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Chapter 110.
Trial Justices. Justices of the Peace. Notaries Public.

Trial Justices.

Sec. 1. Trial justices, appointment, tenure and salary. — 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, and shall receive such salary as shall be determined by the county commissioners, which shall be paid from the county treasury in equal monthly installments. (R. S. c. 97, § 1. 1947, c. 262, § 1.)

Cross reference. — See c. 19, § 3, sub-§ IV, re authority of department of audit.

This section does not require that trial justices should be residents of the county for which they are appointed, and the language of the statute clearly shows that no such qualification was intended. State v. Quinn, 96 Me. 496, 52 A. 1009.

Acceptance of incompatible office effects resignation.—A trial justice, by accepting another incompatible office, such as deputy sheriff or constable, thereby resigns the one first held. Stubbs v. Lee, 64 Me. 195.

Cited in Wendall v. Greaton, 63 Me. 267.

Sec. 2. Fines, costs and forfeitures. — Trial justices shall receive no other compensation except their salaries established by the county commissioners. All fines, costs, fees and forfeitures, except as otherwise provided by law, shall be paid over to their respective counties. (1947, c. 262, § 2.)

Sec. 3. Jurisdiction in civil actions.—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. (R. S. c. 97, § 2.)

Cross references.—See c. 15, § 15, re recording of fingerprints; c. 108, § 1, re disposition of fines, costs and forfeitures.

The jurisdiction of justices depends wholly upon the statutory provisions and cannot be enlarged by presumption or by implication. State v. Hall, 49 Me. 412; Inman v. Whiting, 70 Me. 445.

And specifically upon the ad damnum.—In all actions sounding in damages, as assumpsit and tort, the jurisdiction depends upon the ad damnum, which is the amount of damages demanded. Cole v. Hayes, 78 Me. 539, 7 A. 391.

The ad damnum in the writ is the "debt or damages demanded," within the meaning of this section, which gives trial justices exclusive jurisdiction "when the debt or damages demanded do not exceed twenty dollars." Cole v. Hayes, 78 Me. 539, 7 A. 391.

Verdict under $20 shows jurisdiction of justice.—If the verdict does not exceed twenty dollars, it shows the cause of action was within the jurisdiction of a trial justice and should have been commenced before him. Spaulding v. Yeaton, 82 Me. 92, 19 A. 156.

And interest does not affect the money limitation.—As interest on a verdict is no part of the cause of action, it in nowise affects the question of costs even when it swells the debt or damage to an amount of judgment exceeding twenty dollars. Spaulding v. Yeaton, 82 Me. 92, 19 A. 156.

The facts which determine the jurisdiction must appear of record. Inman v. Whiting, 70 Me. 445.

It is necessary that the jurisdiction of trial justices should appear in their proceedings in order to sustain them. State v. Hartwell, 35 Me. 129.

No action will lie on a judgment of a justice, the record of which does not show that the defendant was served with process, without proof of such process. Waterville Iron Mfg. Co. v. Goodwin, 43 Me. 431.

For the jurisdiction of an inferior court, or magistrate, is never to be presumed. It must be clearly exhibited. In re Hersom, 39 Me. 476.

No presumptions are to be made in favor of courts of limited jurisdiction. Waterville Iron Mfg. Co. v. Goodwin, 43 Me. 431.

Nor can the consent of parties give a justice jurisdiction not statutorily conferred. State v. Hall, 49 Me. 412.

Justice must act at time set for trial.—The justice is not authorized to perform any duty in the case at a different time from that set for the trial, either originally or by adjournment, except to grant the writ and issue subpoenas. Martin v. Fales, 18 Me. 23.

He is not liable for judicial acts.—In rendering a judgment, the justice acts in a judicial character, and within his jurisdiction, and is not responsible for errors of judgment; nor is he liable, in a civil suit, for any act done by him in his judicial capacity. Tyler v. Alford, 38 Me. 530.

