CHAPTER 628

ACCUSATION

628.01 INDICTMENT AND PRESENTMENT.

HISTORY. R.S. 1851 c. 115 ss. 32, 33; P.S. 1858 c. 104 ss. 32, 33; G.S. 1866 c. 107 ss. 29, 30; G.S. 1878 c. 107 ss. 29, 30; G.S. 1894 ss. 7204, 7205; R.L. 1905 s. 5278; G.S. 1913 s. 9115; G.S. 1923 s. 10620; M.S. 1927 s. 10620.

A report of a grand jury in the form of a presentment is not privileged if it names an individual as having done an improper or odious act, and on his application the court should suppress or expunge the same. State ex rel v District Court, 216 M 348, 12 NW(2d) 776.

628.02 REPORTS BY INDICTMENT OR PRESENTMENT.

HISTORY. R.S. 1851 c. 115 ss. 29 to 31; 1853 c. 11 s. 30; P.S. 1858 c. 104 ss. 29 to 31; G.S. 1866 c. 107 ss. 27, 28; G.S. 1878 c. 107 ss. 27, 28; G.S. 1894 ss. 7202, 7203; R.L. 1905 s. 5279; G.S. 1913 s. 9116; G.S. 1923 s. 10621; M.S. 1927 s. 10621.

Upon an indictment for adultery, it need not be alleged in the indictment nor proved on the trial, that the prosecution was commenced on the complaint of the wife. The proper way to raise the objection that it was not, is by motion to set aside the indictment. State v Brecht, 41 M 50, 42 NW 602.

SEE: State ex rel v District Court, 216 M 348, 12 NW(2d) 776.

Inquisitorial power of grand jury; employing and financing private detectives. 12 MLR 761.

628.03 INDICTMENT FOUND, WHEN.

HISTORY. R.S. 1851 c. 115 s. 38; P.S. 1858 c. 104 s. 38; G.S. 1866 c. 107 s. 35; G.S. 1878 c. 107 s. 35; G.S. 1894 s. 7210; R.L. 1905 s. 5281; G.S. 1913 s. 9118; G.S. 1923 s. 10623; M.S. 1927 s. 10623.

The evidence leaves no doubt that a crime was committed. The only question is whether there is legal evidence that defendant is a party to it. State v Elsberg, 209 M 167, 295 NW 913.

628.04 PRESENTMENT, HOW FOUND; PROCEDURE; VIOLATION, HOW PUNISHED; DEFENDANT TO HAVE COPY.

HISTORY. R.S. 1851 c. 115 ss. 46 to 51; P.S. 1858 c. 104 ss. 46 to 51; G.S. 1866 c. 107 ss. 43 to 48; G.S. 1878 c. 107 ss. 43 to 48; 1889 c. 98 s. 6; 1889 c. 110 s. 6; G.S. 1894 ss. 7218 to 7223; R.L. 1905 ss. 5289, 5290; G.S. 1913 ss. 9126, 9127; G.S. 1923 ss. 10631, 10632; M.S. 1927 ss. 10631, 10632.

Defendant, accused under Laws 1911, Chapter 203, is not entitled to inspection of testimony furnished to the county attorney by the state fire marshal to be used for the purpose of making a motion to quash the indictment. State ex rel v Steele, 117 M 384, 135 NW 1128.

628.05 BENCH WARRANT; ISSUANCE.

HISTORY. R.S. 1851 c. 115 ss. 54, 55; 1852 Amend. p. 27; P.S. 1858 c. 104 ss. 54, 55; G.S. 1866 c. 107 ss. 51, 52; G.S. 1878 c. 107 ss. 51, 52; G.S. 1894 ss. 7226, 7227; R.L. 1905 s. 5292; G.S. 1913 s. 9129; G.S. 1923 s. 10634; M.S. 1927 s. 10634.

SEE: State ex rel v Steele, 117 M 384, 135 NW 1128.

628.06 FORM OF WARRANT; HOW SERVED.

HISTORY. R.S. 1851 c. 115 ss. 56, 57; P.S. 1858 c. 104 ss. 56, 57; G.S. 1866 c. 107 ss. 53, 54; G.S. 1878 c. 107 ss. 53, 54; G.S. 1894 ss. 7228, 7229; R.L. 1905 s. 5293; G.S. 1913 s. 9130; G.S. 1923 s. 10635; M.S. 1927 s. 10635.

628.07 PROCEEDINGS ON ARREST.

HISTORY. R.S. 1851 c. 115 ss. 58, 59; P.S. 1858 c. 104 ss. 58, 59; G.S. 1866 c. 107 ss. 55, 56; G.S. 1878 c. 107 ss. 55, 56; G.S. 1894 ss. 7230, 7231; R.L. 1905 s. 5294; G.S. 1913 s. 9131; G.S. 1923 s. 10636; M.S. 1927 s. 10636.

SEE: State ex rel v Steele, 117 M 384, 135 NW 1128.

628.08 INDICTMENT; HOW FOUND AND ENDORSED; NAMES OF WITNESSES.

HISTORY. R.S. 1851 c. 115 ss. 60 to 63; P.S. 1858 c. 104 ss. 60 to 63; G.S. 1866 c. 107 ss. 57 to 59; G.S. 1878 c. 107 ss. 57 to 59; 1889 c. 98 s. 7; 1889 c. 110 s. 7; G.S. 1894 ss. 7232 to 7234; R.L. 1905 s. 5295; G.S. 1913 s. 9132; G.S. 1923 s. 10637; M.S. 1927 s. 10637.

1. **Signing by foreman**
2. **Evidence of finding**
3. **Number of votes necessary**
4. ***Endorsing names of witnesses***
5. **Resubmission**

1. Signing by foreman

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).

In the absence of the foreman of a grand jury, the district court has the power to appoint a foreman pro tempore and indictments properly endorsed by a duly appointed acting foreman are not open to attack on that ground. State v Ginsberg, 167 M 26, 208 NW 177.

Information or indictments. 8 MLR 394.

2. Evidence of finding

The fact that an indictment is endorsed "a true bill", the endorsement signed by the foreman, and the indictment properly filed, are evidence that the indictment has been "found" by a grand jury. State v McCartey, 17 M 76 (54); State v Beebe, 17 M 241 (218).

3. Number of votes necssary

An indictment cannot be found without the concurrence of at least 12 jurors. State v Cooley, 72 M 476, 75 NW 729.

4. Endorsing names of witnesses

Where in an investigation by a grand jury of a charge against one person, evidence is elicited which proves that another person is guilty of the same or another crime, the jury may, on such evidence, indict the latter person without recalling and re-examining the witnesses; and the names of such witnesses should be endorsed on the affidavit. State v Beebe, 17 M 241 (218).

The witnesses whose names are required to be endorsed on the indictment, or inserted at the foot thereof, are only those who were examined and gave material evidence on the particular charge alleged in the indictment at the time when such charge was being investigated by the grand jury. It is not required to endorse or enter the names of the witnesses who, while other charges were being investigated, may have given evidence material on the charge alleged in

the indictment, unless the grand jury found the indictment in whole or in part on such evidence. The fact that the names of such witnesses are not endorsed or entered on the indictment is conclusive that the grand jury did not take such evidence into account in finding "a true bill". State v Hawks, 56 M 129, 57 NW 455; State v Rickmier, 144 M 32, 174 NW 529.

The state is not bound to call and examine all the witnesses whose names are endorsed. State v Smith, 78 M 362, 81 NW 17; State v Sheltrey, 100 M 107, 110 NW 353.

Where the accused is required to give evidence against himself before the jury, the indictment will be quashed although his name is not endorsed thereon. State v Gardner, 88 M 130, 92 NW 529.

If not called by the state, witness may be called by the defendant, and failure of either to call may in the discretion of the court, be commented on by either counsel. State v Sheltrey, 100 M 107, 110 NW 353.

In an information under General Statutes 1913, Section 9159 (section 628.29), et seq. neither the constitution nor the statute require the endorsement thereon of the words, "a true bill"; nor is it necessary to insert the names of the witnesses. State v Workman, 157 M 168, 195 NW 776.

Endorsed on the indictment are the names of 23 witnesses. It is not fatal that the names of some who appeared before the grand jury were omitted. State v Waddell, 187 M 192, 245 NW 140.

Aside from what is required by the provisions of this section, it is not necessary for the state to furnish the defendant with the names of the persons it intends to call as witnesses, and it was not error for the trial court to deny defendant's motion to require the state to do so. State v Poelaert, 200 M 30, 273 NW 641.

There can be nothing improper in the conduct of one accused of crime in interviewing witnesses, whose names are endorsed upon the indictment, so long as no attempt is made to influence their testimony. The main purpose of endorsing the names of witnesses upon an indictment is to advise the defendant, so as to give the defendant an opportunity to contact them. State v Gorman, 219 M 172, 17 NW(2d) 42.

5. Resubmission

The presentation of a petition to the court praying for the resubmission of certain charges of a violation of the law, which had been theretofore submitted to the grand jury, no indictment being found, and since the report of the grand jury without finding an indictment was a final determination of the matter so far as concerned the reporting grand jury, it was not contempt of court, though the petition contained groundless charges of misconduct on the part of the grand jury. State v Young, 113 M 96, 129 NW 148.

628.09 INDICTMENT PRESENTED, FILED, AND RECORDED; EFFECT.

HISTORY. R.S. 1851 c. 115 s. 64; P.S. 1858 c. 104 s. 64; G.S. 1866 c. 107 s. 60; G.S. 1878 c. 107 s. 60; 1881 c. 47 ss. 1 to 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 107 ss. 61, 62; G.S. 1894 ss. 7235 to 7237; R.L. 1905 s. 5296; G.S. 1913 s. 9133; G.S. 1923 s. 10638; M.S. 1927 s. 10638.

Indictment found and properly filed is presumed to have been presented to the court The clerk receives the indictment and files it in silence, allowing no one to inspect it but the judge and the county attorney. It is not customary to make any note of it in the minutes at the time, if the accused has not been arrested. Record when finally made should show a due presentment. State v Beebe, 17 M 241 (218); State v Rank, 162 M 395, 203 NW 49; State v Ginsberg, 167 M 26, 208 NW 177.

Suspending the running the statute by filing an information. 9 MLR 680.

628.10 INDICTMENTS; CONTENTS.

HISTORY. R.S. 1851 c. 119 ss. 45, 46; P.S. 1858 c. 105 ss. 1, 2; G.S. 1866 c. 108 s. 1; G.S. 1878 c. 108 s. 1; G.S. 1894 s. 7238; R.L. 1905 s. 5297; G.S. 1913 s. 9134; G.S. 1923 s. 10639; M.S. 1927 s. 10639.

1. Caption

Indictment for a crime committed in an organied county, to which others are attached for judicial purposes, may be entitled as in all of the counties. State v Stokely, 16 M 282 (249).

Where several counties are attached for judicial purposes, entitling an indictment only in the name of the county to which the others are attached, is a defect of form merely. State v McCartey, 17 M 76 (54).

The number of the judicial district is no part of the title of the district court and if stated erroneously may be rejected. State v Munch, 22 M 67.

All criminal prosecutions whether under statutes or ordinances are properly prosecuted in the name of the state. State v Gill, 89 M 502, 95 NW 449.

Informations or indictments. 8 MLR 380.

2. Commencement or accusing clause

Commencing "The grand jurors for the county of Rice, and State of Minnesota, upon their oaths, present" is sufficient. State v Hinckley, 4 M 345 (261).

Where a crime has a name and is divided into several classes or degrees, it is sufficient if the accused is charged with the offense by name in the accusing clause and the particular degree or class is made out in the charging part. State v Eno, 8 M 220 (190).

Error in designating name of the offense in commencement is an irregularity only. State v Munch, 22 M 67; State v Howard, 66 M 309, 68 NW 1096.

Commencement is strictly no part of the indictment. The fact that the name of the accused is not repeated in the commencement is not material. State v Monson, 41 M 140, 42 NW 790.

An indictment which alleges that the defendant is accused of having committed an offense, but which does not directly charge that he committed the offense, is insufficient. State v Nelson, 79 M 388, 82 NW 650; State v Briggs, 84 M 357, 87 NW 935.

3. Laying venue

Under an indictment charging the offense to have been committed in a certain county, the accused may be convicted if the offense was committed on a vessel which passed through the county on the voyage in the course of which the act took place. State v Timmens, 4 M 325 (241).

The court cannot amend an indictment by inserting an allegation as to venue. State v Armstrong, 4 M 335 (251).

It is not necessary to allege the particular place in the county. O'Connell v State, 6 M 279 (190).

The phrase, "then and there" is insufficient, if standing alone. State v Brown, 12 M 490 (393).

Every indictment must allege the place where the crime was committed in order to show that it was committed within the jurisdiction of the court, and to apprize the accused of the offense charged with certainty. It is the general rule that it must be alleged that the offense was committed within the county in which the indictment is found; but where an offense is committed within 100 rods of the dividing line between two counties, an indictment may be found in either county, and it may be alleged that the offense was committed in the county where it was found or that it was committed in the other county within 100 rods of the dividing line. State v Robinson, 14 M 447 (333); State v Anderson, 25 M 66; State v Masteller, 45 M 128, 47 NW 541.

Where a blow is inflicted in one county and death ensues in another county and state, the venue may be laid in the former county. State v Gessert, 21 M 369.

The proper county being named in the caption, it is sufficient to lay the venue "in said county". State v Bell, 26 M 388, 5 NW 970.

