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Chapter 131.

Crimes against Habitations, Buildings and Property.

Meaning of "maliciously."—"Maliciously" as used in this chapter means nothing more than that the act should be done voluntarily, unlawfully, and without excuse or justification. State v. Glovsky, 119 Me. 546, 112 A. 347.

Arson and Other Burnings.

Arson is in itself an aggravated offense. State v. Rand, 132 Me. 246, 169 A. 898.

And an infamous crime.—The minimum sentence for arson is one year in the state prison. Hence, it is a felony by statute and being a felony it is an infamous crime. State v. Rand, 132 Me. 246, 169 A. 898.

"Set fire to" and "burn" are used synonymously.—The words "set fire to" and "burn" are generally understood as equivalents. And it is very evident that they are used synonymously in these sections. State v. Taylor, 45 Me. 322.

It is not necessary, to constitute arson, that any part of the building should be consumed. If there is actual ignition of any part, however small, though the fire immediately goes out of itself, the offense is committed. State v. Taylor, 45 Me. 322.

Sec. 1. Burning of dwelling houses; offense may constitute murder.—Whoever willfully and maliciously sets fire to or causes fire to be set to the dwelling house or any building occupied in part for dwelling or lodginghouse purposes and belonging wholly or in part to himself, his wife or to another, or to any building adjoining thereto owned wholly or in part by himself, his wife or another, with intent to burn such dwelling house or building, shall be punished by imprisonment for not less than 1 year nor more than 20 years. Whoever willfully and maliciously sets fire to or causes fire to be set to a dwelling house or any building owned by himself, and thereby endangers a dwelling house or other property of his wife or of another shall be punished by imprisonment for not less than 1 year nor more than 20 years. Should the life of any person be lost in consequence of any such burning such offender shall be deemed guilty of murder and punished accordingly. (R. S. c. 118, § 1.)

Cross references.—See § 6, re wife liable if husband's property; § 12, re definition of dwelling house; c. 100, § 47, re lodging-house.

History of section.—See State v. Hill, 55 Me. 365.

"Feloniously" cannot be substituted for "willfully."—An indictment containing the words "feloniously and maliciously" under this section which reads "willfully and maliciously" is insufficient, as the word "feloniously" cannot be substituted for the word "willfully." State v. Hyman, 116 Me. 419, 102 A. 231.

"House" and "dwelling house" are not synonymous.—Neither the terms "house" nor "a certain building, to wit, a house," without more than an allegation of undefined occupancy, describes a dwelling house or a building occupied in part for dwelling or lodginghouse purposes, the burning of which under this section is statutory arson. State v. Beckwith, 135 Me. 423, 198 A. 739.

Necessity for allegation of intent.—Setting fire to a dwelling house and burning the same necessarily implies an intention to burn it; hence there is no necessity for alleging this intention. But if the dwelling house is destroyed by setting fire to an adjoining building, then the intent to burn the dwelling house must be set out. State v. Hill, 55 Me. 365; State v. Watson, 63 Me. 128.

Indictment held sufficient.—See State v. Beckwith, 135 Me. 423, 198 A. 739.

Former provision of section.—For case holding that burning of master's house by servant at master's instance was not arson

under this section when it applied only to the dwelling house of another, see State v. Haynes, 66 Me. 307.

Applied in State v. Hurley, 71 Me. 354; State v. Meservie, 121 Me. 564, 118 A. 482; State v. Baron, 136 Me. 516, 8 A. (2d) 161.

Cited in State v. Crouse, 117 Me. 363, 104 A. 525.

Sec. 2. Burning of public and private buildings. — Whoever willfully and maliciously sets fire to any meetinghouse, courthouse, jail, town house, college, academy or other building erected for public use, or to any store, shop, office, barn or stable of his wife or another within the curtilage of a dwelling house, so that such dwelling house is thereby endangered and such public or other building is thereby burned in the nighttime, shall be punished by imprisonment for any term of years; but if such offense is committed in the daytime or without the curtilage of and without endangering a dwelling house, by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 118, § 2.)

Meaning of "curtilage."—The curtilage of a dwelling house is a space necessary and convenient and habitually used for the family purposes. It includes the garden, if there be one. It need not be separated from other lands by fence. State v. Shaw, 31 Me. 523.

Occupant is presumed owner.—An indictment alleging that the defendant solicited another person to burn a "house" or "a certain building, to wit, a house," occupied by the defendant, does not allege that the defendant solicited the burning of the house or building of another as the house is presumed to belong to the defendant. State v. Beckwith, 135 Me. 423, 198 A. 739.

