NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 4

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 126.

Habeas Corpus. Bail Commissioners.

Sec. 1. Right to writ.—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. (R. S. c. 113, § 1.)

Cross references.—See Const. of Me., Art. I, § 10, re habeas corpus; note to c. 106, § 14, re exceptions to order for discharge of a prisoner upon habeas corpus.

The object of the writ of habeas corpus is to afford relief from every wrongful imprisonment or unlawful restraint of personal liberty. State v. Smith, 6 Me. 462; Knowlton v. Baker, 72 Me. 202.

The purpose of the writ of habeas corpus is not only to secure the right of personal liberty to one who has been illegally deprived thereof, but also to insure a speedy hearing and determination of the questions involved as to the right of the petitioner to be released from imprisonment. Stuart v. Smith, 101 Me. 397, 64 A. 663.

Exceptions do not lie to the discharge of a prisoner on habeas corpus. Knowlton v. Baker, 72 Me. 202; Stuart v. Smith, 101 Me. 397, 64 A. 663.

Cited in Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

Sec. 2. Minors enlisted into army or navy entitled to writ.—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. (R. S. c. 113, § 2.)

Sec. 3. Parent or guardian of minor may have writ.—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. (R. S. c. 113, § 3.)

A divorce decree awarding custody of a minor child cannot be disregarded in a subsequent proceeding under this section to obtain possession of the child. Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

Sec. 4. Courts may grant writ, on application in behalf of one incapable of applying.—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. (R. S. c. 113, § 4.)

Record admissible in subsequent action.—The record of the habeas corpus proceedings brought under this section is admissible in a later action for false imprisonment as tending to show an improbability that the plaintiff was free to leave when she chose, but not to charge the defendant with responsibility for her restraint. Whittaker v. Sanford, 110 Me. 77, 85 A. 399.

Stated in part in Mitchell v. Emmons, 104 Me. 76, 71 A. 321.

Cited in Blue v. Boisvert, 143 Me. 173, 57 A. (2d) 498.

Sec. 5. Persons not entitled of right.—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.

Stated in part in Welch v. Sheriff of Franklin County, 95 Me. 451, 50 A. 88.

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

Persons imprisoned on criminal process are not to be released on habeas corpus for defects in matters of form only. Phinney, Petitioner, 32 Me. 440; O'Malia

v. Wentworth, 65 Me. 129; Wallace v. White, 115 Me. 513, 99 A. 452.

Excessive sentence not totally void.—A sentence which imposes a punishment in excess of the power of the court to impose is not void in toto, but void only as to the excess. It is good on habeas corpus so far as the power of the court extends, and invalid only as to the excess. Wallace v. White, 115 Me. 513, 99 A. 452.

Severable and nonseverable excessive sentences.—If an excessive sentence is severable, the prisoner should not be discharged until he has served out the valid portion of his sentence. If an excessive sentence is not severable the defendant is not entitled to a discharge on habeas corpus but should be remanded for sentence. Wallace v. White, 115 Me. 513, 99 A. 452.

III. Persons committed on mesne process on any civil action on which they are liable to be arrested and imprisoned. (R. S. c. 113, § 5.)

See § 11, re form of writ.

Sec. 6. Application.—Application for such writ by any person shall be made to any justice of the supreme judicial court or superior court, regardless whether or not the supreme judicial court or superior court is in session. It shall be made returnable before such justice to whom application is made. If the writ is denied and an appeal taken to the law court, the person restrained may be admitted to bail within the discretion of the justice rendering judgment thereon, pending such appeal. (R. S. c. 113, § 6. 1953, c. 285.)

History of section. — See Gerrish v. Lovell, 146 Me. 92, 77 A. (2d) 593.

Former provision of section. — For a case decided under a former provision of this section that application for a writ must be made to the supreme judicial or superior court if in session, see Gerrish v. Lovell, 146 Me. 92, 77 A. (2d) 593.

Quoted in part in Mitchell v. Emmons, 104 Me. 76, 71 A. 321.

Sec. 7. Writ returnable.—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. (R. S. c. 113, § 7.)

Sec. 8. Application; when writ shall not issue.—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. (R. S. c. 113, § 8.)

Issuance of writ is discretionary. — An application for the writ is addressed to the sound discretion of the court; and the writ will not be granted unless the real and substantial justice of the case demands it. O'Malia v. Wentworth, 65 Me. 129; Wallace v. White, 115 Me. 513, 99 A. 452.

The court can only examine the precept and cannot look at the complaint to see whether it is sufficiently formal or not. O'Malia v. Wentworth, 65 Me. 129.

Stated in part in Gerrish v. Lovell, 146 Me. 92, 77 A. (2d) 593.

Sec. 9. If excessive bail demanded.—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. (R. S. c. 113, § 9.)

