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Chapter 146.

Magistrates in Criminal Cases.

Municipal Courts.

Sec. 1. Terms.—All municipal courts shall have terms for the transaction of criminal business, which terms shall commence on the return days of the civil terms as set forth in their respective charters and shall continue to and include the days prior to the next civil return days. (R. S. c. 133, § 1.)

Sec. 2. Criminal jurisdiction; fines, penalties and costs paid over; juvenile courts.—Each municipal court shall have jurisdiction, and concurrent jurisdiction with the superior court and with all other municipal courts in the counties where they are located, of all crimes and offenses including violations of any statute or by-law of a town, village corporation or local health officer, or breaches of the peace, not punishable by imprisonment in the state prison, and may for such crimes and offenses impose any of the fines or sentences provided by law to be imposed therefor. All fines, penalties and costs imposed by such courts paid to the jailer after commitment of a respondent shall be paid over by him monthly as provided in section 5 of chapter 150.

Judges of municipal courts within their respective jurisdictions shall have exclusive original jurisdiction over all offenses, except for a crime, the punishment for which may be imprisonment for life or for any term of years, committed by children under the age of 17 years, and when so exercising said jurisdiction shall be known as juvenile courts. Any adjudication or judgment under the provisions of sections 4 to 7, inclusive, shall be that the child was guilty of juvenile delinquency, and no such adjudication or judgment shall be deemed to constitute a conviction for crime. Provided, however, that for the purpose of determining the guilt of any person over the age of 17 years charged as an accessory to any offense committed by a child under the age of 17 years, such offense shall be deemed to be the same as if committed by a person over 17 years of age. (R. S. c. 133, § 2. 1945, c. 293, § 18. 1947, c. 334, § 1.)

I. General Consideration.
II. Juvenile Courts.

Cross Reference.

See c. 149, § 31, re notice of arrest to parent, etc., of child and notice to probation officer.

I. GENERAL CONSIDERATION.

Person tried by municipal court not deprived of trial by jury.—One put on trial in a municipal court for an offense within its jurisdiction is not unconstitutionally deprived of his right to a trial by jury, when he is freely allowed an appeal to a court where a jury trial can be had. Sprague v. Androscoggin County, 104 Me. 352, 71 A. 1090. See § 22 and note, re appeal.

Municipal court has jurisdiction of simple assaults.—Judges of municipal courts have jurisdiction of assaults and batteries when the offense is not of a high and aggravated character. State v. Jones, 73 Me. 280.

Applied in State v. White, 145 Me. 381, 71 A. (2d) 271.

Cited in Downing v. Herrick, 47 Me. 462; State v. Russ, 100 Me. 76, 60 A. 704; State v. Vashon, 123 Me. 412, 123 A. 511;

Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882.

II. JUVENILE COURTS.

History of juvenile law.—See Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Purpose of juvenile law.—The purpose of juvenile courts, and laws relating to juvenile delinquency, is to carry out a modern method of dealing with youthful offenders, so that there may be no criminal record against immature youth to cause detrimental local gossip and future handicaps because of childhood errors and indiscretions, and also that the child who is not inclined to follow legal or moral patterns, may be guided or reformed to become, in his mature years, a useful citizen. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

It is the welfare of the child and the state that the statute is aimed to protect, by exercising a parental control, without the scar of the so-called criminal record. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

"Delinquent child" defined. — "Delinquency," as the term is used in the present juvenile law, was unknown to the common law. A delinquent child is a child under the age limit who violates the criminal law or who is disobedient or incorrigible, or unmanageable, or immoral, or growing up or likely to grow up in idleness and crime. The statute says delinquency is not a crime, and a delinquent child is not a criminal. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

This section makes every municipal court a juvenile court when exercising its exclusive original jurisdiction over offenses committed by a child under the age of 17 years. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

Juvenile courts are courts of special and limited jurisdiction and authority. Children are to be dealt with in a different manner than are adults. The offending child is not found by the juvenile court to be a criminal but guilty of juvenile delinquency. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

Municipal court has exclusive original jurisdiction over juveniles.—The legislature has seen fit to provide a separate and distinct method of handling certain offenses when committed by juveniles under the age of 17 years. The original jurisdiction of the common-law courts over such offenses has been taken away by legislative enactment. The original jurisdiction has been exclusively conferred upon the municipal courts acting as juvenile courts. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

And it has jurisdiction over all misdemeanors committed by juveniles.—The municipal courts have had, from the establishment of the juvenile courts, jurisdiction over all misdemeanors and authority to find juvenile delinquency when the child offender has broken a law where the punishment was less than one year. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

And all felonies.—The juvenile court now has exclusive original jurisdiction over all felonies. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

"Except for a crime, 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) 124.

If the offense with which a person under 17 years of age is charged is punishable by imprisonment for any term of years, the provisions of this section concerning juvenile courts do not apply and the superior court has jurisdiction to hear and try the person on the indictment. State v. Frazier, 144 Me. 383, 64 A. (2d) 179.

