

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS
OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

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1883.

§ 3. **Motion to set aside heard, when.** The motion shall be heard at the time of the arraignment, unless for good cause, the court postpones the hearing to another time.

§ 4. **Demurrer or plea when motion is denied.** If the motion is denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto.

§ 5. **Proceedings, if motion is granted.** If the motion is granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he has deposited money instead of bail, that the money be refunded to him; unless it directs that the case be resubmitted to the same or another grand-jury.

§ 6. **Effect of resubmission of case.** If the court directs that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he is admitted to bail; or if already admitted to bail, or money deposited instead thereof, the bail or money is answerable for the appearance of the defendant, to answer a new indictment.

§ 7. **Proceedings, if new indictment is not found.** Unless a new indictment is found before the next grand-jury of the county is discharged, the court shall, on the discharge of such grand-jury, make the order prescribed by section five aforesaid.

§ 8. **Setting aside indictment no bar to another prosecution.** An order to set aside an indictment, as provided in the seven preceding sections, is no bar to a future prosecution for the same offence.

CHAPTER CXI.

DEMURRERS.

SECTION.

- 1-2. Pleadings of defendant—when to be put in.
- 3-4. Grounds of demurrer—requisites of demurrer.
- 5-6. Hearing of demurrer—judgment thereon.
- 7-9. Allowance of demurrer—when a bar to another prosecution—amendment—resub-

SECTION.

- mission to grand-jury—discharge of defendant—proceedings on resubmission.
- 10. On disallowance of demurrer, defendant may plead.
- 11. What objections must be taken by demurrer.

§ 1. **Pleadings by defendant.** The only pleading on the part of the defendant is a demurrer or a plea.

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

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

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

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

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

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

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

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

§ 5. **Same—when to be heard.** Upon the demurrer being filed, the objection presented thereby shall be heard, either immediately, or at such time as the court may appoint.

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

§ 7. **Proceedings on allowance of demurrer.** If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offence, unless the court allows an amendment where the defendant will not be unjustly prejudiced thereby, or, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury.

§ 8. **Defendant discharged, when.** If the court does not allow an amendment, or direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

§ 9. **Proceedings when case is submitted anew.** If the court directs that the case be submitted anew, the same proceedings shall be had thereon as are prescribed in sections six and seven of chapter one hundred and ten.

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

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