

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.

CHAP. 171. **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.

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.

Certain forms, in proceedings, deemed unnecessary in recognizances.

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

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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SECT. 38. Indictments may be sustained, notwithstanding certain defects in form.

39. Payment of private claims out of forfeited recognizances.

SECT. 40. Proceedings on exceptions in the district courts.

41. Disposal of law questions in criminal trials.

SECTION 1. Prior to the commencement of each term of the supreme judicial court, in each county, and prior to the term of the district court, in each county, to which grand jurors shall be returned, it shall be the duty of the clerk of the court to make out from the returns on the venires for grand jurors, an alphabetical list of such jurors.

Clerks of courts to prepare alphabetical lists of grand jurors. 1821, 84, § 10.

SECT. 2. When the grand jury is to be empaneled, the clerk shall cause the first two persons, named on the list, to be first called, and the following oath shall be administered to them: "You, as grand jurors of this inquest for the body of this county of _____, do solemnly swear, that you will diligently inquire, and true presentment make, of all such matters and things, as shall be 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; neither shall you leave any man unrepresented, 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 may order, 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 behalf, shall well and truly observe and keep. So help you God."

Grand jurors' oath. 1821, 84, § 10, 12.

SECT. 3. When any person returned as grand juror, is conscientiously scrupulous of taking an oath, he shall be allowed to 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."

Form of affirmation. 1821, 84, § 12.

SECT. 4. The grand jury, having been empaneled and instructed by the court, shall retire, in company with an officer; to their room, and there elect by ballot one of their number to be their foreman; and give notice thereof to the court, and the clerk shall record it.

Election of foreman. 1821, 84, § 13.

SECT. 5. Such foreman shall continue in office during the term or year, 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, the choice of another foreman.

Term of his office. 1821, 84, § 13.

SECT. 6. The foreman of each grand jury, the attorney general or county attorney, in the presence of the grand jury, shall have power to swear or affirm any witness to testify before such jury; and the foreman shall return to the court, which empaneled them, a list of all the witnesses so sworn, before the grand jury are discharged by the court; which list shall be filed and entered on record by the clerk.

Oath of witnesses before the grand jury. Lists to be returned to the court. 1821, 84, § 13.

SECT. 7. It shall be the business of the grand juries to present all crimes and offences and breaches of law, cognizable by the respective courts, at which they attend.

Duties of grand jury. 1821, 84, § 15.

SECT. 8. Any grand jury may appoint one of their number to

May appoint one of their

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number to take minutes.

When grand jury may be recalled, during the term.

Disclosures, improper to be made by grand jurors.

Same subject.

In what cases persons in prison, on charges of capital offences, may be bailed or discharged, if not indicted.

1821, 59, § 44.

Same subject. 1821, 59, § 44.

If indicted, when they may claim a trial.

1821, 59, § 44.

Trial for felony may be claimed, the second term after indictment.

1821, 59, § 44.

16 Mass. 423.

Standing mute.

1821, 59, § 42.

Right of challenge in capital cases, limited.

1821, 59, § 42.

Arraignment in capital cases, may be by a single judge.

1826, 347, § 6.

2 Mass. 303.

Other judges to be notified,

when to attend the trial.

act, as clerk, in taking minutes of the proceedings before them; which shall be delivered to the attorney general or county attorney, when the jury shall so direct.

SECT. 9. When a grand jury attending any court shall have been dismissed, before the court is adjourned, they may, on any special occasion, be summoned to attend again, at such time as the court shall direct.

SECT. 10. No grand juror or officer of the court shall disclose the fact, that an indictment for a felony has been found against any person, who is not in custody or under recognizance, except by issuing process on the indictment, until such person shall have been arrested.

SECT. 11. No grand juror shall be allowed to state or testify, in what manner he or any member of the jury voted on any question before them, or what opinion was expressed by any juror, relating to such a question. And it shall be the duty of the court, in charging the grand jury, to impress on their minds the provisions of this and the preceding section.

SECT. 12. Any person held in prison on suspicion of having committed a crime, for which he may be sentenced to suffer death, may be bailed or discharged, if he is not indicted at the second term of the supreme judicial court in the county, where the crime is alleged to have been committed, when there are two terms of said court each year, in such county.

SECT. 13. In those counties where such court sits but once in a year, the accused may be bailed or discharged, if he is not indicted at the first term; provided, such person shall have been held in prison for the space of six months next before the sitting of such court.

SECT. 14. When any person shall be held in prison, under indictment, if he demands the same, he shall be tried or bailed at the first term next after the finding of the indictment, unless the court shall be satisfied that the witnesses or some of them, on the part of the state, have either been enticed away, or are detained by some inevitable accident or cause beyond their control from attending.

