CHAPTER 630

PRETRIAL PROCEDURE

ARRAIGNMENT

630.01 ARRAIGNMENT; PRESENCE OF DEFENDANT.

HISTORY. R.S. 1851 c. 120 ss. 88 to 90; P.S. 1858 c. 106 ss. 1 to 3; G.S. 1866 c. 109 ss. 1 to 3; G.S. 1878 c. 109 ss. 1 to 3; G.S. 1894 ss. 7264 to 7266; R.L. 1905 s. 5322; G.S. 1913 s. 9164; G.S. 1923 s. 10669; M.S. 1927 s. 10669.

That there is ground for postponing the trial is not an excuse for postponing the arraignment. It is the duty of the county attorney to bring on the arraignment immediately after the filing of the indictment, and an unreasonable delay is ground for the dismissal of the indictment. State v Thompson, 32 M 144, 19 NW 730; State v Radoicich, 66 M 294, 69 NW 25.

The following stipulation appears in the record: "On the 20th day of November, 1933, the defendant herein voluntarily surrendered and was duly arraigned in the district court of Hennepin county, his case set for trial and he was released on bail." This was a sufficient arraignment. State v Barnett, 193 M 342, 258 NW 508.

630.02 BENCH WARRANT; ISSUANCE.

HISTORY. R.S. 1851 c. 120 ss. 91, 92, 96; P.S. 1858 c. 106 ss. 4, 5, 9; G.S. 1866 c. 109 ss. 4, 5, 9; G.S. 1878 c. 109 ss. 4, 5, 9; G.S. 1894 ss. 7267, 7268, 7272; R.L. 1905 s. 5323; G.S. 1913 s. 9165; G.S. 1923 s. 10670; M.S. 1927 s. 10670.

630.03 FORM OF BENCH WARRANT IN FELONY.

HISTORY. R.S. 1851 c. 120 s. 93; P.S. 1858 c. 106 s. 6; G.S. 1866 c. 109 s. 6; G.S. 1878 c 109 s. 6; G.S. 1894 s. 7269; R.L. 1905 s. 5324; G.S. 1913 s. 9166; G.S. 1923 s. 10671; M.S. 1927 s. 10671.

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 M 67.

The enforcement officers of the game and fish division may enter upon private lands for the purpose of carrying out duties imposed upon them in the management of wild game without being liable for trespass or for claims of damage unless unreasonable damage is occasioned. 1940 OAG 21, March 6, 1940 (210d-1).

A justice of the peace has no authority to issue a bench warrant or grant a stay of execution. At the time of sentence he may issue an "order of commitment." OAG June 12, 1941 (266B-27).

630.04 FORM OF BENCH WARRANT IN MISDEMEANORS.

HISTORY. R.S. 1851 c. 120 s. 94; P.S. 1858 c. 106 s. 7; G.S. 1866 c. 109 s. 7; G.S. 1878 c. 109 s. 7; G.S. 1894 s. 7270; R.L. 1905 s. 5325; G.S. 1913 s. 9167; G.S. 1923 s. 10672; M.S. 1927 s. 10672.

630.05 COURT TO FIX BAIL.

HISTORY. R.S. 1851 c. 120 s. 95; P.S. 1858 c. 106 s. 8; G.S. 1866 c. 109 s. 8; G.S. 1878 c. 109 s. 8; G.S. 1894 s. 7271; R.L. 1905 s. 5326; G.S. 1913 s. 9168; G.S. 1923 s. 10673; M.S. 1927 s. 10673.

630.06 PROCEEDINGS BEFORE MAGISTRATE.

HISTORY. R.S. 1851 c. 120 s. 97; P.S. 1858 c. 106 s. 10; G.S. 1866 c. 109 s. 10; G.S. 1878 c. 109 s. 10; G.S. 1894 s. 7273; R.L. 1905 s. 5327; G.S. 1913 s. 9169; G.S. 1923 s. 10674; M.S. 1927 s. 10674.

630.07 PROCEEDINGS WHERE BAIL IS TAKEN.

HISTORY. R.S. 1851 c. 120 s. 98; P.S. 1858 c. 106 s. 11; G.S. 1866 c. 109 s. 11; G.S. 1878 c. 109 s. 11; G.S. 1894 s. 7274; R.L. 1905 s. 5328; G.S. 1913 s. 9170; G.S. 1923 s. 10675; M.S. 1927 s. 10675.

630.08 DEFENDANT COMMITTED, WHEN.

HISTORY. R.S. 1851 c. 120 s. 99; P.S. 1858 c. 106 s. 12; G.S. 1866 c. 109 s. 12; G.S. 1878 c. 109 s. 12; G.S. 1894 s. 7275; R.L. 1905 s. 5329; G.S. 1913 s. 9171; G.S. 1923 s. 10676; M.S. 1927 s. 10676.

630.09 BENCH WARRANT TO ENFORCE ORDER.

HISTORY. R.S. 1851 c. 120 s. 100; P.S. 1858 c. 106 s. 13; G.S. 1866 c. 109 s. 13; G.S. 1878 c. 109 s. 13; G.S. 1894 s. 7276; R.L. 1905 s. 5330; G.S. 1913 s. 9172; G.S. 1923 s. 10677; M.S. 1927 s. 10677.

