

# MAINE STATE LEGISLATURE

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REPORT  
OF THE  
COMMISSIONERS  
APPOINTED TO  
REVISE THE PUBLIC LAWS  
OF THE  
STATE OF MAINE.

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**TITLE XI.**  
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AUGUSTA:  
STEVENS & BLAINE, PRINTERS TO THE STATE.

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# TITLE ELEVENTH.

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## CRIMES AND OFFENSES, PROCEEDINGS IN CRIMINAL CASES, PUNISHMENTS AND INCIDENTAL PROVISIONS.

- Chap.* 117. Offenses against the sovereignty of the state.
- 118. " " " lives and persons of individuals.
  - 119. " " habitations and other buildings.
  - 120. Larceny and receiving stolen goods.
  - 121. Forgery and counterfeiting, and fraudulent stocks.
  - 122. Offenses against public justice.
  - 123. " " the public peace.
  - 124. " " chastity, morality and decency.
  - 125. Gambling.
  - 126. Cheating by false pretenses, frauds, and conspiracies.
  - 127. Malicious mischiefs and trespasses on property.
  - 128. Offenses against the public health, safety and policy.
  - 129. Libels.
  - 130. Proceedings for the prevention of crimes.
  - 131. Jurisdiction of offenses and general provisions relating thereto.
  - 132. Powers and proceedings of justices of the peace in criminal cases.
  - 133. Commencement of proceedings in criminal cases.
  - 134. Proceedings in court in criminal cases.
  - 135. Sentence and its execution in criminal cases, and the liberation of poor convicts.
  - 136. Collection and disposal of fines and costs in criminal cases.
  - 137. Disposal of insane criminals.
  - 138. Pardons and fugitives from justice.
  - 139. Coroners' inquests.
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### Chapter 117.

#### OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

- Sect.* 1. Definition and punishment of treason.
- 2. Two witnesses, or confession in open court, necessary for conviction.
  - 3. Misprision of treason.

*Sect.* 4. What proof is necessary for conviction.

5. Limitation of prosecutions.

6. Usurpation of jurisdiction by a foreign power within the limits of the state.

SECT. 1. Whoever is guilty of treason, by levying war  
2 against the state, adhering to its enemies, giving them aid and  
3 comfort, shall be punished with death. R. S., c. 153, § 1.

SECT. 2. No person shall be indicted and convicted of trea-  
2 son, unless on the testimony of two witnesses to the same overt  
3 act, or by confession in open court. R. S., c. 153, § 2.

SECT. 3. If any person has knowledge of any treason com-  
2 mitted, or to be committed, and conceals the same, and does  
3 not, as soon as may be, give information thereof upon oath to  
4 the governor of the state, a judge of a court of record, or to a  
5 justice of the peace, to the end that such offender may be ap-  
6 prehended, and amenable to justice, he shall be deemed guilty  
7 of misprision of treason, and punished by imprisonment in the  
8 state prison, not more than five years, or by fine, not exceeding  
9 one thousand dollars, and by imprisonment in the county jail,  
10 not more than one year. R. S., c. 153, § 3.

SECT. 4. No person shall be indicted and convicted of mis-  
2 prision of treason, unless the treason concealed, as aforesaid, is  
3 proved by the testimony of two witnesses to the same overt act,  
4 or by one witness to one overt act, and by another witness to  
5 another overt act of the same species of treason, or by voluntary  
6 confession in open court. R. S., c. 153, § 4.

SECT. 5. No person shall be indicted and convicted of treason  
2 or misprision of treason, unless the indictment therefor is found  
3 within three years after the commission of the treason.

R. S., c. 153, § 5.

SECT. 6. If any person, not a citizen of the United States, or  
2 any person, under the authority, color or pretense of authority  
3 from any foreign prince, state or government, enters upon any  
4 lands, cuts any timber, serves any civil or criminal process, or  
5 exercises any act of jurisdiction, authority or ownership, or  
6 claims any right, or threatens to do any of the said acts within  
7 the limits of this state, as described in and by the treaties of  
8 seventeen hundred and eighty-three, and eighteen hundred and  
9 forty-two, between the United States and Great Britain, such

10 person, and every person aiding or encouraging the same, shall  
11 be deemed guilty of a high misdemeanor, and punished by fine  
12 and imprisonment at the discretion of the court, according to  
13 the aggravation of the offense. R. S., c. 153, § 6.

## Chapter 118.

### OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

*Sect. 1.* Murder defined.

2. Murder in the first degree.
3. Murder in the second degree.
4. Jury to find the degree on trial; but the court, on confession.
5. Manslaughter.
6. Jurisdiction in case of death in the state, from a wound in a duel without the state.
7. Seconds to any such fatal duel deemed accessory to murder before the fact.
8. Plea of former conviction or acquittal without the state.
9. Party to a duel, whether as principal, second, surgeon or otherwise. Challenges.
10. Accepting a challenge. Aiding or encouraging such challenge or acceptance.
11. Going out of the state for the purposes of a challenge or duel. Conviction in another state may be pleaded in bar.
12. Posting, and contemptuous provocations to a duel.
13. Malicious disturbance of track or bridges, or placing obstructions on railroads, by which death is produced, declared murder; punishment if death is not produced.
14. Punishment for bursting boilers of steamboats or engines by gross neglect or for racing, and if death ensues thereby, declared to be manslaughter.
15. Maiming and malicious disfiguring.
16. Robbery.
17. Punishment, if with a dangerous weapon.
18. Punishment in other cases.
19. Rape.
20. Forceful abduction, and compulsion to marry, or to be defiled.
21. Abduction with intent to compel marriage or defilement.
22. Forceful confinement and kidnapping.
23. Where the offense may be tried; consent no justification, unless proved to be without duress or fraud.
24. Exposure and abandonment of children.
25. Masters of vessels transporting minors and indented servants out of the state.
26. Enlistment of a minor into the U. S. army without the consent of his parent, or enticing him out of the state for that purpose.
27. Threatening communications to extort money, or for other purposes.
28. Assault with intent to ravish, if the female be ten years old, or upwards; and also, if under ten years of age.
29. Punishment for assault by a person armed, with intent to murder; also by a person not armed.
30. Other felonious assaults.

*Sect.* 31. Attempt to murder by poison, or other means, not constituting an assault.

32. Assault and battery defined.

33. Punishment thereof, when not otherwise provided.

SECT. 1. Whoever unlawfully kills any human being, with  
2 malice aforethought, either express or implied, shall be deemed  
3 guilty of murder. R. S., c. 154, § 1.

SECT. 2. Whoever commits murder with express malice afore-  
2 thought, or in perpetrating or attempting to perpetrate any  
3 crime punishable with death, or imprisonment in the state prison  
4 for life, or for an unlimited term of years, shall be deemed  
5 guilty of murder of the first degree, and punished with death.

R. S., c. 154, § 2.

SECT. 3. Whoever commits murder, otherwise than is set  
2 forth in the preceding section, shall be deemed guilty of murder  
3 of the second degree, and punished by imprisonment for life in  
4 the state prison.

R. S., c. 154, § 3.

SECT. 4. Upon the trial of an indictment for murder, the  
2 jury, if they find the defendant guilty, shall inquire and by  
3 their verdict ascertain, whether he is guilty of murder of the  
4 first or second degree; but if such defendant is convicted upon  
5 his confession in open court, the court shall proceed by the ex-  
6 amination of witnesses to determine the degree of the murder,  
7 and to award sentence accordingly. R. S., c. 154, § 4.

SECT. 5. Whoever unlawfully kills any human being in the  
2 heat of passion, on sudden provocation, without malice afore-  
3 thought, either express or implied, or in any manner is guilty  
4 of manslaughter at common law, shall be punished by imprison-  
5 ment in the state prison not more than ten years, or by fine not  
6 exceeding one thousand dollars, and imprisonment in the county  
7 jail not more than one year. R. S., c. 154, § 5.

SECT. 6. Every inhabitant or resident of this state, who  
2 makes an appointment or engagement within the same, to fight  
3 a duel with deadly weapons, and fights such duel, without the  
4 jurisdiction of this state, and in so doing inflicts a mortal wound  
5 on any person, whereof he afterwards dies in this state, shall be  
6 deemed guilty of murder of the first degree, in this state, and  
7 punished accordingly; and may be indicted and tried in the  
8 county where the death happens. R. S., c. 154, § 6.

SECT. 7. Every inhabitant or resident of this state, who by  
2 previous appointment or engagement made in the state, is the  
3 second of either party in such duel, and is present as such, when  
4 a mortal wound is inflicted, whereof death ensues in this state,  
5 shall be deemed an accessory, before the fact, to murder of the  
6 first degree in this state, and punished accordingly; and may be  
7 indicted and tried in the county where the death happens.

R. S., c. 154, § 7.

SECT. 8. Any person, indicted under either of the two pre-  
2 ceding sections, may plead a former conviction or acquittal of  
3 the same offense in any other state or country; and such plea,  
4 if admitted or established, shall be a bar to all further or other  
5 proceedings against him for the same offense in this state.

R. S., c. 154, § 8.

SECT. 9. Every person fighting a duel with deadly weapons,  
2 or present at such fighting as an aid, second or surgeon, or ad-  
3 vising, encouraging or promoting it, though no homicide ensues,  
4 or sending, or delivering a verbal or written message, purporting  
5 or intended to be a challenge, though no duel ensues, shall be  
6 punished by imprisonment in the state prison not more than  
7 twenty years, or by fine not exceeding one thousand dollars, and  
8 imprisonment in the county jail not more than one year; and  
9 shall also be incapable of holding, being elected, or appointed to  
10 any office, place of honor, trust or profit, under this state, for  
11 the term of twenty years after conviction. R. S., c. 154, § 9.

SECT. 10. Whoever accepts such challenge, engages to act as  
2 second, or surgeon on such acceptance, knowingly carries and  
3 delivers any such challenge or acceptance, or advises, encour-  
4 ages or promotes the same, though no duel ensues, shall be pun-  
5 ished by imprisonment in the county jail not more than one year,  
6 and by fine not exceeding one thousand dollars; and shall also  
7 be incapacitated, as mentioned in the preceding section, for the  
8 term of five years after conviction. R. S., c. 154, § 10.

SECT. 11. If any inhabitant or resident of this state leaves  
2 the same for the purpose of eluding the operation of the provi-  
3 sions of the two preceding sections, with intent to give or accept  
4 a challenge, to fight a duel out of the state, or to aid, as a sec-



5 ond or surgeon in any such duel out of the state, he shall be  
6 deemed as guilty, and subject to like punishment, as if the  
7 offense had been committed in this state; and may be indicted,  
8 and tried in the county where he resides; and a former convic-  
9 tion or acquittal for the same offense, in any other state or  
10 country, may be pleaded on such trial, and if admitted or estab-  
11 lished, shall be a bar to any further or other proceedings against  
12 him therefor. R. S., c. 154, § 11.

SECT. 12. If any person posts another, or in writing or in  
2 print, uses any reproachful or contemptuous language concern-  
3 ing another, for not fighting a duel, or for not sending or  
4 accepting a challenge, he shall be punished by imprisonment in  
5 the county jail not more than one year, and by fine not exceed-  
6 ing one hundred dollars. R. S., c. 154, § 12.

SECT. 13. Whoever wilfully and maliciously displaces the  
2 switch or rails, disturbs, injures or destroys the track or bridges  
3 of any railroad, or places any obstructions thereon, with intent  
4 that persons or property, passing on the same, should thereby  
5 be injured, and human life is thereby destroyed, shall be deemed  
6 guilty of murder, and punished accordingly; if life is not thereby  
7 destroyed, but is endangered, or any person or property is  
8 thereby injured, the offender shall be punished by solitary con-  
9 finement in the state prison not less than thirty days, and by  
10 confinement to hard labor afterwards not less than five, nor more  
11 than twenty years. 1846, c. 197, § 1, 2, 3.

SECT. 14. If any person, having charge of any steamboat  
2 used for the conveyance of passengers, or of the boiler or other  
3 apparatus for generating steam therein, *or any engineer, con-*  
4 *ductor or other person, having charge of a locomotive engine,*  
5 *or of a car or train of cars on any railroad,* through igno-  
6 rance, gross neglect, or for the purpose of racing, creates or  
7 allows to be created such an undue quantity of steam as to burst  
8 or break the boiler, or other apparatus for generating steam, or  
9 the machinery connected therewith, and thereby human life is  
10 endangered, he shall be punished by imprisonment in the county  
11 jail not more than one year, or by a fine not exceeding two hun-  
12 dred and fifty dollars, or both; but if human life is destroyed

13 thereby, he shall be deemed guilty of manslaughter, and pun-  
14 ished by imprisonment in the state prison not less than two, nor  
15 more than four years. 1848, c. 70, § 12. (New.)

SECT. 15. Whoever, with malicious intent to maim or dis-  
2 figure, cuts or maims the tongue, puts out or destroys an eye,  
3 cuts or tears off an ear, cuts, slits or mutilates the nose or lip,  
4 or cuts off or disables a limb or any other member of another  
5 person, shall be punished by imprisonment in the state prison  
6 not more than twenty years. R. S., c. 154, § 13.

SECT. 16. Whoever, with force or violence, or by putting in  
2 fear, feloniously steals and takes from the person of another any  
3 property, that is the subject of larceny, shall be deemed guilty  
4 of robbery, and punished according to the aggravation of the  
5 offense, as is provided in the two following sections.

R. S., c. 154, § 14.

SECT. 17. If at the time of such robbery, he is armed with  
2 a dangerous weapon, with intent, if resisted, to kill or maim the  
3 person robbed, or if being so armed, he wounds or strikes the  
4 person robbed, or if he has any confederate aiding and abetting  
5 him in such robbery, present and so armed, he shall be pun-  
6 ished by imprisonment in the state prison for life.

R. S., c. 154, § 15.

SECT. 18. If he commits such robbery otherwise than as  
2 mentioned in the preceding section, he shall be punished by  
3 imprisonment in the state prison for any term of years, or for  
4 life.

R. S., c. 154, § 16.

SECT. 19. Whoever ravishes and carnally knows any female  
2 of ten years of age or more, by force and against her will, or  
3 unlawfully or carnally knows and abuses any female child under  
4 ten years of age, shall be punished by imprisonment in the state  
5 prison for life.

R. S., c. 154, § 17.

SECT. 20. Whoever takes any woman unlawfully and against  
2 her will, and, by force, menace or duress, compels her to marry  
3 him, or any other person, or to be defiled, shall be punished by  
4 imprisonment in the state prison for life, or any term of years.

R. S., c. 154, § 18.

SECT. 21. Whoever takes any woman unlawfully and against  
2 her will, with intent to compel her by force, menace or duress,

3 to marry him or any other person, or to be defiled, shall be  
4 punished by imprisonment in the state prison not more than  
5 ten years. R. S., c. 154, § 19.

SECT. 22. Whoever, without lawful authority, confines or  
2 imprisons within this state, forcibly transports out of the state  
3 or from place to place in it, seizes, inveigles or kidnaps with  
4 intent so to confine, imprison or transport any person without  
5 his consent and against his will; or sells as a slave, or in any  
6 manner transfers for any term the services of any negro, mu-  
7 latto, or other person of color who has been so unlawfully seized,  
8 inveigled or kidnapped, shall be punished by imprisonment in  
9 the state prison, not more than five years, or by fine, not ex-  
10 ceeding one thousand dollars, and imprisonment in the county  
11 jail not more than one year. R. S., c. 154, § 20.

SECT. 23. Every offense mentioned in the preceding section,  
2 may be indicted and tried in the county in which it was com-  
3 mitted, or to which such person was carried or brought; and  
4 on the trial his consent shall not be a defense, unless it appears  
5 to the jury that it was not obtained by fraud, threats or duress.

R. S., c. 154, § 21.

SECT. 24. If the father or mother of any child under the age  
2 of six years, or any person to whom such child is confided, ex-  
3 poses such child in any highway, street, field, house, outhouse,  
4 or other place, with intent wholly to abandon it, he shall be  
5 punished by imprisonment in the state prison not more than five  
6 years, or by fine, not exceeding five hundred dollars, and im-  
7 prisonment in the county jail not more than one year.

R. S., c. 154, § 22.

SECT. 25. Every master or commander of a vessel, who  
2 knowingly carries out of this state any person under the age of  
3 twenty-one years, or any apprentice or indented servant, with-  
4 out the consent of his parent, master or guardian, shall be pun-  
5 ished by a fine not exceeding two hundred dollars, and be liable  
6 to such parent, master or guardian for all damages sustained,  
7 in an action on the case. R. S., c. 154, § 23.

SECT. 26. Whoever in this state enlists, or causes to be en-  
2 listed into the army of the United States, any minor, knowing  
3 him to be such, without the consent in writing of his parent,

4 master and guardian, and within six months after his enlistment,  
5 he is removed out of this state, so that he cannot be had before  
6 the tribunals thereof by writ of habeas corpus; or persuades  
7 him to leave this state with intent thus to enlist him, shall be  
8 punished by a fine not exceeding five hundred dollars, and im-  
9 prisonment in the county jail not more than one year.

R. S., c. 154, § 24, 25.

SECT. 27. Whoever, verbally or by any written or printed  
2 communications, maliciously threatens to accuse another of a  
3 crime, or offense, or to do any injury to his person or property,  
4 with intent thereby to extort any money or pecuniary advan-  
5 tage whatever, or to compel him to do any act against his will,  
6 shall be punished by imprisonment in the state prison not more  
7 than two years, or by fine not exceeding five hundred dollars,  
8 and imprisonment in the county jail not more than one year.

R. S., c. 154, § 26.

SECT. 28. Whoever, with intent to commit a rape, assaults  
2 any female of ten years of age, or more, shall be punished by  
3 imprisonment in the state prison not more than ten years, or by  
4 fine not exceeding five hundred dollars, and imprisonment in the  
5 county jail not more than one year; and if such assault is made  
6 on a female under ten years of age, the punishment shall be not  
7 more than twenty years in the state prison.

R. S., c. 154, § 27, 28.

SECT. 29. Whoever, armed with a dangerous weapon, assaults  
2 another, with intent to murder, kill, maim, rob, steal, or to  
3 commit arson or burglary, shall be punished by imprisonment  
4 in the state prison not more than twenty years; but when not  
5 so armed, he shall be punished by imprisonment in the state  
6 prison not more than ten years, or by fine not exceeding one  
7 thousand dollars, and imprisonment in the county jail not more  
8 than one year.

R. S., c. 154, § 29, 30.

SECT. 30. Whoever assaults another with intent to commit  
2 any felony or crime, punishable with imprisonment in the state  
3 prison, where the punishment therefor is not otherwise pre-  
4 scribed, shall be punished by imprisonment in the state prison  
5 not more than five years, or by fine not exceeding five hundred

6 dollars, and by imprisonment in the county jail not more than  
7 one year. R. S., c. 154, § 31.

SECT. 31. Whoever with intent to murder, mingles poison  
2 in any food, drink or medicine, poisons any spring, well or re-  
3 servoir of water, or in any way, attempts to kill or murder by  
4 poisoning, drowning, suffocating, or other means, not constitu-  
5 ting an assault with an intent to kill or murder, shall be pun-  
6 ished by imprisonment in the state prison not more than twenty  
7 years. R. S., c. 154, § 32.

SECT. 32. Whoever unlawfully offers or attempts to strike,  
2 hit, touch, or do any violence however small, to the person of  
3 another, in a wanton, wilful, angry or insulting manner, with  
4 or without a weapon, or through the instrumentality or inter-  
5 vention of any thing animate or inanimate, and having an inten-  
6 tion and existing ability, at the time, to do some violence to such  
7 person, shall be deemed guilty of an assault; and, if such attempt  
8 is effected, and the person of another is struck, hit, touched or  
9 injured, however slightly, in manner aforesaid, the offender  
10 shall be deemed guilty of an assault and battery.

R. S., c. 154, § 33.

SECT. 33. Whoever is convicted, upon indictment, of an as-  
2 sault, or an assault and battery, where no other punishment is  
3 prescribed, shall be punished by a fine not exceeding two hun-  
4 dred dollars, and by imprisonment in the county jail not more  
5 than one year. R. S., c. 154, § 34.

## Chapter 119.

### OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

#### MALICIOUS BURNING OF BUILDINGS AND OTHER PROPERTY.

Sect. 1. Punishment for malicious burning of a dwelling-house by night; also by day.

2. " " " " " " a man's own house when another is law-  
fully in it.

3. Malicious burning of certain other buildings, by night, and also by day.

4. Otherwise burning buildings, vessels, bridges, dams and flumes.

5. Burning produce, fences, lumber, and other property.

6. Wife liable, though the property burnt is her husband's.

## BREAKING AND ENTERING HOUSES, OTHER BUILDINGS AND VESSELS.

*Sect. 7. Burglary defined.*

8. Punishment, if offender is armed or has confederates; and also if without such aggravation.

9. With felonious intent, entering dwelling-houses, or certain other buildings, or vessels, under special aggravations, but not constituting burglary.

## WHAT IS A DWELLING-HOUSE.

10. What constitutes a dwelling-house.

*Malicious Burning of Buildings and Other Property.*

SECT. 1. Whoever wilfully and maliciously sets fire to the dwelling-house of another, or to any outbuilding adjoining the same, or to any other building owned by himself or another, with the intent to burn such dwelling-house, and thereby the same is burnt, in the night time, shall be punished with death; but if the accused proves on trial, and the jury finds that at the time of committing such offense there was no person lawfully in such dwelling-house; or if such offense is committed in the day time, he shall be punished by imprisonment in the state prison for life.

R. S., c. 155, § 1, 2.

SECT. 2. Whoever wilfully and maliciously sets fire to any dwelling-house owned by himself in whole or in part, another person being lawfully therein at the time, or to any other building owned by himself or another with intent to burn such dwelling-house, and thereby the same is burnt, shall be punished by imprisonment in the state prison for life.

1854, c. 62.

SECT. 3. Whoever wilfully and maliciously sets fire to any meeting-house, court house, jail, town house, college, academy, or any other building erected for public use; or to any store, barn, stable, shop or office of another within the curtilage of a dwelling-house, so that it is thereby endangered, and thereby such public or other building is burnt, in the night time, shall be punished by imprisonment in the state prison for life; but if such offense is committed in the day time, he shall be punished by imprisonment in the state prison not more than ten years.

R. S., c. 155, § 3, 4.

SECT. 4. Whoever wilfully and maliciously burns any store, barn, stable, or other building of another, in a manner not constituting the offense described in the preceding section; or any ship, vessel, bridge, lock, dam or flume of another, shall be pun-

5 ished by imprisonment in the state prison not more than ten  
6 years. R. S., c. 155, § 5. 1849, c. 95.

