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Chapter 134.

Crimes against Chastity, Morality and Decency. Sunday Activities.

Sexual Crimes.

Sec. 1. Adultery; cohabitation after divorce.—Whoever commits adultery shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years; and when only one of the parties is married, or when they have been legally divorced from the bonds of matrimony and afterwards cohabit, each shall be deemed guilty of adultery. (R. S. c. 121, § 1.)

Adultery can be committed only by parties, one of whom is married to third person.—Adultery, in this state, can only be committed by parties, one of whom, at least, is married, and by parties who are not married to each other. State v. Weatherby, 43 Me. 258.

But adultery committed if either party married.—If the defendant was a married man, the offense is equally committed in such case, whether the woman is or is not married. State v. Hutchinson, 36 Me. 261.

And both parties are equally liable.—This section renders both parties implicated equally liable to punishment if either the man or woman is married. State v. Weatherby, 43 Me. 258.

Ignorance of the law cannot excuse adultery. State v. Goodenow, 65 Me. 30.

Nor can reliance on magistrate's opinion.—A man and woman jointly indicted for adultery, the female defendant having a lawful husband alive, cannot set up in defense of the indictment, that such husband had been married again, and that, on that account, they supposed they could lawfully intermarry; and that they were so advised by the magistrate who married them, they relying upon the opinion of the magistrate in good faith. State v. Goodenow, 65 Me. 30.

And criminal intent may be inferred from the act.—It is undoubtedly true, that the crime of adultery cannot be committed without a criminal intent. But the intent may be inferred from the criminality of the act itself. State v. Goodenow, 65 Me. 30.

Indictment must charge marriage of one party.—An indictment against a man for adultery is unsustainable if it neither charges that he was a married man or that the female, at the time when the offense was alleged to have been committed, was a married woman. State v. Thurstin, 35 Me. 205.

But not of both.—If the party indicted is himself alleged to be a married man, the indictment will be good and sufficient in form, without any allegation that the person with whom he had sexual intercourse was a married woman. State v. Hutchinson, 36 Me. 261.

Marriage in fact must be proved.—A marriage in fact, as distinguishable from one inferable from circumstances, must be proved in a prosecution for adultery. State v. Hodgskins, 19 Me. 155; State v. Libby, 44 Me. 469.

It is indispensable that the fact of marriage be proved in a prosecution for adultery. State v. Hodgskins, 19 Me. 155.

Under an indictment for adultery, it is necessary to prove the marriage of at least one of the parties to some person other than the remaining respondent. State v. Mulhern, 133 Me. 351, 177 A. 705.

Positive proof of a legal marriage is required upon the trial of persons indicted for adultery. State v. Mulhern, 133 Me. 351, 177 A. 705.

By person present at ceremony or production of record.—The rule is that a marriage in fact should be proved, by which it is to be understood that it should be by some person present at the performance of the ceremony, or by the production of the record of the marriage. State v. Hodgskins, 19 Me. 155.

Unless proved by confession of accused.—On the trial of one indicted for adultery,

the marriage, whether solemnized within this state or elsewhere, may be proved by the voluntary and deliberate confession of the defendant. Ham's Case, 11 Me. 391.

The only modification of the rule that a marriage in fact should be proved by some person present at the performance of the ceremony, or by the production of the record of the marriage, is the admission of proof of the confession of the fact of marriage by the accused, deliberately and understandingly made. State v. Hodgskins, 19 Me. 155.

In cases of adultery, the confession of the adulterer, deliberately and understandingly made, of his marriage, is admissible, and is considered prima facie evidence of the fact. State v. Hodgskins, 19 Me. 155.

The previous confessions of one on trial for adultery, that he had a wife, and that the woman with whom he lived was his wife, are admissible as evidence of marriage. State v. Libby, 44 Me. 469.

The weight of which is for jury to determine.—The confession of an adulterer of his marriage, deliberately and understandingly made, is receivable in evidence. The confessions once made, and under circumstances which render them admissible, it is for the jury to determine the just degree of confidence which they may place in them. The weight to be given to the testimony is especially for their consideration. State v. Libby, 44 Me. 469.

Identity of the person married must be shown.—In an indictment for adultery, a copy of the record of the marriage, though admissible in evidence, is not sufficient to establish the fact of the marriage, without proof of the identity of the person. Wedgwood's Case, 8 Me. 75.

And proof must show ceremony performed by person with requisite authority.—It is not sufficient evidence of marriage, in a criminal prosecution, to prove that the ceremony was performed, and that cohabitation for a long period followed, without showing that the person by whom it was so performed was clothed with the requisite authority for that purpose. State v. Hodgskins, 19 Me. 155.

The object of requiring the testimony of a person present at the marriage is not merely to prove the performance of the ceremony by some one; but to prove that all the circumstances attending it were such as to constitute it a legal marriage. There should be something disclosed by which it may satisfactorily appear that the person performing the ceremony was legally clothed with authority for the purpose. State v. Hodgskins, 19 Me. 155.

Sec. 2. Incest.—When persons within the degrees of consanguinity or affinity, in which marriages are declared incestuous and void, intermarry or commit fornication or adultery with each other, they shall be punished by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 121, § 2.)

Applied in State v. Brown, 118 Me. 164, 106 A. 429.

Sec. 3. Crime against nature.—Whoever commits the crime against nature, with mankind or with a beast, shall be punished by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 121, § 3.)

Section prohibits all unnatural copulation with mankind or beast.—This section gives no definition of the crime but, with due regard to the sentiments of decent humanity, treats it as one not fit to be named, leaving the record undefiled by the details of different acts which may constitute the perversion. The generality of the prohibition brings all unnatural copulation with mankind or beast, including sodomy, within its scope. State v. Cyr, 135 Me. 513, 198 A. 743; State v. Townsend, 145 Me. 384, 71 A. (2d) 517.

By the weight of recent authority, apparently supported by better reasoning, sodomy, as used in connection with statutes prohibiting the crime against nature, is interpreted in its broad sense and held to include all acts of unnatural carnal copulation with mankind or beast. State v. Cyr, 135 Me. 513, 198 A. 743; State v. Langelier, 136 Me. 320, 8 A. (2d) 897.

Including fellatio.—The unnatural sexual act known to medical jurisprudence as "fellatio" is included within the prohibition of this section. State v. Cyr, 135 Me. 513, 198 A. 743.

And cunnilingus.—The practice known in medical phrase as "cunnilingus" is made criminal by this section, as it is included in the phrase "crime against nature." State v. Townsend, 145 Me. 384, 71 A. (2d) 517.

And is not restricted to sodomy and buggery.—Although several courts have stated and some have held that the phrase "crime against nature" is synonymous with and includes only the common-law crimes of sodomy and buggery and does not include other detestable sexual perver-

sions not embraced within those included in sodomy and buggery according to strict common-law definitions of these terms, such has not been the interpretation of the phrase by the Maine court. State v. Townsend, 145 Me. 384, 71 A. (2d) 517.

While the crime against nature and sodomy have often been used as synonymous terms, this section is broad enough to include in the crime against nature other forms of the offense than sodomy and buggery. It includes all kindred acts of a bestial character whereby degraded and perverted sexual desires are sought to be gratified. State v. Townsend, 145 Me. 384, 71 A. (2d) 517.

