statute providing for forfeiture of property upon which intoxicating liquor is manufactured or sold. 10 A.L.R. 1591.

Servant's unauthorized use of property in violation of liquor laws as forfeiting it. 5 A.L.R. 213.

Taxicab which transports passenger who carries intoxicating liquor. 24 A.L.R. 1130.

Construction and effect of provisions of the Volstead Act for confiscation of vehicles. 10 A.L.R. 1556.

Constitutionality of statutes providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same, on theory of nuisance. 8 A.L.R. 888.

Abatement under Volstead Act, of places where sales of liquor are made illegally. 10 A.L.R. 1556.

Liquor nuisances. 15 R. C. L. 404 et seq. and Supps.

Abatement of liquor nuisance. 15 R. C. L. 406 and Supps.

§ 10145b16. Actions; how maintained; procedure; presumptions; penalties; process; affidavits; evidence. 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, or property designed for use in the manufacture of intoxicating liquor, particularly describing the same, is manu-

factured, sold, bartered, furnished, kept, possessed, or transported on the premises, or at any room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure or place, 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 such writ of injunction, at the time of such service to search diligently the premises and conveyances 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 \$10 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 property designed, or intended for use in the manufacture of such liquor 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 conveyances and keep the same closed and in his custody until such final judgment. The findings of such intoxicating liquor or property on such premises or in such conveyances 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 \$200 nor more than \$1,000, 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 § 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. Processes 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, insofar 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 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 ninetieth rule of the supreme court of the United States for proceedings in equity in the circuit courts. [Laws 1921, ch. 97, § 6.]

Information for violation of state prohibition law, need not negative exceptions, in Federal statute. *State v. McDaniels*, — N. D. —, 192 N. W. 974.

Information for violation of state prohibition law need not negative exception in statute, unless negative of exception is essential part of definition of offense. *State v. Hand*, — N. D. —, 193 N. W. 148.

Denial to state of order to restrain execution sale of automobile, not prejudicial, where order provided for sale subject to state's rights. *State v. One Buick Touring Car*, 48 N. D. 348, 185 N. W. 305.

Intoxicating Liquors, 33 C. J. p. 518, §§ 61-62, pp. 674-677, §§ 369-373, p. 679, § 377 p. 673, §§ 385-386, pp. 689-701, §§ 399-416.

Who may maintain action to abate liquor nuisance. 15 R. C. L. 410.

§ 10145b17. 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, premises, or conveyance or shall permit the same to be used and occupied for the manufacture, storage, transportation, or sale of intoxicating liquor, or property designed, or intended for use in the manufacture of such liquor contrary to the provisions of this act, the premises or conveyance 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 persons 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 non-payment of fine and costs shall exceed the period of six months. [Laws 1921, ch. 97, § 7.]

Intoxicating Liquors, 33 C. J. p. 796, § 553, p. 802, § 562.

§ 10145b18. Contents of affidavits; search warrants. It shall be unlawful to have or possess any intoxicating liquor or property designed for the manufacture of liquor intended for use in violating this act or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue out of any court of competent jurisdiction heretofore authorized to issue search warrants whenever any person shall appear before such courts and make affidavit that he has discovered that such liquor or property is, or has recently been manufactured, stored, possessed or sold in violation of this act in any place or upon any premises and particularly describing the place to be searched. Such court shall issue a search warrant against said premises, and directed to the proper officer, commanding him to search the premises described in the above affidavit, and to seize all intoxicating liquors, and all property designed, or intended for use in the manufacture of such liquor, and all vessels, bottles, or containers which have been used in connection therewith, and take the same into his custody, make proper return upon such search warrant with invoice of such liquor and property seized, to abide the further order of the court. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor and all property designed for the unlawful manufacture of liquor, shall be destroyed. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process. [Laws 1921, ch. 97, § 8.]

Peace officer's right to enter a private house or enclosure for the purpose of making an arrest, without a warrant, for a suspected violation of the liquor law. 26 A.L.R. 286.

Search warrants. 15 R. C. L. 413 and Supps.

§ 10145b19. Seizing transported liquor. When any sheriff, deputy sheriff, constable, marshal, police or peace officer of this state shall discover any person in the act of transporting in violation of the laws, intoxicating liquor, in any wagon, buggy, automobile, water or air craft, or other vehicle or conveyance, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever any intoxicating liquors, transported or possessed illegally, shall be seized by any officer he shall take possession of the vehicle and team, or automobile, boat, air or water craft, or any other conveyance and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this act in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon the execution by him of a good and valid bond, with sufficient sureties, in the sum of double the value of the property,

which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of the trial to abide the judgment of the court. The court, upon conviction of the person so arrested, or upon his plea of guilty, or upon failure after one month of effort, to locate or arrest such person who had possession of such intoxicating liquor, vehicle or conveyance, or when so arrested fails to appear in court for trial at the appointed time and place, shall order the liquor destroyed, and the property used in the transportation of the same to be forfeited, and shall require the state's attorney for the county in which such property was seized to cause summons to be issued against all persons having any right, title or interest in the property seized, which summons shall particularly describe the property and state that the same is held for forfeiture and sale under the provisions of this act, and that in default of answer or claim filed within thirty days after the service of such summons the court will enter its order forfeiting such property to the state of North Dakota. Such summons shall be served in the manner provided for the service of summons in a civil action. If no answer shall be filed or claim made within the time allowed, the court shall enter its order forfeiting such property to the state of North Dakota, and for the sale of same in the manner provided for the sale of personal property on execution. If answer is filed or claim made the court shall require each claimant to furnish a good and sufficient bond conditioned for the prosecution of said action and for the payment of costs should he fail to support his claim. The court shall thereupon proceed to hear and determine the claim according to law. If at such hearing any claimant shall prove to the satisfaction of the court that he is the owner of such property or has a valid lien thereon duly filed or recorded prior to the time such conveyance was seized and that he had no knowledge of the use of such automobile, wagon, buggy, water or air craft or other vehicle or conveyance for such unlawful purpose, the same shall be surrendered to him, if the owner; if a lien holder, the lien shall be foreclosed, the property sold and the proceeds applied in payment of the costs of such sale, then in satisfaction of the lien or liens and the balance deposited as hereinafter provided; if the claimant or claimants shall fail to sustain their claims, judgment shall be entered against them for costs, and the court shall enter its order for the forfeiture and sale of the property as hereinbefore provided in case of default. After deducting the costs and expenses of such proceeding the balance of all money received under the provisions of this act shall be paid to the treasurer of the county wherein the seizure was made, for the benefit of the state school fund. [Laws 1923, ch. 268, § 3; Laws 1921, ch. 97, § 9.]

Subjects seized liquor to control of court having authority to order destruction. *State v. Dufek*, — N. D. —, 193 N. W. 928.

Private person may lawfully arrest automobile driver who voluntarily admits automobile contains quantity of intoxicating liquor; such admission not rendered inadmissible upon arrest under §§ 12, 13 of constitution. *State v. Shank*, — N. D. —, 202 N. W. 128.

See also *Madden v. Dunbar*, — N. D. —, 201 N. W. 988.

Intoxicating Liquors, 33 C. J. p. 669, § 362, pp. 683-689, §§ 387-397.

Seizure of intoxicating liquors. 15 R. C. L. 412 et seq. and Supps.

§ 10145b20. Disposition of evidence. Whenever any sheriff, deputy sheriff, constable or police officer or any person acting under authority given in this chapter and the laws of this state shall seize any intoxicating liquor or property designed or intended for use in the manufacture of such liquor, or any vehicle, boat, water or air craft, or other conveyance used to transport such liquor, such officer or person shall within five days after the seizing of the same file a certified inventory with the clerk of the district court, or county court having increased jurisdiction, in the county in which the offense has been committed or the proceeding commenced and from and after the date of such filing, such liquor and property shall by such officer be held subject to the order of

such court, and such officer shall be accountable to such court for the disposition of the same, and upon any violation of this section or any disposition of such liquor or property other than by the order of such court, he shall be held to be in contempt of court and shall be punished therefore [therefor] in the manner by law provided. [Laws 1923, ch. 268, § 3.]

Intoxicating Liquors, 33 C. J. p. 683, §§ 385-386, p. 689, § 397.

Seizure of intoxicating liquors for evidence. 15 R. C. L. 414 and Supps.

§ 10145b21. Intoxicated on train. Any person who shall publicly drink, or offer to another any intoxicating beverage upon any train within this state, 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 punished by a fine not exceeding fifty dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, in the discretion of the court. [Laws 1921, ch. 97, § 10.]

Drunkards, 19 C. J. p. 797, § 9.

Public intoxication as breach of the peace. 8 R. C. L. 285.

§ 10145b22. Person charged with intoxication to answer questions. Whenever any person shall be arrested for intoxication the justice of the peace, police magistrate, county or district judge before whom he shall be brought for trial may cause him to be questioned fully under oath as to where, when and how he secured the intoxicating liquor causing his intoxication. Testimony so taken shall be reduced to writing and signed by the witness and one copy thereof shall forthwith be delivered to the states attorney of the county wherein the same is taken. If any person shall fail or refuse to answer fully and truthfully any question that may be put to him on such examination, as to where, when and how he secured the liquor causing his intoxication, he shall be deemed guilty of contempt of court and shall be punished by a fine of not less than \$50, nor more than \$100, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment; provided that when compelled to testify and disclose incriminating testimony against himself in any case he shall not be prosecuted in such case. [Laws 1921, ch. 97, § 11.]

Drunkards, 19 C. J. p. 803, § 40; Witnesses, 40 Cyc. 2543.

Witnesses' refusal to testify as contempt. 6 R. C. L. 497 and Supps.

Immunity of witness from self-incrimination. 8 R. C. L. 440 et seq.

§ 10145b23. Remainder of act not invalidated by holding part unconstitutional. If any section, or provision of this act shall be held to be invalid, it is hereby provided that all other provisions of this act which are not expressly held to be invalid shall continue in full force and effect. [Laws 1921, ch. 97, § 12.]

Partial unconstitutionality of statutes. 6 R. C. L. 121 et seq. and Supps.

§ 10145b24. Penalty. Any person who shall within this state commit the crime of engaging in the liquor traffic or violate any of the provisions of this chapter (unless the penalty is elsewhere provided for) shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$200.00 nor more than \$1,000.00 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 the phrase "second offense" shall mean a conviction of any offense prohibited by this act or of the crime of bootlegging as defined in section 10,144 of the revised codes of the state of North Dakota for the year 1913, and a subsequent conviction of violating any provision of this act, whether for the first time or not. This shall not apply to section five, six, ten and eleven of this act (§§ 10145b15, 10145b16, 10145b21, 10145b22, ante). Provided, however, that if the evidence in such case convinces the court that the

person convicted of transporting intoxicating liquors in violation of this act, was in charge of and used any wagon, buggy, automobile, water or air craft, or other vehicle or conveyance, not owned by him or without permission of the owner, or when such vehicle or conveyance so used was mortgaged property, or if there be in or upon such conveyance so used or upon any person therein any firearms, or guns, he shall be deemed guilty of a felony, and be punished by imprisonment in the penitentiary not less than six months and not more than five years. [Laws 1923, ch. 268, § 4; Laws 1921, ch. 97, § 13.]

Intoxicating Liquors, 33 C. J. pp. 796-798, §§ 553-554.

§ 10145b25. All acts, or parts of acts in conflict with this act are hereby repealed. [Laws 1921, ch. 97, § 14.]

§ 10145b26. **Emergency.** Whereas, this act is intended to bring the prohibition laws of North Dakota into full accord with the Eighteenth Amendment and the Volstead Act, it is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval. [Laws 1921, ch. 97, § 15.]

CHAPTER 84.

GOVERNMENT LIQUOR LICENSE.

§§ 10146, 10147. Comp. Laws, 1913.

State v. Winbauer, 21 N. D. 70, 128 N. W. 679.

CHAPTER 85.

PURE LIQUOR LAW.

§§ 10155-10169. Repealed by § 10169a12, post. Corresponding sections in new law are as follows:

§ 10156. See § 10169a4, post.

§ 10158. See § 10169a3, post.

§ 10161. See § 10169a5, post.

§ 10162. See § 10169a3, post.

§ 10163. See § 10169a8, post.

§ 10169. Comp. Laws, 1913.

State v. Kilmer, 31 N. D. 442, 153 N. W. 1089.

CHAPTER 85A.

BEVERAGE INSPECTION ACT.

§ 10169a1. **Name of act.** The following act shall be known and may be cited as the North Dakota Beverage Inspection Act. [Laws 1923, ch. 221, § 1.]

§ 10169a2. **Certain beverages unlawful to sell.** It shall be unlawful for any person, firm or corporation, their agents or employees to sell, offer or expose for sale or to have in their possession with intent to sell within this state, any beverage of whatever nature that contains any ingredient or ingredients injurious to health or is adulterated, misbranded, insufficiently or improperly labeled within the meaning of the Food and Drugs Act of this state, or that is not licensed as hereinafter provided. [Laws 1923, ch. 221, § 2.]

Intoxicating Liquors, 33 C. J. pp. 577-578, § 194; Food, 26 C. J. p. 758, § 11, pp. 761-762, §§ 17-18; Adulteration, 2 C. J. p. 3, §§ 6-7, pp. 5-6, § 13.

Power to prohibit or regulate the sale of "soft" drinks. 34 L.R.A.(N.S.) 890.
Constitutional power to prohibit or regulate sale of nonintoxicating alcoholic liquor. 26 L.R.A.(N.S.) 872.

Prohibition of sale of impure or adulterated food. 11 R. C. L. 1104 and Supps.

§ 10169a3. Label; standards. The requirements for labeling and standards of purity and quality of all beverages included in this act shall be the same as those required under the Food and Drugs Act of this state, together with such other standards, rules and regulations as the state food commissioner and chemist is herewith empowered to make to carry out the intent of this act, and such standards, rules and regulations shall have the force and effect of law. [Laws 1923, ch. 221, § 3.]

Food, 26 C. J. p. 758, § 11, p. 760, § 16; Adulteration, 2 C. J. pp. 5-6, § 13.

Labeling or branding. 11 R. C. L. 1106 and Supps.

§ 10169a4. What is included. There shall be included as coming under the provisions of this act all beverages, as soda water, carbonated and noncarbonated, ginger ale, root beer, aromatic flavors, cereal or malt beverages, apple cider, grape juice and other fruit juices, imitations or compounds of any of these, concentrated extracts and essences from which beverages are made and mineral or spring water sold under private label. [Laws 1923, ch. 221, § 4.]

Beverage, 7 C. J. p. 1149.

Right of state to declare certain liquor intoxicating irrespective of its intoxicating character as matter of fact. 6 L.R.A.(N.S.) 186.

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; L.R.A.1918B, 974.