Such as murder, kidnapping and treason.—The punishment for murder, kidnapping, and for treason, is imprisonment for life. Such offenses are clearly excepted from the jurisdiction of the juvenile court. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

Or rape, robbery and burglary.—The excepting from the juvenile jurisdiction of juvenile courts of crimes "the punishment for which may be for any term of years" means those serious offenses such as rape, robbery and burglary where the courts may sentence for "any term of years." Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

"A term" is not "any term."—In view of the manifest plan of the legislature to broaden the authority of the juvenile court, it is plainly apparent that a term of years is not any term of years. To give to "any term," the meaning of "a term," does not enlarge the jurisdiction of the juvenile court to an appreciable extent, if it does to any degree. The felonies where the juvenile court would have jurisdiction, under such interpretation, would be only those where punishment may be for one year and for less than two

years, and such felonies, if any, are very few. If the legislature had meant to give jurisdiction in only those felonies where punishment may be less than two years, it would have been a simple matter to say so. The legislature, on the contrary, has used the term commonly used by it in the statutes to fix punishment for some of the very serious offenses. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

In all felonies where the maximum allowed is two years, or more than two years, it can be said that punishment is for "a term of years." It is not punishment for "any term of years" because only in those serious crimes formerly capital, or punishable by life imprisonment, such as rape, robbery and burglary, does the statute permit the court to sentence for "any term of years." Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

And manslaughter is not punishable by "any term."—Manslaughter is not a crime punishable by imprisonment for any term of years, as that phrase is used in this section. It is punishable for a term of years (see c. 130, § 8), and the juvenile court has jurisdiction. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 124.

Murder is an offense clearly excepted from the jurisdiction of the juvenile courts. Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

And the superior court has exclusive original jurisdiction of the crime of murder. The jurisdiction of the superior court with respect to the crime of murder is the same as if the so-called juvenile court laws had not been enacted. Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

Which jurisdiction is not defeated by juvenile's plea of guilty of manslaughter.—The jurisdiction of a superior court is in no way changed when it accepts from the petitioner, a juvenile under the age of 17 years, a plea of guilty of manslaughter to an indictment charging murder, and jurisdiction cannot be lost or ousted under such circumstances and once having attached it continues until the final disposition of the cause. Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

And superior court can impose sentence in such case.—The superior court, when it accepts a juvenile's plea of manslaughter to an indictment charging murder, is not without jurisdiction to impose sentence because judges of municipal courts within their respective jurisdictions have exclusive original jurisdiction of all offenses, except for a crime, the punishment for which may be imprisonment for life or any term of years committed by children under the age of 17 years. Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

If a juvenile is properly indicted for murder, that crime not being within the jurisdiction of the juvenile court, the jurisdiction of the criminal court having properly attached, it attached for all purposes and the conviction of the juvenile of manslaughter is correct. Collins v. Robbins, 147 Me. 163, 84 A. (2d) 536.

Sec. 3. Bail.—All recognizances or bail given in any municipal court, in compliance with any provision of law to secure the appearance of a respondent in a criminal prosecution, shall continue in force until the case pending against such respondent is finally disposed of, either by sentence or the finding of probable cause, and need not be renewed, and the sureties on such recognizances or bail shall be responsible on their original recognizance or bail for the appearance of the principal at any and all times to which the case in which said recognizance or bail was given is continued; provided, however, that this provision shall not apply to bail or recognizances given before bail commissioners. (R. S. c. 133, § 3.)

Sec. 4. Hearings on juvenile cases.—Sessions of municipal courts held under the provisions of the 2nd paragraph of section 2 and sections 4 to 7, inclusive, shall be at such times and at such places within their jurisdiction as the court may determine, and hearings may be adjourned from time to time as justice may require. In the hearing of any such case the general public shall be excluded and only such persons admitted as have a direct interest in the case. Records of such cases shall not be open to inspection by the public except by permission of the court. (R. S. c. 133, § 4.)

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

Cited in Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882; State v. White, 145 Me. 381, 71 A. (2d) 271.

Sec. 5. Special probation officers for juveniles.—The judge of any municipal court may appoint special probation officers to care for offenders under the age of 17 years whenever it shall appear to him that such action will best promote the interests of all concerned. Such special probation officers shall be reimbursed by the county for actual expenses incurred in the performance of their duties. (R. S. c. 133, § 5.)

