

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAP. 132.

Costs paid;
disposal of.
R. S., c. 152,
§ 10, 11.

SEC. 18. When the costs in any criminal case are paid to the magistrate as a part of the sentence, he may retain his fees, and pay over the other fees to the persons entitled to them; but if such other fees are not called for in one year, they shall be forfeited to the state, and paid over to the county treasurer within the time, and under the penalty, provided in chapter one hundred thirty-six, section seven.

Costs not paid
may be allow-
ed by county
commission-
ers.

R. S., c. 152,
§ 12, 13.
1854, c. 82.

SEC. 19. When a party accused is acquitted by the magistrate, not sentenced to pay costs, or does not pay them to him when so sentenced, and on all legal search warrants, the commissioners of the same county shall examine and correct the bills of cost, including the fees of officers, witnesses, and other persons entitled thereto, and order the same paid out of the county treasury; but when such magistrate, or other person interested in such bill of costs, is one of the commissioners for the same county, the supreme judicial court shall have the same powers as the commissioners in other cases.

Costs in cases
carried to
higher court.
R. S., c. 152,
§ 14.

Warrants to be
under seal, &c.

SEC. 20. In cases carried to a higher court by appeal, recognizance, or commitment of a party, the costs shall be taxed by the magistrate and certified with the papers.

SEC. 21. Warrants, issued by a magistrate in criminal cases, shall be under seal, and signed by him at the time when they are issued.

CHAPTER 133.

COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.

WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.

- SEC. 1. No person bound to answer for an offence without indictment, except for contempt, by information, and before magistrates and courts martial.

WHO MAY ISSUE CRIMINAL PROCESSES.

2. Justices of the supreme judicial court and magistrates may issue processes in criminal cases.
3. Officer, making complaint officially, may swear to it according to his knowledge and belief, and witnesses may be summoned in a warrant or by subpoena.

ARRESTS WITHOUT WARRANTS.

4. Officers may arrest without warrant persons violating law until warrant can be obtained, and have their fees, if they act in good faith.

ARRESTS IN OTHER COUNTIES.

5. The accused may be pursued into other counties, arrested and brought back.
6. How he may be discharged in the county where he is arrested, if for a bailable offence.

EXAMINATION OF OFFENDERS.

7. Examinations of persons arrested; magistrate may associate another magistrate with him without fees.
8. Adjournment of examination on recognizance or commitment. How offender may be brought before the magistrate at the adjournment.
9. Proceedings if party fails to appear.

SEC. 10. Mode of examination; witnesses may be examined separately, and testimony taken in writing.

CHAP. 133.

11. When the accused shall be discharged, when sentenced, and when bound over or committed.

PROCEEDINGS ON COMMITMENT OR BINDING OVER.

12. Magistrate to recognize material witnesses or commit them.
 13. How married women and minors may recognize.
 14. Who may bail the accused after commitment.
 15. Examinations and recognizances to be returned to the county attorney or clerk, and magistrate compelled to do so by rule or capias of the court.

WHEN PROSECUTIONS MAY BE DISMISSED.

16. What prosecutions may be dismissed on satisfaction for private injury.
 17. Such discharges to be filed with the clerk or jailer.

REMEDIES ON RECOGNIZANCES.

18. Forfeited recognizances to be defaulted and process issued thereon. Sureties may pay the amount to county treasurer or clerk and be discharged.
 19. Court may remit the penalty; and the sureties may surrender the principal, but only twice in the same case.
 20. Certain forms in proceedings on recognizances unessential.

WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.

SEC. 1. No person shall be held to answer in any court for an alleged offence, unless on an indictment found by a grand jury, except for contempt of court and in the following cases:

First.—When prosecutions by information are expressly authorized by statute.

Second.—In proceedings before municipal and police courts, justices of the peace, and courts martial.

No person bound to answer for an offence without indictment, &c.

R. S., c. 169, § 1.

WHO MAY ISSUE CRIMINAL PROCESSES.

SEC. 2. The justices of the supreme judicial court, judges of municipal and police courts, and justices of the peace in their counties, in the manner provided in chapter one hundred and thirty-two, in vacation or term time, may issue processes for the arrest of persons charged with offences.

Justices of the S. J. C. and magistrates may issue processes, &c.

R. S., c. 171, § 1, 2.

SEC. 3. When it is the duty of an officer to make complaint before any magistrate, he may make oath to it according to his knowledge and belief.

