

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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ment thereon arrested, for an 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.

CHAP. 133.

Unessential forms in recognizances, &c. R. S., c. 133, § 22.
59 Me., 413
60 Me., 107.
71 Me., 204.
73 Me., 553.

CHAPTER 134.

PROCEEDINGS IN COURT IN CRIMINAL CASES.

OATH AND DUTIES OF GRAND JURY.

- SEC. 1. Clerks of courts shall prepare alphabetical lists of grand jurors.
2. Grand jurors' oath.
3. Form of affirmation.
4. Election of foreman.
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6. Oath of witnesses before grand jury. List shall be returned to court.
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BAIL, ARRAIGNMENT AND TRIAL OF CRIMINALS.

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11. Standing mute is equivalent to a plea of not guilty.
12. Jury for capital trials, how to be impanelled. Peremptory and other challenges. Supreme court may prescribe rules.
13. A single justice may try capital cases.
14. Person indicted for felony is entitled to a copy of the indictment, and if for a crime punishable with death or life imprisonment, to a list of jurors and process for witnesses, at the State's expense. Counsel may be assigned in capital cases; but the fee is limited to one hundred and fifty dollars.
15. Prosecuting officer may summon witnesses; no fees need be tendered them; no costs for witnesses not recognized or summoned, in cases where no bill is found, or for defect of roads.
16. Punishment for not attending, when summoned as a witness for the State.
17. Witnesses are not entitled to fees until the second or third day, in continued cases; no extra charges shall be allowed for aid or otherwise, unless on examination of officer on oath, or other proof, found reasonable.
18. Person arraigned, need not be asked how he will be tried; dilatory pleas may be rejected unless verified by oath.
19. Depositions may be taken out of the state, on request of defendant. Accused may be a witness, at his own request, but he is not obliged on cross examination to convict himself of any other crime. His failure to testify is not proof of guilt. A husband or wife is a competent witness.
20. Facts shall be tried and challenges allowed, as in civil cases.
21. Jurors' oaths and affirmations.
22. Respondent's presence is required at his trial for felony.
23. View may be ordered by the court.
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PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

- SEC. 25. When private claims may be paid out of forfeited recognizances.

CHAP. 134. EXCEPTIONS, AND BAIL AFTER VERDICT. NEW TRIALS. REVERSAL ON WRIT OF ERROR.

- SEC. 26. Questions of law reserved on report. Accused shall recognize, or be committed; after verdict of guilty of felony, only a justice of the supreme court, or a person appointed by the justice who tried him, can admit him to bail.
27. When a new trial in a capital case is refused, respondent may appeal to the law court, and three justices thereof may grant it.
28. Reversal of judgment on writ of error; proceedings.

OATH AND DUTIES OF GRAND JURORS.

Clerk shall prepare list of grand jurors. R.S., c. 134, § 1. See c. 106.

SEC. 1. Prior to the commencement of each term of the court to which grand jurors are returned, in any county, the clerk of the court shall make out, from the returns on the venires, an alphabetical list of such jurors. (a)

Grand jurors' oath. R.S., c. 134, § 2. 64 Me., 284.

SEC. 2. When the grand jury is to be impanelled, the clerk shall call the first two persons named on the list, and administer the following oath to them: "You, as grand jurors of this county of —, solemnly swear, that you will diligently inquire and true presentment make of all matters and things 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; nor 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 orders, 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 part shall well and truly observe and keep. So help you God."

Form of affirmation for grand juror. R.S., c. 134, § 3.

SEC. 3. When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may 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."

Election of foreman. R.S., c. 134, § 4.

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

Term of foreman's office. R.S., c. 134, § 5.

SEC. 5. Such foreman shall continue in office during the time 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 another foreman.

Oath of witnesses before the grand jury. 1883, c. 190. 67 Me., 129.

SEC. 6. The attorney general, county attorney, or foreman of the grand jury, shall swear, or affirm, in presence of the jury, all witnesses who are to testify before them, and a list thereof, stating the cases in which they testify, shall be returned into court by the foreman before the jury is discharged, and filed and entered on record by the clerk.

