

MAINE STATE LEGISLATURE

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

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

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

This section and § 15 are for different purposes. They create different offenses and impose different punishments. A person may be guilty of one offense and not of the other. He may commit fornication with a female without intending to induce such female to become a prostitute. He

may entice one away from her father's house for the purpose of prostitution, and he may induce her to become a prostitute, without committing fornication with her. *State v. Stoyell*, 54 Me. 24.

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

Abortion, Attempt to Procure; and Concealment of Birth.

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

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

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

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

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

Which must be fully set out in indictment. — It is required by established rules of criminal pleading, that the intention, which prompted the act that caused

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

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

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

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

The offense is complete when an overt

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

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

And necessity in fact for preservation of mother’s life must be established.—Under the exception contained in this section, necessity in fact for the preservation of the mother’s life must be established. *Good*

faith alone is not a defense. *State v. Rudman*, 126 Me. 177, 136 A. 817.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Houses of Ill Fame. Prostitution.

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

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

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

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

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

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

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

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

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

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

Unlawful to permit place to be used for purposes prohibited by sub-§ 1.—In order to decrease the spread of so called sexual diseases, Chapter 112 of the Public Laws of 1919 enacted that it should be unlawful

for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, lewdness or assignation with knowledge or reasonable cause to know that the same is, or is to be used for such purpose. State v. Morin, 126 Me. 136, 136 A. 808.