What constitutes greater and lesser offenses.—If the building set fire to is in the first class named in this section and it is burnt in the nighttime, it is an offense of the higher grade. If it is one enumerated in the second class and is within the curtilage of a dwelling house, so that such dwelling house is endangered, and it is burnt in the nighttime, it is an offense of the higher grade. But, if any such building of either class is burnt in the daytime, it is an offense of less magnitude. Or, if it is a building of a class last named and is without the curtilage of any dwelling house, and no dwelling house is endangered thereby, it is a less offense, though burnt in the nighttime. State v. Taylor, 45 Me. 322.

An indictment under this section for the burning of a meetinghouse need not allege the value of the house. State v. Temple, 12 Me. 214.

Nor that the house was the property of any person. State v. Temple, 12 Me. 214.

Nor that the offense was committed with force and arms. State v. Temple, 12 Me. 214.

Nor that the meetinghouse was then used as a place for public worship. If the building has been abandoned as a place for the public worship of God; proof of this fact is a matter of defense at the trial. State v. Temple, 12 Me. 214.

And indictment for burning barn in day time need not allege barn was part of curtilage of house.—In an indictment under this section for burning a barn "in the day time," it is not necessary to allege that the barn was within the curtilage of a dwelling house, that fact being immaterial, except where the burning is in the nighttime. State v. Taylor, 45 Me. 322.

Applied in State v. Kingsbury, 58 Me. 238; State v. Fraizer, 144 Me. 383, 64 A. (2d) 179.

Cited in State v. Crouse, 117 Me. 363, 104 A. 525; Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

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 the preceding section, or any vessel, bridge, lock, dam or flume of his wife or of another, shall be punished by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 118, § 3.)

This section and § 2 are separate and distinct felonies and the severity of the punishment prescribed differs greatly. State v. Beckwith, 135 Me. 423, 198 A. 739.

Meaning of "building." — The word "building" is not the distinctive name of a particular structure. It is a comprehensive term. It comprises any edifice erected by the hand of man of natural materials, as wood or stone, brick or marble. As commonly understood, a building is a house for residence, business, or public use, or for shelter of animals or storage of goods. A structure of considerable size intended to be permanent or at least to endure for a considerable time. State v. Crouse, 117 Me. 363, 104 A. 525.

Building should be described.—An in-

dictment under this section for burning a "building" should, to fix the identity of the offense, describe what was burned. State v. Crouse, 117 Me. 363, 104 A. 525.

Allegation of nonconsent unnecessary.— This section does not say that the act must be done without the consent of the owner and such an allegation is not necessary in the indictment. State v. Glovsky, 119 Me. 546, 112 A. 347.

Applied in State v. Baron, 136 Me. 516, 8 A. (2d) 161.

Quoted in part in State v. Taylor, 45 Me. 322.

Sec. 4. Assault with intent to commit arson.—Whoever assaults another with intent to commit arson, 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. 118, § 4.)

Sec. 5. Burning of produce, trees, etc. — Whoever willfully and maliciously burns any corn, grain, hay, vegetables or other produce or any soil, trees, underwood or other property of his wife or of another shall be punished by imprisonment for not less than 1 year nor more than 3 years. (R. S. c. 118, § 5.)

See c. 97, § 36, re kindling fire on land without owner's consent; c. 97, § 37, re kindling fire with intent to injure another.

Sec. 6. Wife liable, although property burned is her husband's. — The provisions of the preceding sections are applicable to a married woman committing either of such offenses without the consent of her husband, although the property set on fire and burned belonged wholly or in part to him. (R. S. c. 118, § 6.)

Sec. 7. Burning property for insurance.—If an owner or person in any way concerned, interested or in possession of any building, goods or other property insured against loss or damage by fire, willfully burns the same or causes it to be burned, with intent to defraud the insurer, he shall be punished by imprisonment for not less than 1 year nor more than 20 years. (R. S. c. 118, § 7.)

Insurance is necessary element. — A necessary element of the offense described in this section is that the building was "insured against loss or damage by fire." An indictment lacking this averment is defective. State v. Faddoul, 132 Me. 151, 168 A. 97.

Indictment held insufficient.—See State v. Strout, 132 Me. 134, 167 A. 859.

Applied in State v. McDonald, 117 Me. 474, 104 A. 849; State v. Baron, 136 Me. 516, 8 A. (2d) 161.

