

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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ERRATA:

**The following two leaves are
inserted because one or more pages
in this chapter have errors
noticed and corrected here.**

ERRORS.

ERROR IN THE TEXT OF THE REVISED STATUTES.

Page 63, § 3, line one.—Erase the last word “may.”

ERROR IN THE TEXT OF THE REPEALING ACT.

Page 999.—Transfer “Chapter 48, Section 6, of an act to facilitate the prompt administration of justice by establishing a superior court in Kennebec County,” from the year 1879 to 1878.

ERROR IN THE COMMISSIONER'S NOTES.

Pages 177, 178.—Erase the last two lines of page 177, and the first three lines of page 178.

ERRORS IN THE MARGINAL REFERENCES.

- Page 59, § 6, ¶ xx.—Erase “*R. S.*, c. 1, ¶ xx”, and supply, at the bottom of the page, “*R. S.*, c. 1, § 4”
- “ 66, § 24.—Erase “*Resolve of 1837, c. 52.*”
- “ 69, § 44.—Supply “*Resolve of 1840, c. 107.*”
- “ 72, § 68.—Erase “*See c. 6, §§ 40-67.*”
- “ “ § 70.—Erase “*R. S.*, c. 2, § 66.”
- “ 79, § 12, (note b).—“*See c. 18, § 73*” should read “*See c. 18, § 75.*”
“*See c. 30, § 15*” should read “*See c. 30, § 16.*”
- “ “ § 14.—Supply “*See c. 18, § 75.*”
- “ 83, § 40.—“*R. S.*, c. 3, § 34” should read “*R. S.*, c. 3, § 33.”
- “ 84, § 46.—“*See c. 18, § 67*” should read “*See c. 18, § 59.*”
- “ 86, § 59, ¶ i, (note b).—“*See c. 17, §§ 25-29*” should read “*See c. 17, §§ 27, 28.*”
- “ “ “ ¶ vi, (note e).—“*See c. 18, § 15*” should read “*See c. 18, § 17.*”
- “ 92, note.—“*c. 18, §§ 39, 103*” should read “*c. 18, §§ 39, 97.*”
- “ 97, § 16.—Erase “*R. S.*, c. 4, § 16.”
- “ 108, § 86.—“*Art. ii, § 2*” should read “*Art. ii, § 1, ¶ 2.*”
- “ 117, § 28.—Erase the first reference to “1878, c. 31, § 1.” Also erase “*R. S.*, c. 5, § 26.”
- “ 176, § 27.—“*Resolve of 1883, c. 20*” should read “*Resolve of 1883, c. 86.*”
- “ 183, § 5.—“*See § 93, ¶ 6*” should read “*See § 93, ¶ v.*”
- “ 202, § 102.—“1883, c. 229” should read “*See c. 115, § 1.*”
- “ 209, § 1.—Supply “1880, c. 215.”
- “ 210, § 7.—Supply “1880, c. 215.”
- “ 249, § 44.—“1875, c. 25, § 6” should read “1875, c. 25, § 6.”
- “ 270, § 16.—Supply “1880, c. 215.”
- “ 330, § 26.—“*See c. 40, § 77*” should read “*See c. 40, § 74.*”
- “ “ § 28.—“*See c. 40, § 38*” should read “*See c. 40, §§ 33, 40.*”
- “ 374, § 23.—“*See § 17*” should read “1880, c. 234, § 1.”
- “ 384, § 74.—Add “1883, c. 138, § 3.”
“1883, c. 144, § 4.”
- “ 506, § 1.—Supply “*See 1880, c. 215.*”
- “ 642, § 80, bottom of the page.—Supply “1878, c. 48, § 6.”
- “ 709, § 105.—“*See c. 134, § 13*” should read “*See c. 134, § 19.*”
- “ 773, § 42.—Supply “1883, c. 198, § 2.”
- “ 804, § 35.—“*See c. 134, § 26*” should read “*c. 134, § 26.*”
- “ 861, § 1.—“*R. S.*, c. 2, § 20,” } should read “1883, c. 221.”
“*R. S.*, c. 115, § 1.” }
- “ 862, § 4.—“*See c. 63, §§ 32 to 39*” should read “*See c. 63, § 35.*”

ERRORS IN CITATIONS OF CASES.

