

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.

SEC. 34. 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 axe, 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 is 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. 35. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 36. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 37. 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.

SEC. 38. 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.

SEC. 39. 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, punished accordingly.

SEC. 40. If any person shall, by previous appointment or agreement, fight a duel, and in so doing shall kill his antagonist or any person or persons, or shall inflict such wound as that the 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 counsellors, being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for any term not exceeding five years nor less than one year.

SEC. 41. 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 con-

viction thereof, be punished by imprisonment in the Territorial prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

SEC. 42. If any person shall willingly and 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 a second, or aid or give countenance thereto, such person being duly convicted thereof, shall be punished by imprisonment in the Territorial prison for any term not exceeding three years nor less than one year, and be fined in a sum not exceeding one thousand dollars.

SEC. 43. If any person shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the county jail for a term not exceeding six months, and fined in any sum not exceeding one thousand dollars.

SEC. 44. If any person shall, without deadly weapons, upon previous concert and agreement, upon any wager, or for money or any other reward, fight one with another, upon conviction thereof, they or either or any of them, and all persons present aiding and abetting, shall be punished by imprisonment in the Territorial prison for a term not exceeding two years. Should death ensue to any person in such fight, the person or persons causing such death shall be punished by imprisonment in the Territorial prison for a term not more than ten nor less than three years.

SEC. 45. 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 imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life. And every person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.

SEC. 46. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and of purpose put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction shall be punished by imprisonment in the Territorial prison for a term not less than one nor more than five years.

SEC. 47. Rape is the carnal knowledge of a female, forcibly and against her will. Every person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape, and shall be punished by imprisonment in the Territorial pri-