630.10 DEFENDANT INFORMED OF HIS RIGHT TO COUNSEL.

HISTORY. R.S. 1851 c. 120 s. 101; P.S. 1858 c. 106 s. 14; G.S. 1866 c. 109 s. 14; G.S. 1878 c. 109 s. 14; G.S. 1894 s. 7277; R.L. 1905 s. 5331; G.S. 1913 s. 9173; G.S. 1923 s. 10678; M.S. 1927 s. 10678.

The statute was not followed formally, but the court substantially informed the defendant of his right to counsel. State v McDonnell, 165 M 425, 206 NW 952.

It was not incumbent on the justice to advise defendant to procure counsel in his defense. Various adjournments were had and there was ample opportunity afforded to secure counsel. State ex rel v City of Red Wing, 175 M 225, 220 NW 611.

Criminal prosecutions; right of counsel. 17 MLR 417.

630.11 ARRAIGNMENT; HOW MADE.

HISTORY. R.S. 1851 c. 120 s. 102; P.S. 1858 c. 106 s. 15; G.S. 1866 c. 109 s. 15; G.S. 1878 c. 109 s. 15; G.S. 1894 s. 7278; R.L. 1905 s. 5332; G.S. 1913 s. 9174; G.S. 1923 s. 10679; 1925 c. 137; M.S. 1927 s. 10679.

Upon arraignment it appeared that defendant had been served with an untrue copy of the indictment, and while a motion was pending to set aside the arraignment, a new arraignment was had based upon proper service. No rule of law or right of defendant was violated. State v Gut, 13 M 341, 352 (315).

Where a defective copy of the indictment is served upon the defendant at the time of his arraignment, he is entitled to a second arraignment; but where, having knowledge of the defect, he pleads to the indictment, and waits until the jury is sworn before raising the objection, his motion to dismiss must be denied. State v Comings, 54 M 359, 56 NW 50.

The record contains a copy of a stipulation and establishes the fact that defendant was accorded his statutory and constitutional rights of proper arraignment and notice of the charge brought against him. State v Barnett, 193 M 336, 258 NW 508.

The defendant on arraignment entered a plea of not guilty, and obtaining leave to withdraw his plea demurred to the indictment. The state moved to amend. The court sustained the demurrer and granted leave to amend. On second arraignment defendant stood mute. The court entered for him a plea of not guilty and set the case for trial. Defendant was given a copy of the original indictment, but not the amendment. Defendant did not request it. There was no prejudice. State v Heffelfinger, 197 M 182, 266 NW 751.

630.12 DEFENDANT TO BE ASKED HIS TRUE NAME.

HISTORY. R.S. 1851 c. 120 ss. 103 to 105; P.S. 1858 c. 106 ss. 16 to 18; G.S. 1866 c. 109 ss. 16, 17; G.S. 1878 c. 109 ss. 16, 17; G.S. 1894 ss. 7279, 7280; R.L. 1905 s. 5333; G.S. 1913 s. 9175; G.S. 1923 s. 10680; M.S. 1927 s. 10680.

630.13 TIME TO PLEAD; DEMURRER; PLEA; MOTION TO SET ASIDE.

HISTORY. R.S. 1851 c. 120 ss. 106, 107; P.S. 1858 c. 106 ss. 19, 20; G.S. 1866 c. 109 ss. 18, 19; G.S. 1878 c. 109 ss. 18, 19; G.S. 1894 ss. 7281, 7282; R.L. 1905 s. 5334; G.S. 1913 s. 9176; G.S. 1923 s. 10681; M.S. 1927 s. 10681.

A motion to set aside an indictment must be made before a demurrer or plea is entered. State v Thomas, 19 M 484 (418).

A motion to set aside an indictment for defects in the organization of the grand jury must be made at the time of the arraignment, unless for good cause the court allows it subsequently. State v Schumm, 47 M 373, 50 NW 362; State v Dick, 47 M 375, 50 NW 362.

An objection to the jurisdiction of the court over the person must be made before a plea is entered. State ex rel v Fitzgerald, 51 M 534, 53 NW 799.

The court did not abuse its discretion in denying defendant leave to withdraw his plea of not guilty for the purpose of enabling him to move to quash the indictment on the ground that two of the members of the grand jury that returned the indictment were aliens. State v Arbes, 70 M 462, 73 NW 403.

Challenges to individual grand jurors based upon the ground of prejudice or bias cannot be made at the time of the arraignment by way of a plea in abatement or motion to quash the indictment. State v Ames, 90 M 183, 96 NW 330.

630.14 DEFENSE OF ALIBI; APPLICATION BY COUNTY ATTORNEY.

HISTORY. 1935 c. 194 s. 3; M. Supp. s. 10681-1.

Effect of Laws 1935, Chapter 194. 20 MLR 70.

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630.15 CRIMES OF CORPORATIONS; INDICTMENT; SERVICE OF SUMMONS.

HISTORY. 1895 c. 217; R.L. 1905 s. 5335; G.S. 1913 s. 9177; G.S. 1923 s. 10682; M.S. 1927 s. 10682.

For a violation of the state dairy and food law in underreading the Babcock Test in buying cream, both the corporation and the buttermaker may be prosecuted. The officers should not be taken into custody. It is the corporation accused, not the officers. 1936 OAG 71, Jan. 8, 1935 (494b-10).

630.16 CORPORATIONS; APPEARANCE; TRIAL.

HISTORY. 1895 c. 217; R.L. 1905 s. 5336; G.S. 1913 s. 9178; G.S. 1923 s. 10683; M.S. 1927 s. 10683.