A judge of a court not of record is not liable personally for any injury sustained by anyone which is the result of honest error of judgment, in a matter where the court has jurisdiction, and where the act done is not of a purely ministerial character. Williamson v. Lacy, 86 Me. 80, 29 A. 943.

But is liable for acts after jurisdiction has ceased.—If a justice proceeds to render judgment in a cause and issue execution after his jurisdiction has ceased, he is liable to an action of trespass for an arrest made by virtue of such execution. Spencer v. Perry, 17 Me. 413.

Or for corrupt ministerial acts.—In determining upon an appeal, as well as in issuing an execution, the justice acts ministerially, in a matter demanding the exercise of his discretion. In such cases he may be amenable to a party injured, if he acts corruptly. Tyler v. Alford, 38 Me. 530.

Or if he acts arbitrarily or maliciously.—If an inferior magistrate acts unreasonably and arbitrarily, or from malicious motives, and thereby inflicts an injury upon a person he may be liable in an action therefor. But it must be a case of direct injury or indignity to the individual. Williamson v. Lacy, 86 Me. 80, 29 A. 943.

Scope of "title to real estate....in question."—The expression, "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," embraces in its generality real actions, actions of trespass on real estate, actions for disturbance of a right of way or of any other easement, as well as all other actions, where the title to real estate, according to the pleadings or brief statement, filed in the case by either party, may be in question. Burnham v. Ross, 47 Me. 456.

It does not comprehend title questions in collateral matters.—The title to real estate cannot be considered as concerned or brought in question, within the meaning of this section, when it is not put in issue by the pleadings or brief statement, and cannot be affected by the judgment. When the title to real estate is brought in question in mere collateral matters, it is not within the sense of the section. Hatch v. Allen, 27 Me. 85.

The word "pleadings" includes the declaration as well as the plea filed. Burnham v. Ross, 47 Me. 456.

History of section.—See Burnham v. Ross, 47 Me. 456; Mellows v. Hall, 49 Me. 335.

Former provision of section.—For a case relating to a former provision of this section conferring jurisdiction when "the judge of such court is not interested," see Spear v. Robinson, 29 Me. 531.

Applied in Fernald v. Garvin, 55 Me. 414.

Quoted in Forbes v. Bethel, 28 Me. 204.

Stated in Bacon v. Dyer, 12 Me. 19; Abbott v. Knowlton, 31 Me. 77.

Cited in Houlton v. Martin, 50 Me. 336; Smith v. Hunt, 91 Me. 572, 40 A. 698.

Sec. 4. Writs, form and service.—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. (R. S. c. 97, § 3.)

Cited in Bacon v. Dyer, 12 Me. 19.

Sec. 5. Actions, where brought, when parties live in same county.—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. (R. S. c. 97, § 4.)

Quoted in Allen v. Somers, 68 Me. 247.

Sec. 6. When parties live in different counties.—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. (R. S. c. 97, § 5.)

Local actions may be brought before a justice in the county where the defendant lives, although the cause of action accrued from an injury done to real estate within a different county. Morton v. Chase, 15 Me. 188.

Doubtless, under this section, an action of trespass quare clausum can be maintained before a trial justice in a county where the defendant resided, unless by the pleadings the title to the realty is brought in question, although the defendant does not reside in the county where the cause of action arose. Gordon v. Merry, 65 Me. 168.

Stated in Jewell v. Brown, 33 Me. 250.

Cited in Smith v. Hunt, 91 Me. 572, 40 A. 698.

Sec. 7. Writs returnable before another in same county.—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. (R. S. c. 97, § 6.)

Sec. 8. Writ, when returnable; justice to be present with writ.—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 10. (R. S. c. 97, § 7.)

Justice must attend at time and place specified in writ. — The magistrate is "to attend" at the place where the defendant is summoned to appear, and not elsewhere. If the case is to be tried by another justice, it is at the time and place fixed in the continuance. The time is fixed, the place is fixed and the same rule that applies to the one is equally applicable to the other. Belcher v. Treat, 61 Me. 577.