Indictment need not describe manner and details of act.—By reason of the vile and degrading nature of the crime provided for by this section, it has always been an exception to the strict rules requiring great particularity and nice certainty in criminal pleading, both at common law and where crimes are wholly statutory. It has never been the usual practice to describe the particular manner or the details of the commission of the act, and, where the offense is statutory, a statement of it in the language of the statute, or so plainly that its nature may be easily understood, is all that is required. State v. Langelier, 136 Me. 320, 8 A. (2d) 897.

And it is sufficient merely to charge the accused with the commission of the crime of "sodomy," or of "the crime against nature," the crime being too well known and too disgusting to require other definition or further details or description. State v. Langelier, 136 Me. 320, 8 A. (2d) 897.

Consent is no defense to a prosecution for sodomy, thus distinguishing the prosecution from one for rape. State v. Langelier, 136 Me. 320, 8 A. (2d) 897.

And indictment need not charge force. —Although forms used in criminal procedure in this state have generally included the allegation of force in an indictment for an offense under this section, yet it being unnecessary of proof, an indictment which covers all the material statutory terms is sufficient. State v. Langelier, 136 Me. 320, 8 A. (2d) 897.

As the offense includes all unnatural copulations with mankind or beast, and may be committed without compulsion or force, it is plain that assault is an element only when the offense is perpetrated upon an unwilling human being, and is not an element if the other party consents, or when the offense is committed with a beast. State v. Langelier, 136 Me. 320, 8 A. (2d) 897.

Applied in Jenness v. State, 144 Me. 40, 64 A. (2d) 184.

Sec. 4. Polygamy; place of trial.—If any person, except one legally divorced or one whose husband or wife has been continually absent for 7 years and not known to him or her to be living within that time, having a husband or wife living, marries another married or single person, or if any unmarried person knowingly marries the husband or wife of another when such husband or wife is thereby guilty of polygamy, he or she shall be deemed guilty of polygamy and punished by a fine of not more than $500 or by imprisonment for not more than 5 years; and the indictment for such offense may be found and tried in the county where the offender resides or where he or she is apprehended. (R. S. c. 121, § 4.)

State must prove previous marriage. — It is incumbent on the government to prove that the defendant had been legally married previous to the alleged bigamous marriage whereby he became incapable, in law, of contracting a second time during the continuance of the first contract. Damon's Case, 6 Me. 148.

Positive proof of a legal marriage is required upon the trial of persons indicted for polygamy. State v. Mulhern, 133 Me. 351, 177 A. 705.

By person authorized and between legally competent parties. — The mere reputation of marriage, or proof of cohabitation, or other circumstances from which a marriage may be inferred, and which are sufficient in almost all civil personal actions, cannot, in cases of this nature, be admissible. There must be evidence of a marriage in fact, by a person legally authorized, and between parties legally competent to contract. Damon's Case, 6 Me. 148.

Which may be proved by copy of record or testimony of one present. — Proof of such a marriage may be made either by an official copy of the record, accompanied by such evidence as will satisfy the jury of the identity of the parties, or by the testimony of one who was present at the ceremony. Damon's Case, 6 Me. 148.

And authority of person performing ceremony need not be proved by record evidence.—It is not necessary that the special or official character of the person by whom the rite was solemnized should be proved by record evidence of his ordination or ap-

pointment. Oral proof of his having previously acted in that capacity affords a presumption that he acted legally, and is prima facie evidence of his authority. Damon's Case, 6 Me. 148.

If it appears there has been a marriage in fact, either by town or parish certificates, or by a witness present, that saw the parties stand up and go through the usual ceremonies of marriage, directed by one who usually, or appeared usually to marry persons, the court will presume it was a legal marriage until the contrary is proved. Damon's Case, 6 Me. 148.

Section excepts party whose spouse has been absent for 7 years and not known to be living. — One whose wife had been continually absent for seven years and not known to him to be living within that time is excepted from the operation of this section. State v. Damon, 97 Me. 323, 54 A. 845.

And the rules of pleading require the pleader to aver that the respondent was not within the excepted class. State v. Damon, 97 Me. 323, 54 A. 845.

But lack of knowledge is essential. — Not all cases of seven years absence are within the exception, but only his whose wife is not known to him to be living within that time. The two clauses must be taken together. Together they define only one excepted class, in which is included only that one whose wife has been absent for seven years, and not known to him to be living within that time. When the affirmative element of absence is limited by the negative element of knowledge to be living, a case is brought within the exception in the statute. State v. Damon, 97 Me. 323, 54 A. 845.

Indictment and trial may be in county where offense committed. — This section provides that "the indictment for such offense may be found and tried in the county where the offender resides or where he or she is apprehended." This provision is permissive and not mandatory. It is not in derogation of the common-law right of indictment and trial in the county where the offense is committed, but rather an enlargement of the jurisdiction of the court. There is no intimation in the statute of any purpose to annul the requirement of the common law in this respect. On the contrary, the use of "may" instead of "must" or "shall" implies an intention, not to deprive the court of its existing jurisdiction, but to give it enlarged powers over the same subject matter. State v. Sweetsir, 53 Me. 438; State v. Damon, 97 Me. 323, 54 A. 845.

Section does not give courts jurisdiction of offense committed in another state. — The provision of this section that the indictment may be found and tried in the county where the offender resides or where he or she is apprehended cannot be construed to give the courts of Maine jurisdiction of offense committed beyond the boundaries of the state. This provision simply enlarges the jurisdiction of the court by giving it jurisdiction of the offense in any county where the offender may reside or be apprehended, as well as in the county where the offense was committed. State v. Stephens, 118 Me. 237, 107 A. 296.

Applied in State v. Steeves, 115 Me. 220, 98 A. 708.

Cited in Thompson v. Lewiston Daily Sun Publishing Co., 91 Me. 203, 39 A. 556.

Sec. 5. Lascivious cohabitation; lewdness.—If any man and woman, one or both being at the time married to another person, lewdly and lasciviously cohabit; or, married or unmarried, are guilty of open, gross lewdness and lascivious behavior, they shall each be punished by a fine of not more than $300 or by imprisonment for not more than 5 years. (R. S. c. 121, § 5.)

The statute against lewd and lascivious cohabitation is of a wider scope than that directed at the crime of adultery. State v. Tuttle, 129 Me. 125, 150 A. 490.

"Cohabit" does not mean single act of incontinence. — The word "cohabit," as used in this section in connection with the words "lewdly and lasciviously," may be said to mean, generally speaking, to dwell or live together, not merely to visit or see, nor a single act of incontinence. State v. Tuttle, 129 Me. 125, 150 A. 490.

And habitual acts of illicit intercourse must be proved. — To support an indictment under this section, it is necessary to prove, not only that a man and a woman, "one or both being at the same time married to another person," cohabited, but that they so cohabited "lewdly and lasciviously." Habitual acts of illicit intercourse are necessary elements of the crime of lewd and lascivious cohabitation. State v. Tuttle, 129 Me. 125, 150 A. 490, wherein it was said that evidence of a single act of adultery, together with evidence of other facts, may or may not have force in proving lewd and lascivious cohabitation.

"Lewd" and "lascivious" have been de-

fined to be synonymous terms. State v. Tuttle, 129 Me. 125, 150 A. 490.

And "lewdness" signifies the irregular indulgence of lust, whether public or private. State v. Tuttle, 129 Me. 125, 150 A. 490.

Evidence of lewdness and lascivious behavior in secret will not support an indictment for open, gross lewdness and lascivious behavior. State v. Mulhern, 133 Me. 351, 177 A. 705.

