ILLINOIS HOMICIDE STATUTE 1930

38 ILL. ANN. STAT. § 358 ET. SEQ.

353. Penalties.] § 3. Any person, firm, association or corporation violating any of the provisions of this Act or any of the reasonable rules and regulations of the Department of Trade and Commerce adopted pursuant to the provisions of this Act shall be subject to a fine of not less than $10.00 nor more than $50.00 for each offense, recoverable in an action of debt at the suit of Attorney General the Director of the Department of Trade and Commerce, or State's attorney of the county where such violation occurs. Each day of violation of the provisions of this Act or the reasonable rules and regulations of the Department of Trade and Commerce shall constitute a separate offense.

GRAVES, GRAVEYARDS AND CEMETERIES

Act of March 27, 1874, resumed

354. Robbing graves.] § 138. Whoever willfully, and without authority, digs up, disinters, removes or conveys away from the place of sepulture or interment thereof, any human body or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, shall be imprisoned in the penitentiary, not less than one nor more than ten years. [As amended by act approved May 21, 1879. L. 1879, p. 116.]

355. Injuring monuments.] § 139. Whoever willfully and maliciously injures, defaces, removes or destroys any vault, tomb, monument, gravestone or other memorial of the dead, or any fence or inclosure about the same, or about any cemetery or place of burial of the dead, or willfully cuts, breaks, removes or injures any tree, shrub or plant within any such inclosure, or about or upon any grave or tomb, or wantonly or maliciously disturbs the contents of any vault, tomb or grave, shall be fined not exceeding $500, or confined in the county jail not exceeding one year, or both.

See L. 1851, p. 111, § 2; L. 1865, p. 105, § 1.

HAZING

AN ACT defining, hazing, making the same a misdemeanor, and fixing the punishment thereof. [Approved May 10, 1901. L. 1901, p. 145.]

356. Hazing declared a misdemeanor—Penalty.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whoever shall engage in the practice of hazing in this state, whereby any one sustains an injury to his person therefrom, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both, in the discretion of the court.

357. Term defined.] § 2. The term "hazing" in this act shall be construed to mean any pastime or amusement, engaged in by students or other people in schools, academies, colleges, universities, or other educational institutions of this state, or by people connected with any of the public institutions of this state, whereby such pastime or amusement is had for the purpose of holding up any student, scholar or individual to ridicule for the pastime of others.

HOMICIDE

Act of March 27, 1874, resumed

358. Murder.] § 140. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned. 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 shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

See R. S. 1845, p. 155, §§ 22, 23, 24.

[a] Elements of murder.
[b] Acts as constituting murder.
[c] Corpus delicti in murder.
[d] Malice.
[e] What constitutes "considerable provocation."
[f] Sufficiency of indictment.
[g] Proof of motive.
[h] Sufficiency of evidence.
[i] Dying declarations.
[j] Acquittal as bar.
[k] Burden of proof.

[a] Elements of murder.

Intent to kill is not essential to the offense of murder; it being sufficient to prove that the unlawful killing was done with malice aforethought, either express or implied. P. v. Heffernan, 312—66, 143 N. E. 411.

The difference between "murder," as defined by this section, and "manslaughter," voluntary and involuntary, defined by sections 143, 144, and 145 (Smith-Hurd, ch. 38, §§ 361-363) is that death or great bodily harm must be the reasonable or probable consequence of the act to constitute murder; for otherwise the malice essential for the killing cannot be presumed. P. v. Crenshaw, 298—412, 131 N. E. 576, 15 A. L. R. 671.

Not essential that death be the probable result of the aggression; sufficient if it is the natural result. Adams v. P., 109—444.

[b] Acts as constituting murder.

Defendants, members of a revolutionary society which had for years publicly advocated the overthrow of social order by violent methods, convened an open-air meeting in a populous city, professedly to discuss the alleged illegal shooting of certain laborers by the police on the previous day, but really to propagate anarchical doctrines, incite the laborers to revolt, and take advantage of their uprising to initiate a massacre (1) of the officers of the law; and (2) of all those interested in its maintenance. Explosive bombs of a peculiar composition were manufactured and distributed by one of the defendants before the meeting, and incendiary speeches were made at the meeting by others of them. The crowd became excited, and, on the police attempting to disperse them, a bomb of the description mentioned was exploded, and revolver shots fired, killing and wounding a large number of police. It was conceded that no one of the defendants threw the bomb with his own hands. *Held* that, being members of an unlawful conspiracy involving the use of

force and violence, and murder having resulted as the natural outcome of that conspiracy, each of the defendants was guilty of murder. Spies v. P., 122—1, 12 N. E. 865.

Where defendants when accosted by officers in the discharge of their duty for a violation of law began shooting without justification, the killing of an officer under such circumstances was murder and not manslaughter. P. v. Watkins, 309—318, 141 N. E. 204.

Where defendants, accused of murder, with others, visited a certain social club with intent to collect certain moneys alleged to be due them, and while there became involved in an altercation wherein decedent was shot, defendant, when accompanying the actual perpetrator of the crime for the purpose of assisting in the commission of an unlawful act, in the course of which the crime was committed, was guilty, although he had no intention that such crime should be committed, and took no part in the actual commission thereof. P. v. Rudecki, 309—125, 140 N. E. 832.

Where certain members of a social club visited another social club for the purpose of collecting certain money claimed to be due to one of its members, and one of the visiting members shot and killed a member of the other club, each member of the visiting party was responsible for the acts of any other member done in carrying out the purpose of the assembly, which was to disturb the public peace. P. v. Rudecki, 309—125, 140 N. E. 832.

Where one provoked a quarrel and was the aggressor in a fist fight, he was engaged in an unlawful act, but not one likely to result in death, and if he had no intention of killing deceased, and the latter unexpectedly attacked him with a deadly weapon, his act in resisting such attack with a knife, which caused the death of deceased, would not be murder, but manslaughter. P. v. Pursley, 302—62, 134 N. E. 128.

A mere attempt of the deceased to strike accused with his fist would not justify the latter in meeting the assault with a deadly weapon, or reduce the grade of the homicide to manslaughter. P. v. Pursley, 302—62, 134 N. E. 128.

