

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)

EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT
DECEMBER 30, 1944

VOLUME I



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT

Fees in criminal cases.

Receiving a complaint and issuing a warrant	\$1.00
Entering a complaint, swearing witnesses, filing papers, and certifying costs to the county commissioners	.75
Trial of an issue, each day	3.00
Recognizing parties charged with crimes for appearance at the superior court, certifying and returning the same	.50
Mittimus for the commitment of any person	1.00
Issuing a subpoena separate from the warrant	.10
Taxing costs	.25
Copies of papers for the superior court	2.00
Witnesses in civil and criminal cases:	
For each day's attendance	2.00
For each mile's travel going and returning home	.06

The aforesaid fees when received shall be disposed of as provided by the public laws or by the acts establishing the respective courts.

Sec. 10. Fees for entering appeal. R. S. c. 126, § 25. 1933, c. 118, § 1. No trial justice, or judge, or other officer of any municipal court shall demand or receive any fees for entering an appeal or taking a recognizance to prosecute it, in a criminal case. The legal fees therefor may be taxed in the bill of costs, and certified and paid like other fees.

See c. 133, § 25, re limitation of fees of magistrates in criminal cases.

CHAPTER 97.

TRIAL JUSTICES. JUSTICES OF THE PEACE. NOTARIES PUBLIC.

Sections 1-11	Trial Justices; Appointment, Qualification, and Jurisdiction.
Section 12	Executions.
Section 13	Scire Facias.
Sections 14-19	Records.
Section 20	Trial Justices not to be of Counsel.
Section 21	Justices of the Peace.
Section 22	Fees of Trial Justices and Justices of the Peace.
Sections 23-31.	Notaries Public and Protests.

Trial Justices; Appointment, Qualification, and Jurisdiction

Sec. 1. Trial justices, appointment, and tenure. R. S. c. 97, § 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 7 years from the date of their commissions.

See c. 16, § 3, sub-§ IV, re authority of department of audit; 63 Me. 268; 64 Me. 197; 96 Me. 498.

Sec. 2. Jurisdiction in civil actions. R. S. c. 97, § 2. 1933, c. 118, § 1. 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 \$20, 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 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.

See c. 96, § 1, re disposition of fines, costs, and forfeitures; 12 Me. 18; 13 Me. 140; 15 Me. 189; 18 Me. 28; 27 Me. 95; 29 Me. 543; 35 Me. 131; 39 Me. 477; 43 Me. 432; 65 Me. 169; 78 Me. 540; 82 Me. 98; 86 Me. 80; 91 Me. 576; 102 Me. 523.

Sec. 3. Writs, form, and service. R. S. c. 97, § 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 7, nor more than 60 days before the return day thereof.

Sec. 4. Actions, where to be brought, when parties live in same county. R. S. c. 97, § 8. 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 1 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.

68 Me. 248.

Sec. 5. When parties live in different counties. R. S. c. 97, § 9. When the parties reside in different counties, such actions shall be commenced before any disinterested trial justice residing in the 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.

91 Me. 576.

Sec. 6. Writs issued by a trial justice returnable before another in same county. R. S. c. 97, § 11. 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.

Sec. 7. Writ, when returnable; justice to be present with writ. R. S. c. 97, § 12. No writ shall be made returnable before any trial justice, at an earlier hour than 9 o'clock in the forenoon, nor later than 4 o'clock in the afternoon. No judgment of such justice is valid if he is not present with the plaintiff's writ at the place, within 1 hour after the time therein named, unless the case is continued by some other justice, as provided in section 9.

52 Me. 246.

Sec. 8. Nonsuit or default, after 1 hour; may be stricken off. R. S. c. 97, § 13. The justice may enter judgment on nonsuit or default against the party failing to appear at the end of 1 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 24 hours thereafter, upon such terms as he deems reasonable.

53 Me. 401.

Sec. 9. When justice cannot attend, another may continue proceedings. R. S. c. 97, § 14. 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 30 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.

17 Me. 415; 18 Me. 28; 31 Me. 337; 61 Me. 579; 70 Me. 447.

Sec. 10. Where court may be held; pleadings; limitation of costs. R. S. c. 97, § 15. 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 1 travel and attendance shall be taxed for him, unless the defendant agrees, in writing, to such continuance.

70 Me. 448; 78 Me. 76.

Sec. 11. Judgment on default, or trial. R. S. c. 97, § 16. 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 \$20, as he finds due to the plaintiff, with costs, and issue execution.

