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Chapter 130.

Crimes against the Person.

Murder, Assault with Intent and Attempt to Murder.

Sec. 1. Murder, definition.—Whoever unlawfully kills a human being with malice aforethought, either express or implied, is guilty of murder and shall be punished by imprisonment for life. (R. S. c. 117, § 1.)

Cross reference.—See c. 131, § 1, re burning of building may constitute murder.

In this state degrees of murder have been abolished. State v. Albanes, 109 Me. 199, 83 A. 548; State v. Merry, 136 Me. 243, 8 A. (2d) 143.

For consideration of former provisions as to different degrees of murder, see State v. Conley, 39 Me. 78; State v. Cleveland, 58 Me. 564; State v. Oakes, 95 Me. 369, 50 A. 28.

And the crime is now defined as the unlawful killing of a human being with malice aforethought, either express or implied. State v. Conley, 39 Me. 78; State v. Verrill, 54 Me. 408; State v. Albanes, 109 Me. 199, 83 A. 548; State v. Sprague, 135 Me. 470, 199 A. 705; State v. Merry, 136 Me. 243, 8 A. (2d) 143; State v. Turmel, 148 Me. 1, 88 A. (2d) 367; State v. Chase, 149 Me. 80, 99 A. (2d) 71.

The common-law definition of express malice is when one, with a sedate and liberal mind and formed design, does kill another, which formed design is evidenced by external circumstances, discovering the inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. State v. Neal, 37 Me. 468; State v. Merry, 136 Me. 243, 8 A. (2d) 143.

In support of the charge of murder it is incumbent upon the state to prove malice. It is an essential element. State v. Sprague, 135 Me. 470, 199 A. 705.

Beyond a reasonable doubt.—In murder, malice aforethought must exist, and, as any other elemental fact, be established, not beyond all possible doubt, but beyond a reasonable doubt. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

And malice aforethought implies premeditation. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

Thus, under the statute, there must be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time. But the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for choice to kill or not to kill, and for the formation of a definite purpose to kill. And when the time is sufficient for this, it matters not how brief it is. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

However, malice aforethought does not necessarily mean that there must be specific intent to kill. State v. Turmel, 148 Me. 1, 88 A. (2d) 367.

Nor is it limited to hatred, ill will or malevolence toward the individual slain. It includes that general malignancy and disregard of human life which proceed from a heart void of social duty, and fatally bent on mischief. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

Malice may be presumed from act done.—Malice is implied by law from any deliberate, cruel act, committed by one person against another, suddenly, without

any, or without a considerable provocation. State v. Neal, 37 Me. 468.

He who wilfully and deliberately does any act, which apparently endangers another's life and thereby occasions his death, shall, unless he clearly prove the contrary, be adjudged to kill him of malice prepense. State v. Turmel, 148 Me. 1, 88 A. (2d) 367.

A wrongful act, known to be such, and intentionally done, without just cause or excuse, constitutes malice in law. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

Malice aforethought is implied when there is no showing of actual intent to kill, but death is caused by acts which the law regards as manifesting such an abandoned state of mind as to be equivalent to a purpose to murder. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

And all homicide is, as a general rule, presumed to be malicious, until the contrary appears from circumstances of alleviation, to be made out by the prisoner, unless they arise out of the evidence produced against him. State v. Neal, 37 Me. 468.

In all cases where the unlawful killing is proved, and there is nothing in the circumstances of the case as proved, to explain, qualify or palliate the act, the law presumes it to have been done maliciously; and if the accused would reduce the crime below the degree of murder, the burden is upon him to rebut the inference of malice, which the law raises from the act of killing, by evidence in defence. State v. Turmel, 148 Me. 1, 88 A. (2d) 367.

Motive not essential element of murder.—On a prosecution for murder, motive—that is, the cause or reason that induced commission of the crime—is not an essential element. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

And conviction may be had without reference thereto.—Intent, and not motive, governs. Therefore, a conviction for murder may be had, where, without reference to the motive which prompted it, there was an intention to do the criminal act. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

But evidence of motive is admissible for the purpose of furnishing evidence tending to prove guilt, which, in connection with the whole evidence, the jury must consider. State v. Merry, 136 Me. 243, 8 A. (2d) 143.

As are declarations of defendant.—Declarations made by defendant after the fatal affray showing his hostility to deceased, are admissible in evidence on the issue of malice. State v. Sprague, 135 Me. 470, 199 A. 705.

Necessity of describing wound in indictment.—When death is occasioned by a wound, it should be stated to have been mortal. It must appear from the indictment, that the wound given was sufficient to cause the death, and, for this reason, unless it otherwise appears, the length and depth must be shown. But it is not necessary to state the length, depth or breadth of the wound, if it appears that it contributed to the party's death. State v. Conley, 39 Me. 78.

Indictment sufficient to allege unlawful killing.—An allegation in an indictment that the accused killed and murdered the deceased "against the peace of said State, and contrary to the form of the statute in such case made and provided" is equivalent to an allegation that the killing was unlawfully done. State v. Chase, 149 Me. 80, 99 A. (2d) 71.

Defendant may be convicted of manslaughter on indictment for murder.—See note to § 8.

Applied in State v. Gilman, 51 Me. 206; State v. Lawrence, 57 Me. 574; State v. Smith, 67 Me. 328; State v. Guptill, 126 Me. 239, 137 A. 400.

Cited in Sullivan v. Prudential Ins. Co., 131 Me. 228, 160 A. 777.

Sec. 2. Unlawful acts to railroad property causing death; endangering life, or injuring property.—Whoever willfully and maliciously displaces a switch or rail, disturbs, injures or destroys any part of an engine, car, signal, track or bridge of any railroad, or places an obstruction thereon with intent that any person or property passing on the same should be thereby injured, and human life is thereby destroyed, is guilty of murder and shall be punished accordingly. If human life is thereby endangered and not destroyed or if property is injured, he shall be punished by imprisonment for not less than 10 years. (R. S. c. 117, § 2.)

Cross reference.—See c. 131, § 1, re murder by burning dwelling house causing death.

Intent must be alleged.—If the indictment upon which a defendant was sentenced, did not contain any allegation of

the intent specified in this section to be a part of the offense therein defined, the sentence imposed was not authorized by law. Galeo v. State, 107 Me. 474, 78 A. 867.

And proved or confessed.—The intent that "any person or property passing on the same should be thereby injured," being specifically made by this section a part of the definition of the offense, must be alleged and proved, or confessed, to warrant a conviction and sentence under the section. It is only when the obstructions are placed on the track with that intent, that the offense defined is committed. Galeo v. State, 107 Me. 474, 78 A. 867.

Sec. 3. Murder by dueling, definition.—Any person residing in the state who, within it engages to fight a duel and fights such duel without the state and thereby inflicts a mortal wound on any person, of which he dies in the state, is guilty of murder and shall be punished accordingly; and he may be indicted and tried in the county where the death happened. (R. S. c. 117, § 3.)

Sec. 4. Murder, by a second to such duel.—A person who, by an engagement made in the state, is second to either party in such duel and is present when a mortal wound is inflicted, of which the person dies within the state, is an accessory before the fact to murder and may be indicted, tried and punished the same as the principal may be. (R. S. c. 117, § 4.)

Sec. 5. Trial in another state, effect.—A person indicted under the provisions of sections 3 or 4 may plead a former conviction or acquittal of the same offense, in another state, which, being admitted or established, entitles him to an acquittal in this state. (R. S. c. 117, § 5.)

Sec. 6. Assault with intent to murder or kill.—Whoever assaults another with intent to murder or kill, if armed with a dangerous weapon, shall be punished by imprisonment for not less than 1 year nor more than 20 years; when not so armed, by a fine of not more than $1,000 or by imprisonment for not more than 10 years. (R. S. c. 117, § 6.)

Cross references.—See c. 131, §§ 4, 10, re assault with intent to commit arson or burglary.

History of section.—See Duplisea v. Welsh, 140 Me. 295, 37 A. (2d) 260.

Section recognizes assault with intent to kill and murder as distinct offenses.—At common law there is no such crime recognized as an assault with intent to commit manslaughter, or simply to kill. Where an assault is made with intent to kill, the intent was supposed to imply malice, and therefore the offense was deemed to be an assault with intent to murder. But in this state, the statute recognizes an assault with intent to kill, and an assault with intent to murder, as distinct offenses, the latter being of a higher grade and including the former. State v. Waters, 39 Me. 54.

