GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 27. Powers and duties of grand jury.

The offense created by Gen. St. c. 16, § 4, (selling liquors without license,) is indictable. State v. Kobe, 26 Minn. 148, 1 N. W. Rep. 1051.

§ 41. Disclosure by juror—When required.

The only cases in which the testimony of a witness before the grand jury may be disclosed are those mentioned in § 41. Pinney's Will, 27 Minn. 280, 6 N. W. Rep. 791, 7 N. W. Rep. 144.

§ 57. Finding indictment—Indorsement.

The affidavit of a grand juror is not admissible to show misconduct of the grand jury in finding an indictment. State v. Beebe, 17 Minn. 241, (Gil. 218.)

§ 60. Same—Presentment, filing, and recording.

Whenever an indictment is found it shall be immediately presented by the foreman in the presence of the grand jury to the court, and filed with the clerk to be recorded in a book kept for that purpose, as soon as the arraignment shall have been made, the same to remain in the office of said clerk as a public record. (*As amended* 1881, c. 47, § 1.)

An indictment found by the grand jury, and properly filed, will be presumed to have been properly presented to the court, as prescribed by this section. State v. Beebe, 17 Minn. 241, (Gil. 218.)

The affidavit of a grand juror is not admissible to impeach the conduct of a grand jury, by showing that an indictment was found on illegal evidence, or that a false indorsement of witnesses is made thereon. Id.

*§ 61. Clerk to certify to record.

The clerk shall certify at the bottom of the record that he has compared the same with the original indictment, and that it is a true copy thereof. (1881, c. 47, § 2.)

*§ 62. Record of indictment—Effect.

The record of such indictment shall have all the force and be of the same effect for all the purposes required as the original indictment, and although such indictment should be lost, mislaid, or should for any reason not be before the court, any proceeding may be had upon the record aforesaid in the same manner and with the same effect as if the original indictment was before the court; and in such case no trial, conviction, or sentence shall be invalid by reason of the fact that such original indictment has disappeared from the files of the court, in such case, after the recording of such indictment. (*Id.* § 3.)

CHAPTER 108.

INDICTMENTS.

§ 1. Indictment—Contents.

SUBD. 1. An indictment for a crime committed in an organized county, to which others are attached for judicial purposes, may be entitled as in all of the counties, and found by a grand jury drawn from all. State v. Stokely, 16 Minn. 282, (Gil. 249.)

SUBD. 2. "The grand jurors of the county of Rice, in the state of Minnesota, upon their oaths, present that," etc., instead of following the form given in the statute, "A. B. is accused by the grand jury of," etc., is good as an indictment, if it state facts constituting an offense. State v. Hinkley, 4 Minn. 345, (Gil. 261.)

An inaccurate designation of the offense charged in an indictment does not vitiate it if the act or omission specified shows the offense. State v. Munch, 22 Minn. 67. An

ground that the person so summoned and seeking to be excused is either physically or mentally unable or unfit, in the opinion of the court, to attend or serve as a juror, or by reason of serious sickness of some immediate member of the family of the person so summoned. (*Id.* § 3.)

*§ 9*d*. Excuse and grounds to be recorded.

The name of each person drawn and summoned to serve as a juror, if he be by the court for any cause excused from such service, shall be entered by the clerk among the proceedings of the court, and under the direction of the court the clerk shall also make an entry of the grounds upon which the excuse is based, and the record, when so much of [made up,] shall be preserved and open to inspection by all persons. (*Id.* § 4.)

*§ 9*e*. Law of contempts applicable.

The law in reference to contempts which now is or hereafter may be in force, in so far as may be necessary to carry this act into effect, shall apply equally to contempts committed under the provisions of this act. (*Id.* § 5.)

*§ 9*f*. Penalty.

Persons charged with contempt of court under the provisions of this act shall be dealt with and their cases disposed of summarily by the court, and each person found guilty of a contempt under the provisions hereof shall be punished by fine in a sum not exceeding five hundred dollars, or by imprisonment in the county jail for a term not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. (*Id.* § 6.)

§ 10. Deficiency.

