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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.

I. GENERAL CONSIDERATION.

Elements must be charged and proved.—The elements of perjury must be charged and proved with reference to the committed perjury or the intended perjury as the case may be. In subornation no difficulty arises in charging perjury in a pending proceeding. In attempted subornation, however, the proceedings in which the perjury is intended may or may not be pending. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

The proceeding in which perjury is committed must be a pending proceeding. This indeed is saying no more than that the testimony must be given in a proceeding described in this section. Without such testimony so given there can be neither perjury nor subornation. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

Effect of pending proceedings when procurement, in distinction from perjury, takes place.—It is immaterial whether a proceeding is pending when the procurement, in distinction from the perjury, takes place. The evil reached by the statute is the procurement of perjury at a future time. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

Indictment held valid. — An indictment which plainly states the limitation upon the false testimony so that the basis for separation of the false from the true is certain and clear is valid even though the indictment alleged that all the quoted testimony was false and then excepted some as true. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

An allegation in the indictment that the suborner knew that the testimony when given would be "corruptly and willfully false and untrue" sufficiently alleges that the suborner had knowledge that the witness knew the testimony was false. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

Form of indictment for subornation of perjury.—The form of indictment for subornation of perjury may be set forth as the procurement to commit perjury as described in the statutory form relating to perjury. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

Sec. 2. Attempted subornation of perjury.

Elements must be charged and proved.—The elements of perjury must be charged and proved with reference to the committed perjury or the intended perjury as the case may be. In subornation no difficulty arises in charging perjury in a pending proceeding. In attempted subornation, however, the proceedings in which the perjury is intended may or may not be pending. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

Sec. 4. Indictment.

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The proceeding in which perjury is committed must be a pending proceeding. This indeed is saying no more than that the testimony must be given in a proceeding described in § 1. Without such testimony so given there can be neither perjury nor subornation. State v. Potts, 154 Me. 114, 144 A. (2d) 261.

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Possibility of materiality must be apparent from face of indictment.—The possibility of materiality of the alleged false testimony must be apparent from the face of the indictment alone, although the indictment need not specify the manner in which the testimony becomes actually material. State v. Papalos, 150 Me. 46, 103 A. (2d) 511.

Particular proceeding in which perjury was committed must be identified.—By the language "in which C. D. and E. F. were parties," this section is demanding that the indictment shall set forth a specific, particular proceeding. The section is requiring that this particular proceeding shall be indentified, in its individuality, from among the multitude of proceedings heard or adjudicated by the competent tribunal involved. State v. Papalos, 150 Me. 46, 103 A. (2d) 511.

Adversary proceeding must be identified by naming parties thereto.—An indictment for perjury relating to a proceeding adversary in character, which fails to designate and identify a specific, particular proceeding by naming the parties thereto would be fatally defective, not only at common law, but even under the statute. State v. Papalos, 150 Me. 46, 103 A. (2d) 511.

And identification is not dispensed with where proceeding was not adversary.—In a perjury indictment the purpose of identification must be fulfilled and cannot be dispensed with when statutory form is adapted to cover a proceeding which is not adversary in nature and which lacks parties such as a grand jury inquiry. State v. Papalos, 150 Me. 46, 103 A. (2d) 511.

Indictment must designate particular matter being investigated by tribunal involved.—An indictment for perjury, even under a streamlined statutory form, must contain some designation or identification of the particular matter being investigated, or heard, by the tribunal involved. State v. Papalos, 150 Me. 46, 103 A. (2d) 511.

Grand jury inquiry insufficiently identified.—The allegation in an indictment for perjury that the grand jury was "then and there engaged in hearing testimony relative to the commission of crime in the county of Kennebec" does not identify the particular proceeding or inquiry by which the materiality of the testimony may be adjudged. State v. Papalos, 150 Me. 46, 103 A. (2d) 511.

Bribery and Attempt to Corrupt Officials.

Sec. 5. Bribery and acceptance of bribes by public officers.

Concurrence is not required to establish crime.—In this state and under our statute, concurrence is not required to establish a substantive crime of bribery. State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

Conspiracy to bribe public officer.—See State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

Sec. 7. Bribery of jurors, referees, 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 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. 1963, c. 414, § 141.)

Effect of amendment.—The 1963 amendment deleted "master in chancery."

Sec. 8. Informer exempted from punishment.

Concealment of immunity by a witness cannot be based upon the fact that several persons and the witness relied upon different interpretations of this section. State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

Compounding Felonies.

Sec. 12. Concealment or neglect to disclose commission of felony.

Mere omission to disclose without positive concealment, insufficient to justify conviction. — A mere omission to disclose knowledge of the commission of a felony, without positive concealment, is not enough to justify a conviction under this section. State v. Michaud, 150 Me. 479, 114 A. (2d) 352.

While this section employs the words "conceals or does not ... disclose" it should be interpreted in the conjunctive, i. e. "conceals and does not ... disclose." State v. Michaud, 150 Me. 479, 114 A. (2d) 352.