Depending on presence or absence of malice.—The intention of the legislature probably was, to draw a distinction between that class of assaults which are the result of design and deliberation, and into which the element of legal malice is presumed to enter, and those assaults which are the result of sudden provocation, and where, in the heat of blood, the act so closely follows the intent, as to preclude the presumption of design, or deliberation, and consequently to exclude the presumption of malice. State v. Waters, 39 Me. 54.

The charge of assault with intent to kill as distinguished from assault with intent to murder, was unknown to the common law, because it was thought intent implied malice that was murder. It is made by our statute, and by the statutes of many other states, a substantive offense. It is an offense that may be committed without malice. State v. Leavitt, 87 Me. 72, 32 A. 787.

An assault with intent to murder is an offense more heinous than an assault with intent to kill, since it discloses greater depravity. State v. Neal, 37 Me. 468.

And to charge assault with intent to murder, an indictment must charge malice. That is a necessary element of the crime, and that which must be proved, must be averred directly and not by way of argument, implication or inference. State v. Leavitt, 87 Me. 72, 32 A. 787. See § 1 and note.

The question being would it have been murder had death ensued.—In a prosecution for assault with intent to murder the question presented is, had death ensued

from the assault of the defendant, would he, from the evidence, have been guilty of murder? State v. Neal, 37 Me. 468.

An assault with intent to kill, is a minor offense, but is included in the offense of assault with intent to murder. The jury is therefore authorized to find the defendant guilty of a portion of the offense charged in the indictment, and not guilty of the residue. State v. Waters, 39 Me. 54.

Attempt as laid in indictment must be proved. — Where an indictment is preferred for an assault with an attempt to commit murder, the attempt as laid must be fully established in order to support the indictment. State v. Neal, 37 Me. 468.

And the intent charged in the indictment must be specifically proved. State v. Neal, 37 Me. 468.

Being armed with dangerous weapon is aggravation.—The statute makes it an aggravation and provides a more severe punishment, if the person making the assault is, "armed with a dangerous weapon." State v. Lynch, 88 Me. 195, 33 A. 978.

Indictment sufficient to charge defendant "armed" with weapon.—If an indictment alleges that an assault is made with a dangerous or deadly weapon, which the person making the assault had and held in his hand, it is equivalent to an allegation that he was armed with such a weapon. "Armed" means furnished or equipped with weapons of offense or defense. A person who has in his hand a dangerous weapon with which he makes an assault, is certainly "armed" within the meaning of the statute. State v. Lynch, 88 Me. 195, 33 A. 978.

"Deadly" includes "dangerous" and is sufficient in indictment.—An indictment which alleges that the assault was made with a "deadly" weapon is sufficient to charge an assault with a "dangerous" weapon. While "deadly" and "dangerous" are not equivalents, "deadly" is more than the equivalent and includes the full signification of the statute word. A dangerous weapon may possibly not be deadly, but a deadly weapon, one which is capable of causing death, must be dangerous. State v. Lynch, 88 Me. 195, 33 A. 978.

"With an intention" is equivalent to "with intent."—The indictment uses the words "with an intention," instead of the statutory words "with intent." The language of the indictment, in this respect, is exactly equivalent to the words of the statute. State v. Lynch, 88 Me. 195, 33 A. 978.

Applied in State v. Phinney, 42 Me. 384; State v. Clair, 84 Me. 248, 24 A. 843; State v. Hersom, 90 Me. 273, 38 A. 160.

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 7. Attempt to murder, without assault.—Whoever, without an assault, unlawfully attempts by any means or in any form to murder or kill a human being shall be punished by imprisonment for not less than 1 year nor more than 20 years. (R. S. c. 117, § 7.)

Manslaughter.

Sec. 8. Manslaughter, definition.—Whoever unlawfully kills a human being in the heat of passion, on sudden provocation, without express or implied malice aforethought, or, being under the legal duty to care and provide for any child or other person, willfully fails or neglects to provide for such child or other person necessary food, clothing, treatment for the sick or other necessaries of life, thereby causing or hastening the death of such child or other person, or commits manslaughter as defined by the common law, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 20 years. (R. S. c. 117, § 8.)

Cross reference.—See c. 22, § 151, re operating motor vehicle.

Manslaughter may be voluntary or involuntary.—Manslaughter is the unlawful killing of another without malice aforethought either express or implied, which may be either voluntary, in the heat of passion, and upon sudden provocation, or involuntary, in the commission of some unlawful act. State v. Conley, 39 Me. 78; State v. Pond, 125 Me. 453, 134 A. 572.

It may result from accident.—Manslaughter is the unlawful killing of a human being without malice aforethought, express or implied. Such killing may take place in various forms. It may be done in the heat of passion or on sudden prov-

ocation, or it may even be accidental. State v. Turmel, 148 Me. 1, 88 A. (2d) 367.

Or from practical joke.—It is manslaughter when one kills another as the result of a practical joke which was a surprise to the deceased, and where death is imputable to physical agencies put in motion by the perpetrator. State v. Pond, 125 Me. 453, 134 A. 572.

Conviction may be had on indictment for murder.—The crime of murder includes manslaughter and upon an indictment for murder a conviction may be had for manslaughter. Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

Applied in State v. Dore, 122 Me. 120, 119 A. 119; State v. Sprague, 135 Me. 470, 199 A. 705.

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 9. Misconduct or gross neglect respecting steam in steamboats and boilers; interference with safety valve.—Whoever, having charge of a steamboat used for conveyance of passengers or of the boiler or other apparatus for generating steam therein, through ignorance, gross neglect or for the purpose of racing, creates or allows to be generated such a quantity of steam as to break such boiler, apparatus or machinery connected therewith, or whoever intentionally loads or obstructs or causes to be loaded or obstructed in any way the safety valve of the boiler, or employs any other means or device whereby the boiler may be subjected to a greater pressure than the amount allowed by the inspector's certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the stage of the water or steam in any boiler or to give warning of approaching danger, or intentionally permits the water to fall below the prescribed low-water line of the boiler, or is directly or indirectly concerned therein, and thereby human life is destroyed, is guilty of manslaughter and shall be punished accordingly; and if human life is thereby endangered and not destroyed he shall be punished by a fine of not more than $500 or by imprisonment for not more than 5 years. (R. S. c. 117, § 9.)

See c. 37, § 146, re carelessly shooting, wounding or killing a person while hunting.

Rape, Assault with Intent.

Sec. 10. Rape, definition. — Whoever ravishes and carnally knows any female of 14 or more years of age, by force and against her will, or unlawfully and carnally knows and abuses a female child under 14 years of age, shall be punished by imprisonment for any term of years. (R. S. c. 117, § 10.)

Cross references.—See c. 149, § 12, re provisions for sentences to state prison not applicable; c. 149, § 17, re record of paroled or discharged prisoners to be forwarded to state police.

History of section.—See Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795.

Strictly speaking, this statute does not define rape but provides a punishment for the crime. State v. Flaherty, 128 Me. 141, 146 A. 7.

The essential elements of rape are threefold: the unlawful carnal knowledge of a female, by force, and without her consent. State v. Castner, 122 Me. 106, 119 A. 112; State v. Flaherty, 128 Me. 141, 146 A. 7.

The essence of the crime is said to be not the fact of the intercourse but the injury and outrage to the modesty and feelings of the woman by means of the carnal knowledge effected by force. State v. Castner, 122 Me. 106, 119 A. 112.

Crime may be committed when woman drugged or non compos.—The crime of rape may be committed when, strictly speaking, the woman exhibits no will at all in the matter, as where she is drugged, or non compos mentis. State v. Flaherty, 128 Me. 141, 146 A. 7.

Word "woman" or "female" is not indispensable.—The definition of the crime of rape, both at common law and by statute, includes the word "woman" or "female," but neither at common law nor under the statute is the word "woman" or "female" indispensable. State v. Cavalluzzi, 113 Me. 41, 92 A. 937.

And continuando is unnecessary but not fatal to indictment.—The crime of rape is not a continuing offense. Each perpetration of the act is a distinct and separate offense, and the inclusion of a continuando in the statement of the charge is neither necessary nor in accord with proper plead-

ing. Such inclusion, however, is not fatal to the indictment. It may be treated as surplusage and rejected. State v. Martel, 124 Me. 359, 129 A. 226.