§ 10169a5. License required. Before any beverage, concentrate or essence from which any beverage is to be made can be sold, exposed for sale or held with intent to sell within this state, the manufacturer, importer, jobber or retailer shall submit a suitable sample of each and every product to the state food commissioner and chemist for inspection and chemical analysis. If, after examination, it shall be found to comply with all requirements of law it shall be licensed and may then be sold within this state. If it does not meet all requirements of law, the state food commissioner and chemist shall refuse to license it and prevent its sale. Said sample shall be submitted to the state food commissioner and chemist and the license fee paid annually during the month of December of every year or prior to placing such beverage on the market, and said license shall expire December 31 next following its issuance. If the manufacturer or jobber secures a license for a product, subsequent sellers, including retailers and dispensers, need not again secure a license for the same product, and no dispenser shall be required to secure a license for a product prepared for his own use from a product already licensed. At the time of submitting the sample for analysis there shall be paid to the state food commissioner and chemist a license fee according to the following schedule:

Soda water, ginger ale, root beer, pop—Brand or Class	\$10.00
Concentrated extracts, essences, nectars, cordials—Brand or Class	50.00
Fruit juices, apple cider, grape juice, true brand	20.00
Fruit juices, apple cider, grape juice, imitation brand	10.00
Cereal beverages and malts—Brand	50.00
Mineral and spring water—Brand	20.00

[Laws 1923, ch. 221, § 5.]

Food, 26 C. J. pp. 758-761, §§ 11-17.

Validity of license tax on sale of nonintoxicating liquors as affected by amount. L.R.A.1917C, 463.

Power to require license for sale of soft drinks. 6 A.L.R. 1417.

Licensing dealers. 11 R. C. L. 1102 and Supps.

§ 10169a6. Fees; disposition of; expenses; how paid. All fees received by

the state food commissioner and chemist as provided for in this act shall be properly recorded by him and forwarded monthly to the treasurer of the state of North Dakota. The state treasurer shall upon receipt thereof enter such funds and carry them in a special revolving fund to be designated the "State regulatory fund." All salaries and items of expense of whatever nature incurred in the enforcement of this act shall be paid out of said state regulatory fund. Vouchers for all expenses, pay rolls and other items of expense of whatever nature, incurred in the enforcement of this act shall be approved by the state food commissioner and chemist and be forwarded monthly to the state board of administration for audit and approval and when so audited and approved shall be certified to the state auditor who shall draw warrants upon the state treasurer for all pay rolls, expenses and bills so audited and approved. The state treasurer shall thereupon pay such expenses and accounts out of the state regulatory fund. [Laws 1923, ch. 221, § 6.]

§ 10169a7. State food commissioner and chemist to enforce. The state food commissioner and chemist, his agents and inspectors, as provided for in the Food and Drugs Act of this state, is hereby, charged with the enforcement of all the provisions and intent of this act and is hereby authorized to inspect and collect samples of the various beverages as defined under the provisions of this act and on sale in this state or being shipped into the state at such times and places and to such extent as he may determine. The state food commissioner and chemist and his agents, inspectors and deputies shall have access, ingress and egress to all places of business, factories, buildings, carriages, cars, vessels and containers used in the sale or transportation of beverages coming under the provisions of this act. He shall have power and authority to open any package, container or vessel containing such article and upon paying or offering to pay the value thereof may take suitable samples for analysis therefrom, and shall have the authority to prevent the sale or manufacture of products not complying with the provisions of this act. [Laws 1923, ch. 221, § 7.]

Food, 26 C. J. p. 752, §§ 3-4, pp. 758-759, §§ 11-12.

§ 10169a8. Facts; how transmitted. Whenever said state food commissioner and chemist shall find by analysis or otherwise that adulterated, misbranded, insufficiently labeled or an unlicensed product is being sold in violation of this act, he shall forthwith transmit the facts so found to the state's attorney of the county in which the product was found and it shall be the duty of said state's attorney to institute appropriate proceedings in the proper court of jurisdiction. [Laws 1923, ch. 221, § 8.]

Food, 26 C. J. p. 771, § 51.

§ 10169a9. Penalties for violation. Any person, firm or corporation violating any of the provisions of this act or any rule or regulation issued pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars at the discretion of the court. [Laws 1923, ch. 221, § 9.]

Food, 26 C. J. p. 771, § 51, p. 772, § 54, p. 780, § 77.

§ 10169a10. Publicity. The state food commissioner and chemist shall have authority to publish analyses of all products coming under the provisions of this act and to gather useful information for the benefit of the public and users of the articles designated herein. [Laws 1923, ch. 221, § 10.]

Food, 26 C. J. p. 752, §§ 3-4.

§ 10169a11. Provisions severable. The provisions of this Act and each part thereof and its sections and each part thereof are independent and severable and if any provisions or part thereof or section or part thereof be held unconstitutional or invalid, no other provision or part thereof or section or part

thereof shall thereby be impaired or rendered unconstitutional or invalid.
[Laws 1923, ch. 221, § 11.]

Food, 26 C. J. p. 764, § 24.

§ 10169a12. **Repeals specific; repeals implied; saving clause.** The laws hereafter, enumerated shall be expressly repealed and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed from and after the taking effect of this act:

Chapter 85, Compiled Laws of 1913, sections 10155 to 10169, inclusive.
[Laws 1923, ch. 221, § 12.]

Food, 26 C. J. p. 764, § 24.

CHAPTER 86.

USE OF INTOXICATING LIQUORS ON PASSENGER TRAINS.

§ 10171. Comp. Laws, 1913.

Houston v. Minneapolis, St. P. & S. Ste. M. R. Co. 25 N. D. 469, 46 L.R.A. (N.S.) 589, 141 N. W. 994.

CHAPTER 89A.

PEYOTE AND MESCAL.

§ 10176a1. **Regulation of sale, etc.** It shall be unlawful for any person, firm, corporation, or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or to have in his or its possession Peyote (Pellote), botanically known as *Lophophora Williamsii*; or *Agave Americana*, commonly known as the Mescal button, or any compound, derivative, or preparation thereof. [Laws 1923, ch. 257, § 1.]

§ 10176a2. **Penalties.** Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed \$500.00 or imprisoned in the county jail for a period of not to exceed six months, or by both such fine and imprisonment. [Laws 1923, ch. 257, § 2.]

§ 10176a3. **Emergency.** Whereas there is no adequate law relating to Peyote (Pellote) and this law is necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage and approval. [Laws 1923, ch. 257, § 3.]

CHAPTER 90.

SELLING AND SMOKING OPIUM.

§ 10177. **Place for smoking opium and places where other narcotics are sold 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 and all places where morphine, opium, cocaine, heroin or other narcotics are sold, bartered or given away in violation of the provisions of this chapter, or where persons are permitted to resort for the purposes of smoking opium, using morphine, cocaine, heroin and other narcotics, or where morphine, opium, cocaine, heroin and other narcotics are kept for sale, barter or delivery, except as hereinafter provided, or where opium, cocaine, morphine, heroin or other narcotics are possessed, except as hereinafter provided, used for medical purposes in violation of this chapter, are hereby declared to be a common nuisance;

and if the existence of such a 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 under sheriff, 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 narcotics 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 or any person who, in any manner, by using such place for the illegal purposes forbidden herein, or otherwise aids, abets, or assists in any violation of this section or chapter, shall, upon such conviction be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than \$200 nor more than \$1,000, 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 year; 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 such illegal purposes, and keep the same securely closed for the period of one year (unless sooner released as herein-after 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 injunction; provided, however, that when leasehold premises are closed under a temporary injunctive order or have been 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, if the said owner shall prove to the court that he was without fault, and neither knowingly, nor without knowledge negligently permitted the keeping or maintaining of the nuisance complained of, the premises shall be turned over to the owner upon the order of the court or judge as hereinafter set forth. But the release of the property shall be upon the 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 time 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 if the proceeding is an action either at law or in equity and bond is given and costs therein paid, the action shall be dismissed at the end of one year from the date of the service of the temporary injunctive order, if in an equity case, or the closing of the premises if in a criminal case; in the meantime and in either form of action the premises where such nuisance was kept and maintained, shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt as hereinafter provided; 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 statute or law. Provided, further, that when an injunction, either temporary or permanent, has been granted, under the provisions of this chapter, the same shall be binding personally on the defendant or defendants, throughout the entire state, and for the violation of such injunction in any place in the state of North Dakota, the offending party shall

be punished as for contempt according to the rules in this chapter prescribed; Provided, that this section shall not apply to any room, building, cellar or other place or premises where said narcotic drugs are possessed, or possessed for sale, barter or delivery for medical purposes when the owner or keeper, or other person legally in charge and possession of such place or premises shall have registered and paid the special tax as required by the Federal Narcotic Drug Act of the United States. Provided, further, that it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment or proceedings laid or brought under this act, and the burden of the proof of any such exemption shall be upon the defendant. [Laws 1923, ch. 258, § 1.]

Constitutional Law, 12 C. J. p. 1140, § 873; Nuisances, 29 Cyc. 1165, 1201, 1204, 1218, 1219, 1253, 1287, 1288.

Furnishing or prescribing opium by physician. L.R.A.1918E, 669.

Entrapment to commit crime of unlawfully selling narcotics. 18 A.L.R. 170.

Harrison Narcotic Act. 13 A.L.R. 858.

Entrapment to violate law as to smoking opium. 18 A.L.R. 179.

Prohibition of sale or use of opium as within police power. 6 R. C. L. 223.

§ 10177a1. Cumulative. This Act shall be held by the courts to be cumulative to other laws already provided and shall repeal only such acts or parts of acts as are clearly in conflict with this act. [Laws 1923, ch. 258, § 1 [2]].

§ 10177a2. Emergency. An emergency having arisen in the fact that the law is insufficient to afford adequate relief when agents violate law and in case of persons owning leasehold premises, and also in cases where parties under injunctive order continue their violation of the law elsewhere than as in the place specifically mentioned in the injunctive proceedings, therefore, this act shall take effect and be in force from and after its passage and approval. [Laws 1923, ch. 258, § 3.]

CHAPTER 91.

MANUFACTURE AND SALE OF SNUFF.

Section not unconstitutional as deprivation of life, liberty or property without due process of law, on a denial of equal protection of the laws. *State v. Olson*, 26 N. D. 304, L.R.A. 1918B, 975, 144 N. W. 661.

§ 10180. Comp. Laws, 1913.

Held constitutional. *State v. Olson*, 26 N. D. 304, L.R.A.1918B, 975, 144 N. W. 661.

§ 10182. Performance of food commissioner's duty by food commissioner and chemist, see ante, § 396c2.

CHAPTER 92.

MANUFACTURE OR SALE OF CIGARETTES AND CIGARETTE PAPERS.

ARTICLE 1. SALE GENERALLY, §§ 10183a1-10183a8.

2. SALE, ETC., TO MINORS, §§ 10184-10185a.

ARTICLE 1.—SALE GENERALLY.

§ 10183a1. Permit; necessity; issuance; posting; revocation; notice. No person, firm or corporation shall sell cigarettes or cigarette papers in the state of North Dakota without first obtaining a permit therefor which said permit shall be granted and issued by the attorney general on or before July 1st of each year, and said permit shall be in force and effect for one year following July 1st after

its issue unless sooner revoked and shall be granted only to the person, firm or corporation owning or operating the premises from which said sale is to be made and shall not be transferable; which permit shall have a number and show the residence and place of business of the holder. Such permit must be posted in a conspicuous place in the holder's place of business, in which place the sale of cigarettes or cigarette papers are to be made. The attorney general shall revoke the permit of any person who has violated any of the provisions of this act, and no such permit can again be issued for a period of two years thereafter. The attorney general shall upon the issuance or revocation of any permit hereunder, immediately notify the state treasurer. [Laws 1925, ch. 107, § 1.]

Licenses, 37 C. J. p. 224, § 78, p. 240, § 96, p. 245, § 107, p. 243, § 101, pp. 246-248, §§ 108-113, p. 249, §§ 114-115; Commerce, 12 C. J. p. 104, § 142.

Prohibition or regulation of the manufacture, sale, or importation of. 51 L.R.A.(N.S.) 562; L.R.A.1918B, 988.

Right of state to confiscate cigarettes imported for personal use. 4 L.R.A.(N.S.) 528.

Requirement of municipal license for sale of cigarettes. 19 R. C. L. 846 and Supps.

Requirement of state license for sale of cigarettes as not applicable to original packages. 5 R. C. L. 772 and Supps.

§ 10183a2. Bond. No permit shall be issued until the applicant therefor shall file a bond, to be approved by the attorney general, which said bond shall be payable to the state of North Dakota, and shall be in an amount of not less than \$500.00, and conditioned upon the faithful observance of all the provisions of this act, including the payment of all taxes, fines, penalties and costs herein provided for. Said bond shall be signed by the obligor as principal, and by a surety company authorized to do business in this state, or by two sureties who shall justify in double the amount of the bond, and neither of whom shall be surety on another like bond. [Laws 1925, ch. 107, § 2.]

§ 10183a3. License fee. No permit shall be issued until the applicant shall have paid to the attorney general a mullet tax of \$10.00, license fee. The attorney general shall receipt for such payments and shall forthwith pay over all such remittances to the state treasurer and such funds shall be turned into the general fund of the state. [Laws 1925, ch. 107, § 3.]

Licenses, 37 C. J. p. 250, §§ 114-116, p. 251, § 120, p. 255, § 129.

§ 10183a4. Same; who to pay. Every person, partnership or corporation carrying on the business of selling or keeping for sale cigarettes or cigarette papers, or maintaining a place where such cigarettes or cigarette papers are kept with intent to sell, shall pay the mullet tax provided for in section 3 hereof, payable on the first day of July in each year. [Laws 1925, ch. 107, § 4.]

Licenses, 37 C. J. p. 249, §§ 114-115.

§ 10183a5. Tax; violation of provisions; counterfeiting stamp. From and after the taking effect of this act, there is hereby levied and assessed and shall be collected and paid to the state treasurer upon all cigarettes and cigarette papers or wrappers and tubes sold in North Dakota to consumers the following taxes, to be paid prior to or at the time of sale and delivery to the consumer:

Class A. On cigarettes weighing not more than three pounds per thousand, one and one-half mill on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette.

Class C. On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes made up in packages, books or sets; on each such package, book or set containing not more than fifty papers, one-

half cent; containing more than fifty papers but not more than one hundred papers, one cent; containing more than one hundred papers, one-half cent for each fifty papers or major fractional part thereof.

Class D. On tubes, one cent for each fifty tubes or major fractional part thereof.

All cigarettes sold in this state under the provisions of this act shall be put up in packages containing 5, 8, 10, 12, 15, 16, 20, 24, 40, 50, 80, or 100 cigarettes each. Before being delivered to the consumer each package of cigarettes and each package, book or set of papers or of tubes, shall have securely affixed thereto a suitable stamp denoting the tax thereon, and said stamp shall be properly cancelled prior to such sale or removal for consumption, under such regulations as the state treasurer shall prescribe.