4. The charging part

The charging part of the indictment is alone to be considered in determining whether the indictment charges a public offense. State v Howard, 66 M 309, 68 NW 1096.

An indictment which alleges that the defendant is accused of having committed an offense (stating it), but which does not directly charge the defendant committed the offense, is insufficient against an objection. State v Nelson, 79 M 388, 82 NW 650.

Indictment for second degree grand larceny found to contain such allegations as would permit the introduction of evidence showing that the crime was perpetrated by means of trickery. State v Nuser, 199 M 315, 271 NW 811.

An indictment, alleging that defendant, employed to fumigate a house, left it unguarded and that a boy entered and was stricken with gas, charged only one offense, constituting manslaughter under the state law. State v Cantrell, 220 M —, 18 NW(2d) 681.

5. Direct charge necessary

There must be a direct charge against the accused that he committed the offense. A recital that he is accused of having committed it is not a charge that he committed it. State v Nelson, 79 M 388, 82 NW 650.

6. Mode of charging accessory before the fact

An indictment against an accessory before the fact may charge him directly with the commission of the offense as if he personally committed it, or it may directly charge him as a principal by stating the facts which at common law would make him an accessory before the fact. State v Beebe, 17 M 241 (218); State v Briggs, 84 M 357, 87 NW 935.

7. Mode of charging accessory after the fact

An indictment charging the accused with being an accessory to a felony after the fact should allege facts constituting the felony with the same degree of certainty as though the person who committed it were alone indicted. State v King, 88 M 175, 92 NW 965.

8. Misnaming offense

The sufficiency of an indictment is not affected by the fact that the grand jury misnames or neglects to name the offense charged. State v Hinckley, 4 M 345 (261); State v Garvey, 11 M 154 (95); State v Coon, 18 M 518 (464); State v Munch, 22 M 67; State v Howard, 66 M 309, 68 NW 1096.

9. Words used

The statute provides that "ordinary and concise language" shall be used. The object of this provision was to free criminal pleading of the formality, technicality and tautology of common-law pleading. State v Hinckley, 4 M 345 (261); State v Holong, 38 M 368, 37 NW 587; State v Howard, 66 M 309, 68 NW 1096.

The words of the statute need not be strictly pursued. Other words conveying the same meaning may be used. If an indictment states fully, directly and clearly acts constituting a public offense, it is immaterial in what form of words the acts are alleged. State v Holong, 38 M 368, 37 NW 587; State v Stein, 48 M 466, 51 NW 474; State v Southall, 77 M 296, 79 NW 1007.

10. Use of technical and composite words

The statute providing for the use of ordinary and concise language and the rule against pleading legal conclusions do not prohibit the use of technical words or words of a composite meaning compounded of law and fact. Thus, instead of pleading all the minute facts constituting an ultimate fact it is sufficient to use such words as: "Ravish," O'Connell v State, 6 M 279 (190); "assault," State v Bell, 26 M 388, 5 NW 970; State v Ward, 35 M 182, 28 NW 192; "sell" and "sold," State v Lavake, 26 M 526, 6 NW 339; "take," State v Friend, 47 M 449, 50 NW 692; "executed," State v Butler, 47 M 483, 50 NW 532; "being aided by an accomplice actually present," State v O'Neil, 71 M 399, 73 NW 1091; "forge," State v Greenwood, 76 M 211, 78 NW 1042; "indecent liberties," State v Kunz, 90 M 526, 97 NW 131.

11. Use of words "feloniously," "criminally," and "unlawfully"

Where the statute in defining a crime does not use the words "feloniously" or "criminally" it is not necessary to use them in an indictment. State v Garvey, 11 M 154 (95).

It is not necessary to use the word "feloniously" in an indictment for a felony, and its use in an indictment for a misdemeanor is not fatal. State v Hogard, 12 M 293 (191).

The words "feloniously" and "unlawfully" held properly disregarded as surplusage. State v Crummey, 17 M 72, 50.

Indictments and informations; necessity of word "feloniously." 23 MLR 226.

12. Alleging intent

As a general rule it is not necessary to allege an intent to do the acts charged as it is presumed that an act was intentionally done, but when a specific intent

is an essential element of an offense such intent must be directly alleged. State v Ullman, 5 M 13 (1); State v Ruhnke, 27 M 309, 7 NW 264; State v Howard, 66 M 309, 68 NW 1096.

13. Alleging date of offense

An indictment is sufficient in this regard if it can be understood therefrom "that the offense was committed at some time prior to the time of finding the indictment." State v Ryan, 13 M 371 (343); State v Lavake, 26 M 526, 6 NW 339.

Where the time was alleged as "the fifth day of July, one thousand, eight hundred and seventy-one" the omission of the year was held not fatal. State v Munch, 22 M 67.

Ordinarily the offense need not be proved as of the date alleged. State v New, 22 M 76; State v Johnson, 23 M 569; State v Lavake, 26 M 526, 6 NW 339; State v Brecht, 41 M 50, 42 NW 602; State v Masteller, 45 M 128, 47 NW 541; State v Holmes, 65 M 230, 68 NW 11.

The precise time at which the offense was committed need not be alleged but it may be alleged to have been committed at any time before the finding of the indictment, except where the time is a material ingredient in the offense. State v Johnson, 23 M 569; State v Lavake, 26 M 526, 6 NW 339; State v Holmes, 65 M 230, 68 NW 11.

Where the offense is not of a continuous nature, it is improper, but not fatal, to allege the time as of a specified day "and divers other days and time since said day." State v Kobe, 26 M 148, 1 NW 1054.

Defendant's objection is based on a mere verbal criticism on the allegation as to dates. In the contemplation of law, the defendant committed the crime in Minnesota on the eighth, although died in North Dakota on the ninth of the month. State v Smith, 78 M 364, 81 NW 17.

An indictment charging an attempt to prevent and dissuade one who has been subpoenaed as a witness from appearing and testifying in a prosecution, was sufficient notwithstanding failure to allege time subpoena was served. Time must be alleged and proved as laid only in those cases where time was essential. State v Kahner, 217 M 574, 15 NW(2d) 105.

14. Essential elements to be alleged

No allegation may be omitted if without it a criminal offense would not be described. State v Ullman, 5 M 13 (1); State v Ruhnke, 27 M 309, 7 NW 264; State v Heitsch, 29 M 134, 12 NW 353; State v Tracy, 82 M 317, 84 NW 1015; State v Holton, 88 M 171, 92 NW 541.

Nothing can be inferred, intended, or presumed, that is necessary to be alleged as an essential element of a crime. State v Ames, 91 M 365, 378, 98 NW 190.

An indictment for criminal carelessness in the operation of a railway engine and train by its engineer whereby a collision occurred and named persons were killed, is insufficient. State v MacDonald, 105 M 251, 117 NW 482.

Every essential element of the offense must be alleged directly and certainly. State v Byhre, 137 M 195, 163 NW 282.

Where the accused was indicted for discouraging aid to the government, it was not necessary to allege the names of the persons to whom defendant's language was addressed. State v Hartung, 141 M 207, 169 NW 712.

Indictment for conspiracy. State v Townley, 142 M 326, 171 NW 930.

Essential elements necessary to constitute the crime of grand larceny committed by the use of false statements are stated. State v Anderson, 159 M 245, 199 NW 6.

The pendency of a proceeding for preliminary examination in a lower court does not prevent the finding of an indictment by the grand jury. State v Uglum, 175 M 607, 222 NW 280.

Indictment for second degree grand larceny found to contain such allegations as would permit the introduction of evidence showing that the crime was perpetrated by means of trickery. State v Nuser, 199 M 315, 271 NW 811.

15. Anticipating defense

It is sufficient to allege facts constituting a public offense prima facie. It is not necessary to anticipate and negative possible defenses. State v Ward, 35 M 182, 28 NW 192.

16. Ultimate facts

Only the ultimate facts constituting the offense need be alleged. It is not necessary to allege evidentiary facts. State v Ring, 29 M 78, 11 NW 233; State v O'Neil, 71 M 399, 73 NW 1091; State v Moore, 86 M 418, 90 NW 786; State v Holton, 88 M 171, 92 NW 541.

17. Facts and not conclusions of law

An indictment must allege facts and not conclusions of law. State v O'Neil, 71 M 399, 73 NW 1091; State v Greenwood, 76 M 211, 78 NW 1042.

18. Following language of statute or ordinance

It is to be presumed that all the words used to define an offense are essential, and it is accordingly necessary to employ them all, or their equivalent, in an indictment. State v Ullman, 5 M 13 (1).

An indictment charging an offense in the language of the statute is ordinarily sufficient. State v Garvey, 11 M 154 (95); State v Comfort, 22 M 271; State v Shenton, 22 M 311; State v Heck, 23 M 549; State v Lavake, 26 M 526, 6 NW 339; State v Gray, 29 M 142, 12 NW 455; City of Mankato v Arnold, 36 M 62, 30 NW 305; State v Holong, 38 M 368, 37 NW 587; State v Abrish, 41 M 41, 42 NW 543; State v Stein, 48 M 466, 51 NW 474; State v O'Neil, 71 M 399, 73 NW 1091; State v Greenwood, 76 M 211, 78 NW 1042; State v Barry, 77 M 128, 79 NW 756; State v Evans, 88 M 262, 92 NW 976; State v Gill, 89 M 502, 95 NW 449.

An indictment under General Statutes 1866, Chapter 94, Section 33, is sufficient if it directly charges the defendant with acts coming fully within the statutory description of the offense, in the substantial words of the statute, without any further expansion of the matter. The modern tendency is to follow the general rule and to restrict all exceptions. State v Shenton, 22 M 311.

In a complaint under an ordinance, it is sufficient to follow the language of the ordinance if it sets forth all the essential elements of the offense. City of Mankato v Arnold, 36 M 62, 30 NW 305; State v Gill, 89 M 502, 95 NW 449.

If the statute does not set forth all the elements of the offense to be punished, but simply names the offense or defines it by its legal result, the indictment must allege with certainty all the particular facts necessary to bring the case within the statute. State v Howard, 66 M 309, 68 NW 1096; State v Bradford, 78 M 387, 81 NW 202.

The precise words need not be strictly pursued. Words may be used which are equivalent in meaning of those found in the statute. State v Southall, 77 M 296, 79 NW 1007.

The information charging the defendant with violation of Laws 1925, Chapter 192, was sufficiently definite and states a public offense. State v Nordstrom, 169 M 214, 210 NW 1001.

The indictment in the instant case, charging the maintenance of a liquor nuisance, although not a model one, sufficiently meets the requirements of the statute. State v Shannon, 177 M 278, 225 NW 20.

The indictment charging bribery followed the language of the statute and was not bad for duplicity; the allegations were not repugnant; the state was not obliged to elect as to which specific charge defendant would be tried. State v Ekberg, 178 M 437, 227 NW 497.

An indictment or information is sufficient if it sets forth in the language of the statute the elements of the offense intended to be punished. The court may in its discretion allow amendments of an indictment or information both as to form and substance. State v Omodt, 198 M 165, 269 NW 360.

A statute is unconstitutional for indefiniteness if it requires or forbids in terms so vague that men of common intelligence must guess at its meaning and

differ as to its application. Applying this rule to section 614.46, the section does not violate the United States Constitution, Amendment 14, Section 1. The information in the instant case is sufficiently definite. State v Eich, 204 M 134, 282 NW 810.

An indictment for swindling may contain allegations that the crime was committed by fraudulent representations of facts relating to the present or past or the future. An indictment which alleges an offense generally in the language of the statute and is certain as to the party, the offense, and the particular offense charged, is sufficient under our statutes. State v Yurkiewicz, 208 M 72, 292 NW 782.

In an information under section 620.47 charging the obtaining of signatures by false pretenses, it is not necessary to set out in the information the specific documents whereby the signatures were obtained where such alleged false documents are described in general terms, the defendant having the right to demand a bill of particulars, unless the documents are in his possession. State v Gottwalt, 209 M 4, 295 NW 67.

19. Negativing exceptions

An indictment must negative exceptions or provisos found in the enacting clause of the statute on which it is based. State v Johnson, 12 M 476 (378); State v McIntyre, 19 M 93 (65); State v Jarvis, 67 M 10, 69 NW 474; State v Corcoran, 70 M 12, 72 NW 732; State v Tracy, 82 M 317, 84 NW 1015; State v Kunz, 90 M 526, 97 NW 131.

An exception may be introduced by the word "unless" as well as by the word "except." State v McIntyre, 19 M 93 (65).

If an act is made unlawful unless done with the consent of some person, the consent must be negatived. State v Mims, 26 M 191, 2 NW 492.

An exception in a subsequent independent statute need not be negatived. State v Holt, 69 M 423, 72 NW 700.

The indictment charges the defendants with keeping open after 11 o'clock at night their licensed saloon in a certain room, in a certain building. For the purpose of negativing an exception in the enacting clause of the statute, it states that the room is not a hotel, but it does not state that the building is not a hotel. This was held sufficient. State v Russell, 69 M 500, 72 NW 832.

The enacting clause within the meaning of the rule is that part of the statute which defines the offense. An exception or proviso which is no part of the enacting clause and is not descriptive of the offense need not be negatived, whether it is found in the same section as the enacting clause or a separate one. The test whether an exception or proviso must be negatived is whether it is descriptive of the offense. State v Corcoran, 70 M 12, 72 NW 732.

In information or indictment it is unnecessary to deny exceptions or provisos in the statute unless they are part of the definition or description of the offense. State v Miller, 166 M 116, 207 NW 19.

