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PENAL CODE.

IN THREE PARTS.

PART I. CRIMES AND PUNISHMENTS.

II. CRIMINAL PROCEDURE.

III. STATE PRISONS, COUNTY JAILS AND REFORM SCHOOL.

AN ACT TO ESTABLISH A PENAL CODE.

*Be it enacted by the Legislative Assembly of the State of Montana,
as follows:*

TITLE OF THE ACT

8093. (§ 1.) This Act shall be known as the Penal Code of Montana, and is divided into three parts, as follows:

1. Crimes and Punishments.
2. Criminal Procedure.
3. State prison and county jails.

PRELIMINARY PROVISIONS.

Section 8094. When this act takes effect.

“ 8095. *Not retroactive.*

“ 8096. *Construction of the Penal Code.*

“ 8097. *Provisions similar to existing laws, how construed.*

“ 8098. *Effect of Code upon past offenses.*

“ 8099. *Certain terms defined in the senses in which they are used in this Code.*

“ 8100. *What intent to defraud is sufficient.*

“ 8101. *Civil remedies preserved.*

Section 8102. Proceedings to impeach or remove officers and others preserved.

“ 8103. *Authority of court martial preserved. Courts of justice to punish for contempt.*

“ 8104. *Sections declaring crimes punishable. Duty of court.*

“ 8105. *Punishments, how determined.*

“ 8106. *Witness' testimony may be read against him on prosecution for perjury.*

“ 8107. *“Crime” and “public offense” defined.*

“ 8108. *Crimes, how divided.*

“ 8109. *Felony and misdemeanor defined.*

“ 8110. *Punishment of felony, when not otherwise prescribed.*

“ 8111. *Punishment of misdemeanor when not otherwise prescribed.*

“ 8112. *To constitute crime there must be unity of act and intent.*

“ 8113. *Intent, how manifested, and who considered of sound mind.*

“ 8114. *Drunkenness no excuse for crime. When it may be considered.*

“ 8115. *This act how cited.*

8094. (§ 2.) *When this act takes effect.*—This Code takes effect at twelve o'clock noon, on the first day of July, A. D., 1895.

8095. (§ 3.) *Not retroactive.*—No part of it is retroactive, unless expressly so declared.

8096. (§ 4.) *Construction of the Penal Code.*—The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice.

In re Mitchell, 1 C. App. 398; 82 Pac. 347.

8097. (§ 5.) *Provisions similar to existing laws, how construed.*—The provisions of this Code, so far as they are the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

8098. (§ 6.) *Effect of Code upon past offenses.*—No act or omission commenced after twelve o'clock noon, of the day on which this Code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county or township regulation, passed or adopted under any such statutes, and in force when this Code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted and punished in the same manner as if this Code had not been passed.

8099. (§ 7.) *Certain terms defined in the senses in which they are used in this Code.*—Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced by the term “testify,” and every written one in the term “depose;” signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who write his own name as a witness. The following words, also, have in this Code the signification attached to them in this Section, unless otherwise apparent from the context:

1. The word “wilfully,” when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

2. The words “neglect,” “negligence,” “negligent” and “negligently” import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The word “corruptly” imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The words “malice” and “maliciously” import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

5. The word “knowingly” imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The word “bribe” signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

7. The word “vessel,” when used with reference to shipping, includes ships of all kinds, steamboats, canal boats, barges, and every structure adapted to be navigable from place to place for the transportation of merchandise or persons.

8. The words “peace officer” signify any one of the officers mentioned in § 8924 (1375) of this Code.

9. The word “magistrate” signifies any one of the officers mentioned in § 8923 (1374) of this Code.

10. The word "property" includes both real and personal property.

11. The words "real property" are co-extensive with lands, tenements and hereditaments.

12. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

13. The word "month" means a calendar month, unless otherwise expressed.

14. The word "will" includes codicils.

15. The word "writ" signifies any order or precept in writing, issued in the name of the staté, or of a court or judicial officer, and the word "process," a writ of summons issued in the course of judicial proceedings.

16. Words and phrases must be construed according to the context and the approved usage of the language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

17. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

18. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

19. The word "state" when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories.

In re McCabe, 29 Mont. 28; 73 Pac. 1106. The right of an employe to work is not property.

State v. Schaefer, 35 Mont. 220; 88 Pac. 792.

Coffey v. Court, 2 C. App. 459; 83 Pac. 580.

8100. (§ 8.) *What intent to defraud is sufficient.*—Whenever, by any of the provisions of this Code an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic, or corporate, whatever.

8101. (§ 9.) *Civil remedies preserved.*—The omission to specify or affirm in this Code any liabilities to damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

8102. (§ 10.) *Proceedings to impeach or remove officers and others preserved.*—The omission to specify or affirm in this Code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

8103. (§ 11.) *Authority of court martial preserved. Courts of justice to punish for contempt.*—This Code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

Ex parte Abbott, 94 Cal. 333; 29 Pac. 622.

8104. (§ 12.) *Sections declaring crimes punishable. Duty of court.*—The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed, except in cases where a jury is authorized to determine and impose the same.

Ex parte Nichols, 110 Cal. 654; 43 Pac. 9.

8105. (§ 13.) *Punishments, how determined.*—Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court or by the jury authorized to pass sentence, within such limits as may be prescribed by this Code.

8106. (§ 14.) *Witness' testimony may be read against him on prosecution for perjury.*—The various Sections of this Code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

8107. (§ 15.) *"Crime" and "public offense" defined.*—A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office; or,

5. Disqualification to hold and enjoy any office of honor, trust, or profit in this state.

State v. Court, 24 Mont. 35; 60 Pac. 494. A contempt of court punishable by fine or imprisonment or both, is a

public offense.

Coffey v. Court, 2 Cal. App. 456; 83 Pac. 580.

8108. (§ 16.) *Crimes, how divided.*—Crimes are divided into:

1. Felonies; and,
2. Misdemeanors.

People v. Holmes, 118 Cal. 460; 50 Pac. 675.

8109. (§ 17.) *Felony and misdemeanor defined.*—A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court or jury, it is a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.

People v. Gray, 137 Cal. 268; 70 Pac. 20.

8110. (§ 18.) *Punishment of felony, when not otherwise prescribed.*—Except in cases where a different punishment is prescribed by this Code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five years.

8111. (§ 19.) *Punishment of misdemeanor when not otherwise prescribed.*—Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

State v. Woodman, 26 Mont. 354; 67 Pac. 1119.

People v. Haagan, 139 Cal. 116; 72 Pac. 836.

8112. (§ 20.) *To constitute crime there must be unity of act and intent.*—In every crime or public offense there must exist a union or joint operation of act and intent, or criminal negligence.

State v. Keerl, 29 Mont. 520; 75 Pac. 366. An insane person in criminal law is one who is mentally unable to form a criminal intent. Insanity is any weakness or defect of the mind rendering it incapable of entertaining in the particular instance the criminal intent, supplementing the definition by the comment that criminal responsibility is to be determined solely by the capacity of defendant to conceive and entertain the

intent to commit the particular crime.

State v. Allen, 34 Mont. 418; 87 Pac. 183. Sections 20 and 21 should be embodied in instructions and given to the jury especially when requested by defendant.

State v. Schaefer, 35 Mont. 221; 88 Pac. 792.

People v. Bunkers, 2 C. App. 205; 84 Pac. 364.

8113. (§ 21.) *Intent, how manifested, and who considered of sound mind.*—The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

State v. Keerl, 29 Mont. 509; 79 Pac.
366.
State v. Allen, 34 Mont. 418; 87 Pac.
183.
State v. Schaefer, 35 Mont. 221; 88
Pac. 792.

State v. Gordon, 35 Mont. 467; 90
Pac. 173.
People v. Methever, 132 Cal. 329; 64
Pac. 481.

8114. (§ 22.) *Drunkenness no excuse for crime. When it may be considered.*—No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his being in such a condition. But, whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species of degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

People v. Mahatch, 148 Cal. 203; 82 Pac. 779.

8115. (§ 23.) *This act how cited.*—This act, whenever cited, enumerated, referred to, or amended, may be designated simply as the Penal Code, adding, when necessary, the number of the Section.

PART I.

CRIMES AND PUNISHMENTS.

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| TITLE | I. PERSONS LIABLE TO PUNISHMENT FOR CRIME. |
| | II. PARTIES TO CRIME. |
| | III. CRIMES AGAINST THE SOVEREIGNTY OF THE STATE. |
| | IV. CRIMES AGAINST THE ELECTIVE FRANCHISE. |
| | V. CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE. |
| | VI. CRIMES AGAINST THE LEGISLATIVE POWER. |
| | VII. CRIMES AGAINST PUBLIC JUSTICE. |
| | VIII. CRIMES AGAINST THE PERSON. |
| | IX. CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS. |
| | X. CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY. |
| | XI. CRIMES AGAINST THE PUBLIC PEACE. |
| | XII. CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE. |
| | XIII. CRIMES AGAINST PROPERTY. |
| | XIV. MALICIOUS MISCHIEF. |
| | XV. CRUELTY TO ANIMALS. |
| | XVI. MISCELLANEOUS OFFENSES. |
| | XVII. GENERAL PROVISIONS. |

TITLE I.

PERSONS LIABLE TO PUNISHMENT FOR CRIME.

Section 8116. Who are capable of committing crimes.

“ 8117. *Who are liable to punishment.*

8116. (§ 30.) *Who are capable of committing crimes.*—All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, and over the age of seven, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. Children under the age of seven are not capable of committing crime;

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disapproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

7. Married women (except for felonies) acting under threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused.

State v. Fisher, 23 Mont. 557, subd. 8; 59 Pac. 924. *People v. Methever*, 132 Cal. 329; 64 Pac. 481.

8117. (§ 31.) *Who are liable to punishment.*—The following persons are liable to punishment under the laws of this state:

1. All persons who commit, in whole or in part, any crime within this state;

2. All who commit larceny or robbery out of this state, and bring to, or are found with the property stolen in, this state;

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

People v. Botkin, 132 Cal. 232; 64 Pac. 286.

TITLE II.

PARTIES TO CRIME.

Section 8118. Classification of parties to crime.

“ 8119. *Who are principals.*

“ 8120. *Who are accessories.*

“ 8121. *Punishment of accessories.*

8118. (§ 40.) *Classification of parties to crime.*—The parties to crimes are classified as

1. Principals; and,
2. Accessories.

State v. DeWolfe, 29 Mont. 423; 74 Pac. 1087.

8119. (§ 41.) *Who are principals.*—All persons concerned in the commission of a crime, whether it be a felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

State v. Spotted Hawk, 22 Mont. 65; 55 Pac. 1036. An accomplice is one who is guilty of complicity in the crime charged, either, by being present and aiding or abetting in it, or by having advised and encouraged it, though absent from the place at which it is committed.

State v. Geddes, 22 Mont. 88; 55 Pac. 926.

State v. Martin, 29 Mont. 280; 74 Pac. 727.

State v. DeWolfe, 29 Mont. 423; 74 Pac. 1087.

State v. Dotson 26 Mont. 309; 67 Pac. 939. The distinction recognized by the common law between principals

and accessories before the fact is abolished in this state, and all persons concerned in the commission of a crime, whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, are principals.

State v. Allen, 34 Mont. 416; 87 Pac. 182. The use of the disjunctive "or" in defining a principal as one who aids or abets in the commission of a crime instead of the conjunctive "and," was erroneous.

People v. Nolan, 144 Cal. 79; 77 Pac. 774.

8120. (§ 42.) *Who are accessories.*—All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor or protect the person charged with or convicted thereof, are accessories.

State v. DeWolfe, 29 Mont. 423; 74 Pac. 1087. Accessories before the fact are treated as principals. The accessories to crime, punishable under the

statute are accessories after the fact.

People v. Garnett, 129 Cal. 366; 61 Pac. 1114.

8121. (§ 43.) *Punishment of accessories.*—Except in cases where a different punishment is prescribed an accessory is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding two years, or by fine not exceeding five thousand dollars.

State v. DeWolfe, 29 Mont. 424; 74 Pac. 1087.

TITLE III.

CRIMES AGAINST THE SOVEREIGNTY OF THE STATE.

Section 8122. Treason, who only can commit.

" 8123. *Misprision of treason.*

8122. (§ 50.) *Treason, who only can commit.*—Treason against this state consists only in levying war against it, ad-

hering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the state. The punishment of treason is death.

8123. (§ 51.) *Misprision of treason.*—Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment in the state prison for a term not exceeding five years.

TITLE IV.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

- Section 8124. Violation of election laws by certain officers a felony.*
- “ 8125. *Fraudulent registration a felony.*
 - “ 8126. *Fraudulent voting.*
 - “ 8127. *Attempting to vote without being qualified.*
 - “ 8128. *Procuring illegal voting.*
 - “ 8129. *Changing ballots or altering returns by election officers.*
 - “ 8130. *Judges unfolding or marking tickets.*
 - “ 8131. *Forging or altering returns.*
 - “ 8132. *Adding to or subtracting from votes given.*
 - “ 8133. *Persons aiding and abetting.*
 - “ 8134. *Intimidating, corrupting, deceiving or defrauding electors.*
 - “ 8135. *Offenses under the election laws.*
 - “ 8136. *Officers of election not to electioneer, etc.*
 - “ 8137. *Offenses at an election.*
 - “ 8138. *Furnishing money for electors.*
 - “ 8139. *Unlawful offer to appoint to office.*
 - “ 8140. *Communication of same.*
 - “ 8141. *Bribing members of legislative caucuses, etc.*
 - “ 8142. *Preventing public meetings of electors.*
 - “ 8143. *Disturbance of public meetings of electors.*
 - “ 8144. *Betting on elections.*
 - “ 8145. *Violation of election laws.*
 - “ 8146. *Not to sell liquor on election day.*
 - “ 8147. *Expenses of candidate.*
 - “ 8148. *Unlawful to promise appointments.*
 - “ 8149. *What money may be paid to political committees.*
 - “ 8150. *Lawful expenses of candidate.*
 - “ 8151. *Limitations of contributions to political committees.*
 - “ 8152. *Political committee defined.*
 - “ 8153. *Statement of expenses, by candidate.*
 - “ 8154. *Statement of disbursements by treasurer.*

- Section 8155. Statement by other persons.*
 “ 8156. *Indirect payments not allowed.*
 “ 8157. *Solicitation of money prohibited.*
 “ 8158. *Statement of treasurer filed with county clerk.*
 “ 8159. *Power of supreme and district courts.*
 “ 8160. *Exemption of witness from prosecution.*
 “ 8161. *Clerk may require correct statement.*
 “ 8162. *Statement must be under oath.*
 “ 8163. *Statement open to public inspection.*
 “ 8164. *Secretary of state to provide blanks.*
 “ 8165. *Clerk to receipt for statement.*
 “ 8166. *Vouchers for expenses.*
 “ 8167. *Scope of act.*
 “ 8168. *Penalties.*
 “ 8169. *Bribery.*
 “ 8170. *Bets and wagers.*
 “ 8171. *Treating on election day.*
 “ 8172. *Undue influence.*
 “ 8173. *Unlawful acts of employers.*
 “ 8174. *Fines paid into school fund.*
 “ 8175. *Violation of act voids election.*

8124. (§ 60.) *Violation of election laws by certain officers a felony.*—Every person charged with the performance of any duty, under the provisions of any law of this state relating to elections, or the registration of the names of electors, or the canvassing of the returns of election, who wilfully neglects or refuses to perform such duty, or who in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or both.

State v. Fransham, 19 Mont. 290; McMenomy v. Ruch, 142 Cal. 79; 75 48 Pac. 7. Pac. 661.

8125. (§ 61.) *Fraudulent registration a felony.*—Every person who wilfully causes, procures, or allows himself to be registered in the official register of any election district of any county, knowing himself not to be entitled to such registration, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail or state prison not exceeding one year, or both. In all cases where, on the trial of the person charged with any offense under the provisions of this Section, it appears in evidence that the accused stands registered in such register of any county, without being qualified for such registration, the court must order such registration to be cancelled.

8126. (§ 62.) *Fraudulent voting.*—Every person not entitled to vote, who fraudulently votes, and every person who votes

more than once at any one election, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted; or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll-lists, check-lists, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights or voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

People v. Mahony, 145 Cal. 108; 78 Pac. 354.

8127. (§ 63.) *Attempting to vote without being qualified.*—Every person not entitled to vote, who fraudulently attempts to vote or register, or who, being entitled to vote, attempts to register or vote more than once at any election, is guilty of a misdemeanor.

8128. (§ 64.) *Procuring illegal voting.*—Every person who procures, aids, assists, counsels, or advises another to register or give or offer his vote at any election, knowing that the person is not entitled to vote or register, is guilty of a misdemeanor.

8129. (§ 65.) *Changing ballots or altering returns by election officers.*—Every officer or clerk of election who aids in changing or destroying any poll-list or check-list, or in placing any ballots in the ballot-box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy any poll-list, check-list, ballot-box, or ballots lawfully polled, is guilty of a felony.

8130. (§ 66.) *Judges unfolding or marking tickets.*—Every judge or clerk of an election, who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same in to the ballot-box, or who makes or

places any mark or device on any folded ballot, with the view to ascertain the name of any person for whom the elector has voted, is punishable by imprisonment in the county jail for a period of six months or in the state prison not exceeding two years, or by fine, not exceeding five hundred dollars, or by both.

8131. (§ 67.) *Forging or altering returns.*—Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term not less than two nor more than ten years.

8132. (§ 68.) *Adding to or subtracting from votes given.*—Every person who wilfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the state prison for not less than one nor more than five years.

8133. (§ 69.) *Persons aiding and abetting.*—Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding Sections is punishable by imprisonment in the county jail for a period of six months or in the state prison not exceeding two years.

8134. (§ 70.) *Intimidating, corrupting, deceiving or defrauding electors.*—Every person, who by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or who, being judge or clerk of any election, while acting as such, induces or attempts to induce, any elector, either by menaces or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars or imprisonment not to exceed one year, or both.

8135. (§ 71.) *Offenses under the election laws.*—Every person who falsely makes, or fraudulently defaces or destroys the certificates of nomination of candidates for office, to be filled by the electors at any election, or any part thereof, or files or receives for filing any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppresses any certificate of nomination, which has been duly filed, or any part thereof, or forges or falsely makes the official endorsement on any ballot,

is guilty of a felony and upon conviction thereof is punishable by imprisonment in the state prison not less than one nor more than five years.

8136. (§ 72.) *Officers of election not to electioneer, etc.*—Every officer or clerk of election who deposits in a ballot-box, a ballot on which the official stamp, as provided by law, does not appear, or does any electioneering on election day, is guilty of a misdemeanor and upon conviction is punishable by imprisonment not to exceed six months, or by a fine not less than fifty nor more than five hundred dollars, or both.

8137. (§ 73.) *Offenses at an election.*—Every person who, during an election, removes or destroys any of the supplies or other conveniences, placed in the booths or compartments, for the purpose of enabling a voter to prepare his ballot, or prior to or on the day of election wilfully defaces or destroys any list of candidates posted in accordance with the provisions of law, or during an election tears down or defaces the cards printed for the instruction of voters, or does any electioneering on election day within any polling place or any building in which an election is being held, or within twenty-five feet thereof, or obstructs the doors or entries thereof, or removes any ballot from the polling place before the closing of the polls, or shows his ballot to any person after it is marked so as to reveal the contents thereof, or solicits an elector to show his ballot after it is marked, or places a mark on his ballot by which it may afterward be identified, or receives a ballot from any other person than one of the judges of the election having charge of the ballots, or votes or offers to vote any ballot except such as he has received from the judges of election having charge of the ballots, or does not return the ballot before leaving the polling place, delivered to him by such judges and which he has not voted, is guilty of a misdemeanor and is punishable by a fine not exceeding one hundred dollars.

8138. (§ 74.) *Furnishing money for electors.*—Every person who, with the intention to promote the election of himself or any other person, either:

1. Furnishes entertainments, at his expense, to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

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

4. Furnishes or engages to pay or deliver any money or property or any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public

meetings for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers, previous to such election; is guilty of a misdemeanor.

8139. (§ 75.) *Unlawful offer to appoint to office.*—Every person who, being a candidate at any election, offers, or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or to procure or aid in procuring the election of such candidate is guilty of a misdemeanor.

8140. (§ 76.) *Communication of same.*—Every person, not being a candidate, who communicates any offer, made in violation of the last Section, to any person, with intent to induce him to vote for, or to procure or to aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor..

8141. (§ 77.) *Bribing members of legislative caucuses, etc.*—Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this Section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

People v. Hurley, 126 Cal. 352; 58 Pac. 814.

8142. (§ 78.) *Preventing public meetings of electors.*—Every person who, by threats, intimidations, or violence, wilfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

8143. (§ 79.) *Disturbances of public meetings of electors.*—Every person who wilfully disturbs or breaks up any public meeting of electors or others, lawfully being held for the purpose of considering public questions, any public school or public school meeting is guilty of a misdemeanor.

8144. (§ 80.) *Betting on elections.*—Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

8145. (§ 81.) *Violation of election laws.*—Every person who wilfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for

such violation is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or both.

8146. (§ 82.) *Not to sell liquor on election day.*—Every person who sells, gives away, or furnishes, spirituous or malt liquors, cider, wine, or any other intoxicating beverages on any part of any day set apart for any general or special or municipal election during the hours when by law the polls are required to be kept open, is guilty of a misdemeanor, and punishable by imprisonment not exceeding six months, or by fine not less than fifty nor more than five hundred dollars, or both.

8147. (§ 83.) *Expenses of candidate.*—No person shall, in order to aid or promote his own nomination as a candidate for public office, by a caucus, convention, or nomination paper, directly or indirectly, by himself, or through another person, or by a political committee, give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing, except for personal expenses as hereinafter provided. [Act approved February 25, 1895.]

8148. (§ 84.) *Unlawful to promise appointments.*—No person shall, in order to aid or promote his own nomination or election to a public office directly or indirectly, by himself or through another person, promise to appoint, or promise to secure or assist to secure the appointment, nomination or election of another person to a public position or to a position of honor, trust or emolument, if he shall himself be elected to the public office for which he is a candidate, except that he may announce or define his own choice or purpose in relation to an election in which he may be called to take part. [Act approved February 25, 1895.]

8149. (§ 85.) *What money may be paid to political committees.*—No person shall, in order to aid or promote his own election to a public office, directly or indirectly, by himself or through another person, give, pay, expend or contribute, any money or other valuable thing, except as hereinafter provided, for personal expenses and to a political committee. [Act approved February 25, 1895.]

8150. (§ 86.) *Lawful expenses of candidate.*—A candidate for nomination or for election to a public office, and any other person, may incur and pay, in connection with such nomination or election, his own personal expenses for traveling and purposes properly incidental to traveling; for writing, printing and preparing for transmission, any letter, circular or other publication, which is not issued at regular intervals, whereby he may make known his own position or views upon public or other questions; for stationery and postage, for telegraph, telephone and other public messenger service, and for other petty personal expenses; but all such expenses shall be limited to those which are directly incurred and paid by him, and by him alone; and every person

shall be required to include such personal expenses in any statement which may be required of him under this Act. And in no other case whatever shall the total sum paid, or agreed to be paid, by any candidate for his own personal expenses, as authorized by this Act, exceed the sum of one thousand dollars by any candidate for United States senator, for congress or for any state office; nor shall such personal expenses exceed the sum of one hundred dollars by any candidate for a county or other office. [*Act approved Feb. 25, 1895.*]

8151. (§ 87.) *Limitations of contributions to political committees.*—A person who is nominated as a candidate for public office by a caucus, convention, or nomination paper, and any person who shall, with his own assent, be voted for for public office, may make a voluntary payment of money, or a voluntary or unconditional promise of payment of money, to a political committee as hereinafter defined, for the promotion of the principles of the party which the committee represents and for the general purposes of the committee. But in no case, by direct or indirect voluntary contribution, shall such total aggregate voluntary payments exceed the sum of one thousand dollars by any candidate for the United States senate, for congress or for state offices; nor shall such total aggregate voluntary payments exceed the sum of fifty dollars by any candidate for member of the state legislature, or one hundred dollars for any county or other office within the state, nor the sum of one hundred dollars by any candidate for any other office. *Provided*, that nothing in this Act contained shall be construed to authorize or permit any candidate to make such payment to more than one committee, or person, acting otherwise than under the authority or in behalf of a political committee, in any county. [*Act approved February 25th, 1895.*]

8152. (§ 88.) *Political committee defined.*—The term “political committee,” under the provisions of this Act, shall apply to every committee or combination of persons who shall aid or promote the success or defeat of any political party or principle in a public election, or shall aid or take part in the nomination, election or defeat of a candidate for public office. Every such committee, shall have a treasurer, who is a legal voter of the state, and shall cause to be kept by him detailed accounts of all money and the equivalent of money, which shall be received by or promised to the committee, or any person acting under its authority or in its behalf, and of all such expenditures, disbursements or promises of payment or disbursement, which shall be made by the committee or any person acting under its authority or in its behalf; and no person, acting under the authority or in the behalf of such committee, shall receive any money or equivalent of money, or expend or disburse the same, until the committee has chosen a treasurer to keep its accounts as herein provided. [*Act approved February 25th, 1895.*]

8153. (§ 89.) *Statement of expenses, by candidate.*—A person who, acting under the authority or in behalf of a political committee, shall receive any money or equivalent of money, or promise of the same, or shall expend any money, or its equivalent, or shall incur any liability to pay money or its equivalent, shall at any time thereafter, on demand of the treasurer of such committee, and in any event within fourteen days after such receipt, expenditure, promise or liability, give to such treasurer a detailed account of the same, with all vouchers required by this Act; and such account shall constitute a part of the accounts and records of such treasurer. [*Act approved Feby. 25, 1895.*]

8154. (§ 90.) *Statement of disbursements by treasurer.*—The treasurer of every political committee which shall receive or expend or disburse any money, or equivalent of money, or incur any liability to pay money, in connection with any election, if the aggregate of such receipts or of such expenditures, disbursements and liabilities shall exceed ten dollars, shall, within thirty days after such election, file a statement setting forth all the receipts, expenditures, disbursements and liabilities of the committee, and of every officer and other person acting under its authority or in its behalf. Such statement shall include the amount in each case received, the name of the person or committee from whom it was received, and the date of its receipt, and shall also include the amount of every expenditure or disbursement, the name of the person or committee to whom the expenditure or disbursement was made, and the date of every such expenditure or disbursement, and shall clearly state the purpose for which it was expended or disbursed. The statement shall also give the date and amount of every existing unfulfilled promise or liability, both to and from such committee, remaining uncanceled and in force at the time the statement is made, with the name of the person or committee to or from whom the unfulfilled promise or liability exists, and clearly state the purpose for which the promise or liability was made or incurred. [*Act approved Feby. 25, 1895.*]

8155. (§ 91.) *Statement by other persons.*—Every person, who, acting otherwise than under the authority or in behalf of a political committee, having a treasurer as hereinbefore provided, receives money or the equivalent of money, or expends or disburses, or promises to expend or disburse money or its equivalent, to an amount exceeding ten dollars, for the purpose of aiding or promoting the success or defeat of a political party candidate or principal in a public election, or of aiding or taking part in the nomination, election or defeat of a candidate for public office, shall file such statement as is herein required to be filed by a treasurer of a political committee in the county in which he is a legal voter, and shall be subject to all the requirements of this

Act, the same as a political committee and the treasurer thereof; but no person other than a legal voter of the state shall receive, expend or disburse any money or equivalent of money, or promise to expend or disburse the same, for either of the purposes above named, except for personal expenses as herein provided, or under the authority or in behalf of a political committee. [*Act approved February 25, 1895.*]

8156. (§ 92.) *Indirect payments not allowed.*—No person shall directly or indirectly, by himself or through another person, make a payment or promise of payment to a political committee, or to an officer or other person acting under its authority or in its behalf, in any other than his own name; nor shall such committee officer or other person, knowingly receive a payment or promise of payment, or enter or cause the same to be entered in the accounts or records of such committee, in any other name than that of the person by whom such payment or promise of payment is made. [*Act approved February 25, 1895.*]

8157. (§ 93.) *Solicitation of money prohibited.*—No political committee, and no person acting under the authority or in behalf of a political committee, shall demand, solicit, ask or invite a payment of money or promise of payment of money to be used in an election, from a person who has been nominated by a caucus, convention or nominating paper, as a candidate for public office in such election; and no person so nominated shall make any such payment in an election in which he is a candidate for public office, to a political committee, or to any person acting under the authority or in behalf of a political committee, if such committee or any such person has demanded, solicited, asked or invited from him any such payment or promise of payment. [*Act approved February 25th, 1895.*]

8158. (§ 94.) *Statement of treasurer filed with county clerk.*—The statement required by this Act to be filed by the treasurer of a political committee shall be filed with the clerk of the county in which the treasurer is a legal voter, except that, in case a political committee has its headquarters in some other town or city than that in which the treasurer is a legal voter, the treasurer shall file the statement required of him with the clerk of the county in which such headquarters are maintained at the time of the election to which such statement relates. A statement relating to any other than a municipal election shall be filed in duplicate, and one copy shall be forthwith forwarded by the county clerk receiving the same to the secretary of state, by whom it shall be placed on file. [*Act approved February 25th, 1895.*]

8159. (§ 95.) *Power of supreme and district courts.*—The supreme court and the district court shall have full equity powers to compel any person who fails to file a statement as required by this Act, or who files a statement which does not conform to the

provisions of this Act in respect to sufficiency in detail, conformity to the truth or otherwise, to comply with the provisions of this Act by filing such a statement as is required, and shall compel such compliance upon the petition of any candidate voted for or of any five persons qualified to vote at the election on account of which the expenditures, or a part thereof, were or are alleged to have been made. No such petition shall be brought later than sixty days after such election, against any one who has filed his account within the thirty days required, excepting that a petition may be brought within thirty days of any payment which was not stated in the statement so filed. Proceedings under this Section shall be advanced upon the dockets of said courts, if requested by either party, so that they may be tried and decided with as little delay as possible. No petition brought under this Act shall be withdrawn or discontinued without the consent of the attorney general. [*Act approved Feb. 25, 1895.*]

8160. (§ 96.) *Exemption of witness from prosecution.*—No person called to testify in any proceedings under the preceding Section shall be liable to criminal prosecution under this Act or otherwise, for any matters or causes in respect of which he shall be examined or to which his testimony shall relate, except to prosecution for perjury committed in such testimony. [*Act approved Feb. 25, 1895.*]

8161. (§ 97.) *Clerk may require correct statement.*—If any statements which are filed under this Act shall apparently fail to be in conformity with the requirements thereof, it shall be the duty of the clerk with whom any such statement is filed forthwith to notify the person making the same of such failure, and to request him to amend and correct the same. [*Act approved Feb. 25, 1895.*]

8162. (§ 98.) *Statement must be under oath.*—Every person making a statement required by this Act shall make oath that the same is in all respects correct and true to the best of his knowledge and belief. [*Act approved Feb. 25, 1895.*]

8163. (§ 99.) *Statement open to public inspection.*—All statements which are filed in accordance with the provisions of this Act shall be preserved for not less than fifteen months from the time of the election to which they relate, and shall, during that period, be open to public inspection. [*Act approved February 25, 1895.*]

8164. (§ 100.) *Secretary of state to provide blanks.*—The secretary of state shall, at the expense of the state, provide every county clerk with the blank forms suitable for such statements and receipts for statements as are required under this Act. Said blank forms shall be approved by the secretary, treasurer and auditor of the state, or by a majority of them. [*Act approved February 25, 1895.*]

8165. (§ 101.) *Clerk to receipt for statement.*—The clerk of every county shall give a receipt for any statement which may be filed with him in accordance with the provisions of this Act, at the request of the persons filing the same. [*Act approved February 25, 1895.*]

8166. (§ 102.) *Vouchers for expenses.*—Every payment in respect of any expense incurred, which is to be accounted for under this Act, shall be vouched for by a receipted bill stating the particulars of expenses, and every voucher, receipt or account required by this Act shall be preserved for at least six months from the election to which it relates. [*Act approved February 25, 1895.*]

8167. (§ 103.) *Scope of act.*—This Act shall apply to all public elections, whether for officers or upon questions to be submitted to the people, except elections of township officers, and shall apply to caucuses and conventions for the nomination of candidates to be voted for at such elections, and to nomination papers for the nomination of candidates to be voted for at such elections; except that § § 8147 (83), 8149 (85) and 8156 (92) of this Act shall not apply to the proprietors and publishers of publications issued at regular intervals in respect to the ordinary and regular conduct of business as such proprietors and publishers. [*Act approved February 25, 1895.*]

State v. Fransham, 19 Mont. 290; 48 Pac. 7.

8168. (§ 104.) *Penalties.*—Whoever shall violate any of the provisions of § § 8147 (83), 8148 (84), 8149 (85), 8152 (88), 8153 (89), 8157 (93), 8158 (94), 8162 (98), 8163 (99) and 8166 (102) of this Act shall be punished by a fine not exceeding one thousand dollars, and by imprisonment in the county jail for not more than three months. Whoever shall violate any of the provisions of § § 8154 (90), 8155 (91) and 8156 (92) of this Act shall be punished by a fine not exceeding one thousand dollars and by imprisonment in the county jail for not more than three months. [*Act approved February 25, 1895.*]

8169. (§ 105.) *Bribery.*—The following persons shall be deemed guilty of bribery, and shall be punished by a fine not exceeding one thousand dollars and imprisonment in the penitentiary not exceeding one year:

1. Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promise to procure or endeavors to procure, any money or valuable consideration, to or for any election, or to or for any person on behalf of any elector, or to or for any person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid, from voting at any election;

2. Every person, who, directly or indirectly, by himself or by any other person on his behalf, gives, or procures, or agrees to give or procure, or offers or promises, any office, place or employment, to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid, on account of any elector having voted or refrained from voting at any election;

3. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavor to procure the return of any person to serve in the legislative assembly or the vote of any elector at any election;

4. Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or promises, or endeavors to procure, the election of any candidate to the legislative assembly, or the vote of any elector at any election;

5. Every person who advances or pays, or causes to be paid, any money to, or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery, or in corrupt practices, at any election, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election;

6. Every elector who, before or during any election, directly or indirectly, by himself or any other person on his behalf, receives, agrees or contracts for any money, gift, loan, valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refusing or agreeing to refrain from voting at any election;

7. Every person who, after any election, directly or indirectly, by himself or by any other person in his behalf, receives any money, gift, loan, valuable consideration, office, place or employment, for having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election;

8. Every person, whether an elector or otherwise, who, before or during any election directly or indirectly, by himself or by any other person on his behalf, makes approaches to any candidate or agent, or any person representing or acting on behalf of any candidate at such election, and asks for, or offers to agree or contract for, any money, gift, loan, valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at such election;

9. Every person, whether an elector or otherwise, who, after an election, directly or indirectly, by himself or by any other person on his behalf, makes approaches to any candidate, or any agent or person representing or acting on behalf of any candidate, and asks for or offers to receive any money, gift, loan, valuable consideration, office, place or employment, for himself or any other person, for having voted or refrained from voting, or having induced any other person to vote or refrain from voting at such election;

10. Every person who, in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has so become, gives or lends any money or valuable consideration whatever, or agrees to give or lend, or offers or promises any such money or valuable consideration, or promises to procure or try to procure, or tries to procure, for such person or for any other person, any money or valuable consideration;

11. Every person who, for the purpose and with the intent in the last preceding Sub-section mentioned, gives or procures any office, place of employment, or agrees to give or procure or offers or promises such office, place or employment, or endeavors to procure, or promises to procure or to endeavor to procure, such office, place or employment, to or for such person or any other person;

12. Every person who, in consideration of any gift, loan, offer, promise or agreement, as mentioned in the two last preceding Sub-sections, allows himself to be nominated or refuses to allow himself to be nominated as a candidate at an election, or withdraws if he has been so nominated;

13. Every elector, candidate for nomination, nominee or political committee who shall pay, or offer to pay, the fee for any person who is about to, or has made his declaration of intention, or has taken out, or is about to take out his final papers as a citizen of the United States; and every person who receives any money or other valuable thing to pay such fee, or permits the same to be paid for him. [*Act approved February 25, 1895.*]

8170. (§ 106.) *Bets and wagers.*—Every person who shall bet or wager any money or property, or other valuable thing, on the result of any election authorized by the Constitution or laws of the United States or of this state, or on any vote to be given at such election, or who shall knowingly become stakeholder of such bet or wager, shall be punished by a fine not less than twenty-five dollars nor more than one thousand dollars. [*Act approved Feb. 25, 1895.*]

8171. (§ 107.) *Treating on election day.*—The giving or causing to be given to any elector on the day of voting, or at any

other time, on account of such elector having voted or being about to vote, or with the intent to influence his vote, any meat, drink or refreshment, or any money or ticket to enable such elector to procure such refreshments, shall be deemed a misdemeanor; and who-soever shall have been guilty of such unlawful act, shall, for each offense, be liable to a penalty of not exceeding ten dollars and to imprisonment for not exceeding one month in the county jail. [*Act approved February 25, 1895.*]

8172. (§ 108.) *Undue influence.*—The following persons shall be deemed to be guilty of the offense of “undue influence,” and shall be punishable accordingly by a penalty of not less than two hundred dollars, nor more than five thousand dollars, and by imprisonment for not to exceed two years in the penitentiary:

1. Every person who, directly or indirectly, by himself, or by any other person on his behalf, makes use of, or threatens to make use of any force, violence or restraint, or inflicts or threatens the infliction by himself or by or through any other person, of any injury, damage, harm or loss of employment, position, trade, influence, or in any manner practices intimidation upon, or against any person, in order to induce or compel such person to register or vote or refrain from registering or voting, or on account of such person having voted or refrained from voting, at any election.

2. Every person who, by abduction, duress, or any fraudulent device or contrivance, impedes, or otherwise interferes with the free exercise of the elective franchise, or thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at any election. [*Act approved February 25, 1895.*]

8173. (§ 109.) *Unlawful acts of employers.*—It shall be unlawful for any employer, in paying his employes the salary or wages due them, to inclose their pay in “pay envelopes” upon which there is written or printed the name of any candidate or political mottoes, devices or arguments containing threats or promise, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard containing any threat or promise, notice or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This Section

shall apply to corporations as well as individuals, and any person violating the provisions of this Section is guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, and imprisonment not exceeding six months in the county jail, and any corporation violating this Section shall be punished by fine not to exceed five thousand dollars, or forfeit its charter, or both such fine and forfeiture. [*Act approved February 25, 1895.*]

8174. (§ 110.) *Fines paid into school fund.*—All fines imposed and collected under the preceding Sections shall be paid into the county treasury for the benefit of the common schools of the county in which the offense was committed. [*Act approved February 25, 1895.*]

8175. (§ 111.) *Violation of act voids election.*—If it be proved before any court for the trial of election contests or petitions that any corrupt practice has been committed, by or with the actual knowledge and consent of any candidate at an election, if he has been elected, shall be void, and shall be so adjudged. [*Act approved February 25, 1895.*]

State v. Fransham, 19 Mont. 290; 48 Pac. 7.

TITLE V.

CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

Section 8176. Acting in a public capacity without having qualified.

- “ 8177. *Acts of officers de facto not affected.*
- “ 8178. *Giving or offering bribes to executive officers.*
- “ 8179. *Asking or receiving bribes.*
- “ 8180. *Resisting officers.*
- “ 8181. *Extortion.*
- “ 8182. *Officers illegally interested in contracts.*
- “ 8183. *Presenting fraudulent bills or claims for allowance or payment.*
- “ 8184. *Buying appointments to office.*
- “ 8185. *Taking rewards for deputation.*
- “ 8186. *Exercising functions of office wrongfully.*
- “ 8187. *Refusal to surrender books, etc., to successor.*
- “ 8188. *Sections to apply to administrative and ministerial officers.*
- “ 8189. *School officers and teachers not to act as agents for publishers, etc.*

8176. (§ 130.) *Acting in a public capacity without having qualified.*—Every person who exercises any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor.

8177. (§ 131.) *Acts of officers de facto not affected.*—The last Section does not affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

8178. (§ 132.) *Giving or offering bribes to executive officers.*—Every person who gives or offers any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not less than one nor more than ten years, and is disqualified from holding any office in this state.

8179. (§ 133.) *Asking or receiving bribes.*—Every executive officer or person elected or appointed to an executive office, who asks, receives or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

People v. Seeley, 137 Cal. 14; 69 Pac. 693.

8180. (§ 134.) *Resisting officers.*—Every person who attempts by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

8181. (§ 135.) *Extortion.*—Every executive or ministerial officer who knowingly asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Denninger v. Court, 145 Cal. 638; 79 Pac. 360.

8182. (§ 136.) *Officers illegally interested in contracts.*—Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail or state prison not more than five years, and is forever disqualified from holding any office in this state.

State v. Newman, 34 Mont. 441; 87 Pac. 464.

State v. Danzer, 35 Mont. 272; 88 Pac. 952.

Berka v. Woodward, 125 Cal. 122; 57 Pac. 777.

8183. (§ 137.) *Presenting fraudulent bills or claims for allowance or payment.*—Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town, city, ward, or board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher or writing, is guilty of felony.

People v. Mahony, 145 Cal. 110; 78 Pac. 354.

8184. (§ 138.) *Buying appointments to office.*—Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

8185. (§ 139.) *Taking rewards for deputation.*—Every public officer, who for any gratuity or reward, appoints another person to a public office or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

8186. (§ 140.) *Exercising functions of office wrongfully.*—Every person who wilfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, wilfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

8187. (§ 141.) *Refusal to surrender books, etc., to successor.*—Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, wilfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing appertaining or belonging to his office, wrongfully refuses to surrender the official seal, or mutilates, destroys, or takes away the same, is guilty of a misdemeanor and is punishable by a fine not exceeding two thousand dollars or by imprisonment not exceeding one year, or both.

People v. Hamilton, 103 Cal. 493; 37 Pac. 627.

8188. (§ 142.) *Sections to apply to administrative and ministerial officers.*—The various provisions of this Chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

8189. (§ 143.) *School officers and teachers not to act as agents for publishers, etc.*—Every person who violates any of the provisions of § 1041 of the Political Code relating to school officers and teachers, and prohibiting them from acting as agents, etc., is guilty of a misdemeanor.

TITLE VI.

CRIMES AGAINST THE LEGISLATIVE POWER.

Section 8190. Preventing the meeting of the legislative assembly.