Although defendant killed deceased by striking him with his bare fist and thus broke his neck, the killing cannot be deemed murder, for the means were not calculated to inflict death or serious bodily harm, and there could be no presumption of malice, so it is immaterial that defendant threatened to kill deceased at some other time, and that he was a much larger man than deceased. P. v. Crenshaw, 298—412, 131 N. E. 576, 15 A. L. R. 671.

Where several defendants armed themselves with deadly weapons before breaking into a building for the purpose of committing burglary, and one of the number killed a watchman, all must be deemed guilty as principals. P. v. Andrae, 295—445, 129 N. E. 178.

The mere presence of accused when the homicide was committed by another, without interference by accused and also without anything to show a design to encourage, aid, or abet, is insufficient to make accused guilty as principal. P. v. Cione, 293—321, 127 N. E. 646, 12 A. L. R. 267.

[c] Corpus delicti in murder.

The *corpus delicti* in murder consists of the fact of death and the criminal agency of another as the cause of the death. P. v. Hotz, 261—239, 103 N. E. 1007.

[d] Malice.

Malice aforethought as an essential ingredient of murder. Mayes v. P., 106—306; Bolzer v. P., 129—112, 21 N. E. 818; P. v. Bissett, 246—516, 92 N. E. 949; P. v. Curtright, 258—430, 101 N. E. 551.

Killing of public officer by one resisting illegal arrest without color of authority is manslaughter only, unless evidence shows "express malice," which is deliberate intention unlawfully to take human life, manifested by extraordinary circumstances capable of proof, as distinguished from implied malice. P. v. Scalisi, 324—131, 154 N. E. 715.

Implied malice may be inferred from act or manner of committing homicide, but express malice can only be proved by evidence of facts outside of homicide itself, which shows existence of inward intention. P. v. Scalisi, 324—131, 154 N. E. 715.

Proof of general malice as distinguished from a specific intent to kill is sufficient to establish malice aforethought, rendering an unlawful killing murder. P. v. Heffernan, 312—66, 143 N. E. 411.

Malice necessary to constitute murder is presumed where the act is deliberate and likely to be attended with dangerous or fatal consequences. P. v. Crenshaw, 298—412, 131 N. E. 576, 15 A. L. R. 671.

To sustain a conviction of murder, it must appear that the killing was done with malice aforethought, express or implied, and, where accused was provoked by decedent, who first struck him a severe blow with a piece of timber, a sufficient time for accused to become cool must elapse before the killing in order to convict him of murder. P. v. Bartley, 263—69, 104 N. E. 1057.

Malice includes anger, hatred, and revenge, and every other unlawful motive, and denotes an action flowing from a wicked mind, and malice is inferred from any deliberate or cool act, however sudden, which shows a malignant heart. Parsons v. P., 218—386, 75 N. E. 993.

Malice is a question for the jury to be determined from all the facts. Bonardo v. P., 182—411, 55 N. E. 519.

An instruction that malice includes not only anger, hatred, and revenge, "but every other unlawful and unjustifiable motive," is not subject to the objection that the words quoted broaden the instruction to include every motive, whether or not growing out of the evidence in the case on trial. McCoy v. P., 175—224, 51 N. E. 777.

Express malice is a deliberate intent to take the life of another without impelling provocation or under conditions that show a malignant heart. Kota v. P., 136—655, 27 N. E. 53.

Where defendant robbed a man and compelled him to jump from a moving train to his death, malice is implied. Adams v. P., 109—444.

Malice is shown where defendant threw a beer glass at deceased carrying a lighted lamp, which was hit and broke, kerosene spilling on deceased and burning her to death. Mayes v. P., 106—306.

Where defendant deliberately shot and killed a highway commissioner who was removing a fence along his property, malice was implied. Davison v. P., 90—221.

Malice is a question of fact for the jury, but will be implied where there is no provocation for an attack. Peri v. P., 65—17.

[e] **What constitutes "considerable provocation."**
Mere words do not constitute "considerable provocation." Steffy v. P., 130—98, 22 N. E. 861.

Words of abuse will in no case reduce murder to manslaughter. Jackson v. P., 18—269; Steffy v. P., 130—98, 22 N. E. 861.

[f] **Sufficiency of indictment.**
Under the statute defining "murder" as the unlawful killing of a human being, etc., and the statute providing that an indictment shall be deemed sufficient which states the offense in the terms and language of the statute, or so plainly that the nature of the offense may be easily understood by the jury, an indictment charging that the act was done feloniously, etc., was sufficient, though the word "unlawfully" was not used. P. v. St. Clair, 244—444, 91 N. E. 573.

In a murder prosecution, it is not necessary that the names of the witnesses and the words "A true bill" be indorsed on the indictment in the handwriting of the foreman. P. v. Corder, 306—264, 137 N. E. 845.

Under Cr. Code, div. 11, § 6 (Smith-Hurd, ch. 38, § 716) and this section, in indictment for murder by shooting it is not necessary to allege the particular variety of firearm used, nor the particular variety of load in the firearm, nor the manner in which the firearm was held or discharged, and where it appears that the indictment was returned within a year and a day after the cause of death was administered, it is not necessary to allege the exact date of death. P. v. Corder, 306—264, 137 N. E. 845.

The fact that some of the counts of an indictment charged the defendant under one name only, while other counts charged him under that name and an alias, does not warrant quashing the indictment as charging two different persons with having committed the crime. P. v. Weir, 295—268, 129 N. E. 116.

Where an indictment for murder averred that the assault was made on "the person of F., a human being, then and there being," in the averment of the wounds on the head of F. which caused his death it was not necessary to charge that he was a human being. Kirkham v. P., 170—9, 48 N. E. 465; Palmer v. P., 138—356, 28 N. E. 130.

[g] **Proof of motive.**
Proof that the home property was owned by the husband and wife as joint tenants, and that the husband had insured his life in favor of his wife, without other evidence, does not establish a motive for the killing of the husband by the wife. P. v. Holtz, 294—143, 128 N. E. 341.

Proof of motive for homicide is not alone sufficient to sustain a conviction, without other evidence which, in connection with the proof of motive, convinces of the truth of the charge beyond a reasonable doubt. P. v. Holtz, 294—143, 128 N. E. 341.

While proof of motive is immaterial, where the killing by defendants is proved beyond a reasonable doubt, the presence or absence of a motive is material and competent in determining whether defendants actually did commit the crime, particularly where the evidence is entirely circumstantial. P. v. Holtz, 294—143, 128 N. E. 341.

