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Chapter 145.

General Provisions Relating to Crimes.

Felony.

Sec. 1. "Felony" defined. — The term "felony" includes every offense punishable by imprisonment in the state prison. (R. S. c. 132, § 1.)

Cross reference.—See c. 149, § 4, re sentences of one year or more shall be in state prison.

History of section.—See Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882.

Crime punishable in state prison is infamous. — A crime punishable by imprisonment in the state prison, whether the accused is or is not sentenced to hard labor, is an infamous crime. State v. Vashon, 123 Me. 412, 123 A. 511.

It is the punishment that may be imposed which is determinative. — Any crime that may be punished by imprisonment for one year or more is a felony. It is the punishment that may be imposed, not that which is imposed, that determines whether or not an offense is a felony or a misdemeanor. State v. Smith, 32 Me. 369; Smith v. State, 145 Me. 313, 75 A. (2d) 538.

Felony must be charged by indictment. —Where a defendant is charged with committing a felony, the offense must be charged by indictment. State v. Vashon, 123 Me. 412, 123 A. 511.

Applied in Smith v. State, 33 Me. 48.

Quoted in part in State v. Goddard, 69 Me. 181; State v. Doran, 99 Me. 329, 59 A. 440; State v. Hyman, 116 Me. 419, 102 A. 231; State v. Arris, 121 Me. 94, 115 A. 648.

Cited in State v. Burke, 38 Me. 574; Abbott v. Marshall, 48 Me. 44; LeClair v. White, 117 Me. 335, 104 A. 565.

Parties in Crimes.

Sec. 2. Accessory before or after the fact; punishment; conviction with or without principal; where tried.—Whoever aids in the commission of a felony, or is accessory thereto before the fact, by counseling, hiring or otherwise procuring the same shall be punished in the manner prescribed for the punishment of the principal felon; and such accessory, when a felony is committed within or without the state by his procurement in the state, may be indicted and convicted as an accessory with the principal or after his conviction; or he may be indicted for and convicted of a substantive felony, whether the principal is convicted or is amenable to justice or not, and shall be punished as aforesaid. Whoever is accessory after the fact to a felony may be indicted, tried and sentenced, whether his principal has or has not been convicted.

Every accessory, before or after the fact, may be tried in the county having jurisdiction of the principal offense, although the accessory offense was committed on the high seas or without the state; and if the principal offense was committed in one county and the accessory offense in another, the latter may be tried in either. (R. S. c. 132, § 2.)

Purpose of section. — The purpose of this section is to prescribe more effectual modes for the prosecution and punishment of accessories to felonies before the fact, and to prevent delays attending the trial and escape of accessories, arising from the failure to bring the principals to trial. State v. Ricker, 29 Me. 84.

This section represents a distinct change from the common law rule which author-

ized the prosecution of an accessory to a felony only after, or in connection with, the conviction of his principal. State v. Ricker, 29 Me. 84; State v. Saba, 139 Me. 153, 27 A. (2d) 813.

But does not abrogate distinction between principal and accessory.—This section is not to be understood as abrogating the distinction between principal and accessory, but clearly preserves the difference between the two. State v. Ricker, 29 Me. 84.

The accessory may be indicted and convicted without reference to the conviction of the principal, either in the indictment or on the trial, although the guilt of the principal must be shown in evidence. State v. Ricker, 29 Me. 84; State v. Saba, 139 Me. 153, 27 A. (2d) 813.

But accessory must be charged with crime of procuring.—When the state seeks to prosecute one who has counseled or procured the commission of a felony, without the conviction of his principal, he must be charged with the statutory crime of procuring, and not with the offense procured. State v. Saba, 139 Me. 153, 27 A. (2d) 813. Affirming State v. Ricker, 29 Me. 84.

Conviction of principal may be alleged.—If the indictment is against the accessory after the conviction of the principal, it is proper to allege the conviction of the latter and the record of conviction is prima facie evidence of his guilt. State v. Ricker, 29 Me. 84.

Meaning of "substantive felony."—A "substantive felony" is that which depends on itself, and is not dependent on another felony which can only be established by the conviction of the one who committed it. State v. Ricker, 29 Me. 84.

Cited in State v. Ruby, 68 Me. 543.

Sec. 3. Who are accessories after the fact.—Every person, not standing in the relation of husband or wife, parent or child to the principal offender, who harbors, conceals, maintains or assists any principal felon or accessory before the fact, knowing him to be such, with intent that he may escape detection, arrest, trial or punishment, is an accessory after the fact and shall be punished by a fine of not more than $1,000 and by imprisonment for not more than 7 years; but in no case shall such punishment exceed the punishment to which the principal felon on conviction would be liable. (R. S. c. 132, § 3.)