For any violation of any of the foregoing provisions of this section, the offender, upon conviction thereof, shall be fined not less than \$100 nor more than \$300 and costs of prosecution, and be committed to the county jail until such fine is paid, but not exceeding six months; and all cigarettes, cigarette papers or wrappers, and papers made or prepared for the purpose of making cigarettes in his possession or in his place shall be confiscated and forfeited to the state.

It shall be unlawful for any person not authorized hereby with intent to defraud the state to make, alter, forge, or counterfeit any license or stamp provided for in this act or have in possession any forged, counterfeited, spurious or altered license or stamp, knowing the same to be forged, counterfeited, spurious or altered, and whoever is found guilty of any violation of this provision shall be fined not more than \$1000.00 and be imprisoned in the state penitentiary not more than three years. [Laws 1925, ch. 107, § 5.]

Taxation, 37 Cyc. 765, 810; Counterfeiting, 15 C. J. p. 358, § 10.

Taxation of tobacco. 23 R. C. L. 981 and Supps.

§ 10183a6. **Same.** The state auditor shall prepare and have suitable stamps for use on each kind of package prescribed in section 5 of this act. Upon requisition from the state treasurer, the state auditor shall deliver to his order the stamps designated in such requisition, and shall charge the treasurer of the state with the stamps thus delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The state treasurer shall sell the stamps herein provided for only to dealers holding permits issued as provided in this act, and the moneys received from the sale of said stamps shall be turned into the general fund of the state. [Laws 1925, ch. 107, § 6.]

§ 10183a7. **Assistance in enforcement.** In the enforcement of this act, the attorney general may call to his assistance any state's attorney or any peace officer. The state treasurer and the attorney general are hereby authorized to appoint such necessary additional help as may be necessary to carry out the provisions of this act. [Laws 1925, ch. 107, § 7.]

§ 10183a8. **Nuisance; injunction; abatement; contempt.** Any person, firm or corporation violating any of the provisions of this act, or maintaining a place where such cigarettes or cigarette papers are sold or kept with intent to sell in violation of the provisions of this act, shall be deemed guilty of keeping and maintaining a nuisance, and the building or place so used for the sale or keeping for sale of cigarettes or cigarette papers, or wrappers in violation of the provisions of this act shall be deemed to be a nuisance, and such person, firm or corporation shall be enjoined and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance, or for contempt in violating an order of injunction, shall be, so far as applicable, the same as those now provided by the laws of this state for enjoining and abating intoxicating liquors. [Laws 1925, ch. 107, § 8.]

Explanatory note. Sale to minor, see § 10185a, post.

Nuisances, 29 Cyc. 1196, 1218, 1253.

Enjoining nuisances. 20 R. C. L. 472 et seq. and Supps.

Violation of injunction as contempt. 6 R. C. L. 502 et seq. and Supps.

ARTICLE 2.—SALE, ETC., TO MINORS.

§ 10184. **Sale; when unlawful.** It shall be unlawful for any person by himself, clerk, servant, employee or agent, or any clerk, servant, employee or agent of any person, directly or indirectly, upon any pretense or by any device, to sell, exchange, barter, dispose of or give away to, or to furnish to, or buy or procure for, any person under the age of twenty-one years any cigarette, cigarette paper or cigarette wrapper, prepared or designed to be used for filling with tobacco for smoking. [Laws 1925, ch. 106, § 1; Laws 1921, ch. 126, § 1.]

Infants, 31 C. J. p. 994, § 15.

§ 10184a1. **Keeping; prima facie evidence.** The keeping of cigarettes, or cigarette papers or wrappers in his public place of business by any owner or proprietor thereof, by himself, clerk, servant, employee or agent shall be prima facie evidence of the keeping of the same for sale. Provided, that this section shall not apply to such cigarettes, or cigarette papers or wrappers, in reasonable quantities, that are carried upon the person of such owner or proprietor, or his clerks or employees for their own personal use. [Laws 1921, ch. 126, § 2.]

Explanatory note. It may be that the amendment of § 10184 by Laws 1925, ch. 106, § 1, was intended to supersede § 2 of Laws 1921 (§ 10184a1, ante), as well as § 10184, ante.

§ 10184a2. **Revocation of permit.** The attorney general shall revoke the permit of any person, firm or corporation, authorized to sell cigarettes and cigarette papers in this state, who has violated any of the provisions of this act, and no such permit can again be issued to such person, firm or corporation for a period of two years thereafter. [Laws 1925, ch. 106, § 2.]

Licenses, 33 C. J. p. 247, § 110.

§ 10185. **Penalty.** Any person violating any of the provisions of section 1 of this act 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 \$50.00 nor more than \$100.00; and for the second and each subsequent offense, by a fine of not less than \$100.00 nor more than \$300.00, or by imprisonment in the county jail for not less than ten or more than ninety days, or both such fine and imprisonment. The enforcement of the penal provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of this state and any such officer failing to enforce the penal provisions hereof, shall be subject to removal from office in manner by law provided. [Laws 1925, ch. 106, § 3; Laws 1921, ch. 126, § 3.]

Licenses, 37 C. J. p. 262, §§ 145-146.

§ 10185a. **Nuisance; injunction; abatement; contempt.** Any person, firm or corporation violating any of the provisions of this act, or maintaining a place where cigarettes or cigarette papers are sold or kept with intent to sell in violation of the provisions of this act, shall be deemed guilty of keeping and maintaining a nuisance, and the building or place so used for the sale or keeping for sale of cigarettes or cigarette papers, or wrappers in violation of the provisions of this act shall be deemed to be a nuisance, and such person, firm or corporation may be enjoined and such building or place abated as a nuisance, and the procedure for the actions to enjoin and abate such nuisance, or for contempt in violating an order of injunction, shall be, so far as applicable, the same as those now provided by laws of this state for enjoining and abating intoxicating liquors. [Laws 1925, ch. 106, § 4.]

Nuisances, 29 Cyc. 1196, 1218, 1253.

Violation of injunction as contempt. 6 R. C. L. 502 et seq. and Supps.

Enjoining nuisances. 20 R. C. L. 472 et seq. and Supps.

CHAPTER 92A.

SMOKING.

§ 10185b. **Prohibiting in specified places; penalty.** It shall be unlawful for any person within this state to use tobacco by smoking in cigars, cigarettes, pipes or in any other form in the dining room of any hotel, or in any cafe, restaurant or eating room in which both men and women are being served, or in any street car, or railway coach, except in rooms, coaches and compartments specially provided for that purpose; or for the proprietor of any hotel, cafe, restaurant or eating room, or the conductor of any street car, or railway coach to knowingly permit any such act in any such place. Any person violating any provision of this act shall upon conviction thereof be punished by a fine in any sum not less than \$5.00 and not more than \$25.00. [Laws 1921, ch. 127, § 1.]

Prohibition of smoking of tobacco in public places. 19 R. C. L. 846 and Supps.

CHAPTER 94.

ALLOWING STALLION, BULL OR RAM TO RUN AT LARGE.

§ 10193. **Exceptions.** The provisions of the last section shall not be construed to include any jack, stallion, bull or ram, kept in any herd that is attended by a herder and the jack, stallion, bull or ram is kept with such herd by the herder. [Laws 1915, ch. 167, § 1.]

Animals, 3 C. J. p. 23, § 23, p. 172, § 579, pp. 179-181, §§ 610-612.

Prohibiting animals from running at large. 1 R. C. L. 1096 and Supps.

CHAPTER 97.

SALE OF ADULTERATED INSECTICIDES AND FUNGICIDES.

§§ 10215-10217. Substitution of food commissioner and chemist for food commissioner, see § 396c2, ante.

CHAPTER 104.

MISCELLANEOUS CRIMES.

§ 10241a1. **Masks, wearing of, in public.** Any person or persons over the age of fifteen years who appears outside of any building in the state of North Dakota wearing a mask, regalia, or other head covering so worn as to conceal the features and prevent recognition of said person or persons, is guilty of a misdemeanor. [Laws 1923, ch. 240, § 1.]

§ 10241a2. **Penalties.** Any person or persons within the state of North Dakota, who violates the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum not less than twenty-five nor more than one hundred dollars, or be imprisoned in a county jail for a period of not less than ten days nor more than thirty days, or by both fine and imprisonment, at the discretion of the court. [Laws 1923, ch. 240, § 2.]

§ 10246. Changes as to women, see §§ 10246a1, 10246a2, post.

§ 10246a1. **Hours of labor for females.** No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or telephone or telegraph establishment, or an office, or in any express or transportation company, in the state of North Dakota more than eight

and one-half (8½) hours in any one day, or more than six (6) days or more than forty-eight (48) hours in any one week; provided, however, that this act shall not apply to females working in rural telephone exchanges or in villages or towns of less than five hundred (500) population, nor to cases of employees in small telephone exchanges where the Workmen's Compensation Bureau after a hearing has determined that the condition of work is so light that it does not justify the application of this Act. In such case the Workmen's Compensation Bureau shall make reasonable rules and regulations under which females may be employed in such small exchanges. Provided, further, that the above law shall not apply in case of emergency, that at such time female help may be employed ten hours in one day and seven days in one week, but not to exceed forty-eight hours in any one week. An emergency, as herein referred to, is defined to exist in the case of sickness of more than one female employee, in which case a doctor's certificate must be furnished, for the protection of human life, in the case of the holding of banquets, conventions, celebrations, session of the legislature in any city wherein such session is held and during the time such body is in session, or where a female is employed as reporter in any of the courts of the state of North Dakota. In case such an emergency exists the Workmen's Compensation Bureau must be at once notified in writing or by telegraph, such notice to state the full particulars thereof and the probable duration of such emergency and permission must be obtained from such bureau as soon as practical, who shall determine the duration of such emergency. [Laws 1925, ch. 219, § 1; Laws 1923, ch. 346, § 1; Laws 1919, ch. 170, § 1.]

Master and Servant, 26 Cyc. 978; Constitutional Law, 12 C. J. p. 926, § 436, p. 1128, § 843.

Statutes limiting hours of labor of women as class legislation. 6 R. C. L. 392 and Supps.

Regulation of hours of labor for women. 16 R. C. L. 485 and Supps.

§ 10246a2. Penalty. Any person violating any provisions of this act, shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [Laws 1925, ch. 219, § 2; Laws 1923, ch. 346, § 2; Laws 1919, ch. 170, § 2.]

§ 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 or conditional sale contract, who wilfully destroys or 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 holder of such lien, is guilty of:

1. A crime, and punishable by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days or by both such fine and imprisonment; if the value of the property does not exceed one hundred dollars; or,

2. A felony, if the value of the property exceeds one hundred dollars.

[Laws 1925, ch. 161, § 1.]

Word "wilfully" means not only intentionally, but in criminal law also means with bad purpose or evil intent. Rhoads v. First Nat. Bank, 37 N. D. 421, 163 N. W. 1046.

See also Hansboro State Bank v. Imperial Elevator Co. 46 N. D. 363, 179 N. W. 669; State v. Strong. — N. D. —, 201 N. W. 858; Reeves Co. v. Russell, 28 N. D. 265, L.R.A.1915D, 1149, 148 N. W. 654.

Liens, 37 C. J. p. 331, § 48.

§ 10250. Comp. Laws, 1913.

Requirement that acts prosecuted under this section must "openly outrage public decency" is part of the statutory definition, and act must be openly done, and

not to exclusion from public observation, to constitute the crime. *State v. Stevens*, 33 N. D. 540, 157 N. W. 668; *State v. Nelson*, 36 N. D. 564, 163 N. W. 278.

§ 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, or for [which] the sale of the capital stock of foreign corporations shall form the whole or any part of the consideration, 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," or "given for the sale of capital stock of foreign corporations," as the case may require provided this act shall not apply to the sale of capital stock of cooperative corporations. Such obligations so stamped 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 fine 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. [Laws 1921, ch. 92, § 1.]

Sale of patent rights, and notes given in payment therefor, not void because of nonstamping on face of notes given, and fact that notes are unstamped, is no defense to payment thereof. *McCabe v. Williams*, 45 N. D. 330, 177 N. W. 378.

Bills and Notes, 8 C. J. p. 154, § 262, pp. 509-511, § 718, p. 771, § 1037, p. 782, § 1046; Patents, 30 Cyc. 969.

Statutes requiring recital of consideration on bills and notes. 3 R. C. L. 912 et seq. and Supps.

Effect of failure of note to recite consideration as required by statute. 3 R. C. L. 1021.

§ 10251a. Emergency. Whereas, it is necessary to protect the best interests of the state that this bill become a law at an early date, this act shall be considered an emergency and be in force and effect immediately after its passage and approval. [Laws 1921, ch. 92, § 3.]

§ 10253a1. Registering in hotel under fictitious name. It shall be unlawful for any person to register or to be registered with his or her knowledge or consent at any hotel in the state under a fictitious or false name or any other name than his or her own; provided that the provisions of this act shall not apply to officers of the law, when in actual performance of their duties. [Laws 1921, ch. 75, § 1.]

Innkeepers, 32 C. J. p. 573.

§ 10253a2. Penalty. Any person who shall violate the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall [be] punished by imprisonment in the county jail not exceeding thirty days or by a fine of not less than five dollars and not exceeding one hundred dollars or both in the discretion of the court. [Laws 1921, ch. 75, § 2.]

CHAPTER 105.

GAME AND FISH.

Explanatory note. This chapter has been re-enacted by Laws 1915, ch. 161, and the original chapter of the Compiled Laws repealed by § 85 (§ 10322a95, post). Most

of the original sections are in the re-enactment, but as their order has been changed, the original numbering has not been retained. In so far, however, as corresponding numbers are found in the new law, references thereto are given.

- § 10262. See § 10322a1, post.
- § 10263. See § 10322a2, post.
- § 10264. See § 10322a3, post.
- § 10264a. See § 10322a59, post.
- § 10265. See § 10322a4, post.
- § 10266. See § 10322a5, post.
- § 10267. See § 10322a6, post.
- § 10268. See § 10322a7, post.
- § 10269. See § 10322a8, post.
- § 10270. See § 10322a9, post.
- § 10271. See note preceding § 10262, *anta*.
- § 10272. See § 10322a10, post.
- § 10273. See § 10322a11, post.
- § 10274. See § 10322a12, post.
- § 10275. See § 10322a13, post.
- § 10276. See § 10322a14, post.
- § 10277. See § 10322a15, post.
- § 10278. See note preceding § 10262, *anta*.
- § 10279. See § 10322a16, post.
- § 10280. See § 10322a17, post.
- § 10281. See § 10322a18, post.
- § 10282. See § 10322a80, post.
- § 10283. See § 10322a84, post.
- § 10284. See § 10322a19, post.
- § 10285. See § 10322a20, post.
- § 10286. See § 10322a21, post.
- § 10287. See § 10322a22, post.
- § 10288. See § 10322a23, post.
- § 10289. See § 10322a24, post.
- § 10290. See § 10322a25, post.
- § 10291. See § 10322a26, post.
- § 10292. See § 10322a27, post.
- § 10293. See § 10322a28, post.
- § 10294. See § 10322a30, post.
- § 10295. See § 10322a31, post.
- § 10296. See § 10322a32, post.
- § 10297. See § 10322a33, post.

