

Council for any alteration or improvement, the same shall be made by the Common Council on the terms above mentioned: *Provided*, there shall be funds in the city treasury not otherwise appropriated.

ARTICLE V.

MISCELLANEOUS PROVISIONS.

§ 1. Upon the passage of all bills appropriating money, imposing taxes, increasing, lessening, or abolishing licenses, or for borrowing money, the yeas and nays shall be entered on the Journals.

On passage of certain bills, yeas and nays to be entered in Journal.

§ 2. A majority of all the members elected shall be necessary to pass a tax bill, bills appropriating for any purpose the sum of five hundred dollars or upwards, and bills in anywise increasing or diminishing the city revenue.

Certain bills can only be passed by a majority of all the members.

§ 3. The Mayor may call special sessions of the Common Council at any time by proclamation. And he shall state to them, when assembled, the cause for which they have been convened.

Special sessions of common council.

§ 4. When two or more persons have an equal and the highest number of votes for the office of Mayor, the Common Council shall decide the election by joint ballot.

Election of mayor where two or more have equal number of votes.

§ 5. All resolutions and ordinances calling for the appropriation of any sum of money exceeding fifteen thousand dollars, shall lie over for the space of ten days, and be published for one week in at least one public daily paper.

Certain resolutions and ordinances to lie for ten days and be advertised.

§ 6. No member of the City Council shall, during the period for which he is elected, be interested in any contract, the expenses of which are to be paid out of the public treasury.

Members of council not to be interested in contracts.

§ 7. The Legislature may at any time alter, amend, or repeal this charter.

Charter may be amended.

§ 8. The city shall not at any time become a subscriber for any stock in any corporation.

City not to subscribe for stock.

§ 9. The fiscal year of the city shall terminate on the first day of June in each year.

Fiscal year.

§ 10. The City Council shall cause to be published, within one month after the end of each fiscal year, a full, complete, and detailed statement of all moneys received and expended by the corporation during the preceding fiscal year, and on what account received and expended, classifying each receipt and expenditure under its appropriate head.

City council to publish annually an account of receipts and payments.

§ 11. All the powers and functions of Prefect, Sub-Prefect, Alcaldes, Second Alcaldes, the Ayuntamiento, and all other officers whatsoever, heretofore exercising authority in the Municipal Government of the Pueblo of Yerba Buena, or San Francisco, or city of San Francisco, shall cease and determine from and after the day on which the officers prescribed by this Act shall be duly elected and qualified.

Power of existing municipal officers to cease.

Chap. 99.

AN ACT concerning Crimes and Punishments.

Passed April 16, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

FIRST DIVISION.

PERSONS CAPABLE OF COMMITTING CRIMES.

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

Essence of a crime.

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

Intent—how manifested.

§ 3. A person shall be considered of sound mind who is neither an idiot, nor lunatic, nor 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.

Who considered of sound mind.

Infant under fourteen. Idiots.

§ 4. An infant under the age of fourteen years shall not be found guilty of any crime.

§ 5. An idiot shall not be found guilty or punished for any crime with which he or she may be charged.

Counselling infant or idiot to commit any offence.

§ 6. Any person counselling, advising, or encouraging an infant under the age of fourteen years, a lunatic or idiot, to commit any offence, shall be prosecuted for such offence, when committed, as principal, and if found guilty shall suffer the same punishment that would have been inflicted on such person counselling, advising, or encouraging, as aforesaid, had he or she committed the offence directly, without the intervention of such idiot, lunatic, or infant.

Married woman acting under coercion of husband.

§ 7. 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 have otherwise been inflicted on the wife if she had been found guilty.

Drunkenness not to excuse crime, except, &c.

§ 8. 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 offence, 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 offence, if he, she, or they had been possessed of sound reason and discretion.

Act done by misfortune or accident.

§ 9. All acts committed by misfortune or accident shall not be deemed criminal when it satisfactorily appears that there was no evil design or intention or culpable negligence.

Crimes committed under duress.

§ 10. 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 offence, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offence.

SECOND DIVISION.

ACCESSORIES IN CRIMES.

Accessory defined.

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

Accessory after fact defined.

§ 12. 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 in a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

Punishment.

THIRD DIVISION.

WHO MAY BE A WITNESS IN CRIMINAL CASES.

Party injured may be witness.

§ 13. 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.

Blacks, mulattoes, and Indians, when not to be witnesses. Mulatto and Indian defined.

§ 14. No black or mulatto person, or Indian, 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.

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

FOURTH DIVISION.

CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

§ 16. Crimes against the Government and People shall consist in treason and misprision of treason, and can be committed only by persons owing allegiance to the State. Crimes against government, &c.

§ 17. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court. The punishment of treason shall be death. When the overt act of treason shall be committed without the limits of this State, the person charged therewith may be arrested, tried, and punished in any County of this State within the limits of which he may be found, and the offence may be charged to have been committed in the County where he may be arrested. Treason against state.

§ 18. Misprision of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to, or participating in the crime. Any person being found guilty thereof shall be punished by confinement in the State Prison for any term not exceeding five years. Misprision of treason.

FIFTH DIVISION.

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

§ 19. 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. Murder defined.

§ 20. 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. Express malice defined.

§ 21. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person convicted of the crime of murder shall be death. Malice—when to be implied.

§ 22. Manslaughter is the unlawful killing of a human being without malice expressed 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 defined.

§ 23. 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. Voluntary manslaughter.

§ 24. 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. Manslaughter—when to be punished as murder.

§ 25. 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 offence shall be deemed and adjudged to be murder. Involuntary manslaughter defined.

§ 26. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the State prison for a term not exceeding three years, and fined not exceeding five thousand dollars. Punishment for manslaughter.