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Chapter 135.

Crimes against Public Justice and Official Duty.

Perjury and Subornation of Perjury.

Sec. 1. Perjury; subornation of perjury, definitions.—Whoever, when required to tell the truth on oath or affirmation lawfully administered, willfully and corruptly swears or affirms falsely to a material matter, in a proceeding before any court, tribunal or officer created by law, or in relation to which an oath or affirmation is authorized by law, is guilty of perjury; and whoever procures another to commit perjury is guilty of subornation of perjury; and shall be punished in either case, if the perjury was committed in a trial of a crime punishable by imprisonment for life, by imprisonment for any term of years not less than 10, and if committed in any other case, by imprisonment for not more than 10 years. (R. S. c. 122, § 1.)

I. General Consideration.

II. Subornation of Perjury.

Cross References.

See c. 4, § 35, re false statement in return of expenditures of candidates; c. 5, § 115, re false returns by officers on certificates of election returns; c. 30, § 58 and c. 182, § 7, re false swearing on certificates filed for trade-marks and labels; c. 60, § 119, re false statement on application for health and accident policies; c. 60, § 188, re false statement by agent or physician in fraternal beneficiary association dealings; c. 68, § 4, re false testimony before board of pharmacy; c. 97, § 27, re false swearing in investigation of fires; c. 113, § 180 and note, re action for damages when judgment obtained by perjury; c. 114, § 77, re false disclosure in trustee actions; c. 157, § 6, re false swearing in proof of claim in insolvent estates; c. 166, § 58, re false swearing in divorce libels; c. 181, § 14, re false swearing on certificate filed by mercantile business.

I. GENERAL CONSIDERATION.

Section construed in harmony with common law.—Except as this section has enlarged the scope of perjury by including therein corrupt and willful false oaths and affirmations outside the common-law definition of the crime, it is declaratory of the common law and must be construed in harmony therewith and as not making any innovation therein which it does not clearly express. State v. Shannon, 136 Me. 127, 3 A. (2d) 899.

At common law and by statute, perjury is a crime. It is punished by drastic penalties. Cole v. Chellis, 122 Me. 262, 119 A. 623.

And an infamous crime, of which no man may be deemed guilty until indicted, tried by a jury and found guilty. In re Holbrook, 133 Me. 276, 177 A. 418.

A false and sworn statement as to matter material to an inquiry before a grand jury acting within its authority is perjury. State v. True, 135 Me. 96, 189 A. 831.

To constitute perjury the witness must willfully testify falsely, knowing the testimony given to be false. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

And a witness, by mistake or defect of memory, may testify untruly without being guilty of perjury or any other crime. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

Section applicable only when person re-

quired to tell truth by oath.—In the language of our statute defining perjury, it is only when one who is required to tell the truth on oath or affirmation lawfully administered, willfully and corruptly swears or affirms falsely to material matter, in a proceeding before a court, tribunal or officer created by law, that he is guilty of perjury. State v. Mace, 76 Me. 64.

Authorized or required by law. — The oath must be one authorized or required by law, to constitute perjury. Swearing to an extra judicial affidavit is not perjury. State v. Mace, 76 Me. 64.

And there must be some proceeding, matter or thing, to which the oath was taken. State v. Hanson, 39 Me. 337; State v. Plummer, 50 Me. 217.

General oath is sufficient.—If a party voluntarily takes the general oath, and testifies untruly, wittingly and willingly, to matters legitimately derivable from him, he may well be deemed to come within the purview of this section, and be convicted of perjury. State v. Keene, 26 Me. 33.

But perjury not committed if justice had no jurisdiction to administer oath.—As the justice in this case had no such jurisdiction as he appears by the indictment to have assumed, he could have no legal authority to administer the oath, and the accused could not on that occasion have committed the crime of perjury. State v. Furlong, 26 Me. 69.

To constitute perjury the testimony must be material to the issue. State v. Ela, 91 Me. 309, 39 A. 1001; State v. Crabb, 131 Me. 341, 163 A. 83. See State v. Berliawsky, 106 Me. 506, 76 A. 938.

The test of which is whether testimony would influence tribunal.—The ordinary test of materiality is whether the testimony given could have probably influenced the tribunal before whom the case was being tried, upon the issue involved therein. If it tended to do so, it was material. State v. True, 135 Me. 96, 189 A. 831.

And any statement relevant to the case is material.—Generally speaking, any statement which is relevant to the matter under investigation is sufficiently material to form the basis of a charge of perjury. State v. True, 135 Me. 96, 189 A. 831.

Whether on main issue or collateral issue.—It may be laid down as a general rule that any testimony which is relevant in the trial of a case, whether on the main issue or some collateral issue, is so far material as to render a witness who knowingly and willfully falsifies in giving it guilty of perjury. State v. True, 135 Me. 96, 189 A. 831.

Materiality determined by court.—The materiality of a statement or testimony assigned as false is a question of law for the court and should not be submitted to the jury. State v. True, 135 Me. 96, 189 A. 831.

Testimony as to previous conviction held material.—That a witness has been previously convicted of a crime can be shown to affect his credibility as a witness (see c. 113, § 127) and such evidence is material within the meaning of this section. State v. Crabb, 131 Me. 341, 163 A. 83.

False statements made at same proceeding constitute but one perjury.—One who has taken a lawful oath as a witness in a trial and as such witness has willfully and corruptly made more than one false statement as to one or more matters material to the issue cannot be held to have more than once committed the crime of perjury. State v. Shannon, 136 Me. 127, 3 A. (2d) 899. See note to § 4, re all false statements charged in one count.