630.17 FINE, HOW COLLECTED.

HISTORY. 1895 c. 217; R.L. 1905 s. 5337; G.S. 1913 s. 9179; G.S. 1923 s. 10684; M.S. 1927 s. 10684.

SETTING ASIDE INDICTMENT

630.18 GROUNDS FOR SETTING ASIDE; WAIVER.

HISTORY. R.S. 1851 c. 121 ss. 108, 109; P.S. 1858 c. 107 ss. 1, 2; G.S. 1866 c. 110 ss. 1, 2; G.S. 1878 c. 110 ss. 1, 2; G.S. 1894 ss. 7283, 7284; R.L. 1905 s. 5338; G.S. 1913 s. 9180; G.S. 1923 s. 10685; M.S. 1927 s. 10685.

1. Clause (1)
2. Clause (2)
3. Clause (3)
4. Statutory grounds not exclusive
5. Not grounds for setting aside
6. Affidavits on motion
7. Waiver by failure to move

1. Cases interpreting Clause (1)

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 M 223 (178).

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. State v Froiseth, 16 M 313 (277).

After his demurrer to an indictment is overruled, it is too late for defendant to interpose an objection that the certificates of the county auditor to the clerk do not show affirmatively the qualifications of the grand jurors. State v Thomas, 19 M 484 (418).

One who is held to answer at a term of court, for a criminal offense, must make any objection he has to the manner of procuring the grand jury by challenge. State v Greenman, 23 M 209.

A motion to set aside an indictment for defects in the organization of the grand jury must be made at the time of the arraignment, unless for good cause shown the court allows it to be made subsequently. State v Schumm, 47 M 373, 50 NW 362; State v Dick, 47 M 375, 50 NW 362.

The fact that a person may, in the investigation of some other charge by the grand jury, have been required to give evidence which would have been material on the particular charge for which he is indicted, is no cause for setting aside the indictment on the ground he was required to testify against himself, unless it appears from the endorsement or entry of his name on the indictment as a witness that the grand jury found the bill, in whole or in part, on his evidence. State v Hawks, 56 M 130, 57 NW 455.

The trial court rightly denied defendant's motion to quash moved on the following grounds:

(1) That the jury list, from which the grand jury was drawn was not made by the board authorized to make same; (2) that such list was not made up as required by the Washington county jury law; (3) that the grand jury was illegally recommended for an adjourned term of court at which the indictments were returned. State v Goodrich, 67 M 176, 69 NW 815.

The court did not abuse its discretion in denying defendant leave to withdraw his plea of not guilty for the purpose of enabling him to move to quash the indictment on the ground that two of the members of the grand jury that returned the same were aliens. State v Arbes, 70 M 462, 73 NW 403.

Member of the grand jury disqualified but not acting on the indictment, the remaining jurors not less than 16 being present, may find a valid indictment, 12 of their number concurring. State v Cooley, 72 M 476, 75 NW 729.

A person may be indicted even though the person victimized be not a witness before the grand jury. State v Benham, 168 M 15, 209 NW 633.

Informations or indictments. 8 MLR 390.

2. Cases interpreting Clause (2)

SEE: State v Hawks, 56 M 130, 57 NW 141.

The names of witnesses are not required to be endorsed on an information filed by a county attorney charging a criminal offense. State v Ruddy, 160 M 435, 200 NW 631.

3. Cases interpreting Clause (3)

The publication of the facts concerning a pending indictment prior to the time it is framed, and before the accused is arraigned, and the exclusion of the county attorney from the grand jury room, do not constitute sufficient grounds for quashing an indictment, in the absence of a showing that the substantial rights of the accused were violated. A case is "under consideration" when witnesses are being examined. State v Slocum, 111 M 328, 126 NW 1096.

4. Statutory grounds not exclusive

The statutory grounds for setting aside an indictment are not exclusive. Thus an indictment may be set aside because the defendant was compelled to testify against himself before the grand jury. State v Froiseth, 16 M 296 (260); State v Gardner, 88 M 130, 92 NW 529;

Or, because, in a prosecution for adultery, complaint was not made by the husband or wife. State v Brecht, 41 M 50, 42 NW 602.

The fact that a person in testifying before the grand jury relating to another charge, was required to give evidence which would have been material on the particular charge for which he is indicted, is no cause for setting aside the indictment unless it appears from the entry of his name on the indictment as a witness that the grand jury found the bill, in whole or in part, on his evidence. State v Hawks, 56 M 130, 57 NW 455.

5. Not grounds for setting aside

An indictment should not be set aside for any defect or imperfection in the matter of form which does not tend to prejudice the substantial rights of the defendant upon the merits. An indictment will not be set aside:

Because when the grand jury was impaneled and sworn the defendant was in jail. State v Hoyt, 13 M 132 (125);

Because there is another indictment pending in the same court against the same defendant for the same offense. State v Gut, 13 M 341 (315);

Because one of the grand jurors was not present during the examination when the grand jury was charged, but afterwards took part in finding the indictment. State v Froiseth, 16 M 313 (277).

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. State v Greenman, 23 M 309.

An indictment will not be set aside:

Because the names of witnesses before the grand jury whose testimony was not considered in finding the indictment are not endorsed on the indictment. State v Hawks, 56 M 129, 57 NW 455;

Because the grand jury was reconvened at an adjourned term of court. State v Goodrich, 67 M 176, 69 NW 815;

Because of an immaterial irregularity in drawing the grand jury list. State v Goodrich, 67 M 176, 69 NW 815;

Because the grand jury was filled out by a special venire. State v Russell, 69 M 502, 72 NW 832.

