

# 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.

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BY THE AUTHORITY OF THE LEGISLATURE.



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## CHAP. 134.

the county  
commiss-  
sioners.  
R. S., c. 132, § 19.  
87 Me., 297.

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 others, and order the same to be paid out of the county treasury to the persons entitled thereto; but when such magistrate, or other person interested in such bill of costs, is one of the commissioners for such county, the supreme judicial or superior court shall have the same powers as the commissioners in other cases.

Costs in ap-  
pealed cases.  
R. S., c. 132, § 20.  
87 Me., 297.

SEC. 24. In cases carried to a higher court by appeal, recognizance or commitment, costs shall be taxed by the magistrate and certified with the papers.

## CHAPTER 134.

## COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.

## WHEN PERSONS MAY BE PROSECUTED WITHOUT INDICTMENT.

Criminal  
prosecutions  
must be by  
indictment.  
R. S., c. 133, § 1.

—excepted  
cases.

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

I. When prosecutions by information are expressly authorized by statute.

II. In proceedings before municipal and police courts, trial justices and courts martial.

## WHO MAY ISSUE CRIMINAL PROCESSES.

Justices of  
courts, and  
magistrates,  
may issue  
processes.  
R. S., c. 133, § 2.  
39 Me., 213, 482.

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

How officer  
may make  
oath.  
R. S., c. 133, § 3.

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.

## ARRESTS WITHOUT WARRANTS.

Officer may  
arrest, with-  
out warrant.  
R. S., c. 133, § 4.  
10 Me., 476.  
36 Me., 320.  
42 Me., 388.  
63 Me., 149.  
79 Me., 548.  
92 Me., 410.  
97 Me., 81.  
—liability.

SEC. 4. Every sheriff, deputy sheriff, constable, city or deputy marshal 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 they 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.

## ARRESTS IN OTHER COUNTIES.

Accused,  
escaping,  
may be  
pursued into  
other  
counties.  
R. S., c. 133, § 5.  
17 Me., 195.

SEC. 5. When a person charged with an offense 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 offense was committed.

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SEC. 6. If the offense charged is not punishable with 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 examination, may take his recognizance with sufficient sureties for his appearance at the next court, or before any magistrate having cognizance of the offense 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, who shall immediately deliver them to the clerk of the court or magistrate before whom the accused recognized to appear.

How he may be discharged, upon recognizance, in the county where he was arrested.  
R. S., c. 133, § 6.

TRANSFER OF PERSONS, CHARGED WITH CRIME IN TWO COUNTIES.

SEC. 7. When a person is imprisoned or held under arrest in one county, any justice of the supreme judicial court, in term time or vacation, may order his removal into another county, when complaint has been made and warrant issued, or an indictment has been found, charging the person so arrested or imprisoned, with the commission of a crime in such other county, for examination or trial under said complaint or indictment; but, before issuing such order, he shall be satisfied that the administration of speedy and impartial justice requires it.

Of the transfer of persons, when charged with crimes in two counties.  
R. S., c. 133, § 7.

SEC. 8. The officer holding the person described in such order, shall deliver him to the officer presenting it, upon receiving an attested copy of the same, and of the complaint and warrant, or indictment on which such order is founded. The officer receiving the accused person, shall bring him before the proper court or magistrate, in the county to which he is removed, for examination and trial, and make due return of his proceedings.

Duties of officer holding prisoner, and of officer holding court's order of removal.  
R. S., c. 133, § 8.

EXAMINATION OF OFFENDERS.

SEC. 9. Every person arrested for an offense 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.

Examination of persons arrested.  
R. S., c. 133, § 9.

SEC. 10. A magistrate may adjourn an examination before him, from time to time, for not more than ten days at a time, and the accused may recognize with sufficient sureties for his appearance before him at the time of adjournment; but if no sufficient sureties are offered, or the offense is not bailable, the accused shall be committed to jail by an order of the magistrate, stating briefly the offense 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.