SECT. 15. All persons, under indictment for felony, shall be tried or bailed at the second term after the finding of the indictment.

SECT. 16. When any person, indicted for any crime or offence, shall stand mute and make no answer to the charge, the court shall order the plea of not guilty to be entered, and the same proceedings shall be had, as if he pleaded not guilty.

SECT. 17. No person indicted for an offence, the punishment of which, on conviction of the offender, is declared by law to be death, shall be allowed to challenge, peremptorily, more than twenty persons of the jury.

SECT. 18. Any person, indicted for a crime punishable with death, may be arraigned before the supreme judicial court, when held by one justice thereof; and, if the person, so indicted, shall plead guilty as charged in the indictment, such justice may proceed and pass sentence according to law.

SECT. 19. If the prisoner plead not guilty, such justice, after appointing counsel for the prisoner, and doing all things proper to be

done preparatory for trial, and assigning a time therefor, shall give notices to the other judges thereof; so that a majority of the justices may be present at the trial. CHAP. 172.
1826, 347, § 6.

SECT. 20. When an indictment is found for a capital offence, and the supreme judicial court shall not by law hold a session in the same county, in which the indictment is found, within six months after the finding of the same, a special term of said court may be held for the purpose of trial of the accused, by a majority of the court, at such time and place as they may direct, by their order in writing, to the sheriff of the same county. Special session of the supreme judicial court may be held in certain cases, for a capital trial.

SECT. 21. The sheriff shall give such notice of the intended special term, as the court shall have prescribed in their order to him; and the clerk shall issue venires for jurors, and all necessary preparations shall be made by the sheriff, as for a regular term; but the court shall dispose of no civil action without consent of parties. Public notice thereof. Venires. No civil action disposed of, except by consent.

SECT. 22. Any person indicted for a crime punishable with death, or by imprisonment in the state prison for life, shall be entitled to have a list of the jurors returned delivered to him or his counsel, a copy of the indictment and process to summon his witnesses, at the expense of the state; all which it shall be the duty of the clerk to furnish without expense to the prisoner. Rights of persons indicted.

SECT. 23. A person indicted for any offence, punishable by confinement in the state prison, shall be entitled to a copy of the indictment without paying any fees therefor. Same subject.

SECT. 24. The attorney general, or other prosecuting officer, shall have the same power to issue a summons for witnesses as a justice of the peace or clerk of the court, in criminal cases; and, in all cases, when a witness is summoned on behalf of the state, it shall not be necessary to tender him any fees. Prosecuting officer may summon witnesses.

SECT. 25. When a person, indicted for an assault and battery, or other misdemeanor, for which the party injured may have a remedy by a civil action, except felonious assaults, or assaults upon an officer of justice; or resisting him while in the execution of his office, or assaults and batteries of such officers, if the injured party shall appear in court and acknowledge satisfaction for the injury, the court may, on payment of all costs, order a stay of all further proceedings, and discharge the defendant from the indictment, which shall bar all remedy by action for the injury. When proceedings may be stayed, after indictment on satisfaction made to party injured.

SECT. 26. When a person shall be arraigned on any indictment, it shall not be necessary to ask him, how he will be tried. A useless form dispensed with.

SECT. 27. When a plea in abatement, or other dilatory plea to an indictment shall be offered, the court may refuse to receive it, until the truth of it shall be proved by affidavit or other evidence. Plea in abatement verified by oath, &c.

SECT. 28. On the application of a defendant in any criminal prosecution, the court may grant a commission to examine any material witness residing out of this state, in the same manner as in civil causes; and the prosecuting officer may, if he shall see fit, join in such commission, and name therein any material witness to be examined on the part of the state. Depositions may be taken out of the state, on request of defendant.

SECT. 29. The interrogatories, when settled, shall be annexed to the commission, which shall be executed as in civil causes; and the depositions, taken under such commission, shall be read in the Same subject.

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cause, with like effect, and subject to the same exceptions, as in civil causes. But, if the defendant shall decline to use, on the trial, the depositions so taken for him, those, taken on the part of the state, shall not be read or used.

Facts to be tried by jury, as in civil actions. Grand jurors not to sit on such trial. 13 Mass. 221.

SECT. 30. Issues of fact, joined on indictment, shall be tried by a jury drawn and returned in the manner by law prescribed for the trial of civil causes; but no member of the grand jury, which found the indictment, shall be allowed to sit on the trial of such indictment, if challenged for that cause by the defendant.

Challenges of jurors, as in civil causes, to either party. 10 Pick. 479. 12 Pick. 496.