It is not an abuse of discretion for the court to deny defendant leave to withdraw his plea of not guilty for the purpose of enabling him to move to set aside the indictment on the ground that members of the grand jury were aliens. State v Arbes, 70 M 462, 73 NW 403.

An indictment will not be set aside because less than a full panel of grand jurors found the indictment, provided there are at least 16. State v Cooley, 72 M 476, 75 NW 729;

Nor because of bias or prejudice in the grand jury. State v Ames, 90 M 183, 96 NW 330;

Nor because of the claim that other witnesses were examined and their names not endorsed on the indictment. State v Rickmier, 144 M 32, 174 NW 529.

Where the minutes of the grand jury and from the testimony of members of a former grand jury, it appears that a committee of said former grand jury appeared and made statements as to investigations regarding defendants, made by the former grand jury, such appearance by said committee is ground for quashing the indictment. State v Ernster, 147 M 81, 179 NW 640.

The fact that the defendant is charged with the same offense in two or more indictments does not entitle him to an order setting aside all the indictments. State v Summerland, 155 M 395, 193 NW 699.

The defendant is not entitled to have an indictment quashed simply because the grand jury declined to call a witness on his behalf, whom he had requested them to call, even though an earlier grand jury, with the testimony of the designated witness before them, had refused to indict. State v Lane, 195 M 588, 263 NW 608.

The sufficiency of the evidence before the committing magistrate on the preliminary hearing to justify a finding that a crime had been committed and that there was reasonable cause to charge defendant therewith may not be raised upon a motion to quash the information filed thereon. State v Gottwalt, 209 M 7, 295 NW 67.

Informations and indictments. 8 MLR 390.

6. Affidavits on motion

The affidavit of a grand juror is not admissible to show misconduct on the part of the grand jury. State v Beebe, 17 M 241 (218).

The affidavit upon which defendant based a motion to quash the indictment for the reason that he was compelled to be a witness against himself before the grand jury is sufficient to require the state to traverse it, and the court to determine the motion on the merits. State v Gardner, 88 M 130, 92 NW 529.

Objection to qualification of a witness on the ground of incompetency must be based on a showing of mental condition at the time of offering the testimony and not on past history. State v Kahner, 217 M 574, 15 NW(2d) 105.

7. Waiver by failure to move

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 M 223 (178).

After his demurrer to an indictment is overruled, it is too late for defendant to interpose an objection that the certificates of the county auditor to the clerk of the court do not show, affirmatively, that the grand jurors by whom the indictment was found were qualified according to law. State v Thomas, 19 M 484 (418).

A motion to set aside an indictment for defects in the organization of the grand jury must be made at the time of the arraignment, unless for good cause the court allow it to be made subsequently. State v Schumm, 47 M 373, 50 NW 362; State v Dick, 47 M 375, 50 NW 362.

630.19 MOTION, WHEN HEARD; DECISION.

HISTORY. R.S. 1851 c. 121 ss. 110 to 112; P.S. 1858 c. 107 ss. 3 to 5; G.S. 1866 c. 110 ss. 3 to 5; G.S. 1878 c. 110 ss. 3 to 5; G.S. 1894 ss. 7285 to 7287; R.L. 1905 s. 5339; G.S. 1913 s. 9181; G.S. 1923 s. 10686; M.S. 1927 s. 10686.

630.20 EFFECT OF RESUBMISSION.

HISTORY. R.S. 1851 c. 121 s. 113; P.S. 1858 c. 107 s. 6; G.S. 1866 c. 110 s. 6; G.S. 1878 c. 110 s. 6; G.S. 1894 s. 7288; R.L. 1905 s. 5340; G.S. 1913 s. 9182; G.S. 1923 s. 10687; M.S. 1927 s. 10687.

Where the state neglected for seven months to arraign defendant, three terms of court during the interim, and made no motion to call for her appearance or to forfeit her bail, the court properly dismissed the indictment and released the bail. State v Radoicich, 66 M 294, 69 NW 25.

630.21 PROCEEDINGS IF NEW INDICTMENT IS NOT FOUND; SETTING ASIDE NO BAR.

HISTORY. R.S. 1851 c. 121 ss. 114, 115; P.S. 1858 c. 107 ss. 7, 8; G.S. 1866 c. 110 ss. 7, 8; G.S. 1878 c. 110 ss. 7, 8; G.S. 1894 ss. 7289, 7290; R.L. 1905 s. 5341; G.S. 1913 s. 9183; G.S. 1923 s. 10688; M.S. 1927 s. 10688.

DEMURRER

630.22 PLEADINGS BY DEFENDANT; DEMURRER; PLEA.

HISTORY. R.S. 1851 c. 122 ss. 116, 117; P.S. 1858 c. 108 ss. 1, 2; G.S. 1866 c. 111 ss. 1, 2; G.S. 1878 c. 111 ss. 1, 2; G.S. 1894 ss. 7291, 7292; R.L. 1905 s. 5342; G.S. 1913 s. 9184; G.S. 1923 s. 10689; M.S. 1927 s. 10689.