The failure of a sufficient number of persons selected and summoned as grand jurors to appear in court creates a deficiency of grand jurors, within this section. State v. McCartey, 17 Minn. 76, (Gil. 54.)

An indictment will not be set aside on the ground that one of the grand jurors was not present when the grand jury was charged, but was present during the examination of the charge against defendant, and voted upon the finding. State v. Froiseth, 16 Minn. 313, (Gil. 277.)

§ 13. Who may challenge grand juror.

The right to challenge the panel of a grand jury, or any member thereof, is only secured by statute to prisoners held to answer a charge for a public offense. State v. Davis, 22 Minn. 423.

A party who neglects to claim his right of challenge to the grand jury, before they retire, waives it, although he may be imprisoned at the time. Maher v. State, 3 Minn. 444, (Gil. 329.)

Being imprisoned at the time the grand jury was impaneled is no excuse for omitting to challenge them. State v. Hinkley, 4 Minn. 345, (Gil. 261.)

§ 14. Causes of challenge to panel.

One who is held to answer at a term of the district court, for a criminal offense, must make any objection that he has to the manner of procuring the grand jury by challenge, and cannot move to set aside the indictment against him upon such grounds. State v. Greenman, 23 Minn. 209.

See State v. Gut, 13 Minn. 341, (Gil. 315.)

§ 23. Charge.

See State v. Froiseth, 16 Minn. 313, (Gil. 277.)

§ 26. Discharge of grand jury.

The jury to be discharged on the completion of the business before them, they shall be discharged by the court, or the court may, in its discretion, adjourn their session from time to time during the same term; but whether the business is completed or not, they are discharged by the final adjournment of the court. (*As amended* 1885, *c.* 21.)

indictment for a crime which has a name, and is divided into several classes or degrees, as murder, arson, etc., is sufficient, if it charge the defendant with having committed the offense by name in the accusing part, and bringing it within some one of the classes or degrees in the descriptive part or specification. State v. Eno, 8 Minn. 220, (Gil. 190.)

An indictment which designates the offense only as "an assault with intent to do great bodily harm," but which, in specifying the acts done, alleges that the assault was with a dangerous weapon, with intent to do great bodily harm, is sufficient under the statute as an indictment for "an assault with a dangerous weapon with intent to do great bodily harm." State v. Garvey, 11 Minn. 154, (Gil. 95.)

The allegation, in an indictment for larceny of money, "a more particular description of which," etc., "is to the said grand jury unknown," is not traversable. State v. Taunt, 16 Minn. 109, (Gil. 99.)

An indictment for extortion in taking illegal fees is bad if it do not state in what official capacity defendant exacted the fees, or if it do not state what fees, if any, were due, and what amount was collected. State v. Brown, 12 Minn. 490, (Gil. 393.)

An indictment charging the defendants with burglary, but stating only facts which constitute simple larceny, is good for the latter offense. State v. Coon, 18 Minn. 518, (Gil. 464.)

See State v. Ward, 35 Minn. 182, 28 N. W. Rep. 192.

§ 2. Forms.

No. 2. An indictment for murder in the form given by this section is good under the Penal Code. State v. Johnson, (Minn.) 35 N. W. Rep. 373.

No. 16. A description of the money stolen, in an indictment for larceny, held sufficient. State v. Taunt, 16 Minn. 109, (Gil. 99.)

No. 24. An indictment for perjury, in the form prescribed by No. 24, is sufficient. State v. Thomas, 19 Minn. 484, (Gil. 418.)

No. 25. An indictment for bigamy, in the form prescribed by this section, is sufficient. State v. Armington, 25 Minn. 29.

§ 4. Certainty and directness required.

An indictment for extortion in taking illegal fees is bad if it do not state in what official capacity defendant exacted the fees, or if it do not state what fees, if any, were due, and what amount was collected. State v. Brown, 12 Minn. 490, (Gil. 393.)

An averment in an indictment that the defendant did "then and there" do the acts alleged as an offense, when the only place mentioned in the indictment is in the description of the court as "district court for the county of Nicollet," and of the office held by defendant as "judge of probate of the county of Nicollet," does not show the county in which the offense was committed. State v. Brown, 12 Minn. 490, (Gil. 393.)