- § 10298. See §§ 10322a34, 10322a34a, post.
- § 10299. See § 10322a36, post.
- § 10300. See § 10322a37, post.
- § 10301. See § 10322a35, post.
- § 10302. See note preceding § 10262, anta.
- § 10303. See § 10322a45, post.
- § 10304. See § 10322a50, post.
- § 10305. See § 10322a51, post.
- § 10306. See § 10322a73, post.
- § 10307. See § 10322a71, post.
- § 10308. See § 10322a85, post.
- § 10309. See § 10322a81, post.
- § 10310. See § 10322a78, post.
- § 10311. See § 10322a82, post.
- § 10312. See § 10322a88, post.
- § 10313. See § 10322a86, post.
- § 10314. See § 10322a87, post.
- § 10315. See § 10322a76, post.
- § 10315a. See § 10322a83, post.
- § 10316. See § 10322a52, post.
- § 10317. See § 10322a54, post.
- § 10319. See § 10322a55, post.
- § 10320. See § 10322a57, post.
- § 10321. See § 10322a94, post.
- § 10322. See § 10322a49, post.

§ 10322a1. **Ownership of game 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, killed, or trapped, in any manner or at any time, or had in possession, except the person so taking, catching, killing, trapping 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, killing or trapping; any person catching, taking, killing, trapping or having in possession any wild birds or 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 consent of such person as aforesaid, whether said game or fish were taken within or without the state. [Laws 1915, ch. 161, § 1.]

Fish, 26 C. J. p. 596, § 8, pp. 623-625, §§ 42-43; Game, 27 C. J. p. 942, § 2, pp. 945-946, §§ 9-10.

Taking of game as larceny. L.R.A.1918A, 547.

Protection of migratory birds as within scope of treaty making power. 17 A.L.R. 637.

Power of congress to protect migratory birds. L.R.A.1915F, 1031; 11 A.L.R. 991.

Right to kill game in defense of person or property. 21 A.L.R. 199.

State ownership of fish. 11 R. C. L. 1025 and Supps.

State ownership of game. 12 R. C. L. 684 and Supps.

§ 10322a2. Game warden 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 and their further sub-divisions: Benson, Bottineau, Burke, Cavalier, Divide, Eddy, Grand Forks, McHenry, McKenzie, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, Williams; Game District No. 2 shall consist of the following counties and further sub-divisions: Adams, Barnes, Billings, Bowman, Burleigh, Cass, Dickey, Dunn, Emmons, Foster, Golden Valley, Griggs, Hettinger, Kidder, LaMoure, Logan, McIntosh, McLean, Mercer, Morton, Oliver, Ransom, Richland, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Traill, Wells. [Laws 1915, ch. 161, § 2.]

§ 10322a3. Board of control, game and fish commissioner, terms, appointments, meetings, compensation, rules and regulations. The North Dakota game and fish board is hereby created, consisting of three members to be appointed by the governor. One member of such board shall be appointed for two years commencing on or before the first day of April, 1915, and two members shall be appointed for four years. Thereafter such appointments shall be made for a term of four years, commencing on the expiration of each term. Vacancies arising from any cause shall be filled by the governor. Said board shall hold its first meeting on the second Tuesday of the month succeeding its appointment and shall organize by electing one member of said board president, one vice president, and one secretary. A quorum of said board shall consist of two members. The North Dakota game and fish board after its organization may hold its meetings at any point in the state at such time and place as the president may designate, and there must be at least four regular meetings each year. The president of the board shall have the power to call special meetings whenever, in his judgment, it becomes necessary. The president and the vice president of the board shall receive as compensation for their services the sum of five dollars per day for each day in attendance at and necessary for going to and returning from such meetings, and all expenses actually and necessarily incurred incident to such meetings, and the secretary of the board shall receive not to exceed the sum of twelve hundred dollars per year and actual expenses necessarily incurred in the performance of his official duties, which sums 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. Each member of the North Dakota game and fish board shall give bonds to the state in the sum of five thousand dollars, to be approved by the governor, and the member chosen as secretary shall maintain an office, keep a record of the acts of the board, formulate its reports and keep a record of its expenditures. The board shall establish rules and regulations and employ the most efficient and practical means to carry out the provisions of this act. It shall require of the chief wardens monthly and annual reports in full, a copy of which shall be mailed to each member of such board, stating the number of deputy wardens appointed, their addresses, number of arrests, convictions and fines and other matters necessary to the enforcement of the provisions of this act. In the performance of their duties as members of the game and fish board, as game wardens, as game and fish commissioners, all such persons after having been legally appointed as provided in this act, and during the terms for which they are in active service, shall each of them be exempt from any or all liability to any person for acts done or permitted or property destroyed under and by virtue of the authority of the law. [Laws 1923, ch. 224, § 1; Laws 1915, ch. 161, § 3.]

President of board may call meetings at any time, and place. *Hartung v. Manning*, — N. D. —, 196 N. W. 554.

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.
Constitutionality of game laws as affected by the fact that game protected is destructive of private property. L.R.A.1918C, 404.
Appointment of officers by governor. 12 R. C. L. 1004 and Supps.
Governor's power to fill vacancies in offices. 22 R. C. L. 441 and Supps.

§ 10322a4. Powers and duties of the board. 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 act and the publication of such information and reports.

3. The power to purchase and lease, for the state, control, construct, mark, designate and manage all state fish hatcheries, state game farms, game refuges, game reserves and game reservations that are now, or may hereafter be owned, leased or controlled 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. The taking alive at any time, by any means, under the personal supervision of any member of the board, or someone appointed by them, any birds or animals for propagating purposes, or for the exchange with other states for game and birds and animals of other species.

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, automobiles, vehicles 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.

7. The power to appoint chief game wardens, state wide deputy game wardens, district game wardens, and such other special wardens as may be necessary to enforce the provisions of the game laws of the state of North Dakota, and the deputy game and fish commissioner as provided for in section 6 and section 8 of this act.

It is further provided that the game and fish board shall have the power and authority to remove at their pleasure any one or all of its appointees.

8. The game and fish board shall have full power and authority to fix a maximum amount of traveling and other expenses which may or might be incurred by any or all of its appointees or by the game and fish commissioner. [Laws 1923, ch. 224, § 2; Laws 1915, ch. 161, § 4.]

Fish, 26 C. J. p. 623, § 42; Game, 27 C. J. p. 945, § 9; Constitutional Law, 12 C. J. pp. 844-847, §§ 329-330, p. 853, § 341.

Power as to opening or closing season. 34 A.L.R. 832.

Powers of fish commissioners. 11 R. C. L. 1042 and Supps.

§ 10322a5. Reports and records. Said board shall, on or before December 31st 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, the names of the purchasers, and the amount received, and statement of its disbursements. The books and vouchers of said board shall be subject to examination by the public examiner at all times. [Laws 1915, ch. 161, § 5.]

§ 10322a6. Chief game wardens. The board shall appoint a chief game warden for each of the game districts mentioned in section 2 of this act who

shall devote all his time to the discharge of his duties, and shall receive compensation therefor the sum of 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 biennial period in which he is appointed, (biennial period for appointments shall be construed as ending April 1st of odd numbered years), unless sooner removed by action of the game and fish board as provided for in paragraph 7 of section 4 as amended, and be subject to the board's 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 duties to devote all his time to the practical and actual work of enforcing the provisions of this act in seasons requiring the actual work of deputy wardens in the fields. 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 governor, 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. [Laws 1923, ch. 224, § 3; Laws 1915, ch. 161, § 6.]

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.

Liability of game warden. L.R.A.1918A, 839.

Official bonds. 22 R. C. L. 496 et seq. and Supps.

§ 10322a7. Game and fish commissioner. The governor shall appoint a state game and fish commissioner 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 if no special appropriation has been made. He shall act as such game and fish commissioner during the biennial period in which he is appointed, 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 game and fish. [Laws 1915, ch. 161, § 7.]

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.

§ 10322a8. Other employees. The board may also appoint and remove at pleasure not to exceed one statewide deputy game warden for each game district, and not to exceed twelve regular district deputy game wardens, six of which are to be appointed in the first game district and six in the second game district, as provided for in section 2, such district deputy game warden to serve for a period not to exceed four months during each year, which months shall be designated by the game and fish board, unless in the opinion of the board an emergency exists which requires special work for which the board may authorize the chief game wardens to assign the district deputy wardens for extra duty for such periods and places as conditions require, for the better protection of the game of the state. Provided, further, the chief game warden in each district may appoint one or more special state-wide 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 special state-wide game wardens without compensation, except as provided in section 21 of this act. Such regular deputy game wardens as are appointed by the board, 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 attached 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 employees shall be paid from the state game and fish fund. 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. The board shall also appoint a deputy game and fish commissioner, who shall act as assistant to and under the direction of the state game and fish commissioner, in the care of the state fish hatchery and in the distribution, breeding and capture of such game birds, animals and fish as the board may direct, for which he shall receive not to exceed fifteen hundred dollars per year and actual expenses necessarily incurred in the discharge of his official duties. He shall devote his entire time to the work and reside at a location designated by the board. [Laws 1923, ch. 224, § 4; Laws 1915, ch. 161, § 8.]

State game and fish board may remove employees at pleasure. *Hartung v. Manning*, — N. D. —, 196 N. W. 554.

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.

§ 10322a9. Other officials; attorneys. 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 act. 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 act. [Laws 1915, ch. 161, § 9.]

Fish, 26 C. J. p. 635, § 55, p. 641, § 65; Game, 27 C. J. p. 954, § 19, p. 958, § 29.

§ 10322a10. Execution of writ. All members of the board of control and all wardens and commissioners 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 act, 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 any person not drawing a salary from the game and fish fund shall be entitled to fees in all cases wherein fines are paid, and for the purpose of enforcing the provisions of this act 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 act. The chief wardens, any member of the board, and any deputy shall have the 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. [Laws 1915, ch. 161, § 10.]

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.

§ 10322a11. Bonds for deputy wardens. Each district game warden and game and fish commissioner 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 one thousand dollars. Special deputy wardens and other persons employed by the board, shall give bonds when required. [Laws 1915, ch. 161, § 11.]

Official bonds. 22 R. C. L. 496 et seq.

§ 10322a12. Duties of chief game wardens. It shall be the duty of each chief game warden to keep a complete and correct record of all his transactions, in a record book for that purpose, showing dates of appointments 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 shall make full report of all matters of record to the game and fish board; 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. [Laws 1915, ch. 161, § 12.]

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.

§ 10322a13. Terms defined; agency no excuse. The words "sell" and "sale" as used in this act 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 employee of another, nor that it was committed by or through an agent or employee 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 term "waters of this state" shall be held to include all the boundary waters of the state, and the provisions of this act shall be deemed to extend and be in force and effect over, upon and in all thereof. The term "any part thereof" or "the parts thereof" whenever used in this act shall be deemed to include the hides, horns, hoofs of any animal so referred to, and the plumage and skin and every other part of any bird so referred to. [Laws 1915, ch. 161, § 13.]

Fish, 26 C. J. p. 627, § 45; Game, 27 C. J. p. 949, § 12.

§ 10322a14. Inspection of hotels, restaurants, cold storage plants and other places. The members of the game and fish board and any game wardens shall from time to time inspect hotels, restaurants, cold storage houses or plants, meat markets, ice boxes, cars and ice houses, commonly used for storing meats, game or fish for private parties, including all buildings used for such purposes, and tents, conveyances, vehicles, automobiles, wagons and camps which they have reason to believe contain game, for the purpose of determining whether game is kept therein in violation of the provisions of this act. Any person in possession or control or in charge of any hotel, restaurant, cold storage plant, meat market, ice box, car, ice house, tent, camp or vehicle of any nature, or any part thereof, who refuses or fails to permit a member of the game and fish board or game warden or deputy to enter any such places 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 days or over twenty days for the first offense, or both at the discretion of the court, 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. [Laws 1915, ch. 161, § 14.]

Fish, 26 C. J. p. 635, § 55, p. 639; § 64; Game, 27 C. J. p. 954, § 19, p. 957, § 28, p. 960, § 34.

Serving game or fish with meal as violation of game law. L.R.A.1917F, 769.

§ 10322a15. 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 act, is hereby declared to be contraband. The board, 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 has been caught, taken, killed or had in possession or under control or shipped contrary to any provision of this act. 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 act, 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 facts attending the same to the board. The same penalty shall attach as section 14 of this act (§ 10322a14, ante). [Laws 1915, ch. 161, § 15.]

Fish, 26 C. J. p. 635, § 55, p. 639, § 64; Game, 27 C. J. p. 946, § 10, p. 957, § 28, p. 960, § 34.

Forfeiture of personal property used in violation of game laws. L.R.A.1916F, 913.

Jury trial in case of seizure and destruction of appliances alleged to be illegally used. 17 A.L.R. 574.

Violation of game law as "infamous offense," within constitutional or statutory provision in relation to presentment or indictment by grand jury. 24 A.L.R. 1010.

§ 10322a16. Witnesses. In any prosecutions under the provisions of this act, 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. [Laws 1915, ch. 161, § 16.]

Witnesses, 40 Cyc. 2543.

Immunity of witnesses from self-incrimination. 28 R. C. L. 440 et seq.

§ 10322a17. Limitations to prosecutions. All prosecutions under this act shall be commenced within two years from the time the offense is committed. [Laws 1915, ch. 161, § 17.]

§ 10322a18. 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 wardens of other states for breeding purposes. [Laws 1915, ch. 161, § 18.]

Fish, 26 C. J. p. 635, § 55; Game, 27 C. J. p. 954, § 19.

§ 10322a19. Fines; disposition of. All fines collected under any of the provisions of this act shall be paid in to the county treasury of the proper county to be added to the state school fund. [Laws 1915, ch. 161, § 19.]

Fines, Forfeitures and Penalties, 25 C. J. p. 1165, § 40; Game, 27 C. J. p. 957, § 27; Fish, 26 C. J. p. 639, § 63.

§ 10322a20. 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 for 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 act; provided, that any surplus money accumulating to the credit of the game and fish commissioner fund may be used for the propagation of game and fish. [Laws 1915, ch. 161, § 20.]

Fish, 26 C. J. p. 639, § 63; Licenses, 37 C. J. p. 255, § 129; Fines, Forfeitures and Penalties, 25 C. J. p. 1215, § 161; Game, 27 C. J. p. 957, § 27.

