

MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAPTER 85.

MUNICIPAL AND POLICE COURTS, TRIAL JUSTICES, THEIR JURISDICTION AND PROCEEDINGS IN CIVIL ACTIONS.

APPOINTMENT, QUALIFICATION AND JURISDICTION.

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68 Me., 248.

When parties live in differ-

SEC. 1. Trial justices shall be appointed and commissioned by the governor, with the advice and consent of the council, to act within the county for which they are appointed, and shall hold their offices for seven years from the date of their commissions.

SEC. 2. Every trial justice may hold a court in his county, as provided in this chapter, and have original and exclusive jurisdiction of all civil actions, including prosecutions for penalties in which his town is interested, when the debt or damages demanded do not exceed twenty dollars, except those in which the title to real estate, according to the pleadings or brief statement filed in the case by either party, is in question; and except that in those towns in which a municipal or police court is established, his jurisdiction is restricted to those cases in which jurisdiction was given to justices of the peace, in the act establishing such court, and to cases wherein jurisdiction is given to trial justices in like manner.

SEC. 3. When it appears by the pleadings or brief statement, that the title to real estate is in question, the cause shall, on request of either party, be removed to the supreme judicial court or the superior court in the county; and such party shall recognize to the other in a reasonable sum, with sufficient sureties, to enter the case at the next term thereof; and if he does not so recognize, the justice shall hear and decide the case, as if such request had not been made.

SEC. 4. The party so recognizing shall produce at said court a copy of the record, and all such papers as are required to be produced by an appellant; and if he fails so to do, or to enter the action as before provided, he shall, on complaint of the adverse party, be nonsuited or defaulted, as the case may be; and such judgment shall be rendered as law and justice require.

SEC. 5. The writ in civil actions commenced before a trial justice, shall be a summons, a capias and an attachment, or scire facias, of the form prescribed by law, signed by the justice, and served not less than seven, nor more than sixty days before the return day thereof.

SEC. 6. Writs in civil actions before any municipal or police court, may be made returnable at any term thereof, to be held not less than seven, nor more than sixty days from their date. (a)

SEC. 7. Actions between parties residing in the same county, returnable before any trial justice, shall be commenced before some such disinterested justice residing or holding his court in the town where one of the parties, or his attorney, or person summoned as trustee in such action, resides; and if there is no such justice residing or holding his court therein, then before some such justice, if any, in an adjoining town, otherwise before any such justice in the county.

SEC. 8. When the parties reside in different counties, such actions shall be commenced before any disinterested trial justice residing in the

(a) 84 Me., 240; 86 Me., 345.

county where any defendant resides; but all trustee actions, returnable before such justice, shall be commenced within the county where some trustee, named in the writ, resides.

SEC. 9. A municipal or police court shall not have jurisdiction in any civil matter unless a defendant resides within the county in which such court is established, or is a non-resident of the state and has personal service within the county, or a party summoned as trustee resides within the county, or property of the defendant is attached within the county, in which such court is established. But in case of such personal service, trustee or attachment such court shall have jurisdiction to the amount of the established jurisdiction of such municipal or police court.

SEC. 10. Original writs, issued by any trial justice, may be made returnable before any other trial justice of the same county, and shall have the same effect as if signed by the latter justice; and in like manner, and with like effect, original writs, issued by any police or municipal court, may be made returnable before any other such court in the same or an adjoining county.

SEC. 11. No writ shall be made returnable before any trial justice, at an earlier hour than nine o'clock in the forenoon, nor later than four in the afternoon. No judgment of such justice is valid if he is not present with the plaintiff's writ at the place, within one hour after the time therein named, unless the case is continued by some other justice, as provided in section thirteen.

SEC. 12. The justice may enter judgment on nonsuit or default against the party failing to appear, at the end of one hour after the time of return set forth in the writ; but may in his discretion, on motion of either party, strike off the same within twenty-four hours thereafter, upon such terms as he deems reasonable.

