fined in jail, and exchange the same from time to time; but he shall not deliver books to a person who in his opinion will destroy or misuse them.
P. L. § 8857. G. L. § 7277. P. S. § 6120. V. S. § 5301. R. L. § 4455. 1863, No. 28.

CHAPTER 349.

TOWN AND VILLAGE LOCKUPS.

8032. Erection. At a meeting called for that purpose, a town or incorporated village may authorize the selectmen of the town or trustees of the village, to purchase or erect and maintain at the expense of such town or village within its corporate limits one or more lockups.
P. L. § 8858. G. L. § 7278. P. S. § 6121. R. 1906, § 5994. V. S. § 5302. R. L. § 4456. 1866, No. 48. 78 Vt. 104.

8033. Jailer; appointment; removal. The selectmen of a town or the trustees of an incorporated village may appoint a jailer of such lockup and may remove him at pleasure. Such appointment or removal shall be in writing and recorded in the office of the town or village clerk.
P. L. § 8859. G. L. § 7279. P. S. § 6122. V. S. § 5303. R. L. § 4457. 1874, No. 63, § 1. 1866, No. 48. 78 Vt. 104.

8034. Same; oath; duties and liabilities. Such jailer shall be sworn, and shall perform the duties and be subject to the penalties imposed on county jailers, and shall have the same fees.
P. L. § 8860. G. L. § 7280. P. S. § 6123. V. S. § 5304. R. L. § 4458. 1874, No. 63, § 2. 78 Vt. 104.

8035. Commitments. When process is delivered to an officer to serve, requiring him to commit a person to jail to await examination or trial before a justice's or a municipal court, if such order for commitment was made within the limits of a town or an incorporated village maintaining a lockup, such person shall be committed to such lockup and be subject to the restraints and entitled to the privileges provided by law for persons confined in the county jail.
P. L. § 8861. G. L. § 7281. P. S. § 6124. R. 1906, § 5997. 1902, No. 90, § 99. V. S. § 5305. R. L. § 4459. 1874, No. 63, § 3. 1866, No. 48. 78 Vt. 104.

CHAPTER 350.

COUNSEL FOR PERSON RESTRAINED OF LIBERTY.*

8036. Duties of officers and jailers; penalty. Officers having the custody of a person committed, imprisoned or restrained of his liberty, except in cases of imminent danger of escape, shall admit a practicing attorney of this state, whom such person may desire to see or consult, to see and consult with such person so imprisoned, alone and in private at the jail, lockup or other place of custody. When such prisoner is about to be removed beyond the limits of this state by a person or public officer, he shall be entitled to a reasonable delay for the purpose of obtaining counsel, and of availing himself of the laws of this state for the security of personal liberty. A person who violates a provision of this section shall be fined not more than $200.00.
P. L. § 8862. 1925, No. 136, § 1.

8037. Posting copies of law. Sheriffs, jailers of lockups and all officers or persons having charge of a prison, jail, lockup or other place used for the detention, imprisonment or safe keeping of persons restrained of their liberty shall cause a plainly printed copy of this chapter to be conspicuously posted in every room or cell in such jail, lockup or other place so used as aforesaid, and to keep

* See Chapter 97 (Habeas Corpus).

such copies so posted. A sheriff, jailer, officer or person who fails to post such copies and to keep at all times such copies so posted shall be fined not more than $50.00 nor less than $10.00.
P. L. § 8863. 1925, No. 136, § 2.

8038. Furnishing copies of law to officials. Annually, on or before February 1, the secretary of state shall furnish plainly printed copies of this chapter to all sheriffs, deputy sheriffs, constables, jailers of lockups and town clerks. At all times upon application therefor he shall furnish such copies to the officers and persons herein mentioned.
P. L. § 8864. 1925, No. 136, § 3.

CHAPTER 351.

UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION.

8039. Compact, terms. The governor shall execute a compact on behalf of the state of Vermont with any of the United States legally joining therein the form substantially as follows:

A COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an Act entitled "An act granting the consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

I. That it will be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state, party to this compact, (herein called "receiving state"), while on probation or parole, if:

(a). Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b). Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

II. That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

III. That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: provided however, that if at

the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

IV. That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

V. That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary more effectively to carry out the terms of this compact.

VI. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed, it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

VII. That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

1947, No. 202, § 8202. 1937, No. 218, § 1.

8040. Construction. If any section, subdivision, sentence or clause of this chapter is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter.

1947, No. 202, § 8203. 1937, No. 218, § 2.

8041. Citation. This chapter may be cited as the Uniform Act for Out-of-State Parolee Supervision.

1937, No. 218, § 3.

CHAPTER 352.

PARDONS AND DISCHARGES.

8042. Application for pardon; notice of hearing. When a person in confinement under sentence for a term of one year or more in the state prison or house of correction applies to the governor for a pardon, the application shall be in writing stating in substance the reasons for such application. If the governor, in his opinion, believes the reason stated in such application, if proved true, would constitute cause for granting the pardon, within reasonable time he shall designate a time and place for hearing the same. He shall cause notice of the application and of the hearing to be given to the applicant and to the state's attorney of the county in which the applicant was convicted and sentenced.

P. L. § 8885. G. L. § 7282. P. S. § 6125. V. S. § 5310. R. L. § 4462. 1880, No. 17. 1878, No. 75, § 1.

8043. Governor may call justices to advise. In his discretion, the governor may request to sit with him at the hearing of an application not more than three justices of the supreme court, such as he may select. When so requested, such justices shall sit with him at such hearing, and counsel and advise with him as to all matters pertaining thereto and as to the propriety of granting the pardon. But nothing in this section shall be construed to take away from the governor his power to grant or refuse a pardon in his discretion.

P. L. § 8886. G. L. § 7283. P. S. § 6126. V. S. § 5311. R. L. § 4463. 1878, No. 75, § 2.

8044. Hearing; decision. At such hearing, the governor and justices may direct as to the method of procedure in all respects and may adjourn the hearing from time to time as their convenience requires. When a decision has been made, it shall be communicated in writing to the applicant and to the state's attorney, and, in the discretion of the governor, may be published in one or more newspapers published in the state.

P. L. § 8887. G. L. § 7284. P. S. § 6127. V. S. § 5312. R. L. § 4464. 1878, No. 75, § 3.

8045. Conditional pardon; breach. In his discretion, the governor may grant a pardon for offenses against the state upon such conditions as he judges proper. Until a person to whom such conditional pardon is granted is excused from the performance of the conditions thereof, the governor shall have all the authority, rights and powers over and in relation to such person which he would have if he were surety in the case upon the recognizance of such person before conviction, and he shall be the sole and exclusive judge as to whether the conditions of such pardon have been violated. If, in the judgment of the governor, such conditions have been violated, he may cause such person to be apprehended and returned to his former condition of custody that execution of sentence may be complied with.

P. L. § 8888. 1919, No. 203, § 1. 112 Vt. 441. 113 Vt. 1.

8046. Governor may commute punishment of certain minors and remove to Weeks school; expense. In his discretion, the governor may commute the punishment of persons under sixteen years of age, who are sentenced to or confined in the state prison, and remove them to the Weeks school. The cost of removal shall be paid as provided in case of commitments to the state prison. The officer in charge of the person so removed shall retain him in his custody until he receives information from the superintendent of the Weeks school that there is room for such person in the school.

1947, No. 202, § 8209. P. L. § 8889. G. L. § 7285. P. S. § 6129. R. 1906, § 6002. V. S. § 5314. 1894, No. 297. R. L. § 4466. 1865, No. 1, § 5.

8047. When discharged for non-payment of fine. The governor may discharge a person committed to jail for nonpayment of a fine and costs, on such conditions as he judges proper.

P. L. § 8890. G. L. § 7286. P. S. § 6130. V. S. § 5315. R. L. § 4467. G. S. 121, § 63. R. S. 103, § 57. 1826, No. 11, § 1.

PART II
(2354-2601)

PROCEEDINGS IN CRIMINAL CAUSES.

CHAPTER 110.

GENERAL PROVISIONS.

2354. Indictment. Except in proceedings before a justice or municipal court and when a prosecution by information is authorized, a person shall not be held to answer in court for an alleged crime or offense, unless upon indictment by a grand jury.

P. L. § 2321. G. L. § 2490. 1915, No. 91, § 1. P. S. § 2212. V. S. § 1856. R. L. § 1608. G. S. 111, § 1. R. S. 93, § 1. 1818, p. 19. R. 1797, p. 173, § 36. 61 Vt. 45.

2355. Former acquittal a bar. A person shall not be held to answer on a second complaint, information or indictment for an offense of which he was acquitted by a jury upon the merits on a former trial. Such acquittal may be pleaded in bar of a subsequent prosecution for the same offense, notwithstanding defects in the form or substance of the complaint, information or indictment on which he was acquitted.

1935, No. 50, § 1. P. L. § 2322. 1919, No. 76, § 1. G. L. § 2491. P. S. § 2213. V. S. § 1857. R. L. § 1609. G. S. 111, § 4. R. S. 93, § 4. 2 Tyl. 387. 57 Vt. 637. 59 Vt. 84. 59 Vt. 654.

2356. Same; unless upon a variance. When a person is acquitted by reason of a variance between the complaint, information or indictment and the proof, or upon an exception to the form or substance of the complaint, information or indictment, he may be arraigned again on a new complaint, information or indictment and may be tried and convicted for the same offense notwithstanding such former acquittal.

P. L. § 2323. G. L. § 2492. P. S. § 2214. V. S. § 1858. R. L. § 1610. G. S. 111, § 5. R. S. 93, § 5.

2357. Person not to be punished unless court has jurisdiction. A person shall not be punished for an offense unless he is convicted thereof in a court having jurisdiction of the cause and the person.

P. L. § 2324. G. L. § 2493. P. S. § 2215. V. S. § 1859. R. L. § 1611. G. S. 111, § 6. R. S. 93, § 6.

2358. Conviction to be by plea or verdict. A person shall not be punished for an offense unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted by the court and recorded, or by the judgment of a justice or municipal court when the respondent waives trial by jury.

P. L. § 2325. G. L. § 2494. 1917, No. 254, § 2457. P. S. § 2216. V. S. § 1860. R. L. § 1612. G. S. 111, § 3. R. S. 93, § 3. 68 Vt. 311. 91 Vt. 330. 106 Vt. 97.

2359. Separate trials for respondents. Persons jointly informed against or indicted shall be tried separately or jointly in the discretion of the court, except that when two or more persons are jointly informed against or indicted for a felony punishable by death or imprisonment in the state prison for a term exceeding five years, a respondent requesting it shall be tried separately. However, the provisions of this section shall not apply to a trial on an information or indictment charging conspiracy.

P. L. § 2326. G. L. § 2495. P. S. § 2217. R. 1906, § 2113. 1898, No. 47, § 1.

2360. Rights of accused on trial. On the trial of an information or indictment, the party accused may defend himself, be heard by counsel, produce witnesses and proofs in his favor, and shall be confronted with the witnesses produced against him.

P. L. § 2327. G. L. § 2496. P. S. § 2218. V. S. § 1861. R. L. § 1613. G. S. 111, § 2. R. S. 93, § 2. 1818, p. 20. R. 1797, p. 174, § 40. 104 Vt. 279.

2361. Commitment, how made. When a prisoner is committed to jail on criminal process, the commitment shall be in the manner prescribed for commitments on civil process.

P. L. § 2328. G. L. § 2497. P. S. § 2219. V. S. § 1862. R. L. § 1614. G. S. 33, §§ 59-61. R. S. 28, §§ 24, 25, 26, et seq. 73 Vt. 149.

2362. Copy of process for accused. When an officer does not within six hours deliver a true copy of the warrant or process by which he detains a person in a criminal proceeding, to a person who demands such copy and tenders the fees therefor, he shall forfeit to such person $200.00.

P. L. § 2329. G. L. § 2498. P. S. § 2220. V. S. § 1863. R. L. § 1615. G. S. 43, § 23. R. S. 38, § 23.

2363. Warrant, to whom directed. Except as otherwise provided, a warrant issued in a criminal cause shall be directed to any sheriff or constable in the state.

P. L. § 2330. G. L. § 2499. 1917, No. 254, § 2462. P. S. § 2289. V. S. § 1928. R. L. § 1668. G. S. 31, § 9. R. S. 26, § 57. R. 1797, p. 418, § 9. 1789, p. 10. R. 1787, p. 84.

2364. Costs in criminal causes. In criminal causes where the punishment is by a fine or imprisonment, or both, costs shall follow unless otherwise ordered by the court.

P. L. § 2331. G. L. § 2500. P. S. § 2221. V. S. § 1864. 1894, No. 162, § 1803a. 75 Vt. 329.

CHAPTER 111.

GRAND JURY AND INFORMING OFFICERS.

Grand Jury.

2365. Foreman; powers and duties of jury. After a grand jury is impaneled and sworn, the court shall appoint a foreman, who may administer oaths to wit-

nesses before such grand jury. When the grand jury finds an indictment supported by good and sufficient evidence, the foreman shall write thereon "a true bill." When it does not find an indictment so supported, he shall write thereon "this bill not found" and the accused person shall be thereupon discharged.
P. L. § 2332. G. L. § 2501. P. S. § 2222. V. S. § 1865. R. L. § 1616. G. S. 37, § 14.
R. S. 32, § 14. R. 1797, p. 106, § 65. R. 1787, p. 82. 12 Vt. 300. 31 Vt. 602. 56 Vt. 532.

2366. Bill, how found. An indictment shall not be presented by a grand jury unless twelve of the jurors agree in the same.
P. L. § 2333. G. L. § 2502. P. S. § 2223. V. S. § 1866. R. L. § 1617. G. S. 37, § 15.
R. S. 32, § 15. R. 1797, p. 106, § 65.

Testimony before Grand Jury.

2367. To take testimony. At the expense of the state and upon the approval of the presiding judge, a clerk may take testimony before the grand jury for the use of the state's attorney.
P. L. § 2334. G. L. § 2503. P. S. § 2224. 1898, No. 45, § 1. 70 Vt. 341.

2368. Order of approval to be filed; oath. The order of approval from the presiding judge shall be in writing and filed with the county clerk, and may be revoked by the judge for cause shown. Before entering upon his duties, the clerk shall make oath before the county clerk that he will keep secret all matters and things coming before the grand jury.
P. L. § 2335. G. L. § 2504. P. S. § 2225. 1898, No. 45, § 2.

2369. Clerk not to disclose testimony; exception; minutes property of state. The clerk shall not disclose testimony so taken by him, except to the attorney general, state's attorney and grand jury. The minutes of testimony so taken shall be the property of the state and the same or a copy thereof shall not go out of the possession of the attorney general, state's attorney or their successors, except to an attorney appointed by the court to act in the place of or to assist the state's attorney. Nothing in this section shall prevent the clerk from disclosing such evidence on an order of the supreme or county court.
P. L. § 2336. G. L. § 2505. P. S. § 2226. R. 1906, § 2122. 1898, No. 45, § 3.

2370. Penalty. A clerk approved as aforesaid who violates a provision of the two preceding sections shall be imprisoned not more than one year or fined not more than $1,000.00 nor less than $100.00, or both.
P. L. § 2337. G. L. § 2506. P. S. § 2227. 1898, No. 45, § 4.

Prosecutions by Information.

2371. By state's attorney. Crimes not punishable by death or by imprisonment in the state prison for life may be prosecuted by a state's attorney by information.
P. L. § 2338. G. L. § 2507. P. S. § 2228. 1904, No. 64, § 1. 1898, No. 46, § 1. V. S. § 1867.
R. L. § 1618. G. S. 120, § 1. R. S. 102, § 1. 1819, p. 19. 8 Vt. 57. 23 Vt. 698.
52 Vt. 476. 61 Vt. 45. 67 Vt. 690. 77 Vt. 166. 78 Vt. 124.

2372. By town grand juror. A town grand juror shall inquire into and make due presentment to proper authority of offenses which may come to his knowledge, within the town for which he is elected, or within an unorganized town or gore adjoining such town and which in his judgment ought to be prosecuted.
P. L. § 2339. G. L. § 2508. P. S. § 2229. V. S. § 1868. R. L. § 1619. G. S. 15, § 86.
1854, No. 8, § 1. R. S. 13, § 68. 1819, p. 19. 1801, p. 5. R. 1797, p. 171, § 32.
R. 1797, p. 197, § 4. R. 1797, p. 599, § 1. R. 1787, p. 83. 34 Vt. 345. 113 Vt. 374.

2373. Same; how made. Presentments by a grand juror shall be made by a complaint in writing under his oath of office and official signature to a justice or a municipal court.
P. L. § 2340. G. L. § 2509. 1915, No. 91, § 1. 1908, No. 62. P. S. § 2230. V. S. § 1869.
R. L. § 1620. G. S. 15, § 87. R. S. 13, § 69. 1801, p. 5. 27 Vt. 328. 27 Vt. 553.
30 Vt. 467. 45 Vt. 258. 47 Vt. 290. 52 Vt. 376. 113 Vt. 374.

2374. Grand juror may attend examination. A town grand juror may attend the examination of a person arraigned on such complaint.
P. L. § 2341. G. L. § 2510. P. S. § 2231. V. S. § 1870. R. L. § 1621. G. S. 15, § 88.
R. S. 13, § 70. 1801, p. 5. 113 Vt. 374.

2375. Time of filing, taking bail. Whenever an information is brought by a state's attorney pursuant to the provisions of section 2371, such information shall be filed forthwith with the clerk of the court in which such prosecution is commenced. Such clerk shall issue a summons or capias against the respondent. Upon the arrest of the person named as respondent in such information, he shall be brought forthwith before an assistant judge or the clerk of such court who shall fix and take bail.
1945, No. 32, § 1.

2376. Officers as informing officers, when. When a sheriff, deputy sheriff or constable, or a police officer of a city or incorporated village, arrests a person for a misdemeanor without warrant, he shall take such person forthwith before a court having jurisdiction of the offense. Such officers shall be complaining officers for the purpose of making presentment against persons so arrested by them, by complaint in writing, under their oath of office and official signature, to the court before which such person is brought.
P. L. § 2342. G. L. § 2511. 1917, No. 254, § 2474. 1915, No. 93, §§ 1, 2. 1910, No. 91, §§ 1, 2.
P. S. § 2232. V. S. § 1870. R. L. § 1622. 1876, No. 68, § 1. 113 Vt. 374.

2377. Same; procedure; notice. Upon such presentment, if the respondent pleads guilty, such court shall thereupon impose sentence. If the respondent pleads not guilty, such court, in its discretion, may notify the town grand juror, or city or village attorney, who shall forthwith enter and prosecute such complaint, and be allowed the fees provided by section 10,520, which shall be taxed against the respondent. Such court, in its discretion, may also notify the state's attorney of the county within which such misdemeanor is committed, who may also enter and prosecute such complaint. For making such complaint, the sheriff, deputy sheriff, constable or police officer shall receive no fee.
P. L. § 2343. G. L. § 2512. 1915, No. 93, § 2. 1910, No. 91, § 2. 113 Vt. 374.

2378. Amending complaint; when and by whom. State's attorneys, grand jurors and city or village attorneys, whenever necessary, may amend a complaint authorized to be made under the provisions of the preceding sections.
P. L. § 2344. G. L. § 2513. 1910, No. 91, § 4.