False statements relating to the same transaction, whether one or more, if made under one oath and in one judicial proceeding, constitute only one perjury. State v. Shannon, 136 Me. 127, 3 A. (2d) 899.

Applied in State v. Hall, 49 Me. 412; State v. Corson, 59 Me. 137; State v. Mahoney, 115 Me. 251, 98 A. 750; State v. Rogers, 149 Me. 32, 98 A. (2d) 655.

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

II. SUBORNATION OF PERJURY.

Accused must have procured commissioner of perjury.—To constitute subornation of perjury, the party charged must have procured the commission of the perjury, by inciting, instigating or persuading the guilty party to commit the crime. The calling of a witness to testify, with the knowledge or belief that he will voluntarily testify falsely, is certainly not sufficient to constitute the crime of subornation of perjury. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

And perjury must have been actually committed.—It is essential to the offense of subornation of perjury that perjury, in all of its elements, shall have been committed by the suborned witness. Niehoff v. Sahagian, 149 A. 396, 103 A. (2d) 211.

It is essential to the crime of subornation of perjury that the suborner procured another to give testimony known by him and such other to be false and that such false testimony was in fact given. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

In a proceeding before any court, etc.—The true rendering of the statute is that a person shall be liable who procures a

person to swear falsely "in a proceeding before any court, tribunal or officer created by law, or in relation to which an oath or affirmation is by law authorized." State v. Joaquin, 69 Me. 218.

But suborner may be guilty where act itself constitutes proceeding.—No doubt a person could be guilty under the statute of procuring another to commit perjury where no proceeding is pending, but where the act done would itself constitute a proceeding. A man might be induced to go before a grand jury and falsely swear to a complaint. A pregnant woman might be instigated by another to go before a magistrate and falsely swear to proceedings against a man as the father of her bastard child expected to be born. In such cases, the acts of the foresworn parties would have the effect, per se, to institute proceedings. State v. Joaquin, 69 Me. 218.

Suborner must know that suborned knows testimony is false.—In order to constitute subornation of perjury both the suborner and the suborned must, as elements of the offense, know the testimony to be false, and the former must be aware that the latter so knows it, otherwise there is not the needful corruption. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

And that he will willfully give such false testimony.—If the suborner did not know that the suborned would willfully testify to a fact, knowing it to be false, he cannot be convicted of subornation of perjury. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

In order to constitute subornation of perjury, it is essential that the suborner should have known or believed that the testimony would be false, that he should have known that the witness would testify willfully and corruptly with knowledge of its falsity, and that he should have knowingly and willfully induced or procured the witness to give such false testimony. Niehoff v. Sahagian, 149 Me. 396, 103 A. (2d) 211.

Sec. 2. Attempted subornation of perjury.—Whoever willfully and corruptly endeavors to incite or procure another to commit perjury, although it is not committed, shall be punished by imprisonment for not more than 5 years. (R. S. c. 122, § 2.)

Sec. 3. Presumption of perjury committed before court.—When a witness or party, legally sworn and examined or making affidavit in any proceeding in a court of record, testifies in such a manner as to raise a reasonable presumption that he is guilty of perjury therein, the court may immediately order him committed to prison, or take his recognizance with sureties for his appearance to answer to a charge of perjury; and may bind over any witnesses present to appear at the proper court to prove such charge, order the detention so long as necessary of any papers or documents produced and deemed necessary in the prosecution of such charge, and cause notice of such proceedings to be given to the state's attorney for the same county. (R. S. c. 122, § 3.)

This section outlines a course of procedure which the legislature apparently regarded as sufficient protection against the evil results likely to flow from unrebuked perjury, while still reserving to the suspected perjurer the legal protection to which he is entitled. Its wise provisions might, with good effect, be more frequently invoked. In re Holbrook, 133 Me. 276, 177 A. 418.

Fact of perjury cannot be determined without indictment and trial.—To go farther and determine the fact of perjury without indictment or trial by jury and impose the penalty or imprisonment, theoretically for contempt but in reality for perjury, is an unsafe and unwarranted practice, and one suffering confinement under such a sentence is illegally restrained of his liberty. In re Holbrook, 133 Me. 276, 177 A. 418.

Sec. 4. Indictment.—Indictments against persons for committing perjury before any court or tribunal drawn substantially as hereinafter provided are sufficient in law, viz.:

"STATE OF MAINE.

....., ss. At the ..... court begun and held at ....., within and for said county of ....., on the ..... Tuesday of ....., in the year of our Lord nineteen hundred and .....

The jurors for said state, upon their oath present, that A. B., of ....., in the county of ....." (addition,) "at ....., in the said county of ....., on the .... day of ....., in the year of our Lord nineteen hundred and .....,

appeared as a witness in a proceeding in which C. D. and E. F. were parties, then and there being heard before a tribunal of competent jurisdiction, and committed the crime of perjury, by testifying as follows:" (here set out the matter sworn to and alleged to be false,) "which said testimony was material to the issue then and there pending in said proceeding, against the peace of said state and contrary to the form of the statute in such case made and provided.

A true bill. ....., Foreman.

....., ..., County Attorney."

(R. S. c. 122, § 4.)

The object of the legislature was to simplify and reduce the essential allegations to the fewest possible particulars, retaining the charge of a distinct offense. State v. Corson, 59 Me. 137.

And the legislature has not exceeded its constitutional power in prescribing this simpler form of an indictment. State v. Corson, 59 Me. 137. See note to Me. Const., Art. 1, § 6.

