

ment nor, for the want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or *vice versa*, nor for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment or making the presentment, or on an impossible day, or on a day that never happened, or by reason of any mere defect or imperfection in matters of form which shall not tend to the prejudice of the defendant, nor for any matter or cause which might have been a subject of demurrer to the indictment, inquisition or presentment.

Demurrer.

Since the adoption of this section, the usual and only proper mode of testing the constitutionality of a statute under which a party is indicted is by demurrer to the indictment. *Foote v. State*, 59 Md. 266.

This section referred to in overruling a contention that since there was one good count in the indictment the judgment could not be reversed for erroneous rulings on demurrers to other counts; the demurrers being to each count and the verdict being general, no means exist of determining upon which count the verdict was rendered or whether rendered upon all. *Avirett v. State*, 76 Md. 527.

If an indictment charges an act to be a felony which is not a felony, the error must be taken advantage of by demurrer. *Hawthorne v. State*, 56 Md. 533.

That the act charged against the traverser is not an offense within the true meaning of the law under which the indictment is drawn, or that the law itself is unconstitutional, are subjects of demurrer and, since the adoption of this section, can be raised in no other way. *Cowman v. State*, 12 Md. 253. And see *Spielman v. State*, 27 Md. 524; *Cearfoss v. State*, 42 Md. 405.

Since an indictment for arson which omits to charge a "burning" is demurrable, the defect cannot be availed of by motion in arrest of judgment; nor can the judgment be reversed if no demurrer was filed. *Cochran v. State*, 6 Md. 405.

An indictment being substantially defective and the objection being raised by demurrer, this section held to have no application. *Kearney v. State*, 48 Md. 25.

This section applied, the objections to the indictment being held to be subjects of demurrer. *State v. Reed*, 12 Md. 272; *Costly v. State*, 48 Md. 177; *State v. Phelps*, 9 Md. 26; *Davis v. State*, 39 Md. 385; *State v. Wade*, 55 Md. 41; *Wedge v. State*, 12 Md. 235; *Kellenbeck v. State*, 10 Md. 437. And see *Norwood v. State*, 45 Md. 71.

Generally.

This section held to have no application where there are several counts in an indictment charging the traverser with more than one distinct and separate felony; in point of law it is no objection that two or more offenses of the same nature and upon which the same or a similar judgment may be given are contained in different counts of the same indictment; therefore, it forms no ground for a motion in arrest, nor can the objection be taken by demurrer. *State v. Blakeney*, 96 Md. 713; *State v. McNally*, 55 Md. 562.

This section applied to a motion to quash an indictment under section 437, because it did not contain the allegation that the traverser was licensed to sell or was a trader. Object of this section. *State v. Edlavitch*, 77 Md. 145; *Maguire v. State*, 47 Md. 494.