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

Sec. 6. Powers in juvenile cases; appeal. — A municipal court may place children under the age of 17 years under the supervision, care and control of a probation officer or an agent of the department of health and welfare or may order the child to be placed in a suitable family home subject to the supervision of a probation officer or the department of health and welfare or may commit such child to the department of health and welfare or make such other disposition as may seem best for the interests of the child and for the protection of the community including holding such child for the grand jury or commitment of such child to the Pownal State School upon certification of 2 physicians who are graduates of some legally organized medical college and have practiced 3 years in this state, that such child is mentally defective and that his or her mental age is not greater than ¾ of subject's life age nor under 3 years, or to the state school for boys or state school for girls; but no boy shall be committed to the state school for boys who is under the age of 9 years and no girl shall be committed to the state school for girls who is under the age of 9 years and no municipal court shall sentence a child under the age of 17 years to jail or prison; any child or his next friend or guardian may appeal to the superior court in the same county in the same manner as in criminal appeals, and the court may accept the personal recognizance of such child, next friend or guardian, and said superior court may either affirm such sentence or order of commitment or make such other disposition of the case as may be for the best interests of such child and for the peace and welfare of the community.

Where, however, an appeal is taken and the offense is one that must be prosecuted by indictment, the county attorney shall submit the evidence relating to such crime to the grand jury convening at the criminal term at which the appeal is to be heard, and if the grand jury return an indictment for such offense the accused may, in the discretion of the court, be tried on such indictment, or the court may order it placed on file, or make such other disposition thereof as it may determine, including the dismissal thereof, and proceed to hear the appeal, and either affirm such sentence or order of commitment or make other disposition of the case in accordance with the provisions relating to appeal hereinbefore provided. (R. S. c. 133, § 6. 1945, c. 63. 1947, c. 334, § 2. 1951, c. 84, § 4.)

Cross reference.—See c. 27, § 67, re commitments for under 5 years.

The right of appeal provided for in this section is not a personal right, but is available to "any child or his next friend or guardian" against any sentence imposed under the particular section of the statutes of which it is a part. State v. White, 145 Me. 381, 71 A. (2d) 271.

Section provides appeal only from judgment of guilt of juvenile delinquency.—This section is part and parcel of our juvenile delinquency law which vests exclusive original jurisdiction over offenses committed by children under the age of 17 years, with certain exceptions, in our municipal courts, constitutes them as "juvenile courts" when considering such offenses, and restricts their judgments or adjudications of guilt to findings of guilt of juvenile delinquency (§ 2). It is from such a judgment or adjudication, and no other, that the appeal provided by this section may be taken. State v. White, 145 Me. 381, 71 A. (2d) 271.

Juvenile should be treated as criminal under certain conditions.—It is clear from the provisions of this section that the legislature has recognized that under certain conditions juvenile offenders under the age of 17 years should be dealt with as criminals and made amenable and ac-

countable to the rigors of the criminal law. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

And juvenile court can hold offender for the grand jury.—If, in the determination of the municipal court, acting as a juvenile court, a child guilty of juvenile delinquency should be dealt with as a criminal, for the protection of the community as well as for the interests of the child, it can hold such child for the grand jury. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

The juvenile court can hold a child guilty of juvenile delinquency for the grand jury upon a determination that it should be dealt with as a criminal for the protection of the community and the best interests of the child. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

But it cannot sentence to prison or jail.—The only adjudication or judgment of guilt making final disposition of the case that the judge of the municipal court can make is that the child is guilty of juvenile delinquency. By express provision of this section he cannot sentence a juvenile offender to prison or even to jail. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

And juvenile can be held for grand jury only on judicial determination of municipal court.—It is the right of the juvenile and the state that the juvenile be treated as a delinquent unless and until there is a judicial determination by the municipal court, exercising its jurisdiction as a juvenile court and exercising its discretion as to disposition of the case and the juvenile with which it is invested by this section, that the juvenile be held for the grand jury. The requirement that such jurisdiction be exercised and that the determination to hold for the grand jury as an act of discretion under the authority conferred by this section are both jurisdictional and must be complied with before the superior court has jurisdiction to hear, sentence, or commit after a conviction on an indictment. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

The judge of the municipal court, in dealing with the juvenile offender and in the exercise of his exclusive original jurisdiction, does not have authority to find a crime committed and probable cause in the same manner as when dealing with an adult. If the child is held for the grand jury, when charged with an offense within the exclusive original jurisdiction of the municipal court, it is only because, as a juvenile delinquent, it seems, under the circumstances, to be for the best interest of the child and for the protection of the community that he be so held. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Which must appear from the record.—The record of the municipal court must show, either by express statement or by necessary implication from what is expressly stated therein, that, in holding for the grand jury, it exercised the discretion conferred upon it by this section of the juvenile law in making such disposition of the case. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

And such determination cannot be waived.—The juvenile has the right to be treated as a delinquent until there is a judicial determination under this section, that he be held for the grand jury and such determination being jurisdictional cannot be waived. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Finding of probable cause and fixing of bail is not sufficient.—A finding of probable cause and the fixing of bail is not in and of itself sufficient for holding the juvenile for the grand jury. Especially is it not sufficient in a case where there is an express stipulation that after a plea of not guilty "the judge of said municipal court then refused to exercise jurisdiction over the offense with which the defendant was charged and rendered judgment of 'Probable Cause.'" Such docket entry and such stipulation not only fail to show that the municipal court exercised its jurisdiction over the offense with which the petitioner was charged and that it held him for the grand jury in the exercise of the discretion as to disposition of the case and the juvenile with which it was invested by this section but establishes that it did not do so. Wade v. Warden of State Prison, 145 Me. 120, 73 A. (2d) 128.