All false statements may be charged in one count. — In indictments for perjury, any and all false statements made by a witness under oath may be charged in one count if the statements were given under one oath and in one proceeding. It is not a valid objection to an indictment that it embraces in a single count all the particulars in which the defendant is alleged to have sworn falsely where the assignments relate to the same transaction. And one good assignment of perjury will support a general verdict of guilty, although other assignments are defective or not sustained by proof. State v. Shannon, 136 Me. 127, 3 A. (2d) 899.

Allegation of perjury charges all elements thereof. — The allegation that the party charged has committed perjury, ex vi termini, imports and charges all the particulars, which by law constitute that crime. State v. Corson, 59 Me. 137.

And indictment need not contain distinct allegation of falsehood. — Words within brackets are not regarded as in themselves a part of the prescribed form. They are generally merely indicative of the place where certain matters, which are peculiar to the particular case in which the form is to be used, but not general or applicable to all cases, are to be inserted. In this form the words within brackets do not necessarily require a new and distinct affirmation that the words were false, but may as well refer to the allegation of falsehood embodied and embraced in the word "perjury," before used. If the legislature had intended that the form should require a distinct allegation of falsehood, it would doubtless have inserted it in the body of the form, in the same manner as it has the allegation of materiality and other matters. State v. Corson, 59 Me. 137.

The averment that the accused "committed perjury by testifying as follows," giving his language, is, in fact, a sufficient averment that the words were not true. He could not commit the crime of perjury by testifying in those words, unless they were false. State v. Corson, 59 Me. 137.

But each assignment of perjury must be specific.—There should be an assignment of the perjury, when part of the paper sworn to is or must be true, so that the defendant may be informed of the specific charge he is to answer. Several assignments may be made, and if one is sustained by the proof, a conviction may follow, but each assignment must be specific. State v. Ela, 91 Me. 309, 39 A. 1001.

If, in an indictment for perjury, the entire testimony of the defendant is set out and all of it is alleged to be material and false, when parts of it are manifestly immaterial or not false, the indictment does not sufficiently apprise the defendant of the real charge against him, and is therefore insufficient to require him to answer. State v. Crocker, 106 Me. 369, 76 A. 703. See State v. Mahoney, 115 Me. 251, 98 A. 750.

And time perjury committed must be alleged.—The day, month and year when the offense was committed must be alleged in an indictment, although it may not be necessary to prove it to have been committed on that day. State v. Hanson, 39 Me. 337.

Although the legislature has seen fit in some particulars to simplify the common-law requisites in indictments for perjury, which formerly required great care and nicety of statement, and to reduce the essential averments to the smallest possible compass consistent with constitutional requirements, yet, even according to the form prescribed by statute, the distinct allegations of time and place are among the requisites of the several particulars which go to make up the offense. State v. Fenlason, 79 Me. 117, 8 A. 459.

And designation of term of court at which it was committed is not sufficient.—Designating the term of the court at which the offense happened is not a sufficient averment of the time required to be stated

in an indictment for perjury. Such an indictment cannot be sustained as giving the accused sufficient notice of the nature and cause of the accusation against him. State v. Fenlason, 79 Me. 117, 8 A. 459.

Former form held insufficient.—A former statute (R. S. 1883, c. 122, § 5) contained a second form which related to perjury committed in swearing to some writing in relation to which an oath was authorized or required by law. This form was held insufficient in State v. Mace, 76 Me. 64.

Bribery and Attempt to Corrupt Officials.

Sec. 5. Bribery and acceptance of bribes by public officers.—Whoever gives, offers or promises to an executive, legislative or judicial officer, before or after he is qualified or takes his seat, any valuable consideration or gratuity whatever, or does, offers or promises to do any act beneficial to such officer, with intent to influence his action, vote, opinion or judgment in any matter pending, or that may come legally before him in his official capacity, shall be punished by a fine of not more than $3,000 or by imprisonment for not more than 5 years; and whoever accepts such bribe or beneficial thing, in the manner and for the purpose aforesaid, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the state and shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 10 years. Sheriffs and deputy sheriffs within the several counties and constables, marshals, deputy marshals and other officers of police of the several cities and towns are declared to be executive officers within the meaning of this section; but the enumeration of such officers shall not be held to exclude any other executive officer not specially mentioned herein. (R. S. c. 122, § 5.)

Cross references.—See c. 4, § 9, re votes; c. 9, § 8, re bribery and corrupt practices at elections.

History of section.—See State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Elements of bribery generally.—The essential elements of the crime of bribing or offering to bribe a public officer, as necessarily inferred from this section, include knowledge on the part of the accused of the official character or capacity of the person to whom the bribe is offered, the fact that the thing offered is of some value, and that it was offered with intent to influence his official action. State v. Beattie, 129 Me. 229, 151 A. 427.

This section is applicable to executive, legislative or judicial officers. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

And it prohibits acceptance of promise to pay bribe money.—The law, originally and now, intends to condemn, not only the actual acceptance of bribe money, but the acceptance of a promise to pay such money in order to induce corrupt action by an official. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

State not limited to proof of bribery as to matters then pending.—This section clearly covers bribery, (1) "in any matter pending," (2) "or that may come legally before him." The word "or" in this connection is disjunctive. The corrupt act may occur when a matter is pending, or instead, it may be with reference to a matter that may come legally before him. The state is not limited to proof that the matter is then pending. It may allege and prove the alternative. State v. Dumais, 137 Me. 95, 15 A. (2d) 289.

