

MAINE STATE LEGISLATURE

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CHAPTER 113.

HABEAS CORPUS.

Sec. 1. Right to the writ. R. S. c. 113, § 1. Every person unlawfully deprived of his personal liberty by the act of another, except in the cases hereinafter mentioned, shall of right have a writ of habeas corpus according to the provisions herein contained.

See Const. of Me., Art. I, § 10, re habeas corpus; 48 Me. 127; 72 Me. 202; *104 Me. 81; 110 Me. 77.

Sec. 2. Minors enlisted into the army or navy are entitled to writ. R. S. c. 113, § 2. A minor enlisted within the state into the army or navy of the United States, without the written consent of his parent or guardian, shall have all the benefits of this chapter on the application of himself, parent, or guardian.

Sec. 3. Parent or guardian of minor may have writ. R. S. c. 113, § 3. The parent or guardian of any minor, imprisoned or restrained of his liberty, shall be entitled to the writ of habeas corpus for him, if he would be entitled to it on his own application.

Sec. 4. Courts may grant writ, on application in behalf of one incapable of applying. R. S. c. 113, § 4. The supreme judicial court or the superior court or any justice of either of said courts, on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty, who would be entitled to it on his own application, when from any cause he is incapable of making it.

*104 Me. 81; 110 Me. 81.

Sec. 5. Persons not entitled of right. R. S. c. 113, § 5. The following persons shall not of right have such writ:

I. Persons committed to and confined in prison for treason, felony, or suspicion thereof, or as accessories before the fact to a felony, when the same is plainly and specially expressed in the warrant of commitment.

II. Persons convicted, or in execution upon legal process, criminal or civil.

III. Persons committed on mesne process on any civil action, on which they are liable to be arrested and imprisoned.

See §§ 11, 22; 95 Me. 453; 115 Me. 513.

Sec. 6. Application, how to be made. R. S. c. 113, § 6. Application for such writ by any person shall be made to the supreme judicial or superior court in the county where the restraint exists, if in session; if not, to a justice of either of said courts; and when issued by the court, it shall be returnable thereto; but if the court is adjourned without day or for more than 7 days, it may be returned before a justice of either of said courts, and be heard and determined by him.

*104 Me. 81.

Sec. 7. Writ of habeas corpus, how returnable. R. S. c. 113, § 7. When awarded by a justice of the supreme judicial court or of the superior court, such writ may issue, under his hand and seal, or upon his order from any clerk's office in vacation, as if issued by the court, and run throughout the state, and may be returnable before the court, or before himself, or any other justice thereof, and shall be entered upon the docket of the court in the county where returnable, and the judgment shall there be recorded by the clerk.

Sec. 8. Application, how made; when the writ shall not issue. R. S. c. 113, § 8. The application shall be in writing, signed and sworn to by the person making it, stating the place where, and the person by whom, the restraint is made; the applicant shall produce to the court or justice a copy of the precept by which the person is so restrained, attested by the officer holding it; and if, on inspection, it appears to the court or justice that such person is thereby lawfully imprisoned or restrained of his liberty, a writ shall not be granted; unless from examination of the whole case, the court or justice is of opinion that it ought to issue.

65 Me. 131.

Sec. 9. Proceedings, if excessive bail is demanded. R. S. c. 113, § 9. If it appears that he is imprisoned on mesne process for want of bail, and the court or justice thinks that excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged.

See § 16; 61 Me. 419.

Sec. 10. If officer refuses a copy of precept, writ to issue. R. S. c. 113, § 10. If the prison keeper or other officer having the custody of such person refuses or unreasonably delays to deliver to the applicant an attested copy of the precept by which he restrains him, on demand therefor, the court or justice, on proof of such demand and refusal, shall forthwith issue the writ as prayed for.

Sec. 11. Form of writ in cases mentioned in § 5. R. S. c. 113, § 11. When such writ is issued on an application in behalf of any person described in section 5, it shall be substantially as follows:

“STATE OF MAINE.

C—, ss. To A. B., of —;

[L. S.]

Greeting.

We command you, that you have the body of C. D., in our prison, at—, under your custody,” (or by you imprisoned and restrained of his liberty, as the case may be,) “as it is said, together with the day and cause of his taking and detaining, by whatever name he is called or charged, before our supreme judicial” (or superior) “court, held at —, within and for the county of —, immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf, and have you there this writ.

Witness — —, Esquire, our —, at —, this — day of —, in the year 19—.

— —, Clerk.”

The like form shall be used by any justice of said court, changing what should be changed, when such writ is awarded by him.