20. Exhibits

In pleading a written instrument it should be incorporated in the indictment and not attached as an exhibit. Where an instrument is attached as an exhibit and made a part of the indictment by apt reference it will be deemed a part of the indictment on demurrer. State v Williams, 32 M 537, 21 NW 746.

21. Names; misnomer; idem sonans

The indictment charged the seduction of Anne Forrest. The name "Forrest" is pronounced in French, as if spelled "Foray," which is almost identical in sound with the name of the French Canadian girl whose name was "Fourai." The defendant being French was not mislead. The indictment is sufficient. State v Timmens, 4 M 325 (241).

In describing an offense it is sufficient to give only the initial of the Christian names of third parties. State v Butler, 26 M 90, 1 NW 821.

The variance between "Kurkwiski" and "Kurkowski" held immaterial. State v Johnson, 26 M 316, 3 NW 982.

Use of the word "railroad" for "railway" in naming a company is held immaterial. State v Brin, 30 M 522, 16 NW 406.

The variance between "Fred Vongard" and "William Bungard" is fatal. State v Quinlan, 40 M 55, 41 NW 299.

Where a person is called in an indictment, in describing the offense, by a name other than his true name, but he is known as well by such other name as his true name, it is not a variance. State v Brecht, 41 M 50, 42 NW 602.

The fact that the name is not repeated in the commencement of the indictment is immaterial. State v Monson, 41 M 140, 42 NW 790.

The variance in respect to the name of Christianson, the person alleged to have been injured, the indictment giving the name as "Peter J." while the proof showed it to be "Peter C." was immaterial. State v Tall, 43 M 273, 45 NW 449.

In an indictment for grand larceny, the prosecuting witness was described as "Tony Barrom." At the trial he was called as a witness under the name of "Tony Baron," and so testified. Upon cross-examination, he stated his name was "Tony Baron," but on further cross-examination testified he was baptized under the name "Antonio Barone." On motion in arrest of judgment, it did not conclusively appear that there was a fatal variance. State v Blakeley, 83 M 432, 86 NW 419.

22. Alleging name of person injured

As a general rule it is necessary, as a requirement of a certainty of description, to state the name of the person injured, if known, and if not known, to so state. State v Boylson, 3 M 438 (325); State v Ruhnke, 27 M 309, 7 NW 264; State v Clarke, 31 M 207, 17 NW 344; State v Blakeley, 83 M 432, 86 NW 419.

An indictment for the embezzlement of certain promissory notes held sufficient although it did not state the name of the payee of the notes. State v Rue, 72 M 296, 75 NW 235.

23. Alleging corporation

In naming a corporation in an indictment it is sufficient to give its corporate name and add "a corporation." It is not necessary to allege its incorporation or the place of its incorporation where those facts are not directly involved. State v Loomis, 27 M 521, 8 NW 758; State v Rue, 72 M 296, 75 NW 235.

A mistake in using "railroad" instead of "railway" in describing a corporation is immaterial. State v Brin, 30 M 522, 16 NW 406.

It is ordinarily sufficient to prove it a corporation in fact. State v Rue, 72 M 296, 75 NW 235.

A failure to allege that a company was a corporation held immaterial. State v Golden, 86 M 206, 90 NW 398.

24. Alleging that fact is unknown

Where a mere descriptive fact not vital to the accusation is unknown, it may be stated as unknown. Such an allegation is not traversable. State v Taunt, 16 M 109 (99); State v Gray, 29 M 142, 12 NW 455; State v Brin, 30 M 522, 16 NW 406; State v Clark, 31 M 207, 17 NW 344; State v Briggs, 84 M 357, 87 NW 935; State v Ames, 91 M 365, 98 NW 190; State v Quackenbush, 98 M 515, 108 NW 953.

25. Conjunctive and disjunctive allegations

Where the statute declares that the doing of a thing by way of several means shall constitute a criminal offense, an indictment charging the act as having been done by all of such means set forth conjunctively is ordinarily sufficient if the means are not repugnant in themselves. An indictment charging conjunctively matters which might be charged in the alternative is sufficient. State v Gray, 29 M 142, 12 NW 455; State v McGinnis, 30 M 52, 14 NW 258.

The objection of duplicity does not apply where all the facts are pleaded and such facts constitute only one crime. State v Cantrell, 220 M —, 18 NW(2d) 681.

26. Facts presumed

Facts that will be presumed in the absence of evidence need not be alleged. State v Ward, 35 M 182, 28 NW 192.

27. Facts judicially noticed

Facts of which judicial notice will be taken need not be alleged. State v Gill, 89 M 502, 95 NW 449.

28. Collective allegations against several

An indictment against two or more persons may charge the act to have been done by them collectively. State v Johnson, 37 M 493, 35 NW 373.

29. Use of videlicet; to wit

It seems that a videlicet will prevent a non-essential allegation from becoming essential by association with an essential descriptive allegation, as where defendant was charged with furnishing "one glass of spirituous liquor, to wit, whiskey" to C, an habitual drunkard, it is not necessary to prove that the liquor was whiskey, nor that the defendant knew that C was an habitual drunkard. State v Heck, 23 M 549; State v Williams, 32 M 537, 21 NW 746.

If an allegation is essential, the fact that it follows a videlicet (to wit) is immaterial. Where the matter alleged under a videlicit is essential, entering into the substantial description of the offense, the averment is regarded as positive and direct and is traversable. It will then be treated as particularizing that which was before general, or as explaining that which was before obscure. State v Grimes, 50 M 123, 52 NW 275.

30. Obscene facts

It is not necessary in an indictment for the crime of taking indecent liberties with or on the person of a female child under the age of consent, to allege the particular acts of the defendant constituting such indecent liberties. State v Kunz, 90 M 526, 97 NW 131.

31. Surplusage.

An indictment is not vitiated by the presence of unnecessary and immaterial words. Such words may be disregarded as surplusage. State v Dineen, 10 M 407 (325); State v Garvey, 11 M 154 (95); State v Crummey, 17 M 72 (50); State v Munch, 22 M 67; State v Heck, 23 M 549; State v Kobe, 26 M 148, 1 NW 1054; State v O'Neil, 71 M 399, 73 NW 1091; State v Feldman, 80 M 314, 83 NW 182; State v Quackenbush, 98 M 515, 108 NW 953.

That is, unless they are essential by being inseparately connected with essential words so as to become descriptive of the identity of that with which they are connected. State v Heck, 23 M 549; State v Ruhnke, 27 M 309, 7 NW 264.

A name cannot be disregarded as surplusage if it is descriptive of the identity of an essential element of the offense. State v Ruhnke, 27 M 309, 7 NW 264.

Where an indictment charges two offenses, but one inadequately, the latter may be disregarded as surplusage. State v Henn, 39 M 464, 40 NW 564.

32. Repugnancy

Where one material part of an indictment is repugnant to another, the indictment is insufficient. State v Gray, 29 M 142, 12 NW 455; State v Brin, 30 M 522, 16 NW 406.

33. Specific and general allegations

Specific allegations control general allegations and where it is attempted to allege the particular facts constituting a general or ultimate fact, all the particu-

lar facts must be alleged. State v Ring, 29 M 78, 11 NW 233; State v Farrington, 59 M 147, 60 NW 1088.

34. Words construed according to common usage

The meaning which, in ordinary use, attaches to words not technical will be given to them in an indictment. State v Munch, 22 M 67; State v Lavake, 26 M 526, 6 NW 339; State v Gill, 89 M 502, 95 NW 449.

35. Conclusion against the peace and the statute

If a statute does not create a crime but simply prescribes its punishment, the indictment need not conclude against the form of the statute. O'Connell v State, 6 M 279 (190); State v Crummey, 17 M 72 (50); State v Coon, 18 M 518 (464).

Minnesota Constitution, Article 6, Section 14, provides that all indictments shall conclude "against the peace and dignity of the state of Minnesota." Possibly a failure to comply with this provision is a mere formal defect. Hama v Russell, 12 M 80 (43); Thompson v Bickford, 19 M 17 (1); State v Reckards, 21 M 47.

Putting the date when and the place where found, at the end of an indictment, after the words "against the peace and dignity of the state of Minnesota" does not vitiate it. State v Johnson, 37 M 493, 35 NW 373.

A complaint for the violation of an ordinance concluding against both the statute and the ordinance, held not double on that account. City of Jordan v Nicolin, 84 M 367, 87 NW 916.

The only purpose of the clause "against the form of the statute" is to show that the prosecution is based on a statute and not on a common law offense, and since the repeal of all common law offenses it is functionless except in cases where the same acts are declared to be an offense and punishable both by statute and by a municipal ordinance. In such cases the indictment or complaint ought to conclude contrary to the statute or ordinance, as the case may be. State v Gill, 89 M 502, 95 NW 449.

628.11 FORM.

HISTORY. R.S. 1851 c. 119 s. 47; P.S. 1858 c. 105 s. 3; G.S. 1866 c. 108 s. 2; G.S. 1878 c. 108 s. 2; G.S. 1894 s. 7239; R.L. 1905 s. 5298; G.S. 1913 s. 9135; G.S. 1923 s. 10640; M.S. 1927 s. 10640.

An indictment for criminal carelessness in the operation of a railway engine and train by its engineer, whereby a collision occurred and named persons killed, is insufficient in form and lacking in the required allegations. State v MacDonald, 105 M 251, 117 NW 482.

Indictments examined and found to substantially conform to the requirements of sections 628.10, 628.12 and 628.18, and therefore sufficient in form and statement. State v Byhre, 137 M 195, 163 NW 282; State v Anderson, 159 M 245, 199 NW 6; State v Yurkiewicz, 208 M 72, 292 NW 782.

628.12 TO BE DIRECT AND CERTAIN.

HISTORY. R.S. 1851 c. 119 s. 49; P.S. 1858 c. 105 s. 5; G.S. 1866 c. 108 s. 4; G.S. 1878 c. 108 s. 4; G.S. 1894 s. 7241; R.L. 1905 s. 5299; G.S. 1913 s. 9136; G.S. 1923 s. 10641; M.S. 1927 s. 10641.

1. Allegations must be direct
2. Matters of inducement
3. Certainty
4. Bill of particulars

1. Allegations must be direct

The material facts constituting the offense must be alleged directly and positively and not inferentially, argumentatively, or by way of recital. State v Cody,

65 M 121, 67 NW 798; State v Howard, 66 M 309, 68 NW 1096; State v Nelson, 79 M 388, 82 NW 650; State v Clements, 82 M 448, 85 NW 229; State v King, 88 M 175, 92 NW 965; State v Ames, 91 M 365, 98 NW 190; State v MacDonald, 105 M 251, 117 NW 482.

There must be a direct charge against the accused that he committed the offense. A recital that he is accused of having committed it is not a charge that he has committed it. State v Nelson, 79 M 388, 82 NW 650.

The allegations in this case, charging the maintenance of a liquor nuisance, although not a model one, is sufficient to meet the requirements of the statute. State v Shannon, 177 M 278, 225 NW 20.

An information for bribery averring the official character of the offeree and that the bribe was offered to him "as such officer" is good as against objection that it did not charge that the accused knew that the offeree was "such officer," overruling State v Howard, 66 M 309, 68 NW 1096. State v Lopes, 201 M 20, 275 NW 374.

An indictment for swindling may contain allegations that the crime was committed by fraudulent representations of facts relating both to the present or past and to the future. State v Yurkiewicz, 208 M 72, 292 NW 782.

2. Matters of inducement

"As alleged in the indictment, the charge of making the false statement is a mere matter of inducement, leading up to, and forming part of, the crime of perjury, which is the one which the indictment charges." Matters of inducement need not be alleged with the same degree of certainty as the facts constituting the gist of the offense. Matters of inducement do not render an indictment double. All matters of inducement which are necessary to show that the act charged in a criminal offense must be stated. State v Barry, 77 M 128, 79 NW 656; State v Scott, 78 M 311, 81 NW 3.

All matters of inducement which are necessary in order to show that the act charged is a criminal offense must be stated in the indictment or information. In this case the averments in the way of inducements do not render the indictment double. State v Bean, 199 M 16, 270 NW 918.

3. Certainty

The offense must be charged with sufficient certainty to enable the court to determine that the acts alleged constitute a criminal offense, and this degree of certainty must extend to every essential element of the offense. State v Ullman, 5 M 13 (1); State v Brown, 12 M 490 (393); State v Cody, 65 M 121, 67 NW 798.

The degree of certainty must extend to "the particular circumstances of the offense charged when they are necessary to constitute a complete offense." State v McIntyre, 19 M 93 (65); State v Gray, 29 M 142, 12 NW 455; State v Nelson, 79 M 388, 82 NW 650.

An indictment is sufficiently certain if "the act or omission charged as the offense is stated with such degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case." State v Munch, 22 M 67; State v Anderson, 25 M 66; State v Matakovich, 59 M 514, 61 NW 677; State v Erickson, 81 M 134, 83 NW 512.

Minnesota Constitution, Article 1, Section 6, provides that "in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation." The constitutional provision is but declaratory of what the law always has been. The principle is as old as the common law. The statute does not effect any essential change in the law. The statute is construed in its historical sense. The constitutional provision, the common law, and the statute all require the same certainty. It is a general rule of criminal pleading that the offense charged should be described with reasonable certainty, that the accused may know for what offense he is required to answer, that the court may render a proper judgment, and that the conviction or acquittal may be pleaded in bar of another prosecution for the same offense. State v Shenton, 22 M 311; State v Schmail, 25 M 368; State v Gray, 29 M 142, 12 NW 455; State v Clarke, 31 M

207, 17 NW 344; State v Nelson, 74 M 409, 77 NW 223; State v Clements, 82 M 448, 85 NW 229; State v Ames, 91 M 365, 98 NW 190; State v Byhre, 137 M 195, 163 NW 282.