Amount of bribe is immaterial.—The material question under this section is not the amount of the bribe but whether a bribe was given. State v. Vallee, 137 Me. 311, 19 A. (2d) 429.

In the crime of bribery, intent is a necessary element. State v. Dumais, 137 Me. 95, 15 A. (2d) 289.

And must be alleged.—The intention with which an act was done must be truly laid in the indictment; and it must be laid positively. State v. Dumais, 137 Me. 95, 15 A. (2d) 289.

And the failure to allege the necessary element of intent cannot be cured by implication. State v. Dumais, 137 Me. 95, 15 A. (2d) 289.

But guilt not dependent on mutual intent.—The corrupt intent on the part of the person accused is a necessary element of bribery, but guilt is not made to depend upon the mutual intent of both parties. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Under this section there need not be mutual intent on the part of both the giver and the accepter. It is enough that the person accused had the guilty intent. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

And giver's intent need not be alleged in indictment against acceptor.—If the charge is against the acceptor and his in-

tent is specifically and definitely alleged, allegations of intent in the giver may furnish an aid to a better understanding of the charge against the acceptor, but are not necessary or vital. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Indictment must charge knowledge of official character of person bribed.—An indictment for bribing a public officer should sufficiently show that the person bribed was acting as an officer, and the fact that the bribing one knew he was dealing with an officer; otherwise, the necessary intent would not sufficiently appear. State v. Navarro, 131 Me. 345, 163 A. 103.

An indictment for bribery must set forth the accused's knowledge of the official character of him to whom the bribe was offered. State v. Beattie, 129 Me. 229, 151 A. 427.

And such allegation cannot be supplied by intendment, etc.—The omission in an indictment of an allegation of knowledge of the official character of the person offered the bribe cannot be supplied by intendment, argument or implication. State v. Beattie, 129 Me. 229, 151 A. 427.

Everything pertaining to executive department "may come legally before" the governor.—That portion of this section prohibiting bribery of an executive officer which states "with intent to influence his action, vote, opinion or judgment in any matter pending or that may come legally before him in his official capacity," when pertaining to the governor, means everything pertaining to the executive department, since the governor, as head of the executive department under the constitution, has the duty to take care that the laws be faithfully executed. State v. Simon, 149 Me. 256, 99 A. (2d) 922, holding that matters pertaining to the maintenance of state highways are matters pending or matters which may legally come before the governor in his official capacity within the meaning of this section, even though the governor has no direct authority with respect to purchase of highway material.

Inclusion of continuando not fatal to indictment.—Bribery is not a continuing offense, and the inclusion of a continuando in the indictment is neither necessary nor in accord with proper pleading. Such inclusion, however, is not fatal to the indictment, the continuando may be treated as surplusage and rejected. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Indictment held insufficient.—See State v. Beliveau, 114 Me. 477, 96 A. 779.

Sec. 6. Corrupt solicitation of influence to procure places of trust; acceptance.—Whoever directly or indirectly gives, offers or promises a valuable consideration or gratuity to any person not included in the preceding section, with intent to induce such person to procure for him by his interest, influence or any other means any place of trust in the state; and whoever, not included as aforesaid, accepts the same in the manner and for the purpose aforesaid shall be forever disqualified to hold any place of trust in the state, and be punished by a fine of not more than $300 and by imprisonment for less than 1 year. (R. S. c. 122, § 6.)

This section applies to persons not included in § 5. State v. Vallee, 136 Me. 432, 12 A. (2d) 421.

Sec. 7. Bribery of jurors, referees, masters in chancery, appraisers or auditors, and acceptance.—Whoever corruptly gives, offers or promises a valuable consideration or gratuity to any person summoned, appointed, chosen or sworn as a juror, arbitrator, umpire or referee, auditor, master in chancery or appraiser of real or personal estate, with intent to influence his opinion or decision in any matter pending or that may come legally before him for decision or action; and whoever corruptly or knowingly receives the same, in the manner and for the purpose aforesaid, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years. (R. S. c. 122, § 7.)

Sec. 8. Informer exempted from punishment.—Whoever, offending in the manner described in the 3 preceding sections, gives information under oath against the other party so offending and duly prosecutes him shall be exempt from the disqualifications and punishments therein provided. (R. S. c. 122, § 8.)

Sec. 9. Bribes received by sheriff and other officers.—If any sheriff, deputy sheriff or constable receives from any person money or other valuable

thing as an inducement for omitting or delaying to sell property on execution, to arrest any defendant and carry him before a magistrate or to prison or to perform any other official duty, he shall be deemed guilty of malfeasance in office and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 2 years. (R. S. c. 122, § 9.)

Sec. 10. Attempts to corrupt jurors or referees etc. — Whoever attempts improperly to influence a juror, or anyone drawn, appointed or sworn as such, or an arbitrator, referee or commissioner appointed by a court of probate in relation to any matter pending, or that may come legally before him for action or decision; and whoever drawn, summoned or sworn as a juror promises or agrees to give a verdict for or against a person in any case, or receives any paper, information or evidence relating to any matter, for the trial of which he is sworn, without the authority of the court or officer before whom such matter is pending and without immediately disclosing it to such court or officer, shall be punished by a fine of not more than $200 and by imprisonment for not more than 3 months. (R. S. c. 122, § 10.)

This section makes it a criminal offense for a juror to receive any information or evidence relating to any matter for the trial of which he is sworn, without the authority of the court and without immediately disclosing it to the court. Belcher v. Estes, 99 Me. 314, 59 A. 439.

Compounding Felonies.