Cross reference.—See c. 146, § 2, re accessories when principal is child under 17 years.

Means by which harboring secured are immaterial.—It is not necessary to set forth the means by which the accessory after the fact received, concealed or comforted a principal or accessory before the fact, for it is immaterial in what way the harboring was secured. State v. Neddo, 92 Me. 71, 42 A. 253.

Averment that excepted relationship did not exist.—An averment in an indictment under this section that the accessory did not stand in the relation of husband or wife, or parent or child to the principal sufficiently alleges that the accessory did not stand in such relation at the time stated immediately preceding such averment. State v. Neddo, 92 Me. 71, 42 A. 253.

Attempts to Commit Crime.

Sec. 4. Attempt with overt act to commit offense. — Whoever attempts to commit an offense and does anything towards it, but fails or is interrupted or is prevented in its execution, where no punishment is expressly provided for such attempt, shall, if the offense thus attempted is punishable with imprisonment for life, be imprisoned for not less than 1 nor more than 10 years; and in all other cases he shall receive the same kind of punishment that might have been inflicted if the offense attempted had been committed, but not exceeding ½ thereof. (R. S. c. 132, § 4.)

One accused of the completed offense may lawfully be found guilty of an attempt to commit it, although no separate count charges such an attempt, if there is adequate proof of an overt act toward its complete accomplishment. Carson, Petitioner, 141 Me. 132, 39 A. (2d) 756; Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

Overt act accompanied by intent must be alleged.—In an indictment for an attempt under this section it is essential to aver that the defendant did some act which was accompanied by a particular intent, which would have resulted in the ordinary and likely course of things in a particular crime. State v. Doran, 99 Me. 329, 59 A. 440.

Attempt to commit suicide is not punishable under this section.—Cases of suicide were not within the contemplation of the legislature in the enactment of this section. As no penalty of any kind is attached to suicide if actually committed, there could be no punishment whatever by force of this section for an attempt to commit it. May v. Pennell, 101 Me. 516, 64 A. 885.

Section may apply to acts not themselves a part commission of principal crime.—This section may apply to acts by which the crime is attempted to be committed, although those acts might not have proceeded, previous to the interruption, so far as to constitute a part commission of the principal crime itself. State v. Fuller, 32 Me. 599.

Applied in State v. Cottle, 70 Me. 198.

Cited in State v. Thompson, 70 Me. 196.

Jurisdiction of Crimes.

Sec. 5. Jurisdiction.—The superior court shall have original jurisdiction, exclusive or concurrent, of all offenses except those of which the original exclusive jurisdiction is conferred by law on municipal courts and trial justices, and appellate jurisdiction of these. (R. S. c. 132, § 5.)

Jurisdiction of juveniles.—The superior court is without jurisdiction to try and sentence a child under the age of 17 years unless the offense for which he is charged is one the punishment for which may be imprisonment for life or for any term of years. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Escape is within original jurisdiction of superior court. — The crime of escape or prison breach, whether felony or misdemeanor, is within the original jurisdiction of the superior court and prosecution therefor may be commenced by indictment. Smith v. Lovell, 146 Me. 63, 77 A. (2d) 575.

Applied in State v. Jones, 73 Me. 280.

Quoted in State v. Mullen, 72 Me. 466.

Sec. 6. Death within state from injury inflicted without state; death without state from injury inflicted within state.—If a mortal wound or other violence or injury is inflicted or poison administered on the high seas or without the state, whereby death ensues within the state, such offense may be tried in the county where the death ensues; and if such act is done within and death ensues without the state, the offense may be tried in the county where the act was done, as if death had there ensued. (R. S. c. 132, § 6.)

Section does not apply to the United States forts within the state. Congress has provided for the punishment of crimes committed within the forts of the United States, and conferred exclusive jurisdiction upon the federal courts. State v. Kelly, 76 Me. 331.

Cited in State v. Longley, 119 Me. 535, 112 A. 260.

Sec. 7. Offenses committed on or near boundary of 2 counties; offenses committed in one and death ensues in another county. — When an offense is committed on the boundary between 2 counties or within 100 rods thereof; or a mortal wound or other violence or injury is inflicted or poison is administered in 1 county, whereby death ensues in another, the offense may be alleged in the complaint or indictment as committed, and may be tried in either. (R. S. c. 132, § 7.)