Sec. 7. Support of child committed to custodial agency. — Whenever a child under the age of 17 years is committed by the court to custody other than that of its parent, such commitment shall be subject to the provisions of sections 250, 251 and 252 of chapter 25. The court may, after giving a parent a reasonable opportunity to be heard, adjudge that such parent shall pay in such

manner as the court may direct such sum as will cover in whole or in part the support of such child, and if such parent shall willfully fail or refuse to pay such sum he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence. (R. S. c. 133, § 7.)

Cited in Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882; State v. White, 145 Me. 381, 71 A. (2d) 271.

Trial Justices.

Sec. 8. Jurisdiction of trial justices; bank account for fines, etc.—Trial justices have jurisdiction of the offenses described in sections 1, 5, 6, 7, 9 and 11 of chapter 132, when the value of the property is not alleged to exceed $10; they may punish for the 1st offense by a fine of not more than $10 and by imprisonment for not more than 2 months; and on a 2nd conviction, by a fine of not more than $20 and by imprisonment for not more than 6 months.

They have jurisdiction of assaults and batteries, breaches of the peace, and violations of any statute or by-law of a town, village corporation or local health officer, when the offense is not of a high and aggravated nature, and of offenses and misdemeanors, jurisdiction of which is conferred by law, and of all attempts to commit offenses of which they now have jurisdiction by law; and they may try and punish by a fine of not more than $10 or by imprisonment for not more than 30 days, except as otherwise provided for by law.

Every trial justice shall maintain a bank account in his name as trial justice, in which all fines, costs and forfeitures received shall be deposited within 72 hours after their receipt. (R. S. c. 133, § 8.)

Cross reference.—See c. 27, §§ 77, 89, re juvenile delinquency.

Trial justices have jurisdiction of simple assaults.—Trial justices have jurisdiction of assaults and batteries when the offense is not of a high and aggravated character. State v. Jones, 73 Me. 280.

Applied in State v. Furlong, 26 Me. 69; In re Hersom, 39 Me. 476; State v. Mullen, 72 Me. 466.

Cited in Downing v. Herrick, 47 Me. 462; Sprague v. Androscoggin County, 104 Me. 352, 71 A. 1090; State v. Vashon, 123 Me. 412, 123 A. 511.

Sec. 9. Jurisdiction in towns where there is municipal court.—A trial justice, residing in a town in which there is a municipal court, has the same jurisdiction as other trial justices in the county in all matters, the exclusive jurisdiction of which is not conferred on such court. Warrants issued by trial justices shall be made returnable before any trial justice in the county, and such warrants may be returned before any municipal court in the same county and the same proceedings had thereon as if said warrants had originally issued from said municipal court; and a justice, for issuing one not so returnable, shall be imprisoned for 6 months and pay the costs of prosecution. (R. S. c. 133, § 9.)

This section is applicable only to warrants issued by a trial justice. See State v. Stevens, 53 Me. 548.

Last sentence does not relate to liability of officer.—The words of the last sentence of this section plainly relate to the form of the warrant, and the duty of the justice, and not to the duty or liability of the officer. Zanoni v. Cyr, 117 Me. 399, 104 A. 629.

Applied in State v. Intoxicating Liquors, 80 Me. 91, 13 A. 403.

Sec. 10. Persons arrested brought before trial justice in town where offense occurred.—Any person accused of an offense cognizable by trial justices, if brought or ordered to appear by an officer before a trial justice, shall be brought or ordered to appear before a trial justice holding court within the town where the alleged offense occurred; but if there is no trial justice within said town, then to a trial justice whose usual place of holding court is nearest to where the offense is alleged to have been committed. (R. S. c. 133, § 10.)

Officer required to take prisoner before particular trial justice.—The legislative intention of this section is undoubted. It is to require an officer serving a process

alleging an offense cognizable by trial justices and electing to use such a court to take his prisoner before a particular one. State v. Harnum, 143 Me. 133, 56 A. (2d) 449.

That the legislation prohibits an officer from transporting a person charged with an offense cognizable by trial justices before one of his selection, regardless of where the court of such justice was held usually or at a particular time, as he was authorized to do prior to the enactment, does not admit of doubt. That purpose would be defeated if it were construed to permit him to take such person before a trial justice of his selection in the municipality where the offense occurred although that justice was not holding court therein at the time of the offense and did not usually do so. State v. Harnum, 143 Me. 133, 56 A. (2d) 449.

And particular justice has jurisdiction of each offense.—The statute limits the geographical jurisdiction of trial justices for the trial of cases so that a particular one, designated by its terms, and no other, has jurisdiction of each individual violation of law cognizable by trial justices. State v. Harnum, 143 Me. 133, 56 A. (2d) 449.