SECT. 5. Whoever wilfully and maliciously burns any corn,  
2 grain, hay, or other produce, or any soil, vegetables, trees, un-  
3 derwood or other property of another, shall be punished by  
4 imprisonment in the state prison not more than three years.

R. S., c. 155, § 6.

SECT. 6. The preceding sections shall extend to a married  
2 woman, committing either of such offenses, without the consent  
3 of her husband, though the property set on fire or burnt belonged  
4 in whole or in part to him. R. S., c. 155, § 7.

*Breaking and Entering Houses, Other Buildings and Vessels.*

SECT. 7. Whoever, with intent to commit a felony, breaks  
2 and enters in the night time, or having entered with such intent,  
3 breaks in the night time, any dwelling-house, any person being  
4 then lawfully therein, shall be deemed guilty of burglary, and  
5 punished as provided in section eight. R. S., c. 155, § 8.

SECT. 8. If at the time of committing the burglary, he is  
2 armed with a dangerous weapon; so arms himself after entering  
3 such dwelling-house; actually assaults any person lawfully  
4 therein; or has any confederate present, aiding and abetting  
5 such burglary, he shall be punished by imprisonment in the state  
6 prison for life; but if he otherwise commits such burglary, he  
7 shall be punished by imprisonment in the state prison for life or  
8 any term of years. R. S., c. 155, § 9, 10.

SECT. 9. Whoever, with intent to commit a felony, breaks  
2 and enters in the day time, or enters in the night time without  
3 breaking, any dwelling-house; or breaks and enters any office,  
4 bank, shop, warehouse, ship, vessel, or any building in which  
5 goods, or valuable things are kept for use, sale or deposit, any  
6 person being lawfully therein and put in fear, shall be punished  
7 by imprisonment in the state prison not more than ten years;  
8 but if no person was lawfully therein and put in fear, he shall  
9 be punished by imprisonment in the state prison not more than  
10 five years, or by fine not exceeding five hundred dollars, and  
11 imprisonment in the county jail not more than one year.

R. S., c. 155, § 11.

*What is a Dwelling-house.*

SECT. 10. Any house, prison, jail or other permanent edifice usually occupied by any person by lodging therein at night, shall be deemed a dwelling-house, though such occupant is absent for a time, leaving furniture or goods with an intention to return; but no warehouse, barn, or other outhouse shall be deemed a dwelling-house or part of it, unless it is connected with and occupied as a part of the dwelling-house.

R. S., c. 155, § 12.

**Chapter 120.****LARCENY AND RECEIVING STOLEN GOODS.****SIMPLE AND COMPOUND LARCENIES.***Sect. 1.* Simple larceny.

2. Punishment of larceny in the night in dwelling-houses, without breaking; and in certain other buildings or vessels, with breaking; also in the day.
3. Larceny at fires.
4. Larceny from the person of another.
5. Punishment of a person convicted as a common and notorious thief.
6. Fraudulently personating another and receiving property.

**EMBEZZLEMENT.**

7. Embezzlement by officers, clerks, agents or servants.
8. Embezzlement by carriers or other persons entrusted with property to be delivered to another.

**RECEIVING STOLEN GOODS.**

9. Punishment for receiving or concealing stolen goods; mitigated by restitution.
10. Punishment of receivers on a second conviction.
11. Receiver may be tried, though the principal is not convicted.
12. Jurisdiction of justices of the peace in cases of larceny.

**OFFICERS TO SECURE STOLEN PROPERTY.**

13. On arrest of person charged, the officer to secure the goods, and make return thereof.

**COMPENSATION TO PROSECUTORS AND OFFICERS.**

14. The court may allow the prosecutor and officer a reasonable compensation for services and expenses in securing the offender in burglary, robbery and larceny.

**ACTIONS TO RECOVER STOLEN PROPERTY.**

15. Action to recover stolen property maintained, though the thief is not convicted.



*Simple and Compound Larcenies.*

SECT. 1. Whoever steals, takes and carries away, of the property of another, any money, goods or chattels; any writ, process, or public record; any bond, bank bill or note, promissory note, bill of exchange or other bill, order or certificate; any book of accounts respecting money, goods or other things; any deed or writing containing a conveyance of real estate; any valuable written contract; any receipt, release, or defeasance; or any instrument or writing whereby any demand, right or obligation is created, increased, diminished or extinguished, shall be deemed guilty of larceny; and punished, when the value of the property stolen exceeds one hundred dollars, by imprisonment in the state prison not more than five years; when it does not, by imprisonment in the state prison not more than two years, or by fine not more than one hundred dollars, and imprisonment in the county jail not more than one year.

R. S., c. 156, § 1.

SECT. 2. Whoever in the night time, commits larceny in a dwelling-house, or the outhouses adjoining and occupied therewith, without breaking; or breaks and enters any office, bank, shop, warehouse, barn, stable, ship or vessel; any building in which goods, merchandize, or valuable things are kept for use, sale or deposit; or any court house, jail, meeting-house, college, academy, or other building for public use, and commits larceny therein, shall be punished by imprisonment in the state prison not more than fifteen years; but if he commits such offense in the day time, he shall be punished by imprisonment in the state prison not more than six years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

R. S., c. 156, § 2, 3.

SECT. 3. Whoever commits larceny in any building on fire, or on any property removed on account of an alarm of fire, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

R. S., c. 156, § 4.

SECT. 4. Whoever commits larceny from the person of another, shall be punished by imprisonment in the state prison not more

3 than six years, or by fine not exceeding five hundred dollars,  
4 and imprisonment in the county jail not more than one year.

R. S., c. 156, § 5.

SECT. 5. If any person, after being once convicted of larceny,  
2 as principal or accessory before the fact, is again guilty and  
3 convicted thereof, or is convicted of three distinct larcenies at  
4 the same term of the court, he shall be deemed a common and  
5 notorious thief, and punished by imprisonment in the state prison  
6 not less than four nor more than fifteen years.

R. S., c. 156, § 9.

SECT. 6. Whoever falsely personates or represents another,  
2 and thus receives any money or other thing intended to be  
3 delivered to the party personated, with intent to convert the  
4 same to his own use, shall be deemed guilty of larceny, and  
5 punished accordingly.

R. S., c. 156, § 8.

### *Embezzlement.*

SECT. 7. If any officer, agent, clerk or servant of a person,  
2 copartnership or corporation, not an apprentice, nor less than  
3 sixteen years of age, embezzles or fraudulently converts to his  
4 own use, or takes and secretes with intent to convert to his own  
5 use, without the consent of his employer or master, any money  
6 or property of another in his possession or under his care, by  
7 virtue of such employment, he shall be deemed guilty of larceny,  
8 and punished accordingly.

R. S., c. 156, § 6.

SECT. 8. If any carrier or other person, who is entrusted  
2 with money, goods or other property, the subject of larceny to  
3 be carried for hire or otherwise, embezzles or fraudulently con-  
4 verts the same to his own use, while under his charge, in the  
5 mass as the same were delivered or otherwise, shall be deemed  
6 guilty of larceny, and punished accordingly.

R. S., c. 156, § 7.

### *Receiving Stolen Goods.*

SECT. 9. Whoever buys, receives, or aids in concealing any  
2 stolen money, goods or other property, knowing the same to be  
3 stolen, shall be punished by imprisonment in the state prison  
4 not more than five years, or by fine not exceeding five hundred

5 dollars, and imprisonment in the county jail not more than one year; but if the offense was simple larceny, and the convict makes satisfaction to the party injured, to the full value of the property stolen and not restored, he shall not be sentenced to the state prison. R. S., c. 156, § 10, 11.

SECT. 10. Whoever after being convicted of the offense described in the preceding section, is again guilty and convicted thereof; or is convicted of three such offenses at the same term of the court, shall be punished by imprisonment in the state prison not more than ten years. R. S., c. 156, § 12.

SECT. 11. The conviction of the person who stole the property need not be averred in the indictment, or proved at the trial of any offense described in section nine.

R. S., c. 156, § 13.

SECT. 12. Justices of the peace in their counties may have concurrent jurisdiction of the offenses described in sections one and nine, when the property stolen or received, is not alleged to exceed ten dollars in value; and in that case they may punish for the first offense by fine not exceeding ten dollars, and by imprisonment in the county jail not more than two months; and if after one conviction the offender is again guilty and convicted, they may punish by fine not exceeding twenty dollars and imprisonment in the county jail not more than six months.

R. S., c. 156, § 15.

### *Officers to Secure Stolen Property.*

SECT. 13. The officer arresting any person charged with any offense under this chapter, shall secure the property alleged to have been stolen; be answerable therefor, and annex a schedule thereof to his return, and upon conviction of the offender, the stolen property shall be restored to the owner.

R. S., c. 156, § 14.

### *Compensation to Prosecutors and Officers.*

SECT. 14. The court may allow to the prosecutor and officer, upon any conviction for burglary, robbery or larceny, except for larceny before a justice of the peace, and in cases where no conviction is had by reason of the death of the offender, or his

5 escape without their fault, a fair compensation for their actual  
 6 expenses, time and trouble in arresting the offender, and secur-  
 7 ing the stolen property, to be paid by the county treasurer, and  
 8 charged by him to the State.

1841, c. 1, § 26. 1845, c. 142, § 1. 1846, c. 185.

*Actions to Recover Stolen Property.*

SECT. 15. An action for the recovery of stolen property or  
 2 its value may be maintained by its owner against any person  
 3 legally liable therefor, though the thief is not convicted.

1844, c. 102.

## Chapter 121.

### FORGERY AND COUNTERFEITING, AND FRAUDULENT STOCKS AND CERTIFICATES.

#### FORGERY AND COUNTERFEITING.

- Sect. 1.* Forgery of records, processes, attestations, certificates, deeds and other instruments in writing, and uttering the same as true, and the punishment therefor.
2. Forgery of public securities, bank bills, and gold and silver coins, and having ten or more of them in possession at one time with intent to pass, and punishment therefor.
  3. Punishment for bringing into this State, having in possession, or passing as true counterfeit securities, bills or coin.
  4. Punishment for second conviction, and for three convictions at same term.
  5. Counterfeiting foreign coins for exportation.
  6. Making, mending, or possessing instruments or materials to use in forgery or counterfeiting.
  7. Fraudulent obliterations, material alterations and connecting parts of bills or notes deemed forgery.
  8. Evidence of the falsity of pretended securities and bank bills.

#### FALSE CERTIFICATES, AND FALSE ISSUES AND TRANSFERS OF STOCKS.

9. False certificates of acknowledgment and proof of deeds, and fictitious signatures as officers of coporations deemed forgery.
10. Unauthorized issuing, or signing with intent to issue certificates of stock, or the transfer therefor by officers, or agents or corporations deemed forgery, and how punished.

#### REWARDS TO INFORMERS AND PROSECUTORS.

11. Reward to informers and prosecutors on conviction for forging and counterfeiting coin, securities and bank bills, paid by the state on warrant of the governor.

*Forgery and Counterfeiting.*

SECT. 1. Whoever, with intent to defraud, falsely makes,  
2 alters, forges, or counterfeits any public record; any process  
3 issued or purporting to be issued by a competent court, magis-  
4 trate or officer; any pleading or proceeding filed or entered in  
5 any court of law or equity; any attestation or certificate of any  
6 public officer or other person in relation to any matter wherein  
7 the same is required by law or may be received as legal proof;  
8 any charter, deed, will, testament, bond, writing obligatory,  
9 power of attorney, letter of credit, policy of insurance, bill of  
10 lading, bill of exchange, or promissory note; any order, acquit-  
11 tance, discharge or accountable receipt for money or other valu-  
12 able thing; any acceptance, endorsement or assignment of a bill  
13 of exchange, order, promissory note, debt or contract; or any  
14 other written instrument, that is, or purports to be the act of  
15 another, by which any pecuniary demand or obligation, or any  
16 right in any property whatever is or purports to be created, in-  
17 creased, conveyed, transferred, diminished or discharged; and  
18 whoever utters and publishes, as true, any such instrument,  
19 knowing it to be false, forged, altered or counterfeit, with like  
20 intent, shall be punished by imprisonment in the state prison  
21 not less than two nor more than ten years.

R. S., c. 157, § 1, 2.

SECT. 2. Whoever, with intent to defraud, falsely makes,  
2 alters, forges or counterfeits any public security for money or  
3 other property, in whatever form, issued or purporting to be  
4 issued by authority of the United States or any state or terri-  
5 tory thereof; or any endorsement or other writing purporting  
6 to transfer the right of any holder of such public security; any  
7 bank bill or promissory note in the similitude of a bank bill,  
8 payable to the bearer thereof or the order of any person, issued  
9 or purporting to be issued by any bank or banking company in  
10 any of the United States or territories, or in any foreign state,  
11 province or government, and signed in behalf of such bank or  
12 company; or any gold or silver coin current in this state; and  
13 whoever has in his possession, at one time, ten or more of such  
14 forged and counterfeit public securities, bank bills or notes, or

15 pieces of coin, with intent to utter and pass the same as true or  
16 false, knowing them to be forged or counterfeit, shall be pun-  
17 ished by imprisonment in the state prison for life or any term of  
18 years. R. S., c. 157, § 3, 4, 5, 16.

SECT. 3. Whoever brings into this state or has in his posses-  
2 sion, with intent to utter and pass as true or false; or with in-  
3 tent to defraud utters or tenders in payment, as true, any such  
4 coins, public securities, bank bills or notes as are described in  
5 section two, knowing them to be forged and counterfeit, shall be  
6 punished by imprisonment in the state prison not more than  
7 three years, or by fine not exceeding one thousand dollars, and  
8 imprisonment in the county jail not more than one year.

R. S., c. 157, § 6, 7, 17.

SECT. 4. Whoever, after being convicted of either of the  
2 offenses described in section three, is again guilty and convicted  
3 thereof; or is convicted of three such distinct offenses at the  
4 same term of the court, shall be punished by imprisonment in  
5 the state prison not less than three, nor more than ten years.

R. S., c. 157, § 8, 18.

SECT. 5. Whoever forges or counterfeits any gold or silver  
2 coin of any foreign government or country, with intent to export  
3 it to injure and defraud such government or its subjects, shall  
4 be punished by imprisonment in the state prison not more than  
5 ten years.

R. S., c. 157, § 20.

SECT. 6. Whoever makes or begins to make, mend, cast,  
2 stamp, engrave, mould or provide any plate, mould, die, block,  
3 press, tool, instrument, paper or other material designed and  
4 adapted for making any false, forged and counterfeit coin, public  
5 securities, bank bills or notes, herein before described, or has  
6 the same in his possession, partly or wholly made, with intent  
7 to use, or to permit them to be used for that purpose, shall be  
8 punished by imprisonment in the state prison not more than  
9 three years, or by fine not exceeding five hundred dollars, and  
10 imprisonment in the county jail not more than one year.

R. S., c. 157, § 9, 19.

SECT. 7. Whoever, with intent to defraud, totally erases or  
2 obliterates any record or other written instrument described in  
3 this chapter; fraudulently connects together different parts of

4 several bank bills, notes or other written instruments so as to  
5 produce one, or alters the same in a material matter, shall be  
6 deemed guilty of forgery, and punished the same as if such  
7 instrument had been forged and counterfeited.

R. S., c. 157, § 13, 14.

SECT. 8. In prosecutions for any offense described in this  
2 chapter, relating to the bills or notes of any bank, if the presi-  
3 dent or cashier thereof resides out of the state, or more than  
4 forty miles from the place of trial, any other witness, acquainted  
5 with their signatures, and with the difference between the true  
6 and counterfeit bills of such bank, may be admitted to prove the  
7 same forged and counterfeit; and if such prosecution relates to  
8 public securities, a certificate of the tenor of the genuine public  
9 security, alleged to be forged or altered, made under oath by the  
10 secretary of the treasury, or treasurer of the United States, or  
11 by the secretary or treasurer of any state or territory by which  
12 such security purports to be issued, shall be evidence to prove  
13 the same forged or altered.

R. S., c. 157, § 10, 11.

*False Certificates, and False Issues and Transfers of Stocks.*

SECT. 9. If any person, legally authorized to take the proof  
2 or acknowledgment of any conveyance of real estate, or of any  
3 other instrument that by law may be recorded, wilfully and  
4 falsely certifies that such proof or acknowledgment was duly  
5 made, when in fact it was not; or if any person fraudulently  
6 affixes a fictitious or pretended signature purporting to be that  
7 of any officer or agent of a corporation, to any written instru-  
8 ment purporting to be a draft, note or other evidence of debt  
9 issued by such corporation, with intent to pass the same as true,  
10 though such person never was an officer or agent of such corpo-  
11 ration, or never existed, he shall be deemed guilty of forgery,  
12 and punished as provided in section one.

R. S., c. 157, § 12, 15.

SECT. 10. If any officer or agent of any corporation wilfully  
2 signs with intent to issue, or issues any certificate purporting  
3 to be a certificate or other evidence of the ownership, or of the  
4 transfer of any stock in such corporation, not authorized by its  
5 charter, by-laws and votes, or without such authority issues,

6 sells, or pledges any such certificate or other evidence of owner-  
 7 ship or transfer of stock after it is lawfully signed, he shall be  
 8 punished by imprisonment in the state prison not more than ten  
 9 years, and by fine not exceeding one thousand dollars.

1855, c. 143.

*Rewards to Informers and Prosecutors.*

SECT. 11. The following rewards shall be paid to the person  
 2 informing and prosecuting in the cases described below: Sixty  
 3 dollars for each person convicted and sentenced for either of the  
 4 aforesaid offenses of forging or counterfeiting any coin, public  
 5 security, bank bill or note; and forty dollars for each person  
 6 convicted and sentenced for either of the aforesaid offenses of  
 7 possessing with intent to utter, or of knowingly uttering any  
 8 such coin, public security, bank bill or note; and these rewards  
 9 shall be paid out of the treasury of the state, by warrant of the  
 10 governor, with advice of council, granted on certificate of the  
 11 judge who tried the case; and, where there are two or more  
 12 informers and prosecutors for the same offense, the reward shall  
 13 be divided between them equally, or in such proportions as said  
 14 judge determines.

R. S., c. 157, § 21.

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## Chapter 122.

### OFFENSES AGAINST PUBLIC JUSTICE.

#### PERJURY.

- Sect. 1. Definition and punishment of perjury, and subornation of perjury.  
 2. The like attempt when perjury is not committed.  
 3. Proceedings by any court, on presumption of perjury before such court; wit-  
 nesses recognized, and papers detained.

#### BRIBERY AND CORRUPTION IN OFFICERS OF THE LAW AND OTHERS.

4. Bribery and acceptance of bribes by public officers.
5. Corrupt solicitation of influence to procure places of trust, and acceptance of  
rewards for using the same.
6. Bribery of jurors, referees, masters in chancery, appraisers, or auditors, and  
acceptance thereof by them.
7. The party informing exempted from punishment.
8. Attempts to corrupt jurors or referees, and misconduct of jurors.
9. Sheriffs and other officers receiving bribes for neglect of official duty.
10. Corrupt agreements by attorneys and others, in order to obtain demands for  
collection by suits at law.



## ESCAPES BY THE MISCONDUCT OF OFFICERS.

- Sect. 11. Officers refusing or omitting to execute processes, whereby criminals escape.  
 12. Voluntarily suffering criminals to escape in capital cases; also in other cases.  
 13. Negligent escapes, and refusing to receive prisoners.  
 14. Forcible rescuing, furnishing means or otherwise aiding an escape.

## COMPOUNDING FELONIES.

15. Compounding felonies punishable with death or state prison for life; and also other felonies.

## REFUSING TO AID OFFICERS AND OBEY MAGISTRATES.

16. Refusing to aid officers, when required.  
 17. Refusing to obey justices of the peace, when required on view of a breach of the peace.

## FALSELY ASSUMING TO BE A JUSTICE OR OFFICER.

18. Falsely assuming to be a justice of the peace or other officer.

## DISGUIISING TO OBSTRUCT THE EXECUTION OF THE LAWS.

19. Punishment for disguising to obstruct the execution of the laws.

## EXTORTION.

20. Penalty for officers extorting illegal fees, and for witnesses making false certificates of travel and attendance.

*Perjury.*

SECT. 1. Whoever, when required to tell the truth on oath  
 2 or affirmation lawfully administered, wilfully and corruptly  
 3 swears or affirms falsely to any material matter in a proceeding,  
 4 before any court, tribunal or officer created by law, or in rela-  
 5 tion to which an oath or affirmation is authorized by law, shall  
 6 be deemed guilty of perjury; and whoever procures another to  
 7 commit perjury shall be deemed guilty of subornation of perjury,  
 8 and punished in either case, if the perjury was committed in a  
 9 trial of a capital crime, by imprisonment in the state prison for  
 10 life or any term of years, and if committed in any other case,  
 11 by such imprisonment not less than two, nor more than ten  
 12 years.

R. S., c. 158, § 1, 2.

SECT. 2. Whoever wilfully and corruptly endeavors to incite  
 2 or procure another to commit perjury, though it is not commit-  
 3 ted, shall be punished by imprisonment in the state prison not  
 4 more than five years.

R. S., c. 158, § 3.

SECT. 3. When any witness or party, legally sworn and  
 2 examined or making affidavit in any proceeding in a court of

3 record, testifies in such a manner as to raise a reasonable pre-  
4 sumption that he is guilty of perjury therein, the court may  
5 immediately order him committed to prison, or take his recogni-  
6 zance with sureties for his appearance to answer to a charge of  
7 perjury; and bind over any witnesses present to appear at the  
8 proper court to prove such charge; order the detention, as long  
9 as necessary, of any papers or documents produced and deemed  
10 necessary in the prosecution of such charge, and cause notice of  
11 these proceedings to be given to the state's attorney for the same  
12 county. R. S., c. 158, § 4, 5.

*Bribery and Corruption in Officers of the Law and Others.*

SECT. 4. Whoever gives, offers or promises to an executive,  
2 legislative or judicial officer, before or after he is qualified or  
3 takes his seat, any valuable consideration or gratuity whatever,  
4 or to do any act beneficial to such officer, with intent to influ-  
5 ence his action, vote, opinion or judgment in any matter what-  
6 ever at any time legally before him in his official capacity, shall  
7 be punished by imprisonment in the state prison not more than  
8 five years, or by fine not exceeding three thousand dollars, and  
9 imprisonment in the county jail not more than one year; and  
10 whoever accepts such bribe or beneficial thing in the manner  
11 and for the purpose aforesaid, shall forfeit his office, be forever  
12 disqualified to hold any public office, trust or appointment under  
13 this state, and be punished by imprisonment in the state prison  
14 not more than ten years, or by fine not exceeding five thousand  
15 dollars, and imprisonment in the county jail not more than one  
16 year. R. S., c. 158, § 6, 7.