- “ 8191. *Disturbing the legislative assembly while in session.*
- “ 8192. *Altering draft of bill or resolution.*
- “ 8193. *Altering enrolled copy of bill or resolution.*
- “ 8194. *Giving or offering bribes to members of the legislative assembly.*
- “ 8195. *Receiving bribes by members of the legislative assembly.*
- “ 8196. *Solicitation of bribes.*
- “ 8197. *Bribery.*
- “ 8198. *Same.*
- “ 8199. *Solicitation of bribery.*
- “ 8200. *Personal interest in bill.*
- “ 8201. *Witnesses refusing to attend, etc., before the legislative assembly.*
- “ 8202. *Lobbying.*
- “ 8203. *Penalty.*
- “ 8204. *Bribery and solicitation of bribery by member of legislature.*
- “ 8205. *Bribery of member of legislature.*
- “ 8206. *Acts constituting bribery.*
- “ 8207. *Same.*
- “ 8208. *Penalties.*

8190. (§ 160.) *Preventing the meeting of the legislative assembly.*—Every person who wilfully, and by force and fraud, prevents the legislative assembly of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

In re Wellcome, 23 Mont. 145; 58 Pac. 47. Bribery of a member of the legislature is a felony.

8191. (§ 161.) *Disturbing the legislative assembly while in session.*—Every person who wilfully disturbs the legislative assembly of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt its proceedings or impair the respect due its authority, is guilty of a misdemeanor.

8192. (§ 162.) *Altering draft of bill or resolution.*—Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislative assembly, to be passed or adopted, with intent to pro-

cure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

8193. (§ 163.) *Altering enrolled copy of bill or resolution.*—Every person who fraudulently alters the engrossed copy or enrollment of any bill or resolution which has been passed or adopted by the legislative assembly of this state, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of statutes, in language different from that in which it was passed or adopted by the legislative assembly, is guilty of felony.

8194. (§ 164.) *Giving or offering bribes to members of the legislative assembly.*—Every person who gives or offers a bribe to any member of the legislative assembly or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the state prison not less than one nor more than ten years.

People v. Bunkers, 2 C. App. 204; 84 Pac. 364.

8195. (§ 165.) *Receiving bribes by members of the legislative assembly.*—Every member of either of the houses composing the legislative assembly of this state who asks, receives or agrees to receive any bribe, upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives or offers, or promises to give any official vote in consideration that another member of the legislative assembly shall give any such vote, either upon the same or another question, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Application of Bunkers, 1 C. App. 64; 81 Pac. 748.

8196. (§ 166.) *Solicitation of bribes.*—Every person elected to either house of the legislative assembly who offers or promises to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the legislative assembly, in consideration or upon condition that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise is guilty of solicitation of bribery, and is punishable in the state prison not less than one year nor more than ten years.

8197. (§ 167.) *Bribery.*—Every member of the legislative assembly who gives his vote or influence for or against any

measure or proposition pending or proposed to be introduced in such legislative assembly, or offers, promises, or assents to give, upon condition that any other member will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, is guilty of bribery, and is punishable in the state prison not less than one nor more than ten years.

8198. (§ 168.) *Same*.—Every person who directly or indirectly offers, gives, or promises any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer or member of the legislative assembly, or to any public officer of the state or of any municipal division thereof, to influence him in the performance of any of his official or public duties, is guilty of bribery and is punishable in the state prison not less than one nor more than ten years.

8199. (§ 169.) *Solicitation of bribery*.—Every person who corruptly solicits directly or indirectly the official action of any member of the legislative assembly or of any public officer of the state, or of any municipal division thereof, is guilty of the occupation and practice of solicitation of bribery, and is punishable in the state prison not less than one nor more than ten years.

8200. (§ 170.) *Personal interest in bill*.—Every member of the legislative assembly who has a personal or private interest in any measure or bill, proposed or pending before the legislative assembly of which he is a member, and does not disclose the fact to the house of which he is a member, and votes thereon, is guilty of a misdemeanor.

8201. (§ 171.) *Witnesses refusing to attend, etc., before the legislative assembly*.—Every person who, being summoned to attend as a witness before either house of the legislative assembly or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons, and every person who, being present before either house of the legislative assembly, or any committee thereof, wilfully refuses to be sworn, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers or documents in his possession or under his control, is guilty of a misdemeanor.

8202. (§ 172.) *Lobbying*.—Every person who obtains, or seeks to obtain money or other thing of value from another person upon a pretense, claim or representation that he can or will improperly influence in any manner the action of any member of any legislative body in regard to any vote or legislative matter, is

guilty of felony. Upon the trial no person, otherwise competent as a witness, shall be excused from testifying as such concerning the offense charged, on the ground that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterward be used against him in any judicial proceeding, except for perjury in giving such testimony.

8203. (§ 173.) *Penalty.*—Every member of the legislative assembly convicted of any crime defined in this Title, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this state.

8204. (§ 174.) *Bribery and solicitation of bribery by member of legislature.*—Any person elected to either house of the legislative assembly, who shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the legislative assembly, in consideration or upon condition that any other person elected to the same legislative assembly will give or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition pending or proposed to be introduced into such legislative assembly, shall be deemed guilty of solicitation of bribery. Any member of the legislative assembly who shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such legislative assembly, or offer, promise or assent so to, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, shall be deemed guilty of bribery. [*Act approved February 23, 1893.*]

8205. (§ 175.) *Bribery of member of legislature.*—Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislative assembly to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery. [*Act approved February 23, 1893.*]

8206. (§ 176.) *Acts constituting bribery.*—Any person or persons who shall give, or promise, or offer to give or promise, any member of either house of the legislative assembly any money, office, paper or property or other valuable thing, or shall offer to do for such member or any member of his family, relative or other person, anything not common to the people of the state, county, township or community in which such person resides, in consideration that such member shall vote in either house of the legis-

lative assembly in any given way or in consideration that such member shall do, or omit to do anything appertaining to his office, or duty as a member of such legislative assembly, shall be deemed guilty of bribery. [*Act approved February 23, 1893.*]

8207. (§ 177.) *Same.*—Any person or persons who shall directly or indirectly give any money, property or other valuable thing, or make any promise of any kind whatever with the intent to have it proffered to such member of the legislative assembly to influence his vote or action in connection with his said office by any other person than himself, or shall aid or abet in the commission of the offense described in § § 8205 (175) and 8206 (176) of this act, shall be deemed guilty of bribery. [*Act approved February 23, 1893.*]

8208. (§ 178.) *Penalties.*—Every person convicted of violating any of the provisions of this Act shall be punishable by imprisonment in the state penitentiary for a term of not less than five years, nor more than twenty years, or by a fine not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment, and shall be forever disqualified from voting or holding any office in this state; and any member of the legislative assembly or person elected thereto, who shall be convicted of violating any of the provisions of this Act shall in addition to the punishment above prescribed be expelled therefrom. [*Act approved February 23, 1893.*]

TITLE VII.

CRIMES AGAINST PUBLIC JUSTICE.

- CHAPTER I. BRIBERY AND CORRUPTION.
- II. RESCUES.
- III. ESCAPES AND AIDING THEREIN.
- IV. FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.
- V. PERJURY AND SUBORNATION OF PERJURY.
- VI. FALSIFYING EVIDENCE.
- VII. OTHER OFFENSES AGAINST PUBLIC JUSTICE.
- VIII. CONSPIRACY.

CHAPTER I.

BRIBERY AND CORRUPTION.

- Section 8209. *Giving bribes to judges, jurors, referees, etc.*
- “ 8210. *Receiving bribes by judicial officers, jurors, etc.*
- “ 8211. *Extortion.*
- “ 8212. *Improper attempts to influence jurors, referees, etc.*

Section 8213. Misconduct of jurors, referees, etc.

“ 8214. *Embracery.*

“ 8215. *Misconduct of officers having charge of jury.*

“ 8216. *Justice or constable purchasing judgment.*

“ 8217. *Officers convicted, disfranchised.*

“ 8218. *Bribery of school trustees.*

“ 8219. *Offender a competent witness.*

8209. (§ 190.) *Giving bribes to judges, jurors, referees, etc.*—Every person who gives, or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire, appraiser or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the state prison not less than one nor more than ten years.

8210. (§ 191.) *Receiving bribes by judicial officers, jurors, etc.*—Every judicial officer, juror, referee, arbitrator, umpire, appraiser or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding upon any matter or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than ten years.

People v. Squires, 99 Cal. 328; 33 Pac. 1092.

8211. (§ 192.) *Extortion.*—Every judicial officer who asks or receives any emolument, gratuity or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a felony.

8212. (§ 193.) *Improper attempts to influence jurors, referees, etc.*—Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause or proceeding, pending or about to be brought before him, either

1. By means of any communication, oral or written, had with him except in the regular course of proceedings.

2. By means of any book, paper or instrument exhibited, otherwise than in the regular course of proceedings.

3. By means of any threat, intimidation, persuasion, or entreaty, or by imprisonment in the penitentiary not exceeding one year, or by both such fine and imprisonment; and the person so convicted shall be forever disqualified from holding any office of trust or profit.

Matter of Haymond, 121 Cal. 389; 53 Pac. 899.

8213. (§ 194.) *Misconduct of jurors, referees, etc.*—Every juror, or person summoned or drawn as a juror, or chosen arbitrator or umpire, or appointed referee, who either

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

2. Wilfully and corruptly permits any communication to be made to him or receives any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years.

People v. Squires, 99 Cal. 330; 33 Pac. 1092.

8214. (§ 195.) *Embracery.*—Every person who influences, or attempts to influence, improperly a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as a juror, or one chosen as an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending or about to be brought before him in any case, is punishable as provided in § 8212 (193).

8215. (§ 196.) *Misconduct of officers having charge of jury.*—Every officer to whose charge a jury is committed by a court or judge, who negligently or wilfully permits them, or any of them, without leave of the court or judge:

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper or refreshment; or,
4. To leave the jury room;

Is guilty of a misdemeanor.

8216. (§ 197.) *Justice or constable purchasing judgment.*—Every justice of the peace, or constable of the same township, who purchases or is interested in the purchase of any judgment, or part thereof, on the docket of, or on any docket in the possession of, such justice, is guilty of a misdemeanor.

8217. (§ 198.) *Officers convicted, disfranchised.*—Every officer convicted of any crime defined in this Chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this state.

8218. (§ 199.) *Bribery of school trustees.*—The offering of any valuable thing to any member of a board of education, school trustee or other school officer with the intent thereby to influence his action in regard to the granting of any teacher's certificate, the appointment of any teacher, superintendent, or other officer or employee, the adoption of any text-book, or the making of any contract to which a board of education, school trustees or other officer, be a party, or the acceptance by any member of a board or officer of any valuable thing, with corrupt intent, shall be a felony, and shall be punished by a fine not exceeding one

thousand dollars, or by imprisonment in the penitentiary not exceeding one year, or by both such fine and imprisonment; and the person so convicted shall be forever disqualified from holding any office of trust or profit.

8219. (§ 200.) *Offender a competent witness.*—A person offending against any provision of any Section of this Code relating to bribery, is a competent witness against another person so offending, and may be compelled to attend and testify on any trial, hearing, proceeding or investigation in the same manner as any other person; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly in bar of such indictment or prosecution.

In re Wellcome, 23 Mont. 218; 58 Pac. 49.

CHAPTER II.

RESCUES.

Section 8220. Rescuing prisoners.

“ 8221. *Retaking goods from custody of officer.*

8220. (§ 210.) *Rescuing prisoners.*—Every person who rescues, or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison or jail, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable by death; by imprisonment in the state prison not less than one nor more than fourteen years.

2. If such prisoner was in custody upon a conviction of any other felony; by imprisonment in the state prison not less than six months, nor more than five years.

3. If such prisoner was in custody upon a charge of felony; by a fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding two years.

4. If such prisoner was in custody otherwise than upon a charge or conviction of felony; by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding six months.

8221. (§ 211.) *Retaking goods from custody of officer.*—Every person who wilfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

ESCAPES, AND AIDING THEREIN.

- Section 8222. Escapes from state prison.*
 “ 8223. *Attempt to escape from state prison.*
 “ 8224. *Escapes from other than state prisons.*
 “ 8225. *Officers suffering convicts to escape.*
 “ 8226. *Assisting prisoner to escape.*
 “ 8227. *Carrying into prison things useful to aid in an escape.*
 “ 8228. *Expense of trial for escape.*

8222. (§ 220.) *Escapes from state prison.*—Every prisoner confined in state prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would have otherwise been discharged from said prison.

People v. Wood, 145 Cal. 664; 79 Pac. 367.

8223. (§ 221.) *Attempt to escape from state prison.*—Every prisoner confined in the state prison for a term less than for life, who attempts to escape from such prison, is punishable by imprisonment in the state prison for a term not less than one nor more than ten years, and, on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison.

8224. (§ 222.) *Escapes from other than state prisons.*—Every prisoner confined in any other prison than the state prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

8225. (§ 223.) *Officers suffering convicts to escape.*—Every keeper of a prison, deputy sheriff, constable or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten years, and fine not exceeding ten thousand dollars.

8226. (§ 224.) *Assisting prisoner to escape.*—Every person who wilfully assists any prisoner confined in any prison, or in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or custody, is punishable as provided in the preceding Section.

8227. (§ 225.) *Carrying into prison things useful to aid in an escape.*—Every person who carries or sends into a prison anything useful in aiding a prisoner to make his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in § 8225 (223) of this Code.

8228. (§ 226.) *Expense of trial for escape.*—Whenever a trial takes place of any person under any of the provisions of

§ 8222 (220) and § 8223 (221), of this Code, and whenever a prisoner in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such trial was had.

CHAPTER IV.

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

- Section 8229. Larceny, destruction, etc., of records by officers.*
 “ 8230. *Larceny, destruction, etc., of records by others.*
 “ 8231. *Offering forged or false instruments to be recorded.*
 “ 8232. *Adding names, etc., to jury lists.*
 “ 8233. *Falsifying jury lists, etc.*

8229. (§ 230.) *Larceny, destruction, etc., of records by officers.*—Every officer having the custody of any record, map or book, or of any paper, or proceeding of any court filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, wilfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

State v. Bloor, 20 Mont. 574; 52 Pac. 611. An indictment under this section alleged that defendant being an officer and having in his custody a certain public record, which came into and was in his hands, feloniously secreted the same. The indictment need not allege the means used to secrete the record or an intent

to injure any particular person.

Coad v. Court, 23 Mont. 171; 57 Pac. 1095. This section refers to mutilating, defacing or altering books, maps and other documents and has no reference to the making of a correct index to the contents of books in a public office.

8230. (§ 231.) *Larceny, destruction, etc., of records by others.*—Every person not an officer such as is referred to in the preceding Section, who is guilty of any of the acts specified in that Section, is punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or both.

People v. O'Brien, 96 Cal. 174; 31 Pac. 45.

8231. (§ 232.) *Offering forged or false instruments to be recorded.*—Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in

any public office within the state, which instrument, if genuine, might be filed or registered, or recorded under any law of this state, or of the United States, is guilty of felony.

People v. Kelly, 133 Cal. 2; 64 Pac. 1091.

8232. (§ 233.) *Adding names, etc., to the jury lists.*—Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or boxes, or otherwise, or extracts any name therefrom, or destroys the jury-box or boxes, or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

8233. (§ 234.) *Falsifying jury lists, etc.*—Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly, or wilfully certifies to a false and incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box or boxes, the same names that are on the certified list, and no more and no less than are on such lists, is guilty of a felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

Section 8234. *Perjury defined.*

“ 8235. *Oath defined.*

“ 8236. *Oath of office.*

“ 8237. *Irregularity in administering.*

“ 8238. *Incompetency of witness no defense.*

“ 8239. *Knowledge of materiality of testimony not necessary.*

“ 8240. *Making depositions, etc., when deemed complete.*

“ 8241. *Statement of that which one does not know to be true.*

“ 8242. *Punishment of perjury.*

“ 8243. *Subornation of perjury.*

“ 8244. *Procuring the execution of innocent persons.*

Cal. 118 8234. (§ 240.) *Perjury defined.*—Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer or person, in any of the cases in which an oath may by law be administered, wilfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

People v. Sam, 146 Cal. 115; 79 Pac. 848.

8235. (§ 241.) *Oath defined.*—The term “oath” as used in the last Section, includes an affirmation and every mode authorized by law of attesting the truth of that which is stated.

People v. Simpton, 133 Cal. 370; 65 Pac. 834.

8236. (§ 242.) *Oath of office.*—So much of an oath of office as relates to the future performance of official duties is not such an oath as is entitled by the two preceding Sections.

8237. (§ 243.) *Irregularity in administering.*—It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

People v. Parent, 139 Cal. 601; 73 Pac. 423.

8238. (§ 244.) *Incompetency of witness no defense.*—It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

8239. (§ 245.) *Knowledge of materiality of testimony not necessary.*—It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material and might have been used to affect such proceeding.

People v. Naylor, 82 Cal. 610; 23 Pac. 116.

8240. (§ 246.) *Making depositions, etc., when deemed complete.*—The making of a deposition or certificate is deemed to be complete, within the provisions of this Chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

People v. Maxwell, 118 Cal. 51; 50 Pac. 18.

8241. (§ 247.) *Statement of that which one does not know to be true.*—An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

People v. Von Tiedeman, 120 Cal. 132; 52 Pac. 155.

8242. (§ 248.) *Punishment of perjury.*—Perjury is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

8243. (§ 249.) *Subornation of perjury.*—Every person who wilfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

8244. (§ 250.) *Procuring the execution of innocent persons.*—Every person who, by willful perjury, or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

CHAPTER VI.

FALSIFYING EVIDENCE.

Section 8245. Offering false evidence.

“ 8246. *Deceiving a witness.*

“ 8247. *Preparing false evidence.*

“ 8248. *Destroying evidence.*

“ 8249. *Preventing or dissuading witness from attending.*

“ 8250. *Bribing witness.*

“ 8251. *Receiving or offering to receive bribes.*

8245. (§ 260.) *Offering false evidence.*—Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document or record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered or ante-dated, is guilty of felony.

8246. (§ 261.) *Deceiving a witness.*—Every person who practices any fraud or deceit or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or any person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

8247. (§ 262.) *Preparing false evidence.*—Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding or inquiry whatever authorized by law, is guilty of felony.

8248. (§ 263.) *Destroying evidence.*—Every person who, knowing that any book, paper, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry or investigation whatever, authorized by law, wilfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

8249. (§ 264.) *Preventing or dissuading witness from attending.*—Every person who wilfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding or inquiry, authorized by law, is guilty of a misdemeanor.

8250. (§ 265.) *Bribing witness.*—Every person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influ-

enced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony.

People v. Ching, 78 Cal. 170; 20 Pac. 396.

8251. (§ 266.) *Receiving or offering to receive bribes.*—Every person who is a witness, or is about to be called as such, who receives or offers to receive, any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of felony.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

Section 8252. *Officer refusing to arrest parties charged with crime.*

“ 8253. *Public administrator, neglect or violation of duty by.*

“ 8254. *Administrator, etc., must file report. Penalty.*

“ 8255. *Receiving fee for services in arresting fugitives.*

“ 8256. *Delaying to take person arrested before a magistrate.*

“ 8257. *Making arrest, etc., without lawful authority.*

“ 8258. *Inhumanity to prisoners.*

“ 8259. *Resisting public officers in the discharge of their duties.*

“ 8260. *Assault, etc., by officers under color of authority.*

“ 8261. *Refusing to aid officers in arrest, etc.*

“ 8262. *Compounding crimes.*

“ 8263. *Debtor fraudulently concealing his property.*

“ 8264. *Defendant fraudulently concealing his property.*

“ 8265. *Fraudulent pretenses relative to birth of infant.*

“ 8266. *Substituting one child for another.*

“ 8267. *Common barratry defined, how punished.*

“ 8268. *What proof is required.*

“ 8269. *Misconduct by attorneys.*

“ 8270. *Buying demands or suit by an attorney.*

“ 8271. *Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.*

“ 8272. *Limitation of preceding section.*

“ 8273. *Grand juror acting after challenge has been allowed.*

“ 8274. *Bribing boards of county commissioners.*

“ 8275. *Criminal contempts.*

Section 8276. False certificates of public officers.

“ 8277. *Disclosing fact of indictment having been found.*

“ 8278. *Disclosing what transpired before the grand jury.*

“ 8279. *Maliciously procuring search warrant.*

“ 8280. *Unauthorized communication with convict.*

“ 8281. *Omission of duty by public officer.*

“ 8282. *Offense for which no penalty is prescribed.*

“ 8283. *Oppression and injury by an officer.*

8252. (§ 270.) *Officer refusing to arrest parties charged with crime.*—Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who wilfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

8253. (§ 271.) *Public administrator, neglect or violation of duty by.*—Every person holding the office of public administrator, who wilfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years, or both.

8254. (§ 272.) *Administrator, etc., must file report. Penalty.*—Any administrator, executor or guardian who shall fail to make, render or file any account, report or statement in any estate in his charge within the time required by him by law, may be, by the court within which the estate is being administered, summarily punished by a fine in any sum not exceeding one hundred dollars, and may be committed to jail until payment be made and his letters may be by the court summarily revoked. [Act approved February 16, 1893.]

8255. (§ 273.) *Receiving fee for services in arresting fugitives.*—Every person who violates any of the provisions of § 9710 (2863) of this Code, is guilty of a misdemeanor.

8256. (§ 274.) *Delaying to take person arrested before a magistrate.*—Every public officer or other person having arrested any person upon a criminal charge, who wilfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

8257. (§ 275.) *Making arrest, etc., without lawful authority.*—Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will,

or seizes or levies upon any property, or dispossesses any one of his lands or tenements, without a regular process or lawful authority therefor, is guilty of a misdemeanor.

8258. (§ 276.) *Inhumanity to prisoners.*—Every officer who is found guilty of wilful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

8259. (§ 277.) *Resisting public officers in the discharge of their duties.*—Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

People v. Hunt, 120 Cal. 281; 52 Pac. 658.

8260. (§ 278.) *Assault, etc., by officers under color of authority.*—Every public officer who under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

8261. (§ 279.) *Refusing to aid officers in arrest, etc.*—Every male person above the age of eighteen years who neglects or refuses to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

Sears v. Gallatin Co., 20 Mont. 464; the *posse comitatus* are declaratory of 52 Pac. 204. The statutes respecting the common law.

8262. (§ 280.) *Compounding crimes.*—Every person, who having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in cases provided for by law in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the state prison for life.

2. By imprisonment in the state prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the state prison for any other term than for life.

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

People v. Bryon, 103 Cal. 677; 37 Pac. 754.

8263. (§ 281.) *Debtor fraudulently concealing his property.*—Every debtor who fraudulently removes his property or effects out of this state, or fraudulently sells, conveys, assigns or conceals his property, with intent to defraud, hinder or delay his creditors of their rights, claims or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or both.

Ex parte Clarke, 103 Cal. 354; 37 Pac. 230.

8264. (§ 282.) *Defendant fraudulently concealing his property.*—Every person against whom an action is pending or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells or disposes of such property, with intent to hinder, delay or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding Section.

8265. (§ 283.) *Fraudulent pretenses relative to birth of infant.*—Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the state prison not exceeding ten years.

8266. (§ 284.) *Substituting one child for another.*—Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian, another child in the place of the one so confided, is punishable by imprisonment in the state prison not exceeding seven years.

8267. (§ 285.) *Common barratry defined, how punished.*—Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, and by fine not exceeding five hundred dollars.

8268. (§ 286.) *What proof is required.*—No person can be convicted of common barratry except upon proofs that he has excited suits or proceedings at law in at least three instances, and with a corrupt and malicious intent to vex and annoy.

8269. (§ 287.) *Misconduct by attorneys.*—Every attorney, who, whether as attorney or as counselor, either—

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

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

3. Wilfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for, is guilty of a misdemeanor.

8270. (§ 288.) *Buying demands or suit by an attorney.*—Every attorney who, either directly or indirectly, buys, or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Tuller v. Arnold, 98 Cal. 524; 33 Pac. 445.

8271. (§ 289.) *Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.*—Every attorney who, directly or indirectly, advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as county attorney, or other public prosecutor, with whom such person is directly or indirectly connected as a partner; or who, having himself prosecuted, or in any manner aided or promoted any action or proceeding in any court as county attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

8272. (§ 290.) *Limitation of preceding section.*—The preceding Section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

8273. (§ 291.) *Grand juror acting after challenge has been allowed.*—Every grand juror who, with a knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

8274. (§ 292.) *Bribing boards of county commissioners.*—Every person who gives or offers a bribe to any member of any city or town council, board of county commissioners, or board of trustees of any county, city or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this Section who receives or offers to receive any such bribe, is punishable by imprisonment in the state prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this state.

People v. Ward, 110 Cal. 372; 42 Pac. 894.

8275. (§ 293.) *Criminal contempts.*—Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor:

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

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

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

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

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

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

7. The publication of a false or grossly inaccurate report of the proceedings of any court.

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit or testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this Code.

People v. Faulds, 17 Mont. 140; 42 Pac. 286. The publication by the editor in a newspaper of an editorial referring to decisions of the supreme court, and charging the court with dealing out injustice and entering into a "dirty deal" constitutes a report of the proceedings of

a court within subdivision 7 of this section. The supreme court can punish such act as a contempt, although it is also punishable as a misdemeanor.

State v. Court, 24 Mont. 35; 60 Pac. 494. One guilty of a contempt of court by willful disobedience of an injunction

order lawfully issued concerning the use of water, may be punished under this section for a misdemeanor.

State v. Judges, 30 Mont. 198; 76 Pac. 12. Proceedings in contempt are of a criminal nature. The power to punish for contempt is inherent in district

courts, and exists independently of statutes, and cannot be abridged by the Legislature so as to leave such courts without means of protecting themselves from insult or enforcing their lawful orders.

Ex parte Gould, 99 Cal. 36; 33 Pac. 1112.

8276. (§ 294.) *False certificates of public officers.*—Every public officer or board authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

In re Terrett, 34 Mont. 335; 86 Pac. 268.

8277. (§ 295.) *Disclosing fact of indictment having been found.*—Every grand juror, county attorney, clerk, judge or other officer, who, except by issuing or in executing a warrant of arrest, wilfully discloses the fact of an indictment having been found or information filed for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

8278. (§ 296.) *Disclosing what transpired before the grand jury.*—Every grand juror who, except when required by a court, wilfully discloses any evidence adduced before the grand jury, or anything which he himself, or any other member of the grand jury may have said, or in what manner he or any other member of the grand jury may have voted on a matter before them, is guilty of a misdemeanor.

8279. (§ 297.) *Maliciously procuring search warrant.*—Every person who maliciously and without probable cause, procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

8280. (§ 298.) *Unauthorized communication with convict.*—Every person, not authorized by law, who, without the consent of the warden, or other officer in charge of the state prison, communicates with any convict therein, or brings into or conveys out of the state prison any letter or writing to or from any convict, is guilty of a misdemeanor.

8281. (§ 299.) *Omission of duty by public officer.*—Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment or any neglect of duty, where no special provision has been made for the punishment of such delinquency, is punishable as a misdemeanor.

8282. (§ 300.) *Offense for which no penalty is prescribed.*—When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

8283. (§ 301.) *Oppression and injury by an officer.*—Every officer who, under color of authority, oppresses, wrongs or injures any person, is guilty of a misdemeanor.

CHAPTER VIII.

CONSPIRACY.

Section 8284. Criminal conspiracy defined and punishment fixed.

- “ 8285. *Trusts, punishment.*
- “ 8286. *No other conspiracies punishable criminally.*
- “ 8287. *Overt act, when necessary.*
- “ 8288. *Wearing mask or disguise.*
- “ 8289. *Limitation.*

8284. (§ 320.) *Criminal conspiracy defined and punishment fixed.*—If two or more persons conspire

1. To commit any crime.
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
3. Falsely to move or maintain any suit, action or proceeding.
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses, or
5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice, or due administration of the laws.

They are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars or both.

Finlen v. Heinze, 28 Mont. 566; 73 Pac. 127. The assignor at the time of the making of an agreement to assign mining leases, options and bonds, had explored the vein and concluded that an adjoining owner was trespassing on a vein having its apex within the boundaries of the mine leased and assigned, and the assignor or assignee might have

prosecuted such trespass. The assignment required the assignor to prosecute such action for the benefit of the assignee, who agreed to pay the expenses of the litigation, but this did not render the contract void as a conspiracy.

People v. Holmes, 118 Cal. 460; 50 Pac. 675.

8285. (§ 321.) *Trusts, punishment.*—Every person, corporation, stock company or association of persons in this state who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporations or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or produce, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article, or to enter into an obligation by which they

shall bind others or themselves not to manufacture, sell, or transport any such article below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding ten thousand dollars, or both. Every corporation violating the provisions of this Section, forfeits to the state all its property and franchises, and in case of a foreign corporation it is prohibited from carrying on business in the state.

State v. Cudahy P. Co., 33 Mont. 181; 82 Pac. 833. This section is void.

8286. (§ 322.) *No other conspiracies punishable criminally.*—No conspiracies other than those enumerated in the preceding Sections are punishable criminally.

8287. (§ 323.) *Overt act, when necessary.*—No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to effect the object thereof, by one or more of the parties to the agreement.

People v. Daniels, 105 Cal. 264; 38 Pac. 720.

8288. (§ 324.) *Wearing mask or disguise.*—It is unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of

1. Evading or escaping discovery, recognition or identification in the commission of any public offense.

2. Concealment, flight or escape when charged with, arrested for, or convicted of any public offense. Any person violating any of the provisions of this Section is guilty of a misdemeanor.

8289. (§ 325.) *Limitation.*—The provisions of this Chapter do not apply to any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages, nor to persons engaged in horticulture or agriculture, with a view of enhancing the price of their products.

State v. Cudahy P. Co., 33 Mont. 181; 82 Pac. 833. This section is void.

TITLE VIII.

CRIMES AGAINST THE PERSON.

CHAPTER I. HOMICIDE.

II. MAYHEM.

III. KIDNAPPING.

IV. ROBBERY.

V. ASSAULTS.

VI. DUELS AND CHALLENGES.

VII. FALSE IMPRISONMENT.

VIII. LIBEL.

CHAPTER 1.

HOMICIDE.

- Section 8290. Murder defined.*
 “ 8291. *Malice defined.*
 “ 8292. *Degrees of murder.*
 “ 8293. *Penalty for murder in the first degree.*
 “ 8294. *Petit treason abolished.*
 “ 8295. *Manslaughter—voluntary and involuntary.*
 “ 8296. *Punishment of manslaughter.*
 “ 8297. *Deceased must die within a year and a day.*
 “ 8298. *Proof of corpus delicti.*
 “ 8299. *Excusable homicide.*
 “ 8300. *Justifiable homicide by officers.*
 “ 8301. *Justifiable homicide by other persons.*
 “ 8302. *Bare fear not to justify killing.*
 “ 8303. *Justifiable and excusable homicide not punishable.*

8290. (§ 350.) *Murder defined.*—Murder is the unlawful killing of a human being, with malice aforethought.

State v. Sloan, 22 Mont. 302; 56 Pac. 367. The distinction between murder and manslaughter is that the element of malice aforethought enters in the former, while it is wanting in the latter. The malice necessary to the crime of murder cannot co-exist with the heat of passion. The act of killing cannot be prompted by both.

State v. Hliboka, 31 Mont. 457; 78

Pac. 965. An information charging that accused committed a murder wilfully, unlawfully, feloniously and premeditatedly, and of his malice aforethought, charges murder in the first degree, though it fails to use the word “deliberately.”

People v. Frank, 2 C. App. 285; 83 Pac. 578.

8291. (§ 351.) *Malice defined.*—Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

State v. Gay, 18 Mont. 51; 44 Pac. 422.

State v. Hliboka, 31 Mont. 457; 78 Pac. 965.

People v. McRoberts, 1 C. App. 29; 81 Pac. 734.

8292. (§ 352.) *Degrees of murder.*—All murder which is perpetuated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murder are of the second degree.

State v. Metcalf, 17 Mont. 417; 43 Pac. 182. An indictment charging the killing or murder to have been done by defendant “of his deliberate premeditated malice aforethought” sufficiently charges that the killing was deliberate and premeditated.

State v. Shafer, 26 Mont. 20; 66 Pac. 466. Where the evidence would warrant a verdict of guilty of any grade of unlawful homicide, or of acquittal, the court, in addition to the statutory definitions of murder, murder of the first and second degrees, of manslaughter, and of jus-

tifiable homicide, should declare further the distinction between murder of the first and second degrees.

State v. Martin, 29 Mont. 280; 74 Pac. 727.

State v. Hliboka, 31 Mont. 457; 78 Pac. 965.

State v. Sing, 34 Mont. 34; 85 Pac.

522. It is not necessary to allege that the acts of the accused were done deliberately to sustain a conviction of murder of the first degree, and allegations sufficient for a common-law indictment will be sufficient for an information.

People v. Maughs, 149 Cal. 262; 86 Pac. 187.

8293. *Penalty for murder in the first degree.*—Every person guilty of murder in the first degree shall suffer death, or shall, in the discretion of the jury, or of the court, if the punishment be left to the court, be imprisoned in the state prison for the term of his natural life; and every person guilty of murder in the second degree is punishable by imprisonment in the state prison not less than ten years. [Act approved March 9, 1907.] (10th Sess. Chap. 179.)

State v. Gay, 18 Mont. 59; 44 Pac. 413.

State v. Hliboka, 31 Mont. 457; 78 Pac. 966.

People v. Ross, 134 Cal. 258; 66 Pac. 229.

8294. (§ 354.) *Petit treason' abolished.*—The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this Chapter.

8295. (§ 355.) *Manslaughter—voluntary and involuntary.*—Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

1. Voluntary, upon a sudden quarrel or heat of passion.

2. Involuntary, in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution or circumspection.

State v. Sloan, 22 Mont. 302; 56 Pac. 367.

State v. Schaefer, 35 Mont. 221; 88 Pac. 792.

People v. Maughs, 149 Cal. 264; 86 Pac. 187.

8296. (§ 356.) *Punishment of manslaughter.*—Manslaughter is punishable by imprisonment in the state prison not exceeding ten years.

State v. Gay, 18 Mont. 59; 44 Pac. 413.

8297. (§ 357.) *Deceased must die within a year and a day.*—To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

State v. Keerl, 29 Mont. 511; 75 Pac. 363.

8298. (§ 358.) *Proof of corpus delicti.*—No person can be convicted of murder or manslaughter unless the death of the person, alleged to have been killed, and the fact of the killing by

the defendant as alleged, are established as independent acts; the former by direct proof and the latter beyond a reasonable doubt.

State v. Pepo, 23 Mont. 473; 59 Pac. 724. The *corpus delicti* is directly proved when a dead body is found under circumstances warranting an inference that a person has been feloniously killed; direct proof of the identity of the victim is not required, but only direct proof of death.

State v. Calder, 23 Mont. 505; 59

Pac. 904. The proof of the *corpus delicti* involves the establishment of the fact that a murder has been committed, but includes neither the identity of the person alleged to have been killed, nor the killing by the person accused.

State v. Keerl, 29 Mont. 511; 75 Pac. 363.

8299. (§ 359.) *Excusable homicide*.—Homicide is excusable in the following cases:

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

2. When committed by accident or misfortune, in the heat of passion, upon any sudden or sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in any cruel or unusual manner.

8300. (§ 360.) *Justifiable homicide by officers*.—Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

1. In obedience to a judgment of a competent court; or
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

8301. (§ 361.) *Justifiable homicide by other persons*.—Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,
2. When committed in defense of habitation, property or person, against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner to enter the habitation of another for the purpose of offering violence to any person therein; or,
3. When committed in the lawful defense of such person, or of a wife, or husband, parent, child, master, mistress or servant of such person, when there is reasonable ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he

was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

State v. Shadwell, 26 Mont. 55; 66 Pac. 509. Where there was evidence tending to show that defendant was guilty of murder in the first degree, of murder in the second degree, or of manslaughter, the court should instruct that a verdict for manslaughter may be returned.

State v. Felker, 27 Mont. 457; 71 Pac. 670. On a charge of murder, defendant was convicted of manslaughter and the trial court gave the statutory definitions of murder in the first and second degrees, without an additional in-

struction distinguishing between the two degrees. This is not reversible error. *Quære*: Whether on a charge of murder a verdict of manslaughter acquits defendant of murder.

State v. Houk, 34 Mont. 423; 87 Pac. 176. In a prosecution for murder, the jury were correctly instructed that the right of self defense was to be measured by what a reasonable person would have done under like or the same circumstances.

People v. Glover, 141 Cal. 239; 74 Pac. 745.

8302. (§ 362.) *Bare fear not to justify killing.*—A bare fear of the commission of any of the offenses mentioned in Subdivisions two and three of the preceding Section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

State v. Cadotte, 17 Mont. 315; 42 Pac. 859. An instruction which makes the measure of justification "the sense of danger appearing to the defendant, and to men or individuals of his race" is properly refused.

State v. Shadwell, 26 Mont. 55; 66 Pac. 509.

State v. Felker, 27 Mont. 457; 71 Pac. 670.

People v. Newcomer, 118 Cal. 269; 50 Pac. 405.

8303. (§ 363.) *Justifiable and excusable homicide not punishable.*—The homicide appearing to be justifiable or excusable, the person charged must upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

Section 8304. *Mayhem defined.*

" 8305. *Mayhem, how punishable.*

8304. (§ 370.) *Mayhem defined.*—Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear or lip, is guilty of mayhem.

People v. Demasters, 105 Cal. 673; 39 Pac. 35.

8305. (§ 371.) *Mayhem, how punishable.*—Mayhem is punishable by imprisonment in the state prison not exceeding fourteen years.

CHAPTER III.

KIDNAPPING.

Section 8306. Kidnapping defined and punished.

“ 8307. *Venue.*

“ 8308. *Consent of injured person.*

8306. *Kidnapping defined and punished.*—Every person who wilfully—

1. Seizes, confines, inveigles or kidnaps, another with intent to cause him, without authority of law, to be secretly confined or imprisoned within this State, or to be sent out of the State, or in any way held to service or kept or detained against his or her will or against the will of his or her parent or guardian, whether such guardian be natural or appointed, and any person who,

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

3. Abducts, entices or by force or fraud unlawfully takes or carries away another, at or from a place without the state or procures or advises, aids or abets such abduction, enticing, taking or conveying away, and afterwards sends, brings, has or keeps such person, or causes him to be kept or secreted within this State, is guilty of kidnapping and is punishable by imprisonment in the State Prison for not less than one year. [*Act approved March 11th, 1901.*] (7th Sess. 169.)

State v. Stickney, 29 Mont. 523; 75 Pac. 203. The crime of kidnapping is complete under subdivision 3 when one willfully entices, or by force or fraud takes away another from a place without

the state, and afterwards brings such person into this state; although these acts are done without intent to cause such person to be secretly confined and imprisoned within this state.

8307. (§ 381.) *Venue.*—An indictment or information for kidnapping may be tried either in the county in which the offense was committed or in any county through or in which the person kidnapped or confined, was taken or kept while under confinement or restraint.

8308. (§ 382.) *Consent of injured person.*—Upon a trial for a violation of the offense mentioned in this Chapter, the consent thereto of the person kidnapped or confined is not a defense, unless it appear that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

CHAPTER IV.

ROBBERY.

Section 8309. Robbery defined.

“ 8310. *What fear may be an element in robbery.*

“ 8311. *Punishment of robbery.*

8309. (§ 390.) *Robbery defined.*—Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

State v. Oliver, 20 Mont. 318; 50 Pac. 1019. An instruction defining robbery should state that the taking must be felonious.

State v. Clancy, 20 Mont. 498; 52 Pac. 268. An indictment charging that defendant committed the robbery by force and intimidation, and by putting the party robbed in fear, is sufficient.

State v. Johnson, 26 Mont. 10; 66 Pac. 291. An instruction defining robbery in the language of this section with the exception of the word “accompanied,” in-

stead of the word “accomplished,” is reversible error.

State v. Howard, 30 Mont. 524; 77 Pac. 52. An information in a prosecution for robbery, which charged that the property was taken by means of force and putting in fear, and that it was taken from the person and possession and from the immediate presence of a certain person, does not charge more than one offense.

People v. Modina, 146 Cal. 143; 79 Pac. 842.

8310. (§ 391.) *What fear may be an element in robbery.*—The fear mentioned in the last Section may be either:

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

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

State v. Gill, 21 Mont. 151; 53 Pac. 185.

People v. Modina, 146 Cal. 143; 79 Pac. 842.

8311. (§ 392.) *Punishment of robbery.*—Robbery is punishable by imprisonment in the state prison for a term not less than one year nor more than twenty years. [Act approved March 18, 1895.]

People v. Winthrop, 118 Cal. 93; 50 Pac. 390.

CHAPTER V.

ASSAULTS.

Section 8312. Assault in first degree, defined and how punished.

“ 8313. *Assault in second degree.*

“ 8314. *Assault in third degree.*

“ 8315. *Assaults with caustic chemicals, etc.*

“ 8316. *Use of force not unlawful.*

8312. (§ 400.) *Assault in first degree, defined and how punished.*—Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted or of another:

1. Assaults another with a loaded firearm or any other deadly weapon, or by any other means or force likely to produce death; or,

2. Administers or causes to be administered to, or taken by another, poison or any other destructive or noxious thing, so as to endanger the life of such other,

Is guilty of assault in the first degree, and is punishable by imprisonment in the state prison not less than five nor more than ten years.

People v. Mesa, 93 Cal. 583; 29 Pac. 116.

8313. (§ 401.) *Assault in second degree.*—Every person who, under circumstances not amounting to the offense specified in the last Section:

1. With intent to injure unlawfully, administers to, or causes to be administered to, or taken by another, poison or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or,

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to, or causes to be administered to, or taken, by another, chloroform, ether, laudanum, or any other intoxicating, narcotic or anesthetic agent; or,

✕ 3. Wilfully or wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

✕ 4. Wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm; or,

5. Assaults another with intent to commit a felony or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself or of any other person,

Is guilty of an assault in the second degree, and is punishable by imprisonment in the state prison for not less than one nor more than five years, or by a fine not exceeding two thousand dollars, or both.

State v. Broadbent, 19 Mont. 467; 48 Pac. 775. It is not necessary to allege in an information for an assault and battery in the second degree under subdivision 3 of this section that the assault was committed with the intent to inflict grievous bodily harm, because the statute does not include the word "intent" in defining the crime.

State v. Connors, 27 Mont. 228; 70 Pac. 716.

State v. Farnham, 35 Mont. 377; 89 Pac. 728. An information charging defendant with wilfully, unlawfully and feloniously assaulting a person with a piece of iron pipe with intent to inflict grievous bodily harm is sufficient to charge defendant with an assault with intent to commit a felony.

8314. (§ 402.) *Assault in third degree.*—Every person who commits an assault or an assault and battery not such as is specified in the foregoing Sections of this Chapter, is guilty of assault in the third degree, and is punishable by imprisonment in the county jail not more than six months, or by a fine not more than five hundred dollars, or both.