SEC. 13. When a trial justice fails to attend at the time and place appointed by him for the trial of any suit already entered, or at which a writ is returnable before him, any other trial justice who might legally try the same, or any justice of the peace, residing in the same or an adjoining town, may attend and continue such action, once, to a day certain, not exceeding thirty days, and note the fact on the writ, and on his own docket; and if said trial justice, who so appointed such time and place, or before whom such writ is returnable, fails to attend at the time and place fixed in such continuance, such action may then and there be entered before and tried by some other trial justice of the same town, or, if none such resides therein, then before some trial justice of the same county; who may render judgment and issue execution as if the action had been originally returnable before him.

SEC. 14. A trial justice may hold a court at his dwelling-house, office or other suitable place, and the writ shall be made returnable accordingly. He may adjourn his court by proclamation, from time to time, as justice requires. In actions before him the defendant shall plead the general issue, and need not file any brief statement, except where the title to real estate is in question. When an action in which the defendant does not appear, is continued at the request of the plaintiff, only one travel and attendance shall be taxed for him, unless the defendant agrees, in writing, to such continuance.

SEC. 15. If a person served with process does not appear and answer thereto, his default shall be recorded, and the charge in the declaration taken to be true; and on such default, and when on trial, the action is maintained, the justice shall enter judgment for such sum, not exceeding

ent counties.
R. S., c. 83, § 9.
91 Me., 576.

Jurisdiction
of municipal
courts.
1901, c. 262.
See c. 83, § 16.
96 Me., 348.

Writs issued
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R. S., c. 83, § 10.
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R. S., c. 83, § 11.
52 Me., 246.
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R. S., c. 83, § 12.
53 Me., 401.
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When justice
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R. S., c. 83, § 13.
17 Me., 415.
18 Me., 28.
31 Me., 337.
61 Me., 579.
70 Me., 447.

Where court
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R. S., c. 83, § 15.
70 Me., 448.
78 Me., 76.

—pleadings.

—limitation
of costs.

Judgment
on default,
or trial.
R. S., c. 83, § 16.
49 Me., 413.

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twenty dollars, as he finds due to the plaintiff, with costs, and issue execution.

If plaintiff does not prevail, costs for defendant.
R. S., c. 83, § 17.

SEC. 16. If the plaintiff fails to enter and prosecute his action, or if, on trial, he does not maintain his action, the defendant recovers judgment for his costs to be taxed by the justice; and execution shall issue therefor.

APPEALS.

Appeal, when and how claimed, and its effect.
R. S., c. 83, § 18.
24 Me., 438.
57 Me., 292.
64 Me., 533.

SEC. 17. Any party aggrieved by the judgment of the justice, may appeal to the next supreme judicial or superior court in the same county, and may enter such appeal at any time within twenty-four hours after the judgment, Sunday not included; and in that case no execution shall issue, and the case shall be entered and determined in the appellate court.

Appellant's recognizance.
R. S., c. 83, § 19.
42 Me., 328.
72 Me., 486.
76 Me., 546.

SEC. 18. Before such appeal is allowed, the appellant shall recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and pay all costs arising after the appeal.

Appeal without trial.
R. S., c. 83, § 20.
78 Me., 76.

SEC. 19. In actions in a municipal or police court, or before a trial justice, either party, after appearing and filing his pleadings, may waive a trial and give the adverse party judgment, and then appeal, as if there had been an actual trial.

On appeal, copies and papers shall be produced.
R. S., c. 83, § 21.
44 Me., 41.

SEC. 20. The appellant shall, at the appellate court, produce a copy of the record, and of all the papers filed in the cause, except depositions or other written evidence or documents, the originals of which shall be produced; and if he fails to produce such papers, and enter and prosecute his action, the court, on complaint of the adverse party, may affirm the former judgment with costs.

EXECUTIONS.

Issue and return of executions.
R. S., c. 83, § 22.

SEC. 21. Executions shall not be issued by a trial justice, until twenty-four hours after the rendition of judgment, and shall be made returnable in three months from the day when they are issued. (a)

Executions may be directed into other counties.
R. S., c. 83, § 23.