2379. Recognizance, when required of complainant. A warrant to apprehend a person charged with a criminal offense shall not be granted by a justice or a municipal judge except on information or complaint of an informing or complaining officer, until such magistrate has taken security to his satisfaction, by way of recognizance to the person so charged, that the prosecutor will answer the damages if he does not prosecute his information to effect, and a minute of such recognizance shall be made as in civil causes.
P. L. § 2345. G. L. § 2514. 1908, No. 62. P. S. § 2288. V. S. § 1927. R. L. § 1667.
G. S. 31, § 8. R. S. 26, § 24. R. 1797, p. 418, § 10. 60 Vt. 618. 113 Vt. 374.

2380. Discharge of person bound over for trial; how made; certificate; effect. When a person is confined in jail by reason of failure to furnish bail on being bound over to a county or municipal court, and the grand jury reports that a bill is not found against such person or the state's attorney notifies the county clerk or the judge of such municipal court, as the case may be, that an information or complaint will not be filed against such person, the clerk or judge shall forthwith certify such fact to the jailer. Such person shall thereupon be discharged from custody and the date of such certificate shall be deemed to be the date on which such person was discharged.
P. L. § 2346. G. L. § 2515. 1917, No. 254, § 2478. 1908, No. 66. 113 Vt. 374.

Employment of Counsel.

2381. Grand juror may employ. In the examination of a person charged with a crime exceeding the jurisdiction of a justice's or municipal court to try and determine, commenced upon the complaint of a complaining officer not entitled to draw a salary, and in the trial of person before such court upon the complaint of such an officer, charging him with a crime within the jurisdiction of such court to try and determine, where the fine is payable to the state, such officer may employ counsel at the expense of the state, when the state's attorney is disqualified or unable seasonably to attend at such examination or trial.

P. L. § 2347. G. L. § 2516. 1917, No. 254, § 2479. P. S. § 2234. V. S. § 1873. 1884, No. 126, § 1. 113 Vt. 374.

2382. Payment. The auditor of accounts shall allow counsel so employed a reasonable compensation for his services and expenses and shall issue his warrant for the amount allowed. Compensation shall not be allowed where it appears to the auditor that the prosecution was superfluous and instituted to enhance costs, nor in the trial of a person upon a complaint for intoxication or for any other offense against the chapter relating to intoxicating liquors, except where the respondent pleads not guilty.

P. L. § 2348. G. L. § 2517. P. S. § 2235. R. 1906, § 2131. V. S. § 1874. 1884, No. 126, §§ 1, 2. 113 Vt. 374.

CHAPTER 112.

PLACE OF TRIAL AND PROCEEDINGS IN COURT.

Place of Trial.

2383. In what county. When not otherwise provided, criminal causes shall be tried in the county where the offense is committed.

P. L. § 2349. G. L. § 2518. P. S. § 2243. V. S. § 1882. R. L. § 1624. G. S. 120, § 3. R. S. 102, § 3. 1818, p. 19. R. 1797, p. 173, § 76.

2384. When act in one county causes death in another. A person feloniously wounding or poisoning a person in one county, whose death results therefrom in another county, may be indicted and tried in either county.

P. L. § 2350. G. L. § 2519. P. S. § 2244. V. S. § 1883. R. L. § 1625. G. S. 120, § 3. R. S. 102, § 3. 1818, p. 19. R. 1797, p. 173, § 76.

2385. Offense on boundary. If an offense is committed on the boundary of two or more counties or within one hundred rods of such boundary, such offense may be alleged in the complaint, information or indictment to have been committed and may be prosecuted in any of such counties.

P. L. § 2351. G. L. § 2520. P. S. § 2245. V. S. § 1884. R. L. § 1626. 1870, No. 5, § 8.

2386. Before a justice. Prosecutions of a criminal nature before a justice within his jurisdiction to try and determine shall be tried in the town where the offense is committed or the respondent resides.

P. L. § 2352. G. L. § 2522. P. S. § 2246. V. S. § 1885. R. L. § 1627. G. S. 31, § 2. 1859, No. 11. 46 Vt. 176. 47 Vt. 78.

Change of Venue.

2387. Application. When a person is under information or indictment for an offense punishable by death or imprisonment in the state prison, the respondent or the state's attorney of the county where the prosecution is pending may apply to a superior judge, petitioning that the trial of such respondent be removed to and had in another county.

P. L. § 2353. G. L. § 2523. P. S. § 2247. 1906, No. 63, § 33. V. S. § 1886. R. L. § 1628. 1880, No. 22, § 1. 1865, S. S. No. 1, § 1. 104 Vt. 379.

2388. Respondent to be committed; effect on bail. If such respondent has given bail and is at liberty at the time the application for removal is made, the judge to whom the application is preferred, if in his opinion the same is proper to be granted, before making the order of removal, shall issue a warrant commanding that such respondent be apprehended and committed to the jail of the county in which the prosecution is pending. Upon the commitment of such respondent, the bail shall be discharged, if such commitment is made previous to the term of court at which such respondent was recognized to appear.

P. L. § 2354. G. L. § 2524. P. S. § 2248. V. S. § 1887. R. L. § 1629. 1880, No. 22, § 2.

2389. Order for removal for trial. When such respondent is in custody at the time the application is made or when, having been at liberty, he has been apprehended and committed as provided in the preceding section, the judge to whom the application is preferred, in his discretion, by an order in writing, may direct that the trial of such respondent be removed to and had in some other county named. Such order shall be filed with the clerk of the county court in which such respondent was informed against or indicted.

P. L. § 2355. G. L. § 2525. P. S. § 2249. V. S. § 1888. R. L. § 1630. 1880, No. 22, § 3. 1865, S. S. No. 1, § 1. 104 Vt. 379.

2390. Bail. If the offense charged is bailable, the judge making the order of removal may take a recognizance with sufficient surety of such respondent, conditioned for his personal appearance before the court in which his trial is ordered to be had.

P. L. § 2356. G. L. § 2526. P. S. § 2250. V. S. § 1889. R. L. § 1631. 1880, No. 22, § 4.

2391. Order for removal of respondent. If such respondent is in custody from failure to furnish bail or otherwise, or if the offense is not bailable, or if having entered into recognizance to appear he is again apprehended and committed at the request of his bail, the judge making the order of removal, before the next term of the court in which such respondent is ordered to be tried, shall issue an order in writing to the sheriff of the county in which such respondent is confined, commanding him to deliver such respondent to the keeper of the jail in the county in which the trial is ordered to be had.

P. L. § 2357. G. L. § 2527. P. S. § 2251. V. S. § 1890. R. L. § 1632. 1880, No. 22, § 5.

2392. Service and return. The sheriff shall forthwith remove and deliver such respondent as directed in the order, leave a copy of the same with his return indorsed thereon with the keeper of the jail to which such respondent is committed and return the original order with his return indorsed thereon to the clerk of the court in the county in which such respondent was informed against or indicted.

P. L. § 2358. G. L. § 2528. P. S. § 2252. V. S. § 1891. R. L. § 1633. 1880, No. 22, § 6.

2393. Clerk to transmit papers; cause to proceed. Upon receipt of such order and return, the clerk shall forthwith transmit the same, together with the other papers in the cause, to the clerk of the court in the county in which the trial is ordered to be had. Thereupon such court shall have jurisdiction of the cause and the same proceedings had therein as though such offense had been committed in such county.

P. L. § 2359. G. L. § 2529. P. S. § 2253. V. S. § 1892. R. L. § 1634. 1880, No. 22, § 7. 1865, S. S. No. 1, § 1.

2394. Which state's attorney to prosecute. The state's attorney of the county in which the respondent is informed against or indicted shall appear in behalf of the state at the trial of the respondent in the supreme court or in any county to which the trial is removed, and in proceedings relating thereto he shall have the same powers and be subject to the same duties and liabilities as though the trial were had in the county for which he is such attorney.

P. L. § 2360. G. L. § 2530. P. S. § 2254. V. S. § 1899. R. L. § 1635. 1880, No. 22, § 8.

2395. In county court. If a person is confined in jail on a complaint for a crime or misdemeanor, the county court for the county, on his written motion, may direct an information to be filed against him for such offense, and on such information being filed may try him as if an indictment had been presented against him.

P. L. § 2365. G. L. § 2535. P. S. § 2259. V. S. § 1897. R. L. § 1639. G. S. 30, § 88. R. S. 25, § 61. 1828, No. 2, § 3. 78 Vt. 124.

2396. Capital crimes excepted. The provisions of the preceding section shall not extend to a crime for which the punishment is death or imprisonment in the state prison for life.

P. L. § 2366. G. L. § 2536. P. S. § 2260. V. S. § 1898. R. L. § 1640. G. S. 30, § 89. R. S. 25, § 62. 1828, No. 2, § 5.

Counsel Assigned.*

2397. How paid; exceptions. Compensation shall not be paid by the state to counsel assigned to defend a respondent in a criminal proceeding, except to counsel assigned by the county court in capital causes or in causes where the punishment is by imprisonment in the state prison. Compensation shall not be paid by the state to counsel assigned to assist the state's attorney in a criminal proceeding, except in capital causes or where the punishment is by imprisonment in the state prison for a term exceeding ten years or where the state's attorney is disqualified by reason of interest or relationship to the respondent.

P. L. § 2370. G. L. § 2539. P. S. § 2261. V. S. § 1900. 1892, No. 43. R. L. § 1636. 1880, No. 31, § 1. 1872, No. 27. G. S. 124, §§ 6, 7. 1860, No. 12. 89 Vt. 490.

Pleadings in Criminal Causes.

2398. Time allowed respondent. A person need not plead to an information or indictment until twenty-four hours after being furnished with a copy of the same, and the clerk of the court shall furnish such copy.

P. L. § 2371. G. L. § 2540. P. S. § 2262. V. S. § 1901. R. L. § 1641. G. S. 30, § 83. R. S. 25, § 56. R. 1797, p. 106, § 65. 55 Vt. 211.

2399. Objections to formal defects; amendment. Objections to a complaint, information or indictment, for a formal defect apparent upon the face thereof, shall be taken by demurrer or motion to quash, before the jury is sworn. The court may cause the complaint, information or indictment to be amended forthwith in such particular by some officer of the court.

P. L. § 2372. G. L. § 2541. P. S. § 2263. V. S. § 1902. R. L. § 1642. 1870, No. 5, § 1. 41 Vt. 691. 50 Vt. 731. 54 Vt. 179. 55 Vt. 550. 58 Vt. 524. 59 Vt. 661. 64 Vt. 372. 65 Vt. 439. 90 Vt. 125.

2400. Notice of alibi or insanity plea. Whenever a respondent, in a criminal cause pending before a municipal or county court, shall propose to offer in his defense testimony to establish an alibi or his insanity either at the time of the alleged offense or at the time of trial, he shall serve upon the prosecuting attorney a notice in writing of his intention to claim such defense at least forty-eight hours before the trial of such cause. In cases of a claimed alibi such notice shall include information as to the place at which the accused claims to have been at the time of the alleged offense.

1939, No. 53, § 1. 1935, No. 51, § 1.

2401. Failure to file. In the event of the failure of a respondent to file the written notice prescribed in the preceding section, the court, in its discretion, may exclude evidence offered by such respondent for the purpose of establishing an alibi or the insanity of such respondent as set forth in the preceding section.

1935, No. 51, § 2.

* See 1458.

2402. Standing mute. When a person arraigned on a complaint, information or indictment stands mute or refuses to plead or be tried by due course of law, he shall be treated as pleading not guilty, and the trial shall proceed accordingly.

P. L. § 2373. G. L. § 2542. P. S. § 2264. V. S. § 1903. R. L. § 1643. G. S. 120, § 2. R. S. 102, § 2. 1818, p. 19. R. 1797, p. 173, § 35. R. 1787, p. 104. 85 Vt. 233. 108 Vt. 218.

2403. Judgment against corporation on default. If a corporation, having been served with process, does not answer to a complaint, information or indictment, its default shall be recorded and the charges in the complaint, information or indictment shall be taken to be true and judgment rendered accordingly.

P. L. § 2374. G. L. § 2543. P. S. § 2265. V. S. § 1904. R. L. § 1644. 1870, No. 5, § 7.

2404. Proof showing a greater offense, a nolle prosequi may be allowed. If, upon the trial of a person charged with an offense, the facts given in evidence amount in law to a greater offense than the one charged, such person shall not by reason thereof be acquitted, but the court, in its discretion, may allow a nolle prosequi to be entered in order that he may be prosecuted for the greater offense.

P. L. § 2375. G. L. § 2544. P. S. § 2266. V. S. § 1905. R. L. § 1645. 1870, No. 5, § 9. 110 Vt. 1.

2405. Defense in prosecution for libel. If a person is prosecuted by information or indictment for uttering and publishing a libel or for defaming the civil authority of the state, under a plea of not guilty, he may give evidence as to the truth of the words contained in such supposed libel, as set forth in the information or indictment. If he proves their truth to the satisfaction of the jury, it shall find the respondent not guilty in its verdict.

P. L. § 2376. G. L. § 2545. P. S. § 2267. V. S. § 1906. R. L. § 1646. G. S. 30, § 96. R. S. 25, § 68. 1804, Jan., p. 8.

2406. Indictment for murder or manslaughter. The manner in which, or the means by which, the death of the deceased was caused need not be set forth in an indictment for murder or manslaughter. In an indictment for murder it shall be sufficient to charge that the respondent did feloniously, wilfully and of his malice aforethought kill and murder the deceased. In an indictment for manslaughter, it shall be sufficient to charge that the respondent did feloniously kill and slay the deceased.

P. L. § 2377. G. L. § 2546. P. S. § 2268. V. S. § 1907. R. L. § 1647. 1880, No. 18, § 1. 70 Vt. 247. 85 Vt. 115.

2407. Description of paper forged or counterfeited. In a complaint, information or indictment for forgery or counterfeiting, or for uttering and publishing as true an instrument, document or paper which may be the subject of the offense of forgery or counterfeiting, it shall be sufficient to describe such instrument, document or paper by the name or designation by which it is usually known or by the purport thereof, without setting forth a copy or facsimile or otherwise describing the same or its value. A misnaming of such instrument, document or paper shall not affect the cause, provided, that as set forth, the same appears to be any one of the instruments, documents or papers which is made a subject of the offense of forgery or counterfeiting.

P. L. § 2378. G. L. § 2547. P. S. § 2269. V. S. § 1908. R. L. § 1648. 1880, No. 19.

2408. Description of money stolen. In a complaint, information or indictment for larceny, in which it is necessary to make an averment as to money, bank bills or promissory notes, issued or purporting to be issued by an incorporated bank or banking institution or currency authorized to be circulated and circulating as money, it shall be sufficient to describe such money, bank bills, bank notes or currency, simply as money, without specifying any particular coin, bank bill, bank note or currency. So far as regards the description of property, such allegation shall be sustained by proof of any amount of coin or of any bank bill, bank note or piece of currency, although the particular species of coin of which such amount

was composed or the particular nature of such bank bill, bank note or currency, is not proved.
P. L. § 2379. G. L. § 2548. P. S. § 2270. V. S. § 1909. R. L. § 1649. 1870, No. 5, § 6.

2409. Joinder of counts for larceny and receiving stolen goods. In a complaint, information or indictment for larceny against one or more persons, counts may be added for buying, receiving or aiding in the concealment of property stolen or a part thereof, knowing the same to be stolen. In such cause the prosecutor shall not be put to his election, but upon one or more of the counts, the jury may convict or acquit one or more of the defendants, according to the proofs.
P. L. § 2380. G. L. § 2549. P. S. § 2271. V. S. § 1910. R. L. § 1650. 1870, No. 5, § 3.

2410. Certain omissions not to affect indictment. Where it shall appear by the complaint, information or indictment, that the court has jurisdiction of the offense, a complaint, information or indictment shall not be held bad, nor shall the trial, judgment or other proceedings thereon be affected, by reason of the omission of the words "as appears of record," or of the words "with force and arms," or for the insertion of the words "against the form of the statute," instead of the words "against the form of the statutes," or vice versa, or for the omission of such words, or for omitting to state the time at which the offense was committed in any case where time is not the essence of the offense, or for stating the time imperfectly, or upon a day in the future, or upon an impossible day, or a day that has never happened, or for want of a proper or perfect venue.
P. L. § 2381. G. L. § 2550. P. S. § 2272. V. S. § 1911. 1882, No. 86, § 1. 41 Vt. 691. 90 Vt. 125.

2411. Certain variances cured by amendment. If, on the trial of a complaint, information or indictment, there appears to be a variance between the averments therein and the evidence offered in proof, in the name or description of a place mentioned, or of a person alleged to be the owner of property which forms the subject of an offense charged, or which is alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offense, or in the Christian name or surname, or both Christian name and surname, or other description of a person named or described, or in the name or description of any matter or thing whatsoever, the court before whom such trial is had, if it considers such variance not material and that the respondent cannot be prejudiced thereby in his defense upon the merits, may order the complaint, information or indictment to be amended, according to the proof, by some officer of the court, in that part wherein the variance occurs, on such terms as to a postponement of the trial as the court thinks reasonable. After amendment, the trial shall proceed in the same manner and with the same consequences as if such variance had not occurred.
P. L. § 2382. G. L. § 2551. P. S. § 2273. V. S. § 1912. 1882, No. 86, § 2. 64 Vt. 405. 64 Vt. 569. 71 Vt. 405. 72 Vt. 46. 72 Vt. 410. 75 Vt. 202. 75 Vt. 308. 107 Vt. 487.

Witnesses and Depositions.

2412. Respondent as witness, failure to testify. In the trial of complaints, informations, indictments and other proceedings against persons charged with crimes or offenses, the person so charged shall, at his own request and not otherwise, be deemed a competent witness. The credit to be given to his testimony shall be left solely to the jury, under the instructions of the court but the failure of such person to testify may be a matter of comment to the jury and the jury may draw reasonable inferences therefrom.
1935, No. 52, § 1. P. L. § 2383. G. L. § 2554. P. S. § 2276. V. S. § 1915. R. L. § 1655. 1866, No. 40. 40 Vt. 555. 65 Vt. 66.

2413. Witnesses for poor respondent summoned by state. When it appears to a county court in which a criminal cause is pending, that the respondent is from poverty unable to procure the attendance of witnesses in his behalf, such court may order as many of such witnesses to be summoned by the prosecuting officer, at the expense of the state, as it judges necessary to secure the respondent an impartial trial.
P. L. § 2384. G. L. § 2555. P. S. § 2277. R. 1906, § 2173. V. S. § 1916. R. L. § 1656. G. S. 36, § 31. R. S. 31, § 19. 1830, No. 3.

2414. Nonresident witnesses, testimony of, how taken. When an issue of fact is joined upon a complaint, information or indictment, on application of the respondent, the court may grant a commission to examine material witnesses residing out of the state, and the prosecuting officer may join in such commission and name material witnesses to be examined on the part of the state.
P. L. § 2385. G. L. § 2556. P. S. § 2278. V. S. § 1917. R. L. § 1657. G. S. 120, § 25. R. S. 102, § 17.

2415. Recognizance may be required of witness. In a proceeding before a court or magistrate for the investigation or prosecution of a criminal offense, the court or magistrate may order any witness appearing before such court or magistrate to enter into a sufficient recognizance with surety for his appearance before any court or magistrate where his attendance in such investigation or prosecution is necessary. If the witness refuses to enter into such recognizance with surety, he may be committed to jail in the county where his attendance as a witness is required, on a warrant of the court or magistrate making the order, and there detained until such time as his attendance to testify is required.
P. L. § 2386. G. L. § 2557. 1910, No. 89, § 1. P. S. § 2279. R. 1906, § 2175. V. S. § 1918. R. L. § 1658.

Summons to Testify in State.