This section relates to the admission of proof, and not to the effect of allegation, in certain cases. State v. Bushey, 84 Me. 459, 24 A. 940.

Stated in part in State v. Thompson, 85 Me. 189, 27 A. 97.

Cited in State v. Longley, 119 Me. 535, 112 A. 260.

Sec. 8. County lines terminating at or in tidewaters; course.—The lines of the several counties of the state which terminate at or in tidewaters shall run by the principal channel in such directions as to include, within the counties to which they belong, the several islands in said waters, and after so including such islands shall run in the shortest and most direct line to the extreme limit of the waters under the jurisdiction of this state, and all waters be-

tween such lines off the shores of the respective counties shall be a part of, and held to be within such counties, respectively. (R. S. c. 132, § 8.)

Sec. 9. Warrants for offenses at or in tidewaters; authority of officers.—Any official authorized to issue warrants within any county may issue warrants for offenses committed in or upon the waters so made a part of such county or the waters of any adjoining county; and said warrant shall be returnable in the county where issued and the courts in such county shall have jurisdiction of the offense. Officers have the same authority upon all such waters as they have upon land within the county where the warrant is issued. (R. S. c. 132, § 9.)

Cited in State v. Longley, 119 Me. 535, 112 A. 260.

Sec. 10. Acquittal of part of an indictment and conviction of residue.—When a person, indicted for an offense, is acquitted of a part by verdict of the jury and found guilty of the residue thereof, such verdict may be received and recorded by the court; and he may be considered as convicted of the offense, if any, which is substantially charged by such residue, and be punished accordingly, although such offense would not otherwise be within the jurisdiction of said court. (R. S. c. 132, § 10.)

Verdict of guilty of part of offense constitutes an acquittal of residue.—The verdict need not contain any formal words of acquittal of a part of the offense; yet such is its legal effect. For when the verdict of the jury finds the accused guilty of a certain part of the offense only, the effect is an acquittal of everything else charged. State v. Payson, 37 Me. 361.

An indictment charging a completed crime includes an allegation of an attempt to commit that crime. Such an attempt constitutes a residue substantially charged within the meaning of this section. Carson, Petitioner, 141 Me. 132, 39 A. (2d) 756; Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

Indictment charging two crimes. — Whenever an indictment includes not only the offense charged but one of inferior grade a jury may discharge the defendant of the higher crime and convict him of the lesser. State v. Waters, 39 Me. 54; Carson, Petitioner, 141 Me. 132, 39 A. (2d) 756.

A person substantially charged in an indictment with the commission of an assault and battery, as well as of a riot, may be convicted of the former and acquitted of the latter. State v. Ham, 54 Me. 194.

Applied in State v. Bonney, 34 Me. 223; State v. Leavitt, 87 Me. 72, 32 A. 787.

Sufficiency of Complaints and Warrants.

Sec. 11. Sufficient indictment for murder or manslaughter.—It is sufficient in every indictment for murder to charge that the defendant did feloniously, willfully and of his malice aforethought kill and murder the deceased; and for manslaughter, to charge that the defendant did feloniously kill and slay the deceased without, in either case, setting forth the manner or means of death. (R. S. c. 132, § 11.)

History of section. — See Thompson, Petitioner, 141 Me. 250, 42 A. (2d) 900.

This section is constitutional. — See State v. Verrill, 54 Me. 408; State v. Smith, 65 Me. 257; Thompson, Petitioner, 141 Me. 250, 42 A. (2d) 900; State v. Chase, 149 Me. 80, 99 A. (2d) 71.

And is declaratory of the common law. —All of the necessary elements comprising manslaughter as defined at common law are contained in this section. Thompson, Petitioner, 141 Me. 250, 42 A. (2d) 900; State v. Chase, 149 Me. 80, 99 A. (2d) 71.

An indictment under this section need not set out the manner and means by which the crime was accomplished. State v. Verrill, 54 Me. 408; State v. Smith, 65 Me. 257; State v. Morrissey, 70 Me. 401; State v. Chase, 149 Me. 80, 99 A. (2d) 71.

Nor the sex of a murdered child.—In an indictment for infanticide, it is not indispensable that the sex of the murdered child be stated even though its name be

unknown or it has no name. State v. Morrissey, 70 Me. 401.

But if statute embraces special circumstances they must be set out.—It is only when a statute embraces within it special circumstances making that criminal which would not otherwise be criminal that such circumstances become constituent elements of the crime and must be set out in the indictment. State v. Verrill, 54 Me. 408; Thompson, Petitioner, 141 Me. 250, 42 A. (2d) 900.