Grand jury shall present all offences. R.S., c. 134, § 7. 4 Me., 444. —what is a sufficient indictment

SEC. 7. Grand juries shall present all offences cognizable by the court at which they attend; and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs; and when they are dismissed before the court adjourns,

they may be summoned again, on any special occasion, at such time as the court directs. It is sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased; and for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, without, in either case, setting forth the manner or means of death.

SEC. 8. No grand juror or officer of the court shall disclose that an indictment for felony has been found against any person not in custody or under recognizance, until he is arrested, except by issuing process for his arrest; nor shall any grand juror state how any member of the jury voted, or what opinion he expressed, on any question before them; and the court, in charging such jury, shall impress on their minds this section.

BAIL, ARRAIGNMENT AND TRIAL OF PRISONERS.

SEC. 9. Any person in prison, charged with a crime punishable with death, may be bailed or discharged, if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed, when two or more criminal terms are held therein during each year; but when there is only one term a year, and the accused has been in prison for six months before the first term and is not then indicted, he shall be bailed or discharged.

SEC. 10. Any person in prison under indictment shall be tried or bailed at the next term after the finding thereof, if he demands it, unless the court is satisfied that some of the witnesses on the part of the State have been enticed away, or detained from court by some cause beyond their control; and all persons under indictment for felony, if they have been arrested thereon, shall be tried or bailed at the second term after the finding thereof. Any person indicted, although he has not been arrested, is entitled to a speedy trial, if he demands it in person in open court.

SEC. 11. When a person indicted stands mute, the court shall order the plea of not guilty to be entered, with the same effect as if he had pleaded not guilty.

SEC. 12. When a person indicted for an offence punishable with death is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance, in a box, upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn, shall be made and determined and the juror sworn or set aside before another name is drawn, and so on until the panel is completed. The person indicted shall not challenge, peremptorily, more than twenty, nor the State more than five of the jurors while the panel is being formed; but such person may, before the trial commences, challenge, peremptorily, two of the jurors from the panel. The supreme judicial court may, by general rules, prescribe the mode of exercising the right of challenge from the panel, in all criminal cases.

SEC. 13. One justice of the supreme judicial court may hold a term

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for murder
or man-
slaughter.
32 Me., 373.
51 Me., 413.
65 Me., 266.

Disclosures
improper to
be made by
grand jurors.
R.S., c. 134, § 8.

In capital
cases, per-
sons in prison
may be bailed
or dis-
charged, if
not indicted.
R.S., c. 134, § 9.

When person
indicted may
claim trial.
R. S., c. 134,
§ 10.

Standing
mute.
R. S., c. 134,
§ 11.

Jury for
capital trials,
how to be
impanelled.
1883, c. 205, § 6.
67 Me., 337.
74 Me., 507.

—challenges.

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supreme
court.

One justice

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may try
capital cases.
1883, c. 247, § 3.

Persons
indicted for
felony to be
furnished a
copy of
indictment.
1883, c. 205, § 7.

—if, for capi-
tal crime, &c.,
witnesses to
be summoned
at state's
expense.

—counsel
may be
assigned in
capital cases;
pay limited to
\$150.

Prosecuting
officer may
summon wit-
nesses, &c.
R. S., c. 134,
§ 15.

—no tender
of fees to
state
witnesses.

Punishment
of state wit-
ness for not
attending.
R. S., c. 134,
§ 16.
See c. 82, § 101.

Witnesses are
not entitled
to fees until
the second or
third day in
continued
cases, &c.
R. S., c. 134,
§ 17.

Prisoner need
not be asked
how he will
be tried.
R. S., c. 134,
§ 18.
See c. 77, § 4.

Depositions
may be taken
out of the
state.
R. S., c. 134,
§ 19.

thereof in any county, except in the counties of Cumberland and Kennebec, for the trial of capital cases, and exceptions may be taken, as in other cases, to their rulings and decisions.

SEC. 14. The clerk shall, without charge, furnish to every person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if for a crime punishable by death or imprisonment for life, he shall also furnish a list of the jurors returned, and process to obtain witnesses, to be summoned and paid at the expense of the State; if for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the State only at the discretion of the court. Competent counsel shall be assigned by the court in capital cases, when it appears that the accused has not sufficient means to employ counsel; and reasonable compensation, not exceeding one hundred and fifty dollars in all at any one trial, shall be allowed by the court, to be paid out of the county treasury.