Sec. 11. Taking gratuity to compound, conceal, not prosecute or give evidence in felonies.—Whoever, having knowledge of the commission of an offense, takes any valuable consideration, gratuity or promise thereof with an agreement or understanding, express or implied, to compound, conceal, not to prosecute or not to give evidence of such offense shall be punished, if such offense is punishable with imprisonment for life or an unlimited term of years, by a fine of not more than $500 or by imprisonment for not more than 5 years; but if the offense is punishable by imprisonment in the state prison for a limited term of years, he shall be punished by a fine of not more than $500 and by imprisonment for less than 1 year. (R. S. c. 122, § 11.)

Sec. 12. Concealment or neglect to disclose commission of felony.—Whoever, having knowledge of the actual commission of a felony cognizable by courts of this state, conceals or does not as soon as possible disclose and make known the same to some one of the judges or some officer charged with enforcement of criminal laws of the state shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 years, or by both such fine and imprisonment. (R. S. c. 122, § 12.)

Sec. 13. Harboring person to prevent discovery and arrest for felony.—Any person who shall harbor or conceal any person for whose arrest for a felony a warrant or process has been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 years, or by both such fine and imprisonment. (R. S. c. 122, § 13.)

Malfeasance of Public Officials.

Sec. 14. Malfeasance in office.—Any officer authorized and empowered to serve criminal processes, who shall hire, attempt to hire or give money or other valuable thing by way of inducement to any person to consent or suffer himself to be arrested for, prosecuted for or convicted of any criminal offense, or who shall cause the same to be done, or who shall enter into any pecuniary agree-

ment with any person whereby he is to suffer himself to be so arrested, prosecuted or convicted, whether such person be guilty of such offense or not, shall be deemed guilty of malfeasance in office and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 2 years. (R. S. c. 122, § 14.)

Sec. 15. Extorting illegal fees in performance of official duty.—If any person, for performing any service or official duty for which the pay is fixed by law, willfully and corruptly demands and receives, or takes security for any greater sum, or if any witness falsely and corruptly certifies that as such he traveled more miles or attended more days than he actually did, or certifies that he attended as such for more than one party in the same case, he shall be punished by a fine of not less than $30 for each offense, to be recovered for the state by indictment found within 1 year after the offense is committed, or by action of debt commenced within the same time, to the use of the person first suing therefor in his own name. (R. S. c. 122, § 15.)

Proof of false certificate is sufficient.—In an action of debt brought against one in pursuance of the provisions of this section to recover a penalty for falsely, corruptly and willfully certifying to a greater number of days attendance as a witness in a cause than were actually attended, it is sufficient for the plaintiff to prove that the certificate was false. That it was made corruptly and willfully would follow as a legal inference, unless proved by the defendant to have been made otherwise. Chesley v. Brown, 11 Me. 143.

When the defendant certified falsely that he had attended as a witness two days, when in fact he had attended but one, he must be presumed to know that he certified a falsehood. Chesley v. Brown, 11 Me. 143.

Court to assess penalty.—In an action under this section, it is the duty of the jury to return a verdict merely of the indebtedness or nonindebtedness of the defendant, and it is the proper office of the court to assess the fine or penalty. Chesley v. Brown, 11 Me. 143.

Applied in Kennedy v. Wright, 34 Me. 351.

Sec. 16. Refusal by former public officer to deliver moneys and other public property to successor. — When any person, having held any public office in this state and having in his possession or under his control any moneys, books of account, records, accounts, vouchers, documents or other property or effects pertaining or belonging to said office, or to the state, or to any county or municipality in the state, and whose term of office has expired, and whose successor in said office has been elected or appointed and qualified, after a written demand for the same, willfully refuses to deliver such moneys, books of account, records, accounts, vouchers, documents or other property or effects aforesaid to such successor in said office, he shall be punished by a fine of not more than $5,000 and by imprisonment for not more than 5 years. (R. S. c. 122, § 16.)

Sec. 17. Public officers forbidden to have pecuniary interest in public contracts; contracts void.—No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the state, or any officer of a quasi-municipal corporation shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution or of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation hereof is void; and if such officer or person receives any drawbacks, presents, gratuities or secret discounts to his own use on account of such contracts, or from the profits in any materials, supplies or labor furnished or done for the state or such institution or such quasi-municipal corporation, he shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months. (R. S. c. 122, § 17.)

Cross reference.—See c. 144, § 15, re authority of private detectives to arrest person violating this section.

Purpose of section.—This section was not intended as simply an affirmation of a principle of the common law, but as a more comprehensive legislative rule founded in public policy. The legislature must be presumed to have had in contemplation all of the contracts which might have been

made by the different state officers, and to have enacted the section for the purpose of removing any temptation on their part to bestow reciprocal benefits upon each other, and of preventing favoritism, extravagance and fraudulent collusion among them under any circumstances which might be reasonably anticipated as likely to arise under different state governments in the years to follow. Opinion of the Justices, 108 Me. 545, 82 A. 90.

The secretary of state is necessarily "a person holding a place of trust in a state office" within the meaning of this section. Opinion of the Justices, 108 Me. 545, 82 A. 90, holding that a contract awarded by the governor and council for doing certain printing for the state to a company in which the secretary of state is a stockholder and officer is void.

Applied in Lesieur v. Rumford, 113 Me. 317, 93 A. 838.

Corrupt Agreements by Attorneys and Others.