Ordinarily the rule is not applicable to time nor to matters not essentially descriptive of the offense. State v Lautenschlager, 22 M 514; State v Gray, 29 M 142, 12 NW 455.

The offense must be charged with sufficient certainty to identify it. State v Schmail, 25 M 368; State v Butler, 26 M 90, 1 NW 821.

The general rule is limited by the possibilities of the case and should not be so applied as to make the execution of the criminal law depend upon leaving open the discovery by the grand jury the precise methods by which the crime has been perpetrated and all the circumstances of its accomplishment. Hence the grand jurors are allowed to state that a particular fact not vital to the accusation is to them unknown. State v Gray, 29 M 142, 12 NW 455.

Indictment for taking part in auditing and approving for payment a fraudulent claim against the state held to state the acts constituting the offense with sufficient particularity to inform the defendant of the nature and cause of the accusation against him. State v Buhler, 159 M 228, 198 NW 543.

Essential elements necessary to constitute the crime of grand larceny committed by the use of false statements are stated. State v Anderson, 159 M 245, 199 NW 6.

Information sufficiently definite to show an offense against the provisions of Laws 1925, Chapter 192. State v Nordstrom, 169 M 214, 210 NW 1001.

The bribery indictment followed the language of the statute and the allegations were not repugnant. The indictment was not bad for duplicity and the state was not obliged to elect as to which specific charge defendant would be tried. State v Ekberg, 178 M 437, 227 NW 497.

It has long been established in this state that a person may be charged in an indictment in the words of the statute, "without a particular statement of facts and circumstances, when, by using those words, the act in which an offense consists is fully, directly and expressly alleged, without uncertainty or ambiguity. State v Eich, 204 M 140, 282 NW 810.

If the language in the statute is fully descriptive of the offense, it is usable in the indictment. Dunne v United States, 138 F(2d) 137.

4. Bill of particulars

Although the state furnished a bill of particulars, the state may introduce evidence, in support of the substantive offense charged, of an act of embezzlement committed on the date alleged in the indictment, and also of any other act of embezzlement committed within six months thereafter. State v Kortgaard, 62 M 7, 64 NW 51.

Where the offense is of a general nature and the charge is in general terms the state may be required to file a specification of the particular acts relied on to sustain the charge. State v Holmes, 65 M 230, 68 NW 11.

Aside from what is required by section 628.08, it is not necessary for the state to furnish the defendant with the names of the persons it intends to call as witnesses. State v Poelaert, 200 M 30, 273 NW 641.

628.13 FICTITIOUS NAME.

HISTORY. R.S. 1851 c. 119 s. 70; P.S. 1858 c. 105 s. 6; G.S. 1866 c. 108 s. 5; G.S. 1878 c. 108 s. 5; G.S. 1894 s. 7242; R.L. 1905 s. 5300; G.S. 1913 s. 9137; G.S. 1923 s. 10642; M.S. 1927 s. 10642.

An indictment of carelessness does not conform to the provisions of sections 628.10, 628.11, 628.12 and 628.13, as qualified by the provisions of section 628.18. State v MacDonald, 105 M 251, 117 NW 482.

Error in name is but an amendable irregularity. No objection having been raised, the irregularity was waived. Nelson v Nat'l Casualty, 179 M 59, 228 NW 437.

628.14 DIFFERENT COUNTS.

HISTORY. R.S. 1851 c. 119 s. 71; 1852 Amend. p. 27; P.S. 1858 c. 105 s. 7; G.S. 1866 c. 108 s. 6; G.S. 1878 c. 108 s. 6; G.S. 1894 s. 7243; R.L. 1905 s. 5301; G.S. 1913 s. 9138; G.S. 1923 s. 10643; M.S. 1927 s. 10643.

An indictment containing two counts, one for forging a promissory note, and a second for uttering and publishing a forged promissory note, is demurrable as charging two offenses in a case in which it is not allowed by statute. State v Wood, 13 M 121.

In the following cases where the indictment pleaded alternate means of accomplishing the criminal act, the indictment was sustained. State v Owens, 22 M 238; State v Gray, 29 M 142, 12 NW 455; State v Hann, 73 M 140, 76 NW 33.

In this case it was proper to charge acts and omissions constituting this offense in the conjunctive. State v Staples, 126 M 396, 148 NW 283.

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

Defendant, indicted for arson, asked the court to require the state to elect whether it will attempt to prove that he personally set the fire or caused another to set it. The court's refusal to require an election was not error. State v Demopoulis, 169 M 205, 210 NW 883.

Assault inflicting great bodily harm should not be joined with a count alleging assault with intent to rob. OAG Dec. 26, 1935 (494a-1).

Alternative allegations of fact; joinder of parties in the alternative. 10 MLR 356.

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

628.15 TIME, HOW STATED.

HISTORY. R.S. 1851 c. 119 s. 72; P.S. 1858 c. 105 s. 8; G.S. 1866 c. 108 s. 7; G.S. 1878 c. 108 s. 7; G.S. 1894 s. 7244; R.L. 1905 s. 5302; G.S. 1913 s. 9139; G.S. 1923 s. 10644; M.S. 1927 s. 10644.

Where, upon the trial of an indictment, in which the time alleged for the commission of the offense is not material, the evidence tends to prove an offense committed on a day other than that alleged in the indictment, and a precisely similar offense committed on the day alleged in the indictment, the state may elect for which it will proceed. State v Johnson, 23 M 569.

There can be no reason, in this case, for holding that the indictment must charge that the offense was committed on a precisely specified day. State v Lavake, 26 M 526, 6 NW 339.

The state may prove acts of embezzlement committed within six months next after the time stated in the indictment; but acts prior to the date of the indictment may only be introduced to serve a collateral purpose. State v Holmes, 65 M 230, 68 NW 11.

Time is not an essential element of the offense of keeping a disorderly house, and it is not necessary to prove the commission of the offense within the time laid in the indictment. State v Dufour, 123 M 451, 143 NW 1126.

In an indictment for child abandonment the precise time at which the offense was committed was not a material ingredient of the offense itself, as it was a continuing offense. State v Clark, 148 M 389, 182 NW 452.

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

The complaint alleges that the offense was committed "on or about the tenth day of August, 1926." The allegation as to date was sufficient. State v Berg, 171 M 513, 213 NW 46.

Where the allegation alleged the date of the offense as in "1927," a palpable clerical error, the court properly permitted the deletion of "1927" and the insertion of "1934" in its place. State v Irish, 183 M 53, 235 NW 625.

Under the "blue sky law," separate sales and not a course of business, are aimed at and sought to be prohibited, and a prosecution for a sale to a given person in one county is not a bar to a prosecution for a sale to another person in a different county on a different date. State v Robbins, 185 M 202, 240 NW 456.

628.16 ERRONEOUS ALLEGATION AS TO PERSON INJURED.

HISTORY. R.S. 1851 c. 119 s. 73; P.S. 1858 c. 105 s. 9; G.S. 1866 c. 108 s. 8; G.S. 1878 c. 108 s. 8; G.S. 1894 s. 7245; R.L. 1905 s. 5303; G.S. 1913 s. 9140; G.S. 1923 s. 10645; M.S. 1927 s. 10645.

The provisions of Revised Statutes 1851, Chapter 119, Section 73, (section 628.16), do not apply to a case where the essence of the offense is an attempt, or an act done with intent, to commit an injury to the person. Under an indictment for an assault with intent to kill M, the evidence left it in doubt whether the assault was on M or T. It was error of the court to charge that if the jury believes that the defendant committed an assault on either M or T, they might convict. State v Boylson, 3 M 438 (325).

The intent to defraud set forth in General Statutes 1878, Chapter 39, Section 14, is an intent to defraud the mortgagee. Such intent is an essential ingredient of the crime. In this case the defect in the indictment is not cured by General Statutes 1878, Chapter 96, Section 10, or by General Statutes 1878, Chapter 108, Section 8. State v Ruhnke, 27 M 309, 7 NW 264.

Allegation that the barn was owned by and in the possession of A, the proof being that it was owned by A, but that her husband had possession, was no material variance. State v Grimes, 50 M 123, 52 NW 275.

Where in the indictment the prosecuting witness was designated "Tony Barrom," and on direct examination he was examined under the name "Tony Baron," and on cross-examination he stated his baptismal name was "Antonio Barone," there was no fatal variance. State v Blakeley, 83 M 432, 86 NW 419.

The offense being proven, the fact that a bank was named a defrauded party, when in fact the county was the person defrauded, does not vitiate the indictment. State v Bourne, 86 M 432, 90 NW 1108.

A variance in the name of the person to whom defendant was charged with selling adulterated butter cannot be taken advantage of in the supreme court, unless raised in the trial court. State v Eidsvold, 156 M 27, 194 NW 17.

An indictment for robbery charging defendant with the felonious taking of the property of A in the presence and against the will of B, by force and violence, is not fatally defective because it fails to aver that B had any relationship to A, or the possession or control of the property or any duty with respect to it. State v Schnachtel, 157 M 272, 196 NW 674.

Alleged variances between the proofs and the facts alleged in the information concerning the ownership of the stolen goods and the place from which they were stolen were not material. State v Kaufman, 172 M 139, 214 NW 785.

Section 622.01 (2) which defines larceny, including embezzlement, specifically recognizes an association as an entity from which it is larceny for one of its officers to appropriate funds either for his own use or for that of any other person. State v Portal, 215 M 433, 10 NW(2d) 373.

628.17 WORDS OF STATUTE NEED NOT BE FOLLOWED.

HISTORY. R.S. 1851 c. 119 s. 75; P.S. 1858 c. 105 s. 11; G.S. 1866 c. 108 s. 9; G.S. 1878 c. 108 s. 9; G.S. 1894 s. 7246; R.L. 1905 s. 5304; G.S. 1913 s. 9141; G.S. 1923 s. 10646; M.S. 1927 s. 10646.

The statute read "with malice aforethought." The indictment alleged "with the premeditated design to effect the death." The indictment was sustained. State v Holong, 38 M 368, 37 NW 587.

In an indictment for perjury the allegation that defendant's testimony was "wilfully and corruptly false" is equivalent to alleging that he wilfully and knowingly testified falsely. State v Stein, 48 M 466, 51 NW 474.

Equivalent language will suffice. State v Southall, 77 M 296, 79 NW 1007.

A simple statement of the facts constituting the offense is sufficient. State v Miller, 166 M 116, 207 NW 19.

Where an indictment charges extortion by means of a threat to expose another to disgrace by publicly accusing him of operating a gambling house, proof that the money was extorted by means of a threat to arrest him for operating a gambling house is not a material variance. State v Duffy, 179 M 439, 229 NW 558.

628.18 TESTS OF SUFFICIENCY.

HISTORY. R.S. 1851 c. 119 s. 76; P.S. 1858 c. 105 s. 12; G.S. 1866 c. 108 s. 10; G.S. 1878 c. 108 s. 10; G.S. 1894 s. 7247; R.L. 1905 s. 5305; G.S. 1913 s. 9142; G.S. 1923 s. 10647; M.S. 1927 s. 10647.

Indictments sustained as being substantially in the form required by statute. State v Ryan, 13 M 370 (343); State v Robinson, 14 M 447 (333); State v McCartey, 17 M 76 (54); State v Munch, 22 M 67; State v Anderson, 25 M 66; State v Lavake, 26 M 526, 6 NW 339; State v Harris, 50 M 128, 52 NW 387; State v Scott, 78 M 311, 81 NW 3; State v Erickson, 81 M 134, 83 NW 512; State v Ames, 91 M 365, 98 NW 190; State v Preuss, 112 M 108, 127 NW 438; State v Stickney, 118 M 64, 136 NW 419.

Indictments not sustained. State v Coon, 18 M 518 (464); State v Munch, 22 M 74; State v Cody, 65 M 121, 67 NW 798; State v Howard, 66 M 309, 68 NW 1096; State v Clements, 83 M 448, 85 NW 229.

Other tests are sometimes applied. One test is, are the essential ultimate facts alleged consistent with the innocence of the accused? If such facts are reconcilable with the innocence of the accused, the indictment is bad. State v Erickson, 81 M 134, 83 NW 512.

Another test is, will it protect the accused from a second prosecution for the same offense. State v Tracy, 82 M 317, 84 NW 1015.

An indictment charging defendants, one the county auditor, the other the county commissioner, with becoming unlawfully interested in a certain contract, is sustained. State v Byhre, 137 M 195, 163 NW 282.

An indictment charging defendants with conspiracy to discourage men from enlisting in the armed forces of the United States, is sustained. State v Townley, 142 M 326, 171 NW 930.

An indictment for subornation of perjury which states that the false testimony was given at the trial of a designated civil action, in a designated court, at a designated time and place, sufficiently identifies the subject matter in respect to which the offense is claimed to have been committed. State v Smith, 153 M 167, 190 NW 48.

The indictment for grand larceny states a public offense and substantially conforms to the requirements of sections 628.10, 628.12, as qualified by section 628.18. State v Anderson, 159 M 245, 199 NW 6.

The information charging a violation of Laws 1925, Chapter 192, the blue sky law, is sufficiently definite and states a public offense. State v Nordstrom, 169 M 216, 210 NW 1001.

The indictment, read as a whole, described the offense with sufficient certainty to show the gravamen of the offense. State v Stock, 169 M 364, 211 NW 319.