49 Me. 413.

Executions

Sec. 12. Issue and return of executions. R. S. c. 97, § 22. Executions shall not be issued by a trial justice until 24 hours after the rendition of judgment, and shall be made returnable in 3 months from the day when they are issued.

11 Me. 178; 38 Me. 532; 87 Me. 439.

Scire Facias

Sec. 13. When writs of scire facias may issue. R. S. c. 97, § 24. 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.

Records

Sec. 14. Records. R. S. c. 97, § 26. 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

refuses to produce it or to be examined respecting it on oath, the justice may commit him 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.

61 Me. 565; 75 Me. 111.

Sec. 15. Execution may be issued on the transcribed record. R. S. c. 97, § 27. 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 1 year from the time when the judgment was rendered, unless on scire facias.

61 Me. 566.

Sec. 16. On removal or death, records to be deposited with clerk; penalty for neglect; duty of the clerk. R. S. c. 97, § 28. 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 \$100. 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. 17. Proceedings, if records are not completed; when an execution may be used instead of a copy of the record. R. S. c. 97, § 29. 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, the clerk 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. 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.

33 Me. 442; 60 Me. 258.

Sec. 18. Justice may certify copies and issue new executions after commission expires. R. S. c. 97, § 30. Any trial justice, whose commission expires and is not renewed, may, during 2 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 2 years such copies may be certified and executions issued and renewed, as in case of the death of the justice.

11 Me. 380; 35 Me. 137.

Sec. 19. Unsatisfied executions of a trial justice, how renewed. R. S. c. 97, § 31. 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.

See § 14.

Trial Justices not to be of Counsel

Sec. 20. Justice not to be of counsel; abatement of action. R. S. c. 97, § 32. 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.

91 Me. 201.

Justices of the Peace

Sec. 21. Justices of the peace. R. S. c. 97, § 35. Justices of the peace shall exercise their powers and duties and shall be commissioned to act within and for every county.

See Const. of Me., Art. V, Part 1, § 8, re nomination; 1941 c. 327, re acts of justices of the peace who become police officers, validated; 77 Me. 589.

Fees of Trial Justices and Justices of the Peace

Sec. 22. Fees of trial justices and justices of the peace. R. S. c. 126, § 1. The fees of trial justices and justices of the peace shall be as follows:

For every blank writ of attachment and summons thereon, or original summons, 10c.

For every subpoena for one or more witnesses, 10c.

Entry of an action, or filing a complaint in civil causes, including filing of papers, swearing of witnesses, examining, allowing, and taxing the bill of costs, and entering and recording judgment, 30c. Each continuance in a civil action, 5c.

Trial of an issue, in a civil action, \$3, and when more than 1 day is used in the trial, \$2 for each day, after the first, actually employed.

79 Me. 166.

Copy of a record or other paper, at the rate of 12c a page.

Writ of execution, 15c.

For a recognizance to prosecute an appeal, including principal and surety, 20c.

Taking a deposition, affidavit, or disclosure of a trustee, in any cause not pending before himself, 20c; for writing the same with the caption, and for the notification to the parties and witnesses, at the rate of 12c a page; the justice who takes such affidavit, deposition, or disclosure shall certify the fees of himself, of the witnesses, or party disclosing, and of the officers serving the notifications.

Taking a deposition in perpetual memory of the thing, the same fees as in taking other depositions.

Administering an oath in all cases, except on a trial or examination before himself, and to qualify town and parish officers, and a certificate thereof, 25c, whether administered to one or more persons at the same time.

Taking the acknowledgment of a deed with one or more seals, if it is done at the same time, and certifying the same, 25c.

Granting a warrant of appraisal in any case, and swearing appraisers, 50c.

Receiving a complaint, and issuing a warrant in criminal cases, \$1.

Entering a complaint in a criminal prosecution, swearing witnesses, rendering and recording judgment, examining, allowing, and taxing the costs, and filing the papers, 75c.

Trial of an issue in a criminal case, \$3; and when more than 1 day is used in the trial, \$2 for each day after the first actually employed.

Recognizing persons charged with crimes for their appearance at the superior court, and for certifying and returning the same, with or without sureties, 25c.

Mittimus for the commitment of any person on a criminal accusation, 25c.

In a bastardy process, the fees may be charged as for like services in a criminal prosecution.

Drawing a rule for submission to referees, and acknowledging the same, 33c.

Writ to remove a nuisance, 33c.

