

This section referred to in overruling contention that since there was one good count in indictment the judgment could not be reversed for erroneous rulings on demurrers to other counts; demurrers being to each count and verdict being general, no means exist of determining upon which count 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 traverser is not an offense within true meaning of law under which indictment is drawn, or that 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 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 judgment be reversed if no demurrer was filed. *Cochran v. State*, 6 Md. 405.

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, objections to 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.

Time not being of the essence of the offense, an indictment for larceny was not demurrable for indefiniteness as to time of its commission. *Whittington v. State*, 173 Md. 392.

Cited in *Green v. State*, 170 Md. 141, 142.

An error in stating the time at which an offense was committed, held immaterial in view of this section. *Allen v. State*, 128 Md. 267.

Indictment not defective because it alleges time of offense as on or about certain date; policy of this section. *Brunner v. State*, 154 Md. 657.

Nothing can be made the basis of motion in arrest of judgment which is subject of demurrer. Act 1916, ch. 30, prohibiting sale of liquor in Washington County. *McCurdy v. State*, 151 Md. 440.

Questions raised on demurrers to indictment and plea of limitations cannot be considered on motion in arrest of judgment. *Simmons v. State*, 165 Md. 168.

This section held to have no application where there are several counts in indictment charging traverser with more than one distinct and separate felony; in point of law it is no objection that two or more offenses of same nature and upon which the same or a similar judgment may be given are contained in different counts of 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 indictment under sec. 575, because it did not contain allegation that 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.

Since burden is on traverser to bring himself within an exception in the statute under which he is prosecuted, an indictment was upheld in view of the portion of this section prohibiting quashing of indictments for want of averment unnecessary to be proved. See notes to sec. 663. *Howes v. State*, 141 Md. 545.

This section referred to in overruling an objection to indictment for assault with intent to commit rape on the ground of a variance between allegation and proof as to time of offense. *Hill v. State*, 143 Md. 361.

The words "current money" in indictment under sec. 387, charging the property stolen to be worth so many dollars "current money," held to be mere surplusage and not ground of reversal under this section. *Gardner v. State*, 25 Md. 151.

This section held not to do away with authority of court to strike out judgment during term at which it is rendered. *State v. Butler*, 72 Md. 100.

An indictment charging that traverser was a free negro when upon the trial it turned out that she was a slave, upheld under this section. *Negro Hammond v. State*, 14 Md. 148.

This section referred to in refusing to review the action of the trial court in declining to accept a plea in abatement. *Cooper v. State*, 64 Md. 44.

An information sustained without reference to this section. *Acton v. State*, 80 Md. 551.

Cited in *Callahan v. State*, 174 Md. 50.

Indictments—Conclusion of—Joinder of Counts.

An. Code, 1924, sec. 554. 1912, sec. 497. 1904, sec. 439. 1888, sec. 287. 1852, ch. 63, sec. 3.

650. All indictments for offenses forbidden by any statute or statutes, or for offenses the punishment of which is contained in the same clause of any statute with the prohibition of the offense, may conclude as for offenses at common law, and where any offense which is a misdemeanor at