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costs. No action shall be maintained for a false return to a writ of mandamus. After judgment and decree that the peremptory writ be granted or denied, the justice of the court before which the proceedings are pending shall forthwith certify to the chief justice for decision any appeal based on objections to any rulings, findings or decrees made at any stage of the proceedings. Notice of such appeal shall be given within 5 days after judgment and decree. The appealing party shall, within 15 days thereafter, forward to the chief justice his written argument upon such appeal and shall, within said 15 days, furnish the adverse party or his attorney with a copy of such argument. The adverse party shall, within 15 days after receipt of such copy, forward to the chief justice his written argument in reply. Thereupon the justices of said court shall consider said cause immediately and decide thereon and transmit their decision to the clerk of the court where the petition is pending, and final judgment shall be entered accordingly. If the judgment is in favor of the petitioner, the peremptory writ of mandamus shall thereupon be issued. (R. S. c. 116, § 18. 1959, c. 317, § 283.)

Effect of amendment.—The 1959 amendment divided the next to last sentence into three sentences, substituted "deny" for "traverse," and "move to dismiss for insufficiency in law" for "demur" in the first sentence, added "or denied" following "granted," and substituted "any appeal based on objections" for "all exceptions which may be filed and allowed" in the fourth sentence, added the fifth sentence, and substituted "appealing" for "excepting" and "appeal" for "exceptions" in the sixth sentence.

Effective date of 1959 amendment.—See note to § 16.

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.

Stated in State v. Cuccinello, 152 Me. 431, 133 A. (2d) 889.

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 evidence is to be carefully considered by the jury. State v. Dipietrantonio, 152 Me. 41, 122 A. (2d) 414.

Crime must be committed when woman drugged, etc.

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

The words "without her consent" and "against her will" are used synonymously. State v. Dipietrantonio, 152 Me. 41, 122 A. (2d) 414.

Unchastity of the female is no defense, etc.

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

However, it may be admissible to show consent, etc.

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

In a prosecution under this section, etc.

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

Admissibility of prior acts of intercourse. —Prior acts of intercourse (to those alleged) between a respondent and prosecutrix are admissible for the purpose of demonstrating relationship between the parties, even though not set forth in the bill of particulars. State v. Henderson, 153 Me. 364, 139 A. (2d) 515.

When proper and improper for defendant to show that another was responsible for pregnancy of complaining witness.— Where pregnancy of a complaining witness in a rape is brought into the case by the state, it is evidence of probative force against a respondent and tends to corroborate the testimony of the prosecutrix. In such case, it is proper for a defendant to attack it by being permitted to show that another than he was responsible for the prosecutrix's condition. State v. Henderson, 153 Me. 364, 139 A. (2d) 515.

Where the fact of birth of a child, or other corroborating circumstance, is first brought out by the accused, the rule is otherwise. State v. Henderson, 153 Me. 364, 139 A. (2d) 515.

Instructions.—See State v. Dipietrantonio, 152 Me. 41, 122 A. (2d) 414.

Assault, Assault and Battery.

Sec. 21. Assault, and assault and battery, definitions.

The ancient doctrine that one must "retreat to the wall" has been discarded by our courts and it is now the almost universal rule that in case of assault and battery the assaulted person may stand his ground and defend himself just as long as he uses no more force than necessary to repel the attack. State v. Lumbert, 152 Me. 131, 124 A. (2d) 746.

Section constitutional even though presiding justice may determine gravity of offense.—This section is constitutional even though it permits the presiding justice to determine the gravity of the offense. State v. Cuccinello, 152 Me. 431, 133 A. (2d) 889.

Responsibility where physical injury accidental or unintentional but where shooting occurred during intended assault.—One does not escape criminal responsibility under this section because the physical injury may have been accidental or unintentional where the fact remains that the shooting

occurred during an intended assault. State v. Cuccinello, 152 Me. 431, 133 A. (2d) 889.

Cited in State v. Barnett, 150 Me. 473, 114 A. (2d) 245.

Sec. 22-A. False report as to bomb.—Whoever calls out or causes to be called out any fire department, police department or other municipal department, or any portion or persons thereof, by intentionally giving a false report as to the deposit of any bomb or infernal machine in any public place, or in or upon any public conveyance, including but not limited to aircraft, or causes the evacuation of any public place or public conveyance by such false report, knowing such report to be false, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years, or by both. (1957, c. 262.)

Conspiracies, Blacklisting, Threatening Communications and Malicious Vexations.

Sec. 25. Conspiracies in other cases.

Conspiracy to bribe public officer.—See State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

Chapter 131.

Crimes against Habitations, Buildings and Property.

Arson and Other Burnings.

Sec. 3. Burning of other buildings, vessels, bridges, etc. — Whoever willfully and maliciously burns any building of his wife or of another not mentioned in section 2, or any motor vehicle, aircraft, vessel, bridge, lock, dam or flume of his wife or of another, shall be punished by imprisonment for not less than one year nor more than 10 years. (R. S. c. 118, § 3. 1957, c. 62.)

Effect of amendment. — The 1957 amendment added motor vehicle and aircraft to the list of articles enumerated.

Burglary, Assault with Intent. Breaking and Entering with Intent to Commit a Felony.

Sec. 11. Breaking and entering with intent to commit a felony or any larceny.—Whoever, with intent to commit a felony or any larceny, breaks and enters in the daytime or enters without breaking in the nighttime any dwelling house, or breaks and enters any office, bank, shop, store, warehouse, vessel, railroad car of any kind, motor vehicle, aircraft, house trailer, or building in which valuable things are kept, any person being lawfully therein and put in fear, shall be punished by imprisonment for not less than one year nor more than 10 years; but if no person was lawfully therein and put in fear, by imprisonment for not more than 5 years or by a fine of not more than $500. (R. S. c. 118, § 11. 1947, c. 167, § 2. 1959, c. 59.)

Effect of amendment.—The 1959 amendment added "motor vehicle, aircraft, house trailer" after the words "of any kind."

Malicious Mischiefs.

Sec. 26. Unlawful injuring of or tampering with vehicles or aircraft. —Whoever shall individually or in association with one or more others willfully break, injure, tamper with or remove any part or parts of any vehicle or aircraft