§ 10322a21. 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 act, or any enactments involving deer, antelope, moose, or elk, beaver or otter, the sum of twenty-five dollars; any game bird or fish or other violation ten dollars; provided, however, that this section shall not apply to any game warden regularly employed and receiving salary from the said board. [Laws 1915, ch. 161, § 21.]

Fish, 26 C. J. p. 639, § 63; Licenses, 37 C. J. p. 255, § 129; Fines, Forfeitures and Penalties, 25 C. J. p. 1167, § 41, p. 1177, § 70, p. 1215, § 161; Rewards, 34 Cyc. 1752-1755; Game, 27 C. J. p. 957, § 27.

§ 10322a22. Permits. The game and fish board may issue permits to breed or domesticate any of the protected game birds and animals; permits to any holder of a resident hunting license to ship not to exceed in any one season ten protected game birds to points other than his home within the state, or to points

outside of the state, such permits to be attached to the shipment; permits to any holder of a resident hunting license to retain in his possession or in cold storage for his own private use for a longer period than five days after the close of the regular open season, thirty wild ducks or wild geese or any combination of the same; permits to properly authenticated persons to make collections of protected birds and animals for scientific purposes. All holders of permits for domesticating protected game birds and animals must report to the secretary by the first of December of each year the result of their experiments and increase, if any. The board may, at its discretion also issue permits for the shipment within or without the state of any such live protected game and animals, provided the permit is attached to the shipment. All applications for permits must be made to the secretary of the game and fish board in writing and state the name and address of the applicant, the number of his license and designate the location where such protected game birds and animals are to be kept or collected. It shall be unlawful for any one to retain, ship or collect protected game birds or animals without having first procured permits as herein provided. Any person violating the provisions of this act shall be guilty of a misdemeanor. [Laws 1919, ch. 134, § 1; Laws 1915, ch. 161, § 22.]

Game, 27 C. J. p. 952 § 16.

Applicability of game laws to domesticated animals. L.R.A.1916C, 343.

Domestication of wild game. 12 R. C. L. 686 and Supps.

Transportation of wild game. 12 R. C. L. 701 and Supps.

§ 10322a23. 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 nest, or the eggs of any kind of birds, the killing of which is at any and at all times prohibited. [Laws 1915, ch. 161, § 23.]

Game, 27 C. J. p. 947 § 11.

§ 10322a24. Manner of taking. No person shall at any time catch, take or kill any of the birds or animals mentioned in this act 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 especially provided. [Laws 1915, ch. 161, § 24.]

Game, 27 C. J. p. 951 § 15.

§ 10322a25. Traps, snares, blinds, lights, etc. No person shall at any time set, lay, prepare, or have in possession, any trap, snare, artificial light, net, bird line, swivel gun or contrivance whatever for the purpose of catching, taking or killing any of the protected game birds and animals in this act mentioned, except that natural blinds, which are stationary, and decoys and boats anchored or tied in natural blinds may be used in hunting wild ducks and wild geese; no person shall shoot from any sunken boat, nor from any artificially disguised boat, nor from any moving boat, nor from any boat in open waters of the state, nor shall any person use or cause to be used any floating battery, electric, steam or gasoline or other boat or floating vessel or rifle for the purpose of driving or raising any game birds from their resting or feeding places in any waters of this state, nor to [sic] use rifles in pursuing or hunting ducks or geese nor to [sic] use any vehicle or automobiles for the purpose of disturbing geese while feeding or resting. Shooting from any vehicle or automobile is strictly prohibited. [Laws 1915, ch. 161, § 25.]

Game, 27 C. J. p. 951 § 15.

§ 10322a26. Hours for shooting. No person shall hunt, pursue, catch, shoot at or in any way molest any of the game birds or animals mentioned in this act, within the borders of the state, during the time elapsing between actual sunset and one-half hour before sunrise. [Laws 1921, ch. 70, § 1; Laws 1915, ch. 161, § 26.]

Prohibition of killing of game in nighttime. 12 R. C. L. 695 and Supps.

§ 10322a27. **Dogs, use of.** No person shall hunt, pursue, catch, take or kill deer, antelope, moose or elk 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 or droppers, or allow same to run loose in fields or upon land in which game birds may be found, or are apt to be frequented by game birds between the first day of April and the first day of November (both inclusive) following of each year.

Provided, however, that this section shall not be construed as prohibiting the use of dogs for retrieving water birds, including any or all of the several species of ducks and geese which it is lawful to hunt and kill. [Laws 1923, ch. 224, § 5; Laws 1919, ch. 134, § 2; Laws 1915, ch. 161, § 27.]

Does not prohibit use of spaniel to retrieve wounded or dead bird previously shot and located within small area from which gamebirds had been flushed. *State v. Canham*, — N. D. —, 203 N. W. 497.

Game, 27 C. J. p. 951 § 15.

§ 10322a28. **Entering upon posted lands.** No person shall at any time go upon any lands for the purpose and with intent to take or kill any game birds or wild animal, upon which signs have been posted, by the owner, leasee or agent bearing the inscription "No Hunting or Trespassing Allowed" without first obtaining the written consent so to do from such owner, lessee or agent. Any person or persons entering upon the premises of another without permission as above provided for who have in his or her possession any gun or firearms, shall prima facie be presumed to have entered said premises for the purpose of hunting game within the meaning of this act. Provided, however, that it shall be lawful for any person to pursue upon said posted lands any deer or other wild animal which had been shot and wounded on other lands not so posted; provided, further, no person shall enter upon such posted land unless there be a visible trail of blood clearly indicating the course of such wounded animal onto such posted land and in no event shall it be lawful for more than two persons to pursue such wounded animal.

Any person or persons convicted of the violation of this section shall be fined not less than ten (\$10.00) nor more than fifty (\$50.00) dollars and cost of prosecution. [Laws 1921, ch. 71; Laws 1919, ch. 134, § 3; Laws 1915, ch. 161, § 28.]

Game, 27 C. J. p. 944 § 6, p. 952 § 17.

Title to game taken by trespasser. 23 A.L.R. 1402.

Hunting or fishing on another's land as trespass. 26 R. C. L. 942.

§ 10322a29. **Trespassing; signs.** 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 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. Any person or persons entering upon the premises of another without permission as provided, who shall at the time of so entering have in his or her possession any gun or firearm shall prima facie be presumed to have entered said premises for the purpose of hunting game within the meaning of this act. Any person violating the provisions of this act shall upon conviction thereof be punished by a fine of not less than ten or 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. [Laws 1915, ch. 161, § 29.]

Game, 27 C. J. p. 952 § 17; Trespass, 38 Cyc. 1177.

Hunting or fishing on another's land as trespass. 26 R. C. L. 942.

§ 10322a30. **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 unlawfully outside

of this state at a time when it is unlawful to have in possession or under control such birds, animals or fish, or parts thereof, if caught, taken or killed in this state, or which have been unlawfully taken or killed outside of this state or unlawfully shipped therefrom into this state. [Laws 1915, ch. 161, § 30.]

Game, 27 C. J. p. 950 § 14.

Application of statutes to game killed in other states. 12 R. C. L. 696 and Supps.

§ 10322a31. 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 act 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 [sic], and that he was lawfully in possession thereof. [Laws 1915, ch. 161, § 31.]

Fish, 26 C. J. p. 643 § 68; Game, 27 C. J. p. 959 § 32.

§ 10322a32. Skins. Nothing in this act 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, heads or trophies, 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. [Laws 1915, ch. 161, § 32.]

Game, 27 C. J. p. 949 § 12.

§ 10322a33. Game birds; season 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 any one, 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 ringneck or English pheasant, Hungarian partridges, wild duck of any variety, wild goose of any variety, brant of any variety, or aquatic fowl, or any part thereof, except: First, that any snipe, prairie chicken, grouse, wood cock or golden plover may be killed or had in possession between the sixteenth day of September and the sixteenth day of October, both inclusive following, provided, however, that no snipe, prairie chicken, grouse, wood cock or golden plover shall be placed in cold storage; second, that any wild duck, wild goose or brant of any variety may be killed and had in possession between the sixteenth day of September and the first day of December, both inclusive, following. Any person violating the provisions of this section shall be punished by fine of not less than \$25.00 or more than \$50.00, 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 fine and imprisonment, in the discretion of the court, for each and every bird killed or destroyed contrary to the provisions of this section. [Laws 1919, ch. 134, § 4; Laws 1917, ch. 122, § 1; Laws 1915, ch. 161, § 33.]

Game, 27 C. J. pp. 949-950 §§ 12-14, p. 952 § 16.

§ 10322a34. Deer; season for killing. No person shall hunt, shoot, catch, kill, trap, or in any manner destroy any deer within the boundary limits of the State of North Dakota. 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 cost 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 Act. [Laws 1923, ch. 224, § 6; Laws 1915, ch. 161, § 34.]

Explanatory note. Laws 1915, ch. 161, approved March 11, 1915, re-enacted the entire law as to game and fish and repealed in § 85 (§ 10322a95, post), the provisions of the Compiled Laws relating thereto (§§ 10262-10327). Section 10322a34, ante, was § 34 of such ch. 161 and corresponded to § 10298 of the Compiled Laws. Laws 1915, ch. 162, covering the same subject matter and expressly amending § 10298 had previously been enacted and approved Feb. 10, 1915, and such ch. 162 was not repealed by § 10322a95, post. Section 10298 as amended by Laws 1915, ch. 162, was re-enacted by Laws 1919, ch. 134, § 9 and an attempt to re-enact the same section as amended by Laws 1915, ch. 162, and Laws 1919, ch. 134, was made by Laws 1921, ch. 69. Laws 1923, ch. 224, § 6, thereafter re-enacted § 34 of Laws 1915, ch. 161 (§ 10322a34, ante), but did not refer in any way to Laws 1915, ch. 162, Laws 1919, ch. 134, or Laws 1921, ch. 69. It would seem under these circumstances that § 10322a34a, post, is still in force, and that §§ 10322a34, 10322a34a, should be read together to learn the existing law on the subject. The records of the two Houses contain the following matters as to Laws 1921, chap. 69, ante. This was Bill No. 107 of the House and was passed by the House Feb. 5, 1921, and was received by the Senate Feb. 8, 1921. The committee on Game and Fish made a report thereon, Feb. 15, 1921, recommending specified amendments and the passage of the act "when so amended." On Feb. 25, 1921, Senator Mees moved to amend such bill in a specified manner "which motion prevailed" according to the Senate Journal. On the same day, such Bill No. 107 together with two other Bills was returned to the House by the Senate with the statement "which the Senate has passed unchanged." Because of this irregularity the Act of 1921 is probably void and the Act of 1919, chap. 134, is accordingly inserted as § 10322a34a instead of the Act of 1921.

Game, 27 C. J. p. 947 § 11, p. 960 § 34.

§ 10322a34a. Deer; seasons 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 10th, 1921, and after November 10th, 1921, 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 10th, to November 30th (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 [Laws 1919, ch. 134, § 9; Laws 1915, ch. 162, § 1.]

Explanatory note. See note preceding the above section.

§ 10322a35. Licenses for resident and nonresident hunters, professional dog trainers and taxidermists; how provided. All persons are prohibited from hunting, taking or killing any protected game or bird in this state without having first procured a hunting license, as prescribed in this act. It shall be unlawful for any person over 16 years of age to take, trap, kill or capture in any manner any mink, muskrat, skunk, or other fur bearing animal without having first procured a license therefor. It is hereby provided, however, that no license is required for any resident of this state to hunt, fish or trap on lands owned by him or actually cultivated by him, or any member of his family residing permanently with him, during the open season as provided for in this act. All persons who accept money for training dogs, commonly used for hunting purposes, are hereby declared to be professional dog trainers and must secure licenses for that purpose. All persons are prohibited from practicing taxidermy for pay without first having secured a license therefor. The expiration of all

licenses shall be on the following dates—each subsequent to their issuance; hunting licenses on the first day of December, trapping licenses on the sixth day of September, taxidermist licenses on the thirty-first day of December. The North Dakota game and fish board shall provide the necessary blank forms for applications and licenses of all kinds and distribute them among those authorized to sell said licenses. [Laws 1923, ch. 224, § 7; Laws 1915, ch. 161, § 35.]

Game, 27 C. J. p. 953 § 18.

Hunting licenses. 12 R. C. L. 701 and Supps.

§ 10322a36. Resident licenses; cost; how issued; applications; forms; game and fish shipments. Application for resident hunting licenses shall show the applicant is a bona fide resident of the state and for six months has been a resident of the county in which license is sought, shall give his residence, post office address, shall contain a description of his person as to his height, weight, color of his hair and eyes, and shall be verified by some freeholder of the county, other than the applicant, acquainted with the facts as set forth in the application; and it is provided further that if any person selling licenses is in doubt as to the question of the residence of the applicant, an affidavit on that point may be required additional to the usual application. Resident hunting, trapping, professional dog training and taxidermists licenses may be sold by the county auditors, members of the game and fish board and by all bonded game wardens. When sold by members of the game and fish board or the bonded appointees of the board the gross receipts must be sent to the secretary of the board at the end of each month and by him transmitted to the state treasurer who shall credit the amount to the game and fish fund. No such resident license shall be transferable. Resident hunting licenses shall be sold for one dollar and fifty cents each, resident trapping licenses for two dollars each, resident professional dog trainers' licenses for one dollar each, taxidermist licenses for one dollar each. Resident licenses, when issued, shall describe the licensee, designate his place of residence and have printed upon it in large figures the year for which issued and the word "Not Transferable." Any resident of the state having procured a resident hunting license as required, and being lawfully in possession of any protected game birds or animals mentioned in this act may ship by common carrier or when same is accompanied by the person legally in possession of said protected birds or animals may carry on the same train or other conveyance, to his home address in the county in which he resides not to exceed a two days' bag limit of any protected game-birds or animals. Any resident of the state who shall hunt, trap, practice taxidermy for pay, or train dogs professionally without having first procured a license therefor as provided in this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and costs of prosecution, or by imprisonment in the county jail not less than ten days nor more than thirty days for each offense, or by both such fine and imprisonment, and each violation of this act shall be a distinct and separate offense. [Laws 1923, ch. 224, § 8; Laws 1919, ch. 134, § 5; Laws 1915, ch. 161, § 36.]

Game, 27 C. J. pp. 952-953 §§ 16, 12, p. 960 § 24.

Hunting licenses. 12 R. C. L. 701 and Supps.