But indictment must charge force.—The acts necessary to constitute the crime of rape must be done "by force," and these words, or something equally significant, in addition to the other language used in the statute, cannot be dispensed with in an indictment founded thereon. State v. Blake, 39 Me. 322.

An indictment which charges the unlawful carnal knowledge and the lack of consent sufficiently but omits the element of force is fatally defective. State v. Castner, 122 Me. 106, 119 A. 112.

And word "feloniously" not sufficient.—The word "feloniously" cannot supply the element of force. That word is of general signification and means with criminal intent. State v. Castner, 122 Me. 106, 119 A. 112.

But for the statutory rape of a female under fourteen years of age, the element of force is not necessary. State v. Castner, 122 Me. 106, 119 A. 112.

If a man has sexual intercourse with a female under 14 years of age, with or without her consent, he is guilty of rape. State v. Morin, 149 Me. 279, 100 A. (2d) 657.

And it need not be charged.—See State v. Black, 63 Me. 210.

But intercourse before female reached 14 must be proved.—Before the accused can be convicted for rape of a female under 14 years of age, intercourse with her before she arrived at the age of 14 years must be proved beyond a reasonable doubt. State v. Morin, 149 Me. 279, 100 A. (2d) 657.

Indictment held sufficient to charge rape.—See State v. Townsend, 118 Me. 380, 108 A. 260.

Unchastity of the female is no defense to the charge of rape. The crime may be committed upon an unchaste woman or a prostitute as well as upon any other woman. State v. Flaherty, 128 Me. 141, 146 A. 7.

However it may be admissible to show consent, but not character.—It is true that evidence to show a reputation for unchastity may be admissible to impeach the testimony of the prosecuting witness as to the want of consent, yet the overwhelming weight of authority is that specific acts of unchastity are not admissible to prove character. State v. Flaherty, 128 Me. 141, 146 A. 7.

In a prosecution under this section, corroboration of the testimony of the prosecutrix is not necessary. State v. Morin, 149 Me. 279, 100 A. (2d) 657.

But it may be corroborated by proof of complaint.—In the trial of one indicted for rape, if the prosecutrix takes the stand, her testimony may be corroborated by proof that she made a complaint through the testimony of the person to whom it was made, but the details of the complaint are not admissible unless her testimony has been impeached, or the complaint is within the rule of res gestae. State v. King, 123 Me. 256, 122 A. 578; State v. Bragg, 141 Me. 157, 40 A. (2d) 1.

Aiders and abettors may be convicted as principals.—Rape is a felony and all persons who are present, aiding, abetting, and assisting a man to commit the offense are principals and may be indicted as such. State v. Flaherty, 128 Me. 141, 146 A. 7.

In a joint act of two or more persons, committing rape, one may furnish one of the elements and the other another, whereby each is guilty as a principal. State v. Flaherty, 128 Me. 141, 146 A. 7.

As where one uses force and another performs act of intercourse.—Where one person uses the necessary force, while another performs the act of sexual intercourse, all being against the will and without the consent of the woman, each is guilty of rape. State v. Flaherty, 128 Me. 141, 146 A. 7.

And it is immaterial that the aider and abettor is disqualified from being the principal actor by reason of age, sex, condition or class. State v. Flaherty, 128 Me. 141, 146 A. 7.

Thus, a woman may be convicted as a principal in the crime of rape, although incapable herself of committing the deed, if she aids, abets and assists the actual perpetrator in the commission of the crime. State v. Flaherty, 128 Me. 141, 146 Me. 7.

Applied in State v. Davis, 116 Me. 260, 101 A. 208; State v. Howard, 117 Me. 69, 102 A. 743; State v. Joy, 130 Me. 519, 155 A. 34; Ingerson v. State, 146 Me. 412, 82 A. (2d) 407.

Quoted in State v. Clukey, 147 Me. 123, 83 A. (2d) 568.

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 11. Carnal knowledge of girls between 14 and 16 years.—Whoever, being more than 18 years of age, has carnal knowledge of the body of any

female child between the ages of 14 and 16 years shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years. The provisions of this section shall not apply to cases of rape as defined in section 10. (R. S. c. 117, § 11.)

Cross references. — See c. 149, § 12, re provisions for sentences to state prison not applicable; c. 149, § 17, re record of paroled or discharged prisoners to be forwarded to state police.

The crime provided for by this section is not rape, but a distinct offense. State v. Morang, 132 Me. 443, 172 A. 431.

It is not a defense to a prosecution under this section that the child consents, nor is it necessary to establish that the intercourse was accomplished by force and without her consent. State v. Morang, 132 Me. 443, 172 A. 431.

Sec. 12. Assault with intent to commit rape. — Whoever assaults a female of 14 years of age or more with intent to commit a rape shall be punished by a fine of not more than $500 or by imprisonment for not more than 10 years. If such assault is made on a female under 14 years, such imprisonment shall be for not less than 1 year nor more than 20 years. (R. S. c. 117, § 12.)

Cross references. — See c. 149, § 12, re provisions for sentences to state prison not applicable; c. 149, § 17, re record of paroled or discharged prisoners to be forwarded to state police.

History of section. — See Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795.

The word "rape," as used in this section, means the offense for which punishment is provided in § 10. It includes not only the ravishment of a female of 14 or more years of age by force and against her will but also the unlawful carnal knowledge and abuse of a female child under the age of 14 years. Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795; State v. Clukey, 147 Me. 123, 83 A. (2d) 568.

The phrase "with intent to commit a rape", as used in this section, means an intent to commit those acts punishable under § 10, including unlawfully and carnally knowing and abusing a female under fourteen years of age. State v. Clukey, 147 Me. 123, 83 A. (2d) 568.

If female under 14, intent must be to unlawfully and carnally know, etc. — An assault with intent to commit a rape upon a female child under 14 years of age requires the specific intent to unlawfully and carnally know and abuse such female child. Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795; State v. Clukey, 147 Me. 123, 83 A. (2d) 568.

And if over 14 it must be to do this notwithstanding resistance.—In order to find the prisoner guilty of an assault with intent to commit a rape, the jury must be satisfied that the prisoner, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so, at all events, and notwithstanding any resistance on her part. State v. Blake, 39 Me. 322.

Indictment must set forth required specific intent.—As the statutory crime of assault with intent to commit a rape requires proof of a specific intent, the long established rules of criminal pleading require that the indictment set forth that the assault was made with the required specific intent. Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795, holding that an allegation that one made an assault and attempted to commit rape is the equivalent of an allegation that he made the assault with the intent to commit such offense. State v. Clukey, 147 Me. 123, 83 A. (2d) 568.

Of "unlawfully and carnally knowing and abusing."— The crime interdicted by § 10 is "unlawfully and carnally knowing and abusing" and the indictment for assault with intent to commit that crime must set forth that the assault was made with such intent. Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795; State v. Clukey, 147 Me. 123, 83 A. (2d) 568.

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Abduction of Women and Kidnapping.

Sec. 13. Abduction of women.—Whoever takes a woman unlawfully and against her will and by force, menace or duress compels her to marry him or any other person, or to be defiled, shall be punished by imprisonment for any term of years; and whoever so takes a woman, with intent by such means to compel her

to do so, shall be punished by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 117, § 13.)

Sec. 14. Kidnapping; jurisdiction; consent.—Whoever unlawfully confines or imprisons another, or forcibly transports or carries him out of the state or from place to place within it, or so seizes, conveys, inveigles or kidnaps any person, by any means whatever and holds him for ransom or reward, shall be punished by imprisonment for life. If two or more persons enter into an agreement, confederation or conspiracy to violate the provisions of this section and do any overt act toward carrying out such unlawful agreement, confederation or conspiracy, such person or persons shall be punished by imprisonment for such term of years as the court in its discretion shall determine. Indictments for these offenses may be found and tried in the county where such person was carried or brought, or in the county where the offense was committed; and on trial, the consent of such person shall not be a defense unless it appears that it was not obtained by fraud, threats or duress. (R. S. c. 117, § 14.)

Sec. 15. Shipmasters, carrying apprentices and minors out of state. —If the master of a vessel carries out of the state an apprentice, indented servant or person under 21 years of age, without the consent of his parent, master or guardian, he shall be punished by a fine of not more than $200; and be liable in an action on the case to such parent, master or guardian for all damages thereby sustained. (R. S. c. 117, § 15.)