2416. Penalty for not obeying. A person legally summoned to attend a court in this state to testify in a criminal cause, who wilfully or wrongfully refuses to attend and testify, shall be fined not less than $10.00 nor more than $100.00 or imprisoned not more than six months, or both.
P. L. § 2389. G. L. § 2560. P. S. § 2282. V. S. § 1921. R. L. § 1661. G. S. 36, § 32. 1861, No. 23, § 1. 10 Vt. 493. 56 Vt. 698.

2417. Counseling or aiding in nonattendance; penalty. A person who knowingly and wrongfully counsels, aids or assists a person so summoned to testify, to absent himself from attendance before such court, shall be fined not more than $50.00 nor less than $10.00.
P. L. § 2390. G. L. § 2561. P. S. § 2283. V. S. § 1922. R. L. § 1662. G. S. 36, § 33. 1861, No. 23, § 2.

Depositions.

2418. To perpetuate testimony. A person complained of, informed against or indicted for a crime may make affidavit before a justice of the supreme court, a superior judge or a judge of the county court, that the testimony of certain witnesses is material in his defense, and thereupon the same proceedings may be had as in perpetuating testimony in civil causes.
P. L. § 2391. G. L. § 2562. 1915, No. 1, § 96. P. S. § 2284. R. 1906, § 2180. V. S. § 1923. R. L. § 1663. G. S. 36, § 41. 1858, No. 32, § 1.

2419. Notice. Reasonable notice shall be given to the prosecuting attorney of the time and place when and where the witnesses will be examined, specifying therein the complaint, information or indictment on the trial of which such testimony is to be used and the names of the witnesses proposed to be examined.
P. L. § 2392. G. L. § 2563. P. S. § 2285. R. 1906, § 2181. V. S. § 1924. R. L. § 1664. G. S. 36, § 42. 1858, No. 32, § 2.

2420. Admissible on trial. Depositions so taken to be used in criminal causes, if taken at least ten days before the session of the court in which the same are offered as evidence, may be admitted on the trial of the complaint, information or indictment relative to which they are to be used, subject to the conditions provided as to similar depositions to be used in civil causes.
P. L. § 2393. G. L. § 2564. P. S. § 2286. V. S. § 1925. R. L. § 1665. G. S. 36, § 43. 1858, No. 32, § 3.

Proceedings Before a Municipal Court in Criminal Causes.

2421. Jurisdiction; misdemeanors. Municipal courts shall have concurrent jurisdiction with county courts, except as otherwise provided, to try and finally determine prosecutions for misdemeanors committed within their jurisdictions, but an appeal shall not be allowed from the judgment of such municipal court to the county court.

1939, No. 45, § 2. P. L. § 2394. G. L. § 2565. 1915, No. 91, § 1. 90 Vt. 150. 91 Vt. 330.

2422. Same. A municipal court shall have jurisdiction to try and finally determine prosecutions for violations of by-laws or ordinances of a village or city within the county, except as otherwise provided.

P. L. § 2395. G. L. § 2566. 1915, No. 91, § 2.

2423. Same. A municipal court shall have jurisdiction to render judgment and pass sentence upon a plea of guilty in prosecutions for felony, wherein the maximum penalty of imprisonment is for less than life.

P. L. § 2396. G. L. § 2567. 1917, No. 254, § 2530. 1915, No. 91, § 3.

Procedure in a County Having No Municipal Court.

2424. Filing of information, appearance. When a person is confined in jail in a county not having a municipal court established by law, on a complaint for an offense which may be prosecuted by information, any superior judge or judge of any municipal court within the state on the written petition of the respondent, may direct an information for the offense charged to be filed against him by the state's attorney of such county with the clerk of the county court for the county in which such jail is located. On such information being filed, such superior judge or municipal judge may order the appearance of such respondent before him at some place within the county where such jail is located, with notice of such order to the state's attorney of such county.

1939, No. 51, § 1.

2425. Hearing. At such hearing, such judge may receive and record a plea of guilty, award sentence thereon and hear and determine questions of law arising on such information, and shall file with such county clerk a record of his doings, findings and sentence, as may be required. The clerk of the court shall forthwith issue a mittimus to carry such sentence into effect.

1939, No. 51, § 2.

2426. Mittimus. Such mittimus shall be sufficient in law, providing a reference to this subheading and the name of the superior or municipal judge awarding such sentence is designated therein.

1939, No. 51, § 3.

2427. Same, not guilty plea. Upon such information, if the respondent pleads not guilty or a plea upon which an issue is joined, such information, with a certificate of the proceedings thereon, signed by such superior or municipal judge, shall be filed with the clerk of the county court in such county and thereupon the respondent shall be ordered recommitted to such jail and the clerk of the county court shall issue a mittimus accordingly.

1939, No. 51, § 4.

Proceedings Before Justices of the Peace in Criminal Causes and Appeals Therefrom.

2428. Jurisdiction. Except as otherwise provided, a justice may try and determine prosecutions and actions of a criminal nature, only where the punishment is by fine not exceeding $100.00, and issue a warrant to carry the judgment into effect in case an appeal is not taken, and shall have the same authority in other criminal causes where jurisdiction is given him.

P. L. § 2397. 1931, No. 40, § 1. G. L. § 2570. 1917, No. 254, § 2533. P. S. § 2287. V. S. § 1926. R. L. § 1666. G. S. 31, § 1. R. S. 26, § 1. 1816, p. 137. R. 1797, p. 413, § 1. 1789, p. 9. R. 1787, p. 84. 25 Vt. 247. 57 Vt. 576. 60 Vt. 618. 82 Vt. 37.

2429. Testimony to be written. A justice shall take in writing the substance of the evidence of witnesses testifying before him in a criminal cause.

P. L. § 2398. G. L. § 2571. P. S. § 2291. V. S. § 1930. R. L. § 1670. 1880, No. 119, § 8. 56 Vt. 451.

2430. Testimony to be filed with clerk, if appeal taken. When a respondent appeals from the judgment of a justice, in a cause within his jurisdiction to try and determine, the justice shall file with the clerk thereof the evidence so taken by him at least two days before the sitting of the court to which appeal is taken.

P. L. § 2399. G. L. § 2572. P. S. § 2292. V. S. § 1931. R. L. §§ 1671, 1672. 1880, No. 119, §§ 9, 10. 56 Vt. 451.

2431. Jury, how drawn. When a criminal cause is tried by jury before a justice, the jury shall be drawn as in civil causes.

P. L. § 2400. G. L. § 2573. P. S. § 2290. V. S. § 1929. R. L. § 1669. G. S. 31, § 44. R. S. 26, § 34. R. 1787, p. 83. R. 1797, p. 420, § 15.

2432. Appeal, when allowed. An appeal shall not be allowed in a criminal cause where the respondent is acquitted or where the respondent pleads guilty. The respondent may appeal from a judgment or sentence of a justice against him in all other causes, if the appeal is claimed within two hours after the rendition thereof.

P. L. § 2401. G. L. § 2574. P. S. § 2293. V. S. § 1932. 1894, No. 47, § 1. R. L. § 1673. 1880, No. 23, § 3. 1876, No. 64. G. S. 31, §§ 63, 70. R. S. 26, §§ 45, 51. 1821, pp. 76, 78. R. 1797, p. 414, § 4. 1792, p. 62. 1789, p. 11. R. 1787, p. 86. 35 Vt. 562. 42 Vt. 430. 43 Vt. 265. 55 Vt. 1. 60 Vt. 199. 64 Vt. 203.

2433. Appeal from justice, where heard. In prosecutions before a justice in which an appeal is taken from his judgment and sentence, such appeal shall lie to a municipal court within the same county, if there is such a court therein. Such appeal shall be heard at the county courthouse in the county where the complaint was first heard, at such time as the judge of such court shall determine. However, the judge shall not compel a respondent to go to trial within twenty days from the time of entering such appeal.

P. L. § 2402. G. L. § 2575. 1917, No. 254, § 2536. 1915, No. 91, § 7.

2434. Appeal to county court, when. In counties not having a municipal court, the appeal shall be taken to the county court.

P. L. § 2403. G. L. § 2576. 1915, No. 91, § 7.

2435. Appeals; time for entering. Appeals to a county or municipal court shall be entered within twenty-one days from the date of the judgment or sentence appealed from.

P. L. § 2404. G. L. § 2577. 1917, No. 254, § 2538.

2436. Recognizance; entry for affirmance. A party appealing from a justice shall not be released from custody, unless at the time of the appeal he gives surety, by way of recognizance to the state, county, town or village, as the case may be, in which the offense is charged to have been committed, if the prosecution is on complaint or information of a complaining or informing officer, or, if otherwise, to the prosecutor, conditioned that the respondent will personally appear before the court to which the cause is appealed, and there prosecute his appeal to effect and abide the order of court thereon. If the respondent does not enter his appeal in a proper court within the time prescribed, the appellee may enter the same for affirmance. If cause is not shown to the contrary, the same shall be affirmed with additional costs.

P. L. § 2405. G. L. § 2578. 1915, No. 91, § 7. P. S. § 2294. V. S. § 1934. R. L. § 1674. G. S. 31, § 64. 1859, No. 12, § 1 R. S. 26, § 46. R. 1797, p. 414, § 4. 1792, p. 62. 1789, p. 11. 10 Vt. 544. 44 Vt. 363. 62 Vt. 62.

2437. Same; how prosecuted after affirmance. When such judgment or sentence is affirmed, the recognizance taken by the justice shall be prosecuted as in civil causes.

P. L. § 2406. G. L. § 2579. P. S. § 2295. V. S. § 1935. R. L. § 1675. G. S. 31, § 65. 1859, No. 12, § 2.

2438. Appeal not entered, warrant may issue. If the respondent in a criminal cause appeals from the judgment or sentence of a justice, the appeal shall suspend the judgment or sentence, but shall not vacate it. If neither the prosecuting officer nor the respondent enters the cause in court within twenty-one days from the day of such judgment or sentence, the justice shall issue a warrant to carry such judgment and sentence into effect as if an appeal had not been taken.

P. L. § 2407. G. L. § 2580. 1915, No. 91, § 1. P. S. § 2296. 1906, No. 72, § 1. V. S. § 1936. 1894, No. 48. R. L. § 1676. 1865, No. 10, § 1. 63 Vt. 537. 71 Vt. 476.

2439. Recognizance, prosecution of. If such appeal is not entered for affirmance, the prosecuting officer may have an action of contract, in the name of the state, against the bail, upon the recognizance for the appeal. The judgment shall be for such sum as is just, which, if the respondent cannot be found, shall be the amount of fine, costs and interest. If the sentence was imprisonment, the judgment shall be for such sum as the court adjudges equitable. A judgment against the bail, and payment of the same, shall not relieve the respondent from the sentence of imprisonment.

P. L. § 2408. G. L. § 2581. P. S. § 2297. V. S. § 1937. R. L. § 1677. 1865, No. 10, § 3. 64 Vt. 203.

2440. Payment of fine after appeal; effect. The respondent in a criminal cause appealed from the decision of a justice may, where the sentence is for fine and costs only, tender or pay to such justice the fine and costs at any time before such appeal is entered in court and within twenty-one days from the day of the judgment appealed from. The justice shall receive and enter the same on the records, which shall be a full satisfaction of the judgment.

P. L. § 2409. G. L. § 2582. 1915, No. 91, § 1. P. S. § 2298. 1906, No. 72, § 2. V. S. § 1938. R. L. § 1678. 1865, No. 10, § 2. 44 Vt. 363. 63 Vt. 537.

2441. Waiving appeal; effect. A respondent in a criminal cause appealed from the decision of a justice may, at any time before such appeal is entered in court and within twenty-one days from the day of the judgment appealed from, personally appear before the justice and waive his appeal. Thereupon the justice shall issue a warrant to carry the judgment into effect as if an appeal had not been taken.

P. L. § 2410. G. L. § 2583. P. S. § 2299. 1906, No. 72, § 3. V. S. § 1939. 1886, No. 50.

Binding Over to County and Municipal Courts.

2442. Powers as to. A justice or municipal court may cause a person charged with a crime, exceeding its jurisdiction to try and determine, to be apprehended and committed to jail or bound over with sufficient sureties by way of recognizance, for his appearance before the county court within the county in which such cause is triable, to answer to such information or indictment as may be brought against him. However, if the proceedings are before a justice, and there is a municipal court within the county having jurisdiction to try and determine the cause, the respondent shall be bound over to such court to appear on the last Wednesday of the month next following, to answer to such complaint or information as may be brought against him, and from day to day thereafter. If there is not a municipal court within the county, the respondent shall be bound over to the county court as herein provided.

P. L. § 2411. G. L. § 2584. 1917, No. 254, § 2545. 1915, No. 91, §§ 1, 8. P. S. § 2300. 1898, No. 43, § 2. V. S. § 1940. R. L. § 1679. G. S. 31, § 6. R. S. 26, § 2. 1830, No. 2, § 1. R. 1797, p. 413, § 2. 1789, p. 9. R. 1787, p. 84. 82 Vt. 37. 90 Vt. 150.

2443. Copy of record to be filed. In such cases, the justice or municipal court shall file with the clerk of the county court, if the respondent is bound over to such court, the evidence taken by him and a certified copy of the records and process in the cause within thirty days after the trial or examination, but if there are not thirty days before the next term of the county court, then on the first day of the term. If the respondent is bound over to a municipal court, the justice shall file such copy with the judge or clerk of such court within ten days after the trial or examination.

P. L. § 2412. G. L. § 2585. 1917, No. 254, § 2546. P. S. § 2301. V. S. § 1941. R. L. §§ 1672, 1680. 1880, No. 119, § 10. G. S. 31, § 7. R. S. 26, § 3. 1826, No. 6.

2444. Respondent may waive examination. A person arrested and brought before a justice or municipal court and charged with an offense exceeding the jurisdiction of such court to try and determine, may waive examination. He shall thereupon be committed to jail or bound over as provided in section 2442.

P. L. § 2413. G. L. § 2586. P. S. § 2302. 1902, No. 46, § 1.

Sureties of Peace, and on Continuance.

2445. Sureties of the peace. A justice or municipal court may order a person who is arrested for a criminal offense, to find sureties that he will keep the peace, when it is necessary, and may commit him to jail until he complies.

P. L. § 2414. G. L. § 2587. 1908, No. 62. P. S. § 2304. V. S. § 1943. R. L. § 1682. G. S. 31, § 12. R. S. 26, § 6.

2446. Bail, when hearing postponed. When a justice or municipal court postpones the trial of a criminal cause or the examination of a person charged with a criminal offense which is bailable, the court may take security of the person by way of recognizance to the state, for his appearance before the court on the day to which the trial or examination is postponed.

P. L. § 2415. G. L. § 2588. 1910, No. 89, § 3. 1908, No. 62. P. S. § 2305. V. S. § 1944. R. L. § 1683. G. S. 31, § 13. R. S. 26, § 21. R. 1797, p. 423, § 20. 85 Vt. 484.

Search Warrants.

2447. Search warrants; daytime; nighttime. For the purpose of procuring evidence of a crime, a justice of the peace or a municipal judge may issue a warrant for searching in the daytime, or two justices of the peace or a municipal judge may issue a warrant for searching in the nighttime, a dwelling house or other place in the following cases:

I. To search for and seize personal property, stolen, embezzled or obtained by false tokens, where such property is alleged to be concealed; or

II. To search for and seize a person against whom a warrant for a criminal offense has been issued, when such person is believed to be secreted; or

III. To search a house of ill fame for the purpose of getting evidence of prostitution; or

IV. To search for and seize counterfeit coin, forged or counterfeit bank bills or notes, forged or counterfeit public or corporate securities and the tools and materials for such forgery or counterfeiting, when the discovery of such articles may tend to convict a person of a criminal offense; or

V. To search for and seize gaming implements and apparatus when the discovery of such articles may tend to convict a person of a criminal offense; or

VI. To search for and seize obscene books, pictures, figures or descriptions when the discovery of such articles may tend to convict a person for a criminal offense; or

VII. To search for and seize lottery tickets or materials for a lottery when the discovery of such articles may tend to convict a person of a criminal offense; or

VIII. To search for and seize fish, quadrupeds or birds protected by chapters 279 and 280 and believed to have been taken unlawfully, or implements or devices for taking such fish, quadrupeds, or birds, subject to seizure or unlawfully possessed, when the discovery of such fish, game, implements or devices may tend to convict a person of an offense; or

IX. To search for and seize implements, devices, tools, materials, or any other personal property alleged to have been used in the commission of, or which may constitute evidence of, a crime.

1935, No. 53, § 1. P. L. § 2416. G. L. § 2589. 1908, No. 62. P. S. § 2315. 1896, No. 35, § 1. V. S. § 1954. R. L. § 1693. 1870, No. 5, § 11. G. S. 31, § 14. R. S. 26, § 69. R. 1797, p. 138, § 8. R. 1797, p. 171, § 32. R. 1787, p. 140.

2448. Oath. Such search warrant shall not be granted except upon the oath of the attorney general, a state's attorney, grand juror or some creditable person, that he has reason to suspect and does suspect that a person against whom a warrant for a criminal offense has been issued is secreted in the house or place to be searched, that the house or place to be searched is a house of ill fame resorted to for the purpose of prostitution, that property which has been stolen, embezzled or obtained by false tokens or any of the articles, fish, quadrupeds or birds mentioned in the preceding section are concealed in a particular house or place or that the discovery of such article, fish, quadrupeds, birds or implements, devices, tools, materials or any personal property suspected to have been used in the commission of a crime might upon discovery of the same tend to convict a person of a criminal offense.

1935, No. 53, § 2. P. L. § 2417. G. L. § 2590. P. S. § 2316. R. 1906, § 2212. V. S. § 1955. R. L. § 1694. G. S. 31, § 15. R. S. 26, § 70. R. 1797, p. 171, § 32.

2449. Fees paid by state, when. When the state's attorney of a county or the grand juror of a town in which a search is to be made, under the provisions of the two preceding sections, applies for such a warrant or certifies in writing on the warrant that the search ought to be made, the fees for such warrant and the service thereof shall be paid by the state.

P. L. § 2419. G. L. § 2592. P. S. § 2318. V. S. § 1957. 1890, No. 51, § 1. 72 Vt. 55.

Justices to Make Report to Town Treasurer.

2450. Fines and penalties. Annually, on or before February 10, a justice shall deliver an abstract of the fines and penalties imposed by him in the preceding year, ending January 31, to the treasurer of the village, town or county to which the fine or penalty belongs, with the name of the person to whom the execution or warrant for the collection of the same was delivered. On failure so to do, such justice shall forfeit to the use of such village, town or county a sum equal to the fine or penalty, to be recovered in an action of tort on this statute.

P. L. § 2420. G. L. § 2593. 1917, No. 254, § 2554. P. S. § 2319. R. 1906, § 2215. V. S. § 1958. R. L. § 1696. G. S. 31, §§ 2, 3. 1854, No. 8, § 2. R. S. 26, §§ 66, 67. R. 1797, p. 429, § 30. R. 1787, p. 71.

2451. Statistics and costs. Within ten days after the trial, a justice shall furnish to the treasurer of the town liable to pay the costs of prosecution, a written statement of criminal prosecutions tried by him. Such statement shall contain the name of the person prosecuted, his offense and sentence, the name of the prosecuting officer, the officer making the arrest, the witnesses, and the fees due each. It shall also contain a description of the orders and the amount thereof drawn by him in such prosecution.

P. L. § 2421. G. L. § 2594. 1917, No. 254, § 2555. P. S. § 2320. V. S. § 1959. R. L. § 1697. 1876, No. 72. G. S. 31, § 4. 1860, No. 47, § 1.