State v. Court, 35 Mont. 324; 89 Pac. 64.

8315. (§ 403.) *Assaults with caustic chemicals, etc.*—Every person who wilfully and maliciously places or throws, or causes to be placed or thrown upon the person of another, any vitrol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

State v. Court, 35 Mont. 322; 89 Pac. 64. The jury found defendant guilty of the crime of assault with corrosive acids and caustic chemicals. In the absence of a finding that defendant committed the crime willfully, or maliciously, or with the intent to injure the flesh or dis-

figure the body of the person assaulted, the verdict did not support a judgment of conviction for a felony, but defendant was guilty of assault in the third degree. People v. Stanton, 106 Cal. 140; 39 Pac. 515.

8316. (§ 404.) *Use of force not unlawful.*—To use or attempt or offer to use force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty, or by any other person assisting him or acting under his direction;

2. When necessarily committed by any person in arresting one who has committed a felony and delivering him to a public officer competent to receive him in custody.

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

4. When committed by a parent, or an authorized agent of any parent, or by a guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or pupil and the force or violence used, is reasonable in manner and moderate in degree;

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

6. When committed by any person when preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of their reason, from committing an act dangerous to himself or to another, or in enforcing such restraint as is necessary for the protection of

his person or for his restoration to health during such period only as shall be necessary to obtain legal authority for the restraint and custody of his person.

State v. Howell, 21 Mont. 169, subd. 3; 53 Pac. 315. A person may have a lawful possession, such as he may defend, which is not lasting or permanent.

CHAPTER VI.

DUELS AND CHALLENGES.

Section 8317. Duel defined.

“ 8318. *Punishment for fighting a duel when death ensues.*

“ 8319. *Punishment for fighting a duel although death does not ensue.*

“ 8320. *Posting for not fighting.*

“ 8321. *Duties of officers to prevent duels.*

“ 8322. *Leaving the state with intent to evade laws against dueling.*

“ 8323. *Witness' privilege.*

8317. (§ 410.) *Duel defined.*—A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

8318. (§ 411.) *Punishment for fighting a duel when death ensues.*—Every person guilty of fighting any duel from which death ensues within a year and a day, is punishable by imprisonment in the state prison not less than one nor more than seven years.

8319. (§ 412.) *Punishment for fighting a duel although death does not ensue.*—Every person who fights a duel or accepts or sends a challenge to fight a duel, is punishable by imprisonment in the state prison or in a county jail not exceeding one year.

8320. (§ 413.) *Posting for not fighting.*—Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

8321. (§ 414.) *Duties of officers to prevent duels.*—Every judge, justice of the peace, sheriff or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

8322. (§ 415.) *Leaving the state with intent to evade laws against dueling.*—Every person who leaves this state with in-

ten to evade any of the provisions of this Chapter, and to commit any act out of this state, such as is prohibited by this Chapter, and who does any act, although out of this state, which would be punishable by such provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

8323. (§ 416.) *Witness' privilege.*—No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this Chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

CHAPTER VII.

FALSE IMPRISONMENT.

8324. (§ 420.) *False imprisonment defined and how punished.*—False imprisonment is the unlawful violation of the personal liberty of another, and is punishable by fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year, or both.

Ex parte Keil, 85 Cal. 312; 24 Pac. 742.

CHAPTER VIII.

LIBEL.

- Section 8325. *Libel defined.*
 “ 8326. *Punishment of libel.*
 “ 8327. *Malice presumed.*
 “ 8328. *Truth may be given in evidence. Jury to determine law and fact.*
 “ 8329. *Publication defined.*
 “ 8330. *Liability of editors and publishers.*
 “ 8331. *Publishing a true report of public proceedings, privileged.*
 “ 8332. *Extent of privilege.*
 “ 8333. *Other privileged communications.*
 “ 8334. *Threatening to publish libel. Offer to prevent publication, with intent to extort money.*
 “ 8335. *Giving false information for publication.*

8325. (§ 430.) *Libel defined.*—A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or to publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

People v. Seeley, 139 Cal. 119; 72 Pac. 834.

8326. (§ 431.) *Punishment of libel.*—Every person who wilfully and with a malicious intent to injure another, publishes or procures to be published, any libel is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year.

8327. (§ 432.) *Malice presumed.*—An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

8328. (§ 433.) *Truth may be given in evidence. Jury to determine law and fact.*—In all criminal prosecutions for libel the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

8329. (§ 434.) *Publication defined.*—To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel, under circumstances which exposed it to be read or seen by any other person than himself.

People v. Miller, 122 Cal. 93; 54 Pac. 523.

8330. (§ 435.) *Liability of editors and publishers.*—Each author, editor or proprietor of any book, newspaper or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

8331. (§ 436.) *Publishing a true report of public proceedings, privileged.*—No reporter, editor or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative or other public official proceedings, or of any statement, speech, argument or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication.

8332. (§ 437.) *Extent of privilege.*—Libelous remarks or comments connected with matter privileged by the last Section receive no privilege by reason of their being so connected.

8333. (§ 438.) *Other privileged communications.*—A communication made to a person interested in the communication, by any one who was also interested, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

8334. (§ 439.) *Threatening to publish libel. Offer to prevent publication, with intent to extort money.*—Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person or member of his

family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort money or other valuable consideration from any person, is guilty of a misdemeanor.

8335. *Giving false information for publication.*—Any person who wilfully states, delivers or transmits by any means whatsoever, to the manager, editor, publisher or reporter of any newspaper, magazine, publication, periodical, or serial, for publication therein, any false or libelous statement concerning any person or corporation, and thereby secures the actual publication of the same, is hereby declared guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding Five Hundred Dollars, or confined in the county jail not exceeding six months, or both. [*Act approved February 25, 1905.*] (9th Sess. Chap. 36.)

TITLE IX.

CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

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| CHAPTER | I. | RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, SEDUCTION AND ADULTERY. |
| | II. | ABANDONMENT AND NEGLECT OF CHILDREN. |
| | III. | ABORTION. |
| | IV. | BIGAMY, INCEST AND CRIME AGAINST NATURE. |
| | V. | VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD. |
| | VI. | OFFENSES AGAINST GOOD MORALS. |
| | VII. | INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES. |
| | VIII. | LOTTERIES. |
| | IX. | GAMING. |
| | X. | PAWNBROKERS. |
| | XI. | OTHER INJURIES TO PERSONS. |

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, SEDUCTION AND ADULTERY.

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|----------------|-------|--|
| <i>Section</i> | 8336. | <i>Rape defined.</i> |
| " | 8337. | <i>When physical ability must be proved.</i> |
| " | 8338. | <i>Penetration sufficient.</i> |
| " | 8339. | <i>Punishment of rape.</i> |
| " | 8340. | <i>Abduction of women.</i> |
| " | 8341. | <i>Seduction for purposes of prostitution.</i> |
| " | 8342. | <i>Abduction.</i> |
| " | 8343. | <i>Adultery.</i> |
| " | 8344. | <i>Seduction.</i> |

Crim. 13-16 8336. (§ 450.) *Rape defined.*—Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of sixteen years.
2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but her resistance is overcome by violence or force.
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic or other anesthetic substance, administered by or with the privity of the accused.
5. Where she is, at the time, unconscious of the nature of the act, and this is known to the accused.
6. Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practised by the accused, with intent to induce such belief. [*Act approved March 19, 1895.*]

State v. Bowser, 21 Mont. 134; 53 Pac. 182. The question of force is immaterial where the prosecuting witness is under sixteen years of age. The prosecuting witness may testify as to her age.

State v. Mahoney, 24 Mont. 284; 61 Pac. 647. In an indictment under this

section when there is ample evidence that the female is under sixteen years of age, the state is not required to prove that she resisted the assault of defendant, and that defendant overcame her resistance.

People v. Lung, 2 C. App. 279; 83 Pac. 296.

8337. (§ 451.) *When physical ability must be proved.*—No conviction for rape can be had against one who was under the age of sixteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt.

People v. Wessel, 98 Cal. 353; 33 Pac. 216.

8338. (§ 452.) *Penetration sufficient.*—The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

People v. Howard, 143 Cal. 317; 76 Pac. 1116.

Imprisoned 11-10. 8339. (§ 453.) *Punishment of rape.*—Rape is punishable by imprisonment in the state prison not less than five years.

People v. Gardner, 98 Cal. 129; 32 Pac. 880.

8340. (§ 454.) *Abduction of women.*—Every person who takes any woman unlawfully against her will, and by force, menace or duress compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison not less than two nor more than fourteen years.

Repeated 12-1 8341. (§ 455.) *Seduction for purpose of prostitution.*—Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere for the pur-

pose of prostitution; or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person, who by any false pretenses, false representation or other fraudulent means, procures any female to have any illicit carnal connection with any man, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

People v. Elliott, 119 Cal. 594; 51 Pac. 955.

8342. (§ 456.) *Abduction*.—Every person who takes away any female under the age of eighteen years from her father, mother, guardian or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison not exceeding five years, and a fine not exceeding one thousand dollars.

Repealed
12-1

People v. Lewis, 141 Cal. 548; 75 Pac. 189.

8343. (§ 457.) *Adultery*.—Every person who lives in open and notorious cohabitation in a state of adultery or fornication, is punishable by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months or both. The intermarriage of the parties subsequent to the commission of the offense is a bar to the prosecution.

Ledlie v. Wallen, 17 Mont. 155; 42 Pac. 290.

8344. (§ 458.) *Seduction*.—Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character is punishable by imprisonment in the state prison not more than five years or by a fine not more than five thousand dollars, or both. The intermarriage of the parties subsequent to the commission of the offense is a bar to the prosecution.

People v. Tibbs, 143 Cal. 101; 76 Pac. 904.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

Section 8345. Omitting to provide child with necessities.

“ 8346. *Deserting child.*

“ 8347. *Disposing of child for mendicant business.*

“ 8348. *Cruelty to children.*

“ 8349. *Employment of a child in a mine.*

“ 8350. *Compulsory education, violation of law for.*

8345. (§ 470.) *Omitting to provide child with necessities*.—Every parent of a child who wilfully omits, without lawful excuse to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

8346. *Deserting child*.—Every parent of any child under the age of twelve years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with the intent wholly to abandon it, shall be punished by imprisonment in the state prison not exceeding seven years, or in a county jail not exceeding one year. [Act approved February 3, 1905, § 1.] (9th Sess. Chap. 6.)

8347. (§ 472.) *Disposing of child for mendicant business*.—Any person, whether as parent, relative, guardian, employer or otherwise, having in his care, custody or control any child under the age of sixteen years, who shall sell, apprentice, give away, let out or otherwise dispose of any such child to any person, under any name, title or pretense, for the vocation, use, occupation, calling, service or purpose of singing, playing on musical instruments, rope walking, dancing, begging or peddling in any public street or highway, or in any mendicant or wandering business whatever, and any person who shall take, receive, hire, employ, use or have in custody any child for such purposes, or either of them, is guilty of a misdemeanor.

In re Weber, 149 Cal. 394; 86 Pac. 809.

8348. *Cruelty to children*.—Every person who has the legal care or custody of an infant, minor child or apprentice, and cruelly treats, abuses or inflicts unnecessary and cruel punishment upon the same or wilfully abandons or neglects such child, is guilty of a misdemeanor. [Act approved February 3, 1905, § 2.] (9th Sess. Chap. 6.)

8349. (§ 474.) *Employment of a child in a mine*.—Every person who receives or employs any child under fourteen years of age in any underground works or mine, or in any similar business, is punishable by a fine not exceeding one thousand dollars.

8350. (§ 475.) *Compulsory education, violation of law for*.—Every person who fails to comply with the provisions of § 1154* of the Political Code, relating to compulsory education, is guilty of a misdemeanor and upon conviction is punishable by a fine not less than ten nor more than fifty dollars. All fines so collected must be paid into the school fund of the county.

* Note.—This section was repealed prior to adoption of the Codes.

CHAPTER III.

ABORTION.

Section 8351. *Administering drugs, etc., with intent to produce miscarriage.*

“ 8352. *Submitting to an attempt to produce miscarriage.*

8351. (§ 480.) *Administer drugs, etc., with intent to produce miscarriage*.—Every person who provides, supplies or ad-

ministers to any pregnant woman, or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than five years.

People v. Balkwell, 143 Cal. 261; 76 Pac. 1017.

8352. (§ 481.) *Submitting to an attempt to produce miscarriage.*—Every woman who solicits of any person any medicine, drug or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

CHAPTER IV.

BIGAMY, INCEST AND CRIME AGAINST NATURE.

Section 8353. *Bigamy defined.*

“ 8354. *Exceptions.*

“ 8355. *Punishment of bigamy.*

“ 8356. *Marrying a husband or wife of another.*

“ 8357. *Incest.*

“ 8358. *Unlawful marriage.*

“ 8359. *Crime against nature.*

“ 8360. *Penetration sufficient to complete the crime.*

8353. (§ 490.) *Bigamy defined.*—Every person having a husband or wife living who marries any other person except in the cases specified in the next Section, is guilty of bigamy.

People v. Beevers, 99 Cal. 288; 33 Pac. 844.

8354. (§ 491.) *Exceptions.*—The last Section does not extend—

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

2. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court.

8355. (§ 492.) *Punishment of bigamy.*—Bigamy is punishable by fine not exceeding two thousand dollars, and by imprisonment in the state prison not exceeding three years.

8356. (§ 493.) *Marrying a husband or wife of another.*—Every person who knowingly and wilfully marries the husband or wife of another, in any case in which such husband or wife

would be punishable under the provisions of this Chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the state prison not exceeding three years.

8357. (§ 494.) *Incest*.—Persons within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ten years.

People v. Koller, 142 Cal. 622; 76 Pac. 500.

8358. (§ 495.) *Unlawful marriage*.—Every person who marries another contrary to the provisions of § 3657 (146) of the Civil Code, is punishable by imprisonment in the state prison not exceeding one year.

8359. (§ 496.) *Crime against nature*.—Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.

People v. Carroll, 1 C. App. 3; 81 Pac. 680.

8360. (§ 497.) *Penetration sufficient to complete the crime*.—Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER V.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

Section 8361. *Unlawful mutilation or removal of dead bodies.*

“ 8362. *Unlawful removal of dead body from grave for dissection, etc.*

“ 8363. *Who are charged with the duty of burial.*

“ 8364. *Punishment for omitting to bury.*

“ 8365. *Who are entitled to custody of a body.*

“ 8366. *Arresting or attaching a dead body.*

“ 8367. *Defacing tombs or monuments.*

“ 8368. *Burying bodies without physicians' certificates.*

8361. (§ 510.) *Unlawful mutilation or removal of dead bodies*.—Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law is guilty of felony. But the provisions of this Section do not apply to any person who removes the dead body of a relative or friend for reinterment.

People v. Baumgartner, 135 Cal. 72 66 Pac. 974.

8362. (§ 511.) *Unlawful removal of dead body from grave for dissection, etc.*—Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same has been deposited while awaiting burial, with intent to sell

the same, or dissect, without authority of law, or from malice or wantonness, is punishable by imprisonment in the state prison not exceeding five years.

8363. (§ 512.) *Who are charged with the duty of burial.*—The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased was a married man or woman the duty devolves upon the husband, or wife.

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

3. If the deceased left no husband or kindred answering the foregoing description the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

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

Odd Fellows v. San Francisco, 140 Cal. 233; 73 Pac. 987.

8364. (§ 513.) *Punishment for omitting to bury.*—Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law who omits to perform that duty within a reasonable time is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

Pacific Undertakers v. Widber, 113 Cal. 203; 45 Pac. 273.

8365. (§ 514.) *Who are entitled to custody of a body.*—The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it, except that in the case in which an inquest is required to be held upon a dead body by a coroner such coroner is entitled to its custody until such inquest has been completed.

8366. (§ 515.) *Arresting or attaching a dead body.*—Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever or detains or claims to detain it for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

8367. (§ 516.) *Defacing tombs or monuments.*—Every person who wilfully and maliciously defaces, breaks, destroys or removes any tomb, monument or gravestone erected to any deceased person, or any memento or memorial, or any ornamental plant, tree or shrub appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy or remove any fence, post, rail or wall, of any cemetery or graveyard, is guilty of a misdemeanor.

8368. *Burying bodies without physician's certificate.*—Every person who buries or inters, or causes to be buried, or interred, the dead body of any human being or any human remains without first having obtained a certificate of cause of death from a regular practicing physician of the State or the coroner of the county in which the death occurred is guilty of a misdemeanor. Any practicing physician of the State or any coroner in any county who fails to file a certified copy of every certificate of the cause of death which he shall issue in the office of the county Clerk and Recorder of the county in which the death occurs, within three days from time said certificate is issued, shall be guilty of a misdemeanor.

Upon information or knowledge of any infraction of this law the coroner shall immediately investigate the circumstances and make complaint against the offenders. Every person who buries or inters, causes to be buried or interred the dead body of any human being or any human remains in any place within the corporate limits of any city or town in this State, except in a cemetery or place of burial now existing under the laws of this State and in which interments have been made, or that is now or may hereafter be established or organized by the board of county commissioners of the county, or other legal authority, in which such city or town is situate is guilty of a misdemeanor. [Act approved March 9th, 1901.] (7th Sess. 170.)

CHAPTER VI.

OFFENSES AGAINST GOOD MORALS.

- Section 8369. *Keeping open places of amusement and gambling houses on Sunday.*
- “ 8370. *Conducting barber business on Sunday.*
- “ 8371. *Penalty.*
- “ 8372. *Disturbing religious meeting on Sunday.*
- “ 8373. *Sale of liquors and employing women to sell liquor.*
- “ 8374. *Selling liquors at camp-meeting.*
- “ 8375. *Limitation of preceding Section.*
- “ 8376. *Females exhibited in public places.*

Section 8377. Keeping or resorting to place where opium is used.

- " 8378. *Admission of minor to place of prostitution.*
- " 8379. *Permitting minors to resort in a saloon.*
- " 8380. *Furnishing liquors to habitual drunkards, minors or Indians.*
- " 8381. *Penalty for selling cigarettes to minors.*
- " 8382. *Prohibition against use of screens and other obstructions in saloons.*
- " 8383. *Wine rooms or private apartments in saloon must be kept open to public view.*
- " 8384. *Prohibition against female persons entering saloons.*
- " 8385. *Same.*
- " 8386. *Prohibiting display of certain signs.*
- " 8387. *Loitering of female around saloon prima facie evidence of guilt.*
- " 8388. *Penalties for violation of act.*
- " 8389. *Immunity of witnesses.*
- " 8390. *Duties of police officers and sheriffs.*

8369. (§ 530.) *Keeping open places of amusement and gambling houses on Sunday.*—Every person who on Sunday, or the first day of the week, keeps open or maintains or aids in opening or maintaining any theater, play-house, dance house, race-track, gambling-house, concert saloon or variety hall is guilty of a misdemeanor.

8370. (§ 531.) *Conducting barber business on Sunday.*—It is unlawful to conduct the business of hair cutting, shaving or shampooing, or to open barber shops for the doing of such business, on Sunday. [*Act approved March 18, 1895.*]

8371. (§ 532.) *Penalty.*—Any person violating the provisions of this Act is guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense, not less than fifteen dollars and not to exceed fifty dollars and for any subsequent violation, a fine not less than twenty-five dollars and not exceeding one hundred dollars shall be imposed. [*Act approved March 18, 1895.*]

8372. (§ 533.) *Disturbing religious meeting on Sunday.*—Every person who wilfully disturbs or disquiets any assemblage of people met for religious worship by noise, profane discourse, rude or indecent behavior, or by unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

8373. (§ 534.) *Sale of liquors and employing women to sell liquors.*—Every person who sells or furnishes any malt, vinous

or spirituous liquor to any person in the auditorium, boxes or lobbies of any theater, melodeon, variety show, museum, circus or caravan, or any place where any farce, comedy, tragedy, ballet, opera or play is being performed, or any exhibition of dancing, juggling, wax-work figures and the like is being given for public amusement, and every person who employs or procures or causes to be employed or procured any female to sell or furnish any malt, vinous or spiritous liquors at such place is guilty of a misdemeanor.

8374. (§ 535.) *Selling liquors at camp-meeting.*—Every person who erects or keeps a booth, tent, stall or other contrivance for the purpose of selling or otherwise disposing of any wine, spirituous or intoxicating liquors, or any drink of which wines, spirituous or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles or hawks about any such drink or article within one mile of any camp or field meeting for religious worship during the time of holding such meeting is punishable by a fine of not less than five nor more than five hundred dollars.

8375. (§ 536.) *Limitation of preceding section.*—The provisions of the preceding section do not apply to a person carrying on a regular business in the sale of liquors or other articles which business was established prior to the appointment of the meeting referred to in the last Section.

8376. (§ 537.) *Females exhibited in public places.*—Every person who causes, procures or employs any female for hire, drink or gain to play upon any musical instrument or to dance, wait, promenade or otherwise exhibit herself in any drinking saloon, dance-cellar, ball-room, public garden, public highway, common park or street, or in any steamboat or railroad car, or in any place whatsoever, if in such place there is connected therewith the sale or use as a beverage of any intoxicating, spirituous, vinous or malt liquors, or who shall allow the same in any premises under his control where intoxicating, spirituous, vinous or malt liquors are sold or used, when two or more persons are present, is punishable by a fine of not less than fifty nor more than five hundred dollars or by imprisonment in the county jail not exceeding three months, or both; and every female so playing upon any musical instrument or dancing, waiting, promenading or exhibiting herself, as herein aforesaid, is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding one month, or both.

8377. (§ 538.) *Keeping or resorting to place where opium is used.*—Every person who opens or maintains, to be resorted to by other persons, any place where opium, or any of its preparations is sold, or given away, to be smoked at such place and any person who at such place sells or gives away any opium, or its

preparations, to be there smoked or otherwise used, and every person who visits or resorts to any such place for the purpose of smoking opium, or its preparations, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both.

8378. (§ 539.) *Admission of minor to place of prostitution.*—Any proprietor, keeper, manager, conductor or person having the control of any house of prostitution or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein, or any parent or guardian of any such minor who shall admit or keep such minor, or sanction or connive at the admission or keeping thereof into or in any such house or room shall be guilty of a misdemeanor.

8379. (§ 540.) *Permitting minors to resort in a saloon.*—Every person who keeps a saloon, gambling-house or other place of resort where intoxicating liquors are sold by retail, or games of chance are played, and permits any minor to resort or stop therein, is guilty of a misdemeanor.

8380. *Furnishing liquors to habitual drunkards, minors or Indians.*—Every person who sells or gives intoxicating liquors to persons who are in the habit of getting drunk or intoxicated, or of drinking intoxicating liquors to excess, after being notified of such habit or knowing the same, or who sells or gives intoxicating liquors to a minor, or to an Indian, is liable in damages to any person who is injured thereby in money, property, or means of support, and in addition thereto is guilty of a misdemeanor. In a suit for recovering damages named in this Section a married woman may sue in her own name and a minor by a guardian. [Act approved February 16, 1905.] (9th Sess. Chap. 17.)

8381. (§ 542.) *Penalty for selling cigarettes to minors.*—Every person who sells or gives any tobacco, cigars, cigarettes or cigarette paper to any minor under eighteen years of age, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or imprisonment not to exceed three months in the county jail, or both such fine and imprisonment, in the discretion of the court. [Act approved March 6, 1895.]

8382. *Prohibition against use of screens and other obstructions in saloons.*—During the time or hours when, by the provisions of any statute of the State of Montana saloons must close, all curtains, screens, movable blinds, shutters, paint, frost, dirt, or other things that obstruct the view from the outside of the bar or place in any saloon where liquors are sold, or kept for sale, shall be removed. It shall be the duty of every owner,

licensee, proprietor or employee in charge of any saloon to remove any and all movable obstruction or obstructions at the hour that the saloon is by law required to close, or within fifteen minutes after said hour. [Act approved March 8, 1907, § 1.] (10th Sess. Chap. 170.)

8383. *Wine rooms or private apartments in saloon must be kept open to public view.*—It shall be unlawful to erect or maintain, or allow to remain in existence in, or in connection with any saloon, either as a part thereof, or as an adjunct thereto, or on any floor, or in any basement of any saloon, any wine room, or private apartment, with any door, curtain or screen of any kind, or any room or private apartment unless the interior thereof is left open to public view, and unless there be an opening from such rooms or apartments of at least three feet in width and six feet in height, without any curtains or screen whatsoever in, or in front of, or inside of such opening or in any passageway connected therewith or adjacent thereto. And every day during which any such prohibited apartment or room is maintained or allowed to remain in existence shall be deemed a separate offense. [Act approved March 8, 1907, § 2.] (10th Sess. Chap. 170.)

8384. *Prohibition against female persons entering saloons.*—It shall be unlawful for any owner, licensee, proprietor or manager of any saloon, or his clerk, agent, servant or bar tender, to have with, or as a part of, any saloon any room or apartment, with or without door or doors, curtain or curtains, or screen of any kind, in which any female person shall be permitted to enter from the outside or from such saloon. [Act approved March 8, 1907, § 3.] (10th Sess. Chap. 170.)

8385. *Same.*—It shall be unlawful for any owner, licensee, manager, clerk, agent, bar tender, or other employee, having for the time being charge or control of any saloon, or any place connected therewith, either by doors or otherwise, to suffer or permit any female person to be or remain in such saloon, or place connected therewith, for the purpose of being there supplied with any kind of liquor whatsoever. *Provided*, that when a bar-room is maintained in any hotel, this Act shall not be construed to apply to the parts of the building where the other business of the hotel is transacted. [Act approved March 8, 1907, § 4.] (10th Sess. Chap. 170.)

8386. *Prohibiting display of certain signs.*—It shall be unlawful for any owner, proprietor, licensee, manager or other person owning, running or conducting any saloon to put up, maintain or allow to remain in place over or near any door, or in or near any passageway, opening or leading into such saloon, the words "ladies entrance," or "womens' entrance," or "private

entrance," or any words of like import on any wall, door, sign board or otherwise. [Act approved March 8, 1907, § 5.] (10th Sess. Chap. 170.)

8387. *Loitering of female around saloon prima facie evidence of guilt.*—If it shall appear that any female shall at any time be allowed to loiter in any saloon, or to be or remain in any room, apartment or place in or connected with such saloon, such fact shall be prima facie evidence or presumptive evidence that such female was permitted to be or remain in said saloon or place connected therewith for the purpose of being supplied with liquor, and shall be prima facie or presumptive evidence in favor of the guilt of the accused party or parties. *Provided*, that when a bar-room is maintained in any hotel, this Act shall not be construed to apply to the parts of the building where the other business of the hotel is transacted. Act approved March 8, 1907, § 6.] (10th Sess. Chap. 170.)

8388. *Penalties for violation of act.*—Any person violating any of the provisions of this act shall be punished by a fine of not less than One Hundred Dollars nor more than One Thousand Dollars. And if any person convicted of any violation of any of the provisions of this act shall, after such conviction, commit any other violation of any of the provisions of this act, such person shall, upon conviction of such subsequent offense, be imprisoned in the county jail for not less than thirty days nor more than one year, and shall not, for a period of one year after such second or other subsequent conviction, be entitled to obtain or hold in his own name or the name of any person any license for the sale of any malt, spirituous or intoxicating liquor. [Act approved March 8, 1907, § 7.] (10th Sess. Chap. 170.)

8389. *Immunity of witnesses.*—No person shall be excused from attending or testifying, or producing any books, papers, documents, before any court or magistrate upon any investigation, proceeding or trial for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence of, documentary or otherwise; and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action or investigation. And the person so testifying may plead or prove the giving of any testimony accordingly in bar of such prosecution, penalty or forfeiture. [Act approved March 8, 1907, § 8.] (10th Sess. Chap. 170.)

8390. *Duties of police officers and sheriffs.*—Within thirty days after the fifteenth day of April, 1907, it shall be the duty of every chief of police and marshal in all cities and towns in this State to make a thorough inspection of all saloons within his city or town to ascertain whether this act shall have been complied with and whether any rooms, apartments, or partitions are maintained in any saloon in violation of any of the provisions of this Act, and to make a report in writing to the county attorney of any violations of this act and of any failure to comply with its provisions. It shall likewise be the duty of the sheriff of every county in this State, within sixty days after the fifteenth day of April, 1907, to make a thorough examination of every saloon situated in his county outside of the corporate limits of any city or town, to ascertain whether this act shall have been complied with and whether any rooms, apartments or partitions are maintained in any saloon in violation of any of the provisions of this act, and to make a report in writing to the county attorney of any violation of this act and of any failure to comply with its provisions. Upon receipt of such report or reports it shall be the duty of the county attorney to cause prosecutions to be commenced against all persons reported to him as having violated any of the provisions of this act or as having failed to comply therewith. It shall at all times be the duty of all peace officers in counties, cities and towns of this State to report and prosecute, or cause to be prosecuted, any and all persons guilty of any violation of the provisions of this act, and to report all cases of violations to the county attorney. [Act approved March 8, 1907, § 9.] (10th Sess. Chap. 170.)

CHAPTER VII.

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

- Section 8391. Obscene literature not to be given to or sold by minors.*
- “ 8392. *Penalty.*
- “ 8393. *Indecent exposures, exhibitions and pictures.*
- “ 8394. *Seizure of indecent articles authorized.*
- “ 8395. *Their character to be summarily determined.*
- “ 8396. *Their destruction.*
- “ 8397. *Keeping or residing in a house of ill-fame.*
- “ 8398. *Keeping disorderly houses.*
- “ 8399. *Advertising to produce miscarriage.*
- “ 8400. *Enticing to place of gambling or prostitution.*

Section 8401. Prohibition against a certain class of advertisements.

- “ 8402. *Distribution of circulars.*
- “ 8403. *Penalties.*
- “ 8404. *Same.*
- “ 8405. *Production of advertisement prima facie evidence of guilt.*

8391. (§ 560.) *Obscene literature not to be given to or sold by minors.*—It is unlawful for any person to sell, lend, give away or show or have in his possession with intent to sell or give away or to show or advertise or otherwise offer for loan, gift or distribution, to any minor child, under the age of sixteen years, any book, pamphlet, magazine, newspaper, lewd picture, story paper or other printed paper, devoted to the publication or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and stories of lust or crime. It is unlawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of sixteen years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper or publication.

8392. (§ 561.) *Penalty.*—Every person violating any of the provisions of the next preceding Section is guilty of a misdemeanor.

8393. (§ 562.) *Indecent exposures, exhibitions and pictures.*—Every person who wilfully and lewdly either—

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

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

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

4. Writes, composes or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; or,

5. Sings any lewd or obscene song, ballad or other words in any public place or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

8394. (§ 563.) *Seizure of indecent articles authorized.*—Every person who is authorized or enjoined to arrest any person for a violation of Subdivision three of the last Section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession, or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested, is required to be taken.

8395. (§ 564.) *Their character to be summarily determined.*—The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure is delivered pursuant to the foregoing Section, must upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the county attorney of the county in which the accused is liable to trial, and must at once destroy all the other copies.

8396. (§ 565.) *Their destruction.*—Upon the conviction of the accused, such county attorney must cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such county attorney to be destroyed.

8397. (§ 566.) *Keeping or residing in a house of ill-fame.*—Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who wilfully resides in such house is guilty of a misdemeanor.

Pon v. Wittman, 147 Cal. 292; 81 Pac. 984.

8398. (§ 567.) *Keeping disorderly houses.*—Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner, and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

Chateau v. Singla, 114 Cal. 93; 45 Pac. 1015.

8399. (§ 568.) *Advertising to produce miscarriage.*—Every person who wilfully writes, composes or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement or otherwise, to assist in the accomplishment of any such purpose is guilty of a misdemeanor.

8400. (§ 569.) *Enticing to place of gambling or prostitution.*—Whoever through invitation or device, prevails upon any

person, to visit any room, building or other places kept for the purpose of gambling or prostitution is guilty of a misdemeanor.

8401. *Prohibition against a certain class of advertisements.*—No newspaper or other paper published or circulated in whole or in part within the State of Montana, shall contain: Advertisements of cures, appliances or treatments for certain diseases or disorders, to-wit: Stricture, syphilis, impotency, gonorrhoea, emissions, and so-called "lost manhood," and other private diseases of men and women, and their complications. [Act approved March 9, 1907, § 1.] (10th Sess. Chap. 191.)

8402. *Distribution of circulars.*—It is hereby made unlawful to distribute any circulars, dodgers or advertising matter whatsoever advertising remedies for the cure of any of the diseases mentioned in § 8401 (1) of this act. [Act approved March 9, 1907, § 2.] (10th Sess. Chap. 191.)

8403. *Penalties.*—The person advertising, as well as the proprietor, editor, or any person in charge of any newspaper or printing establishment, violating any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars nor more than Five Hundred Dollars, or by imprisonment in the county jail for not more than six months. [Act approved March 9, 1907, § 3.] (10th Sess. Chap. 191.)

8404. *Same.*—Any person publishing, distributing, or causing to be distributed or circulated, any of the advertising matter hereinabove prohibited shall be guilty of a misdemeanor and punished as prescribed in § 8404 (3) of this Act. [Act approved March 9, 1907, § 4.] (10th Sess. Chap. 191.)

8405. *Production of advertisement prima facie evidence of guilt.*—The production of any advertisement or advertising matter published or distributed contrary to the provisions of this Act shall be, of itself, prima facie evidence of the guilt of the person or persons advertising to cure any such disease hereinabove mentioned, or of the publishers who publishes any matter such as is herein prohibited. [Act approved March 9, 1907, § 5.] (10th Sess. Chap. 191.)

CHAPTER VIII.

LOTTERIES.

Section 8406. *Lottery defined.*

" 8407. *Punishment for drawing lottery.*

" 8408. *Punishment for selling lottery tickets.*

" 8409. *Aiding lotteries.*

" 8410. *Lottery offices. Advertising lottery offices.*

" 8411. *Insuring lottery tickets. Publishing offers to insure.*

Section 8412. Property offered for disposal in lottery forfeited.

“ 8413. *Letting building for lottery purposes.*

“ 8414. *Lotteries out of this state.*

“ 8415. *Punishment.*

8406. (§ 580.) *Lottery defined.*—A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name the same may be known.

8407. (§ 581.) *Punishment for drawing lottery.*—Every person who contrives, prepares, sets up, proposes or draws any lottery is guilty of a misdemeanor.

8408. (§ 582.) *Punishment for selling lottery tickets.*—Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest or any paper, certificate or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery is guilty of a misdemeanor.

8409. (§ 583.) *Aiding lotteries.*—Every person who aids or assists, either by printing, writing, advertising, publishing or otherwise, in setting up, managing or drawing any lottery or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

8410. (§ 584.) *Lottery offices. Advertising lottery offices.*—Every person who opens, sets up or keeps, by himself, or by any other person, any office or any other place for the sale of, or for registering the number of any ticket in any lottery within or without this state, or who by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of, any such office is guilty of a misdemeanor.

8411. (§ 585.) *Insuring lottery tickets. Publishing offers to insure.*—Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum or deliver the same, or any other property if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn at any particular time, or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action or property, or

to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency, dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

8412. (§ 586.) *Property offered for disposal in lottery forfeited.*—All moneys or property offered for sale or distribution in violation of any of the provisions of this Chapter, are forfeited to the state, and may be recovered by information filed, or by an action brought by the attorney general, or by any county attorney in the name of the state. Upon the filing of the information or complaint, the clerk of the court, or, if the suit is in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments are issued from the district courts in civil cases.

8413. (§ 587.) *Letting building for lottery purposes.*—Every person who lets or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing, any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

8414. (§ 588.) *Lotteries out of this state.*—The provisions of this Chapter are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state or country where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

8415. (§ 589.) *Punishment.*—Every person convicted of any of the offenses mentioned in this Chapter, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars or both.

CHAPTER IX.

GAMING.

Section 8416. Gambling games prohibited.

“ 8417. *Possession of gambling implements prohibited.*

“ 8418. *Obtaining money by means of gambling games or tricks deemed to be larceny.*

“ 8419. *Brace and bunco games prohibited.*

“ 8420. *Soliciting or persuading persons to visit gambling resorts prohibited.*

“ 8421. *Penalty for second offense.*

“ 8422. *Maintaining gambling apparatus a nuisance.*

Section 8423. Duty of public officer to seize gambling implements and apparatus.

“ 8424. *Duty of magistrate to retain gambling implement or apparatus for trial.*

“ 8425. *Authority to break and enter buildings where games are probably being played.*

“ 8426. *Duty of public officer to make complaint.*

“ 8427. *Duty of mayors to enforce law.*

“ 8428. *Officers neglecting duty subject to forfeiture of office.*

“ 8429. *Receiving money to protect offenders prohibited.*

“ 8430. *Losses at gambling may be recovered in civil action.*

“ 8431. *Action may be brought by any person for the use of loser.*

“ 8432. *Pleadings in actions to recover moneys lost.*

“ 8433. *Compelling testimony in such actions.*

“ 8434. *Leaser of buildings used for gambling purposes treated as principal.*

“ 8435. *Immunity of witnesses.*

“ 8436. *Ordinance in conflict with this act void.*

8416. *Gambling games prohibited.*—Any person who carries on, opens or causes to be opened, or who conducts or causes to be conducted, or operates or runs, as principal, agent or employee, any game of monte, dondo, fan-tan, tan, stud-horse poker, craps, seven and a half, twenty-one, faro, roulette, draw-poker, or the game commonly called round-the-table poker, or solo, or any banking or percentage game, or any game commonly known as a sure thing game, or any game of chance played with cards, dice or any device whatever, or who runs or conducts, or keeps any slot machine, or other similar machine, or permits the same to be run or conducted, for money, checks, credits, or any representative of value, or for any property or thing whatever, or any person or persons who conduct any brokerage business, bucket shop or office where grain stocks or securities of any kind are sold on margins and any person owning or in charge of any saloon, beer hall, bar room, cigar store, or other place of business, or any place where drinks are sold or served, who permits any of the games mentioned in this section to be played in or about such saloon, beer hall, bar room, cigar store, or other place of business, or permits any slot machine, or other similar machine to be kept therein, is punishable by a fine of not less than one hundred nor more than one thousand dollars, and may be imprisoned for not less than three months, nor more than one year, or by both such fine and imprisonment. [Act approved March 5, 1907, § 1.] (10th Sess. Chap. 115.)

Am.
1917 ch. 86

8417. *Possession of gambling implements prohibited.*—Any person who has in his possession, or under his control, or who permits to be placed, maintained or kept in any room, space, enclosure or building, owned, leased or occupied by him, or under his management or control, any faro box, faro lay-out, roulette wheel, roulette table, crap table, slot machine, or any machine or apparatus of the kind mentioned in the preceding section of this act, is punishable by a fine of not less than one hundred nor more than one thousand dollars, and may be imprisoned for not less than three months nor more than one year in the discretion of the court. *Provided, however,* that this section shall not apply to a public officer, or to a person coming into possession thereof in or by reason of the performance of an official duty and holding the same to be disposed of according to law. [Act approved March 6, 1907, § 2.] (10th Sess Chap. 115.)

8418. *Obtaining money by means of gambling games or tricks deemed to be larceny.*—Every person who, by means of any game, device, sleight of hand trick, or other means whatever, by the use of cards or other implements other than those mentioned in § 8419 (4) hereof, or while betting on sides, or hands, of any such game or play, fraudulently obtains from another person money or property of any description, shall be deemed guilty of larceny of property of like value. [Act approved March 6, 1907, § 3.] (10th Sess. Chap. 115.)

8419. *Brace and bunco games prohibited.*—Every person who uses or deals with or wins any money or property by the use of brace faro, or of any two card faro box, or any brace roulette wheel or roulette table, or any brace apparatus, or with loaded dice or with marked cards, or by any game commonly known as a confidence game or bunco, is punishable by imprisonment in the State Prison not exceeding five years. [Act approved March 6, 1907, § 4.] (10th Sess. Chap. 115.)

8420. *Soliciting or persuading persons to visit gambling resorts prohibited.*—Any person who persuades or solicits another to visit any room, tent, apartment or place used, or represented by the person soliciting or persuading to be a place used for the purpose of running any of the games prohibited by this act, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or imprisonment not less than three months, nor more than one year, or by both such fine and imprisonment in the county jail. [Act approved March 6, 1907, § 5.] (10th Sess. Chap. 115.)