SEC. 22. When a debtor removes or is out of the county in which judgment is rendered against him by a trial justice or municipal or police court, such justice or court may issue execution against him, directed to the proper officers in the county where he is supposed to be; and it has the same force as if issued by a justice or court of the latter county.

SCIRE FACIAS.

When writs of scire facias may issue.
R. S., c. 83, § 24.

SEC. 23. Every trial justice may issue writs of scire facias against executors or administrators, upon a suggestion of waste, after judgment against them; against bail in civil actions, and indorsers of writs; and enter judgment and issue execution, as any court might do in like cases.

Such writs and executions, when to be directed into other counties.
R. S., c. 83, § 25.

SEC. 24. In cases of scire facias against bail, indorsers of writs, executors or administrators, and in all trustee processes, or original writs against two or more defendants, before a trial justice or a judge of a municipal or police court, where the defendant or trustee resides out of the county where the proceedings are had, the justice or judge may direct the writ or execution to any proper officer of the county where said defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him.

(a) 11 Me., 178; 38 Me., 532; 87 Me., 439.

RECORDS, HOW TO BE KEPT AND TRANSCRIBED.

SEC. 25. Every trial justice shall keep a fair record of his proceedings; and if he dies after giving judgment in a cause and before it is satisfied, any other trial justice of the county may, on complaint of the creditor, issue a summons to the person in whose possession the record of such judgment is, directing him to produce and deliver it to him; and if he contemptuously refuses to produce it, or to be examined respecting it on oath, the justice may commit him to prison, for contempt, to be detained until he submits to such examination and produces the record; and when the record is so delivered, the justice shall transcribe it upon his own book of records, and return the original to the person who produced it; and a copy thereof, attested by the transcribing justice, or otherwise proved, is legal evidence in all cases where an authenticated copy of the original might be received.

SEC. 26. On such transcribed record, the justice may issue executions as if the judgment was rendered by himself, changing the form as the case requires; but no such first execution shall issue after one year from the time when the judgment was rendered, unless on scire facias.

SEC. 27. Every trial justice, who removes from the state, shall first deposit with the clerk of the judicial courts in the county for which he was commissioned, all his official records and papers; and the executor or administrator of a deceased justice shall so deposit all the official records and papers of the deceased justice that come into his hands; and if either neglects to do so, he forfeits one hundred dollars. The clerk shall receive and safely keep such records and papers, and may grant certified copies thereof, which are as good evidence as if certified by the justice.

SEC. 28. If any trial justice dies or removes from the state, without recording and signing a judgment by him rendered in an action before him, and his docket, original writ and papers pertaining thereto, and execution if any issued, are so deposited in the office of the clerk, he shall, on payment of the usual fees, make out and certify copies of all the papers in such cause, and all facts appearing in such docket; and such copies are legal evidence. But if such records have not been deposited with the clerk, the plaintiff in any action may use, in place of such certified copy, an execution issued by the justice on such judgment, with an affidavit thereon made by the plaintiff or his attorney, that it is not satisfied, or satisfied in part only, as the case may be.

SEC. 29. Any trial justice, whose commission expires and is not renewed, may, during two years thereafter, certify copies of judgments rendered by him while in commission, and issue and renew executions thereon, which shall be obeyed by the officer, as if the commission of the justice had not expired; and after two years such copies may be certified and executions issued and renewed, as in case of the death of the justice.

SEC. 30. Executions remaining unsatisfied, in whole or in part, issued by a trial justice whose commission has expired, or who has removed from the county for which he was commissioned, or who has deceased, may be renewed by any trial justice in the same county, upon such vouchers as would be required by the trial justice who rendered the judgment.

TRIAL JUSTICES AND JUDGES SHALL NOT BE OF COUNSEL.

SEC. 31. No trial justice shall be of counsel for or give advice to either party, in a suit before him, or be subsequently employed as counsel or attorney in any case tried before him; nor hear or determine any civil action commenced by himself; and every action so commenced shall abate.

Records, how to be kept, and transcribed after death of justice.
R. S., c. 83, § 26.
61 Me., 565.
75 Me., 111.

Execution may be issued on the transcribed record.
R. S., c. 83, § 27.
61 Me., 566.

