

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE.

---

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

---

WATERVILLE  
SENTINEL PUBLISHING COMPANY  
1909

In the 10th Vol. of Am. & Eng. Enc. of Law, (1st Ed.) on page 199, you will find this statement; "a prisoner who escapes before his term of imprisonment is ended, should, on his recapture, be imprisoned for a time equal to the remainder of the term." This statement is upon the authority of the supreme court of New York as decided in *Haggerty vs. People*, 53 N. Y. 476. Moreover, the court has gone further in another New York case and has ruled that a prisoner escaping during his term of imprisonment, and retaken *after the time for which he was imprisoned has expired*, may be returned to prison for a time equal to the remainder of his term unserved. This point was also decided in the N. Y. case to which we have just referred and was held to be good law in a Virginia case, *Cleek vs. Commonwealth*, 21 Gratt. 777.

The other question is with reference to requisition. The Constitution of the U. S., Art. IV, Sec. II, Par. 2, provides for extradition in the case of a person "who shall flee from justice." Ordinarily a fugitive from justice has been thought of as a man who has fled before he has had his trial, but it has been decided that an escaped prisoner who is under sentence is also a fugitive from justice. The authority for this is found in Enc. of Law, Vol. 19, page 88, and is founded upon the decision of the court in *Drinkall vs. Spiegel*, 68 Conn. 411, and also in a N. Y. case, in *re Hope*, 10 N. Y. Suppl. 28. It is quite plain, therefore, that extradition can be resorted to in such a case as the one which you have on hand.

CORPORATIONS.—INDICTMENTS AGAINST BODY  
CORPORATE AND AGAINST STOCKHOLDERS,  
OFFICERS, AGENTS OR EMPLOYEES.

*Frederick A. Hobbs, Esq., Office of County Attorney, South Berwick, Maine:*

DEAR SIR:—I have your favor of the 27th, supplementing a former letter in which you ask for suggestions relating to some of your liquor cases and in your last letter you have reduced the inquiry to three questions.

Your first question is, "in those matters what would be the criminal liability of the corporation?" If I understand your

question it would mean, can a corporation be indicted, as an individual or person could be indicted, for committing a misdemeanor in that class of misdemeanors commonly referred to as violations of the liquor law. In the very early days of English jurisprudence there appears to have been some conflict of opinion as to whether a corporation could be indicted for any offense whether felony or misdemeanor. Lord Holt is reported to have said that a corporation is not indictable but particular members of it are—anonymous, 12 Mod. 559. It has been pointed out, however, that even in the time of Lord Holt, there were many instances of indictments against counties, which were quasi corporations, for their neglect to keep their roads and bridges in repair. It is now, however, a well settled principle of modern jurisprudence that an indictment will lie against a corporation aggregate, although not for every species of crime or misdemeanor. There was a very early theory that a corporation aggregate was indictable only for acts of nonfeasance, for the theory was that it could not be indictable for acts of misfeasance because it had no power under its charter to commit such acts and when it did commit such acts it was acting ultra vires so that the acts were personal acts and not acts of the corporation. There was also an early doctrine that evil intent or evil motive could not be imputed to a corporation in its aggregate form. This early idea found expression in the courts of last resort in this country and even crept into the decisions of the court of Maine. See *State vs. Great Works Milling & Mnfg. Co.*, 20th Me. 41, where you will see this language used by Weston, Chief Justice: "They (the corporation) can neither commit a crime or misdemeanor, by any positive or affirmative act, or incite others to do so as a corporation. \* \* \* It would be stepping aside altogether from their corporate powers \* \* \* such only as take part in the measure, should be prosecuted as individuals, either as principals, or as aiding and abetting or procuring an offence to be committed, according to its character or magnitude. It is a doctrine then, in conformity with the demands of justice, and a proper distinction between the innocent and the guilty, that when a crime or misdemeanor is committed under color of corporate authority, the individuals acting in the business, and not the corporation should be indicted."

This doctrine, however, has been discarded both in England and in America and it is now fully settled that a corporation may be prosecuted by indictment for a misfeasance as well as for a nonfeasance. The cases in this State which establish the later doctrine are, *State vs. Freeport*, 43 Me. 198, *State vs. Portland*, 57 Me. 402, and 74 Me. 268, which distinctly overrules *State vs. Great Work, etc.*, 20th Me. 41. Misdemeanors for which corporations have been successfully indicted are keeping disorderly houses, *State vs. Passaic Co. Agr. Soc.* 54 N. J. L. 260, for Sabbath Day breaking, *Louisville vs. Commonwealth* 26 Am. Rep. 205, and for so constructing its sewers as to create a public nuisance, *State vs. Portland* 74 Me. 268, and many others of like nature which might be called to your attention.

Thus far we have been discussing your first question as to the criminal liability of a corporation. We think we have said enough to warrant us in answering your first question in the affirmative, or in other words, that there is a criminal liability attached to corporations, in certain classes of offenses, under our statute, which may be prosecuted by indictment, and we have no doubt that violations of the liquor law are among the classes of misdemeanors which may be thus prosecuted against corporations.

Your second question is, "what would be the personal liability of the individual stockholders and officers," and your third question is, "what would be the personal liability of the employees." These two questions may be answered together. We do not know of any plainer answer than can be found in *State vs. Bass*, 101 Me. 481. It is true that in the case just mentioned judgment was found for the defendants, and it was because the agreed statement did not show that the defendants owned stock in the corporation *at the date* of the alleged misdemeanor, but you will observe on page 484 this dictum of the court: "It is an elementary principle of criminal law and procedure, \* \* \* that in misdemeanors all who knowingly participate in the commission of the offense are deemed principals and may be indicted and convicted either jointly or severally." We have no doubt, therefore, that any stockholder, officer or employee who might "knowingly participate in the commission of the offense" would be a proper subject for indictment.