2452. Penalty. A justice who does not comply with the provisions of the preceding section shall be fined $5.00.

P. L. § 2422. G. L. § 2595. 1917, No. 254, § 2556. P. S. § 2321. V. S. § 1960. R. L. § 1698. G. S. 31, § 5. 1860, No. 47, § 2.

Questions of Law in Supreme Court.

2453. Appeal, stay of sentence. After a verdict of guilty is returned and upon motion of the respondent, questions of law decided by the county court arising upon demurrer, trial by jury or motion in arrest, in a prosecution by information or indictment for a crime or misdemeanor, shall be allowed and placed upon the record, and the same shall thereupon pass to the supreme court for final decision. Judgment, sentence and execution shall be respited and stayed in all causes where the respondent has been convicted of a misdemeanor and in capital causes, and in other causes only at the discretion of the court.

1937, No. 47, § 1. P. L. § 2423. G. L. § 2596. P. S. § 2322. V. S. § 1961. R. L. § 1699. G. S. 30, § 93. 1856, No. 9. R. S. 25, §§ 64, 65. 1828, No. 2, § 1. 60 Vt. 90. 65 Vt. 1. 66 Vt. 134. 66 Vt. 356. 86 Vt. 479. 89 Vt. 326. 89 Vt. 490. 90 Vt. 65. 199 U. S. 425.

2454. Recognizance. Whenever a person charged with or convicted of a misdemeanor is able to furnish sufficient sureties, such person shall not be confined in jail, but his recognizance shall be taken as provided by law and he shall be released from custody, provided that such recognizance is taken before such cause is finally determined by expiration of the time for taking or entering an appeal or for filing exceptions, or by final entry in supreme court or otherwise.

1937, No. 47, § 2.

2455. Proceeding in supreme court. If, upon the inspection of the record in a cause where judgment, sentence and execution have been respited and stayed, the supreme court is of opinion that judgment ought to be rendered upon the verdict, it shall render judgment and sentence thereon and cause execution thereof to be done. When the county court has passed judgment and sentence upon the verdict of the jury, and the supreme court does not find an error in the proceedings of the county court, it shall adjudge that the exceptions be overruled. If it finds error, the judgment and sentence of the county court shall be reversed and judgment of acquittal rendered by the supreme court, or the cause remanded to the county court for a new trial.

P. L. § 2424. 1933, No. 35, § 1. G. L. § 2597. P. S. § 2324. V. S. § 1963. R. L. § 1700. G. S. 30, § 94. R. S. 25, § 66. 1828, No. 2, § 1. 1816, p. 126. 66 Vt. 134. 66 Vt. 356. 86 Vt. 479.

2456. Exceptions to supreme court; remand. In a prosecution by complaint, information or indictment for a felony or misdemeanor, upon exceptions taken by the state, questions of law decided against the state by a county or municipal court shall be allowed and placed upon the record before final judgment. When such exceptions are so taken and allowed, in its discretion such court may pass the same to the supreme court before final judgment. The supreme court shall hear and determine the questions upon such exceptions and render final judgment thereon, or remand the cause to such county or municipal court for further trial or other proceedings, as justice and the state of the cause may require.

P. L. § 2425. G. L. § 2598. 1912, No. 96, §§ 1, 2. 92 Vt. 477. 93 Vt. 304. 109 Vt. 349. 110 Vt. 361. 113 Vt. 34. 114 Vt. 292.

2457. May be heard in absence of respondent. The supreme court, in its discretion, may hear questions of law for final decision in such court in the absence of the respondent.

P. L. § 2426. G. L. § 2599. 1912, No. 95. P. S. § 2323. V. S. § 1962. 1892, No. 28, § 6.

2458. Bail forfeited in supreme court. When a respondent forfeits his bail after conviction in a municipal or county court and after going at large upon bail for his appearance before the supreme court, the supreme court shall render judgment that the bonds are forfeited, adjudge that the respondent has waived his exceptions and order the cause to be remanded to the court for sentence or such further proceedings as the law requires.

P. L. § 2427. G. L. § 2[illegible] 1917, No. 254, § 2561. P. S. § 2325. V. S. § 1964. 1882, No. 87.

2459. No writ of error. A writ of error shall not be allowed in a criminal cause prosecuted by complaint, information or indictment.

P. L. § 2428. G. L. § 2601. P. S. § 2326. V. S. § 1965. R. L. § 1701. G. S. 30, § 95. R. S. 25, § 67. 1828, No. 2, § 1.

Proceedings in Case of Insanity.

2460. Commitment for observation. If a person is indicted or informed against for a criminal offense or is committed to jail on a criminal charge by a justice or municipal court, and a plea of insanity is made in court, or if the judge is satisfied that a plea of insanity will be made, the presiding judge of the county court before whom the person is to be tried, or any municipal, or superior judge in term time or in vacation, may order the person into the care of the superintendent of the Vermont state hospital, to be detained and observed by the superintendent until further order of such judge, or of such county court, that the truth or falsity of such plea may be ascertained.

1939, No. 52, § 1. P. L. § 2429. G. L. § 2602. 1917, No. 254, § 2563. P. S. § 2327. 1898, No. 48, § 1. 73 Vt. 205.

2461. When person is not indicted because insane; confinement. When a person held in prison on a charge of having committed a criminal offense is not indicted by the grand jury by reason of insanity, the grand jury shall so certify to the court. If in such case the discharge or going at large of the insane person is considered by the court dangerous to the community, the court may order him confined in the county jail, or in the Vermont state hospital, or some other suitable place at his own expense, if he has estate sufficient for that purpose, and if not, at the expense of the state.

P. L. § 2430. G. L. § 2603. P. S. § 2328. V. S. § 1966. 1894, No. 65. 1888, No. 55. 1884, No. 50. R. L. § 1702. G. S. 120, § 23. 1842, No. 27. R. S. 102, § 15. 1825, No. 7, §§ 1, 2. 84 Vt. 363.

2462. On acquittal by reason of insanity; confinement. When a person, who has been tried on a complaint, information or indictment for a criminal offense, is acquitted by the jury by reason of insanity, the jury, in giving its verdict of not guilty, shall state that it is given for such cause. In such case, if the discharge or going at large of the insane person is considered dangerous to the community, the court, in its discretion, may order him to be confined in the state prison, or in the Vermont state hospital, or in some other suitable place, on such terms as the court directs, and at his own expense, if he has sufficient estate for that purpose, and if not, at the expense of the state.

P. L. § 2431. G. L. § 2604. 1910, No. 90. P. S. § 2329. V. S. § 1967. 1884, No. 50. R. L. § 1703. G. S. 120, § 21. 1841, No. 12, § 1. R. S. 102, § 16. 1825, No. 7, §§ 1, 2. 113 Vt. 414.

2463. Same; change of place of confinement. Upon hearing, after twelve days' notice to the state's attorney of the county in which the case was tried, for good cause shown, a superior judge may order a change of the place of confinement of a person confined under the provisions of the preceding section.

P. L. § 2432. G. L. § 2604. 1910, No. 90. P. S. § 2329. V. S. § 1967. 1884, No. 50. R. L. § 1703. G. S. 120, § 21. 1841, No. 12, § 1. R. S. 102, § 16. 1825, No. 7, §§ 1, 2.

2464. Petition for discharge. A person confined under an order of court, pursuant to the three preceding sections, shall be discharged from confinement only by order of the county court for the county in which the order for confinement was made, upon petition therefor, returnable to such court, and served upon the state's attorney for that county within twenty-one days from the date of issuing the same. The state's attorney shall enter his appearance therein not later than twenty-one days after the date of the service thereof. This section shall not affect the right of a person so confined to sue out a writ of habeas corpus.

1945, No. 29, § 29. P. L. § 2433. G. L. § 2605. P. S. § 2330. V. S. § 1968. 1882, No. 49, §§ 1, 9. 113 Vt. 414.

2465. Same; by state board. If the person has no estate, the petition may be brought in his behalf by the state board of mental health at the expense of the state. In such case, recognizance for costs shall not be required.

P. L. § 2434. G. L. § 2606. P. S. § 2331. V. S. § 1969. 1882, No. 49, § 2.

2466. Witness for respondent at expense of state, when. If it appears to the court that the person is for reasons of poverty unable to procure the attendance of witnesses in his behalf, it may order such witnesses subpoenaed at the expense of the state as it deems necessary to secure the petitioner an impartial hearing. The witnesses shall be paid as in other state causes.

P. L. § 2435. G. L. § 2607. P. S. § 2332. V. S. § 1970. 1882, No. 49, §§ 3, 8. 113 Vt. 414.

2467. Court may order respondent produced. Such court may issue an order, directed to any sheriff or constable in the state, commanding him to bring the person before the court for hearing. The officer executing the order shall deliver an attested copy thereof to the custodian of the person, who shall thereupon surrender him to the officer.

P. L. § 2436. G. L. § 2608. P.S. § 2333. V. S. § 1971. 1882, No. 49, § 4. 113 Vt. 414.

2468. Hearing; discharged or recommitted. On hearing, if it appears that the person has become sane, and the court considers that his release or going at large is not dangerous to the community, it shall order his discharge from confinement. Otherwise the petition shall be dismissed and the person, if before the court, shall be recommitted to the place of confinement from which he was brought.

P. L. § 2437. G. L. § 2609. P. S. § 2334. V. S. § 1972. 1882, No. 49, § 5. 113 Vt. 414.

2469. Costs. On hearing, if it appears that the person has sufficient estate, in its discretion and upon dismissing the petition, the court may award costs against such estate and issue execution therefor.

P. L. § 2438. G. L. § 2610. P. S. § 2335. V. S. § 1973. 1882, No. 49, § 6.

2470. Change of terms of confinement; petition. When a person acquitted of a criminal offense because of his insanity is confined by order of the court, such court may thereafter alter the terms on which the person is confined, upon petition therefor returnable to the court and served upon the state's attorney for the county in which the order was made, at least twelve days before the return date thereof.

P. L. § 2439. G. L. § 2611. P. S. § 2336. V. S. § 1974. 1882, No. 49, § 7.

Miscellaneous.

2471. Trial for murder; conviction may be for what. Under an indictment for murder, the respondent may be convicted of murder in the first degree, murder in the second degree or of manslaughter, as the case may be, upon the proofs.

P. L. § 2440. G. L. § 2612. P. S. § 2337. V. S. § 1975. R. L. § 1704. 1880, No. 18, § 2. G. S. 120, § 12. R. S. 102, § 7. 1818, p. 21. R. 1797, p. 175, § 41. 53 Vt. 560. 58 Vt. 457. 85 Vt. 115.

2472. Same; burglary or robbery. A person arraigned and tried for murder may be convicted of manslaughter, if the jury finds that offense proved. A person arraigned and tried for burglary or robbery may be convicted of larceny, if the jury finds that offense proved.

P. L. § 2441. G. L. § 2613. P. S. § 2338. V. S. § 1976. R. L. § 1705. G. S. 120, § 12. R. S. 102, § 7. 1818, p. 21. R. 1797, p. 175, § 41. 53 Vt. 560. 110 Vt. 1.

2473. Several indicted for jointly receiving stolen goods; one or more may be convicted. On trial of two or more persons upon complaint, information or indictment, for jointly buying, receiving or aiding in the concealment of stolen property, knowing the same to be stolen, if it is proved that one or more of the persons separately bought, received or aided in the concealment of any of such property, the jury may convict such of the persons as are proved to have bought,

received or aided in the concealment of any part of such property, knowing the same to have been stolen.

P. L. § 2442. G. L. § 2614. P. S. § 2339. V. S. § 1977. R. L. § 1706. 1870, No. 5, § 4.

2474. Allegations of ownership; extent of proof to support. In the prosecution of an offense committed upon, or in relation to, or in any way affecting real estate, or an offense committed in stealing, embezzling, injuring or fraudulently receiving or concealing money or other personal estate, it shall be sufficient and not deemed a variance if it is proved on trial that, at the time when the offense was committed, the actual or constructive possession, or the general or special property in whole or in part of such real or personal estate was in the person alleged in the complaint, information or indictment to be the owner thereof.

P. L. § 2443. G. L. § 2615. 1917, No. 254, § 2576. P. S. § 2340. V. S. § 1978. R. L. § 1707. G. S. 120, § 18. R. S. 102, § 13. 64 Vt. 405. 89 Vt. 148.

2475. Intent to defraud, allegation and proof. When an intent to defraud is required to constitute a criminal offense, it shall be sufficient to allege in the complaint, information or indictment an intent to defraud, without naming the person or body corporate intended to be defrauded. On trial it shall be sufficient and shall not be deemed a variance if there appears to have been an intent to defraud the United States, a state, county, town, city, district, a body corporate, a public officer in his official capacity, a partnership or members thereof or a person.

P. L. § 2444. G. L. § 2616. P. S. § 2341. V. S. § 1979. R. L. § 1708. G. S. 114, § 8. R. S. 96, § 8.

2476. Conviction of theft need not be averred or proved in certain prosecutions. In a prosecution for buying, receiving or aiding in the concealment of money or other property known to have been stolen, it shall not be necessary to aver nor on trial to prove that the person who stole the property has been convicted.

P. L. § 2445. G. L. § 2617. P. S. § 2342. V. S. § 1980. R. L. § 1709. G. S. 113, § 17. R. S. 95, § 9.

2477. Respondent on trial ordered into custody, when. On the trial of a person on information or indictment for a felony, the court, in its discretion, may order the person into custody, to be retained in discharge of his recognizance.

P. L. § 2446. G. L. § 2618. P. S. § 2343. V. S. § 1981. 1890, No. 30. R. L. § 1710. G. S. 30, § 84. R. S. 25, § 57. 1805, p. 144. 73 Vt. 149.

2478. Witnesses examined separately, when. On the trial of a person for a criminal offense or on the examination of a person charged therewith before a justice's or municipal court, on the request of the prosecuting attorney or the party accused, the court shall have the witnesses examined separately and apart from each other.

P. L. § 2447. G. L. § 2619. 1908, No. 62. P. S. § 2344. V. S. § 1982. R. L. § 1711. G. S. 30, § 85. R. S. 25, § 58. 50 Vt. 316. 58 Vt. 378. 61 Vt. 153.

2479. Expert evidence. To prevent a failure of justice, a superior judge or the attorney general may order an examination to be made by an expert or experts, either within or without the state, in the investigation of a crime supposed to have been committed within the state. Such order shall be made only on the petition of the state's attorney for the county in which the crime is supposed to have been committed, setting forth the facts because of which the order is applied for, and verified by affidavit, and shall name the expert or experts by whom the examination is to be made, and limit the expense of the examination. Such expense shall be paid in the manner provided for the payment of witness fees in state causes in the county court.

P. L. § 2448. G. L. § 2620. P. S. § 2345. 1906, No. 63, § 33. 1904, No. 58, § 3. V. S. § 1983. 1882, No. 101, § 3.

2480. Autopsy. To prevent a failure of justice, upon the petition of the state's attorney, a superior judge or the attorney general may order an autopsy to be made in the preparation of a state cause for trial in any court, and fix the compensation therefor, not to exceed $25.00.

P. L. § 2449. G. L. § 2621. P. S. § 2346. 1906, No. 63, § 33. 1904, No. 58, § 3. V. S. § 1984. 1886, No. 94, § 2.

CHAPTER 113.

UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES.

2481. Definitions. As used in this chapter, "action" shall include any proceeding or investigation by a grand jury commenced or about to be commenced, or any action, prosecution or proceeding; "witness" shall include a person whose testimony is desired in any such action; and the word "state" shall include any territory of the United States and District of Columbia.

1937, No. 46, § 1.

2482. Summoning witnesses in this state to testify in another state; certificate; notice of hearing. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in an action in this state, certifies under the seal of such court that there is such action pending in such court, that a person being within this state is a material witness in such action, and that his presence will be required for a specified number of days, upon presentation of such certificate to any superior judge or a judge of a municipal court in the county in which such person is, such judge shall fix a time and place for a hearing in such county and shall notify the witness thereof by an order stating the purpose of the hearing and directing him to appear therefor at a time and place certain.

1937, No. 46, § 2.

2483. Same; hearing, summons. If at such hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in such action in the other state, and that the laws of the state in which such action is pending will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the action is pending at a time and place specified in the summons. In such hearing the certificate shall be prima facie evidence of all the facts stated therein.

1937, No. 46, § 3.

2484. Same; arrest; recognizance. If such certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may direct, in lieu of notification of the hearing, that such witness be forthwith brought before him for such hearing. If at such hearing the judge is satisfied as to the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, he may order, in lieu of issuing subpoena or summons, that such witness be taken forthwith into custody and delivered to an officer of the requesting state, provided however, that a witness so taken into custody may enter into recognizance for such attendance as provided in section 2415.

1937, No. 46, § 4.

2485. Same; penalty. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile and $10.00 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the

summons, he shall be imprisoned not more than two years or fined not more than $1,000.00, or both.

1937, No. 46, § 5.

2486. Witness from another state summoned to testify in this state. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in an action in this state, is a material witness in such action pending in a court of record in this state, a superior judge or a judge of a municipal court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Such certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. Such certificate shall be presented to a judge of a court of record of the state in which the witness is found.

1937, No. 46, § 6.

2487. Same; fees; penalty. If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where such action is pending and $10.00 a day for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for in section 2485.

1937, No. 46, § 7.

2488. Exemption from arrest and service of process. If a person comes into this state in obedience to a summons directing him to attend and testify in such action in this state, he shall not, while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance under the summons.

1937, No. 46, § 8.

2489. Same. If a person passes through this state while going to another state in obedience to a summons to attend and testify in such action in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

1937, No. 46, § 9.

2490. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

1937, No. 46, § 10.

2491. Construction. If any part of this chapter is for any reason declared void, such invalidity shall not affect the validity of the remaining portions thereof.

1937, No. 46, § 13.

2492. Citation. This chapter may be cited as the Uniform Act to Secure the Attendance of Witnesses from without the State in Criminal Cases.

1937, No. 46, § 11.

CHAPTER 114.

LIMITATION OF CRIMINAL PROSECUTIONS AND ACTIONS ON PENAL STATUTES.

2493. Felonies and misdemeanors in general. Prosecutions for a felony or misdemeanor, other than larceny, robbery, burglary, forgery, arson and murder,

shall be commenced within three years after the commission of the offense, and not after.

P. L. § 2450. G. L. § 2622. P. S. § 2347. V. S. § 1985. R. L. § 1712. G. S. 62, § 1.
R. S. 57, § 1. R. 1797, p. 594, § 3. R. 1787, p. 91. 1 Tyl. 283.

2494. Larceny, robbery, burglary and forgery. Prosecutions for larceny, robbery, burglary and forgery shall be commenced within six years after the commission of the offense, and not after.

P. L. § 2451. G. L. § 2623. P. S. § 2348. V. S. § 1986. R. L. § 1713. G. S. 62, § 2.
R. S. 57, § 2. R. 1797, p. 594, § 3. R. 1787, p. 91.

2495. Proceedings begun after time limited, void. If a prosecution for a felony or misdemeanor, other than arson and murder, is commenced after the time limited by the two preceding sections, such proceedings shall be void.

P. L. § 2452. G. L. § 2624. P. S. § 2349. V. S. § 1987. R. L. § 1714. G. S. 62, § 3.
R. S. 57, § 3. R. 1797, p. 594, § 3. R. 1787, p. 91. 56 Vt. 111. 80 Vt. 510.

2496. If prosecutor has penalty. Actions upon a statute for a penalty or forfeiture given in whole or in part to a person who prosecutes for the same, shall be commenced within one year after the commission of the offense, and not after.