SECT. 5. Whoever directly or indirectly gives, offers or prom-  
2 ises any valuable consideration or gratuity whatever to any  
3 person, not included in section four, with intent to induce him  
4 to procure for him by his interest, influence or any other means  
5 whatever, any place of trust in this state; and whoever, not  
6 included as aforesaid, accepts the same in the manner and for  
7 the purpose aforesaid, shall be forever disqualified to hold any  
8 place of trust in this state, and punished by fine not exceeding  
9 three hundred dollars, and imprisonment in the county jail not  
10 more than one year. R. S., c. 158, § 8, 9.

SECT. 6. Whoever corruptly gives, offers or promises any valuable consideration or gratuity whatever to any person summoned, appointed, chosen or sworn as a juror, arbitrator, umpire or referee, or to any auditor, master in chancery or appraiser of real or personal estate, with intent to influence his opinion or decision in any matter whatever, at any time, legally before him for decision or action; and whoever corruptly or knowingly receives the same, in the manner and for the purpose aforesaid, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

R. S., c. 158, § 10, 11.

SECT. 7. Whoever, offending in the manner described in the three preceding sections, gives information under oath against the other party so offending, and duly prosecutes him, shall be exempt from the disqualifications and punishments therein provided.

R. S., c. 158, § 12.

SECT. 8. Whoever attempts improperly to influence any juror or one drawn, appointed or sworn as such, or any arbitrator or referee in relation to any matter whatever, that may at any time be legally before him for action or decision; and whoever, drawn, summoned or sworn as a juror, promises or agrees to give a verdict for or against any person in any case, or receives any paper, information or evidence relating to any matter for the trial of which he is sworn, without the authority of the court or officer before whom such matter is pending, and without immediately disclosing it to such court or officer, shall be punished by a fine not exceeding two hundred dollars, and imprisonment in the county jail not more than three months.

R. S., c. 158, § 13, 14.

SECT. 9. If any sheriff, deputy sheriff, coroner or constable receives from a defendant or any other person any money or other valuable thing, as an inducement for omitting or delaying to sell any property on execution, to arrest any defendant and carry him before a magistrate or to prison, or to perform any other official duty, he shall be punished by a fine not exceeding three hundred dollars, and imprisonment in the county jail not more than three months.

R. S., c. 158, § 15.

SECT. 10. If any attorney, justice of the peace, sheriff, deputy sheriff, coroner or constable loans, advances, or promises to loan or advance any money; gives or promises to give day of payment on any demand left with him for collection; gives or promises any valuable consideration; becomes liable in any manner whatever for the payment of any money or other thing; becomes surety for another for such payment, or requests, advises or procures another person to become responsible or surety as aforesaid, with intent thereby to procure any account, note or other demand for the profit arising from its collection by a suit at law, he shall be punished by a fine not exceeding five hundred, nor less than twenty dollars; or such penalty may be recovered by an action of debt, one-half to the use of the person suing therefor in his own name, and the other to the state.

R. S., c. 158, § 16.

*Escapes by the Misconduct of Officers and Others.*

SECT. 11. If any officer, authorized to serve process, wilfully and corruptly refuses to execute any lawful process to him directed, requiring him to arrest or confine any person charged with, or convicted of any offense; or thus omits or delays to execute the same whereby the offender escapes, he shall be punished by imprisonment in the county jail not more than one year, and by fine not exceeding five hundred dollars.

R. S., c. 158, § 20.

SECT. 12. If any jailer or other officer voluntarily suffers any prisoner in his custody to escape, he shall be punished, if such prisoner was convicted of a capital felony, by a fine not exceeding one thousand dollars, and also by imprisonment in the state prison for life; if charged with such felony, by imprisonment in the state prison not less than five nor more than fifteen years; if charged or convicted of any other offense, by the same penalties and punishments that such prisoner would have suffered or been liable to suffer if he had not escaped.

R. S., c. 158, § 21, 22, 23.

SECT. 13. If any jailer or other officer, through negligence, suffers any prisoner in his custody for a criminal offense to escape, or wilfully refuses to receive into his custody any pris-

4 oner committed to him on any lawful process whatever, he shall  
5 be punished by imprisonment in the county jail not more than  
6 two years, and by fine not exceeding five hundred dollars.

R. S., c. 158, § 24.

SECT. 14. Whoever forcibly rescues any prisoner lawfully  
2 detained for any criminal offense; conveys into any jail or other  
3 place of confinement any disguise, arms, instruments or other  
4 things adapted and intended to aid, or in any other way aids  
5 him to escape, though such escape is not effected or attempted,  
6 shall be punished, if such prisoner was in custody for any felony,  
7 by imprisonment in the state prison not more than seven years;  
8 and if for any other offense, by imprisonment in the county jail  
9 not more than one year, and by fine not exceeding five hundred  
10 dollars.

R. S., c. 158, § 25.

### *Compounding Felonies.*

SECT. 15. Whoever, having knowledge of the commission of  
2 any offense, takes any money or other valuable consideration,  
3 gratuity or promise thereof, with an agreement or understanding  
4 express or implied to compound, conceal, not prosecute, or not  
5 give evidence of, such offense, shall be punished, if such offense  
6 is punishable with death, or imprisonment in the state prison for  
7 life or an unlimited term of years, by imprisonment in the state  
8 prison not more than five years, or by fine not exceeding five  
9 hundred dollars, and imprisonment in the county jail not more  
10 than one year; but if the offense is punishable by imprisonment  
11 in the state prison for a limited term of years, he shall be pun-  
12 ished by imprisonment in the county jail not more than one  
13 year, and by fine not exceeding five hundred dollars.

R. S., c. 158, § 18, 19.

### *Refusing to Aid Officers and Obey Magistrates.*

SECT. 16. Whoever, when required, in the name of the state,  
2 by any sheriff, deputy sheriff, coroner or constable, neglects or  
3 refuses to aid him in the execution of his office in any criminal  
4 case, in the preservation of the peace, in arresting and securing  
5 any person for a breach of the peace, or in the escape or rescue  
6 of persons arrested on civil process, shall be punished by im-

7 imprisonment in the county jail not more than thirty days, or by  
8 fine not exceeding fifty dollars. R. S., c. 158, § 26.

SECT. 17. If any person neglects or refuses to obey any jus-  
2 tice of the peace, when in view of a breach of the peace, or other  
3 offense proper for his cognizance, he requires such person to  
4 arrest and bring the offender before him, shall be punished as  
5 in section sixteen; and if the justice made known or declared  
6 his office to such person, he shall not plead ignorance thereof.

R. S., c. 158, § 27.

*Falsely Assuming to be a Justice or Officer.*

SECT. 18. Whoever falsely assumes to be a justice of the  
2 peace, sheriff, deputy sheriff, coroner or constable, and to act as  
3 such, or to require any one to aid him in any matter pertaining  
4 to the duty of such office, shall be punished by imprisonment in  
5 the county jail not more than one year, and by fine not exceed-  
6 ing four hundred dollars.

R. S., c. 158, § 28.

*Disguising to Obstruct the Execution of the Laws.*

SECT. 19. Whoever disguises himself in any manner, with  
2 intent to obstruct the due execution of the laws, or to intimi-  
3 date any officer, surveyor or other person in the legal discharge  
4 of his duty under the laws and constitution of the state, though  
5 such intent is not effected, shall be punished by imprisonment  
6 in the county jail not more than one year, and by fine not ex-  
7 ceeding five hundred dollars.

R. S., c. 158, § 29.

*Extortion.*

SECT. 20. If any person, for performing any service or official  
2 duty for which the pay is fixed by law, wilfully and corruptly  
3 demands and receives or takes security for any greater sum than  
4 is legal; or if any witness falsely and corruptly certifies that  
5 as such he traveled more miles or attended more days than he  
6 actually did, he shall be punished by a fine not exceeding thirty  
7 dollars for each offense, to be recovered to the use of the state  
8 by indictment found within one year after the offense is com-  
9 mitted, or by action of debt commenced within the same time,  
10 to the use of the person first suing therefor in his own name.

R. S., c. 158, § 17.

**Chapter 123.****OFFENCES AGAINST THE PUBLIC PEACE.****AFFRAYS AND RIOTS.**

- Sect.* 1. Affrays between two or more persons,  
 2. Unlawful assembly and riot.  
 3. One person may be convicted, without the others.

**SUPPRESSION OF MOBS BY OFFICERS AND ARMED FORCE.**

4. Duty of magistrates and officers to disperse unlawful assembly of twelve or more; refusal to assist them, or to disperse when ordered; neglect of duty by magistrates and officers.  
 5. When rioters refuse to disperse, magistrates and officers to call out armed force.  
 6. If any person is killed or wounded, magistrates and officers held guiltless; liability of the persons unlawfully assembled or refusing to assist in like case.

**PUNISHMENT AND REMEDY FOR INJURIES BY MOBS.**

7. Punishment and civil remedy for pulling down houses or premeditated personal injuries.  
 8. Extent of liability of towns for injury to private property by mobs, and their remedy against the wrong-doers.

**INSURRECTION.**

9. Governor empowered to call out the militia to suppress insurrection.

*Affrays and Riots.*

SECT. 1. If two persons voluntarily or by agreement, fight  
 2 or use any blows or force towards each other, in an angry or  
 3 quarrelsome manner, in any public place, to the terror or dis-  
 4 turbance of others, they shall be deemed guilty of an affray,  
 5 and punished, when no other punishment is provided by law, as  
 6 for an assault and battery. R. S., c. 159, § 1.

SECT. 2. If three or more persons assemble in a violent or  
 2 tumultuous manner to do an unlawful act, or being together,  
 3 make any attempt or motion towards doing a lawful or unlawful  
 4 act in a violent, unlawful or tumultuous manner, to the terror  
 5 or disturbance of others, they shall be deemed guilty of an  
 6 unlawful assembly; but if they commit such acts in the manner  
 7 and with the effect aforesaid, they shall be deemed guilty of a  
 8 riot, and be punished, in either case, by imprisonment in the  
 9 county jail not more than one year, and by fine not exceeding  
 10 five hundred dollars; and in case of a riot, each offender shall  
 11 also suffer such punishment as he would be liable to if he had  
 12 committed such act alone. R. S., c. 159, § 2, 3.

SECT. 3. Any person engaged in an unlawful assembly or riot, may be indicted and convicted thereof alone, if it is alleged in the indictment and proved at the trial that three or more were engaged therein, and if known, they must be named, but if unknown, that fact must be alleged. R. S., c. 159, § 4.

*Suppression of Mobs by Officers and Armed Force.*

SECT. 4. When twelve or more persons, any of them armed with clubs or other dangerous weapons, or thirty or more, armed or unarmed, are unlawfully, riotously or tumultuously assembled in any town, it shall be the duty of each of the municipal officers, constables and justices of the peace of such town, and of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as they can safely go, and in the name of the state, command them immediately and peaceably to disperse, and if they do not obey, such magistrates and officers shall command the assistance of all persons present in arresting and securing the persons so unlawfully assembled, that they may be dealt with according to law; and every person refusing to disperse, or to assist as aforesaid, shall be deemed one of such unlawful assembly, and punished by a fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year; and each such magistrate or other officer, having notice of such unlawful assembly in his town, and refusing or neglecting to do his duty in relation thereto as aforesaid, shall be punished by a fine not exceeding three hundred dollars. R. S., c. 159, § 5, 6, 7.

SECT. 5. When persons so riotously or unlawfully assembled neglect or refuse, on command as aforesaid, to disperse without unnecessary delay, any two of the magistrates or officers aforesaid may require the aid of a sufficient number of persons, in arms or otherwise, and proceed in such manner as they judge expedient to suppress such riotous assembly, and arrest and secure the persons composing it, that they may be dealt with according to law; and when an armed force is thus called out, they shall obey the orders for suppressing such assembly, and arresting and securing the persons composing it, which they receive from the governor, any judge of a court of record, the



12 sheriff of the county, or any two of the magistrates or officers  
13 mentioned in section four. R. S., c. 159, § 8, 9.

SECT. 6. If in the efforts made as aforesaid to suppress such  
2 assembly, and to arrest and secure the persons composing it,  
3 who refuse to disperse, though the number remaining is less  
4 than twelve, any such persons, or any persons present as spec-  
5 tators or otherwise, are killed or wounded, said magistrates and  
6 officers, and persons acting with them by order of the governor,  
7 any judge, sheriff, magistrates or officers aforesaid, shall be held  
8 guiltless and justified in law; but if any of said magistrates,  
9 officers or persons thus acting with them, are killed or wounded,  
10 all persons so unlawfully or riotously assembled, and all other  
11 persons, who refused when required, to aid said magistrates and  
12 officers, shall be held answerable therefor.

R. S., c. 159, § 10.

*Punishment and Remedy for Injuries by Mobs.*

SECT. 7. If any persons, thus unlawfully and riotously assem-  
2 bled, pull down, or begin to pull down or destroy, any dwelling-  
3 house, buildings, ship or vessel; or perpetrate any premeditated  
4 injury, not a felony, on any person, each shall be punished by  
5 imprisonment in the state prison not more than five years, or by  
6 fine not exceeding five hundred dollars, and imprisonment in the  
7 county jail not more than one year; and shall also be answera-  
8 ble to any person injured, in an action of trespass, to the full  
9 amount of damages by him sustained. R. S., c. 159, § 11.

SECT. 8. When the injury to any property, as described in  
2 section seven, amounts to fifty dollars or more, the town, where  
3 such property is situated, shall indemnify the owner thereof for  
4 three-fourths of the value of such injury, to be recovered in an  
5 action on the case; provided, such owner uses all reasonable  
6 diligence to prevent such injuries, and to procure the conviction  
7 of the offenders; and such town paying any sum as aforesaid,  
8 may recover the same, in an action on the case, against the per-  
9 sons doing the injury. R. S., c. 159, § 12, 13.

*Insurrection.*

SECT. 9. When an insurrection exists in this state to obstruct  
2 the course of justice, or the due execution of the laws, the gov-

3 ernor is empowered to detach and call into actual service such  
 4 part of the militia as in his opinion is adequate to suppress the  
 5 same.

Amendments of 1841, c. 1, § 27.

## Chapter 124.

### OFFENSES AGAINST CHASTITY, MORALITY AND DECENCY.

#### ADULTERY, INCEST, POLYGAMY, GROSS LEWDNESS AND FORNICATION.

##### Sect. 1. Adultery.

2. Incest.
3. Crime against nature.
4. Polygamy, its punishment, and where tried.
5. Lascivious cohabitation and open and gross lewdness.
6. Fornication.

#### CONCEALMENT OF BIRTHS AND PROCURING ABORTIONS.

7. Concealment by the mother of the birth of illegitimate issue, and how indicted with charge of murder.
8. Punishment for procuring or attempting to procure abortion.

#### HOUSES OF ILL-FAME.

9. Keeping houses of ill-fame.
10. Enticing females to houses of ill-fame.
11. Warrants to search for females supposed to be so enticed.
12. Lease of tenant convicted of keeping house of ill-fame void at option of landlord.

#### OBSCENE BOOKS AND PICTURES.

13. Punishment for making or circulating obscene books and pictures.
14. Warrants to search for the same.

#### BLASPHEMY AND PROFANITY.

15. Blasphemy.
16. Profanity.

#### DISTURBANCE OF RELIGIOUS MEETINGS, AND OBSERVANCE OF THE SABBATH.

17. Rude behavior in house of worship, disturbance of religious meetings, selling articles within a mile thereof, and refusing to leave or conform to the established rules of such meeting.
18. Presiding officer or committee of arrangements may appoint a person to keep boarders and sell refreshments.
19. All such offenders shall be arrested and detained by magistrates and officers a warrant can be procured, and all persons present shall assist in so doing.
20. Business, traveling and recreation prohibited on the Sabbath.
21. Innholders and victualers not to allow persons to abide or play any games and amusements about their premises on Sunday, or the evening preceding or following. Penalty for so doing.

Sect. 22. All public amusements, except sacred concerts of music, on Saturday and Sunday evening prohibited.

23. Persons conscientiously observing the seventh day excepted.

24. Tythingmen to prosecute for these offenses.

PROTECTION OF DEAD BODIES AND GRAVES.

25. Punishment for an officer arresting the body of a deceased person.

26. Unauthorized disinterment or improper exposure or abandonment of dead bodies, not including bodies lawfully in the hands of surgeons and physicians.

27. Injury to monuments and places of burial.

CRUELTY TO ANIMALS.

28. Punishment for cruelty to animals.

DRUNKENNESS.

29. Punishment for first and second offense.

*Adultery, Incest, Polygamy, Gross Lewdness and Fornication.*

SECT. 1. Whoever commits adultery shall be punished by imprisonment in the state prison not more than five years; and when only one of the parties is married, and when they have been legally divorced from the bonds of matrimony, and afterwards cohabit, each shall be deemed guilty of adultery.

R. S., c. 160, § 1, 2.

SECT. 2. When persons within the degrees of consanguinity or affinity, in which marriages are declared incestuous and void, intermarry or commit fornication or adultery with each other, they shall be punished by imprisonment in the state prison not more than ten years.

R. S., c. 160, § 3.

SECT. 3. Whoever commits the detestable crime against nature with mankind or with a beast, shall be punished by imprisonment in the state prison not more than ten years.

R. S., c. 160, § 4.

SECT. 4. If any person, except one legally divorced on his or her own petition, or one whose husband or wife has been continually absent for seven years, and not known to him or her to be living within that time, having a husband or wife living, marries another married or single person; or if any unmarried person knowingly marries the husband or wife of another, when such husband or wife is thereby guilty of polygamy, he shall be deemed guilty of polygamy, and punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail

11 not more than one year; and the indictment for such offense  
12 may be found and tried in the county where the offender resides  
13 or where he is apprehended. R. S., c. 160, § 5, 6, 7, 8.

SECT. 5. If any man and woman, one or both being at the  
2 time married to another person, lewdly and lasciviously cohabit;  
3 or, married or unmarried, are guilty of open, gross lewdness and  
4 lascivious behavior, they shall each be punished by imprison-  
5 ment in the state prison not more than five years, or by fine not  
6 exceeding three hundred dollars, and imprisonment in the county  
7 jail not more than one year. R. S., c. 160, § 9.

SECT. 6. If an unmarried man commits fornication with an  
2 unmarried woman, they shall each be punished by imprison-  
3 ment in the county jail not more than sixty days, and by fine  
4 not exceeding one hundred dollars. R. S., c. 160, § 10.

*Concealment of Births and Procuring Abortions.*

SECT. 7. If any woman is willingly delivered in secret of the  
2 issue of her body, which would be a bastard if born alive, and  
3 conceals the death thereof, so that it is not known whether it  
4 was born dead, or alive and was murdered, she shall be pun-  
5 ished by imprisonment in the state prison not more than three  
6 years, or by fine not exceeding one hundred dollars, and impris-  
7 onment in the county jail not more than one year; and she may  
8 be charged with such offense, and also with murder of such  
9 child in the same indictment, and convicted and punished for  
10 either according to the verdict of the jury.

R. S., c. 160, § 11, 12.

SECT. 8. Whoever administers to any woman pregnant with  
2 child, whether such child is quick or not, any medicine, drug  
3 or other substance whatever, or uses any instrument or other  
4 means whatever, unless the same were done as necessary for the  
5 preservation of the mother's life, shall be punished, if done with  
6 intent to destroy such child, and thereby it was destroyed before  
7 birth, by imprisonment in the state prison not more than five  
8 years, or by fine not exceeding one thousand dollars, and impris-  
9 onment in the county jail not more than one year; but if done  
10 with intent to procure the miscarriage of such woman, by im-

11 imprisonment in the county jail not more than one year, and by  
12 fine not exceeding one thousand dollars.

R. S., c. 160, § 13, 14.

*Houses of Ill-fame.*

SECT. 9. Whoever keeps a house of ill-fame, resorted to for  
2 the purpose of prostitution or lewdness, shall be punished by  
3 imprisonment in the county jail not more than one year, and by  
4 fine not exceeding five hundred dollars, and if, after conviction,  
5 he is again guilty and convicted, he shall be punished by impris-  
6 onment in the state prison not more than three years.

R. S., c. 160, § 15.

SECT. 10. Whoever inveigles or entices any female, before  
2 reputed virtuous, to a house of ill-fame, or knowingly conceals,  
3 or aids in concealing any such female so enticed, for the purpose  
4 of prostitution or lewdness, shall be punished by imprisonment  
5 in the state prison not more than ten years.

R. S., c. 160, § 17.

SECT. 11. When any overseer of the poor, police officer, con-  
2 stable, parent, master or guardian has reason to believe that any  
3 female has been inveigled or enticed to a house of ill-fame as  
4 aforesaid, he may complain to a magistrate authorized to issue  
5 warrants, and he may issue his search warrant as in other cases  
6 to enter such house by day or night, search for such female,  
7 and bring her and the person in whose keeping she is found,  
8 before him, and he may order her to be delivered to the com-  
9 plainant or discharged, as law and justice require.

R. S., c. 160, § 18.

SECT. 12. When the tenant of a dwelling house is convicted  
2 of keeping it as a house of ill-fame, the lease or contract by  
3 which he occupies it, may at the option of the landlord be  
4 deemed void, and he shall have the same remedy to recover pos-  
5 session as against a tenant holding over after his term expires.

R. S., c. 160, § 16.

*Obscene Books and Pictures.*

SECT. 13. Whoever imports, prints, publishes, sells, exhibits,  
2 or distributes any book, pamphlet, ballad or printed paper con-  
3 taining obscene language, prints, pictures or descriptions, mani-

4 festly tending to corrupt the morals of youth; or procures,  
5 receives or has any of them in his possession with intent to sell,  
6 exhibit or circulate them; shall be punished by imprisonment in  
7 the county jail not more than one year, or by fine not exceeding  
8 five hundred dollars. R. S., c. 160, § 19.

SECT. 14. A warrant to search for such articles may be issued  
2 by any justice of the peace like other search warrants, and when  
3 any of them are found by the officer serving the warrant, they  
4 shall be brought before the justice, and kept by him or the  
5 officer to be used as evidence in any case that may arise con-  
6 cerning the same or any person connected therewith; and on  
7 conviction of any such offender, said articles shall be destroyed  
8 by order of the court trying the case. R. S., c. 160, § 20.