Which jurisdiction must be determined on the basis of the facts as they exist when the offense was committed. It is not subject to control by subsequent action on the part of either officers or trial justices. State v. Harnum, 143 Me. 133, 56 A. (2d) 449.

Powers of Magistrates.

Sec. 11. Administer oaths. — Judges of municipal courts, trial justices and justices of the peace may administer all oaths required by law, unless another officer is specially required to do it. (R. S. c. 133, § 11.)

Cited in Sprague v. Androscoggin County, 104 Me. 352, 71 A. 1090.

Sec. 12. Require aid upon view.—Upon view of an affray, riot, assault or battery, within their county, such judges and justices may, without warrant, command the assistance of any sheriff, deputy sheriff, constable or person present to repress the same and to arrest all concerned therein. (R. S. c. 133, § 11.)

Sec. 13. Duty of magistrates on receipt of complaints.—When complaint is made to any municipal judge or trial justice charging a person with the commission of an offense, he shall carefully examine, on oath, the complainant, the witnesses by him produced and the circumstances and, when satisfied that the accused committed the offense, shall, on any day, Sundays and holidays not excepted, issue a warrant for his arrest, stating therein the substance of the charge.

He may, and on complaint shall, cause to be arrested persons found within his county charged with offenses; and those having committed offenses therein who have escaped therefrom; and all persons charged with felonies, offenses and misdemeanors, and all affrayers, rioters, breakers of the peace and violators of the law, and may require such offenders to find sureties for keeping the peace; and when the offense on examination is found to be one not within his jurisdiction for trial, he may cause them to recognize with sufficient sureties to appear before the superior court, and, in default thereof, shall commit them.

He may try those brought before him for offenses within his jurisdiction, although the penalty or fine accrues wholly or partly to his town.

Warrants issued by such magistrates in criminal cases shall be under seal and be signed by them at the time they are issued. (R. S. c. 133, § 12.)

Cross references.—See c. 108, § 6, re signature of recorder or clerk; c. 147, § 6, re right of accused to discharge upon recognizance.

The oath and inquiry provided for by this section are not expected to be sufficient to insure a conviction. They are expected to present a probable cause. State v. Hobbs, 39 Me. 212.

The belief of the complainant might not constitute a proper basis upon which to issue a warrant. State v. Mallett, 123 Me. 220, 122 A. 570.

But verification of charge by oath may

be sufficient to authorize warrant.—The verification of a positive charge by an oath, according to the best knowledge and belief of the party, may be sufficient, upon inquiry into the circumstances, to satisfy the justice that an offense has been committed, and it may therefore be sufficient to authorize him to issue his warrant. State v. Hobbs, 39 Me. 212.

Reference to complaint on which warrant made is sufficient statement of charge.—If the warrant is made upon the same paper with the complaint, and expressly refers to it, it is a sufficient compliance with the provisions of this section that the warrant should state "the substance of the charge." State v. McAllister, 25 Me. 490.

A warrant issued by a magistrate without a seal is void. State v. Drake, 36 Me. 366.

A recognizance taken by a magistrate with a single surety is valid, although it is his duty to require sureties. State v. Baker, 50 Me. 45.

Applied in Osborn v. Sargent, 23 Me. 527.

Quoted in part in State v. LeClair, 86 Me. 522, 30 A. 7.

Cited in Welch v. Sheriff of Franklin County, 95 Me. 451, 50 A. 88; State v. Conwell, 96 Me. 172, 51 A. 873; State v. Russ, 100 Me. 76, 60 A. 704; Sprague v. Androscoggin County, 104 Me. 352, 71 A. 1090; Howard v. Harrington, 114 Me. 443, 96 A. 769.

Sec. 14. Authority of clerks of municipal courts.—When, by reason of sickness, absence from the county, inability or vacancy in office, no judge or recorder of a municipal court is available to hold a criminal term, the clerk of such court shall continue criminal matters for not exceeding 10 days and may admit to bail respondents. (R. S. c. 133, § 13.)

Sec. 15. Violation of municipal ordinance.—In any prosecution before a municipal court or trial justice for violation of an ordinance or by-law of a city or town, or of any by-law of a village corporation or local health officer, it shall not be necessary to recite such ordinance or by-law in the complaint, or to allege the offense more particularly than in prosecutions under a general statute. (R. S. c. 133, § 14.)

Search Warrants.

Cross reference.—See Me. Const., art. 1, § 5, re unreasonable searches prohibited.

The requirements of §§ 16-19 are, for the most part, entirely inappropriate to a search for liquors. State v. Bennett, 95 Me. 197, 49 A. 867.

Sec. 16. Warrants for search. — A magistrate may issue warrants to search, within the limits of his jurisdiction, any house or place for property stolen, embezzled or obtained by false tokens or pretenses; for forged or counterfeit coins, bankbills or other writings; for tools, machines or materials used or designed for making the same; or for a dead body unlawfully disinterred, carried away and concealed; and in other cases when such a warrant is authorized by law. Such warrants can be issued only according to the following provisions. (R. S. c. 133, § 15.)