P. L. § 2453. G. L. § 2625. P. S. § 2350. V. S. § 1988. R. L. § 1715. G. S. 62, § 4.
R. S. 57, § 4. R. 1797, p. 593, § 1. R. 1787, p. 91.

2497. If state, county or town has penalty. Actions founded upon a statute for a penalty or forfeiture given in whole or in part to the state, county or town shall be commenced within two years after the commission of the offense, and not after, unless otherwise provided.

P. L. § 2454. G. L. § 2626. P. S. § 2351. V. S. § 1989. R. L. § 1716. G. S. 62, § 5.
R. S. 57, § 5. R. 1797, p. 593, § 1. R. 1787, p. 91. 43 Vt. 587.

2498. If party aggrieved has penalty. Actions upon a statute for a penalty or forfeiture given in whole or in part to the party aggrieved shall be commenced within four years after the commission of the offense, and not after.

P. L. § 2455. G. L. § 2627. P. S. § 2352. V. S. § 1990. R. L. § 1717. G. S. 62, § 6.
R. S. 57, § 6. 1808, p. 129. R. 1797, p. 593, § 1. R. 1787, p. 91. 19 Vt. 559. 55 Vt. 61. 80 Vt. 510.

2499. Prosecutions limited by other statutes. The six preceding sections shall not apply to an action, complaint, information or indictment limited by a statute to be commenced within a shorter or longer time than is prescribed in such sections.

P. L. § 2456. G. L. § 2628. P. S. § 2353. V. S. § 1991. R. L. § 1718. G. S. 62, § 7.
R. S. 57, § 7. R. 1797, p. 594, § 4.

2500. Time of exhibiting complaint to be minuted. At the time when a complaint, information or indictment is exhibited in a cause mentioned in this chapter, the clerk of the court or magistrate to whom it is exhibited shall make a minute thereon in writing, under his official signature, of the day, month and year when the same was exhibited.

P. L. § 2457. G. L. § 2629. P. S. § 2354. V. S. § 1992. R. L. § 1719. G. S. 62, § 8.
R. S. 57, § 8. R. 1797, p. 595, § 5. R. 1787, p. 91. 6 Vt. 282. 11 Vt. 650. 15 Vt. 435. 17 Vt. 145. 54 Vt. 503. 57 Vt. 369. 58 Vt. 722. 60 Vt. 618. 77 Vt. 258. 80 Vt. 510. 109 Vt. 217.

2501. Time of signing writ to be minuted. When an action is commenced in a cause mentioned in this chapter, the clerk or magistrate signing the writ shall enter upon it a minute of the day, month and year when the same was signed.

P. L. § 2458. G. L. § 2630. P. S. § 2355. V. S. § 1993. R. L. § 1720. G. S. 62, § 9.
R. S. 57, § 9. R. 1797, p. 595, § 5. R. 1787, p. 91. 1 Tyl. 345. 2 Tyl. 64. 2 Tyl. 85. 13 Vt. 275. 16 Vt. 604. 17 Vt. 48. 19 Vt. 559. 26 Vt. 178. 46 Vt. 90. 77 Vt. 258. 111 Vt. 403.

2502. Effect of omitting such minute. A complaint, information, indi ment or writ on which a minute of the day, month and year is not made, as provid by the two preceding sections, shall be dismissed on motion.

P. L. § 2459. G. L. § 2631. P. S. § 2356. V. S. § 1994. R. L. § 1721. G. S. 62, § 10. R. S. 57, § 10. R. 1797, p. 595, § 5. R. 1787, p. 91. 58 Vt. 722. 111 Vt. 403.

2503. Actions against moneyed corporations for penalty. The provisio of this chapter shall not apply to actions against moneyed corporations or agai the directors or stockholders thereof, to recover a penalty or forfeiture impos or to enforce a liability created by the act of incorporation or other law. Su actions shall be brought by the aggrieved party within six years after the discove of the facts upon which the penalty or forfeiture attached or by which the liabil was created.

P. L. § 2460. G. L. § 2632. P. S. § 2357. V. S. § 1995. R. L. § 1722. G. S. 62, § 11. R. S. 57, § 11.

CHAPTER 115.

NEW TRIALS IN CRIMINAL CAUSES.

2504. Provisions applicable; recognizance. The provisions for new tria in civil causes shall govern applications for new trials by respondents in crimin causes, except as hereinafter provided. The magistrate signing the citation may may not, in his discretion, require a recognizance for costs.

P. L. § 2461. G. L. § 2633. 1915, No. 1, § 97. P. S. § 2358. V. S. § 1996. R. L. § 1723. 69 Vt. 217. 77 Vt. 454. 100 Vt. 214.

2505. Petition in capital cases after time limited. When a person is co victed of a capital offense and sentenced to suffer the punishment of death, he ma bring a petition for a new trial at any time before execution of the sentence. Suc petition shall set forth the grounds for a new trial; and, if for newly discovered ev dence, the same shall be attached thereto, with a copy of the evidence taken at hi trial.

P. L. § 2462. G. L. § 2634. 1915, No. 1, § 98. P. S. § 2359. V. S. § 1997. R. L. § 1724. 1878, No. 19, § 1. 73 Vt. 380. 74 Vt. 478.

2506. Filing petition; staying execution; former adjudication as a bar. Such petition shall be presented to two justices of the supreme court who, upo examination thereof, shall determine whether it shall be filed, and shall certify thei determination thereon. If the petition is allowed to be filed, such justices shal make an order staying the execution of sentence until after the time fixed for hear ing the petition by the supreme court. An adjudication of a former petition shall not be a bar to a subsequent one based upon evidence discovered after the forme adjudication.

P. L. § 2463. G. L. § 2635. P. S. § 2360. V. S. § 1998. R. L. § 1725. 1878, No. 19, § 1. 73 Vt. 380.

2507. Appointing another time for execution. When the hearing on th petition does not take place until after the time appointed for execution, the cour hearing the petition shall appoint a time for executing sentence, and issue its order to the sheriff for that purpose in the event a new trial is refused.

P. L. § 2464. G. L. § 2636. P. S. § 2361. V. S. § 1999. R. L. § 1726. 1878, No. 19, § 2.

CHAPTER 116.

JUDGMENT AND EXECUTION IN CRIMINAL CAUSES.

Effect of Judgment.

2508. Sentence to successive terms of imprisonment. A person convicte of two or more offenses punishable by imprisonment in the state prison or house

number of dollars in the costs of prosecution, including the costs of detention and commitment.

1947, No. 202, § 8598. 1943, No. 152, § 1. P. L. § 8579. 1933, No. 157, § 8222. G. L. § 6987. 1915, No. 207. 1912, No. 234. P. S. § 5860. 1906, No. 200, § 8. 1902, No. 120, § 1. 1896, No. 106, § 1. V. S. § 4761. 1894, No. 75, § 1. R. L. § 3967. 1880, No. 43. 1878, No. 14, §§ 1, 5. 1864, No. 5. 79 Vt. 521. 80 Vt. 175.

8446. Jurisdiction. Justices shall have concurrent jurisdiction with county and municipal courts of offenses arising under sections 8444 and 8445.

P. L. § 8581. G. L. § 6987. 1915, No. 207. 1912, No. 234. P. S. § 5860. 1906, No. 200, § 8. 1902, No. 120, § 1. 1896, No. 106, § 1. V. S. § 4761. 1894, No. 75, § 1. R. L. § 3967. 1880, No. 43. 1878, No. 14, §§ 1, 5. 1864, No. 5. 79 Vt. 521. 80 Vt. 175.

8447. Costs paid by state. In prosecutions under sections 8444 and 8445, all costs shall be paid by the state and all fines and costs shall be paid to the state.

P. L. § 8582. G. L. § 6987. 1915, No. 207. 1912, No. 234. P. S. § 5860. 1906, No. 200, § 8. 1902, No. 120, § 1. 1896, No. 106, § 1. V. S. § 4761. 1894, No. 75, § 1. R. L. § 3967. 1880, No. 43. 1878, No. 14, §§ 1, 5. 1864, No. 5. 79 Vt. 521. 80 Vt. 175.

8448. Entering buildings; building fires; carrying weapons. A vagrant having entered a dwelling house or premises who persists in remaining against the will of the owner or occupant thereof, or kindles a fire in an outbuilding, schoolhouse or other public or unoccupied building, or on the lands, or in the public highway adjoining the lands, of any person between May 1 and December 1, without the consent of the owner or occupant thereof, or who is found carrying a firearm or other dangerous weapon, or threatens to injure persons or property, shall be imprisoned in the state prison not more than two years nor less than six months.

1947, No. 202, § 8602. P. L. § 8583. G. L. § 6988. 1917, No. 254, § 6801. 1915, No. 207. P. S. § 5861. V. S. § 4762. 1894, No. 75, § 2. R. L. § 3969. 1878, No. 14, § 3.

8449. Wilful injury; procuring food by threat or force. A vagrant who wilfully and maliciously injures the person or property of another, or procures, or attempts to procure, food, clothing or other property by threats or by force, shall be imprisoned in the state prison not more than five years nor less than one year.

1947, No. 202, § 8603. P. L. § 8584. G. L. § 6989. P. S. § 5862. V. S. § 4763. 1894, No. 75, § 3. R. L. § 3972. 1878, No. 14, § 4.

CHAPTER 369.

BREACHES OF THE PEACE AND DISTURBANCES.

Riots.

8450. Duties of officers. A justice, municipal judge, sheriff, deputy sheriff or constable having notice or knowledge of the unlawful, tumultuous or riotous assemblage of three or more persons within his jurisdiction, among or as near as he can safely come to such rioters, shall command them in the name of the state of Vermont immediately and peaceably to disperse. If after such command such rioters do not disperse, such officer or magistrate and such other person as he commands to assist him shall apprehend and forthwith take them before a justice or a municipal court.

P. L. § 8585. 1933, No. 157, § 8228. G. L. § 6990. 1908, No. 62. P. S. § 5863. V. S. § 5036. R. L. § 4221. G. S. 116, §§ 2, 3. R. S. 98, §§ 2, 3. 1821, pp. 8, 9. R. 1797, p. 183, §§ 15, 16. R. 1787, pp. 132, 133.

8451. Rioters refusing to disperse; penalty. Persons so unlawfully and riotously assembled who, after proclamation made, do not immediately disperse, and persons unlawfully and riotously assembled to the number of three or more who do an unlawful act against a man's person or property or against the public interest, and persons present at the place of an unlawful or riotous assemblage who, when commanded by a magistrate or officer to assist him or to leave the place of such riotous

the costs of detention and

5. 157, § 8222. G. L. § 6987.
1902, No. 120, § 1.
1880, No. 43.

it jurisdiction with county
8444 and 8445.

§ 5860. 1906, No. 200, § 8.
5, § 1. R. L. § 3967.
80 Vt. 175.

er sections 8444 and 8445,
s shall be paid to the state.

§ 5860. 1906, No. 200, § 8.
5, § 1. R. L. § 3967.
80 Vt. 175.

ing weapons. A vagrant
ts in remaining against the
in an outbuilding, school-
ands, or in the public high-
id December 1, without the
carrying a firearm or other
operty, shall be imprisoned
n six months.

§ 6801. 1915, No. 207.
8, No. 14, § 3.

or force. A vagrant who
of another, or procures, or
threats or by force, shall
s nor less than one year.
V. S. § 4763.

STURBANCES.

dge, sheriff, deputy sheriff
tumultuous or riotous as-
n, among or as near as he
the name of the state of
such command such rioters
person as he commands to
re a justice or a municipal

P. S. § 5863. V. S. § 5036.
R. 1797, p. 183, §§ 15, 16.

Persons so unlawfully and
immediately disperse, and
r of three or more who do
nst the public interest, and
semblage who, when com-
e the place of such riotous

assemblage, fails so to do, shall each be imprisoned not more than six months or fined not more than $100.00, or both.

P. L. § 8586. G. L. § 6991. P. S. § 5864. V. S. § 5037. R. L. § 4222. G. S. 116, §§ 4, 5.
R. S. 98, §§ 4, 5. 1821, p. 8. R. 1797, p. 183, § 15. R. 1787, p. 132.

8452. Hindering officer. A person who, with force and arms, wilfully and knowingly obstructs or in any manner hinders or hurts a person attempting to make proclamation against a riot, shall be punished as provided in the preceding section. Persons riotously assembled to whom proclamation would be made if the same were not hindered, who having knowledge of such hindrance do not immediately disperse, shall be imprisoned not more than six months or fined not more than $100.00.

P. L. § 8587. G. L. § 6992. P. S. § 5865. V. S. § 5038. R. L. § 4223. G. S. 116, §§ 8, 9.
R. S. 98, §§ 8, 9. 1821, p. 10. R. 1797, p. 184, § 18. R. 1787, p. 134.

8453. Officer killing resisting rioter, not liable. Officers, and persons assisting them, in lawfully dispersing or apprehending such rioters, shall not be liable in a civil or criminal proceeding if a rioter, by reason of his resistance, is killed or injured.

P. L. § 8588. G. L. § 6993. P. S. § 5866. V. S. § 5039. R. L. § 4224. G. S. 116, § 6.
R. S. 98, § 6. 1821, p. 10. R. 1797, p. 184, § 17. R. 1787, p. 133.

8454. Rioters injuring building or vessel. Persons riotously assembled who destroy or injure a dwelling house or other building, steamboat or vessel shall each be imprisoned in the state prison not more than five years and fined not more than $1,000.00 and be answerable to the person injured for the damages in an action of tort.

P. L. § 8589. G. L. § 6994. P. S. § 5867. V. S. § 5040. R. L. § 4225. G. S. 116, § 7.
R. S. 98, § 7.

Intimidation of Workmen.

8455. Threats to prevent employment. A person who threatens violence or injury to another person with intent to prevent his employment in a mill, manufactory, shop, quarry, mine, railroad or other occupation shall be imprisoned not more than three months or fined not more than $100.00.

P. L. § 8590. G. L. § 6995. P. S. § 5868. V. S. § 5041. R. L. § 4226. 1867 *S.*, No. 6, § 1.
59 Vt. 273. 67 Vt. 690.

8456. Same; to stop work. A person who, by threats, intimidation or by force, alone or in combination with others, affrights, drives away or prevents another person from accepting, undertaking or prosecuting such employment, with intent to prevent the prosecution of work in such mill, shop, manufactory, mine, quarry, railroad or other occupation, shall be imprisoned in the state prison not more than five years or fined not more than $500.00.

P. L. § 8591. G. L. § 6996. P. S. § 5869. V. S. § 5042. R. L. § 4227. 1867 *S.*, No. 6, § 2.
59 Vt. 273. 67 Vt. 690. 71 Vt. 1. 78 Vt. 364. 106 Vt. 183.

Conspiracy to Hold Certain Buildings.

8457. Conspiracy, penalty. If three or more persons conspire together or act in concert for the purpose and with the intent, forcibly and unlawfully to occupy, hold or possess any store, factory, mill, plant, garage, or any parts thereof, against the will and without the consent of the owner, lessee or management thereof, each person so offending shall be imprisoned not more than two years or fined not more than $1,000.00.

1937, No. 210, § 1.

Disturbances.

8458. Of the public peace. A person who disturbs or breaks the public peace by tumultuous and offensive carriage, by threatening, quarreling, challenging, as-

saulting, beating or striking another person shall be imprisoned not more than five years or fined not more than $1,000.00, or both.

P. L. § 8592. G. L. § 6997. P. S. § 5870. 1906, No. 200, § 8. 1898, No. 120, § 1. V. S. § 5043. R. L. § 4228. G. S. 116, § 1. R. S. 98, § 1. 1826, No. 14, § 1. 1821, p. 12. R. 1797, p. 187, § 21. 1788, p. 9. 1 Tyl. 180. 11 Vt. 236. 22 Vt. 321. 42 Vt. 542. 47 Vt. 290. 57 Vt. 576. 59 Vt. 548. 64 Vt. 25. 69 Vt. 98. 79 Vt. 521. 80 Vt. 175. 91 Vt. 88. 91 Vt. 507. 97 Vt. 461.

8459. Of a lawful meeting or school. A person who by a disorderly or unlawful act disturbs a town, society or district meeting, or a school, or any meeting lawfully assembled, or by force or menace interrupts the business of such meeting or school, shall be fined not more than $100.00.

P. L. § 8593. G. L. § 6998. P. S. § 5871. V. S. § 5044. R. L. § 4229. G. S. 116, § 10. 1854, No. 115. R. S. 98, § 10. 1821, p. 10. R. 1797, p. 185, § 19.

8460. Religious meetings. A person who wilfully disturbs or interrupts an assembly of people met together for religious worship or religious instruction by noisy, rude or indecent behavior, or by profane discourse, either within or without the place where such assembly is collected, or violates any prescribed rules or regulations for the government of such meetings shall be fined not more than $40.00 nor less than $5.00.

P. L. § 8594. G. L. § 6999. P. S. § 5872. V. S. § 5045. R. L. § 4231. G. S. 93, § 5. R. S. 82, § 5. 1827, No. 25, § 1, 1819, p. 20. R. 1797, p. 197, § 2. R. 1787, p. 134.

8461. By noise in nighttime; exception. A person who, between sunset and sunrise, disturbs and breaks the public peace by firing guns, blowing horns or other unnecessary and offensive noise shall be fined not more than $50.00. However, this section shall not prevent a person employing workmen, for the purpose of giving notice to his employees, from ringing bells or using whistles or gongs of such size and weight, in such manner, and at such hours as the selectmen of the town, the aldermen of the city or the trustees of the village may prescribe in writing.

P. L. § 8595. G. L. § 7000. P. S. § 5873. V. S. §§ 4699, 5046. 1890, No. 75. R. L. § 4234. G. S. 116, § 11. 1863, No. 9. 64 Vt. 25.

8462. Jurisdiction. Justices shall have concurrent jurisdiction with county and municipal courts of offenses arising under the four preceding sections, to the extent of fining the respondent $50.00 or sentencing him to imprisonment in the county jail for a period of not more than three months, or both.

P. L. § 8596. G. L. § 7001. P. S. § 5874. 1906, No. 188, § 1. V. S. § 5048. R. L. § 4235. 1863, No. 9. 57 Vt. 576. 74 Vt. 323. 82 Vt. 37.

8463. Of schools by persons over ten years. A person over ten years of age, not connected with the school, who annoys or disturbs a school by remaining at or near it, or by not departing on request of the teacher, school directors or prudential committee, shall be fined not more than $20.00.

P. L. § 8597. 1933, No. 157, § 8240. G. L. § 7002. 1915, No. 91, § 1. 1908, No. 62. P. S. § 5875. V. S. § 5049. R. L. § 4230. 1870, No. 60.

8464. Officers' powers and duties at religious meetings. A justice, municipal judge, sheriff and deputy sheriff of the county, and a constable and grand juror of the town, being present at the disturbance of a religious meeting, without warrant, upon view, may arrest a person so making disturbance, and detain him in custody during the time of such meeting, or until a trial of such offense is had. Such magistrate, sheriff, deputy sheriff, constable and grand juror may command assistance, in the execution of the aforesaid duties, as sheriffs by law may. Persons so commanded, who refuse to obey such command, shall be subject to the same penalties as persons who refuse to assist sheriffs in the discharge of their office and duty.

P. L. § 8598. G. L. § 7003. 1908, No. 62. P. S. § 5876. V. S. § 5050. R. L. § 4232. G. S. 93, § 6. R. S. 82, § 6. 1827, No. 25, § 1. 1819, p. 21.