- Page 10, § 8, ¶ iii, (note c).—"14 *Pet.*, 504" should read "14 *Pet.*, 540."
 " 16, § 1, (note b).—"10 *Me.*, 483" should read "10 *Me.*, 283."
 " 78, § 5, (note a).—"13 *Me.*, 472, 489" should read "13 *Me.*, 472."
 " " § 7, (note b).—"12 *Me.*, 589" should read "12 *Me.*, 489."
 " 147, § 97.—"58 *Me.*, 528" should read "58 *Me.*, 532."
 " 166, § 1.—"64 *Me.*, 549" should read "64 *Me.*, 599."
 " 200, § 93, ¶ iv.—Erase "20 *Me.*, 545."
 " 211, § 19.—"3 *Me.*, 347" should read "3 *Me.*, 249."
 " 241, § 5, (note b).—"68 *Me.*, 28" should read "63 *Me.*, 28."
 " 257, § 80, (note a), Construction of ways.—"26 *Me.*, 340" should read "26 *Me.*, 240."
 " 397, § 1, (note a).—Erase "66 *Me.*, 526."
 " 521, § 2, (note a).—Erase "60 *Me.*, 377."
 " " § 9.—Erase "60 *Me.*, 533."
 " 563, § 10.—"31 *Me.*, 286" should read "31 *Me.*, 254."
 " 597, § 23.—"4 *Me.*, 19" should read "4 *Me.*, 8."
 " 705, § 78.—"43 *Me.*, 438" should read "48 *Me.*, 438."
 " 728, § 12.—Erase "68 *Me.*, 30."
 " 750, § 5.—Erase "20 *Me.*, 325."
 " 765, § 1, (note a).—Erase "73 *Me.*, 228."
 " 814, § 19, (note c).—Erase "71 *Me.*, 543."
 " 817, § 8, (note b).—"27 *Me.*, 363" should read "27 *Me.*, 362."
 " 885, § 1.—Erase "62 *Me.*, 285."
 " 886, § 8.—"36 *Me.*, 225" should read "36 *Me.*, 227."
 " 933, § 4.—"34 *Me.*, 478" should read "39 *Me.*, 478."

OMISSION IN REFERENCE INDEX TABLE, PART I.

Page 1060.—Supply "1878, c. 48, § 6," with a reference to "R. S., c. 77, § 80."

in said town. And if the value is ten dollars or more, the same shall be cried and notice given by posting as aforesaid in two towns adjoining, in addition. CHAP. 98.

SEC. 11. Every finder of lost goods of the value of ten dollars or more, shall, within two months after finding, and before using them to their disadvantage, procure a warrant from the town clerk or a justice of the peace, directed to two persons, appointed by said clerk or justice, not interested except as inhabitants of the town, returnable at said clerk's office, within seven days from its date, to appraise said goods under oath.

Also, if worth ten dollars or more.
R.S., c. 98, § 11.

SEC. 12. If the owner of such lost money or goods appears within one year after said notice to the town clerk, and gives reasonable evidence of his ownership to the finder, he shall have restitution of them or their value, paying all necessary charges and reasonable compensation to the finder, to be adjudged by a justice of the peace of the county, if the owner and finder cannot agree.

Proceedings, if owner appears within one year.
R.S., c. 98, § 12.

SEC. 13. If no owner appears within one year, such money or lost goods shall belong to the finder, by paying one half their value to the treasurer of said town, after deducting all necessary charges; but if he neglects to pay it on demand, it may be recovered in an action brought by said treasurer in the name of the town.

Proceedings, if no owner appears within one year.
R.S., c. 98, § 13.

SEC. 14. If the finder of lost money or goods, of the value of three dollars or more, neglects to give notice to the town clerk and to cause them to be cried and advertised as herein provided, he forfeits the full value thereof, half to the town, and half to the prosecutor, and shall be liable to the owner for the lost money or goods.

Penalty, if finder neglects to give notice.
R.S., c. 98, § 14.

CHAPTER 99.

HABEAS CORPUS.

- SEC. 1. Who may prosecute the writ, as matter of right.
2. Minors enlisting in the army or navy, are entitled to its benefits.
3. Parent, master, or guardian of minor restrained, is entitled to the writ.
4. Supreme or superior court may grant such writ, on application of any person, in behalf of one incapable of making his own application.
5. Who are not so entitled, as of right.
6. Application; how to be made, by persons not of right entitled.
7. Returnable before the court, or any justice thereof.
8. Application must be in writing, signed and sworn to, and shall state the case clearly. When the writ shall not issue.
9. Proceedings, if excessive bail is demanded.
10. If the officer refuses a copy of precept, the writ shall issue forthwith.
11. Form of writ in cases mentioned in section five.
12. Time of service and return. Tender of fees.
13. Officer, when he makes return, must bring the body of person restrained. Proceedings, if the person is sick, and cannot be brought.
14. Examination of the causes of restraint.
15. Persons interested must be notified, before discharge.