630.23 GROUNDS OF DEMURRER.

HISTORY. R.S. 1851 c. 122 s. 118; P.S. 1858 c. 108 s. 3; G.S. 1866 c. 111 s. 3; G.S. 1878 c. 111 s. 3; G.S. 1894 s. 7293; R.L. 1905 s. 5343; G.S. 1913 s. 9185; G.S. 1923 s. 10690; M.S. 1927 s. 10690.

1. General principles
2. Defect of substance
3. Objection, how taken
4. Amendment by striking out
5. Indictments held double
6. Indictments not double
7. Generally

1. General principles

If an indictment charges two offenses, but one of them insufficiently so that no conviction could be had thereon, it is not double. State v Henn, 39 M 464, 40 NW 564.

Where, in defining a defense, a statute enumerates a series of acts, either of which separately, or all together, may constitute the offense, all such acts may be charged in a single count, for the reason that notwithstanding each act may by itself constitute the offense, all of them do no more, and likewise constitute but one and the same offense. State v Greenwood, 76 M 207, 78 NW 1044.

An indictment charging defendant with having sold its certificates to six persons who are named and to others not named, without having a license to do so, is not bad for duplicity. State v Gopher Tire Co., 146 M 52, 177 NW 937.

Where an information charging a crime under section 620.47 alleges that two mortgages and notes were obtained by the same means in one transaction, it does not charge more than one offense. State v Gottwalt, 209 M 7, 295 NW 67.

Statutory joinder of separate offenses in the same indictment. 22 MLR 113.

2. Defect of substance

At common law a court has discretionary power to sustain a double indictment but in our practice the defect is one of substance and there is no such discretion. State v Wood, 13 M 121 (112).

3. Objection, how taken

Duplicity is a ground for demurrer. State v Wood, 13 M 121 (112); State v Chute, 19 M 271 (233); and

If not so taken it is waived. State v Henn, 39 M 464, 40 NW 564; State v Briggs, 84 M 357, 87 NW 935; State v. Kunz, 90 M 526, 97 NW 131.

4. Amendment by striking out

If the court sustains a demurrer on the ground of duplicity it may allow an amendment striking out one of the charges. State v Wood, 13 M 121 (112); State v Chute, 13 M 121 (112).

5. Indictments held double

The following indictments were held double:

For forging and uttering a note. State v Wood, 13 M 121 (112);

Against a justice of the peace for neglect of duty, charging several acts of omission and commission. State v Coon, 14 M 456 (340);

For a nuisance, charging the maintenance of a building in an unsafe condition and allowing filth to accumulate therein. State v Chute, 19 M 271 (230).

6. Indictments not double

In the following cases the indictment does not charge two offenses, or for other reasons is not bad because of duplicity:

In an assault case, charging a beating and wounding. State v Dineen, 10 M 407 (325);

Selling liquor on a named day and on divers other days. State v Kobe, 26 M 148, 1 NW 1054;

For swindling by three-card monte, charging different means conjunctively. State v Gray, 29 M 142, 12 NW 455;

Selling liquor, alleging sale and disposal. State v McGinnis, 30 M 52, 14 NW 258;

Selling mortgaged property to several persons. State v Williams, 32 M 537, 21 NW 746;

For selling liquor without a license, and alleging one sale of beer, "a fermented malt liquor". State v Nerbovig, 33 M 480, 24 NW 321;

For larceny, with allegations insufficient to charge forgery. State v Henn, 39 M 464, 40 NW 564;

For larceny, alleging an unlawful conversion with the superfluous words "steal and carry away". State v Comings, 54 M 359, 56 NW 50;

For libeling two or more persons in a single writing. State v Hoskins, 60 M 168, 62 NW 270;

For rape, charging commission of the offense in different ways. State v Hann, 73 M 140, 76 NW 33;

For forgery, charging several acts but committed at the same time with reference to the same instrument. State v Greenwood, 76 M 207, 78 NW 1044;

For perjury, the indictment being drawn under the provisions of Laws 1895, Chapter 175, Section 104. State v Scott, 78 M 311, 81 NW 3;

For inducing and procuring another to keep a gambling device. State v Briggs, 84 M 357, 87 NW 935;

For keeping a saloon open during prohibited hours contrary to the statute and a city ordinance. City of Jordan v Nicolin, 84 M 367, 87 NW 916;

For uttering several forged instruments at the same time and to the same person. State v Moore, 86 M 422, 90 NW 787;

For taking indecent liberties, superfluous description. State v Kunz, 90 M 526, 97 NW 131;

For accepting bribes from prostitutes. State v Ames, 91 M 365, 98 NW 190;

For forging and uttering the same instrument. State v Klugherz, 91 M 406, 98 NW 99.

7. Generally

A demurrer goes to the whole indictment, and if, omitting the objectionable parts, there still remains an offense properly charged, the indictment must be sustained. State v Hinckley, 4 M 345 (261).

The fact that a written instrument is attached to an indictment in the form of an exhibit, instead of being incorporated in the body of an indictment, is not ground for demurrer. State v Williams, 32 M 537, 21 NW 746.

The court has jurisdiction of any indictment, whether good or bad, rightfully or wrongfully found, if found by the proper grand jury. State v Brecht, 41 M 52, 42 NW 602.

Defendant did not waive the statute of limitations by pleading guilty after his demurrer had been overruled. Waiver is a voluntary relinquishment of a known right. Voluntary choice is of its very essence. It is largely a matter of intention. It must be based on full knowledge of the facts. State v Tupa, 194 M 490, 260 NW 875.