On removal or death, records shall be deposited with clerk.
R. S., c. 83, § 28.
—penalty, if executor or administrator neglects.
—duty of the clerk.

Proceedings, if records are not completed.
R. S., c. 83, § 29.
33 Me., 442.
60 Me., 258.

—when an execution may be used instead of a copy of the record.

Justice may certify copies and issue new executions after commission expires.
R. S., c. 83, § 30.
11 Me., 380.
35 Me., 137.

Unsatisfied executions of a trial justice, how renewed.
R. S., c. 83, § 31.
See § 25.
1897, c. 182.

Justice not to be of counsel.
R. S., c. 83, § 32.
91 Me., 201.
—such action shall abate.

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Judge shall not act in cases within jurisdiction of his court. 1903, c. 115.

SEC. 32. No judge of any municipal or police court shall give counsel or accept any retainer in relation to any cause, the subject matter of which shall be within the jurisdiction of the court over which he presides, nor in any manner become voluntarily interested, directly or indirectly, in any such cause.

JUSTICES OF THE PEACE.

Ex-officio, Justices of the peace. R. S., c. 83, § 33. 1895, c. 106. 66 Me., 271.

SEC. 33. Trial justices and judges of municipal and police courts are, ex-officio, justices of the peace and all their official acts, attested by them in either capacity, except those pertaining to the exclusive jurisdiction of trial justices and judges of municipal and police courts, are of equal effect.

To be commissioned for the state. R. S., c. 83, § 34. 77 Me., 589.

SEC. 34. Justices of the peace shall exercise their powers and duties, and shall be commissioned to act, within and for every county.

Note. Jurisdiction of trial justices, and judges of municipal and police courts to hear complaints by masters, of departure, without leave, of indentured child, c. 27, § 26; to provide for care and custody of abused or neglected children, c. 61, § 46; to enforce liens under c. 93, § 75; in actions of forcible entry and detainer, c. 96, § 3; in actions for penalties for trespasses on islands, c. 97, § 14; in replevin of beasts, c. 98, § 1, and of goods, § 9; in cases of libels for forfeited goods, c. 100, § 8; to act in poor debtor disclosures, c. 114, §§ 22, 68.

CHAPTER 86.

LEVY OF EXECUTIONS ON PERSONAL PROPERTY.

What goods may be sold on execution. R. S., c. 84, § 1.

SEC. 1. All chattels, real and personal, liable at common law to attachment, and not exempted therefrom by statute, may be taken and sold on execution as prescribed in this chapter. (a)

Coin and bank notes, how levied on. R. S., c. 84, § 2. 57 Me., 414.

SEC. 2. Current gold or silver coin may be taken on execution and paid to the creditor as money collected; and bank notes and all other evidences of debts, issued by any moneyed corporation and circulated as money, may be taken on execution, and paid to the creditor at their par value, if he will accept them; otherwise, they may be sold like other chattels.

Goods, when to be sold on execution. R. S., c. 84, § 3. 24 Me., 398. 61 Me., 531. 75 Me., 394.

SEC. 3. Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor, for four days at least after the day on which they were taken, exclusive of Sunday; and they shall be sold within fourteen days after the day of seizure, except as hereinafter provided, unless before the time of sale the debtor redeems them by otherwise satisfying the execution.

Notice of sale. R. S., c. 84, § 4. 60 Me., 206.

SEC. 4. The officer shall post public notice of the time and place of sale, at least forty-eight hours before the time thereof, in two or more public places in the town or place of sale.

Adjournments of sale; time. R. S., c. 84, § 5. 11 Me., 374. 34 Me., 442. 60 Me., 206.

SEC. 5. If at the time so appointed, the officer is prevented by sickness or other casualty from attending at such place, or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding six days after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment as required in the preceding section.

Adjournment of sale to another place. R. S., c. 84, § 6.

SEC. 6. For good reason, and for the purpose of obtaining a better price for the goods, he may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town. (b)

(a) 24 Me., 399; 51 Me., 557.

(b) 11 Me., 374; 74 Me., 553.