See c. 32, § 118, re search warrants for vessels containing milk or cream held in wrongful possession; c. 37, § 128, re arrest and search for violation of fish and game laws; c. 38, § 137, re search warrants for violation of sea and shore fisheries laws; c. 61, § 84, re search warrants for intoxicating liquor; c. 97, § 45, re town officers may search for gun powder, etc.; c. 100, § 231, re search warrants for improperly marked oil and beverage containers; c. 134, §§ 23, 25, re search of houses of ill fame and search for immoral literature, etc.; c. 139, §§ 12, 13, re search warrants for implements of gambling, and forfeiture thereof.

Sec. 17. Complaint. — The complaint for a warrant to search must be made in writing, sworn to and signed by the complainant, must specially designate the place to be searched, the owner or occupant thereof, and the person or thing to be searched for, and allege substantially the offense in relation thereto;

and that the complainant has probable cause to suspect and does suspect that the same is there concealed. (R. S. c. 133, § 16.)

Sufficiency of designation of place to be searched.—That cannot be considered as a special designation of the place which, if used in a conveyance, would not convey it, and which would not confine the search to one building or place. State v. Robinson, 33 Me. 564; State v. Duane, 100 Me. 447, 62 A. 80.

Quoted in Zanoni v. Cyr, 117 Me. 399, 104 A. 629.

Stated in State v. Bushey, 96 Me. 151, 51 A. 872.

Cited in State v. Welch, 79 Me. 99, 8 A. 348.

Sec. 18. Warrant. — A search warrant shall recite, by reference to the complaint annexed or otherwise, all the essential facts alleged in the complaint, be directed to a proper officer or to a person therein named, and be made returnable like other warrants; and the person or thing searched for, if found, and the person in whose possession or custody the same was found, shall be returned with the warrant before a proper magistrate. (R. S. c. 133, § 17.)

A single search warrant cannot be lawfully issued to search more than one place. If the warrant contains a description of more than one place to be searched it is invalid. State v. Duane, 100 Me. 447, 62 A. 80.

Return made only if thing searched for found.—This section does not require a return to be made to the justice issuing the warrant in any event; but only in case the person or thing searched for "is found." Zanoni v. Cyr, 117 Me. 399, 104 A. 629.

Stated in State v. Bushey, 96 Me. 151, 51 A. 872.

Sec. 19. Search of a dwelling house. — To authorize the search of a dwelling house in the nighttime, the magistrate must be satisfied that it is necessary to prevent the escape or removal of such person or property, and must in his warrant expressly require it. (R. S. c. 133, § 18.)

See note to c. 61, § 84, re warrant to search for liquor need contain no provision as to nighttime.

Summonses for Witnesses, and Their Fees.

Sec. 20. Summonses to witnesses. — Any judge or justice named in section 11, when a warrant is issued by him, may cause such witnesses only as he is satisfied can testify to material facts to be summoned to attend the trial, by inserting their names in the warrant or otherwise; and when the case is appealed or the person is required to appear before a higher tribunal, he may order such witnesses only to recognize for their appearance where the case is to be tried or examined. He may issue summonses for witnesses in criminal cases to appear before any judicial tribunal, at the request of the attorney general, a county attorney or the party accused, and he shall express in the summons at whose request they are summoned; and when summoned for the accused, the witnesses are not required to attend without payment or tender of their legal fees. (R. S. c. 133, § 19.)

See c. 22, § 150, re operation of motor vehicle while under the influence of intoxicating liquor or drug.

Sec. 21. Limitation of costs and fees.—No costs shall be allowed by such magistrate to complainants in any capacity; but this shall not prevent the allowance of their fees as officers to police officers and constables or for their municipalities when such police officers or constables are paid a salary or are paid upon a per diem basis by such municipalities and such officers or constables complain under authority of their municipalities or it is made their duty to do so. No witness shall be allowed in a criminal case for more than one travel,

or for travel and attendance in more than one case at the same time before any judicial tribunal. (R. S. c. 133, § 20. 1947, c. 290, § 2.)

Appeals from Magistrates.

Sec. 22. Appeals within 5 days after decision or sentence. — Any person aggrieved at the decision or sentence of such magistrate may, within 5 days after such decision or sentence is imposed, Sunday not included, appeal therefrom to the next superior court to be held in the same county, and the magistrate shall thereupon order such appellant to recognize in a reasonable sum, not less than $20 with sufficient sureties, to appear and prosecute his appeal and to be committed until the order is complied with. When such appeal is not taken before the adjournment of the session of court at which said sentence is imposed, mittimus shall issue and the respondent shall be committed thereon, under such sentence, but if, after adjournment and commitment as aforesaid and within said 5 days, application in writing is made to such magistrate to enter such appeal, he shall supersede such commitment by his written order to the jailer or other officer, and the respondent shall be brought before him and such appeal allowed and entered as if claimed before adjournment. (R. S. c. 133, § 21.)