Officer making complaint, &c. 1848, c. 71, § 3.

ARRESTS WITHOUT WARRANTS.

SEC. 4. Every sheriff, deputy sheriff, constable, city or deputy marshal, watchman, or police officer, shall arrest and detain persons found violating any law of the state, or any legal ordinance or by-law of a town, until a legal warrant can be obtained, and shall be entitled to legal fees for such service; but if, in so doing, he acts wantonly or oppressively, or detains a person without a warrant longer than is necessary to procure it, he shall be liable to such person for the damages suffered thereby.

Officers may arrest without warrant, &c.

10 Maine, 473. 1848, c. 71, § 1, 2.

CHAP. 133.

ARRESTS IN OTHER COUNTIES.

The accused may be pursued into other counties, &c.
R. S., c. 171,
§ 3, 6, 7.

SEC. 5. When a person charged with an offence in any county, before or after the issue of the warrant, removes, escapes, or is found out of it, the officer having the warrant may pursue and arrest him in any other county, command aid as in his own county, and convey him to the county where the offence was committed.

How discharged in county where arrested, &c.
R. S., c. 171,
§ 4, 5.

SEC. 6. If the offence charged is not punishable with death or imprisonment in the state prison, the officer shall, on request of the accused, take him before a magistrate of the county where he is arrested; and such magistrate, without any examination, may take his recognizance with sufficient sureties for his appearance at the next court, or before any magistrate having cognizance of the offence in the county where it was committed, and thereupon the accused shall be discharged; and the magistrate shall certify that fact on the warrant, and deliver the same with the recognizance to the officer, and he shall immediately deliver them to the clerk of the court or magistrate before whom the accused recognized to appear.

EXAMINATIONS OF OFFENDERS.

Examinations of persons arrested, &c.
R. S., c. 171,
§ 8, 23.

SEC. 7. Every person arrested for any offence shall be brought before the magistrate issuing the warrant, or some other in the same county, for examination; and the warrant, with a proper return thereon, signed by the officer serving it, shall be delivered to the magistrate, who may associate another magistrate with him in such examination, but no fees shall be taxed for him.

Adjournment of examination on recognizance or commitment, &c.
R. S., c. 171,
§ 9, 11.

SEC. 8. Any magistrate may adjourn an examination before him, from time to time, not more than ten days at a time, and may recognize the accused with sufficient sureties for his appearance before him at the time of adjournment; but if no sufficient sureties are offered, or the offence is not bailable, the accused shall be committed to jail by an order of the magistrate, stating briefly the offence with which he is charged, and that he is committed for examination at a future day therein named, and, on the day appointed, he may be brought before such magistrate by his verbal order to the officer committing him, or by a written order to any other person.

Proceedings, if party fails to appear.
R. S., c. 171,
§ 10.

SEC. 9. If the party so recognized does not appear at the time of such adjournment, the magistrate shall record his default, and certify the recognizance and such record to the supreme judicial court, there to be proceeded with as any other forfeited recognizance in a criminal case.

Examination, &c.
R. S., c. 171,
§ 12, 13, 14, 15.

SEC. 10. When the accused is brought before a magistrate, he shall first examine, in the presence of the accused, on oath, the complainant and witnesses to support the prosecution as to all pertinent facts, and then the witnesses in defence; the witnesses on both sides may be examined, each one separately from all the others; and the witnesses for may be kept separate from those against the accused during the examination, according to the directions of the magistrate, who may reduce the testimony of

any witness to writing, when he thinks it necessary, and require him to sign it.

SEC. 11. If it appears on the whole examination that no offence is committed, or that there is not probable cause to charge the accused, he shall be discharged; but if it appears that an offence is committed, that there is probable cause to charge the accused, and the offence is bailable, and sufficient bail is offered, it shall be taken, and the accused discharged; but if it is not bailable, or no sufficient bail is offered, the accused shall be committed to prison to await a trial. If the offence is within the jurisdiction of the magistrate, he shall try it, and award sentence thereon.

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When accused shall be discharged, &c.
R. S., c. 171, § 16, 17.

PROCEEDINGS ON COMMITMENT OR BINDING OVER.

SEC. 12. When the accused is committed, or bound over for trial to a higher court, the magistrate shall order the material witnesses against him to recognize to appear and testify at said court; and when he is satisfied there is reason to believe that any of them will not perform the condition of his own recognizance, he may order him to recognize with sufficient sureties; and if he refuses to recognize as required, in either case, he may be committed to prison and remain till discharged by law.