630.24 REQUISITES; WHEN HEARD; JUDGMENT.

HISTORY. R.S. 1851 c. 122 ss. 119 to 121; P.S. 1858 c. 108 ss. 4 to 6; G.S. 1866 c. 111 ss. 4 to 6; G.S. 1878 c. 111 ss. 4 to 6; G.S. 1894 ss. 7294 to 7296; R.L. 1905 s. 5344; G.S. 1913 s. 9186; G.S. 1923 s. 10691; M.S. 1927 s. 10691.

The court: "Ordered, that said demurrer be, and the same is hereby, sustained, and the defendant, McGrorty, go hence without day." The state cannot take an appeal or writ of error in a criminal case. State v McGrorty, 2 M 224 (187).

The dismissal of an indictment by order of court on motion of the county attorney for a clerical defect appearing on its face, after a demurrer has been interposed by defendant and not yet decided by the court, is not equivalent to an order sustaining the demurrer within the meaning and purpose of this section. State v Lightheart, 153 M 40, 189 NW 408.

630.25 PROCEEDINGS ON ALLOWANCE; DEFENDANT, WHEN DISCHARGED.

HISTORY. R.S. 1851 c. 122 ss. 122, 123; P.S. 1858 c. 108 ss. 7, 8; G.S. 1866 c. 111 ss. 7, 8; G.S. 1878 c. 111 ss. 7, 8; G.S. 1894 ss. 7297, 7298; R.L. 1905 s. 5345; G.S. 1913 s. 9187; G.S. 1923 s. 10692; M.S. 1927 s. 10692.

If the demurrer is allowed the judgment is final upon the indictment demurred to and is a bar to another prosecution for the same offense. State v McGrorty, 2 M 224 (187).

An indictment cannot be amended by the court except as to matters of form, as, for example, the date or place of finding or the court in which found. It cannot be amended by inserting the county in which the offense was committed. State v Armstrong, 4 M 335 (251).

It is the right and duty of the court to refuse to receive an informal indictment and to send the jury out to correct it. State v Beebe, 17 M 241 (218); State v Williams, 32 M 537, 21 NW 746.

The allowance of an amendment or direction for resubmission must be by matter of record, made at the same time when the demurrer is allowed, and ought regularly to be made in the order or judgment allowing the demurrer. State v Comfort, 22 M 271.

An indictment may probably be amended by endorsing the names of the witnesses examined by the grand jury. State v Hawks, 56 M 129, 57 NW 455.

The dismissal of an indictment on the motion of the county attorney after the same has been attacked by demurrer is not equivalent to a decision of the court sustaining the demurrer, so as to prevent the case from being resubmitted to the same or another grand jury without an order of court. State v Peterson, 61 M 73, 63 NW 171.

Where upon objection to the introduction of any evidence under an indictment on the ground of its insufficiency the objection is sustained and the court dismisses the indictment without directing that the case be submitted to another grand jury, a second indictment may be found for the same offense. State v Holton, 88 M 171, 92 NW 541.

Where upon motion of the county attorney, the court, because of a clerical defect, dismisses an indictment, a second indictment by the same grand jury either

before or after the dismissal of the first indictment, is valid. State v Lightheart, 153 M 40, 189 NW 408; State v Ginsberg, 167 M 29, 208 NW 177.

The court may allow amendments of indictments as to matters of form or substance, and this may be done even though the period limited by the statute of limitations has run against the offense, provided the original indictment was returned from the grand jury within the required time. State v Heffelfinger, 197 M 177, 266 NW 751.

Double jeopardy. 24 MLR 525.

630.26 PROCEEDINGS WHEN DISALLOWED OR CASE IS SUBMITTED ANEW.

HISTORY. R.S. 1851 c. 122 ss. 124, 125; P.S. 1858 c. 108 ss. 9, 10; G.S. 1866 c. 111 ss. 9, 10; G.S. 1878 c. 111 ss 9, 10; G.S. 1894 ss. 7299, 7300; R.L. 1905 s. 5346; G.S. 1913 s. 9188; G.S. 1923 s. 10693; M.S. 1927 s. 10693.

Designation of the time within which to plead over is within the discretion of the court and the time originally fixed may be extended. If the defendant refuses to plead, judgment as upon a plea of guilty should be entered against him. State v Abrisch, 42 M 202, 43 NW 1115.

630.27 OBJECTIONS TAKEN BY DEMURRER.

HISTORY. R.S. 1851 c. 122 s. 126; P.S. 1858 c. 108 s. 11; G.S. 1866 c. 111 s. 11; G.S. 1878 c. 111 s. 11; G.S. 1894 s. 7301; R.L. 1905 s. 5347; G.S. 1913 s. 9189; G.S. 1923 s. 10694; M.S. 1927 s. 10694.

Cases where the defendant by not moving to set aside the indictment, or demurring is deemed to have waived the objection. State v Shippey, 10 M 223 (178); State v Reckards, 21 M 47; State v Loomis, 27 M 521, 8 NW 758; State v Kunz, 90 M 526, 97 NW 131.

Where objection is raised for the first time on appeal the indictment will be given the benefit of every reasonable intendment. State v Bell, 26 M 388, 5 NW 570; State v Howard, 66 M 309, 68 NW 1096.

The objection that the complaint does not state facts sufficient to constitute a public offense may be made for the first time on appeal. State v Tracy, 82 M 317, 84 NW 1015.

