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Chapter 148.

Proceedings in Court in Criminal Cases.

Oath and Duties of Grand Jurors.

Sec. 1. List of grand jurors.—Prior to the commencement of each term of the court to which grand jurors are returned, in any county, the clerk of the court shall make out, from the returns on the venires, an alphabetical list of such jurors. (R. S. c. 135, § 1.)

Cross reference. — See c. 116, § 4, re preparation of lists of persons qualified to serve as jurors.

Stated in State v. Lightbody, 38 Me. 200.

Sec. 2. Oath.—When the grand jury is to be impaneled, the clerk shall call the first 2 persons named on the list and administer the following oath to them: "You, as grand jurors of this county of ...., solemnly swear that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows' and your own, you shall keep secret. You shall present no man for envy, hatred or malice; nor leave any man unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you on your part shall well and truly observe and keep. So help you God." (R. S. c. 135, § 2.)

Further oath when presentment made not required.—An oath in compliance with this section, once administered to the grand jurors prior to entering upon the duties of their office, is sufficient. All presentments made upon their oath will be considered sworn presentments, and this applies to presentments for contempt. When presentment is made upon their oath as grand jurors, no further oath or verification of the presentment is necessary, in the absence of a specific statute requiring the same. Gendron v. Burnham, 146 Me. 387, 82 A. (2d) 773.

Oath does not prevent grand juror from testifying. — The oath of the grand juror does not prohibit his testifying what was done before the grand jury when the evidence is required for the purposes of public justice or the establishment of private rights. State v. Benner, 64 Me. 267.

The witness who testifies before the grand jury has no privilege to have his testimony treated as a confidential communication, but he ought to be considered as deposing under all the obligations of an oath in judicial proceedings and, therefore, the oath of the grand juror is no legal or moral impediment to his solemn examination under the direction of a court, as to evidence before him, whenever it becomes material to the administration of justice. State v. Benner, 64 Me. 267.

When a witness testifies differently in the trial before the petit jury from what he did before the grand jury, the grand jurors may be called to contradict him whether his testimony is favorable or adverse to the prisoner. State v. Benner, 64 Me. 267.

In either criminal or civil case. — In all cases when necessary for the protection of the rights of parties, whether civil or criminal, grand jurors may be witnesses. State v. Benner, 64 Me. 267.

Cited in State v. Lightbody, 38 Me. 200.

Sec. 3. Affirmation.—When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may make affirmation, substituting the word "affirm" instead of "swear" and also the words "This you do under the pains and penalties of perjury" instead of "So help you God." (R. S. c. 135, § 3.)

Sec. 4. Foreman.—The grand jury, having been impaneled and instructed by the court, shall retire in company with an officer to their room, and there elect, by ballot, one of their number for foreman and give notice thereof to the court, and the clerk shall record it. Such foreman shall continue in office during the time for which he was returned; but in case of his sickness or absence, the jury may in like manner elect and announce to the court another foreman who shall serve only during such time as the first regularly elected foreman shall be sick or absent. (R. S. c. 135, § 4.)

Sec. 5. Oaths of witnesses.—The attorney general, county attorney or foreman of the grand jury shall swear or affirm, in presence of the jury, all witnesses who are to testify before them, and a list thereof, stating the cases in which they testify, shall be returned into the court by the foreman before the jury is discharged and filed and entered on record by the clerk. The clerk shall not make such list public until the criminal cases at such terms have been tried or otherwise disposed of. (R. S. c. 135, § 5.)

Duty to return list is merely formal and ministerial.—The list of witnesses is no part of the finding of the grand jury or the verdict of the trial jury. Neither jury performs any duty in relation to it. The requirement is that the foreman shall return it into court—a merely formal and ministerial duty imposed upon that official. State v. Wilkinson, 76 Me. 317.

And failure is not ground for exception.—The statutory provision as to returning the list of witnesses is directory merely—not mandatory—and an omission of its requirements does not, as a matter of right, furnish ground for exception. State v. Wilkinson, 76 Me. 317.

A true list can be furnished through other means and sources, if the foreman neglects his duty. State v. Wilkinson, 76 Me. 317.

To have a list is a right. The manner of getting it may be a matter of judicial discretion. State v. Wilkinson, 76 Me. 317.

Cited in State v. Reed, 67 Me. 127.

Sec. 6. Grand jury shall present all offenses. — Grand juries shall present all offenses cognizable by the court at which they attend; and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs; and when they are dismissed before the court adjourns, they may be summoned again, on any special occasion, at such time as the court directs. Evidence relating to offenses cognizable by the court may be offered to the grand jury by the attorney general, the county attorney, the assistant county attorney and, at the discretion of the presiding justice, by such other persons as said presiding justice may permit. (R. S. c. 135, § 6. 1953, c. 399.)