§ 10322a37. Nonresident licenses; cost; how issued; applications; form; game shipments. Every person, not a resident of this state for six months prior to application for any license provided herein is prohibited from hunting, taking or killing any protected game bird, or animal unless he shall have first procured a non-resident hunting license for which he shall pay the sum of twenty-five dollars. Every person not a resident of this state for six months is prohibited from taking, trapping, killing or capturing in any manner any mink or muskrat unless he shall have first procured a non-resident trapping license for which he shall pay the sum of twenty-five dollars. Every person

not a resident of this state for six months is prohibited from acting as a professional dog trainer, unless he shall have first obtained a non resident professional dog trainers' license for which he shall pay the sum of twenty-five dollars. Such non-resident licenses may be sold by any member of the game and fish board or bonded game wardens or bonded game and fish commissioners or county auditors, when countersigned by the secretary of the North Dakota game and fish board. When sold by members of the game and fish board, or bonded appointees the gross receipts must be sent to the secretary of the board at the end of each month and by him transmitted to the state treasurer, who shall credit such amounts to the game and fish fund; to be used for the enforcement of the game laws as provided in this act. Said non-resident licenses shall describe the licensee, designate the place of residence, and have printed on them in large letters the year for which issued and the words "Non-resident License" and "Non-transferable." Any non-resident having procured such non-resident hunting license may carry with him on leaving the state not to exceed twenty pinnated grouse or sharp-tailed grouse, or twenty of the same combined, or thirty wild ducks, wild geese or brant, or a total of fifty of all birds combined. After November tenth, 1920, he may also take one male, antlered deer or any part thereof. Any common carrier is hereby permitted to carry any such protected game birds and animals when same is accompanied and carried on the same train or conveyance by the person who displays a non-resident license identifying him and who is legally in possession of the same, provided that the same is plainly marked with a suitable tag, bearing the name and address of the licensee, and number of his non-resident hunting license and there is attached thereto a special tax provided on the non-resident license form, and when the protected game birds or animals are not concealed in any box, trunk, bag, can or receptacle that prevents easy inspection of its contents. Any non-resident of this state who shall hunt, trap, fish or train dogs professionally, without first having procured a non-resident license therefor as provided in this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than one hundred dollars and costs of prosecution, or by imprisonment in the county jail for not less than twenty days nor more than forty days, or by both such fine and imprisonment, for each and every offense. Each violation of this section shall be a distinct and separate offense. [Laws 1915, ch. 161, § 37.]

Game, 27 C. J. pp. 946-948 §§ 10-12, p. 952 § 16, p. 953 § 18, p. 960 § 34.

Discrimination against nonresidents, as to hunting licenses. 12 R. C. L. 693 and Supps.

§ 10322a38. Resident hunting licenses to actual settlers who are recent arrivals. Resident licenses may be issued by and in the discretion of the secretary of the game and fish board to actual settlers who may not have been in the state or county the required time immediately preceding the application for the license, provided a satisfactory affidavit of some bona fide resident of the state setting forth the actual conditions, accompanies the application. [Laws 1915, ch. 161, § 38.]

Game, 27 C. J. p. 953 § 18.

§ 10322a39. County auditors; bonds; reports; fees. The bonds required under the general and special laws of the state of North Dakota to be given by county auditors shall hereby be construed as applying to all the duties required of such county auditors under the provisions of this act, including the liability for all moneys required to be collected or received under the terms of this act for the sale of licenses or otherwise, and for each license sold by him each county auditor shall collect the charges authorized under this act and retained as his compensation for the additional duties prescribed for such officer by this act, for all licenses sold by him, the fee of ten cents for each resident license, and the fee of one dollar for each non-resident hunting license and fifty cents for each non-resident trapping license, and the

remainder he shall transmit to the state treasurer, who shall credit the same to the game and fish fund to be used under the direction of the game and fish board as provided in this act. The retention by such county auditor of such specified fees for his personal use is hereby legalized and authorized. Each county auditor shall keep all applications for licenses on file, subject to the inspection by members of the game and fish board and all wardens, at all times, prior to the first day of December of each year, at which time all applications and unused or mutilated licenses of whatever nature shall be forwarded to the secretary of the game and fish board, together with a complete report of all license sales during the previous twelve months. Each county auditor shall transmit to the state treasurer on the fifteenth days of September, December and April of each year, whatever license funds, less his personal fees, he may have received since preceding remittances, and at the same time notify the secretary of the game and fish board of the amount of such remittances. [Laws 1915, ch. 161, § 39.]

Game, 27 C. J. p. 953 § 18.

§ 10322a40. Forfeiture of licenses. All persons convicted of violations of the provisions of this act, shall, in addition to the fines and imprisonment provided, also forfeit any licenses held by them for privileges they have violated and no license shall be issued to such person for the remainder of such season. [Laws 1915, ch. 161, § 40.]

Licenses, 37 C. J. pp. 246-247 §§ 109-110.

Cruel and unusual punishment for violation of game laws. L.R.A.1915C, 566.
Revocation of licenses. 17 R. C. L. 554 et seq. and Supps.

§ 10322a41. Misrepresentations or alterations. Any person who makes any misrepresentation in his application for license, or makes any alterations in licenses already procured, shall, upon conviction thereof, be fined not less than fifty dollars, nor more than one hundred dollars and costs of prosecution, or imprisonment in the county jail for a term of not less than twenty-five days or by both such fine and imprisonment. [Laws 1915, ch. 161, § 41.]

§ 10322a42. No duplicate licenses. No official issuing licenses shall have the authority to issue duplicate licenses to those who have lost their licenses without the re-payment of the license fee. [Laws 1915, ch. 161, § 42.]

§ 10322a43. Common carriers. Any agent, servant, or employe of any transportation company or common carrier who shall receive for shipment or transport any protected game birds or animals from any person without a license showing him to be lawfully in possession of such game birds or animals, shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars, or by imprisonment in the county jail not less than ten nor more than thirty days. [Laws 1915, ch. 161, § 43.]

Game, 27 C. J. p. 952 § 16.

Transportation of wild game. 12 R. C. L. 701 and Supps.

§ 10322a44. Duty of common carrier. No transportation company or common carrier shall receive for transportation or attempt to transport any protected game bird or animal or fish except during the open season for same, as provided for in this act. [Laws 1915, ch. 161, § 44.]

Game, 27 C. J. p. 952 § 16.

Transportation of wild game. 12 R. C. L. 701 and Supps.

§ 10322a45. Mink and 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 destroyed may kill them at any time. No person shall at any time destroy a muskrat house. [Laws 1915, ch. 161, § 45.]

Game, 27 C. J. p. 947 § 11.

Closed season for game. 12 R. C. L. 699 and Supps.

§ 10322a46. Beaver, otter and muskrat. No person shall take, kill, catch, trap or destroy any beaver or otter within the boundary of the state of North Dakota. No person shall take, kill, catch, trap or destroy any muskrat within the boundary of the state of North Dakota until the 10th day of January, 1924. However, at no time shall it be lawful to cut into, destroy, dynamite or molest, any beaver dam, beaver or muskrat house or mound. Provided, however, that any person having procured a trapping license may take, kill, catch or trap muskrat, but never by shooting, on or after the tenth day of January, 1924, until the 10th day of March, 1924, and between and including the 10th day of January and the 10th day of March of each year thereafter.

Any violation of this section of the law shall be declared a misdemeanor and any person or persons convicted of the violation thereof, shall be punished by a fine of not less than seventy-five dollars or more than one hundred dollars, and the costs of prosecution, or by the imprisonment in the county jail, for not less than ten or more than thirty days; or by both such fine and imprisonment.

If the owner, owners, lessee or lessees of any premises upon which there may be any muskrat shall, thereupon post in a conspicuous place upon such premises a notice forbidding trapping thereon, it shall be unlawful to take, kill, catch or trap muskrat upon such premises providing, however, the owners or lessees of said premises or any member of his family may take, kill, catch or trap muskrat upon his or their own premises after the tenth day of January, 1924, until the 10th day of March, 1924, and between and including the 10th day of January and the 10th day of March thereafter of each year, and any person or persons violating this provision shall be guilty of a misdemeanor. [Laws 1923, ch. 224, § 9; Laws 1921, ch. 68; Laws 1919, ch. 134, § 6; Laws 1917, ch. 63 §§ 1-4; Laws 1915, ch. 161, § 46.]

Game, 27 C. J. p. 947 § 11.

Closed season for game. 12 R. C. L. 699 and Supps.

§ 10322a47. Turning money over; neglect; penalty. Any person who shall fail, refuse or neglect to turn over as provided in this act, any moneys collected or authorized to be collected under the provisions of this act, or who shall fail, neglect or refuse to turn over and deliver all applications, mutilated and unused licenses and permits shall be fined not less than one hundred dollars, nor more than five hundred dollars and costs of prosecution, and civil action may be begun by the board against his bondsmen to recover any money not turned over according to the provisions of this act. [Laws 1915, ch. 161, § 47.]

Does not repeal statute denouncing embezzlement of public funds and securities. *State v. Kopriva*, — N. D. —, 201 N. W. 167.

Officers, 29 Cyc. 1450.

Actions on official bonds. 22 R. C. L. 517 et seq. and Supps.

§ 10322a48. Taxidermy; how regulated. Hereafter it shall be unlawful within the state of North Dakota for any person who shall engage in conducting a taxidermist business, as the term is commonly understood, to prepare or mount any skins or dead bodies of any protected game birds or animals for profit, without first having secured a license therefor, which shall be granted to any person by the game and fish board. All taxidermists must keep a register in which a list of names of all persons who furnish them with raw or unmounted specimens shall be kept together with the species of bird or animal received, and by whom sent, and shall exhibit this register together with all unmounted skins in his possession to any member of the game board or bonded game warden upon request. Upon conviction of any holder of a taxidermist license for violating any of the provisions of this section his license shall be forfeited for the remainder of that year and he shall be punished by a fine of not less than ten nor more than twenty-five dollars. [Laws 1919, ch. 134, § 7; Laws 1915, ch. 161, § 48.]

Game, 27 C. J. pp. 246-247 §§ 109-110, pp. 264-269 §§ 151-163.

§ 10322a49. Professional dog trainers; how regulated. It shall be unlawful for any person to train in open fields, any dogs, commonly used for hunting purposes, between the first day of April and the first day of August. All persons who train dogs, commonly used for hunting purposes, and receive pay therefor are hereby declared to be professional dog trainers and must procure licenses therefor. It shall be unlawful for any person training dogs to shoot, kill, maim, or wound any protected game bird, or to carry any shot gun or rifle while training dogs. All applications for professional dog trainers' licenses must state the locality in which they wish to train and upon conviction for any violation of the game laws of the state, the licenses shall also be declared forfeited for that season. [Laws 1915, ch. 161, § 49.]

Game, 27 C. J. pp. 246-247 §§ 109-110, pp. 264-269 §§ 151-163.

§ 10322a50. 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 anyone, 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 act the following only shall be considered game birds: The anatidæ, commonly known as geese, brant, river and sea ducks; the limeolæ, commonly known as plover, snipe, woodcock; the gallinæ, commonly known as pinnated grouse, (prairie chicken) sharp-tailed grouse (white-breasted grouse), pheasants of all varieties, quail, ruffed grouse or partridge; the gruidæ or cranes of all varieties; the raillidæ or rails and coots; the columbidæ or pigeons or doves; provided that black birds, crows, English sparrows, sharp-shinned hawks and Cooper hawks and great horned owls and cormorants 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. [Laws 1915, ch. 161, § 50.]

Game, 27 C. J. p. 947 § 11.

Birds protected by game laws. 12 R. C. L. 692 and Supps.

§ 10322a51. Illegal acts; penalties for going afield with guns. 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 or without a dog or dogs commonly used or kept for the purposes of use in hunting any game birds mentioned in this act, from the first day of July to the fifteenth day of September (both inclusive) each year, shall be presumed to have violated or attempted to so violate the provisions of this act as to unlawful hunting, shooting or taking of game birds, as mentioned in this act, 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 act is hereby prohibited and subjects the person 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 snares, traps or other devices used for the purpose of trapping, snaring or taking such 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 act. 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 and cost of prosecution, 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. [Laws 1919, ch. 134, § 8; Laws 1915, ch. 161, § 51.]

Game, 27 C. J. p. 947 § 11, p. 951 § 15, p. 959 § 32.

§ 10322a52. **Amendment; big limit for game birds.** No person shall in any one day, take, catch, kill or destroy, to exceed five pinnated grouse (prairie chicken), sharptailed grouse (white breasted), grouse, turtle doves, plover of any variety or five of the same combined, or have in possession at any one time, to exceed ten of each of all combined, nor more than eight each of wild geese of any variety, fifteen each of wild ducks of any variety, quail, woodcock or snipe of any variety, or of the same combined; or have in possession at any one time to exceed the limit of two days' bag of each or all of the same combined.

Any person violating any provisions of this section, shall upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00), for each and every bird and cost of prosecution, or be imprisoned in the county jail for not less than twenty days or 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. [Laws 1921, ch. 67; Laws 1917, ch. 121, § 2; Laws 1915, ch. 161, § 52.]

Game, 27 C. J. p. 947 § 11.

Limitation of quantity of game to be killed. 12 R. C. L. 702.

§ 10322a53. **Private game preserves.** Any person owning or having control by lease, or otherwise, of lands within the state of North Dakota, may establish thereon a private game preserve for the propagation and domestication of deer, elk, and antelope. Such private game preserve shall not be less than two acres in extent and shall be so inclosed as to prevent escape of said animals. For the purpose of stocking such preserves antelope, elk or deer, may be imported or purchased from persons owning such animals, but no such animals shall be captured or be permitted to be placed in such private game preserve which are now running wild in this state, unless permission is specifically granted by the state game and fish board. The animals in such private game preserves shall not be subject to the provisions of the game laws of the state of North Dakota. [Laws 1917, ch. 123, § 1.]

Game, 27 C. J. pp. 943-944 §§ 4-6.

Private hunting grounds. 12 R. C. L. 687 and Supps.

§ 10322a54. **Antelope, moose and elk.** No person shall hunt, shoot at, catch, kill or trap or in any way destroy any antelope, moose or elk within the boundary limits of the state of North Dakota. 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 costs 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. [Laws 1915, ch. 161, § 53.]

Game, 27 C. J. p. 947 § 11.

§ 10322a55. **Sale of game by commission.** The game and fish board is hereby authorized to sell to residents of the 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 chief game warden of the district in which the sale is made. [Laws 1915, ch. 161, § 54.]

Game, 27 C. J. p. 946 § 10.

§ 10322a56. **Resisting the board of control or its wardens.** Whoever shall resist or obstruct the board or any member thereof, or any warden or other officer of this state in the discharge of his duties under this act, 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 costs of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days for each and every offense. [Laws 1915, ch. 161, § 55.]

§ 10322a57. Breeding of fox, mink, muskrat, skunk and raccoon; application to be made to game and fish board; bond to be given. The game and fish board of this state may issue annual permits to breed or domesticate fox, mink, muskrat, skunk and raccoon upon application to it which shall contain:

1. The name and address of the applicant.
2. A description of the premises upon which the applicant shall keep such domesticated animals.

The approximate number and kinds of animals in possession at the time of making the application and whether they are wild or domesticated.