Marriage must be proved. — Under an indictment for lewd and lascivious cohabitation, it is necessary to prove the marriage of at least one of the parties to some person other than the remaining respondent. State v. Mulhern, 133 Me. 351, 177 A. 705.

And there must be evidence of a marriage in fact by a person legally authorized, between parties legally competent to contract. Proof of such a marriage may be made by an official copy of the record accompanied by such evidence as will satisfy the jury of the identity of the parties, or by the testimony of one who was present at the ceremony. State v. Mulhern, 133 Me. 351, 177 A. 705.

It is not sufficient evidence of marriage in a criminal prosecution to prove that the ceremony was performed and that cohabitation for a long period followed, without showing that the person by whom it was so perfomed was clothed with the requisite authority for that purpose. State v. Mulhern, 133 Me. 351, 177 A. 705.

But authority of person performing ceremony need not be proved by record evidence.—But it is not necessary that the special or official character of the person by whom the rite was solemized should be proved by record evidence of his ordination or reappointment. If it appears that there has been a marriage in fact, either by town or parish certificates or by a witness present that saw the parties stand up and go through the usual ceremonies of marriage, directed by one who usually or appeared usually to marry persons, the court will presume it is a legal marriage until the contrary is proved. State v. Mulhern, 133 Me. 351, 177 A. 705.

Cited in State v. Hoffses, 147 Me. 221, 85 A. (2d) 919.

Sec. 6. Indecent liberties.—Whoever, being 21 years or more of age, takes any indecent liberty or liberties or indulges in any indecent or immoral practice or practices with the sexual parts or organs of any other person, male or female, under the age of 16 years, either with or without the consent of such male or female person, shall, upon conviction thereof, be punished by imprisonment at hard labor for not less than 1 year nor more than 10 years. (R. S. c. 121, § 6.)

Cross references.—See c. 149, § 12, re provisions for sentences to state prison not applicable; c. 149, § 17, to record of paroled or discharged prisoners to be sent to state police.

Acts prohibited constitute but one offense. — The statute describes the offense in the disjunctive; yet the acts prohibited constitute but one which may be charged in the conjunctive or may be charged by alleging either description of the offense. It is difficult to see how acts which can be considered as taking indecent liberties with the sexual organs are not also the indulgence of immoral practices with such organs. State v. Farnham, 119 Me. 541, 112 A. 258.

Indictment in language of section is sufficient. — This section so fully sets out the facts which constitute the offense that an indictment framed upon it and containing no other averments will be sufficient. State v. Farnham, 119 Me. 541, 112 A. 258.

And assault need not be alleged. — An assault is not a necessary element of the offense provided for by this section and accordingly an allegation of such in the indictment is not required. State v. Brown, 142 Me. 16, 45 A. (2d) 442.

An indictment charging the crime defined in this section includes allegation of an attempt to commit the crime. Carson, Petitioner, 141 Me. 132, 39 A. (2d) 756.

Testimony of earlier happenings between parties is admissible. — Testimony of the female minor named in the indictment as to acts of earlier happenings between the parties, similar to the offense charged, is admissible for the purpose of showing the relationship between the parties. State v. Berube, 139 Me. 11, 26 A. (2d) 654.

Applied in State v. Dodge, 124 Me. 243, 127 A. 899; State v. Dorathy, 132 Me. 291, 170 A. 506; State v. Townsend, 145 Me. 384, 71 A. (2d) 517; State v. Newcomb, 146 Me. 173, 78 A. (2d) 787.

Sec. 7. Indecent exposure.—Whoever wantonly and indecently exposes

his person shall be punished by a fine of not more than $25 and by imprisonment for not more than 6 months. (R. S. c. 121, § 7.)

Complaint held sufficient.— See State v. Cole, 112 Me. 56, 90 A. 709.

Sec. 8. Fornication.—If an unmarried man commits fornication with an unmarried woman, they shall be punished by a fine of not more than $100 and by imprisonment for not more than 60 days. (R. S. c. 121, § 8.)

This section and § 15 are for different purposes. They create different offenses and impose different punishments. A person may be guilty of one offense and not of the other. He may commit fornication with a female without intending to induce such female to become a prostitute. He may entice one away from her father's house for the purpose of prostitution, and he may induce her to become a prostitute, without committing fornication with her. State v. Stoyell, 54 Me. 24.

Stated in State v. Day, 132 Me. 38, 165 A. 163.

Abortion, Attempt to Procure; and Concealment of Birth.

Sec. 9. Abortion or attempt to procure; miscarriage.—Whoever administers to any woman pregnant with child, whether such child is quick or not, any medicine, drug or other substance, or uses any instrument or other means, unless the same was done as necessary for the preservation of the mother's life, shall be punished, if done with intent to destroy such child and thereby it was destroyed before birth, by a fine of not more than $1,000 and by imprisonment for not more than 5 years; but if done with intent to procure the miscarriage of such woman, by a fine of not more than $1,000 and by imprisonment for less than 1 year, and any person consenting and aiding or assisting shall be liable to like punishment. (R. S. c. 121, § 9.)

Procuring an abortion is a felony.—The using of any means, with intent to destroy the child of which a female is pregnant, and the destroying of the child thereby before its birth, unless done to preserve the life of the mother, constitute a felony. Smith v. State, 33 Me. 48.

Whether with or without mother's consent. — To procure an abortion, as to a female pregnant, but not quick with child, was not, at the common law, an offense, if done with her consent. By our statute, the procuring of an abortion is an offense, whether with or without the consent of the mother. Smith v. State, 33 Me. 48.

And whether child quick or not.—It is now equally criminal to produce abortion before and after quickening. And the unsuccessful attempt to cause the destruction of an unborn child is a crime, whether the child be quick or not. Smith v. State, 33 Me. 48.

But act must be done with criminal intent.—The offense described in this section is not committed unless the act is done with "intent to destroy such child" as is there referred to, and is destroyed by the means used for that purpose. Smith v. State, 33 Me. 48.

Which must be fully set out in indictment. — It is required by established rules of criminal pleading, that the intention, which prompted the act that caused the destruction of the child, as well as the act itself and the death of the child thereby produced, should be fully set out in the indictment, in order to constitute a crime punishable by imprisonment in the state prison under this section. Smith v. State, 33 Me. 48, wherein it was held that the allegation that a certain instrument was used upon a woman pregnant, and that the use of that instrument caused her to bring forth the child, dead, was not a charge that the one using the instrument intended to destroy the child.

Procuring a miscarriage is misdemeanor. —The using of means, with intent to procure the miscarriage of a pregnant female, and the procuring of the miscarriage thereby, unless done to preserve the life of the mother, is a misdemeanor. Smith v. State, 33 Me. 48.

State must prove pregnancy. — Under the statute the burden is upon the state to prove beyond a reasonable doubt that the woman was pregnant with child. Whether such child was quick or not is immaterial. State v. Rudman, 126 Me. 177, 136 A. 817.

But such may be proved by circumstantial evidence. — Absolute certainty in the proof of pregnancy, however, is never exacted. It may be established by circumstantial evidence. State v. Rudman, 126 Me. 177, 136 A. 817.

The offense is complete when an overt

act is done with the intent defined by the statute, unless the act falls within the exception. State v. Rudman, 126 Me. 177, 136 A. 817.

Exception applies to unlawful acts enumerated.—The language of this section is somewhat unusual in context and its grammatical relations. The exception is written, "unless the same was done as necessary for the preservation of the mother's life." To what does "same" refer? The unlawful or overt act prohibited in the administration of medicine, etc., or the "use of any instrument or other means." Context and phraseology convince us that the phrase "unless the same was done" finds its antecedent in the unlawful acts enumerated rather than in the evil intent which must concur. State v. Rudman, 126 Me. 177, 136 A. 817.

