

Gen. Laws, statutes, etc.

ANNOTATED CODE

OF THE

STATE OF IOWA

CONTAINING

ALL THE LAWS OF A GENERAL NATURE

ENACTED BY

THE TWENTY-SIXTH GENERAL ASSEMBLY,

AT THE EXTRA SESSION, WHICH ADJOURNED JULY 2, 1897.

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to terrify the person aimed at, if the latter does not know or has no reason to believe that the weapon is not loaded: *State v. Shepard*, 10-126.

An indictment charging that defendant did make an assault with a certain dangerous weapon, to wit, a gun with which he was armed, etc., but not alleging that the gun was loaded, nor the manner of using it, nor that it was pointed or discharged, *held* sufficient to charge an assault: *Ibid*.

An assault may be committed without doing any personal injury: *State v. Myers*, 19-517.

Assault and battery: The statute merely prescribes the punishment for the offenses of assault, and assault and battery, and leaves them to be defined by the common law: *State v. Twogood*, 7-252.

It constitutes assault and battery to forcibly and violently take property claimed under chattel mortgage from the person in possession thereof, where it is necessary, in order to effect the purpose, to inflict personal injury: *State v. Boynton*, 75-753.

Justification: Angry words are no justification for an assault and battery. Neither is it unlawful for a party to forbid an angry person coming upon the former's premises: *Thompson v. Mumma*, 21-65.

The fact that an officer has levied upon property exempt from seizure is no justification for an assault: *Cokely v. State*, 4-477.

In a prosecution for an assault it is not proper to ask the prosecuting witness whether he had not at a previous time

struck the defendant: *State v. Montgomery*, 65-483.

How charged: Information charging defendant with inhumanly beating his own child sufficiently charges the offense of assault and battery; but the name of the person on whom the offense was committed should be given: *State v. Bitman*, 13-485.

An information for assault and battery is sufficient which charges violent beating, wounding, etc., without alleging that such acts were done in anger and in a wilful manner, and with the purpose to hurt and inflict corporal injury: *State v. Boynton*, 75-753.

As to assault included in other crimes, see notes to § 5407.

The act of defendant in shaking his fist at the prosecutor and turning about the horse on which the prosecutor was riding, *held* not to constitute an assault in view of the fact that defendant was protesting against and attempting to prevent prosecutor from riding across defendant's land on the line of a highway not yet opened: *State v. Stoke*, 80-68.

An assault and battery is not justifiable when made for the purpose of taking possession of a house of which another is already in peaceful possession: *State v. McKinley*, 82-445.

Where defendant in pursuance of an unlawful purpose broke into the house of prosecutor and assaulted him, *held*, that the fact that defendant believed prosecutor was going into the house for a gun to use against defendant would not constitute a defense, if it appeared that defendant could have escaped from the peril, if any, by going away: *Ibid*.

SEC. 4775. Carrying concealed weapons. If any person carry upon his person any concealed weapon, or shall wilfully draw and point a pistol, revolver or gun at another, he shall be guilty of a misdemeanor, and be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days; but this section shall not apply to police officers and other persons whose duty it is to execute process or warrants, or make arrests. [C. '73, § 3879.]

The intent or purpose with which the weapon is carried is not an element of the offense, nor is it required that it be carried with defendant's knowledge, or wilfully, that is, with set purpose. The obvious purpose is to forbid the carrying of weapons on the person with the knowledge of the accused that

the weapon was so carried, and that it was a weapon. If the weapon was carried through restraint, or ignorance, or for any innocent or lawful purpose, such fact may be shown by the defense; it need not be negated in the indictment: *State v. Williams*, 70-52.

CHAPTER 3.

OF OFFENSES AGAINST PROPERTY.

SECTION 4776. Burning inhabited dwelling in nighttime. If any person wilfully or maliciously burn in the nighttime the inhabited building, boat or vessel of another, or wilfully and maliciously set fire to any other building, boat or vessel owned by himself or another, by the burning whereof such inhabited building, boat or vessel is burnt in the night-time, he shall be imprisoned in the penitentiary for life or any term of years. [C. '73, § 3880; R., § 4222; C. '51, § 2598.]