Sec. 7. Disclosures improper.—No grand juror or officer of the court, unless by order of the court, shall disclose that an indictment for felony has been found against any person not in custody or under recognizance until he is arrested, except by issuing process for his arrest; nor shall any grand juror state how any member of the jury voted or what opinion he expressed on any question before them; and the court, in charging such jury, shall impress on their minds the provisions of this section. (R. S. c. 135, § 7.)

Principle of section applies to all offenses.—Though the statutory prohibition of this section extends only to indictments for felonies, the principle which it seeks to enforce applies as well to all grades of offenses. State v. Knowlton, 115 Me. 544, 99 A. 631.

Indictment not entered on docket unless accused in custody, etc.—A court docket is open to public inspection, and to enter an indictment for a felony upon the docket before an arrest has been made would be violative of this section, unless the indicted party is in custody or under recognizance. State v. Knowlton, 115 Me. 544, 99 A. 631.

It is a common practice not to enter upon the docket indictments where the respondents have not previously been ap-

prehended, and are not in custody, nor under bail. The practice is a necessary one, otherwise the parties indicted might be apprised of the fact, and escape before arrest. This necessity is recognized in this section. State v. Knowlton, 115 Me. 544, 99 A. 631.

Bail. Arraignment and Trial of Prisoners.

Sec. 8. Persons in prison bailed or discharged, if not indicted. — Any person in prison charged with a crime punishable by imprisonment for life may be bailed or discharged if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed. (R. S. c. 135, § 8.)

See Me. Const., Art. 1, § 10, re bailable offenses.

Sec. 9. Right of person indicted to speedy trial.—Any person in prison under indictment shall be tried or bailed at the next term after the finding thereof, if he demands it, unless the court is satisfied that some of the witnesses on the part of the state have been enticed away or detained from court by some cause beyond their control; and all persons under indictment for felony, if they have been arrested thereon, shall be tried or bailed at the 2nd term after the finding thereof. Any person indicted, although he has not been arrested, is entitled to a speedy trial, if he demands it in person in open court. (R. S. c. 135, § 9.)

This section was designed to carry out the general provisions of the constitution guaranteeing a "speedy trial." It must be inferred from the language of the section that a trial at the second term after the finding of the indictment complies with the constitutional provision guaranteeing a speedy trial, unless a trial is demanded by the respondent at the first term. State v. Slorah, 118 Me. 203, 106 A. 768.

Right to speedy trial may be waived.— The right to a speedy trial and to a trial at the second term after the finding of an indictment for a felony is a personal privilege which a respondent may waive. State v. Slorah, 118 Me. 203, 106 A. 764.

If it appears that the reason for the failure to place the respondent on trial at the second term was his own act in presenting prematurely to the law court his exceptions to the court's order continuing the case, the respondent, by his acts in having the case transferred to the law docket, thereby causing the delay, must be held to have waived his rights under this section. State v. Slorah, 118 Me. 203, 106 A. 764.

Silence on the part of the respondent does not constitute a demand for trial. State v. Slorah, 118 Me. 203, 106 A. 764.

Sec. 10. Standing mute.—When a person indicted stands mute, the court shall order the plea of not guilty to be entered, with the same effect as if he had pleaded not guilty. (R. S. c. 135, § 10.)

See c. 145, § 16, re prisoner need not be asked how he will be tried.

Sec. 11. Persons indicted for felony furnished with copy of indictment; witnesses summoned at state's expense; counsel assigned in certain cases; compensation.—The clerk shall, without charge, furnish to any person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if he is indicted for a crime punishable by imprisonment for life, the clerk shall furnish a copy of the indictment, a list of the jurors returned and process to obtain witnesses, to be summoned and paid at the expense of the state; if for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the state only at the discretion of the court. Competent defense counsel may be assigned by the superior court in any criminal cases and shall be assigned in all cases punishable by imprisonment for life, when it appears that the accused has not sufficient means to employ counsel; and the court shall order reasonable compensation to be paid to counsel out of the county treasury for such services rendered in any case punish-

able by imprisonment for life, and compensation may be allowed by the court in cases of other felonies, but no compensation shall be allowed counsel for services in lesser cases. (R. S. c. 135, § 11. 1949, c. 100.)

Cross reference.—See § 19, re prosecuting officer may summon witnesses.

Clerk not required to furnish fees for witnesses, etc.—A fair construction of this section does not seem to give an accused person any right beyond that of having a list of jurors, a copy of the indictment, and the process for summoning witnesses at the expense of the state. That clause of the section making it the duty of the clerk to furnish these facilities to the prisoner without expense is in harmony with this construction. To furnish the list of jurors, the copy of the indictment, and the process for summoning witnesses appropriately falls within the ordinary duties of the clerk. But to require that officer to furnish the funds necessary to pay the expenses of summoning, and the fees for the attendance of the defendant's witnesses, would seem to be requirements beyond the appropriate sphere of his official duties; nor is there any provision of law by which he could be reimbursed for such expenditures. State v. Waters, 39 Me. 54.