Former provision of section. — For a consideration of this section when it prohibited the carriage of the named persons "to parts beyond sea," see Campbell v. Rankins, 11 Me. 103.

Relation of plaintiff to person carried away indicates measure of damages.—This section gives damages to the parent, master and guardian. The relation of the plaintiff to the person carried away or transported indicates the measure of damages, and that they are to be assessed upon common principles in each case. The parent is entitled to the services of his child, and is liable for his maintenance. A similar relation exists between the master and his apprentice. It is for this reason that each can maintain an action. Nickerson v. Harriman, 38 Me. 277.

And vindictive damages not allowed.— The true measure of damages under this section is compensation for the pecuniary injury or loss which directly results from the cause of action. The circumstance that, besides giving an action for "damages sustained," a penalty is imposed, would lead to the conclusion that vindictive damages were not intended to be given. Nickerson v. Harriman, 38 Me. 277.

Robbery, Assault with Intent.

Sec. 16. Robbery, definition. — Whoever, by force and violence or by putting in fear, feloniously steals and takes from the person of another property that is the subject of larceny is guilty of robbery and shall be punished by imprisonment for any term of years. (R. S. c. 117, § 16.)

Cross reference. — See c. 132, § 1, re larceny.

Value of property is not element of offense.—The value of the property named in the indictment is not a necessary ingredient of the offense of robbery and is not legally essential to the punishment to be inflicted. State v. Perley, 86 Me. 427, 30 A. 74.

And punishment not dependent thereon. —There is no provision of this section which makes the amount of property taken an essential element of the offense, and there is no statute in this state which creates degrees in robbery, or in any way makes the punishment of the offense dependent upon the value of the property taken. State v. Perley, 86 Me. 427, 30 A. 74.

Thus value need not be charged, proved or specified in verdict. — The value of the thing taken is not of the essence of the offense. The putting in fear and taking the property constitute the gist of the crime, and there is no necessity for either charging in the indictment, or proving at the trial or specifying in the verdict, the value of the property. State v. Perley, 86 Me. 427, 30 A. 74.

But jury must be satisfied that goods

were of some value. — Where the value is not essential to the punishment it need not be distinctly alleged or proved. The jury must be satisfied, however, that the goods were of some value, and they may infer it without separate proof, either from the inspection of the articles, or from the description of them by the witnesses. State v. Perley, 86 Me. 427, 30 A. 74.

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 17. Assault with intent to rob or steal.—Whoever assaults another with intent to rob or steal, if armed with a dangerous weapon, shall be punished by imprisonment for not less than 1 year nor more than 20 years; when not so armed, by a fine of not more than $1,000 or by imprisonment for not more than 10 years. (R. S. c. 117, § 17.)

Cross references. — See c. 131, §§ 4, 10, re assault with intent to commit arson or burglary.

History of section. — See Duplisea v. Welsh, 140 Me. 295, 37 A. (2d) 260.

The statute makes it an aggravation and provides a more severe punishment, if the person making the assault is armed with a dangerous weapon. State v. Lynch, 88 Me. 195, 33 A. 978.

"Deadly" weapon includes "dangerous" weapon. — An indictment which alleges that the assault was made with a "deadly" weapon is sufficient to charge an assault with a "dangerous" weapon. While "deadly" and "dangerous" are not equivalents, "deadly" is more than the equivalent and includes the full signification of the statute word. A dangerous weapon may possibly not be deadly, but a deadly weapon, one which is capable of causing death, must be dangerous. State v. Lynch, 88 Me. 195, 33 A. 978.

Allegation sufficient to charge defendant "armed."—If an indictment alleges that an assault is made with a dangerous or deadly weapon, which the person making the assault had and held in his hand, it is equivalent to an allegation that he was armed with such a weapon. "Armed" means furnished or equipped with weapons of offense or defense. A person who has in his hand a dangerous weapon with which he makes an assault, is certainly "armed" within the meaning of the statute. State v. Lynch, 88 Me. 195, 33 A. 978.

"With an intention" is equivalent to "with intent."—The indictment uses the words "with an intention," instead of the statutory words "with intent." The language of the indictment, in this respect, is exactly equivalent to the words of the statute. State v. Lynch, 88 Me. 195, 33 A. 978.

Applied in State v. Dyer, 136 Me. 282, 8 A. (2d) 301.

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Mayhem, Assault with Intent to Maim.

Sec. 18. Mayhem, definition.—Whoever, with malicious intent to maim or disfigure, cuts or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits or mutilates the nose or lip, or cuts off or disables a limb or other member of another person, shall be punished by imprisonment for not less than 1 year nor more than 20 years. (R. S. c. 117, § 18.)

Sec. 19. Assault with intent to maim.—Whoever assaults another with intent to maim, if armed with a dangerous weapon, shall be punished by imprisonment for not less than 1 year nor more than 20 years; when not so armed, by a fine of not more than $1,000 or by imprisonment for not more than 10 years. (R. S. c. 117, § 19.)

Cross references. — See c. 131, §§ 4, 10, re assault with intent to commit arson or burglary.

The statute makes it an aggravation and provides a more severe punishment, if the person making the assault is armed with a dangerous weapon. State v. Lynch, 88 Me. 195, 33 A. 978.

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"Deadly" weapon includes "dangerous" weapon. — An indictment which alleges that the assault was made with a "deadly"

weapon is sufficient to charge an assault with a "dangerous" weapon. While "deadly" and "dangerons" are not equivalents, "deadly" is more than the equivalent and includes the full signification of the statute word. A dangerous weapon may possibly not be deadly, but a deadly weapon, one which is capable of causing death, must be dangerous. State v. Lynch, 88 Me. 195, 33 A. 978.

"With an intention" is equivalent to "with intent." — The indictment uses the words "with an intention," instead of the statutory words "with intent." The language of the indictment, in this respect, is exactly equivalent to the words of the statute. State v. Lynch, 88 Me. 195, 33 A. 978.

Applied in State v. Leavitt, 87 Me. 72, 32 A. 787.

Assault with Intent to Commit Other Felony.

Sec. 20. Assault with intent to commit other felony.—Whoever commits an assault with intent to commit a felony, which has not been otherwise described or for which no penalty has been provided, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years. (R. S. c. 117, § 20.)

Applied in State v. Goddard, 69 Me. 181.

Assault, Assault and Battery.

Sec. 21. Assault, and assault and battery, definitions.—Whoever unlawfully attempts to strike, hit, touch or do any violence to another however small, in a wanton, willful, angry or insulting manner, having an intention and existing ability to do some violence to such person, is guilty of an assault; and if such attempt is carried into effect, he is guilty of an assault and battery. Any person convicted of either offense, when it is not of a high and aggravated nature, shall be punished by a fine of not more than $100 or by imprisonment for not more than 6 months, or by both such fine and imprisonment; and when the offense is of a high and aggravated nature, the person convicted of either offense shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years, when no other punishment is prescribed. (R. S. c. 117, § 21.)

Cross references. — See c. 135, § 21, re assaults upon or interference with officer; c. 136, § 6, re unlawful assembly and riot.

This section is merely declaratory of the common law. Rell v. State, 136 Me. 322, 9 A. (2d) 129.

An assault or assault and battery may be charged in general terms, without specifying the means by which it was made. State v. Mahoney, 122 Me. 483, 120 A. 543.

An indictment merely charging the felonious making of an assault, without going into the details and reciting the elements of the crime, is sufficient. State v. Mahoney, 122 Me. 483, 120 A. 543.

With regard to the making of an assault, the indictment or information is usually regarded as sufficient which alleges merely that the defendant made an assault. State v. Mahoney, 122 Me. 483, 120 A. 543.

This section is merely declaratory of the common law. It adds nothing to the common-law definition of assault, and requires no additional allegations in an indictment. State v. Creighton, 98 Me. 424, 57 A. 592; State v. Mahoney, 122 Me. 483, 120 A. 543.

It is not necessary for an indictment for assault and battery to describe the act charged as "unlawful" and as done in a "wanton, wilful, angry or insulting manner, having an intention and existing ability to do some violence," although these words are contained in this section defining the offense of assault and battery. These words are not necessary to the validity of the indictment, as they are all implied in the word "assault." State v. Creighton, 98 Me. 424, 57 A. 592.

