

CHAPTER 630

PRETRIAL PROCEDURE

ARRAIGNMENT

630.04 FORM OF BENCH WARRANT IN MISDEMEANORS.

A justice of the peace has no authority to issue a bench warrant or grant a stay of execution. At the time of sentence he may issue an "order of commitment". 1942 OAG 21, June 12, 1941 (266-B-27).

630.10 DEFENDANT INFORMED OF HIS RIGHT TO COUNSEL.

Defendant was arrested about noon and tried in the municipal court the next day on a tab charge. He made no motion for continuance or asked for counsel. He told the clerk he was ready for trial. He cross-examined the witnesses of the state. Defendant was not deprived of any legal rights to have counsel in his defense. He in effect waived his privilege. *State v Martin*, 223 M 414, 27 NW(2d) 158.

Criminal prosecutions; right to counsel. 17 MLR 415, 432.

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

Defendant was convicted of arson in the third degree. It was not error to refuse to permit defendant to demur to the indictment after the trial began; it appearing that the very ground for demurring was that the indictment failed to state facts sufficient to constitute the crime. *State v Roth*, 117 M 404, 136 NW 12.

630.14 DEFENSE OF ALIBI; APPLICATION BY COUNTY ATTORNEY.

Effect of L. 1935, cc. 194 and 196. 20 MLR 70.

The show window of the bar. 20 MLR 577, 581.

SETTING ASIDE INDICTMENT

630.18 GROUNDS FOR SETTING ASIDE; WAIVER.

Informations and indictments. 8 MLR 379, 390.

DEMURRER

630.23 GROUNDS FOR DEMURRER.

Although the complaint is not a model, it is not void for duplicity. Accused is charged with using threatening and abusive language and with threatening with a gun. The gravamen of the charge is a breach of the peace. Further, an objection on the ground of duplicity must be taken at or before the trial or it is deemed waived. *State ex rel v City of Red Wing*, 175 M 222, 220 NW 611.

All facts constituting a crime having been pleaded, and there being no inconsistency, there is no duplicity since the facts pleaded constitute only one crime. *State v Cantrell*, 220 M 13, 18 NW(2d) 686.

While accused may raise the question of the sufficiency of the indictment to charge a public offense by a motion in arrest of judgment, it is better practice to raise the question by demurrer. *Clement v United States*, 149 F. 306.

Joinder of separate offenses in indictment. 22 MLR 112.

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630.24 REQUISITES, WHEN HEARD; JUDGMENT.

See, *Clement v United States*, 149 F. 306, noted under section 630.23.

630.25 PROCEEDINGS ON ALLOWANCE; DEFENDANT, WHEN DISCHARGED.

Double jeopardy. 24 MLR 522, 525.

630.27 OBJECTIONS TAKEN BY DEMURRER.

Where parties were indicted for conspiracy to defraud the United States of certain lands, an objection that the indictment does not clearly describe the lands cannot be raised in a motion for arrest of judgment. *Stearns v United States*, 152 F. 900.

PLEAS

630.28 PLEAS TO INDICTMENT; ORAL; HOW ENTERED.

By pleading not guilty to a complaint filed in the justice court charging defendant with petit larceny, he submitted himself to the jurisdiction of the court, and there was no error in denying defendant's motion to withdraw his plea. Defendant waived the right to object to the jurisdiction of the court on the ground that he was arrested without a warrant and was charged with a misdemeanor not committed in the presence of the arresting officer. Upon arraignment, defendant must move to set aside the indictment, or demur, or plead. *State v Henspeter*, 199 M 359, 271 NW 700.

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

The trial court did not abuse judicial discretion in refusing defendant's motion, after sentence was pronounced, for a vacation thereof and for leave to withdraw the plea and stand trial. *State v Levine*, 146 M 187, 178 NW 491.

630.33 INDICTMENT FOR OFFENSE OF DIFFERENT DEGREES.

Accused was acquitted of the crime of rape because the indictment did not allege the age of the female. Notwithstanding his acquittal, he was legally charged and convicted of the crime of carnal knowledge of a female child under the age of consent. *State v Winger*, 204 M 164, 282 NW 819.

Double jeopardy. 24 MLR 522, 543.