SECT. 31. The same challenges of jurors shall be allowed in criminal, as in civil causes, to the attorney general or other prosecutor, and to the defendant.

Conscientious scruple of a juror, in capital cases.

SECT. 32. No person shall be allowed to sit as a juror, in the trial of a capital cause, who cannot conscientiously find a man guilty of an offence, which is punishable with death.

Juror's oath. 1821, 84, § 12.

SECT. 33. The following oath shall be administered to jurors, in all criminal cases, not capital: "You swear, that you will well and truly try the issue between the state and the defendant," (or, "defendants," as the case may be), "according to your evidence. So help you God." In capital cases, the following oath shall be administered to the jurors: "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."

Affirmation. 1821, 84, § 12.

SECT. 34. Any juror conscientiously scrupulous of taking an oath, may affirm, substituting the words, "this you do under the pains and penalties of perjury," instead of the words, "so help you God."

When a person indicted shall, or may not, be present at his trial.

SECT. 35. No person indicted for felony, shall be tried, unless present during the trial; but persons, indicted for less offences, may, at their own request and by leave of court, be put on trial, in their absence, by their attorney.

View.

SECT. 36. The court may order a view by any jury in a criminal case.

When the court may postpone criminal trials, &c. 1822, 186, § 1.

SECT. 37. Whenever, in the trial of any cause, except for a capital offence, it shall appear to the court that justice would be promoted thereby, they may, at their discretion, suspend or postpone such trial to a future day, during the same term, or discharge the jury from the trial of the cause, and continue such indictment, as to the court may seem just and reasonable.

Indictments may be sustained, notwithstanding certain defects in form. 15 Maine, 122, 476.

SECT. 38. No indictment or complaint shall be quashed, nor judgment thereon be arrested or affected by reason of the omission or misstatement of the title, occupation, estate or degree of the defendant, or of the name of the city, town or county of his residence, nor by reason of the omission of the word, "feloniously," or of the words, "force and arms," or the words, "against the peace," or the omission to charge any offence to have been committed, contrary to the form of the statute or statutes; provided, that such omission or misstatement do not tend to the prejudice of the defendant.

Payment of private claims, out of forfeited recognizances.

SECT. 39. Whenever the forfeited penalty of recognizance for the prosecution of an appeal has been paid to the clerk of the court

or county treasurer, and any portion of such penalty shall accrue to any person, by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to, out of it.

SECT. 40. Any person, convicted of an offence in the district court, may allege exceptions to any opinion, direction or judgment of the said court, and thereupon such proceedings shall be had in said court, and also in the supreme judicial court, as are prescribed in the nineteenth section, of the ninety seventh chapter, establishing the said district court.

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Proceedings, on exceptions, in the district courts.

SECT. 41. In criminal trials in the supreme judicial court, any person, convicted of any offence tried before any one justice of said court, may, in the manner mentioned in the preceding section, allege exceptions to any opinion, direction or judgment of such justice, to be allowed and signed by him; or any questions of law, which may be so reserved on exceptions, as above stated, may be reserved on a report signed by such justice, who may require such defendant to recognize with sufficient sureties to appear at the next term of said court, and abide the judgment which the full court shall render in the cause; or commit him, on his neglecting so to recognize.

Disposal of law questions, in criminal trials.

CHAPTER 173.

AS TO THE DISPOSAL OF INSANE PERSONS, WHEN PROSECUTED FOR CRIMES OR OFFENCES.

SECT. 1. Duty of court, when either jury finds the party accused, to be insane.

2. At whose expense such person to be supported in confinement.

3. How he may be liberated, when safe.

SECT. 4. May be given up to his friends, they giving bonds to the judge of probate.

5. Or to the overseers of the poor, if chargeable, a suitable place being provided.

6. Towns in such case answerable for damages, if the person go at large.

SECTION 1. When any person, indicted for any crime, shall be acquitted by the jury of trials, by reason of insanity or mental derangement, they shall state that fact to the court, when they return their verdict; and, when the grand jury shall, for the same reason, omit to find an indictment against any person, who has been arrested by legal process to answer for any crime or offence, they shall certify to the court the above mentioned reason for such omission; and the court shall have power to commit such person to prison, or the insane hospital, there to remain until restored to his right mind, or otherwise delivered by due course of law.

Duty of the court, when either jury finds the party accused to be insane. 1821, 58, § 1, 2.

SECT. 2. And the person, so committed, shall be kept in prison, or the insane hospital, at his own expense, if he have sufficient property for the purpose; otherwise, of the person or town that would have been chargeable for his maintenance, if he had not

At whose expense, such person to be supported in confinement. 1821, 58, § 1.