8465. Limitation. Prosecutions for disturbing a religious meeting shall be commenced within thirty days after the commission of the offense, and not after.

P. L. § 8599. G. L. § 7004. 1910, No. 91, § 5. P. S. § 5877. V. S. § 5051. R. L. § 4233. G. S. 93, §§ 8, 9. R. S. 82, §§ 9, 10. 1827, No. 25, § 2. R. 1797, p. 198, § 7. R. 1787, p. 135.

Appendix 10

VERMONT STATUTES ANNOTATED

Titles 13 through 15
Title 16, sections 1 - 1690

PUBLISHED BY

EQUITY FOLLOWS THE LAW
PUBLISHING CORPORATION
ORFORD, NEW HAMPSHIRE, U.S.A.

Designed and Printed by
EQUITY PUBLISHING CORPORATION
Orford, New Hampshire, U.S.A.

Preface

VERMONT STATUTES ANNOTATED is the latest revision of the statute laws of Vermont. Here all of the general and permanent laws of the state are classified under a new analysis of titles and chapters. As thus prepared this publication will permit a system of continuous statutory revision that will eliminate the necessity and expense of periodical revision of the entire statutory law.

History. In 1955 the general assembly, by Joint Resolution No. R-55, authorized the appointment of a commission to negotiate a contract for a revision of the Vermont statutes. On December 31, 1955, the commission reported to the general assembly, suggesting a contract and bill to authorize the preparation of a new edition of the statutes. The commission's recommendations with minor changes became No. 91 of the Acts of 1957.

A statutory revision commission was appointed by the governor under the provision of No. 91 of the Acts of 1957, 1 V.S.A. §§ 1 – 9. On May 23, 1957, the commission contracted with Equity Publishing Corporation for the editing and publishing of Vermont Statutes Annotated. Work thereon began immediately.

Classification. In this revision the body of statutory law is divided into thirty-three titles, each covering a separate subject. The chapters and sections of each title are numbered independently of those in other titles. In each title the chapters are assigned odd numbers in consecutive order and section numbers are skipped at the end of each chapter. The purpose of doing so is to permit an orderly and systematic integration of laws in the future.

For ease of reference the first four titles cover general provisions and the three branches of the government. The remaining titles are arranged alphabetically.

Text of Statutes. Vermont Statutes Annotated contains all general and permanent provisions still in effect of the Vermont Statutes, Revision of 1947, and of the laws enacted by the general assembly from 1949 through 1957.

Under the supervision of the commission the editors examined each section of the law and prepared master classification cards

Other notes cover short titles and separability provisions. Notes concerning effective dates, appropriations, and temporary provisions have been inserted where these matters are of general and current interest.

Cross references are made to other important provisions affecting the same subject in this publication, the United States Code, and to Uniform Laws.

As a general rule, notes which apply to an entire title, chapter or subchapter have been inserted under the first section thereof.

Annotations. A valuable new feature of Vermont Statutes Annotated consists of annotations of court decisions construing and applying the law. The annotations are arranged in logical order under numbered catchlines. Sections with ten or more annotation catchlines are provided with indexes to the annotations. These several editorial aids should facilitate the user's access to this material.

The annotations cover opinions of the Vermont Supreme Court through 120 Vt. 268, 138 A.2d 425. Decisions of the federal courts construing Vermont laws are also included. These close with cases in 354 U.S. 393, 77 S. Ct. 1424, 1 L. Ed. 2d 1559; 245 F.2d 264; and 151 F. Supp. 848.

For the first time the opinions of the attorney general of Vermont are made readily available to the public in the form of annotations. These cover opinions from 1938 through May 8, 1958.

Court Rules. Rules of the supreme court, the county court, and the court of chancery, with annotations, are set out in an appendix to Title 12.

Tables. The last volume contains distribution tables through which all provisions of V.S. 1947 and subsequent acts can be easily located. A table of acts cited by popular names is also included.

Index. A general index covering all titles will be found in the last volume. Great care has been exercised in an effort to prepare a thorough and accurate subject-word index.

Upkeep Service. Vermont Statutes Annotated will be kept to date by means of regular cumulative pocket part supplementation. To this end these volumes have been bound with pockets in the

showing its complete history with respect to amendments and repeals. The analysis of titles and chapters was based upon this research.

The order of the sections was changed where this would improve the arrangement of subject matter. In some cases a section was divided, or two or more sections were consolidated. Lengthy paragraphs were also divided. A uniform system of numbering subsections, subdivisions, and paragraphs was adopted. Definitions were rearranged in alphabetical order. Obvious typographical errors in spelling and punctuation were corrected. The section catchlines, which are not considered a part of the text of the law, were rewritten in many cases for greater ease of reference.

All other changes in the text of the law are explained in revision notes under the sections affected. Such changes include the reconciliation of inconsistent provisions and the omission of provisions which are clearly obsolete or superseded.

Historical Documents and Constitutions. A history of Vermont revisions and compilations is set out preceding Title 1. This will be useful in identifying the prior revisions cited in source notes under the sections. Following this is the text of the declaration of independence and the articles of confederation.

The constitutions of the United States and the state of Vermont are also set out preceding Title 1. These constitutions are annotated and each is followed by an index. Under the United States constitution, the annotations consist of Vermont cases.

Prima Facie Evidence. Vermont Statutes Annotated is published under certificate of authenticity by the chairman of the commission. Under section 4 of 1957, No. 91, 1 V.S.A. § 4, this publication is entitled to admission in all courts of Vermont as prima facie evidence of the law, until such time as the general assembly shall act upon this matter.

Historical Notes. Source notes under each section show the statute from which it was derived and all amendments thereto. These are cited by year, act number, and section. In the case of special sessions, the year is followed by "S".

A new feature is the citation of repealed sections of V.S. 1947 and later acts as "Prior law" notes under the present section covering the same subject. Revision notes explain any change in the text of the section.

TITLE THIRTEEN

Crimes and Criminal Procedure

PART 1. CRIMES

PART 2. CRIMINAL PROCEDURE GENERALLY

PART 3. PROCEEDINGS BEFORE TRIAL

PART 4. TRIALS

PART 5. JUDGMENT AND PROCEEDINGS AFTER JUDGMENT

less than thirty days, or fined not more than $100.00 nor less than $10.00. The provisions of this section shall not affect the provisions of sections 507 and 3906 of this title.

Source. V.S. 1947, § 8291. 1947, No. 202, § 8444. P.L. § 8427. G.L. § 6857. 1908, No. 166.

§ 509. Attempts

The placing or distributing of any inflammable, explosive or combustible material or substance, or any device, in any building or property mentioned in sections 502–505 of this title in any arrangement or preparation with intent wilfully and maliciously to set fire to or burn the same, or to procure the setting fire to or burning of the same shall, for the purposes of this chapter, constitute an attempt to burn such building or property.

Source. V.S. 1947, § 8288. 1935, No. 202, § 5.

Chapter 13. Assaults

SECTION

§ 601. Assault with intent to kill by one armed

A person who, armed with a dangerous weapon, assaults another with intent to kill or murder shall be imprisoned in the state prison not more than thirty years.

HISTORY

Source. V.S. 1947, § 8268. P.L. § 8405. 1919, No. 196, § 1. G.L. § 6837. P.S. § 5732. V.S. § 4918. R.L. § 4119. G.S. 112, § 23. 1850, No. 18, § 1. R.S. 94, § 17. 1818, p. 8. R. 1797, p. 160, § 14.

Cross references. Breach of the peace by assaulting, beating, or striking another person, see § 1021 of this title.

ANNOTATIONS

1. **Minor offense included in major.** One indicted for an assault with an intent to commit murder could on trial be convicted of assault simply though indictment contained no count specially charging the minor offense. State v. Coy (1827) 2 Aik. 181.

2. **Sufficiency of indictment.** Although this section refers to intent "to kill or murder," there was no incongruity in embracing the two offenses in one

section in the alternative; each offense could be charged in a separate count in same indictment and there was no legal objection to charging both offenses in conjunctive in same count. State v. Reed (1868) 40 Vt. 603.

Upon an indictment for an assault, being armed with a dangerous weapon, with intent to kill and murder, respondent could legally be convicted of an assault, with intent to kill, without intent to murder being proved. Id.

3. Evidence. To rebut claim of respondent that person assaulted assumed a belligerent attitude towards him immediately before assault, it was admissible for state to show, not only that person assaulted did not assume such an attitude, but also that he had no intention of assaulting respondent, for this tended to make it less probable that he would assume such an attitude. State v. Lawrence (1898) 70 Vt. 524, 41 Atl. 1027.

§ 602. Assault with intent to kill or maim

Any person who shall assault another with intent to kill, or with intent to maim or disfigure his person in any of the ways mentioned in section 2701 of this title, shall be imprisoned in the state prison not more than ten years and fined not more than $1,000.00.

History

Source. V.S. 1947, § 8256. 1947, No. 202, § 8410. P.L. § 8391. G.L. § 6825. P.S. § 5720. V.S. § 4911. R.L. § 4118. G.S. 112, § 18. R.S. 94, § 14.

Annotations

1. Intent. The wicked and wilful intent to kill was an essential element of offense, and there must be a concurrence of both the act and intent to warrant a conviction. State v. Daley (1869) 41 Vt. 564.

Even though four persons were acting together with a common purpose of resisting arrest, fact that one of them shot officer in execution of that design and with intent to kill, while others were present assisting in assault, did not make others guilty of an assault with intent to kill unless they had the same intent; it would doubtless be otherwise if they were acting upon a common understanding that they would do whatever might be necessary to avoid arrest. State v. Taylor (1896) 70 Vt. 1, 39 Atl. 447, 16 B.U.L. Rev. 603, 622, 26 B.U.L. Rev. 142.

There is a well recognized distinction between an assault with intent to murder, and an assault with intent to kill; in former case proof must be such as shows that if death had been caused by assault, assailant would have been guilty of murder; and in latter case proof need only be such as that had death ensued, crime would have been manslaughter; in former case intent must be result of malice aforethought, and in latter, the result of sudden passion or emotion without time for deliberation or reflection. State v. Reed (1868) 40 Vt. 603.

2. Sufficiency of indictment. Indictment charging an assault with the "wicked, wilful and malicious intent to kill and slay," and in other respects in the language of statute, but not alleging that it was with felonious intent, was sufficient. State v. Daley (1869) 41 Vt. 564.

Where information charged that respondent committed assault with "wicked, wilful, malicious and felonious" intent to kill, failure to instruct on the question of respondent's wilfulness and maliciousness was not erroneous, since addition of the words "wilful" and "malicious" in information added nothing to state's burdens. State v. Gomez (1915) 89 Vt. 490, 96 Atl. 190.

§ 603. Assault and robbery by one armed

A person who assaults another and feloniously robs, steals and takes from his person money or other property, the subject of larceny, being armed with a dangerous weapon, with intent if resisted to kill or maim the person robbed, shall be imprisoned in the state prison not more than twenty years and fined not more than $1,000.00.

History

Source. V.S. 1947, § 8265. 1947, No. 202, § 8419. P.L. § 8400. G.L. § 6832. P.S. § 5727. V.S. § 4913. R.L. § 4113. G.S. 112, § 22. R.S. 94, § 16. 1818, p. 8. R. 1797, p. 160, § 14. R. 1787, p. 68.

Cross references. Conviction of larceny in robbery prosecution, see § 2507 of this title.

Disposition of property upon arrest for larceny or robbery, see § 2506 of this title.

Annotations

1. Intent. Evidence of confederate's intent to use unloaded revolver of considerable weight as club if resisted in course of holdup was not sufficient to warrant finding beyond reasonable doubt of intent to maim victim where revolver was not in fact so used. State v. Deso (1938) 110 Vt. 1, 1 A.2d 710, 26 B.U.L. Rev. 137.

2. Taking from person. Requirement of taking from the person was satisfied by taking from his presence. State v. Deso (1938) 110 Vt. 1, 1 A.2d 710, 26 B.U.L. Rev. 137.

A thing is in presence of person in respect to robbery, which is so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession. Id.

3. Information. In prosecution for assault and robbery while armed with dangerous weapon, failure to allege in information ownership of money or property taken is amendable. State v. Deso (1938) 110 Vt. 1, 1 A.2d 710, 26 B.U.L. Rev. 137.

4. Minor offense included in major. Supreme court would assume, where no faults were pointed out, that information, admitted by respondent to be sufficient to charge assault and robbery while armed with dangerous weapon, with intent to maim if resisted, also included all lower degrees of offenses of like nature, including simple assault. State v. Deso (1938) 110 Vt. 1, 1 A.2d 710, 26 B.U.L. Rev. 137.

In prosecution for assault and robbery while armed with dangerous weapon, with intent to maim if resisted, evidence that respondent's confederate, in respondent's presence, stuck unloaded revolver in victim's ribs, would be sufficient to make respondent guilty of a battery and so to sustain his conviction for simple assault. Id.

In criminal prosecution, where according to evidence respondent's confederate held up storekeeper by sticking unloaded revolver in his ribs, while respondent took money from cash register, respondent could have been convicted, both as principal and as aiding and abetting, of all degrees of robbery and attempt to rob described in statutes, except the highest — robbery while armed with dangerous weapon with intent if resisted to kill or maim — and of larceny and simple assault. Id.

§ 604. Assault and robbery by one not armed

A person who, not being armed with a dangerous weapon, by force or by assault and putting in fear, feloniously robs, steals and takes from the person of another, money or other property, the subject of larceny, shall be imprisoned in the state prison not more than ten years nor less than three years.

Source. V.S. 1947, § 8266. P.L. § 8401. G.L. § 6833. P.S. § 5728. V.S. § 4914. R.L. § 4114. G.S. 112, § 26. R.S. 94, § 19. 1818, p. 8. R. 1797, p. 160, § 14. R. 1787, p. 68.

§ 605. Assault with intent to rob by one armed

A person who, armed with a dangerous weapon, assaults another with intent to rob shall be imprisoned in the state prison not more than ten years nor less than three years.

HISTORY

Source. V.S. 1947, § 8267. P.L. § 8402. G.L. § 6834. P.S. § 5729. V.S. § 4915. R.L. § 4115. G.S. 112, § 24. R.S. 94, § 17. 1818, p. 8. R. 1797, p. 160, § 14.

ANNOTATIONS

1. Dangerous weapon. In ordinary case of aggravated assault dangerous weapon is weapon which in way it is used or attempted to be used may endanger life or inflict great bodily harm, and whether revolver used as bludgeon is dangerous weapon depends upon its size, weight and manner of using it. State v. Deso (1938) 110 Vt. 1, 1 A.2d 710, 26 B.U.L. Rev. 137.

§ 606. Assault with intent to rob, by one not armed

A person who, not being armed with a dangerous weapon, shall assault another with force and with intent to steal or rob shall be imprisoned in the state prison not more than seven years nor less than two years.

HISTORY

Source. V.S. 1947, § 8269. P.L. § 8403. P.S. § 5730. V.S. § 4916. R.L. § 4116. G.S. 112, § 25. R.S. 94, § 18. 1818, p. 8.

ANNOTATIONS

1. Force. In cases of robbery and assault with intent to rob, offense committed or attempted to be committed is independent of the assault and may as well be accomplished by intimidation as by force. State v. Deso (1938) 110 Vt. 1, 1 A.2d 710, 26 B.U.L. Rev. 137.

To sustain criminal complaint for assault, there is no need for party assailed to be put in actual peril if only a well-founded apprehension is created, so that apparent power to do bodily harm is sufficient, and what is denoted to party assailed by conduct of assaulting party and attending circumstances is material rather than his secret intent or undisclosed fact of his ability or inability to commit battery. Id.

§ 607. Assault with intent to commit rape

A person who shall assault a female person with intent to commit rape shall be imprisoned in the state prison not more than ten years or fined not more than $1,000.00, or both.

HISTORY

Source. V.S. 1947, § 8270. P.L. § 8404. G.L. § 6836. P.S. § 5731. V.S. § 4917. R.L. § 4117. G.S. 112, § 29. 1849, No. 7, § 2. 1818, p. 7. R. 1797, p. 159, § 12. 1791, p. 22.

ANNOTATIONS

1. Elements of offense. If one lays hold of a woman and uses force upon her, with intent to have sexual intercourse with her against her will, and she resists his attempt for a while, but finally consents to the sexual connection then had with him, he is guilty of an assault with intent to commit a rape. State v. Hartigan (1860) 32 Vt. 607.

Upon an information for an assault with intent to commit rape, the respondent may be convicted upon proof that a rape was actually committed; where one offense is a necessary element in, and constitutes an essential part of, another offense, and both are in fact but one transaction, a conviction or an acquittal of one is a bar to a prosecution for the other. State v. Smith (1870) 43 Vt. 324.

Where an indictment charges the respondent with an assault upon a female, whose age is not averred, with the intent carnally to know her against her will, it must be shown on trial that the female did not consent, even though it appears that she was under the age of fourteen. State v. Wheat (1890) 63 Vt. 673, 22 Atl. 720, 81 A.L.R. 610.

2. Indictment. Indictment for an assault with intent to commit a rape is sufficient if it follows substantially the language of this section; it need not further describe the crime which is attempted than to call it "a rape." State v. Hanlon (1890) 62 Vt. 334, 19 Atl. 773.

Indictment need not specify means by which the assault was made; it was enough to charge that respondent "made an assault." Id.

3. Intoxication as defense. Where respondent became voluntarily intoxicated, fact of intoxication should not be considered by jury. State v. Hanlon (1890) 62 Vt. 334, 19 Atl. 773.

Chapter 15. Barratry

SECTION

§ 701. Penalty

A person who is a common barrator shall be fined not more than $50.00 and become bound with sufficient surety for his good behavior for not less than one year.

Source. V.S. 1947, § 8527. P.L. § 8665. G.L. § 7060. P.S. § 5920. V.S. § 5093. R.L. § 4275. G.S. 119, § 8.

camp meeting grounds, during the continuance of the camp meeting with the same power as is given to constables. Before acting as such special police they shall be sworn and, while on duty, wear a badge of office.

Source. V.S. 1947, § 8578. P.L. § 8712. G.L. § 7102. P.S. § 5960. V.S. § 5145. R.L. § 4319. 1874, No. 65.

§ 976. — Limitation on prosecutions

Prosecutions for offenses under section 974 of this title shall be commenced within thirty days after the commission of the offense and not after.

Source. V.S. 1947, § 8577. P.L. § 8711. G.L. § 7101. 1910, No. 91, § 9. P.S. § 5959. V.S. § 5144. R.L. § 4318. 1863, No. 9. G.S. 93, §§ 8, 9. R.S. 82, §§ 9, 10. 1827, No. 25, § 2. 1819, p. 21.

Subchapter 4. Other Disturbances of the Peace

§ 1021. Breach of the peace generally

A person who disturbs or breaks the public peace:

(1) By destruction of property, assaulting, beating or striking another person shall be imprisoned not more than five years or fined not more than $1,000.00 or both;

(2) By any disorderly act or language, which does not amount to assault or battery, or destruction of property, shall be imprisoned not more than thirty days or fined not more than $25.00 or both.

HISTORY

Source. 1957, No. 178. V.S. 1947, § 8458. P.L. § 8592. G.L. § 6997. P.S. § 5870. 1906, No. 200, § 8. 1898, No. 120, § 1. V.S. § 5043. R.L. § 4228. G.S. 116, § 1. R.S. 98, § 1. 1826, No. 14, § 1. 1821, p. 12. R. 1797, p. 187, § 21. 1788, p. 9.

Cross references. Arrest of intoxicated person, see T. 7, § 562.
Assaults generally, see ch. 13 of this title.
Trespasses and malicious injuries to property, see ch. 71 of this title.

