

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED
THE CONSTITUTIONS

OF THE
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
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CHAP. 85.

CHAPTER 85.

BAIL IN CIVIL ACTIONS.

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Bail shall be by bond to officer and returned with the writ.

R. S. c. 85, § 1.
1 Me. 334.
4 Me. 10.
8 Me. 422.
40 Me. 125.

What bail he may require.

R. S. c. 85, § 2.
2 Me. 46.

In what cases obligors holden.

R. S. c. 85, § 3.

Surrender of principal before entry, how done and effect.

R. S. c. 85, § 4.
2 Me. 382.

SEC. 1. When bail is taken on mesne process, it shall be by bond to the sheriff, if taken by him or his deputy, otherwise to the officer making the arrest, with condition that the defendant will appear and answer to the suit, and abide final judgment thereon and not avoid. The bond shall be returned with the writ, and the clerk shall note on the writ that a bail bond is so filed.

SEC. 2. No officer shall be obliged to accept a bail bond unless signed by two sureties, at least, having sufficient property in the county in which the principal is arrested or held in custody; and if he takes a bail bond with only one surety, he shall be liable to the plaintiff for any deficiency thereof.

SEC. 3. A bail bond shall bind the obligors though signed by only one surety, or when signed by two or more sureties, when all or any of them had not sufficient property in the county.

SEC. 4. Any bail may, before the action is entered, exonerate himself from all liability, by surrendering his principal to the jail in the county where the arrest was made, or in the county where the writ is returnable, and within fifteen days thereafter, leaving with the jailer an attested copy of the writ or process whereby the arrest was made, of the return indorsed thereon, and of the bail bond, and notifying, in writing, the plaintiff or his attorney of the time and place of the commitment; and the jailer shall receive him into custody as if committed by the officer making the arrest.

SEC. 5. If judgment is rendered against the principal in the action in which the bail is taken, the clerk of the court or trial justice issuing the execution on the judgment, shall insert, on the margin thereof, the names of the bail, their addition and place of abode, if inserted in the bail bond; and if the debtor is committed to jail, the clerk or justice shall note in like manner the jail to which he is committed.

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Names of bail to be entered on execution. R. S. c. 85, § 5. 4 Me. 10.

SEC. 6. The officer holding the execution, fifteen days at least before its expiration, whether the debtor has given bail to the arresting officer or the jailer, shall notify the bail personally, or by leaving a notice in writing, by him signed, at his usual place of abode, if in the officer's county, certifying that he cannot find the principal debtor, or property wherewith to satisfy the execution, for which he may 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 produce and deliver to the officer the principal debtor.

Officer to notify bail; his fees to be paid. R. S. c. 85, § 6. 7 Me. 80.

SEC. 7. If the bail do not surrender the principal as aforesaid, they may, at any time before final judgment in the original suit, bring him into court where the action is pending, and deliver him into the custody thereof and be thereby discharged.

Surrender of principal in court. R. S. c. 85, § 7. 19 Me. 409. 20 Me. 479.

SEC. 8. In case of the avoidance of the principal, and return on the execution by the officer that he had had it in his hands at least thirty days before its expiration, and that the principal was not found, his bail shall satisfy the judgment with interest thereon from the time when it was rendered, unless they discharge themselves by surrendering the principal before final judgment against them on the writ of scire facias, or by some other sufficient defence.

In case of avoidance, officer's duty; liability of bail. R. S. c. 85, § 8.

SEC. 9. When the principal so avoids, and his property cannot be found to satisfy the execution, the original creditor may have a writ of scire facias, in his own name, from the same court, against the bail, in vacation or in term time, to be sued out within one year from the rendition of judgment against the principal, and need not declare on the bail bond, but merely allege that the defendants became bail in the original action.

When scire facias against bail may issue. R. S. c. 85, § 9.

SEC. 10. 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, on the plea that it is not their bond; or may show any special matter of discharge, filing a brief statement thereof as provided by law.

Pleadings and defence by bail. R. S. c. 85, § 10.

SEC. 11. The bail may surrender the principal in court before final judgment on the scire facias, and on paying all the costs on the

Surrender of principal on

CHAP. 85. scire facias, they shall be discharged; and the principal shall be committed to jail to remain for the space of fifteen days; and if the creditor does not, within that time, take him in execution, the sheriff shall discharge him on payment of the legal prison fees.

Scire facias
R. S. c. 85, § 11.

SEC. 12. When bail is taken on mesne process in an action returnable before a trial justice, and there is a return on the execution issued on the judgment therein, that the principal is not found, the 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 rendition of judgment, against the principal, and issue execution accordingly, notwithstanding the debt and costs on the original judgment exceed the sum of twenty dollars.

Proceedings
when bail is
taken in a jus-
tice action.
R. S. c. 85, § 12.

SEC. 13. If the bail, at any time before final judgment in the original suit or on scire facias, brings the principal before the justice, and procures the attendance of an officer to receive him, the justice shall make a record of the surrender, and order him into the custody of the officer to be committed to jail, to be proceeded with as mentioned in the preceding sections; and on payment of costs on the scire facias, the bail shall be fully discharged.

Surrender and
commitment
of principal in
such case and
effect thereof.
R. S. c. 85, § 13.

SEC. 14. The officer shall attend before a justice for such purpose, when requested; and shall be allowed therefor the same fees as for arresting and committing a defendant on mesne process; and for neglect of official duty in such case, he shall be answerable for all damages to the party injured thereby.

Officer's fees,
duty and lia-
bility for neg-
lect.
R. S. c. 85, § 14.

SEC. 15. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the writ, with the return thereon, attested by the justice; if after such judgment, the bail shall deliver a copy of the entry of surrender, attested by the justice; and in either case the officer shall deliver it to the jailer with the prisoner; and it shall be a sufficient warrant to the officer for receiving and conveying him to jail, and to the jailer for holding him in custody.

Surrender in
such case be-
fore and after
judgment.
R. S. c. 85, § 15.

SEC. 16. 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.

Remedy of
bail against
principal.
R. S. c. 85, § 16.