Former provision of section.—Under a former provision of this section limiting the compensation to counsel appointed by the court to $150, it was held that, where two or more persons were jointly indicted for a felony and tried jointly, and the court assigned different counsel for each, the judge presiding had authority to allow not exceeding $150 in all for the services of counsel for any one trial, including services upon appeal or upon exceptions before the law court. Anonymous, 76 Me. 207.

Sec. 12. Juror's oath or affirmation.—The following oath shall be administered to jurors in cases punishable by imprisonment for life: "You swear, that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God." In all other criminal cases, the following: "You swear, that you will well and truly try the issue between the state and the defendant, according to your evidence. So help you God." Any juror conscientiously scrupulous of taking an oath, may affirm in the mode described in section 3. (R. S. c. 135, § 12.)

Sec. 13. Jury for trials of offenses punishable by imprisonment for life impaneled; challenges.—When a person indicted for an offense punishable by imprisonment for life is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance in a box upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn shall be made and determined and the juror sworn or set aside before another name is drawn, and so on until the panel is completed. The state shall not challenge more than 10 of the jurors peremptorily, and the person indicted shall not challenge peremptorily more than 20 of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily 2 of the jurors from the panel. The superior court may, by general rules, prescribe the mode of exercising the right of challenge from the panel in all criminal cases. (R. S. c. 135, § 13.)

Statute liberally construed. — Statutes giving to parties peremptory challenges are not penal. They impose no hardships. Their only tendency is to secure fairness and impartiality. Every one acquainted with jury trials knows that unfit jurors will sometimes remain upon the panel after every effort to remove them for cause has failed. This is an evil that can only be remedied by peremptory challenges; and the statutes giving them should be liberally construed, so as best to accomplish the purpose for which they were intended. State v. Chadbourne, 74 Me. 506.

History of section.—See State v. Chadbourne, 74 Me. 506.

Former provision of section.—Formerly, this section was applicable only to those cases in which the indictment was for an offense punishable by death. In State v. Smith, 67 Me. 328, the defendant was indicted for murder, after the punishment

for that offense had been reduced from death to imprisonment for life, but before this section was amended to apply to cases wherein the indictment was for an offense punishable by life imprisonment. It was held in that case that the defendant was not entitled to the peremptory challenges of this section but was governed by the provisions of § 15.

Cited in State v. Dyer, 136 Me. 282, 8 A. (2d) 301.

Sec. 14. Respondent present at trial for felony; not otherwise.—No person indicted for felony shall be tried unless present during the trial; but persons indicted for less offenses, at their own request and by leave of court, may be tried in their absence if represented by their attorney. (R. S. c. 135, § 14.)

A person charged with a misdemeanor can be tried in his absence only at his request and by leave of court. State v. Garland, 67 Me. 423.

View may proceed in absence of accused.—A view by the jury is not a part of the trial in the sense in which the word is used in this section and a view may properly proceed in the absence of the accused. State v. Slorah, 118 Me. 203, 106 A. 768.

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; 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.)

Cross reference.—See c. 113, § 95 and note, re challenges.

Applied in State v. Williams, 30 Me. 484; State v. Knight, 43 Me. 11; State v. Smith, 67 Me. 328; State v. Cady, 80 Me. 413, 14 A. 940.

Cited in State v. Neagle, 65 Me. 468; State v. Chadbourne, 74 Me. 506; State v. Dyer, 136 Me. 282, 8 A. (2d) 301.

Sec. 16. Postponement or continuance. — The trial of any criminal case, except for a crime punishable by imprisonment for life, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom and the case continued, if justice will thereby be promoted. (R. S. c. 135, § 16.)

Discretion of court when error discovered in copy of complaint.—Upon the discovery of an error in the copy of the complaint after the trial is begun, it is within the discretion of the court to suspend the trial, to be resumed after the correction of the error, or to stop the trial and begin it again after such correction. State v. Libby, 85 Me. 169, 26 A. 1015.

Continuance in case where imprisonment may be for life.—The exception of cases wherein the imprisonment may be for life from the provisions of this section simply leaves such cases subject to the common law as to continuances, and does not preclude by implication a continuance in any event of cases, in which the offense charged is punishable by imprisonment for life. Such cases may be continued in the discretion of the court subject to the provisions of § 9 and of Me. Const., Art. 1, § 6. State v. Slorah, 118 Me. 203, 106 A. 768.

Sec. 17. View.—The court may order a view by any jury in a criminal case. (R. S. c. 135, § 17.)

Witnesses.

Sec. 18. Recognizance of witnesses.—When an indictment has been returned into court, any justice of the superior court may order the material witnesses against the respondent or respondents named in the indictment to recognize with sufficient sureties to appear and testify at the trial of said indictment in said court; and if any one of said witnesses refuse or fail to recognize, he may be committed to prison and held until discharged by law, and such justice may issue capias to bring such witness before the court to give his recognizance or upon failure or refusal so to recognize to be committed as aforesaid. (R. S. c. 135, § 18.)