The application shall be accompanied by a fee of five dollars. The board may thereupon issue a permit to the applicant to keep such animals. Any person so holding such permit shall annually on the first day of January, report to the board any increase or decrease had upon the original number applied for. The board shall keep a record of all persons holding such permits.

Any person desiring to breed and domesticate such fur-bearing animals may apply to the game and fish board for a permit to catch and take for the purpose of breeding and domesticating only, such animals within certain described territory and within a described portion of the closed season and upon such applicant giving a bond to the state of North Dakota in the sum of five hundred dollars (\$500.00), with two or more sureties to be approved by said board, conditioned, among other things, that said applicant will only within the time prescribed and within the territory mentioned in the application, take and catch such animals for the purpose of breeding and domesticating, and that such applicant will not catch, take or use such animals for any other purposes and will not sell or otherwise dispose of the same, or of the carcasses, fur and hides thereof, the said board may issue to such applicant a permit to so catch and take such animals. At the end of the time stated in such permit the person named therein shall forthwith report to the game and fish board the kind and number of such animals so caught and taken and receive a permit for their retention and domestication, as in this act provided. [Laws 1923, ch. 225, § 1; Laws 1917, ch. 121, § 1.]

Game, 27 C. J. p. 953 § 18.

Domestication of wild game. 12 R. C. L. 685 and Supps.

§ 10322a58. Property rights; penalty for entering enclosures; right to sell or ship. Any person, who under the authority of this act, shall have in his lawful possession, any such fur bearing animals, shall be deemed to have a property right therein and to be the owner thereof, and any person who shall enter the enclosure where such animals are confined, or who shall catch, take or molest such animals when in such enclosure, shall be subject to the same liabilities, penalties and punishments as though the animals in question were ordinary domestic animals, the subject of property rights in this state.

Any such animals or their furs or hides may be sold or shipped within or without the state upon receipt of written permission to do so from the board. [Laws 1923, ch. 225, § 2; Laws 1917, ch. 121, § 2.]

Game, 27 C. J. p. 942 § 2, p. 952 § 16.

Ownership of game reduced to possession. 12 R. C. L. 685.

§ 10322a59. 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 sub-voucher signed by the party to whom the money was paid. The sub-voucher shall show

the date, at what price and for what the money was paid. The sub-voucher 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 and secretary 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. [Laws 1915, ch. 161, § 56.]

§ 10322a60. Game refuges; how donated by owners; under what terms; length of time; for protection of wild life; regulations for control; penalties. Any person, partnership or corporation owning or having control by lease or otherwise for the required time, of lands within the state of North Dakota, may establish thereon a game refuge by filing a written application with the secretary of the game and fish board giving (a) the name of the owner or lessee, or in case of the lessee, the written consent of both the owner and lessee, (b) the time for which the refuge is to be established, in no case less than ten years from the date the application is filed, (c) the extent and legal description of the land, in no case to be less than ten acres, and not to exceed in all six sections in any one township, (d) a brief dedication of the land to the state of North Dakota for the purpose of a game refuge, (4) each owner or lessee, if the latter the written agreement of both, must waive all rights of himself or members of his family to hunt, shoot, trap or kill any protected game bird or animal, during the life of the dedication of the land to the state as a game refuge and after the filing of this application in due form and the acceptance by the state game and fish board, the same shall constitute a game refuge within the meaning of this section. A proper record subject to public inspection shall be kept by the secretary of the game and fish board in which shall be registered by counties, the names and donors, the time of the dedication and the legal description of the lands so dedicated as game refuges. The game and fish board may, in like manner, establish one or more game refuges on any unsold public lands of the state, which shall be registered with the game refuges on private lands, as hereinbefore set forth, the duration of the public land refuges being until they become the property of private persons or until canceled by such game and fish board. It is further provided that under the same terms and conditions, the owner or owners of land surrounding or adjoining any lake within the state, may dedicate the lake to the state for breeding, resting and refuge places for waterfowl. All lands and lakes so set aside and established as game refuges shall be under the protection of the state, and it shall be unlawful to hunt with any firearms of any description, with or without dogs, commonly used for hunting purposes, within one hundred and fifty feet of the boundaries outside thereof, and any person who shall, within the limits of the one hundred and fifty feet of the outside of any game refuge, shoot, trap, kill, wound in any manner, take or capture, or drive out of the refuge for the purpose of killing or capturing any protected game bird or animal, or shall be found within the limits of any game refuge with firearms of any kind, shall, upon conviction, be punished by a fine of not less than fifty dollars nor more than one hundred dollars and by imprisonment in the county jail not less than ten days nor more than sixty days. Any person convicted of a second offense shall be punished by a fine of not less than one hundred dollars and not more than two hundred dollars and costs of prosecution and by imprisonment in the county jail not less than sixty days and not more than six months. Each game refuge shall, after it has been established as provided, be posted at each corner and along its outer line at least each eighty rods with a sign upon which shall be the words "State Game Refuge." The owner or lessee of any land or lakes so set aside as a game refuge, shall not themselves nor permit immediate members of his own family nor any other person or persons to hunt, carry firearms, therein, except that if he has reason to believe there are within the game refuge any carnivorous birds or animals, or if he finds any car-

niverous birds or animals, he may, with the knowledge and a written permit from the secretary of the game and fish board, hunt and kill and trap any and all such carnivorous or unprotected birds or animals found within such game refuge, as by nature injure or kill protected game birds and animals living therein. [Laws 1915, ch. 161, § 57.]

§ 10322a61. **Defacing warning signs.** The board shall mark all game farms, game reservations, breeding grounds and resting places under its protection and no person shall mutilate, destroy, tear or pull down or shoot at such designating marks or other special or general warning signs or cards for the protection of game animals and birds. It shall also be unlawful to destroy any signs on posted lands. Any violation of this section shall be a misdemeanor. [Laws 1915, ch. 161, § 58.]

§ 10322a62. **Illegal to hire another to hunt.** No person shall hire another person to hunt for him. No person shall hunt for remuneration for another. [Laws 1915, ch. 161, § 59.]

§ 10322a63. **Trespassing on game reserves.** 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 protected bird, or to rob or destroy any protected bird nest or eggs on said reserve at any season of the year. It shall also be unlawful for any person to hunt or trap on the national game reserve in Sully's Hill National Park in Benson county, near Devils Lake, or in any other national or state game reserve or game refuge that has been or may hereafter be established within the boundaries of the state of North Dakota. Every violation of this section 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. [Laws 1915, ch. 161, § 60.]

§ 10322a64. **Carrying and displaying licenses.** All persons holding licenses under this act shall carry them on their persons when engaged in hunting, trapping, fishing or in practicing taxidermy or training dogs professionally, for which licenses are required and shall on the request or demand of any member of the game and fish board or any game warden of the state of North Dakota, immediately show the license to the officer making the request or demand. Failure or refusal to show such license or needless delay in showing such licenses shall be a misdemeanor. [Laws 1915, ch. 161, § 61.]

Game, 27 C. J. p. 953 § 18.

§ 10322a65. **Impersonating game wardens.** Any person who impersonates a game warden or claims to have such authority, without having been formally appointed as herein provided shall be guilty of a misdemeanor. [Laws 1915, ch. 161, § 62.]

False Personation, 25 C. J. p. 576 § 3.

§ 10322a66. **Using license of another.** It shall be unlawful for any person to use the license of another for the purposes for which any licenses are required or to attempt to deceive any game warden or other official by claiming such license as his own. Such illegal use of licenses shall be a misdemeanor. [Laws 1915, ch. 161, § 63.]

§ 10322a67. **Actions against game wardens.** No criminal action shall be started against any game warden for false arrest without the approval of the state's attorney. [Laws 1915, ch. 161, § 64.]

§ 10322a68. **Ruffed grouse or partridge, pheasants, quail.** Ruffed grouse

or partridge, pheasants of all kinds and quail may be propagated, bred and distributed under the direction of the game and fish board and it shall be unlawful for any person or persons to hunt, shoot, kill, take, trap or in any manner destroy, maim or wound any of these birds, except as authorized by the game and fish boards. An open season on ruffed grouse or partridge shall be declared from October 7th to October 16th, inclusive, in each year, in the counties of Bottineau, Cavalier, Pembina, and Rolette, the bag limit to be five birds only per day for each licensed hunter and no hunter shall be permitted to have more than fifteen ruffed grouse or partridges in his possession at one time. It is further provided that it shall be unlawful to shoot, kill or trap in any manner the sandhill, little brown or whooping crane, swans, the sage hen or (sage grouse). Any violations of this section shall be a misdemeanor. [Laws 1923, ch. 224, § 10; Laws 1915, ch. 161, § 65.]

Game, 27 C. J. p. 947 § 11.

§ 10322a69. Green hides. It shall be unlawful and is hereby prohibited for any person or persons to have in possession any green hides of any mink or muskrat for a longer time than five days after the closing of the season for the taking of the same, and all such hides, traps or other equipment used in the violation of this section may be seized, confiscated and sold by any warden and the possession of such green hides is prima facie evidence of guilt. [Laws 1915, ch. 161, § 66.]

Game, 27 C. J. p. 949 § 12.

§ 10322a70. Illegal hunting; illegal ownership of guns or rifles; penalties. It shall be unlawful for any person who is not a citizen of the United States or who has not declared his intention to become such, to hunt, shoot, capture, take, kill, trap, snare or in any manner destroy, wound or maim any wild bird or animal, either game or otherwise, of any description, in this state, except in defense of person or property; and to that end it shall be unlawful for any person who is not a citizen of the United States or who has not declared his intention to become such, to either own or be possessed of a shot gun or rifle of any make. Each and every person violating any provision of this section shall, upon conviction thereof, be sentenced to pay a fine of not less than twenty-five dollars, nor more than fifty dollars and costs of prosecution, or to serve not less than ten days nor more than thirty days in the county jail, or both such fine and imprisonment at the discretion of the court; provided that in addition to the before-named penalty, all guns of the before mentioned kinds found in the possession or under the control of such persons not citizens of the United States or who have not declared their intention to become such, shall upon conviction of such person, or upon his signing a declaration of guilt, be declared forfeited to the state of North Dakota, and shall be sold as provided in this act. For the purposes of this section any person not a citizen of the United States or who has not declared his intention to become such, who shall reside or live within the boundaries of the state of North Dakota for ten consecutive days shall be considered a resident, and shall be liable to the penalties imposed for violation of the provisions of this section. The possession of a shot gun or rifle at any place outside of buildings within this state by any person not a citizen of the United States or who has not declared his intention to become such, shall be conclusive proof of a violation of this section and prima facie evidence of guilt, and shall render any person convicted thereof liable to the penalty as fixed in this section. The presence of a shot gun or rifle at any place outside of a permanent house, within a camp of any description, within this state, occupied or controlled by any person not a citizen of the United States or who has not declared his intention to become such, shall be prima facie evidence that such shot gun or rifle is owned or controlled by the person occupying or controlling the property in which such shot gun or rifle is found, and

shall render any such person liable to the penalty imposed in this section. Notice of the seizure of all guns or rifles under the provisions of this section shall be sent to the secretary of the game and fish board by the chief game warden of the district in which said seizure is made, and the shot gun or rifle so seized, shall, after the conviction of the illegal owner or possessor thereof, be sold as provided under the provisions of this act. It shall be made the duty of all members of the game and fish board, all game wardens, all game and fish commissioners, all sheriffs, deputy sheriffs, constables, police or other peace officers of the state of North Dakota to arrest, without warrant, any person whom they have reason to suspect as being unlawfully in possession of shot guns or rifles as provided in this section. Such arrests may also be made upon Sunday. Each of the before-named officials shall have the power and authority to inspect any car, wagon, automobile, cart, conveyance, vehicle, box car, passenger car, tent, box, bag, can, locker, chest, crate, basket or other receptacle, outside of permanent buildings. Nothing in this section shall be construed as applying to any person who shall have established a permanent residence and resided in this state continuously for three years. [Laws 1915, ch. 161, § 67.]

Game, 27 C. J. pp. 946-947 §§ 10-11, p. 954 § 19, p. 957 § 28, p. 959 § 32.

§ 10322a71. Game and fish commissicner; powers; duties. The state game and fish commissioner shall have charge of all state game farms and fish hatcheries and appurtenances. He shall supervise the breeding, propagation, capture and distribution of such game birds and animals as the game and fish board directs. Both the game and fish commissioner and the deputy game and fish commissioner and [sic] shall have the same powers of arrest as chief game wardens and state-wide deputy game wardens. The game and fish commissioner shall examine all state waters and wherever suitable waters are found, he shall arrange to plant, stock or deposit such fish as are available. He shall co-operate with the United States Commissioner 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 remove or take by any means from any of the public waters of the state containing a surplus of fish any reasonable quantity for the stocking of other public waters of the 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 numbers so taken be so great as to perceptibly deplete such lake or stream. No individual, club, society or person shall have authority or power to remove or take from any of the public waters of the state, for exchange, propagation or scientific purposes any fish excepting only under the personal supervision of the state game and fish commissioner or some one appointed by him. The state game or fish commissioner may take or cause to be taken at any time by any means from any of the public waters of the state any suckers, carp or pickerel. The game and fish commissioner shall make general monthly reports and detailed annual and biennial reports of his work, and a copy must be mailed to each member of the board. He shall keep a book showing the expenditures of his department and on or before the first day of December of each year report in detail all expenditures of his department during the season and make estimates for the succeeding year. [Laws 1915, ch. 161, § 68.]

Fish, 26 C. J. p. 635 § 55; Game, 27 C. J. p. 954 § 19.

Fish commissioners. 11 R. C. L. 1042 and Supps.

§ 10322a72. Commissioner's bond. The state game and fish commissioner before entering upon the discharge of duties shall give a bond to the state of North Dakota with securities or security, to be approved by the governor, in the penal sum of five hundred dollars conditioned for the faithful per-

formance of his duties and the accounting of all state property coming into his hands. [Laws 1915, ch. 161, § 69.]

Official bonds. 22 R. C. L. 496 et seq. and Supps.

§ 10322a73. 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 species of trout or land-locked salmon between the first day of October and the first day of May (both inclusive), following. Any black, gray, or oswego bass between the fifteenth day of October and the first day of June (both inclusive) following. Any species of pike, crappie or perch, between the fifteenth day of October and the fifteenth day of May (both inclusive) following. [Laws 1915, ch. 161, § 70.]

Fish, 26 C. J. p. 626 § 44.

Right to fish in bays of Great Lakes. L.R.A.1918A, 1147.

Time of taking fish. 11 R. C. L. 1050, and Supps.

§ 10322a74. Rules and regulations; power to make. Whenever the North Dakota game and fish board, after investigation, finds that the fish, or any species thereof, in any lake of this state, for which an open season is provided, are in danger of undue depletion or extinction, or when necessary for the propagating of or the protection of immature fish, it may by an order provide protection for such fish, additional to that provided by law, and to that end may prescribe, in what manner and in what number, and in what places, and at what time fish may be taken. [Laws 1923, ch. 226, § 1.]