The indictment charging maintenance of a liquor nuisance meets the requirements of the statute. State v Shannon, 177 M 280, 225 NW 20.

An information may be amended on trial. It was without prejudice to the defendant to change the date by substituting "1924" for the year "1927." State v Irish, 183 M 53, 235 NW 625.

Indictments charging that the offense occurred in a given county without going farther are upheld, See, O'Connell v State, 6 M 190 (279); People v Baker, 100 Cal. 188, 34 Pac. 649. State v Putzier, 183 M 425, 236 NW 922.

Information charging defendant in substance in the language of section 614.46 was sufficiently definite to state an offense. State v Eich, 204 M 140, 282 NW 810.

An indictment which alleges an offense generally in the language of the statute and is certain as to the party, the offense, and the particular circumstances of the offense charged, is sufficient under our statutes and under sections 628.10, 628.11, 628.12, 628.13, and 628.18. State v Yurkiewicz, 208 M 72, 292 NW 782.

The information sufficiently charges knowledge on the part of the defendant of the falsity of the documents used to obtain the signatures complained of and sufficiently alleges the reliance of the victims on the false representations. State v Gottwalt, 209 M 6, 295 NW 67.

628.19 FORMAL DEFECTS DISREGARDED.

HISTORY. R.S. 1851 c. 119 s. 77; P.S. 1858 c. 105 s. 13; G.S. 1866 c. 108 s. 11; G.S. 1878 c. 108 s. 11; G.S. 1894 s. 7248; R.L. 1905 s. 5306; G.S. 1913 s. 9143; G.S. 1923 s. 10648; 1927 c. 297; M.S. 1927 s. 10648.

Sections 628.10, 628.17, 628.18, 628.19, were enacted to free criminal pleading of excessive technicality, formality and tautology. They should be construed liberally. State v Hinckley, 4 M 345 (261); State v Holong, 38 M 368, 37 NW 587; State v Howard, 66 M 309, 68 NW 1096.

These provisions, however, were not intended to encourage laxity in criminal pleading and do not affect the rule that indictments must be direct and certain as to every essential element of the offense. State v Brown, 12 M 490 (393); State v Howard, 66 M 309, 68 NW 1096; State v Clements, 82 M 448, 85 NW 229.

This statute has been applied and construed in the following cases: State v Ryan, 13 M 370 (343); State v McCartey, 17 M 76 (54); State v Munch, 22 M 67; State v Holong, 38 M 368, 37 NW 587; State v Harris, 50 M 128, 52 NW 387; State v Golden, 86 M 206, 90 NW 398; State v Preuss, 112 M 108, 127 NW 438.

Indictments are to be construed, not with reference to the canons of common law pleading, but in accordance with the more liberal and more reasonable rules prescribed by statute. State v Shenton, 22 M 311, State v Keith, 47 M 559, 50 NW 691; State v Harris, 50 M 128, 52 NW 387; State v Cowdery, 79 M 99, 81 NW 750; State v Sharp, 121 M 381, 141 NW 526; State v Staples, 126 M 396, 148 NW 283; State v Hartung, 141 M 207, 169 NW 712.

Except as required by statute, an order of resubmission is not a condition precedent to the reconsideration of a criminal charge by a grand jury and the finding of a second indictment thereon, even though the first is still pending. This may be done on the evidence previously heard, and without calling witnesses. State v Ginsberg, 167 M 25, 208 NW 177.

The information, relative to breach of Laws 1925, Chapter 192, the blue sky law, is sufficiently definite and states a public offense. State v Nordstrom, 169 M 214, 210 NW 1001.

An indictment for perjury or subornation of perjury which complies with the requirements of the statutes, is sufficient, although it may not comply with the requirements of the common law. State v Nelson, 74 M 409, 77 NW 223, insofar as it may be deemed an authority for different rule, is disapproved. State v Smith, 153 M 168, 190 NW 48.

Where defendant was indicted for abduction it is immaterial whether the girl is married or not, and an allegation in the indictment that she was unmarried need not be proved. State v Eckelberry, 153 M 497, 191 NW 256.

The supreme court has not been inclined to disregard the constitutional rights of a person accused of crime merely because the evidence of guilt was satisfactory to the jury, but has repeatedly said that the technical rules of the common law as to criminal pleadings do not obtain in this state. State v Kaufman, 172 M 142, 214 NW 785.

The information charged defendant with carrying a revolver with criminal intent to use against another. The proof showed the weapon to be an automatic pistol. There was no fatal variance between pleading and proof. State v Nyhus, 176 M 238, 222 NW 925.

The indictment charging maintenance of a liquor nuisance sufficiently meets the requirements of the statute. State v Shannon, 177 M 280, 225 NW 20.

The indictment for bribery followed the language of the statute and was not bad for duplicity; the allegations were not repugnant; the state was not obliged to elect as to which specific charge defendant would be tried. State v Ekberg, 178 M 440, 227 NW 497.

Where an indictment charges extortion by means of a threat to expose another to disgrace by publicly accusing him of operating a gambling house, proof that money was extorted by means of a threat to arrest him for operating a gambling house is not a material variance. State v Duffy, 179 M 439, 229 NW 558.

An information may be amended on trial; and such an amendment may consist of changing the date of the commission of the crime by substituting "1924" for the year "1927." State v Irish, 183 M 53, 235 NW 625.

In an indictment for forgery, certain improper interrogations answered by the deputy public examiner were not prejudicial. State v Stearns, 184 M 452, 238 NW 895.

There being no question of the authenticity of the indictment for murder, and none as to its substance, misnomer of deceased in the minutes of the grand jury was not material. State v Waddell, 187 M 200, 245 NW 140.

In a trial for breach of the liquor laws the arresting officer testified "it was caramel coloring, what they use for coloring moonshine." While the answer was a conclusion and should have been stricken, failure to do so was not reversible error. State v Olson, 187 M 527, 246 NW 117.

The judge's charge "the presumption (of innocence) is for the benefit of the innocent and not intended as a shield or protection for the guilty" while improper, was not sufficiently prejudicial to warrant a new trial. State v Bauer, 189 M 280, 249 NW 40.

Where defendant was charged with the crime of grand larceny in obtaining money on fraudulent checks, certain evidence was offered to prove that the bank had previously permitted overdrafts by defendant. There was error in excluding this testimony as no prejudice resulted. State v Scott, 190 M 462, 252 NW 225.

That a public official clandestinely took public money, put it into his own bank account, without making return, and that the money is gone, shows as a matter of law the intent necessary under the statute. State v Cater, 190 M 485, 252 NW 421.

Evidence leaving no doubt of defendant's guilt alleged errors with no adverse effect on defendant's substantial or constitutional rights will not be considered. State v MacLean, 192 M 96, 255 NW 821.

The record establishes that defendant was accorded his statutory and constitutional rights. There was sufficient evidence. A new trial in criminal cases should be granted cautiously and only for substantial error. State v Barnett, 193 M 342, 258 NW 508.

Where defendant was convicted of manslaughter (illegal operation), admission of testimony as to conversation had with deceased after performance of the operation was not prejudicial error since defendant was in no way mentioned in the conversation testified to. State v Zabrocki, 194 M 346, 260 NW 507.

The act of the jury, acting without authority in visiting the scene of the alleged crime while irregular, was not prejudicial. State v Simenson, 195 M 260, 262 NW 638.

The indictment being amended, the defendant should have been given a copy, but as he knew the contents of the amendment and opposed it, there was no prejudice on account of lack of the copy. State v Heffelfinger, 197 M 173, 266 NW 751.

It is within the discretion of the court to permit amendments of the indictment or information as to form or substance or both. State v Heffelfinger, 197 M 173, 266 NW 751; State v Omodt, 198 M 165, 269 NW 360.

The court in his charge defined the different degrees of homicide stating that he wanted the jury to understand the difference between murder and homicide. There was no prejudicial error. State v Warren, 201 M 369, 276 NW 655.

The jury may be prejudiced by the admission of incompetent evidence even though it be subsequently stricken. In the instant case there was additional possibility of prejudice because the prosecuting attorney outlined the proposed evidence in his opening statement to the jury. State v Elias, 205 M 156, 285 NW 475.

An amendment of an indictment which alleges that old age assistance was obtained "by means of a false representation" in the language of the statute so as to amplify and state in detail the nature of the false representations and reliance thereon, does not allege a new offense, but merely restates with particularity the original one. State v Jansen, 207 M 250, 290 NW 557.

Where sentences run concurrently, and defendant was properly convicted upon one count of the indictment, reversible error on the trial of other counts is not ground for reversal, since defendant was not prejudiced by sentence on count in which conviction was erroneous. Neal v United States, 102 F(2d) 643.

New proceedings after dismissal or failure of original prosecution. 14 MLR 91.

628.20 JUDGMENT, HOW PLEADED.

HISTORY. R.S. 1851 c. 119 s. 79; P.S. 1858 c. 105 s. 15; G.S. 1866 c. 108 s. 12; G.S. 1878 c. 108 s. 12; G.S. 1894 s. 7249; R.L. 1905 s. 5307; G.S. 1913 s. 9144; G.S. 1923 s. 10649; M.S. 1927 s. 10649.

628.21 PRIVATE STATUTE, HOW PLEADED.

HISTORY. R.S. 1851 c. 119 s. 80; P.S. 1858 c. 105 s. 16; G.S. 1866 c. 108 s. 13; G.S. 1878 c. 108 s. 13; G.S. 1894 s. 7250; R.L. 1905 s. 5308; G.S. 1913 s. 9145; G.S. 1923 s. 10650; M.S. 1927 s. 10650.

The statutory rule in respect to pleading a private statute, in an indictment, General Statutes 1878, Chapter 108, Section 13 (section 628.21), by a reference to its title, and the day of its passage, has no application to a case where, at common law, such statute need not have been pleaded. State v Loomis, 27 M 521, 8 NW 758.

628.22 INDICTMENT FOR LIBEL.

HISTORY. R.S. 1851 c. 119 s. 81; P.S. 1858 c. 105 s. 17; G.S. 1866 c. 108 s. 14; G.S. 1878 c. 108 s. 14; G.S. 1894 s. 7251; R.L. 1905 s. 5309; G.S. 1913 s. 9146; G.S. 1923 s. 10651; M.S. 1927 s. 10651.

Where the indictment for criminal libel, where the indictment charges that the libelous matter was published of and concerning a person or persons named, it need not otherwise state the extrinsic facts to show that the language used applied to the person or persons named in the indictment as being libeled. Such extrinsic facts are to be shown by the evidence at the trial. State v Cramer, 193 M 344, 258 NW 525.

628.23 MISDESCRIPTION OF FORGED INSTRUMENT.

HISTORY. R.S. 1851 c. 119 s. 82; P.S. 1858 c. 105 s. 18; G.S. 1866 c. 108 s. 15; G.S. 1878 c. 108 s. 15; G.S. 1894 s. 7252; R.L. 1905 s. 5310; G.S. 1913 s. 9147; G.S. 1923 s. 10652; M.S. 1927 s. 10652.

628.24 INDICTMENT FOR PERJURY.

HISTORY. R.S. 1851 c. 119 s. 83; P.S. 1858 c. 105 s. 19; G.S. 1866 c. 108 s. 16; G.S. 1878 c. 108 s. 16; G.S. 1894 s. 7253; R.L. 1905 s. 5311; G.S. 1913 s. 9148; G.S. 1923 s. 10653; M.S. 1927 s. 10653.

The indictment set out in extenso the testimony of the defendant, consisting of a number of distinct and separate statements of fact, followed by a general allegation that all of this testimony was false, but contained no "assignment of perjury"; that is, no special averments negativing any of the facts alleged to have been falsely deposed, or specifying wherein they were false. The indictment did not inform the accused of the "nature and cause of the accusation" against him, within the meaning of Minnesota Constitution, Article 1, Section 6. State v Nelson, 74 M 409, 77 NW 223.

An indictment for subornation of perjury which states that the false testimony was given at the trial of a designated civil action, in a designated court, at a designated time and place, sufficiently identifies the subject matter in respect to which the offense is claimed to have been committed. If any of the assignments of perjury are sufficient, the indictment is not invalid because others are insufficient. State v Smith, 153 M 168, 190 NW 48.

628.25 COMPOUNDING FELONY INDICTABLE.

HISTORY. R.S. 1851 c. 119 s. 87; P.S. 1858 c. 105 s. 23; G.S. 1866 c. 108 s. 17; G.S. 1878 c. 108 s. 17; G.S. 1894 s. 7254; R.L. 1905 s. 5312; G.S. 1913 s. 9149; G.S. 1923 s. 10654; M.S. 1927 s. 10654.

Boys stole 14 chickens, and under threat of arrest paid $500.00 to defendant. The crime was grand larceny in the second degree. In a conviction of the defendant for compounding a felony, the complaint is not bad for duplicity and the evidence supports the conviction. State v Ostensoe, 181 M 106, 231 NW 804.

628.26 LIMITATIONS.

HISTORY. R.S. 1851 c. 119 s. 88; P.S. 1858 c. 105 s. 24; G.S. 1866 c. 108 s. 18; G.S. 1878 c. 108 s. 18; G.S. 1894 s. 7255; R.L. 1905 s. 5313; G.S. 1913 s. 9150; G.S. 1923 s. 10655; M.S. 1927 s. 10655.

An indictment for the crime of adultery may be returned at any time within three years from the commission thereof; but if no prosecution has been commenced before an examining magistrate, and the indictment shows the offense was committed more than one year before the return thereof, a motion to quash will lie. Proceedings before an examining magistrate by which the defendant is held to answer in the district court constitutes a commencement of a prosecution. State v Dlugi, 123 M 392, 143 NW 971.

