

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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1872.

committed within six months next after the time stated in the indictment, and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance if it is proved that any money, bank note, check, draft, bill of exchange, or other security for money of such person, of whatever amount, was fraudulently embezzled by such clerk, agent or servant, within the said period of six months.

What deemed proof of ownership of property stolen, &c.

1869
+
85

SEC. 24. In the prosecution of any such offense committed upon or in relation to, or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it is proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation, to be the owner thereof.

CHAPTER CIX.

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Arraignment of defendant.

SECTION 1. When the indictment is filed, the defendant shall be arraigned thereon, before the court in which it is found, if it is triable therein, or if not, before the court to which it is sent or removed.

When defendant must be personally present.

SEC. 2. If the indictment is for a felony, the defendant shall be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

May be brought into court to be arraigned.

SEC. 3. When his personal appearance is necessary, if he is in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned.

Not appearing, bench warrant may issue

SEC. 4. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 5. The clerk, on the application of the county attorney, may accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant, into one or more counties. Clerk shall issue bench warrant, when.

SEC. 6. The bench warrant upon the indictment shall, if the offense is a felony, be substantially in the following form: Form of bench warrant in case of felony.

The district court for the county of _____, and state of Minnesota:

The State of Minnesota to any sheriff, (or other proper officer.)

An indictment having been found on the _____ day of _____, A. D. 18____, in the district court for the county of _____, charging C. D. with the crime of (designating it generally,) you are therefore commanded forthwith to arrest the above named C. D. and bring him before this court (or if the venue has been changed, take him before that court, as the case may be,) to answer the indictment, or if the court has adjourned for the term, that you deliver him into the custody of the jailor of the county (or city,) of _____, the _____ day of _____, A. D.

Witness the Honorable

By order of the court.

E. F., clerk.

SEC. 7. If the offense is a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "or if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment." Form of bench warrant in case of misdemeanor.

SEC. 8. If the offense charged is bailable, the court, upon directing the bench warrant to issue, may fix the amount of bail, and in such case an indorsement shall be made upon the bench warrant, and signed by the clerk, to the following effect: "the defendant is to be admitted to bail in the sum of _____ dollars." Court shall fix amount of bail.

SEC. 9. The bench warrant may be served in any county in the same manner as a warrant of arrest. Bench warrant, how served.

SEC. 10. If the defendant is brought before a magistrate of another county, for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest. Proceedings before magistrate.

SEC. 11. On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and recognizance to the officer having charge of the defendant; the officer shall then discharge the defendant from arrest, and without delay deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear. Magistrate shall proceed, how.

SEC. 12. When the indictment is for felony, and the defendant before the finding thereof has given bail for his appearance to answer the charge, the court to which the indictment is presented or sent, or removed for trial, may order the defendant to be committed to actual custody, unless he give bail in the increased amount to be specified in the order. Court may order defendant to be committed.

SEC. 13. If the defendant is present when the order is made, he shall be forthwith committed; if he is not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter. Bench warrant may issue to enforce order of commitment.

SEC. 14. If the defendant appears for arraignment without counsel, he shall be informed by the court that it his right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel. Court shall inform defendant of his right to counsel.

SEC. 15. The arraignment shall be made by the court, or by the clerk or county attorney, under his direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment. Arraignment of defendant, how conducted.

SEC. 16. When the defendant is arraigned he shall be informed that Defendant shall

be asked to give his true name.

Proceedings when he gives another as his true name.

Time to plead allowed.

Defendant may move to set aside indictment, may demur or plead.

if the name by which he is indicted is not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name, the court may proceed accordingly.

SEC. 17. If he alleges that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

SEC. 18. If on the arraignment the defendant requires it, he shall be allowed until the next day, or such further time may be allowed him as the court deems reasonable, to answer the indictment.

SEC. 19. If the defendant does not require time, as provided in the last section, or if he does, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

CHAPTER CX.

SETTING ASIDE INDICTMENT.

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1. Indictment shall be set aside, when.
2. Objections to indictment, waived, when.
3. Motion to set aside indictment heard, when.
4. If motion is denied, defendant shall demur or plead.

SECTION

5. Proceedings, if motion is granted.
6. Effect of re-submission of case to grand jury.
7. Proceedings, if new indictment is not found.
8. Order setting aside indictment no bar to another prosecution.

Indictment shall be set aside, when.

10 Min. 223.

Objections to indictment waived, when.

Motion to set aside indictment heard, when.

If motion is denied, defendant shall demur or plead.

Proceedings, if motion is granted.

SECTION 1. The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion in either of the following cases :

First. When it is not found, indorsed, and presented as prescribed in the chapter relating to grand-juries ;

Second. When the names of the witnesses examined before the grand-jury are not inserted at the foot of the indictment, or indorsed thereon ;

Third. When a person is permitted to be present during the session of the grand-jury, while the charge embraced in the indictment was under consideration, except as provided in section thirty-nine of said chapter.

SEC. 2. If the motion to set aside the indictment is not made, the defendant is precluded from afterward taking the objections mentioned in the last section.

SEC. 3. The motion shall be heard at the time of the arraignment, unless for good cause the court postpones the hearing to another time.

SEC. 4. If the motion is denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto.

SEC. 5. If the motion is granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the