8421. *Penalty for second offense.*—Every person who, having been convicted of a violation of any of the provisions of this act, which is punishable by fine, commits another such violation after such conviction, is punishable by a fine of not less than five hundred nor more than one thousand dollars, and by im-

prisonment in the county jail for not less than six months nor more than one year. [*Act approved March 6, 1907, § 6.*] (*10th Sess. Chap. 115.*)

8422. *Maintaining gambling apparatus a nuisance.*—Any article, machine or apparatus maintained or kept in violation of any of the provisions of this act is a public nuisance, but the punishment for the maintaining or keeping of the same shall be as provided in this act. [*Act approved March 6, 1907, § 7.*] (*10th Sess. Chap. 115.*)

8423. *Duty of public officer to seize gambling implements and apparatus.*—It shall be the duty of every officer authorized to make arrests, to seize every machine, apparatus, or instrument answering to the description contained in this act, or which may be used for the carrying on or conducting of any game or games mentioned in this act, and to arrest the person actually or apparently in possession or control thereof, or of the premises in which the same may be found, if any such person be present at the time of the seizure and to bring the machine, apparatus, or instrument and the prisoner, if there be one, before a committing magistrate. [*Act approved March 6, 1907, § 8.*] (*10th Sess. Chap. 115.*)

8424. *Duty of magistrate to retain gambling implement or apparatus for trial.*—The magistrate before whom any machine, apparatus or instrument is brought, pursuant to the preceding section, must if there be a prisoner, and if he shall hold such prisoner, cause the machine, apparatus or instrument to be delivered to the county attorney to be used as evidence on the trial of such prisoner. If there be no prisoner, or if the magistrate does not hold the prisoner he must cause the immediate and public destruction of the machine, apparatus, or instrument in the presence of said magistrate. No person owning or claiming to own any such machine, apparatus, or instrument so destroyed, shall have any right of action against any person or against the state, county, or city for the value of such article, or for damages. It shall be the duty of the county attorney to produce such articles in court on the trial of the case. It shall be the duty of the trial court, after the disposition of the case, and whether the defendant be convicted, acquitted or fails to appear for trial, to cause the immediate and public destruction of any such article by the sheriff or any other officer or person designated by the court. [*Act approved March 6, 1907, § 9.*] (*10th Sess. Chap. 115.*)

8425. *Authority to break and enter buildings where games are probably being played.*—Every sheriff, constable and public officer having probable cause to believe, that any room, tent, or apartment is being used as a room, tent or apartment for the playing or conducting of any of the games mentioned in this

act, shall have authority to break open any door, or opening into any such room, tent or apartment, with or without a warrant of arrest, for the purpose of arresting the offenders against this act. [*Act approved March 6, 1907, § 10.*] (*10th Sess. Chap. 115.*)

8426. *Duty of public officer to make complaint.*—Every county attorney, sheriff, constable, chief of police, marshal or police officer must inform against and make complaint and diligently prosecute persons whom they know, or concerning whom they may be informed, or whom they may have reasonable cause to believe to be offenders against the provisions of this act. The neglect or refusal of any such officer to make complaint against or diligently prosecute persons he has reasonable cause to believe to be offenders against the provisions of this act, shall be deemed sufficient cause for removal from office. [*Act approved March 6, 1907, § 11.*] (*10th Sess. Chap. 115.*)

8427. *Duty of mayors to enforce law.*—It shall be the duty of every mayor of every town or city in this state, to cause this act to be diligently enforced and to cause the police officers of his city or town to arrest and to make complaint against any and all persons whom he or they know, or have reasonable cause to believe to be offenders against any of the provisions of this act. [*Act approved March 6, 1907, § 12.*] (*10th Sess. Chap. 115.*)

8428. *Officers neglecting duty subject to forfeiture of office.*—Every county attorney, sheriff, mayor, constable, chief of police, marshal, or police officer who shall refuse or neglect to perform any of the duties imposed upon him by any of the provisions of this act, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred, nor more than three thousand dollars, or imprisonment for not less than six months, nor more than one year in the county jail. A conviction under this section shall unless set aside, also work a forfeiture of the office of such officer and operate as a removal from office. But a prosecution under this section shall not bar or interfere with any proceeding or action for removal from office which may be brought under any other provision of law or statute, nor affect or limit the effect or operation of any other statute regarding removals or suspensions from office. [*Act approved March 6, 1907, § 13.*] (*10th Sess. Chap. 115.*)

8429. *Receiving money to protect offenders prohibited.*—Every state, county, city or township officer, or other person, who shall ask for, receive or collect any money or valuable consideration, either for his own or for the public use, or the use of any other person or persons, for and with the understanding that he will protect or exempt any person from arrest or conviction for any violation of the provisions of this Act, or that he

will abstain from arresting or prosecuting, or causing to be arrested or prosecuted, any person offending against any of the provisions of this act, or that he will permit any of the things prohibited by this act to be done or carried on, and every such state, county, city or township officer, who shall grant, issue or deliver, or cause to be issued or delivered to any person or persons any license, permit, or other privilege giving or pretending to give any authority or right, to any person or persons to carry on, conduct, open, or cause to be conducted or opened or carried on, any game or games which are forbidden by any of the provisions of this act, is guilty of a felony. [*Act approved March 6, 1907, § 14.*] (*10th Sess. Chap. 115.*)

8430. *Losses at gambling may be recovered in civil action.*—If any person, by playing or betting at any of the games prohibited by this act, loses to another person any sum of money, or thing of value and pays or delivers the same, or any part thereof, to any person connected with the operation or conducting of such game, either as owner, or dealer, or operator, the person who so loses and pays or delivers may, at any time within sixty days next after the said loss and payment or delivery, sue for and recover the money or thing of value so lost and paid or delivered, or any part thereof from any person having any interest, direct or contingent in the game, as owner, backer, or otherwise, with costs of suit, by civil action before any court of competent jurisdiction, together with exemplary damages, which in no case shall be less than fifty, nor more than five hundred dollars, and may join as defendants in said suit, all persons having any interest direct or contingent, in such game as backers, owners, or otherwise. [*Act approved March 6, 1907, § 15.*] (*10th Sess. Chap. 115.*)

8431. *Action may be brought by any person for the use of loser.*—If any person losing such money or thing of value does not, within sixty days without collusion or deceit, sue and with effect prosecute for the money or thing of value so lost and paid or delivered, any person, or a guardian of any person, dependent in any degree for support upon or entitled to the earnings of such persons losing said money or thing of value, or any citizen for the use of the person so dependent may, within one year sue for and recover the same, with costs of suit and exemplary damages as aforesaid, against any and all persons having any interest, direct or contingent, in the said game as backers, owners or otherwise, as aforesaid. [*Act approved March 6, 1907, § 16.*] (*10th Sess. Chap. 115.*)

8432. *Pleadings in actions to recover moneys lost.*—In the prosecutions of such actions it shall be sufficient for the complaint to allege that the defendant is indebted to the plaintiff's use, the money or thing of value so lost and paid or delivered,

whereby the plaintiff's action accrued to him, or to the person for whose use the suit is brought, without setting forth the special matter. In case suit is brought by a plaintiff for the use of another person, that fact and the name of the person for whose use the suit is brought shall be stated. [Act approved March 6, 1907, § 17.] (10th Sess. Chap. 115.)

8433. *Compelling testimony in such actions.*—Every person liable in a civil action under this act, may be compelled to answer upon oath, interrogatories annexed to the complaint in such civil action for the purpose of discovery of his liability; and upon discovery and repayment of the money or other thing, the person discovering and repaying the same, with costs and such an amount of exemplary damages as may be agreed upon by the parties, or fixed by the court, shall be acquitted and discharged from any further or other forfeiture, punishment, penalty, or prosecution he or they may have incurred for so winning such money or thing, discovered and repaid. [Act approved March 6, 1907, § 18.] (10th Sess. Chap. 115.)

8434. *Leaser of buildings used for gambling purposes treated as principal.*—Whenever premises are occupied for the doing of any of the things, or running any of the games prohibited by this act, the lease or agreement under which they are so occupied shall be absolutely void at the instance of the lessor, who may at any time obtain possession by civil action, or by action of forcible detainer; and if any person lease premises for any such purpose, or knowingly permits them to be used or occupied for such purpose or purposes, or knowing them to be so occupied or used, fails immediately to prosecute, in good faith an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases, civil and criminal, as a principal in running the games or doing the things run or done in such building, in violation of this act, and shall be dealt with and punished accordingly. [Act approved March 6, 1907, § 19.] (10th Sess. Chap. 115.)

8435. *Immunity of witnesses.*—No person shall be excused from attending or testifying or producing any books, papers, documents, or any thing or things, before any court or magistrate upon any investigation, proceeding or trial for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence of, documentary or otherwise; and no testimony or evidence so given or produced shall be re-

ceived against him in any civil or criminal proceeding, action or investigation. [*Act approved March 6, 1907, § 20.*] (*10th Sess. Chap. 115.*)

8436. *Ordinances in conflict with this act void.*—Upon the passage of this act, all ordinances and parts of ordinances of cities and towns in this state regarding gambling and gambling houses shall be inoperative and void, and thereafter no ordinance regarding gambling or gambling houses shall be passed by any city or town. [*Act approved March 6, 1907, § 21.*] (*10th Sess. Chap. 115.*)

CHAPTER X.

PAWNBROKERS.

Section 8437. Pawnbroker. Doing business without license.

“ 8438. *Failure to keep register.*

“ 8439. *Rate of interest.*

“ 8440. *Failure to produce register for inspection.*

8437. *Pawnbroker. Doing business without license.*—Every person who carries on the business of a pawnbroker by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent per annum, except by authority of a license is guilty of a misdemeanor. [*Act approved March 3rd, 1903.*] (*8th Sess. Chap. 54.*)

8438. *Failure to keep register.*—Every person who carries on the business of a pawnbroker, dealer in secondhand goods or junk dealer who fails at the time of the transaction to enter in a register kept by him for that person, in the English language, the date, duration, amount and rate of interest of every loan made by him, or an accurate description of the property pledged or sold to him or by him or the name and residence of the pledger or seller or purchaser or to deliver to the pledger or seller or purchaser, a written copy of such entry or to keep an account in writing of all sales or purchases made by him and every pawnbroker, dealer in second hand goods or junk dealer who receives goods in pledge or by gift, or purchases the same from any person under the age of 21 years or from anybody acting as agent for said person, shall be deemed guilty of a misdemeanor and a conviction thereof shall also work a forfeiture of his license. [*Act approved March 3, 1903.*] (*8th Sess. Chap. 54.*)

8439. *Rate of interest.*—Every pawnbroker who charges or receives interest at the rate of more than three per cent per month, or who, by charging commission, discount, storage or other charge, or by compounding, increases or attempts to increase such interest, is guilty of a misdemeanor. [*Act approved March 3rd, 1903.*] (*8th Sess. Chap. 54.*)

8440. *Failure to produce register for inspection.*—Every pawnbroker, dealer in second hand goods or junk dealer who fails, refuses or neglects to produce for inspection his register or to exhibit the articles received by him in pledge, or sold to him or his account of sales and purchases to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register or examine such articles or accounts of sales or purchases, is guilty of a misdemeanor. [Act approved March 3rd, 1903.] (8th Sess. Chap. 54.)

CHAPTER XI.

OTHER INJURIES TO PERSONS.

- Section 8441. *Acts of intoxicated physicians.*
 “ 8442. *Wilfully poisoning food, medicine, or water.*
 “ 8443. *Mismanagement of steam boilers.*
 “ 8444. *Operating steam boiler without license.*
 “ 8445. *Unsafe steam boilers.*
 “ 8446. *False certificate of boiler inspector.*
 “ 8447. *Counterfeiting trade-marks.*
 “ 8448. *Selling goods which bear counterfeit trade-marks.*
 “ 8449. *Definition of the phrase “counterfeited trade-marks,” etc.*
 “ 8450. *“Trade-mark” defined.*
 “ 8451. *Refilling casks, etc., bearing trade-mark.*
 “ 8452. *Counterfeiting certain trade-marks.*
 “ 8453. *Penalty for unlawfully using trade-mark.*
 “ 8454. *Record of certain trade-marks.*
 “ 8455. *Suits to protect certain trade-marks.*
 “ 8456. *Penalties.*
 “ 8457. *Same.*
 “ 8458. *Defacing marks upon logs, lumber or wood.*
 “ 8459. *Altering brands.*
 “ 8460. *Contracting or solemnizing incestuous or forbidden marriages.*
 “ 8461. *Making false return or record of marriage.*
 “ 8462. *Cruel treatment of lunatics, etc.*
 “ 8463. *Refusing to issue or obey writ of habeas corpus.*
 “ 8464. *Reconfining persons discharged upon writ of habeas corpus.*
 “ 8465. *Concealing persons entitled to benefit of habeas corpus.*
 “ 8466. *Innkeepers and carriers refusing to receive guests.*
 “ 8467. *Protection of discharged employees.*

- Section 8468. Inspection of boilers. Penalties.*
 “ 8469. *False representations to procure workmen.*
 “ 8470. *Same. Penalty.*
 “ 8471. *Same. Action for damages.*
 “ 8472. *Prohibiting compulsory company boarding houses.*
 “ 8473. *Same. Penalty.*
 “ 8474. *Trespassing stock.*
 “ 8475. *Same. Penalty.*
 “ 8476. *Fines belong to school fund.*
 “ 8477. *When act applicable.*

8441. (§ 630.) *Acts of intoxicated physicians.*—Every physician, who in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

8442. (§ 631.) *Wilfully poisoning food, medicine, or water.*—Every person who wilfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being to his injury, and every person who wilfully poisons any well, spring or reservoir of water, is punishable by imprisonment in the state prison for a term not less than one nor more than ten years.

8443. (§ 632.) *Mismanagement of steam boilers.*—Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, steamboat, railway, mining, milling or other mechanical works, who wilfully or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony.

Imm. 13-30 8444. (§ 633.) *Operating steam boiler without license.*—Every person who operates any steam boiler or steam engine without first obtaining a license from the boiler inspector or assistant boiler inspector, as required by law, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or both.

8445. (§ 634.) *Unsafe steam boilers.*—Every owner, renter, or user of a steam boiler, who uses a boiler or steam engine which has become unsafe from any cause, or has been notified by the boiler inspector or his assistant, that such boiler or steam engine is unsafe from any defect, or that repairs are necessary, and after such notice, uses the same, is punishable by imprisonment in the county jail not exceeding three months, or by fine not exceeding two hundred and fifty dollars, or both.

8446. (§ 635.) *False certificate of boiler inspector.*—If the state boiler inspector, or assistant inspector, wilfully and falsely

certifies regarding any steam boiler, steam engine, or its attachments, or grants a license to any person to act as engineer, contrary to law, he is punishable by imprisonment not exceeding one year in the county jail, or by a fine not exceeding five hundred dollars, or both.

8447. (§ 636.) *Counterfeiting trade-marks.*—Every person who wilfully forges or counterfeits, or procures to be forged or counterfeited, any trade-mark usually affixed by any person to his goods, which has been recorded in the office of the secretary of state, with intent to pass off any goods to which such forged or counterfeited trade-mark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

8448. (§ 637.) *Selling goods which bear counterfeit trade-marks.*—Every person who sells or keeps for sale, any goods upon or to which any counterfeited trade-mark has been affixed, after such trade-mark has been recorded in the office of the secretary of state, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

8449. (§ 638.) *Definition of the phrase "counterfeit trade-marks," etc.*—The phrases "forged trade-mark" and "counterfeit trade-mark," or their equivalents, as used in this Chapter, include every alteration or imitation of any trade-mark so resembling the original as to be likely to deceive.

8450. (§ 639.) *"Trade-mark" defined.*—The phrase "trade-mark," as used in the three preceding Sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

8451. (§ 640.) *Refilling casks, etc., bearing trade-mark.*—Every person who has or uses any cask, bottle, siphon, vessel, case, box cover, label, or other thing bearing or having in any way connected with it the duly filed trade-mark or name of another, for the purpose of disposing, with intent to deceive or defraud, of any article other than that which such cask, vessel, bottle, case, cover, label or other thing originally contained, or was connected with, by the owner of such trade-mark or name, is guilty of a misdemeanor.

8452. (§ 641.) *Counterfeiting certain trade-marks.*—Whenever any person, association or union of workmen have adopted or shall hereafter adopt, for their protection, any label, trade-mark or form of advertisement, announcing that goods to which such label, trade-mark or form of advertisement, shall be attached were manufactured by such person or by a member or members of such

Am.
18-94

association or union, it shall be unlawful for any person or corporation to counterfeit or imitate such label, trade-mark or form of advertisement. Every person violating this Section shall, upon conviction, be guilty of a misdemeanor. [*Act approved March 6, 1895.*]

8453. (§ 642.) *Penalty for unlawfully using trade-mark.*—Every person who shall use any counterfeit or imitate any label, trade-mark or form of advertisement of any such person, union or association, knowing the same to be counterfeit or imitation, shall be guilty of a misdemeanor. [*Act approved March 6, 1895.*]

8454. (§ 643.) *Record of certain trade-marks.*—Every such person, association or union that heretofore adopted, or shall hereafter adopt, a label, trade-mark or form of advertisement as aforesaid, may file the same for record in the office of the secretary of state, by leaving two copies, counterparts or fac-similes thereof with the secretary of state; said secretary shall deliver to such person, association or union filing the same a duly attested certificate of the record of the same, for which he shall receive a fee of one dollar. Such certificate of record shall in all suits and prosecutions under this Act be sufficient proof of the adoption of such label, trade-mark or form of advertisement, and of the right of said person, association or union to adopt the same. No label shall be recorded, that, probably, would be mistaken for a label already of record. [*Act approved March 6, 1895.*]

8455. (§ 644.) *Suits to protect certain trade-marks.*—Every such person, association or union adopting a label, trade-mark or form of advertisement, as aforesaid, may proceed by suit to enjoin the manufacture, use, display or sale of any such counterfeit or imitation, and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the complainant in such suit such damages resulting from such wrongful manufacture, use, display or sale as may by said court be deemed just and reasonable, and shall require the defendants to pay such person, association or union the profits derived from such wrongful manufacture, use, display or sale; and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to any officer of the court or to complainant to be destroyed. [*Act approved March 6, 1895.*]

8456. (§ 645.) *Penalties.*—Every person who shall use or display the genuine label, trade-mark or form of advertisement of any such person, association or union, in any manner not authorized by such person, union or association, shall be deemed guilty of a misdemeanor. In all cases where such association or union is not incorporated, suits under this Act may be commenced and prosecuted by any officer or member of such association or union on behalf of and for the use of such association or union. [*Act approved March 6, 1895.*]

8457. (§ 646.) *Same.*—Any person or person who shall in any way use the name or seal of any person, association or union, or officer thereof, in and about the name of goods or otherwise, not being authorized to use the same, shall be guilty of a misdemeanor. [*Act approved March 6, 1895.*]

8458. (§ 647.) *Defacing marks upon logs, lumber or wood.*—Every person who cuts out, alters or defaces any mark made upon any log, lumber or wood, or puts a false mark thereon, with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Ex parte Lorenzen, 128 Cal. 443; 61 Pac. 68.

8459. (§ 648.) *Altering brands.*—Every person who marks or brands, alters or defaces the mark or brand, of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat or pig, belonging to another, with intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by fine not to exceed five hundred dollars, or imprisonment in the state prison not to exceed five years, or both. [*Act approved March 6, 1895.*]

People v. Strombeck, 145 Cal. 111; 78 Pac. 472.

8460. (§ 649.) *Contracting or solemnizing incestuous or forbidden marriages.*—Every person authorized to solemnize marriage, who wilfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by a fine not less than one hundred nor more than one thousand dollars, or imprisonment in the county jail not less than one year nor more than two years, or both.

8461. (§ 650.) *Making false return or record of marriage.*—Every person authorized to solemnize any marriage, who wilfully makes a false return of any marriage or pretended marriage, to the county clerk, and every person who wilfully makes a false record of any marriage return, is punishable as provided in the preceding section.

8462. (§ 651.) *Cruel treatment of lunatic, etc.*—Every person guilty of any harsh, cruel or unkind treatment or any neglect of duty towards any idiot, lunatic, or insane person, is guilty of a misdemeanor.

8463. (§ 652.) *Refusing to issue or obey writ of habeas corpus.*—Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

8464. (§ 653.) *Reconfining persons discharged upon writ of habeas corpus.*—Every person who, either solely or as a member of court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

8465. (§ 654.) *Concealing persons entitled to benefit of habeas corpus.*—Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ, or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement, or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

8466. (§ 655.) *Innkeepers and carriers refusing to receive guests.*—Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive or entertain any passenger, is guilty of a misdemeanor.

8467. (§ 656.) *Protection of discharged employees.*—Every person who violates any of the provisions of Chapter XXI., Title VII., Part III. of the Political Code, relating to the protection of discharged employees, and the prevention of blacklisting, is guilty of a misdemeanor.

Repealed.
13-30
8468. (§ 657.) *Inspection of boilers. Penalties.*—Every person who violates any of the provisions of Article XV., Chapter III., Title I., Part III. of the Political Code, relating to boiler inspection, except as otherwise provided, is guilty of a misdemeanor.

8469. *False representation to procure workmen.*—That it shall be unlawful for any person or persons, society, company, association, corporation, or organization of any kind, doing business in this State, to induce, influence, persuade or engage workmen to change from one place to another in this State, through or by means of deception, misrepresentation and false advertising concerning the kind or character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to such engagement. Failure to state in any advertisement, proposal or contract for the employment of workmen that there is a strike, lock-out, or other labor trouble at the place of the proposed employment, when in fact such strike, lock-out or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this Act. [Act approved March 5th, 1903, § 1.] (8th Sess. Chap. 80.)

8470. *Same. Penalty.*—Every person, company, corporation, society, association, or organization of any kind, doing business in this State, violating any of the provisions of this Act, is punishable by a fine of not less than One Hundred (\$100.00) Dollars, nor more than Two Thousand (\$2000.00) Dollars. [Act approved March 5th, 1903, § 2.] (8th Sess. Chap. 80.)

8471. *Same. Action for damages.*—Any workman of this State, or any workman of any State, who has been, or shall be, influenced, induced or persuaded to engage with any person mentioned in § 8469 (1) of this Act, through or by means of any of the things prohibited by this Act, shall have a right of action for recovery of all damages that he has sustained in consequence of the deception, misrepresentation and false advertising used to induce him to change his place of employment, against any person corporation, company or association, directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorney's fees to be fixed by the Court and taxed as costs in any judgment recovered. [Act approved March 5th, 1903, § 3.] (8th Sess. Chap. 80.)

8472. *Prohibiting compulsory company boarding houses.*—It shall be unlawful for any person, firm, company or corporation now operating, or who shall hereafter operate a boarding house in connection with their general business, either directly or through others, to compel an employe to board in such boarding house against his will. [Act approved March 6, 1903, § 1.] (8th Sess. Chap. 102.)

8473. *Same. Penalty.*—Any person, firm, company or corporation violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars. [Act approved March 6, 1903, § 2.] (8th Sess. Chap. 102.)

8474. *Trespassing stock.*—It shall be unlawful for any person or persons to wilfully drive, or cause to be driven, any live stock held in herd, on or over any field, ranch property or valid claim in process of title under any of the land laws of the United States, or under lease from the State of Montana, whether the same be fenced or not; *provided*, that any lands so owned, or under process of title, or under lease, and not fenced, shall be clearly defined by suitable monuments or stakes, and plough furrows, with printed or written notices indicating the lands so held. [Act approved March 6, 1903, § 1.] (8th Sess. Chap. 103.)

8475. *Same. Penalty.*—For any violation of the provisions of this Act, such stock so driven, or herded, or permitted to enter upon the property referred to under § 8474 (1) of this Act, shall, upon complaint to any magistrate or court of record, of the owner, or claimants under any of the land laws of the United States, or of the State, be subject to the payment of a fine of not less than Twenty-Five Dollars (\$25.00), nor more than Five Hundred Dollars (\$500.00), and the costs of such proceedings. [Act approved March 6, 1903, § 2.] (8th Sess. Chap. 103.)

8476. *Fines belong to school fund.*—All fines collected under the provisions of this Act shall be converted into the school funds of the county in which the action is brought. [Act approved March 6, 1903, § 3.] (8th Sess. Chap. 103.)

8477. *When act applicable.*—This Act is not intended, and shall not apply to stock on range not held in herd, or not in charge of a herder. [Act approved March 6th, 1903, § 4.] (8th Sess. Chap. 103.)

TITLE X.

CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

- Section 8478. *Death from explosions, etc.*
 “ 8479. *Death from collision on railroads.*
 “ 8480. *“Public nuisance” defined.*
 “ 8481. *Unequal damage.*
 “ 8482. *Maintaining a nuisance a misdemeanor.*
 “ 8483. *Establishing or keeping a pest house within cities, towns, etc.*
 “ 8484. *Putting dead animals in streets, rivers, etc.*
 “ 8485. *Willful violation of health laws.*
 “ 8486. *Neglecting to perform duties under health laws.*
 “ 8487. *Apothecary omitting to label drugs, or labelling them wrongfully, etc.*
 “ 8488. *Selling opium, etc.*
 “ 8489. *Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.*
 “ 8490. *Adulterating food, drugs, liquors, etc.*
 “ 8491. *Disposing of tainted food, etc.*
 “ 8492. *Slaughter of big jaw or diseased cattle for food.*
 “ 8493. *Sale of adulterated drugs or foods prohibited.*
 “ 8494. *Standard of purity of drugs.*
 “ 8495. *Standard of purity of food.*
 “ 8496. *Penalty for adulteration.*
 “ 8497. *Sales of maple sugar.*
 “ 8498. *Sales of cider vinegar.*
 “ 8499. *Standards of purity.*
 “ 8500. *Penalties.*
 “ 8501. *Seller must furnish samples for analysis.*
 “ 8502. *Same.*
 “ 8503. *Obstructing officer in discharge of duty.*
 “ 8504. *Analysis of sample.*
 “ 8505. *Adulterated liquors.*
 “ 8506. *Killing or selling meat of calf less than four weeks old.*
 “ 8507. *Forfeiture of adulterated articles.*
 “ 8508. *Record of poisonous drugs sold.*
 “ 8509. *Penalties.*
 “ 8510. *Not applicable to physicians’ prescriptions.*
 “ 8511. *Duty of county attorney.*
 “ 8512. *Exemptions.*

- Section 8513. *Hotels serving adulterated foods must post cards announcing such facts.*
- “ 8514. *Penalty for violation of act.*
- “ 8515. *Possession of adulterated food prima facie evidence of guilt.*
- “ 8516. *Oleomargarine.*
- “ 8517. *Same.*
- “ 8518. *Penalty.*
- “ 8519. *Obstructing attempts to extinguish fires.*
- “ 8520. *Riding or driving faster than a walk on public bridges.*
- “ 8521. *Intoxication of engineers, conductors or drivers of locomotives or cars.*
- “ 8522. *Placing passenger cars in front of freight cars.*
- “ 8523. *Violation of duty by employes of railroad companies.*
- “ 8524. *Violation of duty by railroads.*
- “ 8525. *Exposing person infected with any contagious disease in a public place.*
- “ 8526. *Fraudulent practices to affect the market price.*
- “ 8527. *Selling firearms and ammunition to Indians*
- “ 8528. *Death from mischievous animals.*
- “ 8529. *Aiding or encouraging suicide a felony.*
- “ 8530. *Exhibiting deformities of person.*
- “ 8531. *Using or exposing animal with glanders.*
- “ 8532. *Animal having glanders to be killed.*
- “ 8533. *Adulterated candies.*
- “ 8534. *Unsafe buildings.*
- “ 8535. *Protecting mining shaft in city. Penalty.*
- “ 8536. *Cages in mines must be cased in.*
- “ 8537. *Stopping near shaft.*
- “ 8538. *Running cage at excessive speed.*
- “ 8539. *Maintaining buildings near mouth of shaft.*
- “ 8540. *Penalties.*
- “ 8541. *Protection of underground mines. Escapement shaft.*
- “ 8542. *To what mines applicable.*
- “ 8543. *Penalty.*
- “ 8544. *Practicing medicine without a license.*
- “ 8545. *Regulating sales of explosives.*
- “ 8546. *Storage of explosives in mines.*
- “ 8547. *Storage of explosives in cities, etc.*
- “ 8548. *Construction and location of magazines.*
- “ 8549. *Magazines, etc., to bear warning signs.*
- “ 8550. *Transportation of explosives.*
- “ 8551. *Careless use of explosives.*
- “ 8552. *Penalties.*

Section 8553. Penalty when death caused by violation of this act.

- “ 8554. *Sales of explosives after dark.*
- “ 8555. *Selling liquor at retail within five miles of grading camps prohibited.*
- “ 8556. *Sales of intoxicating liquors prohibited in vicinity of cemeteries or free public parks.*
- “ 8557. *Depositing coal slack in stream.*
- “ 8558. *Same. Penalty.*
- “ 8559. *Regulation of coal mines.*
- “ 8560. *Sale of kerosene and coal oil.*
- “ 8561. *Animals killed by railroads.*
- “ 8562. *Violating railroad regulations.*
- “ 8563. *Inspection of mine. Penalties. Dam and reservoirs, unsafe.*

8478. (§ 670.) *Death from explosions, etc.*—Every person having charge of a steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory, or on a railroad, or in any vessel, or in any kind of mining, milling or mechanical works, who wilfully, or from ignorance or neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is produced, is punishable by imprisonment in the state prison, for not less than one nor more than ten years.

8479. (§ 671.) *Death from collision on railroads.*—Every conductor, engineer, brakeman, switchman or other person having charge, wholly or in part, of any railroad car, locomotive or train, who wilfully or negligently suffers or causes the same to collide with another car, locomotive or train, or with any other object or thing, whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

8480. (§ 672.) *“Public nuisances” defined.*—Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin, or any public park, square, street or highway, is a public nuisance.

Siskiyou L. Co. v. Rostel, 121 Cal. 513; 53 Pac. 1118.

8481. (§ 673.) *Unequal damage.*—Any act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last Section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals, is unequal.

8482. (§ 674.) *Maintaining a nuisance a misdemeanor.*—Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty which relates to the removal of a public nuisance, is guilty of a misdemeanor.

Taylor v. Reynolds, 92 Cal. 574; 28 Pac. 688.

8483. (§ 675.) *Establishing or keeping a pest house within cities, towns, etc.*—Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town, or village, any pest house, hospital or place for person affected with contagious or infectious diseases, is guilty of a misdemeanor.

8484. (§ 676.) *Putting dead animals in streets, rivers, etc.*—Every person who puts the carcass of any dead animal, or the offal from any slaughter-pen, corral or butcher shop, into any river, creek, pond or reservoir, stream, street, alley, public highway or road in common use, or who attempts to destroy the same by fire within one-fourth mile of any city, town or village, and every person who puts the carcass of any dead animal, or any offal of any kind in or upon the borders of any stream, pond, lake or reservoir, from which water is drawn for the supply of the inhabitants of any city or town in this state, so that the drainage from such carcass or offal may be taken up by or in such stream, pond, lake or reservoir, or who allows the carcass of any dead animal, or any offal of any kind, to remain in or upon the borders of any such stream, pond, lake or reservoir within the boundaries of any land owned or occupied by him, or who keeps any horses, mules, cattle, swine, sheep or live stock of any kind, penned, corralled or housed on, over or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof shall become polluted by reason thereof, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in § 8485 (677) of this Code.

Van Horn v. Ricks W. Co., 115 Cal. 450; 47 Pac. 361.

8485. (§ 677.) *Wilful violation of health laws.*—Every person who wilfully violates any of the laws of this state, relating to the preservation of the public health, is, unless a different punishment is prescribed by this Code, punishable by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars, or both.

8486. (§ 678.) *Neglecting to perform duties under health laws.*—Every person charged with the performance of any duty under the laws of this state, relating to the preservation of the public health, who wilfully neglects or refuses to perform the same, is guilty of a misdemeanor.

8487. (§ 679.) *Apothecary omitting to label drugs, or labeling them wrongfully, etc.*—Every apothecary, druggist or person carrying on business as a dealer in drugs or medicines, or person

employed as clerk or salesman by such person, who, in putting up any drugs or medicines, wilfully, negligently, or ignorantly, omits to label the same, or puts an untrue label, stamp or other designation of contents, upon any box, bottle or other package, containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

8488. (§ 680.) *Selling opium, etc.*—Every person who sells, or in any way disposes of, to another person, any morphine, opium, cocaine, chloral-hydrate, or any of their compounds, except to a licensed physician, or on the authority of a certificate of such licensed physician, or fails to keep on file at his place of business, any such certificate for inspection of all persons, after the same has been surrendered to him by the buyer of any such drugs, or uses or fills out any such certificate more than once, for the benefit of the person presenting the same, or any other person, is punishable by fine not exceeding two hundred dollars. The provisions of this Section do not apply to the sale of paregoric or any other mild compound of any of such drugs, nor do they apply to persons who are sick and in actual need of any of such drugs as a medicine. [*Repealed by § 656 Political Code.*]

8489. (§ 681.) *Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.*—Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages, by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, with intent thereby to sell the goods therein, or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense.

8490. (§ 682.) *Adulterating food, drugs, liquors, etc.*—Every person who adulterates, or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor or wine, or any article used in compounding them, with a fraudulent intent, to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

8491. (§ 683.) *Disposing of tainted food, etc.*—Every person who sells, or keeps for sale, or otherwise disposes of any article of food, drink, drug or medicine, knowing that the same has be-

come tainted, decayed, spoiled, or otherwise unwholesome, or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

People v. Hoffman, 126 Cal. 367; 58 Pac. 856.

8492. *Slaughter of big jaw or diseased cattle for food.*—Any person who shall slaughter, sell or offer for sale for the purpose of food, any cattle having a big jaw or any other disease, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not exceeding Five Hundred Dollars or be imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment. [*Act approved March 9th, 1901.*] (7th Sess. 163.)

8493. *Sale of adulterated drugs or foods prohibited.*—No person shall sell, or offer for sale, any adulterated drug or substance to be used in the manner of medicine or any adulterated article of food or substance to be used in the manner of food or drink. [*Act approved March 8, 1907, § 1.*] (10th Sess. Chap. 175.)

8494. *Standard of purity of drugs.*—If any drug or substance used for medicine sold under a name recognized by the United States pharmacopoeia, or in some pharmacopoeia, or other standard work of materia medica, differs materially from the standard of strength, quality or purity laid down in such work, or contains less of active principle than is contained in the genuine article, weight for weight, or falls below the professed standard under which it is sold, it shall be deemed to be adulterated within the meaning of this Chapter. [*Act approved March 8, 1907, § 2.*] (10th Sess. Chap. 175.)

8495. *Standard of purity of food.*—If any food or substance to be eaten or used in the manner of food or drink contains a less quantity of any valuable constituent than is contained in the genuine article, weight for weight, or contains any substance foreign to the well known article under whose name it is sold, or is colored, coated, polished or powdered, whereby damage is concealed, or contains any added poisonous ingredient, or consists wholly or partly of any decomposed, putrid or diseased substance, or has become offensive or injured from age or improper care, it shall be deemed to be adulterated within the meaning of this Chapter. [*Act approved March 8, 1907, § 3.*] (10th Sess. Chap. 175.)

8496. *Penalty for adulteration.*—Whoever adulterates, for the purpose of sale, any article of food or drink, drug or medicine, or knowingly sells any adulterated article of food, or drink, or drug, or medicine, or any kind of diseased or unwholesome provisions, as defined in this Chapter, shall be imprisoned not exceeding one year in the county jail, or be fined not exceeding four hundred (\$400.00) dollars, or both such fine and imprisonment. [*Act approved March 8, 1907, § 4.*] (10th Sess. Chap. 175.)

8497. *Sales of maple sugar.*—No person shall sell, expose for sale, exchange, barter or deal in any article as and for maple sugar, maple candy or maple syrup unless the same shall be sugar, candy or syrup made solely from the sap of the maple tree. [Act approved March 8, 1907, § 5.] (10th Sess. Chap. 175.)

8498. *Sales of cider vinegar.*—No person shall sell or expose for sale, exchange, barter or deal in any article as and for cider vinegar, unless the same shall be vinegar made solely from cider made of apples, and shall have an acidity equal to the presence of not less than four (4%) per cent by weight of absolute acetic acid, and shall contain not less than 1.6 by weight of apple solids. [Acts approved March 8, 1907, § 6.] (10th Sess. Chap. 175.)

8499. *Standards of purity.*—No person shall have in his possession for sale, exchange, or barter, any article which is not maple sugar, maple candy or maple syrup, or which is not cider vinegar, as those articles are defined in the two preceding sections, which is labeled, marked or represented to be maple sugar, maple candy, maple syrup or cider vinegar, and no vinegar shall be sold to contain over five (5%) per cent, by weight, of absolute acetic acid. [Act approved March 8, 1907, § 7.] (10th Sess. Chap. 175.)

8500. *Penalties.*—Any person who shall violate any of the provisions of the three preceding sections, shall be fined not less than ten (\$10.00) dollars, nor more than fifty (\$50.00) dollars. [Act approved March 8, 1907, § 8.] (10th Sess. Chap. 175.)

8501. *Seller must furnish samples for analysis.*—Every person offering or exposing for sale any drug or article of food, within the meaning of this Chapter, shall furnish to any analyst, or other officer duly appointed for the purpose, who shall apply to him for the same and tender him its value in money, a sample sufficient for the purpose of analysis of such drug or article of food. [Act approved March 8, 1907, § 9.] (10th Sess. Chap. 175.)

8502. *Same.*—Any person who has reason to doubt the purity or genuineness of any article of food which he has purchased may send a sealed sample of it to the chemical department of any of the State Institutions for inspection and analysis without cost. If, upon examination, the article appears to be adulterated, the county attorney may obtain a certified sample of it, and, should this sample prove to be adulterated, the county attorney shall begin proceedings at once against the vendor. [Act approved March 8, 1907, § 10.] (10th Sess. Chap. 175.)

8503. *Obstructing officer in discharge of duty.*—Whoever hinders, obstructs, or in any way interferes with any inspector, analyst or other officer duly appointed hereunder, in the performance of his duty, shall be fined not exceeding fifty (\$50.00) dollars for the first offense, and one hundred (\$100.00) dollars for each subsequent offense. [Act approved March 8, 1907, § 11.] (10th Sess. Chap. 175.)

8504. *Analysis of sample.*—Before commencing the analysis of a sample, the analyst shall reserve a portion which shall be sealed, and, in case of complaint or indictment, part of the reserved portion of the sample alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney and part to the county attorney in the county where the complaint or indictment is found. [Act approved March 8, 1907, § 12.] (10th Sess. Chap. 175.)

8505. *Adulterated liquors.*—Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, or knowingly sells any such liquor so adulterated, shall be fined not exceeding one thousand (\$1000.00) dollars, or be imprisoned for not exceeding one year in the county jail, or both such fine and imprisonment. [Act approved March 8, 1907, § 13.] (10th Sess. Chap. 175.)

8506. *Killing or selling meat of calf less than four weeks old.*—Whoever kills, or causes to be killed, for the purpose of sale, a calf less than four weeks old, or knowingly sells or has in his possession, with intent to sell for food, the meat of such calf, shall be fined not exceeding fifty (\$50.00) dollars, or be imprisoned not exceeding thirty days in the county jail, or both such fine and imprisonment. [Act approved March 8, 1907, § 14.] (10th Sess. Chap. 175.)

8507. *Forfeiture of adulterated articles.*—Any meat, unwholesome provisions or articles sold, kept or offered for sale, and any articles adulterated in violation of any of the preceding section, shall be forfeited. [Act approved March 8, 1907, § 15.] (10th Sess. Chap. 175.)

8508. *Record of poisonous drugs sold.*—Every apothecary, druggist or other person who sells any arsenic, corrosive sublimate, nux vomica, strychnine, prussic acid, morphia, chloral hydrate, codeine, or cocaine, shall make a record of such sale in a book kept for that purpose, specifying the kind and quantity of the article sold and the time when, and the name of the person to whom such sale was made, which record shall be open to all persons authorized to inspect same. [Act approved March 8, 1907, § 16.] (10th Sess. Chap. 175.)

8509. *Penalties.*—Any person who shall violate any of the provisions of the preceding section of this Act shall on conviction thereof, be fined not less than ten dollars nor more than one hundred dollars and each article, barrel or package sold in violation of this Act shall constitute a separate offense. [Act approved March 8, 1907, § 17.] (10th Sess. Chap. 175.)

8510. *Not applicable to physicians prescriptions.*—The two preceding sections shall not apply to physicians in their prescriptions or their prescriptions to their patients. [*Act approved March 8, 1907, § 18.*] (10th Sess. Chap. 175.)

8511. *Duty of county attorney.*—It is hereby made the duty of the prosecuting attorneys of this state to appear for the people and to attend to the prosecution of all complaints under this Act in all the courts in their respective counties. [*Act approved March 8, 1907, § 19.*] (10th Sess. Chap. 175.)

8512. *Exemptions.*—All goods purchased before March 1, 1907, by wholesale or retail dealers of this State only, are exempt from the provisions of this Bill until January 1, 1908. This exemption is held to extend to stocks of goods in the hands of the original manufacturers or packers of this state, contracted before March 1, 1907, and to the goods exempt under this Section, no matter how many times they change hands, *provided* that all such goods shall contain their true brand or formula. [*Act approved March 8, 1907, § 20.*] (10th Sess. Chap. 175.)

8513. *Hotels serving adulterated foods must post cards announcing such facts.*—If a proprietor, manager or other person having the management of any hotel, restaurant or boarding-house in the State of Montana shall serve or cause to be served upon the tables to his or their guests any article of food known to said proprietor or manager of said hotel, restaurant or boarding-house, to be adulterated, he shall be guilty of a violation of this Act, unless he or they shall have posted, hung up and maintain in his or their public office and in his or their dining room, in a conspicuous place in full view of his or their guests, a large red, card board sign, the size of which shall be twelve (12) inches in width, the words printed thereon in large, bold, black letters of the size of not less than seventy-two point type, "We Serve On Our Tables, No Food Stuffs Which Have Been Harmfully-Adulterated." Be it *further provided* that the original labels shall always be maintained and kept upon the can, carton, box, bottle, barrel or other receptacle containing any such goods which may be used for foods, until all of the contents of such cans, boxes, cartons, bottles, barrels or any other receptacle containing any such food stuffs shall have been used or totally destroyed. [*Act approved March 8, 1907, § 1.*] (10th Sess. Chap. 169.)

8514. *Penalty for violation of act.*—For failure to put up and maintain such cards continuously in said public offices and dining rooms heretofore mentioned, or to maintain the labels as this Act directs, the proprietor or manager guilty of such failure shall be guilty of a violation thereof, the penalty for which shall be, for the first offense a fine of Two Hundred (\$200) and costs of court for the prosecution of the said cause; for the second offense a fine of Three Hundred Dollars (\$300) together with court costs and

a term of not less than three months nor more than six months in the County Jail; for the third offense, a fine of Six Hundred Dollars (\$600) and court costs, and a term in the State prison for a period of not less than one year nor more than three years. [*Act approved March 8, 1907, § 2.*] (10th Sess. Chap. 169.)

8515. *Possession of adulterated food prima facie evidence of guilt.*—Any canned goods or food stuffs purchased at the stores in Montana, or from any wholesale or retail stores in the United States which are labeled as being adulterated and served to their guests or stored upon the premises occupied by them shall be prima facie evidence of the guilt of such hotel, restaurant or boarding-house proprietor or manager if such cards are not displayed as heretofore directed. Any state chemist or any sheriff or any of his deputies shall at all times have free and peaceable access during business hours in the store-room, kitchen, or any other place where foods are stored or kept by the proprietor or manager aforesaid, for the purpose of ascertaining the quality and brands of the goods used by said proprietor or manager. [*Act approved March 8, 1907, § 3.*] (10th Sess. Chap. 169.)

8516. (§ 684.) *Oleomargarine.*—Every person who manufactures for sale, or offers or exposes for sale, or has in his possession, with intent to sell any article or substance in resemblance of butter or cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream, or into which the oil or fat of animals not produced from milk, enters as a component part, or into which the oil or fat of animals not produced from milk has been introduced to take the place of cream, must distinctly stamp, brand or mark in some conspicuous place upon every firkin, tub, or package of such article or substance, in plain letters not less than one-fourth inch square each, the word "Oleomargarine," or the words "Imitation cheese," as the case may be; and in the retail sale of such article or substance, in parcels or otherwise, the seller must deliver to the purchaser therewith, a printed label, bearing the plainly printed words "Oleomargarine" or "Imitation cheese," plainly marked as aforesaid.

8517. (§ 685.) *Same.*—Every person dealing in the article or substance described in the next preceding Section, and every hotel, restaurant, or boarding house keeper, using such article or substance in his business, must continuously and conspicuously keep posted up in not less than three exposed positions, in and about his place of business, a printed notice in the following words: "Oleomargarine" or "Imitation cheese" "sold (or used) here," which notice must be plainly printed with letters not less than two inches square each, and must upon the furnishing the article or substance to his customers or guests, if inquiry is made, distinctly inform each of them that the article furnished is not butter or cheese the genuine product of the dairy, but is oleomargarine or imitation cheese.

