

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.

CHAPTER 171.

OF COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.

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| <p>SECT. 1. Processes to be issued by certain magistrates.</p> <p>2. Origin of proceedings by complaint and warrant.</p> <p>3. Party accused may be pursued into other counties.</p> <p>4. Power of justices in such other counties, on arrest of the accused, to take recognizances.</p> <p>5. The same to be returned to the proper tribunal.</p> <p>6. If no bail be given, prisoner to be taken to the county, where the process originated.</p> <p>7. Also, if the offence be punishable with death, or confinement in the state prison.</p> <p>8. When examination may be before a justice, other than the one issuing the warrant.</p> <p>9. Adjournment of examination. Recognizance.</p> <p>10. Proceedings, if party fail to appear.</p> <p>11. Commitment for further examination.</p> <p>12, 13. Mode of examination.</p> <p>14. Witnesses may be examined separately.</p> <p>15. Testimony may be taken in writing.</p> <p>16. When the prisoner shall be discharged.</p> | <p>SECT. 17. When to be committed or bailed, or tried.</p> <p>18. Witnesses to recognize to appear at court.</p> <p>19. To recognize with sureties, if required.</p> <p>20. To be committed, on their refusal.</p> <p>21. How married women and minors may be bound to appear.</p> <p>22. Bail may be taken after commitment.</p> <p>23. Justice may associate another justice with him.</p> <p>24. Examinations and recognizances to be returned to the county attorney, or clerk.</p> <p>25. Prosecutions may be discontinued in certain cases, after restitution made for private injuries.</p> <p>26. Discharge in such case to be preserved on file, &c.</p> <p>27. Remedy on recognizances.</p> <p>28. Surety may pay the penalty to the county treasurer or the clerk.</p> <p>29. Court may remit the penalty, either wholly, or in part.</p> <p>30. Certain forms in proceedings deemed unessential, as to recognizances.</p> <p>31. Traverse juries, in certain cases, may be summoned at a law term.</p> |
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Processes to be issued by certain magistrates.

SECTION 1. The justices of the supreme judicial court and of the district court, the judges of municipal courts, police courts and justices of [the] peace in their respective counties, as well in vacation as term time, for the apprehension of persons charged with offences, are authorized to issue process, to carry into effect the provisions of this chapter.

Origin of proceedings, by complaint and warrant.
1823, 235, § 1.
1 Fairf. 473.

SECT. 2. When a complaint is made to any judge of a municipal or police court, or justice of the peace, that a criminal offence has been committed, he shall examine the complainant on oath, and any witnesses he may produce; and, if it shall appear that any such offence has been committed, and that there is reason for believing the person charged to be guilty, the court or justice shall issue a warrant, stating the substance of the charge, and requiring the officer to whom it is directed, forthwith to arrest the person accused, and bring him before such court or justice, or some other magistrate of the county, to be dealt with according to law; and, in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Party accused may be pursued into other counties.

SECT. 3. When a person, against whom a warrant has been issued for an alleged offence, committed in any county, shall, before or after issuing the warrant, have removed or escaped from or be

out of the county, the sheriff or deputy to whom the warrant is directed, may pursue and apprehend the party charged in any county in the state; and may, for that purpose, command aid, as in his own county, and convey him into the county, in which the offence was committed.

CHAP. 171.
1824, 244, § 1.

SECT. 4. Where the offence charged in the warrant is not punishable with death or imprisonment in the state prison, the person arrested, if he shall request it, may be carried before any justice of the county in which the arrest was made, for the purpose of entering into a recognizance, without any trial or examination, and it shall be the duty of the officer so to carry him; and the justice may take a recognizance from the person arrested, with sufficient sureties, for his appearance at the next court, or before any justice of the peace having cognizance of the offence in the county where the same is alleged to have been committed; and thereupon the party arrested shall be discharged.

Power of justices in such other counties on arrest of the accused, to take recognizance.

SECT. 5. The magistrate, having so taken the recognizance of the party charged, shall certify that fact on the warrant, and deliver the same, with the recognizance, to the person who made the arrest; and it shall be his duty to cause the same to be delivered, without delay, to the clerk of the court before which the person accused was recognized to appear.

The same to be returned to the proper tribunal.

SECT. 6. If the magistrate in the county where the arrest was made, shall refuse to let to bail the person arrested and brought before him, or if no sufficient bail be offered, the person, having him in charge, shall take him before some magistrate of the county in which the warrant was issued, to be proceeded with, as hereinafter mentioned.

If no bail be given, prisoner to be taken to the county, where the process originated.

SECT. 7. When the offence charged is punishable with death, or by imprisonment in the state prison, the officer making the arrest in some other county, shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed in the following section.

Also if the offence be punishable with death or confinement in the state prison.