And necessity in fact for preservation of mother's life must be established.—Under the exception contained in this section, necessity in fact for the preservation of the mother's life must be established. Good faith alone is not a defense. State v. Rudman, 126 Me. 177, 136 A. 817.

The only exception to criminal responsibility for abortion, or attempted procurement of miscarriage, is necessity in fact of the preservation of the mother's life. State v. Rudman, 126 Me. 177, 136 A. 817.

It is well known that occasion arises where in the exercise of proper surgical advice and care it becomes necessary, in order to save the mother's life, to remove the unborn foetus. To such highly honorable and proper acts, in accord with the highest ethics of the medical profession, the dictates of humanity, and all legal precepts, the statute has and can have no application. But to the destruction of unborn life for reasons, whatever they may be, other than necessity to save the mother's life, the law is intended to be an express and absolute prohibition. State v. Rudman, 126 Me. 177, 136 A. 817.

Applied in State v. Smith, 32 Me. 369; State v. Perry, 115 Me. 203, 98 A. 634; State v. Donnell, 128 Me. 500, 148 A. 747.

Sec. 10. Concealment by mother of death of illegitimate issue; may be charged with murder in same indictment.—If a woman is willingly delivered in secret of the issue of her body, which would be a bastard if born alive, and conceals the death thereof so that it is not known whether it was born dead, or alive and was murdered, she shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 years; and she may be charged with such offense and also with the murder of such child in the same indictment, and convicted and punished for either, according to the verdict. (R. S. c. 121, § 10.)

History of section.—See State v. Kirby, 57 Me. 30.

Purpose of section. — The great end to be accomplished by this section is the prevention and punishment of child-murder. As there would, in many cases, be great doubt whether in fact there was murder, if it appears upon trial that there are such doubts that the prisoner cannot be convicted, she is not allowed to go unpunished, if these doubts are occasioned by her own machinations. State v. Kirby, 57 Me. 30.

This section applies to such issue of the body as was, or would have been if born alive, a bastard, viz., issue begotten and born out of wedlock. State v. Kirby, 57 Me. 30.

Offense is concealment so as to prevent its being known whether child born dead, or alive and was murdered.—While the gist of the offense consists in the concealment of the death of the child, it is such a concealment as prevents its being known that the child was born dead, or alive and was murdered. State v. Kirby, 57 Me. 30.

And any other concealment is not within statute.—The offense of this section consists in willingly being delivered of such issue in secret, and concealing the death of it, "so that it is not known whether it was born dead, or alive and was murdered." Any other concealment is not within the prohibition of the statute. It must be effectual to this end. State v. Kirby, 57 Me. 30.

Thus proof adduced at the trial that the child was born dead entitles the mother to an acquittal. State v. Kirby, 57 Me. 30.

If all doubts are removed by proof that no offense has been committed, there is no occasion to punish. State v. Kirby, 57 Me. 30.

Whether introduced by prosecution or defendant.—Proof under this section that the child was born dead entitles the mother to an acquittal, whether introduced by the prosecution or by the prisoner. If introduced by the prosecution the case fails, because it then appears that the attempted concealment has been unsuccessful. If introduced by the mother she is acquitted, because the law in its

mercy allows her to remove the veil of concealment and discharge herself from the crime of infanticide and murder. State v. Kirby, 57 Me. 30.

The phrase "so that it is not known" means so that it is not known at any time past or present. State v. Kirby, 57 Me. 30.

Sec. 11. Publication, sale or distribution of information tending to produce miscarriage.—Whoever publishes, sells or distributes by hand or otherwise any circular, pamphlet or book containing recipes or prescriptions for the cure of chronic female complaints or private diseases, or recipes or prescriptions for drops, pills, tinctures or other compound designed to prevent conception or tending to produce miscarriage or abortion shall be punished by a fine of not less than $50 nor more than $100, or by imprisonment for not more than 3 months. (R. S. c. 121, § 11.)

Houses of Ill Fame. Prostitution.

Sec. 12. Prostitution, lewdness and assignation; terms of probation and parole.—It shall be unlawful:

I. To occupy any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, lewdness or assignation, with knowledge or reasonable cause to know that the same is or is to be used for such purpose;

II. To receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or to permit any person to remain there for such purpose;

III. To direct, take or transport or to offer or agree to take or transport any person to any place, structure or building or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;

IV. To procure or solicit or to offer to procure or solicit, for the purpose of prostitution, lewdness or assignation;

V. To reside in, enter or remain in any place, structure or building, or to enter or remain in any conveyance for the purpose of prostitution, lewdness or assignation;

VI. To engage in prostitution, lewdness or assignation, or to aid or abet prostitution, lewdness or assignation by any means whatsoever.

Any person who violates any of the provisions of this section shall be subject to imprisonment in or commitment to any penal or reformatory institution in this state for not more than 3 years. Probation or parole shall be granted or ordered in the case of a person infected with venereal disease only on such terms and conditions as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

No female who shall be convicted of violating any of the provisions of this section shall be placed on probation or on parole in the care or charge of any person except a woman probation officer. (R. S. c. 121, § 12.)

Cross reference.—See c. 100, §§ 149-152, re licensee of employment agency not to send persons to places of bad repute.

Unlawful to permit place to be used for purposes prohibited by sub-§ 1.—In order to decrease the spread of so called sexual diseases, Chapter 112 of the Public Laws of 1919 enacted that it should be unlawful for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, lewdness or assignation with knowledge or reasonable cause to know that the same is, or is to be used for such purpose. State v. Morin, 126 Me. 136, 136 A. 808.

But grand jury must allege guilty knowledge.—It is incumbent on the grand jury, in preparing a true bill, on consideration of an act forbidden by subsection I, to allege guilty knowledge on the part of the respondent. State v. Morin, 126 Me. 136, 136 A. 808.

Indictment need not state street location of house.—The indictment is not defective in substance or form on account of the omission to state the street in which the house that is alleged to have been unlawfully kept is situated. State v. Stevens, 40 Me. 559.

Nor allege a nuisance. — An indictment under this section is not for the offense of keeping a house of ill fame, as a common nuisance, but for violation of the section, and an allegation of nuisance is not necessary. State v. Stevens, 40 Me. 559. See c. 141, § 1, re common nuisances.

For a case concerning whether the act containing this section took effect as an emergency measure, see Payne v. Graham, 118 Me. 251, 107 A. 709.

Applied in State v. Garing, 75 Me. 591.

Cited in State v. Cavalluzzi, 113 Me. 41, 92 A. 937; Howard v. Harrington, 114 Me. 443, 96 A. 769.

Sec. 13. "Prostitution", "lewdness", "assignation", defined.—The term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse for hire and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire. The term "lewdness" shall be construed to include any indecent or obscene act. The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement. (R. S. c. 121, § 13.)

Sec. 14. Record of prior conviction admissible evidence in trial.— In the trial of any person charged with a violation of any of the provisions of section 12, the record of a prior conviction or testimony concerning the reputation of any place, structure or building and of the person or persons who reside in or frequent the same shall be admissible in evidence in support of the charge. (R. S. c. 121, § 14.)