- CHAP. 99. SEC. 16. Proceedings and decision, upon the application. If no legal cause is shown for imprisonment, prisoner shall be discharged. Exception.
17. Party detained for bailable offence, how to be admitted to bail.
18. Form of writ, if the restraint is not by an officer.
19. By whom to be issued, and where served.
20. If the person restraining is unknown, how he shall be designated.
21. If the person restrained is unknown, how he shall be designated.
22. Form of return, in cases mentioned in sections eleven and eighteen.
23. How such return shall be authenticated.
24. Manner of keeping the party, before judgment.
25. Penalty for neglect of an officer to deliver a copy of his precept for detaining a prisoner.
26. Officer neglecting to serve a writ of habeas corpus, attachment shall issue.
27. If attachment is issued against a sheriff, proceedings.
28. Proceedings in such case for release of the person for whose benefit the writ issued, if officer refuses to obey the writ.
29. Persons once discharged, shall not be re-arrested; exceptions.
30. Conveyance to prison of persons ordered to be committed. Penalty for eluding the service of a writ of habeas corpus.
31. Infliction of penalty is no bar to action for damages.
32. A third person may appear for the party detained, in certain cases.
33. Supreme or superior court, or any justice thereof, may allow bail, at discretion, except to persons committed by the governor, senate, or house.
34. Bail commissioners, appointment of, in each county, by supreme court.
35. Commissioners may admit to bail persons committed for not finding sureties, and may issue writs of habeas corpus.
36. Commissioners may admit to bail, before commitment.
37. Habeas corpus may issue to bring in a prisoner as a witness.
38. Habeas corpus may issue, on application, in behalf of an insane person, committed on mesne process, or execution.

Who may have writ, as of right. R.S., c. 99, § 1. 48 Me., 127. 72 Me., 202.

Minors enlisted into the army or navy, are entitled to writ. R.S., c. 99, § 2.

Parent, master, or guardian of minor. R.S., c. 99, § 3.

Courts may grant writ, on application in behalf of one incapable of applying. R.S., c. 99, § 4.

Who are not entitled of right. R.S., c. 99, § 5.

SEC. 1. Every person unlawfully deprived of his personal liberty by the act of another, except in the cases hereinafter mentioned, shall of right have a writ of habeas corpus according to the provisions herein contained.

SEC. 2. A minor enlisted within the state into the army or navy of the United States, without the written consent of his parent, guardian, or master, shall have all the benefits of this chapter on the application of himself, parent, guardian or master.

SEC. 3. The parent, master, or guardian of any minor, imprisoned or restrained of his liberty, shall be entitled to the writ of habeas corpus for him, if he would be entitled to it on his own application.

SEC. 4. The supreme judicial court, or either of the superior courts, or any of the justices thereof, on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty, who would be entitled to it on his own application, when from any cause he is incapable of making it.

SEC. 5. The following persons shall not of right have such writ :

I.—Persons committed to and confined in prison for treason, felony, or suspicion thereof, or as accessories before the fact to a felony, when the same is plainly and specially expressed in the warrant of commitment.

II.—Persons convicted, or in execution upon legal process, criminal or civil.

III.—Persons committed on mesne process in any civil action, on which they are liable to be arrested and imprisoned.

Application

SEC. 6. Application for such writ by any person shall be made to the

supreme judicial or superior court in the county where the restraint exists, if in session; if not, to a justice thereof; and when issued by the court, it shall be returnable thereto; but if the court is adjourned without day or for more than seven days, it may be returned before a justice thereof, and be heard and determined by him.

SEC. 7. When issued by a justice of the court, it may be made returnable before the court, himself, or any other justice thereof.

SEC. 8. The application shall be in writing, signed and sworn to by the person making it, stating the place where, and the person by whom, the restraint is made; the applicant shall produce to the court or justice a copy of the precept by which the person is so restrained, attested by the officer holding it; and if, on inspection, it appears to the court or justice that such person is thereby lawfully imprisoned or restrained of his liberty, a writ shall not be granted.

