MAINE STATE LEGISLATURE

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cretion of the attorney general, with his consent, and upon his official responsibility. State v. Elwell, 156 Me. 193, 163 A. (2d) 342.

Who is an essential party.—The attorney general in quo warranto proceedings is neither a nominal plaintiff nor a coplaintiff with the relators. He is the person essential to the institution and maintenance of the process of quo warranto and the ordinary rules existing between co-plaintiffs as to the power of dismissal without authority of the others is not applicable. State v. Elwell, 156 Me. 193, 163 A. (2d) 342.

And whose withdrawal from proceeding subjects action to dismissal.—The institution of an information in the nature of quo warranto, upon the relation of the attorney general, is a matter within the discretion of the attorney general, and the action cannot 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.

And the crime is now, etc.

In accord with original. See State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

Beyond a reasonable doubt.

In accord with original. See State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

However, malice aforethought, etc.

In accord with original. See State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

Nor is it limited to hatred, etc.

In accord with original. See State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

"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.

Malice may be presumed, etc.

In accord with 2nd paragraph in original. See State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

And all homicide is, etc.

In accord with 2nd paragraph in original. See State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

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; State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

The difference between murder and manslaughter is malice aforethought. State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

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; State v. Duguay, 158 Me. 61, 178 A. (2d) 129; Doyon v. State, 158 Me. 190, 181 A. (2d) 586, cert. den. 371 U. S. 849, 83 S. Ct. 85, 9 L. Ed. (2d) 84.

That a defendant had been a good citizen holding responsible positions in the community and that at the time of the homicide he was badly intoxicated, were not factors which would reduce the crime of murder to manslaughter. Doyon v. State, 158 Me. 190, 181 A. (2d) 586, cert. den. 371 U. S. 849, 83 S. Ct. 85, 9 L. Ed. (2d) 84.

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 crimi-

nal 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; State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

The difference between murder and manslaughter is malice aforethought. State v. Duguay, 158 Me. 61, 178 A. (2d) 129.

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.

Voluntary intoxication.—See same catchline in note to § 1 of this chapter.

Rape, Assault with Intent.

Sec. 10. Rape, defined.—Whoever ravishes and carnally knows any female who has attained her 14th birthday, by force and against her will, or unlawfully and carnally knows and abuses a female child who has not attained her 14th birthday, shall be punished by imprisonment for any term of years. (R. S. c. 117, § 10. 1963, c. 331, § 1.)

Effect of amendment.—The 1963 amendment substituted "who has attained her 14th birthday" for "of 14 or more years of age" and also substituted "who has not attained her 14th birthday" for "under 14 years of age."

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.

There are three elements which must be present to constitute rape, viz: carnal knowledge, force, and the commission of the act without the consent or against the will of the ravished woman. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

Carnal knowledge is synonymous with sexual intercourse. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

The meaning of the words "carnal knowledge" of a woman by a man is sexual bodily connection. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

And is a species of sexual relations.—Sexual relations comprise a comprehensive genus of which sexual intercourse and the latter's equivalent, carnal knowledge, are species. All carnal knowledge is sex relations but the converse is false. Carnal knowledge and sex relations are not constantly convertible terms. Sexual relations ought not to be treated as synonymous with sexual intercourse. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

It is complete upon proof of penetration of the female organ by the male organ, however slight. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

Proof of carnal knowledge is indispensable to conviction of rape. — In requisite degree the proof of carnal knowledge by the defendant is indispensable to a conviction of rape. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

And sexual intercourse is an indispensable element in the crime of statutory rape. State v. Barnette, 158 Me. 117, 179 A. (2d) 800.

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 may 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.

By practical standards the offenses of aiding child delinquency and statutory rape are distinguishable and not identical. They are not the same offense. State v. Barnette, 158 Me. 117, 179 A. (2d) 800.

Hence, plea of former jeopardy was properly overruled where it was raised in bar to an indictment accusing defendant of having unlawfully and carnally known and abused a female child of 12 years of age (this section) on the basis of a prior conviction in a municipal court of having aided in the delinquency of a child (c. 138, § 13-A). Statutory rape is aiding juvenile delinquency plus the different criminal factor of sexual intercourse. Correlatively, statutory rape and aiding child delinquency are the greater and lesser offenses, one being a felony the other a misdemeanor. The municipal court which adjudicated the misdemeanor had no jurisdiction of the felony; thus in the delinquency proceedings, the defendant was not in jeopardy for statutory rape. State v. Barnette, 158 Me. 117, 179 A. (2d) 800.

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; State v. Bennett, 158 Me. 109, 179 A. (2d) 812.

But it may be corroborated by proof of, etc.

The fact that a complaint of rape was made is always admissible as a part of the state's evidence in chief, if the prosecutrix takes the stand, in corroboration of her evidence, but not the details of the complaint. State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

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; State v. Bennett, 158 Me. 109, 179 A. (2d) 812.

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.

Evidence held insufficient to establish carnal knowledge.—See State v. Croteau, 158 Me. 360, 184 A. (2d) 683.

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

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

Sec. 11. Carnal knowledge of girls between 14 and 16 years. — Whoever, having attained his 18th birthday, has carnal knowledge of the body of any female child who has attained her 14th birthday but has not attained her 16th birthday shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years. This section shall not apply to cases of rape as defined in section 10. (R. S. c. 117, § 11. 1963, c. 331, § 2.)