And failure to attend operates a discontinuance.—If the justice is not present at the time and place to which the cause was duly continued, that operates a discontinuance of the cause. Spencer v. Perry, 17 Me. 413.

If the justice does not attend at the time and place of trial, the suit fails, except as provided in § 10. Martin v. Fales, 18 Me. 23.

A trial justice is an inferior magistrate of limited statutory jurisdiction, and to retain jurisdiction under this section he must be present in person at the time and place named for the defendant to appear. Hamlin v. Higgins, 102 Me. 510, 67 A. 625.

A writ, made returnable before a trial justice, "at his dwelling house," to wit, "at his office," must be entered before him at such dwelling house. If it is entered at the office of the justice a short distance from the dwelling house, the justice has no jurisdiction. Stanton v. Hatch, 52 Me. 244.

As does an attempted continuance at improper time.—The continuance of an action by a justice at a time when he is not

present, or before the day for trial arrives, will operate a discontinuance. State v. Hall, 49 Me. 412.

The defendant is not summoned to be present at any other time or place than that specified in the writ. If the justice, before whom the writ is returnable, should undertake to order a continuance at any other time than that to which the writ is returnable, or to which the cause may stand adjourned, it would operate a discontinuance. Belcher v. Treat, 61 Me. 577.

The justice has no right to order a continuance, prior to the day appointed. Spencer v. Perry, 17 Me. 413.

Or at improper place.—An adjournment should be at the place where the defendant had been summoned to appear; if at the office of the justice, then within and not without it. The justice can no more continue at a different place than at a different time from that to which the writ was returnable. Belcher v. Treat, 61 Me. 577.

He must act on return day or on day to which continued.—The justice, to maintain his jurisdiction for any purpose, except such as are merely ministerial, must act either on the return day or on some day to which the action has been legally continued, otherwise his action will be coram non judice. State v. Hall, 49 Me. 412.

Sec. 9. Nonsuit or default after 1 hour; stricken off. — 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. (R. S. c. 97, § 8.)

Section refers to nonsuit or default only at time set in writ.—The provisions of this section manifestly refer to a nonsuit or default at the time set in a writ for the trial of a civil cause. They do not refer to a disposition of a cause in either mode at some subsequent adjournment. They relate only to the possible failure of justice by the non-appearance of the party nonsuited or defaulted at the return day of the writ. Pratt v. Roberts, 53 Me. 399.

And nonsuit on day to which continued terminates jurisdiction.—Where the parties were present on the return day of the writ and the action was nonsuited at the day to which it was continued, the jurisdiction of the magistrate was at an end, except to carry into effect the judgment rendered. This section gives no authority for further judicial action. Pratt v. Roberts, 53 Me. 399.

The omission of the plaintiff or anyone for him to appear, effects a discontinuance of his cause, and the justice has no authority to enter judgment for him. Martin v. Fales, 18 Me. 23.

Sec. 10. When justice cannot attend, another may continue proceedings.—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. (R. S. c. 97, § 9.)

Continuance limited to return day of writ.—When the justice, before whom a cause is to be tried, fails to attend at the time and place appointed for trial, a continuance of the cause by another justice is intended by this section to be limited to the return day of the writ. Spencer v. Perry, 17 Me. 413.

A second continuance after 30 days defeats jurisdiction.—Where the justice who tried the cause, had twice continued it, and the hearing was more than thirty days after the return day of the writ, he had no jurisdiction when he entered the action, and heard the parties. Call v. Mitchell, 39 Me. 465.

And consent cannot confer jurisdiction.—An express waiver of all objection, under the provisions of this section, to the jurisdiction of the justice, or consent that

he should exercise it, does not confer jurisdiction when none existed by law. Call v. Mitchell, 39 Me. 465.

Former provision.—For a case relating to a former provision of this section providing for continuance when justice was "unable" to attend, see Inman v. Whiting, 70 Me. 445.

Stated in Tyler v. Beal, 31 Me. 336.

Sec. 11. Where court held; pleadings; limitation of costs.—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. (R. S. c. 97, § 10.)