Sec. 15. Enticing unmarried females for purposes of prostitution.— Whoever fraudulently and deceitfully entices or takes away an unmarried female from her father's house, or wherever else she may be found, for the purpose of prostitution at a house of ill fame, assignation or elsewhere, and whoever aids therein or secretes such female for such purposes; or whoever inveigles or entices any female, before reputed virtuous, to a house of ill fame or knowingly conceals or aids in concealing any such female so enticed, for the purpose of prostitution or lewdness, shall be punished by imprisonment for not less than 1 year nor more than 10 years. (R. S. c. 121, § 15.)

Persons of either sex may entice away females for the purpose of supplying brothels and houses of ill fame. State v. Stoyell, 54 Me. 24.

Section does not apply to enticing female away for purpose of fornication. — This section does not apply to the case of a man's enticing a woman to leave her place of abode for the sole purpose of illicit sexual intercourse with him. State v. Stoyell, 54 Me. 24.

This section and § 8 are for different purposes. They create different offenses and impose different punishments. A person may be guilty of one offense and not of the other. He may commit fornication with a female without intending to induce such female to become a prostitute. He may entice one away from her father's house for the purpose of prostitution and induce her to become a prostitute without committing fornication with her. State v. Stoyell, 54 Me. 24.

Where it appears in proof that the defendant, by false representations, procured the complainant to go with him for the purpose of having sexual intercourse with her, and nothing indicates a design on his part to make her a common prostitute, however infamous the conduct of the defendant and however deserving of punishment he may be, he cannot be legally convicted of, nor punished for a crime under this section. State v. Stoyell, 54 Me. 24.

Cited in State v. Cavalluzzi, 113 Me. 41, 92 A. 937.

Sec. 16. Procuration for prostitution.—Whoever procures a female in-

mate for a house of prostitution; or induces, persuades, encourages, inveigles or entices a female person to become a prostitute; or whoever by promises, threats, violence or by any device or scheme causes, induces, persuades, inveigles, takes, places, harbors, encourages or entices a female person to become an inmate of a house of prostitution, or assignation place or any place where prostitution is practiced, encouraged or allowed; or whoever by promises, threats, violence or by any device or scheme causes, induces, persuades, encourages, inveigles or entices an inmate of a house of prostitution or place of assignation to remain therein as such inmate; or whoever by promises, threats, violence, by any device or scheme, by fraud or artifice, or by duress of person, of goods, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures any female person to enter any place within this state in which prostitution is practiced, encouraged or allowed for the purpose of prostitution or for any other immoral purpose; or whoever inveigles, entices, persuades, encourages or procures any female person to come into this state or leave this state for the purpose of prostitution or for any other immoral purpose; or whoever takes or detains a female with the intent to compel her by force, threats, menace or duress to marry him or to marry any other person or to be defiled; or upon the pretense of marriage takes or detains a female person for the purpose of sexual intercourse; or whoever receives or gives or agrees to receive or give any money or thing of value for procuring or attempting to procure any female person to become a prostitute or to come into this state or leave this state for the purpose of prostitution or for any other immoral purpose shall be punished by imprisonment for not less than 2 years nor more than 20 years. (R. S. c. 121, § 16.)

Sec. 17. Placing of a wife in house of prostitution.—Whoever by force, fraud, intimidation or threats places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution or to lead a life of prostitution shall be punished by imprisonment for not less than 2 years nor more than 20 years. (R. S. c. 121, § 17.)

Sec. 18. Acceptance of money from woman engaged in prostitution; evidence.—Whoever knowingly accepts, receives, levies or appropriates any money or other valuable thing, without consideration, from the proceeds of the earnings of any woman engaged in prostitution shall be punished by imprisonment for not less than 2 years nor more than 20 years. Any such acceptance, receipt, levy or appropriation of such money or valuable thing shall, upon any proceeding or trial for violation of this section, be presumptive evidence of lack of consideration. (R. S. c. 121, § 18.)

Indictment need not allege earnings were unlawful or accepted for unlawful purpose.—An indictment charging the accused, in the language of this section, with accepting the earnings of a named female, "she then and there being a common prostitute," sufficiently charges the offense of accepting the earnings of a prostitute, it not being necessary to specify that the earnings so given were unlawful earnings accepted for an unlawful purpose, or to state specifically what was received. State v. Buckwald, 117 Me. 344, 104 A. 520.

And word "prostitution" need not be limited or described.—In an indictment under this section the use of the word "prostitution," as used in the statute, is sufficient without words of limitation or description. State v. Cavalluzzi, 113 Me. 41, 92 A. 937.

And indictment may omit word "woman."—An indictment under this section is sufficient if the sex of the party from whom the money was received can be recognized from the name and the pronoun her, although the word "woman" is not employed. State v. Cavalluzzi, 113 Me. 41, 92 A. 937.

Sec. 19. Detention of female in house of prostitution on account of debt.—Whoever attempts to detain any female person in a house of prostitution, assignation place or any place where prostitution is practiced, encouraged or al-

lowed, because of any debt or debts she has contracted or is said to have contracted, shall be punished by imprisonment for not less than 2 years nor more than 20 years. (R. S. c. 121, § 19.)

Sec. 20. Transportation of female persons for purpose of prostitution; place of prosecution.—Whoever knowingly transports or causes to be transported, or aids or assists in obtaining transportation for, by any means of conveyance into, through or across the state, any female person for the purpose of prostitution or for any other immoral purpose, or with the intent and purpose to induce, entice or compel such female person to become a prostitute shall be punished by imprisonment for not less than 2 years nor more than 20 years. Such person may be prosecuted, indicted, tried and convicted in any county in or through which he shall have transported or attempted to transport any female person as aforesaid. (R. S. c. 121, § 20.)

This section was enacted for the purpose of suppressing commercialized vice. State v. Day, 132 Me. 38, 165 A 163; State v. Casale, 148 Me. 312, 92 A. (2d) 718.

And is not applicable to transportation for purpose of fornication. — This section does not and was not intended to apply to a case where a man transports a female for the purpose of having sexual intercourse with her himself. The punishment for committing fornication is fixed by § 8 at imprisonment for not more than sixty days and fine not more than one hundred dollars. It is hardly conceivable that the legislature intended by this section that a misdemeanor should be transformed into a felony simply because the commission of the offense was preceded by an automobile ride. State v. Day, 132 Me. 38, 165 A. 163.

This section was designed to protect society against an abhorrent evil. It was not enacted for the purpose of placing an effective weapon in the hands of blackmailers nor for punishing the perpetrator of a minor offense with undue and extraordinary severity. State v. Day, 132 Me. 38, 165 A. 163.

The purpose in transporting determines the guilt regardless of whether that purpose be consummated. State v. Casale, 148 Me. 312, 2 A. (2d) 718.

And the offense consists of any transportation, whatever the distance, anywhere in Maine, and the accused may be prosecuted in any county "in or through which he shall have transported or attempted to transport." State v. Casale, 148 Me. 312, 92 A. (2d) 718.

Evidence sufficient to justify conviction. —See State v. Casale, 148 Me. 312, 92 A. (2d) 718.

Sec. 21. No defense that part of prohibited acts committed outside of state.—It shall not be a defense to a prosecution for any of the acts prohibited in the 5 preceding sections that any part of such act or acts shall have been committed outside this state, and the offense in such case shall be deemed and alleged to have been committed and the offender tried and punished in any county in which the prostitution was intended to be practiced or in which the offense was consummated or any overt act in furtherance of the offense shall have been committed. (R. S. c. 121, § 21.)

