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be maintained without his consent. He may, therefore, withdraw from the proceeding at his discretion, without the assent of the relators, and if he does so, the action is subject to dismissal, either on motion of the attorney general, or upon motion of the respondents. State v. Elwell, 156 Me. 193, 163 A. (2d) 342.

Sec. 22. When attorney general need not be party.

Section modifies, etc.

In accord with original. See State v. Elwell, 156 Me. 193, 163 A. (2d) 342.

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.—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, except that if there is a violation of chapter 22, sections 151-B or 151-C, no prosecution for manslaughter shall lie. (R. S. c. 117, § 8. 1961, c. 262, § 3.)

Effect of amendment.—The 1961 amendment added the exception at the end of this section.

Editor's note. — The case of State v. London, 156 Me. 123, 162 A. (2d) 150, noted below, was decided prior to the 1961 amendment to this section.

It may result from accident.

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

The enactment of c. 22, § 151-B does not affect the law of manslaughter as it has been applied in a homicide involving the operation of an automobile, where the basic element of the crime lies in the commission of an unlawful act malum in se or malum prohibitum, unless proof of the particular unlawful act relied upon as the basis for the manslaughter charge necessarily requires evidence essential to establish the crime of reckless homicide. In such event the offenses are identical, and c. 22, § 151-B governs. State v. London, 156 Me. 123, 162 A. (2d) 150.

But repeals this section insofar as it applies to criminal negligence in operation of automobile.—Chapter 22, § 151-B, is repugnant and inconsistent with this section to such an extent that the legislature must have intended to repeal this section insofar as it applies to a prosecution for manslaughter based upon criminal negligence in the operation of an automobile. State v. London, 156 Me. 123, 162 A. (2d) 150.

As substance of crime under this section and c. 22, § 151-B, is the same.—An examination of the elements of the crime established by c. 22, § 151-B and of the elements of manslaughter by criminal negligence, discloses that the substance of the crime in each case is the operation of an automobile with reckless disregard for the safety of others, thereby causing the death of another. State v. London, 156 Me. 123, 162 A. (2d) 150.

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; State v. Field, 157 Me. 71, 170 A. (2d) 167.

Constructive force.—Where prosecutrix submits under the compulsion of fear, the force may be said to be constructive. State v. Field, 157 Me. 71, 170 A. (2d) 167.

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; State v. Field, 157 Me. 71, 170 A. (2d) 167.

In absence of corroboration, testimony of prosecutrix must be scrutinized and analyzed with great care. If the testimony is contradictory, or unreasonable, or incredible, it does not form sufficient support for a verdict of guilty. State v. Field, 157 Me. 71, 170 A. (2d) 167.

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.

Cited in State v. Rand, 156 Me. 81, 161 A. (2d) 852.

Abduction of Women and Kidnapping.

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 a civil action to such parent, master or guardian for all damages thereby sustained. (R. S. c. 117, § 15. 1961, c. 317, § 452.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action on the case" in this section.

Assault, Assault and Battery.

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

This section is merely declaratory, etc. In accord with original. See State v. Rand, 156 Me. 81, 161 A. (2d) 852.

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.

There is no age of consent in this section. State v. Rand, 156 Me. 81, 161 A. (2d) 852.

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.

The guilty intention in assault may be inferred from the act. State v. Rand, 156 Me. 81, 161 A. (2d) 852.

Act constituting assault and battery indecent in character.—The touching of the private parts of a nine year old child through her clothing, without her consent, constitutes and assault and battery indecent in character. State v. Rand, 156 Me. 81, 161 A. (2d) 852.

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.

Libels.

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 a civil action 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. 1961, c. 317, § 453.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the third sentence of this section.

Chapter 131.

Crimes against Habitations, Buildings and Property.

Sections 36-A to 36-C. Emergency Use of Party Lines.

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. 17. Malicious injury; tampering with; setting in motion any railroad car.—Whoever willfully, mischievously or maliciously breaks the seal