### *Blasphemy and Profanity.*

SECT. 15. Whoever blasphemes the holy name of God, by  
2 denying, cursing, or contumiliously reproaching God, his crea-  
3 tion, government, final judgment of the world, Jesus Christ, the  
4 Holy Ghost or the Holy Scriptures as contained in the canonical  
5 books of the old or new Testament; or by exposing them to  
6 contempt and ridicule, shall be punished by imprisonment in the  
7 state prison not more than two years, or by fine not exceeding  
8 two hundred dollars, and by imprisonment in the county jail not  
9 more than one year. R. S., c. 160, § 21.

SECT. 16. Whoever being of years of discretion profanely  
2 curses or swears, on complaint made within twenty days there-  
3 after, shall be punished by fine not exceeding two dollars; and  
4 if after conviction he is again guilty by fine not exceeding five  
5 dollars. R. S., c. 160, § 22.

### *Disturbance of Religious Meetings and Observance of the Sabbath.*

SECT. 17. Whoever on the Sabbath day or any other time  
2 behaves rudely or indecently in the walls of any house of public  
3 worship; wilfully interrupts or disturbs any assembly of persons  
4 for religious worship within the place of such assembly or out of  
5 it; sells or exposes to sale, within one mile thereof and during  
6 the time of their meeting, any intoxicating liquors, refreshments

7 or merchandize, except in his usual course and place of busi-  
8 ness; exhibits any shows or plays; engages or aids in any horse  
9 race, gaming or other sports to the disturbance of such assem-  
10 bly; or coming within their neighborhood, refuses on request  
11 either immediately and peaceably to retire beyond their hearing,  
12 or to conform to the established regulations of the meeting, shall  
13 be punished by imprisonment in the county jail not more than  
14 thirty days, and by fine not exceeding ten dollars.

R. S., c. 160, § 23, 25. 1848, c. 53, § 1, 2. 1852,  
c. 271, § 1.

SECT. 18. The presiding officer or committee of arrangements  
2 of any such religious assembly or meeting may appoint some  
3 suitable persons to keep boarders and sell refreshments at such  
4 meetings, who shall conform therein to such regulations as the  
5 officers appointing them prescribe. 1852, c. 271, § 2.

SECT. 19. Every justice of the peace, sheriff, deputy sheriff,  
2 constable, grand juror and tythingman present at any such reli-  
3 gious assembly disturbed as aforesaid, shall arrest or cause to be  
4 arrested every such offender, and detain him until the close of  
5 such assembly, or until he can be taken before a magistrate to  
6 be dealt with according to law; and all persons present at such  
7 assembly, on request, shall assist said officers in the execution  
8 of their duty, under the same penalties for neglect or refusal  
9 that are provided for neglecting or refusing to aid officers in  
10 other cases. R. S., c. 160, § 24.

SECT. 20. Whoever, on the Sabbath day, which is the time  
2 between midnight preceding and sunset of the same day, keeps  
3 open his shop, workhouse, or warehouse; travels or does any  
4 work, labor or business on that day, except works of necessity,  
5 or charity; uses any sport, game or recreation, or is present at  
6 any dancing, public diversion, show or entertainment, encour-  
7 aging the same, shall be punished by a fine not exceeding ten  
8 dollars. R. S., c. 160, § 26, 28.

SECT. 21. If any innholder or victualer, on the Sabbath day,  
2 or on the evening preceding or following it, suffers any persons,  
3 except travelers, strangers or lodgers, to abide in his house,  
4 yard, or field, drinking or spending their time idly, at play or  
5 doing any secular business, except works of charity or necessity,

6 shall be punished by fine not exceeding four dollars for each  
7 person thus suffered to abide; and if, after conviction, he is  
8 again guilty, by fine not exceeding ten dollars for each offense;  
9 and upon a third conviction, he shall also be incapable of hold-  
10 ing any license: and every person so abiding shall be punished  
11 by fine not exceeding four dollars for each offense.

R. S., c. 160, § 27, 29.

SECT. 22. Whoever, on the evening preceding or following  
2 Sabbath day, is present at any dancing or other public diver-  
3 sion, except concerts of sacred music, or then uses any sport,  
4 game or recreation, shall be punished by fine not exceeding  
5 three dollars.

R. S., c. 160, § 29.

SECT. 23. No person conscientiously believing that the sev-  
2 enth day of the week ought to be observed as the Sabbath, and  
3 actually refraining from secular business and labor on that day,  
4 shall be liable to said penalties for doing such business or labor  
5 on the first day of the week if he does not disturb other persons.

R. S., c. 160, § 30.

SECT. 24. Tythingmen shall prosecute for all offenses de-  
2 scribed in sections seventeen, twenty, twenty-one and twenty-  
3 two, at any time within six months after the commission thereof,  
4 in any competent court.

R. S., c. 160, § 31.

### *Protection of Dead Bodies and Graves.*

SECT. 25. If any officer takes the body of any deceased per-  
2 son by writ or execution, he shall be punished by fine not exceed-  
3 ing five hundred dollars, and by imprisonment in the county  
4 jail not more than six months.

R. S., c. 160, § 33.

SECT. 26. Whoever, without the permission of the board of  
2 health, municipal officers, or overseers of the poor of any town,  
3 therein wilfully digs up, or removes any human body or its re-  
4 mains from its place of burial, or aids in so doing; knowingly  
5 receives, conceals or disposes of the same, or unnecessarily and  
6 indecently exposes, throws away or abandons any human body  
7 or its remains in any public place, river, stream or elsewhere,  
8 shall be punished by imprisonment in the state prison not more  
9 than five years, or by fine not exceeding three thousand dollars;  
10 but any physician, surgeon or medical student may have in his



11 possession, or use human bodies or parts thereof lawfully obtained  
12 for anatomical or physiological investigation and instruction.

R. S., c. 160, § 32. 1844, c. 120, § 1, 2. 1846, c. 204.

SECT. 27. Whoever wilfully destroys or injures any tomb,  
2 grave stone, monument or other thing placed or designed as a  
3 memorial of the dead, or any fence, railing or other thing placed  
4 about, or inclosing the burial place of the dead; or wilfully in-  
5 jures, removes or destroys any tree, shrub or plant within such  
6 inclosure, shall be punished by imprisonment in the county jail  
7 not more than one year, or by fine not exceeding five hundred  
8 dollars.

R. S., c. 160, § 34.

### *Cruelty to Animals.*

SECT. 28. Whoever cruelly beats or tortures any horse, ox or  
2 other animal belonging to himself or another, shall be punished  
3 by imprisonment in the county jail not more than one year, or  
4 by fine not exceeding two hundred dollars.

R. S., c. 160, § 35.

### *Drunkenness.*

SECT. 29. Any intoxicated person found in the streets; or  
2 found in any other place disturbing the peace of the public, that  
3 of his own or any other family, shall be punished by a fine of  
4 five dollars; but if after conviction he is again guilty, he shall  
5 be punished by a fine of ten dollars, or by imprisonment in the  
6 county jail or house of correction not more than three months;  
7 and such offenses may be prosecuted before a justice of the peace  
8 at any time within three months after they are committed.

R. S., c. 160, § 36.

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## **Chapter 125.**

### **GAMBLING.**

Sect. 1. Punishment for keeping a gambling house or suffering persons to gamble in the  
same.

2. Penalty for gambling.

3. Penalty for winning more than three dollars at one time.

## RECOVERY OF MONEY LOST BY GAMBLING.

Sect. 4. Loser may recover of the winner money lost by gambling within three months, or any other person may recover three times the amount so lost in action on the case.

5. Loser when plaintiff may be a witness, and the winner also.

## SECURITIES GIVEN FOR GAMBLING DEBTS VOID.

6. All securities given for gambling debts void, except in the hands of bona fide purchasers or holders without notice.

## SEARCH FOR IMPLEMENTS OF GAMBLING.

7. Justices of the peace may issue warrants to search for implements of gambling and to arrest the keeper of the place where they are found.

SECT. 1. If any person, or corporation keeps a house, shop or other place resorted to for the purpose of gambling; or permits any person to gamble in any way in any house, shop or place under his care and control, such offender shall be punished by fine not less than twenty nor more than one hundred dollars, to the use of the prosecutor.

R. S., c. 35, § 7. c. 160, § 37.

SECT. 2. Whoever gambles, or bets on any person gambling, shall be punished by fine not less than one, nor more than twenty dollars, to be recovered by complaint or indictment to the use of the prosecutor.

R. S., c. 35, § 6, 8. c. 160, § 38.

SECT. 3. Whoever is convicted, by indictment found within six months, of winning at one time or sitting, by gambling or betting on persons gambling, any money or goods of the value of three dollars or more, and of receiving or taking security for the same, shall forfeit, to the use of the town where the offense is committed, double the value of the property so won and received.

R. S., c. 35, § 4.

*Recovery of Money Lost by Gambling.*

SECT. 4. Whoever by gambling or betting on persons gambling, loses to any person so gambling or betting any money or goods whatever, and pays or delivers any part thereof, may sue for and recover the same of the winner in an action on the case brought within three months thereafter; and if the loser does not, without covin or collusion, within said time, prosecute therefor with effect, any other person may sue for and recover of the

8 winner treble the value of the same in such action, half to his  
9 own use and half to the use of the town.

R. S., c. 35, § 1, 2.

SECT. 5. In any such action brought by the loser against the  
2 winner, the plaintiff may offer to make oath that such money or  
3 goods were lost by gambling with the defendant, and the court  
4 shall thereupon render judgment for the plaintiff for the amount  
5 thereof, unless the defendant will make oath that he did not  
6 obtain any part of the same by gambling, and if he so dis-  
7 charges himself on oath, he shall recover his costs; or the plain-  
8 tiff may prove his case in any other legal mode.

R. S., c. 35, § 3.

*Securities Given for Gambling Debts Void.*

SECT. 6. All notes, bills, bonds, mortgages, securities or con-  
2 veyances whatever given in whole or in part for money or goods  
3 won by gambling or betting on persons gambling, or to repay  
4 any money lent or advanced for gambling or betting, or at the  
5 time and place thereof, shall be utterly void against all persons,  
6 except bona fide subsequent purchasers of real estate and holders  
7 of negotiable paper, for a valuable consideration without notice.

R. S., c. 35, § 5.

*Search for Implements of Gambling.*

SECT. 7. When any person makes oath before a justice of the  
2 peace that he has reason to suspect, and does suspect, that any  
3 house or building, naming in the complaint the house or build-  
4 ing, and the occupant, is unlawfully used as a common gambling  
5 house, and that idle or dissolute persons resort there for that  
6 purpose, such justice shall issue his search warrant to search for  
7 all implements used for gambling; and if any such are found  
8 there, for the arrest of the occupant or keeper of such house or  
9 other building, and said implements and keeper shall be carried  
10 before him to be dealt with according to law.

R. S., c. 160, § 39.

**Chapter 126.****CHEATING BY FALSE PRETENSES, FRAUDS AND CONSPIRACIES.****FALSE PRETENSES AND FRAUDS.**

*Sect. 1.* Cheating by false pretenses.

2. Parties to fraudulent conveyances, or to the use thereof.
3. Gross frauds at common law.
4. Circulating advertisements and shop bills in the similitude of bank bills.

**SUPPRESSION OF WILLS.**

5. Suppression of last wills and testaments.

**MARITIME FRAUDS.**

6. Fraudulent destruction of vessels, and fitting them out for that purpose.
7. Making false bills of lading and other exhibits of property, shipped.
8. False affidavits and protests.

**BURNING PROPERTY FOR THE INSURANCE.**

9. Persons burning their own property to defraud insurers.

**CONSPIRACIES.**

10. Conspiracies to prosecute an innocent person.
11. Conspiracies in other cases.

*False Pretenses and Frauds.*

SECT. 1. Whoever designedly and by any false pretense, or  
 2 privy or false token, and with intent to defraud, obtains from  
 3 another any money, goods or other property, or his signature to  
 4 any written instrument, the false making of which is forgery,  
 5 shall be punished by imprisonment in the state prison not more  
 6 than seven years, or by fine not exceeding five hundred dollars,  
 7 and imprisonment in the county jail not more than one year.

R. S., c. 161, § 1.

SECT. 2. Whoever is knowingly a party to any conveyance  
 2 or assignment of real estate or interest in lands, goods or things  
 3 in action, or rents and profits arising therefrom, or to any charge  
 4 thereon made with intent to defraud prior or subsequent pur-  
 5 chasers, or to hinder, delay or defraud creditors or others; or  
 6 knowingly puts such fraudulent conveyance, assignment or  
 7 charge into use, as genuine and made in good faith, shall be pun-  
 8 ished by fine not exceeding one thousand dollars, and imprison-  
 9 ment in the county jail not more than one year.

R. S., c. 161, § 2.

SECT. 3. Whoever is guilty of a gross fraud or cheat at  
2 common law, shall be punished by imprisonment in the state  
3 prison not more than seven years, or by fine not exceeding one  
4 thousand dollars, and imprisonment in the county jail not more  
5 than one year. R. S., c. 161, § 4.

SECT. 4. Whoever puts in circulation or distributes any  
2 notice, advertisement or shop bill in the form and similtude of  
3 bank bills, shall forfeit fifty dollars for each offense, to be recov-  
4 ered by action of debt, in the name and to the use of the person  
5 suing therefor. 1849, c. 144.

### *Suppression of Wills.*

SECT. 5. Whoever wilfully suppresses, secretes, defaces or  
2 destroys any last will and testament of a deceased person, in his  
3 possession or under his control, with intent to injure or defraud  
4 any person interested therein, shall be punished as in section  
5 three. R. S., c. 161, § 3.

### *Maritime Frauds.*

SECT. 6. Whoever wilfully casts away, burns, sinks or other-  
2 wise destroys any vessel in any county in this state, with intent  
3 to injure or defraud any owner thereof, the owner of any prop-  
4 erty on board the same, or any insurer of either, shall be  
5 punished by imprisonment in the state prison for life, or any  
6 term of years not less than five; and if he lades, equips, or fits  
7 out any vessel, or aids in so doing, intending that the same shall  
8 be destroyed in the manner and with the intent aforesaid, he shall  
9 be punished by imprisonment in the state prison not more than  
10 twenty years, or by fine not exceeding five thousand dollars,  
11 and imprisonment in the county jail not more than one year.

R. S., c. 161, § 5, 6.

SECT. 7. If any owner of a vessel, or of any property laden  
2 or pretended to be laden on board thereof, or other person con-  
3 cerned in its lading or fitting out, makes out or exhibits, or  
4 causes to be made out or exhibited, any false or fraudulent  
5 invoice, bill of lading, bill of parcels or other false estimates of  
6 any such property, with intent to injure or defraud any insurer  
7 of such vessel or property, he shall be punished by imprison-

8 ment in the state prison not more than ten years, or by fine not  
9 exceeding five thousand dollars, and imprisonment in the county  
10 jail not more than one year. R. S., c. 161, § 7.

SECT. 8. If any master, other officer or mariner of any vessel,  
2 makes, causes to be made, or swears to any false affidavit or  
3 protest; or if any owner or other person concerned in such ves-  
4 sel, or in the property on board thereof, procures any such false  
5 affidavit or protest to be made, or exhibits the same with intent  
6 to injure, deceive or defraud any insurer of such vessel or prop-  
7 erty, he shall be punished by imprisonment in the state prison  
8 not more than ten years, or by a fine not exceeding five thousand  
9 dollars, and imprisonment in the county jail not more than one  
10 year. R. S., c. 161, § 8.

#### *Burning Property for the Insurance.*

SECT. 9. If any owner, or person in any way concerned, in-  
2 terested or in possession of any building, goods or other prop-  
3 erty insured against loss or damage by fire, wilfully burns the  
4 same or causes it to be burnt, with intent to defraud the insurer,  
5 he shall be punished by imprisonment in the state prison not  
6 more than twenty years. R. S., c. 161, § 9.

#### *Conspiracies.*

SECT. 10. If any two or more persons conspire and agree to-  
2 gether, with intent falsely, fraudulently and maliciously to cause  
3 another person to be indicted or in any way prosecuted for an  
4 offense of which he is innocent, whether he is prosecuted or not,  
5 they shall be deemed guilty of a conspiracy, and each punished  
6 by imprisonment in the state prison not more than five years, or  
7 by a fine not exceeding one thousand dollars, and imprisonment  
8 in the county jail not more than one year.

R. S., c. 161, § 10.

SECT. 11. If any two or more persons conspire and agree  
2 together, with the fraudulent or malicious intent wrongfully and  
3 wickedly to injure the person, character, business, or property  
4 of another; or to do any illegal act injurious to the public trade,  
5 health, morals, police, or administration of public justice; or to  
6 commit any crime punishable by imprisonment in the state

7 prison, they shall be deemed guilty of a conspiracy, and every  
8 such offender, and every person convicted of conspiracy at com-  
9 mon law, shall be punished by imprisonment in the state prison  
10 not more than three years; or by fine not exceeding one thou-  
11 sand dollars, and imprisonment in the county jail not more than  
12 one year. R. S., c. 161, § 11.

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## Chapter 127.

### MALICIOUS MISCHIEFS, AND TRESPASSES ON PROPERTY.

*Sect. 1.* Maliciously killing or injuring domestic animals.

2. Injuries to dams, canals, machinery, ponds, engines, telegraph fixtures, public bridges, and placing obstructions on bridges and roads.
3. Penalty for injuring or cutting loose booms, rafts, vessels, or boats, and civil action for double damages.
4. Penalty for throwing obstructions in navigable waters, and civil actions for damages.
5. Malicious injuries to trees, shrubs, fences, gates, bars, or produce, or things attached to land.
6. Trespasses on gardens, orchards, or improved lands, with intent to take, and carry away trees, vegetables or soil.
7. Passing through gardens or fields after prohibition.
8. Trespass on timber, or wood standing; earth or stone; produce on lands; goods on wharves or landing places.
9. Monuments, marked trees, mile stones, guide boards, sign boards, lamps and lamp posts.
10. Wilful injuries to buildings, fixtures, goods or valuable papers of another.
11. Limitation of prosecutions, and jurisdiction of justices of the peace.

SECT. 1. Whoever wilfully or maliciously kills, wounds,  
2 maims, disfigures or poisons any domestic animal, or exposes  
3 any poisonous substance with intent that the life of any such  
4 animal should be destroyed thereby, shall be punished by  
5 imprisonment in the state prison not more than four years, or  
6 by fine not exceeding five hundred dollars, and imprisonment in  
7 the county jail not more than one year. R. S., c. 162, § 1.

SECT. 2. Whoever wilfully or maliciously injures, removes or  
2 destroys any dam, reservoir, canal, trench or their appurtenances,  
3 or the gear or machinery of any mill or manufactory; draws off  
4 the water from any mill pond, reservoir, canal or trench;  
5 destroys or injures any engine or its apparatus for the extin-

6 guishment of fire, or any posts, glass caps, wires or other mate-  
7 rials used in the construction and operation of any telegraph; re-  
8 moves, injures or destroys any public or toll bridge, or places any  
9 obstruction on such bridge or on any public road with intent to  
10 injure any persons or property passing thereon, shall be punished  
11 by imprisonment in the state prison not more than three years,  
12 or by fine not exceeding five hundred dollars, and imprisonment  
13 in the county jail not more than one year.

R. S., c. 162, § 2, 3. 1846, c. 183. c. 197, § 1.

SECT. 3. Whoever wilfully or maliciously, without consent  
2 of the owner, cuts away, lets loose, injures or destroys any boom,  
3 raft of logs or other lumber, vessel, gondola, scow or other boat,  
4 fastened to any place of which he is not the owner or legal  
5 possessor, shall be punished by fine not exceeding five hundred  
6 dollars, and imprisonment in the county jail not more than one  
7 year; and shall also be liable to the person injured, in an action  
8 of trespass, for double the damages by him sustained.

R. S., c. 162, § 4.

SECT. 4. Whoever throws any slabs, edgings, ballast, sand,  
2 gravel, lime core, or other refuse materials of any description  
3 into any navigable rivers, streams, bays, harbors or other waters  
4 in the state or on its coasts, or deposits the same where they are  
5 swept or fall into said waters, whereby the navigation or other  
6 lawful use thereof is impeded or injuriously affected, shall for-  
7 feit not less than five nor more than twenty dollars to the use of  
8 the person prosecuting therefor, before a justice of the peace;  
9 and also be liable, in an action on the case, for all damages any  
10 person may suffer by such obstructions; and if such offense is  
11 committed by any person in the employ of any mill owners,  
12 they shall be liable to the same penalties.

1843, c. 10, § 1, 2. c. 26, § 1. 1844, c. 80.

SECT. 5. Whoever wilfully and maliciously cuts down, destroys  
2 or otherwise injures any shrub, fruit tree or other tree for orna-  
3 ment or use; breaks, injures or defaces any fences; throws down  
3 or opens any gates or bars; injures, destroys or severs from the  
4 land of another, any produce thereof or thing attached thereto,  
5 such articles not being his own in either case, shall be punished



6 by imprisonment in the county jail not more than one year, and  
7 by fine not exceeding one hundred dollars.

R. S., c. 162, § 5, 6, 7.

SECT. 6. Whoever wilfully commits any trespass, or knowingly authorizes or employs another to do so, by entering the garden, orchard, pasture or improved land of another with intent to take, carry away, destroy, or injure the trees, shrubs, grain, grass, hay, fruit, vegetables, turf or soil thereon, shall be punished by a fine not exceeding twenty dollars, and imprisonment in the county jail not more than thirty days.

R. S., c. 162, § 11. 1853, c. 5.

SECT. 7. Whoever wilfully enters and passes over any garden, yard or other improved field, after being expressly forbidden so to do by the owner or occupant thereof, shall be punished by fine not exceeding five dollars, or imprisonment in the county jail not more than ten days.

R. S., c. 162, § 12.

SECT. 8. If any person, except a highway surveyor acting within the scope of his lawful authority, wilfully commits any trespass by cutting, destroying or carrying away any timber or wood on the land of another; by digging up, taking, and carrying away therefrom any earth, stone, grass, hay or other vegetables, or carrying away from any wharf or landing place any goods whatever in which he has no interest, he shall be punished by imprisonment in the county jail not more than two months, and by fine not exceeding fifty dollars.

R. S., c. 162, § 9, 10.

SECT. 9. Whoever wilfully and maliciously injures or removes any monument erected, or tree marked as a boundary of any land or town; destroys, defaces or alters the marks thereon, made for the purpose of designating such boundary; injures or defaces any mile stone or guide board, erected on any public way, turnpike or railroad; removes, defaces or injures any sign board, lamp or lamp post, or extinguishes any lamp on any bridge, street, way or passage, shall be punished by imprisonment in the county jail not more than one year, and by fine not exceeding one hundred dollars.