Trials in court, as a rule, must be public. It is a public rather than an individual right to have proceedings in court conducted with open doors. Williamson v. Lacy, 86 Me. 80, 29 A. 943.

Though judge may regulate spectators at criminal trials.—In criminal cases the accused cannot be deprived of the presence of his friends. Judges have a discretion to be exercised in regulating the number and kind of spectators at criminal trials, but not an unlimited discretion. Williamson v. Lacy, 86 Me. 80, 29 A. 943.

But he cannot exclude all spectators.—A trial justice exercises his discretionary power erroneously who causes to be ejected from his courtroom during a criminal examination all persons but parties and their witnesses, including in the number many leading and influential citizens in attendance as spectators. Williamson v. Lacy, 86 Me. 80, 29 A. 943.

Nothing more than the general issue need be pleaded before justices' courts, title to land and matter in abatement excepted. Otis v. Ellis, 78 Me. 75, 2 A. 851.

Pleas and motions in abatement should be filed before a general continuance of the cause. Otis v. Ellis, 78 Me. 75, 2 A. 851.

Appealing from the decision of a matter in abatement before the general issue is pleaded is a wavier of any defense under that issue. Otis v. Ellis, 78 Me. 75, 2 A. 851.

Applied in Inman v. Whiting, 70 Me. 445.

Cited in Tyler v. Beal, 31 Me. 336.

Sec. 12. Judgment on default or trial.—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. (R. S. c. 97, § 11.)

Stated in State v. Hall, 49 Me. 412.

Executions.

Sec. 13. Issue and return of executions.—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. (R. S. c. 97, § 12.)

Issuing an execution, or entering an appeal, is a mere ministerial act, and may be done out of term time or after the justice has adjourned his court. State v. Hall, 49 Me. 412. See Jones v. Elliott, 35 Me. 137.

But execution without seal cannot justify action thereunder. — In an action of trespass de bonis asportatis, where the defendant justified the taking as an officer on an execution issued by a justice on a recognizance for debt, such execution having no seal affixed thereto; it was held that the execution gave the defendant no authority to seize and dispose of the goods. Nor did the justice have authority after the return of execution to amend the execution by affixing a seal. Porter v. Haskell, 11 Me. 177.

Stated in Stevens v. Manson, 87 Me. 436, 32 A. 1002.

Scire Facias.

Sec. 14. When writs of scire facias issue. — 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. (R. S. c. 97, § 13.)

Records.

Sec. 15. Records.—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. (R. S. c. 97, § 14.)

Records of justices are treated as other court records.—The records of trial justices are treated as such, uniformly. Their veracity cannot be impeached, any more than those of other courts; and on a plea of nul tiel record the trial is by inspection of them as of other records. Longley v. Vose, 27 Me. 179.

The records of trial justices as to matters within their jurisdiction, are entitled to the same credit as are the records of higher judicial tribunals. State v. Hall, 49 Me. 412.

Applied in Brown v. Joy, 61 Me. 564.

Cited in Frost v. Holland, 75 Me. 108.

Sec. 16. Execution issued on transcribed record.—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. (R. S. c. 97, § 15.)

The "first execution" is the one to be issued by the transcribing justice, which must be done within "one year from the time the judgment was rendered." Unless issued within the year, he can only issue on scire facias. Brown v. Joy, 61 Me. 564.

Sec. 17. On removal or death, records deposited with clerk; duty of clerk.—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. (R. S. c. 97, § 16.)

Sec. 18. Proceedings, if records not completed; when an execution used instead of copy of record.—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. (R. S. c. 97, § 17.)

Justice's certificate of facts in record not proof.—The contents of a justice's record are to be proved by an authenticated copy of it. His certificate, alleging what facts appear by the record, is not receivable as proof. English v. Sprague, 33 Me. 440.

Cited in Edwards v. Moody, 60 Me. 255.

Sec. 19. Justice may certify copies and issue new executions after commission expires.—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. (R. S. c. 97, § 18.)