8518. (§ 686.) *Penalty.*—Every person, and every officer or agent, of any corporation who violates any of the provisions of the last two preceding Sections, is punishable by imprisonment in the county jail not exceeding one month or by fine not exceeding one hundred dollars.

8519. (§ 687.) *Obstructing attempts to extinguish fires.*—Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to, or interferes with the lawful efforts of any fireman or any company of firemen, to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

8520. (§ 688.) *Riding or driving faster than a walk on public bridges.*—Every person who wilfully rides or drives faster than a walk, on or over, any public bridge, and every person who drives any loose stock, such as horses, mules or cattle over any public bridge in a larger number than fifteen head at a time, is punishable by a fine not exceeding twenty dollars.

8521. (§ 690.) *Intoxication of engineers, conductors or drivers of locomotives or cars.*—Every person who is intoxicated while in charge of a locomotive engine, or while as conductor or driver upon any railroad car or train, whether propelled by steam or otherwise, or while acting as train dispatcher, or as telegraph operator receiving or transmitting dispatches, in relation to the movement of trains, is guilty of a misdemeanor.

8522. (§ 691.) *Placing passenger cars in front of freight cars.*—Every person who, in making up or running railroad trains, places or runs, causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor; and if loss of life or limb results from such placing or running, is guilty of felony. The term “freight car” as used in this Section does not include a baggage, express or mail car.

8523. (§ 692.) *Violation of duty by employes of railroad companies.*—Every engineer, conductor, brakeman, switchtender or other officer, agent, or servant of any railroad company, who is guilty of any wilfull violation or omission of his duty as such officer, agent or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

8524. (§ 693.) *Violation of duty by railroads.*—Every person or corporation who owns, carries on or has control of a railroad and fails to observe any of the regulations or requirements or perform any of the duties prescribed by law in reference to railroads, the penalty for which is not otherwise provided for in this Code, is punishable by a fine not exceeding five thousand dollars.

8525. (§ 694.) *Exposing person infected with any contagious disease in a public place.*—Every person who wilfully exposes himself or another infected with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

8526. (§ 695.) *Fraudulent practices to affect the market price.*—Every person who wilfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

8527. (§ 696.) *Selling firearms and ammunition to Indians.*—Every person who sells or furnishes to any Indian any firearm or ammunition therefor, is guilty of a misdemeanor.

8528. (§ 697.) *Death from mischievous animals.*—If the owner of a mischievous animal, knowing its propensities, wilfully suffers it to go at large, or keeps it without ordinary care, and such animal while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

8529. (§ 698.) *Aiding or encouraging suicide a felony.*—Every person who deliberately aids, or advises or encourages another to commit suicide is guilty of a felony.

8530. (§ 699.) *Exhibiting deformities of person.*—Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall by any artificial means give to any person the appearance of a deformity, and shall exhibit such person for hire, is guilty of a misdemeanor.

8531. (§ 700.) *Using or exposing animal with glanders.*—Any person who shall knowingly sell or offer for sale or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or exposed, any horse, mule, or other animal having the disease known as glanders, farcy, or any contagious disease, or violates any of the provisions of § 1900 (3063) of the Political Code, is guilty of a misdemeanor.

8532. (§ 701.) *Animal having glanders to be killed.*—Every animal having glanders or farcy, shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this Section, is guilty of a misdemeanor.

8533. *Adulterated candies.*—Every person who shall, by himself, his servant or agent, or as the servant or agent of any other person or corporation, manufacture for sale, or knowingly sell or offer to sell any candy adulterated by the ad-

mixture of terra alba, barytes, talc or any mineral substance, by poisonous colors or flavors or other ingredients deleterious or detrimental to health, is guilty of a misdemeanor. [*Act approved February 22, 1899.*] (6th Sess. 151.)

8534. (§ 703.) *Unsafe buildings.*—Every person who constructs, owns, controls or has the custody of any building erected to accommodate public assemblies, including churches, schools, court houses, theaters, public halls, ball rooms, or any other building of like character, and fails to have the openings for ingress and egress therein furnished with doors hung on hinges so that they open outwardly from the rooms and from the main building itself, is punishable by imprisonment in the county jail not exceeding three months or by fine not exceeding two hundred and fifty dollars, or both, and the building or buildings owned by such persons may by order of the court be closed until the doors thereof be made to conform to the provision of this Section.

8535. *Protecting mining shaft in city. Penalty.*—Every person who sinks any shaft or runs any drift or cut, or causes the same to be done, within the limits of any city or town or village in this state, or within one mile of the corporate limits of any city or town, or within three hundred feet of any street, road or public highway, and who shall fail to place a substantial cover over or tight fence around the same, is punishable by a fine not exceeding one thousand dollars (\$1,000). The owner of any property, or his agent in charge thereof, or any person in possession of the same shall be deemed to be within the provisions of this act if he permit any such shaft, drift or cut to remain open, exposed or unprotected upon his property, or the property in his charge or possession, for a period of more than ten days. Mining, irrigating and other ditches may be dug or cut to a depth not exceeding ten feet without incurring the penalty of this section. [*Act approved February 23th, 1899.*] (6th Sess. 149-150.)

8536. *Cages in mines must be cased in.*—It is unlawful for any corporation to sink or work, through any vertical shaft where mining cages are used, to a greater depth than three hundred feet, unless said shaft shall be provided with an iron-boltoned safety cage, to be used in the lowering and hoisting of the employes thereof, said cage to be also provided with sheet iron or steel casing not less than one-eighth inch in diameter; doors to be made of the same material shall be hung on hinges, or may be made to slide and shall not be less than five feet high from the bottom of the cage, and said door must be closed when lowering or hoisting the men. *Provided*, that when such cage is used for sinking only, it need not be equipped with such doors as are hereinbefore provided for. The safety apparatus, whether consisting of eccentrics, springs or other device, must be securely fastened to the cage, and must be of sufficient strength to hold

the cage loaded at any depth to which the shaft may be sunk. The iron bonnet of the aforesaid cage must be made of boiler sheet iron, of good quality, of at least three-sixteenths of an inch in thickness, and must cover the top of such cage in such manner as to afford the greatest protection to life and limb from anything falling down said shaft. It shall be the duty of the Mining Inspector and his assistant to see that all cages are kept in compliance with this Section and to also see that the safety dogs are kept in good order. Every person or corporation failing to comply with any of the provisions of this Section is punishable by a fine of not less than three hundred dollars, nor more than one thousand dollars. [*Act approved March 4th, 1903.*] (8th Sess. Chap. 60.)

State v. Anaconda Mining Company, 23 Mont. 498; 59 Pac. 855.

8537. *Stopping near shaft.*—It is unlawful for any corporation or person operating any Mine in this State worked through a vertical or incline shaft, to stope within a less distance than twenty-five (25) feet of the said shaft, when other work is being carried on below said stopping. [*Act approved March 5th, 1903, § 1.*] (8th Sess. Chap. 82.)

8538. *Running cage at excessive speed.*—It is unlawful for any person or corporation operating any mine in this State worked through a vertical or incline shaft, where a cage or other device is used for the purpose of hoisting or lowering men to run such cage when men are upon the same at a greater rate of speed than eight hundred (800) feet per minute. [*Act approved March 5th, 1903, § 2.*] (8th Sess. Chap. 82.)

8539. *Maintaining buildings near mouth of shaft.*—It is unlawful for any person, company or corporation, to erect or maintain any building, or inclosure used for a blacksmith shop or drying room within a distance of fifty (50) feet of the mouth of any tunnel or shaft, unless the same shall be fire proof in its construction. [*Act approved March 5th, 1903, § 3.*] (8th Sess. Chap. 82.)

8540. *Penalties.*—The penalty for violating the provisions of any of the preceding sections is the same as provided in section 8536 (705) of the Penal Code. *Provided*, that when it shall appear that any engineer has violated the express order of his employer in running his engine at a greater speed than 800 feet per minute the engineer alone shall be subject to prosecution, and to the fine imposed by the provisions of this Act. [*Act approved March 5th, 1903, § 4.*] (8th Sess. Chap. 82.)

8541. *Protection of underground miners. Escapement shaft.*—It is the duty of any person, company or corporation, who shall have sunk on any mine a vertical or incline to a greater depth than one hundred feet, and who shall have the top of such shaft or hoisting opening covered or enclosed by a shaft or building

which is not fireproof, and who shall have drifted on or along the vein or veins thereof, a distance of two hundred feet or more, after cross cutting to the same, and shall have commenced to stope, to provide and maintain to the hoisting shaft or the opening through which men are let into or out of the mine and the ore is extracted, a second escapement shaft, raise, or opening, or an underground opening or communication between every such mine and some other contiguous mine, *provided*, that in case such contiguous mine belongs to a different person, company, or corporation, the right to use the outlet through such contiguous mine in all cases when necessary, or in cases of accident must be secured and kept in force. Where such an escapement shaft or opening shall not be in existence at the time that stoping is commenced, work upon such an escapement shaft or opening must be commenced as soon as stoping begins and be diligently prosecuted until the same is completed, and said escapement shaft, raise or opening shall be continued to and connected with the lowest workings in the mine. The exit, escapement shaft, raise, or opening provided for in the foregoing paragraphs must be of sufficient size as to afford an easy passage way, and if it be a raise, or shaft, must be provided with good and substantial ladders from the deepest workings to the surface. Whenever the exit or outlet herein provided for is not in a direct or continuous course, sign-boards plainly marked showing the direction to be taken must be placed at each departure from the continuous course. [*Act approved March 4th, 1897, § 1.*] (5th Sess. 66-67.)

8542. *To what mines applicable.*—This Act shall apply only to quartz mines in which nine or more men are employed underground, and shall not apply to mines not actually extracting ores, by stoping, nor to mines in which the shaft or hoisting opening, or hauling way is not covered by a shaft house, and has no building structure within thirty (30) feet of the shaft or opening, nor to mines in which the hoisting shaft or opening shall be covered by or enclosed in a fire-proof shaft or building. [*Act approved March 1st, 1897, § 2.*] (5th Sess. 67.)

8543. *Penalty.*—The penalty for violating any of the provisions of the preceding Section is the same as provided in Section 8536 (705) of the Penal Code. [*Act approved March 1st, 1897, § 3.*] (5th Sess. 67.)

8544. (§ 706.) *Practicing medicine without a license.*—Every person who practices medicine or surgery within this state without first having obtained the certificate to practice, as provided by law or contrary to the provisions of the act to regulate the practice of medicine in Montana, is punishable by imprisonment in the county jail not exceeding ninety days or by a fine not exceeding five hundred dollars, or both.

8545. (§ 707.) *Regulating sales of explosives.*—That every person, company or corporation, manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or hercules powder, giant caps, or other highly explosive substances, shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same, which record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof, and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor. Such record shall at all times be open to the inspection of the state inspector of mines, or any peace officer. [*Act approved March 15th, 1895.*]

8546. (§ 708.) *Storage of explosives in mines.*—No person, company or corporation shall store, deposit or keep in any mine a greater quantity than three thousand pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this Section shall be stored, deposited or kept in any place where its accidental explosion would cut off the escape of miners working in said mine. [*Act approved March 15, 1895.*]

8547. (§ 709.) *Storage of explosives in cities, etc.*—No person, company or corporation, shall store, deposit or keep, within one mile of the limits of any city, town or village, any powder, gunpowder, giant or hercules powder, or other highly explosive substance, in greater quantities than one hundred pounds, or more than one thousand giant caps, at any one time, nor shall such explosives be stored, deposited or kept in any quantities whatever within one mile of such city, town or village, except in a magazine constructed as hereinafter described. *Provided*, that this Section shall not be construed to prevent any person, company or corporation, operating a mine within one mile of the limits of such city, town or village, from storing powder for use in such mine in the manner prescribed in §§ 8546 (708) and 8548 (710) of this Act. *Provided* also, that this Section shall not prevent the keeping of a reasonable amount of gunpowder, not exceeding fifty pounds, in a safe place for sale. [*Act approved March 15, 1895.*]

8548. (§ 710.) *Construction and location of magazines.*—It shall be unlawful to store, deposit or keep, any powder, gunpowder, giant or hercules powder, giant caps or other highly explosive substance, in amounts exceeding one hundred pounds, elsewhere than in storehouses or magazines constructed as follows:

The walls of such storehouses and magazines shall be constructed entirely of stone or brick. There shall be no opening in such magazine except necessary ventilation, and one entrance not

exceeding thirty inches in width. There shall be two doors to such entrance, an outer door opening outward and an inner door opening inward. The said door shall be of plank not less than two inches in thickness, and both doors shall be entirely covered with one-eighth inch iron, and shall be hinged upon two or more iron hooks securely anchored in the walls of such magazine. Both said doors shall be kept securely locked at all times when powder is stored therein, except when it is necessary to store therein or remove therefrom such powder or other explosives. Such storage room or magazine shall be well and securely roofed with fire proof and bullet proof material. Such magazine shall not be constructed within less than one-fourth of a mile of any human habitation except by the permission of the county commissioners, nor shall any magazine constructed within one mile of the limits of any city, town or village be constructed within one hundred feet of any building owned by any other person. [*Act approved March 15, 1895.*]

8549. (§ 711.) *Magazines, etc., to bear warning signs.*—Every storehouse or magazine constructed as provided in the foregoing Section, in which shall be stored, deposited or kept, any powder, gunpowder, giant or hercules powder, giant caps, or other highly explosive substance, shall at all times have posted above the entrance thereof a sign-board on which shall be painted in conspicuous letters not less than four inches in length the words, "Explosives—Dangerous." Every dray, wagon, freight car, or other vehicle in which shall be transported, transferred, or delivered any of the said explosives, shall bear on each side thereof a similar sign with conspicuous letters not less than two inches in length. [*Act approved March 15, 1895.*]

8550. *Transportation of explosives.*—It shall be unlawful to knowingly transport or deliver or cause to be delivered giant, or Hercules powder, giant caps, nitro-glycerine, nitro-leum, blasting or nitrated oil, or powder mixed therewith or fibre saturated therewith, or any other highly explosive substance in any quantities whatever on any vessel or vehicle whatever carrying passengers by land or water between any points within the State of Montana: *Provided*, that on mixed trains intended for service on railroad lines leading to mining localities or camps the aforesaid explosive substances or any of them may be lawfully carried, by hanging a placard on each side of the car or cars carrying the explosives, reading thus: "This car is loaded with Powder"—each letter of said placard to be at least two inches long, but this proviso shall not permit the carrying of any of said explosive substances in the same car or coach in which the passengers are carried. [*Act approved March 6th, 1897.*] (*5th Sess. 246-7.*)

8551. (§ 713.) *Careless use of explosives.*—Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or hercules powder, giant caps or other highly explosive substance, whereby any human being is intimidated, terrified, or endangered, shall be guilty of a misdemeanor. [Act approved March 15, 1895.]

8552. (§ 714.) *Penalties.*—Any person, or association of persons, violating any of the provisions of this Act, shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. [Act approved March 15, 1895.]

8553. (§ 715.) *Penalty when death caused by violation of this act.*—When the death of any person is caused by the explosion of any powder, gunpowder, giant or hercules powder, giant caps, or other highly explosive substance, that has been stored, kept, handled or transported, contrary to the provisions of the foregoing Sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants or employees, to so unlawfully store, keep, handle or transport the same, shall be guilty of manslaughter, and on conviction, shall be punished by imprisonment in the state penitentiary for a period not exceeding ten years. [Act approved March 15, 1895.]

8554. (§ 716.) *Sales of explosives after dark.*—No person, or persons, shall store, or keep in any store, warehouse, or any other building within the limits of any unincorporated town or village, more than five thousand giant caps at any one time, or any coal oil, kerosene or petroleum, exceeding sixty gallons, other than in original packages, within the limits of the said unincorporated town or village, or shall sell, lend, barter or dispose of, deliver or receive the same, or any or either of the said articles or materials, in the Section herein enumerated, after dark, by the aid of any lamp, lantern, candle, match or other artificial light, except electric light. [Act approved March 8, 1893.]

8555. *Selling liquor at retail within five miles of grading camps prohibited.*—Every person who sells, furnishes or gives away any spirituous or malt liquors, wine or cider, or any beverage containing any intoxicating liquors, within five miles of any railroad grade, irrigating ditch, or canal under course of construction, or on any railroad grade on which track is being laid, or within five miles of any logging camp, sawmill, mine, stone quarry, or sheep shearing camp in operation is punishable by imprisonment in the county jail not exceeding sixty days, or a fine not exceeding one hundred (\$100.00) dollars or by both such fine and imprisonment. The provisions of this Section do not apply to the selling, furnishing or giving away intoxicating liquors, wine or cider within the limits of any town or city,

provided, that the word "town" or "city," within the meaning of this Act, shall include all places and only such places as have a bona fide permanent population of not less than thirty persons over the age of twenty-one years residing within the territory not exceeding one mile square, and excluding from such enumeration all persons who have not resided at least six months in such place, and also excluding all employees, owners or agents engaged in any of the above named businesses; *Provided*, that the provisions of this Act shall not apply to any person previously engaged in selling intoxicating liquors at a fixed place of business, established six months prior to the beginning of work in or upon, or the erection of construction, or operation of any of the things enumerated in this Act, or to his assigns. [Act approved March 2, 1907.] (10th Sess. Chap. 65.)

8556. *Sales of intoxicating liquors prohibited in vicinity of cemeteries or free public parks.*—Every person who erects or keeps a saloon, house, booth, tent, stall or other contrivance for the purpose of selling or otherwise disposing of any wine, malt, spirituous or intoxicating liquors, or any drink of which wines, malt, spirituous or intoxicating liquors from a part, or who shall maintain, establish or carry on the business of selling or disposing of any wine, or malt, or spirituous or intoxicating liquors within one-half mile of any park in which the sale of wines, malt, spirituous or intoxicating liquors is not carried on, and in which the sale of such liquors is not allowed, and to which said park admission is free to the general public, and which park is maintained for the use of the public, or within one thousand feet of the entrance of any cemetery, is punishable by a fine of not less than one hundred nor more than five hundred dollars; *provided, however*, that nothing herein contained shall apply to saloon or any other place of business, or to the sale of any liquors within the corporate limits of any incorporated city or town. No place shall be deemed a park within the meaning of this Act unless the same be at least ten acres in superficial area. [Act approved March 5, 1907.] (10th Sess. Chap. 98.)

8557. *Depositing coal slack in streams.*—All persons owning or having in operation, and all persons who may hereafter own or put in operation in the state of Montana, either in person or by agent, any coal mine on any stream containing fish or water which is used for domestic purposes, or for irrigation, are hereby required to so care for any coal slack or other refuse emanating from such coal mining operation as to prevent the same from mingling with the waters of such streams. [Act approved February 16th, 1903.] (8th Sess. Chap. 6.)

8558. *Same. Penalty.*—All persons owning or operating, or who may hereafter own or operate any coal mine on any stream containing fish or water which is used for domestic purposes, or

for irrigation, who shall dump, cart or deposit, or cause or suffer to be deposited in such stream any such coal-slack or other refuse emanating from such coal-mining operation, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than two hundred (\$200) dollars nor more than five hundred (\$500) dollars for each and every offense. [*Act approved February 16th, 1903.*] (8th Sess. Chap. 6.)

8559. (§ 718.) *Regulation of coal mines.*—Every person who violates any of the provisions of Chapter XX., Title VII., Part III., of the Political Code, relating to the regulation of coal mines, is guilty of a misdemeanor.

8560. (§ 719.) *Sale of kerosene and coal oil.*—Every person who violates any of the provisions of Chapter XXI., Title VII., Part III., of the Political Code, relating to the sale of kerosene and coal oil, is guilty of a misdemeanor.

8561. (§ 720.) *Animals killed by railroads.*—Except as otherwise provided, every person who violates any of the provisions of Chapter III., Title VIII., Part IV., Division I., of the Civil Code, relating to live stock killed or injured by railroads, is guilty of a misdemeanor.

8562. (§ 721.) *Violating railroad regulations.*—Every person who violates any of the provisions of § 4289 (908), of the Civil Code, relating to the regulations of railroad companies, must on conviction of any of the offenses therein named be punished by a fine not less than five hundred nor more than ten thousand dollars.

8563. (§ 722.) *Inspection of mines. Penalties. Dams and reservoirs, unsafe.*—Every person who violates any of the provisions of Article XIV., Chapter III., Part III., of the Political Code, relating to the inspection of mines, and every person who violates any of the provisions of Chapter XXIV., Title VII., Part III., of the Political Code, relating to dams and reservoirs, is guilty of a misdemeanor.

TITLE XI.

CRIMES AGAINST THE PUBLIC PEACE.

Section 8564. Disturbance of public meetings other than religious or political.

- “ 8565. *Riot defined.*
- “ 8566. *Riot, punishment of.*
- “ 8567. *Rout defined.*
- “ 8568. *Unlawful assembly defined.*
- “ 8569. *Punishment of rout and unlawful assembly.*
- “ 8570. *Remaining present at place of riot, etc., after warning to disperse.*

Section 8571. Magistrates neglecting or refusing to disperse rioters.

- “ 8572. *Consequence of resisting process after a county has been declared in a state of insurrection.*
- “ 8573. *Prize fights.*
- “ 8574. *Persons present at prize fights.*
- “ 8575. *Leaving the state to engage in prize fights.*
- “ 8576. *Boxing matches.*
- “ 8577. *Disturbing the peace.*
- “ 8578. *Refusing to disperse upon lawful command.*
- “ 8579. *Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.*
- “ 8580. *Forcible entry and detainer.*
- “ 8581. *Returning to take possession of lands after being removed by legal proceedings.*
- “ 8582. *Carrying concealed weapons in city or town.*
- “ 8583. *Carrying concealed weapons generally.*
- “ 8584. *Exception.*
- “ 8585. *Carrying concealed weapons in places of public resort.*
- “ 8586. *Exception. Permit.*
- “ 8587. *Person violating law may be arrested without warrant.*
- “ 8588. *“Concealed” weapon. Definition.*
- “ 8589. *Act not to apply to frontier county.*
- “ 8590. *Prohibiting the carrying of fire-arms by Indians while off Reservation.*
- “ 8591. *Bringing armed men into the state.*

8564. (§ 740.) *Disturbance of public meetings other than religious or political.*—Every person who, without authority of law, disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in §§ 8143 (79) and 8372 (533), is guilty of a misdemeanor.

8565. (§ 741.) *Riot defined.*—Any use of force or violence, disturbing the public peace, or any threats to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

8566. (§ 742.) *Riot, punishment of.*—Any person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by a fine not exceeding two thousand dollars, or both.

8567. (§ 743.) *Rout defined.*—Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

8568. (§ 744.) *Unlawful assembly defined.*—Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or to do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

8569. (§ 745.) *Punishment of rout and unlawful assembly.*—Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

8570. (§ 746.) *Remaining present at place of riot, etc., after warning to disperse.*—Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

8571. (§ 747.) *Magistrate neglecting or refusing to disperse rioters.*—If a magistrate having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is vested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

8572. (§ 748.) *Consequence of resisting process after a county has been declared in a state of insurrection.*—A person who, after the publication of the proclamation authorized by § 8970 (1471), resists or aids in resisting the execution of process in any county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists, or aids in resisting any force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the state prison not less than two years.

8573. (§ 749.) *Prize fights.*—Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons) either as principal, aid, second, umpire, surgeon or otherwise, is punishable by imprisonment in the state prison not exceeding two years.

State v. Woodman, 26 Mont. 355; 67 Pac. 1120.

8574. (§ 750.) *Persons present at prize fights.*—Every person wilfully present as a spectator at any fight or contention mentioned in the preceding Section is guilty of a misdemeanor.

State v. Woodman, 26 Mont. 355; 67 Pac. 1120.

8575. (§ 751.) *Leaving the state to engage in prize fights.*—Every person who leaves this state with intent to evade any of the provisions of the last two Sections, and to commit any act out of this state, such as is prohibited by them, and who does

any act which would be punishable under these provisions if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

8576. (§ 752.) *Boxing matches.*—Every person who engages in, instigates, encourages, or promotes as principal, aid, second, umpire, or otherwise, any boxing, wrestling or slugging match, with or without gloves, or who attends or is present at such contest, or hires, rents or permits the use of any building or grounds for such purposes, is guilty of a misdemeanor. This Section does not apply to boxing with soft gloves in any gymnasium for exercise.

8577. (§ 753.) *Disturbing the peace.*—Every person who wilfully and maliciously disturbs the peace of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarrelling challenging to fight or fighting, or who, on the public streets of any town, or upon the public highways, runs any horse race, either for a wager or for amusement, or fires any gun or pistol in such town, or uses any vulgar, profane or indecent language within the presence or hearing of any women or children, in a loud and boisterous manner, is punishable by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or both.

State v. Koch, 33 Mont. 495; 85 Pac. 273.

Ex parte Boynton, 1 C. App. 295; 82 Pac. 90.

8578. (§ 754.) *Refusing to disperse upon lawful command.*—If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

8579. (§ 755.) *Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.*—Every person who, not in necessary self defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who in any manner unlawfully uses the same in any fight or quarrel, is guilty of a misdemeanor.

8580. (§ 756.) *Forcible entry and detainer.*—Every person using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

8581. (§ 757.) *Returning to take possession of lands after being removed by legal proceedings.*—Every person who has been removed from any lands by process of law or who has been removed from any lands pursuant to the lawful adjudication or

direction of any court, tribunal or officer, and who afterwards returns to settle, reside upon or take possession of such lands is guilty of a misdemeanor.

8582. (§ 758.) *Carrying concealed weapons in city or town.* *Am. 12-5.*
—Every person who within the limits of any city or town carries or bears concealed upon his person a dirk, dagger, pistol, revolver, or other deadly weapon is punishable by a fine not exceeding one hundred dollars. This Section does not apply to peace officers in discharge of their official duty.

8583. *Carrying concealed weapons generally.*—Any person in this State who shall carry concealed or partially concealed on or about his person any revolver, pistol, dirk, dagger, slung shot, sword cane, or knuckles made of any metal or any hard substance shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty five nor more than two hundred dollars, or by imprisonment in the County jail not less than ten nor more than thirty days, or by both such fine and imprisonment. [Act approved February 27th, 1903, § 1.] (8th Sess. Chap. 35.)

8584. *Exception.*—The preceding section shall not apply to a person in actual service as a militiaman, nor to a police officer or policeman, or person summoned to his aid nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own premises, or place of business. [Act approved February 27th, 1903, § 2.] (8th Sess. Chap. 35.)

8585. *Carrying concealed weapons in places of public resort.*
—If any person shall go into any church or religious assembly, any school room or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball room, social party, or social gathering, or to any election precinct or any place of registration, on the day or days of any election or registration, where any portion of the people of the State are collected to register or vote at any election, or to any other place where people may be assembled to perform any public duty, or at any public assembly, and shall have or carry concealed or partially concealed about his person a pistol or other firearm, dirk, dagger, slung shot, sword cane, knuckles, or bowie knife, he shall be punished by a fine of not less than fifty nor more than five hundred dollars. [Act approved February 27th, 1903, § 3.] (8th Sess. Chap. 35.)

8586. *Exception. Permit.*—The preceding section shall not apply to peace officers or other persons authorized or permitted by law to carry arms at the places therein designated. And any District Judge of any judicial district of the State of Montana, may, upon satisfactory proof being produced before him of the

good moral character and peaceable disposition of any person, grant permission to such person to bear concealed or otherwise a "pistol" or "revolver" for such a period of time as such judge may deem necessary. [*Act approved February 27th, 1903, § 4.*] (*8th Sess. Chap. 35.*)

8587. *Person violating law may be arrested without warrant.*—Any person violating any of the provisions of sections one and three of this act may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some creditable person, shall be punished by a fine not exceeding five hundred dollars. [*Act approved February 27th, 1903, § 5.*] (*8th Sess. Chap. 35.*)

8588. "*Concealed*" weapon. *Definition.*—The term concealed weapons shall be taken to mean any weapon mentioned in the foregoing sections which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying the weapon. [*Act approved February 27th, 1903, § 6.*] (*8th Sess. Chap. 35.*)

8589. *Act not to apply to frontier county.*—The provisions of this Act shall not apply to or be in force in any county which the governor may designate by proclamation as a frontier county and liable to incursions by hostile Indians. [*Act approved February 27, 1903, § 7.*] (*8th Sess. Chap. 35.*)

8590. *Prohibiting the carrying of fire-arms by Indians while off Reservation.*—Any Indian who while off, or away from, any Indian Reservation carries or bears, or causes to be carried or borne by any member of any party with which he may travel or stop, any pistol, revolver, rifle, or other fire arm, or any ammunition for any fire arm, shall be guilty of a misdemeanor. And such arms shall be seized, confiscated and sold by the officer making the arrest and the proceeds from such sale shall be disposed of as follows: when seized and sold by an officer of the Stock Association the proceeds shall be sent to the State Treasurer and by him placed to the credit of the Stock Inspector and Detective Fund; when seized and sold by a Game Warden the proceeds shall be placed to the credit of the Fish and Game Fund; and when seized and sold by any other peace officer the proceeds shall be turned over to the County Treasurer and placed to the credit of the General Fund in which county the arrest and seizure is made. [*Act approved March 5th, 1903.*] (*8th Sess. Chap. 84.*)

8591. (§ 759.) *Bringing armed men into the state.*—Every person who brings into this state an armed person or armed body of men for the preservation of the peace or the suppression of domestic violence, except at the solicitation and by the permis-

sion of the legislative assembly or of the governor, is punishable by imprisonment in the state prison not exceeding ten years and by a fine not exceeding ten thousand dollars.

TITLE XII.

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

- Section 8592. Embezzlement by public officers.*
 “ 8593. *Officers neglecting to pay over public moneys.*
 “ 8594. *“Public moneys” as used in the preceding section defined.*
 “ 8595. *Failure to pay over fines and forfeitures received a misdemeanor.*
 “ 8596. *Obstructing officer in collecting revenue.*
 “ 8597. *Refusing to give assessor list of property, or giving false name.*
 “ 8598. *Making false statement, not under oath, in reference to taxes.*
 “ 8599. *Delivering receipts for poll taxes other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.*
 “ 8600. *Having blank receipts for licenses other than those prescribed by law.*
 “ 8601. *Refusing to give name of person in employment, etc.*
 “ 8602. *Carrying on business without license.*
 “ 8603. *Unlawfully acting as auctioneer.*
 “ 8604. *Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.*
 “ 8605. *Board of examiners, auditor and treasurer neglecting certain duties.*
 “ 8606. *Having state arms, etc.*
 “ 8607. *Selling state arms, etc.*
 “ 8608. *Sheriff falsely representing accounts.*
 “ 8609. *Trespass on public property.*
 “ 8610. *Limitations on preceding Section.*

8592. *Embezzlement by public officer.*—Every officer of this state, or of any county, city, town or district of this state, and every other person charged with the receipt, safe keeping, transfer or disbursement of public moneys, who either—

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or
2. Loans the same, or any portion thereof, except by deposits in the manner authorized by law, or having the possession or con-

trol of any public money, makes profit out of it, or uses the same for any purpose not authorized by law; or

3. Fails to keep the same in his possession or under his control until disbursed or paid out by authority of law; or

4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banks or other person; or

5. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or

6. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or

7. Wilfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by a competent authority; or

8. Wilfully omits to transfer the same when such transfer is required by law; or

9. Wilfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any moneys received by him under any duty imposed by law which compels him to pay over the same; is punishable by imprisonment in the State Prison not less than one nor more than ten years, and is disqualified from holding any office in this state. [*Act approved March 7, 1907.*] (*10th Sess. Chap. 153.*)

8593. (§ 771.) *Officers neglecting to pay over public moneys.*—Every officer charged with the receipt, safekeeping, or disbursement of any public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

Raban v. Cascade Bank, 33 Mont. 416; Ex parte Wah, 91 Cal. 511; 27 Pac. 84 Pac. 73. 766.

8594. (§ 772.) *"Public moneys" as used in the preceding section defined.*—The phrase "public moneys," as used in this Code, includes all bonds and evidences of indebtedness, and all moneys belonging to the state, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, city or town officers in their official capacity.

People v. Wilson 117 Cal. 244; 49 Pac. 135.

8595. (§ 773.) *Failure to pay over fines and forfeitures received a misdemeanor.*—If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law, and within thirty days after the receipt thereof, is guilty of misdemeanor.

8596. (§ 774.) *Obstructing officer in collecting revenue.*—Every person who wilfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in

which this state is interested, and which such officer is by law empowered to collect, or who obstructs or hinders any public officer in the discharge of his duty, is guilty of a misdemeanor.

8597. (§ 775.) *Refusing to give assessor list of property, or giving false name.*—Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor, in the discharge of his official duties, is guilty of a misdemeanor.

8598. (§ 776.) *Making false statement, not under oath, in reference to taxes.*—Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment or of an application to reduce any tax or assessment, wilfully states anything which he knows to be false, is guilty of a misdemeanor.

8599. (§ 777.) *Delivering receipts for poll taxes other than prescribed by law, or collecting poll taxes, etc., without giving the receipt prescribed by law.*—Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

8600. (§ 778.) *Having blank receipts for licenses other than those prescribed by law.*—Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll tax receipts other than those furnished by the officer authorized by law, is guilty of a felony.

8601. (§ 779.) *Refusing to give name of person in employment, etc.*—Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

8602. (§ 780.) *Carrying on business without license.*—Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring a license prescribed by such law, is guilty of a misdemeanor.

Plumas Co. v. Wheeler, 149 Cal. 768; 87 Pac. 909.

8603. (§ 781.) *Unlawfully acting as auctioneer.*—Every person who acts as an auctioneer in violation of the laws of this state relating to auctions and auctioneers, is guilty of a misdemeanor.

8604. (§ 782.) *Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.*—Every person charged with the collection, receipt, or disbursement of any portion of the revenue of this state, who, upon demand fails or refuses to permit the state examiner, state auditor or attorney general to inspect his books, papers, receipts and records pertaining to his office, and every person who violates any of the provisions of *§ 493 of the Political Code, is guilty of a misdemeanor.

8605. (§ 783.) *Board of examiners, auditor and treasurer neglecting certain duties.*—Every member of the board of examiners, and every state auditor or state treasurer, who violates any of the provisions of the laws of this state relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony.

8606. (§ 784.) *Having state arms, etc.*—Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores belonging to the state, or the property of any company of the state militia, is guilty of a misdemeanor.

8607. (§ 785.) *Selling state arms, etc.*—Every member of the state militia who unlawfully disposes of any arms, equipments, clothing or military stores, the property of this state, or of any company of the state militia, is guilty of a misdemeanor.

8608. (§ 786.) *Sheriff falsely representing accounts.*—Every person who violates any of the provisions of § § 3160 (4627) and 3161 (4628) of the Political Code, relating to sheriff, is guilty of a felony.

8609. (§ 787.) *Trespass on public property.*—If any person shall wilfully injure or trespass or commit waste upon any premises, or shall damage, deface or destroy any house, improvement or other like property, such premises, house, improvement or property being then and there the property of this state, the person or persons so offending shall be deemed guilty of a misdemeanor if the damage does not exceed fifty dollars; and of a felony if such damage exceeds fifty dollars. If convicted of a misdemeanor, in this Section defined, the defendant shall be punished by a fine of not less than fifty dollars, or by imprisonment in the county jail not more than sixty days, or by both such fine and imprisonment. If convicted of the felony herein defined, the person so convicted shall be punished by imprisonment at hard labor in the penitentiary not less than six months nor more than ten years, and in addition to penalties before mentioned the party convicted shall be liable to the state in the sum of three times the value of the property taken, the damage done or the property destroyed; to be recovered in a civil action. [Act approved March 1, 1893.]

* Note.—Section 493 has been repealed. See Revised Code, § 210.

8610. (§ 788.) *Limitations on preceding Section.*—The foregoing Section shall not apply to unenclosed granted lands to the state, which are not occupied and have no improvements or enclosures thereon so far as mere trespass not malicious is concerned, but shall apply to any waste or destruction thereon, or to the cutting or removing of timber therefrom, or the destruction of the same. All fines collected and all moneys recovered by virtue of this Section must be paid into the school fund of the state. [*Act approved March 1, 1893.*]

TITLE XIII.

CRIMES AGAINST PROPERTY.

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| CHAPTER | I. | ARSON. |
| | II. | BURGLARY AND HOUSEBREAKING. |
| | III. | HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS. |
| | IV. | FORGERY AND COUNTERFEITING. |
| | V. | LARCENY. |
| | VI. | EXTORTION. |
| | VII. | FALSE PERSONATION AND CHEATS. |
| | VIII. | FRAUDULENT DESTRUCTION OF PROPERTY INSURED. |
| | IX. | FALSE WEIGHTS AND MEASURES. |
| | X. | FRAUDULENT CONVEYANCES. |
| | XI. | FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT. |
| | XII. | FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE. |
| | XIII. | MALICIOUS INJURIES TO RAILROAD PROPERTY, HIGHWAYS, BRIDGES, TELEGRAPHS, DITCHES, ETC. |

CHAPTER I.

ARSON.

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| Section | 8611. | <i>Arson defined.</i> |
| " | 8612. | <i>"Building" defined.</i> |
| " | 8613. | <i>"Inhabited building" defined.</i> |
| " | 8614. | <i>"Night time" defined.</i> |
| " | 8615. | <i>"Burning" defined.</i> |
| " | 8616. | <i>Ownership of the building.</i> |
| " | 8617. | <i>Degrees of arson.</i> |
| " | 8618. | <i>Arson of the first degree. Arson of the second degree.</i> |
| " | 8619. | <i>Punishment of arson.</i> |

8611. (§ 800.) *Arson defined.*—Arson is the wilful and malicious burning of a building with intent to destroy it.

People v. Mooney, 127 Cal. 340; 59 Pac. 761.

8612. "*Building*" defined.—Any house, edifice, structure, vessel, railroad car, tent, camp wagon, sheep wagon, or other erection capable of affording shelter or appurtenant to or connected with an erection so adapted, is a "building" within the meaning of this Chapter. [Act approved February 24th, 1903.] (8th Sess. Chap. 22.)

8613. (§ 802.) "*Inhabited building*" defined.—Any building which has usually been occupied by any person lodging therein at night is an "inhabited building" within the meaning of this Chapter.

8614. (§ 803.) "*Night time*" defined.—The phrase "night time" as used in this Chapter means the period between sunset and sunrise.

8615. (§ 804.) "*Burning*" defined.—To constitute a burning within the meaning of this Chapter it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

8616. (§ 805.) *Ownership of the building.*—To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of or was actually occupying such building or any part thereof.

People v. Davis, 135 Cal. 166; 67 Pac. 59.

8617. (§ 806.) *Degrees of arson.*—Arson is divided into two degrees.

8618. (§ 807.) *Arson of the first degree.* *Arson of the second degree.*—Maliciously burning in the night time an inhabited building in which there is at the time some human being is arson in the first degree. All other kinds are arson of the second degree.

8619. (§ 808.) *Punishment of arson.*—Arson is punishable by imprisonment in the state prison as follows:

1. Arson in the first degree, for not less than five years.
2. Arson in the second degree for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

Section 8620. "*Burglary*" defined.

" 8621. *Degrees of burglary.*

" 8622. *Penalty.*

" 8623. *Word "enter" defined.*

" 8624. "*Night-time*" defined.

" 8625. *Burglary with explosives.*

" 8626. *Penalty.*

*In larceny it
felonious taking*

8620. (§ 820.) "*Burglary*" defined.—Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, with intent to commit grand or petit larceny or any felony is guilty of burglary.

State v. Green, 15 Mont. 424; 39 Pac. 322. An information charging the statutory offense of burglary must aver that the place entered was included within the strict terms of the statute, but in the use of the words "box-car" instead of "railroad car," there is no substantial departure from the rule.

State v. Rogers, 31 Mont. 3; 77 Pac. 294. The entry of a building with the intent to commit a larceny or some felony is all that the statute makes essential to the crime of burglary. The gravamen

of the charge is the entry with this criminal intent.

State v. Copenhaver, 35 Mont. 343; 89 Pac. 61. In an information charging burglary, the time during the twenty-four hours of the day at which the entry into any of the structures enumerated in this section was made, need not be alleged. Where defendant was charged with burglary in the night-time he could not be convicted of burglary in the day-time, as the former does not include the latter.

People v. Devlin, 143 Cal. 129; 76 Pac. 900.

8621. (§ 821.) *Degrees of burglary.*—Every burglary committed in the night time is burglary in the first degree, and every burglary committed in the day time is burglary in the second degree.

State v. Copenhaver, 35 Mont. 343; 89 Pac. 61.

People v. Perry, 144 Cal. 754; 78 Pac. 284.

8622. (§ 822.) *Penalty.*—Burglary in the first degree is punishable by imprisonment in the state prison for not less than one nor more than fifteen years. Burglary in the second degree is punishable by imprisonment in the state prison for not more than five years.

State v. Connors, 27 Mont. 228; 70 Pac. 716.

State v. Copenhaver, 35 Mont. 343; 89 Pac. 61.

8623. (§ 823.) *Word "enter" defined.*—The word "enter," as used in this Chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, stable, outhouse or other building, tent, vessel or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

8624. (§ 824.) "*Night-time*" defined.—The phrase "night-time," as used in this Chapter, means the period between sunset and sunrise.

State v. Copenhagen, 35 Mont. 343; People v. Perry, 144 Cal. 754; 78 Pac. 89 Pac. 61. 284.

8625. *Burglary with explosives*.—Any person who enters a building belonging to another with intent to commit a felony or other crime by the use of nitro glycerine, dynamite, gun powder or other high explosives or who commits a burglary by the use of any such explosives is guilty of burglary with explosives. [Act approved March 6, 1907, § 1.] (10th Sess. Chap. 107.)

8626. *Penalty*.—Burglary with explosives is punishable by imprisonment in State Prison for not less than fifteen years, and not more than forty years. [Act approved March 6, 1907, § 2.] (10th Sess. Chap. 107.)

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

Section 8627. *Possession of burglarious instruments.*

" 8628. *Having possession of deadly weapons.*

8627. (§ 830.) *Possession of burglarious instruments*.—Every person having upon him or in his possession a pick-lock, crow, key, bit or other instrument or tool with intent feloniously to break or enter into any building, or who shall knowingly make or alter or shall attempt to make or alter any key or other instrument above named so that the same will fit or open the lock of a building without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in § 8620 (820) of this Code shall be deemed to be a building within the meaning of this Section.

