

L A W S

OF THE

TERRITORY OF NEVADA,

PASSED AT THE

FIRST REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY,

BEGUN

THE FIRST DAY OF OCTOBER AND ENDED ON THE TWENTY-NINTH DAY
OF NOVEMBER, 1861, AT CARSON CITY.

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3.
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Further
powers.

stone, gravel and other materials, to be used in the construction, maintenance and working of its road and its depots, shops, and other buildings necessary and proper for the use and convenience of its road; Seventh. To receive by purchase, donation, or otherwise, any lands or other property of any description, and to hold, use and convey the same as they may think proper, the same as a natural person might or could do, that may be necessary or proper for the construction, operating or maintenance of its road, and for the erection of depots, turnouts, workshops, warehouses, or for any other purposes necessary or proper for their use and convenience, in order to transact the business usual for railroad companies; Eighth. To take, transport, carry and convey persons and property on their road by the force and power of steam, of animals, or any other power, or by any combination of them, and collect and receive tolls and compensation therefor; Ninth. To erect and maintain all necessary and convenient buildings, stations, depots, workshops, warehouses and fixtures, and machinery for the accommodation and use of their passengers, freight and business, and purchase and hold the lands and other property necessary therefor; Tenth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensations to be paid therefor; Eleventh. To regulate the force and speed of their locomotives, cars, trains, or other machinery used or employed on their road, and to establish, regulate and enforce all needful and proper rules and regulations for the management of its business transactions and the working of its road.

CHAP. XXVIII.—*An Act concerning Crimes and Punishments.*

[Approved November 26, 1861.]

Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows :

I.—PERSONS CAPABLE OF COMMITTING CRIMES.

Essence of
crime.

SECTION 1. In every crime, or public offense, there must be an union or joint operation of act and intention, or criminal negligence.

Intent, how
manifested.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Of sound
mind.

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil.

SEC. 4. An infant, under the age of fourteen years, shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown. Infants incapable.

SEC. 5. Any person counseling, advising, or encouraging, an infant under the age of ten years, a lunatic, or idiot, to commit any offense, shall be prosecuted for such offense, where committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising, or encouraging, as aforesaid, had he or she committed the offense directly, without the intervention of such idiot, lunatic, or infant. Counseling idiots or infants.

SEC. 6. A married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime not punishable with death; *provided*, it appear, from all the facts and circumstances of the case, that violent threats, command, or coercion, were used; and in such case, the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty. Married women acting under coercion.

SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force, of some other person, or persons, for the purpose of causing the perpetration of an offense, in which case the person, or persons, so causing said drunkenness, for such malignant purpose, shall be considered principal, or principals, and suffer the same punishment as would have been inflicted on the person, or persons, committing the offense, if he, she, or they, had been possessed of sound reason and discretion. Drunkenness. Exception.

SEC. 8. All acts committed by misfortune, or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil design, or intention, or culpable negligence. Misfortune.

SEC. 9. A person committing a crime not punishable with death, under threats, or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty, and such threats, or menaces, being proved and established, the person, or persons, compelling, by such threats, or menaces, the commission of the offense, shall be considered as principal, or principals, and suffer the same punishment as if he or she had perpetrated the offense. Committed under duress

II.—ACCESSORY.

SEC. 10. An accessory is he or she who stands by and aids, abets, or assists; or who, not being present, aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets, or assists, advises, Accessory

or encourages, shall be deemed and considered as principal, and punished accordingly.

After the fact. SEC. 11. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of, the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

Penalty.

III.—WITNESS.

Injured party may witness. SEC. 12. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime, or misdemeanor, either of such persons may be sworn as a witness against another, in relation to such crime, or misdemeanor; but the testimony given by such witness shall in no instance be used against himself, in any criminal prosecution; and any person may be compelled to testify, as provided in this section.

State's evidence.

Blacks, Indians, etc. SEC. 13. No black, or mulatto person, or Indian, or Chinese, shall be permitted to give evidence in favor of, or against, any white person. Every person who shall have one eighth part, or more, of negro blood, shall be deemed a mulatto; and every person who shall have one half of Indian blood, shall be deemed an Indian.

Affirmation sufficient. SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit willful and corrupt perjury.

IV.—OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

Murder. SEC. 15. Murder, is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice. SEC. 16. Express malice, is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Malice when implied. SEC. 17. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds

Degrees of murder.

of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but, if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death, and every person convicted of murder of the second degree shall suffer imprisonment in the territorial prison for a term not less than ten years, and which may be extended to life.

Punishment.

SEC. 18. Manslaughter, is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or, involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

Manslaughter.

SEC. 19. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

Same.

SEC. 20. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

When punished as murder.

SEC. 21. Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence in an unlawful manner; *provided*, that where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

Involuntary manslaughter.

SEC. 22. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the Territorial prison, for a term not exceeding ten years.

Punishment.

SEC. 23. In order 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.

Death, within a year and day. Computat'n.

SEC. 24. If the injury be inflicted in one county, and the party die within another county, or without the Territory, the accused shall be tried in the county where the act was done, or

Place of trial.

the cause of death administered. If the party killing shall be in one county, and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

Homicide
justifiable.

SEC. 25. Justifiable homicide, is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends, or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Justification
insufficient.

SEC. 26. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing in
self-defense.

SEC. 27. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

Officer
justified
in killing.

SEC. 28. If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance he or she be killed, the officer or private person so killing shall be justified; *provided*, that such officer or private person previous to such killing shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

Justifiable
homicide.

SEC. 29. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable,
by misad-
venture.

SEC. 30. Excusable homicide by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an ax, and the head flies off and kills a bystander, or where

a parent is moderately correcting his child, or a master his servant, or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable, or excusable homicide. Same.

SEC. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged. Same.

SEC. 33. 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. Proving mitigating circumstances.

SEC. 34. 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 Territorial Prison, 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. Women concealing death of bastard child.

SEC. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly. Punishment.

SEC. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the Territorial Prison, not less than two, nor more than ten years, and shall be incapable of voting or holding any office of trust or profit, under the laws of this Territory. Dueling.

SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon, or spectator, or who shall advise or give assistance Persons implicated to give evidence.