A DIGEST

OF THE

CRIMINAL LAWS OF ILLINOIS

FROM THE

ADOPTION OF THE CONSTITUTION

TO THE END OF THE

TWENTY-FIFTH GENERAL ASSEMBLY.

1818--1868.

ILLUSTRATED BY REFERENCES TO THE OPINIONS OF THE SUPREME COURT, COMPRISED IN THE FIRST THIRTY-EIGHT VOLUMES OF ILLINOIS REPORTS.

By EUGENE L. GROSS.

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ensue, it will be manslaughter or murder, according to the circumstances of the case.

R. S. 1845, § 38. Purple, 364. Scales, 379.

40. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

Ibid. § 39.

41. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Ibid. § 40.

42. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

Ibid. § 41.

43. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Ibid. § 42.

44. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted be punished accordingly.

Ibid. § 43.

45. If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors and counselors, being thereof duly convicted, shall be considered to have committed a high misdemeanor, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years, nor less than one year.

46. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this state and be fined in a sum not exceeding one hundred dollars. R. S. 1845, § 44. Purple, 365. Scates, 380.

47. If any person shall, willingly or knowingly, carry or deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as a second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument or weapon with which the duel shall be fought or intended to be fought, so that it be alleged in the indictment, that the engine, weapon or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties. Ibid. § 45.

48. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than seven years. And every Ibid. § 46.

46. A letter which is not a challenge, but an invitation to another to send a challenge, is not within the statute. Aulger *v.* People, 34 Ill. 486.

48. In a prosecution for giving drugs to a pregnant woman, to produce miscarriage, the verdict fixed the time in the penitentiary, "together with a fine of one hundred dollars," *held*, that this was surplusage, and did not vitiate. Armstrong *v.* People, 37 Ill. 459.