Where a person is arraigned upon an indictment charging felony (murder in the first degree), and the case is set for a day certain, and the accused appears personally with his attorney insisting upon trial, and the indictment is dismissed on motion of the prosecution, and no further steps are had for a period of ten years, such a lapse of time amounts to a denial to the accused of the speedy trial granted him by Minnesota Constitution, Article 1, Section 6. State v Artz, 154 M 294, 191 NW 605.

The operation of the statute of limitations is not suspended by merely filing an information within the time allowed by section 628.26. Unless the information is filed to enable the accused to enter a plea of guilty as provided by section 628.32, it must be presented to the court within three years after the date of the commission of the offense. State v Rank, 162 M 393, 203 NW 49.

The guardian of an incompetent is charged with grand larceny. If the original wrong was done in 1926, it was carried along through 1928, when the account was settled by the probate court. At that time, defendant said that the $1,000 was in the account. It was not until 1930 when he refused to turn over the money because he had used it. The claim that the three-year limitation had run was without merit. State v Thang, 188 M 226, 246 NW 891.

Where the information clearly shows that since the offense was committed the time within which the statute permits the offense to be prosecuted has elapsed, absent any allegation avoiding the operation of the statute, such information is demurrable. State v Tupa, 194 M 488, 260 NW 875.

A court may allow amendments to indictments as to matters of substance, and this may be done even though the period limited by the statute has run against the offense, provided the original indictment was returned from the grand jury within the required time. State v Heffelfinger, 197 M 173, 266 NW 751.

Defendant collected $200.00 for a client, the check being dated August 1, 1931. Defendant had the check certified on August 3, and thereafter deposited in his own bank. So far there was no wrong. The embezzlement was thereafter. The information filed on Aug. 3, 1934, was within the three-year limitation. State v Chisholm, 198 M 241, 269 NW 463.

Indictments were found by the grand jury on Sept. 20, 1922. There was no trial and the indictments were dismissed by the court in January 1933. There is no way by which they may be reinstated. 1934 OAG 304, March 23, 1933 (605a-13).

Abandonment is a continuing crime against which the limitation statute does not run. OAG Aug. 25, 1937 (605a-13); OAG July 15, 1938 (133b-1).

Dismissal as bar to further prosecution. 7 MLR 575.

Suspending the running of the statute of limitations by filing an information. 9 MLR 680.

New proceedings after dismissal on failure of original prosecution. 14 MLR 92.

628.27 LARCENY BY CLERKS, AGENTS; EVIDENCE.

HISTORY. R.S. 1851 c. 109 s. 10; P.S. 1858 c. 98 s. 10; G.S. 1866 c. 108 s. 23; G.S. 1878 c. 108 s. 24; G.S. 1894 s. 7262; R.L. 1905 s. 5320; G.S. 1913 s. 9157; G.S. 1923 s. 10662; M.S. 1927 s. 10662.

Where there has been "an actual embezzlement and fraudulent appropriation" of money intrusted to a servant for delivery, a demand and refusal are not necessary to constitute conversion of same. State v New, 22 M 76.

This section is applicable to bank officers indicted for embezzlement or statutory larceny under the Penal Code, Section 415, Subdivision 2. State v Kortgaard, 62 M 7, 64 NW 51.

Under an indictment for statutory larceny or embezzlement in general form as authorized by General Statutes 1894, Section 7262 (section 628.27), the state may prove any and all acts of embezzlement by the defendant in the same employment committed within six months next after the time stated in the indictment; and the defendant may be convicted of the whole. State v Holmes, 65 M 230, 68 NW 11.

Defendant was properly convicted of embezzlement of money of the creamery company of which he was treasurer. State v Peterson, 167 M 216, 208 NW 761.

Section 628.27 is a liberalizing and not a limiting statute. It permits conviction of larceny by embezzlement for any taking within the stated six-months period from the time charged in the information or indictment; and it does not exclude otherwise relevant evidence of the doings of the accused outside of the six-months period. State v Cater, 190 M 485, 252 NW 421.

In the instant case the statute of limitations had not run against the prosecution for embezzlement. State v Chisholm, 198 M 241, 269 NW 863.

The information was sufficient under section 628.27. The trial court properly allowed the amendment of the information. The date was not an essential element of the crime. State v McGunn, 208 M 350, 294 NW 208.

A servant who takes small amounts of his employer's money over a period of six months may be convicted of grand larceny of the whole amount taken. OAG Feb. 19, 1935 (494b-20).

628.28 EVIDENCE OF OWNERSHIP

HISTORY. R.S. 1851 c. 109 s. 11; P.S. 1858 c. 98 s. 11; G.S. 1866 c. 108 s. 24; 1869 c. 71 s. 1; G.S. 1878 c. 108 s. 25; G.S. 1894 s. 7263; R.L. 1905 s. 5321; G.S. 1913 s. 9158; G.S. 1923 s. 10663; M.S. 1927 s. 10663.

It being alleged that a barn was owned and in the possession of A, the proof that it was owned by A, but that her husband had possession of it was no material variance. State v Grimes, 50 M 124, 52 NW 275.

Indictment for larceny of 1,000 pounds of sugar from a building, properly located and described, "being then and there the property of, and in the lawful possession of, and belonging to Willard W. Morse." The evidence showed that Morse was in the warehouse business at the place indicated and in possession of the sugar as warehouseman. Although his lease had expired, there was no variance. State v Whitman, 103 M 96, 114 NW 363.

The indictment charged defendant with taking the money of Winsett, defendant being agent. The money in fact belonged to Goodhauser. There was no fatal variance. State v Uglum, 175 M 608, 222 NW 280.

An indictment which charges larceny from an incorporated association, sufficiently alleges ownership, since section 622.01 (2) specifically recognizes an association as an entity from which it is larceny for one of its officers to appropriate funds. State v Postal, 215 M 433, 10 NW(2d) 373.

628.29 INFORMATIONS; POWERS OF DISTRICT COURT.

HISTORY. 1905 c. 231 s. 1; G.S. 1913 s. 9159; G.S. 1923 s. 10664; M.S. 1927 s. 10664.

A person charged with a criminal offense who has had a preliminary examination before a magistrate, or has waived such examination, and has been bound over to the district court, may be prosecuted for the offense for which he was bound over upon an information filed against him by the county attorney, unless the punishment for such offense may exceed ten years' imprisonment in the state's prison. This is due process and does not violate either the state or federal constitution. State v Keeney, 153 M 153, 189 NW 1023.

In an information under Laws 1905, Chapter 231 (section 628.29 et seq), neither the constitution of the state nor the statute requires the endorsement thereon of the words, "a true bill" nor is it necessary to insert the names of the witnesses. State v Workman, 157 M 168, 195 NW 776.

Informations or indictments in felony cases. 8 MLR 380.

628.30 INFORMATION; CONTENTS; PROVISIONS APPLICABLE.

HISTORY. 1905 c. 231 s. 2; G.S. 1913 s. 9160; G.S. 1923 s. 10665; M.S. 1927 s. 10665.

See, State v Workman, 157 M 168, 195 NW 776.

An information charging a sale under Laws 1919, Chapter 455, Section 25 (a), as amended by Laws 1921, Chapter 391, and alleging a conviction of "violating the liquor laws of the state of Minnesota" is insufficient. The prior conviction must be alleged in the information. The information must show a conviction for an offense under clause (a). State v Brendeke, 158 M 239, 197 NW 278.

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.

The operation of the statute of limitations is not suspended by merely filing an information within the time allowed by section 628.26. Unless the information is filed to enable the accused to enter a plea of guilty as provided by section 628.32, it must be presented to the court within three years after the date of the commission of the offense. State v Rank, 162 M 393, 203 NW 49.

The information charging an offense under the provisions of Laws 1925, Chapter 192, the "blue sky law," is sufficiently definite and states a public offense. State v Nordstrom, 169 M 214, 210 NW 1001.

Section 628.19 provides that no indictment shall be insufficient by reason of a defect or imperfection in matter of form which does not tend to the prejudice of the substantial rights of the defendant upon its merits. This provision is applicable to informations. State v Kaufman, 172 M 143, 214 NW 785.

Laws 1927, Chapter 236 (habitual criminal act), and sections 628.29 to 628.33 may consistently stand and operate without conflict. Prosecutions, after preliminary examination, may be by information in all cases where the punishment prescribed for the offense charged does not exceed ten years' imprisonment. If after conviction it is established under the provisions of Laws 1927, Chapter 236, that defendant has previously been convicted, then the increased sentence prescribed must be imposed and is valid. State v Zywicki, 175 M 508, 221 NW 900.

The common law characteristics of an information have not been destroyed. Its scope and field of application have been extended and enlarged. An amendment is permissible and in the instant case was without prejudice. State v Irish, 183 M 51, 235 NW 625.

The information charging defendant with knowingly exposing poison with intent to poison a dog, describing the dog, is sufficient. State v Eich, 204 M 134, 282 NW 810.

Information and indictments. 8 MLR 381.

Suspending the running of the statute of limitations by filing an information. 9 MLR 680.

628.31 PRELIMINARY EXAMINATION.

HISTORY. 1905 c. 231 s. 3; G.S. 1913 s. 9161; G.S. 1923 s. 10666; M.S. 1927 s. 10666.

No information shall be filed against any person until he shall have had a preliminary examination before a magistrate, unless he waive his right to such examination. State v Keeney, 153 M 157, 189 NW 1023.

The information designated means an information made and filed by a duly constituted prosecuting officer, and the proceedings must conform to the provisions of sections 628.29 to 628.33. An information may not be made by a private individual. State ex rel v Municipal Court, 164 M 328, 205 NW 63.

See, State v Zywicki, 175 M 508, 221 NW 900.

The pendency of a proceeding for preliminary examination in municipal or justice court does not prevent the finding of an indictment. The rule is different in case of information. State v Uglum, 175 M 610, 222 NW 280.

An information may be amended on trial. There was no prejudice in substituting "1924" for the year "1927." State v Irish, 183 M 51, 235 NW 625.

The defendant when arraigned stood mute and did not call the court's attention to the state's failure to file a formal complaint against him and to hold a preliminary examination. He is deemed to have waived the defect in procedure. State v Puent, 198 M 175, 269 NW 372.

Informations and indictments. 8 MLR 382, 397.

628.32 COURT MAY DIRECT FILING OF INFORMATION, WHEN; PLEA.

HISTORY. 1905 c. 231 s. 4; 1909 c. 398; 1913 c. 65 s. 1; G.S. 1913 s. 9162; G.S. 1923 s. 10667; 1925 c. 136 s. 1; M.S. 1927 s. 10667; 1935 c. 194 s. 1.

See, State v Rank, 162 M 393, 203 NW 49, notes under section 628.30.

The procedure by information under Laws 1913, Chapter 65, does not limit the jurisdiction to cases in which the accused asks to plead guilty, but extends to all criminal cases where the maximum punishment does not exceed ten years in the state prison. State v McGraw, 163 M 155, 203 NW 771.

The defendant was convicted on his plea of guilty to an information filed by the county attorney on his own initiative pursuant to sections 628.29 to 628.31. The provisions of section 628.32 requiring the appointment of counsel for the defendant before the taking of a plea, applies to an information filed under that section upon the application of the defendant to plead guilty, and not to an information under sections 628.29 to 628.31 filed on the initiative of the county attorney. State v McDonnell, 165 M 423, 206 NW 952.

See, State v Keeney, 153 M 157, 189 NW 1023; State v Zywicki, 175 M 508, 221 NW 900.

Comparative law of the states regarding indigent defendants. Betts v Brady, 316 US 478.

Prior to Laws 1935, Chapter 194, information could be filed by the county attorney in all cases where the penalty did not exceed ten years. The 1935 act permits filing in all cases where the penalty is less than life imprisonment. OAG July 1, 1938 (494a-2).

628.33 FORM OF INFORMATION.

HISTORY. 1905 c. 231 s. 5; G.S. 1913 s. 9163; G.S. 1923 s. 10668; M.S. 1927 s. 10668.

State ex rel v Municipal Court, 164 M 328, 205 NW 63. See notes under section 628.31. State v Zywicki, 175 M 508, 221 NW 63. See notes under section 628.30.

List of states which require that indigent defendants in non-capital as well as capital criminal cases be provided with counsel on request. Betts v Brady, 316 US 478.

GRAND JURIES

628.41 GRAND JURIES; MEMBERS; QUORUM.

HISTORY. R.S. 1851 c. 115 ss. 1, 12; P.S. 1858 c. 104 ss. 1, 12; G.S. 1866 c. 107 ss. 1, 12; G.S. 1878 c. 107 ss. 1, 12; G.S. 1894 ss. 7170, 7187; 1889 c. 98 ss. 1, 3; 1889 c. 110 ss. 1, 3; 1891 c. 32 ss. 1, 3; R.L. 1905 s. 5261; G.S. 1913 s. 9098; 1921 c. 365 s. 2; G.S. 1923 s. 10603; M.S. 1927 s. 10603.

It is no valid objection to an indictment that it was found and presented by the grand jury at an adjourned regular term of the court, and after the petit jury had been finally discharged. State v Davis, 22 M 423.

A grand jury is sufficiently large if there are 16 jurors present and voting on an indictment; but an indictment cannot be found without the concurrence of at least 12 jurors. An accused cannot insist upon the attendance of the full panel summoned. State v Cooley, 72 M 476, 75 NW 729.