See State v. Gray, 29 Minn. 142, 12 N. W. Rep. 455.

§ 6. Joinder of counts.

A count for forging a note, and one for uttering and publishing the forged note, cannot, under the statute, be joined in the same indictment. They are not different degrees of the same offense, but distinct offenses. State v. Wood, 13 Minn. 121, (Gil. 112.)

Duplicity. People v. Van Alstine, (Mich.) 23 N. W. Rep. 594; State v. Ormiston, (Iowa,) 23 N. W. Rep. 370; State v. Winebrenner, (Iowa,) 25 N. W. Rep. 146.

See People v. Sweeney, (Mich.) 22 N. W. Rep. 50; People v. McDowell, (Mich.) 30 N. W. Rep. 68; Glover v. State, (Ind.) 10 N. E. Rep. 282; State v. Gray, 29 Minn. 142, 145, 12 N. W. Rep. 455; State v. Owens, 22 Minn. 238, 242.

§ 7. Averment of time.

Under the common-law rule, adopted in this section, allegation of the time of committing a criminal offense need not in general be proved as laid. State v. New, 22 Minn. 76.

Impossible date. Murphy v. State, (Ind.) 8 N. E. Rep. 583.

An indictment, entitled "the district court for the counties of Lyon and Lincoln, and state of Minnesota," and charging that the defendant, "on or about the 15th day of November, A. D. 1879, at" a town named, "in said county of Lincoln, did sell and dispose of," to a person named, "one pint of brandy, of the value of 10 cents," sufficiently alleges a sale and disposal of a quantity of spirituous liquor, less than five gallons, in the county of Lincoln, in the state of Minnesota, and the time of such sale and disposal. State v. Lavake, 26 Minn. 526, 6 N. W. Rep. 339.

§ 8. Allegation as to person injured.

This provision does not apply to a case where the essence of the of the offense is an attempt, or an act done with intent, to commit an injury to the person. State v. Boylson, 3 Minn. 438, (Gil. 325.)

The intent to defraud, mentioned in Gen. St. 1878, *c.* 39, § 14, is an intent to defraud the mortgagee therein named. Such intent is an essential ingredient of the offense defined

by that section, so that an indictment under it, alleging no intent to defraud except one to defraud some other person than the mortgagee, is fatally defective. Such defect is not reached by this section. State v. Ruhnke, 27 Minn. 309, 7 N. W. Rep. 264.

See, also, State v. Butler, 26 Minn. 90, 1 N. W. Rep. 821. State v. Crawford, (Iowa,) 23 N. W. Rep. 684.

§ 10. Tests of sufficiency of indictment.

Putting the date and place of finding at the end after the words, "against the peace and dignity of the state of Minnesota," does not vitiate it. Such date and place are no part of the indictment. State v. Johnson, (Minn.) 35 N. W. Rep. 373.

An indictment against several may charge the act to have been done by them collectively. Id.

SUBD. 1. Where several counties are attached for judicial purposes, entitling an indictment in the name only of the county to which the others are attached, is a defect of form merely. State v. McCartey, 17 Minn. 76, (Gil. 54.)

The number of the judicial district is no part of the title of the district court, and, if erroneously given, may be rejected. State v. Munch, 22 Minn. 67.

SUBD. 4. See State v. Robinson, 14 Minn. 447, (Gil. 333, 337.)

SUBD. 6. If the indictment is in the words of the statute it is sufficient. The words "deliberately," "premeditatedly," and "with malice aforethought" are unnecessary. State v. Garvey, 11 Minn. 154, (Gil. 95.)

An indictment for larceny described a part of the property stolen as "divers bank bills, amounting in the whole to the sum of five hundred dollars, and of the value of five hundred dollars," without stating that a more particular description of the bills was unknown to the grand jury. *Held*, the description is bad for want of certainty, but, other property being sufficiently described in it, a demurrer will not lie to the indictment; but, also, to admit evidence as to the bills was error. State v. Hinkley, 4 Minn. 345, (Gil. 261.)

See State v. Lavake, 26 Minn. 526, 528, 6 N. W. Rep. 339.

§ 11. Formal defects.