[h] **Sufficiency of evidence.**
In a trial for murder the evidence showed that deceased and defendant engaged in a fight, in which defendant had the worst of it; that a few minutes later a number of other men attacked deceased, and that he received a mortal cut in the neck. One witness testified that he saw defendant cut deceased, but this witness' character for veracity was impeached. The testimony was very conflicting, and several witnesses testified that defendant took no part in the second fight, and that deceased was not cut in the first fight. *Held*, that the evidence did not justify a conviction. Raggio v. P., 135—533, 26 N. E. 377.

Mere proof that defendants had an opportunity to commit the homicide, without proof excluding an opportunity by any one else to commit it, is not sufficient. P. v. Holtz, 294—143, 128 N. E. 341.

The evidence showed that defendant and deceased had been fighting, and that, after the fight had ceased, defendant deliberately stabbed and killed the deceased. They had previously been good friends. *Held*, that the evidence justified a conviction. Kota v. P., 136—655, 27 N. E. 53.

While defendant was standing looking at a locomotive, deceased approached him, and they engaged in the fight in which deceased was stabbed. The evidence was contradictory as to who struck the first blow; but just before they separated deceased was on top of defendant, striking him about the head, and came away leaving him lying on the ground. Defendant had threatened deceased's life on several occasions, and also in a letter written to deceased's brother. After the affray defendant made contradictory statements as to how the cutting had been done. *Held*, that though defendant's conduct in making the threats was reprehensible, and his contradictory statements as to the cutting could not be reconciled with honesty of purpose, the evidence was not sufficient to sustain a conviction for murder. Westbrook v. P., 126—81, 18 N. E. 304.

Deceased, an express messenger on a railroad car (No. 18), was murdered somewhere between J. and M. Defendant W. was acting as baggage-man on car No. 34, and defendant S. as rear brakeman. The two cars were next to the engine. Before the train started defendants were seen together in the baggage car in conversation. The doors of the cars could be opened from the inside by a knob, but from the outside only by a key. W. stated that he heard a step behind him, and saw a man pointing a revolver at his head, who commanded him not to move; that he then heard the breaking of glass in the transom in the roof, and saw a man's hand, holding a revolver, pointed down through it; that he sat still until the train reached M., when he discovered that both had disappeared, and gave the alarm; that he did not hear the man come in or go out. The safe in the express car was found to be opened by means of a key taken from the deceased, and robbed of $21,000. In the closet of the passenger car, where S. was principally employed, was found a piece of one of the canceled vouchers, which were in the safe at the time. The defendants had no means except their wages, but soon after the robbery they indulged in many extravagances out of keeping with their visible means. To explain this they claimed to have received money from their relatives. S. was shown to have paid out a considerable number of $50 and $100 bills, which were proved to be the identical bills stolen from the express company. It was proved, that W. had cautioned S. to be careful how he spent his money, as people were beginning to suspect him. *Held*, that the evidence was sufficient to support a verdict finding both defendants guilty of murder. Watt v. P., 126—9, 18 N. E. 340.

[i] **Dying declarations.**
It is for the trial court, in the first instance, to determine on the admissibility of dying declaration

from proof of the condition of deceased's mind, as to belief in impending death, at the time it was made. P. v. Selknes, 309—113, 140 N. E. 852.

"Dying declarations" are such as are made relating to the facts of an injury of which the party afterward dies, under the fixed belief and moral conviction that immediate death is inevitable, without opportunity for repentance, and without hope of escaping the impending danger. P. v. Selknes, 309—113, 140 N. E. 852; P. v. Corder, 306—264, 137 N. E. 845.

For declarations to be admissible as dying declarations, it is not necessary that the deceased actually be at the point of death, or that the statement be made at the time deceased is breathing his last. P. v. Corder, 306—264, 137 N. E. 845.

Whether statements made by wounded persons are dying declarations must be determined by the court on preliminary proof, and if the proof satisfies the court, beyond a reasonable doubt, that the declaration was made in extremity, and was in fact a dying declaration, it should be admitted in evidence. P. v. Corder, 306—264, 137 N. E. 845.

[j] Acquittal as bar.

Though the killing of one policeman and the shooting of another with intent to murder were parts of the same affray, defendant's acquittal on the charge of murder did not bar a prosecution for the assault on the other policeman with intent to murder. P. v. Stephens, 297—91, 130 N. E. 459.

[k] Burden of proof.

While the people are required to prove the commission of the forbidden act beyond a reasonable doubt, they are never required to prove the cause or reason that induced the homicide, if, without such proof, the evidence is sufficient to show that the act was done by accused, for, if accused committed the act, the question whether he had a motive, or what it was, is immaterial. P. v. Corder, 306—264, 137 N. E. 845.

359. Petit treason—Murder.] § 141. The distinction between petit treason and murder is abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly.

See R. S. 1845, p. 157, § 42.

360. Murder — Punishment.] § 142. Whoever is guilty of murder, shall suffer the punishment of death, or imprisonment in the penitentiary for his natural life, or for a term not less than fourteen years. If the accused is found guilty by a jury, they shall fix the punishment by their verdict; upon a plea of guilty, the punishment shall be fixed by the court.

See R. S. 1845, p. 155, § 24; L. 1867, p. 90, § 1; R. S. 1874, p. 374, § 142.

[a] Necessity of admission of evidence.
[b] Punishment.
[c] Jury to fix punishment.
[d] Sufficiency of verdict.

[a] Necessity of admission of evidence.

Section necessitates the admission of evidence bearing on the offense so as to fix the penalty. Fletcher v. P., 117—184, 7 N. E. 80; Norwacryk v. P., 139—336, 28 N. E. 961; Montag v. P., 141—75, 30 N. E. 337.

Upon a trial for murder of a girl in an attempt to kill her father, it is reversible error to refuse to allow the defendant to show that, on the day before the homicide, the girl's father armed himself and went to defendant's house with the avowed purpose of killing him while the defendant was concealed in the house, since such evidence is admissible as affecting the extent of the punishment to be inflicted. Nowacryk v. P., 139—336, 28 N. E. 961.

[b] Punishment.

Section warrants a sentence of imprisonment for 99 years. Hickam v. P., 137—75, 27 N. E. 88.

[c] Jury to fix punishment.