R. S., c. 162, § 8.

SECT. 10. Whoever wilfully and maliciously destroys, injures or defaces any building or fixture attached thereto, without consent of the owner; or destroys, injures or secretes any goods, chattels or valuable papers of another, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars; and also be liable to the party injured, in an action of trespass, for three times the amount of injury so done. R. S., c. 162, § 13.

SECT. 11. All prosecutions for offenses herein described after section four, must be commenced within four years after the commission thereof; and justices of the peace shall have jurisdiction thereof, when the property destroyed, or the injury done, is not alleged to exceed ten dollars, and in that case the punishment shall be by fine not exceeding ten dollars, and imprisonment in the county jail not more than thirty days.

R. S., c. 162, § 14, 15.

## Chapter 128.

### OFFENSES AGAINST THE PUBLIC HEALTH, SAFETY AND POLICY.

#### UNWHOLESOME PROVISIONS AND DRINKS.

Sect. 1. Selling unwholesome provisions and drinks.

#### FIRE WORKS.

2. Penalty for selling, giving away or firing fire works without license.

#### LOTTERIES.

3. Lotteries prohibited, and penalty for being in any way concerned in them.
4. Attorney general may apply to court and have injunction to restrain any lottery.
5. All payments and securities for lotteries void and may be recovered back.

### *Unwholesome Provisions and Drinks.*

SECT. 1. Whoever sells any diseased, corrupted or unwholesome provision for food or drink, knowing it to be such, without informing the buyer; or fraudulently adulterates for the purpose of sale, any substance intended for food, or any wine, spirits or other liquors intended for drink, so as to render them injurious to health, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding

8 one thousand dollars, and imprisonment in the county jail not  
9 more than one year. R. S., c. 163, § 1, 2.

### *Fire Works.*

SECT. 2. Whoever sells, offers for sale or gives away any  
2 crackers, squibs, rockets or other fire works, or fires or throws  
3 the same in any town without the license of the municipal offi-  
4 cers thereof, shall be punished by fine not exceeding ten dollars,  
5 to the use of such town. R. S., c. 163, § 3.

### *Lotteries.*

SECT. 3. Every lottery, scheme, or device of chance, of what-  
2 ever name or description, is prohibited and declared a nuisance ;  
3 and whoever is concerned therein, in any way, directly or indi-  
4 rectly, by making, advertising, purchasing, receiving, selling,  
5 offering for sale, giving away, disposing of, or having in his pos-  
6 session with intent to sell or dispose of any ticket, certificate,  
7 share or interest therein ; by printing, publishing or circulating  
8 the same or any hand bill, advertisement or notice whatever  
9 thereof, or by knowingly suffering the same to be published in  
10 any newspaper or periodical under his charge, or on any cover  
11 or paper attached thereto ; or in any manner whatever aids  
12 therein or is connected therewith, shall be punished by fine not  
13 less than one hundred, nor more than one thousand dollars, to  
14 be recovered by indictment or action of debt, one-half to the use  
15 of the prosecutor, and the other to the town where the offense is  
16 committed ; and if by action of debt, he shall not be entitled to  
17 the provisions of law for the relief of poor debtors, and if by  
18 indictment, he shall further be punished by imprisonment in the  
19 county jail for thirty days on the first conviction ; sixty, on the  
20 second, and ninety, on the third.

1855, c. 173, § 1, 2, 3, 5. R. S., c. 163, § 4.

SECT. 4. When it appears to the attorney general that any  
2 person has formed, or published any such lottery ; taken any  
3 measures for that purpose, or is engaged in selling or otherwise  
4 distributing any tickets, certificates, shares or interests therein,  
5 whether the same originated in this state or not, he shall imme-  
6 diately make complaint in the name of the state, to some justice

7 of the supreme judicial court, for an injunction to restrain such  
8 person from any further proceedings therein; and on being sat-  
9 isfied that there is sufficient grounds therefor, such justice shall  
10 forthwith issue such injunction; and thereupon he shall order  
11 notice to be served like other summonses on the adverse party to  
12 appear and answer to said complaint. Such justice, after a full  
13 hearing, may dissolve, modify or make perpetual such injunc-  
14 tion; make all orders and decrees, according to the course of  
15 chancery proceedings, necessary to restrain and suppress all such  
16 unlawful proceedings, and if the adverse party neglects to ap-  
17 pear, or the final decree of the court is against him, judgment  
18 shall be rendered against him for all costs, fees and expenses  
19 incurred in the case, and for such compensation to the attorney  
20 general for his services and expenses as the court deems reason-  
21 able. 1855, c. 173, § 6.

SECT. 5. All payments, compensations and securities of every  
2 description made, directly or indirectly, in whole or in part, for  
3 any such lottery, or ticket, certificate, share or interest therein,  
4 shall be considered as received without consideration, and against  
5 law and equity, and may be recovered back in the manner pro-  
6 vided in chapter twenty-nine in relation to payments made for  
7 liquor sold in violation of law. 1855, c. 173, § 4.

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## Chapter 129.

### LIBEL.

Sect. 1. Definition of a libel and of a publication.

2. Punishment for making or publishing a libel.

3. What persons shall be responsible for libels printed or published in their offices,  
newspapers, &c., unless on negative proof.

4. How far the truth of a publication is a justification.

5. Jury judges of the law and the facts.

SECT. 1. A libel is the malicious defamation of a living per-  
2 son, made public by any printing, writing, sign, picture, repre-  
3 sentation or effigy, tending to provoke him to wrath, expose him  
4 to public hatred, contempt or ridicule, or to deprive him of the  
5 benefits of public confidence and social intercourse; or of a de-

6 ceased person, thus made public, designed to blacken and vilify  
7 his memory, and tending to scandalize or provoke his relatives  
8 or friends; but nothing shall be deemed a libel unless there is  
9 a publication thereof, and the delivery, selling, reading or other-  
10 wise communicating a libel, directly or indirectly, to any person,  
11 or to the party libeled, shall be deemed a publication.

R. S., c. 165, § 1, 7.

SECT. 2. Whoever makes, composes, dictates, writes or prints  
2 a libel; directs or procures it to be done; wilfully publishes or  
3 circulates it, or in any way knowingly and wilfully aids in doing  
4 either, shall be punished by imprisonment in the county jail not  
5 more than one year, and by fine not exceeding one thousand  
6 dollars.

R. S., c. 165, § 2.

SECT. 3. Whoever manages or controls the business of a  
2 printing office, bookstore or shop, as principal or agent, or is, in  
3 whole or in part, proprietor, editor, printer or publisher of a  
4 newspaper, pamphlet, book or other publication, shall be respon-  
5 sible for any libel printed or published therein, unless he can  
6 prove on trial that it was printed and published without his  
7 knowledge, consent or suspicion, and that by reasonable care  
8 and diligence he could not have prevented it.

R. S., c. 165, § 3.

SECT. 4. In prosecutions for any publication relative to the  
2 official conduct of men in public capacities, or the qualifications  
3 of candidates for popular suffrages; or where the matter pub-  
4 lished is proper for public information, the truth thereof may be  
5 given in evidence, and, if proved, shall be a complete justifica-  
6 tion; and in prosecutions for all other libels, the truth thereof  
7 thus proved shall be a complete justification, unless it appears  
8 that such publication originated in corrupt and malicious mo-  
9 tives; and if any alleged libel is not justified in either of said  
10 modes, it shall be deemed malicious, unless the contrary is  
11 clearly proved.

R. S., c. 165, § 4, 5, 6.

SECT. 5. In all indictments for libel, the jury, after receiving  
2 the direction of the court, may determine, at their discretion,  
3 the law and the fact.

R. S., c. 165, § 8.

**Chapter 130.****PROCEEDINGS FOR THE PREVENTION OF CRIMES.**

- Sect.* 1. Justices of the Supreme Judicial Court and magistrates may require sureties of the peace and good behavior.
2. On complaint that an offense is threatened, magistrates may issue warrants, if they think fit, to bring the accused before them.
3. He may then be ordered to find sureties to keep the peace for not more than one year, and pay the costs, but not be bound over to court, unless a specific offense is charged.
4. If he complies, to be discharged; if not, to be committed, and magistrate return papers to the next court.
5. Proceedings, if the complaint is not sustained. Costs, if malicious or frivolous.
6. Appeal to the next Supreme Judicial Court and proceedings thereon.
7. Consequences, if the appellant fails to prosecute.
8. How recognizance may be taken after commitment.
9. When magistrate may require sureties, without a formal complaint.
10. Persons going armed, without reasonable cause.
11. All recognizances to be returned to Supreme Judicial Court, and the court may remit the penalty.
12. Sureties on recognizances may surrender their principals, as in case of bail in civil actions.

**SECT. 1.** The judges of the supreme judicial court, and of  
 2 municipal and police courts, in vacation or in court, and justices  
 3 of the peace in their counties, shall have power to cause all laws  
 4 for the preservation of the public peace to be kept; and in the  
 5 execution thereof, may require persons to give security to keep  
 6 the peace and be of good behavior, as hereinafter provided.

R. S., c. 169, § 2.

**SECT. 2.** Any such magistrate, on complaint that any person  
 2 threatens to commit an offense against the person or property of  
 3 another, shall examine, on oath, the complainant, and any other  
 4 witnesses produced, reduce the complaint to writing, and cause  
 5 the complainant to sign it; and if on examination of the facts,  
 6 he thinks there is just cause to fear the commission of such  
 7 offense, he shall issue a warrant, reciting the substance of the  
 8 complaint, and commanding the officer, to whom it is directed,  
 9 forthwith to arrest the accused, and bring him before such mag-  
 10 istrate or court.

R. S., c. 169, § 3, 4.

**SECT. 3.** When the accused is brought before the magistrate  
 2 and his defense is heard, he may be ordered to recognize, with  
 3 sufficient sureties, in the sum required by the magistrate, to  
 4 keep the peace towards all persons, and especially towards the

5 person requiring the security, for a term not exceeding one year,  
6 and pay the costs of prosecution; but shall not be bound over  
7 to any court, unless he is also charged with some other specific  
8 offense requiring it. R. S., c. 169, § 5, 9.

SECT. 4. If the accused complies with such order, he shall  
2 be discharged; but if he does not, he shall be committed to the  
3 county jail for the time for which he was required to find sure-  
4 ties, or till he complies with such order; and the magistrate  
5 shall state in the mittimus the cause of commitment, and the  
6 time and sum for which security was required, and return a  
7 copy of the warrant to the next supreme judicial court in said  
8 county, and such court shall have cognizance of the case, the  
9 same as if the accused had appealed thereto.

R. S., c. 169, § 6, 7.

SECT. 5. If the magistrate, on examination of the facts, is not  
2 satisfied that there is just cause to fear the commission of any  
3 offense, he shall immediately discharge the accused, and if he  
4 judges the complaint unfounded, frivolous or malicious, he may  
5 order the complainant to pay the costs of prosecution, who shall  
6 thereupon be answerable to the magistrate, officer and witnesses  
7 for their fees as for his own debt. R. S., c. 169, § 8.

SECT. 6. Any person, aggrieved by the order of such magis-  
2 trate, requiring him thus to recognize, on giving the security  
3 required, may appeal to the next supreme judicial court in the  
4 same county; and the magistrate shall thereupon require such  
5 witnesses, as he thinks proper, to recognize to appear at the  
6 appellate court; and such court may affirm or reverse the order  
7 of the magistrate, require the accused to recognize anew with  
8 sufficient sureties, and make such order as to costs as they deem  
9 reasonable. R. S., c. 169, § 10, 11.

SECT. 7. If the appellant fails to prosecute his appeal, his  
2 recognizance shall be in force for any breach of its conditions  
3 without an affirmation of said order, and stand as security for  
4 any costs, which he is ordered by the court to pay.

R. S., c. 169, § 12.

SECT. 8. Any person committed for not recognizing as afore-  
2 said, may be discharged by any judge or justice of the peace,  
3 on giving the security required. R. S., c. 169, § 13.

SECT. 9. Whoever, in the presence of any of the magistrates  
 2 aforesaid, or any court of record, makes an affray; threatens to  
 3 kill or beat another, or commit any violence against his person  
 4 or property, or contends with hot and angry words to the dis-  
 5 turbance of the peace, may be ordered, without process or other  
 6 proof, to recognize to keep the peace and be of good behavior  
 7 for a term not exceeding three months, and otherwise dealt with  
 8 as is provided in the preceding sections.

R. S., c. 169, § 15.

SECT. 10. Whoever goes armed with any dirk, pistol or other  
 2 offensive and dangerous weapon, without just cause to fear an  
 3 assault on himself, family or property, on complaint of any per-  
 4 son having cause to fear an injury or breach of the peace, may  
 5 be required to find sureties to keep the peace for a term not  
 6 exceeding one year, and be otherwise dealt with as is provided  
 7 in the preceding sections.

R. S., c. 169, § 16.

SECT. 11. All recognizances taken under this chapter shall  
 2 be returned to the supreme judicial court on or before the first  
 3 day of the next term, and there filed by the clerk as of record;  
 4 and in any suit thereon, if the forfeiture is found, or confessed,  
 5 the court may remit so much of the penalty and on such terms,  
 6 as they think proper.

R. S., c. 169, § 14, 17.

SECT. 12. Any surety in such recognizance may surrender  
 2 the principal the same as bail in civil cases, and shall thereupon  
 3 be discharged from all liability for any subsequent breach of the  
 4 recognizance, and the principal may recognize anew with suffi-  
 5 cient sureties for the residue of the term, before a justice of the  
 6 peace, and then be discharged.

R. S., c. 169, § 18.

## Chapter 131.

### JURISDICTION OF OFFENSES AND GENERAL PROVISIONS RELATING THERETO.

#### JURISDICTION OF CRIMES.

Sect. 1. Original and appellate jurisdiction of the Supreme Judicial Court in criminal  
 cases.

2. Offenses committed near the boundary of two counties, and death in one county  
 from an injury in another.



3. Death within the state from an injury inflicted on the high seas or without the state.
4. Acquittal of part of an indictment and conviction of the residue.
5. Where an accessory before or after the fact may be tried.

## ACCESSORIES.

6. Accessories before the fact punished the same as principal, and convicted with or without him.
7. Who are accessories after the fact.

## ATTEMPTS TO COMMIT OFFENSES.

8. Attempt with an overt act to commit an offense, how punishable.

## DEFINITIONS AND ALLEGATIONS.

9. Definition of "felony."
10. Of "owner" of property as used in indictments.
11. General allegation of intent to defraud sufficient.
12. Complaints and indictments not to be quashed for omission of "feloniously," "force and arms," "against the peace," and "contrary to the form of the statute."

## RECOVERY AND APPROPRIATION OF FINES.

13. Fines and forfeitures to be recovered by indictment and accrue to the state unless otherwise provided.

## LIMITATION OF PROSECUTIONS.

14. Prosecutions limited to six years, deducting absence from the state.

*Jurisdiction of Crimes.*

SECT. 1. The supreme judicial court shall have original jurisdiction, exclusive or concurrent of all criminal offenses whatever, except those of which the jurisdiction is conferred, by law, on municipal and police courts, and justices of the peace; and appellate jurisdiction of those included in the exception.

R. S., c. 166, § 1, 2.

SECT. 2. When an offense is committed on the boundary between two counties, or within one hundred rods thereof; or a mortal wound or other violence or injury is inflicted, or poison administered in one county, whereby death ensues in another, the offense may be alleged in the complaint or indictment as committed, and may be tried in either.

R. S., c. 166, § 4, 5.

SECT. 3. If a mortal wound or other violence or injury is inflicted, or poison administered on the high seas, or without this state, whereby death ensues within this state, such offense may be tried in the county where the death ensues; and if such

5 acts are done within and death ensues without this state, such  
6 offense may be tried in the county where the acts were done, the  
7 same as if the death had there ensued.

R. S., c. 166, § 6. 1854, c. 75.

SECT. 4. When a person, indicted for any offense, is acquit-  
2 ted of a part, by the verdict of the jury on trial, and found  
3 guilty of the residue thereof, such verdict may be received and  
4 recorded by the court; and, thereupon, he may be convicted of  
5 the offense, if any, which is substantially charged by such resi-  
6 due, and shall be punished accordingly, though such offense  
7 would not otherwise be within the jurisdiction of said court.

R. S., c. 166, § 7.

SECT. 5. Every accessory, before or after the fact, may be  
2 tried in the county having jurisdiction of the principal offense,  
3 though the accessory offense was committed on the high seas,  
4 or without the state; and if the principal offense was committed  
5 in one county and the accessory offense in another, the latter  
6 may be tried in either.

R. S., c. 167, § 5, 7.

#### *Accessories.*

SECT. 6. Whoever aids in the commission of any felony, or  
2 is accessory thereto before the fact, by counseling, hiring or  
3 otherwise procuring the same, shall be punished in the manner  
4 prescribed for the punishment of the principal felon; and such  
5 accessory, when a felony is committed, within or without the  
6 state, by his procurement in the state, may be indicted and con-  
7 victed, as an accessory, with the principal, or after his convic-  
8 tion; or of a substantive felony, whether the principal is con-  
9 victed, or amenable to justice or not, and punished as aforesaid.

R. S., c. 167, § 3, 4. 1854, c. 74.

SECT. 7. Every person, not standing in the relation of hus-  
2 band or wife, parent or child to the principal offender, who har-  
3 bors, conceals, maintains or assists any principal felon or acces-  
4 sory, before the fact, knowing him to be such, with intent that  
5 he may escape detection, arrest, trial or punishment, shall be  
6 deemed an accessory after the fact, and shall be punished by  
7 imprisonment in the state prison not more than seven years, or  
8 in the county jail not more than one year, and by fine not ex-

9 ceeding one thousand dollars; but, in no case, shall such pun-  
10 ishment exceed the punishment to which the principal felon, on  
11 conviction, would be liable. R. S., c. 167, § 6.

*Attempts to Commit Offenses.*

SECT. 8. Whoever attempts to commit any criminal offense,  
2 and does anything towards it, but fails, is interrupted or pre-  
3 vented in its execution, where no punishment is expressly pro-  
4 vided for such attempt, shall be punished, when the offense thus  
5 attempted is punishable with death or imprisonment in the state  
6 prison for life, by imprisonment in the state prison not more  
7 than ten years; but in all other cases by the same kind, but  
8 not exceeding one-half of the punishment that might have been  
9 inflicted, if the offense attempted had been committed.

R. S., c. 167, § 10.

*Definitions and Allegations.*

SECT. 9. The term, "felony," when used in any chapter in  
2 this title, shall be construed to include murder, rape, arson,  
3 robbery, burglary, maims, larceny, and every offense punishable  
4 with death or by imprisonment in the state prison.

R. S., c. 167, § 2.

SECT. 10. In an offense in any way relating to real or per-  
2 sonal estate, it shall be deemed sufficient and not a variance, if  
3 it is proved at the trial, that, when the offense was committed,  
4 the actual or constructive possession, or the general or apicial  
5 property, in whole or in part of such estate was in the person or  
6 community alleged in the indictment to be the owner thereof.

R. S., c. 167, § 8.

SECT. 11. When an intent to defraud is necessary to consti-  
2 tute any offense, it shall be sufficient to allege generally in the  
3 indictment an intent to defraud; and if there appears on trial  
4 an intent to defraud the United States, any state, county, town,  
5 person or corporation whatever, it shall be sufficient.

R. S., c. 167, § 9.

SECT. 12. No indictment or complaint shall be quashed, nor  
2 judgment thereon arrested or affected by reason of the omission

3 or misstatement of the title, occupation, estate or degree of the  
 4 accused; of the name of the city, town or county of his resi-  
 5 dence, nor of the words, "feloniously," "force and arms,"  
 6 "against the peace," or "contrary to the form of the statute;"  
 7 if such omission or misstatement does not tend to his prejudice.

R. S., c. 172, § 38.

### *Recovery and Appropriation of Fines.*

SECT. 13. All fines and forfeitures, imposed as a punishment  
 2 for any offense, or for a violation or neglect of any statute duty,  
 3 when no other mode is expressly provided, may be recovered by  
 4 indictment; and when no other appropriation is expressly made  
 5 by law, shall inure to the state. R. S., c. 167, § 13, 14.

### *Limitation of Prosecutions.*

SECT. 14. When no other limitation is provided by law, no  
 2 indictment for any offense, except treason, murder, arson or  
 3 manslaughter, shall be found after six years from the commission  
 4 thereof; but any time, during which the offender is not usually  
 5 and publicly resident in this state, shall not be a part of said six  
 6 years. R. S., c. 167, § 15.

## **Chapter 132.**

### **POWERS AND PROCEEDINGS OF JUSTICES OF THE PEACE IN CRIMINAL CASES.**

#### **THEIR GENERAL POWER AND JURISDICTION.**

- Sect.* 1. Judges of the peace, and judges of municipal and police courts may require aid on view of a breach of the peace without a warrant.
2. Their general jurisdiction, and penalty for taking cognizance of any fugitive slave case.
3. Duty when complaint is made, and when to issue a warrant. When he may summon witnesses before issuing a warrant. Their fees to be paid by complainant.
4. Such witnesses bound to attend, and on conviction complainant shall be allowed the cost paid by him.
5. Penalty for making special warrants.
6. Examinations of the accused; to be sentenced if within the jurisdiction of the magistrate; if not, bound over.

#### **POWER IN SUMMONING WITNESSES AND ALLOWING THEIR FEES.**

7. Magistrate may summon necessary witnesses before himself, and by request of the attorney for the state, before other courts, and recognize them to higher

court. Also summon witnesses for the accused and they shall attend if their fees are paid or tendered.

*Sect.* 8. No costs allowed to complainant, except where it is his official duty to complain, nor to witnesses in more than one case at the same time.

9. Power of magistrates to issue a summons for witnesses to appear in any other New England state in a criminal case, and penalty for not appearing on tender of their fees.

#### SEARCHES.

10. In what cases magistrates may issue search warrants.

11. Form of the application.

12. Essentials of the warrant.

13. When search may be made in the night time.

#### APPEALS FROM MAGISTRATES.

14. Accused may appeal, by giving recognizance or being committed.

15. Appellant to carry up copies of all the papers. Proceedings if he does not prosecute his appeal.

#### PROVISIONS RELATING TO THE FEES OF MAGISTRATES.

16. Costs for magistrate only on one warrant unless more are necessary; no costs for him when grand jury do not find a bill and only legal fees in any case.