A justice does not act judicially in making up and completing his record. It is a mere ministerial act. Matthews v. Houghton, 11 Me. 377; Jones v. Elliott, 35 Me. 137.

Incompatibility of office immaterial in renewing execution.—A justice has authority to renew an execution at any time within two years from the expiration of his commission, although at the time of doing it, he may be rightfully exercising the duties of an executive officer. The incompatibility of the two offices is immaterial. Jones v. Elliot, 35 Me. 137.

Sec. 20. Unsatisfied executions of a trial justice renewed.—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. (R. S. c. 97, § 19.)

See § 15, re records.

Trial Justices Not to Be of Counsel.

Sec. 21. Justice not to be of counsel; abatement of action.—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. (R. S. c. 97, § 20.)

Applied in Spaulding v. Nickerson, 91 Me. 200, 39 A. 574.

Justices of the Peace.

Sec. 22. Justices of the peace.—Justices of the peace shall exercise their powers and duties and shall be commissioned to act within and for every county. (R. S. c. 97, § 21.)

Cross reference.—See Me. Const., Art. 5, Part First, § 8, re nomination.

Applied in Blake v. Peck, 77 Me. 588, 1 A. 828.

Fees of Trial Justices and Justices of the Peace.

Sec. 23. Fees of trial justices and justices of the peace.—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.

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 120, $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. (R. S. c. 97, § 22.)

Applied in Knowlton v. Waldo County Com'rs, 79 Me. 164, 8 A. 683.

Notaries Public and Protests.

Sec. 24. Notary's seal; authority to administer oaths.—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. (R. S. c. 97, § 23.)

See Me. Const., Art. 5, Part First, § 8, re nomination.

Sec. 25. Duty as to protests of losses, and record and copies. — 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. (R. S. c. 97, § 24.)

Sec. 26. Demand and notice on notes, bills, etc.—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. (R. S. c. 97, § 25.)

By this section a notary public is authorized to administer oaths in all cases where a justice of the peace can act. Duncan v. Grant, 86 Me. 212, 29 A. 987. See note to c. 120, § 2, re creditor's oath for arrest of debtor may be taken before notary.

This section is plainly limited to the authority of notaries public within the state. It does not purport to give effect to the acts of notaries without the state. By the use of the words "notary public," only such a person is intended as is recognized by the laws of the state as such. Holbrook v. Libby, 113 Me. 389, 94 A. 482.

And foreign notaries presumed unauthorized to administer oaths.—At common law a notary public had no authority to administer oaths, and in the absence of proof to the contrary, the law of foreign states is presumed to be like our common law. Holbrook v. Libby, 113 Me. 389, 94 A. 482.

An affidavit made before a notary public in a foreign state does not have the legal efficacy of an affidavit in this state unless it is shown that in such foreign state notaries public are authorized to administer oaths. Holbrook v. Libby, 113 Me. 389, 94 A. 482.

Applied in Central Bank v. Allen, 16 Me. 41; Clark v. Bigelow, 16 Me. 246; Warren v. Warren, 16 Me. 259; Warren v. Gilman, 17 Me. 360; Freeman's Bank v. Perkins, 18 Me. 292; Northern Bank v. Williams, 21 Me. 217.

Sec. 27. Acts of notary who is interested in corporation.—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 nonpayment 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. (R. S. c. 97, § 26.)

Sec. 28. Copies, evidence.—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. (R. S. c. 97, § 27.)

Scope of section.—This section is in affirmance of the common law relating to foreign bills, and embraces within its provisions all inland bills, notes and orders, so as to render all subjects of protest, and all protests alike receivable as evidence, a provision insuring an expeditious mode of procuring and perpetuating testimony. Ticonic Bank v. Stackpole, 41 Me. 302.

Uncontradicted certificate establishes li-

ability.—Where the plaintiff shows the certificate of a notary public certifying that notice was duly given, such proof being uncontradicted, the liability of the defendant, as indorser, is established. Loud v. Merrill, 45 Me. 516.