Character of knowledge required.—This section requires "knowledge of the actual commission of a felony." It must be actual and personal knowledge. It must not be knowledge from hearsay, or from possibilities or probabilities. It must be first-hand knowledge by the respondent of all facts necessary to know that the alleged felony has been committed. State v. Michaud, 150 Me. 479, 114 A. (2d) 352.

The indictment must indicate what the knowledge was or how obtained. State v. Michaud, 150 Me. 479, 114 A. (2d) 352.

And must set forth acts of concealment. —An indictment under this section must set forth the acts of concealment. State v. Michaud, 150 Me. 479, 114 A. (2d) 352.

Malfeasance of Public Officials.

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 one year after the offense is committed, or by civil action commenced within the same time, to the use of the person first suing therefor in his own name. (R. S. c. 122, § 15. 1961, c. 317, § 462.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "action of debt" near the end of this section.

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. This section shall not apply to purchases of the state by the governor and council under authority of chapter 1, section 24-A. (R. S. c. 122, § 17. 1959, c. 251, § 2.)

Effect of amendment.—The 1959 amendment added the last sentence to this section.

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 prom-

ises 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 civil action, or brings, prosecutes or defends, or agrees to bring, prosecute or defend any civil action 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. 1961, c. 317, § 463.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "suit at law or in equity" in two places in the first sentence of this section.

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

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, police officer or state probation-parole 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 this section, not of an aggravated nature, the district court may punish by a fine of not more than $100 or by imprisonment for not more than 90 days. (R. S. c. 122, § 21. 1949, c. 202. 1951, c. 266, § 115. 1953, c. 391. 1959, c. 312, § 15. 1961, c. 241. 1963, c. 402, § 215.)

Effect of amendments. — The 1959 amendment included state probation-parole officers in the section.

The 1961 amendment, which amended the last sentence, substituted "$50" for "$20", inserted "not more than" preceding "60 days", substituted "$100" for "$30" and substituted "not more than 90" for "60" near the end of that sentence.

The 1963 amendment substituted "the district court" for "trial justices may try and punish by a fine of not more than $50 or by imprisonment for not more than 60 days, and municipal courts" in the last sentence.

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Escapes from Custody of Officer and Jail.

Sec. 28. Escape from jail; resisting or breaking arrest.—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. Whoever resists apprehension or breaks arrest shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months. (R. S. c. 122, § 28. 1951, c. 3. 1963, c. 77.)

Effect of amendment.—The 1963 amendment divided the first sentence into two sentences and added the present third sentence.

The effect of this section is not the creation of a new and distinct offense, it merely provides a specific penalty for certain common-law escapes which are brought within its terms by the other requirements as to the place from which the escape is made and the clause of the detention. It makes certain escapes felonies which were misdemeanors. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

Facts stated in indictment, etc.

In accord with original. See Couture v. State, 156 Me. 231, 163 A. (2d) 646.

Unless the allegations of fact set forth in the indictment show the "lawful detention" of the escapee, and that the detention was "for a criminal offense," the indictment is fatally defective so far as setting forth a violation of this section is concerned. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

And mere allegation, etc.

In accord with original. See Couture v. State, 156 Me. 231, 163 A. (2d) 646.

Chapter 136.

Crimes against Public Peace and Tranquility.

Disorderly Conduct.

Sec. 4-A. Disorderly conduct; penalty.—Any person who shall by any offensive or disorderly conduct, act or language annoy or interfere with any person in any place or with the passengers of any public conveyance, although such conduct, act or language may not amount to an assault or battery, is guilty of a breach of the peace and shall be punished by a fine of not more than $100 or by imprisonment for not more than 6 months, or by both. (1957, c. 133.)

Injuries by Mobs.

Sec. 7. Riotous assemblies destroying certain properties or causing personal injuries. — If any persons, unlawfully and riotously assembled as described in section 9, pull down or begin to pull down or destroy any dwelling house, building, ship or vessel; or perpetrate any premeditated injury, not a felony, on any person, each shall be punished by a fine of not more than $500 or by imprisonment for not more than 5 years; and shall be answerable to any person injured, in a civil action, to the full amount of damages by him sustained. (R. S. c. 123, § 7. 1961, c. 317, § 464.)

Effect of amendment.— The 1961 amendment deleted "also" preceding "be answerable" and substituted "a civil action" for "an action of trespass" near the end of this section.

Sec. 8. Liability of towns for property injury by mobs; town's remedy against rioters.—When the injury to any property described in section 7 amounts to $50 or more, the town where such property is situated shall indemnify the owner thereof for ¾ of the value of such injury, to be recovered in a civil action, if he uses all reasonable diligence to prevent such injury and to procure the conviction of the offenders. The town paying such sum may recover it in a civil action against the persons doing the injury. (R. S. c. 123, § 8. 1961, c. 317, § 465.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, substituted "section 7" for "the preceding section" near the beginning of the present first sentence and substituted "a civil action" for "an action on the case" in both the present first and second sentences.