MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

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Chapter 122.

Forcible Entry and Detainer. Tenancies.

Sec. 3. Jurisdiction.—Trial justices, judges and recorders of municipal courts have jurisdiction of cases of forcible entry and detainer respecting estates within their counties. Such justices, judges and recorders have exclusive jurisdiction of such cases within their cities or towns unless interested and except in such cases in which such justices, judges or recorders are the plaintiffs; provided, however, that judges and recorders of municipal courts shall also have jurisdiction of such cases in all towns in which they are authorized to hold court, notwithstanding the fact that their residence may be in some other town. Such cases in which such justices, judges or recorders are the plaintiffs may be made returnable before any other municipal court within their county. (R. S. c. 109, § 3. 1955, c. 301.)

Effect of amendment.—The 1955 amendment made this section applicable to recorders. It also inserted the words "and except in such cases in which such justices, judges or recorders are the plaintiffs" in the second sentence, and added the third sentence.

Chapter 123.

Petitions and Actions of Review.

Petitions for Review.

Sec. 1. Review within 3 years after judgment.
VII.

I. GENERAL CONSIDERATION.

Each petition rests on its own proven facts.

In accord with original. See Munsey v. Public Loan Corp., 151 Me. 17, 116 A. (2d) 416.

Petitioner must establish 3 propositions.

In accord with original. See Munsey v. Public Loan Corp., 151 Me. 17, 116 A. (2d) 416.

II. WHAT CONSTITUTES "ACCIDENT, MISTAKE OR MISFORTUNE."

A petition for review will be denied if the attorney was negligent, for his negligence unexplained is the negligence of his client. Munsey v. Public Loan Corp., 151 Me. 17, 116 A. (2d) 416.

Fraud, accident or mistake not shown.—Where clerk entered judgment on note after parties agreed to judgment, petition for review alleging that the petitioner had not been given credit for full value of repossessed truck did not show evidence of fraud, accident or mistake required by the statute to entitle petitioner to review. Munsey v. Public Loan Corp., 151 Me. 17, 116 A. (2d) 416.

Chapter 126.

Habeas Corpus. Bail Commissioners.

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; provided, however, that if a bail commissioner takes bail after 8:00 P. M. and prior to 8:00 A. M. of the following day he shall be permitted to receive a charge of up to $10 for the occasion of taking such bail, but said charge shall not be in addition to the charge in each case otherwise authorized in this section but shall be inclusive of such charge or charges.
    (1955, c. 356.)

Effect of amendment.—The 1955 amendment added the proviso at the end of the first paragraph. As the second paragraph was not changed, it is not set out.

Chapter 127.

Writ of Audita Querela.

Sec. 1. Form.

Definition of writ of audita querela and when allowed. — See Wintle v. Wright, 151 Me. 212, 117 A. (2d) 68.

Chapter 129.

Writs of Error, Certiorari, Mandamus and Quo Warranto.

Writs of Error.

Sec. 9. Proceedings.

Section applicable to civil and criminal cases.—The fact that this section has been placed, by the revisors of the statutes, with certain other sections relating to civil cases renders it no less effective in criminal cases. It is not restricted by its terms, and is applicable to cases civil or criminal. Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

A **writ of error coram nobis** may be petitioned for in the superior court in the county where conviction was had, or judgment rendered, in the case, and where the record is. If the petition is in proper form and the petition shows on its face a valid cause (when or if proved by the petitioner at a hearing on the writ), the court should order the writ of error coram nobis to issue and hearing should be had thereon. Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

Writs of Error in Criminal Cases.

Sec. 11. Writ of error in criminal cases.

Quoted in Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

Sec. 12. Effect; custody of plaintiff; release on bail; copies of judgment.

Errors that appear upon face of record.—This section and section 11 of this chapter, when this statute has been invoked, have been construed to apply to

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