See § 22.

Sec. 12. Time of service, return and tender of fees. R. S. c. 113, § 12. When such writ is offered to the officer to whom it is directed, he shall receive it; on payment or tender of such sum as the court or justice thereof directs, he shall make due return thereof within 3 days if the place of return is within 20 miles of the place of imprisonment; if over 20, and less than 100 miles, within 7 days; and if more than 100 miles, within 14 days; but if such writ was issued against such officer, on his refusal or neglect to deliver, on demand, to the applicant a copy of the precept by which he restrained the person of his liberty, in whose behalf application was made, then the officer shall obey the writ without payment or tender of expenses.

Sec. 13. Officer, when he makes return, to bring the body of person restrained; proceedings, if person is sick and cannot be brought. R. S. c. 113, § 13. The person making the return shall, at the same time, bring the body of the party, as commanded in the writ, if in his custody or power or under his restraint, unless prevented by sickness or infirmity of such party; and in such case that fact shall be stated in the return; and if proved to the satisfaction of the court or justice, a justice of the court may proceed to the place where the party is confined and there make his examination, or may adjourn it to another time, or make such other order in the case as law and justice require.

Sec. 14. Examination of the causes of restraint. R. S. c. 113, § 14. On return of the writ, the court or justice, without delay, shall proceed to examine the causes of imprisonment or restraint; and may adjourn such examination from time to time.

*101 Me. 401.

Sec. 15. Persons interested must be notified before prisoner is discharged. R. S. c. 113, § 15. When it appears that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person or his attorney, if within the state or within 30 miles of the place of examination, to appear and object, if he sees cause; and if imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the attorney-general, or other attorney for the state, that he may appear and object, if he thinks fit.

Sec. 16. Proceedings in court. R. S. c. 113, § 16. The party imprisoned or restrained may deny allegations of fact in the return or statement, and may allege other material facts; and the court or justice may, in a summary way, examine the cause of imprisonment or restraint; hear evidence produced on either side, and if no legal cause is shown for such imprisonment or restraint, the court or justice shall discharge him; except as provided in section 9.

6 Me. 466; 32 Me. 441; *36 Me. 428; 47 Me. 86; *101 Me. 401.

Sec. 17. Party detained for any bailable offense to be admitted to bail. R. S. c. 113, § 17. If the party is imprisoned and detained for a bailable offense, he shall be admitted to bail, if sufficient bail is offered; and if not, he shall be remanded, with an order of the court or justice, expressing the sum in which he shall be held to bail, and the court at which he shall be bound to appear; and a justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

*95 Me. 453.

Sec. 18. Form of writ, if the restraint is not by an officer. R. S. c. 113, § 18. In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, constable, jailer, or marshal, deputy marshal, or other officer of the courts of the United States, the writ shall be in the following form, viz:

“STATE OF MAINE.

[L. S.] To the sheriffs of our several counties and their respective deputies,
Greeting.

We command you, that you take the body of C. D., of —, imprisoned and restrained of his liberty, as it is said, by A. B., of —, and have him before our supreme judicial” (or superior) “court, held at —, within and for our county

of —, immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A. B. then and there to appear before our said court, to show cause for taking and detaining said C. D., and have you there this writ with your doings thereon.

Witness, — —, Esquire, our —, at —, this — day of —, in the year 19—. — —, Clerk.”

See § 22; 110 Me. 81.

Sec. 19. Issue and service of writ. R. S. c. 113, § 19. The writ described in the preceding section may be issued by the supreme judicial court or superior court sitting in any county in which the person in whose behalf application is made is restrained, or by any justice thereof, the form to be varied so far as necessary when issued by a justice of the court; and may be served in any county in the state.

Sec. 20. If the person restraining is unknown, how to be designated. R. S. c. 113, § 20. The person having custody of the prisoner may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name; and any one served with the writ shall be deemed the person thereby intended.

Sec. 21. If person restrained is unknown. R. S. c. 113, § 21. The person restrained shall be designated by his name, if known; if unknown or uncertain, in any other way so as to make known who is intended.

Sec. 22. Form of return in cases mentioned in §§ 11 and 18. R. S. c. 113, § 22. In cases under the provisions of section 11, the person who makes the return, and in cases under the provisions of section 18, the person in whose custody the prisoner is found, shall state in writing to the court or justice before whom the process is returned, plainly and unequivocally:

I. Whether he has or has not the party in his custody or power, or under restraint;

II. If he has, he shall state, at large, the authority and true and whole cause of such imprisonment or restraint, upon which the party is detained; and,

III. If he has had the party in his custody or power or under his restraint and has transferred him to another, he shall state particularly to whom, at what time, for what cause, and by what authority such transfer was made.