Overruling State v Howard, 66 M 309, 68 NW 1096, the point not having been taken by demurrer or motion before trial, it is then too late to object to the use in an information for bribery of the word "tending" rather than "intending" as applied to the purpose of feloniously influencing official action. State v Lopes, 201 M 20, 275 NW 374.

PLEAS

630.28 PLEASE TO INDICTMENT; ORAL; HOW ENTERED.

HISTORY. R.S. 1851 c. 123 ss. 127 to 129; P.S. 1858 c. 109 ss. 1 to 3; G.S. 1866 c. 112 ss. 1 to 3; G.S. 1878 c. 112 ss. 1 to 3; G.S. 1894 ss. 7302 to 7304; R.L. 1905 s. 5348; G.S. 1913 s. 9190; G.S. 1923 s. 10695; M.S. 1927 s. 10695.

The plea of benefit of clergy does not exist in this state. State v Bilansky, 3 M 246 (169).

A plea of former conviction must show authority to convict by the court in which it was had. State v Charles, 16 M 474 (426).

In this state there is no plea in abatement. State v Brecht, 41 M 50, 42 NW 602.

By entering a plea the party waives objection to the jurisdiction of the court over his person. State ex rel v Fitzgerald, 51 M 534, 53 NW 799.

A plea of former jeopardy has been sustained though not expressly authorized. State v Sommers, 60 M 90, 61 NW 907.

A plea of former acquittal is sufficient whenever it shows on its face that the second indictment is based upon the same single criminal act which is the

basis of the indictment upon which the accused was acquitted. State v Klugherz, 91 M 406, 98 NW 99.

A plea to a charge in an indictment or information of former jeopardy must be entered at the time of arraignment. That issue cannot be raised by objection made at the close of the trial. State v Warner, 165 M 79, 205 NW 692.

The sufficiency of a plea of former jeopardy may be questioned by demurrer, but a motion to strike is better practice. The enumeration of the pleas to an indictment necessarily excludes a plea of nolo contendere. State v Kiewel, 166 M 302, 207 NW 646.

An acquittal in the trial of one offense cannot exclude the evidence used in that trial from use in the trial of another offense when the same single criminal act is not the basis of both prosecutions. City of Duluth v Nordin, 166 M 466, 208 NW 189.

Former jeopardy or a prior conviction of the same offense is the basis for a plea in bar to be tried formally; and a fact issue being raised the defendant may have a trial by jury. The issue cannot be disposed of on mere affidavits. State v Eaton, 180 M 439, 231 NW 6.

A plea of guilty does not preclude a defendant from raising for the first time on appeal the question of whether or not the complaint, information, or indictment charges a public offense. State v Parker, 183 M 588, 237 NW 409.

The acceptance or rejection of a plea of nolo contendere rests wholly within the discretion of the trial judge. Twin Ports v Pure Oil Co. 26 F. Supp. 366.

630.29 PLEA OF GUILTY.

HISTORY. R.S. 1851 c. 123 ss. 130, 131; P.S. 1858 c. 109 ss. 4, 5; G.S. 1866 c. 112 ss. 4, 5; G.S. 1878 c. 112 ss. 4, 5; G.S. 1894 ss. 7305, 7306; R.L. 1905 s. 5349; G.S. 1913 s. 9191; G.S. 1923 s. 10696; M.S. 1927 s. 10696.

Guilty; not guilty; or a former judgment of conviction or acquittal must be entered upon arraignment. State v Warner, 165 M 82, 205 NW 692.

Requirement for appointment of counsel for accused before taking his plea does not apply where the county attorney files information on his own motion. State v McDonnell, 165 M 423, 206 NW 952.

A plea of guilty which is withdrawn by leave of court is not admissible upon the trial of the substituted plea of not guilty nor may he be cross-examined thereon. State v Anderson, 173 M 293, 217 NW 351; State v Hook, 174 M 590, 219 NW 926.

Defendant on appeal from sentence of the justice of the peace on question of law and fact had the right to withdraw his plea of guilty entered in justice court and enter a plea of not guilty in district court. State v Prickett, 217 M 629, 15 NW(2d) 96.

630.30 PLEA OF GUILTY TO LESSER DEGREE OF OFFENSE; RECORD.

HISTORY. 1927 c. 255; M.S. 1927 s. 10696-1.

630.31 PLEA OF NOT GUILTY; EVIDENCE UNDER.

HISTORY. R.S. 1851 c. 123 ss. 132, 133; P.S. 1858 c. 109 ss. 6, 7; G.S. 1866 c. 112 ss. 6, 7; G.S. 1878 c. 112 ss. 6, 7; G.S. 1894 ss. 7307, 7308; R.L. 1905 s. 5350; G.S. 1913 s. 9192; G.S. 1923 s. 10697; M.S. 1927 s. 10697.

See notes under section 630.29.

By pleading not guilty to a complaint filed in justice court charging defendant with petit larceny, he submitted himself to the jurisdiction of the court, and there was no error in denying defendant's motion to withdraw the plea. State v Henspeter, 199 M 359, 271 NW 700.

630.32 ACQUITTAL; WHEN A BAR.

HISTORY. R.S. 1851 c. 123, ss. 134, 135; P.S. 1858 c. 109 ss. 8, 9; G.S. 1866 c. 112 ss. 8, 9; G.S. 1878 c. 112 ss. 8, 9; G.S. 1894 ss. 7309, 7310; R.L. 1905 s. 5351; G.S. 1913 s. 9193; G.S. 1923 s. 10698; M.S. 1927 s. 10698.