SEC. 9. If it appears that he is imprisoned on mesne process for want of bail, and the court or justice thinks that excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged.

SEC. 10. If the prison keeper or other officer having the custody of such person, refuses or unreasonably delays to deliver to the applicant an attested copy of the precept by which he restrains him, on demand therefor, the court or justice, on proof of such demand and refusal, shall forthwith issue the writ as prayed for.

SEC. 11. When such writ is issued on an application in behalf of any person described in section five, it shall be substantially as follows:

"STATE OF MAINE.

C—, ss. To A. B., of —;

[L. S.]

Greeting.

We command you, that you have the body of C. D., in our prison, at —, under your custody," (or by you imprisoned and restrained of his liberty, as the case may be,) "as it is said, together with the day and cause of his taking and detaining, by whatever name he is called or charged, before our supreme judicial" (or superior court), "held at —, within and for our county of —, immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf, and have you there this writ.

Witness —, Esquire, our —, at —, this — day of —, in the year 18—.

—, Clerk."

The like form shall be used by any justice of said court, changing what should be changed, when such writ is awarded by him.

SEC. 12. When such writ is offered to the officer to whom it is directed, he shall receive it; and on payment or tender of such sum as the court or justice thereof directs, he shall make due return thereof within three days, if the place of return is within twenty miles of the place of imprisonment; if over twenty, and less than one hundred miles, within seven days; and if more than one hundred miles, within fourteen days; but if such writ was issued against such officer, on his refusal

CHAP. 99.

by person not of right entitled, how to be made. R.S., c. 99, § 6.

How returnable. R.S., c. 99, § 7.

Application, how made. R.S., c. 99, § 8. 65 Me., 131.

—when the writ shall not issue.

Proceedings, if excessive bail is demanded. R.S., c. 99, § 9. 61 Me., 419.

If officer refuses a copy of precept, writ shall issue. R.S., c. 99, § 10.

Form of writ in cases mentioned in section five. R.S., c. 99, § 11.

Time of service, return and tender of fees. R.S., c. 99, § 12.

CHAP. 99. or neglect to deliver, on demand, to the applicant a copy of the precept by which he restrained the person of his liberty, in whose behalf application was made, then the officer shall obey the writ without payment or tender of expenses.

Officer, when he makes return, shall bring the body of person restrained.
R.S., c. 99, § 13.
—proceedings, if person is sick, and cannot be brought.

SEC. 13. The person making the return, shall, at the same time, bring the body of the party, as commanded in the writ, if in his custody or power or under his restraint, unless prevented by sickness or infirmity of such party; and in such case that fact shall be stated in the return; and if proved to the satisfaction of the court or justice, a justice of the court may proceed to the place where the party is confined and there make his examination, or may adjourn it to another time, or make such other order in the case as law and justice require.

Examination of the causes of restraint.
R.S., c. 99, § 14.

SEC. 14. On return of the writ, the court or justice, without delay, shall proceed to examine the causes of imprisonment or restraint; and may adjourn such examination from time to time.

Persons interested, must be notified, before prisoner is discharged.
R.S., c. 99, § 15.

SEC. 15. When it appears that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person or his attorney, if within the state or within thirty miles of the place of examination, to appear and object, if he sees cause; and if imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the attorney general, or other attorney for the State, that he may appear and object, if he thinks fit.

Proceedings in court.
R.S., c. 99, § 16.
—if no legal cause for imprisonment, court shall discharge.
—exception.

SEC. 16. The party imprisoned or restrained may deny allegations of fact in the return or statement, and may allege other material facts; and the court or justice may, in a summary way, examine the cause of imprisonment or restraint; hear evidence produced on either side, and if no legal cause is shown for such imprisonment or restraint, the court or justice shall discharge him; except as provided in section nine. (a)

Party detained for any bailable offence, shall be admitted to bail, and how.
R.S., c. 99, § 17.

SEC. 17. If the party is imprisoned and detained for a bailable offence, he shall be admitted to bail, if sufficient bail is offered; and if not, he shall be remanded, with an order of the court or justice, expressing the sum in which he shall be held to bail, and the court at which he shall be bound to appear; and a justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

Form of writ, if the restraint is not by an officer.
R.S., c. 99, § 18.

SEC. 18. In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, coroner, constable, jailer, or marshal, deputy marshal, or other officer of the courts of the United States, the writ shall be in the following form, viz:

“STATE OF MAINE.