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

Sec. 8. Burglary, definition.—Whoever breaks and enters in the nighttime with intent to commit a felony or any larceny or, having entered with such intent, breaks in the nighttime a dwelling house, any person being then lawfully therein, is guilty of burglary; and whether he is, before or after entering, armed with a dangerous weapon, or whether he assaults any person lawfully therein or has any confederate present aiding or abetting or not, in either case he shall be punished by imprisonment for any term of years; and all burglars' tools or implements prepared or designed for committing burglary shall be dealt with as provided in section 13 of chapter 139. (R. S. c. 118, § 8. 1947, c. 167, § 1.)

Applied in State v. Seymour, 36 Me. 225.
Cited in Duplisea v. Welsh, 140 Me. 295, 37 A. (2d) 260; Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 9. Burglary with explosives; definition.—Any person who, with intent to commit crime, breaks and enters, either by day or by night, any building whether inhabited or not and opens or attempts to open any vault, safe or

other secure place by the use of nitroglycerine, dynamite, gunpowder or any other explosive shall be deemed guilty of burglary with explosives. Any person duly convicted of burglary with explosives shall be punished by imprisonment for not less than 20 years nor more than 40 years. (R. S. c. 118, § 9.)

Sec. 10. Assault with intent to commit burglary. — Whoever assaults another with intent to commit burglary, 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. 118, § 10.)

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 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 1 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.)

This section makes the breaking and entering of a dwelling house a distinct offense, and it is immaterial whether or not valuable things are therein kept. If the breaking and entering is of any building other than a dwelling house it is necessary to allege that valuable things were therein kept, but no such allegation is required when the indictment charges the breaking and entering of a dwelling house. State v. Neddo, 92 Me. 71, 42 A. 253.

Actual breaking must be proved.—However full may be the proof of entrance, the offense described in this section is not proved, until there be proof of an actual breaking or its equivalent. It is immaterial, by what kind of violence the breaking is effected. The gist of the offense consists not in the degree or kind of violence used. State v. Newbegin, 25 Me. 500.

Import of "break and enter."—It was doubtless the design of the legislature to use the words, break and enter, when defining this offense, in the sense in which they are used to define the crime of burglary. State v. Newbegin, 25 Me. 500.

Averment of occupancy is not necessary to charge lighter offense.—If it is intended to charge the offense for which the lighter punishment is provided by this section, it is not necessary to aver that no person was lawfully in said dwelling house and put in fear. State v. Neddo, 92 Me. 71, 42 A. 253.

Indictment held sufficient.—An indictment alleging that the accused broke and entered a dwelling house on a day named sufficiently charges an offense under this section for breaking and entering a dwelling house in the daytime. State v. Neddo, 92 Me. 71, 42 A. 253.

Indictment held insufficient.—An indictment under this section averring that the defendant broke and entered a railroad car for the purpose of committing a felony wholly failed to apprise him of the specific offense which it is claimed he intended to commit and was therefore held to be insufficient. State v. Doran, 99 Me. 329, 59 A. 440.

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

Sec. 12. Dwelling house defined.—Any permanent building or edifice, usually occupied by any person by lodging therein at night, is a dwelling house, although such occupant is absent for a time, leaving furniture or goods therein, with an intention to return; but no building shall be deemed a dwelling house or part of it, unless connected with or occupied as part of the dwelling house. (R. S. c. 118, § 12.)

Common-law definition adopted.—This section has adopted substantially the same definition of the term "dwelling house," as was used at common law. Marshall v. Wheeler, 124 Me. 324, 128 A. 692.

Connection may be by intervening structure.—Under the terms of this section a building which is connected with or occupied as part of a dwelling house is part of the dwelling house. The connection of such building with the main part of the dwelling house may be by an intervening structure. State v. Meservie, 121 Me. 564, 118 A. 482.

Stated in part in State v. Crouse, 117 Me. 363, 104 A. 525.

Malicious Mischiefs.

Cross Reference.—See § 42, re limitation of action.

Sec. 13. Willful injuries to public and utility properties in general.—Whoever willfully or maliciously destroys, injures or removes any public building, armory, breastwork, trench, fortification, wharf, pier or dock; or any property, pipe line, reservoir, structure or apparatus used in supplying water to the public or to any portion thereof; or any dam, reservoir, fishway, fish screen, canal, trench or their appurtenances; or the gear or machinery of a mill or manufactory; or draws off the water from a mill pond, canal or trench; or destroys or injures any engine or its apparatus for the extinguishment of fire; or any posts, glass caps, wires or other material used in the construction and operation of a telegraph, telephone, electric light or electric power line; or removes, injures or destroys any public or toll bridge, or places any obstruction on such bridge or on any public road with intent to injure persons or property passing thereon, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 3 years. (R. S. c. 118, § 13.)