Section provides appeal from judges of municipal court.—Within the meaning of this section relating to appeals, the term "magistrate" includes judges of municipal courts as well as trial justices, and the right of appeal appertains to all criminal proceedings within the jurisdiction of municipal courts. Sprague v. Androscoggin County, 104 Me. 352, 71 A. 1090.

Commitment illegal if right of appeal denied.—If the right of appeal given by this section is, without warrant of law, denied the petitioner, the commitment which follows such denial is illegal. Rafferty v. Hassett, 130 Me. 241, 154 A. 646.

Defendant must appeal to proper court at proper term.—It is the duty of the defendant, if he desires to appeal from the judgment of the magistrate, to appeal to the proper court, and the proper term of court. If he fails to do so his attempted appeal is a nullity, and the judgment of the magistrate in the original proceeding stands against him unreversed and unaffected by his ineffectual attempt to appeal therefrom. State v. Quinn, 96 Me. 496, 52 A. 1009.

Applied in Tuttle v. Lang, 100 Me. 123, 60 A. 892.

Stated in Downing v. Herrick, 47 Me. 462.

Sec. 23. Copies sent to appellate court; failure to prosecute appeal.—The magistrate shall send to the appellate court a copy of the whole process and of all writings before the magistrate. If the appellant does not appear and prosecute his appeal, his default shall be noted on the record; and the court may order the case to be laid before the grand jury, or may issue a capias against the body of the appellant, bring him into court and then affirm the sentence of the magistrate with additional costs. (R. S. c. 133, § 22.)

Court may receive amended copy of process.—This section requires the magistrate to "send to the appellate court a copy of the whole process." As it must be the true record which controls, the appellate court is entitled to a correct and not an erroneous copy of the process, and it has been the settled practice in this state for the court to receive amended copies at any time before the case is given to the jury. State v. Wise, 107 Me. 17, 78 A. 101.

Failure to send copy of process cannot be taken advantage of by demurrer.—The failure of a magistrate to send to the appellate court a copy of the whole process, and of all writings in the case before the magistrate, cannot be taken advantage of by demurrer. State v. Sheehan, 111 Me. 503, 90 A. 120.

Sentence may be affirmed at term other than that to which appeal taken.—This section contains no limitation that the sentence can be lawfully affirmed only at the term to which the appeal is taken and at which it is entered. Sweetland, Petitioner, 124 Me. 58, 126 A. 42.

But the respondent must be brought into court before the sentence is affirmed with additional costs. Wallace v. White, 115 Me. 513, 99 A. 452.

Applied in State v. Houlehan, 109 Me. 281, 83 A. 1106.

Stated in Downing v. Herrick, 47 Me. 462.

Sec. 24. Appellant may withdraw appeal and abide by sentence; fees of jailer.—The appellant may, at any time before such copy has been sent to the appellate court, come personally before such magistrate, who may permit him, on motion, to withdraw his appeal and abide by the sentence appealed from; whereupon, he shall be ordered to comply with said sentence and the sureties taken upon the recognizance upon such appeal shall be discharged. If the appellant is detained in jail for want of sureties to prosecute his appeal, he may give notice in writing to the jailer of his desire to withdraw his appeal and abide by the sentence appealed from; whereupon, such jailer shall cause him to be taken before such magistrate, who shall order him to comply with the sentence appealed from, as hereinbefore provided; and in such case the jailer, or officer taking the appellant before the magistrate by his direction, shall be entitled to the same fees, to be taxed and paid as a part of the costs of prosecution, as are allowed to an officer for serving a mittimus. (R. S. c. 133, § 23.)

Magistrate's jurisdiction ends when appeal taken unless appeal withdrawn.—Upon the imposition of sentence, the taking of the appeal and filing of the appeal bond, the jurisdiction of the magistrate is at an end, and he has no further jurisdiction of the case, unless the appellant withdraws his appeal as and in the manner authorized in this section. State v. Houlehan, 109 Me. 281, 83 A. 1106; Cote v. Cummings, 126 Me. 330, 138 A. 547; State v. Parent, 132 Me. 433, 172 A. 442.

Under this section the court has jurisdiction both of the person and of the matter. State v. Parent, 132 Me. 433, 172 A. 442.

But the court's only authority in the premises under this section is to order compliance with the sentence already imposed. State v. Houlehan, 109 Me. 281, 83 A. 1106; Cote v. Cummings, 126 Me. 330, 138 A. 547.

When a motion is made by an appellant, under this section, to withdraw his appeal, the powers of the magistrate are those only which are conferred by the section. State v. Houlehan, 109 Me. 281, 83 A. 1106.

And sentence cannot be suspended.—When an appellant appears for the purpose of withdrawing his appeal, the judge has no power, upon payment by the appellant of the fine and costs, to suspend the imprisonment and place him on probation. Cote v. Cummings, 126 Me. 330, 138 A. 547.