Sec. 22. Such females competent witnesses; evidence of general reputation of house admissible.—Any such female person referred to in the 6 preceding sections shall be a competent witness in any prosecution thereunder to testify for or against the accused as to any transaction, or as to any conversation with the accused, or by him with another person or persons in her presence, notwithstanding her having married the accused before or after the violation of any provision of said sections, whether called as a witness during the existence of the marriage or after its dissolution. In any prosecution under the provisions of the 6 preceding sections, evidence of the general reputation or common fame of a house or place shall be admissible for the purpose of proving that the house or place is one of ill fame, prostitution or assignation. (R. S. c. 121, § 22.)

Purpose of provision as to evidence of reputation of house.—This section provides that "in any prosecution under the provisions of the 6 preceding sections,

evidence of the general reputation or common fame of a house or place shall be admissible for the purpose of proving that the house or place is one of ill fame, prostitution or assignation." The language used needs no construction to show the intention of the legislature. Various offenses are mentioned in the "6 preceding sections," in any one and all of which this section applies, its clear purpose being to make use of, and make admissible such reputation of ill repute, in the highest interest of society, to the end that such practices as are prohibited shall be stamped out. State v. Buckwald, 117 Me. 344, 104 A. 520.

Sec. 23. Warrants to search for females so enticed.—When an overseer of the poor, police officer, constable, parent or guardian has reason to believe that a female has been inveigled or enticed to a house of ill fame as aforesaid, he may complain on oath to a competent magistrate who may issue his search warrant, as in other cases, to enter such house by day or night, search for such female and bring her and the person in whose keeping she is found before him, and may order her to be delivered to the complainant or to be discharged, as law and justice require. (R. S. c. 121, § 23.)

Immoral Literature, Pictures, Exhibitions and Advertisements.

Sec. 24. Making or circulating obscene books and pictures.—Whoever imports, prints, publishes, sells or distributes any book, pamphlet, ballad, printed paper or other thing containing obscene, indecent or impure language, or manifestly tending to the corruption of the morals of youth, or an obscene, indecent or impure print, picture, figure or description, manifestly tending to the corruption of the morals of youth, or introduces into a family, school or place of education, or buys, procures, receives or has in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of sale, exhibition, loan or circulation, or with intent to introduce the same into a family, school or place of education, shall be punished by a fine of not less than $100 nor more than $1,000, and by imprisonment for not more than 5 years. (R. S. c. 121, § 24.)

See c. 41, § 234, re penalty for defacing schoolhouses and outbuildings.

Sec. 25. Warrants to search for such articles.—A warrant to search for such articles may be issued by any trial justice like other search warrants, and when any of them are found by the officer serving it, they shall be brought before the justice and kept by him or the officer, to be used as evidence in any case that may arise concerning them or any person connected therewith; and on conviction of such offender, said articles shall be destroyed by order of the court trying the case. (R. S. c. 121, § 25.)

Sec. 26. Publication, distribution or display of notices or advertisements for cure of venereal diseases.—It shall be unlawful for any person to publish or cause to be published, to deliver or distribute or cause to be delivered or distributed, in any manner whatsoever, or to post or display, or to permit to be posted, displayed or to remain on any buildings, windows or outhouses, or premises or other surface owned or controlled by him in this state, or to have displayed in or on any window or place where the same could be read by passers-by or the public, any advertisement, label, statement, print or writing which refers to any person or persons from whom, or to any means by which, or to any office or place at which may be obtained any treatment or cure for syphilis, gonorrhea, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele or self-abuse, whether described by such names, words, terms or phrases, or by any other names, words, terms or phrases calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions or habits are meant or referred to, or which refers to any medicine, article, device or preparation that may be used for the treatment, cure or preven-

tion of any of the diseases, infirmities, disabilities, conditions or habits mentioned in this section.

This section shall not apply to publications, advertisements or notices of the United States government, this state or of any city, town or plantation in this state, or of any public official, department or agency of this state charged with the enforcement of its health laws.

Any person violating any of the provisions of this section shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 months, or by both such fine and imprisonment.

The word "person" as used in this section shall mean and include natural persons, copartnerships, corporations and associations and shall include persons of both sexes. (R. S. c. 121, § 26.)

Sec. 27. Circulation among minors of criminal news and obscene pictures; jurisdiction.—Whoever knowingly sells, lends, gives away or shows to any minor any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and stories of lust or crime; or circulates, posts or causes to be circulated or posted in any conspicuous or public place any picture, handbill or poster containing obscene, indecent or immoral representations; or in any manner hires, uses or employs any minor to sell or give away, or in any manner to distribute, or who, having the care, custody or control of any minor, permits such minor to sell or give away, or in any manner to distribute any book, magazine, pamphlet or newspaper as described in this section shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Trial justices within their county shall have, by complaint, jurisdiction of the offenses mentioned in this section, original and concurrent with municipal courts and the superior court. (R. S. c. 121, § 27.)

Sec. 28. Use of phonograph which utters profane or obscene language.—Whoever in connection with any show or entertainment, whether public or private, either as owner, manager or director or in any other capacity, uses or causes or permits to be used a phonograph or other contrivance, instrument or device which utters or gives forth any profane, obscene or impure language shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 121, § 28.)

Sec. 29. Giving any obscene or impure show.—Whoever as owner, manager, director, agent or in any other capacity prepares, advertises, gives, presents or participates in any obscene, indecent, immoral or impure show or entertainment, or in any show or entertainment manifestly tending to corrupt the morals of youth, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 121, § 29.)

Desecration of Dead Bodies and Graves.

Sec. 30. Disinterment, concealment, exposure or abandonment of dead bodies; exceptions for physicians, surgeons and students of anatomy.—Whoever, without permission of the clerk of a town, therein willfully digs up or removes any human body or its remains from its place of burial, or aids in so doing, or knowingly receives, conceals or disposes of the same; or whoever mutilates, conceals or unlawfully disposes of any human body or its remains, or unnecessarily and indecently exposes, throws away or abandons the same in any public place, river, stream or elsewhere, shall be punished by a fine of not more than $3,000, or by imprisonment for not less than 1 year nor more than 10 years; but any physician, surgeon or medical student may have in his

possession or use human bodies or parts thereof lawfully obtained, for anatomical or physiological investigation and instruction. (R. S. c. 121, § 30.)

Cross references. — See c. 25, § 386, re permit necessary for interment or disinterment; c. 66, §§ 10-15, re promotion of medical education.

This section is not applicable to a case where the defendant is charged with having burned the body of his sister. See State v. Bradbury, 136 Me. 347, 9 A. (2d) 657.

Sec. 31. Injury to monuments and places of burial.—Whoever willfully destroys or injures any tomb, gravestone, monument or other object placed or designed as a memorial of the dead, or any fence, railing or other thing placed about or enclosing a burial place; or willfully injures, removes or destroys any tree, shrub or plant within such enclosure shall be punished by a fine of not more than $500 or by imprisonment for less than 1 year. (R. S. c. 121, § 31.)

Section applies only to cases of willful destruction or injury.—This section was intended to provide for cases of willful destruction or injury to any tomb, gravestone, or monument, and any case falling short of such willful destruction or injury would not be within its purview. Bradburg v. Segal, 121 Me. 146, 116 A. 65.

And a change of location is not such an injury to the gravestone as the statute contemplates. Bradburg v. Segal, 121 Me. 146, 116 A. 65.

Sec. 32. Arrest of dead body.—If an officer takes the body of a deceased person by writ or execution, he shall be punished by a fine of not more than $500 and by imprisonment for not more than 6 months. (R. S. c. 121, § 32.)