Cross reference.—See c. 52, § 10, re penalty for injuring an aqueduct.

The word "mill" means the house or building that contains the machinery for grinding, etc. Norway v. Willis, 105 Me. 54, 72 A. 733.

Proof of interest is necessary.—An indictment for maliciously breaking down a dam, belonging to a person named, cannot be sustained except on proof that such person had some interest in the dam. State v. Weeks, 30 Me. 182.

Former provision of section.—For case under this section when it read "maliciously or wantonly," see State v. Burgess, 40 Me. 592.

Sec. 14. Tapping or interfering with water pipes, etc. — Whoever unlawfully and intentionally taps or interferes with the water pipes or fixtures belonging to any water company or to any city, town or water district, or pipes lawfully connected therewith, shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 118, § 14.)

Sec. 15. Injury to, or interference with apparatus used in furnishing gas, electricity or water.—Whoever unlawfully and intentionally injures or destroys or suffers to be injured or destroyed any meter, pipe, conduit, wire, line, pole, lamp or other apparatus belonging to an individual, copartnership or corporation engaged in the manufacture or sale of gas or electricity for lighting purposes or power purposes, or belonging to any water company, or unlawfully and intentionally prevents an electric, water or gas meter from duly registering the quantity of electricity, water or gas supplied, or in any way interferes with its proper action or just registration, or without the consent of such individual, copartnership or corporation unlawfully and intentionally diverts any electric current from any wire of such individual, copartnership or corporation, or otherwise unlawfully and intentionally uses or causes to be used without the consent of such individual, copartnership or corporation any electricity manufactured or distributed by such individual, copartnership or corporation, or unlawfully and intentionally and without the consent of such company taps or interferes with the pipes or fixtures of any gas company, shall for every such offense be punished by a fine of not more than $100 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 118, § 15.)

Sec. 16. Injuring or interfering with telegraph or telephone lines, etc.—Whoever unlawfully and intentionally injures, molests or destroys any insulator, wire, posts, crossarm, bracket or other structure or mechanism which forms part of, or is used in connection with an electrical transmission line constructed and maintained for the transmission of intelligence, heat, light or power by electricity, or destroys or in any way interferes with the proper working of

such transmission line or anything pertaining thereto, shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 118, § 16.)

Sec. 17. Malicious injury; tampering with; setting in motion any railroad car.—Whoever willfully, mischievously or maliciously breaks the seal upon any freight car, or breaks and enters any railroad car, locomotive or work equipment on any railroad in the state, or destroys, injures, defiles or defaces any railroad car, locomotive or work equipment on any railroad in the state, or mischievously or maliciously releases the brakes upon, moves or sets in motion any railroad car, locomotive or work equipment on the track or sidetrack of any railroad in the state, shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years, and shall also be liable to the corporation injured in an action of trespass for the amount of injury so done. (R. S. c. 118, § 17.)

Cross reference.—See c. 136, §§ 19, 20, re malicious obstruction of any engine or car, or abandonment of the same on railroad.

Purpose of section.—The purpose and object of this section is not only to prevent annoyance and damage to the railroad, itself, but to protect the traveling public against accident from any possible collision with a railroad car which might thus be moved or set in motion upon the track. State v. Tardiff, 111 Me. 552, 90 A. 424.

Several distinct offenses are described in this section each punishable by the same penalty. The second clause applies to cars capable of being broken and entered such as any passenger coach, mail car or enclosed freight car. It does not apply to an open, flat car. But an open, flat car readily comes within the mischief to be prevented by the fourth clause of the section. State v. Tardiff, 111 Me. 552, 90 A. 424.

"Car" is used generically in fourth clause.—The word "car" as used in the fourth clause of this section should be regarded as a generic term and intended to cover every kind of a vehicle adapted to the use of rails. State v. Tardiff, 111 Me. 552, 90 A. 424.

Sec. 18. Willful removal of waste from journal boxes of railroad vehicles.—Whoever willfully and maliciously takes or removes the waste or packing from a journal box or boxes of a locomotive, engine, tender, carriage, coach, car, caboose or truck used or operated upon a railroad, whether operated by steam or electricity, shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 years. (R. S. c. 118, § 18.)