Laws 1921, Chapter 365, which defines a petit jury as a body of 12 men or women or both is constitutional and valid. State v Rosenberg, 155 M 37, 192 NW 194.

Restrictions upon the manner of a grand jury's inquiry are general and few. A second indictment may be found without reexamination of the witnesses originally heard, and without consideration of any new or additional evidence. State v Ginsberg, 167 M 29, 208 NW 177.

A public officer takes his office cum onere and is entitled to no compensation for his official services except as prescribed by law. An individual juror is not entitled to "extra days" pay put in on investigation and committee meetings on days when the grand jury had no meeting, and no quorum was present. 1938 OAG 287, April 30, 1937 (260b).

Suffrage amendment as qualifying women for jury duty; necessity for qualifying statute. 5 MLR 319, 6 MLR 79.

628.42 WHEN DRAWN.

HISTORY. R.S. 1851 c. 115 ss. 2, 3; P.S. 1858 c. 104 ss. 2, 3; G.S. 1866 c. 107 ss. 2, 3; 1877 c. 37 s. 1; G.S. 1878 c. 107 ss. 2, 3; 1889 c. 84 s. 1; G.S. 1894 ss. 7171, 7172; R.L. 1905 s. 5262; 1909 c. 221; G.S. 1913 s. 9099; 1923 c. 257 s. 1; G.S. 1923 s. 10604; M.S. 1927 s. 10604.

The district court has the power to discharge the grand jury impaneled at a regular general term of the district court, adjourn the term to a future day, and order a new venire of grand jurors to be drawn and summoned for such adjourned term; which may be drawn from the regular jury list selected by the county commissioners and filed with the clerk of the court. State v Peterson, 61 M 73, 63 NW 171.

Laws 1921, Chapter 365, defining a petit jury as a body of 12 men or women or both is valid. Comparative law and constitutionality discussed. State v Rosenberg, 155 M 39, 192 NW 194.

The court within the statutory 15 days made its order calling a grand jury, but it was not filed with the clerk 15 days before the term. No grand jury could be called that term. OAG Sept. 30, 1937 (494a-3).

Suffrage amendment as qualifying women for jury duty. 5 MLR 319.

Informations or indictments. 8 MLR 383.

Laws 1923, Chapter 257, a bill to extend the use of informations. 9 MLR 697.

628.43 EXEMPTION FROM SERVICE.

HISTORY. R.S. 1851 c. 115 s. 4; P.S. 1858 c. 104 s. 4; G.S. 1866 c. 107 s. 4; 1873 c. 72 s. 1; G.S. 1878 c. 107 s. 4; 1887 c. 186; 1889 c. 74 s. 1; 1889 c. 83 s. 1; G.S.

1894 s. 7173; 1895 c. 309; 1897 c. 352 s. 3; R.L. 1905 s. 5263; G.S. 1913 s. 9100; 1915 c. 15 s. 1; G.S. 1923 s. 10605; M.S. 1927 s. 10605.

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).

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.

Where a grand jury is composed of not less than 16 members and not more than 23, its action is not vitiated by reason of there being drawn as one member thereof a disqualified person, he being excused before the charge in the indictment is considered. The remaining jurors, not less than 16 being present when the matter before them is under consideration, may legally find an indictment, 12 of their number concurring therein. State v Cooley, 72 M 476, 75 NW 729.

Disqualification of governmental employees as jurors in criminal cases for implied bias. 21 MLR 609.

628.44 DIRECTOR OF FORESTRY AND EMPLOYEES EXEMPT FROM JURY SERVICE.

HISTORY. 1927 c. 279 s. 1; M.S. 1927 s. 10605-1.

Disqualification of governmental employees as jurors in criminal cases for implied bias. 21 MLR 609.

628.45 NAMES, HOW PREPARED AND DRAWN.

HISTORY. R.S. 1851 c. 115 ss. 5, 6; P.S. 1858 c. 104 ss. 5, 6; G.S. 1866 c. 107 ss. 5, 6; G.S. 1878 c. 107 ss. 5, 6; 1889 c. 98 s. 2; 1889 c. 110 s. 2; 1891 c. 32 s. 2; G.S. 1894 ss. 7174, 7175; R.L. 1905 s. 5264; G.S. 1913 s. 9101; G.S. 1923 s. 10606; M.S. 1927 s. 10606.

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).

The clerk has no authority to draw a jury from any list except such as is made out and certified to him as required by statute. Objection that the list was not properly signed and certified by the chairman of the board cannot be raised after the arraignment without leave of court, and if the accused was held on a charge for a public offense at the time the jury was impaneled, the objection must be made by challenge to the panel and cannot be made by a motion to quash. State v Greenman, 23 M 209; State v Schumm, 47 M 373, 50 NW 362; State v Dick, 47 M 375, 50 NW 362.

In a criminal case a motion in arrest of judgment after verdict cannot be predicated upon matter not appearing upon the face of the record. A defect in the authentication of the grand jury list, filed with the clerk of the district court, from which the grand jury finding the indictment was drawn, cannot be taken advantage of on a motion of this character. State v Conway, 23 M 291.

An informal certificate was held sufficient. The list of grand jurors held sufficient although under the same heading as petit jury list and there was but one certificate for the two lists. State v Peterson, 61 M 73, 63 NW 171.

The county board does not draw the jury. It simply selects a larger list of names from which the jury is subsequently drawn. Statutes regulating the preparation of the list by the board are merely directory. The fact that a person acted as a member of the board without authority is not a ground for setting aside the indictment. If the accused was not held at a time when the jury was impaneled, the objection may be made by motion to quash the arraignment. State v Russell, 69 M 502, 72 NW 832.

The general rule is that mere irregularity in the proceedings by which a grand juror gets on a panel does not affect the legality of its proceedings if such grand

juror is not personally disqualified. Provision is made so that no person be included in two successive annual lists. State v Cooley, 72 M 476, 75 NW 729.

Challenges to individual grand jurors, based upon the ground of prejudice or bias, can be interposed only before the jury is sworn. Such challenges cannot be made at the time of the arraignment, by way of a plea in abatement or motion to quash the indictment under General Statutes 1894, Section 7189 (section 626.17). Section 626.17 provides only for challenges or objections going to the regularity of the proceedings in the selection and formation of the jury. State v Ames, 90 M 183, 96 NW 330.

Method of summoning jurors from bystanders or from the county at large. Rakowski v Nowacki, 157 M 183, 195 NW 890.

628.46 VENIRE; SERVICE; RETURN.

HISTORY. R.S. 1851 c. 115 ss. 7, 8; P.S. 1858 c. 104 ss. 7, 8; G.S. 1866 c. 107 ss. 7, 8; G.S. 1878 c. 107 ss. 7, 8; G.S. 1894 ss. 7176, 7177; 1899 c. 12; R.L. 1905 s. 5265; 1913 c. 451 s. 1; G.S. 1913 s. 9102; G.S. 1923 s. 10607; M.S. 1927 s. 10607.

628.47 NEGLECT TO ATTEND; HOW PUNISHED.

HISTORY. R.S. 1851 c. 115 s. 9; P.S. 1858 c. 104 s. 9; G.S. 1866 c. 107 s. 9; G.S. 1878 c. 107 s. 9; G.S. 1894 s. 7178; R.L. 1905 s. 5266; G.S. 1913 s. 9103; G.S. 1923 s. 10608; M.S. 1927 s. 10608.

628.48 FAILURE TO REPORT; ATTACHMENT.

HISTORY. 1883 c. 103 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 107 ss. 9a, 9b; G.S. 1894 ss. 7179, 7180; R.L. 1905 s. 5267; G.S. 1913 s. 9104; G.S. 1923 s. 10609; M.S. 1927 s. 10609.

628.49 GROUNDS OF EXCUSE; RECORD.

HISTORY. 1883 c. 103 ss. 3, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 107 ss. 9c, 9d; G.S. 1894 ss. 7181, 7182; R.L. 1905 s. 5268; 1909 c. 407 s. 1; G.S. 1913 s. 9105; 1921 c. 370 s. 1; G.S. 1923 s. 10610; M.S. 1927 s. 10610.

The person summoned as a grand juror being over age, neither the defendant nor the court, had a right to require him to serve. State v Brown, 12 M 540 (448).

The court may on its own motion, and independently of the statute, exclude a juror who for any reason appears disqualified. State v Ring, 29 M 78, 11 NW 233; State v Strait, 94 M 384, 102 NW 913.

Where a court excuses a juror without challenge it will be presumed on appeal that it acted under this section and in the exercise of a sound discretion. Hill v Winston, 73 M 80, 75 NW 1030.

628.50 CONTEMPT; HOW PUNISHED.

HISTORY. 1883 c. 103 ss. 5, 6; G.S. 1878 Vol. 2 (1888 Supp.) c. 107 ss. 9e, 9f; G.S. 1894 ss. 7183, 7184; R.L. 1905 s. 5269; G.S. 1913 s. 9106; G.S. 1923 s. 10611; M.S. 1927 s. 10611.

628.51 SPECIAL VENIRE.

HISTORY. R.S. 1851 c. 115 ss. 10, 11; P.S. 1858 c. 104 ss. 10, 11; G.S. 1866 c. 107 ss. 10, 11; G.S. 1878 c. 107 ss. 10, 11; G.S. 1894 ss. 7185, 7186; R.L. 1905 s. 5270; G.S. 1913 s. 9107; G.S. 1923 s. 10612; M.S. 1927 s. 10612.

Deficiency authorizing a special venire may occur either at the time of the organization of the grand jury by the failure of a sufficient number to appear, or at any subsequent period of their services, by death, sickness, challenges to individual jurors or to the panel, or other unavoidable causes. State v Froiseth, 16 M 313 (277); State v Grimes, 50 M 123, 52 NW 275; State v Russell, 69 M 502, 72 NW 832.

Failure of a sufficient number of grand jurors selected and summoned on the regular panel to appear when called in court is a "deficiency of grand jurors" within this section. State v McCartey, 17 M 76 (54).

Objection that additional jurors are improperly summoned by a special venire cannot be raised after arraignment. State v Schumm, 47 M 373, 50 NW 362; State v Dick, 47 M 375, 50 NW 362.

Where a disqualified juror is excused, the accused cannot complain that a new juror is not summoned in his place, provided not less than 16 remain. Jacobson v Anderson, 72 M 476, 75 NW 729.

628.52 CHALLENGE.

HISTORY. R.S. 1851 c. 115 s. 12; P.S. 1858 c. 104 s. 12; G.S. 1866 c. 107 s. 12; G.S. 1878 c. 107 s. 12; 1889 c. 98 s. 3; 1889 c. 110 s. 3; 1891 c. 32 s. 3; G.S. 1894 s. 7188; R.L. 1905 s. 5271; G.S. 1913 s. 9108; G.S. 1923 s. 10613; M.S. 1927 s. 10613.

1. Challenge to individual jurors
2. Challenge to the panel
3. When made

1. Challenge to individual jurors

This rule applies to persons who are imprisoned at the time the jury is impaneled. Maher v State, 3 M 444 (329).

Right to challenge a juror is limited to those who are held to answer a charge for a public offense. State v Davis, 22 M 423; State v Ames, 90 M 183, 96 NW 330.

Challenge to individual jurors must in all cases be made before the jury retires. State v Greenman, 23 M 209; State v Ames, 90 M 183, 96 NW 330; State v VanVleet, 139 M 144, 165 NW 962.

An objection in the nature of a challenge to the panel may be made by motion to quash by a person who is not held on a charge of public offense at the time the jury was impaneled. State v Russell, 69 M 502, 72 NW 832.

Such person cannot move to quash on any of the statutory grounds of challenge to individual jurors, at least not on the ground of bias or prejudice. State v Ames, 90 M 183, 96 NW 330.

2. Challenge to the panel

Right to challenge must be exercised before the jury retires and this is so although the accused is in prison at the time. Maher v State, 3 M 444 (329); State v Hinckley, 4 M 345 (261); State v Hoyt, 13 M 132 (125).

Challenge to the panel can be interposed only for some one or more of the statutory causes, whether the jury is summoned by a general or special venire. State v Gut, 13 M 341 (315); State v Russell, 69 M 502, 72 NW 832; State v Ames, 90 M 183, 96 NW 330.

Right to challenge the panel is restricted to those who are held to answer a charge for a public offense. State v Davis, 22 M 423.

Challenge will lie on the ground that the list was not properly signed and certified by the chairman of the county board. Where at the time of impaneling of the grand jury, a person is held to answer a charge for a public offense, the only way in which he may object to the panel is by challenge. He cannot object by motion to quash the indictment. State v Greenman, 23 M 209.

See, State v Schumm, 47 M 373, 50 NW 362.

Where the accused is not held in custody, he may object to the panel on the grounds stated in section 616.17 and on those grounds only by a motion to quash the indictment. State v Russell, 69 M 502, 72 NW 832; State v Ames, 90 M 183, 96 NW 330.

3. When made

Objections to the grand jury are too late after a demurrer to the indictment. State v Thomas, 19 M 484 (418).

Objection to the authentication of the jury list cannot be made on a motion in arrest of judgment. State v Lautenschlager, 23 M 290; State v Conway, 23 M 292.

Motion to set aside an indictment for defects in the organization of a grand jury must be made at the time of the arraignment, unless for good cause 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.

Objections to the grand jury are too late after a plea of not guilty. Discretion of the court in denying the accused 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 were aliens held properly exercised. State v Arbes, 70 M 462, 73 NW 403.

