

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

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ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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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. 335, (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. 753; *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,) 23 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. 232, (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,) 23 N. W. Rep. 452.

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

§ 5. Application by state.

In a criminal case, a change of place of trial, on the application of the state, may be made from a county in one judicial district to an adjoining county in another district. *State v. Miller*, 15 Minn. 344, (Gil. 277.)

CHAPTER 114.
ISSUES AND MODE OF TRIAL.**§ 2. Trial by a jury of the county.**

Defendant cannot waive his right to a jury trial. *State v. Carman*, (Iowa,) 18 N. W. Rep. 691.

Where the defendant, the court, and the state consented to trial before eleven jurors, a conviction was sustained. *State v. Kaufman*, (Iowa,) 2 N. W. Rep. 275.

§ 3. Presence of defendant at trial.

Defendant's presence at a motion preliminary to the trial is not necessary. *Epps v. State*, (Ind.) 1 N. E. Rep. 491.

See *State v. Reckards*, 21 Minn. 47, 50.

§ 4. Continuance.

Continuance to obtain witnesses. *Sutton v. People*, (Ill.) 10 N. E. Rep. 376; *Dacey v. People*, (Ill.) 6 N. E. Rep. 165.

Sufficiency of the affidavits and of the showing. *Dacey v. People*, (Ill.) 6 N. E. Rep. 165; *Sutherland v. State*, (Ind.) 9 N. E. Rep. 298; *State v. Smith*, (Iowa,) 15 N. W. Rep. 593; *State v. Bennett*, (Iowa,) 2 N. W. Rep. 1103; *Dingman v. State*, (Wis.) 4 N. W. Rep. 668; *State v. Dakin*, (Iowa,) 3 N. W. Rep. 411; *People v. Anderson*, (Mich.) 18 N. W. Rep. 561; *People v. Mason*, (Mich.) 30 N. W. Rep. 103; *People v. Shufelt*, (Mich.) 28 N. W. Rep. 79; *State v. Stone*, (Iowa,) 21 N. W. Rep. 681; *State v. Falconer*, (Iowa,) 30 N. W. Rep. 655.

Discretion of the court upon the application. *Morris v. State*, (Ind.) 4 N. E. Rep. 148.

Sufficiency of order of adjournment. *State v. Holmes*, (Iowa,) 9 N. W. Rep. 894; *State v. McGuire*, (Iowa,) 4 N. W. Rep. 886.

§ 7. Joint defendants—State's evidence.

Upon an indictment against two, neither can be sworn for the other, though they be tried separately. *State v. Dumphey*, 4 Minn. 433, (Gil. 340.)

§ 10. View.

The matter of ordering a view by the jury in a criminal case is, under this section, discretionary with the court. *Chute v. State*, 19 Minn. 271, (Gil. 230.)

See *Shular v. State*, (Ind.) 4 N. E. Rep. 870; *People v. Bush*, (Cal.) 10 Pac. Rep. 169.

§ 11. Questions for court and jury.

It is the duty of the court to declare the law to the jury in criminal as well as in civil cases. Whether the evidence has a tendency to prove any fact in issue, in a criminal cause, is for the determination of the court; not so as to the weight of evidence. *State v. Rheams*, 34 Minn. 18, 24 N. W. Rep. 302.

***§ 12. Order of argument.**

This section is not applicable to the municipal court of the city of Minneapolis. *State v. Wagner*, 23 Minn. 544.

§ 14. (Sec. 13.) Deliberation of jury.

It is error to allow a jury in a criminal case to separate without being in charge of an officer, after the case is finally submitted to them. *State v. Parrant*, 18 Minn. 178, (Gil. 157.)