17. When costs are paid to the magistrate he may keep his, and pay over the others; and if they are not called for in one year he shall pay them to the county treasurer.

18. When costs are not paid to magistrate, county commissioners to examine and allow them; but if any person interested in a bill of cost is a county commissioner, Supreme Judicial Court to allow it.

19. In cases carried to higher court, magistrate to certify bill of cost.

#### DEFENSE TO ACTIONS AGAINST MAGISTRATES.

20. In actions against a magistrate for issuing a warrant, its accordance with an existing law shall be a defense, unless he knew it had been declared void by Supreme Judicial Court, and no judgment shall be rendered against him for any technical error or defect, if the warrant was issued in good faith.

21. All warrants to be under the hand and seal of the magistrate.

### *Their General Powers and Jurisdiction.*

**SECT. 1.** Justices of the peace, and judges of municipal and police courts, as conservators of the peace within their counties, upon view of an affray, riot, assault or battery, without any written warrant, may command the assistance of any sheriff, deputy sheriff, constable or other persons present, for suppressing the same and arresting all concerned therein to be dealt with according to law. R. S., c. 170, § 1.

**SECT. 2.** Such magistrates shall have all the original jurisdiction of criminal offenses, exclusive or concurrent, that is con-

3 ferred on them by law expressly or by necessary implication,  
4 and of all assaults and batteries, and other breaches of the peace,  
5 made criminal by any statute or town by-law; may punish by  
6 fine not exceeding twenty dollars, or imprisonment in the county  
7 jail not more than sixty days; cause to be arrested all persons  
8 charged with any offense and found in their counties, or escaping  
9 therefrom, after committing an offense therein; administer oaths  
10 in all cases where an oath is required, unless otherwise provided  
11 by law; and exercise all other powers granted to them by any  
12 statute of this state; but they shall not take cognizance of any  
13 case relating to any person claimed as a fugitive slave, nor in  
14 any way aid in his arrest, detention or surrender, under a pen-  
15 alty not exceeding one thousand dollars, or imprisonment in the  
16 county jail not more than one year. R. S., c. 154, § 35.

c. 166, § 3. c. 170, § 2, 6, 12. 1855, c. 182, § 1, 2, 3.

SECT. 3. When a complaint is duly made to any magistrate,  
2 alleging the commission of any offense, and praying for a war-  
3 rant against the accused, he shall carefully examine the com-  
4 plainant and any witnesses he produces, on oath, relative to the  
5 circumstances of the case, and if it appears that such offense has  
6 been committed, and there is reason to believe the accused is  
7 guilty, he shall issue his warrant; but if he is not satisfied, he  
8 may issue his summons, in behalf of the state, for any person  
9 that may have knowledge relating to the case, to appear before  
10 him forthwith and testify in relation thereto; but the costs of  
11 the summons and service, and the lawful fees of such witnesses  
12 shall, in the first instance, be paid by the complainant, and the  
13 magistrate, officer and witnesses shall have no claim on the state  
14 therefor. R. S., c. 170, § 3. 1855, c. 183, § 1.

SECT. 4. Witnesses, so summoned, and paid or tendered their  
2 lawful fees, shall appear and testify under the same liabilities  
3 and penalties as other witnesses summoned in behalf of the  
4 state; and if after the hearing of such witnesses, a warrant is  
5 issued, and any of the offenders therein named are convicted, on  
6 final trial, of the offense charged, the complainant shall be  
7 allowed, in the bill of cost, what he has lawfully paid to the  
8 magistrate, officer and witnesses as aforesaid.

1855, c. 183, § 2, 3.

SECT. 5. If any such magistrate issues a warrant for any offense returnable before himself, and not before any magistrate of the county, except when the law conferring the jurisdiction authorizes him so to do, he shall be punished, on indictment, by the payment of costs and imprisonment in the county jail not more than six months. 1845, c. 139, § 1, 2.

SECT. 6. Persons arrested on process, conformable to the constitution, for any offense, may be examined by the magistrate before whom they are brought, and by him tried, though there is a penalty accruing, in whole or in part, to his town, and if found guilty, may be punished, as aforesaid, and also required to find sureties to keep the peace; but if the offense is beyond the final jurisdiction of the magistrate, they may be committed or bound over for trial to the supreme judicial court.

R. S., c. 170, § 4, 5, 7.

*Power in Summoning Witnesses, and Allowing Their Fees.*

SECT. 7. Any such magistrate may issue summonses for such witnesses only, as he thinks can testify to material facts, to appear before himself in any criminal case, and also, by the request of the attorney general or county attorney, to appear before any judicial court, or any other magistrate, and such request shall be expressed therein; and he may order such only as he thinks material and necessary, in any such case examined before him, to recognize for their appearance at a higher court, to which such case is in any way carried; but when the summons is issued to a witness for the accused, it shall be so expressed therein, and such witness shall be required to appear and give evidence, on condition that his legal fees are first paid or tendered by the accused.

R. S., c. 152, § 4, 5, 6. c. 170, § 11.

SECT. 8. No costs shall be allowed by any such magistrate for the benefit of the complainant as witness, officer, or in any other capacity, except to police officers and constables duly qualified and acting under the authority of their town, or complaining in cases where by law it is made their duty to do so; and when any person is summoned as a witness in more than one criminal case before a magistrate on the same day, or at the

8 same term of any court, he shall have pay for travel and attend-  
9 ance only in one case, and in no case shall he have more than  
10 one travel at the same time. R. S., c. 152, § 7, 8.

SECT. 9. When, on affidavit filed, the clerk of any court in  
2 any New England state certifies that there is a criminal case  
3 pending in such court, and that a resident of this state is sup-  
4 posed to be a material witness therein, any magistrate, upon  
5 such certificate or a paper annexed thereto, may issue a sum-  
6 mons requiring such witness to appear and testify at such court;  
7 and if any person, thus summoned after tender of twelve cents  
8 for each mile to and from such court, and two dollars for each  
9 day his attendance is required, unreasonably neglects or refuses  
10 to attend and testify at such court, he shall forfeit the sum of  
11 two hundred dollars to any person suing therefor.

1855, c. 184, § 1, 2. R. S., c. 133, § 40.

### *Searches.*

SECT. 10. Any magistrate authorized to issue warrants in  
2 criminal cases, within the limits of his jurisdiction, may issue  
3 his warrant to search any house or place for property stolen,  
4 embezzled, or obtained by false tokens or pretences; forged and  
5 counterfeit coins, bank bills, or other writings; tools, machines,  
6 or materials used or designed for making the same, or any dead  
7 body unlawfully disinterred, carried away, and concealed, and  
8 in other cases, and for persons, when a search is authorized by  
9 law; and such search warrant shall be issued according to the  
10 following principles and provisions and not otherwise.

R. S., c. 170, § 13.

SECT. 11. The complaint for a search warrant, shall be in  
2 writing, signed by the complainant, and verified by his oath or  
3 affirmation, specially designating the place to be searched, the  
4 owner or occupant thereof, and the person or thing to be searched  
5 for, and substantially alleging the offense committed in relation  
6 thereto, and that the complainant has probable cause to suspect,  
7 and does suspect that the same is there concealed.

R. S., c. 170, § 14.

SECT. 12. Such magistrate shall thereupon issue his war-  
2 rant, and direct the same to a proper officer, or to any other



3 person by name, for service, containing a recital of all the essen-  
4 tial facts alleged in the complaint, and made returnable like  
5 other warrants; and the person or thing searched for, if found,  
6 and the person in whose possession or custody the same was  
7 found, shall be brought before the magistrate, to be dealt with  
8 according to law. R. S., c. 170, § 15.

SECT. 13. Such warrant shall not authorize the person exe-  
2 cuting it to search any dwelling house in the night time, unless  
3 the magistrate is satisfied that it is necessary to prevent the es-  
4 cape or removal of such person or property, and such authority  
5 is distinctly expressed therein. R. S., c. 170, § 16.

*Appeals from Magistrates.*

SECT. 14. Any person aggrieved at any sentence of such mag-  
2 istrate, may appeal therefrom to the next supreme judicial court  
3 in the same county, and the magistrate shall thereupon order  
4 him to recognize in a reasonable sum, not less than twenty dol-  
5 lars, with sufficient sureties to appear and prosecute his appeal,  
6 and to be committed till the order is complied with.

R. S., c. 170, § 8.

SECT. 15. He shall produce at the appellate court a copy of  
2 the whole process, and of all writings filed before the magistrate;  
3 and if he does not produce them, and prosecute his appeal, his  
4 default shall be noted on the record; and the court may order  
5 the case laid before the grand jury, or issue a capias against the  
6 body of the appellant, bring him into court, and then affirm the  
7 sentence of the magistrate with additional costs.

R. S., c. 170, § 9, 10.

*Provisions Relating to the Fees of Magistrates.*

SECT. 16. When several warrants are issued by any magis-  
2 trate, where only one is necessary, he shall be allowed only the  
3 costs for one complaint and warrant; and when he binds over a  
4 party, and the grand jury do not find an indictment against such  
5 party, he shall not have any fees in the case, and in no case  
6 shall he tax other or greater fees than are expressly allowed by  
7 law. R. S., c. 152, § 1, 2.

SECT. 17. When the costs in any criminal case are paid to

2 the magistrate as a part of the sentence, he may retain his fees,  
3 and pay over the other fees to the persons entitled to them; but  
4 if such other fees are not called for in one year, they shall be  
5 forfeited to the state, and paid over to the county treasurer  
6 within the time and under the penalty provided in cases of fines.

R. S., c. 152, § 10, 11.

SECT. 18. When a party accused is acquitted by the magis-  
2 trate; not sentenced to pay costs, or does not pay them to him,  
3 when so sentenced, and on all legal search warrants, the com-  
4 missioners of the same county shall examine and correct the bills  
5 of cost, including the fees of officers, witnesses and other per-  
6 sons entitled thereto, and order the same paid out of the county  
7 treasury; but when such magistrate or other person interested  
8 in such bill of costs, is one of the commissioners for the same  
9 county, the supreme judicial court shall have the same powers  
10 as the commissioners in other cases.

R. S., c. 152, § 12, 13. 1854, c. 82.

SECT. 19. In cases carried to a higher court by appeal, bind-  
2 ing over or commitment, the magistrate shall tax and certify the  
3 costs with the papers to such court. R. S., c. 152, § 14.

### *Defense to Actions against Magistrates.*

SECT. 20. In actions against a magistrate for issuing any  
2 warrant, precept or order, it shall be a sufficient defense for him  
3 to show that it is in due form, and issued according to some law  
4 of this state in the proper exercise of his official duties, unless it  
5 is proved that, before its issue, the law under which it was issued  
6 had been declared void by a final judgment of the supreme judi-  
7 cial court, and that such magistrate had, or by due diligence  
8 might have had notice thereof; and no judgment for damages or  
9 costs shall be rendered against any magistrate, in such action,  
10 for any technical error or defect in such warrant, if the subject  
11 matter is set forth therein so as to be readily understood, and it  
12 was issued in good faith, and without any wrongful intent.

1855, c. 160, § 1, 2, 3.

SECT. 21. All warrants issued by any magistrate in a crimi-  
2 nal case, shall be under his hand and seal. (New.)

**Chapter 133.****COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.****WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.**

*Sect. 1.* No person bound to answer for an offense without indictment, except for contempt, by information, and before magistrates and courts martial.

**WHO MAY ISSUE CRIMINAL PROCESSES.**

2. Justices of the supreme judicial court and magistrates may issue processes in criminal cases.
3. Officer making complaint officially, may swear to it according to his knowledge and belief, and witnesses may be summoned in a warrant or by subpoena.

**ARRESTS WITHOUT WARRANTS.**

4. Officers may arrest without warrant persons violating law until warrant can be obtained, and have their fees, if they act in good faith.

**ARRESTS IN OTHER COUNTIES.**

5. The accused may be pursued into other counties, arrested and brought back,
6. How he may be discharged in the county where he is arrested, if for a bailable offense.

**EXAMINATION OF OFFENDERS.**

7. Examinations of persons arrested, magistrate may associate another magistrate with him without fees.
8. Adjournment of examination on recognizance or commitment. How offender may be brought before the magistrate at the adjournment.
9. Proceedings if party fails to appear.
10. Mode of examination; witnesses may be examined separately, and testimony taken in writing.
11. When the accused shall be discharged, when sentenced, and when bound over or committed,

**PROCEEDINGS ON COMMITMENT OR BINDING OVER.**

12. Magistrate to recognize material witnesses or commit them.
13. How married women and minors may recognize.
14. Who may bail the accused after commitment.
15. Examinations and recognizances to be returned to the county attorney or clerk, and magistrate compelled to do so by rule or capias of the court.

**WHEN PROSECUTIONS MAY BE DISMISSED.**

16. What prosecutions may be dismissed on satisfaction for private injury.
17. Such discharges to be filed with clerk or jailer.

**REMEDIES ON RECOGNIZANCES.**

18. Forfeited recognizances to be defaulted and process issued thereon. Sureties may pay the amount to county treasurer or clerk and be discharged.
19. Court may remit the penalty; and the sureties may surrender the principal, but only twice in the same case.
20. Certain forms in proceedings on recognizances unessential.

*When Persons may be Prosecuted without Indictment.*

SECT. 1. No person shall be held to answer in any court for an alleged offense, unless on an indictment found by a grand jury, except for contempt of court and in the following cases:

*First.* When prosecutions by information are expressly authorized by statute.

*Second.* In proceedings before municipal and police courts, justices of the peace, and courts martial. R. S., c. 169, § 1.

*Who may Issue Criminal Processes.*

SECT. 2. The justices of the supreme judicial court, in the manner heretofore practiced in this state; and judges of municipal and police courts, and justices of the peace in their counties, in the manner provided in chapter one hundred and thirty-two, in vacation or term time, may issue processes for the arrest of persons charged with offenses, to carry into effect the provisions of this chapter. R. S., c. 171, § 1, 2.

SECT. 3. When it is the duty of an officer to make complaint before any magistrate, he may make oath to it according to his knowledge and belief; and in any warrant, the magistrate may require the officer to summon the witnesses therein named, or issue a separate subpoena therefor.

R. S., c. 171, § 2. 1848, c. 71, § 3.

*Arrests without Warrants.*

SECT. 4. Every sheriff, deputy sheriff, constable, city or deputy marshal, watchman or police officer shall arrest and detain persons found violating any law of the state, or any legal ordinance or by-law of a town, until a legal warrant can be obtained, and shall be entitled to legal fees for such service; but if in so doing, he acts wantonly or oppressively, or detains a person without a warrant longer than is necessary to procure it, he shall be liable to such person for the damages suffered thereby.

1848, c. 71, § 1, 2.

*Arrests in Other Counties.*

SECT. 5. When a person charged with an offense, in any county, before or after the issue of the warrant, removes, escapes

3 or is found out of it, the officer having the warrant may pursue  
4 and arrest him in any other county; command aid as in his own  
5 county, and convey him to the county where the offense was  
6 committed to be there dealt with according to law, unless he is  
7 discharged under the following section.

R. S., c. 171, § 3, 6, 7.

SECT. 6. If the offense charged is not punishable with death  
2 or imprisonment in the state prison, the officer shall on request  
3 of the accused, take him before a magistrate of the county where  
4 he is arrested; and such magistrate, without any examination,  
5 may take his recognizance, with sufficient sureties, for his ap-  
6 pearance at the next court, or before any magistrate having  
7 cognizance of the offense in the county where it was committed,  
8 and thereupon the accused shall be discharged; and the magis-  
9 trate shall certify that fact on the warrant, and deliver the same,  
10 with the recognizance, to the officer, and he shall immediately  
11 deliver them to the clerk of the court or magistrate before whom  
12 the accused recognized to appear. R. S., c. 171, § 4, 5.

#### *Examinations of Offenders.*

SECT. 7. Every person, arrested for any offense, shall be  
2 brought before the magistrate issuing the warrant or some other  
3 in the same county for examination, and the warrant, with a  
4 proper return thereon, signed by the officer serving it, shall be  
5 delivered to the magistrate, who may associate another magis-  
6 trate with him in such examination, but no fees shall be taxed  
7 for him. R. S., c. 171, § 8, 23.

SECT. 8. Any magistrate may adjourn an examination before  
2 him, from time to time, not more than ten days at a time, and  
3 may recognize the accused, with sufficient sureties, for his  
4 appearance before him at the time of adjournment; but if no  
5 sufficient sureties are offered, or the offense is not bailable, the  
6 accused shall be committed to jail by an order of the magistrate,  
7 stating briefly the offense with which he is charged, and that he  
8 is committed for examination at a future day therein named, and  
9 on the day appointed he may be brought before such magistrate  
10 by his verbal order to the officer committing him, or by a writ-  
11 ten order to any other person. R. S., c. 171, § 9, 11.

SECT. 9. If the party, so recognized, does not appear at the 2 time of such adjournment, the magistrate shall record his 3 default, and certify the recognizance and such record to the 4 supreme judicial court, there to be proceeded with the same as 5 any other forfeited recognizance in a criminal case.

R. S., c. 171, § 10.

SECT. 10. When the accused is brought before a magistrate, 2 he shall first examine, in the presence of the accused, on oath, 3 the complainant and witnesses to support the prosecution as to 4 all pertinent facts, and then the witnesses in defense; the wit- 5 nesses on both sides may be examined, each one separately 6 from all the others; and the witnesses for may be kept separate 7 from those against the accused, during the examination, accord- 8 ing to the directions of the magistrate, who may reduce the 9 testimony of any witness to writing when he thinks it necessary, 10 and require him to sign it. R. S., c. 171, § 12, 13, 14, 15.

SECT. 11. If it appears on the whole examination, that no 2 offense is committed, or that there is not probable cause to 3 charge the accused, he shall be discharged; but if it appears 4 that an offense is committed, that there is probable cause to 5 charge the accused, and the offense is bailable, and sufficient 6 bail is offered, it shall be taken, and the accused discharged; 7 but if it is not bailable, or no sufficient bail is offered, the 8 accused shall be committed to prison to await a trial. If the 9 offense is within the jurisdiction of the magistrate, he shall try 10 it, and award sentence thereon. R. S., c. 171, § 16, 17.

*Proceedings on commitment or binding over.*

SECT. 12. When the accused is committed, or bound over for 2 trial to a higher court, the magistrate shall order the material 3 witnesses against him to recognize, to appear and testify at said 4 court; and when he is satisfied there is reason to believe that 5 any of them will not perform the conditions of his own recog- 6 nizance, he may order him to recognize with sufficient sureties; 7 and if he refuses to recognize, as required in either case, he 8 may be committed to prison, and remain till discharged by law.

R. S., c. 171, § 18, 19, 20.

SECT. 13. Any person may so recognize for a married woman

2 or minor, to appear as a witness, or the magistrate may take the  
3 recognizance of either in a sum not exceeding twenty dollars,  
4 which shall be valid notwithstanding such disability.

R. S., c. 171, § 21.

SECT. 14. Any justice of the supreme judicial court, or any  
2 two justices of the peace and quorum, for the county, on appli-  
3 cation of a prisoner committed for a bailable offense, or for not  
4 finding sureties to recognize for him, may inquire into the case  
5 and admit him to bail.

R. S., c. 171, § 22.

SECT. 15. All the examinations and recognizances, taken by  
2 a magistrate, under this chapter, shall be certified and returned  
3 to the county attorney or clerk of the court at which the accused  
4 is to appear, on or before the first day of its session; and if  
5 the magistrate neglects so to do, he may be compelled by rule of  
6 court, or if that is disobeyed, by attachment for contempt.

R. S., c. 171, § 24.

*When prosecutions may be discontinued.*

SECT. 16. When any person is committed or recognized, by  
2 a magistrate, to answer to a charge of assault and battery or  
3 other misdemeanor, for which the party injured had a remedy  
4 by civil action, except when the offense is committed by or upon  
5 a sheriff or other officer of justice, riotously, or with a felonious  
6 intent, and the injured party appears before such magistrate,  
7 and acknowledges, in writing, that he has received satisfaction  
8 for the injury, on the payment of all costs, he may discharge  
9 the recognizance, or supersede the commitment, by an order  
10 under his hand; and discharge the recognizances of all the  
11 witnesses.

R. S., c. 171, § 25.

SECT. 17. Any order discharging recognizances, shall be  
2 filed in the office of the clerk of the court, at which the party  
3 and witnesses are to appear, and an order, superseding a com-  
4 mitment, shall be delivered to the jailer, and if so filed or  
5 delivered, and not otherwise, shall bar all remedy by civil  
6 action for such injury.

R. S., c. 171, § 26.

*Remedies on recognizances..*

SECT. 18. When any person, under recognizance in a criminal  
2 case, fails to perform its condition, his default shall be recorded;

3 and process shall be issued against such of the conusors as the  
 4 prosecuting officer directs, but no costs shall be taxed for travel  
 5 in the suit; but any surety may be discharged by paying to the  
 6 county treasurer, before or after process, the amount for which  
 7 he is bound as surety, with costs, if any, or depositing it with  
 8 the clerk of the court where the recognizance is filed.

R. S., c. 171, § 27, 28.

SECT. 19. When the penalty of any recognizance in a crimi-  
 2 nal case is forfeited, on scire facias against principal, sureties or  
 3 witnesses, the court, on application of any defendant, may remit  
 4 all or any part of the penalty, or the sureties may surrender the  
 5 principal in court at any time before final judgment on scire  
 6 facias, and be discharged by paying the costs of suit; but if a  
 7 principal has been thus surrendered twice, and is again released  
 8 on bail in the same case, the sureties in such third or any sub-  
 9 sequent recognizance, shall not be so discharged.

R. S., c. 171, § 29. 1845, c. 161. 1846, c. 212.

SECT. 20. No action on such recognizances shall be defeated,  
 2 nor judgment thereon arrested, for any omission to record a  
 3 default of the principal or surety at the proper term, nor for  
 4 any defect in the form of the recognizance, if it can be sufficiently  
 5 understood from its tenor, at what court the party or witness  
 6 was to appear, and from the description of the offense charged,  
 7 that the magistrate was authorized to require and take the  
 8 same.

R. S., c. 171, § 30.

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## Chapter 134.

### PROCEEDINGS IN COURT IN CRIMINAL CASES.

#### OATH AND DUTIES OF GRAND JURY.

*Sect.* 1. Clerks of courts to prepare alphabetical lists of grand jurors.

2. Grand jurors' oath.

3. Form of affirmation.

4. Election of foreman.

5. Term of his office.

6. Oath of witnesses before the grand jury. List to be returned to the court.

7. Grand jury to present all offenses, appoint one to take minutes and when dis-  
 missed, may be recalled.

8. Disclosures improper to be made by grand jurors.



## BAIL, ARRAIGNMENT AND TRIAL OF CRIMINALS.

*Sect. 9.* In what cases persons in prison, on charges of capital offenses, may be bailed or discharged, if not indicted.