Magistrate to recognize material witnesses or commit them.
R. S., c. 171, § 18, 19, 20.

SEC. 13. Any person may so recognize for a married woman or minor to appear as a witness, or the magistrate may take the recognizance of either in a sum not exceeding twenty dollars, which shall be valid notwithstanding such disability.

How married women and minors may recognize.
R. S., c. 171, § 21.

SEC. 14. Any justice of the supreme judicial court, or any two justices of the peace and quorum for the county, on application of a prisoner committed before verdict of guilty, for a bailable offence, or for not finding sureties to recognize for him, may inquire into the case and admit him to bail.

Who may bail the accused after commitment.
10 Maine, 473.
R. S., c. 171, § 22.

SEC. 15. All the examinations and recognizances, taken by a magistrate under this chapter, shall be certified and returned to the county attorney or clerk of the court, at which the accused is to appear, on or before the first day of its session; and if the magistrate neglects so to do, he may be compelled by rule of court, or if that is disobeyed, by attachment for contempt.

Examinations and recognizances to be returned, &c.
R. S., c. 171, § 24.

WHEN PROSECUTIONS MAY BE DISCONTINUED.

SEC. 16. When a person is recognized or committed by a magistrate, or is indicted for an assault and battery, or other misdemeanor, for which the party injured has a remedy by a civil action, except felonious assaults, assaults upon or resistance of an officer of justice in the execution of his duty, and assaults and batteries of such officers, if the injured party appears before the magistrate or court, and in writing acknowledges satisfaction for the injury, on payment of all costs, the court may stay all further proceedings and discharge the defendant; the magistrate may discharge the recognizance, supersede the commitment by his written order, and discharge the recognizance of the witnesses.

What prosecutions may be dismissed on satisfaction for private injury.
R. S., c. 171, § 25.
c. 172, § 25.

CHAP. 133.

Such discharges to be filed with clerk or jailer.
R. S., c. 171, § 26.

SEC. 17. Any order discharging recognizances shall be filed in the office of the clerk of the court, at which the party and witnesses are to appear; and an order superseding a commitment shall be delivered to the jailer; and if so filed or delivered, and not otherwise, shall bar all remedy by civil action for such injury.

REMEDIES ON RECOGNIZANCES.

Forfeited recognizances to be defaulted, &c.

R. S., c. 171, § 27, 28.

SEC. 18. When any person, under recognizance in a criminal case, fails to perform its condition, his default shall be recorded, and process shall be issued against such of the consors as the prosecuting officer directs, but no costs shall be taxed for travel in the suit; but any surety may be discharged by paying to the county treasurer, before or after process, the amount for which he is bound as surety, with costs, if any, or depositing it with the clerk of the court where the recognizance is filed.

Court may remit penalty, &c.

R. S., c. 171,

§ 29.

1845, c. 161.

1846, c. 212.

SEC. 19. When the penalty of any recognizance in a criminal case is forfeited, on scire facias against principal, sureties, or witnesses, the court, on application of any defendant, may remit all or any part of the penalty; or the sureties may surrender the principal in court at any time before final judgment on scire facias, and be discharged by paying the costs of suit; but if a principal has been thus surrendered twice, and is again released on bail in the same case, the sureties in such third, or any subsequent recognizance, shall not be so discharged.

Certain forms in proceedings unessential.

R. S., c. 171,

§ 30.

SEC. 20. No action on such recognizances shall be defeated, nor judgment thereon arrested, for any omission to record a default of the principal or surety at the proper term, nor for any defect in the form of the recognizance, if it can be sufficiently understood, from its tenor, at what court the party or witness was to appear, and from the description of the offence charged, that the magistrate was authorized to require and take the same.

CHAPTER 134.

PROCEEDINGS IN COURT IN CRIMINAL CASES.

OATH AND DUTY OF GRAND JURY.

- SEC. 1. Clerks of courts to prepare alphabetical lists of grand jurors.
2. Grand jurors' oath.
 3. Form of affirmation.
 4. Election of foreman.
 5. Term of his office.
 6. Oath of witnesses before the grand jury. List to be returned to the court.
 7. Grand jury to present all offences, appoint one to take minutes, and when dismissed may be recalled.
 8. Disclosures improper to be made by grand jurors.

BAIL, ARRAIGNMENT AND TRIAL OF CRIMINALS.

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