Regardless of enormity of offense.—An indictment which charges an assault or assault and battery in general terms without specifying the means by which it was accomplished is sufficient regardless of the enormity of the offense. Rell v. State, 136 Me. 322, 9 A. (2d) 129.

State must prove guilty intent.—An assault and battery is committed by carrying into effect an unlawful attempt to strike, hit, touch, or do any violence to another, however small, in a wanton, wilful, angry or insulting manner, having an intention

and ability to do violence to such other. It is obvious that crime cannot be committed if, at the time of doing the act, the mind of the doer is innocent. Therefore, it is incumbent on the state to prove the guilty intent coexistent with his overt act. State v. Sanborn, 120 Me. 170, 113 A. 54; State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

But such may be presumed from circumstances, etc.—The general rule in a case of assault and battery is that, if it is proved that the accused committed the unlawful act laid against him, it will be presumed from his violent conduct, the attending circumstances and the outward demonstration, that the act was done with a criminal intention; and it will be left for the accused to rebut this presumption. State v. Sanborn, 120 Me. 170, 113 A. 54; State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

Proof of the intent under this section may be inferred by the jury from the act itself. State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

An assault and battery may be a felony. State v. Jones, 73 Me. 280. See State v. Goddard, 69 Me. 181.

The imposition of sentence, within the statutory limits, is committed to the discretion of the trial judge. Rell v. State, 136 Me. 322, 9 A. (2d) 129.

But maximum imprisonment is 5 years.—If an indictment charges only an assault in violation of this section, even though the assault was of a high and aggravated nature, the maximum sentence which can be imposed is imprisonment for 5 years. Moody v. Lovell, 145 Me. 328, 75 A. (2d) 795.

This section permits discretionary severity in the punishment of assaults and assaults and batteries which are of a "high and aggravated nature." State v. McClay, 146 Me. 104, 78 A. (2d) 347.

Which depends upon proof and not allegation.—Whether an assault or an assault and battery shall be punished as of a high and aggravated character, depends upon the proof and not the intensity of the allegations. State v. Jones, 73 Me. 280; Rell v. State, 136 Me. 322, 9 A. (2d) 129.

The degree of the offense in any particular case of assault and battery must depend upon the proof adduced and not upon the facts alleged. The proof may constitute it a felony or only a petty misdemeanor, and upon the proof would depend the measure of the punishment. Rell v. State, 136 Me. 322, 9 A. (2d) 129.

But it does not create an offense of aggravated assault or assault and battery. It is still assault, although of an aggravated nature. State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

As aggravation has to do only with sentence.—No new offense of what might be called an aggravated assault or assault and battery was added by this section. The matter of the aggravation has to do only with the sentence and is a matter for the court, whose duty it is to sentence. State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

And the jury has no duty to declare aggravation in its verdict, and if it does, it adds nothing. The conviction would still be of assault or assault and battery. State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

And aggravation need not be alleged.—The legislature did not intend to divide assault and battery into separate and distinct crimes. It is still assault and battery which is punishable, and facts which establish that the offense is or is not of a high and aggravated nature go only to the measure of punishment and need not be alleged. Rell v. State, 136 Me. 342, 9 A. (2d) 129; State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

The matter of aggravation need not be alleged in the indictment and if it is, it may be considered as surplusage. State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

Or proved.—To secure conviction under this section it is not necessary to prove an aggravated assault. State v. McKrackern, 141 Me. 194, 41 A. (2d) 817.

Acts which may embarrass and distress do not necessarily amount to an assault. Indignities may not constitute an assault. Acts aggravating an assault, differ materially from the assault thereby aggravated. Insulting language or conduct may aggravate an assault, but it is not an assault. Sterns v. Sampson, 59 Me. 568.

And the removal of a door or windows of a building of the owner in possession, would constitute no assault under this section. Stearns v. Sampson, 59 Me. 568.

Applied in Littlefield v. Littlefield, 114 Me. 494, 96 A. 789.

Cited in State v. Vashon, 123 Me. 412, 123 A. 511; Duplisea v. Welsh, 140 Me. 295, 37 A. (2d) 260.

Sec. 22. Sending or causing to be sent any bomb or infernal machine.—Whoever sends or procures to be sent to another or deposits or procures to be deposited any bomb or infernal machine, with intent that the same shall explode to cause injury to the person or property of another, whereby any per-

son is injured, shall be punished by imprisonment for any term of years; and if upon explosion no person is injured, the imprisonment shall be for not more than 20 years. (R. S. c. 117, § 22.)

Cited in Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 23. Possession of bomb or infernal machine. — Whoever knowingly has in his possession any bomb or infernal machine or materials appropriate for the construction thereof, except for lawful purposes, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 15 years, or by both such fine and imprisonment. (R. S. c. 117, § 23.)

Conspiracies, Blacklisting, Threatening Communications and Malicious Vexations.

Sec. 24. Conspiracies to prosecute an innocent person. — If two or more persons conspire and agree together, with intent falsely, fraudulently and maliciously to cause another person to be indicted or in any way prosecuted for an offense of which he is innocent, whether he is prosecuted or not, they are guilty of a conspiracy, and each shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years. (R. S. c. 117, § 24.)

Indictment sufficient. — This section makes it criminal for two or more persons to conspire, "with intent falsely, fraudulently and maliciously," to cause another person to be prosecuted for an offense of which he is innocent. An indictment which not only charges an act of conspiracy, but also charges a co-existing intent which characterizes and makes the act criminal and in this particular, follows the very words of the statute, is sufficient. State v. Locklin, 81 Me. 251, 16 A. 895.

Sec. 25. Conspiracies in other cases.—If two or more persons conspire and agree together, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business or property of another; or for one or more of them to sell intoxicating liquor in this state in violation of law to one or more of the others; or to do any illegal act injurious to the public trade, health, morals, police or administration of public justice; or to commit a crime punishable by imprisonment in the state prison, they are guilty of a conspiracy; and every such offender and every person convicted of conspiracy at common law shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 10 years. (R. S. c. 117, § 25.)

This section defines the crime of conspiracy, both in the purposes designed to be promoted, and the combination essential to effect them. State v. Ripley, 31 Me. 386.

Which is combination to accomplish unlawful purpose or lawful purpose by unlawful means.—A conspiracy has been well defined to be a combination of two or more persons, by concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means. State v. Mayberry, 48 Me. 218; State v. Vetrano, 121 Me. 368, 117 A. 460; Berger v. State, 147 Me. 111, 83 A. (2d) 571.

And conspiracy is offense itself.—The conspiracy is the gist of the indictment, and though nothing is done in prosecution of it, it is a complete and consummate offense of itself. State v. Ripley, 31 Me. 386; State v. Parento, 135 Me. 353, 197 A. 156; State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

The name of the object of the conspiracy is merely an incident of the conspiracy not necessary to proof of it, the conspiracy itself being the gravamen of the charge. State v. Vetrano, 121 Me. 368, 117 A. 460.

The gravamen of which is "combination," "concerted action" and "unlawful purpose." State v. Vetrano, 121 Me. 368, 117 A. 460; State v. Parento, 135 Me. 353, 197 A. 156; State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

And offense complete without overt act. —No overt act in carrying out the designs of those who have conspired, confederated and agreed together for such object is necessary to make up the crime; it may be fully complete without it. State v. Ripley, 31 Me. 386.

When the unlawful agreement is estab-

lished the offense is complete. The object need not be attained, nor need anything be done in pursuance of the agreement. No overt act need be proved; it is an offense complete and consummate in itself. State v. Vetrano, 121 Me. 368, 117 A. 460.

While the gist of the civil action for conspiracy is the acts done in pursuance thereof, and not the combination, the criminal offense, at common law, is complete as soon as the confederacy or combination is formed. The legal character of the offense depends neither upon that which actually follows it nor upon that which is intended to follow it; it is the same whether its object be accomplished or abandoned. It may be followed by one overt act, or a series of them, but the offense is complete without any subsequent overt act. State v. Vetrano, 121 Me. 368, 117 A. 460.

But joint evil intent is necessary to constitute the offense. The confederation must be corrupt. This is implied in the meaning of the term "conspiracy." State v. Parento, 135 Me. 353, 197 A. 156.

