

MAINE STATE LEGISLATURE

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OF THE
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of habeas corpus and cause such person to be brought before him for this purpose, and may take such recognizance; provided, however, that during a term of the superior court, a bail commissioner is not authorized to admit to bail any person confined in jail or held under arrest by virtue of a precept returnable to said term; and when a person is confined in jail for a bailable offense or for not finding sureties on a recognizance and the amount of his bail has been fixed by a justice of the supreme judicial court or of the superior court or by a judge or recorder of a municipal court, a bail commissioner is not authorized to change the amount of such bail. Such bail commissioner shall receive not exceeding the sum of \$5 in each case in which bail is so taken, the same to be paid by the person so admitted to bail; but the person admitted to bail shall not be required to pay any other fees or charges to any officer for services connected with the giving of such bail; provided, however, that if a bail commissioner takes bail after 8:00 P. M. and prior to 8:00 A. M. of the following day he shall be permitted to receive a charge of up to \$10 for the occasion of taking such bail, but said charge shall not be in addition to the charge in each case otherwise authorized in this section but shall be inclusive of such charge or charges.

(1955, c. 356.)

Effect of amendment.—The 1955 amendment added the proviso at the end of the first paragraph. As the second paragraph was not changed, it is not set out.

Chapter 127.

Writ of Audita Querela.

Sec. 1. Form.

Definition of writ of audita querela and when allowed.—See *Wintle v. Wright*, 151 Me. 212, 117 A. (2d) 68.

Chapter 129.

Writs of Error, Certiorari, Mandamus and Quo Warranto.

Writs of Error.

Sec. 9. Proceedings.

Section applicable to civil and criminal cases.—The fact that this section has been placed, by the revisors of the statutes, with certain other sections relating to civil cases renders it no less effective in criminal cases. It is not restricted by its terms, and is applicable to cases civil or criminal. *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

A writ of error coram nobis may be petitioned for in the superior court in the

county where conviction was had, or judgment rendered, in the case, and where the record is. If the petition is in proper form and the petition shows on its face a valid cause (when or if proved by the petitioner at a hearing on the writ), the court should order the writ of error coram nobis to issue and hearing should be had thereon. *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

Writs of Error in Criminal Cases.

Sec. 11. Writ of error in criminal cases.

Quoted in *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

Sec. 12. Effect; custody of plaintiff; release on bail; copies of judgment.

Errors that appear upon face of record.—This section and section 11 of this chapter, when this statute has been invoked, have been construed to apply to

those errors that appear upon the face of the record. *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

A writ of error coram nobis may be petitioned for in the superior court in the county where conviction was had, or judgment rendered, in the case, and where the record is. If the petition is in proper

form and the petition shows on its face a valid cause (when or if proved by the petitioner at a hearing on the writ), the court should order the writ of error coram nobis to issue and hearing should be had thereon. *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

Chapter 130.

Crimes against the Person.

Murder, Assault with Intent and Attempt to Murder.

Sec. 1. Murder, definition.

History of section.—See *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

In this state degrees of murder, etc.

In accord with 1st paragraph in original. See *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Nor is it limited to hatred, etc.

“Malice,” as used in the definition of murder, does not necessarily imply ill will or hatred. It is a wrongful act, known to be such, and intentionally done without just and lawful cause or excuse. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

And all homicide is, etc.

When the fact of killing is proved and nothing further is shown, the presumption of law is that it is malicious and an act of murder. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Voluntary intoxication. — Intoxication

will not reduce to manslaughter where there is malice aforethought, and where there is no provocation or sudden passion. Voluntary intoxication is no excuse for murder. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

The rule regarding the defense of insanity should never be extended to apply to voluntary intoxication in a murder case. It would not only open wide the door to defenses built on frauds and perjuries, but would build a broad, easy turnpike for escape. All that the crafty criminal would require for a well-planned murder, in Maine, would be a revolver in one hand to commit the deed, and a quart of intoxicating liquor in the other with which to build his excusable defense. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Sec. 6. Assault with intent to murder or kill.

A reckless and wanton disregard of rights of others may, under some circumstances be an assault even where no particular person was singled out or aimed at. *State v. Barnett*, 150 Me. 473, 114 A. (2d) 245.

Intent to kill or do bodily harm may be inferred from circumstances where one acts in a reckless or wanton disregard of the safety of others. *State v. Barnett*, 150 Me. 473, 114 A. (2d) 245.

Manslaughter.

Sec. 8. Manslaughter, definition.

It may result from accident.

In accord with original. See *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Rape, Assault with Intent.

Sec. 10. Rape, definition.

The essential elements of rape, etc.

In accord with original. See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Resistance is not necessarily an element.

It depends on circumstances. The Maine statute does not say that it is an element. Resistance, if any, and the amount and kind of resistance, is evidence to show consent or lack of consent, and like all