8628. (§ 831.) *Having possession of deadly weapons*.—Every person having upon him any deadly weapon with intent to assault another is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

Section 8629. *Forgery of wills, conveyances, etc.*

" 8630. *Making false entries in records or returns.*

" 8631. *Forgery of public or corporate seals.*

" 8632. *Punishment of forgery.*

" 8633. *Forging telegraphic messages.*

Section 8634. *Passing or receiving forged notes.*

" 8635. *Making, passing, or uttering fictitious bills, etc.*

" 8636. *Counterfeiting coin, bullion, etc.*

" 8637. *Punishment of counterfeiting.*

" 8638. *Possessing or receiving counterfeit coin, bullion, etc.*

" 8639. *Making or possessing counterfeit dies or plates.*

" 8640. *Counterfeiting railroad tickets, etc.*

" 8641. *Restoring cancelled tickets.*

8629. (§ 840.) *Forgery of wills, conveyances, etc.*—Every person who with intent to defraud another falsely makes, alters, forges or counterfeits any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right or interest in the stock of any corporation or association, or any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument in writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien or convey any goods, chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another or any official certificate, or utters, publishes, or passes or attempts to pass as true and genuine any of the above named false, altered, forged or counterfeited matters as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person, or who, with intent to defraud, alters, corrupts or falsifies any record of any will, codicil, conveyance or other instrument, the record of which is by law evidence, or any record of any judgment of any court, or the return of any officer to any process of any court, is guilty of forgery.

State v. Brett, 16 Mont. 361; 40 Pac. 873. A city warrant or order, regular on its face, and apparently drawn according to law on the city treasurer, signed

by the mayor and countersigned by the city clerk, for the payment of money out of a specific fund, is a draft and the subject of forgery.

Where a city warrant purporting on its face to be good and valid for the purposes for which it is made, is altered with the intent to defraud, the crime of forgery is complete.

State v. Court, 21 Mont. 534; 55 Pac. 108. An information charging the forgery of an endorsement of a certificate of deposit, set out in full in the informa-

tion and containing the words "H. D. & Co., Bankers," at the top and above the date and signed "H. D. & Co., and payable to the order of the depositor, is sufficient.

State v. Newman, 34 Mont. 436; 87 Pac. 462.

People v. McGlade, 139 Cal. 68; 72 Pac. 600.

8630. (§ 841.) *Making false entries in records or returns.*—Every person who, with intent to defraud another, makes, forges or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding Section, is guilty of forgery.

People v. Terrill, 133 Cal. 125; 65 Pac. 303.

8631. (§ 842.) *Forgery of public or corporate seal.*—Every person who, with intent to defraud another, forges or counterfeits the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this state, or any other state, government or country, or who falsely makes, forges or counterfeits any impression purporting to be an impression of any such seal, or who has in possession any such counterfeited seal, or impression thereof, knowing it to be counterfeited, and wilfully conceals the same, is guilty of forgery.

People v. Chretien, 137 Cal. 451; 70 Pac. 305.

8632. (§ 843.) *Punishment of forgery.*—Forgery is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

People v. Terrill, 133 Cal. 125; 65 Pac. 303.

8633. (§ 844.) *Forging telegraphic messages.*—Every person who knowingly and wilfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who wilfully delivers or causes to be delivered to any person any such message, falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator or employee, to be sent by telegraph or to be delivered, any such message, knowing the same to be forged or false, with intent to deceive, injure, or defraud another, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

People v. Chadwick, 143 Cal. 119; 76 Pac. 884.

8634. (§ 845.) *Passing or receiving forged notes.*—Every person who has in his possession, or receives from another person, any forged promissory note, or bank-bill, or bills for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or

passed with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank-bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up or complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be passed, or to defraud any person, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

8635. *Making, passing or uttering fictitious bills, etc.*—Every person who makes, passes, utters, or publishes with intention to defraud any other person, (or who, with like intention, attempts to pass, utter or publish, any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument in writing for the payment of money or property of some bank, corporation, co-partnership, government or individual in existence, (when in fact there is no such bank, corporation, co-partnership, government, or individual in existence.)) knowing the bill, note, check or instrument in writing to be fictitious, is punishable by imprisonment in the state prison for not less than one nor more than fourteen years. [Act approved February 25, 1907.] (10th Sess. Chap. 32.)

8636. (§ 847.) *Counterfeiting coin, bullion, etc.*—Every person who counterfeits any of the species of gold or silver coin current in this state, or any kind or species of gold dust, gold or silver bullion or bars, lumps, pieces or nuggets or who sells, passes or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces or nuggets, or permits, causes, or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

8637. (§ 848.) *Punishment of counterfeiting.*—Counterfeiting is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

State v. Newman, 34 Mont. 436: 87 Pac. 462.

8638. (§ 849.) *Possessing or receiving counterfeit coin, bullion, etc.*—Every person who has in his possession, or receives from any other person, any counterfeit gold or silver coin of the species current in this state, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces or nuggets, with the intention to sell, utter, or put off, or pass the same, or permits, causes, or produces the same to be sold, uttered or passed with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the state prison not less than one nor more than fourteen years.

8639. (§ 850.) *Making or possessing counterfeit dies or plates.*—Every person who makes, or knowingly has in his possession any die, plate or any apparatus, paper, metal, machine or other thing whatever made use of in counterfeiting coin current in this state, in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machine, intended for the purpose aforesaid, must be destroyed.

People v. McDonnell, 80 Cal. 285; 22 Pac. 190.

8640. (§ 851.) *Counterfeiting railroad tickets, etc.*—Every person who counterfeits, forges or alters any check, ticket, order, coupon, receipt for fare or pass, issued by any railroad company, or by any lessee or manager thereof, designated to entitle the holder to ride in the cars of such company, or who utters, publishes or puts into circulation, any such counterfeit or altered ticket, check or order, coupon, receipt for fare or pass, with intention to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or both such imprisonment and fine.

8641. (§ 852.) *Restoring canceled tickets.*—Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates the cuts, marks, punch holes or other evidences of cancellation, from any ticket, check, coupon, receipt for fare or pass, issued by any railroad company or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessees thereof, or any other person, or who, with like intention to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or both.

CHAPTER V.

LARCENY.

Section 8642. Larceny defined.

“ 8643. *Obtaining property by fraudulent draft.*

“ 8644. *Grand and petit larceny.*

“ 8645. *Grand larceny defined.*

“ 8646. *Petit larceny defined.*

- Section 8647. *Punishment of grand larceny.*
 “ 8648. *Punishment of petit larceny.*
 “ 8649. *Dogs, property.*
 “ 8650. *Larceny of lost property.*
 “ 8651. *Larceny of written instruments.*
 “ 8652. *Value of passage tickets.*
 “ 8653. *Written instruments completed but not delivered.*
 “ 8654. *Severing and removing part of the realty.*
 “ 8655. *Larceny and receiving stolen property out of the state.*
 “ 8656. *Conversion by trustee, larceny.*
 “ 8657. *Verbal false pretense, not larceny.*
 “ 8658. *Claim of title, ground of defense.*
 “ 8659. *Larceny of gas or electricity.*
 “ 8660. *Larceny of water.*
 “ 8661. *False device for measuring gas, water or electricity.*
 “ 8662. *Receiver of stolen property.*

8642. (§ 880.) *Larceny defined.*—Every person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person either—

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing, or secrets, withholds or appropriates to his own use, or that of any other person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

2. Having in his possession, custody or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association or corporation, or as a public officer, or as a person authorized by agreement or by competent authority to hold, or take such possession, custody or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner, or person entitled to the benefit thereof, steals such property and is guilty of larceny.

State v. Rechnitz, 20 Mont. 488; 52 Pac. 264. It is not necessary to use the word “feloniously” in describing the crime of larceny; it is sufficient if the criminal intent, included in that technical word, is included in appropriate terms.

State v. Dickinson, 21 Mont. 595; 55 Pac. 539. To convict under this section, it is necessary to prove that defendant obtained the money in question under

circumstances showing that the owner parted with the title thereto, and not merely with the possession thereof.

State v. Mjelde, 29 Mont. 493; 75 Pac. 88. Three persons placed at the same time individual sums, less than \$50, on the table of an agent, who by one act collected them, placed them in his pocket and afterwards appropriated them to his own use, and this constituted a single offense of grand larceny.

8643. (§ 881.) *Obtaining property by fraudulent draft.*—Every person who wilfully with intent to defraud by color or aid of a check or draft, or order for the payment of money, or the delivery of property when such person knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of larceny.

8644. (§ 882.) *Grand and petit larceny.*—Larceny is divided into two degrees, the first of which is termed grand larceny, the second petit larceny.

8645. *Grand larceny defined.*—Grand Larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding fifty dollars.
2. When the property taken is from the person of another.
3. When the property taken is a stallion, mare, gelding, colt, foal or filly, cow, steer, bull, stag, heifer, calf, mule, jack, jenny, goat, sheep, or hog.
4. If any person or persons, shall steal or with intent to steal, shall take, carry, drive, lead or entice away any mare, gelding, stallion, colt, foal or filly, mule, jack or jenny, ox, cow, bull, stag, heifer, steer, calf, sheep, goat or hog, being the property of another, he or they shall be deemed guilty of grand larceny; and shall be liable to the person or persons, whose property is so stolen, for the said property or the value thereof, and for any expenses by him or them incurred in endeavoring to make reclamation thereof. [Act approved February 23rd, 1897.] (5th Sess. Chap. 247.)

State v. Allen, 34 Mont. 406; 87 Pac. 178. The term "feloniously" in an in- formation imports criminal intent.

8646. (§ 884.) *Petit larceny defined.*—Larceny in other cases is petit larceny.

8647. (§ 885.) *Punishment of grand larceny.*—Grand larceny is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

State v. DeWolf, 29 Mont. 424; 74 Pac. 1087.

8648. (§ 886.) *Punishment of petit larceny.*—Petit larceny is punishable by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months or both.

8649. (§ 887.) *Dogs, property.*—Dogs are personal property, and their value is to be ascertained in the same manner as the value of other property.

Johnson v. McConnell, 80 Cal. 549; 22 Pac. 219.

→ 8650. (§ 888.) *Larceny of lost property.*—One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the real owner and who appropriates such

property to his own use or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

8651. (§ 889.) *Larceny of written instruments.*—If the thing stolen consists of any evidence of debt or other written instrument the amount of money due thereon or secured to be paid thereby and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property, the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

People v. Lopez, 90 Cal. 573; 27 Pac. 427.

8652. (§ 890.) *Value of passage tickets.*—If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel, or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper or writing.

8653. (§ 891.) *Written instruments completed but not delivered.*—All the provisions of this Chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

8654. (§ 892.) *Severing and removing part of the realty.*—The provisions of this Chapter apply where the thing taken is a fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

→ 8655. (§ 893.) *Larceny and receiving stolen property out of the state.*—Every person who, in another state or country, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this state.

People v. Black, 122 Cal. 74; 54 Pac. 385.

8656. (§ 894.) *Conversion by trustee, larceny.*—Every person acting as executor, administrator, guardian, receiver, the officer of any bank or corporation, or trustee of any description appointed by a deed, will or other instrument, or by an order or judgment of a court, judge or officer, who secretes, withholds or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or property, or other valuable thing, or any proceeds thereof, in his possession or

custody, by virtue of his office, employment or appointment, is guilty of larceny in such degree as is herein prescribed with reference to the value of such property.

8657. (§ 895.) *Verbal false pretense, not larceny.*—A purchase of property by means of false pretense is not criminal where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged.

8658. (§ 896.) *Claim of title, ground of defense.*—Upon an indictment, information or complaint for larceny it is a sufficient defense that the property was appropriated openly and avowedly under a claim of title preferred in good faith, even though such claim is untenable. The fact that the defendant intended to restore the property taken is no ground of defense if it has not been restored before complaint, to a magistrate or court, charging the commission of the offense, has been made.

8659. *Larceny of gas or electricity.*—Every person who, with intent to injure or defraud, procures, makes, or causes to be made, any pipe, tube, wire, or other conductor of gas or electricity, and connects the same, or causes it to be connected, with any main, service pipe, or other pipe for conducting or supplying illuminating gas or any wires or other conductor of electricity, in such manner as to supply illuminating gas or electricity to any lamp, motor, burner, or orifice, by or at which illuminating gas or electricity is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas or electric meter, or obstructs its action, is guilty of a misdemeanor. In prosecutions for offenses under this Section proof that, any of the acts herein forbidden have been done in, upon, or about the premises owned or used by the defendant charged with the commission of such offense in such a manner as to decrease or lessen the amount he should pay under his understanding or contract with any person or corporation engaged in the business of furnishing and selling gas or electricity, shall be prima facie evidence of the guilt of said defendant. [*Act approved March 6th, 1897, § 1.*] (5th Sess. 248.)

8660. *Larceny of water.*—Every person who, with intent to injure or defraud connects or causes to be connected, any pipe, tube, wire electrical conductor or other instrument with any main, service pipe, or other pipe or conduit or flume for conducting water, or with any main, service pipe, or other pipe or conduit for conducting gas, or with any main service wires or other electrical conductor used for the purpose of conducting electricity for light or motive service, for the purpose of taking therefrom water, gas, or electricity without the knowledge of the owner thereof and with

intent to evade payment therefor, is guilty of a misdemeanor. In prosecutions for offenses under this Section proof that any of the Acts herein forbidden have been done in, upon, or about the premises owned or used by the defendant charged with the commission of such offense in such a manner as to provide for such defendant's use, water, gas or electricity shall be prima facie evidence of the guilt of the defendant. [Act approved March 6th, 1897, § 2.] (5th Sess. Chap. 248-9.)

8661. *False device for measuring gas, water or electricity.*—Every person, or persons, or officer or officers or employe, or employes of any corporation or corporations who with intent to injure, or defraud, uses or causes to be used any false registering or false measuring device or meter for the measuring of any water, gas or electric current that is sold to any other person or persons, corporation or corporations, or who shall alter or change the record or measurement of any such meter or measuring device with intent to injure or defraud, shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of not less than \$100 nor more than \$500. In prosecutions for offenses under this Section, proof of the use of such false registering meter or proof of an attempt to collect payment from any consumer for any falsified amount or quantity of gas, water, or electricity, shall be prima facie evidence of the guilt of such defendant. [Act approved March 6th, 1897,] (5th Sess. 249.)

Note.—Subject of this section is not embraced within title of act.

8662. (§ 899.) *Receiver of stolen property.*—Every person ^L who for his own gain or to prevent the owner from again possessing his own property buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five years or in a county jail not exceeding six months; and it is presumptive evidence that such property was stolen if the same consists of jewelry, silver or plated ware or articles of personal ornament, if purchased or received from a person under the age of eighteen unless said property is sold by said minor at a fixed place of business carried on by said minor or his employer.

CHAPTER VI.

EXTORTION.

Section 8663. *Extortion defined.*

“ 8664. *What threats constitute extortion.*

“ 8665. *Punishment of extortion in certain cases.*

“ 8666. *Obtaining signature by means of threats.*

“ 8667. *Compulsion to execute instrument.*

“ 8668. *Oppression committed under color of official right.*

Section 8669. Extortion committed under color of official right.

“ 8670. *Punishment of extortion committed under color of official right.*

“ 8671. *Blackmail.*

“ 8672. *Written threats.*

“ 8673. *Verbal threats.*

“ 8674. *Unlawful threat referring to act of third person.*

“ 8675. *Employe of railroad company taking more fare, etc.*

“ 8676. *Requiring release of liability, etc.*

“ 8677. *Extortion; refusal to pay wages without discount.*

“ 8678. *Receipt or solicitation of gifts by foremen from employees.*

“ 8679. *Immunity of witnesses.*

8663. (§ 910.) *Extortion defined.*—Extortion is the obtaining property from another with his consent induced by wrongful use of force or fear or under color of official right.

In re McCabe, 29 Mont. 29; 73 Pac. 1106. The right of an employe to work is not property, and therefore a complaint charging a foreman with extorting money from an employe by a threat

to discharge him did not charge the crime of extortion.

People v. Hoffman, 126 Cal. 367; 58 Pac. 856.

8664. (§ 911.) *What threats constitute extortion.*—Fear, such as will constitute extortion, may be induced by a threat either—

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,

2. To accuse him or any relative or member of his family of any crime; or,

3. To expose or impute to them or him any deformity or disgrace; or,

4. To expose any secret affecting him or them.

In re McCabe, 29 Mont. 28; 73 Pac. 1106.

People v. Hoffman, 126 Cal. 367; 58 Pac. 856.

8665. (§ 912.) *Punishment of extortion in certain cases.*—Every person who extorts money or other property from another under circumstances not amounting to robbery by means of force or any threat such as is mentioned in the preceding Section is punishable by imprisonment in the state prison not exceeding five years.

8666. (§ 913.) *Obtaining signature by means of threats.*—Every person who by any extortionate means obtains from another his signature to any paper or instrument whereby, if such signature were freely given, any property would be transferred or any

debt, demand, charge, or right of action created is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

8667. (§ 914.) *Compulsion to execute instrument.*—The compelling or inducing another by force or threat to make subscribe, seal, execute, alter or destroy any valuable security or instrument, or writing affecting or intended to affect any cause of action or defense or any property is extortion under the provisions of the three preceding sections.

8668. (§ 915.) *Oppression committed under color of official right.*—Every public officer or person pretending to be such who unlawfully and maliciously, under pretense or color of official authority—

1. Arrests another or detains him against his will; or,
2. Seizes or levies upon another's property; or,
3. Dispossesses another of any lands or tenements; or,
4. Does any other act whereby another person is injured in his person, property or rights, is guilty of a misdemeanor.

8669. (§ 916.) *Extortion committed under color of official right.*—Every public officer who asks or receives or agrees to receive a fee or other compensation for his official services, either:

1. In excess of the fee or compensation allowed to him by statute therefor; or,
2. Where no fee or compensation is allowed to him by statute therefor:

Is guilty of a misdemeanor.

8670. (§ 917.) *Punishment of extortion committed under color of official right.*—Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this Code, is guilty of a misdemeanor.

8671. (§ 918.) *Blackmail.*—Every person who, knowing the contents thereof, and with intent by means thereof, to extort or gain any money or other property, or to do, abet or procure any illegal or wrongful act, sends, delivers or in any manner causes to be forwarded or received, or makes or parts with for the purpose that there may be sent or delivered, any letter or writing whether subscribed or not, threatening:

1. To accuse any person of crime; or,
2. To do any injury to any person or to any property; or,
3. To publish or connive at publishing any libel; or,
4. To expose or impute to any person any deformity or disgrace; or,
5. To expose any secret affecting any person;

Is punishable by imprisonment in the state prison, not exceeding five years, or by fine not exceeding five thousand dollars, or both.

8672. (§ 919.) *Written threats.*—Every person who, knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received any letter or other writing, whether subscribed or not, threatening to do an unlawful injury to the person or property of another, is guilty of a misdemeanor.

8673. (§ 920.) *Verbal threats.*—Every person who, under circumstances not amounting to robbery or an attempt at robbery, with intent to gain or extort any money or other property, verbally makes such a threat as would be criminal under either of the preceding Sections of this Chapter if made or communicated in writing, is guilty of a misdemeanor.

8674. (§ 921.) *Unlawful threat referring to act of third person.*—It is immaterial whether a threat made as specified in this Chapter is of things to be done or omitted by the offender or by any other person.

8675. (§ 922.) *Employe of railroad company taking more fare, etc.*—Every officer, agent or employe of a railroad company, who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

Denninger v. Court, 145 Cal. 637; 79 Pac. 364.

8676. (§ 923.) *Requiring release of liability, etc.*—Every person, company or corporation, which requires of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation is released or discharged from liability or responsibility on account of personal injuries received by such servants or employes, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

8677. *Extortion; refusal to pay wages without discount.*—Every person, company or corporation, indebted to another person for labor, or any agent of any person, co-partnership, or corporation so indebted, who shall, with intent to secure from such other person a discount upon the payment of such indebtedness, wilfully refuse to pay the same, or falsely deny the same, or the amount or validity thereof, or that the same is due, is guilty of a misdemeanor; *provided, however*, that nothing herein contained shall prohibit any employer from fixing regular pay days for the payment of wages or salary earned in the calendar month immediately preceding such pay days, except in cases where the employe is discharged. [Act approved March 7, 1907.] (10th Sess. Chap. 144.)

8678. *Receipt or solicitation of gifts by foremen from employes.*—That any superintendent, foreman, assistant, boss, or any other person, or persons, who shall receive, or solicit, or cause

to be received or solicited, any sum of money or other valuable consideration, from any person for or on account of the employment, or the continuing of the employment of such person, or of any one else, or for, or on account of any promise, or agreement, to employ or to continue to employ, any such person, or any one else, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand (1,000) dollars, or undergo an imprisonment in the county jail of not more than one (1) year, or both, at the discretion of the court. [*Act approved February 28, 1907.*] (10th Sess. Chap. 52.)

8679. *Immunity of witnesses.*—No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing, or things before any court, or magistrate upon any investigation, proceeding, or trial, for a violation of any of the provisions of this Act, upon the ground, or for the reason that the testimony, or evidence, documentary, or otherwise required of him, may tend to convict him of a crime, or to subject him to a penalty, or forfeiture; but no person shall be prosecuted or subjected to any penalty, or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify, or produce evidence of documentary, or otherwise; and no testimony or evidence so given, or produced shall be received against him in any civil or criminal proceeding, action or investigation. [*Act approved February 28th, 1907, § 2.*] (10th Sess. Chap. 52.)

CHAPTER VII.

FALSE PERSONATION AND CHEATS.

- Section 8680. *Marrying under false personation.*
 “ 8681. *Falsely personating another in other cases.*
 “ 8682. *Receiving property in a false character.*
 “ 8683. *Obtaining money by false pretenses.*
 “ 8684. *Confidence games.*
 “ 8685. *Selling land twice.*
 “ 8686. *Married person selling land under false representations.*
 “ 8687. *Mock auction.*
 “ 8688. *Consignee, false statement by.*
 “ 8689. *Removing mortgaged property.*
 “ 8690. *False pedigree of animals, etc.*
 “ 8691. *Selling animal with false pedigree.*
 “ 8692. *Use of false pretenses in selling mines.*
 “ 8693. *Interference with samples for assay.*
 “ 8694. *Making false samples of ore.*
 “ 8695. *Misrepresentation by life insurance company or agent.*
 “ 8696. *Same. Penalty.*
 “ 8697. *Same.*

8680. (§ 930.) *Marrying under false personation.*—Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without connivance of such other, is guilty of a felony.

8681. (§ 931.) *Falsely personating another in other cases.*—Every person who falsely personates another, and in such assumed character, either :

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges, or proves in the name of another person, any written instrument, with intent that the same may be recorded, delivered and used as true; or,

3. Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person; or,

4. Confesses a judgment,

Is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

People v. Knox, 119 Cal. 73; 51 Pac. 19.

8682. (§ 932.) *Receiving property in a false character.*—Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

8683. (§ 933.) *Obtaining money by false pretenses.*—Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.

People v. Small, 1 C. App. 321; 82 Pac. 87.

8684. (§ 934.) *Confidence games.*—Every person who obtains or attempts to obtain from another any money or property, by means or use of brace faro, or any false or worthless checks, or by any other means, artifice, device, instrument or pretense, commonly called confidence games or bunco, is punishable by imprisonment in the state prison not exceeding ten years.

8685. (§ 935.) *Selling land twice.*—Every person who, after once selling, bartering or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again wilfully and with intent to defraud previous or subsequent purchasers, sells, barter or disposes of the same tract of land or town lot, or any part thereof, or wilfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the state prison not less than one nor more than ten years.

In re Weed, 26 Mont. 247; 67 Pac. 3 08.

8686. (§ 936.) *Married person selling land under false representations.*—Every person who falsely represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representation wilfully conveys or mortgages the same, is guilty of a felony.

8687. (§ 937.) *Mock auction.*—Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment, in the state prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment; and in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

8688. (§ 938.) *Consignee, false statement by.*—Every commission merchant, broker, agent, factor or consignee who shall wilfully and corruptly make or cause to be made to the principal or consignor of such commission merchant, agent, broker, factor or consignee a false statement concerning the price obtained for or the quality or quantity of any property consigned or entrusted to such commission merchant, agent, broker, factor or consignee for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding six months, or both.

8689. *Removal of mortgaged property.*—Every person who, after mortgaging any personal property, except locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use and vessels, voluntarily removes, or permits the removal of such mortgaged property from the County where it was situated at the time it was mortgaged, without the written consent of the

71 - 2

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mortgagee, with intent to deprive the mortgagee of his claim there-to and interest therein, is guilty of larceny. [*Act approved March 3, 1905.*] (*9th Sess. Chap. 72.*)

8690. (§ 940.) *False pedigree of animals, etc.*—Every person who makes, publishes, delivers or uses any false or fraudulent pedigree of any horse, cattle, sheep or other domestic animal for the purpose of increasing the value of the animal is punishable by a fine not exceeding five hundred dollars.

8691. (§ 941.) *Selling animal with false pedigree.*—Every person who by statements or representations concerning a false or fraudulent pedigree sells to another any domestic animal and such animal is not of the breeding or pedigree as represented, is punishable by a fine not exceeding fifty dollars, and is liable to the purchaser in a civil action for double the value or price paid for the animal.

8692. (§ 942.) *Use of false pretenses in selling mines.*—Every person who, with intent to cheat, wrong, or defraud, places in or upon any mine or mining claim any ores or specimens of ores not extracted therefrom, or exhibits any ore, or certificate of assay of ore not extracted therefrom, for the purpose of selling any mine or mining claim, or interest therein, or who obtains any money or property by any such false pretenses or artifices, is guilty of a felony.

8693. (§ 943.) *Interference with samples for assay.*—Every person who interferes with, or in any manner changes samples of ores or bullion produced for sampling, or changes or alters samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong, or defraud, is guilty of a felony.

8694. (§ 944.) *Making false samples of ore.*—Every person who, with intent to cheat, wrong, or defraud, makes or publishes a false sample of ore or bullion, or who makes or publishes, or causes to be published a false assay of ore or bullion, is guilty of a felony.

8695. *Misrepresentation by life insurance company or agent.*—No life insurance company doing business in this state and no officer, director or agent thereof shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. [*Act approved February 25, 1907, § 1.*] (*10th Sess. Chap. 31.*)

8696. *Same. Penalty.*—Every officer or agent of any such corporation who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor. [Act approved February 25, 1907, § 2.] (10th Sess. Chap. 31.)

8697. *Same.*—Every corporation or officer or agent thereof which shall violate any of the provisions of this act shall be fined in any sum not exceeding five hundred dollars to be recovered by any action in the name of the state, and on collection to be paid into the county treasury for the benefit of the common school fund. [Act approved February 25, 1907, § 3.] (10th Sess. Chap. 31.)

CHAPTER VIII.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

Section 8698. *Burning or destroying property insured.*

“ 8699. *Presenting false proofs upon policy of insurance.*

8698. (§ 950.) *Burning or destroying property insured.*—Every person who wilfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person, or of any other, is punishable by imprisonment in the state prison not less than one nor more than ten years.

People v. Hong, 120 Cal. 687; 53 Pac. 265.

8699. (§ 951.) *Presenting false proofs upon policy of insurance.*—Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper or writing, with intent to present or use the same, or allow it to be presented or used in support of any such claim, is punishable by imprisonment in the state prison not exceeding three years, or by fine not exceeding one thousand dollars, or both.

CHAPTER IX.

FALSE WEIGHTS AND MEASURES.

Section 8700. *“False weight” and “measure” defined.*

“ 8701. *Using false weights or measures.*

“ 8702. *Stamping false weight, etc., on casks or packages.*

“ 8703. *Weight by the ton or pound.*

8700. (§ 960.) *“False weight” and “measure” defined.*—A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

8701. (§ 961.) *Using false weights or measures.*—Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

8702. (§ 962.) *Stamping false weight, etc., on casks or packages.*—Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

8703. (§ 963.) *Weight by the ton or pound.*—In all sales of coal, hay and other commodities, usually sold by the ton or fractional part thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this Section is guilty of a misdemeanor.

CHAPTER X.

FRAUDULENT CONVEYANCES.

Section 8704. Fraudulent conveyances.

“ 8705. *Fraudulent removal of property to prevent levy.*

“ 8706. *Knowingly receiving property.*

“ 8707. *Concealment of the effects of insolvent debtor.*

8704. (§ 970.) *Fraudulent conveyances.*—Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies or defends the same, or any of them, as true and done, had or made in good faith, or upon good consideration, or aliens, assigns or sells any of the lands, tenements or hereditaments, goods, chattels or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

8705. (§ 971.) *Fraudulent removal of property to prevent levy.*—Every person who, with intent to defraud a creditor, or

to prevent any of his property from being made liable for the payment of any of his debts, or from being levied upon by a writ of execution or attachment, removes any of his property or secretes, assigns, conveys or otherwise disposes of the same, is guilty of a misdemeanor.

8706. (§ 972.) *Knowingly receiving property.*—Every person, who receives any property from another, knowing that the same is transferred or delivered to him in violation of or with intent to violate the last Section, is guilty of a misdemeanor.

8707. (§ 973.) *Concealment of the effects of insolvent debtor.*—Every person who makes a general assignment of his property for the payment of his debts and wilfully conceals any part of his estate or effects, or any book account or any writing relating thereto, or any debt owing him by any person, or who represents in his list of creditors any person to whom he is not indebted, or does any act contrary to the provisions of Title III., Part II., Division IV., of the Civil Code, is guilty of a misdemeanor.

CHAPTER XI.

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

- Section 8708. Fraud in publishing false statement of concern.*
 “ 8709. *Frauds in subscriptions for stock of corporations.*
 “ 8710. *Fraudulent issue of stock, scrip, etc.*
 “ 8711. *Frauds in procuring organization, etc., of corporation.*
 “ 8712. *Unauthorized use of names in prospectus, etc.*
 “ 8713. *Misconduct of directors of stock corporations.*
 “ 8714. *Savings bank officer overdrawing his account.*
 “ 8715. *Receiving deposits in insolvent banks.*
 “ 8716. *Prior offense not affected by this act.*
 “ 8717. *Frauds in keeping accounts in books of corporation.*
 “ 8718. *Officer of corporation publishing false reports.*
 “ 8719. *Officer of corporation to permit an inspection.*
 “ 8720. *Officer of railroad company contracting debt in its behalf exceeding its available means.*
 “ 8721. *Debt contracted in violation of the last section not invalid.*
 “ 8722. *Director of a corporation presumed to have knowledge of its affairs.*
 “ 8723. *Director present at meeting, when presumed to have assented to proceedings.*

Section 8724. Director absent from meeting, when presumed to have assented to proceedings.

“ 8725. *Foreign corporations.*

“ 8726. *Same.*

“ 8727. *Agent of foreign corporation.*

“ 8728. *Corporation not complying with laws.*

“ 8729. *Agent of corporation.*

“ 8730. *“Director” defined.*

8708. *Fraud in publishing false statement of concern.*—Any person who knowingly makes or publishes, any book, prospectus, notice, report, statement, exhibit or other publication of or concerning the affairs, financial condition or property of any corporation, joint stock association, co-partnership or individual, which said book, prospectus, notice, report, statement, exhibit or other publication, shall contain any material statement which is wilfully and knowingly false so as to give a less or greater apparent value to the shares, bonds or property of said corporation, joint stock association, co-partnership or individual, or any part of said shares, bonds or property, than said shares, bonds or property, or any part thereof, shall really and in fact possess, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned for not more than ten years, or fined not more than ten thousand (\$10,000.00) dollars, or shall suffer both said fine and imprisonment. [*Act approved March 7, 1907.*] (10th Sess. Chap. 131.)

8709. (§ 980.) *Frauds in subscriptions for stock of corporations.*—Every person who signs the name of a fictitious person to any subscription for, or an agreement to take, stock in any corporation, existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

8710. (§ 981.) *Fraudulent issue of stock, scrip, etc.*—Every officer, agent or other person in the service of any joint stock company or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either—

1. Sells, pledges or issues, or causes to be sold, pledged or issued, signs or executes, or causes to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purport-

ing to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which said company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise, upon its power to create or issue stock or evidence of debt; or,

2. Re-issues, sells, pledges or disposes of, or causes to be re-issued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer, or ownership of any such share or shares, is punishable by imprisonment in the state prison not exceeding seven years, or by a fine not exceeding three thousand dollars, or both.

8711. (§ 982.) *Frauds in procuring organization, etc., of corporation.*—Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

8712. (§ 983.) *Unauthorized use of name in prospectus, etc.*—Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

8713. (§ 984.) *Misconduct of directors of stock corporations.*—Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payments; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such corporation, is guilty of a misdemeanor.

Vercoutere v. Golden Co., 116 Cal. 415; 48 Pac. 375.

8714. (§ 985.) *Savings bank officer overdrawing his account.*—Every officer, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note or funds of such bank, is guilty of a misdemeanor.

8715. *Receiving deposits in insolvent banks.*—No bank, banking house, exchange broker, individual banker, deposit office or firm, company, corporation, or party engaged in the banking, broker, exchange, loan or deposit business shall accept or receive on deposit, or for safe keeping, or to loan, with or without interest, from any person, any money or any bills, notes or any paper circulating as money, or any notes, drafts, bills of exchange, bank checks or other commercial paper, for safe keeping or for collection, when such bank, banking house, exchange broker, individual banker, deposit office, firm, company, corporation, or party is unsafe and insolvent. If any such bank, banking house, exchange broker, individual banker, deposit office, or firm, company, corporation or party, shall receive or accept on deposit, or for safe keeping or to loan, with or without interest, from any persons, any money or any bills of exchange, bank checks or other commercial paper, drafts, notes or other paper circulating as money, or any notes, for safe keeping or for collection, when unsafe or insolvent, any officer, director, cashier, manager, principal, agent, clerk, party or managing party, thereof, knowing or having reason to know, of any such unsafeness or insolvency, who shall knowingly receive or accept, be accessory to, or permit or connive at, or receive or accept on deposit therein or thereby, any such deposits, money or property as aforesaid, shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary not less than one year or more than twenty years. [*Act approved March 4, 1907, § 1.*] (10th Sess. Chap. 84.)

8716. *Prior offense not affected by this act.*—But the passage and approval of this act and the amendment as herein provided shall not constitute a bar to the prosecution of an act or offense heretofore committed in violation of said Section 986,* but said act or offense and the person committing the same may be prosecuted, indicted, or informed against, and punished, the same as if this act had not been passed. [*Act approved March 4, 1907, § 2.*] (10th Sess. Chap. 84.)

* Note.—This section was amended by the enactment of Section 8715.

8717. (§ 987.) *Frauds in keeping accounts in books of corporation.*—Every officer, director or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or to direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes, or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both imprisonment and fine.

People v. Leonard, 103 Cal. 202; 37 Pac. 222.

8718. (§ 988.) *Officer of corporation publishing false reports.*—Every director, officer, or agent of any corporation or joint stock association, who knowingly concurs in making, publishing or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this Chapter, is guilty of a felony.

8719. (§ 989.) *Officer of corporation to permit an inspection.*—Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

8720. (§ 990.) *Officer of railroad company contracting debt in its behalf exceeding its available means.*—Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its *bona fide* and available stock subscriptions, and inclusive of its real estate, is guilty of a misdemeanor.

8721. (§ 991.) *Debt contracted in violation of the last section not invalid.*—The last Section does not affect the validity of a debt created in violation of its provisions, as against the company.

8722. (§ 992.) *Director of a corporation presumed to have knowledge of its affairs.*—Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this Chapter.

8723. (§ 993.) *Director present at meeting, when presumed to have assented to proceedings.*—Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this Chapter occurs, is deemed to have concurred therein unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

8724. (§ 994.) *Director absent from meeting, when presumed to have assented to proceedings.*—Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this Chapter occurs, is deemed to have concurred therein if the facts constituting such violation appear on the records or proceedings of the board of directors and he remains a director of the same company for six months thereafter and does not within that time cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

8725. (§ 995.) *Foreign corporations.*—It is no defense to a prosecution for a violation of the provisions of this Chapter that the corporation was one created by the laws of another state, government or country, if it was one carrying on business or keeping an office therefor within this state.

8726. (§ 996.) *Same.*—Every foreign corporation doing business in this state contrary to the provisions of Title XII., Part IV., Division I., of the Civil Code, is guilty of a misdemeanor.

8727. (§ 997.) *Agent of foreign corporation.*—Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

8728. (§ 998.) *Corporation not complying with laws.*—Every corporation which fails to comply with the provisions of law relating to corporations, as prescribed in the Civil Code, is guilty of a misdemeanor.

8729. (§ 999.) *Agent of corporation.*—Every person who acts as an officer, agent or in any other capacity for a corporation which has not complied with the provisions of law as prescribed in the Civil Code, is guilty of a misdemeanor.

8730. (§ 1000.) "*Director*" defined.—The term "director," as used in this Chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XII.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

Section 8731. Issuing fictitious bills of lading, etc.

" 8732. *Issuing fictitious warehouse receipts.*

" 8733. *Erroneous bills of lading or receipts issued in good faith.*

" 8734. *Duplicate receipts must be marked "duplicate."*

" 8735. *Selling, etc., property received for transportation or storage.*

8731. (§ 1020.) *Issuing fictitious bills of lading, etc.*—Every person being the master, owner, or agent of any vessel, or officer or agent, of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

8732. (§ 1021.) *Issuing fictitious warehouse receipts.*—Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

8733. (§ 1022.) *Erroneous bills of lading or receipts issued in good faith.*—No person can be convicted of any offense under the last two Sections by reason that the contents of any barrel, box, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks,

labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew such marks, labels, or brands were untrue.

8734. (§ 1023.) *Duplicate receipts must be marked "duplicate."*—Every person mentioned in this Chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate" in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

8735. (§ 1024.) *Selling, etc., property received for transportation or storage.*—Every person mentioned in this Chapter who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. The provisions of this Section do not apply where the property is demanded or sold under process of law.

CHAPTER XIII.

MALICIOUS INJURIES TO RAILROAD PROPERTY, HIGHWAYS, BRIDGES. TELEGRAPHS, DITCHES, ETC.

- Section 8736. *Injuries to highways, private ways, and bridges.*
 " 8737. *Injuries to milestones and guideboards.*
 " 8738. *Injuries to telegraph lines.*
 " 8739. *Taking water from or obstructing canals.*
 " 8740. *Interferences with railroad property.*
 " 8741. *Punishment.*
 " 8742. *Acts causing death punished as murder.*
 " 8743. *Crimes heretofore committed.*
 " 8744. *Remove waste or packing from locomotives or motors.*
 " 8745. *Interference with electric lines or apparatus.*

8736. (§ 1031.) *Injuries to highways, private ways, and bridges.*—Every person who maliciously digs up, removes, displaces, breaks or otherwise injures or destroys any public highway, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

People v. Goodin, 136 Cal. 456; 69 Pac. 85.

8737. (§ 1032.) *Injuries to milestones and guideboards.*—Every person who maliciously removes or injures any mile-board, post or stone, or guide-post or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

8738. (§ 1033.) *Injuries to telegraph lines.*—Every person who maliciously takes down, removes, injures or obstructs any line of telegraph, telephone or electric light, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

Davis Pacific Co., 127 Cal. 317; 59 Pac. 698.

8739. (§ 1034.) *Taking water from or obstructing canals.*—Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining or domestic uses, or who, without like authority, shall raise, lower, or otherwise disturb any gate or other appurtenance thereof used for the control or the measurement of water, or who shall empty or place, or cause to be emptied or placed into any such canal, ditch, flume or reservoir, any rubbish, filth or obstruction to the free flow of the water, is guilty of a misdemeanor.

8740. *Interferences with railroad property.*—Every person who, within the State of Montana, wilfully and maliciously either,

a. Burns, breaks, cuts, derails, destroys, displaces, injures, obstructs, removes or places any explosive substance upon, in or under, any track, switch, bridge, culvert, viaduct, road-bed, embankment, reservoir, water-tank, stand-pipe or appurtenances, station or section house, coal dock, passenger, mail, baggage, express or freight car, caboose, engine, tender or other rolling stock, or other appliance, part, structure or fixture attached to, or used in connection with, any operated railway, or any branch thereof, lying wholly or partially within this State, whether operated by steam or other motive power; or by letter or other writing, threatens to do, any of the foregoing acts or things; or

b. Wrecks, whether by the use of dynamite or other explosive or any other means, any moving train, engine, cars or other rolling stock of any such railroad or branch; or

c. By intimidating any member of a train or engine crew, or any passenger, or otherwise stops, holds up, or interrupts the journey of any such train, engine, cars or rolling stock, of any such railway, or branch thereof, for the purpose of gaining from any person, by any means, any money or other thing of value; shall be deemed guilty of felony, and on conviction be punished by imprisonment in the State Prison, for a term not less than five years, and which may extend to the term of his natural life. [Act approved February 18, 1905, § 1.] (9th Sess. Chap. 24.)

8741. *Punishment.*—Any person who wilfully and maliciously attempts to commit any of the acts in § 8740 (1) of this Act enumerated, shall be deemed guilty of a felony, and punished by imprisonment in the State Prison for not less than one year nor more than ten years. [Act approved February 18, 1905, § 2.] (9th Sess. Chap. 24.)

8742. *Acts causing death punished as murder.*—If in the commission, or attempts to commit, any of the acts made felonies under § 8740 (1) of this Act, the death of any person shall be caused, the person so committing, or attempting to commit said acts or any thereof, shall be deemed guilty of murder in the first degree; and, on conviction thereof, shall suffer death. [Act approved February 18, 1905, § 3.] (9th Sess. Chap. 24.)

8743. *Crimes heretofore committed.*—Any act heretofore done of the general nature of any of the acts hereinabove enumerated, which were at the time of their commission, punishable as a crime, under any then existing law of this state, may still be prosecuted and punished under such pre-existing law. [Act approved February 18, 1905, § 4.] (9th Sess. Chap. 24.)

8744. *Remove waste or packing from locomotives or motors.*—That if any person shall wilfully and maliciously take or remove the waste or packing or brass or brasses from any journal box or boxes of any locomotive, engine, tender, carriage, coach, car, caboose or truck, used or operated or capable of being used or operated upon any railroad, hoisting engines, threshing machines, pumps or any other machinery, whether the same be operated by steam or electricity, the person so offending shall be guilty of a misdemeanor and on conviction shall be sentenced to pay a fine of not more than \$100 nor less than \$50, or by imprisonment in the county jail not more than six months, or both such fine and imprisonment. [Act approved March 3rd, 1903.] (8th Sess. Chap. 46.)

8745. *Interference with electric lines or apparatus.*—Every person who unlawfully or maliciously takes down, removes, injures, interferes with or obstructs any line or lines erected or maintained for the purpose of transmitting electricity for developing light, heat or power, or any part thereof, or any insulation or cross-arm appurtenance or apparatus connected therewith, or severs or in any way interferes with the wire or wires, cable or cables, current or currents thereof, or who attempts to do the same, is punishable by fine not exceeding Five Hundred Dollars, or imprisonment in the county jail not exceeding one year. [Act approved March 5th, 1903.] (8th Sess. Chap. 71.)