Sec. 18. Corrupt agreements by attorneys and others.—Whoever loans, advances or promises to loan or advance any money, gives or promises to give day of payment on any demand left with him for collection, gives or promises any valuable consideration, becomes liable in any manner for the payment of anything, becomes surety for another for such payment, or requests, advises or procures another person to become responsible or surety as aforesaid, with intent thereby to procure any account, note or other demand for the profit arising from its collection by a suit at law or in equity, or brings, prosecutes or defends, or agrees to bring, prosecute or defend any suit at law or in equity upon shares, shall be punished by fine of not less than $20 nor more than $1,000, or by imprisonment for not more than 11 months. The provisions of this section shall include in its application all persons, corporations or associations of whatever form or design operating or in any manner engaging in the business of collecting for others claims, demands or accounts of any nature. No such person, corporation or association shall, under the penalties hereinbefore provided, in any manner or form solicit or receive, or acquire by any transfer, assignment or other arrangement made with the intent or for the purpose of evading the provisions of this section, any such claims, demands or accounts for collection by legal process in this state; or, having solicited or received such claims, demands or accounts for collection without legal process, shall subsequently prosecute or arrange for the prosecution thereof by legal process in this state by or through any attorney at law. (R. S. c. 122, § 18.)

Cross reference.—See c. 105, § 7, re attorney's oath.

In this state it is a crime for anyone to contract or agree to bring or prosecute any suit in equity upon shares. Hinckley v. Giberson, 129 Me. 308, 151 A. 542.

Contract violating section cannot be inforced.—A contract which falls within the prohibition of this section is unlawful and its enforcement would involve a violation of law. Therefore, it cannot be enforced. Low v. Hutchinson, 37 Me. 196.

And no party can recover for acts or services done in direct contravention of this section. Hinckley v. Giberson, 129 Me. 308, 151 A. 542.

An agreement, to be champertous, must stipulate for the prosecution or defense of a suit. An agreement, which does not provide for the prosecution or defense of a suit, may be fraudulent; or, for some other reason, it may be illegal; but, champertous it cannot be. This section is based on the same essential element. It is, therefore, immaterial whether the court looks to the common law or the statute for a definition of champerty, for both make a stipulation for the prosecution of a suit, either at law or in equity, an essential element of the offense. Burnham v. Heselton, 84 Me. 578, 24 A. 955.

And agreement merely to collect demand is not champertous.—An agreement to collect a demand, or to endeavor to collect one, or to enforce a claim, no mention being made of a suit at law or in equity as one of the means to be employed, is not champertous. Such a contract may be fully performed without the commencement or prosecution of a suit, either at law or in equity. Burnham v. Heselton, 84 Me. 578, 24 A. 955.

Disputed claim may be given to third person.—There is no legal impropriety in

one person giving to another an account against a third person, which is in dispute and not likely to be enforced except by litigation. Wright v. Fairbrother, 81 Me. 38, 16 A. 330.

Agreement held not champertous.—See Manning v. Perkins, 85 Me. 172, 26 A. 1015.

Applied in DeProux v. Sargent, 70 Me. 265.

Cited in Marston, Petitioner, 79 Me. 25, 8 A. 87.

Refusing to Obey Magistrates. Obstructing, Assaulting and Refusing to Aid Officers.

Sec. 19. Refusing to aid officers.—Whoever, when required in the name of the state by any sheriff, deputy sheriff or constable, neglects or refuses to aid him in the execution of his office in any criminal case, or in the preservation of the peace, or in arresting and securing any person for a breach of the peace, or in preventing the escape or rescue of persons arrested on civil process shall be punished by a fine of not more than $50 or by imprisonment for not more than 30 days. (R. S. c. 122, § 19.)

Cross reference.—See c. 89, § 201, re penalty for refusal to aid officers.

Applied in State v. Freeman, 122 Me. 294, 119 A. 668.

Sec. 20. Obstructing officer in service of civil process.—Whoever willfully obstructs such officer or person in the service of any civil process or order, or of any process for an offense punishable by imprisonment and fine, or either, or whoever obstructs an inland fish and game warden or a coastal warden while in the lawful discharge of his official duty, whether with or without process, shall be punished by a fine of not more than $300 and by imprisonment for not more than 11 months. (R. S. c. 122, § 20. 1949, c. 349, § 132.)

Indictment must state all elements necessary to constitute offense.—The offense is created and defined by the statute. The indictment should state all the elements necessary to constitute the offense, either in words of the statute or in language which is its substantial equivalent. State v. Bushey, 96 Me. 151, 51 A. 872.

Thus it must allege obstruction of service of process.—This section is limited to the obstruction of an officer in the service of some process. If there is in the indictment no allegation of such obstruction, it is insufficient to charge an offense under this section. State v. Simmons, 108 Me. 239, 79 A. 1069.

And act by which obstruction accomplished. — An indictment which follows the words of the statute and charges that the defendant did willfully obstruct the officer in serving the process and goes on to say that the defendant "did prevent the said . . . from seizing a large quantity of intoxicating liquor intended for illegal sale upon said premises," is not sufficient. It states a mere conclusion and does not state upon what act of the defendant that conclusion is based. The indictment should allege facts, not state conclusions. The defendant is charged with obstructing and preventing, possibly with obstructing by preventing; but by what act he obstructed, by what act he prevented, in short with what criminal act he is charged, the defendant is left solely to conjecture. The criminal act with which he is charged should be so specifically stated that he may prepare his defense, and if again prosecuted for the same offense may plead the former conviction or acquittal in bar. State v. Bushey, 96 Me. 151, 51 A. 872.