10. If indicted, when they may claim a trial.
11. Standing mute equivalent to not guilty.
12. In capital cases only ten jurors to be peremptorily challenged. Accused arraigned before one justice, and if he pleads guilty, sentenced; if not guilty, preparations made and time appointed for trial and chief justice notified.
13. If stated term not held in six months, chief justice to order special term. What notice shall be given thereof. No civil action disposed of without consent.
14. Rights of persons indicted for felony to a copy of indictment, if indicted for capital offense or one punishable with state prison for life, a copy of indictment, list of the jurors and witnesses at expense of the state.
15. Prosecuting officer may summon witnesses; no fees need be tendered them; no cost for witnesses where no bill found, or for defect of roads.
16. Punishment for not attending, when summoned as a witness.
17. Witnesses not to be paid till second or third day in continued cases; costs allowed before arrest or trial, in certain cases; but no extra charges for aid or otherwise, unless on examination of officer on oath or other proof.
18. When proceedings may be stayed after indictment, on satisfaction made to party injured.
19. Person arraigned, need not be asked how he will be tried; and dilatory pleas may be rejected unless verified by oath.
20. Depositions may be taken out of the state, on request of defendant.
21. Facts to be tried and challenges allowed as in civil cases, but no grand juror or person with conscientious scruples about the penalty of death, shall sit in a capital case.
22. Jurors' oaths and affirmations.
23. When a person indicted shall, or may not, be present at his trial.
24. View.
25. When the court may postpone criminal trials, or discharge the jury.

## PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

26. Payment of private claims out of forfeited recognizances.

## EXCEPTIONS, AND BAIL AFTER VERDICT.

27. Exceptions allowed to rulings of single justice, or law questions raised on report. Accused to give recognizance, or be committed; and after verdict of guilty against him only a justice of the supreme judicial court, or a person appointed by the justice who tried the case, can admit him to bail.

*Oath and Duties of Grand Jurors..*

SECT. 1. Prior to the commencement of each term of the  
 2 supreme judicial court in any county, to which grand jurors are  
 3 returned, the clerk of the court shall make out from the returns  
 4 on the venires, an alphabetical list of such jurors.

R. S., c. 172, § 1.

SECT. 2. When the grand jury is to be empaneled, the clerk shall call the first two persons named on the list, and administer the following oath to them: "You, as grand jurors of this county of ———, do solemnly swear, that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows' and your own, you shall keep secret. You shall present no man for envy, hatred or malice; nor leave any man unrepresented, for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders, and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you, on your part, shall well and truly observe and keep. So help you God." R. S., c. 172, § 2.

SECT. 3. When any person returned as grand juror, is conscientiously scrupulous of taking an oath, he shall be allowed to make affirmation, substituting the word "affirm," instead of "swear;" and also the words, "this you do under the pains and penalties of perjury," instead of "so help you God."

R. S., c. 172, § 3.

SECT. 4. The grand jury having been empaneled and instructed by the court, shall retire in company with an officer, to their room, and there elect by ballot, one of their number for foreman, and give notice thereof to the court, and the clerk shall record it.

R. S., c. 172, § 4.

SECT. 5. Such foreman shall continue in office during the time for which he was returned; but in case of his sickness or absence, the jury may, in like manner, elect and announce to the court another foreman.

R. S., c. 172, § 5.

SECT. 6. The county attorney, or the foreman of the grand jury shall swear or affirm, in the presence of the jury, all witnesses who are to testify before them, and a list thereof shall be returned into court by the foreman before the jury is discharged, and filed and entered on record by the clerk.

R. S. c. 172, § 6.

SECT. 7. Grand juries shall present all offenses cognizable by

2 the court at which they attend; and may appoint one of their  
3 number to take minutes of their proceedings, to be delivered to  
4 the county attorney if the jury so directs; and when they are  
5 dismissed before the court adjourns, they may be summoned  
6 again, on any special occasion, at such time as the court directs.

R. S., c. 172, § 7, 8, 9.

SECT. 8. No grand juror or officer of the court shall dis-  
2 close that an indictment for felony is found against any person  
3 not in custody or under recognizance, except by issuing  
4 process for his arrest, until he is arrested; nor shall any grand  
5 juror state how any member of the jury voted, or what opinion  
6 he expressed on any question before them; and the court in  
7 charging such jury shall impress on their minds the provisions  
8 of this section.

R. S., c. 172, § 10, 11.

*Bail, Arraignment and Trial of Criminals.*

SECT. 9. Any person in prison charged with a crime punish-  
2 able with death, may be bailed or discharged, if he is not  
3 indicted at the second term of the court in the county where the  
4 crime is alleged to have been committed, when there are two terms  
5 there in each year; but when there is only one term a year  
6 therein, and the accused has been in prison six months before  
7 the first term, and is not then indicted, he shall be bailed or  
8 discharged.

R. S., 172, § 12, 13.

SECT. 10. Any person, in prison under indictment, shall be  
2 tried or bailed at the first term next after the finding thereof, if  
3 he demands it, unless the court is satisfied that some of the  
4 witnesses on the part of the state have been enticed away, or  
5 detained from court by some cause beyond their control; and  
6 all persons under indictment for felony, if they have been  
7 arrested thereon, shall be tried or bailed at the second term  
8 after the finding thereof.

R. S., c. 172, § 14, 15.

SECT. 11. When any person indicted stands mute, the court  
2 shall order the plea of not guilty to be entered, and it shall have  
3 the same effect as if he had pleaded not guilty.

R. S., c. 172, § 16.

SECT. 12. Any person indicted for an offense punishable  
2 with death, shall challenge peremptorily no more than ten of

3 the jurors; and he may be arraigned before the court held by  
4 one justice, and if he pleads guilty, the court may proceed to  
5 pass sentence according to law; but if he pleads not guilty, the  
6 court, after appointing counsel for him, and making all proper  
7 preparations for trial, shall assign a time therefor, and give  
8 notice to the chief justice that he may direct a court to be held  
9 accordingly competent to try the case.

R. S., c. 172, § 17, 18, 19. 1849, c. 100, 1855,  
c. 174, § 1. 1854, c. 56.

SECT. 13. When a stated term of the court is not held within  
2 six months after an indictment for a capital offense is found in  
3 any county, a special term may be held to try the same; and  
4 the chief justice, by his order, in writing, to the sheriff, shall  
5 appoint the time and direct what notice shall be given; and the  
6 sheriff shall give it accordingly, and the clerk shall issue venires  
7 for jurors, and all preparations shall be made by the sheriff the  
8 same as for a stated term; but the court, at such term, shall  
9 dispose of no civil actions without consent of parties.

R. S., c. 172, § 20, 21.

SECT. 14. The clerk shall, without charge, furnish to any  
2 person indicted for a crime punishable by imprisonment in the  
3 state prison, a copy of the indictment; but if he is indicted for a  
4 crime punishable by death or imprisonment in the state prison  
5 for life, he shall furnish a copy of the indictment; a list of the  
6 jurors returned; and process to obtain witnesses, to be summoned  
7 and paid at the expense of the state.

R. S., c. 172, § 22, 23.

SECT. 15. The prosecuting officer shall have the same power  
2 to issue a summons for witnesses in criminal cases as the clerk  
3 of the court; and no costs shall be taxed for witnesses before  
4 the grand jury in a case where no bill is found, nor in complaints  
5 against towns for defect of road, unless they are recognized so to  
6 attend, or summoned by order of the grand jury or prosecuting  
7 officer; nor shall it be necessary to tender any fees to witnesses  
8 summoned in behalf of the state.

R. S., c. 172, § 24. 1844, c. 95, § 2.

SECT. 16. If any person, duly summoned as a witness in  
2 behalf of the state, before any court or grand jury, without

3 reasonable cause, fails to appear at the time and place desig-  
4 nated in the summons, if he is not punished therefor as for  
5 contempt, he shall be punished, on indictment, by imprisonment  
6 in the county jail not more than one year, or by fine not  
7 exceeding one hundred dollars. 1845, c. 153.

SECT. 17. No fees in criminal cases, continued after the first  
2 term, shall be allowed to witnesses on the part of the state, until  
3 the second day of the term, in Hancock, Oxford, Franklin,  
4 Piscataquis, and Aroostook, nor until the third day in any other  
5 county, unless legally summoned at an earlier day; and the  
6 court, in all such cases, previous to the determination thereof,  
7 or the arrest of the accused, may allow such costs for justices,  
8 officers, aids, jurors and witnesses, as are provided by law, to  
9 be paid from the county treasury; but no court or magistrate  
10 shall allow any charge for aid, or other expenses of the officer,  
11 in serving a warrant, except his stated fees for service and travel,  
12 unless, on his examination, on oath, or on other evidence, they  
13 find such additional charges reasonable.

R. S., c. 152, § 3, 9, 15.

SECT. 18. When a person, indicted for an assault and battery,  
2 or other misdemeanor, for which the party injured has a remedy  
3 by a civil action, except felonious assaults, or assaults upon an  
4 officer of justice, or resisting him while in the execution of his  
5 office, or assaults and batteries of such officers, if the injured  
6 party appears in court and acknowledges satisfaction for the  
7 injury, the court, on payment of all costs, may order a stay of  
8 all further proceedings, discharge the defendant from the indict-  
9 ment, and this shall bar all remedy by action for the injury.

R. S., c. 172, § 25.

SECT. 19. When a person is arraigned on any indictment, he  
2 need not be asked how he will be tried; and when a plea in  
3 abatement, or other dilatory plea to an indictment is offered, the  
4 court may refuse to receive it, until it is verified by affidavit or  
5 other evidence. R. S., c. 172, § 26, 27.

SECT. 20. On application of the defendant in a criminal case,  
2 the court may grant a commission to take the depositions of  
3 material witnesses living out of the state, to be taken on inter-  
4 rogatories in the same manner, have the same effect, and be

5 subject to the same exceptions as in civil causes ; the prosecuting  
6 officer may join in such commission, and name therein any  
7 material witness to be examined on the part of the state ; but if  
8 the defendant does not use, at the trial, the depositions so taken  
9 for him, those taken for the state shall not be used.

R. S., c. 172, § 28, 29.

SECT. 21. Issues of fact, joined on indictments, shall be tried  
2 by a jury drawn and returned in the same manner, and the  
3 same challenges shall be allowed to the prosecuting officer and  
4 the accused as in civil cases ; but no member of a grand jury  
5 finding an indictment shall sit on the trial thereof, if challenged  
6 therefor by the accused ; nor shall any person be a juror in a  
7 capital case, who cannot conscientiously find a man guilty of an  
8 offense punishable with death. R. S., c. 172, § 30, 31, 32.

SECT. 22. The following oath shall be administered to jurors  
2 in capital cases : “ You swear, that you will well and truly  
3 try, and true deliverance make, between the state and the pris-  
4 oner at the bar, whom you shall have in charge, according to  
5 your evidence. So help you God.” In all other criminal cases  
6 the following : “ You swear, that you will well and truly try  
7 the issue between the state and the defendant according to your  
8 evidence. So help you God.” Any juror conscientiously scru-  
9 pulous of taking an oath, may affirm in the mode described in  
10 section three. R. S., c. 172, § 33, 34.

SECT. 23. No person indicted for felony shall be tried, unless  
2 present during the trial ; but persons indicted for less offenses,  
3 at their own request and by leave of court, may be tried in their  
4 absence by their attorney. R. S., c. 172, § 35.

SECT. 24. The court may order a view by any jury in a  
2 criminal case. R. S., c. 172, § 36.

SECT. 25. The trial of any criminal case, except a capital  
2 one, may be postponed by the court to a future day of the same  
3 term, or the jury discharged therefrom, and the case continued  
4 if justice will thereby be promoted. R. S., c. 172, § 37.

#### *Payment of Private Claims from Forfeited Recognizances.*

SECT. 26. When the penalty of a recognizance to prosecute  
2 an appeal is paid to the clerk of the court, or county treasurer,

3 the court may award to any person therefrom the same sum he  
 4 would have been entitled to receive from the penalty affixed to  
 5 the offense, if paid on conviction, and not on recognizance.

R. S., c. 172, § 39.

*Exceptions, and Bail after Verdict.*

SECT. 27. Any person convicted of an offense before one jus-  
 2 tice of the supreme judicial court, may allege exceptions, as is  
 3 provided in chapter seventy-seven, section thirty-five; or any  
 4 question of law, allowable by exceptions, may be reserved on a  
 5 report signed by such justice; and in either case he shall require  
 6 the defendant to recognize, with sufficient sureties, to appear at  
 7 the next term of said court, and abide the final judgment in the  
 8 case, and commit him if he does not so recognize; but when a  
 9 verdict of guilty is rendered against any person for an offense  
 10 punishable by imprisonment in the state prison, he shall be  
 11 admitted to bail only by the justice trying him, by some person  
 12 by him appointed therefor, or by some other justice of the court.

R. S., c. 172, § 41. 1850, c. 152.

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## Chapter 135.

### SENTENCE AND ITS EXECUTION IN CRIMINAL CASES, AND THE LIBERA- TION OF POOR CONVICTS.

#### WHAT SENTENCE MAY BE AWARDED.

- Sect.* 1. No person charged with any offense to be punished till convicted; and what sentence may be passed, when none is provided by law.
2. When imprisonment may be in jail or house of correction; and convicts may be sentenced to pay fine and costs, or sent to jail or house of correction.
3. No convict sent to state prison less than a year, and when he is to be punished by imprisonment and a fine, he may be sentenced to either or both.
4. Punishment, when convict has before been sentenced to state prison.
5. In what cases, sureties to keep the peace may be required in addition to the other punishment.

#### EXECUTION OF SENTENCE.

6. Minutes made by the clerk, when sufficient authority for the officer.
7. Removal of convicts to the state prison, upon sentence.

#### IN CAPITAL CASES.

8. Convicts under sentence of death, to be also sentenced to solitary confinement

and labor in the state prison, in the meantime; and execution not to take place within one year nor until a warrant of the executive therefor.

Sect. 9. How and where sentence of death shall be executed, and who may be present.

10. Sheriff's return to be made and filed in the office of secretary of state.

#### LIBERATION OF POOR CONVICTS.

11. Persons imprisoned for non-payment of fines or costs, may be liberated by the sheriff, after thirty days, on giving their notes, and a sworn schedule of their property.

12. Such notes a lien on their real estate, and execution thereon may be proceeded with as in other cases.

13. Penalty for wilfully making a false schedule of property.

#### *What sentences may be awarded.*

SECT. 1. No person, charged with any offense against the law, shall be punished therefor, till he is duly convicted thereof in a court of competent jurisdiction of the person and cause; and in all criminal cases, when no punishment is provided by statute, the court shall pass sentence according to the nature of the offense, the common practice in this state, and not repugnant to the constitution. R. S., c. 167, § 1, and c. 168, § 1.

SECT. 2. Whoever is convicted in the supreme judicial court, of any offense punishable, in whole or in part, by imprisonment in the county jail, may be sentenced to such imprisonment in said jail or the house of correction, to be kept at work there, the same as other persons committed thereto by law; and the court may sentence any convict conditionally, to pay a fine and costs, or if he does not pay the same in ten days, to be immediately thereafter imprisoned in the county jail or house of correction, for a term not exceeding six months. R. S., c. 168, § 2, 3.

SECT. 3. No convict shall be sentenced to the state prison for less than one year, but all less terms of imprisonment shall be in the county jail or house of correction; and when it is provided that a convict shall be punished by imprisonment and a fine, he may be sentenced to either or both.

R. S., c. 167, § 11, and c. 168, § 4.

SECT. 4. When a person is convicted of a crime, punishable by imprisonment in the state prison, and it is alleged in the indictment therefor, and proved or admitted on trial, that he had been before convicted and sentenced to a state prison by any court of this state, of any other state, or of the United States,



6 whether pardoned therefor or not, he may be punished by im-  
7 prisonment in the state prison for life, or any term of years.

R. S., c. 167, § 12.

SECT. 5. In addition to the punishment prescribed by law,  
2 the court may require any person convicted of an offense not  
3 punishable by death or imprisonment in the state prison, to  
4 recognize to the state, with sufficient sureties, in a reasonable  
5 sum, to keep the peace and be of good behaviour for a term not  
6 exceeding two years, and stand committed till he so recognizes.

R. S., c. 168, § 5.

### *Execution of Sentences.*

SECT. 6. When a convict is sentenced to pay a fine or costs,  
2 or be imprisoned in the county jail or house of correction, the  
3 clerk of the courts as soon as may be, shall make out and deliver  
4 to the sheriff or some officer in court, a transcript of the minutes  
5 of the conviction and sentence, duly certified by him; and this  
6 shall be a sufficient authority for the officer to execute such sen-  
7 tence.

R. S., c. 168, § 6.

SECT. 7. When any convict is sentenced to confinement in  
2 the state prison, such clerk shall make out a warrant under seal  
3 of the court, directed to the warden of the prison, requiring him  
4 to cause such convict, without needless delay, to be removed  
5 from the county jail to the state prison; and the warden and all  
6 sheriffs and jail keepers are required strictly to obey its direc-  
7 tions; and the clerk as soon as may be, shall deliver such  
8 warrant to the sheriff of the county, and he shall forthwith  
9 deliver it to said warden.

R. S., c. 168, § 7.

### *In Capital Cases.*

SECT. 8. When any person is convicted of a crime punishable  
2 with death, and sentenced therefor, he shall, at the same time,  
3 be sentenced to solitary confinement and hard labor in the state  
4 prison, till such punishment is inflicted; but he shall not be  
5 executed within one year from the day the sentence of death  
6 was passed, nor until the whole record of such proceedings or  
7 case is certified by the clerk of said court, under the seal thereof,  
8 to the supreme executive authority of the state, and a warrant  
9 is issued by said executive authority, under the great seal of this

10 state, directed to the sheriff of the county wherein the state  
 11 prison is situated, commanding him to carry said sentence of  
 12 death into execution. R. S., c. 168, § 8, 9. 1844, c. 101.

SECT. 9. The sentence of death shall, in all cases, be inflicted  
 2 by hanging the convict by the neck till he is dead, and be exe-  
 3 cuted, at the time directed in the warrant, within the walls, or  
 4 inclosed yard of the state prison; and the sheriff of the county,  
 5 unless prevented by sickness or other casualty, and two deputies,  
 6 designated by him, shall be present at the place of execution;  
 7 he shall request the county attorney, and twelve citizens includ-  
 8 ing a surgeon or physician, and permit the convict's counsel,  
 9 relatives and such minister of the gospel, such officers of the  
 10 prison, deputies, constables and military guard as the sheriff  
 11 sees fit, but no others, to be present.

R. S., c. 168, § 10, 11.

SECT. 10. When a sheriff inflicts the sentence of death, as  
 2 aforesaid, he shall immediately make return of the warrant  
 3 therefor, under his hand, with his doings thereon, to the office of  
 4 the secretary of state; and file an attested copy of the warrant  
 5 and return in the office of the clerk of the court, where the  
 6 conviction was had; and the clerk shall file the same with the  
 7 indictment, and subjoin to the record a brief abstract of such  
 8 return.

R. S., c. 168, § 12.

### *Liberation of Poor Convicts.*

SECT. 11. Any convict, sentenced to pay a fine or costs, and  
 2 committed for default thereof and for no other cause, who is  
 3 unable to pay the same, may be liberated by the sheriff, after  
 4 thirty days from his commitment, by giving his promissory for  
 5 the amount due, to the treasurer of the same county, accom-  
 6 panied by a written schedule of all his property of every kind,  
 7 signed and sworn to, and the sheriff shall deliver the same to  
 8 said treasurer for the use of the county, within thirty days.

R. S., c. 175, § 1.

SECT. 12. Such note shall be and continue, a lien on all the  
 2 maker's real estate till the same is fully paid; and if judgment

3 is rendered on it in favor of the treasurer, the same proceedings  
4 may be had on the execution as in other cases of contract.

R. S., c. 175, §2, 3.

SECT. 13. If such convict is convicted of knowingly and wil-  
2 fully making a false schedule, on oath, as to the nature or  
3 amount of his property, he shall receive no benefit from his lib-  
4 eration, but may be imprisoned again till the performance of the  
5 original sentence.

R. S., c. 175, § 4.

## Chapter 136.

### COLLECTION AND DISPOSAL OF FINES AND COSTS IN CRIMINAL CASES.

#### DUTY OF THE CLERK IN RELATION THERETO.

Sect. 1. Certificates of fines and costs, required from the clerk of the judicial courts.

2. Duty of clerks to collect fines and costs, or issue process.

#### DUTY OF SHERIFFS AND OTHER OFFICERS.

3. Officers to pay over to county treasurer fines and costs collected.

4. Penalty for their neglect. Treasurer's duty.

5. Officers receiving warrants, &c., for collection, to produce receipts to the court,  
or give a good excuse.

6. Sheriff to deliver over certain securities to the county treasurer.

#### DUTY OF JUSTICES OF THE PEACE.

7. Justices of the peace to account for, and pay over fines to treasurer of county  
or town, and penalty for neglect.

#### DUTY OF COUNTY TREASURER.

8. County treasurers to account with state treasurer.

9. Fees allowed to individuals must be claimed within three years.

10. County treasurer to account to the state for unclaimed moneys, and for fees  
allowed the attorneys for the state.

11. County treasurer to account to the county for jury fees, and for jailer's charges.

12. Fines and costs in justices' prosecutions, how appropriated.

13. Treasurer to exhibit a schedule of the same to the commissioners.

#### DUTY OF COUNTY COMMISSIONERS.

14. Proceedings of commissioners thereon.

#### DUTY OF THE SECRETARY OF STATE.

15. Secretary of state to compare the treasurer's books with returns of the clerks.  
&c.

16. Secretary's duty, as to unpaid fines.

## DUTY OF COUNTY ATTORNEYS.

Sect. 17. The county attorneys shall examine the records of courts, and accounts of treasurers, and move for process to enforce collection.

18. He shall summon any delinquent officer before the court to show cause why fines are not collected, and use all other means to enforce collections.

19. When required by the executive, shall report result of his examinations.

*Duty of the Clerk in relation thereto.*

SECT. 1. The clerk of the courts shall attest and deliver to the  
2 county treasurers, duplicate copies of all bills of costs allowed  
3 by said courts, and certificates of all fines and forfeitures,  
4 imposed and accruing to the state or to the county, before the  
5 rising thereof, or as soon after as may be, and return to the  
6 treasurer of state, a certificate of all fines and forfeitures  
7 imposed to the use of the state, in said courts.