Sec. 19. Prosecuting officer may summon witnesses; no tender of fees to state witnesses.—The prosecuting officer has the same power as the clerk of the court to issue summonses for witnesses in criminal cases; and no costs shall be taxed for witnesses before the grand jury in a case where no bill is found nor in complaints against towns for defect of road, unless they recognized so to attend or were summoned by order of the grand jury or prosecuting officer; nor is it necessary to tender fees to witnesses summoned in behalf of the state. (R. S. c. 135, § 19.)

Cross reference.—See § 11, re clerk of court to summon witnesses.

Summons may issue to prosecuting witness.—It is elementary that the prosecutrix is not a party in a criminal case and personally has nothing to gain or lose by the outcome. By this section, summons may issue to her and all other witnesses for the state and the punishment for failing to appear is severe. State v. Bragg, 141 Me. 157, 40 A. (2d) 1.

Sec. 20. Punishment of state witness for not attending.—Whoever, having been summoned as a witness in behalf of the state before any court or grand jury, without reasonable cause fails to appear at the time and place designated in the summons, if he is not punished therefor as for contempt, shall be punished, on indictment, by a fine of not more than $100 or by imprisonment for less than 1 year. (R. S. c. 135, § 20.)

Cross reference.—See c. 113, § 123, re liability of witnesses summoned who do not attend.

Cited in State v. Bragg, 141 Me. 157, 40 A. (2d) 1.

Sec. 21. Witnesses not entitled to fees until the 2nd or 3rd day in continued cases, etc.—No fees in criminal cases continued after the 1st term shall be allowed to witnesses on the part of the state until the 2nd day of the term in Hancock, Oxford, Franklin, Piscataquis and Aroostook; nor until the 3rd day in any other county, unless they were summoned at an earlier day; and in all criminal cases, previous to the determination thereof, the court may allow such costs for justices, officers, aids, jurors and witnesses, as are provided by law, to be paid from the county treasury; but no court or magistrate shall allow any charge for aid or other expenses of the officer in serving a warrant, except his stated fees for service and travel unless, on his examination upon oath or on other evidence, they find such additional charges reasonable. (R. S. c. 135, § 21.)

Sec. 22. Respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify. — In all criminal trials, the accused shall, at his own request but not otherwise, be a competent witness. He shall not be compelled to testify on cross-examination to facts that would convict, or furnish evidence to convict him of any other crime than that for which he is on trial; and the fact that he does not testify in his own behalf shall not be taken as evidence of his guilt. The husband or wife of the accused is a competent witness. (R. S. c.135, § 22.)

History of section.—See State v. Banks, 78 Me. 490, 7 A. 269.

Section passed for benefit of innocent.—This section, authorizing the defendant in criminal proceedings, at his own request, to testify, was passed for the benefit of the innocent and for the protection of innocence. State v. Cleaves, 59 Me. 298.

It guards rights of accused.—This section carefully guards the rights of the accused, and leaves it entirely at his option to testify or remain silent. State v. Bartlett, 55 Me. 200.

And does not violate Me. Const., Art. 1, § 6.—This section, admitting defendants in criminal cases to be witnesses in their own behalf, is not in contravention of that provision of Me. Const., Art. 1, § 6, which provides that the accused "shall not be compelled to furnish evidence against himself." State v. Bartlett, 55 Me. 200.

An accused cannot now be compelled to furnish evidence against himself any more than before the passage of this section. He may now be as reticent as before, if he chooses. The only difference is that, before the section, he had to be silent, and now he may. State v. Bartlett, 55 Me. 200.

Wife of accused is competent witness.—By this section, the wife of the accused is made a competent witness without his consent, not to testify merely in his behalf, but to testify generally. The bar is thus not partially removed, but wholly so. State v. Black, 63 Me. 210.

Production of her testimony may be compelled.—It was the design of the legislature in a criminal case to compel the production of the husband's or wife's testimony in favor of or against each other. State v. Black, 63 Me. 210.

One defendant may testify against co-defendant.—In the separate trial of one of two persons jointly indicted for murder, the other defendant, even while the indictment is still pending against himself on a plea of not guilty, may with his own consent, be called as a witness and allowed to testify against his co-defendant. State v. Barrows, 76 Me. 401.

Accused testifying is subject to cross-examination as to all matters pertinent to issue.—The privilege of exemption from criminative interrogation or cross-interrogation is guaranteed to the accused. But this privilege may be waived. By this section, the accused shall, at his own request, but not otherwise, be a competent witness. If the defendant, at his own request, becomes a competent witness, and thereby waives his constitutional privilege, he then subjects himself to the peril consequent upon a cross-examination as to all matters pertinent to the issue. State v. Wentworth, 65 Me. 234.