Under the statute which recognizes no degrees of murder, the jury in every instance passes, not only upon the question of defendant's guilt, but upon the turpitude of the crime, and the proper punishment within the limits prescribed by the statute. P. v. Heffernan, 312—66, 143 N. E. 411.

[d] Sufficiency of verdict.

A verdict, finding defendant guilty of murder, and fixing his punishment "at imprisonment in the penitentiary for a term of 14 years, not less than 14 years," *held* not void, the term being plainly fixed at 14 years, the minimum term the statute allows the jury to fix, so that the language "not less than 14 years" was but surplusage. P. v. Klein, 305—141, 137 N. E. 145.

A verdict finding defendant guilty and fixing the penalty "at the penitentiary for his natural life" was not void, as the only punishment provided by law at the penitentiary is imprisonment, and a judgment on such verdict could be pleaded in bar to another indictment. P. v. Bundy, 295—322, 129 N. E. 189.

361. Manslaughter defined.] § 143. Manslaughter is the unlawful killing of a human being without malice, express or implied, and without any mixture of deliberation whatever. 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.

See R. S. 1845, p. 155, § 25.

[a] Elements of offense.
[b] Acts constituting manslaughter.
[c] Distinguished from murder.
[d] Malice.
[e] Sufficiency of indictment.
[f] Instructions.

[a] Elements of offense.

The intent to kill or malice is not a necessary ingredient in "manslaughter," defined by statute as being the unlawful killing of a human being without malice, express or implied and without deliberation. P. v. Adams, 289—339, 124 N. E. 575.

[b] Acts constituting manslaughter.

Where one person attacks another without justifiable cause, and without malice, express or implied, and without any mixture of deliberation whatever, and by the use of a deadly weapon kills him, the killing amounts only to manslaughter, and, if the proof on the part of the prosecution leaves a reasonable doubt in the minds of the jury as to whether the killing is murder or manslaughter, he is entitled to the benefit of that doubt, and can only be convicted of the lesser crime. P. v. Pursley, 302—62, 134 N. E. 128.

Killing of public officer by one resisting illegal arrest without color of authority is manslaughter only,

unless evidence shows "express malice," which is deliberate intention unlawfully to take human life, manifested by extraordinary circumstances capable of proof, as distinguished from implied malice. P. v. Scalisi, 324—131, 154 N. E. 715; P. v. White, 333—512, 165 N. E. 168.

Although defendant killed deceased by striking him with his bare fist and thus broke his neck, the killing cannot be deemed murder, for the means were not calculated to inflict death or serious bodily harm, and there could be no presumption of malice, so it is immaterial that defendant threatened to kill deceased at some other time, and that he was a much larger man than deceased. P. v. Crenshaw, 298—412, 131 N. E. 576, 15 A. L. R. 671.

To be criminally liable for killing caused by his reckless driving of an automobile defendant must have been guilty of gross or wanton negligence; "gross negligence" being negligence bordering on recklessness, "wanton negligence" in the running of motors and vehicles implying a positive disregard of the rules of diligence and a reckless heedlessness of consequences, and "ordinary negligence" denoting merely a negative quality in a person neglecting a duty. P. v. Adams, 289—339, 124 N. E. 575.

Where decedent and accused had fought and had been separated, and decedent had first picked up a heavy piece of timber, and had struck accused a severe blow, and accused, in the midst of the affray, procured his gun and loaded it, and decedent picked up an ax and approached accused, who then shot decedent, accused was not guilty of murder, because of the absence of premeditation and could be convicted, at most, only of manslaughter. P. v. Bartley, 263—69, 104 N. E. 1057.

[c] Distinguished from murder.

The difference between "murder," as defined by Cr. Code, § 140 (Smith-Hurd, ch. 38, § 358), and "manslaughter," voluntary and involuntary, defined by sections 143, 144, and 145 (Smith-Hurd, §§ 361, 362, 363), is that death or great bodily harm must be the reasonable or probable consequence of the act to constitute murder; for otherwise the malice essential for the killing cannot be presumed. P. v. Crenshaw, 298—412, 131 N. E. 576, 15 A. L. R. 671.

[d] Malice.

Implied malice may be inferred from act or manner of committing homicide, but express malice can only be proved by evidence of facts outside of homicide itself, which shows existence of inward intention. P. v. Scalisi, 324—131, 154 N. E. 715.

[e] Sufficiency of indictment.

An indictment for manslaughter need not charge malice. P. v. Adams, 289—339, 124 N. E. 575.

[f] Instructions.

Instruction on manslaughter in the language of section *held* not misleading as permitting jury to believe that proof of either voluntary or involuntary manslaughter could be made under indictment charging voluntary manslaughter only, in view of fact that jury found defendant guilty of voluntary manslaughter. P. v. Kessler, 333—451, 164 N. E. 840.

Whether the giving of an instruction on manslaughter in the language of section is misleading will depend upon the facts of the particular case. P. v. Kessler, 333—451, 164 N. E. 840.

362. Manslaughter voluntary.] § 144. 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. 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.

See R. S. 1845, p. 155, §§ 26, 27.

[a] Does not apply to plea of self defense.
[b] Distinguished from murder.
[c] Provocation and passion.
[d] Intoxication.
[e] Instructions.

[a] Does not apply to plea of self defense.

Criminal Code, § 144 (Smith-Hurd, ch. 38, § 362), providing that voluntary manslaughter must be the result of a sudden violent impulse of passion supposed to be irresistible, is not applicable to a plea of self-defense. P. v. Davis, 300—226, 133 N. E. 320.

[b] Distinguished from murder.

The difference between murder as defined by Criminal Code, § 140 (Smith-Hurd, ch. 38, § 358), and manslaughter, voluntary and involuntary, defined by this and the preceding and following sections, is that death or great bodily harm must be the reasonable or probable consequence of the act to constitute murder; for otherwise the malice essential for the killing cannot be presumed. P. v. Crenshaw, 298—412, 131 N. E. 576, 15 A. L. R. 671.

[c] Provocation and passion.

A mere attempt of the deceased to strike accused with his fist would not justify the latter in meeting the assault with a deadly weapon, or reduce the grade of the homicide to manslaughter. P. v. Pursley, 302—62, 134 N. E. 128.