Sec. 23. Authentication of return. R. S. c. 113, § 23. Such return or statement shall be signed and sworn to by the person making it, unless he is a sworn public officer and makes and signs his return in his official capacity.

Sec. 24. How party is to be kept. R. S. c. 113, § 24. The party may be bailed to appear from day to day until judgment is rendered; or remanded or committed to the sheriff or placed in custody, as the case requires.

Sec. 25. Neglect of officer to deliver copy of precept, penalty. R. S. c. 113, § 25. If an officer refuses or neglects, for 4 hours, to deliver a true and attested copy of the warrant or process by which he detains a prisoner to any person who demands it and tenders the fees therefor, he forfeits to such prisoner \$200.

See § 31; *71 Me. 407.

Sec. 26. Penalty if officer neglects to serve writ; contempt proceedings. R. S. c. 113, § 26. If any person or officer to whom such writ is directed refuses to receive it or neglects to obey and execute it as required, and no sufficient cause

is shown therefor, he forfeits to the aggrieved party \$400; and the court or justice before whom the writ was returnable shall proceed forthwith by attachment as for a contempt, to compel obedience to the writ, and to punish for the contempt.

See §§ 27, 31.

Sec. 27. Attachment against a sheriff; service. R. S. c. 113, § 27. If such attachment is issued against a sheriff or his deputy, it may be directed to any person therein designated, who shall thereby have power to execute it, and the sheriff or his deputy may be committed to jail on such process in any county but his own.

Sec. 28. Proceedings when person refuses to obey writ. R. S. c. 113, § 28. If the person to whom the writ is directed refuses to obey and execute it, the court or justice may issue a precept to any officer or other person therein named, commanding him to bring the person for whose benefit the writ was issued before such court or justice; and the prisoner shall thereupon be discharged, bailed, or remanded as if brought in on habeas corpus.

Sec. 29. Persons discharged on habeas corpus, not to be rearrested; exceptions. R. S. c. 113, § 29. No person discharged by habeas corpus shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail; or unless, after a discharge for defect of proof or some material defect in the commitment in a criminal case, he is arrested on sufficient proof and committed by legal process for the same offense.

101 Me. 401.

Sec. 30. Conveyance to prison of persons ordered to be committed; penalty for eluding service. R. S. c. 113, § 30. A person ordered to be committed to prison on a criminal charge shall be carried to such prison as soon as may be, and shall not be delivered from one officer to another except for easy and speedy conveyance; nor removed without his consent from one county to another, unless by habeas corpus; and if any one having in his custody or under his power a person entitled to a writ of habeas corpus, whether issued or not, transfers him to the custody of another, or changes his place of confinement, with intent to elude the service of such writ, he forfeits \$400 to the party aggrieved.

Sec. 31. Penalty is no bar to action. R. S. c. 113, § 31. No penalty established by the provisions of this chapter shall bar any action at common law for damages for false imprisonment.

See c. 99, § 93, re false imprisonment.

Sec. 32. Third person may appear for party, by stipulating for costs. R. S. c. 113, § 32. When a person is unlawfully carried out of the state or is imprisoned in a secret place, any other person may appear for him in an action therefor in his name, who shall stipulate for the payment of costs as the court orders.

Sec. 33. Bail; exceptions. R. S. c. 113, § 33. Nothing in this chapter shall restrain the supreme judicial court or the superior court in term time, or any justice thereof in vacation, from bailing a person for any offense, when the circumstances of the case require it; except persons committed by the governor and council, senate, or house of representatives, for causes mentioned in the constitution.

See Const. of Me. Art. I, § 10, re bailable offences; Art. IV, Part 3, § 6, re legislature may punish for contempt.

Sec. 34. Bail commissioners appointed by court; limitations. R. S. c. 113, § 34. 1935, c. 68. The superior court sitting in each county shall appoint from the number of justices of the peace resident in the county, one or more bail commissioners, who shall hold office during the pleasure of the court. All bail commissioners acting under an appointment by a justice of the supreme judicial court shall continue in office during the pleasure of the superior court. No judge, clerk, or recorder of any municipal court, or any trial justice, who is also a bail commissioner, shall act in his capacity as bail commissioner in any case wherein the process is made returnable to his court.