If it is considered that the notarial certificate is defective, the necessary facts may be supplied aliunde. Bradley v. Davis, 26 Me. 45.

Notarial protest with record, sufficient to charge endorser.—Notarial protests relied on by the plaintiff and testified to by the notary as genuine, corresponding with his notarial record, and descriptive of the notes in suit, are sufficient evidence to charge the endorser upon such notes; and the production by the defendant of other and like notices can have no tendency to invalidate those relied upon or to show the want of legal notice. Cummings v. Herrick, 43 Me. 203.

And uncontroverted testimony of notary with records proves notice.—Where a notary public testified that he sent notices to the defendant, a copy of which was in his book of records and was in due form, it was held, such evidence being uncontroverted, that notice was sufficiently proved. Union Bank v. Stone, 50 Me. 595.

Notarial notice is presumed sufficient.—Where a notary certifies that he officially gave notice to an endorser of a bill of exchange, the presumption is that his notice was sufficient to charge the party notified. Pattee v. McCrillis, 53 Me. 410.

And notice that describes note with reasonable certainty is sufficient.—A notice by a notary public to an indorser, of the dishonor of a note, is sufficient if it describes the note with reasonable certainty, though the description may not be strictly accurate. Williams v. Smith, 48 Me. 135.

Notary's certificate, to be conclusive, must be specific.—This section does not make the notary's certificate conclusive evidence of the facts therein stated; and if it is to be taken as conclusive, it ought to be specific as to the mode in which the notices were given, by stating whether they were verbal or in writing, and, if in writing, whether the writing was delivered to the person or persons notified, or dispatched by some other mode of conveyance; and, if so, by what mode, and when sent, and to what place addressed. Bradley v. Davis, 26 Me. 45; Orono Bank v. Wood, 49 Me. 26.

But if not specific, it is prima facie sufficient.—A notary's certificate which states generally, that the notary "duly notified the drawer and indorser," without stating what notice was given, how given, and where such notice was addressed, is prima facie sufficient to charge the indorser. Orono Bank v. Wood, 49 Me. 26.

Contents of notices inferred from notarial certificate.—A notarial certificate stating that the notary exhibited the note at the place of business of the promisors and demanded payment thereof, which was refused, and that he duly notified the endorsers by written notices, sent them by mail, and that this was done at the request of proper authority, the time limited and grace having expired, affords reasonable inference that he stated substantially these facts in the written notices which he sent; and such evidence makes out a prima facie case. Lewiston Falls Bank v. Leonard, 43 Me. 144.

A bill drawn in this state on drawees in another state is a foreign bill, and a notarial protest of it is admissible in evidence. Clark v. Bigelow, 16 Me. 246; Freeman's Bank v. Perkins, 18 Me. 292.

And protests of foreign notaries are admissible.—A note payable at a place in another state, in a suit against the indorser, may, so far as to admit the protest as evidence, be treated as a foreign bill. Consequently the protests of notaries, residing in the state where the paper was payable, are legally admissible by the common law. Ticonic Bank v. Stackpole, 41 Me. 302.

Applied in Green v. Jackson, 15 Me. 136; Central Bank v. Allen, 16 Me. 41; Homes v. Smith, 16 Me. 181; Warren v. Warren, 16 Me. 259; Fales v. Wadsworth, 23 Me. 553; Ticonic Bank v. Stackpole, 41 Me. 321.

Sec. 29. When office vacated, records deposited with clerk of courts.—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. (R. S. c. 97, § 28.)

Sec. 30. Injuring or concealing such records.—Whoever knowingly de-

stroys, 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. (R. S. c. 97, § 29.)

Sec. 31. Duties of clerks relating to records; fees.—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. (R. S. c. 97, § 30.)

Applied in Homes v. Smith, 16 Me. 181.

Sec. 32. Fees for protest and appropriation of penalties.—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 29 and 30 accrue, ½ to the state and ½ to the prosecutor. (R. S. c. 97, § 31.)