"Manslaughter" is the unlawful killing of a human being without malice, express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible. In "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. 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 to be heard, the killing shall be attributed to deliberate revenge, and punished as murder. P. v. Bissett, 246—516, 92 N. E. 949.

Murder is reduced to manslaughter only where the homicide is committed under an irresistible impulse without premeditation. Nowacryk v. P., 139—336, 28 N. E. 961.

Provocation must be great to reduce murder to manslaughter. Crosby v. P., 137—325, 27 N. E. 49.

Where the evidence shows that defendant had frequently threatened to kill the man he is charged with murdering, and that he finally did shoot him without provocation, except his refusal to shake hands with him, the evidence is wanting in those elements which

constitute a case of manslaughter, as sudden impulse of passion. Dacey v. P., 116—555, 6 N. E. 165.

Words alone will not amount to provocation to reduce murder to manslaughter. Jackson v. P., 18—269; Steffy v. P., 130—98, 22 N. E. 861; Bonardo v. P., 182—411, 55 N. E. 519.

[d] **Intoxication.**
Intoxication will not reduce murder to manslaughter. Rafferty v. P., 66—118.

[e] **Instructions.**
In murder prosecution, in which the only defense was that defendant had killed deceased in self-defense, instruction on manslaughter, embracing the substance of this section, defining voluntary manslaughter and instructing jury that killing was not manslaughter, if the person who did the killing "acted premeditatedly, or prepared for the act or intended to kill the other a sufficient length of time before the killing to have enabled him to resist the impulse to kill," *held* erroneous, because misleading, since jury could have inferred therefrom that the killing was murder, if defendant had intentionally killed the deceased. P. v. Bradley, 324—294, 155 N. E. 301.

Instruction in prosecution for voluntary manslaughter in the language of section, which amplifies definition of voluntary manslaughter, *held* not erroneous because of not permitting jury to consider that defendant might have acted in self-defense where such defense was not interposed. P. v. Kessler, 333—451, 164 N. E. 840.

363. Manslaughter involuntary.] § 145. Involuntary manslaughter shall consist in the killing of a human being without any intent to do so, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: Provided, always, 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.

[a] **Elements of offense.**
[b] **Causing death by abortion.**
[c] **Death from blow of fist.**
[d] **Death from firing pistol.**
[e] **Reckless driving of automobile.**
[f] **Instructions.**

[a] **Elements of offense.**
The intent to kill is not a necessary ingredient in manslaughter. P. v. Adams, 289—339, 124 N. E. 575.

[b] **Causing death by abortion.**
Where one charged with murder by abortion has by a conviction for manslaughter been acquitted of the offense of murder and granted a new trial, the fact that this section contains the provision that, if such involuntary killing is committed in the prosecution of a felonious intent, the offense shall be deemed murder, and that criminal abortion is a felony, does not preclude a conviction for manslaughter. P. v. Carrico, 310—543, 142 N. E. 164.

[c] **Death from blow of fist.**
Death resulting from blow of fist, where there was no intent to kill, merely manslaughter. P. v. Mighell, 254—53, 98 N. E. 236.

[d] **Death from firing pistol.**
If a person contrary to law, good order, and public security fires off a pistol in the streets of a town, whereby death is produced, he must answer criminally for it, whether the act be *malum in see*, or *malum prohibitum*. P. v. Camberis, 297—455, 130 N. E. 712.

[e] **Reckless driving of automobile.**
If a person by careless or furious driving of an automobile unintentionally runs over another and kills him, it is manslaughter. P. v. Camberis, 297—455, 130 N. E. 712.

Where person, with wilful and wanton negligence, drives his automobile in reckless manner, in utter disregard of safety of others, and runs over another and kills him, even though unintentionally, it will be "manslaughter." P. v. Sikes, 328—64, 159 N. E. 293.

One doing an act of gross carelessness even in the performance of what is lawful, as the driving of an automobile, and a *fortiori*, of what is not lawful, or in negligently omitting a legal duty, whereby death ensues, is indictable for murder or manslaughter. P. v. Camberis, 297—455, 130 N. E. 712.

To be criminally liable for killing caused by his reckless driving of an automobile defendant must have been guilty of gross or wanton negligence; "gross negligence" being negligence bordering on recklessness, "wanton negligence" in the running of motors and vehicles implying a positive disregard of the rules of diligence and a reckless heedlessness of consequences, and "ordinary negligence" denoting merely a negative quality in a person neglecting a duty. P. v. Adams, 289—339, 124 N. E. 575.

[f] **Instructions.**
In a prosecution for murder under Smith-Hurd, ch. 38, § 373a, by selling poisonous liquor a charge that the sale of liquor was an unlawful act and that if death resulted therefrom the jury might take such fact into consideration on the question of manslaughter was not misleading. P. v. Tokoly, 313—177, 144 N. E. 808.

364. Manslaughter—Punishment.] § 146. Whoever is guilty of manslaughter shall be imprisoned in the penitentiary for from one to fourteen years. [As amended by act approved July 6, 1927. L. 1927, p. 398.]

[a] **Parole law applies.**
[b] **Term of imprisonment.**
[c] **Punishment.**

[a] **Parole law applies.**
Defendant convicted of manslaughter was properly sentenced under the Parole Law, which does not operate to increase the minimum sentence for the offense, since under its provisions a convict may be discharged without being paroled if the Governor consents, or may be paroled after serving the minimum sentence provided by law. P. v. Doras, 290—188, 125 N. E. 2.

The parole law (sections 801-815, *post*), providing that in certain cases a convicted prisoner shall be sentenced to the penitentiary, but that the court shall not fix the term of his imprisonment, which shall not be less than one year nor greater than the term provided by law for the crime for which he was convicted, is applicable to manslaughter; and where accused was convicted of manslaughter, and the verdict fixed his punishment at imprisonment in the penitentiary, the court properly sentenced him to imprisonment until discharged by the state board of pardons, provided such term should not exceed the maximum term for the crime for which he was convicted and sentenced. P. v. Peters, 246—351, 92 N. E. 889.

[b] Term of imprisonment.
The term of parole of defendant convicted of manslaughter cannot be considered part of term of his imprisonment in the penitentiary, to render sentence under the Parole Law erroneous as increasing the minimum sentence for manslaughter from a year to 18 months. P. v. Doras, 290—188, 125 N. E. 2.

[c] Punishment.
Under Act of 1859, the punishment cannot be for less than one year. Mullen v. P. 31—444.

