

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

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1841.

ment by the obligee, or person entitled to the conveyance, and the validity of such assignment shall be put in issue, the court shall cause the assignee to be made a party to the bill; and, on his appearance or non appearance, may direct the same to be tried by a jury; and, if found fraudulent, it shall be no bar to the conveyance prayed for.

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the obligor disclose an assignment of the obligation. * 1829, 431, § 3.

CHAPTER 118.

OF BAIL IN CIVIL ACTIONS.

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| <p>SECT. 1. How bail shall be taken.</p> <p>2. Names of bail to be entered on executions.</p> <p>3. Officer to notify bail. Fees.</p> <p>4. Surrender of principal into court.</p> <p>5. In case of avoidance, officer's duty, and liability of bail.</p> <p>6. Scire facias against bail, in such case.</p> <p>7. Form of the scire facias.</p> <p>8. Limitation of such action.</p> <p>9. Pleadings and defence, by bail.</p> <p>10. Surrender of principal on scire facias.</p> | <p>SECT. 11. Principal to be committed to jail.</p> <p>12. When discharged, if not taken in execution.</p> <p>13. Proceedings, when bail is taken in a justice action.</p> <p>14. Surrender, and commitment of principal in such case.</p> <p>15. Officer's duty and fees.</p> <p>16. Surrender in such case, after judgment.</p> <p>17. Surrender before judgment.</p> <p>18. Remedy of bail against principal.</p> |
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SECTION 1. Bail shall always be taken, and the bail bond be returned and filed with the writ, in the manner mentioned in the one hundred and fourteenth chapter.

How bail shall be taken.

SECT. 2. If judgment be rendered against the principal in the action, in which the bail was taken, the clerk of the court or justice of the peace, issuing the execution on such judgment, shall, on the margin of the execution, insert the names of the persons who became bail, with the place of their abode, and their addition, provided, they are named in the bail bond; and, if the debtor was committed to jail, such clerk or justice shall note, in like manner, the jail, to which he was committed.

Names of bail to be entered on executions. 1821, 67, § 1. 4 Greenl. 10.

SECT. 3. The officer, holding said execution, whether the debtor had given bail to the arresting officer, or to the jailer, shall notify the bail personally, or by leaving a notice, in writing by him signed, at the usual place of abode of the bail, if living in his county, at least fifteen days before the expiration thereof, certifying, that he cannot find the principal debtor, nor property wherewith to satisfy the execution; for which service he shall be entitled to demand and receive, of the bail the usual fee for the service of a writ, and for travel from the dwelling house of the officer, to the dwelling house of the bail; and shall minute in said notice the amount of the fees; which the bail shall pay in twenty days, unless, one day at least, before the execution is returnable, the bail shall produce and deliver to the officer the principal debtor.

Officer to notify bail. Fees. 1821, 67, § 1. 7 Greenl. 80.

SECT. 4. If the bail shall not have committed the principal to

Surrender of

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principal into court.
1821, 67, § 2.
14 Mass. 115.

In case of avoidance, officer's duty, and liability of bail.
1821, 67, § 2.

Scire facias against bail, in such case.
1821, 67, § 3.
4 Pick. 120.
13 Pick. 339.

Form of the scire facias.

Limitation of such action.
1821, 67, § 8.
7 Mass. 342.

Pleadings, and defence by bail.
8 Mass. 264, 490.
17 Mass. 591.
10 Pick. 49.

Surrender of principal, on scire facias.
1821, 67, § 2.
5 Mass. 373.
7 Mass. 169.

Principal to be committed to jail.
1821, 67, § 3.

When discharged, if not taken in execution.

Proceedings, when bail is taken in a justice action.
1821, 67, § 4.

prison, in the manner mentioned in the said one hundred and fourteenth chapter, they may, at any time, before final judgment in the original suit, bring the principal into court, where the action is pending, and deliver him into the custody thereof, and be thereby discharged of their suretyship.