A defendant, testifying as his own witness, can be examined just as any other witness could be in any respect material and relevant to the issue. State v. Witham, 72 Me. 531.

And his testimony may supply details of proof of guilt.—A respondent is not obliged to take the stand in his own defense. Electing to do so, however, his testimony may supply all necessary details of proof of his guilt otherwise lacking, and he cannot complain that the evidence adduced by the prosecution is insufficient if he himself supplies the deficiency. State v. Joy, 130 Me. 519, 155 A. 34.

Claiming to be a witness in his own behalf "at his own request," the defendant cannot have the privilege of self-exonerative testimony without incurring the dangers incident to discreditive or criminative cross-interrogation. State v. Wentworth, 65 Me. 234.

And implication in other crimes does not protect him against cross-examination.—A defendant, in a criminal prosecution, testifying in his own behalf, may be cross-examined in full, in the same manner and to the same extent that any other witness could be. He is not to be protected against cross-examination because his answers may implicate him in other criminalities besides the offense with which he is charged, if the connection is such that the proof is relevant to the issue. State v. Witham, 72 Me. 531.

This section does not exclude evidence which charges or confesses extraneous criminalities, the evidence of which, from circumstances, becomes relevant and material to the main question in issue. State v. Witham, 72 Me. 531.

But the defendant cannot be compelled to confess independent and extraneous offenses, merely to affect character or credibility. State v. Witham, 72 Me. 531.

That the accused did not testify before the jury presents no evidence of his guilt. State v. O'Donnell, 131 Me. 294, 161 A. 802.

And such fact should be excluded from jury's consideration.—The intent of the provision of this section that the fact that the defendant in a criminal prosecution does not testify in his own behalf shall not be evidence of his guilt is that the jury, in determining their verdict, shall entirely exclude from their consideration the fact that the defendant did not elect to testify, substantially as if the law did not allow him to be a witness. State v. Banks, 78 Me. 490, 7 A. 269.

Prior to the inclusion in this section of the provision that the failure of the accused to testify in his own behalf shall not be taken as evidence of his guilt, it was held that it was proper for the jury, in determining the question of the accused's guilt, to consider the fact that he did not testify in his own behalf. See State v. Bartlett, 55 Me. 200; State v. Cleaves, 59 Me. 298.

And the jury is to draw no inference against the accused because he does not elect to testify. He is in the same position as if the law did not allow him to be a witness. He is entitled to have this explained to the jury in unequivocal language. State v. Shannon, 135 Me. 325, 196 A. 636.

And jury should be advised of existence of section.—This section provides that the fact that the person accused does not testify in his own behalf shall not be taken as evidence of his guilt. An accused is entitled to have the jury know of the existence of the statute and understand the ef-

fect of it. If not so, then the statute, expressly created for the benefit of the accused, would be wholly useless to him. The natural inclination of jurors would lead them to adopt the very presumption which the statute was designed to prevent. State v. Landry, 85 Me. 95, 26 A. 998.

Commenting on failure of accused to testify.—See State v. Banks, 78 Me. 490, 7 A. 269.

Stated in part in State v. Chadbourne, 74 Me. 506; State v. Casale, 148 Me. 312, 92 A. (2d) 718.

Sec. 23. Depositions.—On application of the defendant in a criminal case, the court may grant a commission to take the depositions of material witnesses living out of the state, upon interrogatories in the same manner, with the same effect and subject to exceptions, as in civil causes; the prosecuting officer may join in such commission and name therein any material witness to be examined on the part of the state; but if, at the trial, the defendant does not use the depositions so taken for him, those taken for the state shall not be used. Upon like application by the defendant in a criminal case, a like commission may issue to take the deposition of a material witness living in the state; but the prosecuting officer shall not name therein any material witness to be examined on the part of the state. (R. S. c. 135, § 23.)

Cited in State v. Sutkus, 134 Me. 100, 182 A. 15.

Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings.

Sec. 24. Definitions.—As used in sections 24 to 28, inclusive, the following words shall have the following meaning:

"State" shall include any territory of the United States and District of Columbia.

"Summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

"Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. (R. S. c. 135, § 24.)

Sec. 25. Summoning witness in this state to testify in another state.—If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, and of any other state through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody

and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10c a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (R. S. c. 135, § 25.)

Sec. 26. Witness from another state summoned to testify in this state.—If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record within whose territorial jurisdiction the witness is found.

If the witness is summoned to attend and testify in this state, he shall be tendered the sum of 10c a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (R. S. c. 135, § 26.)

Sec. 27. Exemption from arrest and service of process.—If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. (R. S. c. 135, § 27.)

Sec. 28. Short title.— Sections 24 to 28, inclusive, may be cited as "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings." (R. S. c. 135, § 28.)

Proceedings after Verdict.