But express allegation of officer's possession of process is not necessary.—It is not necessary in an indictment under this section that there be an express allegation that the process was in the possession of the officer. It is sufficient if such is the fair inference from all the language used. State v. Bushey, 96 Me. 151, 51 A. 872.

If it is alleged that the officer was in the due and lawful execution of his office and in the process of serving a warrant, his possession of the warrant appears as plainly from the language of the indictment as if it had been directly alleged. State v. Bushey, 96 Me. 151, 51 A. 872.

Nor is allegation that process was lawful.—In a prosecution under this section, there need not necessarily be an allegation that the process was lawful. State v. Bushey, 96 Me. 151, 51 A. 872.

Although there must be proof that the process was lawful. State v. Bushey, 96 Me. 151, 51 A. 872.

Sec. 21. Assaults upon or interference with officers; jurisdiction.—Whoever assaults, intimidates or in any manner willfully obstructs, intimidates

or hinders any sheriff, deputy sheriff, constable, inland fish and game warden, coastal warden, insurance commissioner or his authorized representative, liquor inspector or police officer while in the lawful discharge of his official duties, whether with or without process, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months. In offenses under the provisions of this section, not of an aggravated nature, trial justices may try and punish by a fine of not more than $20 or by imprisonment for 60 days, and municipal courts may punish by a fine of not more than $30 or by imprisonment for 60 days. (R. S. c. 122, § 21. 1949, c. 202. 1951, c. 266, § 115. 1953, c. 391.)

Cross reference.—See c. 140, § 19, re interference with officers who prevent cruelty to animals.

This section is limited to the officers specified. State v. Simmons, 108 Me. 239, 79 A. 1069, holding that the section did not apply to fish wardens, prior to their specific inclusion in the section.

Sec. 22. Obstructing officer serving criminal process.—Whoever willfully obstructs an officer or other person authorized in the service of any process for an offense punishable by imprisonment for more than 1 year shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years. (R. S. c. 122, § 22.)

Sec. 23. Refusing to obey justices of the peace, when required to aid.—Whoever neglects or refuses to obey any justice of the peace when, in view of a breach of the peace or other offense proper for his cognizance, he requires such person to arrest and bring the offender before a court of competent jurisdiction shall be punished, if such prisoner was in custody for a felony, by imprisonment for not less than 1 year nor more than 7 years; and if for any other offense, by a fine of not more than $500 and by imprisonment for less than 1 year; and if the justice made known or declared his office to such person, he shall not plead ignorance thereof. (R. S. c. 122, § 23.)

Sec. 24. Aiding person arrested for a felony to escape custody of officer.—Any person who shall, directly or indirectly, aid, abet or assist any person arrested for a felony to escape from custody of any officer charged with the enforcement of the criminal laws of this state shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 years, or by both such fine and imprisonment. (R. S. c. 122, § 24.)

Escapes from Custody of Officer and Jail.

Sec. 25. Voluntarily suffering criminals to escape.—If a jailer or other officer voluntarily suffers any prisoner in his custody to escape, he shall be punished, if such prisoner was convicted of a felony punishable by imprisonment for life, by a fine of not more than $1,000 and by imprisonment for life; if charged with such felony, by imprisonment for not less than 5 years nor more than 15 years; if charged or convicted of any other offense, by the same penalties and punishments that such prisoner would have suffered or been liable to suffer, if he had not escaped. (R. S. c. 122, § 25.)

Sec. 26. Negligent escapes, and refusal to receive prisoners.—If a jailer or other officer through negligence suffers any prisoner in his custody for a criminal offense to escape, or willfully refuses to receive into his custody any prisoner committed to him on a lawful process, he shall be punished by a fine of not more than $500 and by imprisonment for not more than 2 years. (R. S. c. 122, § 26.)

See c. 89, § 195, re liability of keeper and sheriff if prisoner escapes.

Sec. 27. Forcibly rescuing, furnishing means or otherwise aiding an escape.—Whoever forcibly rescues a prisoner lawfully detained for any criminal

offense; conveys into a jail or other place of confinement any disguise, arms, instruments or other things adapted and intended to aid, or in any way aids him to escape, although such escape is not affected or attempted; or whoever secretes, or with a design to aid the prisoner in his escape, harbors; or with such design in any way assists such prisoner who has escaped or is at large shall be punished, if such prisoner was in custody for a felony, by imprisonment for not less than 1 year nor more than 7 years; and if for any other offense, by a fine of not more than $500 and by imprisonment for less than 1 year. (R. S. c. 122, § 27.)

What constitutes forcible rescue.—Any force, whether physical or mental, or any kind of force that tends to drive, or compel or force the officer to let the prisoner go, and the officer yields to that force and lets him go, not because he thinks it is right to let him go, but because he yields to the force, is forcible within the meaning of this section. It is enough that the officer is made to understand that if he does not let the prisoner go there will be force used, and there will be a breach of the peace, impelling the officer to let the prisoner go. State v. McLeod, 97 Me. 80, 53 A. 878.

A forcible rescue of a prisoner may be accomplished without the exercise of physical force, if by threats, menaces or demonstrations an officer is compelled to yield thereto and to let his prisoner go. State v. McLeod, 97 Me. 80, 53 A. 878.

Aiding an escape is any overt act which is intended to assist, and which is useful to assist, an attempted or completed departure of a prisoner from lawful custody before he is discharged by due process of law. State v. Navarro, 131 Me. 345, 163 A. 103.

"Design" defined.—In a criminal statute such as this, the word "design" means "intendment" or "purpose." State v. Navarro, 131 Me. 345, 163 A. 103.