Sec. 19. Willful destruction of, or injury to baggage; jurisdiction. — Any baggagemaster, express agent, stage driver, hackman or other person whose duty it is to handle, remove or take care of trunks, valises, boxes, packages or parcels, whether in the employment of a railroad, steamboat or stage company or not, who, while loading, transporting, unloading, delivering or storing such property, wantonly or recklessly injures or destroys the same, shall be punished by a fine of not more than $100 or by imprisonment for less than 1 year; and such offenders may be prosecuted by the owner of property so destroyed or injured or by his authorized agent, within 1 year from the day of the offense, half of the fine to be paid to such owner and half to the county in which the offense was committed. Trial justices have jurisdiction of offenses described in this section when the property destroyed or injury done is not alleged to exceed $20. (R. S. c. 118, § 19.)

Sec. 20. Interference, removal or destruction of transit points, etc. —Whoever willfully or maliciously disturbs, removes or destroys any transit point, reference point, stake, plug, hub, guard-stake, bench mark or other monument of any railroad, highway or other engineering location or survey shall be punished by a fine of not more than $25 or by imprisonment for not more than 30 days; and in addition thereto shall be liable in an action of debt for the amount of damage done. (R. S. c. 118, § 20.)

Sec. 21. Malicious injuries to monuments, landmarks, guideboards, lamps.—Whoever willfully and wantonly or maliciously injures or removes any monument erected or tree marked as a boundary of any land or town; destroys, defaces or alters the marks thereon, made for the purpose of designating such boundary; injures or defaces any milestone or guideboard erected on a public way or railroad; removes, defaces or injures any signboard, lamp or lamppost; or extinguishes any lamp on any bridge, street, way or passage, shall be punished by a fine of not more than $100 and by imprisonment for less than 1 year. (R. S. c. 118, § 21.)

Sec. 22. Malicious injury to buildings, fixtures, goods or valuable papers; civil action for damages not exceeding treble amount.—Whoever willfully and wantonly or maliciously destroys, injures or defaces any building or fixture attached thereto without consent of the owner; or destroys, injures or secretes any goods, chattels or valuable papers of another, shall be punished by a fine of not more than $500 or by imprisonment for less than 1 year; and shall also be liable to the party injured, in an action of trespass, for the amount of injury so done and for a further sum, not exceeding in all three times such amount, as the jury deems reasonable. (R. S. c. 118, § 22.)

No new right of action established.—This section cannot be construed to give a right of action to a party who had none before at common law. Rockingham Mut. Fire Ins. Co. v. Bosher, 39 Me. 253.

Section is for benefit of owner.—This section was designed to increase the liability in the amount to be recovered of one who should willfully or maliciously destroy, injure or deface, or secrete the property of another person, by the owner thereof, and not by one who has no interest in the property, but who might be remotely prejudiced by virtue of some contract with the owner. Rockingham Mut. Fire Ins. Co. v. Bosher, 39 Me. 253.

Prior criminal conviction is not necessary for recovery of threefold damages.—In order to recover threefold damages allowed by this section for the willful destruction of property, it is not a prerequisite that the defendant should have been convicted of the offense in a criminal prosecution. Thayer v. Boyle, 30 Me. 475; State v. Pike, 33 Me. 361.

Wrongful taking is not essential element.—In a criminal prosecution under this section for willfully destroying the property of a person without his consent, it is immaterial whether the property came rightfully or wrongfully into possession of the defendant. A wrongful taking is not an essential ingredient in this class of offenses. State v. Pike, 33 Me. 361.

But offense must have been done out of cruelty, etc.—To constitute a "malicious and willful" injury to a building, it is not enough that the injury was willful and intentional; but, in order to create the criminal offense, it must have been done out of cruelty, hostility or revenge. Wing v. Wing, 66 Me. 62.

And nonconsent must be alleged.—Where, as in this section, nonconsent of the owner is made a material part of the offense, an allegation of such nonconsent is necessary. State v. Glovsky, 119 Me. 546, 112 A. 347.

Injured party may be state's witness.—In a criminal prosecution under this section for willfully destroying property, the party injured may be a witness for the state. State v. Pike, 33 Me. 361.

One in possession may be treated as owner.—In an indictment under this section for maliciously injuring a dwelling house, not having the consent of the owner thereof, where at the time of the commission of the offense, the house injured was not in the possession of the owner, but of a tenant at will under him, it may well be described as the house of the tenant. State v. Whittier, 21 Me. 341.