An indictment which charges the killing of a person on a day specified, imports that he died on that day. State v. Ryan, 13 Minn. 370, (Gil. 343.)

See State v. Munch, 22 Minn. 67, 74; State v. Gut, 13 Minn. 341, (Gil. 315, 335.)

§ 13. Pleading private statute.

The statutory rule in respect to pleading a private statute, in an indictment, by a reference to its title, and the day of its passage, has no application to a case where, at common law, such statute need not have been pleaded. State v. Loomis, 27 Minn. 521, 8 N. W. Rep. 758.

§ 16. Indictment for perjury.

An indictment for perjury in the form No. 24 is good. State v. Thomas, 19 Minn. 484, (Gil. 418.)

§ 19. Offense committed on vessel.

Under an indictment charging the offense to have been committed in a certain county, the defendant may be convicted if the offense was committed on a vessel which passed through the county, on the voyage in the course of which the act took place. State v. Timmens, 4 Minn. 325, (Gil. 241.)

*§ 19*a*. Offenses on public conveyances—Jurisdiction.

The route traversed by every railway car, coach, train, or public conveyance, and the lake or stream traversed by any boat, shall be deemed and are hereby declared to be criminal districts, and jurisdiction of all public offenses which shall be committed on any such railroad car, coach, train, boat, or other public conveyance, or at any station or depot upon such route, shall be in any county through which said car, coach, train, boat, or other public conveyance may pass during the trip or voyage or in which the trip or voyage may begin or terminate. (1885, *c.* 189.*)

[See *post*, Penal Code, §§ 536, 542.]

*"An act to punish offenses committed on railway cars, coaches, trains, or public conveyances, and upon lakes or streams." Approved February 26, 1885.

§ 20. Offense committed on county lines.

This section is not in conflict with § 6, art. 1, Const. State v. Robinson, 14 Minn. 447, (Gil. 333.)

It is sufficient, in an indictment under this section, to charge that the offense was committed in the county in which the indictment is found, or to charge that it was committed in the adjoining county, within one hundred rods of the dividing line. Id.

See State v. Anderson, 25 Minn. 66.

§ 23. Homicide—Death out of state.

An indictment charging defendant with committing the crime of murder, by feloniously, etc., inflicting upon David Savazyo, etc., on August 28, 1874, in Washington county, in this state, a stab or wound of which, upon the same day, said Savazyo died in the county of Pierce, and state of Wisconsin, held to charge the commission of the offense in the county of Washington. State v. Gessert, 21 Minn. 369.

§ 24. Embezzlement—Evidence.

Evidence that the offense charged was committed before the time laid in the indictment is competent, and is not excluded by this section. State v. New, 22 Minn. 76.

CHAPTER 110.

SETTING ASIDE INDICTMENT.

§ 1. Grounds.

It is not a ground for setting aside an indictment that there is another indictment pending in the same court against the same defendant for the same offense. State v. Gut, 13 Minn. 341, (Gil. 315.)

See State v. Greenman, 23 Minn. 209.

§ 2. Implied waiver of objections.

By not moving to set aside the indictment, or demurring, the defendant waives the objection that the indictment is not signed by the foreman of the grand jury. State v. Shippey, 10 Minn. 223, (Gil. 178.)

CHAPTER 111.

DEMURRERS.

§ 3. Grounds of demurrer.

SUBD. 3. An indictment charging defendant with maintaining a building which overhangs a public street, and endangers the safety of people passing thereon, and with permitting to remain in said building large quantities of filth, emitting offensive stenches, dangerous to the public health, is demurrable, as charging two offenses. Chute v. Minnesota, 19 Minn. 271, (Gil. 230.)

See State v. Wood, 13 Minn. 121, (Gil. 112.)

SUBD. 4. A count in an indictment held bad, as not alleging acts, circumstances, and facts constituting an offense. State v. McIntyre, 19 Minn. 93, (Gil. 65.)

§ 7. Allowance of demurrer—Amendment.

Section 7, c. 108, Comp. St., authorizing the court, upon demurrer, to amend an indictment, "where the defendant will not be unjustly prejudiced thereby," permits amend-