SEC. 15. The prosecuting officer has the same power as the clerk of the court to issue a summons for witnesses in criminal cases; and no costs shall be taxed for witnesses before the grand jury in a case where no bill is found, nor in complaints against towns for defect of road, unless they recognized so to attend, or were summoned by order of the grand jury or prosecuting officer; nor is it necessary to tender fees to witnesses summoned in behalf of the State.

SEC. 16. Whoever, having been summoned as a witness in behalf of the State before any court or grand jury, without reasonable cause fails to appear at the time and place designated in the summons, if he is not punished therefor as for contempt, shall be punished, on indictment, by imprisonment for less than one year, or by fine not exceeding one hundred dollars.

SEC. 17. No fees in criminal cases continued after the first term shall be allowed to witnesses on the part of the State, until the second day of the term in Hancock, Oxford, Franklin, Piscataquis, and Aroostook; nor until the third day in any other county, unless they were summoned at an earlier day; and in all criminal cases, previous to the determination thereof, the court may allow such costs for justices, officers, aids, jurors, and witnesses, as are provided by law, to be paid from the county treasury; but no court or magistrate shall allow any charge for aid or other expenses of the officer in serving a warrant, except his stated fees for service and travel, unless, on his examination upon oath, or on other evidence, they find such additional charges reasonable.

SEC. 18. When a person is arraigned on an indictment, he need not be asked how he will be tried; and when a plea in abatement, or other dilatory plea to an indictment is offered, the court may refuse to receive it until it is verified by affidavit or other evidence. (a)

SEC. 19. On application of the defendant in a criminal case, the court may grant a commission to take the depositions of material witnesses living out of the state, upon interrogatories in the same manner, with the same effect, and subject to exceptions, as in civil causes;

(a) 15 Me., 107; 23 Me., 114; 36 Me., 132; 37 Me., 333; 38 Me., 300; 39 Me., 361.

the prosecuting officer may join in such commission, and name therein any material witness to be examined on the part of the State; but if at the trial, the defendant does not use the depositions so taken for him, those taken for the State shall not be used. In all criminal trials, the accused shall, at his own request, but not otherwise, be a competent witness. He shall not be compelled to testify on cross examination to facts that would convict, or furnish evidence to convict him of any other crime than that for which he is on trial; and the fact that he does not testify in his own behalf, shall not be taken as evidence of his guilt. The husband or wife of the accused is a competent witness. (a)

SEC. 20. Issues of fact joined on indictments, shall be tried by a jury drawn and returned in the same manner, and challenges shall be allowed to the prosecuting officer and the accused, as in civil cases; but no member of a grand jury finding an indictment, shall sit on the trial thereof, if challenged therefor by the accused; nor shall any person be a juror in a capital case, who cannot conscientiously find a man guilty of an offence punishable with death. (b)

SEC. 21. The following oath shall be administered to jurors in capital cases: "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." In all other criminal cases, the following: "You swear, that you will well and truly try the issue between the State and the defendant, according to your evidence. So help you God." Any juror conscientiously scrupulous of taking an oath may affirm in the mode described in section three.

SEC. 22. No person indicted for felony shall be tried, unless present during the trial; but persons indicted for less offences, at their own request and by leave of court, may be tried in their absence, by their attorney.

SEC. 23. The court may order a view by any jury in a criminal case.

SEC. 24. The trial of any criminal case, except a capital one, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom, and the case continued, if justice will thereby be promoted.

PAYMENT OF PRIVATE CLAIMS FROM FORFEITED RECOGNIZANCES.

SEC. 25. When the penalty of a recognizance to prosecute an appeal is paid to the clerk of the court or county treasurer, the court may award to any person therefrom the same sum that he would have been entitled to receive from the penalty affixed to the offence, if paid on conviction, and not on recognizance.

(a) 59 Me., 300; 63 Me., 211; 65 Me., 240; 72 Me., 534; 74 Me., 508.