365. Time of death.] § 147. 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 hurt was done shall be reckoned the first.

See R. S. 1845, p. 156, § 30.

366. Justifiable homicide.] § 148. Justifiable homicide is the killing of a human being in necessary self-defense, or in the defense of habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, 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. 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.

See R. S. 1845, p. 156, §§ 32, 33.

[a] Self defense.
[b] Duty to retreat.
[c] Defense of habitation.
[d] Defense of relatives.
[e] Killing to prevent trespass.
[f] Instructions.

[a] Self defense.
All that a man who has taken his assailant's life is bound to show, in order to excuse himself, is that he did what a reasonable person would have done under the circumstances, and the defense may be invoked by the timid, as well as the strong. P. v. McGinnis, 234—68, 84 N. E. 687.

If it appeared to one charged with murder that under the circumstances under which he was placed, and acting as a reasonable person, he was in danger of losing his life, or of receiving great bodily harm, then he was warranted in using such force as was necessary, or apparently necessary, to defend himself against the attack of deceased. P. v. Durand, 307—611, 139 N. E. 78.

It is not the law that, before a person in self-defense can be justified in resorting to a deadly weapon and using it in a deadly manner, it must appear that he was in imminent danger of death, or of receiving great bodily harm, or that a reasonable person in like circumstances would have believed that he was in peril of losing his life, or sustaining great bodily harm, and that he could not otherwise have saved his life or person from great bodily harm. P. v. Durand, 307—611, 139 N. E. 78.

[b] Duty to retreat.
When a person is in a place where he has a lawful right to be, and is unlawfully assaulted by another and put in apparent danger of his life, or great bodily harm, he need not attempt to escape, but may lawfully stand his ground and meet force with force, even to the taking his assailant's life if necessary, or apparently necessary, to save his own life, or to prevent great bodily harm. P. v. Durand, 307—611, 139 N. E. 78.

[c] Defense of habitation.
One who invites assault cannot defend on ground of defense of habitation. Kinney v. P., 108—519; Greschia v. P., 53—295; P. v. Grosenheider, 266—324, — N. E. —.

Householder may not kill another merely because he is in his house, where no intention to commit felony or element of danger is manifest. P. v. Black, 309—354, 141 N. E. 170.

Danger of life or great bodily harm justified killing in defense of habitation which assailant is wantonly seeking to enter. Hayner v. P., 213—142, 72 N. E. 792; Reins v. P., 30—256; Brown v. P., 39—407; Foster v. Shepherd, 258—164, 101 N. E. 411.

[d] Defense of relatives.
Actual or real danger is not indispensable to the defense of one's realtives. McCoy v. P., 175—224, 51 N. E. 777.

[e] Killing to prevent trespass.
Killing to prevent trespass is not justifiable except to prevent forcible entry into dwelling. Davison v. P., 90—221.

[f] Instructions.
In view of this section, instructing that threats of deceased cannot avail defendant unless he was actually assailed or had sufficient evidence to convince any reasonable person, like situated, that he was in danger of great bodily injury or of losing his life, was not erroneous, but statement that circumstances "must convince defendant acting as reasonable person under circumstances" would have been more accurate. P. v. Scimeni, 316—591, 147 N. E. 484.

Instructions following literally sections 148 and 149 of the Criminal Code should not be combined in one, as they are seldom, if ever, applicable to the same case or to the same state of facts. P. v. Jones, 313—335, 145 N. E. 110; P. v. Garippo, 321—157, 151 N. E. 584.

Should not be embodied in an instruction where the only defense is self defense. P. v. Durand, 307—611, 139 N. E. 78.

367. Self-defense.] § 149. 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.

See R. S. 1845, p. 156, § 34.

[a] Construction.
[b] Nature of law of self defense.
[c] Nature of danger to justify killing.
[d] Reasonableness of belief in danger.
[e] Who may avail of self defense.
[f] Defense of relative.
[g] Duty to decline further struggle.
[h] Instructions.

[a] **Construction.**
This section must be construed in connection with section 366, *ante*. Gainey v. P., 97—270; Kinney v. P., 108—519; Appleton v. P., 171—473, 49 N. E. 708; McCoy v. P., 175—224, 51 N. E. 777; Waller v. P., 209—284, 70 N. E. 681; Mackin v. P., 214—232, 73 N. E. 344; Kipley v. P., 215—358, 74 N. E. 379.

—**"Serious bodily injury."**
Words "serious bodily injury" are equivalent to "great bodily harm." Lawlor v. P., 74—228.

[b] **Nature of law of self-defense.**
The law of self-defense is the law of necessity which must be either real or apparently real, so that there is a reasonable apprehension of loss of life or great bodily harm, and it appears that there is no other alternative than killing the assailant. P. v. Stapleton, 300—471, 133 N. E. 224.

A man may deliberately and intentionally use a deadly weapon in self-defense, and may intend to kill his opponent, and yet not be guilty of either murder or manslaughter. P. v. Davis, 300—226, 133 N. E. 320.

[c] **Nature of danger to justify killing.**
The danger must be apparently imminent, urgent and pressing, though not necessarily real. Price v. P., 131—223, 23 N. E. 639; Kota v. P., 136—655, 27 N. E. 53; McCoy v. P., 175—224, 51 N. E. 777; P. v. Hubert, 251—514, 96 N. E. 294.

If the circumstances induce in the accused a reasonable and well-grounded belief that he is actually in present danger of losing his life or receiving great bodily harm, he is justified in defending himself, whether the danger is real or only apparent. P. v. Stapleton, 300—471, 133 N. E. 224; Kipley v. P., 215—358, 74 N. E. 379; Mackin v. P., 214—232, 73 N. E. 344.

Homicide must be apparently necessary to save defendant's life or prevent great bodily harm to be justified in self-defense. Davison v. P., 90—221; Cannon v. P., 141—270, 30 N. E. 1027.

Actual and positive danger is not indispensable to justify killing in self-defense. Hopkinson v. P., 18—264; Schnier v. P., 23—11; Maher v. P. 24—241; Roach v. P., 77—25; Steinmeyer v. P., 95—383; Panton v. P., 114—505, 2 N. E. 411; Enright v. P., 155—32, 39 N. E. 561; Mackin v. P., 214—232, 73 N. E. 344.