Sec. 12. Owner of property, as used in indictment.—In an offense in any way relating to real or personal estate, it is sufficient and not a variance if it is proved at the trial that, when the offense was committed, the actual or constructive possession of or the general or special property in the whole of such estate or in any part thereof was in the person or community alleged in the indictment to be the owner thereof. (R. S. c. 132, § 12.)

Stated in part in State v. Davidson, 119 Me. 146, 109 A. 593.

Sec. 13. General allegation of intent to defraud sufficient.—When an intent to defraud is necessary to constitute an offense, it is sufficient to allege generally in the indictment an intent to defraud; and if there appears on trial an intent to defraud the United States, any state, county, town, person or corporation, it is sufficient. (R. S. c. 132, § 13.)

Sec. 14. Unimportant variance between written or printed matter in evidence and indictment not material; process, except for felony, amended.—No variance between any matter in writing or in print, produced in evidence on the trial of a criminal cause, and the recital or setting forth thereof in the complaint, indictment or other criminal process whereon trial is had, is material, provided that the identity of the instrument is evident and the purport thereof is sufficiently described to prevent prejudice to the defendant; and any criminal process may be amended, in matters of form, at any time before final judgment. Any complaint, indictment or other criminal process for any offense, except for a felony, may be amended in matters of substance, provided the nature of the charge is not thereby changed. (R. S. c. 132, § 14. 1949, c. 140.)

Applied in State v. Harvey, 126 Me. 509, 140 A. 188; State v. Haapanen, 129 Me. 28, 149 A. 389.

Sec. 15. Complaints and indictments not quashed for technicalities; nor for unimportant defect in venires.—No indictment or complaint shall be quashed or adjudged bad, nor shall the proceedings or judgment thereon be arrested, reversed or affected by reason of the omission or misstatement of the title, occupation, estate or degree of the accused; of the name of the city, town, plantation or county of his residence, or of the words "feloniously," "force and arms," "against the peace" or "contrary to the form of the statute," if such omission or misstatement does not tend to his prejudice; nor by reason of any defect, want of form or irregularity in the venires for grand or traverse jurors, or in the issuing or return of the same, or in the drawing or summoning of grand or traverse jurors, unless it appears to the court that the respondent has been or may be injured thereby. (R. S. c. 132, § 15.)

"Feloniously" is not distinct element of crime.—Where the acts charged in the indictment amount to a felony, it is unnecessary to allege that they were feloniously done. "Feloniously" describes the grade of the act rather than the act which constitutes the offense. It is not a distinct element of the crime. State v. Chase, 149 Me. 80, 99 A. (2d) 71.

Applied in State v. Goddard, 69 Me. 181; State v. Dorr, 82 Me. 341, 19 A. 861; State v. Leavitt, 87 Me. 72, 32 A. 787.

Procedure on Arraignment. Dilatory Pleas.

Sec. 16. Prisoner not asked how he will be tried; dilatory pleas verified.—When a person is arraigned on an indictment, he need not be asked

how he will be tried; and when a plea in abatement or other dilatory plea to an indictment is offered, the court may refuse to receive it until it is verified by affidavit or other evidence. (R. S. c. 132, § 16.)

See c. 106, § 18, re affidavit in abatement.

Limitation of Prosecutions.

Sec. 17. Statute of limitation on prosecution of crime.—When no other limitation is provided, no indictment shall be found and no complaint and warrant shall be issued for any offense, except treason, murder, arson or manslaughter, after 6 years from the commission thereof; but any time, during which the offender is not usually and publicly resident in the state, shall not be a part of said 6 years. (R. S. c. 132, § 17.)

Cross references. — See c. 131, § 42, re limitations of prosecutions and jurisdiction of offenses; c. 143, § 3, re prosecution for treason; note c. 22, § 150, re 6 year limitation applicable to prosecution for drunken driving.

Stated in part in Dwinal v. Smith, 25 Me. 379.

Cited in State v. Demerritt, 149 Me. 380, 103 A. (2d) 106.

Fines and Forfeitures Recovered by Indictment.

Sec. 18. Fines and forfeitures recovered by indictment unless otherwise provided.—All fines and forfeitures, imposed as punishment for offenses or for violations or neglects of statute duties may, when no other mode is expressly provided, be recovered by indictment; and when no other appropriation is expressly made, they inure to the county where the offense is prosecuted. (R. S. c. 132, § 18.)

Former provision of section.—For case under this section when fines and forfeitures enured to the state, see State v. Grand Trunk Ry., 59 Me. 189.