Blasphemy and Profanity.

Sec. 33. Blasphemy.—Whoever blasphemes the holy name of God by cursing or contumeliously reproaching God, His creation, government, final judgment of the world, Jesus Christ, the Holy Ghost or the Holy Scriptures as contained in the canonical books of the Old or New Testament, or by exposing them to contempt and ridicule, shall be punished by a fine of not more than $200 or by imprisonment for not more than 2 years. (R. S. c. 121, § 33.)

The gist of the offense provided for by this section is the unlawful intent with which the words are uttered. State v. Mockus, 120 Me. 84, 113 A. 39.

State need not prove commission of all acts prohibited.—To curse God means to scoff at God, to use profanely insolent and reproachful language against Him. This is one form of blasphemy under the authority of standard lexicographers. To contumeliously reproach God, His creation, government, final judgment of the world, Jesus Christ, the Holy Ghost or the Holy Scriptures, as contained in the canonical books of the Old or New Testament, under the same authorities, is to charge Him or them with fault, to rebuke, to censure, to upbraid, doing the same with scornful insolence, with disdain, with contemptuousness in act or speech. This is another form of blasphemy. And it is blasphemy to expose any of these enumerated Beings or Scriptures to contempt and ridicule. To do any one of these things is blasphemy under the statute as as well at common law. It is not necessary for the state to prove that the defendant did them all. State v. Mockus, 120 Me. 84, 113 A. 39.

Section constitutional.—See State v. Mockus, 120 Me. 84, 113 A. 39. See also notes to Me. Const., Art. 1, §§ 3, 4.

Sec. 34. Profanity.—Whoever, being of years of discretion, profanely curses or swears shall, on complaint made within 20 days thereafter, be punished by a fine of not more than $2; and if, after conviction, he is again guilty, by a fine of not more than $5. (R. S. c. 121, § 34.)

Lord's Day. Memorial Day. Disturbance of Religious Meetings. Sunday Sports, Moving Pictures and Bowling.

Sec. 35. Duration of Lord's Day.—The Lord's Day includes the time between 12 o'clock on Saturday night and 12 o'clock on Sunday night. (R. S. c. 121, § 35.)

Sec. 36. Rude behavior in a house of worship or religious assembly. —Whoever, on the Lord's Day or at any other time, behaves rudely or indecently within the walls of any house of public worship; willfully interrupts or disturbs any assembly for religious worship within the place of such assembly or out of it; sells or exposes for sale within 1 mile thereof and during the time of their meeting, refreshments or merchandise, except in his usual course and place of business; exhibits any show or play; engages or aids in any horserace, gambling or other sport to the disturbance of such assembly; or, coming within their neighborhood, refuses, on request, either immediately and peaceably to retire beyond their hearing or to conform to their established regulations, shall be punished by a fine of not more than $10 and by imprisonment for not more than 30 days. (R. S. c. 121, § 37.)

See § 45, re limitation of action.

Sec. 37. Special police at camp meetings; appointment of persons to keep boarders and sell refreshments; arrest of offenders; refusing to aid officers.—On application of the presiding elder, officers or preachers in charge, or tent masters of a religious or temperance camp meeting in any town, the municipal officers thereof or a majority of them shall in writing appoint one or more police officers to preserve the peace during such meeting, who may arrest any violator of the provisions of the preceding section, detain him until a warrant can be issued and execute such warrant when directed to them; and the presiding officer or committee of arrangements of such religious assembly or meeting may appoint some suitable persons to keep boarders and sell refreshments at such meetings, and to sell tickets for admission to such meetings, who shall conform therein to such regulations as the officers appointing them prescribe. Every justice of the peace, sheriff, deputy sheriff, constable and grand juror, present at any such religious assembly disturbed as aforesaid, shall arrest or cause to be arrested every such offender and detain him until the close of such assembly or until he can be taken before a magistrate; and all persons present at such assembly shall, on request, assist said officers in the execution of their duty, under the same penalties for neglect or refusal as are provided for neglecting or refusing to aid officers in other cases. (R. S. c. 121, § 38.)

Sec. 38. Business, traveling and recreation on the Lord's Day.—Whoever, on the Lord's Day, keeps open his shop, workhouse, warehouse or place of business; travels; does any work, labor or business on that day, except works of necessity or charity; uses any sport, game or recreation; or is present at any dancing, public diversion, show or entertainment, encouraging the same, shall be punished by a fine of not more than $10; provided, however, that this section shall not apply to the operation of common carriers; to the driving of taxicabs and public carriages; to the operation of airplanes; to the driving of private automobiles or other vehicles; to the printing and selling of Sunday newspapers; to the keeping open of hotels, restaurants, garages, grocery stores and drug stores; to the selling of gasoline; or to the giving of scientific, philosophical, religious or educational lectures, or to musical concerts or theatrical productions. (R. S. c. 121, § 39. 1949, c. 440. 1953, c. 337.)

Cross reference. — See § 45, re limitation of action.

This section is designed to aid in keeping the Christian Sabbath holy. State v. Beaudette, 122 Me. 44, 118 A. 719.

Among other things, it prohibits business, except works of charity or necessity, upon the Lord's Day. Bridges v. Bridges, 93 Me. 557, 45 A. 827.

And it does not merely prohibit manual labor, but it likewise forbids the making of bargains and all kinds of trafficking. Mace v. Putnam, 71 Me. 238.

Including indorsement of note.—That the indorsement of a note is an act within the statute prohibiting secular business on the Sabbath cannot be seriously doubted. It is a business matter, not of necessity or charity. Benson v. Drake, 55 Me. 555.

But it does not prohibit the doing of

those things necessary and suitable to health. Eaton v. Atlas Accident Ins. Co., 89 Me. 570, 36 A. 1048.

Nor interfere with private habits and comfort of individuals.—The primary object of legislation such as this section has been to secure to private citizens the quiet enjoyment of Sunday as a day of rest, and to encourage the observance of moral duties on that day, but not to authorize any arbitrary or vexatious interference with the private habits and comfort of individuals. Cleveland v. Bangor, 87 Me. 259, 32 A. 892.

Works of necessity are expressly excepted from the prohibition of this section. State v. Conwell, 96 Me. 172, 51 A. 873.

Which exception applies to everything morally fit and proper.—The exception as to works of necessity or charity may properly be said to cover everything which is morally fit and proper, under the particular circumstances of the case, to be done upon the Sabbath. Sullivan v. Maine Central R. R., 82 Me. 196, 19 A. 169.

Including whatever is necessary to prevent crime.—Whatever is necesary to prevent crime and apprehend persons charged with its commission is within the exception of works of necessity. State v. Conwell, 96 Me. 172, 51 A. 873.

And person may enter shop to furnish medicine.—This section makes it an offense for any person to keep open his shop, workhouse, warehouse, or place of business on the Lord's day. The proper construction of the section does not mean that one is prohibited from going into his shop to prepare or compound a prescription in case of sickness, or from entering for the purpose of doing an act of necessity or charity. One may enter his shop for many purposes and not violate the section. State v. Morin, 108 Me. 303, 80 A. 751.

For such would not constitute opening the shop.—The opening of a store and entering it for the purpose of furnishing a medicine then needed for sickness, would not be keeping open shop within the meaning of the statute; it would not be keeping open shop in a manner to invite trade, or to invite people to enter to transact business, or doing work therein. The opening would only be that the defendant might do an act of necessity or charity — furnish medicine to aid the sick and suffering, not to induce others to enter to trade or transact business. State v. Morin, 108 Me. 303, 80 A. 751.