[d] **Reasonableness of belief in danger.**
The fear under the influence of which a person may take the life of his assailant is the fear of a reasonable person excited by the circumstances surrounding him at the time, and in determining whether the fear was sufficient the intelligence and experience of the person committing the homicide need not be considered. P. v. Williams, 240—633, 88 N. E. 1053.

Defendant need not show that he acted as a man of "ordinary judgment and courage." P. v. McGinnis, 234—68, 84 N. E. 687.

Justifiable homicide is the killing of a human being in necessary self-defense, or under circumstances sufficient to excite the fears of a reasonable person, and induce him as a reasonable person to believe that in order to save his own life or prevent his receiving great bodily harm it was necessary to take the life of the person killed. Kota v. P., 136—655, 27 N. E. 53.

The apparent danger must create a reasonable belief of peril to life or great bodily harm, to justify homicide. Reins v. P., 30—256; Kinney v. P., 108—519.

Where an armed man who was confining an unarmed man in a corn crib could have put away his revolver and retired in safety, there was no reasonable belief that the danger was so great that it was necessary to continue the imprisonment of the other in order to save his own life. McNay v. Stratton, 9 A. 215. See also Lyons v. P., 137—602, 27 N. E. 677.

[e] **Who may avail of self-defense.**
Self-defense not available to defendant where acted out of revenge with no reasonable cause to apprehend injury. Morello v. P., 226—388, 80 N. E. 903.

[f] **Defense of relative.**
Right of self-defense extends to the killing, by a brother, of assailant of his sister. P. v. Forte, 269—505, 110 N. E. 47.

[g] **Duty to decline further struggle.**
Where it is not disputed that deceased was the aggressor in a fatal difficulty, the defendant, accused of murder, is not required, in order to establish the justification of self-defense, to show that he had really and in good faith endeavored to decline any further struggle before the assault was made on him. Filippo v. P., 224—212, 79 N. E. 609. See also Mackin v. P., 214—232, 73 N. E. 344.

An officer in the discharge of his duty is not required to retreat when attacked to justify killing his assailant in self-defense. Lynn v. P., 170—527, 48 N. E. 964.

Where deceased struck defendant and then retreated, defendant who pursued and killed him cannot plead self-defense. Bonardo v. P., 182—411, 55 N. E. 519.

[h] **Instructions.**
In homicide prosecution a charge on self-defense in the language of section is improper in that it does not give the jury any accurate knowledge of the law. P. v. Garines, 314—413, 145 N. E. 699.

Instructions following literally sections 148 and 149 of the Criminal Code should not be combined in one, as they are seldom, if ever, applicable to the same case or the same state of facts. P. v. Jones, 313—335, 145 N. E. 110.

In a prosecution for homicide, where the accused claimed self-defense, an instruction embodying in part Cr. Code, § 144 (Smith-Hurd, ch. 38, § 362), defining voluntary manslaughter, where the killing is the result of sudden impulse or passion supposed to be irresistible, had no application to the plea of self-defense. P. v. Jarvis, 306—611, 138 N. E. 102.

An instruction concerning self-defense which was an exact copy of this and the preceding section, fairly connected, stated the law of self-defense and was not misleading. P. v. Laures, 289—490, 124 N. E. 585; Kipley v. P., 215—358, 74 N. E. 379.

An instruction ignoring the doctrine of apparent danger, and limiting the right of self-defense to defendant's having inflicted the wound to save his own life, or save himself from great bodily harm (that is, to actual danger), is erroneous. Steiner v. P., 187—244, 58 N. E. 383.

Giving an instruction that, if a person kills another in self-defense, it must appear that his danger was such that the killing of the other was "absolutely necessary," which followed the words of this section, is not error where the jury were further instructed that: "Actual or real danger is not indispensable to the defense of one's relatives. Persons threatened with danger, or their relatives, must judge from appear-

ances, and determine therefrom the actual state of things surrounding them or their relatives. If such persons act from honest fears, induced by reasonable evidence, they are not responsible for a mistake as to the extent of danger." And where the jury were further instructed, they must consider the instructions as one entire series, since the combined instructions fairly present the law to the jury so as not to mislead them. McCoy v. P., 175—224, 51 N. E. 777.

368. By an officer resisted.] § 150. If any 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 treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting or other felony, and he be resisted in the endeavor to take the person accused, and, to prevent the escape of the accused, by reason of such resistance, he 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 accused person.

See chapter 108, § 39; R. S. 1845, p. 156, § 35.

Officer killing convict, see Penitentiary, ch. 108, § 38, *post.*

369. According to lawful sentence.] § 151. 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.

See R. S. 1845, p. 156, § 36.

370. By misadventure.] § 152. Excusable homicide, by misadventure, is when a person in doing a lawful act, without any intention of killing, yet unfortunately kills another person, 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 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.

See R. S. 1845, p. 157, § 37.

371. Other instances.] § 153. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

See R. S. 1845, p. 157, § 38.

372. Justifiable or excusable—Defendant discharged.] § 154. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

See R. S. 1845, p. 157, § 39.

373. Burden of proof.] § 155. 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.

See R. S. 1845, p. 157, § 40.

[a] Self-defense.
[b] Justification.
[c] Proof of motive.
[d] Matters in mitigation.
[e] Instructions.
[f] Evidence.

[a] Self defense.

In a murder case, the burden of proof never shifts to the defendant, no matter what his defense may be, and, where the defense is self-defense, it is sufficient to acquit if his evidence on self-defense, together with all the other evidence in the case creates in the minds of the jury a reasonable doubt of his guilt. P. v. Durand, 307—611, 139 N. E. 78.

In murder trial, where all the facts proved by the prosecution show that accused claimed to do the act resulting in death in self-defense, a burden rests upon the prosecution to show beyond a reasonable doubt that the act was criminal. P. v. Willy, 301—307, 133 N. E. 859.

Instruction that the burden is on the state to show accused was not acting in self-defense, was erroneous. Lyons v. P., 137—602, 27 N. E. 677.

It is error to charge that "it is incumbent on the defendant satisfactorily to establish the defense of self-defense." Appleton v. P., 171—473, 49 N. E. 708.

[b] Justification.

Justification or facts in mitigation must be proved by accused, after the homicide has been shown. Wallace v. P., 159—446, 42 N. E. 771; Smith v. P., 142—117, 31 N. E. 599.