Fish, 26 C. J. pp. 623-625 §§ 42-43, p. 635 § 55.

Prohibition or regulation of fishing over private land. L.R.A.1916E, 523.

Extension of regulation as to shell fishing to private bed. 12 L.R.A.(N.S.) 869; L.R.A.1918E, 111.

Power to interfere with private right. L.R.A.1916E, 523.

Constitutionality and construction of statutes for prevention of waste of fish. 38 A.L.R. 1198.

Regulation of fishing. 11 R. C. L. 1041 et seq. and Supps.

§ 10322a75. Order of board; force of. Any order issued by the said board pursuant to this act, shall have the force of law, and any person or persons who shall violate any provisions of this act, shall be guilty of misdemeanor, and shall upon conviction be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) and costs of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days, or both, at the discretion of the court. [Laws 1923, ch. 226, § 2.]

Fish, 26 C. J. pp. 623-625 §§ 42-43, p. 635 § 55; Constitutional Law, 12 C. J. p. 853 § 341.

§ 10322a76. Fish protected when planted. All planted fish or fish eggs placed in the public waters of this state for the purpose of propagation, breeding or growth shall be and are hereby protected for a period of five years from the time of such planting. [Laws 1915, ch. 161, § 71.]

Fish, 26 C. J. p. 626 § 44.

Pollution of oyster beds. 3 A.L.R. 762.

Planting shell fish as creating property rights. 11 R. C. L. 1017 and Supps.

§ 10322a77. Nets; seines; penalty. No person shall use, set, or have in possession, or under control, or upon his premises with intent to use or set any net or seine, for the purpose of catching or taking any fish from the public waters of this state, except as provided by law. Any person convicted of the violation of this section shall be punished by a fine of not less than ten dollars, nor more than twenty dollars or by imprisonment in the county jail for not less than ten days nor more than twenty days, or by both

such fine and imprisonment in the discretion of the court. [Laws 1919, ch. 135, § 1; Laws 1915, ch. 161, § 72.]

Fish, 26 C. J. p. 628 § 48.

Manner of taking fish. 11 R. C. L. 1051 and Supps.

§ 10322a78. **Drugs and explosives forbidden.** No person shall lay, set, or use any drug, poison, lime, medicated bait, fish berries, dynamite or other deleterious substance whatever, or lay, stretch, or place any tip-up snare, fish trap, set or trot line, wire, string, rope or cable of any sort in any of the public waters of this state, with intent thereby or therewith to catch, take, kill or destroy 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 day of October. [Laws 1915, ch. 161, § 73.]

Fish, 26 C. J. p. 628 § 48.

Manner of taking fish. 11 R. C. L. 1051 and Supps.

§ 10322a79. **Prohibited devices; disposition.** All boats, lights and other contrivances and devices used in the illegal taking, catching, killing and destroying of fish in the public waters of this state, are hereby declared to be, and are a public nuisance. The chief game wardens, district game wardens, special game wardens, all members of the game and fish board, the state fish commissioner, sheriffs and their deputies, police officers, and constables 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. [Laws 1915, ch. 161, § 74.]

Fish, 26 C. J. p. 628 § 48, p. 639 § 64.

Right to jury trial in case of seizure of nets, traps, boats, etc., alleged to be illegally used. 17 A.L.R. 574.

Confiscation of nets found in illegal use. L.R.A.1916F, 918.

Manner of taking fish. 11 R. C. L. 1051 and Supps.

§ 10322a80. **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 state game and fish 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 state game and fish fund. All fishways heretofore or hereafter erected in any dam or obstruction across any of the streams of 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. [Laws 1915, ch. 161, § 75.]

Fish, 26 C. J. p. 630 § 49.

§ 10322a81. **Fishing near fishways forbidden.** 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. [Laws 1915, ch. 161, § 76.]

Fish, 26 C. J. p. 626 § 44.

§ 10322a82. **Fish houses.** No person shall erect, have or maintain on the ice in any waters of this state, any fish house, structure, inclosure or shelter whatever to protect the person of the occupant while engaged in fishing through the ice. [Laws 1915, ch. 161, § 77.]

§ 10322a83. **Fish screens.** The board may cause to be placed in lakes having an outlet into the waters outside of the borders of this state, a fish screen of such size and construction as to prevent the escape of fish into waters outside the border of this state; provided, that such screen shall in no way obstruct or interfere with the natural flow of water in such outlet. [Laws 1915, ch. 161, § 78.]

§ 10322a84. **Sawdust deposit.** Any person who deposits any sawdust or other refuse in any lakes or streams of water wherein the state or government has deposited any fish, fish eggs or fry, or may deposit any such fry or where any game fish naturally abound, shall be deemed guilty of a misdemeanor. [Laws 1915, ch. 161, § 79.]

Fish, 26 C. J. p. 631 § 50.

§ 10322a85. **Fish; manner of taking.** No person shall take, catch, kill or destroy in any manner than by angling for them with a hook and line held in the hands or attached to a rod so held, not with more than one line, nor with more than one rod, nor more than one hook or an artificial lure attached thereto any protected game fish; provided, that any person or persons may take with nets, seines, drag nets, dip nets and traps any such fish as buffalo, bullhead, suckers, carp, catfish, redhorse or sturgeon from the waters of this state provided it is done under the direction of the game board or chief game wardens or their authorized agent. Any person or persons desiring to do such seining must notify the members of the game board or chief game wardens (of their district) and the members of the game board or chief game wardens are authorized to issue a permit allowing seining, provided the parties making application so that this game board or chief game wardens or their duly authorized agent may be present at such seining and if any other fish than the above mentioned kind are caught they shall be returned to the waters with as little harm as possible; provided, further, that seines, nets, drag nets, dip nets or traps may be used by any person without a permit in Des Lacs lake, Mouse river and the Missouri river, and any species or variety of fish may be taken from the Mouse river or the Missouri river and bayous or backwaters of the Missouri river. But no person or persons shall use a seine, net or trap within a thousand feet of the mouth of any stream emptying into the above named rivers; provided, further, that pickerel are hereby considered a game fish and are therefore protected; but the members of the game board or chief game wardens shall have the power and authority to allow seining of pickerel at such time and place as in their judgment it shall be beneficial to the waters of the state. The game and fish board shall issue annual licenses to any person to use seines, nets, drag nets, dip nets or traps in Des Lacs lake, Mouse river and the Missouri, upon payment of the following fee:

For resident license, \$1.50 dollars [sic]; for non-resident license twenty-five dollars. [Laws 1923, ch. 224, § 11; Laws 1919, ch. 135, § 2; Laws 1915, ch. 161, § 80.]

Fish, 26 C. J. p. 628 § 48.

Right to construct fish traps in front of riparian property. L.R.A.1918A, 1076.

Rights of fishing in inland lakes. 5 A. L. R. 1056.

Manner of taking fish. 11 R. C. L. 1051 and Supps.

§ 10322a86. **Fish may be taken; size.** No person shall at any time catch, take or kill, or have in possession, or under control any black, gray or oswego bass, trout of any species, land-locked salmon, pike, or wall-eyed pike, that are less than ten inches in length, or perch less than six inches long, measurements in each case to be made from tip of the head or snout to the end of the tail. Any person catching any of the above named species of fish that are less than specified inches in length, shall immediately return them

to the water from which they were taken with as little injury to the fish as possible. [Laws 1915, ch. 161, § 81.]

Fish, 26 C. J. p. 626 § 44.

Title to fish taken by trespasser. 23 A.L.R. 1402.

Size of fish which may be taken. 11 R. C. L. 1051.

§ 10322a87. Fish to be taken; number. No person in any one day shall catch, take, kill or destroy to exceed fifteen each black, gray, or Oswego bass, trout of any species, land-locked salmon, perch, crappie, or pike, 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 and costs of prosecution, or by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment in the discretion of the court, for each and every fish in excess of the number legally allowed to be taken by the provisions of this section. [Laws 1915, ch. 161, § 82.]

Fish, 26 C. J. p. 626 § 44.

§ 10322a88. Fish; sale of. 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 species of trout, black, gray or Oswego bass or any species of pike, crappie, perch or land-locked salmon which have been caught within the borders of this state. [Laws 1915, ch. 161, § 83.]

Fish, 26 C. J. p. 627 § 45.

Sale of fish. 11 R. C. L. 1052 and Supps.

§ 10322a89. General penalty. Any person or persons who violate any provisions of this act 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 costs of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days, or both at the discretion of the court. [Laws 1915, ch. 161, § 84.]

Fish, 26 C. J. p. 641 § 65.

Violation of fish and game law as "infamous offense," within constitutional or statutory provision in relation to presentment or indictment by grand jury. 24 A.L.R. 1010.

§ 10322a90. Frogs; closed season. No person shall take, catch or kill any frog between the first day of April and the thirty first day of May, both dates included; nor at any time, except for scientific purposes, any frog that is less than two and one half inches in length from tip of nose to end of spinal column. [Laws 1925, ch. 143, § 1.]

§ 10322a91. Same; manner of taking. No person shall at any time take, catch or kill any frog by the use of fences, traps, nets or pitfalls. [Laws 1925, ch. 143, § 2.]

§ 10322a92. Same; shipping live frogs. No person shall ship or carry to a point outside of this state any live frog of less than two and one half inches in length from tip of nose to end of spinal column, except for scientific purposes, and upon permit from the game and fish board.

Application for such permit shall state the purpose for which such frogs are to be used, the number proposed to be shipped, and the party to whom they are to be shipped. Application and fee in sum of 50/100 dollars shall be sent to the secretary of the game and fish board and may be issued or denied in the discretion of the board. [Laws 1925, ch. 143, § 3.]

§ 10322a93. Same; dealer's license. No person shall engage in the business of buying, selling or shipping frogs, or frogs' legs until he has obtained a license therefor from the game and fish board.

Application for such license shall show the residence of the applicant, his place of business and post-office address.

Upon receipt of such application and fee of five dollars if the applicant is a bona fide resident of the state; and a fee of twenty-five dollars if the applicant is a non-resident, the secretary of the board shall issue a license to expire the first day of the following April.

Such license shall have attached a report card showing the number of frogs bought, sold or shipped, the prices paid and the prices received. Said card shall be filled out by the licensee and returned to the secretary of the board not later than the first day of May.

The game and fish board may refuse to issue license to any dealer who has failed to make such return. [Laws 1925, ch. 143, § 4.]

§ 10322a94. Same; penalty. Any person who shall violate any provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail for a term not to exceed thirty days or by both such fine and imprisonment. [Laws 1925, ch. 143, § 5.]

§ 10322a95. Repeal. All acts or parts of acts in conflict with this act are hereby repealed.

Sections 10262, 10263, 10264, 10264a, 10265, 10266, 10267, 10268, 10269, 10270, 10271, 10272, 10273, 10274, 10275, 10276, 10277, 10278, 10279, 10280, 10281, 10282, 10283, 10284, 10285, 10286, 10287, 10288, 10289, 10290, 10291, 10292, 10293, 10294, 10295, 10296, 10297, 10298, 10299, 10300, 10301, 10302, 10303, 10304, 10305, 10306, 10307, 10308, 10309, 10310, 10311, 10312, 10313, 10314, 10315, 10316, 10317, 10318, 10319, 10320, 10321, 10322, 10323, 10324, 10325, 10326, 10327, of the Compiled Laws of North Dakota are hereby expressly repealed. [Laws 1915, ch. 161, § 85.]

§ 10322a96. Appropriation. There is hereby appropriated out of any moneys in the state treasury credited to the game and fish fund, not otherwise appropriated, the sum of \$86,400.00, or so much thereof as may be necessary for the payment of salaries, per diem, office rent, printing, traveling expense, and general maintenance of game farms, fish hatchery and miscellaneous items for the biennium beginning July 1st, 1925, and terminating June 30th, 1927, to-wit:

Salary—	
1. Wardens	\$21,000.00
2. Fish commissioner and deputy	6,000.00
Clerkhire:	
1. Secretary	2,400.00
2. Clerkhire for secretary and wardens	3,000.00
3. Per diem and board officers	1,000.00
Postage	600.00
Office supplies	500.00
Furniture and fixtures	500.00
Printing	2,000.00
Miscellaneous	2,000.00
Travel expense—officers, wardens, secretary	27,000.00
Office rent, two chief wardens and secretary	1,000.00
Travel expense—fish commissioner and deputy	2,400.00
Care and propagation of game and fish	5,000.00
Maintenance of game farms	5,000.00
Maintenance of fish hatcheries	5,000.00
Rewards and convictions	2,000.00
Total	\$86,400.00

Provided that any surplus money accumulating to the credit of the game and fish commission fund may be used for the propagation of game and fish. [Laws 1925, ch. 26, § 1.]

CHAPTER 106.

PROTECTION OF BIRDS AT DEVILS' LAKE.

§§ 10323, 10324. Repealed by § 10322a95, ante. For corresponding section, see § 10322a63, ante.

CHAPTER 107.

TRESPASSING WHILE HUNTING GAME.

§§ 10325-10327. Repealed by § 10322a95. For corresponding section, see § 10322a29, ante.

CHAPTER 108.

GENERAL PROVISIONS.

§ 10334. Comp. Laws, 1913.

State ex rel. Braatelian v. Drakeley, 26 N. D. 87, 143 N. W. 768.

§ 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; R. C. 1899, § 7695; Pen. C. 1877, § 753.]

§ 10349. Comp. Laws, 1913.

Re Schantz, 26 N. D. 380, 144 N. W. 445.

§ 10356. Comp. Laws, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716.

§ 10358. Comp. Laws, 1913.

Negligence is want of ordinary care and prudence. York v. General Utilities Corp. 41 N. D. 137, 170 N. W. 312.

See also Steinke v. Halvorson, 46 N. D. 10, 178 N. W. 964.

§ 10359. Comp. Laws, 1913.

State v. La Flame, 30 N. D. 489, 152 N. W. 810.

§ 10360. Comp. Laws, 1913.

Rhoads v. First Nat. Bank, 37 N. D. 421, 163 N. W. 1046; Weeks v. Great Northern R. Co. 43 N. D. 426, 8 A.L.R. 1178, 175 N. W. 726; Shong v. Stinchfield, 47 N. D. 495, 183 N. W. 268.

§ 10362. Comp. Laws, 1913.

State v. La Flame, 30 N. D. 489, 152 N. W. 810.

§§ 10366, 10367. Comp. Laws, 1913.

Hagen v. Gresby, 34 N. D. 349, L.R.A.1917B, 281, 159 N. W. 3.

§ 10368. Comp. Laws, 1913.

Sox v. Miracle, 35 N. D. 458, 160 N. W. 716.