Effect of amendment.—The 1963 amendment substituted "having attained his 18th birthday" for "being more than 18 years of age," substituted "who has attained her 14th birthday but has not attained her 16th birthday" for "between the ages of 14 and 16 years," and deleted "The provisions of."

Cited in Austin v. State, 158 Me. 292, 183 A. (2d) 515.

Sec. 12. Assault with intent to commit rape.—Whoever assaults a female who has attained her 14th birthday 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 who has not attained her 14th birthday, such imprisonment shall be for not less than one year nor more than 20 years. (R. S. c. 117, § 12. 1963, c. 331, § 3.)

Effect of amendment.—The 1963 amendment substituted "who has attained her 14th birthday" for "of 14 years of age or more" in the first sentence and substituted "who has not attained her 14th birthday" for "under 14 years" in the second sentence.

Abduction of Women and Kidnapping.

Sec. 13. Abduction of women.

Cited in Austin v. State, 158 Me. 292, 183 A. (2d) 515.

Sec. 14. Kidnapping; jurisdiction; consent.

Applied in Austin v. State, 158 Me. 292, 183 A. (2d) 515.

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 who has not attained his 21st birthday, 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. 1963, c. 331, § 4.)

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

The 1963 amendment substituted "who has not attained his 21st birthday" for "under 21 years of age."

Robbery, Assault with Intent.

Sec. 16. Robbery, definition.

Robbery defined.—Robbery is larceny committed by violence from the person of one put in fear. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

Felonious intent must be shown. — A conviction for larceny will not be sustained unless a felonious intent at the time of the taking is shown. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

In order to constitute a larceny, there must be not only a taking and carrying away of the goods of another, but there must also exist contemporaneously the felonious intent, the animus furandi, on the part of the taker, which means a taking without excuse or color or right with the intent to deprive the owner permanently of his property and all compensation therefor. The felonious intent is the very gist of the offense. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

And an exposition thereof included in charge to jury.—In a prosecution under this section, the defendant had a constitutional right to have included in the charge to the jury an exposition of the indispensable element of animus furandi or the essential intent to deprive permanently. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

The intent must be to deprive the owner permanently of the property. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

To verify robbery or larceny, the evidence adduced must demonstrate beyond any reasonable doubt a taking by a defendant with intent to deprive the chattel's owner or possessor permanently of the object appropriated. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

And borrowing for temporary use is insufficient.—Merely borrowing property for a temporary use does not constitute larceny. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

Intent is a jury question. State v. Greenlaw, 159 Me. 141, 189 A. (2d) 370.

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 gives a false report, knowing such report to be false, to anyone as to the deposit of any bomb or infernal machine in any place shall be punished by a fine of not more than $500

or by imprisonment for not more than 11 months, or by both. (1957, c. 262. 1963, c. 70, § 1.)

Cross reference.—For present provisions re calling out public agencies on false bomb reports, see § 22-B of this chapter.

Effect of amendment.—The 1963 amendment rewrote this section, which formerly related to calling out fire or police departments or causing the evacuation of public places or conveyances by giving intentionally false reports as to the deposit of bombs in public places or conveyances.

Sec. 22-B. Calling out public agency on false bomb report.—Whoever calls out or causes to be called out any fire department, police department or other municipal department, sheriff department or state police, or any portion or persons thereof, by intentionally giving a false report as to the deposit of any bomb or infernal machine in any place, 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. (1963, c. 70, § 2.)

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.

Sec. 27. Threatening communication.

Legislative intent.—By this section the legislature intended to make it a crime for one to make, publish or send to another any communication, written or oral, containing a threat to injure the person or property of that person. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

This section is not ambiguous. The language is plain and understandable. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Nor is it inconsistent with other code provisions.—There is no inconsistency in the purposes intended by the provisions of this section and § 28 of this chapter and §§ 1, 2 and 4 of c. 144. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

This section describes an entirely different crime than that of § 28 of this chapter. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Sections 1, 2, and 4 of c. 144 prescribe procedures for prevention of crime and have no bearing on the application of this section. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Verdict precluded attack on sufficiency of indictment. — Where the indictment charged by the use of statutory language a crime under this section, whether or not the language used alleged the crime with that degree of certainty and particularity that the process of criminal pleading requires was not available to attack by defendant, since his right to question the sufficiency of the indictment was lost to him after verdict, as the allegations in the indictment alleged, in substance, a crime. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Sec. 28. Threats to accuse or injure, with intent to extort or compel.

This section describes an entirely different crime than that of § 27 of this chapter. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

And is not inconsistent with other code provisions.—There is no inconsistency in the purposes intended by the provisions of this section and § 27 of this chapter and §§ 1, 2 and 4 of c. 144. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

The gist of the offense, etc.

Extortion is the gist of the crime, and the verbal, written, or printed communication is the manner in which the extortion is committed. Haynes v. Robbins, 158 Me. 17, 177 A. (2d) 352.

Sec. 29. Maliciously vexing or tormenting another by a person of 16 or over.—Whoever having attained his 16th birthday 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. 1963, c. 331, § 5.)

Effect of amendment.—The 1963 amendment substituted "having attained his 16th birthday" for "being more than 16 years of age" near the beginning of this section.

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