SECT. 5. In case of the avoidance of the principal, and return on the execution by the officer, that he has had the same execution in his hands at least thirty days before the expiration thereof, and that the principal is not found, his bail shall be obliged to satisfy the judgment with interest thereon, from the time when it was rendered, unless he shall discharge himself by surrendering the principal, before final judgment against him on the writ of scire facias, or by other sufficient defence.

SECT. 6. When the principal shall so avoid, and his goods, chattels or lands cannot be found to satisfy the execution, the person, for whom judgment was given, shall be entitled to a writ of scire facias in his own name from the same court, against the bail, which may be taken out of the clerk's office in vacation, as well as term time.

SECT. 7. In such writ, the plaintiff need not declare on the bail bond, but may merely allege, that the defendants became bail in the original action.

SECT. 8. No such action shall be maintained against any person, as a bail, unless commenced within one year from the time judgment was rendered against the principal.

SECT. 9. The bail may plead jointly or severally, that they never became bail, as alleged in the writ, and, under that plea, may avail themselves of every defence, which would avail them in an action of debt on the bond, upon the plea that it is not their bond; or may shew any special matter of discharge, filing a brief statement thereof, as by law provided.

SECT. 10. The bail may surrender the principal in court, before final judgment on the scire facias, and deliver him the order of court, and, on paying all the costs on the scire facias, they shall be discharged.

SECT. 11. The principal, so surrendered, shall be committed to the county jail, there to remain for the space of fifteen days, in order to be taken in execution.

SECT. 12. If the creditor shall not, within fifteen days next after such surrender of the principal, take him in execution, the sheriff shall discharge him, on payment of the legal prison fees.

SECT. 13. When bail is taken, on mesne process, in an action triable before a justice of the peace, and there shall be a return on the execution issued on the judgment in such suit, that the principal is not found; said justice may issue a scire facias thereon against the bail, to be served seven days before the day of trial; and, if no sufficient cause is shown to the contrary, he may render judgment for the debt and costs recovered, with interest thereon, from the time judgment was rendered against the principal; and it shall be no bar to such scire facias, that the debt and costs on the original judgment, when added together, shall exceed the sum of twenty dollars.

SECT. 14. If the bail shall, at any time before final judgment in the original suit is rendered, or upon the return of the scire facias and before final judgment thereon, bring the principal before such justice, and procure the attendance of the sheriff, his deputy, or a constable of the town, in which the court is holden, to receive such principal; such justice shall make a record of such surrender, and shall order him into the custody of such officer; and he shall commit the principal to jail, to be proceeded with as mentioned in the eleventh and twelfth sections; and, on payment of costs arising on the scire facias, the bail shall be fully discharged.

SECT. 15. It shall be the duty of the officer to attend before such justice, for the purpose aforesaid, when so requested; and, for so doing, he shall be allowed the same fees as for arresting and committing defendant on mesne process; and, for neglect of official duty in the above case, he shall be answerable for all damages to the party injured thereby.

SECT. 16. When the principal is surrendered to such justice, after final judgment in the original action, the bail shall deliver to the officer a copy of the entry of the surrender, which entry the justice is bound to make, attested by the justice; and the officer shall deliver the same to the jailer, on committing the prisoner to his custody; and this shall be a sufficient warrant to the officer, for receiving and conveying him to jail, and to the jailer, for holding him in custody.

SECT. 17. If the principal is surrendered, before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the justice; and the officer shall deliver the same copy to the jailer; and this shall be a sufficient warrant to the officer and jailer, as mentioned in the preceding section.

SECT. 18. Bail may have their remedy against their principal, by an action on the case, for all damages sustained by them, by reason of their suretyship.

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Surrender, and commitment of principal, in such case. 1821, 67, § 5. 15 Mass. 535.

Officer's duty, and fees. 1821, 67, § 7.

Surrender, in such case, after judgment. 1821, 67, § 6.

Surrender, before judgment.

Remedy of bail against principal. 1821, 67, § 9.

CHAPTER 119.

OF TRUSTEE PROCESS OR FOREIGN ATTACHMENT.

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3. Mode of service.

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13. Effect, if defendant in a suit be summoned as trustee of the plaintiff.