SECT. 8. Every person, arrested by warrant for any offence, where no provision is made for his examination thereon, before any other justice of the peace, shall be brought before the magistrate, who issued the warrant; or, if he be absent or unable to attend, before any other magistrate of the same county; and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

When examination may be before a justice, other than the one issuing the warrant.

SECT. 9. Any magistrate may adjourn an examination before himself from time to time, not exceeding ten days at one time, and may take the recognizance of the party accused with sufficient sureties for his personal attendance for the purpose before such magistrate; but, if the party is charged with a capital offence, he shall be committed to prison in the mean time.

Adjournment of examination. Recognizance. 1824, 244, § 2.

SECT. 10. If the party, so recognized, shall not appear, at any time appointed, before the magistrate, for further examination, the magistrate shall record the default, and certify his recognizance with the record of the default to the district court; and the like proceedings shall be had thereon, as on a breach of the condition of a recognizance for appearance before the court.

Proceedings, if party fail to appear. 1824, 244, § 3.

CHAP. 171.

Commitment,
for further ex-
amination.

SECT. 11. When such person shall fail to recognize, he may be committed to prison by an order from the magistrate, stating, in a summary manner; the offence with which he is charged, and that he committed him for further examination on a future day, named in such order; and, on the day appointed, he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by a written order to a different person.

Mode of exam-
ination.

SECT. 12. When a person charged with the commission of an offence, is brought before a magistrate, he shall first examine under oath the complainant, and witnesses to support the prosecution, in presence of the party charged, as to all pertinent facts.

Same subject.

SECT. 13. Afterwards the witnesses for the prisoner shall be sworn and examined, and he may be assisted by his counsel in the examination, and in the cross examination of the complainant and his witnesses.

Witnesses may
be examined
separately.

SECT. 14. The witnesses against and for the prisoner may be examined, each one separately from all the others; and the magistrate may keep the witnesses for the prisoner separate from those against him, during his examination, according to his sound discretion.

Testimony may
be taken in
writing.

SECT. 15. When the magistrate may think it necessary, he shall reduce to writing the testimony of any witness, and require him to sign it.

When the pris-
oner shall be
discharged.

SECT. 16. If, on examination, it shall appear on the whole evidence that no offence has been committed, or that there is not probable cause for charging the prisoner with an offence, he shall be discharged.

When to be
committed, or
bailed, or tried.

SECT. 17. But, if it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner to be guilty, and if the offence be bailable by such magistrate, and sufficient bail be offered, it shall be taken, and the prisoner discharged; but, if the offence is not bailable by the magistrate, or no sufficient bail be offered, the prisoner shall be committed to prison to await a trial. If the offence charged be within the jurisdiction of such justice, he may proceed to try the same; and award sentence thereon.

Witnesses to
recognize to ap-
pear at court.

SECT. 18. In either case, the magistrate shall order such of the witnesses against the prisoner, as he may deem material, to recognize to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

To recognize
with sureties,
if required.

SECT. 19. When the magistrate shall be satisfied, there is good reason to believe that any such witness will avoid, and not perform the condition of his own recognizance, unless other security be given, he may order such witness to recognize with sufficient surety or sureties for his appearance at court.

To be commit-
ted, on their re-
fusal.

SECT. 20. When any such witness shall refuse to recognize, with or without surety, as required for his appearance at court as aforesaid; he may be committed to prison to remain till by law discharged.

How married
women and mi-
nors may be
bound to ap-
pear.

SECT. 21. Any person may recognize for the appearance at court, as a witness, of a married woman or a minor, or the magistrate may, in his discretion, recognize such married woman or minor,

in a sum not exceeding twenty dollars; which shall be valid, notwithstanding the disability of coverture or minority. CHAP. 171.

SECT. 22. Any justice of the supreme judicial court or district court, or any two justices of the peace and quorum for any county, on application of any prisoner committed for a bailable offence, or for not finding sureties to recognize for him, may inquire into the case and admit such person to bail. Bail may be taken after commitment. 1821, 68. 1 Fairf. 473.

SECT. 23. Any magistrate, before whom a prisoner is brought, may associate another magistrate with him in performing the duties before mentioned; but no fees shall be taxed for him. Justice may associate another justice with him.

SECT. 24. All examinations and recognizances, taken by a magistrate pursuant to the provisions of this chapter, shall be certified and returned to the county attorney or clerk of the court, before which the party charged is bound to appear, on or before the first day of its session; and, in case of neglect of such justice, he may be compelled by rule of court, and, if it be disobeyed, by attachment for contempt. Examination and recognizance to be returned to the county attorney, or clerk.

SECT. 25. Any person committed or recognized to answer to a charge of assault and battery or other misdemeanor, for which the party injured may have a remedy by civil action, except when the offence was committed by or upon a sheriff or other officer of justice, or riotously, or with a felonious intent, if the injured party shall appear before the magistrate, who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate in his discretion, may, on payment of all costs, discharge the recognizance, or supersede the commitment, by an order under his hand; and may also discharge the recognizances of all the witnesses taken in the case. Prosecutions may be discontinued in certain cases, after restitution made for private injuries.