After a jury was impaneled for the trial of the defendant on an indictment for larceny by a bailee the courts sustained his objection to any evidence on the part of the state, for the reason the indictment did not allege facts constituting a public offense and dismissed the indictment without directing that the case be submitted to another grand jury. This was not a bar to a second indictment for the same offense. State v Holton, 88 M 171, 92 NW 541; State v Lightheart, 153 M 43, 189 NW 408.

Inexcusable failure to provide for one's minor children is a continuing offense. An acquittal in a prosecution for deserting them is not a bar to a prosecution for nonsupport subsequent to the date of the alleged desertion. State v Wood, 168 M 34, 209 NW 529.

Where the defendant was acquitted on the charge of rape, the age of the female not being alleged, he may again be indicted and tried for carnal knowledge and abuse of a female child under the age of consent. State v Winger, 204 M 164, 282 NW 819.

A plea of former conviction or acquittal of the same offense raises an issue of fact of which the trial court has jurisdiction. A defendant's constitutional right to plead former jeopardy may be waived. If not raised at the proper time it is deemed waived. State ex rel v Utecht, 206 M 43, 287 NW 229.

When does jeopardy attach. 24 MLR 526.

630.33 INDICTMENT FOR OFFENSE OF DIFFERENT DEGREES.

HISTORY. R.S. 1851 c. 123 s. 136; P.S. 1858 c. 109 s. 10; G.S. 1866 c. 112 s. 10; G.S. 1878 c. 112 s. 10; G.S. 1894 s. 7311; R.L. 1905 s. 5352; G.S. 1913 s. 9194; G.S. 1923 s. 10699; M.S. 1927 s. 10699.

Upon an indictment for the highest degree of an offense defendant may be convicted of a lesser degree, though not described in the indictment, if it be the same act. State v Lessing, 16 M 75 (64).

A conviction for simple larceny of a hat (value $4.00) is a bar to an indictment for larceny of the same from a shop, the stealing in both cases being one and the same. State v Wiles, 26 M 381, 4 NW 615.

A person who, having entered any building under such circumstances as to constitute burglary in any degree, commits the crime of larceny therein, is punishable therefor as well as for the burglary, and may be prosecuted for each crime separately. State v Hackett, 47 M 425, 50 NW 472.

A defendant indicted for grand larceny in the second degree cannot complain because the court permitted the jury to find him guilty of petit larceny, although the evidence strongly tended to show that, if guilty at all, he was guilty of the crime charged. State v Morris, 149 M 41, 182 NW 721.

The defense of former jeopardy is an established maxim of the common law. The constitutional provision safeguarding this right is found in the federal constitution and in the constitution of most of the states. The protection thus afforded is not against the peril of second punishment, but against being again tried for the same offense. Before a defendant may avail himself of the plea of former jeopardy, it is necessary for him to show that the present prosecution is for the identical act and that the crime both in law and in fact was settled by the first prosecution. State v Fredlund, 200 M 47, 273 N. W. 353.

See State v Winger, 204 M 164, 282 NW 819.

Multiple consequences of a single criminal act. 21 MLR 805.

Crimes consisting of several degrees. 24 MLR 543.

630.34 REFUSAL TO PLEAD.

HISTORY. R.S. 1851 c. 123 s. 137; P.S. 1858 c. 109 s. 11; G.S. 1866 c. 112 s. 11; G.S. 1878 c. 112 s. 11; G.S. 1894 s. 7312; R.L. 1905 s. 5353; G.S. 1913 s. 9195; G.S. 1923 s. 10700; M.S. 1927 s. 10700.

CALENDAR

630.35 CALENDAR; CONTENTS.

HISTORY. R.S. 1851 c. 127 s. 162; P.S. 1858 c. 113 s. 1; G.S. 1866 c. 115 s. 1; G.S. 1878 c. 115 s. 1; G.S. 1894 s. 7347; R.L. 1905 s. 5379; G.S. 1913 s. 9221; G.S. 1923 s. 10726; M.S. 1927 s. 10726.

630.36 ISSUES, HOW DISPOSED OF.

HISTORY. R.S. 1851 c. 127 ss. 163, 164; P.S. 1858 c. 113 ss. 2, 3; G.S. 1866 c. 115 ss. 2, 3; G.S. 1878 c. 115 ss. 2, 3; G.S. 1894 ss. 7348, 7349; R.L. 1905 s. 5380; G.S. 1913 s. 9222; G.S. 1923 s. 10727; M.S. 1927 s. 10727.

Disqualification of judge. State v Hoist, 111 M 325, 126 NW 1090.

That another member of the county bar, with the consent of the court, and without objection by defendant, assists the county attorney in the trial of a criminal case, is no ground for a new trial. State v Blake, 176 M 305, 223 NW 141.

630.37 REGISTER.

HISTORY. R.S. 1851 c. 127 s. 165; P.S. 1858 c. 113 s. 4; G.S. 1866 c. 115 s. 4; G.S. 1878 c. 115 s. 4; G.S. 1894 s. 7350; R.L. 1905 s. 5381; G.S. 1913 s. 9223; G.S. 1923 s. 10728; M.S. 1927 s. 10728.

Proceedings before an examining magistrate by which the defendant is held to answer in the district court for the crime of adultery, constitute the commencement of a prosecution therefor. State v Dlugi, 123 M 392, 143 NW 971.