(b) Practice and evidence in criminal cases. 19 Me., 227, 401; 21 Me., 18; 26 Me., 317; 29 Me., 336, 563; 30 Me., 30, 183, 344; 31 Me., 63; 32 Me., 372, 585; 34 Me., 40; 37 Me., 331, 363; 38 Me., 575; 39 Me., 65, 69, 92, 296, 361; 40 Me., 560; 43 Me., 108; 45 Me., 329; 46 Me., 531; 47 Me., 450; 48 Me., 238, 366; 51 Me., 364, 396; 53 Me., 127, 331, 549; 54 Me., 28, 579; 55 Me., 213; 65 Me., 469; 67 Me., 337; 74 Me., 507, 511.

CHAP. 134.

—respondent may testify at his own request.
—not to be compelled to convict himself of any other crime; his failing to testify is not proof of guilt.
1879, c. 92, § 2.
1879, c. 92, § 1.
1873, c. 137, § 5.

Facts tried, challenges allowed, as in civil cases.
R. S., c. 134, § 20.
—what jurors excluded in capital trials.
1883, c. 247, § 4.

Jurors' oath; affirmations.
R. S., c. 134, § 21.

—juror may affirm.

Respondent must be present at trial for felony.
R. S., c. 134, § 22.
67 Me., 424.
View.
R. S., c. 134, § 23.
When court may postpone or continue.
R. S., c. 134, § 24.

Private claims may be paid out of forfeited recognizances.
R. S., c. 134, § 25.

CHAP. 134. EXCEPTIONS AND BAIL AFTER VERDICT. NEW TRIALS. REVERSAL ON WRIT OF ERROR.

Respondent may give bail in bailable case, pending a question of law. R. S., c. 134, § 26. See c. 99, § 35. —form of recognizance. — after conviction of felony, he can be bailed only by justice trying him, or by some person appointed by him. 41 Me., 167. 42 Me., 385. 59 Me., 305. 70 Me., 334.

SEC. 26. Questions of law may be reserved on a report signed by the presiding justice, and in such case, and where exceptions are allowed, the defendant may, when the offence charged is bailable, recognize with sureties, in such sum as the court orders, with conditions substantially as follows: "The condition of this recognizance is such that, whereas there is now pending in the — court, within and for the county of —, an indictment against the said — — for the offence of —, in the course of the proceedings upon which, questions of law requiring the decision of the justices of the supreme judicial court have arisen; now if said — — shall personally appear before said — court, to be held in and for said county, from term to term, until and including the term of said court next after the certificate of decision shall be received from said justices, and shall abide the decision and order of said court, and not depart without license, then this recognizance shall be void." If he does not so recognize he shall be committed. When a verdict of guilty is rendered against any person for an offence punishable by imprisonment in the state prison, he shall be admitted to bail only by the justice trying him, by some person by him appointed therefor, or by some justice of the supreme judicial court.

Three justices may grant a new trial in capital cases. 1883, c. 205, § 8.

SEC. 27. If a motion for new trial in a capital case is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term for such district; and the concurrence of but three justices shall be necessary to grant such motion.

In case of error in the sentence, proceedings. R. S., c. 134, § 27.

SEC. 28. When a final judgment in any criminal case is reversed by the supreme judicial court, upon a writ of error, on account of error in the sentence, the court may render such judgment therein as should have been rendered, or may remand the case for that purpose to the court before whom the conviction was had.

CHAPTER 135.

SENTENCE, AND ITS EXECUTION IN CRIMINAL CASES, AND THE LIBERATION OF POOR CONVICTS.

WHAT SENTENCE MAY BE AWARDED.

- SEC. 1. No person shall be punished until convicted; what sentence may be passed, when none is provided. When punishment is by imprisonment and fine, or by imprisonment or fine, sentence may be to either or both. When convict shall pay costs.
2. Punishment may be for life, when a convict has before been sentenced to any state prison.
3. No convict shall be sent to the state prison for less than a year. Imprisonment for misdemeanors may be inflicted in jail or house of correction.
4. Crimes punishable in state prison for three years or less, may be punished in work-jails.