SECT. 26. Every such order of discharge of recognizances shall be filed in the office of the clerk of the court, at which the party and the witnesses were bound to attend; and every order, suspending the commitment of the party charged, shall be delivered to the keeper of the jail, and shall, if so filed and delivered, and not otherwise, forever bar all remedy by civil action for such injury. Discharge, in such case, to be preserved on file, &c.

SECT. 27. When any person, under recognizance in any criminal prosecution, shall fail to perform the condition thereof, his default shall be recorded; and process shall be issued against the person bound by such recognizance, or against such of the persons as the prosecuting officer shall direct; but, in the suit, no costs shall be taxed for travel. Remedy on recognizances.

SECT. 28. Any surety in a recognizance may be forever discharged from its obligations, by paying to the county treasurer, either before or after process has been issued against him, the amount for which he was bound as surety, with costs of prosecution, if any, or depositing the same with the clerk of the court, where the recognizance is filed. Surety may pay the penalty to the county treasurer, or the clerk.

SECT. 29. When a scire facias is brought on behalf of the state, to recover the penalty of any recognizance, taken in a criminal prosecution of principals, sureties or witnesses, when the penalty shall be forfeited, the court may, on application of the party, remit all or any part of the penalty of such recognizance, upon such terms, as they may deem reasonable and just. Court may remit the penalty either wholly, or in part.

CHAP. 171.

Certain forms, in proceedings, deemed unnecessary in recognizances.

SECT. 30. No action brought on recognizance, as mentioned in the preceding section, shall be barred or defeated, nor shall judgment thereon be arrested, by reason of any omission to record the default of any principal or surety, at the proper term, nor by reason of any defect in the form, if it can be sufficiently understood from its tenor, and at what court the party or witness was bound to appear, and that from the description of the offence charged, the magistrate was authorized to require and take the same.

Traverse juries, in certain cases, may be summoned at a lay term.

SECT. 31. Whenever any person shall be in prison, charged with any crime or offence cognizable by the supreme judicial court in any county, where no traverse jury has been ordered and summoned to attend, and the attorney general or county attorney, or the person so imprisoned shall, by himself or his attorney, request said court in session, or any justice thereof in vacation, to summon a jury for the trial of such prisoner, it shall be the duty of such court or justice so to summon such jury, unless a continuance, on the application of the prosecuting attorney or the prisoner, and upon legal ground or consent, shall be granted.

CHAPTER 172.

OF PROCEEDINGS IN COURT IN CRIMINAL CASES.

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| <p>SECT. 1. Clerks of courts to prepare alphabetical lists of grand jurors.</p> <p>2. Grand jurors' oath.</p> <p>3. Form of affirmation.</p> <p>4. Election of foreman.</p> <p>5. Term of his office.</p> <p>6. Oath of witnesses before the grand jury. List to be returned to the court.</p> <p>7. Duties of grand jury.</p> <p>8. May appoint one of their number to take minutes.</p> <p>9. When the grand jury may be recalled during the term.</p> <p>10. Disclosures improper to be made by grand jurors.</p> <p>11, 12. In what cases persons in prison, on charges of capital offences, may be bailed or discharged, if not indicted.</p> <p>14. If indicted, when they may claim a trial.</p> <p>15. Trial for felony may be claimed, the second term after indictment.</p> <p>16. Standing mute.</p> <p>17. Right of challenge in capital cases, limited.</p> <p>18. Arraignment, in capital cases, may be by a single judge.</p> <p>19. Other judges to be notified, when to attend the trial.</p> | <p>SECT. 20. Special session of the supreme judicial court may be held, in certain cases, for a capital trial.</p> <p>21. Public notice thereof. Venires. No civil action disposed of, except by consent.</p> <p>22, 23. Rights of persons indicted.</p> <p>24. Prosecuting officer may summon witnesses.</p> <p>25. When proceedings may be stayed after indictment, on satisfaction made to party injured.</p> <p>26. A useless form dispensed with.</p> <p>27. Plea in abatement, verified by oath, &c.</p> <p>28, 29. Depositions may be taken, out of the state, on request of defendant.</p> <p>30. Facts to be tried by jury, as in civil causes. Grand jurors not to sit on such trial.</p> <p>31. Challenges of jurors, as in civil causes, to either party.</p> <p>32. Conscientious scruples of a juror, in capital cases.</p> <p>33. Jurors' oaths.</p> <p>34. Affirmation.</p> <p>35. When a person indicted shall, or may not, be present at his trial.</p> <p>36. View.</p> <p>37. When the court may postpone criminal trials, &c.</p> |
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