TITLE XIV.

MALICIOUS MISCHIEF.

- Section 8746. Malicious mischief in general defined.*
- “ 8747. *Specifications in following sections not restrictive.*
- “ 8748. *Burning buildings, etc., not the subject of arson.*
- “ 8749. *Using gunpowder, etc., in destroying or injuring any buildings.*
- “ 8750. *Malicious injuries to freehold.*
- “ 8751. *Injuries to standing crops, etc.*
- “ 8752. *Removing, defacing, or altering landmarks.*
- “ 8753. *Destruction of fence or enclosure.*
- “ 8754. *Destroying or injuring jails.*
- “ 8755. *Destroying or injuring dams, etc.*
- “ 8756. *Burning or injuring rafts, setting adrift vessels.*
- “ 8757. *Obstructing navigable rivers.*
- “ 8758. *Injuries to United States surveyors' monuments.*
- “ 8759. *Destroying or tearing down notices.*
- “ 8760. *Injuring or destroying written instrument.*
- “ 8761. *Opening or publishing sealed letters.*
- “ 8762. *Disclosing contents of telegraphic message.*
- “ 8763. *Altering telegraphic messages.*
- “ 8764. *Opening telegrams.*
- “ 8765. *Injuring works of art or improvements.*
- “ 8766. *Destroying works of literature, etc., in public libraries.*
- “ 8767. *Breaking or obstructing water pipes, etc.*
- “ 8768. *Setting fire to timber, etc., negligently.*
- “ 8769. *Setting fire to timber, etc., maliciously.*
- “ 8770. *Exposing infected clothing.*
- “ 8771. *Driving animals on sidewalk.*
- “ 8772. *Defacing public buildings.*
- “ 8773. *Injury to trees on public lands.*

8746. (§ 1050.) *Malicious mischief in general defined.*—Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this Code, is guilty of a misdemeanor.

8747. (§ 1051.) *Specifications in following sections not restriction.*—The specification of the acts enumerated in the following Sections of this Chapter is not intended to restrict or qualify the interpretation of the preceding Section.

8748. (§ 1052.) *Burning buildings, etc., not the subject of arson.*—Every person who wilfully and maliciously burns any bridge exceeding fifty dollars in value, or any building, snow-shed

or vessel not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass or tree, or any fence not the property of such person, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

8749. (§ 1053.) *Using gunpowder, etc., in destroying or injuring any buildings.*—Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of a felony.

8750. *Malicious injuries to freehold.*—Every person who wilfully or maliciously commits any trespass by either:—

1. Cutting down, destroying or injuring any kind of wood or timber standing or growing upon the lands of another; or

2. Carrying away any kind of timber or wood lying on such lands; or

3. Maliciously injuring or severing from the freehold of another anything attached thereto or the produce thereof; or

4. Digging, taking or carrying away from any lot situated within the limits of any incorporated city without the license of the owner or legal occupant thereof, any earth, soil, or stone; or

5. Digging, taking or carrying away from any land in any cities of the state, laid down on the map or plan of said cities otherwise recognized or established as a street or alley, avenue or park, without the license of the proper authorities, any earth, soil or stone; or

6. Putting up, fastening, printing or painting upon any property belonging to the state, or to any city, county, town or village, or dedicated to the public or upon any property of any person without license of the owner any notice, advertisement or designation thereof, or any name of any commodity, whether for sale or otherwise, or any picture, sign or device intended to call attention thereto; or

7. Hunts without permission, upon the enclosed premises of another; or

8. Destroying, defacing or injuring any door, window or other portion of any vacant resident or other building, or maliciously opening any closed door or window of such buildings, or entering therein or on without the consent of the owner, agent or tenant of such premises or by authority of law, is guilty of misdemeanor. [Act approved February 9, 1905.] (9th Sess. Chap. 10.)

8751. (§ 1055.) *Injuries to standing crops, etc.*—Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not prescribed by this Code, is guilty of a misdemeanor.

8752. (§ 1056.) *Removing, defacing, or altering landmarks.*—Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

2. Wilfully or maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

Is guilty of a misdemeanor.

8753. *Destruction of fence or enclosure.*—Every person who wilfully and maliciously cuts, tears down, removes, or in any other manner injures or destroys any fence or other enclosure of lands, other than public, belonging to another, is guilty of a misdemeanor, and upon conviction is punishable by a fine not less than Twenty-five dollars nor more than Two Hundred dollars, or by imprisonment in the county jail not less than thirty days or more than six months, or by both such fine and imprisonment. [*Act approved February 28th, 1903.*] (8th Sess. Chap. 41.)

8754. (§ 1057.) *Destroying or injuring jails.*—Every person who wilfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, or by imprisonment in the state prison not exceeding five years.

People v. Boren, 139 Cal. 212; 72 Pac. 899.

8755. (§ 1058.) *Destroying or injuring dams, etc.*—Every person who wilfully and maliciously cuts, breaks, injures or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir or other structure erected to create hydraulic power, or to store or to conduct water for mining, manufacturing, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or wilfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same, is punishable by a fine not less than one hundred dollars, or by imprisonment in the county jail not exceeding two years, or both.

8756. (§ 1059.) *Burning or injuring rafts, setting adrift vessels.*—Every person who wilfully and maliciously burns, injures or destroys any pile or raft of wood, plank boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift

any vessel or boat, the property of another, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

8757. (§ 1060.) *Obstructing navigable rivers.*—Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

8758. (§ 1061.) *Injuries to United States surveyors' monuments.*—Every person who wilfully injures, defaces or removes any monument erected, or marked, or used by the surveyors of the United States to designate a point or corner in a survey under authority of the United States is guilty of a misdemeanor.

8759. (§ 1062.) *Destroying or tearing down notices.*—Every person who intentionally—

1. Defaces, obliterates, tears down, or destroys any copy or transcript or extract from or of any law of the United States or of this state, or any proclamation, advertisement or notification set up at any place in this state by authority of any law of the United States or this state, or by order of any court, before the expiration of the time for which the same was to remain set up, or

2. Defaces, obliterates, tears or destroys any notice placed or posted on a mining claim, or removes or destroys any stake or monument placed thereon to identify it,

Is punishable by imprisonment in the county jail not exceeding three months or by a fine not exceeding one hundred dollars, or both.

8760. (§ 1063.) *Injuring or destroying written instrument.*—Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument the property of another, the false making of which would be forgery, is punishable by imprisonment in the state prison not less than one nor more than five years.

8761. (§ 1064.) *Opening or publishing sealed letters.*—Every person who wilfully opens or reads, or causes to be read any sealed letter not addressed to himself, without being authorized so to do either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

Greene v. Murdock, 1 C. App. 138; 81 Pac. 993.

8762. (§ 1065.) *Disclosing contents of telegraphic message.*—Every person who wilfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment

in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

8763. (§ 1066.) *Altering telegraphic messages.*—Every person who wilfully alters the purport, effect, or meaning of a telegraphic message to the injury of another, is punishable as provided in the preceding Section.

8764. (§ 1067.) *Opening télégrams.*—Every person not connected with any telegraph office who, without the authority or the consent of the person to whom the same may be directed, wilfully opens any sealed envelope inclosing a telegraphic message and addressed to another person, with the purpose of learning the contents of such message, or who fraudulently represents another person and thereby procures to be delivered to himself any telegraphic message addressed to such person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in § 8762 (1065.)

8765. (§ 1068.) *Injuring works of art or improvements.*—Every person, not the owner thereof, who wilfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

8766. (§ 1069.) *Destroying works of literature, etc., in public libraries.*—Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art or mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of felony.

8767. (§ 1070.) *Breaking or obstructing water pipes, etc.*—Every person who wilfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

8768. (§ 1071.) *Setting fire to timber, etc., negligently.*—Every person who carelessly sets fire to any timber, woodland or grass, except for useful or necessary purposes, or who at any time makes a camp-fire, or lights a fire for any purposes whatever without taking sufficient steps to secure the same from spreading from the immediate locality where it is used, or fails to extinguish such fire before leaving it, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both.

8769. (§ 1072.) *Setting fire to timber, etc., maliciously.*—Every person who wantonly or designedly sets fire to any timber, woodland or grass, or maliciously fails to extinguish a fire after making the same for a necessary purpose, before leaving it, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or both.

8770. (§ 1073.) *Exposing infected clothing.*—Every person who exposes any clothing or person infected with the smallpox, or other contagious disease, with intent to cause the spread of such disease, is punishable by imprisonment in the state prison not exceeding five years.

8771. (§ 1074.) *Driving animals on sidewalk.*—Every person who, wilfully and without authority, drives any team, vehicle or animal along or upon a sidewalk in a town or city, is punishable by imprisonment in the county jail not exceeding one month, or by a fine not exceeding fifty dollars, or both.

8772. (§ 1075.) *Defacing public buildings.*—Every person who wilfully breaks, defaces or otherwise injures any church, schoolhouse or other public building, or any part thereof, or appurtenance thereto, or the windows or doors of the same, or any book, furniture, ornament or musical instrument or other chattel therein used, is guilty of a misdemeanor.

8773. (§ 1076.) *Injury to trees on public lands.*—Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three times the value of said trees, or timber or lumber into which the same are converted. All fines collected and all moneys recovered by virtue of this Section must be paid into the school fund of the state.

TITLE XV.

CRUELTY TO ANIMALS.

Section 8774. *Overdriving animals.*

“ 8775. *Abandonment of disabled animals.*

“ 8776. *Failure to provide proper food and drink to impounded animals.*

“ 8777. *Carrying an animal in a cruel manner.*

“ 8778. *Poisoning animals.*

“ 8779. *Keeping cows in unhealthy places.*

“ 8780. *Promoting fights between animals.*

“ 8781. *Killing, maiming or poisoning live stock.*

8774. (§ 1090.) *Overdriving animals.*—Every person who overdrives or overloads, tortures or cruelly beats, or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or another, or deprives any animal of necessary food or drink, or neglects or refuses to furnish it such food or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully instigates or in any way engages in any act of cruelty to any animal, is guilty of a misdemeanor,

8775. *Abandonment of disabled animals.*—Every person being the owner, or in possession or having charge or custody of a maimed, diseased or infirm animal, who abandons and leaves such animal to die in the street, highway or public place, is guilty of a misdemeanor and such animal may be killed by any sheriff or peace officer in a humane manner, and the owner shall be liable for the necessary care of such animal while living and for the cost of disposing of the carcass. [Act approved February 25, 1905.] (9th Sess. Chap. 35.)

8776. (§ 1092.) *Failure to provide proper food and drink to impounded animals.*—Every person who has impounded or confined any animal and refuses and neglects to supply such animal, during its confinement, with sufficient food, shelter and water, is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine not exceeding one hundred dollars; or both.

8777. (§ 1093.) *Carrying an animal in a cruel manner.*—Every person who carries, or causes to be carried, in or upon any car, vessel or vehicle, or otherwise, any animal in a cruel manner, or so as to produce torture, is guilty of a misdemeanor.

8778. (§ 1094.) *Poisoning animals.*—Every person who wilfully administers any poison to an animal the property of another or maliciously exposes any poisonous substance with the intent that the same shall be taken or swallowed by any such animal is punishable by imprisonment in the state prison not exceeding three years or in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment.

8779. (§ 1095.) *Keeping cows in unhealthy places.*—Every person who keeps a cow or any animal for the production of milk in a crowded or unhealthy place or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by imprisonment in the county jail not exceeding three months or by fine not exceeding two hundred dollars, or both.

8780. (§ 1096.) *Promoting fights between animals.*—Every person who instigates, promotes or carries on, or does any act as principal, assistant, referee or umpire, or is a witness of or in any way aids in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other animals premeditated by any person owning or having custody of such birds or animals, is punishable by imprisonment in the county jail not exceeding three months or by fine not exceeding two hundred dollars, or both.

➤ 8781. *Killing, maiming or poisoning live stock.*—Every person who wilfully and maliciously kills or maims any live stock of whatsoever kind, character or description, not his own, by whatsoever means, or who wilfully and maliciously places upon the public ranges or any other lands except his own enclosed tract or tracts, any poison, poisonous substance, or other thing known to be injurious or harmful, or likely to produce the death of any live stock of whatsoever kind, character or description, not his own, is guilty of a felony, and upon conviction shall be punished by not less than one nor more than ten years imprisonment in the State Prison. This Act is not intended to prevent or restrict the right of any person to use poison in carcasses or bait on the public range, for the purpose of poisoning coyotes, wolves or other animals destructive to live stock. [Act approved February 27th, 1903.] (8th Sess. Chap. 37.)

TITLE XVI.

MISCELLANEOUS OFFENSES.

CHAPTER I. VIOLATION OF THE LAWS FOR THE PROTECTION OF GAME AND FISH AND BOUNTY LAWS.

II. OTHER AND MISCELLANEOUS OFFENSES.

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PROTECTION OF GAME AND FISH AND BOUNTY LAWS.

Section 8782. *Closed season for killing deer.*

“ 8783. *Prohibition against killing moose, bison, caribou, buffalo or antelope, quail or Chinese pheasant.*

“ 8784. *Open season for elk.*

“ 8785. *Open season for Rocky Mountain goat or mountain sheep.*

“ 8786. *Hunting with dogs prohibited.*

“ 8787. *Open season for grouse, prairie chicken and game birds.*

“ 8788. *Open season for water fowl.*

“ 8789. *Killing song birds punished.*

Section 8790. *Trapping buffalo, elk, moose or mountain sheep punished.*

“ 8791. *Destruction of nests or eggs of birds or wild fowl.*

“ 8792. *Catching fish except with pole, line and hook.*

“ 8793. *Seining.*

“ 8794. *Catching fish for market.*

“ 8795. *Fines collected by civil action.*

“ 8796. *Dynamiting fish.*

“ 8797. *Depositing saw dust in streams.*

“ 8798. *Putting saw-dust in stream.*

“ 8799. *Fishways in dams.*

“ 8800. *Possession of dead animal prima facie evidence.*

“ 8801. *Offering fish or game for sale.*

“ 8802. *Selling birds or animals.*

“ 8803. *Duties of Grand Jury. Indians included in Act.*

“ 8804. *Violation of laws of other states.*

“ 8805. *Exceptions.*

“ 8806. *Shipping birds or game animals out of state prohibited.*

“ 8807. *Permit to resident to ship game or birds.*

“ 8808. *Shipment by non-resident.*

“ 8809. *Transportation companies prohibited from accepting shipment except upon permit or license.*

“ 8810. *Owner must accompany shipment.*

“ 8811. *Packages must be labeled.*

“ 8812. *Penalties.*

“ 8813. *Shipping permits. Fees.*

“ 8814. *Guides to be licensed.*

“ 8815. *Penalty.*

“ 8816. *Who deemed guide.*

“ 8817. *Guides.*

“ 8818. *Report of guide.*

“ 8819. *Penalties.*

“ 8820. *Taxidermist license.*

“ 8821. *Taxidermist. Penalty for failure to make report.*

“ 8822. *Violation of bounty laws.*

8782. *Closed season for killing deer.*—Any person who between December 15th, of any year and September first of the following year wilfully shoots or kills, or causes to be shot or killed, any deer, or who in the open season of any calendar year shoots or kills, or causes to be shot or killed more than three deer shall be punished by imprisonment in the state prison for a term not exceeding one year or in the county jail not less than three

Am. 11-81

Am. 12-79

months, or by a fine of not more than five hundred dollars nor less than one hundred dollars, or by both such fine and imprisonment. [Act approved March 6, 1907.] (10th Sess. Chap. 124.)

Am. 11-81

8783. *Prohibition against killing moose, bison, caribou, buffalo or antelope, quail or Chinese pheasant.*—Any person who wilfully shoots or kills, or causes to be shot or killed, any moose, bison, caribou, buffalo, or more than one antelope which can be killed only between September 1 and December 1, shall be punished by imprisonment in the state prison for a term not exceeding two years, or in the county jail not less than six months, or shall be fined not more than five hundred dollars nor less than fifty dollars, or by both such fine and imprisonment. Any person who wilfully shoots or kills, or causes to be shot or killed, any quail, or Chinese pheasant shall be punished by imprisonment in the county jail for a term not less than ninety days nor more than six months, or by a fine of not less than twenty-five dollars nor more than five hundred dollars or by both such fine and imprisonment. [Act approved March 8, 1907.] (10th Sess. Chap. 166.)

Am. 8-11-81

Am. 13-83

8784. *Open season for elk.*—Any person who between the first day of December of one year and the first day of September of the following year wilfully shoots or kills, or causes to be shot or killed, any elk, or who in a single open season shall shoot or kill, or cause to be shot or killed, more than one elk shall be punished by imprisonment in the state prison for a term of not exceeding two years or in the county jail not less than six months, or by a fine of not more than Five Hundred Dollars nor less than One Hundred Dollars, or by both such fine and imprisonment. [Act approved March 1, 1905, § 3.] (9th Sess. Chap. 52.)

Am. 11-8

8785. *Open season for Rocky Mountain goat or mountain sheep.*—Any person who between December first of any year and September first of the following year, wilfully shoots or kills, or causes to be shot or killed, any deer, Rocky Mountain goat, or mountain sheep, or who in the open season of any calendar year shoots or kills, or causes to be shot or killed more than three deer, one Rocky Mountain goat and one mountain sheep, shall be punished by imprisonment in the state prison for a term not exceeding one year, or in the county jail not less than three months, or by a fine of not more than Five Hundred Dollars nor less than One Hundred Dollars, or by both such fine and imprisonment. [Act approved March 1, 1905, § 4.] (9th Sess. Chap. 52.)

8786. *Hunting with dogs prohibited.*—Any person who hunts, chases, or runs with dogs, any of the animals mentioned in Sections 8783 (2), 8784 (3) and 8785 (4) of this Act shall be punishable by a fine of not less than fifty dollars nor more than three

hundred dollars, or by imprisonment in the county jail for a term of not less than sixty days nor more than six months, or by such fine and imprisonment. [*Act approved March 1, 1905, § 5.*] (*9th Sess. Chap. 52.*)

8787. *Open season for grouse, prairie chicken and game birds.* *Am. 11-81*
—Every person who between the first day of December of any year and the first day of September of the following year wilfully shoots or kills, or causes to be shot or killed, any grouse, prairie chicken, fool hen, sage hen, pheasant, partridge or turtle dove, or who during the open season shoots or kills, or causes to be shot or killed, more than ten grouse, or prairie chickens, or fool hens, or pheasants, or sage hens, or partridges, or turtle doves, in any one day shall be punished by a fine of not less than Twenty-five Dollars nor more than Two Hundred and Fifty Dollars or by imprisonment in the county jail not exceeding three months nor less than one month, or by both such fine and imprisonment. [*Act approved March 1, 1905, § 6.*] (*9th Sess. Chap. 52.*)

8788. *Open season for water fowl.* *Am. 11-81*
—Every person who wilfully shoots or kills, or causes to be shot or killed, any wild geese, wild ducks, brant or swan between the first day of December of any year and the first day of September of the following year, shall be punishable by a fine of not less than Twenty-five Dollars nor more than Two Hundred and Fifty Dollars, or by imprisonment in the county jail for a term not exceeding three months or less than one month, or by both such fine and imprisonment. [*Act approved March 1, 1905, § 7.*] (*9th Sess. Chap. 52.*)

8789. *Killing song birds punished.*—Every person, who, wilfully shoots, or otherwise kills or causes to be killed, any meadow lark, blue bird, thrush, oriole, wood-pecker, mocking bird, gold-finch, snow-bird, cedar-bird, stork, or any other of the small birds known as singing birds, shall be punished by a fine not exceeding One Hundred Dollars, nor less than five Dollars and by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment. [*Act approved March 8th, 1897, § 7.*] (*5th Sess. 251.*)

8790. *Trapping buffalo, elk, moose or mountain sheep punished.*—That any person who shall wilfully catch, trap or otherwise restrain, for the purpose of sale or domestication or any other purpose, any buffalo, elk, moose, or mountain sheep within the State, shall be deemed guilty of a misdemeanor and be fined not more than Five Hundred Dollars, nor less than One Hundred Dollars and shall be imprisoned in the county jail not exceeding six months or by both such fine or imprisonment for each offense committed in the discretion of the court. [*Act approved March 8th, 1897, § 8.*] (*5th Sess. Chap. 251.*)

8791. *Destruction of nests or eggs of birds or wild fowl.*—Any person who shall wilfully destroy the nests or carry away the eggs from the nests of any of the birds or wild fowls mentioned in this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than Five Dollars nor more than Twenty-five Dollars for each offense committed, or by imprisonment in the county jail for a period of not exceeding sixty days, or both, at the discretion of the court. [Act approved March 8th, 1897, § 9.] (5th Sess. Chap. 251.)

Am. 13-79 8792. *Catching fish except with pole, line and hook.*—Every person who takes or catches fish in any of the streams, lakes or ponds of this State, except with a pole, line and hooks, or any person who takes or catches fish with a hook baited with any poisonous thing or substance, or by means of dams, or in the use of any fish traps, grab-hooks, seines, or similar means for catching fish, is guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than Twenty-five Dollars, nor more than Two Hundred Dollars, or be imprisoned in the county jail not less than thirty days, nor more than ninety days, or both such fine and imprisonment in the discretion of the court. [Act approved March 8th, 1897, § 10.] (5th Sess. Chap. 251.)

Am. 1379. 8793. *Seining.*—It is, however, lawful to use a seine or catch net in the Missouri River, except in that portion of said river known as Lake Sewell extending from the dam of the Missouri River Power Company, in Lewis & Clark County, Montana, up said river to the bridge known as Blake's Ferry Bridge, in Broadwater County, and also in the Yellowstone River, except in that portion of said river above its confluence with the Big Horn River; *provided*, said seine or net has a mesh not less than one and one-half inches square; *provided, further*, that it shall be unlawful for any person to sell, or offer for sale, any fish caught by the use of such seine or catch net. Any person guilty of a violation of the provisions of this Section shall be punished by a fine of not less than Twenty-five Dollars nor more than Two Hundred Dollars, or by imprisonment in the county jail for a term not less than sixty days nor more than six months, or by both such fine and imprisonment. [Act approved March 1, 1905, § 8.] (9th Sess. Chap. 52.)

8794. *Catching fish for market.*—Every person who in any way catches any trout, grayling or black bass, or who shall remove the eggs or spawn from any of said fish for speculative purposes, for market or for sale, or who shall sell, or offer for sale, any trout, grayling, black bass, or eggs, or spawn therefrom, shall be punishable by a fine of not less than Twenty-five Dollars nor more than Two Hundred Dollars, or by imprisonment in the county jail not less than thirty days nor more than ninety days, or by both such fine and imprisonment; *provided, however*, that this

Section shall not apply to fish caught in private ponds by the owners thereof. [*Act approved March 1, 1905, § 9.*] (9th Sess. Chap. 52.)

8795. *Fines collected by civil action.*—All fines, bonds and penalties mentioned in any Section of this Act may be collected by a civil action in the name of the State of Montana in any court of competent jurisdiction upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this Act shall be paid to the State Treasurer and by him placed to the credit of the fish and game fund. All such fines, bonds and costs shall be collected without stay of execution, and the defendant, or defendants, may by order of the court be confined in the county jail of the county until such fine and costs are paid. [*Act approved March 1, 1905, § 10.*] (9th Sess. Chap. 52.)

8796. *Dynamiting fish.*—If any person, or persons shall use any giant powder or other explosive compounds for the purpose of catching or killing fish, he shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not less than Two Hundred Dollars, nor more than Five Hundred Dollars, or by imprisonment in the State Prison not less than one year nor more than three years, or both such fine and imprisonment. [*Act approved March 8th, 1897, § 13.*] (5th Sess. Chap. 252.)

8797. *Depositing saw dust in streams.*—Every person who ^{Chm. 12-90} operates any saw-mill on or near any stream, who dumps, drops, carts, deposits, or causes to be deposited in any such stream, any saw dust, bark or debris, coming from said saw-mill, is punishable by a fine not less than Fifty Dollars nor more than Two Hundred and fifty Dollars, or by imprisonment in the county jail not less than thirty days, nor more than ninety days, or both such fine and imprisonment, in the discretion of the court. [*Act approved March 8th, 1897, § 14.*] (5th Sess. 252.)

8798. *Putting saw dust in streams.*—Every person who operates any saw-mill, pulp-mill, paper mill or wood manufacturing plant on or near any stream, lake, or any body of water connected with any stream or lake, who dumps, drops, carts, deposits or causes to be deposited in such stream, lake, or body of water connected with any stream or lake, any saw-dust, bark, chemicals, refuse or debris coming from said saw-mill, pulp-mill, paper-mill or wood manufacturing plant, is punishable by a fine not exceeding five hundred (\$500) dollars. [*Act approved February 14th, 1903.*] (8th Sess. Chap. 3.)

Note.—Section 1123 of the Penal Code of which this section purports to be an amendment, was repealed by Laws 1897, p. 249.

8799. *Fishways in dams.*—There shall be constructed at all dams now existing or any that may be hereafter placed on any of the streams of the State, a fish way or ladder, said fish way or ladder to conform to the following requirements: It shall be from three to six feet in width, as the fish and game

warden may direct; it shall extend from the base to the apex of the dam; it shall be strongly constructed and made of at least two-inch planks; the sides shall not be less than one foot in height; it shall have wings placed on the inside at an angle of not more than forty-five degrees, which said wings shall not be more than four feet apart along each side of the way or ladder; the way or ladder shall have a slope of not more than thirty degrees. Any persons or corporations who shall violate any of the provisions of this Section, upon conviction thereof, shall pay a fine of not less than Fifty Dollars, nor more than Two Hundred Dollars, or be imprisoned in the county jail for a period of not less than thirty days, nor more than ninety days, or both such fine and imprisonment in the discretion of the court. [*Act approved March 8th, 1897, § 15.*] (5th Sess. 252.)

8800. *Possession of dead animals prima facie evidence.*—The possession of the dead bodies or any part thereof, or any of the birds or animals mentioned in this Act shall be *prima facie* evidence that such person or persons is or are guilty of killing the same. [*Act approved March 8th, 1897, § 16.*] (5th Sess. Chap. 253.)

8801. *Offering fish or game for sale.*—Any person or persons, agent or employees, of any stage or express company, or railroad company or association of persons, who shall receive for transportation or carriage, or shall sell or offer for sale, fish or game that have been taken or killed contrary to the provisions of this Act, knowing or having reason to believe that such fish or game were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than One Hundred Dollars, or more than Three Hundred Dollars for each lot or shipment of fish or game so transported or carried, or be imprisoned in the county jail for not less than ninety days, or both in the discretion of the court. [*Act approved March 8th, 1897, § 17.*] (5th Sess. 253.)

8802. *Selling birds or animals.*—Every person who shall sell or offer for sale, any of the birds or animals or any part thereof mentioned in Sections 1, 2, 3, 4, 5 and 6 of this Act, * is punishable by a fine of not less than Twenty-five Dollars or more than Two Hundred and Fifty Dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or both such fine and imprisonment in the discretion of the court. [*Act approved March 8th, 1897, § 19.*] (5th Sess. 253.)

* Note.—Sections 8782 to 8787 are substitutes for the sections herein enumerated.

8803. *Duties of grand jury. Indians included in Act.*—It shall be the duty of all grand juries to investigate all infractions of any provisions of this Act, except such cases and violations as may have been tried by a court of competent jurisdiction,

and upon due proof of violation of any of the said provisions, they shall proceed to indict such party or parties according to law, and it is hereby made the duty of the Judge of the District Court to call the attention of the Grand Jury to the provisions of this Act. The District Court shall have concurrent jurisdiction with justices of the peace of all offenses committed under the provisions of this Act. And it is *further provided* that in construing this Act, the provisions and penalties hereinbefore made and prescribed shall be deemed and held to include all Indians and half-breed Indians when outside the Indian Reservation. It is *further provided* and declared to be the duty of any sheriff, or peace-officer of any county of this State, and the county attorneys of the respective counties when it shall come to their knowledge, or they shall have reason to believe that any person has violated any of the Sections of this Act, to commence criminal proceedings against them either in the Justice or District Court, as in their judgment shall be proper, and any failure on the part of any county attorney, sheriff or other peace officer, or game warden, who has knowledge of the violation of any of the provisions of this Act to commence such proceedings, shall be deemed a misdemeanor, and he shall be punished by a fine of not to exceed Five Hundred Dollars or by imprisonment in the county jail for not less than six months, or both such fine and imprisonment in the discretion of the court and shall forfeit his office. [*Act approved March 8th, 1897, § 20.*] (5th Sess. 253-4.)

8804. *Violation of laws of other state.*—Whenever it shall appear under any prosecution under any Section of this Act making it a felony for the violation thereof, that the crime was committed, or that the game was killed, or the fish caught in violation of law in any other State other than Montana, it shall be the duty of the magistrate or the court before whom the trial was had to hold said defendant for at least ten days, and for such further time as may be necessary to allow the authorities of said State wherein the law has been violated to take the necessary steps to secure the arrest and extradition of the accused, if they so desire; and on the holding of the accused under the provisions of this Section, it shall be the duty of the county attorney or attorney prosecuting to immediately notify the proper officers of the State and county in which it appears the law has been violated, of all the facts and circumstances connected with said proceeding. [*Act approved March 8th 1897, § 23.*] (5th Sess. 254.)

8805. *Exception.*—When it is shown that any violation of the provisions of this Act was for the purpose of preventing great suffering by hunger, of any person or persons, which could

not otherwise been avoided, the provisions of this Act shall not apply to said case. [*Act approved March 8th, 1897, § 24.*] (5th Sess. 254-5.)

8806. *Shipping birds or game animals out of state prohibited.*—It is unlawful, and is hereby prohibited, for any person, or persons, to ship or take out of the State any of the birds or game animals, or any part thereof, mentioned in Sections 1, 2, 3, 4, 5, 6, or 7, of an Act to repeal Sections 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, and 1144 of the Penal Code of the State of Montana, and to provide further protection to birds, fish, fur-bearing animals and game, approved March 8, 1897, except as herein provided for. [*Act approved February 21st, 1903, § 3.*] (8th Sess. Chap. 11.)

Note.—See Note to Section 8802.

8807. *Permit to resident to ship game or birds.*—Any resident of this State who desires to ship out of the State any of the birds or animals, or parts thereof, mentioned in said Act during the open season for the killing of the same, the same having been killed lawfully, shall first procure a permit from the State Game and Fish Warden, said permit stating the name of the consignee and consignor, destination, and number and kind of game that is to be shipped, and said permit shall be presented to the transportation company with the consignment of game. [*Act approved February 21st, 1903, § 4.*] (8th Sess. Chap. 11.)

8808. *Shipment by non-resident.*—Any non-resident of this State who has procured a hunter's license, and who desires to ship out of the State any of the birds or animals, or any part thereof, mentioned in this Act, during the open season for killing the same, the same having been killed lawfully, shall present to the transportation company his license, with the consignment of game to be shipped, *provided* that no one person shall ship in one year more game than it is lawful for one person to kill in a single open season. [*Act approved February 21st, 1903, § 5.*] (8th Sess. Chap. 11.)

8809. *Transportation Companies prohibited from accepting shipment except upon permit or license.*—It shall be unlawful for any person to ship, or offer for shipment, or for any transportation or common carrier company, or any agent, servant, or employee of any such company, to ship or accept for shipment, any of the game birds, or game animals, or any parts thereof, mentioned in this Act, for transport out of the State, except the same be accompanied by a permit issued by the State Game and Fish Warden, as herein provided, or by a non-resident hunter's license. When said permit is presented the company shall compare the description on the same with the consignment of game to be shipped and if the same is correct, the company may accept

the consignment, and shall take up the permit and return the same to the State Game and Fish Warden at once. When non-resident hunter's license is presented, the company shall examine the license and if the kind of game offered for shipment is covered by said license, said game may be accepted for shipment; *provided* that the amount of game offered for shipment is not in excess of the limit as prescribed by law to be killed by any one person, in any one open season. The company shall endorse upon the back of said license in ink the name of the station from which shipment is made, date, destination, consignee, and the number of each kind of game shipped. The company shall at once notify the State Game and Fish Warden, giving the number of the license, name of holder, shipping station, date, name of consignee, destination, and the number and kind of each kind of game shipped. Should a license be presented with a consignment of game for shipment, and the endorsements on the back of same show that the number of such game as was lawful to be killed by any one person in one single open season, had already been shipped on said license, the company shall refuse to accept same for shipment. It shall be unlawful for any transportation or common carrier company, or any agent, servant or employee of any such company to ship or accept for shipment any large game on a non-resident hunter's small game license, and vice versa. [*Act approved February 21st, 1903, § 6.*] (8th Sess. Chap. 11.)

8810. *Owner must accompany shipment.*—It shall be unlawful for any person to ship out of this State any birds, fish, or animals protected by the laws of this State, except when the same shall be in the personal possession of, or carried as baggage or express, by the owner thereof, and accompanied by the owner thereof, upon the same train or other conveyance. [*Act approved February 21st, 1903, § 7.*] (8th Sess. Chap. 11.)

8811. *Packages must be labeled.*—It is required that all packages containing fish or game shall be labeled in plain letters on the address side of the package, so as to disclose the contents thereof. [*Act approved February 21st, 1903, § 8.*] (8th Sess. Chap. 11.)

8812. *Penalties.*—Any person or persons, transportation or common carrier company, agent, servant or employee of any transportation or common carrier company, who shall violate any of the provisions, or any part thereof, contained in § § 8806 to 8811 (3, 4, 5, 6, 7, and 8) of this Act, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or imprisonment in a County jail not less than thirty days, nor more than ninety days, or both such fine and imprisonment. All game shipped or had in possession in violation of any of the provisions of this Act may be seized, confiscated, and disposed of, as provided by law. [*Act approved February 21st, 1903, § 9.*] (8th Sess. Chap. 11.)

8813. *Shipping permits. Fees.*—The State Game and Fish Warden shall hereafter make a charge of Fifty (50) Cents for each and every shipping permit issued by him for the shipment of game or parts thereof out of the State. All money so received shall be turned over by him to the State Treasurer at the time and in the manner prescribed by law and the State Treasurer shall place such money to the credit of the Fish and Game Fund. [Act March 2, 1905, § 10.] (9th Sess. Chap. 57.) .

8814. *Guides to be licensed.*—No person shall engage in the business of guiding, as the term is commonly understood, without first having procured from the State Game and Fish Warden, a guide's license. Any competent person, who is a bona fide citizen of the State of Montana, shall, upon the presentation of an affidavit, stating that the applicant is of good moral character and responsible, and signed by three tax payers of the county in which the applicant lives; and by the applicant signing the oath of office of a Deputy State Game Warden, and making the payment of ten dollars to the State Game Warden, receive from him a guide's license, which shall be good for one year only; *provided*, that upon payment of ten dollars annually said license may be renewed. Such license shall state the name, age, and place of resident of the holder, and shall further recite that the holder of such license is a person of good moral character. Every person acting as a guide in this State shall be a Deputy State Game and Fish Warden, and shall file with the State Game and Fish Warden his oath of office as such Deputy Game Warden, but shall receive no compensation from the State in any way for such services, other than the consideration above mentioned. [Act approved February 21st, 1903, § 10.] (8th Sess. Chap. 11.)

8815. *Same. Penalty.*—Any person acting as a guide for any person or party shall be equally responsible with such person or party, for any violation of the law, any such guide who shall wilfully fail or refuse to report any violation of the law, by the said person or party employing him, shall be liable to the penalties as hereinafter provided for. [Act approved February 21st, 1903, § 11.] (8th Sess. Chap. 11.)

8816. *Who deemed guide.*—Any person who shall, for pay, aid or assist any person or party, in locating, pursuing, hunting or killing any of the game birds or animals mentioned in this Act, shall be deemed a guide within the meaning of this Section. [Act approved February 21st, 1903, § 12.] (8th Sess. Chap. 11.)

8817. *Guides.*—Any person who shall engage in the business of packing for hunting parties, as the term is commonly understood, or who shall for pay, accompany such party as guide, packer or cook shall be considered a guide and shall come within the requirements provided for in § § 8814, 8815, 8818 and 8819, (10, 11, 13, and 14 of Senate Bill No. 30, approved February 21st,

1903), *provided, however*, that it shall be necessary only for one of the persons above named, with each and every hunting party, to have fulfilled the requirements of this Section. [Act March 2, 1905, § 12.] (9th Sess. Chap. 57.)

8818. *Report of guide.*—Whenever a guide is employed by any person or party, such guide shall at the expiration of the period of the time for which he was employed, make a written statement to the State Game and Fish Warden, stating the number of days he was employed, the number of persons guided, their names, residences, and the number of each kind of game killed, and if non-residents, the number of their license. [Act approved February 21st, 1903, § 13.] (8th Sess. Chap. 11.)

8819. *Penalties.*—Any person violating any of the provisions contained in Sections 8815 (11), 8816 (12), 8818 (13) and 8819 (14) of this Act shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in a county jail for not less than sixty days, nor more than six months, or both such fine and imprisonment, and in all cases of conviction their license shall be revoked. [Act approved February 21st, 1903, § 14.] (8th Sess. Chap. 11.)

8820. *Taxidermist license.*—Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any of the birds or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the State Game and Fish Warden a Taxidermist's license, such license to be taken out annually. Such person shall, on the first day of each month, make a written report to the State Game and Fish Warden, of all the articles of Game, the kind and number of each, by whom owned, and residence of owner, received during the past month, also of all the articles of game shipped and to whom and where shipped during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned and owner's address. [Act approved March 7, 1907.] (10th Sess. Chap. 162.)

8821. *Taxidermist. Penalty for failure to make report.*—Any person failing to secure the herein mentioned license, or who shall fail, neglect, or refuse to make the above mentioned report, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a term not less than three months, or more than six months, or both such fine and imprisonment, and in all cases of conviction their license shall be revoked. [Act approved February 21st, 1903, § 16.] (8th Sess. Chap. 11.)

8822. *Violation of bounty laws.*—Every person who violates any of the provisions of Section 3070,* of the Penal Code, relating to bounties for killing wild animals, is guilty of a misdemeanor, and is punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [Act approved March 6th, 1903, § 1.] (8th Sess. Chap. 94.)

* Note.—This reference was probably to § 3070 of Political Code, which has been repealed.

CHAPTER II.

OTHER AND MISCELLANEOUS OFFENSES.

- Section 8823. Neglect or postponement of telegraphic messages.*
- “ 8824. *Employe using information from messages.*
- “ 8825. *Clandestinely learning the contents of a telegram.*
- “ 8826. *Bribing telegraphic operator.*
- “ 8827. *Aiding apprentices to run away or harboring them.*
- “ 8828. *Vagrants.*
- “ 8829. *Issuing or circulating paper money.*
- “ 8830. *Officers of fire departments issuing false certificates of exemption.*
- “ 8831. *Abuse of school teachers.*
- “ 8832. *Leaving gate of an enclosure open.*
- “ 8833. *Obstructing ford near ferry.*
- “ 8834. *Firing firearms.*
- “ 8835. *Ditch overflowing on highway.*
- “ 8836. *Stallion running at large.*
- “ 8837. *Ram running at large.*
- “ 8838. *Swine running at large.*
- “ 8839. *Penalties.*
- “ 8840. *Disposition of fines.*
- “ 8841. *Removing skin from animal.*
- “ 8842. *Scabby sheep.*
- “ 8843. *Bringing infected animals into state.*
- “ 8844. *Disobeying orders of state veterinary surgeon.*
- “ 8845. *Receiving and transporting diseased sheep.*
- “ 8846. *Moving diseased sheep.*
- “ 8847. *Importing diseased cattle into state.*
- “ 8848. *Receiving or transporting diseased cattle.*
- “ 8849. *Obstructing veterinary surgeon, etc.*
- “ 8850. *Selling horses, etc., at auction.*
- “ 8851. *Branding animals driven through the state.*
- “ 8852. *Driven stock to be branded.*
- “ 8853. *Road brand.*

- Section 8854. *Sheep brands.*
 “ 8855. *Penalties.*
 “ 8856. *Duty of officers.*
 “ 8857. *Fines, how disposed of.*
 “ 8858. *Driving stock from ranges, prohibited.*
 “ 8859. *Duty of butchers slaughtering animals.*
 “ 8860. *Driving cattle, etc., from range.*
 “ 8861. *Dogging live stock.*
 “ 8862. *Hides of animals killed.*
 “ 8863. *Branding cattle running at large.*
 “ 8864. *Prohibiting sash or frying pan brand.*
 “ 8865. *Driving cattle on railroad.*
 “ 8866. *Wearing of badges and insignia by persons not entitled to do so prohibited.*
 “ 8867. *Diseased animals.*
 “ 8868. *Unlawful and dangerous fences.*
 “ 8869. *Unlawful entries in races.*
 “ 8870. *Name of race horse.*
 “ 8871. *Canada thistles, etc.*
 “ 8872. *Permitting thistles to go to seed.*
 “ 8873. *Landholders to destroy thistles.*
 “ 8874. *Duties.*
 “ 8875. *Desecration of flag.*
 “ 8876. *Meaning of term flag.*
 “ 8877. *Exceptions.*
 “ 8878. *Advertising to procure divorce forbidden.*
 “ 8879. *Use of fire arms by children under the age of fourteen years prohibited.*
 “ 8880. *Liability of parent or guardian.*
 “ 8881. *Exhibition of pictures of train robberies prohibited.*
 “ 8882. *Stealing rides upon cars or locomotive.*
 “ 8883. *Stealing rides on trucks, rods or brake beams.*
 “ 8884. *Trainmen constituted peace officers.*

8823. (§ 1150.) *Neglect or postponement of telegraphic messages.*—Every agent, operator, or employe of any telegraph office who wilfully refuses or neglects to send any message received at such office for transmission, or wilfully postpones the same out of its order, or wilfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted or delivered, unless the charges thereon have been paid or tendered, or to require the sending, receiving, or delivering of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state, or other resistance to lawful authority, or any message calculated to further any plan or purpose, or to

instigate or encourage the perpetration of any unlawful act, or facilitate the escape of any criminal or person accused of crime.

8824. (§ 1151.) *Employe using information from messages.*—Every agent, operator, or employe of any telegraph office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to another person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employe, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

8825. (§ 1152.) *Clandestinely learning the contents of a telegram.*—Every person who, by means of any machine, instrument, or contrivance, or in any other manner, wilfully and fraudulently reads, or attempts to read, any message, or learn the contents thereof, while the same is being sent over any telegraph line, or wilfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, whilst the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in § 8824 (1151).

8826. (§ 1153.) *Bribing telegraphic operator.*—Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent, operator or employe to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employe any bribe, compensation or reward, for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employe, or uses or attempts to use any such information so obtained, is punishable as provided in § 8824 (1151).