Adjournment of an examination, on recognizance or commitment.  
R. S., c. 133, § 10.  
43 Me., 582.

SEC. 11. If the party so recognizing does not appear at the time of such adjournment, the magistrate shall record his default, and certify the recognizance and such record to the appellate court, there to be proceeded with as forfeited recognizances in criminal cases.

Proceedings, if party fails to appear.  
R. S., c. 133, § 11.

SEC. 12. When the accused is brought before a magistrate, he shall first examine on oath, in the presence of the accused, the complainant and witnesses for the prosecution, as to all pertinent facts, and then the

Examination.  
R. S., c. 133, § 12.  
71 Me., 204.

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witnesses in defense; the witnesses on both sides may be examined, each one separately from all the others; and the witnesses for the accused may be kept separate from those against him 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.

When accused shall be discharged. R. S., c. 133, § 13.

—complaint may be adjudged frivolous or malicious; if so, complainant shall pay costs.

—complainant may appeal.

—proceedings, if there is probable cause to charge the accused.

SEC. 13. If on the whole examination it appears that no offense has been committed or that there is not probable cause to charge the accused, he shall be discharged, and on motion of the respondent the magistrate shall render judgment whether or not the complaint is frivolous or malicious, and if the magistrate judges the complaint to be frivolous or malicious, he shall order the complainant to pay the costs of prosecution and shall issue execution in favor of the county and against the complainant for such sum, and may receive and pay over said costs to the county treasurer for the use of the county, and if the same are not paid, the magistrate shall return said execution to the county commissioners, for the use of the county. The complainant has the same right of appeal as in civil cases. But if it appears that an offense has been committed and that there is probable cause to charge the accused, and the offense 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 await trial. If the offense is within the jurisdiction of the magistrate, he shall try it, and award sentence thereon. (a)

## PROCEEDINGS ON COMMITMENT OR BINDING OVER.

Sureties for respondent in criminal prosecution shall make statement of property. 1903, c. 125, § 1.

SEC. 14. Any person offering to recognize before any trial justice, judge of a police or municipal court, or bail commissioner, as surety for the appearance before the supreme judicial court or a superior court of any respondent in a criminal prosecution, whether such respondent be an appellant from the finding of a trial justice or judge of a police or municipal court, or be ordered to recognize to await the action of the grand jury, or be arrested in vacation on *capias* issued on an indictment pending in such supreme judicial or superior court, may be required to file with said trial justice, judge or bail commissioner, a written statement signed and sworn to by said surety, describing all real estate owned by him within the state with sufficient accuracy to identify it, and giving in detail all encumbrances thereon and the value thereof, such valuation to be based on the judgment of said surety. Said certificate shall remain on file with the original papers in said case and a certified copy thereof shall be transmitted by the magistrate taking such bail to the clerk of the court before which said respondent so recognizes for his appearance.

Responsibility of bail. 1903, c. 125, § 2.

SEC. 15. All bail shall be responsible for the appearance of their principal at all times during the term of court at which they agree to have him, until verdict or certification of the case to the law court on demurrer or exceptions, unless said bail shall have sooner surrendered him into the custody of the sheriff or jailer of the county in which the case is pending.

Magistrate shall recognize material witnesses, or commit them. R. S., c. 133, § 14.

SEC. 16. When the accused is committed, or is bound over to a higher court for trial, the magistrate shall order the material witnesses against him to recognize to appear and testify at said court; and when he is satisfied that 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

(a) 35 Me., 131; 37 Me., 136; 41 Me., 431; 47 Me., 464; 50 Me., 51; 71 Me., 204; 75 Me., III; 89 Me., 43.

sufficient sureties; and if, in either case, he refuses to recognize as required, he may be committed to prison and remain until discharged by law.

SEC. 17. Any person may so recognize for a minor to appear as a witness, or the magistrate may take the recognizance of such minor in a sum not exceeding twenty dollars, which shall be valid notwithstanding such disability.