What constitutes secretion.—In an action for secreting a town's records, it is not necessary that the defendant do an act to conceal the book; a false denial that it was in his possession or that he had any knowledge of it might operate as a most effectual secretion of it. State v. Williams, 30 Me. 484.

Applied in State v. Billington, 33 Me. 146.

Sec. 23. Wanton injury to books, pictures, statues, etc.—Whoever wantonly mars, defaces or injures a book, picture, statue, painting or other object or materials, belonging to any public library or library of any association open to the public or to any literary or educational institution, or any statue

erected in any public park or square or upon any ground open to the public, shall be punished by a fine of not more than $50 or by imprisonment for not more than 3 months. (R. S. c. 118, § 23. 1953, c. 5, § 2.)

Sec. 24. Mooring vessels or rafts to buoys or beacons and for destroying them.—Whoever moors a vessel, boat, scow or raft to any buoy or beacon, placed by the United States or this state in any of the navigable waters of this state, or in any manner makes the same fast thereto, forfeits $50; and whoever willfully destroys any such buoy or beacon shall forfeit $100 and be imprisoned for 3 months. Said forfeitures may be recovered by complaint or action of debt, half to the plaintiff or informer and half to the county in which the trial is had. (R. S. c. 118, § 24.)

"Vessel" is used in specific sense.—The word "vessel" is used in a specific and not in a generic sense. McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

Sec. 25. Unlawful taking and use of boats, vehicles, aircraft or draft animals; limitation. — Whoever, in any other case, willfully and mischievously takes or uses any boat, vehicle, aeroplane or other aircraft, or takes, drives, rides or uses any horse, ox or other draft animal, the property of another, without the consent of the owner or person having the legal custody, care and control thereof; or whoever hires with intent to and does so use or drive any horse, ox or other draft animal in excess of any contract made with the owner or keeper thereof shall be punished by a fine of not more than $300 or by imprisonment for not more than 11 months; but the provisions of this section and of section 27 do not apply to any case of taking the property of another with intent to steal the same, or when such property is taken under a claim of right, or with the presumed consent of the owner or person having the legal control thereof. (R. S. c. 118, § 25.)

By this section the legislature has not placed an unauthorized use within the scope of criminal larceny. Wheeler v. Phoenix Assur. Co., 144 Me. 105, 65 A. (2d) 10.

Sec. 26. Unlawful injuring of or tampering with vehicles.—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 for the purpose of injuring, defacing or destroying such vehicle or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle shall be punished by a fine of not more than $200 or by imprisonment for a term of not more than 3 months, or by both such fine and imprisonment; and whoever is convicted the 2nd time for a violation of any of the provisions of this section shall be punished by a fine of not less than $200 nor more than $500, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 118, § 26.)

Sec. 27. Unlawful taking of saddled or harnessed horse. — Whoever unlawfully, willfully and with intent to injure the owner takes away any horse, saddled or harnessed or attached to a vehicle and standing in any highway or other place, shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 months. (R. S. c. 118, § 27.)

See § 25, re exceptions to application of section.

Sec. 28. Driving nails, spikes, etc., in logs intended for manufacture; civil action for double damage. — Whoever willfully or maliciously drives or causes to be driven into any log or logs intended to be sawed or manufactured any nail, spike, bolt or other article such as is likely to cause injury

to or destruction of any saw or instrument used in the manufacture of such logs or endanger the life or person of anyone engaged in such manufacture, shall be punished by a fine of not less than $100 nor more than $500, and by imprisonment for not less than 1 year nor more than 5 years; and shall also be liable to any person injured in an action on the case for double the damages sustained by such person. (R. S. c. 118, § 28.)

Sec. 29. Injuring or cutting loose booms, rafts, vessels or boats; civil action for double damages.—Whoever willfully or maliciously, without consent of the owner, cuts away, lets loose, injures or destroys any boom, raft or logs or other lumber, or any vessel, gondola, scow or other boat fastened to any place, of which he is not the owner or legal possessor, shall be punished by a fine of not more than $500 and by imprisonment for less than 1 year; and shall also be liable to the person injured in an action of trespass for double the damages by him sustained. (R. S. c. 118, § 29.)

"Vessel" is used in specific sense.—The word "vessel" is used in a specific and not in a generic sense. McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

Stated in part in White's Case, 124 Me. 343, 128 A. 739.