In the case of conspiracy, it is necessary that criminal intent be shown. State v. Parento, 135 Me. 353, 197 A. 156.

And it is necessary under this section to allege fraudulent or malicious intent. State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

And mere passive cognizance of a conspiracy is not sufficient to make a co-conspirator. There must be active cooperation, and when this exists the period when each party enters into the combination is unessential. State v. Parento, 135 Me. 353, 197 A. 156.

Nor does mere sympathy with a conspiracy not exhibiting itself in overt acts make a person a co-conspirator. State v. Parento, 135 Me. 353, 197 A. 156.

But proof of agreement to concur is not necessary.—If it is proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same so as to complete it, with a view to the attainment of that same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object. If, therefore, one concurs in a conspiracy, no proof of agreement to concur is necessary in order to make him guilty. State v. Vetrano, 121 Me. 368, 117 A. 460.

Conspiring to cheat and defraud is not unlawful in itself.—Cheating and defrauding a person of his property, though never right, was not necessarily an offense at common law. The transaction might be dishonest and immoral, and still not be unlawful in the sense in which that term is used in criminal law. Hence, the mere allegation, that the defendants conspired to cheat and defraud would not be sufficient. To sustain an indictment for that cause, it must appear, by the averments in the indictment, that the act was to be accomplished by criminal or unlawful means. State v. Mayberry, 48 Me. 218.

The indictment which does not charge a conspiracy with the intent to injure the person, character, business or property of another, but substantially alleges it to have been with the intent to deprive another of his property, by cheating and defrauding, and thereby to cause an injury, alleges no crime under this section. Such injury might tend to lessen the general property of another; and so would an agreement to purchase for less than the value; or to obtain property without paying for it, where no false pretences were used; and yet, such transactions do not constitute crimes, and are not within the prohibition of this section. State v. Hewett, 31 Me. 396.

A conspiracy to cheat and defraud, and thereby causing an injury or loss is not within the prohibition of this section. The injury referred to is one whereby the value of the property injured is diminished or destroyed. State v. Clary, 64 Me. 369.

A wide discretion is given to the court as to punishment for conspiracies and undoubtedly because of the wide range of criminal turpitude which may be experienced in the various sorts of conspiracies. State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

The injury to the property contemplated by this section must be to the property in rem, as distinct from an injury to business, or a detriment, causing a diminution of the general amount of property. State v. Hewett, 31 Me. 396.

Section not limited to conspiracies to commit crime.—It is urged that the conspiracy statute contains a provision to the effect that a combination "to commit a crime punishable by imprisonment in the state prison" is a conspiracy, and hence the statute was intended to have application only to such substantive offenses as were felonies. Examination of the conspiracy statute clearly negatives any such intention. The clause cited is but one of several offenses specifically denominate. State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

But conspiracy to commit crime is an offense.—The combination of two or more persons by concerted action to commit a crime, whether it be of the grade of a fel-

ony or only of a misdemeanor, is an indictable offense made punishable by the conspiracy statute. State v. Vermette, 130 Me. 387, 156 A. 807; State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

A conspiracy to commit an offense is itself a separate offense and the punishment therefor may be fixed by statute. State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

It is elementary law that the combination of two or more persons by concerted action to commit a crime, whether it is of the grade of a felony or only of a misdemeanor, and whether the crime is an offense at common law or by statute, is a conspiracy at common law, which is an indictable offense in this state, recognized and made punishable by the conspiracy statute. State v. Vermette, 130 Me. 387, 156 A. 807.

And place where crime intended to be committed not material.—The combination and agreement are of the essence, the gist of the offense; and as a distinct, substantive offense, it is then committed. The place at which it is intended to commit the felony is not material. It is the law of the place where the conspiracy is formed which is broken. State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

And prosecution may be had where conspiracy formed even though consummated in another jurisdiction.—As the gravamen of criminal conspiracy is the unlawful confederation, a prosecution may be had where the conspiracy is formed, though the unlawful design of the conspirators is consummated by overt acts in another jurisdiction. State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

Indictment need allege means employed to accomplish object only when such object is lawful.—When the act to be accomplished is itself criminal or unlawful, it is not necessary to set out in the indictment the means by which it is to be accomplished; but, when the act is not in itself criminal or unlawful, the unlawful means by which it is to be accomplished must be distinctly set out. State v. Mayberry, 48 Me. 218; State v. Vetrano, 121 Me. 368, 117 A. 460; Berger v. State, 147 Me. 111, 83 A. (2d) 571.

A conspiracy at common law, consists in the unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, or in the unlawful agreement to compass or promote a purpose not in itself criminal or unlawful, by criminal and unlawful means. If the crime consists in the illegal object, the purpose must be clearly and fully stated in the indictment. When the act is itself illegal there is no occasion to state the means by which the conspiracy was effected. State v. Bartlett, 30 Me. 132.

In an indictment for a conspiracy at common law, if the conspiracy charged is an unlawful combination and agreement of two or more persons to commit a deed which, if done, would be an offense, well known and acknowledged, the nature of which is perfectly understood by the name by which it is designated, no further description of the crime is required. It is equally unnecessary to set out the means by which the unlawful act was intended to be accomplished. It is only when the conspiracy is to promote a purpose not criminal or unlawful in itself, but when that purpose is to be effected by means which are criminal or unlawful that those means should be specifically stated in the indictment. The reason for this distinction is very obvious. If the conspiracy is to do an act, which if done would be criminal, the offense is perfect, without reference to the means to be used, and it is necessary that this criminal purpose should be so specifically alleged as to be well understood. If the conspiracy consists in the unlawful means to be employed, according to well established rules of pleading, those means, which are relied upon as giving the wrongful agreement a criminal character, should be specifically stated, although not the object of the combination, but merely the instrument promotive of it. State v. Ripley, 31 Me. 386.

A conspiracy may be proved like any other alleged criminal offense. State v. Vetrano, 121 Me. 368, 117 A. 460.

And may be proved by circumstantial evidence.—A conspiracy may be proved by circumstantial evidence and this is the usual mode of proving it, since it is not often that direct evidence can be had. The acts of different persons who are shown to have known each other, or to have been in communication with each other, directed towards the accomplishment of the same object, especially if by the same means or in the same manner, may be satisfactory proof of a conspiracy. State v. Vetrano, 121 Me. 368, 117 A. 460.

Conspiracies need not be established by direct evidence of the acts charged, but may and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purposes to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparently criminal or un-

lawful purpose in common between them. The existence of the agreement or joint assent of the minds need not be proved directly. It may be inferred by the jury from other facts proved. State v. Vetrano, 121 Me. 368, 117 A. 460; State v. Parento, 135 Me. 353, 197 A. 156.

But conspiracies cannot be established by a mere suspicion, nor does evidence of mere relationship between the parties or association show a conspiracy. State v. Parento, 135 Me. 353, 197 A. 156.

The humane presumption of the law is against guilt and, though a conspiracy must ordinarily be proved by circumstantial evidence, yet it is not to be forgotten that the charge of conspiracy is easily made. Mere suspicion or possibility of guilty connection is not to be received as proof in such a case. State v. Parento, 135 Me. 353, 197 A. 156.

Overt act may be given in evidence.—If the conspirators carry out, or attempt to carry out the object of the conspiracy, that fact may be alleged in aggravation of the offense, and given in evidence to prove the conspiracy. State v. Mayberry, 48 Me. 218; State v. Parento, 135 Me. 353, 197 A. 156; State v. Pooler, 141 Me. 274, 43 A. (2d) 353.

Admissibility of acts and words of parties to conspiracy.—The acts and words of all parties alleged to be participants in the conspiracy, as well as all other testimony, are admissible in the discretion of the court for the purpose of proving the fact of conspiracy, but are not to be taken into consideration against any one of the parties concerned until, from the evidence thus admitted, the fact of a conspiracy is proved; after which the acts and words of each co-conspirator, whenever done or whenever said, in furtherance of the common purpose are admissible against all the alleged conspirators upon the ground that the act of one is the act of all. State v. Vetrano, 121 Me. 368, 117 A. 460; State v. Davis, 123 Me. 317, 122 A. 868.