628.53 CAUSES OF CHALLENGE TO PANEL.

HISTORY. R.S. 1851 c. 115 s. 14; P.S. 1858 c. 104 s. 14; G.S. 1866 c. 107 s. 14; G.S. 1878 c. 107 s. 14; G.S. 1894 s. 7189; R.L. 1905 s. 5272; G.S. 1913 s. 9109; G.S. 1923 s. 10614; M.S. 1927 s. 10614.

628.54 CAUSES OF CHALLENGE TO JUROR; HOW TRIED; DECISION ENTERED.

HISTORY. R.S. 1851 c. 115 ss. 15 to 17; P.S. 1858 c. 104, ss. 15 to 17; G.S. 1866 c. 107 ss. 15 to 17; G.S. 1878 c. 107 ss. 15 to 17; G.S. 1894 ss. 7190 to 7192; R.L. 1905 s. 5273; G.S. 1913 s. 9110; G.S. 1923 s. 10615; M.S. 1927 s. 10615.

Decision of trial court on a challenge for bias is final or at least will not be disturbed except for manifest error. State v Gut, 13 M 341 (315).

A grand juror may not testify to conversations had when none but his fellow members were present relative to matters considered by them in the discharge of their duties. The secrecy enjoined by law in this respect is permanent. Burns v *Holt*, 138 M 165, 164 NW 590.

628.55 EFFECT OF ALLOWANCE OF CHALLENGE.

HISTORY. R.S. 1851 c. 115 ss. 18 to 20; P.S. 1858 c. 104 ss. 18 to 20; G.S. 1866 c. 107 ss. 18 to 20; G.S. 1878 c. 107 ss. 18 to 20; 1889 c. 98 s. 4; 1889 c. 110 s. 4; G.S. 1894 ss. 7193 to 7195; R.L. 1905 s. 5274; G.S. 1913 s. 9111; G.S. 1923 s. 10616; M.S. 1927 s. 10616.

628.56 FOREMAN; JURY SWORN; CHARGE OF COURT.

HISTORY. R.S. 1851 c. 115 ss. 21, 22, 25; P.S. 1858 c. 104 ss. 21, 22, 25; G.S. 1866 c. 107 ss. 21 to 23; G.S. 1878 c. 107 ss. 21 to 23; 1889 c. 98 s. 5; 1889 c. 110 s. 5; G.S. 1894 ss. 7196 to 7198; R.L. 1905 s. 5275; G.S. 1913 s. 9112; G.S. 1923 s. 10617; M.S. 1927 s. 10617.

The charge should be repeated when a new juror is added. State v Froiseth, 16 M 313 (277).

In the absence of the foreman of a grand jury, the district court has the power to appoint a foreman pro tempore and indictments properly endorsed by a duly appointed acting foreman are not open to attack on that ground. State v Ginsberg, 167 M 26, 208 NW 177.

628.57 JURY TO RETIRE; CLERK; DUTIES.

HISTORY. R.S. 1851 c. 115 ss. 26, 27; P.S. 1858 c. 104 ss. 26, 27; G.S. 1866 c. 107 ss. 24, 25; 1871 c. 59 s. 1; G.S. 1878 c. 107 ss. 24, 25; G.S. 1894 ss. 7199, 7200; R.L. 1905 s. 5276; G.S. 1913 s. 9113; G.S. 1923 s. 10618; M.S. 1927 s. 10618.

From the minutes of the grand jury that found the indictment and from the testimony of the members of a committee from a former grand jury, it clearly appears that this committee appeared at a session of the grand jury and made statements as to the investigations made by the former grand jury of the charge

against the defendants, the evidence heard and the reasons for not taking action. This appearance of the committee constitutes a legal cause for quashing the indictment. State v Ernster, 147 M 81, 179 NW 640.

628.58 DISCHARGE AND ADJOURNMENT.

HISTORY. R.S. 1851 c. 115 s. 28; P.S. 1858 c. 104 s. 28; G.S. 1866 c. 107 s. 26; G.S. 1878 c. 107 s. 26; 1885 c. 21; 1891 c. 85 s. 1; G.S. 1894 s. 7201; R.L. 1905 s. 5277; G.S. 1913 s. 9114; G.S. 1923 s. 10619; M.S. 1927 s. 10619.

The court may adjourn sessions of the grand jury from time to time during term; and until finally discharged by the court at the expiration of the term the jury retains all its powers and functions. State v Davis, 22 M 423.

The trial court rightfully denied the motion to quash on defendant's claim that the grand jury was illegally reconvened for an adjourned term of court at which the indictments were returned. State v Goodrich, 67 M 176, 69 NW 815.

628.59 EVIDENCE; FOR DEFENDANT.

HISTORY. R.S. 1851 c. 116 ss. 34 to 37; P.S. 1858 c. 104 ss. 34 to 37; 1852 Amend. p. 27; G.S. 1866 c. 107 ss. 31 to 34; G.S. 1878 c. 107 ss. 31 to 34; G.S. 1894 ss. 7206 to 7209; R.L. 1905 s. 5280; G.S. 1913 s. 9117; G.S. 1923 s. 10622; M.S. 1927 s. 10622.

1. Generally
2. Accused as a witness

1. Generally

If the evidence before a grand jury on a charge against one person shows that another ought also to be indicted, it is the duty of the jury to indict such other. Only legal evidence should be admitted, but the illegality of the evidence cannot be shown by the affidavit of a juror. State v Beebe, 17 M 241 (218).

On dismissal of an indictment on the motion of the county attorney, a second indictment may be found by the same grand jury for the same offense, on the evidence already received on which the former indictment was found, and it is not necessary that any new or additional evidence be received. State v Peterson, 61 M 73, 63 NW 171.

A contract with a detective agency to obtain evidence of crime conditions, even if not void as against public policy, would be so at variance with the usual and fair procedure under the law that it ought not to be allowed to rest on inferences. Burns v Holt, 138 M 165, 164 NW 590.

A prosecution for the crime of adultery may be commenced by an indictment without a formal complaint being first made by the innocent spouse before a committing magistrate. In such a prosecution the grand jury may not receive the evidence of the innocent spouse, without the consent of the defendant, and base a true bill in part upon such testimony. State v Marshall, 140 M 363, 168 NW 174.

Under General Statutes 1923, Section 10358 (section 622.01), a person may be indicted by a grand jury for having defrauded another by false pretense, when the ingredient of the offense is that such representations have been believed and relied upon even though the person victimized may not have been a witness before that body. State v Benham, 168 M 14, 209 NW 633.

A witness before a grand jury, no personal privilege of his own being invaded, may not refuse to answer questions because they have not been ruled upon by the court or because they seem to relate only to an offense the prosecution of which is barred by a statute of limitation. State v Kasherman, 177 M 200, 224 NW 838.

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.

Shall the grand jury in ordinary cases be dispensed with. 6 MLR 616.

Information or indictments. 8 MLR 391.

Limitations upon the inquisitorial powers of a grand jury. 21 MLR 605.

2. Accused as a witness

If the accused is required to appear before the jury and give testimony against himself the indictment may be quashed on motion, although his name is not endorsed thereon as a witness. State v Froiseth, 16 M 296 (260); State v Gardner, 88 M 130, 92 NW 529.

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 that he is required to testify against himself, unless it appears from 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 129, 57 NW 455.

The affidavit upon which the defendant herein 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.

Where, after a complaint is filed against the defendant in the municipal court charging him with a felony and a warrant is issued thereon, but before hearing thereon he is subpoenaed to appear before the grand jury and compelled to give evidence as to facts upon which said charge is based, his constitutional right not to be compelled in any criminal case to be a witness against himself is violated. State v Corteau, 198 M 433, 270 NW 144.

628.60 JUROR COMPLAINANT, WHEN.

HISTORY. R.S. 1851 c. 116 s. 39; P.S. 1858 c. 104 s. 39; G.S. 1866 c. 107 s. 36; G.S. 1878 c. 107 s. 36; G.S. 1894 s. 7211; R.L. 1905 s. 5282; G.S. 1913 s. 9119; G.S. 1923 s. 10624; M.S. 1927 s. 10624.

628.61 MATTERS INQUIRED INTO.

HISTORY. R.S. 1851 c. 116 s. 40; P.S. 1858 c. 104 s. 40; G.S. 1866 c. 107 s. 37; G.S. 1878 c. 107 s. 37; G.S. 1894 s. 7212; R.L. 1905 s. 5283; G.S. 1913 s. 9120; G.S. 1923 s. 10625; M.S. 1927 s. 10625.

A witness before a grand jury, no personal privilege of his own being invaded, may not refuse to answer questions because they have not been ruled upon by the court or because they seem to relate only to an offense the prosecution of which is barred by a statute of limitations. State v Kasherman, 177 M 202, 224 NW 838.

A report of a grand jury in the form of a presentment is not privileged if it names an individual as having done an improper or odious act, and on his application the court should suppress or expunge the same. State ex rel v District Court, 216 M 345, 12 NW(2d) 776.

Limitations upon the inquisitorial powers of grand juries. 21 MLR 606.

628.62 ACCESS TO PRISONS AND RECORDS.

HISTORY. R.S. 1851 c. 116 s. 41; P.S. 1858 c. 104 s. 41; G.S. 1866 c. 107 s. 38; G.S. 1878 c. 107 s. 38; G.S. 1894 s. 7213; R.L. 1905 s. 5284; G.S. 1913 s. 9121; G.S. 1923 s. 10626; M.S. 1927 s. 10626.

628.63 COUNTY ATTORNEY TO ATTEND; DUTIES.

HISTORY. R.S. 1851 c. 116 s. 42; P.S. 1858 c. 104 s. 42; G.S. 1866 c. 107 s. 39; G.S. 1878 c. 107 s. 39; G.S. 1894 s. 7214; R.L. 1905 s. 5285; G.S. 1913 s. 9122; G.S. 1923 s. 10627; M.S. 1927 s. 10627.

The grand jury excluded the county attorney and called in another attorney who sat in the jury room while the witnesses were being examined. The indictment must be quashed. State v Slocum, 111 M 328, 126 NW 1096.

A committee from a former grand jury was permitted in the jury room and made statements of investigation by the former grand jury. This was cause to quash the indictment. State v Ernster, 147 M 81, 179 NW 640.

Informations or indictments. 8 MLR 390.

628.64 OBSERVE SECRECY.

HISTORY. R.S. 1851 c. 116 s. 43; P.S. 1858 c. 104 s. 43; G.S. 1866 c. 107 s. 40; G.S. 1878 c. 107 s. 40; G.S. 1894 s. 7215; R.L. 1905 s. 5286; G.S. 1913 s. 9123; G.S. 1923 s. 10628; M.S. 1927 s. 10628.

The trial court properly refused to receive an affidavit of one of the grand jurors, on the ground that public policy did not allow a grand juror's evidence or affidavit as to what occurred in the jury room. State v Beebe, 17 M 241 (218).

The only cases in which the testimony of a witness before the grand jury may be disclosed, are those mentioned in General Statutes 1878, Chapter 107, Section 41, (section 626.29). Pinney's Will, 27 M 280, 6 NW 791, 7 NW 144.

In the instant case the name of the witness in question need not be endorsed on the true bill. State v Hawks, 56 M 129, 57 NW 455.

A grand juror is not competent, in a civil case, to testify as to statements of a witness before the grand jury. Loveland v Cooley, 59 M 260, 61 NW 138.

The grand jury excluded the county attorney and without court order, called in another attorney. The indictment was quashed. State v Slocum, 111 M 328, 126 NW 1096.

A grand juror may not testify to conversations had when none but his fellow members were present relative to matters considered by them in the discharge of their duties. Burns v Holt, 138 M 165, 164 NW 590.

Members of the grand jury are required to preserve secrecy in respect to proceedings before it. State ex rel v District Court, 216 M 348, 12 NW(2d) 776.

Informations or indictments. 8 MLR 390.

628.65 MAKE DISCLOSURE, WHEN.

HISTORY. R.S. 1851 c. 116 s. 44; P.S. 1858 c. 104 s. 44; G.S. 1866 c. 107 s. 41; G.S. 1878 c. 107 s. 41; G.S. 1894 s. 7216; R.L. 1905 s. 5287; G.S. 1913 s. 9124; G.S. 1923 s. 10629; M.S. 1927 s. 10629.

The only cases in which the testimony of a witness before the grand jury may be discussed, are those mentioned in General Statutes 1878, Chapter 107, Section 41, (section 626.29). Pinney's Will, 27 M 280, 6 NW 791, 7 NW 144; State v Fruen, 162 M 351, 202 NW 737.

Informations and indictments. 8 MLR 391.

628.66 ACTION NOT TO BE QUESTIONED; EXCEPTION.

HISTORY. R.S. 1851 c. 116 s. 45; P.S. 1858 c. 104 s. 45; G.S. 1866 c. 107 s. 42; G.S. 1878 c. 107 s. 42; G.S. 1894 s. 7217; R.L. 1905 s. 5288; G.S. 1913 s. 9125; G.S. 1923 s. 10630; M.S. 1927 s. 10630.

628.67 INDICTMENT OR PRESENTMENT KEPT SECRET.

HISTORY. R.S. 1851 c. 117 ss. 52, 53; 1852 Amend. p. 27; P.S. 1858 c. 104 ss. 52, 53; G.S. 1866 c. 107 ss. 49, 50; G.S. 1878 c. 107 ss. 49, 50; G.S. 1894 ss. 7224, 7225; R.L. 1905 s. 5291; G.S. 1913 s. 9128; G.S. 1923 s. 10633; M.S. 1927 s. 10633.