ANNOTATIONS

1. **Prior law — Breach of Peace.** The term breach of peace is generic and includes all violations of the public peace or order. State v. Wixon (1955) 118 Vt. 495, 114 A.2d 410; Stata v. Thompson (1951) 117 Vt. 70, 84 A.2d 594; State v. Christie (1924) 97 Vt. 461, 123 Atl. 849, 34 A.L.R. 577; State v. Mancini (1916) 91 Vt. 507, 101 Atl. 581.

In order to secure a conviction on charge of breach of the peace the stata must show more than a mere possibility that the respondent's act might produce violence or a disturbance of public peace. State v. Thompson (1951) 117 Vt. 70, 84 A.2d 594.

It was not required that person threatened should necessarily be put in fear to constitute a breach of peace. State v. Wixon (1955) 118 Vt. 495, 114 A.2d 410.

Threats of great bodily harm, accompanied by acts showing a formed intention to put them in execution, if intended to put person threatened in fear of their execution, and if they had that effect, and were calculated to produce that effect upon a person of ordinary firmness, constituted a breach of public peace, which was punishable by indictment. State v. Benedict (1839) 11 Vt. 236, 48 A.L.R. 84.

The use of loud, profane and obscene language upon public highway in presence of others comes within definition of "tumultuous and offensive carriage" as used in V.S. § 8458. State v. Ploof (1949) 116 Vt. 93, 70 A.2d 775.

Evidence that respondent, after midnight, went along highway past houses occupied by non-union workmen and their families, shouting, "scab," "bozo," and "rats," to annoyance, disturbance, and alarm of people living therein, warranted a conviction. State v. Christie (1924) 97 Vt. 461, 123 Atl. 849, 34 A.L.R. 577.

An indictment for sending a written challenge to fight a duel will not lie under this section as originally passed March 4th, 1797. State v. S. S. (1801) 1 Tyl. 180.

2. — Sufficiency of complaint. The omission of "vi et armis" was not fatal, whon averments in English showed that criminal act was committed with force and violence. State v. Hanley (1875) 47 Vt. 290.

Complaint that respondent "did disturb and break the public peace by tumultuous and offensive carriage, by firing guns, blowing horns, and beating tin pans," charged offense. State v. Coffin (1891) 64 Vt. 25, 23 Atl. 632; State v. Hanley (1875) 47 Vt. 290.

Complaint charging an assault and battery, with force and arms, against form of statute and peace of state, etc., was a charge of a breach of the public peace. State v. Barrows (1885) 57 Vt. 576.

Complaint alleging that the respondent disturbed and broke the public peace by tumultuons and offensive carriage, in that he ran an automobile upon a public highway at a high rate of speed and in a dangerous, reckless and riotous manner, and in a manner to imperil the safety, peace and security of persons then using the highway, and put them in great fear of bodily harm, sufficiently charged a breach of the peace by tumultuous and offensive carriage, within the meaning of P.S. 5870. State v. Boyd (1916) 91 Vt. 88, 99 Atl. 515.

Complaint which charges a breach of the peace by "threatening to strike, heat, injure and assault divers and sundry persons," without naming them or alleging that their names are unknown, was bad on general demurrer. State v. Bruce (1896) 69 Vt. 98, 37 Atl. 238, same case 68 Vt. 183, 34 Atl. 701, 48 A.L.R. 91.

Complaint that respondents did break and disturb public peace by ringing a certain church bell, and, well knowing that one P was then living, did report and aver that P was dead and was to be buried on the next day, and did ring the said bell with intent to have it believed that the said P was then dead and with intent to annoy, harrass and vex the said P, and his family and friends, was insufficient. State v. Riggs (1850) 22 Vt. 321.

3. — Force in defense of self or property. Where court charged that a person in charge of property delivered to him to be kept is not justified in assaultiug a trespasser in the first instance but must first require trespasser to depart, and then use only such force as is reasonably necessary to expel him, but if trespasser first uses violence, then person in charge, without a request to depart, may use violence in return; exception taken thereto on ground that notica is not necessary before person in charge may proceed to expel trespasser by force is not good. State v. Bean (1935) 107 Vt. 513, 180 Atl. 882.

While unlawful arrest may be lawfully resisted, right of resistance, being in nature of self-defense, permits arrested person to use only such amount of force as reasonably appears to him to be necessary under circumstances. State v. Malnati (1938) 109 Vt. 429, 199 Atl. 249.

§ 1022. Noise in the nighttime

A person who, between sunset and sunrise, disturbs and breaks the public peace by firing guns, blowing horns or other unnecessary and offensive noise shall be fined not more than $50.00. However, this section shall not prevent a person employing workmen, for the purpose of giving notice to his employees, from ringing bells or using whistles or gongs of such size and weight, in such manner, and at such hours as the selectmen of the town, the aldermen of the city or the trustees of the village may prescribe in writing.

Source. V.S. 1947, § 8461. P.L. § 8595. G.L. § 7000. P.S. § 5873. V.S. §§ 4699, 5046. 1890, No. 75. R.L. § 4234. G.S. 116, § 11. 1863, No. 9.

§ 1023. Disturbing meetings and schools

A person who by a disorderly or unlawful act disturbs a town, society or district meeting, or a school, or any meeting lawfully assembled, or by force or menace interrupts the business of such meeting or school, shall be fined not more than $100.00.

HISTORY

Source. V.S. 1947, § 8459. P.L. § 8593. G.L. § 6998. P.S. § 5871. V.S. § 5044. R.L. § 4229. G.S. 116, § 10. 1854, No. 115. R.S. 98, § 10. 1821, p. 10. R. 1797, p. 185, § 19.

ANNOTATIONS

1. **Questions for jury.** When persons attending an appointed lawful meeting of any description conduct themselves in a manner lawful in itself, but at variance with purpose of gathering and inconsistent with its orderly procedure, it will ordinarily be for jury to say whether their conduct was such as amounted, in circumstances, to a disturbance of peace. State v. Mancini (1916) 91 Vt. 507, 101 Atl. 581.

§ 1024. Disturbance of schools by persons over ten years

A person over ten years of age, not connected with the school, who annoys or disturbs a school by remaining at or near it, or by not departing on request of the teacher, school directors or prudential committee, shall be fined not more than $20.00.

Source. V.S. 1947, § 8463. P.L. § 8597. 1933, No. 157, § 8240. G.L. § 7002. 1915, No. 91, § 1. 1908, No. 62. P.S. § 5875. V.S. § 5049. R.L. § 4230. 1870, No. 60.

Chapter 45. Homicide

SECTION

§ 2301. Murder — Degrees defined

Murder committed by means of poison, or by lying in wait, or by wilful, deliberate and premeditated killing, or committed in perpetrating or attempting to perpetrate arson, rape, robbery or burglary, shall be murder in the first degree. All other kinds of murder shall be murder in the second degree.

HISTORY

Source. V.S. 1947, § 8240. P.L. § 8374. G.L. § 6798. P.S. § 5693. V.S. § 4884. R.L. § 4086. 1869, No. 44, § 1.

Cross references. Assault with intent to kill, see ch. 13 of this title.
Death in connection with:
Abortion, see §§ 101–103 of this title.
Arson, see § 501 of this title.
Railroad equipment, tampering with, see § 3101 of this title.

ANNOTATIONS

1. Common law. Section has not altered the common law definition of murder. State v. Blair (1880) 53 Vt. 37.

2. Elements. Murder in the second degree involves malice, but not premeditation; and an instruction that it wants the elements of both malice and premeditation is erroneous. State v. Bradley (1892) 64 Vt. 466, 24 Atl. 1053, same case 67 Vt. 465, 32 Atl. 238.

If the killing of a human being is premeditated, and with malice, it is murder in the first degree. State v. Blair (1880) 53 Vt. 37.

3. Intent. If resistance to authorized arrest which is properly being made results in death of arresting officer the crime is murder, regardless of the question of malice. State v. Shaw (1900) 73 Vt. 149, 50 Atl. 863, 48 A.L.R.2d 566.

4. — Presumed. If one inflict a mortal wound with a deadly weapon upon a vital part, it is a presumption of fact that he designed the natural consequences of his act; and it is murder, unless he shows that the result was not designed, or that the act was done in heat of blood upon legal provocation, or under justifying circumstances. State v. McDonnell (1860) 32 Vt. 491, 52 Harv. L. R. 593.

5. — Change of intent. If jury found that respondent entered upon the affray with murderous intent, respondent was fully protected when the instruction permitted the jury to consider whether his design was altered during the affray before the homicide, and to determine the character of the homicide, in accordance with such altered design. State v. Doherty (1900) 72 Vt. 381, 48 Atl. 658, appeal dismissed 189 U.S. 514, 23 S. Ct. 850, 47 L. Ed. 729.

6. — Evidence. It was proper to show that respondent had been confined in jail, but had escaped therefrom, had immediately thereafter armed himself with a rifle and had set out upon the flight in which he was overtaken when he fired, since such evidence tended to show that respondent had reason to suppose that he would be pursued by officers of the law, and that he intended to use the rifle in resistance of arrest if overtaken. State v. Shaw (1900) 73 Vt. 149, 50 Atl. 863, 48 A.L.R.2d 566.

7. Premeditation. Where respondent went into a barn and then left the same and walked smartly a distance of some fifteen or twenty feet before he shot the deceased there was time for forming premeditated determination to kill after respondent left the barn. State v. Doherty (1900) 72 Vt. 381, 48 Atl. 658, appeal dismissed 189 U.S. 514, 23 S. Ct. 850, 47 L. Ed. 925.

When nothing else is wanting, no specific or particular length of time is necessary for premeditation to constitute murder in the first degree. State v. Carr (1880) 53 Vt. 37.

If design to kill be formed deliberately for ever so short a time before the infliction of the mortal wound, or if it be formed without such provocation as the law regards as sufficient justification for heat of blood and anger, the offense is murder. State v. McDonnell (1860) 32 Vt. 491, 52 Harv. L. R. 593.

8. — Provocation. In determining whether a homicide is murder or manslaughter, a proper attempt at a lawful arrest cannot be considered a provocation to passion and heat of blood. State v. Shaw (1900) 73 Vt. 149, 50 Atl. 863, 48 A.L.R.2d 566.

9. — Evidence. Where respondent shot and killed deceased with a revolver, evidence that the night before the shooting respondent purchased the revolver with which he shot, tended to show preparation and premeditation and was admissible. State v. Doherty (1900) 72 Vt. 381, 48 Atl. 658, dismissed 189 U.S. 514, 23 S. Ct. 850, 47 L. Ed. 925.

10. Causation. If one inflicts a mortal wound, but before death ensues another kills the same person by an independent act, the person causing the first wound cannot be convicted of murder, manslaughter or an assault with intent to kill, on an indictment charging both jointly with murder. State v. Wood (1881) 53 Vt. 560.

11. Insanity. See annotations under §§ 4801, 4802 of this title.

12. — Burden of proof. Reasonable doubt of guilt, produced in the minds of the jury by evidence of insanity, entitles the respondent to acquittal. State v. Doherty (1900) 72 Vt. 381, 48 Atl. 658, dismissed 189 U.S. 514, 23 S. Ct. 850, 47 L. Ed. 925.

13. **Intoxication.** Voluntary intoxication does not excuse or palliate crime, or operate to reduce the degree of homicide where the perpetrator was previously in the requisite condition of mental responsibility. State v. Frotten (1946) 114 Vt. 410, 46 A.2d 921.

Application of the common-law rule, that a criminal offense is neither excused nor mitigated by the voluntary intoxication of the person who commits it, in trials for murder was not affected by No. 44, Acts of 1869, making degrees of murder. State v. Tatro (1878) 50 Vt. 483.

14. **Included crimes.** Both voluntary and involuntary manslaughter are included in crime of murder, and on plea of not guilty to indictment charging that respondent "with force and arms, feloniously, wilfully, deliberately, with premeditation, and of malice aforethought, did kill and murder" deceased, defendant may be convicted of involuntary manslaughter. State v. Averill (1911) 85 Vt. 115, 81 Atl. 461.

15. **Evidence.** Where on direct examination a witness for state testified that he had been well acquainted with deceased for years, that the latter was an aged man and walked with a cane or crutch, inquiries on cross-examination as to whether witness had drunk intoxicating liquor with deceased, whether witness had ever seen deceased under the influence of liquor, and as to deceased's conduct in that condition, were properly excluded as not proper cross-examination. State v. Lescord (1922) 96 Vt. 85, 117 Atl. 242.

When on the trial of one charged with crime his flight is shown as tending to prove guilt, it is proper to show the extent of the flight and such actions and doings of the respondent, when pursued, including resistance of known officers in attempting his arrest, as tend to characterize the flight. State v. Shaw (1900) 73 Vt. 149, 50 Atl. 863, 25 A.L.R. 901, 48 A.L.R.2d 566.

Where child died from a fractured skull it was proper to permit the state to show that an infant's skull could be fractured by pressure of the hands, as tending to show that respondents had the means and physical ability to perpetrate the crime. State v. Noakes (1897) 70 Vt. 247, 40 Atl. 249, 55 Harv. L. Rev. 622.

16. — **Presumption of innocence.** See annotations under § 6502 of this title.

§ 2302. — Determination of degree

The jury by whom a person is tried for murder, if it finds such person guilty thereof, shall state in its verdict whether it is murder in the first or in the second degree. If such person is convicted on confession in open court, the court, by examination of witnesses, shall determine the degree of the crime and give sentence accordingly.

History

Source. V.S. 1947, § 8241. P.L. § 8375. G.L. § 6799. P.S. § 5694. V.S. § 4885. R.L. § 4087. 1869, No. 44, § 1.

Annotations

1. **Questions for jury.** It is for the jury to find from all the evidence whether the killing is murder, and if so, whether in the first or second degree. State v. Carr (1880) 53 Vt. 37.

2. **Charge to jury.** Where respondent might have been guilty of murder in the first or second degree or manslaughter it was error for the court, in its charge to the jury, to define two of the crimes without defining the other and

the court should have fully explained to the jury what constitutes each degree of murder and its distinguishing characteristics, so that they might have a correct standard by which to determine the degree. State v. Meyer (1886) 58 Vt. 457, 3 Atl. 195, 52 Harv. L. Rev. 593.

Charge to the jury was erroneous where, there being testimony tending to prove a case of manslaughter only, the court neglected to call the jury's attention to it in that light, or to the theory of the respondent's counsel upon the evidence, indicating that it was manslaughter and not murder, and omitted to inform the jury of the distinction between murder and manslaughter, except in a few abstract remarks, unaccompanied by any application of them to the facts in the case. State v. McDonnell (1860) 32 Vt. 491, 52 Harv. L. R. 593.

3. Confessions. Confession in a legal sense is an admission of something which proves, or tends to prove, that the party making it was himself connected with the alleged crime, in a criminal or questionable manner; hence, admissions which tend to criminate a third party, are not within the rules of law that exclude confessions induced by promises and hope of favor. State v. Carr (1880) 53 Vt. 37.

4. Evidence. Section contemplates for the purpose of determining the degree of the crime that evidence may be introduced showing the existence of any of the elements specified by reason of which it is murder in the first degree. State v. Goyet (1957) 120 Vt. 12, 132 A.2d 623, same case 119 Vt. 167, 122 A.2d 862.

Since perpetrating or attempting to perpetrate robbery results in murder in the first degree, proof of robbery only goes to the degree of murder and not to the proof of the criminal means by which it was committed. Id.

State may, under this section, introduce evidence to show that the murder was committed in perpetrating or attempting to perpetrate a robbery. State v. Lescord (1922) 96 Vt. 85, 117 Atl. 242.

§ 2303. — Penalties

The punishment of murder in the first degree shall be death or imprisonment in the state prison for life as the jury shall determine. For an unrelated second offense the punishment shall be death. The punishment of murder in the second degree shall be imprisonment in the state prison for life or for such term as the court shall order.

History

Source. 1957, No. 201, § 1. V.S. 1947, § 8242. P.L. § 8376. 1933, No. 157, § 8019. G.L. § 6800. 1912, No. 228. 1910, No. 225. P.S. § 5695. V.S. § 4886. R.L. § 4088. 1869, No. 44, § 2. G.S. 112, § 1. R.S. 94, § 1. 1818, p. 4. R. 1797, p. 156, § 3. R. 1787, p. 68.

Annotations

1. Purpose. Former amendment which provided that punishment for murder in the first degree shall be death or imprisonment in the state's prison for life, "as the jury may determine," does not divide murder in the first degree into grades, but leaves it for the jury to determine the penalty, in the untrammeled exercise of a just and wise discretion, without any instructions as to the doctrine of reasonable doubt, presumptions, etc. State v. Bosworth (1912) 86 Vt. 71, 83 Atl. 657.

2. **Factors for consideration of jury.** Jury has no right to consider in its deliberations the different punishments for murder in the first degree and murder in the second degree, but is to consider the case solely upon the facts in determining whether it is murder in the first or second degree. State v. Goyet (1957) 120 Vt. 12, 132 A.2d 623, same case 119 Vt. 167, 122 A.2d 862.

§ 2304. Manslaughter — Penalties

A person who commits manslaughter shall be imprisoned in the state prison for not more than fifteen years or for not less than one year or fined not more than $1,000.00.

HISTORY

Source. 1957, No. 201, § 2. V.S. 1947, § 8243. P.L. § 8377. G.L. § 6801. P.S. § 5696. 1900, No. 99, § 1. V.S. § 4887. R.L. § 4089. G.S. 112, § 15. R.S. 94, § 11. 1818, p. 6. R. 1797, p. 158, § 8. R. 1787, p. 68.

ANNOTATIONS

1. **Provocation.** If in a mutual combat arising without previous malice, mutual blows be given before respondent draws his knife and he then draws it in the heat and fury of the fight and deals a mortal wound, with the purpose of taking life, the offense is only manslaughter. State v. McDonnell (1860) 32 Vt. 491, 52 Harv. L. R. 593.

2. **Included crimes.** One indicted for manslaughter may, on trial, be convicted for an assault and battery, though the indictment contain no count specially charging the minor offense. State v. Scott (1852) 24 Vt. 127.

3. **Question for jury.** Refusal of court to comply with jury's request that they be informed as to maximum penalty for manslaughter, and instruction that they had nothing to do with penalty, and that it should not enter into their consideration or discussion, was without error, since court alone fixes penalty under this section. State v. Lapan (1928) 101 Vt. 124, 141 Atl. 686.

§ 2305. Justifiable homicide

If a person kills or wounds another under any of the circumstances enumerated below, he shall be guiltless:

(1) In the just and necessary defense of his own life or the life of his or her husband, wife, parent, child, brother, sister, master, mistress, servant, guardian or ward; or

(2) In the suppression of a person attempting to commit murder, rape, burglary or robbery, with force or violence; or

(3) In the case of a civil officer; or a military officer or private soldier when lawfully called out to suppress riot or rebellion, or to prevent or suppress invasion, or to assist in serving legal process, in suppressing opposition against him in the just and necessary discharge of his duty.

HISTORY

Source. V.S. 1947, § 8245. P.L. § 8379. G.L. § 6803. P.S. § 5698. V.S. § 4889. R.L. § 4091. G.S. 12, § 13. G.S. 112, § 16. R.S. 11, § 13.

R.S. 94, § 12. 1818, p. 6. R. 1797, p. 137, § 7. R. 1797, p. 158, § 8. R. 1787, pp. 68, 139.

Cross references. Officer killing rioter not liable, see § 904 of this title.