When, in the discretion of the court, all the evidence tending to prove a conspiracy is admitted, and the jury upon examination, comparison and deduction from that evidence, come to the conclusion that it is so connected as to warrant the inference that a conspiracy is proved, then the charge is proved against all. If, however, the evidence is not so connected as to warrant the inference that a conspiracy is proved against all the alleged parties, then those against whom the proof fails are exempt from the charge, and the acts and words of the alleged co-conspirators cannot be considered against them. State v. Vetrano, 121 Me. 368, 117 A. 460.

Applied in State v. Murray, 15 Me. 100; State v. Roberts, 34 Me. 320; State v. Mackesy, 135 Me. 488, 200 A. 511.

Sec. 26. Preventing, by threats, any person from entering or leaving employment; maintaining of blacklist.—Any employer, employee or other person who, by threats of injury, intimidation or force, alone or in combination with others, prevents any person from entering into, continuing in or leaving the employment of any person, firm or corporation, and any employer, agent of an employer or other person who, alone or in combination with others, attempts to prevent a wage earner in any industry from obtaining employment at his trade, by maintaining or being a party to the maintaining of a blacklist, shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years. (R. S. c. 117, § 26.)

Cited in State v. Vermette, 130 Me. 387, 156 A. 807.

Sec. 27. Threatening communication. — Whoever makes, publishes or sends to another any communication, written or oral, containing a threat to injure the person or property of any person shall be punished by a fine of not more than $500 or by imprisonment for not more than 5 years, or by both such fine and imprisonment; and if the communication is written and is anonymous or signed by any other than the true name of the writer, the punishment shall be a fine of not more than $1,500 or imprisonment for not more than 10 years, or by both such fine and imprisonment; and if any such threat is against the person or property or member of the family of any public official, the punishment shall be imprisonment for not more than 15 years. (R. S. c. 117, § 27.)

Sec. 28. Threats to accuse or injure, with intent to extort or compel. — Whoever, verbally or by written or printed communication, maliciously

threatens to accuse another of a crime or offense, or to injure his person or property, with intent thereby to extort money or to procure any advantage from him, or to compel him to do any act against his will, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months. (R. S. c. 117, § 28.)

The gist of the offense is the malicious threat made to extort money. State v. Robinson, 85 Me. 195, 27 A. 99.

The gravamen of the charge contained in this section is an intent to extort money. The threat is the manner in which this is to be accomplished. State v. Blackington, 111 Me. 229, 88 A. 726; State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

The gist of the crime under this section lies, not in the nature of the threat, but in the intent to extort money. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

And does not consist of effect threats have.—The offense is not made by this section, to consist in the effect which the threats may have upon the person, or in the fact that property was thereby obtained; but in maliciously threatening to accuse him of an offense, or to injure his person or property, with intent to extort money or pecuniary advantage, or with intent to compel him to do an act against his will. State v. Bruce, 24 Me. 71.

The same rule of strictness does not apply to actions for extortion as in actions or indictments for libel, a class of prosecutions not very much favored by the law. State v. Robinson, 85 Me. 195, 27 A. 99.

And the statute never intended that the words should be alleged as in the case of libel or slander. The language in which the threat is made was intended as a matter of proof and not of pleading. The respondent is not charged with libel or slander, but with a threat to accuse of a certain offense. The question is not whether his language is libelous, but whether, whatever the form of expression, it contains a malicious threat to accuse of the offense charged. It, therefore, seems clear that the interpretation of the language used, in conveying an alleged threat, is a question of fact for the jury. If, regardless of its form, it is sufficient to prove the threat, then the offense threatened is established. If the language is insufficient, then the proof fails. State v. Blackington, 111 Me. 229, 88 A. 726.

The form of the language in which the threat is made is not material and is not required to be set out in the indictment. State v. Blackington, 111 Me. 229, 88 A. 726; State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

The precise words of the threat need not be set out. It is enough if the substance is stated. If the indictment attempted to give the words used, yet it would only be to prove the allegation substantially. The gist of the offense is the intent to extort money by a malicious threat to accuse of some crime. The words used do not constitute the offense without the accompanying intent to extort. State v. Blackington, 111 Me. 229, 88 A. 726.

And indictment is sufficient if defendant notified of utterances relied on, etc.—If the defendant is notified of his utterances that are relied on, and also of the nature of the accusation which he has threatened to make, more particularity of averment than this is not required. The intimated accusation is often couched in vague and evasive terms, and may depend for its meaning on a variety of circumstances which cannot be easily alleged. Or the threat may be of a general character, indicating not the accusation of any particular crime or offense, but an accusation of some offense or other. State v. Robinson, 85 Me. 195, 27 A. 99.

However, it should be directly averred that the threat was to accuse of some crime or offense, whether the same is particularized or not. State v. Robinson, 85 Me. 195, 27 A. 99.

And indictment insufficient in absence of such averment. — An indictment which avers that the threat was to accuse and prosecute the complainant, but does not aver that it was a threat to accuse him of any particular offense or of any offense whatever is insufficient. State v. Robinson, 85 Me. 195, 27 A. 99.

Under an indictment charging extortion, an allegation that the property intended to be injured was a contract of employment between a certain individual and a county was sufficiently particular. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Action of fish warden held not extortion. —For a fish warden, acting under the instructions of the commissioner, and without malicious, corrupt or oppressive in-

tent, to write to an offender that his lobster case is not yet settled, that he owes the state nine dollars, and that unless he sends that amount to the commissioner before a date named, he (the warden) is ordered to take defendant's case to the grand jury, does not constitute maliciously threatening to accuse another of crime, within the meaning of this section. State v. Hanna, 99 Me. 224, 58 A. 1061.

Extortion by person whose property has been stolen. — See State v. Bruce, 24 Me. 71.

Applied in State v. Patterson, 68 Me. 473; State v. Crooker, 123 Me. 310, 122 A. 865.

Sec. 29. Maliciously vexing or tormenting another by a person more than 16 years of age.—Whoever being more than 16 years of age willfully and wantonly or maliciously vexes, irritates, harasses or torments any person in any way, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace, and whoever without reasonable cause or provocation willfully and wantonly or maliciously vexes, irritates, harasses or torments any person by communications to or conversation with such person over or by means of any telephone, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months. (R. S. c. 117, § 29.)

Specific intent to vex, etc., must be proved. — In the statute the words "willfully and wantonly or maliciously" modify the words "vexes, irritates, harasses, or torments." The specific intent to "vex," etc., is, therefore, an element of the offense created and must be proved with the same certainty as any other element. State v. Wagner, 141 Me. 403, 44 A. (2d) 821.

And cannot be presumed from overt act. —The specific intent to vex, etc., cannot be presumed from the commission of an overt act, although such overt act is committed with general wrongful intent. State v. Wagner, 141 Me. 403, 44 A. (2d) 821.

Cited in Healey v. Spaulding, 104 Me. 122, 71 A. 472.

Libels.

Sec. 30. Libel; definitions; publication.—A libel is the malicious defamation of a living person, made public by any printing, writing, sign, picture, representation or effigy, tending to provoke him to wrath, expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or of a deceased person, thus made public, designed to blacken and vilify his memory and tending to scandalize or provoke his relatives or friends; but nothing shall be deemed a libel unless there is a publication thereof; and the delivery, selling, reading or otherwise communicating a libel directly or indirectly to any person, including the person libeled, is a publication. Whoever makes, composes, dictates, writes or prints a libel; directs or procures it to be done; willfully publishes or circulates it, or knowingly and willfully aids in doing either, shall be punished by a fine of not more than $1,000 and by imprisonment for less than 1 year. (R. S. c. 117, § 30.)

Cross references.—See c. 113, § 47, re truth justification; c. 113, § 48, re mitigation of damages.

The definition and prosecution of a criminal libel are in this state matters of statute. The statute defines the crime, declares the responsibility and regulates the proceeding. State v. Berry, 112 Me. 501, 92 A. 619.

It is clear that the language of this section constitutes three separate and independent classes of offenses. To make, compose, dictate, write or print a libel is one offense. To direct or procure the making, composing, dictating, writing or printing a libel is another. Both of these are subject to the limitation that nothing is to be deemed a libel unless published. To willfully publish or circulate a libel, or to knowingly aid in doing either, is a third offense. State v. Berry, 112 Me. 501, 92 A. 619.

It is not the ingeniously possible construction, but the plainly normal construction, which determines the question of libel, or no libel, in written words which are maliciously published. State v. Norton, 89 Me. 290, 36 A. 394.