[L. s.] To the sheriffs of our several counties and their respective deputies,
Greeting.

We command you, that you take the body of C. D., of —, imprisoned and restrained of his liberty, as it is said, by A. B., of —, and have him before our supreme judicial” (or superior court,) “held at —,

(a) 6 Me., 466; 32 Me., 441; 36 Me., 428; 47 Me., 86.

within and for our county of —, immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A. B. then and there to appear before our said court, to show cause for taking and detaining said C. D., and have you there this writ with your doings thereon.

Witness, —, Esquire, our —, at —, this — day of —, in the year 18—. —, Clerk.”

SEC. 19. Such writ may be issued by the supreme judicial or superior court, sitting in any county in which the person in whose behalf application is made, is restrained, or by any justice thereof, the form to be varied so far as necessary, when issued by a justice of the court; and may be served in any county in the state.

SEC. 20. The person having custody of the prisoner may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name; and any one served with the writ, shall be deemed the person thereby intended.

SEC. 21. The person restrained shall be designated by his name, if known; if unknown or uncertain, in any other way, so as to make known who is intended.

SEC. 22. In cases under section eleven, the person who makes the return, and in cases under section eighteen, the person in whose custody the prisoner is found, shall state in writing to the court or justice before whom the process is returned, plainly and unequivocally,—

I.—Whether he has or has not the party in his custody or power, or under restraint;

II.—If he has, he shall state, at large, the authority and true and whole cause of such imprisonment or restraint, upon which the party is detained; and,

III.—If he has had the party in his custody or power or under his restraint, and has transferred him to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

SEC. 23. Such return or statement shall be signed and sworn to by the person making it, unless he is a sworn public officer, and makes and signs his return in his official capacity.

SEC. 24. The party may be bailed to appear from day to day, until judgment is rendered; or remanded, or committed to the sheriff, or placed in custody, as the case requires.

SEC. 25. If an officer refuses or neglects, for four hours, to deliver a true and attested copy of the warrant or process, by which he detains a prisoner, to any person who demands it and tenders the fees therefor, he forfeits to such prisoner two hundred dollars.

SEC. 26. If any person or officer, to whom such writ is directed, refuses to receive it, or neglects to obey and execute it, as hereby required, and no sufficient cause is shown therefor, he forfeits to the aggrieved party four hundred dollars; and the court or justice, before whom the writ was returnable, shall proceed forthwith by attachment as for a

By whom to be issued, and where to be served.
R.S., c. 99, § 19.

If the person restraining is unknown, how to be designated.
R.S., c. 99, § 20.

If person restrained is unknown.
R.S., c. 99, § 21.

Form of return, in cases mentioned in sections eleven and eighteen.
R.S., c. 99, § 22.

How to be authenticated.
R.S., c. 99, § 23.

How party is to be kept.
R.S., c. 99, § 24.

Neglect of officer to deliver copy of precept.
R.S., c. 99, § 25.
71 Me., 407.

Punishment, if officer neglects to serve writ.
R.S., c. 99, § 26.

CHAP. 99. contempt, to compel obedience to the writ, and to punish for the contempt.

Attachment against a sheriff, may be served by a coroner or other person. R.S., c. 99, § 27.

Proceedings for release of the person for whom the writ issued, when officer refuses to obey writ. R.S., c. 99, § 28.

Persons discharged on habeas corpus, shall not be re-arrested, save in certain cases. R.S., c. 99, § 29.

Conveyance to prison of persons ordered to be committed. R.S., c. 99, § 30.

—penalty for eluding writ.

Penalty is no bar to action. R.S., c. 99, § 31.

Third person may appear for party, by stipulating for costs. R.S., c. 99, § 32.

Court or justice may allow bail. R.S., c. 99, § 33.

—exceptions. See Constitution, art. i, § 10; art. iv, part 3, § 6.

Bail commissioners, to be appointed in each county by court. 1873, c. 137, § 1.

Commissioners may admit to bail persons committed for not finding sureties. 1873, c. 137, § 2. See c. 134, § 26.

SEC. 27. If such attachment is issued against a sheriff or his deputy, it may be directed to a coroner, or any other person therein designated, who shall thereby have power to execute it; and the sheriff or his deputy may be committed to jail on such process in any county but his own.

SEC. 28. If the person to whom the writ is directed refuses to obey and execute it, the court or justice may issue a precept to any officer or other person therein named, commanding him to bring the person for whose benefit the writ was issued before such court or justice; and the prisoner shall thereupon be discharged, bailed, or remanded, as if brought in on habeas corpus.

