

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 97 (G. S. ch. 111).

DEMURRERS.

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SEC. 6770. **Defendant's pleading.**—The only pleading on the part of the defendant is a demurrer or a plea.

G. S. ch. 111, § 1.

SEC. 6771. **When made.**—Both the demurrer and the plea shall be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

G. S. ch. 111, § 2.

SEC. 6772. **Grounds of demurrer.**—The defendant may demur to the indictment when it appears from the face thereof, either,

First. That the grand-jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the county;

Second. That it does not substantially conform to the requirements of sections one, two, three and four, of chapter one hundred and eight, as the same are qualified by section ten of the same chapter, or was not found within the time prescribed by section eighteen;

Third. That more than one offence is charged in the indictment, except in cases where it is allowed by statute;

Fourth. That the facts stated do not constitute a public offence;

Fifth. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

G. S. ch. 111, § 3. 4 M. 345; 13 M. 121; 19 M. 271; 19 M. 93.

SEC. 6773. **Form of demurrer.**—The demurrer shall be in writing, signed either by the defendant or his counsel; it shall distinctly specify the ground of objection to the indictment, or it may be disregarded.

G. S. ch. 111, § 4.

SEC. 6774. **Hearing.**—Upon the demurrer being filed, the objection presented thereby shall be heard, either immediately, or at such time as the court may appoint.

G. S. ch. 111, § 5.

SEC. 6775. **Judgment.**—Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered upon the minutes.

G. S. ch. 111, § 6.

SEC. 6776. **Allowance of demurrer.**—If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offence, unless the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or, being of opinion

that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand-jury.

G. S. ch. 111, § 7. 4 M. 335; 22 M. 71.

SEC. 6777. Discharge of defendant.—If the court does not allow an amendment, or direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

G. S. ch. 111, § 8.

SEC. 6778. Resubmission.—If the court directs that the case be submitted anew, the same proceedings shall be had thereon as are prescribed in sections six and seven of chapter one hundred and ten.

G. S. ch. 111, § 9.

SEC. 6779. Disallowance of demurrer.—If the demurrer is disallowed or the indictment amended, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow. If he does not plead, judgment shall be pronounced against him.

G. S. ch. 111, § 10.

SEC. 6780. Objections at trial.—When the objections mentioned in section three appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

G. S. ch. 111, § 11. 27 M. 525.