Sec. 29. Sentence imposed upon conviction; proviso; form of recognizance; stay of execution of sentence had after commitment. — Sentence shall be imposed upon conviction, either by verdict or upon demurrer,

of a crime which is not punishable by imprisonment for life, provided that the court at the term of conviction may in its discretion continue the matter for sentence, suspend sentence or stay the execution of sentence, although exceptions are alleged. Questions of law may be reserved on a report signed by the presiding justice, and in such case and where exceptions are allowed, the defendant may, when the offense charged is bailable, recognize with sureties, in such sum as the court orders, with conditions substantially as follows: "The condition of this recognizance is such that, whereas there is now pending in the court, within and for the county of , an indictment against the said for the offense of , in the course of the proceedings upon which, questions of law requiring the decision of the justices of the supreme judicial court have arisen; now if said shall personally appear before said court, to be held in and for said county, from term to term, until and including the term of said court next after the certificate of decision shall be received from said justices, and shall abide the decision and order of said court, and not depart without license, then this recognizance shall be void." If he does not so recognize, the court, on request of the defendant upon whom sentence is imposed may allow stay of execution of sentence, in which case commitment shall be to await final decision; otherwise, such commitment shall be in execution of sentence. When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, or any person is committed pending decision on report or exceptions, as herein provided, and remains imprisoned after the adjournment of court, he shall be admitted to bail only by the justice trying him, by some person by said justice appointed therefor or by some other justice of the superior court, or by some justice of the supreme judicial court. If a person shall be so admitted to bail after commitment in execution of sentence, as above provided, such admission to bail shall vacate the effect of the original commitment and the full term of imprisonment shall commence from the date of commitment after final decision. (R. S. c. 135, § 29.)

Section constitutional.—There is no provision of the constitution which forbids such legislation as this section. It therefore must be adjudged constitutional. State v. Morrill, 105 Me. 207, 73 A. 1091.

This section provides the only mode by which criminal cases may be brought before the full bench, viz.: on a question of law allowable by exceptions. If a demurrer could be carried up without exceptions, then the judge at nisi prius would have no authority to require such recognizance. The defendant would only have to demur and then bid defiance to the officers of the law. State v. Dresser, 54 Me. 569.

If a person obtains a stay of sentence and fails to recognize, his commitment will be to await final decision, rather than in execution of sentence. Smith v. Lovell, 146 Me. 63, 77 A. (2d) 575.

Judgment cannot be rendered until law court's decision received.—The defendant's recognizance taken when his cause is marked "law" requires his attendance "from term to term until and including the term of said court, next after the certificate of decision shall be received" from the law court. Until that term, his attendance is not required and no judgment can be rendered against him. State v. Conwell, 80 Me. 80, 13 A. 49.

Verdict of guilty is conviction meant by section.—This section provides that "sentence shall be imposed upon conviction, either by verdict or upon demurrer, of a crime which is not punishable by imprisonment for life * * * although exceptions are alleged." The verdict of guilty is the conviction meant by the section. State v. Morrill, 105 Me. 207, 73 A. 1091.

Sentence of life cannot be imposed during pendency of appeal.—It is only in cases of conviction of crimes not punishable by imprisonment for life that the court has authority to impose sentence before the determination of exceptions or appeals by the law court. State v. Chase, 149 Me. 80, 99 A. (2d) 71.

In a prosecution for murder, the court has no authority to impose sentence upon the accused pending appeal to the supreme judicial court. State v. Rainey, 149 Me. 92, 99 A. (2d) 78.

Second sentence may be attacked.—After a person has been convicted, he can obtain a stay of sentence and be released on bail until final determination of the cause. And he can likewise attack the

second sentence by exceptions and obtain a stay thereof until final determination and be released on bail until that time. Smith v. Lovell, 146 Me. 63, 77 A. (2d) 575.

Failure to attack proceedings, etc., constitutes waiver.—Failure to attack proceedings at nisi prius by demurrer, motion in arrest of judgment or exceptions, and obtain a stay of sentence and release on bail pending final determination of the cause under this section, results in a waiver. Smith v. Lovell, 146 Me. 63, 77 A. (2d) 575.

Question of legality of grand jury may be reserved.—The question presented on a motion that the indictment be quashed because the grand jury by whom it was found were not legally drawn may be reserved for the law court, on a report signed by the presiding judge. But if not so reserved, and the motion is overruled, the defendant must plead the matter in abatement. State v. Maher, 49 Me. 569.

Applied in State v. Dyer, 59 Me. 303; State v. Lynch, 89 Me. 209, 36 A. 69; State v. Seguin, 98 Me. 285, 56 A. 840; State v. Mallett, 123 Me. 220, 122 A. 570; State v. Cole, 123 Me. 340, 122 A. 871; In re Hume, 132 Me. 102, 167 A. 79.

Quoted in part in State v. Gilman, 70 Me. 329.

Cited in Cote v. Cummings, 126 Me. 330, 138 A. 547; State v. Prescott, 129 Me. 239, 151 A. 426.