Intent must be alleged positively.—The intention with which the act is done is material to constitute the offense under this section, and such intention must be truly laid in the indictment; and it must be laid positively. State v. Navarro, 131 Me. 345, 163 A. 103.

And word "feloniously" not sufficient to charge criminal design.—The use of the word "feloniously" in an indictment under this section is not a sufficient allegation of criminal design. "Feloniously" describes the grade of the act rather than the act which constitutes the offense. It does not imply a specific design; it is not a distinct element of the crime. State v. Navarro, 131 Me. 345, 163 A. 103.

State must prove person rescued was lawfully detained.—It is one of the essential elements of the offense for the government to prove that the person alleged to have been rescued was lawfully detained for a criminal offense. State v. McLeod, 97 Me. 80, 53 A. 878.

But his conviction need not be proved.—In the trial of an accused upon an indictment for forcibly rescuing a prisoner lawfully detained for a criminal offense, it is not necessary for the government to prove that the rescued prisoner had been subsequently convicted of the offense for which he was under arrest. It is sufficient for the government to show by any competent evidence that the prisoner was lawfully detained for a criminal offense. State v. McLeod, 97 Me. 80, 53 A. 878.

Cited in Hassan v. Doe, 38 Me. 45.

Sec. 28. Escapes from jail.—Whoever, being lawfully detained in any jail or other place of confinement, except the state prison, breaks or escapes therefrom, or attempts to do so, shall be punished by imprisonment for not more than 7 years; the sentence to such imprisonment shall not be concurrent with any other sentence then being served or thereafter to be imposed upon such escapee. (R. S. c. 122, § 28. 1951, c. 3.)

Facts stated in indictment should show lawfulness of detention.—The lawfulness of the detention is the very gist of the crime of criminal escape, and the commitment by lawful authority is the very essence of the lawfulness of the detention. Well established principles of criminal pleading require that sufficient facts be alleged so that the lawfulness of the detention may be determined from the facts so stated. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

An indictment which sets forth no facts from which the lawfulness of the detention may be determined is insufficient. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

And mere allegation of lawful detention not sufficient.—As the statutory requirement of "lawful detention" is merely declaratory of one of the elements of the common-law crime, the facts with respect to detention should be set forth, with sufficient particularity to satisfy common-law requirements. Whether or not the deten-

tion is lawful is a conclusion of law based upon the facts of detention. This is equally true both under the statute and at common law. An allegation that the escapee was "lawfully detained," unless sufficient facts are alleged to show the lawfulness of the detention, is but the statement of a legal conclusion so far as the lawfulness of the detention is concerned. This applies both to the common-law and the statutory offense. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

Hence indictment must allege by what authority accused was committed.—An indictment for escape which alleges a lawful detention by virtue of a commitment to jail, but which fails to allege by what authority the commitment is made does not allege the facts constituting the crime with that reasonable degree of fullness, certainty and precision which the common law and the constitution of this state require. It does not enable the party accused to meet the exact charge against him. Smith v. State, 145 Me. 313, 75 A. (2d) 538. See Me. Const. Art. 1, § 6 and note.

An indictment for an escape from lawful detention must at least set forth the court by which, or the authority under which the accused was committed to the place of detention from which it is alleged that he has escaped. Without such a statement in the indictment or complaint the accused is not informed thereby of an essential fact upon which the lawfulness of his detention depends. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

And original cause of commitment.—An indictment or information against a prisoner for effecting his escape should show the original cause of imprisonment, and by what authority he was delivered into custody—so that the lawfulness of the custody will appear—and that the prisoner did escape and go at large. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

And state must prove commitment by lawful authority.—One of the essentials of a lawful detention in a jail is that the commitment thereto be made by lawful authority. That is an essential traversable fact which must be established by the state to make out a prima facie case. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

Former provision of section.—For case concerning a former provision of this section making the penalty for escape dependent on whether the escapee was in custody for a felony or a misdemeanor, see Smith v. State, 145 Me. 313, 75 A. (2d) 538.

Sec. 29. Officers, refusing or omitting to execute processes.—If an officer, authorized to serve process, willfully and corruptly refuses to execute any lawful process to him directed requiring him to arrest or confine any person charged with or convicted of any offense; or thus omits or delays to execute it, whereby the offender escapes, he shall be punished by a fine of not more than $500 and by imprisonment for less than 1 year. (R. S. c. 122, § 29.)

Falsely Assuming to Be an Officer.

Sec. 30. Falsely assuming to be an officer.—Whoever falsely assumes to be a justice of the peace, sheriff, deputy sheriff, liquor inspector, health officer, constable, inland fish and game warden, state humane agent or state police officer, or who falsely acts as such, or who requires anyone to aid him in a matter pertaining to the duties of any such office which he does not hold, 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. 122, § 30. 1947, c. 214.)

Cross references.—See note to c. 89, § 207, re person assuming to act as constable without authority not liable to forfeiture for failing to give bond; c. 143, § 10, re falsely assuming to be state official.

This section contemplates the open assumption and exercise of authority. Coffin's Case, 6 Me. 281.

Cited in Eustis v. Kidder, 26 Me. 97; State v. Clary, 64 Me. 369.

Disguising to Obstruct or Intimidate Officer.

Sec. 31. Disguising to obstruct execution of laws.—Whoever disguises himself in any manner with intent to obstruct the due execution of the laws or to intimidate any officer, surveyor or other person in the discharge of his duty, although such intent is not effected, shall be punished by a fine of not more than $500 and by imprisonment for less than 1 year. (R. S. c. 122, § 31.)