The language published need not accuse the plaintiff of any criminal offense. Such a charge is not essential to a criminal libel. There is a wide difference in this respect between words spoken, and words printed in a newspaper. Many words which merely spoken are not actionable become punishable as libellous when embedded in type and circulated in a newspaper. State v. Norton, 89 Me. 290, 36 A. 394.

It is too well settled to require extended citation of authority that there is a distinction in the requirements necessary to maintain an action of libel and in those essential in an action of slander. A charge which is published in writing is regarded as carrying more weight than one which is made verbally. It is accordingly not necessary in a case of libel that the charge import a crime, nor is it essential that special damage be alleged. The question is, do the printed words, if believed, naturally tend to expose the plaintiff to public hatred, contempt or ridicule, or deprive him of the benefit of public confidence and social intercourse? Brown v. Guy Gannett Publishing Co., 147 Me. 3, 82 A. (2d) 797.

And insinuations may be as defamatory as direct assertion, and sometimes even more mischievous. The effect, the tendency of the language used, not its form, is the criterion. State v. Norton, 89 Me. 290, 36 A. 394.

And words in an interrogative form may be as libellous as if in a declarative form. State v. Norton, 89 Me. 290, 36 A. 394.

Libel need not produce all results named in section.—It is not necessary in order for printed words to be libellous that they naturally tend to expose the plaintiff to public hatred and contempt and ridicule, and deprive him of the benefit of public confidence and social intercourse. It is sufficient if they naturally tend to bring about any one of the foregoing consequences. The governing principle of law is stated in the alternative or disjunctive, not in the conjunctive. Brown v. Guy Gannett Publishing Co., 147 Me. 3, 82 A. (2d) 797.

Publishing and circulating libel must be willfully done.—This section declares that whoever "willfully publishes or circulates" a libel shall be punished. It does not make the publishing and circulating of a libel an offense, unless willfully done. The word "willfully" is descriptive of the offense. State v. Berry, 112 Me. 501, 92 A. 619.

And indictment must so allege.—Under this section, which makes it a criminal offense to willfully publish or circulate a libel, an indictment for publishing and circulating a libel which does not charge that it was "willfully" done is fatally defective. State v. Berry, 112 Me. 501, 92 A. 619.

Degree of notoriety given publication is matter of proof, not pleading.—The declaration is objected to, because it does not aver that the libel was published by the defendant "to divers and sundry persons or to any third person." Such an averment is unnecessary. None of the forms in either civil or criminal cases require it. To publish is to make public. A publisher is one who makes a thing publicly known. Had the allegation been merely that the defendant "printed" a libel, that would not have been enough. But to aver that a defendant "published" a libel, does declare that he circulated it or caused it to be circulated "among divers and sundry persons." The degree of notoriety given to the publication is matter of proof and not of pleading. Sproul v. Pillsbury, 72 Me. 20.

Indictment not bad for duplicity.—An indictment which avers that the defendant "did write and publish, and cause to be written and published," a malicious libel, is not bad for duplicity. State v. Robbins, 66 Me. 324.

The allegation of sending the libel and that thereby the defendant published it, is a sufficient averment of publication. State v. Barnes, 32 Me. 530.

And it is not requisite that the whole of a book containing the libel be set out. State v. Barnes, 32 Me. 530.

The word "unlawfully" is not in this section, but its insertion in the indictment does not vitiate it. If the fact as stated is illegal, it is unnecessary to say it is unlawful. If it is legal, the stating it to be unlawful, will not make it so. The only case when it may be necessary to use it, is where it is a part of a description of a statute offense; but it is not so here. It may be rejected as surplusage. State v. Robbins, 66 Me. 324.

Conviction may be had where libel printed though published elsewhere.—One may be indicted and convicted of making or printing a libel in the county where it was made or printed, though the publication may have been elsewhere. State v. Berry, 112 Me. 501, 92 A. 619.

Or where published though printed elsewhere.—One may be indicted and convicted of willfully publishing or circulat-

ing a libel in the county where it was published or circulated, though it may have been made or printed elsewhere. State v. Berry, 112 Me. 501, 92 A. 619.

Sec. 31. Responsibility for libels printed or published. — Whoever manages or controls the business of a printing office, bookstore or shop, as principal or agent, or is, in whole or in part, proprietor, editor, printer or publisher of a newspaper, pamphlet, book or other publication is responsible for any libel printed or published therein, unless he proves on trial that it was printed and published without his knowledge, consent or suspicion, and that by reasonable care and diligence, he could not have prevented it. (R. S. c. 117, § 31.)

Sec. 32. Responsibility for libels by radio.—A person shall be responsible for any libel published or uttered in or as a part of a visual or sound radio broadcast, unless he proves on trial that it was broadcast and published without his knowledge, consent or suspicion, and that by reasonable care and diligence he could not have prevented it.

In no event, however, shall any person be held liable for any damages for any defamatory statement uttered by another over the facilities of a visual or sound radio station or network by or on behalf of any candidate for public office, or in discussion of any matter referred to referendum, if such person shall have no power of censorship over the material broadcast. (1949, c. 134.)

Sec. 33. Publication of any false or libelous statement.—Whoever willfully and maliciously states, delivers or transmits by any means whatever to the manager, editor, publisher or reporter of any newspaper, magazine, publication, periodical or serial, for publication therein, any false or libelous statement concerning any person or corporation, and thereby secures the actual publication of the same, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 117, § 32.)

Sec. 34. Truth of publication is justification if not made maliciously; jury to judge law and fact.—In prosecutions for any publication relative to the official conduct of men in their public capacities, or to the qualifications of candidates for popular suffrages, or where the matter published is proper for public information, the truth thereof may be given in evidence and, if proved, shall be a complete justification; and in prosecutions for all other libels, the truth thereof, thus proved, shall be a complete justification unless it appears that such publication originated in corrupt and malicious motives; and if any alleged libel is not justified in either of said modes, it shall be deemed malicious unless the contrary is clearly proved. In all indictments for libel, the jury, after receiving the direction of the court, may determine at their discretion the law and the fact. (R. S. c. 117, § 33.)

Cross reference.—See Me. Const., Art. 1, § 4, re libel.

Whether the language published constitutes a criminal libel is a question wholly for the jury, since under the constitution (Art. 1, § 4) and this section, in all indictments for libels, the jury determines the law as well as the facts. State v. Norton, 89 Me. 290, 36 A. 394.

But this privilege may be waived by accused.—Since the provision of this section authorizing the jury to determine both law and fact is for the benefit of the accused, he may waive it by admitting the allegations of fact, and asking the court to determine the law. State v. Norton, 89 Me. 290, 36 A. 394.

It is true that, in a prosecution for libel the respondent has the right to have the jury determine whether or not the publication is libellous; but he may waive this privilege by admitting it to be a libel; in which case he cannot complain if this question is not left to the jury, nor can he be aggrieved by a ruling of the court, as a matter of law, that it is a libel. State v. Goold, 62 Me. 509.

And when the accused demurs to an indictment he thereby refers the question of libel or no libel to the court. State v. Norton, 89 Me. 290, 36 A. 394.

Sec. 35. Publishing lists of debtors; certain officials excepted.—No person, firm or corporation shall publicly advertise for sale in any manner whatever, or for any purpose whatever, any list or lists of debts, dues, accounts, demands, notes or judgments containing the names of any of the persons who owe the same. Any such public advertisement containing the name of but 1 person who owes as aforesaid shall be construed as a list within the meaning of this section. Any person, firm or corporation violating any of the provisions of this section shall be liable in an action of debt to a penalty of not less than $25 nor more than $100, to each and every person, severally and not jointly, whose name appears in any such list. The provisions of this section shall not apply to executors, administrators, guardians, trustees, trustees in bankruptcy, assignees in insolvency, sheriffs, deputy sheriffs, constables, collectors of taxes, town treasurers or any other officials whose official duties require them to publish any such list or lists. (R. S. c. 117, § 34.)

Applied in American Mercantile Exchange v. Blunt, 102 Me. 128, 66 A. 212.

False Reports Concerning Banks, Loan and Building Associations and Insurance Companies.

Sec. 36. False reports concerning banks, loan and building associations and insurance companies.—Whoever maliciously makes, publishes, utters, repeats or circulates any false report concerning any savings bank, national bank, trust company, loan and building association or insurance company shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 117, § 35.)