Cross reference.—See § 16, re proceedings in court.

Cited in Moore v. Moore, 61 Me. 417.

Sec. 10. If officer refuses copy of precept, writ to issue. — 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. (R. S. c. 113, § 10.)

Quoted in part in Gerrish v. Lovell, 146 Me. 92, 77 A. (2d) 593.

Sec. 11. Form of writ.—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. (R. S. c. 113, § 11.)

See § 22, re form of return.

Sec. 12. Time of service, return and tender of fees.—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. (R. S. c. 113, § 12.)

Sec. 13. Officer, when making return, to bring body of person restrained; if person sick and cannot be brought.—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. (R. S. c. 113, § 13.)

Sec. 14. Examination of causes of restraint.—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. (R. S. c. 113, § 14.)

Quoted in part in Stuart v. Smith, 101 Me. 397, 64 A. 663.

Sec. 15. Persons interested notified before prisoner discharged. — 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. (R. S. c. 113, § 15.)

Sec. 16. Proceedings in court.—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. (R. S. c. 113, § 16.)

The court is bound to set an infant free from an improper restraint, but it is not bound to deliver the infant over to anybody. State v. Smith, 6 Me. 462.

Quoted in part in Stuart v. Smith, 101 Me. 397, 64 A. 663.

Sec. 17. Party detained for any bailable offense admitted to bail.—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. (R. S. c. 113, § 17.)

Stated in Welch v. Sheriff of Franklin County, 95 Me. 451, 50 A. 88.

Sec. 18. Form of writ, if restraint is not by officer.—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."

(R. S. c. 113, § 18.)

Cross reference.—See § 22, re form of return.

Quoted in part in Whittaker v. Sanford, 110 Me. 77, 85 A. 399.

Sec. 19. Issue and service of writ.—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. (R. S. c. 113, § 19.)

Sec. 20. If person restraining unknown, how designated.—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 anyone served with the writ shall be deemed the person thereby intended. (R. S. c. 113, § 20.)

Sec. 21. If person restrained unknown.—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. (R. S. c. 113, § 21.)

Sec. 22. Form of return in cases mentioned in §§ 11 and 18.—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. (R. S. c. 113, § 22.)

Sec. 23. Authentication of return. — 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. (R. S. c. 113, § 23.)

Sec. 24. How party kept.—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. (R. S. c. 113, § 24.)

Sec. 25. Neglect of officer to deliver copy of precept.—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. (R. S. c. 113, § 25.)

Cross reference.—See § 31, re common law action for false imprisonment.

Officer must furnish process by which he detains prisoner. — This section seems to take it for granted that the jailer or other officer shall be able to furnish the written evidence of his authority for depriving a citizen of his liberty. Jones v. Emerson, 71 Me. 405; Berticelli v. Huard, 146 Me. 151, 78 A. (2d) 495.

Sec. 26. If officer neglects to serve writ; contempt proceedings.—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. (R. S. c. 113, § 26.)

See § 31, re common law action for false imprisonment.

Sec. 27. Attachment against sheriff; service. — 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. (R. S. c. 113, § 27.)

Sec. 28. When person refuses to obey writ.—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. (R. S. c. 113, § 28.)

Sec. 29. Persons discharged on habeas corpus, not rearrested. — 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. (R. S. c. 113, § 29.)

Quoted in part in Stuart v. Smith, 101 Me. 397, 64 A. 663.

Sec. 30. Conveyance to prison of persons ordered committed; eluding service.—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 anyone 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. (R. S. c. 113, § 30.)

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

See c. 112, § 93, re false imprisonment.

Sec. 32. Third person may appear for party by stipulating for costs. —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. (R. S. c. 113, § 32.)

Sec. 33. Bail; exceptions.—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. (R. S. c. 113, § 33.)

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

Sec. 34. Bail commissioners appointed by court; limitations. — 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. (R. S. c. 113, § 34.)

Sec. 35. Commissioners admit to bail persons committed for not finding sureties.—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 148, 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. (R. S. c. 113, § 35.)

Stated in part in In re Bail Com'rs, 85 Me. 544, 27 A. 455.

Sec. 36. May admit to bail before commitment; and on Lord's Day.—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. (R. S. c. 113, § 36.)

Sec. 37. Habeas corpus may issue to bring prisoner as witness.—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. (R. S. c. 113, § 37.)

Writ will not issue to permit prisoner to argue before appellate court.—A writ of habeas corpus will not issue to enable a prisoner to appear before the supreme judicial court to personally argue his bill of exceptions, since there is no occasion for the testimony of witnesses, and to allow a prisoner to personally argue would be an undesirable practice. In re Smith, 145 Me. 174, 74 A. (2d) 225.

Sec. 38. Habeas corpus may issue on application in behalf of insane person.—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. (R. S. c. 113, § 38.)