

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

SEVENTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

PASSED AUGUST 5, 1930, AND TAKING  
EFFECT NOVEMBER 10, 1930



By the Authority of the Legislature

---

AUGUSTA  
KENNEBEC JOURNAL PRINT

an action of assumpsit, the full value thereof with interest at the rate of twelve per cent yearly, with costs of suit; and may prove and recover the real value thereof, whatever was the price at which it was sold.

See c. 14, § 70; c. 56, § 116; 69 Me. 468; 74 Me. 43.

## CHAPTER 99.

### Bail in Civil Actions.

**Sec. 1. Bail-bond; its form; to be returned with writ. R. S. c. 90, § 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.

1 Me. 336; 4 Me. 13; 8 Me. 423; 40 Me. 125; 76 Me. 265; 96 Me. 436.

**Sec. 2. Number of sureties. R. S. c. 90, § 2.** No officer is obliged to accept a bail-bond unless signed by at least two sureties, 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 is liable to the plaintiff for any deficiency thereof.

2 Me. 48.

**Sec. 3. When obligors are held. R. S. c. 90, § 3.** A bail-bond binds the obligors although 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. Surrender of principal before entry; proceedings and effect. R. S. c. 90, § 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.

2 Me. 383; 76 Me. 266.

**Sec. 5. Names of bail to be entered on execution. R. S. c. 90, § 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 places 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.

4 Me. 13; 76 Me. 266.

**Sec. 6. Officer to notify bail; his fees must be paid. R. S. c. 90, § 6.** The officer holding the execution shall, fifteen days at least before its expiration, whether the debtor has given bail to the arresting officer or the jailer, notify each of the bail personally, or by leaving a notice in writing, by him signed, at the bail's 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 service of a

writ, and for travel, 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.

See c. 126, § 4; 7 Me. 81.

**Sec. 7. Surrender of principal in court.** R. S. c. 90, § 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.

19 Me. 412; 20 Me. 481; 76 Me. 266.

**Sec. 8. In case of avoidance, officer's duty; liability of bail.** R. S. c. 90, § 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 defense.

76 Me. 266.

**Sec. 9. When scire facias against bail may issue.** R. S. c. 90, § 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 he need not declare on the bail-bond, but may merely allege that the defendants became bail in the original action.

62 Me. 237.

**Sec. 10. Pleadings and defense by bail.** R. S. c. 90, § 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 defense 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.

**Sec. 11. Surrender of principal on scire facias; exoneration of bail in civil action after entry of action.** R. S. c. 90, § 11. 1929, c. 68. The bail may surrender the principal in court before final judgment on the scire facias, and on paying all the costs on the scire facias, they shall be discharged; and the principal shall be committed to jail to remain for 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.

Any bail may, after the action is entered, and before final judgment in the original suit, exonerate himself from all liability, by surrendering his principal to the jail in the county where the writ is returnable, and within five days thereafter leaving with the jailer an attested copy of the writ or process whereby the arrest was made, of the return endorsed thereon, and of the bail-bond, and notifying, in writing, the clerk of the court 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. 12. Proceedings, when bail is taken in a justice action.** R. S. c. 90, § 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

## CHAP. 100

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 twenty dollars.

**Sec. 13. Surrender of principal before trial justice, proceedings; effect.** R. S. c. 90, § 13. If the bail, at any time before final judgment in the original suit or on scire facias, bring the principal before the justice, and procure 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.

**Sec. 14. Officer's fees; duty and liability for neglect.** R. S. c. 90, § 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.

**Sec. 15. Surrender in such case, before and after judgment.** R. S. c. 90, § 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; but if he is surrendered 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 the copy to the jailer with the prisoner; which shall be a sufficient warrant to the officer for receiving and conveying him to jail, and to the jailer for holding him in custody.

71 Me. 406; 77 Me. 24.

**Sec. 16. Remedy of bail against principal.** R. S. c. 90, § 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.

---

## CHAPTER 100.

### Trustee Process.

- Sections 1-66 General Provisions as to Procedure.
- Sections 67-72 Scire Facias.
- Sections 73-79 Miscellaneous Provisions.
- Sections 80-84 Trustee Process in Inferior Courts.
- Section 85 Trustee Action on Judgment may be Abated.
- Sections 86-87 Proceedings when Demand Against Trustee has been Assigned.

### General Provisions as to Procedure.

**Sec. 1. Actions in which trustee process may be used.** R. S. c. 91, § 1. All personal actions, except those of detinue, replevin, actions on the case for malicious prosecution, for slander by writing or speaking, and for assault and battery, may be commenced by trustee process in the superior court; or when the amount demanded in damages is not less than five dollars, nor more than twenty dollars, before a municipal or police court, or a trial justice unless otherwise limited in the act establishing such court.

\*57 Me. 408; 70 Me. 242; \*120 Me. 379.