ANNOTATIONS

1. Self-defense. Doctrine of self-defense has no application to resistance of a lawful arrest properly attempted. State v. Shaw (1900) 73 Vt. 149, 50 Atl. 863, 48 A.L.R.2d 566.

Where one sees another coming towards him in a hostile attitude, and the circumstances are such as to reasonably lead him to believe that he is in danger of being killed or of great bodily harm, and he so believes, and through nervousness, fear, fright or cowardice fatally shoots his assailant, it reasonably appearing to him that he can defend himself in no other way, the homicide is justifiable as in self-defense. State v. Doherty (1900) 72 Vt. 381, 48 Atl. 658, appeal dismissed 189 U.S. 514, 23 S. Ct. 850, 47 L. Ed. 925.

§ 2306. Poisoning food, drink, medicine or water

A person who mingles poison with food, drink or medicine, with intent to kill or injure another person, or who, with a like intent, wilfully poisons a spring, well or reservoir of water shall be imprisoned in the state prison not more than twenty years.

Source. V.S. 1947, § 8246. P.L. § 8382. G.L. § 6806. P.S. § 5701. V.S. § 4892. 1882, No. 83, § 1. R.L. § 4094. G.S. 112, § 20. R.S. 94, § 23.

§ 2307. Attempting to murder by poisoning, drowning, etc.

Any person who shall attempt to commit the crime of murder by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to murder, shall be imprisoned in the state prison not more than ten years and fined not more than $1,000.00.

Source. V.S. 1947, § 8247. 1947, No. 202, § 8401. P.L. § 8383. G.L. § 6807. P.S. § 5702. V.S. § 4893. R.L. § 4095. G.S. 112, § 19. R.S. 94, § 15.

§ 2308. False testimony with intent to cause death

A person who wilfully and corruptly bears false testimony with intent to take away the life of a person and thereby causes the life of such person to be taken, shall be guilty of murder in the first degree.

HISTORY

Source. 1957, No. 201, § 3. V.S. 1947, § 8248. P.L. § 8384. G.L. § 6808. P.S. § 5703. V.S. § 4894. R.L. § 4096. G.S. 112, § 2. R.S. 94, § 2. 1818, p. 4. R. 1797, p. 156, § 4. R. 1787, p. 67.

ANNOTATIONS

1. Instruction to jury. It was not error to charge jury, in connection with the testimony of certain witnesses for the state in a murder case, that if a person willfully and corruptly bears false testimony with intent to take away the life of a person, and thereby causes the life of such a person to be taken,

the person so testifying shall suffer the punishment of death. State v. Fournier (1896) 68 Vt. 262, 35 Atl. 178, 70 A.L.R. 1192.

§ 2309. Indictment for murder or manslaughter

The manner in which, or the means by which, the death of the deceased was caused need not be set forth in an indictment for murder or manslaughter. In an indictment for murder it shall be sufficient to charge that the respondent did feloniously, wilfully and of his malice aforethought kill and murder the deceased. In an indictment for manslaughter, it shall be sufficient to charge that the respondent did feloniously kill and slay the deceased.

Source. V.S. 1947, § 2406. P.L. § 2377. G.L. § 2546. P.S. § 2268. V.S. § 1907. R.L. § 1647. 1880, No. 18, § 1.

§ 2310. Conviction of lesser offense on trial for murder

(a) Under an indictment for murder, the respondent may be convicted of murder in the first degree, murder in the second degree or of manslaughter, as the case may be, upon the proofs.

(b) A person arraigned and tried for murder may be convicted of manslaughter, if the jury finds that offense proved.

(c) If, in the opinion of the jury, the evidence is not sufficient to convict of murder a person arraigned and put upon trial for that offense, the jury may convict him of manslaughter, if, in its opinion, the evidence is sufficient to prove that offense.

History

Source. Subsec. (a): V.S. 1947, § 2471. P.L. § 2440. G.L. § 2612. P.S. § 2337. V.S. § 1975. R.L. § 1704. 1880, No. 18, § 2. G.S. 120, § 12. R.S. 102, § 7. 1818, p. 21. R. 1797, p. 175, § 41.

Subsec. (b): V.S. 1947, § 2472. P.L. § 2441. G.L. § 2613. P.S. § 2338. V.S. § 1976. R.L. § 1705. G.S. 120, § 12. R.S. 102, § 7. 1818, p. 21. R. 1797, p. 175, § 41.

Subsec. (c): V.S. 1947, § 8244. 1947, No. 202, § 8398. P.L. § 8378. G.L. § 6802. P.S. § 5697. V.S. § 4888. R.L. § 4090. 1880, No. 18, § 2. G.S. 120, § 12. R.S. 102, § 7. 1818, p. 21. R. 1797, p. 175, § 41.

Revision note. Provision of V.S. 1947, § 2472, as to burglary, robbery, and larceny is set out in § 2507 of this title.

Annotations

1. Included crimes. Both voluntary and involuntary manslaughter are included in the crime of murder, and on a plea of not guilty to an indictment charging that respondent "with force and arms, feloniously, wilfully, deliberately, with premeditation, and with malice aforethought, did kill and murder" the deceased, alleging neither the manner nor the means, he may be convicted of involuntary manslaughter. State v. Averill (1911) 85 Vt. 115, 81 Atl. 461; State v. Wood (1881) 53 Vt. 560.

2. Charge to jury. Where respondent could have been guilty of murder in the first or second decree, or manslaughter it was error for the court, in its

charge to the jury, to define two of the crimes without defining the other; it was error for the court to express its opinion that, if the respondent was guilty, he was guilty of murder in the first degree; the court should have fully explained to the jury what constituted each degree of murder and its distinguishing characteristics, so that they might have a correct standard by which to determine the degree. State v. Meyer (1886) 58 Vt. 457, 3 Atl. 195, 52 Harv. L. Rev. 593.

Error, if any, in instructing jury that, if respondent had requisite mental capacity, there was no evidence that would justify his conduct in going to farm where wife was and shooting her, "so as to under any possibility reduce the crime to manslaughter," was cured by verdict of murder in first degree. State v. Stacy (1932) 104 Vt. 379, 160 Atl. 257, 747, 50 A.L.R.2d 547.

Chapter 47. Kidnapping

SECTION

§ 2401. Definition and punishment

A person who, without legal authority, forcibly or secretly confines or imprisons another person within this state against his will, or forcibly carries or sends such person out of the state, or forcibly seizes or confines or inveigles or kidnaps another person with intent to cause him to be secretly confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will, or in any way held to service against his will, shall be imprisoned in the state prison not more than twenty-five years or fined not more than $10,000.00, or both.

HISTORY

Source. V.S. 1947, § 8257. P.L. § 8392. 1933, No. 147. G.L. § 6826. P.S. § 5721. R. 1906, § 5580. 1904, No. 149, §§ 1, 2. V.S. § 4912. R.L. § 4112. G.S. 112, § 31. R.S. 94, § 24. 1814, p. 138. 1806, p. 157.

ANNOTATIONS

1. Elements — Force. It is not necessary to show that the respondent used actual force on the person of the prosecutrix, and thus caused her to be sent out of this state. State v. Rivers (1909) 84 Vt. 154, 78 Atl. 786.

Moral force need not create a willingness on the girl's part to leave the state. Id.

Where there was no claim of actual force used by respondent, the size of the girl was immaterial. Id.

2. — Inveigle. The word "inveigle" is used in its ordinary sense and involves the idea of deception for the accomplishment of an evil purpose. State v. Rivers (1909) 84 Vt. 154, 78 Atl. 786.

such railroad suffers bodily harm, or property is injured, the time of imprisonment may be lengthened, provided it does not exceed in all twenty years, except in the case provided in section 3101 of this title.

Source. V.S. 1947, §§ 8250, 8251. P.L. § 8386. G.L. § 6820. P.S. § 5715. V.S. § 4906. R.L. § 4108. 1876, No. 24. 1866, No. 51, § 2. G.S. 112, § 20. 1849, No. 41, § 35.

§ 3103. Throwing missiles at train

A person who unlawfully and maliciously throws or causes anything to be thrown or to fall into or upon, or to strike against a railroad train or an engine, tender, car or truck, with intent to injure or endanger the safety of any person on such train or on such engine, tender, car or truck, shall be punished as provided in section 3102(b) of this title.

Source. V.S. 1947, § 8252. P.L. § 8387. G.L. § 6821. P.S. § 5716. V.S. § 4907. R.L. § 4109. 1866, No. 51, § 1.

§ 3104. Removal of packing from journal boxes

A person who wilfully and maliciously takes or removes the waste or packing from a journal box of a locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon a railroad shall be imprisoned not more than three years or fined not more than $500.00.

Source. V.S. 1947, § 8392. 1947, No. 202, § 8545. P.L. § 8529. G.L. § 6945. P.S. § 5831. 1904, No. 151, § 1.

Chapter 63. Rape

SECTION

§ 3201. Rape by person over sixteen

A person over the age of sixteen years who ravishes and carnally knows a female person of the age of sixteen years or more, by force and against her will, or unlawfully and carnally knows a female person under sixteen years of age, with or without her consent, shall be imprisoned in the state prison not more than twenty years or fined not more than $2,000.00, or both.

HISTORY

Source. V.S. 1947, § 8253. P.L. § 8388. G.L. § 6822. P.S. § 5717. 1898, No. 118, § 1. V.S. § 4908. 1886, No. 63, § 1. R.L. § 4110. G.S. 112, § 28.

1849, No. 7, § 1. R.S. 94, § 21. 1818, p. 7. R. 1797, p. 159, §§ 10, 11. 1791, p. 22.

Cross references. Assault with intent to commit rape, see § 607 of this title.

ANNOTATIONS

1. **Common law.** Section imposing a penalty upon a "person over the age of sixteen years who ravishes and carnally knows a female person of the age of sixteen years or more, by force and against her will," is declaratory of common law as to offenses against women of sixteen or over. State v. Jewett (1937) 109 Vt. 73, 192 Atl. 7.

2. **Definitions.** Rape is defined as the carnal knowledge of a woman by force and against her will. State v. Jewett (1937) 109 Vt. 73, 192 Atl. 7.

3. **Age of defendant.** It was not necessary to allege age of respondent if he was under sixteen years of age; that was matter of defense. State v. Sullivan (1896) 68 Vt. 540, 35 Atl. 479.

Appearance of respondent himself before jury might be weighed as evidence upon his age. Id.

4. **Consent.** Charge to jury that if prosecutrix in the first instance consented to the intercourse but after it had commenced withdrew her consent, and respondent thereafterwards forcibly continued it, knowing of her dissent, it would be rape, was not error, since court might well consider physical strength of prosecutrix, the relation she sustained to respondent, and all other circumstances disclosed by evidence. State v. Niles (1874) 47 Vt. 82.

Where an indictment charged respondent with assault upon female whose age was not averred with intent carnally to know her against her will, it must be shown on trial that female did not consent, even though it appeared that she was under age of fourteen; for whether or not one can be convicted of an attempt carnally to know a female under fourteen years of age with her consent, that was not crime charged in indictment and for which respondent was on trial. State v. Wheat (1890) 63 Vt. 673, 22 Atl. 720, 81 A.L.R. 610.

5. **Mental capacity to consent.** Copulation with a woman known to be incapable of giving even an imperfect consent is rape, but a non compos woman whose infirmity was less profound may consent, as mere fact that woman was weak-minded did not disable or debar her from consenting to act. State v. Jewett (1937) 109 Vt. 73, 192 Atl. 7.

There being no statute for protection of mentally defective women, case involving prosecution for rape upon such woman thirty-two years old was to be decided according to common law principles. Id.

In prosecution for rape, where there was no evidence that any force or violence was used by respondent, but woman upon whom offense was alleged to have been committed was thirty-two years old but of subnormal mentality, there could be no conviction unless woman was incapable of understanding act, its motive and possible consequences. Id.

6. **Evidence.** Evidence that prosecutrix afterwards complained of act was only admissible as confirmatory of her testimony; mere lapse of time between commission of crime and making of complaint was not test of admissibility of such evidence, but was only matter for consideration of jury in determining upon weight to be given to it. State v. Niles (1874) 47 Vt. 82.

Rule is that it is competent to prove that prosecutrix made complaint, and that an individual, without naming him, was charged with crime. Id.

It was not error to allow state to introduce evidence of sexual intercourse had on different days, and to refuse to require it to elect occasion on which it would rely till close of its case. State v. Willett (1904) 78 Vt. 157, 62 Atl. 48, 167 A.L.R. 576.

7. Statutory rape — Generally. In a prosecution for an assault with intent to ravish a girl under the age of sixteen years, question of her consent was immaterial. State v. Clark (1904) 77 Vt. 10, 58 Atl. 796, 81 A.L.R. 603; State v. Sullivan (1896) 68 Vt. 540, 35 Atl. 479, 81 A.L.R. 603.

8. — Indictment. Indictment for "carnally knowing a female under fourteen years of age," "with or without her consent," must allege age of female. State v. Wheat (1890) 63 Vt. 673, 22 Atl. 720, 81 A.L.R. 603.

9. — Evidence of age. On question of prosecutrix's age in prosecution for statutory rape, evidence of her mother was entitled to very great weight, as was also testimony of child's grandmother who was present at prosecutrix's birth. State v. Reynolds (1922) 96 Vt. 37, 116 Atl. 116.

10. — Defenses. Where, in a prosecution for statutory rape, prosecutrix testified for state, respondent was not entitled to show by her in cross-examination, as bearing upon her credibility, that, since she was twelve years old down to time in question, she had had sexual intercourse with many different men. State v. Stimpson (1905) 78 Vt. 124, 62 Atl. 14, 140 A.L.R. 376.

§ 3202. Rape by person under sixteen

If a person under the age of sixteen years unlawfully and carnally knows a female person under the age of sixteen years with her consent, both persons shall be guilty of a misdemeanor, and may be committed to the Weeks school. A person under the age of sixteen years who unlawfully and carnally knows any female person by force and against her will shall be punished as provided in section 3201 of this title.

HISTORY

Source. V.S. 1947, § 8254. P.L. § 8389. G.L. § 6823. P.S. § 5718. 1898, No. 118, § 2. V.S. § 4909. 1886, No. 63, § 2.

ANNOTATIONS

1. Generally. See annotations under § 3202 of this title.

Chapter 25. Children and Incompetent Persons

SECTION

§ 1301. Contributing to juvenile delinquency

A person responsible for, or any other person who contributes to, condones, encourages or causes, the delinquency of a child under sixteen years of age in the violation of any law of this state or a city or village ordinance; in associating with criminals or with vicious or immoral persons; or in growing up in crime or immoral conduct, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $100.00 or imprisoned not more than one year, or both.

HISTORY

Source. 1949, No. 195, § 1.

Cross references. Dependent, neglected, and delinquent children, jurisdiction of juvenile court, see ch. 11 of Title 33.

Other offenses as to children:
Firearms, see §§ 4007, 4008 of this title.
Kidnapping, see ch. 47 of this title.
Lewdness, see ch. 51 of this title.
Obscenity, see ch. 55 of this title.
Rape, see ch. 63 of this title.

§ 1302. — Jurisdiction

County and municipal courts shall have concurrent jurisdiction of offenses under section 1301 of this title.

Source. 1949, No. 195, § 2.

§ 1303. Abandonment or exposure of baby

A person who abandons or exposes a child under the age of two years, whereby the life or health of such child is endangered, shall be imprisoned in the state prison not more than ten years or fined not more than $1,000.00, or both.

Source. V.S. 1947, § 8260. P.L. § 8395. G.L. § 6827. P.S. § 5722. 1896, No. 54, § 1.

§ 1304. Cruelty to children under ten by one over sixteen

A person over the age of sixteen years, having the custody, charge or care of a child under ten years of age, who wilfully assaults, ill treats, neglects or abandons or exposes such child, or causes or procures such child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner to cause such child unnecessary suffering, or to endanger his health, shall be imprisoned in the state prison not more than two years or fined not more than $500.00, or both.

HISTORY

Source. V.S. 1947, § 8261. P.L. § 8396. G.L. § 6828. P.S. § 5723. 1896, No. 54, § 2.

ANNOTATIONS

1. **Complaint.** It was esential that complaint allege that abandonment was wilful and that it was done in a manner to cause child unnecessary suffering or to endanger its health. In re Greenough (1950) 116 Vt. 277, 75 A.2d 569.

§ 1305. Cruelty by person having custody of another

A person having the custody, charge, care or control of another person, who inflicts unnecessary cruelty upon such person, or unnecessarily and cruelly fails to provide such person with proper food, drink, shelter or protection from the weather, or unnecessarily and cruelly neglects to properly care for such person, shall be imprisoned in the state prison not more than one year or fined not more than $200.00, or both.

Source. V.S. 1947, § 8262. P.L. § 8397. G.L. § 6829. P.S. § 5724. 1896, No. 55, § 1.

§ 1306. Mistreatment of persons of unsound mind

A person who wilfully and maliciously teases, plagues, annoys, angers, irritates, maltreats, worries or excites another of unsound or feeble mind shall be imprisoned not more than one year or fined not more than $100.00 nor less than $5.00, or both.

Source. V.S. 1947, § 8263. P.L. § 8398. G.L. § 6830. P.S. § 5725. 1906, No. 188, § 1. V.S. §§ 5047, 5048. 1888, No. 90, § 1. R.L. § 4235. 1863, No. 9.

§ 1307. — Jurisdiction of justice

Justices shall have concurrent jurisdiction with county and municipal courts of offenses under section 1306 of this title to the extent of fining the respondent $50.00 or sentencing him to im-

Subchapter 1. Lewd and Indecent Conduct

§ 2601. Lewd and lascivious conduct

A person guilty of open and gross lewdness and lascivious behavior shall be imprisoned not more than five years or fined not more than $300.00.

HISTORY

Sources. V.S. 1947, § 8478. 1947, No. 202, § 8632. P.L. § 8611. G.L. § 7016. P.S. § 5892. V.S. § 5066. 1888, No. 138, § 1. R.L. § 4250. G.S. 117, § 11. R.S. 99, § 8.

ANNOTATIONS

1. Open and gross. Section deals only with lewdness which is open and gross and where attempted copulation was done privately and under concealment verdict was directed for defendant. State v. Franzoni (1926) 100 Vt. 373, 137 Atl. 465.

2. Lewd and lascivious. Information which charged that respondent was and is a lewd, wanton and lascivious person in speech and behavior was insufficient to charge an offense under this section as there is no penalty for being a person of that character, but the penalty is for acts constituting open and gross lewdness and lascivious behavior. State v. Ryea (1923) 97 Vt. 219, 122 Atl. 422.

Where man indecently exposed his person to a woman and solicited her to have sexual intercourse, notwithstanding her opposition, this was open and gross lewdness and lascivious conduct. State v. Millard (1846) 18 Vt. 574, 93 A.L.R. 1001.

§ 2602. Lewd or lascivious conduct with child

A person who shall wilfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of such person or of such child, shall be imprisoned in the state prison not less than one year nor more than five years.

Source. V.S. 1947, § 8479. 1937, No. 211, § 1.

§ 2603. Fellation

A person participating in the act of copulating the mouth of one person with the sexual organ of another shall be imprisoned in the state prison not less than one year nor more than five years.

Source. V.S. 1947, § 8480. 1937, No. 211, § 2.

§ 2604. Keeping house of ill fame

A person who keeps a disorderly house, or a house of ill fame, resorted to for the purpose of prostitution and lewdness, whether the same is occupied or frequented by one or more females, shall be imprisoned not more than four years or fined not more than $300.00.

Appendix 11

V.S.A. Pockets Parts
1974 to 1977