

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
VOLUME 4

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1957

Sec. 23. Copies sent to appellate court; failure to prosecute appeal.

Failure of trial justice to send copy of brief to superior court.—The fact that a brief (prepared by respondent's counsel, submitted to the trial justice, and read by the trial justice before his decision) was not forwarded by the trial justice to the superior court does not cause the superior court to lose jurisdiction. *State v. Whitehead*, 151 Me. 135, 116 A. (2d) 618.

Trial de novo upon appeal.—On appeal, the judgment of a lower court is vacated, and the case is removed to the appellate court and copy of record forwarded, and respondent is to be tried and judgment rendered de novo upon both law and fact. *State v. Whitehead*, 151 Me. 135, 116 A. (2d) 618.

Fees of Magistrates.

Sec. 26. Repealed by Public Laws 1957, c. 334, § 12.

Sec. 27. Repealed by Public Laws 1957, c. 334, § 12.

Sec. 28. Allowance of costs and fees by the county commissioners.—The county commissioners shall examine the monthly reports of trial justice and municipal courts, and the bills of costs of other courts, and correct same regardless of the final disposition of the case, and shall order all fees which are due to officers, witnesses and others to be paid out of the county treasury to the persons entitled thereto; but when one of the county commissioners is the person due to receive such fee, the superior court shall examine and correct such fee and shall in like manner order the same to be paid. Should one of the county commissioners be a magistrate then he shall abstain from examining, correcting and ordering payment of such fees or costs which come through his own court, and the remaining county commissioners shall have full power to do so. (R. S. c. 133, § 27. 1957, c. 334, § 13.)

Effect of amendment.—The 1957 amendment rewrote this section.

Sec. 29. Repealed by Public Laws 1957, c. 334, § 12.

Chapter 147.

Proceedings in Criminal Cases.

Section 33. Waiver of Indictment.

Waiver of Indictment.

Sec. 33. Waiver of indictment; petition; information; notification of rights; additional charges.—Any person charged with an offense not punishable by life imprisonment, who has been bound over to await the action of a grand jury in any superior court, and who desires to waive indictment and have a prompt arraignment upon waiver of said indictment, may file a petition in writing with the clerk of said court requesting prompt arraignment by information.

After the filing of such petition, and after the accused in open court, or before any justice of the superior court in vacation, has been advised of the nature of the offense and of his rights, said accused may waive in open court prosecution by indictment, which waiver shall be recorded. Thereupon the county attorney or the assistant county attorney may proceed against the accused person by information.

The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the county

attorney or the assistant county attorney, and in such cases the superior court, or any justice of the superior court in vacation, shall have jurisdiction, in term time or in vacation, as if an indictment had been found, and upon plea of guilty shall thereupon impose sentence, and upon entry of any other plea shall continue the matter to the next term at which criminal trials are held.

The accused person may then be arraigned upon said information at such time as the court, or any justice of the superior court in vacation, may designate, whether in term time or vacation.

The court which binds over an accused person will notify him of his right to apply for waiver of indictment and prompt arraignment as aforesaid.

If the county attorney or the assistant county attorney desires to charge the accused person with an offense or offenses not punishable by life imprisonment, and not contained in the complaint upon which such accused person has been so bound over, he may, before consenting to proceedings by information, prepare an information or informations setting forth such other offenses and file the same with the clerk of courts and cause the accused to be served with attested copy thereof in order that the accused may have an opportunity to waive indictment upon such other offenses, and an affidavit of such waiver by the accused shall be presented to the court, or any justice of the superior court in vacation, and be recorded.

The superior court shall, by rule, establish forms and petitions to waive indictment hereunder, and may, by rule, make such other regulations or procedure hereunder as justice may require. (1955, c. 187. 1957, c. 3.)

Effect of amendment. — The 1957 county attorney" in the second, third and amendment inserted "or the assistant sixth paragraphs.

Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34. State Jurisdiction after Federal Court Disposition.

Bail, Arraignment and Trial of Prisoners.

Sec. 15. Facts tried, challenges allowed, as in civil cases.—Issues of fact joined on indictments shall be tried by a jury drawn and returned in the same manner, and challenges shall be allowed to the prosecuting officer and the accused, as in civil cases, except that, in cases of felonies not punishable by imprisonment for life, 8 peremptory challenges shall be allowed each, to the prosecuting officer and the accused; but no member of a grand jury finding an indictment shall sit on the trial thereof, if challenged therefor by the accused. (R. S. c. 135, § 15. 1955, c. 119.)

Effect of amendment.—The 1955 amendment inserted the provision for eight peremptory challenges in cases of felonies not punishable by life imprisonment.

Witnesses.

Sec. 22. Respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify.

Competency of an accused to testify rests upon this section and depends upon compliance with the words "at his own request but not otherwise." State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

This section is applicable in the joint trial of co-indictees. Each may be a wit-

ness for himself, for a co-indictee, or for the State, provided his testimony is given at his own request, but not otherwise. State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

There must be no element of compulsion to make the accused take the witness