Sec. 30. Appeal when punishment is imprisonment for life and in certain other criminal cases.—If a motion for a new trial in any case, in which a person has been convicted of any offense for which the punishment is imprisonment for life, is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term of the supreme judicial court; and if 3 justices concur the motion shall be granted. In all other criminal cases amounting to a felony, where like motion is filed and appeal taken to the law court, the concurrence of a majority of the justices sitting and qualified to act in the case shall be necessary to sustain the appeal, and if the appeal is not sustained, judgment for the state shall follow. (R. S. c. 135, § 30.)

History of section.—See State v. Googins, 115 Me. 373, 98 A. 1032; State v. Brown, 118 Me. 164, 106 A. 429.

The method of review by appeal is a purely statutory proceeding and had no place in actions at law under the common-law procedure, and hence its scope, limits and conditions must either be found in the express terms of the statute authorizing it, or be implied from the nature and purpose of the act itself. State v. Dodge, 124 Me. 243, 127 A. 899. See State v. Bobb, 138 Me. 242, 25 A. (2d) 229.

And section provides only remedy in case of denial of motion for new trial.—At common law, a decision by the presiding justice at nisi prius, on a motion for a new trial, was final. The only redress in case of denial in this state is provided in this section, in case of felonies, and that by appeal. In cases of misdemeanor there is no redress. State v. Carter, 121 Me. 116, 115 A. 820.

The only machinery provided by statute to carry the denial of a motion for new trial to the law court for review is by appeal under this section. In the absence of such an appeal, denial in the trial court represents final adjudication upon all the allegations of the motion. State v. Berube, 139 Me. 11, 26 A. (2d) 654.

Thus, such denial not subject to exceptions.—If the presiding justice denies a motion for a new trial, the remedy is by appeal under this section, and not by exceptions. State v. Sutkus, 134 Me. 100, 182 A. 15.

The procedure authorized and controlled by this section is by appeal from the decision of the presiding justice, not by exception to his ruling. Consequently, the law court is without jurisdiction to review a motion for new trial after verdict on exceptions to the refusal of the trial judge to grant such motion. State v. Bobb, 138 Me. 242, 25 A. (2d) 229.

This section, being remedial in its nature, should be liberally construed. State v. Dodge, 124 Me. 243, 127 A. 899.

Defendant may appeal from denial of motion in case of felony.—If a motion for a new trial in any criminal case amounting to a felony is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term. State v. Gustin, 123 Me. 307, 122 A. 856.

This section, by its fiat, says that the decision of the presiding justice in felony cases on a motion for a new trial is not final and that respondent may, by appeal, submit the question to the law court. State v. Bobb, 138 Me. 242, 25 A. (2d) 229.

There is no doubt that an appeal, in-

volving life imprisonment, lies from an adverse decision of a justice of the superior court on a motion for a new trial. State v. Brown, 118 Me. 164, 106 A. 429.

Regardless of grounds for motion.—The language of this section is broad enough to include all motions for a new trial based on any grounds whatever. State v. Dodge, 124 Me. 243, 127 A. 899, holding that appeals from decisions of the justice presiding at nisi prius upon motions for a new trial based upon newly-discovered evidence are authorized by this section.

But law court has no jurisdiction of motion in first instance.—If a motion for a new trial in any criminal case amounting to a felony is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term. But the law court has no jurisdiction of such a motion in the first instance. State v. Perry, 115 Me. 203, 98 A. 634.

The law court has no authority to pass on motions for new trial addressed to it. They should be addressed to the justice who presided at the trial below. If this is done and if he refuses to grant them, appeal will lie. State v. Gross, 130 Me. 161, 154 A. 187.

And on all motions for a new trial in misdemeanors the decision of the presiding justice is still final. State v. Dodge, 124 Me. 243, 127 A. 899.

Only in prosecutions for felony is an appeal to the law court provided by this section. State v. Golden, 127 Me. 521, 145 A. 11.

In misdemeanors, no appeal is provided and the decision of the presiding justice in denying a motion for a new trial remains final. State v. Bobb, 138 Me. 242, 25 A. (2d) 229.

Only question before law court is whether verdict of guilty was warranted.—The single question before the law court on an appeal under this section is whether, in view of all the testimony, the jury were warranted in believing beyond a reasonable doubt, and therefore in finding, that the defendant was guilty of the crime charged against him. State v. Albanes, 109 Me. 199, 83 A. 548; State v. Priest, 117 Me. 223, 103 A. 359; State v. Di Pietrantonio, 119 Me. 18, 109 A. 186; State v. Wright, 128 Me. 404, 148 A. 141; State v. Gross, 130 Me. 161, 154 A. 187; State v. Brewer, 135 Me. 208, 193 A. 834; State v. Manchester, 142 Me. 163, 48 A. (2d) 626.