8827. (§ 1154.) *Aiding apprentices to run away or harboring them.*—Every person who wilfully and knowingly aids, assists or encourages to run away, or who harbors or conceals any apprentice or person bound or held to service or labor, is guilty of a misdemeanor.

8828. (§ 1155.) *Vagrants.*—1. Every person (except an Indian) without visible means of living, who has the physical ability to work, and who does not seek employment, or labor when employment is offered him.

2. Every healthy beggar who solicits alms as a business.

3. Every person who roams about from place to place without any lawful business.

4. Every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, outhouse, vessel or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof.

5. Every lewd and dissolute person, who lives in and about houses of ill-fame, or who lives with or upon the earnings of a woman of bad repute; and,

6. Every common prostitute and common drunkard,

Is a vagrant, and punishable by imprisonment in the county jail not exceeding ninety days,

Pon v. Wittman, 147 Cal. 292; 81 Pac. 984.

8829. (§ 1156.) *Issuing or circulating paper money.*—Every person who makes, issues, or puts in circulation, any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense is guilty of a misdemeanor, and for each and every subsequent offence is guilty of felony,

8830. (§ 1157.) *Officers of fire departments issuing false certificates of exemption.*—Every officer of a fire department who wilfully issues, or causes to be issued, any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor.

8831. (§ 1158.) *Abuse of school teachers.*—Every parent, guardian, or other person, who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor.

8832. (§ 1159.) *Leaving gate of an enclosure open.*—Every person who wilfully leaves open a gate leading in or out of any enclosed premises, whether enclosed by a lawful fence or not, is punishable by a fine not exceeding twenty-five dollars.

8833. (§ 1160.) *Obstructing ford near ferry.*—Every person who owns and conducts a ferry, and who obstructs any ford at or near his ferry, or excludes or prevents the public from the free use of such ford, and who in any manner obstructs such ford, is punishable by a fine not exceeding one hundred dollars.

8834. (§ 1161.) *Firing firearms.*—Every person who wilfully shoots or fires off, a gun, pistol, or any firearm, within the limits of any town or city, or of any private enclosure which contains a dwelling house, is punishable by a fine not exceeding twenty-five dollars.

8835. (§ 1162.) *Ditch overflowing on highway.*—Every person who owns a ditch or flume, and allows the water therein to overflow the side and run into a public highway, or in or upon the property of another, is punishable by a fine not exceeding one hundred dollars.

8836. (§ 1163.) *Stallion running at large.*—Every person who owns a stud horse, ridgeling, or unaltered male mule or jack-ass over the age of eighteen months, and allows the same to run at large, is punishable by fine not exceeding fifty dollars. Any person may take any such animal, and if the same is not claimed in five days, may castrate him at the expense of the owner.

8837. (§ 1164.) *Ram running at large.*—Every person who owns, controls, or has the custody of any ram or he goat, and allows the same to run at large between the first day of August and the first day of December of each year, is punishable by a fine not exceeding twenty dollars.

8838. (§ 1165.) *Swine running at large.*—That hereafter it shall be unlawful for any owner or owners of swine to permit the same to run at large. [Act approved March 6, 1895.]

8839. (§ 1166.) *Penalties.*—Any person or persons violating § 8838 (1165), of this Act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of ten dollars for the first offense and in the sum of twenty dollars for each subsequent offense and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction. [Act approved March 6, 1895.]

8840. (§ 1167.) *Disposition of fines.*—That all fines collected under the provisions of this Act shall be paid into the county treasury for the use and benefit of the public schools. [Act approved March 6, 1895.]

8841. (§ 1168.) *Removing skin from animal.*—Every person who removes the skin from an animal and leaves the carcass within one-quarter of a mile of a dwelling, is punishable by a fine not exceeding twenty-five dollars.

8842. (§ 1169.) *Scabby sheep.*—Every person who removes from one point to another in any of the counties of this state, or from one county to another, any scabby sheep, or any sheep that have been scabby within one year, without the written certificate of the sheep inspector, or the written consent of all the sheep owners or managers along the route, and in the vicinity of the proposed location, is punishable by a fine not exceeding one thousand dollars. This Section does not apply to scabby sheep imported into this state and against which quarantine has been declared.

8843. (§ 1170.) *Bringing infected animals into state.*—Every person who brings into this state sheep infected with scab

or other infectious disease, or any horses, mules, asses or cattle infected with any contagious disease, is punishable by a fine not exceeding five hundred dollars.

8844. (§ 1171.) *Disobeying orders of state veterinary surgeon.*—Every person who fails to comply with or disregards any lawful order or direction made by the state veterinary surgeon, or deputy, or deputy sheep inspector, under the provisions of the Political Code, concerning scab and other contagious diseases among sheep, or to prevent the spread of disease among cattle, is punishable by a fine not exceeding five hundred dollars.

8845. (§ 1172.) *Receiving and transporting diseased sheep.*—Every person who, after the publication of the proclamation of the governor of this state prohibiting the importation of diseased sheep into this state, knowingly receives any such sheep from any of the prohibited districts, or transports the same within the limits of the state, is punishable by a fine not exceeding five hundred dollars.

8846. (§ 1173.) *Moving diseased sheep.*—Every person in charge of sheep being shipped into this state, against which quarantine has been declared, as specified in the last preceding Section, and fails to notify the deputy inspector of the county in which such sheep are brought, or allows any such sheep to pass over or upon any public highway, or upon the ranges occupied by other sheep, or within five miles of any corral in which sheep are regularly corralled, before such sheep are inspected as provided by law, is punishable by a fine not exceeding five hundred dollars.

8847. (§ 1174.) *Importing diseased cattle into state.*—Every person who imports into this state any cattle, horses, mules, or asses, after the governor has made proclamation holding in quarantine for the purpose of inspection for contagious or infectious diseases, such animals, and allows the same or any of them to leave the place of their first arrival in this state, until they have been examined by the state veterinary surgeon, and a certificate has been obtained therefrom that such animals are free from disease, or permits any such animals to run at large, or to be removed, or to escape before such certificate has been received, is punishable by a fine not exceeding five hundred dollars. This Section does not apply to any animals driven in harness, or under yoke, or ridden by their owners into this state.

8848. (§ 1175.) *Receiving or transporting diseased cattle.*—Every person who, after the publication of such proclamation, knowingly receives or transports within the limits of this state, any animal mentioned in the preceding Section, before the certificate mentioned therein has been given, is punishable by a fine not exceeding ten thousand dollars.

8849. (§ 1176.) *Obstructing veterinary surgeon, etc.*—Every person who owns or has the custody of any cattle, horses, mules or asses infected with a contagious disease, and fails to immediately report the same to the state veterinary surgeon, or conceals the existence of such disease, or attempts so to do, or wilfully obstructs or resists the said veterinary surgeon in the discharge of his duty as provided by law, or sells, gives away or uses the meat or milk, or removes the skin or any part of such animal, is punishable by a fine not exceeding five hundred dollars.

8850. (§ 1177.) *Selling horses, etc., at auction.*—Every person who sells at auction any horses, mules, asses, or cattle, and fails to record in a book the name of the person who offers for sale said animals, the names of the owners with their residences, the color, brand, mark, size, and age of the animal offered for sale, or fails to keep said book open for the inspection of any person, is punishable by a fine not exceeding fifty dollars. This Section does not apply to judicial sales.

8851. (§ 1178.) *Branding animals driven through the state.*—Every person who owns or has charge of any horses, cattle or sheep which are driven into or through any part of this state, and fails to plainly brand or mark the animals so driven, so that such animals may be readily distinguished from other animals, is punishable by a fine not exceeding three hundred dollars.

8852. (§ 1179.) *Driven stock to be branded.*—All droves of horses, mules, cattle or sheep which may hereafter be driven from any other state or territory of the United States or any foreign country, into or through any county or counties of this state, shall be plainly branded or marked with one uniform brand or mark. [Act approved March 7, 1893.]

8853. (§ 1180.) *Road brand.*—All such horses, mules and cattle shall be so branded with one distinct ranch or road brand of the owner or owners so as to show distinctly in such place or places as the owner may adopt. [Act approved March 7, 1893.]

8854. (§ 1181.) *Sheep brands.*—All such sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily should they become intermixed or mingled with other flocks of sheep in this state. [Act approved March 7, 1893.]

8855. (§ 1182.) *Penalties.*—Any such owner or owners, person or persons in charge of such drove of stock which may be driven into or through this state, who shall fail to comply with the provisions of this Act, shall be fined in a sum not less than fifty dollars, nor more than three hundred dollars together with costs of suit. [Act approved March 7, 1893.]

8856. (§ 1183.) *Duty of officers.*—It shall be the special duty of the county attorney, sheriff, and any constable of each and every county in this state, to enforce the provisions of this Act. [Act approved March 7, 1893.]

8857. (§ 1184.) *Fines, how disposed of.*—All fines collected under the provisions of this Act, shall be paid into the general school fund of the county in which judgment therefor is recovered. [Act approved March 7, 1893.]

8858. (§ 1185.) *Driving stock from ranges, prohibited.*—That any person or persons other than the owner of, or his agents who shall drive any horses, mules or cattle farther from their usual and customary ranges, than the nearest corral, and who shall neglect to return such horses, mules or cattle immediately to their accustomed range; *Provided* they can have the use of such corral shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace, in the state of Montana shall be fined in any sum not exceeding one hundred dollars nor less than twenty-five dollars to be collected as other fines are, and may also in the discretion of the said justice of the peace be imprisoned in the county jail for a term not more than three months, or both. All fines collected under the provisions of this Act shall be paid into the school fund of the county in which the said stock do most usually range and graze. [Act approved March 9, 1893.]

8859. (§ 1186.) *Duty of butchers slaughtering animals.*—Every person who is a butcher and who slaughters cattle in this state, and fails to keep a true and correct record of all marks and brands of the cattle slaughtered by him, the name of the person from whom said cattle were bought, his residence and the date of the purchase and delivery of the cattle, or fails to keep such record open for inspection at his place of business, or fails on or before the first day of each month to file a verified copy of such record in the office of the justice of the peace nearest his place of business and another verified copy in the office of the county clerk of the county in which he resides, and every person slaughtering cattle, who does not keep the hide, with the ears attached, for ten days after the slaughter of such animal, at his place of business or residence, or who does not exhibit said hide upon demand of any person, is punishable by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or both.

8860. (§ 1187.) *Driving cattle, etc., from range.*—Every person who wilfully drives or causes to be driven any cattle, horses, mules, sheep, or swine from their customary range without the permission of the owner thereof is punishable by imprisonment in the county jail not exceeding ninety days, or by fine not exceeding one hundred dollars, or both.

8861. *Dogging livestock*.—Any person, who shall permit or direct any dog owned by them, or in their possession or in the possession of any employer to chase or run any cattle or other live stock, of which he is not the owner or the person in charge, upon the open range, or government lands or away from any watering place upon the open range, shall be guilty of a misdemeanor and shall be punishable by a fine of not more than Fifty (\$50.00) Dollars. [Act approved March 6, 1903.] (8th Sess. Chap. 110.)

8862. (§ 1188.) *Hides of animals killed*.—Every person, except, a licensed butcher, who offers to sell or sells any beef and fails to expose to the purchaser the hide of the animal to be sold, or sold, and does not keep such hide for ten days after the sale at his place of residence, or refuses to allow the same to be inspected by any other person, is punishable by imprisonment in the county jail not exceeding three months, or by a fine not exceeding one hundred dollars, or both.

8863. (§ 1189.) *Branding cattle running at large*.—Every person save only an owner, and he only when branding on his own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between the first day of December, and the tenth day of May of the next ensuing year; and every person who shall at any time brand or cause to be branded or marked any horse, mule, cattle or head of cattle, sheep, swine, or other animal, one year old or older, with any piece of metal or implement, other than a branding iron, which branding iron shall be of the same design as the brand or mark owned by the party using it; or who shall so mark or brand, or cause to be marked or branded any of the animals aforesaid with any piece or pieces of iron called "running irons," such as bars, rings, half or quarter circles; is punishable by imprisonment in the county jail for not exceeding six months, or by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or both. [Act approved March 5, 1895.]

8864. *Prohibiting sash or frying pan brand*.—Every person who, for the purpose of branding horses, cattle, sheep, goats or any other animal, uses as a brand, a sash, frying pan or any device whatsoever, which can be employed or used to obliterate a brand, and every person who shall use any unrecorded brand which is an infringement upon any recorded brand, or who shall use a like brand in the same position or place recorded by another, is punishable by a fine not exceeding Two Hundred Dollars, or imprisonment in the county jail not exceeding sixty days, or both. [Act approved March 7, 1903.] (8th Sess. Chap. 125.)

8865. (§ 1191.) *Driving cattle on railroad*.—Every person who wilfully drives any animal upon any railroad track with intent to injure the corporation or persons owning the railroad,

and such animal is killed or injured thereby, is punishable by imprisonment in the state prison not exceeding five years.

8866. *Wearing of badges and insignia by persons not entitled to do so prohibited.*—Any person who wilfully wears the badge of the Grand Army of the Republic, the insignia, badge or rosette of the military order of the Loyal Legion of the United States, or of the military order of Foreign Wars of the United States, or the badge or button of the United Spanish War Veterans, or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, of the Order of the Knights of Pythias or Labor Organizations, or any Society, Order or Organization of ten years standing in the State of Montana, or use the name to obtain aid or assistance within this State, or wilfully uses the name of such society, order or organization, the title of its officers, or its insignia, rituals or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order, or of such society, order or organization, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for a term not to exceed ninety days in the county jail, or a fine not to exceed two hundred and no-100 (\$200.00) dollars, or by both such fine and imprisonment, *provided* this shall not apply to the wives, daughters, sisters or mothers of members of these orders who are in good standing. [Act approved February 19, 1907.] (10th Sess. Chap. 18.)

8867. (§ 1193.) *Diseased animals.*—It is unlawful for any person having in charge any horse, mule, ass, sheep, hog, or cattle, affected with a contagious disease, to allow such animal to run on any range or to be within any enclosure where they may come in contact with any other animal not so diseased. All animals so affected must be immediately removed to an inside inclosure secure from other animals, or must be herded six miles away from any farm or ranch or from any other stock running at large or being herded. Every person who neglects or refuses to remove, or inclose, or herd as aforesaid, such diseased animals, is guilty of a misdemeanor and liable in damages to the party injured.

8868. (§ 1194.) *Unlawful and dangerous fences.*—That any person owning any lands in this state, or if the owner is not a resident wherein said land is situated, his managing agent, or if such lands are leased, the lessor, who shall permit any barbed or other wire to remain down, or broken in such condition as to be dangerous to live stock, for the period of thirty days, and the further period of ten days, after personal service upon him of a notice in writing, to repair said wire, shall be deemed guilty of a misdemeanor. [Act approved March 18, 1895.]

8869. (§ 1195.) *Unlawful entries in races.*—It is hereby made unlawful in this state for any person or persons knowingly

to enter or cause to be entered for competition or to compete for any purse, prize, premium, stake or sweepstakes offered or given by any agricultural or other society, association, person or persons or to drive any horse, mare, gelding, colt or filly under an assumed name or out of its proper class where such purse, prize, premium, stake or sweepstakes is to be decided by a contest of speed. That any person or persons found guilty of a violation of this Section shall, upon conviction thereof be imprisoned in the penitentiary for a period of not more than three years, or imprisoned in the county jail of the county in which the accused may be convicted for any period not more than six months, and shall be fined in any sum not exceeding one thousand dollars. [*Act approved February 28, 1895.*]

8870. (§ 1196.) *Name of race horse.*—That the name of any horse, for the purpose of entry for competition in any contest of speed, shall not be changed after once having contested for a prize, purse, premium, stake or sweepstakes, except as provided by the code of rules of the society or association under which the contest is advertised to be conducted. That the class to which a horse belongs, for the purpose of an entry in any such contest of speed, shall be determined by the public performance of said horse in any former contest or trial of speed as provided by the rules of the society under which the proposed contest is advertised to be conducted. And any person or persons knowingly misrepresenting or fraudulently concealing the public performance of any former contest or trial of speed of any horse which he or they propose to enter for competition in any such contest, shall, upon conviction thereof, be liable to the same punishment as provided in the preceding Section, whether he or they shall succeed in making said entry or not. [*Act approved February 28th, 1895.*]

8871. (§ 1197.) *Canada thistles, etc.*—Be it enacted that the weeds known as the Canada thistle, the Scotch bull thistle and the Russian thistle are hereby declared to be a common nuisance for all purposes of this Act. [*Act approved March 18th, 1895.*]

8872. (§ 1198.) *Permitting thistles to go to seed.*—Any person or persons owning any lands within this state, or occupying or having control of any lands, whether within the plat of towns, villages or cities, or otherwise, within this state, knowingly permitting or suffering any Canada, Scotch bull or Russian thistle or thistles to go to seed upon any land or lands thus owned, occupied or under control of such person or persons shall be deemed guilty of supporting and maintaining a common nuisance, and upon conviction thereof in any court of competent jurisdiction, of the offense, shall be punished by a fine not exceeding fifty nor less than five dollars. [*Act approved March 18th, 1895.*]

8873. (§ 1199.) *Landholders to destroy thistles.*—In case any person or persons, railroad or other corporation, owning or occupying any lands within this state, under his or her or their control, as the case may be, shall refuse or neglect to destroy any Canada, Scotch bull or Russian thistle or thistles growing or standing upon any land or lands so owned, occupied or controlled, on or before the fifteenth day of August it shall be the duty of the county commissioners, road supervisors, or other person or persons having control of the public highways, streets or alleys where any such thistle or thistles may be found growing or standing, to immediately destroy or cause the same to be destroyed, and pay therefor at the same rate that is paid for road labor; and every supervisor or other person hereinbefore authorized to destroy said thistles shall keep a correct account of all moneys paid out for that purpose, and charge the same to the person or persons or corporation owning, occupying or controlling the land or lands upon which such thistle or thistles were destroyed, and the person or persons or corporation owning, occupying or having control of such lands shall be liable in a civil action for the amount so charged against them and costs of suit; *Provided*, that if any supervisor or other person having, under the authority of this Act, destroyed any of the said thistles, and is unable to find the owner of the land, or is unable to collect such money, the same shall be paid by the authorities of the town, village, city or county where such thistles were destroyed; *and provided further*, that in case any railroad company becomes chargeable under the provisions of this Section, the supervisors of the township where same has become chargeable may certify to the same to the county attorney of their county, whose duty it shall be to bring and prosecute a civil action against the railroad company for the amount so charged and costs of suit aforesaid. [*Act approved March 18, 1895.*]

8874. (§ 1200.) *Duties.*—It is hereby made the duty of every person having knowledge of any Canada, Scotch bull or Russian thistle or thistles growing or standing upon the lands of another to immediately destroy the same, or give the person owning or occupying such lands immediate notice thereof. [*Act approved March 18, 1895.*]

8875. *Desecration of flag.*—That any person who in any manner for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag, standard, color, or ensign of the United States of America, or shall expose, or cause to be exposed to public view any such flag, standard, color, or ensign upon which shall be printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement

of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away or for use for any purpose, any article or substance, being any article of merchandise or receptacle of merchandise, upon which shall have been printed, painted, attached, or otherwise placed, a representation of any such flag, standard, color, or ensign to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, defile, or defy, trample upon, or cast contempt upon, either by words or act, upon any such flag, standard, color or ensign shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment for not more than thirty days, or both in the discretion of the court. [*Act approved March 2, 1905, § 1.*] (9th Sess. Chap. 63.)

8876. *Meaning of term flag.*—That the words flag, standard, color or ensign, as used in this act, shall include any flag, standard, color, ensign, or any picture or representation of either thereof, made of any substance or represented on any substance, and of any size evidently purporting to be said flag, standard, color or ensign of the United States of America, or a picture, or representation of either thereof upon which shall be shown the colors, the stars, and the stripes in any number of either thereof, or by which the person seeing the same without deliberation may believe the same to represent the flag, color, standard or ensign of the United States of America. [*Act approved March 2, 1905, § 2.*] (9th Sess. Chap. 63.)

8877. *Exceptions.*—That this act shall not apply to any act permitted by the Statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, or stationery for use in correspondence, on any of which shall be printed, painted or placed said flag, disconnected from any advertisement. [*Act approved March 2, 1905, § 3.*] (9th Sess. Chap. 63.)

8878. *Advertising to procure divorce forbidden.*—Any person who advertises, prints, publishes, distributes or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, hand-bill, advertisement, printed paper, book, newspaper, or notice of any kind, with intent to procure, or to aid in procuring any divorce, either in this State or elsewhere, shall be fined not less than Twenty-five Dollars (\$25.00), nor more than One Hundred Dollars (\$100.00), for such offense, or imprisoned in the county jail not less than ten days nor more than thirty days, or both such fine and im-

prisonment. This Act shall not be deemed to apply to the publication of summons in actions for divorce. [*Act approved March 5th, 1903.*] (8th Sess. Chap. 73.)

8879. *Use of fire arms by children under the age of fourteen years prohibited.*—It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian. [*Act approved March 6, 1907, § 1.*] (10th Sess. Chap. 111.)

8880. *Liability of parent or guardian.*—Any parent, guardian, or other person, violating the provisions of this Act shall be guilty of a misdemeanor, and the county attorney, on complaint of any person, must prosecute violations of this Act. [*Act approved March 6, 1907, § 2.*] (10th Sess. Chap. 111.)

8881. *Exhibition of pictures of train robberies prohibited.*—Every person who shall exhibit moving pictures wherein are shown or exhibited to the public any scenes or pictures depicting burglaries, train robberies, or other acts which would constitute a felony, is guilty of a misdemeanor. [*Act approved March 2, 1907.*] (10th Sess. Chap. 66.)

8882. *Stealing rides upon cars or locomotives.*—It shall be and hereby is declared to be a misdemeanor for any person to enter upon, ride upon, or secure passage upon, any railroad car or locomotive or tender, of any description, other than a car used exclusively for the carriage of passengers, with intent thereby to obtain a ride without payment therefor, or fraudulently obtain carriage upon any such car, locomotive or tender. [*Act February 24, 1899, § 1.*] (6th Sess. 150.)

8883. *Stealing rides on trucks, rods or brakebeams.*—It shall be and is hereby declared to be misdemeanor for any person excepting railroad employes in the performance of their duty, to take passage or ride upon, or enter for the purpose of taking passage or riding upon, the trucks, rods, brake-beams, or any part of any car, locomotive, or tender not ordinarily and customarily used, or intended for the resting place of a person riding upon or operating the same. [*Act February 24, 1899, § 2.*] (6th Sess. 150.)

8884. *Trainmen constituted peace officers.*—Every conductor, engineer or other person in charge of the operation of cars or trains, or locomotives, upon any railroad, are, while so engaged or employed, hereby constituted public executive officers, of the class of peace officers, and of the grade of a constable in each county wherein their train or car, or cars, or locomotives may from time to time happen to be, and are hereby given the same authority as other peace officers to with or without a warrant

arrest and prosecute persons violating any provision of this Act, *provided, however*, that the persons mentioned herein shall not be entitled to receive fees for any arrest or prosecution which may be made or prosecuted under this Act. And *provided further*, that none of the persons herein named shall be authorized to hold said office or exercise its functions unless at the time he shall be a citizen of the United States, and shall have been a citizen of this State for at least one year next preceding his exercising the functions thereof. [Act approved February 24, 1899, § 3.] (6th Sess. 150-1.)

TITLE XVII.

GENERAL PROVISIONS.

- Section 8885. *Acts made punishable by different provisions of this Code.*
- “ 8886. *Acts punishable under foreign law.*
- “ 8887. *Foreign conviction or acquittal.*
- “ 8888. *Contempts, how punishable.*
- “ 8889. *Mitigation of punishment in certain cases.*
- “ 8890. *Aiding in misdemeanor.*
- “ 8891. *Sending letters, when deemed complete.*
- “ 8892. *Removal from office for neglect of official duty.*
- “ 8893. *Omission to perform duty, when punishable.*
- “ 8894. *Attempts to commit crimes, when punishable.*
- “ 8895. *Attempts to commit crimes, how punishable.*
- “ 8896. *Restrictions upon the preceding sections.*
- “ 8897. *Second offense, how punished after conviction of former offense.*
- “ 8898. *Second offenses, how punished after conviction of attempt to commit a state prison offense.*
- “ 8899. *Foreign conviction for former offense.*
- “ 8900. *Second term of imprisonment, when to commence.*
- “ 8901. *When term of imprisonment commences, etc.*
- “ 8902. *Imprisonment for life.*
- “ 8903. *Fine may be added to imprisonment.*
- “ 8904. *Civil rights of convict suspended.*
- “ 8905. *Civil death.*
- “ 8906. *Limitations to two preceding sections.*
- “ 8907. *Convict competent witness.*
- “ 8908. *Person of convict protected.*
- “ 8909. *Forfeitures.*

8885. (§ 1220.) *Acts made punishable by different provisions of this Code.*—An act or omission which is made punishable in different provisions of this Code, may be punished under

either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in §§ 8829 (1156), 8898 (1333) and 8899 (1234), the punishment therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment or information and found by the jury.

8886. (§ 1221.) *Acts punishable under foreign law.*—An act or omission declared punishable by this Code is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared.

8887. (§ 1222.) *Foreign conviction or acquittal.*—Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another state, government or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

8888. (§ 1223.) *Contempts, how punishable.*—A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

8889. (§ 1224.) *Mitigation of punishment in certain cases.*—When it appears at the time of passing sentence upon a person convicted upon indictment, or information that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order judging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

8890. (§ 1225.) *Aiding in misdemeanor.*—Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

State v. Woodman, 26 Mont. 354; 67 Pac. 1118.

8891. (§ 1226.) *Sending letters, when deemed complete.*—In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any postoffice, or any other place, or delivered to any person, with intent that it shall be forwarded.

8892. (§ 1227.) *Removal from office for neglect of official duty.*—In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers—state, county, city, town, or township—where it is not so expressly provided, they may, in the discretion of the court, be removed from office.

8893. (§ 1228.) *Omission to perform duty, when punishable.*—No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

8894. (§ 1229.) *Attempts to commit crimes, when punishable.*—An act done with intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

People v. Oates, 142 Cal. 14; 75 Pac. 337.

8895. (§ 1230.) *Attempts to commit crime, how punishable.*—Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the state prison for five years, or more, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the state prison, or in the county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the state prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such an attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

4. If the offense so attempted is punishable by a fine and imprisonment, the offender convicted of such attempt may be punished by both such imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

People v. Oates, 142 Cal. 14; 75 Pac. 337.

8896. (§ 1231.) *Restrictions upon the preceding sections.*—The last two Sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

8897. (§ 1232.) *Second offense, how punished after conviction of former offense.*—Every person who, having been convicted of any offense punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the state prison for any term exceeding five years, such person is punishable by imprisonment in the state prison not less than ten years.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the state prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the state prison not exceeding five years.

State v. Connors, 27 Mont. 228; 70 Pac. 716. This case falls within subdivision 2, and the court was authorized to impose the sentence of ten years for the crime of assault in the second degree. People v. Burns, 138 Cal. 163; 69 Pac. 16.

8898. (§ 1233.) *Second offenses, how punished after conviction of attempt to commit a state prison offense.*—Every person who, having been convicted of petit larceny, or attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the state prison, commits any crime after such conviction, is punishable as follows:

1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. * If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the state prison for any term less than life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction for such first offense.

3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the state prison, then such person is punishable by imprisonment in such prison not exceeding five years.

People v. Burns, 138 Cal. 162; 69 Pac. 16.

8899. (§ 1234.) *Foreign conviction for former offense.*—Every person who has been convicted in any other state, government, or country, of an offense which, if committed within this state, would be punishable by the laws of this state by imprison-

ment in the state prison, is punishable for any subsequent crime committed in this state in the manner prescribed in the last two sections, and to the same extent as if such first conviction had taken place in a court of this state.

8900. (§ 1235.) *Second term of imprisonment, when to commence.*—When any person has been convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second, or other subsequent term of imprisonment, as the case may be.

Ex parte Clifton, 145 Cal. 186; 78 Pac. 655.

8901. (§ 1236.) *When term of imprisonment commences, etc.*—The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if, thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment, and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Ex parte McGuire, 135 Cal. 341; 67 Pac. 327.

8902. (§ 1237.) *Imprisonment for life.*—Whenever any person is declared punishable for a crime by imprisonment in the state prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

People v. Burns, 138 Cal. 161; 69 Pac. 16.

8903. (§ 1238.) *Fine may be added to imprisonment.*—Upon conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars, in addition to the punishment prescribed.

8904. (§ 1239.) *Civil rights of convict suspended.*—A sentence of imprisonment in the state prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment.

Coffee v. Haynes, 124 Cal. 565; 57 Pac. 482.

8905. (§ 1240.) *Civil death.*—A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead.

Estate of Donnelly, 125 Cal. 419; 58 Pac. 61.

8906. (§ 1241.) *Limitations to two preceding sections.*—The provisions of the last two preceding Sections must not be construed to render the person therein mentioned incapable of making and acknowledging a sale or conveyance of property.

Coffee v. Haynes, 124 Cal. 566; 57 Pac. 482.

8907. (§ 1242.) *Convict competent witness.*—A person convicted of any offense is notwithstanding a competent witness in any cause or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record or by his examination as such witness.

8908. (§ 1243.) *Person of convict protected.*—The person of a convict sentenced to imprisonment in the state prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Estate of Donnelly, 125 Cal. 419; 58 Pac. 61.

8909. (§ 1244.) *Forfeitures.*—No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the state, in the nature of a deodand, or where any person shall flee from justice, are abolished.

Estate of Donnelly, 125 Cal. 420; 58 Pac. 61.

PART II.

CRIMINAL PROCEDURE.

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| TITLE | I. PRELIMINARY PROVISIONS. |
| | II. THE PREVENTION OF PUBLIC OFFENSES. |
| | III. JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS BY IMPEACHMENT OR OTHERWISE. |
| | IV. PROCEEDINGS IN CRIMINAL ACTIONS. |
| | V. PROCEEDINGS ON INFORMATION AND INDICTMENT. |
| | VI. THE INDICTMENT AND INFORMATION. |
| | VII. PLEADINGS AND PROCEEDINGS AFTER INFORMATION OR INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL. |
| | VIII. PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT. |
| | IX. JUDGMENT AND EXECUTION. |
| | X. APPEALS TO THE SUPREME COURT. |
| | XI. TRIALS OF DELINQUENT CHILDREN AND JUVENILE CRIMINALS. |
| | XII. MISCELLANEOUS PROCEEDINGS. |
| | XIII. PROCEEDINGS IN JUSTICES' AND POLICE COURTS AND APPEALS TO DISTRICT COURTS. |

- XIV. SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.
- XV. PROCEEDINGS FOR BRINGING PERSONS IMPRISONED
IN THE STATE PRISON OR JAIL OF ANOTHER
COUNTY, BEFORE A COURT.
- XVI. DISPOSITION OF FINES AND FORFEITURES.

TITLE I.

PRELIMINARY PROVISIONS.

- CHAPTER I. RIGHTS OF DEFENDANTS.
- II. DEFINITIONS.
- III. CRIMINAL ACTIONS. HOW PROSECUTED.
- IV. JURISDICTION.

CHAPTER I.

RIGHTS OF DEFENDANTS.

- Section 8910. No person punishable but on legal conviction.*
- “ 8911. *Public offenses, how prosecuted.*
- “ 8912. *Criminal action defined.*
- “ 8913. *Parties to a criminal action.*
- “ 8914. *The party prosecuted known as defendant.*
- “ 8915. *Rights of defendant in a criminal action.*
- “ 8916. *Second prosecution for the same offense prohibited.*
- “ 8917. *No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.*
- “ 8918. *No person to be convicted but upon verdict or judgment.*

8910. (§ 1350.) *No person punishable but on legal conviction.*—No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

8911. (§ 1351.) *Public offenses, how prosecuted.*—Every public offense must be prosecuted by indictment or information, except—

1. Where proceedings are had for the removal of civil officers of the state.

2. Offenses arising in the militia when in actual service and in the land and naval forces in time of war, or which the state may keep with the consent of congress, in time of peace.

3. Offenses tried in justices' and police courts.

In the matter of Burleigh, 145 Cal. 37; 78 Pac. 242.

8912. (§ 1352.) *Criminal action defined.*—The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

8913. (§ 1353.) *Parties to a criminal action.*—A criminal action is prosecuted in the name of the state of Montana as a party, against the person charged with the offense.

8914. (§ 1354.) *The party prosecuted known as defendant.*—The party prosecuted in a criminal action is designated in this Code as the defendant.

8915. (§ 1355.) *Rights of defendant in a criminal action.*—In all criminal prosecutions the accused shall have the right—

1. To appear and defend in person and by counsel;
2. To demand the nature and cause of the action;
3. To meet the witnesses against him face to face;
4. To have process to compel the attendance of witnesses in his behalf.

5. A speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

State v. Kennie, 24 Mont. 56; 60 Pac. 593. At the date of the adoption of the constitution, the right of trial by jury existed under territorial statutes in all cases of felonies and misdemeanors, but

not under statutes for the prevention of public offenses, and there has not been any change in this respect.

People v. Ballard, 1 C. App. 224; 81 Pac. 1040.

8916. (§ 1356.) *Second prosecution for the same offense prohibited.*—No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

State v. Keerl, 33 Mont. 511; 85 Pac. 863. Defendant charged with murder was tried three times and found guilty of manslaughter at the third trial. In the second trial the jury did not agree and were discharged. At the third trial the plea of once in jeopardy was interposed on the ground that the jury had been discharged at the second trial when there was no necessity for such action. The defense was overruled. When a person charged with a crime is neither convicted

nor acquitted after a trial, and the jury are discharged and the trial ended, he may again be put upon trial for the same offense. After a verdict on a judgment of conviction or acquittal, defendant has been in jeopardy and may not be tried again for the same offense, except where a new trial has been granted or ordered.

Rehstock v. Court, 146 Cal. 315; 80 Pac. 65.

8917. (§ 1357.) *No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.*—No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

8918. (§ 1358.) *No person to be convicted but upon verdict or judgment.*—No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon a judgment of a court, a jury having been waived, in a criminal case not amounting to felony.

CHAPTER II.

DEFINITIONS.

- Section 8919. *Complaint.*
 “ 8920. *Indictment.*
 “ 8921. *Information.*
 “ 8922. *Magistrate.*
 “ 8923. *Who are magistrates.*
 “ 8924. *Peace officer.*

8919. (§ 1370.) *Complaint.*—A complaint is a statement in writing, made to a court or magistrate, that a person has been guilty of some designated offense.

8920. (§ 1371.) *Indictment.*—An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

State v. Brantly, 20 Mont. 178; 50 Pac. 411. The district court has jurisdiction to try the case of a person charged with the crime of murder in the first de-
 gree in an information which is not verified; and the accused waives this defect unless he objects at the trial.

8921. (§ 1372.) *Information.*—An information is an accusation in writing, in form and substance like an indictment for the same offense, charging a person with a public offense, presented and signed by the county attorney and filed in the office of the clerk of the district court.

State v. Brantly, 20 Mont. 173; 50 Pac. 411. State v. Peterson, 24 Mont. 85; 60 Pac. 809.

8922. (§ 1373.) *Magistrate.*—A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

8923. (§ 1374.) *Who are magistrates.*—The following persons are magistrates:

1. The justices of the supreme court.
2. The judges of the district court.
3. Justices of the peace.
4. Police magistrates in towns or cities.

8924. (§ 1375.) *Peace officer.*—A peace officer is a sheriff of a county, or his deputy, or a constable, marshal or policeman of a township, city or town.

CHAPTER III.

CRIMINAL ACTIONS. HOW PROSECUTED.

- Section 8925. *Criminal actions in justice court.*
 “ 8926. *Criminal actions in district court.*
 “ 8927. *Prosecutions by information.*
 “ 8928. *Leave to file information.*
 “ 8929. *Order of court granting.*
 “ 8930. *County attorney to file information.*
 “ 8931. *Order entered in minutes of court.*
 “ 8932. *Officers not to disclose.*
 “ 8933. *Prosecutions by indictment, when.*

8925. (§ 1380.) *Criminal actions in justice court.*—All criminal actions in courts of justices of the peace and police courts must be prosecuted by complaint.

8926. (§ 1381.) *Criminal actions in district court.*—All criminal actions in the district court, except those on appeal, must be prosecuted by information or indictment.

8927. (§ 1382.) *Prosecutions by information.*—Prosecutions in the district court must be by information :

1. In all cases where there has been an examination and commitment or admission to bail by a magistrate on a charge of crime; or,

2. In any case where there has been no examination or commitment or admission to bail, upon leave granted by the court for that purpose.

State v. Bowser, 21 Mont. 133; 53 Pac. 180. Where the information is filed by leave of court, it need not be entered in writing before the filing of the information, but after the arrest of defendant, the minutes of the court may be corrected and the order amended.

State v. Shafer, 26 Mont. 15; 66 Pac. 464. The written motion by the county attorney for leave to file the information, need not be supported by oath or affirmation, and need not set forth with technical accuracy the facts constituting a formal charge.

8928. (§ 1383.) *Leave to file information.*—Application for leave to file an information before an examination, commitment or admission to bail, must be made to the court on written motion, by the county attorney.

8929. (§ 1384.) *Order of court granting.*—The court by an order may grant such leave, or may require an examination before a magistrate, or may, upon affidavits filed by any person, order the county attorney to file an information against the persons charged with a public offense.

In re Weed, 26 Mont. 251; 67 Pac. 312.

8930. (§ 1385.) *County attorney to file information.*—If leave is granted, the county attorney may at any time thereafter file an information against the person named in the order granting leave to file the same, and thereupon the defendant named in the information must be arrested, as upon the finding of an indictment.

8931. (§ 1386.) *Order entered in minutes of court.*—After the arrest of such defendant the clerk must immediately enter the order granting leave to file the information in the minutes of the court.

State v. Bowser, 21 Mont. 138; 53 Pac. 181.

8932. (§ 1387.) *Officers not to disclose.*—The fact that such leave has been granted, or that an information has been filed, must not be disclosed until after the defendant has been arrested.

State v. Bowser, 21 Mont. 138; 53 Pac. 181.

8933. (§ 1388.) *Prosecutions by indictment, when.*—Prosecutions in the district court must be by indictment in all cases where there has been no examination, commitment or admission to

bail by a magistrate, except in the cases where the court grants leave to prosecute by information before an examination and commitment by a magistrate.

CHAPTER IV.

JURISDICTION.

Section 8934. Jurisdiction of justices of the peace.

“ 8935. *Jurisdiction of district court.*

8934. (§ 1400.) *Jurisdiction of justices of the peace.*—The justices’ courts shall have jurisdiction of the following public offenses, committed within their respective counties, in which such courts are established:

1. Petit larceny.
2. Assault in the third degree as specified in § 8314 (402) of this Code.
3. Breaches of the peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both such fine and imprisonment.

And to act as examining and committing magistrates, as provided in this Code.

State v. Kennie, 24 Mont. 56; 60 Pac. 593.

8935. (§ 1401.) *Jurisdiction of district court.*—The district court has jurisdiction of all public offenses not otherwise provided for.

TITLE II.

THE PREVENTION OF PUBLIC OFFENSES.

- CHAPTER I. LAWFUL RESISTANCE.
- II. THE INTERVENTION OF THE OFFICERS OF JUSTICE.
 - III. SECURITY TO KEEP THE PEACE.
 - IV. POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.
 - V. SUPPRESSION OF RIOTS.

CHAPTER I.

LAWFUL RESISTANCE.

Section 8936. Lawful resistance, by whom made.

“ 8937. *By the party, in what cases and to what extent.*

“ 8938. *By other parties, in what cases.*

8936. (§ 1410.) *Lawful resistance, by whom made.*—Lawful resistance to the commission of a public offense may be made—

1. By the party about to be injured.
2. By other parties.

8937. (§ 1411.) *By the party, in what cases and to what extent.*—Resistance sufficient to prevent the offense may be made by the party about to be injured—

1. To prevent an offense against his person, or his family, or some member thereof.

2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

8938. (§ 1412.) *By other parties, in what cases.*—Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

THE INTERVENTION OF THE OFFICERS OF JUSTICE.

Section 8939. Intervention of officers, in what cases.

“ 8940. *Persons acting in their aid justified.*

8939. (§ 1420.) *Intervention of officers, in what cases.*—Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.

2. By forming a police in cities and towns, and by requiring their attendance in exposed places.

3. By suppressing riots.

8940. (§ 1421.) *Persons acting in their aid justified.*—When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

Section 8941. Information of threatened offense.

“ 8942. *Examination of complainant and witnesses.*

“ 8943. *Warrant of arrest.*

“ 8944. *Proceedings on charge being controverted.*

“ 8945. *Person complained of, when to be discharged.*

“ 8946. *Security to keep the peace, when required.*

“ 8947. *Effect of giving or refusing to give security.*

“ 8948. *Person committed for not giving security.*

“ 8949. *Undertaking to be filed in clerk's office.*

“ 8950. *Security required for assault committed in court.*

“ 8951. *Undertaking, when broken.*

“ 8952. *Undertaking, when and how to be prosecuted.*

“ 8953. *Evidence of breach.*

“ 8954. *Costs taxed against complainant.*

“ 8955. *Appeal by complainant.*

“ 8956. *Security for the peace.*

8941. (§ 1430.) *Information of threatened offense.*—A complaint may be laid before any of the magistrates mentioned in § 8923 (1374), that a person has threatened to commit an offense against the person or property of another.

State v. Kennie, 24 Mont. 54; 60 Pac. 592.

8942. (§ 1431.) *Examination of complainant and witnesses.*—When the complaint is laid before such magistrate, he must examine on oath the complainant, and any witness he may produce, and must take their testimony in writing, and cause them to subscribe the same.

8943. (§ 1432.) *Warrant of arrest.*—If it appears upon such examination that there is just reason to fear the commission of the offense threatened, by the person so complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the state, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of and bring him before the magistrate.

8944. (§ 1433.) *Proceedings on charge being controverted.*—When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

8945. (§ 1434.) *Person complained of, when to be discharged.*—If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

State v. Kennie, 24 Mont. 54; 60 Pac. 592.

8946. (§ 1435.) *Security to keep the peace, when required.*—If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the state, and particularly toward the complainant. The undertaking is valid and binding for one year, and may, upon the renewal of the complaint, be extended for a longer period, or a new undertaking may be required.

State v. Kennie, 24 Mont. 54; 60 Pac. 593.

8947. (§ 1436.) *Effect of giving or refusing to give security.*—If the undertaking required by the last Section is given, the party complained of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the cause of commitment, the requirement to give security, the amount thereof, and the omission to give the same.

State v. Kennie, 24 Mont. 54; 60 Pac. 593.

8948. (§ 1437.) *Person committed for not giving security.*—If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.