

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

IN FORCE

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COMPLETE IN TWO VOLUMES.

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 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 23, 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-

ments as to matters of form only, and not as to matters of substance. Inserting the name of the county in which the offense was committed is not such an amendment as is permitted under such section. *State v. Armstrong*, 4 Minn. 385, (Gil. 251.)

See *State v. Comfort*, 22 Minn. 271, 272.

§ 11. Objections to be taken by demurrer only.

See *State v. Loomis*, 27 Minn. 521, 525, 8 N. W. Rep. 758; *State v. Reckards*, 21 Minn. 47, 49.

CHAPTER 112.

PLEAS.

§ 1. Pleas enumerated.

SUBD. 3. Where the same act causes the death of two persons, an acquittal of the murder of one is not a bar to a prosecution for the murder of the other. *People v. Majors*, (Cal.) 3 Pac. Rep. 597.

Where a jury impaneled to try defendant is discharged upon his motion, such discharge will not support a plea of former jeopardy, in a subsequent trial. *People v. Gardner*, (Mich.) 29 N. W. Rep. 19.

Plea of former acquittal, based on a stipulation that a former conviction should include all prior offenses. *State v. Sterrenberg*, (Iowa,) 29 N. W. Rep. 457.

Continuance and discharge of the jury in the former prosecution. *State v. Falconer*, (Iowa,) 30 N. W. Rep. 655.

A plea alleging a former prosecution and trial, but failing to aver the result of such trial, or that any verdict was returned or final judgment rendered, is bad. *Hensley v. State*, (Ind.) 8 N. E. Rep. 692.

Parol evidence in support of a plea of former jeopardy. *Walter v. State*, (Ind.) 5 N. E. Rep. 735.

See, also, *State v. Parker*, (Iowa,) 24 N. W. Rep. 225; *State v. Mikesell*, (Iowa,) 30 N. W. Rep. 474; *State v. Clark*, (Iowa,) 28 N. W. Rep. 537; *People v. Pline*, (Mich.) Id. 83.

§ 3. Entry of plea.

A record failing to disclose affirmatively that a plea was entered, shows a mistrial, and the error is not cured by a recital in the bill of exceptions that defendant pleaded not guilty. *Bowen v. State*, (Ind.) 9 N. E. Rep. 378. See *Billings v. State*, (Ind.) 6 N. E. Rep. 914.

CHAPTER 113.

CHANGE OF VENUE IN CRIMINAL CASES.

§ 1. Place of trial—Change of venue.

Upon a motion on affidavit by a defendant in a criminal case, under this chapter, for a change of venue, counter-affidavits may be used. Such an application being in the discretion of the court, the decision will not be reviewed unless there is an abuse of discretion. *State v. Stokely*, 16 Minn. 282, (Gil. 249.)

As to the discretion of the court upon an application for change of venue, see *State v. Foley*, (Iowa,) 21 N. W. Rep. 162; *State v. Hale*, (Iowa,) 22 N. W. Rep. 682; *State v. Perigo*, (Iowa,) 28 N. W. Rep. 452.

See, also, *Spittorff v. State*, (Ind.) 8 N. E. Rep. 911; *Shular v. State*, (Ind.) 4 N. E. Rep. 870.