Sec. 30. Damages to fruit gardens; arrest of offenders.—Whoever enters an orchard, fruit garden, vineyard or any field or enclosure kept for the purpose of cultivating any domestic fruit therein, without consent of the owner or occupant, and with intent to take, injure or destroy anything there growing, and whoever willfully cuts down, injures or destroys any tree, shrub or vine within any of the places before named, or injures any building, trellis, framework or appurtenance belonging to or upon any of said places, shall be punished by a fine of $20 and costs and by imprisonment for not less than 30 days, and in default of payment of said fine and costs, shall be further imprisoned at the rate of 2 days for each dollar of said fine and costs. The owner of such place or any person employed in its cultivation or rightfully in the possession thereof may arrest any person found violating any provision of this section and carry him before any magistrate within the county where the arrest is made. (R. S. c. 118, § 30.)

Cross reference.—See c. 124, § 11, re trespass on improved or ornamental grounds.

The offense of willfully and maliciously cutting and destroying fruit trees is not punishable by indictment at common law, but only by this section. Brown's Case, 3 Me. 177.

Sec. 31. Protection of rhododendron maximum linnaeus and kalmia latifolia linnaeus. — Whoever without the consent of the owner of the land whereon the same may be growing injures, destroys, digs up or removes any rhododendron maximum linnaeus or kalmia latifolia linnaeus, or any part or parts of the plants of either of said species growing upon the land of another, shall be guilty of a misdemeanor and shall be punished by a fine of not more than $100, and in addition thereto shall be liable to the owner of the land upon which the same was growing in an action of trespass in treble damages. (R. S. c. 118, § 31.)

Sec. 32. Malicious damage to ice upon any waters by self or another.—Whoever willfully and wantonly or maliciously cuts, injures, mars or otherwise destroys or damages ice upon any waters from which ice is or may be taken as an article of merchandise, whereby the taking thereof is hindered or the value of the same is diminished for that purpose; or whoever willfully and wantonly or maliciously incites or procures another to do so shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months; and it is not necessary to allege or prove the title or ownership of the ice so cut, injured, marred, damaged or destroyed. (R. S. c. 118, § 32.)

See c. 137, § 1, re corrupting water used for domestic or other uses.

Sec. 33. Malicious damage to trees, fences, gates, signs or produce. —Whoever willfully and wantonly or maliciously cuts down, destroys or otherwise injures any shrub or tree for ornament or use; breaks, injures or defaces any fence; throws down or opens any gates or bars; knocks down, removes, destroys or defaces signs posted on land or buildings to forbid trespassing; injures, destroys or severs from the land of another any produce thereof or thing attached thereto, such articles not being his own, shall be punished by a fine of not more than $100 and by imprisonment for less than 1 year. (R. S. c. 118, § 33. 1949, c. 327, § 2.)

Cross reference.—See c. 124, § 9, re trespass on lands of another.

"Willfully" and "maliciously" are not identical.—This section uses the words "willfully and maliciously." It does not regard them as identical in meaning, as both are used. It will not be sufficient in the indictment to charge that it was done "feloniously, unlawfully, and willfully." State v. Hussey, 60 Me. 410.

Stated in part in State v. Merrill, 37 Me. 329.

Cited in Wellman v. Dickey, 78 Me. 29, 2 A. 133.

Sec. 34. Advertising on fences, rocks, etc.—Whoever advertises his wares or occupation by painting notices of the same on, or affixing them to fences or other private property, or to rocks or other natural objects, without the consent of the owner in writing, shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $5 nor more than $20. (R. S. c. 118, § 34. 1951, c. 302, § 5.)

Sec. 35. Wearing of spiked boots and shoes in public places. — No person wearing boots or shoes with spikes or calks in the sole or heel thereof shall enter any public building, hotel, railroad station, railroad car or steamboat without special permission from the owner, lessee, person in charge thereof, or some officer, agent or servant of either of them, or, having entered, shall remain therein after having been requested to leave such public building, hotel, railroad station, railroad car or steamboat by the owner, lessee, person in charge thereof, or some officer, agent or servant of either of them. No person shall be convicted of any offense hereunder unless a printed copy of this section and the following section shall have been posted in a conspicuous place in the public building, hotel, railroad station, railroad car or steamboat where said offense is committed for at least 30 days prior to the commission of said offense and is also posted at the time of said offense. Whoever violates any of the provisions hereof shall, on complaint and conviction, be punished by a fine of not less than $1 nor more than $10, but a person having entered as aforesaid without permission and remaining after having been requested to leave as above provided shall only be convicted of violating one of the provisions hereof. (R. S. c. 118, § 36.)