Prior to the enactment of c. 113, § 154, it was held that, by reason of this section, a contract made on Sunday was void between the parties, and that the consideration therefor could not be recovered back, and that a tort arising from such contract would not support an action for damages. See Towle v. Larrabee, 26 Me. 464; Hilton v. Houghton, 35 Me. 143; Morton v. Gloster, 46 Me. 520; Bank of Cumberland v. Mayberry, 48 Me. 198; Pope v. Linn, 50 Me. 83; Tillock v. Webb, 56 Me. 100; Parker v. Latner, 60 Me. 528; Plaisted v. Palmer, 63 Me. 576; Meader v. White, 66 Me. 90; Mace v. Putnam, 71 Me. 238; First Nat. Bank of Bar Harbor v. Kingsley, 84 Me. 111, 24 A. 794; Bridges v. Bridges, 93 Me. 557, 45 A. 827. But see note to c. 113, § 154, re action to recover for labor performed in violation of this section not maintainable.

Editor's note.—Since this section now excepts from its provisions practically all types of traveling, it is felt that it would serve no useful purpose to carry notes from those early cases which dealt with traveling on Sunday before the enactment of the various exceptions. Consequently, those cases are simply cited, as follows, for their historical interest: Bryant v. Biddeford, 39 Me. 193; Hinckley v. Penobscot, 42 Me. 89; Cratty v. Bangor, 57 Me. 423; O'Connell v. Lewiston, 65 Me. 34; Davidson v. Portland, 69 Me. 116; Sullivan v. Maine Central R. R., 82 Me. 196, 19 A. 169; Buck v. Biddeford, 82 Me. 433, 19 A. 912; Cleveland v. Bangor, 87 Me. 259, 32 A. 892; Eaton v. Atlas Accident Ins. Co., 89 Me. 570, 36 A. 1048.

Applied in Nason v. Dinsmore, 34 Me. 391; Greene v. Godfrey, 44 Me. 25; Harris v. Morse, 49 Me. 432; Wheelden v. Lyford, 84 Me. 114, 24 A. 793.

Cited in Carson v. Calhoun, 101 Me. 456, 64 A. 838.

Sec. 39. Sunday sports legalized; local option.—The provisions of this section may be referred to in proceedings of city governments and in warrants for town meetings as "The Sunday Amateur Sports Law."

In any city or town that shall so vote, as hereinafter provided, it shall be lawful to engage in as a participant, manager or official, or to attend as a spectator any outdoor recreational or competitive amateur sport or game, except boxing, horseracing, air circuses or wrestling between the hours of 1 P. M. and 7 P. M. on Sunday

This section shall not be effective in any city until the municipal officers of a city so vote or in any town until an article in a town warrant so providing has been adopted at any annual or special town meeting. When a city or town has voted in favor of adopting the provisions of this section, said provisions shall be effective until repealed in the same manner as above provided.

Cities and towns adopting the provisions hereof may designate certain areas or places in said cities or towns in which said outdoor amateur games and sports may be engaged in, and may pass regulations concerning said areas and places to the end that persons attending places of public worship may not be disturbed therein; provided, however, that no regulations shall be passed which shall prohibit the receiving of remuneration by any proprietor or owner of such areas or places, or the taking of collections at any such amateur sport or game.

The municipal officers of cities shall take action upon the acceptance hereof upon receipt of a petition therefor signed by at least 100 registered voters in said city and shall hold such public hearings thereon as they may deem necessary. The selectmen or other municipal officers of towns shall insert an article in the warrant for the next annual town meeting for the acceptance of the provisions of this section after receipt of a petition therefor signed by at least 25 registered voters of such town.

Any person violating any of the provisions of this section or any regulation of a city or town made in connection therewith shall upon conviction be punished by a fine of $5 and costs of prosecution. (R. S. c. 121, § 40.)

See § 45, re limitation of action.

Sec. 40. Sunday bowling legalized; local option.—In any city or town that shall vote as hereinafter provided, it shall be lawful to operate bowling alleys or to bowl therein on Sunday between the hours of 2 P. M. and 11 P. M.

This section shall not be effective in any city until the municipal officers of a city so vote or in any town until an article in a town warrant so providing has been adopted at any annual or special town meeting. When a city or town has voted in favor of adopting the provisions of this section, said provisions shall be effective until repealed in the same manner as herein provided.

The municipal officers of cities shall take action upon the acceptance hereof upon receipt of a petition therefor signed by at least 100 registered voters in said city and shall hold such public hearings thereon as they may deem necessary. The selectmen or other municipal officers of towns shall insert an article in the warrant for the next annual town meeting for the acceptance of the provisions of this section after receipt of a petition therefor signed by at least 25 registered voters of such town. (1947, c. 292.)

Sec. 41. Sunday moving pictures legalized; local option.—In any city or town that shall vote as hereinafter provided, it shall be lawful for any moving picture theater to have an exhibition of moving pictures on Sunday between the hours of 3 P. M. and 11:30 P. M. This section shall not be effective in any city until a majority of the legal voters, present and voting, at any regular election so vote. The question in appropriate terms may be submitted to the voters at any such election by the municipal officers thereof and shall by them be so submitted when thereto requested in writing by 100 legal voters therein at least 21 days before such regular election; nor shall it be effective in any town until an article in such town warrant so providing shall have been adopted at an annual town meeting. When a city or town has voted in favor of adopting the provisions hereof, said provisions shall remain in effect therein until repealed in the same manner as above provided for their adoption. It shall be unlawful for any person, firm or corporation operating any theatrical or motion picture show on Sunday to require or permit any employee of said person, firm or corporation to work or be on duty more than 6 days in any 1 week. (R. S. c. 121, § 41.)

Sec. 42. Public outdoor sports where admission charged on Memorial Day.—Whoever on Memorial Day before 3:30 o'clock in the afternoon engages in any public outdoor game or sport where an admission is charged or collection is taken shall be punished by a fine of not more than $25 or by imprisonment for not more than 10 days, or by both such fine and imprisonment. Trial justices shall have jurisdiction of all offenses under this section. (R. S. c. 121, § 42.)

Sec. 43. Innholders and victualers not to allow gambling, diversion or business on Lord's Day.—If an innholder or victualer, on the Lord's Day, suffers any persons, except travelers, strangers or lodgers, to abide in his house, yard or field, drinking or spending their time idly at play, or doing any secular business except works of charity or necessity, he shall be punished by a fine of not more than $4 for each person thus suffered to abide; and if after conviction he is again guilty, by a fine of not more than $10 for each offense; and upon a 3rd conviction, he shall also be incapable of holding any license; and every person so abiding shall be punished by a fine of not more than $4 for each offense. (R. S. c. 121, § 43.)

Cross reference.—See § 45, re limitation of action.

Applied in O'Connell v. Lewiston, 65 Me. 34.

Sec. 44. Persons conscientiously observing the 7th day.—No person conscientiously believing that the 7th day of the week ought to be observed as the Sabbath, and actually refraining from secular business and labor on that day, is liable to said penalties for doing such business or labor on the 1st day of the week, if he does not disturb other persons. (R. S. c. 121, § 36.)

Sec. 45. Prosecutions under §§ 36, 38, 39 and 43.—Any person may prosecute for all offenses described in sections 36, 38, 39 and 43 at any time within 6 months after the commission thereof. (R. S. c. 121, § 44.)