Sec. 35. Commissioners admit to bail persons committed for not finding sureties. R. S. c. 113, § 35. When a person is confined in a jail for a bailable offense, or for not finding sureties on a recognizance, except when a verdict of guilty has been rendered against him for an offense punishable in the state prison, and except when such person is committed pending decision on report or exceptions as provided in section 29 of chapter 135, any such commissioner, on application, may inquire into the case and admit him to bail, and exercise the same power as any justice of the supreme judicial court or superior court can; and may issue a writ of habeas corpus, and cause such person to be brought before him for this purpose, and may take such recognizance; provided, however, that during a term of the superior court, a bail commissioner is not authorized to admit to bail any person confined in jail or held under arrest by virtue of a precept returnable to said term; and when a person is confined in jail for a bailable offense, or for not finding sureties on a recognizance, and the amount of his bail has been fixed by a justice of the supreme judicial court or of the superior court, or by a judge or recorder of a municipal court, a bail commissioner is not authorized to change the amount of such bail. Such bail commissioner shall receive not exceeding the sum of \$5 in each case in which bail is so taken, the same to be paid by the person so admitted to bail; but the person admitted to bail shall not be required to pay any other fees or charges to any officer for services connected with the giving of such bail.

No attorney at law who has acted as bail commissioner in any proceeding shall act as attorney for or in behalf of any respondent for whom he has taken bail in such proceeding; nor shall any attorney at law who has acted as such attorney for a respondent in any offense act as bail commissioner in any proceeding growing out of the offense with which the respondent is charged or for not finding sureties on a recognizance growing out of such proceeding.

85 Me. 544.

Sec. 36. May admit to bail before commitment; and on Lord's Day. R. S. c. 113, § 36. Any person under arrest for a bailable criminal offense may, before commitment to jail if he so requests, be taken by the officer having him in charge before a bail commissioner, who may inquire into the case and admit him to bail. Any person arrested on the Lord's Day, or on the afternoon or evening preceding, for a bailable offense, may be admitted to bail on that day by such commissioner.

Sec. 37. Habeas corpus may issue to bring a prisoner as a witness. R. S. c. 113, § 37. A court may issue a writ of habeas corpus, when necessary, to bring before it a prisoner for trial in a cause pending in such court, or to testify as a witness, when his personal attendance is deemed necessary for the attainment of justice.

Sec. 38. Habeas corpus may issue on application in behalf of insane person. R. S. c. 113, § 38. When an insane person is arrested or imprisoned on mesne process or execution in a civil suit, a justice of the supreme judicial court or of the superior court, or the judge of probate within his county, on application, may inquire into the case; issue a writ of habeas corpus; cause such person to be brought before him for examination; and after notice to the creditor or his attorney, if either is living in the state, and a hearing, if it is proved to the satisfaction of said justice or judge that the person is insane, he may discharge him from arrest or imprisonment; and the creditor may make a new arrest, on the same demand, when the debtor becomes of sound mind. If he is arrested on the same demand a second time, before he becomes of sound mind, and is again discharged for that reason, he is forever after exempt from arrest for the same cause.

CHAPTER 114.

WRIT OF AUDITA QUERELA.

Sec. 1. Form of writ. R. S. c. 114, § 1. The writ of audita querela may be sued out in the form of a writ of attachment or summons; and shall be sealed, signed, tested, and indorsed as other writs.

Sec. 2. In what court and county to be sued out. R. S. c. 114, § 2. When brought to prevent, set aside, or annul proceedings on a judgment or execution, it shall be sued out of the court in which judgment was rendered, but in all other cases it shall be sued in the county and court having jurisdiction of the case according to the provisions of law as to personal actions.

59 Me. 567; 62 Me. 13.

Sec. 3. Proceedings. R. S. c. 114, § 3. If the defendant does not appear, after being duly served with process, he shall be defaulted; but if he appears, a trial shall be had as in other actions.

Sec. 4. Complainant may recover special damages. R. S. c. 114, § 4. The complainant may declare in his writ for any special damages that he has suffered by the service of such execution; and, on proof, he shall have judgment and execution for such damages, instead of recovering therefor in a subsequent suit.

24 Me. 306.

Sec. 5. Pleadings, and filing exceptions. R. S. c. 114, § 5. The defendant may plead the general issue of not guilty, with or without a brief statement, or any special matter in bar; and exceptions may be alleged to the rulings, instructions, and opinion of the court, as in civil actions.

Sec. 6. Proceedings, if complainant in prison. R. S. c. 114, § 6. When the complainant is in prison on execution, the court, before which such action described in this chapter is brought, may admit him to bail, to be approved by the court; the bond shall be conditioned, that if final judgment is rendered for the respondent, the complainant, within 30 days thereafter, shall surrender himself