Sec. 36. Destroying notices provided for in preceding section. — Whoever willfully destroys, defaces or tears down any such printed copy posted under the provisions of the preceding section shall forfeit not less than $1 nor more than $10, to be recovered on complaint. (R. S. c. 118, § 37.)

See c. 89, § 87, re malicious injury to tollgate or toll bridge; c. 89, § 94, re malicious injury to the structure of meridian lines.

Trespass.

Cross Reference.—See § 42, re limitation of action.

Sec. 37. Trespass upon lands appurtenant to certain state institutions.—Whoever willfully trespasses upon lands which belong to the state and are appurtenant to the Pownal state school, reformatory for women, reformatory for men, state school for girls or state school for boys, or whoever shall unlawfully interfere with the inmates of any of said institutions, or, after notice

from an officer of any of said institutions to leave said lands, remains thereon, shall be punished by a fine of not more than $50 or by imprisonment for not more than 3 months. (R. S. c. 118, § 38.)

Sec. 38. Trespasses on improved lands.—Whoever willfully commits any trespass or knowingly authorizes or employs another to do so by entering the garden, orchard, pasture, cranberry ground, improved blueberry ground, arboretum, botanic garden or improved land of another, with intent to take, carry away, destroy or injure trees, shrubs, plants, flowers, grain, grass, hay, fruit, vegetables, turf or soil thereon, shall be punished by a fine of not more than $100 and by imprisonment for not more than 90 days. (R. S. c. 118, § 39.)

See c. 124, § 11, re trespass on improved or ornamental grounds.

Sec. 39. Trespass on commercial or residential property.—Whoever willfully enters in and upon any land commercially used, including parking lots, or whoever willfully enters in and upon residential property or the improved lands appertaining to any farm, summer camp or cottage, or whoever parks any motor vehicle in any private drive or way in a manner to block the same or on a public highway in such a manner as to block the entrance to a private driveway, gate or barway, after being forbidden to do so by the owner or occupant thereof, either personally or by an appropriate notice posted conspicuously on the premises, shall be guilty of trespass and shall be punished by a fine of not more than $100 or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (1949, c. 327, § 1. 1953, c. 325.)

Sec. 40. Trespass by entering or passing over enclosed or cultivated land after being forbidden; arrest of offenders.—Whoever willfully enters on or passes over the garden, orchard, mowing land or other enclosed or cultivated land of another between the 1st days of April and December, after being forbidden to do so by the owner or occupant of said land or his agent, either personally or by notice posted conspicuously on the premises, is guilty of trespass and shall be punished by a fine of not more than $20. The owner or occupant of said land or his agent may arrest any person found violating any provision of this section and carry him before any magistrate within the county where the arrest is made. (R. S. c. 118, § 40.)

Sec. 41. Trespass on timber or wood standing, etc.—Whoever, except a road commissioner acting within the scope of his lawful authority, willfully commits any trespass by cutting, destroying or carrying away timber or wood on the land of another; by digging up, taking and carrying away therefrom earth, stone, grass, corn, grain, fruit, hay or other vegetables, or by carrying away from any wharf or landing place goods in which he has no interest, shall be punished by a fine of not more than $50 and by imprisonment for not more than 2 months. (R. S. c. 118, § 41.)

Nonconsent is necessary allegation.— The want of an averment in the complaint that the trees were cut by the defendant, without the license or consent of the owner, is fatal. Hall's Case, 5 Me. 409.

Sec. 42. Limitations of prosecutions and jurisdiction of offenses.—Prosecutions for offenses described in sections 13 to 41, inclusive, except those set forth in sections 15, 16, 19, 29, 31, 35 and 36, must be commenced within 4 years after the commission thereof; and trial justices shall have jurisdiction when the property destroyed or injury done is not alleged to exceed $10 in value, in which case the punishment shall be by a fine of not more than $10 and by imprisonment for not more than 30 days, unless otherwise specially provided. (R. S. c. 118, § 42.)

Protection of Wild Bees.

Sec. 43. Wild bees protected.—No person shall willfully capture, destroy or interfere with a colony or nest of wild bees or remove honey from same, except for purposes of cultivating or self-protection from the bees, except that an owner of an apiary may destroy wild bee nests within a distance of 2 miles of his apiary for the purpose of protecting his bees from disease.

Whoever violates any of the provisions of this section shall be punished by a fine of not less than $10 nor more than $50 for each offense. (1949, c. 391.)

See c. 32, §§ 165-176, re cultivation of bees.