R. S., c. 152, § 17. 1843, c. 29.

SECT. 2. He shall receive all fines, forfeitures or bills of costs  
2 paid or tendered to him before the issuing of any process for the  
3 collection thereof, and pay over the same to the treasurer of the  
4 county; and in default of such payment made to him, issue  
5 warrants of distress or such other process therefor, as the court  
6 finds necessary to enforce the execution of any order, sentence  
7 or judgment in behalf of the state, and deliver the same to the  
8 sheriff, or to such coroner or constable as the attorney general  
9 or county attorney directs, and shall enter of record, the name  
10 of the officer, and the time when the same is delivered to him.

R. S., c. 152, § 18.

*Duty of Sheriffs and other officers.*

SECT. 3. All sheriffs, jailers, constables, and coroners, who  
2 may by virtue of their office, receive any fines, forfeitures or bills  
3 of costs, whether they accrue to the state or to the county,  
4 except debts and costs received upon executions in favor of  
5 the state, shall forthwith pay the same to the treasurer of the  
6 county in which the same accrued.

R. S., c. 152, § 19.

SECT. 4. If any such officer, receiving such fine, forfeiture or  
2 costs, neglects to pay over the same, for the space of thirty days  
3 after the receipt thereof; or if he permits any person sentenced  
4 to pay such fine, forfeiture or bill of costs, and committed to his

5 custody, to go at large without payment, unless by order of law,  
6 and does not within thirty days after such escape pay the  
7 amount thereof to the county treasurer, he shall forfeit and pay  
8 double the amount; and the county treasurer shall give notice  
9 of such delinquency to the county attorney who shall sue for the  
10 same in an action of debt, in the name of such treasurer, to the  
11 use of the state or county. R. S., c. 152, § 20.

SECT. 5. Every sheriff or other officer to whom any process  
2 is committed for the recovery of any such fine, forfeiture or  
3 costs, by the clerk of the courts, shall, at the next session  
4 of the court in the same county, produce thereto a receipt in  
5 full for the same, or assign a satisfactory excuse for not doing  
6 so; and, in case of delinquency, the court shall order a prose-  
7 cution to be commenced for the same by the county attorney.

R. S., c. 152, § 21.

SECT. 6. The sheriff in each county, as often, at least, as  
2 every three months, shall deliver over to the treasurer of his  
3 county all notes or other securities by him taken for fines and  
4 costs, on the liberation of poor convicts from prison, pursuant to  
5 law.

R. S., c. 152, § 28.

### *Duty of Justices of the Peace.*

SECT. 7. Every justice of the peace, or judge of a municipal  
2 or police court, shall render an account of, and pay over all  
3 fines and forfeitures, by him received upon convictions and  
4 sentences before him, accruing to the state or the county, to the  
5 treasurer of the county, and when they accrue to the town, to  
6 the treasurer of the town, within six months after he receives  
7 the same; and for any neglect, he shall forfeit and pay, in each  
8 instance, double the amount, to be recovered in an action of  
9 debt, in the name of the county treasurer, when they accrue to  
10 the state or county, and in the name of the town treasurer,  
11 when they accrue to the town. R. S., c. 152, § 22, 37.

### *Duty of County Treasurers.*

SECT. 8. The county treasurer shall make out his account of  
2 all bills of costs, allowed and taxed against the state by the

3 judicial courts in his county, and give credit for all fines, for-  
4 feitures and costs accruing to the state by him received, and  
5 pay over the net balance thereof to the state treasurer, if any  
6 is due to the state; or, if otherwise, receive such balance from  
7 the state treasurer in the manner, and under the penalties,  
8 provided by law. R. S., c. 152, § 23.

SECT. 9. All sums, allowed to any person as fees, or for  
2 expenses in any criminal prosecution, which are chargeable to  
3 the state, and payable from the county treasury, may be claimed  
4 by such person of the county treasurer, at any time within  
5 three years after the allowance, and not afterwards.

R. S., c. 152, § 24.

SECT. 10. Every county treasurer, in his general account,  
2 shall credit the state with all sums of money remaining  
3 unclaimed, as mentioned in the preceding section; and with all  
4 sums taxed in any bill of costs, in a criminal prosecution, for  
5 the fees of the attorney general or county attorney, when no  
6 other person is entitled thereto; and the amount shall be de-  
7 ducted from the county treasurer's account against the state.

R. S., c. 152, § 25.

SECT. 11. Every county treasurer shall account with the  
2 county for all sums allowed to, or received by him out of the  
3 treasury of the state for jury fees, and for jailer's charges for  
4 the support of prisoners.

R. S., c. 152, § 26.

SECT. 12. All fines, imposed by justices of the peace to the  
2 use of the state, and all costs, accruing to the state in such  
3 prosecutions, shall be paid into the county treasury, to be  
4 appropriated to the payment of criminal costs, allowed by the  
5 supreme judicial court; and the county treasurer shall credit  
6 his county with the same, instead of the state.

R. S., c. 152, § 27.

SECT. 13. A schedule of all notes and securities, with the  
2 amount due on each, received by the county treasurer from the  
3 sheriff, pursuant to section six, shall be by him laid before  
4 the county commissioners, at their next session, to be filed with  
5 the clerk.

R. S., c. 152, § 29.

*Duty of County Commissioners.*

SECT. 14. The county commissioners, from time to time, shall  
2 examine such notes and securities; order the county attorney to  
3 take such measures for their collection as they judge expedient,  
4 or authorize the treasurer to compound and cancel the same on  
5 such terms as they direct. R. S., c. 152, § 30.

*Duty of the Secretary of State.*

SECT. 15. The secretary of state, from time to time, as the  
2 governor and council directs, shall cause the books of the  
3 treasurer of state, and the accounts of the several county treas-  
4 urers, deposited in the office of the treasurer of state, to be  
5 compared with the returns made to him from the clerks of the  
6 judicial courts, and shall ascertain what fines, forfeitures and  
7 bills of costs have not been paid over to the use of the state.

R. S., c. 152, § 31.

SECT. 16. He shall make out separate schedules for each  
2 county, of unpaid fines, forfeitures and bills of costs, and make  
3 appropriate entries and records thereof, to be kept in his office;  
4 and transmit such schedules to the attorneys of the respective  
5 counties, certifying thereon that the same appear to be due and  
6 unpaid.

R. S., c. 152, § 32.

*Duty of County Attorneys.*

SECT. 17. The county attorneys shall examine the records  
2 and files in the offices of clerks in their counties, and the cer-  
3 tificates and accounts in the offices of the county treasurers,  
4 relating to fines, forfeitures and bills of costs, accruing to the  
5 use of the state, and ascertain, as far as practicable, the causes  
6 of any delinquencies in paying over the same; and move the  
7 court for all necessary orders and processes to enforce the  
8 collection thereof.

R. S., c. 152, § 33.

SECT. 18. When it appears that any sheriff or other officer is  
2 not discharged of any fine, forfeiture, or bill of costs committed  
3 to him to collect, the county attorney shall cause him to be  
4 summoned and brought before the court that imposed the same,  
5 to show a proper discharge, or the cause for not collecting and

6 paying over the same; and he shall carry into execution all  
 7 lawful orders of the court relating to the collection and payment  
 8 thereof, and, by all other means pertaining to his office, promote  
 9 and enforce the same. R. S., c. 152, § 34, 35.

SECT. 19. The county attorneys, when required by the  
 2 governor and council, shall make out and transmit to the secre-  
 3 tary of state, a report of the result of the investigation made by  
 4 them under section seventeen of this chapter.

R. S., c. 152, § 36.

## Chapter 137.

### DISPOSAL OF INSANE CRIMINALS.

- Sect. 1. When a person is committed to jail by a magistrate on a criminal charge, any justice of the court may order him to the insane hospital to be observed.
2. When a grand or trial jury omits to find against any accused by reason of insanity, court shall commit him to the hospital,
  3. How he shall be supported at the hospital.
  4. How and by whom he may be discharged therefrom.
  5. When an inmate of the state prison becomes insane, how and by whom he may be sent to the hospital.

SECT. 1. When any person is indicted for a criminal offense,  
 2 or is committed to jail on a charge thereof, by a justice of the  
 3 peace or judge of a police or municipal court, any judge of the  
 4 court before which he is to be tried, when a plea of insanity is  
 5 made in court, or he is notified that it will be made, may, in  
 6 vacation or term time, order such person into the care of the  
 7 superintendent of the insane hospital, to be detained and  
 8 observed by him till the further order of the court, that the  
 9 truth or falsity of the plea may be ascertained

1847, c. 33, § 15. 1848, c. 79, § 3.

SECT. 2. When the grand jury omits to find an indictment  
 2 against any person arrested by legal process to answer for any  
 3 offense, by reason of his insanity, they shall certify that fact to  
 4 the court; and when a traverse jury, for the same reason,  
 5 acquits any person indicted, they shall state that fact to the  
 6 court when they return their verdict; and the court by a cer-  
 7 tificate stating the fact of insanity, may commit him to prison



8 or to the insane hospital till restored to his right mind, or de-  
9 livered according to law; but he shall only remain in prison till  
10 provision can be made for him at the hospital, and then removed  
11 thereto.

R. S., c. 173, § 1. 1844, c. 103. 1847, c. 33, § 14.

SECT. 3. The person so committed shall be there supported  
2 at his own expense, if he has sufficient means; otherwise at the  
3 expense of the person or town that would be chargeable for his  
4 maintenance if he had not been committed; but if he has no  
5 settlement in any town in the state, at the expense of the state;  
6 but if the insane had committed homicide and was then sent to  
7 the hospital as aforesaid, he shall be supported there at his own  
8 expense or that of the state.

R. S., c. 173, § 2. 1844, c. 108.

SECT. 4. Any person committed under section two, may be  
2 discharged by any judge of the supreme judicial court, or by  
3 two justices of the peace and quorum of the county where he is  
4 placed, one chosen by his friends and the other by the trustees  
5 of the hospital, on satisfactory proof that if enlarged, he would  
6 not be dangerous to the peace and safety of the community; or  
7 on application of any friend of the insane, he may be committed  
8 to the custody of such friend, by his giving bond to the judge of  
9 probate for the same county, with sufficient sureties, approved  
10 by said magistrates, conditioned for his safe keeping, and the  
11 payment of all damages which any person sustains by the acts  
12 of the insane. 1855, c. 124, § 1, 2, 3.

SECT. 5. When an inmate of the state prison becomes insane,  
2 the warden shall notify the governor of the fact, and he, with  
3 advice of council, shall appoint a commission of two or more  
4 skilful physicians to investigate the case, and if such inmate is  
5 found insane by their examination, he shall be sent to the insane  
6 hospital until he becomes of sound mind; and if this takes  
7 place before the expiration of his sentence, he shall be returned  
8 to prison; but if after, he shall be discharged free. The expen-  
9 ses of the commission, removal and support, shall be paid by  
10 the state. 1847, c. 33, § 16.

**Chapter 138.****PARDONS AND FUGITIVES FROM JUSTICE.****PARDONS.**

*Sect. 1.* Conditional pardons may be granted to persons under sentence of death.

2. Written notice shall be given to county attorney on all petitions for pardon, and any other notice ordered by executive, and they may require the minutes of the trial.

**FUGITIVES FROM JUSTICE IN THIS STATE.**

3. Governor to appoint an agent to demand and receive fugitives in other states.

4. May offer rewards for apprehending persons convicted, or charged with crimes.

**FUGITIVES FROM JUSTICE IN OTHER STATES.**

5. May issue his warrant to surrender fugitives found in this state.

6. When the court or magistrates may issue warrants for the arrest of fugitives from justice found in this state.

7. The case to be examined, and if made out, may be continued to obtain executive warrant, and accused bailed or committed. Results of forfeiture of such bail.

8. He shall be discharged at the adjourned day unless executive warrant is obtained, or for cause case further continued, but these proceedings not to prevent arrests in the ordinary mode.

9. The complainant shall be answerable for costs of such proceedings.

*Pardons.*

*SECT. 1.* When any person, sentenced to suffer the punishment of death, applies to the governor for a pardon, he may, by the advice and consent of the council, grant a pardon on condition, that the convict shall be imprisoned, or confined to hard labor for life, or any term of years expressed in the pardon; and to carry the same into effect, may issue his warrant, directed to all proper officers, who shall serve and obey it, the same as if such had been the original sentence. R. S., c. 174, § 4.

*SECT. 2.* On all petitions to the governor for pardons, or commutation of sentence, written notice thereof shall be given to the county attorney for the county where the case was tried, and such other notice in any newspapers as the governor orders; and the governor and council may require the judge and prosecuting officer who tried the case, to furnish them a concise statement of it, as proved at the trial, and any other facts bearing on the propriety of granting the pardon.

1849, c. 99, § 1, 2, 3.

*Fugitives from Justice in this State.*

SECT. 3. In any case, authorized by the constitution and laws of the United States, the governor may appoint an agent to demand and receive of the executive authority of any other state, any fugitive from justice, charged with treason, felony, or any other crime in this state; and the accounts of such agent shall be audited and paid, by order of the governor and council, from the treasury.

R. S., c. 174, § 1.

SECT. 4. He may offer and pay a suitable reward, not exceeding one thousand dollars, in any case, to any person, who by reason of such offer, arrests, brings back and secures any prisoner escaping from prison in this state, convicted or charged with any capital crime or other high offense; or any person who has committed such offense, and is not arrested therefor, when he cannot be arrested and secured in the ordinary course of proceedings, and, with the advice of council, may draw his warrant on the treasurer for the payment thereof.

R. S., c. 174, § 3.

*Fugitives from Justice in other States.*

SECT. 5. When such demand, as is mentioned in section three is made on the governor of this state, and he is satisfied on examination of the grounds thereof, that it is according to law, and ought to be granted, he shall issue his warrant under the seal of the state, authorizing the agent making the demand, at his own expense, to take and transport such fugitive to the line of the state, at the time designated in the warrant, and shall therein require the civil officers of the state to afford all needful aid in its execution.

R. S., c. 174, § 2.

SECT. 6. When any such fugitive from justice, in another state, is found in this state, any court or magistrate, authorized to issue warrants in criminal cases, on complaint, under oath, setting forth the offense and other facts necessary to bring the case within the provisions of law, may grant a warrant and have the accused arrested for examination, as in other cases.

1846, c. 193, § 1.

SECT. 7. On such examination, if the court or magistrate believes that the complaint is true, and that the accused can

3 lawfully be demanded of the governor, the case shall be ad-  
 4 journed long enough to obtain an executive warrant, and if the  
 5 offense is bailable, the accused may recognize, with sufficient  
 6 sureties, to appear at the adjournment; and if he does not so  
 7 recognize, or the offense is not bailable, he shall be committed;  
 8 and if any such recognizance is forfeited, the same proceedings  
 9 shall be had as in case of other recognizances.

1846, c. 193, § 2.

SECT. 8. If the accused appears at the adjournment, he shall  
 2 be discharged, unless some person is authorized to receive him  
 3 by an executive warrant, or another adjournment is ordered for  
 4 sufficient cause, and, in that case, the same proceedings shall be  
 5 had as at the first adjournment; but nothing in this and the  
 6 two preceding sections shall prevent the arrest of any accused  
 7 by an executive warrant, and such arrest shall discharge any  
 8 such existing recognizance.

1846, c. 193, § 3.

SECT. 9. The complainant shall be answerable in all such  
 2 cases for the actual costs and charges, and the support in prison  
 3 of the accused, when committed, to be paid the same as a cred-  
 4 itor pays for his debtor committed on execution; and if his  
 5 support in prison is not so paid, the jailor may discharge the  
 6 accused, the same as if he were committed on execution for debt.

1846, c. 193, § 4.

## Chapter 139.

### CORONERS' INQUESTS.

- Sec.* 1. When inquests shall be taken, and coroner's warrant to the constable to sum-  
 mon a jury.
2. Duties of constable and jurors, and penalties for neglect.
  3. Juror's oath.
  4. Talesmen.
  5. Subpenas for witnesses, and their oath.
  6. Testimony to be in writing and signed. Power of coroner to recognize the witnesses.
  7. Coroner's charge to the jury, and proclamation for persons to give evidence.
  8. Form of verdict.
  9. Coroner may issue a warrant for the arrest of the person charged by the inquest.
  10. Coroner to bury the body. Expenses of inquest and burial how paid.
  11. Reasonable compensation to coroner and all others concerned for their services and expenses, and person may be employed to watch the dead body.

SECT. 1. Any coroner shall hold inquests on dead bodies of  
 2 such persons only as appear or are supposed to come to their  
 3 death by violence, and not when it is believed their death was  
 4 caused by casualty; and as soon as he is notified of any such  
 5 dead body in his county, he shall make out his warrant in the  
 6 following form, directed to any of the constables of the same  
 7 town, or an adjoining town in his county, requiring him forth-  
 8 with to summon a jury of six good and lawful men of their  
 9 towns to appear before him at the time and place fixed in the  
 10 warrant:

11 [L. S.] To either of the constables in the town of ———, in  
 12 the county of ———; Greeting.

13 In the name of the State of Maine, you are hereby required;  
 14 immediately to summon six good and lawful men of said town of  
 15 ———, to appear before me, one of the coroners of the county of  
 16 ———, at the dwelling house of ——— ———, (or at the place called  
 17 ———,) within said town of ———, at the hour of ———, then  
 18 and there to inquire upon and view the body of ——— ———,  
 19 there lying dead, how and in what manner he came to his death.  
 20 Fail not herein at your peril.

21 Given under my hand and seal, at ———, the ——— day  
 22 of ——— in the year eighteen hundred and ———. S. F.

R. S., c. 176, § 1, 2.

SECT. 2. The constable to whom such warrant is directed and  
 2 delivered, shall forthwith execute it, and repair to the place  
 3 where the dead body is, at the time appointed, and make return  
 4 of the warrant with his doings to said coroner, or he shall for-  
 5 feit the sum of ten dollars; and every person summoned as a  
 6 juror, neglecting to attend at the time and place appointed,  
 7 without reasonable excuse, shall forfeit and pay the sum of seven  
 8 dollars; to be recovered in an action of debt, in the name of the  
 9 coroner or the county and for the use of the county.

R. S., c. 176, § 3.

SECT. 3. The coroner shall administer to the jurors who  
 2 appear in view of the body, the following oath: You solemnly  
 3 swear that you will diligently inquire and true presentment  
 4 make, on behalf of this state, how, when and in what manner,  
 5 the person whose body here lies dead, came to his death, and

6 you shall return to me a true inquest thereof, according to your  
 7 knowledge, and such evidence as shall be laid before you. So  
 8 help you God." R. S., c. 176, § 4.  
 10 SECT. 4. If the six jurors summoned do not appear as com-  
 2 manded, the coroner may require the constable, or any other  
 3 person he may appoint, to return jurors from the bystanders to  
 4 complete the number. R. S., c. 176, § 5.

SECT. 5. The coroners may issue subpoenas for witnesses, to  
 2 be served as in other cases, and shall administer to them an oath  
 3 as follows :  
 4 You solemnly swear, that the evidence which you shall give  
 5 to this inquest, concerning the death of the person here lying  
 6 dead, shall be the truth, the whole truth, and nothing but the  
 7 truth. So help you God. R. S., c. 176, § 6, 7.

SECT. 6. The evidence of all the witnesses shall be in writing  
 2 and signed by them; and if it relates to the trial of any person  
 3 concerned in the death, the coroner shall bind such witnesses by  
 4 recognizance in a reasonable sum, for their personal appearance,  
 5 at the next supreme judicial court, to be held in the same county,  
 6 to give their testimony accordingly; and if they do not so recog-  
 7 nize, he shall commit them to prison, and return to the same  
 8 court the inquisition, written evidence, and recognizance by him  
 9 taken. R. S., c. 176, § 8.

SECT. 7. After the coroner has sworn the jurors, he shall  
 2 charge them to declare whether the person died by felony, mis-  
 3 chance or accident; if by felony, who were principals and  
 4 accessories; the instrument employed, and all important circum-  
 5 stances; if by mischance or by his own hand, in what manner,  
 6 and all attending circumstances, and make proclamation for all  
 7 persons who can give any evidence, to draw near and be sworn.  
 8 R. S., c. 176, § 9.

SECT. 8. The jury, after examining the body, hearing the  
 2 evidence, and making all useful inquiries, shall draw up and  
 3 deliver to the coroner, their verdict in writing, under their hand  
 4 and seals, in substance as follows :

5 An inquisition held at ———, within the county of ———,  
 6 the ——— day of ———, in the year ———, before S. F.,  
 7 one of the coroners of said county, upon view of the body of

8 ———, there lying dead, by the oaths of ———  
9 ———, good and lawful men, who being  
10 charged and sworn to inquire for the state, when, how, and by  
11 what means, the said ——— came to his death, upon  
12 their oaths say: (then insert, how, when and by what means,  
13 and with what instrument he was killed.) In testimony whereof  
14 the said coroner, and the jurors of this inquest, have hereunto  
15 set their hands and seals, the day and year above said.

R. S., c. 176, § 10.

SECT. 9. If any person, charged by the inquest with causing  
2 the death of such person, is not then in custody, the coroner  
3 shall have the same power as a justice of the peace to issue a  
4 warrant for the apprehension of such accused, to be returned  
5 before any judge or justice of the peace, who shall proceed  
6 therein according to law.

R. S., c. 176, § 11.

SECT. 10. Every coroner within his county, after the return  
2 of an inquisition of the jury, upon view of the dead body of a  
3 stranger, shall bury the body in a decent manner, and all the  
4 expenses attending the burial, and the expenses of the inqui-  
5 sition, shall be paid to the coroner out of the state treasury; if  
6 the coroner certifies, under oath, that the deceased was a  
7 stranger, not belonging to the state, according to his best  
8 knowledge and belief; otherwise, the expenses of burial shall  
9 be paid to the coroner by the town where the body was found,  
10 and repaid to such town by the town to which he belonged in  
11 the state; and the expense of the inquisition, by the county.

R. S., c. 176, § 12.

SECT. 11. The coroner, jurors, witnesses and any other  
2 person required to summon jurors or witnesses, shall be allowed  
3 in addition to the regular fees, a sum sufficient to make a rea-  
4 sonable compensation for all their services and expenses; and  
5 any coroner, if necessary, may employ some person to watch  
6 the dead body till an inquest is held, for which a suitable  
7 compensation shall be allowed.

R. S., c. 176, § 7. 1846, c. 187. 1855, c. 179.