SEC. 29. No person, enlarged by habeas corpus, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail; or unless, after a discharge for defect of proof, or some material defect in the commitment in a criminal case, he is arrested on sufficient proof, and committed by legal process for the same offence.

SEC. 30. A person ordered to be committed to prison on a criminal charge, shall be carried to such prison, as soon as may be, and shall not be delivered from one officer to another except for easy and speedy conveyance; nor removed without his consent from one county to another, unless by habeas corpus; and if any one, having in his custody or under his power a person entitled to a writ of habeas corpus, whether issued or not, transfers him to the custody of another, or changes his place of confinement, with intent to elude the service of such writ, he forfeits four hundred dollars to the party aggrieved.

SEC. 31. No penalty, established by this chapter, shall bar any action at common law for damages for false imprisonment.

SEC. 32. When a person is unlawfully carried out of the state or is imprisoned in a secret place, any other person may appear for him in an action therefor in his name, who shall stipulate for the payment of costs as the court orders.

SEC. 33. Nothing in this chapter shall restrain the supreme judicial or either of the superior courts in term time, or any justice thereof in vacation, from bailing a person for any offence, when the circumstances of the case require it; except persons committed by the governor and council, senate, or house of representatives, for causes mentioned in the constitution.

SEC. 34. The supreme judicial court sitting in each county shall appoint from the number of justices of the peace and of the quorum resident in the county, one or more bail commissioners, who shall hold office during the pleasure of the court.

SEC. 35. When a person is confined in a jail for a bailable offence, or for not finding sureties on a recognizance, except when a verdict of guilty has been rendered against him for an offence punishable in the state prison, any such commissioner, on application, may inquire into the case and admit him to bail, and exercise the same power as any justice

of the supreme judicial or superior court can ; and may issue a writ of habeas corpus, and cause such person to be brought before him for this purpose, and may take such recognizance. CHAP. 99.

—may issue habeas corpus.

SEC. 36. Any person under arrest on criminal process for a bailable offence, may, before commitment to jail, if he so requests, be taken by the officer having him in charge, before such commissioner, who may inquire into the case and admit him to bail. May admit to bail, before commitment. 1876, c. 137.

SEC. 37. A court may issue a writ of habeas corpus, when necessary, to bring before them a prisoner for trial in a cause pending in such court, or to testify as a witness, when his personal attendance is deemed necessary for the attainment of justice. Habeas corpus may issue to bring a prisoner as a witness. R.S., c. 99, § 35.

SEC. 38. When an insane person is arrested or imprisoned on mesne process or execution in a civil suit, a justice of the supreme judicial or superior court, or judge of probate within his county, on application, may inquire into the case ; issue a writ of habeas corpus ; cause such person to be brought before him for examination ; and after notice to the creditor or his attorney, if either is living in the state, and a hearing, if it is proved to the satisfaction of said justice or judge that the person is insane, he may discharge him from arrest or imprisonment ; and the creditor may make a new arrest, on the same demand, when the debtor becomes of sound mind. But if he is arrested on the same demand a second time, before he becomes of sound mind, and is again discharged for that reason, he is forever after exempt from arrest therefor. Habeas corpus may issue, on application in behalf of insane persons. R.S., c. 99, § 36.

CHAPTER 100.

WRIT OF AUDITA QUERELA.

- SEC. 1. Form of the writ.
2. In what court and county, it must be sued out.
 3. Proceedings in court, if defendant appears, and if not.
 4. Complainant may recover special damages.
 5. Pleadings, and filing exceptions.
 6. Proceedings, if complainant is in prison.
 7. Effect of a surrender to jail.

SEC. 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested, and indorsed, as other writs. Form of writ. R.S., c. 100, § 1.

SEC. 2. When brought to prevent, set aside, or annul proceedings on a judgment or execution, it shall be sued out of the court in which judgment was rendered, but in all other cases it shall be sued in the county and court having jurisdiction of the case according to the provisions of law as to personal actions. In what court and county it shall be sued out. R.S., c. 100, § 2. 59 Me., 567. 62 Me., 13.

SEC. 3. If the defendant does not appear, after being duly served with process, he shall be defaulted ; but if he does, a trial shall be had as in other actions. Proceedings, if defendant appears, and if not. R.S., c. 100, § 3.