How minors may recognize.  
R. S., c. 133, § 15.

SEC. 18. Any justice of the supreme judicial or superior court, or bail commissioner within his county, on application of a prisoner committed before verdict of guilty, for a bailable offense, or for not finding sureties to recognize for him, may inquire into the case and admit him to bail.

Who may bail accused after commitment.  
R. S., c. 133, § 16.  
85 Me., 544.  
95 Me., 453.

SEC. 19. All 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, etc.  
R. S., c. 133, § 17.  
61 Me., 175.  
75 Me., 111.

WHEN PROSECUTIONS MAY BE DISMISSED.

SEC. 20. When a person has recognized or is committed by a magistrate, or is indicted, or held upon a complaint and warrant for an assault and battery or other misdemeanor, for which the party injured has a remedy by 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, the court, on payment of all costs, may stay 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. 133, § 18.  
1899, c. 9.  
92 Me., 411.

SEC. 21. 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.

Such discharges shall be filed with clerk or jailer.  
R. S., c. 133, § 19.  
92 Me., 411.

REMEDIES ON RECOGNIZANCES. BAIL, HOW TO BE DISCHARGED.

SEC. 22. When a 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 cosurers as the prosecuting officer directs, but no costs shall be taxed for travel in the suit; and 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.

Forfeited recognizances shall be defaulted.  
R. S., c. 133, § 20.  
33 Me., 200, 539.  
41 Me., 345.  
79 Me., 176.

SEC. 23. Bail in criminal cases, at any time before default upon their recognizance, may exonerate themselves by surrendering their principal into court, or to the jailer in the county where the principal is held to appear, and delivering to the jailer a certified copy of the recognizance; and the jailer shall receive and detain such principal; and any person, so surrendered, may be afterwards bailed in the same manner as if he had been committed without recognizance.

Bail, how exonerated by surrender before default upon their recognizance.  
R. S., c. 133, § 21.

SEC. 24. When the penalty of a recognizance in a criminal case is forfeited, on scire facias against principal, sureties or witnesses, the court,

When court may remit penalty, etc.

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R. S., c. 133, § 22.  
41 Me., 536.  
50 Me., 55.

—or sureties  
may surren-  
der principal  
in court.

Liquor cases  
excepted.  
R. S., c. 133, § 23.  
See c. 29,  
§§ 63, 68.

Suit on any  
recognizance  
may be dis-  
missed.  
R. S., c. 133, § 24.  
See c. 29, § 63.

Unessential  
forms in  
recogni-  
zances, etc.  
R. S., c. 133, § 25.  
59 Me., 413.  
60 Me., 107.  
71 Me., 204.  
73 Me., 555.  
81 Me., 410.

on application of any defendant, if satisfied that the default of the principal was without the consent or connivance of the bail, 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 may, on application therefor, be discharged by paying costs of suit, *provided*, that the court is satisfied as aforesaid.

SEC. 25. The preceding section is not applicable to recognizances taken under any of the last fifty-nine sections of chapter twenty-nine.

SEC. 26. Whenever, in any suit of scire facias on a recognizance taken in any criminal case, it appears that the surety has surrendered the principal into court for sentence, and that the principal has actually been sentenced upon the indictment or complaint on which the recognizance was taken, such suit shall be dismissed upon payment of costs.

SEC. 27. No action on any recognizance shall be defeated, nor judgment 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 offense charged, that the magistrate was authorized to require and take the same.

## CHAPTER 135.

## PROCEEDINGS IN COURT IN CRIMINAL CASES.

## OATH AND DUTIES OF GRAND JURORS.

Clerk shall  
prepare list of  
grand jurors.  
R. S., c. 134, § 1.  
See c. 108.

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 venire, 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 impaneled, 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 impaneled 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.

(a) 36 Me., 130; 38 Me., 201, 300; 49 Me., 576, 594; 51 Me., 397.