Calling a meeting of a corporation, 50c.

For an examination of a debtor under the provisions of chapter 107, \$2 for each day employed in such examination, in full payment for all official services and expenses in such examination, exclusive of travel. For travel on official duty, 12c a mile one way; but not to be taxed for over 10 miles one way, and in no case shall there be constructive travel.

In all cases where the attendance of two or more justices is required, each is entitled to the fees prescribed for all services rendered by him personally.

Notaries Public and Protests

Sec. 23. Notary's seal; authority to administer oaths. R. S. c. 97, § 36. Every notary public shall constantly keep a seal of office, whereon is engraven his name, and the words "Notary Public" and "Maine" or its abbreviation "Me.," with the arms of state, or such other device as he chooses. When authorized by the laws of this state or of any other state or country to do any official act, he may administer any oath necessary to the completion or validity thereof.

See Const. of Me., Art. V, Part 1, § 8, re nomination; 1941, c. 327, re acts of notaries public who become police officers, validated.

Sec. 24. Duty as to protests of losses, and record and copies thereof. R. S. c. 97, § 37. When requested, every notary public shall enter on record all losses or damages sustained or apprehended by sea or land, and all averages, and such other matters as, by mercantile usage, appertain to his office; grant warrants of survey on vessels; and all facts, extracts from documents, and circumstances so noted shall be signed and sworn to by all the persons appearing to protest; he shall note, extend, and record the protest so made; and grant authenticated copies thereof, under his signature and notarial seal, to those who request and pay for them.

Sec. 25. Demand and notice on notes, bills, etc. R. S. c. 97, § 38. Any notary public may, in behalf of any person interested, present any bill of exchange or other negotiable paper for acceptance or payment to any party liable therefor; notify indorsers or other parties thereto; record and certify all contracts usually recorded or certified by notaries; and in general, do all acts which may be done by notaries public according to the usages of merchants and authorized by law; he may do all things that justices of the peace are or may be authorized to do and shall have the same territorial jurisdiction; he shall record all mercantile and marine protests by him noted and done in his official capacity.

15 Me. 454; 16 Me. 43, 247, 260; 17 Me. 363; 18 Me. 295; 21 Me. 219; 86 Me. 214;
*113 Me. 391.

Sec. 26. Acts of notary who is interested in corporation; when unlawful. R. S. c. 97, § 39. Any notary public, who is a stockholder, director, officer, or employee of a bank or other corporation, may take the acknowledgment of any party to any written instrument executed to or by such corporation, or may administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or may protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation: provided that it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation, where such notary is individually a party to such instrument.

Sec. 27. Copies, evidence. R. S. c. 97, § 40. The protest of any foreign or inland bill of exchange, promissory note, or order, and all copies or certificates by him granted shall be under his hand and notarial seal, and shall be received in all courts as legal evidence of such transactions, and as to the notice given to the drawer or indorser, and of all facts therein contained.

15 Me. 138; 16 Me. 43, 183, 260; 23 Me. 287, 554; *26 Me. 50; 41 Me. 304, 323; 43 Me. 154, 205; 49 Me. 27; 50 Me. 597; *53 Me. 411.

Sec. 28. When office vacated, records to be deposited with clerk of courts; penalty. R. S. c. 97, § 41. On the resignation or removal from office of any notary public, his records shall be deposited with the clerk of the judicial courts in the county for which he was appointed. Any notary public who shall, for a period of 3 months, neglect to comply with the above requirement, and any administrator or executor representing a deceased notary public who shall, for a period of 3 months, neglect to comply with such requirement shall forfeit not less than \$50, nor more than \$500.

Sec. 29. Penalty for injuring or concealing such records. R. S. c. 97, § 42. Whoever knowingly destroys, defaces, or conceals such record forfeits not less than \$200, nor more than \$1,000; and is liable for damages to any person injured, in an action on the case.

Sec. 30. Duties of clerks relating to records; fees. R. S. c. 97, § 43. All clerks of courts shall receive and safely keep all such records and papers lodged in their offices and give attested copies thereof, for which they shall receive the same fees as a notary; and such copies shall be as valid as if certified by notaries.

16 Me. 183.

Sec. 31. Fees for protest, and appropriation of penalties. R. S. c. 97, § 44. For each protest of a bill or note, notifying parties, making his certificate thereof in due form and recording his proceedings, a notary public shall receive \$1.50. All penalties provided in sections 28 and 29 accrue, one-half to the state and one-half to the prosecutor.