The question before the law court is whether, in view of all the evidence, the decision from which the appeal was taken is wrong. State v. O'Donnell, 131 Me. 294, 161 A. 802.

The nature and scope of the review provided for in this section is not defined by its terms, but following the long established practice under the statute in civil actions at the time this section was enacted, the court has given an appeal from a denial of a general motion for a new trial practically the same effect as a review of a trial in a civil action on a motion for a new trial directed to the law court, viz.: Whether upon all the evidence the jury was warranted in arriving at their verdict in finding the respondent guilty beyond a reasonable doubt, having in mind that it is for the jury to determine the credence to be given the witnesses and the weight of their testimony. State v. Dodge, 124 Me. 243, 127 A. 899.

And errors of law are not open to review.—In civil cases, errors of law are not, as a general rule, open to review on a motion for a new trial directed to the law court. The same general rule applies to statutory appeals in criminal cases. State v. Wright, 128 Me. 404, 148 A. 141.

Except where injustice would result.—In civil cases, however, an exception to this general rule has been recognized, and where, and only where, manifest error in law has occurred in the trial of cases and injustice would otherwise inevitably result, the law of the case may be examined upon a motion for a new trial on the ground that the verdict is against the law, and the verdict, if clearly wrong, set aside. The same exception must be recognized in the review of criminal appeals. In this state the principles applicable to the review of civil trials on a general motion govern appeals in criminal cases. State v. Wright, 128 Me. 404, 148 A. 141.

Copy of evidence to be transmitted to law court.—While this section makes no provision for a report of the evidence, a provision for an appeal, of necessity, implies that a copy of the evidence upon which the appeal is based shall be transmitted to the appellate court as in equity cases, from which jurisprudence this form of review is adopted. It being required under the statute, though by implication, the provision for authentication by the court stenographer under c. 113, § 190 clearly applies. State v. Dodge, 124 Me. 243, 127 A. 899.

Applied in State v. Wilkinson, 76 Me. 317; State v. Beal, 82 Me. 284, 19 A. 458; State v. Friel, 107 Me. 536, 80 A. 1134; State v. Mulkerrin, 112 Me. 544, 92 A. 785; State v. Simpson, 113 Me. 27, 92 A. 898;

State v. Mulkern, 118 Me. 477, 105 A. 177; State v. Capodilupo, 119 Me. 600, 112 A. 387; State v. Crooker, 123 Me. 310, 122 A. 865; State v. Cole, 123 Me. 340, 122 A. 871; State v. Tuttle, 129 Me. 125, 150 A. 490; State v. Brown, 129 Me. 169, 151 A. 9; State v. Brown, 142 Me. 106, 48 A. (2d) 242; State v. Hume, 146 Me. 129, 78 A. (2d) 496.

Sec. 31. Copy of proceedings in murder cases filed with clerk of court and in office of secretary of state; expenses.—Whenever any person is convicted of murder, a copy of the indictment, plea, evidence and charge of the presiding justice, certified by the official court reporter, shall be filed with the clerk of the court where such trial is held. If such court reporter is paid an annual salary, the making and filing of said copy shall be without extra compensation, otherwise the expense thereof shall be paid by the county; but this section shall not apply to cases where a motion for a new trial is filed and granted, as to the evidence and charge in any trial but the last. A copy of the indictment, plea, evidence and charge of the presiding justice, certified by the official court reporter, shall also be filed in the office of the secretary of state, so that it may be used in any pardon hearing before the governor and council, and the expense thereof shall be paid by the state. The state shall pay the expense of having the evidence and charge transcribed by the official court reporter in any murder cases heretofore tried, where a pardon is sought by one serving a life sentence in the state prison who is unable to pay therefor, if he or she claims to be innocent of the crime, the transcript to be filed in the office of the secretary of state for use as above provided. (R. S. c. 135, § 31. 1953, c. 420, § 8.)

Sec. 32. Error in sentence.—When a final judgment in any criminal case is reversed upon a writ of error on account of error in the sentence, the court may render such judgment therein as should have been rendered or may remand the case for that purpose to the court before whom the conviction was had. (R. S. c. 135, § 32.)

See c. 129, §§ 11-12, re writs of error in criminal cases.

Sec. 33. Detention at state prison of certain prisoners.—When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, and such person is committed to jail pending decision by the supreme judicial court on exceptions, report, motion in arrest of judgment, writ of error, appeal or otherwise, or is committed to jail to await action of a grand jury after a finding of probable cause, the sheriff of the county in which such person is committed to jail may certify, in writing, to any justice of the superior or supreme judicial court, in term time or in vacation, that in his opinion such person is dangerous and liable to attempt to escape from such jail; thereupon such justice may order, after hearing, that said person be transferred and committed to the state prison for safekeeping to await the final decision from the supreme judicial court. The county committing such person for safekeeping shall be liable to the state to the amount of $1 for each day of such imprisonment. (R. S. c. 135, § 33.)