Where the evidence of the prosecution shows a justification the defendant may rest on that evidence without further proof. Alexander v. P., 96—96.

[c] Proof of motive.

Proof of motive for homicide is not alone sufficient to sustain a conviction without other evidence which, in connection with proof of motive, convinces of the truth of the charge beyond a reasonable doubt. P. v. Holtz, 294—143, 128 N. E. 341.

While proof of motive is immaterial, where the killing by defendants is proved beyond a reasonable doubt, the presence or absence of a motive is material and competent in determining whether defendants actually did commit the crime, particularly where the evidence is entirely circumstantial. P. v. Holtz, 294—143, 128 N. E. 341.

While the people are required to prove the commission of the forbidden act beyond a reasonable doubt, they are never required to prove the cause or reason that induced the homicide, if, without such proof, the evidence is sufficient to show that the act was done by accused, for, if accused committed the act, the question whether he

had a motive, or what it was, is immaterial. P. v. Corder, 306—264, 137 N. E. 845.

[d] **Matters in mitigation.**
The burden of proving mitigating circumstances, or those excusing the homicide, is on accused, where the killing is proved. Parsons v. P., 218—386, 75 N. E. 993.

In a prosecution for murder, an instruction that, the killing being proved, the burden of producing sufficient evidence to raise a reasonable doubt in the defendant's favor of the existence of facts or 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 accused was justified or excused in committing the homicide, was not misleading in its reference to manslaughter on the ground that the defense of insanity was of such a nature that it could not mitigate the crime so as to make it manslaughter instead of murder. P. v. Casey, 231—261, 83 N. E. 278.

[e] **Instructions.**
An instruction in the language of this section in effect that, if jury believes killing has been shown, burden of proof shifts to defendant, should never be given in a homicide case. P. v. Sterankovich, 313—556, 145 N. E. 172; P. v. Durand, 307—611, 139 N. E. 78.

An instruction in the exact words of Chapter 38, § 155, that, "the killing being proved, the burden of proving circumstances that justify or excuse the homicide will devolve upon the accused, unless the proof on the part of the prosecution sufficiently manifests that the accused was justified or excused in committing the homicide," is proper, and does not assume that the deceased was killed by the defendant, or excuse the prosecution from proving that the killing was felonious. Duncan v. P., 134—110, 24 N. E. 765.

[f] **Evidence.**
Mere proof that defendants had an opportunity to commit the homicide, without proof excluding an opportunity by anyone else to commit it, is not sufficient. P. v. Holtz, 294—143, 128 N. E. 341.

Evidence *held* to justify finding that defendant was guilty of manslaughter, and that shooting was not done in necessary self-defense. Kipley v. P., 215—358, 74 N. E. 379.

AN ACT to punish persons knowingly and wilfully selling, bartering or furnishing for beverage purposes wood alcohol, compounds or preparations containing wood alcohol, or any poisonous liquor, which causes death, from its use as a beverage. [Approved June 25, 1923. L. 1923, p. 317.]

373a. Causing death by poisonous liquor.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Whoever knowingly and wilfully sells, barters or furnishes any wood alcohol, or any compound or preparation containing wood alcohol, or any poisonous liquor, to be used for beverage purposes, and death results from such use, shall be guilty of murder and punished accordingly.
[See § 186.]

[a] Constitutionality.
[b] Sufficiency of indictment.
[c] Instructions.
[d] Evidence.

[a] **Constitutionality.**
Act is not amendatory of previous law in sense intended by Const. art. 4, § 13, and is not invalid because not setting out act or section amended. P. v. Tokoly, 313—177, 144 N. E. 808.

[b] **Sufficiency of indictment.**
Indictment under section substantially in language of act and which advised defendant of nature of charge against him *held* sufficient under Smith-Hurd Stat. 1923, ch. 38, par. 716. P. v. Tokoly, 313—177, 144 N. E. 808.

[c] **Instructions.**
Instruction that the sale of the liquor was an unlawful act, and that if death resulted therefrom the jury might take such fact into consideration on the question of manslaughter was not misleading in view of Smith-Hurd, ch. 38, § 363. P. v. Tokoly, 313—177, 144 N. E. 808.

[d] **Evidence.**
In a prosecution under the section evidence that defendant made other sales on the same day to other persons, who died or became ill is admissible as tending to show that the sale in question was not an accident or mistake. P. v. Tokoly, 313—177, 144 N. E. 808.

INCEST

Act of March 27, 1874, resumed

374. Father with daughter.] § 156. If a father shall rudely and licentiously cohabit with his own daughter, the father shall be imprisoned in the penitentiary for a term of not less than one year and not exceeding twenty years. [As amended by act approved June 28, 1919. L. 1919, p. 426.]

See R. S. 1845, p. 174, § 126.

[a] Punishment to be fixed by verdict.
[b] Daughter not accomplice.
[c] Solicitation to commit offense.
[d] Sufficiency of indictment.
[e] Sufficiency of judgment.

[a] **Punishment to be fixed by verdict.**
The Indeterminate Sentence Act not applying to crimes the minimum punishment for which may be less than a year, punishment for incest, for which a maximum of 20 years, but no minimum, is fixed, should be fixed by the verdict. P. v. Afton, 258—292, 101 N. E. 557; P. v. Turner, 260—84, 102 N. E. 1036.

[b] **Daughter not accomplice.**
The daughter cannot be an accomplice, though she admitted she enjoyed the sexual intercourse. P. v. Turner, 260—84, 102 N. E. 1036.

[c] **Solicitation to commit offense.**
Mere solicitation to commit incest not within this section. Cox v. P., 82—191.

[d] **Sufficiency of indictment.**
The crime of incest being a statutory, and not a common-law, offense, an indictment therefor need not allege that it was feloniously and knowingly committed. Bolen v. P., 184—338, 56 N. E. 408.

The averment in incest of the offense with a person named "being the daughter of said defendant" is sufficient. Bergen v. P., 17—426.

[e] **Sufficiency of judgment.**
Judgment on conviction of incest, merely directing sheriff, to deliver prisoner to warden of penitentiary at Chester, and commanding warden to confine him safely and securely, *held* insufficient, as not definitely fixing place of imprisonment as Southern Illinois Penitentiary, as required by section 801 of this chapter. P. v. Wood, 318—388, 149 N. E. 273.