Nor can case be continued for sentence.—The judge of the lower court exceeds his rights when he continues the case for sentence, instead of ordering the respondent to comply with the original sentence. State v. Parent, 132 Me. 433, 172 A. 442.

But acts in excess of jurisdiction do not defeat right to receive defendant into custody.—That done in excess of jurisdiction does not invalidate the court's acts performed within his jurisdictional rights, in which is included the right to receive the defendant into the custody of the law. State v. Parent, 132 Me. 433, 172 A. 442.

The acceptance of custody of the defendant is within the right and jurisdiction of the court and its failure to order compliance as to sentence, accompanied with its continuation of the case for sentence, contra to the statute, is simply an act in excess of its jurisdiction which does not invalidate its previous reception of the principal into its custody. State v. Parent, 132 Me. 433, 172 A. 442.

The contract of suretyship does not prevent the principal from exercising his rights under this section. State v. Parent, 132 Me. 433, 172 A. 442.

But the sureties are discharged thereby.—The sureties, by operation of law, are discharged when the principal, availing himself of his statutory right, seasonably surrenders himself into the custody of the lower court, unconditionally withdraws his appeal, and submits himself to the possibility of an order of compliance with the original sentence. State v. Parent, 132 Me. 433, 172 A. 442.

As custody does not remain in them.—The court, having lawful custody under this section, custody, neither actual nor constructive, remains in the sureties. The court has the custody, not only with the right, but the statute-imposed duty, to order the respondent, his appeal having then been withdrawn unconditionally, to comply with the original sentence. State v. Parent, 132 Me. 433, 172 A. 442.

Upon a surrender under this section, the defendant is again in the custody of the law and no longer in that of his sureties. They lose their control of his person, and their rights as sureties cease. State v. Parent, 132 Me. 433, 172 A. 442.

And failure of court to order compliance with sentence does not prevent discharge.—Where the respondent upon conviction in the municipal court appealed therefrom

and recognized with bail for his appearance in the appellate court, and subsequently thereto, but before the sitting of the appellate court, availed himself of his rights under this section, to present himself personally before the lower court for the purpose of withdrawing his appeal and abiding by the sentence appealed from, and did unconditionally withdraw his appeal, although the lower court, in noncompliance with the statute, did not order the respondent to comply with the original sentence but continued the case for sentence, nevertheless, on said facts, the sureties were discharged. State v. Parent, 132 Me. 433, 172 A. 442.

If the court performs its duty under this section, the sureties will be discharged. And they are not to be denied their discharge, to be penalized, for the fault of the court itself. State v. Parent, 132 Me. 433, 172 A. 442.

Sec. 25. Respondent may appeal without trial. — In all prosecutions before municipal courts or trial justices, the respondent may plead not guilty and waive a hearing, whereupon the same proceedings shall be had as to sentence and appeal as if there had been a full hearing. (R. S. c. 133, § 24.)

Fees of Magistrates.

Sec. 26. Limitation of fees of magistrates. — When several warrants are issued by a magistrate where only one is necessary, he shall be allowed only the costs for one complaint and warrant; and when he binds over a party, and the grand jury does not find an indictment against him, or convicts a party and he appeals and is finally acquitted, the magistrate shall have no fees in the case unless the same are certified and approved by the county attorney, and in no case shall he tax other or greater fees than are expressly allowed by law. (R. S. c. 133, § 25.)

See c. 108, § 11, re fees on appeals in criminal cases.

Sec. 27. Costs paid; how disposed of.—When the costs in a criminal case are paid to the magistrate as a part of the sentence, he may retain his fees and pay over the other fees to the persons entitled thereto. If such other fees are not called for in 1 year, they shall be forfeited to the state and paid over to the county treasurer within the time and under the penalty provided in section 5 of chapter 150. (R. S. c. 133, § 26.)

Sec. 28. Allowance of costs by the county commissioners.—When a party accused is acquitted by the magistrate and is not sentenced to pay costs, or does not pay them when so sentenced, and on all legal search warrants, the commissioners of the same county shall examine and correct the bills of costs, including the fees of officers, witnesses and others, and order the same to be paid out of the county treasury to the persons entitled thereto; but when such magistrate, or other person interested in such bill of costs, is one of the commissioners for such county, the superior court shall have the same powers as the commissioners in other cases. (R. S. c. 133, § 27.)

Applied in Bangor v. County Com'rs, 87 Me. 294, 32 A. 903.

Sec. 29. Fees and costs in appealed cases.—In cases carried to a higher court by appeal, recognizance or commitment, costs shall be taxed by the magistrate and certified with the papers. The magistrate shall be allowed $1.50 for copies of papers for the appellate court, to be paid out of the county treasury. (R. S. c. 133, § 28.)

Applied in Bangor v. County Com'rs, 87 Me. 294, 32 A. 903.